LEASEHOLD AND FREEHOLD REFORM BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Leasehold and Freehold Reform Bill as introduced in the House of Commons on 27 November 2023 (Bill 13).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader They do not form part of the Leasehold and Freehold Reform Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Leasehold and Freehold Reform Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Leasehold and Freehold Reform Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Leasehold and Freehold Reform Bill as introduced in the House of Commons on 27 November 2023.

Overview of the Bill

1 The Leasehold and Freehold Reform Bill is the second part of a legislative package to reform English and Welsh property law. It follows on from the Leasehold Reform (Ground Rent) Act 2022, which put an end to ground rents for new, qualifying long residential leasehold properties in England and Wales.

2 The Bill will make long-term changes to homeownership for millions of leaseholders in England and Wales. The main elements of the Bill are:

3 Empowering leaseholders:

a. Making it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold.

b. Increasing the standard lease extension term from 90 years to 990 years for both houses and flats, with ground rent reduced to a peppercorn.

c. Removing the requirement for a new leaseholder to have owned their house for two years before they can extend their lease or buy their freehold and for flats before they can extend their lease.

d. Increasing the 25 per cent 'non-residential' limit preventing 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 - to allow leaseholders in buildings with up to 50 per cent non-residential floorspace to buy their freehold or take over its management.

4 Improving leaseholder consumer rights:

a. Requiring greater transparency regarding leaseholders' service charges so that all leaseholders receive minimum key financial and non-financial information on a regular basis, including introducing a standardised service charge demand form and an annual report, so that leaseholders can scrutinise and better challenge costs if they are considered unreasonable.

b. Replacing buildings insurance commissions for managing agents, landlords and freeholders with transparent administration fees.

c. Scrapping the presumption for leaseholders to pay their landlords' legal costs when challenging poor practice.

d. Granting freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders – by extending equivalent rights to transparency over their estate charges and to challenge the charges they pay by taking a case to a Tribunal.

Policy background

Leasehold Enfranchisement

5 Generally, homeownership in England and Wales consists of two tenure types: freehold and leasehold. Freehold is ownership over the land and the property built upon it, which lasts forever, and generally gives extensive control over the property. Leasehold provides time-limited ownership (for example, a 99-year lease), and control of the property, which is shared with, and limited by the landlord. Unless a leaseholder extends their lease, the property will revert to the landlord, and ultimately the freeholder. The balance of power between leasehold owners and their landlord (who may or may not also be the freeholder) is governed by the terms of the lease and by legislation. The residential leasehold sector represents one in five (4.98 million properties) of the English housing stock and one in six in Wales (approximately 235,000).

6 Qualifying leaseholders have statutory rights to extend their lease or buy the freehold (either individually for houses, or collectively with fellow leaseholders for blocks of flats). The process of extending a lease or buying the freehold is often referred to as enfranchisement. When a leaseholder exercises their right to extend their lease or buy the freehold, they must pay a price (known as the premium) to their landlords (except for lease extensions of houses, where a 'modern ground rent' is paid instead of a premium). In addition, leaseholders in a building may have the right to take over its management without buying the freehold (which is known as the right to manage, or "RTM"), or to seek the appointment of a new manager.

7 In the leasehold system, the ownership structures can be complex. In addition to freeholders, intermediate landlords and managing agents also play a role. For example, where one is appointed, it is a managing agent's job to manage the property in accordance with the terms of the lease and statutory requirements on behalf of the landlord. Sometimes there might be a chain of leases in a building, sitting like rungs on a ladder, with a freeholder at the top, leaseholders (such as those qualifying for enfranchisement rights) at the other end, and one or more leases - called "intermediate leases" - in-between. There might also be leases that do not act as landlords to leaseholders, for example ones covering the common parts.

8 Until recently, landlords could sell a new lease on a property subject to an ongoing obligation to pay a ground rent. A ground rent is a regular payment which a leaseholder must make to their landlord, which is unconnected with any services that the landlord might provide (for example, building maintenance). From 30 June 2022, the Leasehold Reform (Ground Rent) Act 2022 prohibited the charging of a financial ground rent for most new regulated leases. However, the 2022 Act did not alter the position for existing leaseholders. Ground rents, and any potential increases through rent review provisions set out in the lease, are factored into the calculation of premiums for lease extension and freehold acquisition claims. After a statutory lease extension of a flat, the leaseholder is only liable to pay a peppercorn ground rent, whereas in a lease extension of a house, a financial ground rent is due.

9 Most houses are sold as freehold, although an increasing number of freehold homeowners live on estates ("freehold estates") where the communal areas are owned, paid for and maintained privately, rather than by the local authority. Freehold homeowners are required to contribute towards the maintenance of the shared areas through payment of an estate rentcharge or equivalent contribution. There are an estimated 20,000 freehold estates in England.

Qualifying Criteria

10 The Bill removes the requirement for the leaseholder of a flat to have owned their property for at least two years before they can extend their lease, and the leaseholder of a house to have owned their property for at least two years before they can extend their lease or buy their freehold. The Bill allows leaseholders of flats to extend their lease, and leaseholders of houses to extend their lease or buy their freehold, immediately upon taking ownership of a lease.

11 The Bill increases the 'non-residential limit' to 50% for collective enfranchisement and the right to manage. The 'non-residential limit' restricts leaseholder's access to collective enfranchisement and the right to manage based on the proportion of the building's floor space that is used for non-residential purposes. The Bill gives leaseholders the right to collectively enfranchise or claim a right to manage in buildings where up to 50% of the floorspace (excluding common parts) is used, or intended to be used, for non-residential purposes which represents an increase from the current 25% limit.

Lease extensions and Ground rent

12 This Bill introduces a new right to a lease extension for leaseholders of both houses and flats, for a term of 990 years at a peppercorn ground rent on payment of a premium.

13 The Bill amends statutory redevelopment break rights to give freeholders consistent rights for houses and flats. Break rights will be available during the last 12 months of the original lease or the last five years of each period of 90 years of a 990-year lease extension.

14 The Bill repeals a limited number of statutory redevelopment 'defences' (or blockers) to lease extension (as well as some freehold acquisition claims) in houses and flats, where the rights have become redundant, or in certain cases for houses, compensation rules are incompatible with the new 990-year lease extension rights.

15 The Bill introduces a new right for leaseholders who already have very long leases (with over 150 years remaining) to buy out their ground rent without extending the term of their lease or buying the freehold.

16 The Bill sets the method for calculating the price of a statutory lease extension or freehold acquisition, known as the valuation process. The Bill removes the requirement for marriage value to be paid, caps the treatment of ground rents in the valuation calculation at 0.1% of the freehold value and allows Government to prescribe the rates used to calculate the enfranchisement premium. Rates will be set by the Secretary of State in secondary legislation.

Intermediate Leases

17 Intermediate leases are a feature in many blocks of flats but can also be found in leasehold houses. Where intermediate leases are present, the Bill treats those interests as merged into the freehold for the purposes of determining the premium a leaseholder must pay. This simplifies the valuation process for leaseholders, and in many cases will reduce the premium payable and reduce their costs.

18 The Bill introduces a new right for an intermediate landlord to reduce ('commute') the rents

that they pay where a ground rent is reduced to a peppercorn following a lease extension or ground rent buyout claim. In collective enfranchisements, the Bill introduces a right for leaseholders to leave in place the parts of intermediate leases that are superior to leaseholders who qualify for enfranchisement, but do not participate in the claim. The bill also introduces certain protections for intermediate landlords and extends the right to a lease extension to certain sublessees.

Mandatory leasebacks and Jurisdiction

19 The Bill establishes a new right for leaseholders to require their landlord to take a 'leaseback' of any unit that is not let to a participating tenant (which would include commercial units). Leasebacks are 999-year leases (at a peppercorn rent) given to the former freeholder following a collective enfranchisement claim. If there is an existing lease of the unit (e.g. a sitting commercial tenant) the former freeholder, having received a leaseback, becomes an intermediate leaseholder and therefore continues to be the landlord of that unit, and receives any rent payable by the tenant. The leaseholders participating in the collective enfranchisement claim benefit because the value of the unit is removed from the premium they must pay for the freehold. Under the current law, in some circumstances, a freeholder can require the leaseholders who are pursuing a collective enfranchisement claim against them to grant them a 'leaseback' of any unit that is not let to a qualifying tenant (leaseholder). The Bill gives leaseholders an equivalent right for any non-participating units.

20 The Bill sets a new costs regime for enfranchisement and right to manage claims. Leaseholders who are extending their lease, buying their freehold or exercising their right to manage will no longer generally pay the landlord's costs of dealing with the claim (such as valuation, conveyancing and legal fees). Each party will generally bear their own costs.

21 The Bill amends the jurisdiction for enfranchisement and right to manage disputes, so that as far as possible all disputes will be determined by the Tribunal. Again, in most cases each party will pay their own litigation costs.

Transparency of Service Charges and Administration Charges

22 Most leaseholders and some tenants, particularly assured tenants of social housing landlords, are required to pay a service charge to their landlord in return for services carried out to manage, maintain, repair, insure and, in some cases, improve their building (commonly known as "management functions"). For assured tenants, they will only pay for services carried out to manage and maintain the building and will not be responsible for the payment of charges to repair, insure or improve the building. Details - for example on the way service charges are to be organised, what landlord may or may not be charged for, the proportion of the overall change individual leaseholders must pay, and the frequency of payment - are set out in individual leases.

23 Leaseholders and tenants who pay a variable service charge have some protection. Under section 19 and 27A of the 1985 Act, variable service charges must be reasonably incurred and, where costs relate to work or services, those works or services must be of a reasonable standard. Leaseholders and tenants may challenge the reasonableness of the service charge

by making an application to the appropriate tribunal (the First-tier Tribunal (Property Chamber) in England and the Leasehold Valuation Tribunal in Wales) who can make a legal determination on the reasonableness of the service charge. There are also two Government approved codes of practice – Royal Institution of Chartered Surveyors Code of Practice, and the Association of Retirement Housing Managers Code of Practice - which outline best practice for managing agents, landlords or other relevant parties in relation to residential leasehold property management. Both documents can be taken into account as evidence at court and First-tier Tribunal hearings, including hearings on the reasonableness of service charges.

24 Those leaseholders and tenants who pay a variable service charge also have other rights. For example, the demand must contain an address in England or Wales which can be used to send notices to the landlord. The landlord must demand the service charge within 18 months of the relevant costs having been incurred or provide notice in writing that those costs have been incurred and that the leaseholder or tenant will subsequently be required to contribute to them by the payment of a service charge. Leaseholders and tenants may ask for a summary of the service charge account for the last accounting year or, if accounts are not kept by accounting years, the past 12 months. Leaseholders and tenants also have the right to inspect documents relating to the service charge to provide more detail on the summary.

25 The proposals in this Bill seek to drive up the transparency of financial and non-financial information that leaseholders and tenants receive. This includes how service charge costs are presented; the provision of key information – such as insurance costs; greater financial information through the annual preparation of written statements of account; and the ability to compel landlords to provide other relevant information that the tenant needs to know as an occupier of a building where a service charge is payable. Some of these measures will be extended to those who currently pay fixed service charges.

26 Another charge most leaseholders and some tenants may be liable to pay is a variable administration charge. The lease or tenancy governs the situations where a variable administration chare may be payable and include, for example, obtaining permission to carry out alterations to the flat, or payment of the landlord's legal fees incurred incidental to any action taken in respect of non-payment of rent and service charge or for other alleged breaches of the agreement.

27 Variable administration charges are subject to a statutory limitation that any charge is payable only to the extent that the amount of the charge is reasonable, and again the reasonableness of the charge may be challenged through an application to the appropriate tribunal. Landlords have discretion, albeit not unfettered, as to amount that is payable. Leaseholders and tenants may be aware that a cost may be payable, but do not know in advance how much these fees will be. The proposal in this Bill seeks to drive up the transparency of administration charges that leaseholders and tenants may face.

Buildings insurance

28 Most leaseholders are obliged to maintain buildings insurance as part of their mortgage. It is

normal, especially in the context of residential multi-occupancy buildings, for the freeholder/landlord (or property agent if they are acting on their behalf) to reserve the right in the lease to place and manage the insurance of the building and recover the cost of the premium either as a separate insurance rent or as part of the service charge.

29 The Secretary of State asked the Financial Conduct Authority (FCA) to review the residential multi-occupancy building insurance market because of dramatic premium increases. In 2022, the FCA published a report that found over the period 2016-2021, premiums for residential multi-occupancy buildings had increased by 187% for buildings which had flammable cladding, and 94% for buildings without flammable cladding.

30 The FCA followed up with a report in 2023 that found that commissions were often at least 30% of the total insurance premium, with some commissions being over 50%. On average, these are split 50/50 between the insurance broker and the placer and manager of insurance.

31 Under existing legislation, leaseholders do not have to be made aware of the level of any commission being taken throughout the value chain, which gives intermediaries the opportunity to take substantial commissions without needing to demonstrate the reasonableness of the costs. This arrangement may incentivise lessors or those working on their behalf, to maximise their own remuneration as opposed to choosing the best value.

32 The proposals in this Bill will prohibit commissions from the placer/manager of insurance from being recovered from leaseholders through their service charge. These commissions will be replaced by a transparent handling fee system where those placing or managing insurance can charge for their work, for example, if they are handling claims on behalf of leaseholders. The intent is the cost will have to reflect the work and time undertaken to carry out the work; both, to understand the basis of the fee and to make it more easily challengeable if considered by the leaseholder as being unreasonable.

Rebalancing the legal costs regime

33 Under the terms of a lease, leaseholders and tenants may be liable to pay the legal costs of their landlord, regardless of the outcome before the court or appropriate tribunal. Currently, leaseholders and tenants must apply to the court or appropriate tribunal to limit their liability to pay their landlord's legal costs recovered either through the service charge or as an administration charge. In addition, leaseholders and tenants are only able to claim their own legal costs from their landlord under very limited circumstances. This may deter some leaseholders and tenants from bringing challenge.

34 The Government announced its commitment to ensuring leaseholders and tenants are not subject to any unjustified legal costs and can claim their own legal costs from their landlord if appropriate.

35 The proposals in this Bill will flip the requirement that leaseholders and tenants have to apply to limit their liability for their landlord's legal costs and will, instead, require landlords to apply to the relevant court or tribunal to pass any or all of their legal costs on to individual leaseholders and tenants as an administration charge; or on to both participant and non-participant leaseholders and tenants through the service charge. The relevant court or

tribunal will make a decision on applications that is just and equitable in the circumstances. An implied term in all leases will give leaseholders a new right to apply to claim their legal costs from their landlord. The relevant court or tribunal will make a decision on applications that is just and equitable in the circumstances.

Regulation of estate management

36 There is a growing number of households in England who live on private or mixed-tenure estates where, on completion of a development, they -rather than the local authority - are required to pay for the maintenance of communal areas and facilities. This can include payments for servicing of private roads, external lighting, play areas for children or electric gates. The provision of these services is undertaken either through a private or resident-led Estate Management Company, and the liability for contributions towards maintenance of communal areas and facilities is usually defined in the deed of conveyance or the rent charge deed.

37 Homeowners on these estates have extremely limited rights over the quality of services provided. There is currently no regulatory framework to protect homeowners from excessive costs or poor quality work – and homeowners currently have no statutory rights to challenge their estate management provider when there has been a failure to provide a reasonable service or when an unreasonable charge has been levied. The Government made a public commitment in December 2017 to give freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed-use estate the ability to access equivalent rights as leaseholders to challenge the reasonableness of service charges.

38 The provisions in this Bill seek to give homeowners living on managed estates a number of new rights to make it easier to hold estate management companies to account. This includes the ability to challenge the reasonableness of the charges they pay. It also includes similar rights to leaseholders that are being proposed in this Bill around greater transparency of information over their costs and the ability to obtain other information. There will be provision for a system of civil penalties, which will apply to an estate management provider, who fails to comply with requirements in respect of the provision of information, inspecting of accounts or insurance.

39 Homeowners on managed estates, like many leaseholders and tenants, are also subject to various administration charges for which they have no control or protection. These may be payable for issues such as variation of the deed of the property, handling requests for information or costs of non-payment of estate management charges. The proposals in the Bill will create a new regulatory framework around administration charges. They will require all administration charges to be reasonable and give homeowners the right to challenge the reasonableness of the charges by making an application to the First-tier Tribunal in England (and the Leasehold Valuation Tribunal in Wales). The Bill also proposes measures to ensure that homeowners are provided with better information about the amount of the administration fee they are liable to pay.

Rentcharges

40 A rentcharge is generally an annual sum of money (other than rent) which is charged on and payable out of land. It can be created by deed, will or codicil, or by statute. Rentcharges were historically used for the purpose of making financial provision for family members or other dependants. Since the Rentcharges Act 1977, no new income-supported rentcharges of the type mentioned above can be created, and any existing charges will be phased out by 2037.

41 Failure to pay a rentcharge within 40 days of its due date means that under section 121 of the Law of Property Act 1925, the recipient of the rentcharge (the rentcharge owner) may take possession of the subject premises until the arrears and all costs and expenses are paid, or the rentcharge owner may grant a lease of the subject premises to a trustee that the rentcharge owner may set up themselves. The proposals in this Bill seek to fulfil a public commitment, made in December 2017, so that a rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.

Legal background

42 The Bill will implement a streamlined package of the enfranchisement and right to manage ("RTM") reforms recommended by the Law Commission in their reports of July 2020 [details in Related Documents], together with other leasehold and homeownership reforms.

43 The main legislation relevant to the rights of residential leaseholders is:

a. The Leasehold Reform Act 1967;

b. The Landlord and Tenant Act 1987;

c. Schedule 2 of the Housing Act 1988;

d. The Local Government and Housing Act 1989;

e. The Leasehold Reform, Housing and Urban Development Act 1993;

f. The Commonhold and Leasehold Reform Act 2002.

44 The main legislation relevant to Freeholders on managed estates and rent charges is:

a. The Rentcharges Act 1977

b. The Law of Property Act 1925

45 The following abbreviations are used throughout these instructions:

a. "the 1967 Act" means the Leasehold Reform Act 1967;

b. "the 1985 Act" means the Landlord and Tenant Act 1985;

c. "the 1987 Act" means the Landlord and Tenant Act 1987;

d. "the 1993 Act" means the Leasehold Reform, Housing and Urban Development Act 1993;

e. "the 2002 Act" means the Commonhold and Leasehold Reform Act 2002;

f. "the appropriate Tribunal" means the First-Tier Tribunal (Property Chamber) (for England) and the Leasehold Valuation Tribunal (for Wales) unless otherwise stated;

46 The Bill in the main amends the 1967 Act, the 1985 Act and the 1993 Act.

Territorial extent and application

47 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1 - Leasehold enfranchisement and extension

Clause 1: Removal of qualifying period before enfranchisement and extension claims

48 Clause 1 amends section 1(b) of the LRA 1967 to remove the requirement that a leaseholder must have owned the lease of their house for at least two years before qualifying to buy their freehold or extend their lease. It also amends section 39(2) of LRHUDA 1993 to remove the requirement that a leaseholder of a flat has owned their lease for two years before qualifying for a lease extension.

Clause 2: Removal of restrictions on repeated enfranchisement and extension claims

49 Clause 2 removes the provisions of the LRA 1967 and the LRHUDA 1993 that prevent tenants from starting new enfranchisement or lease extension claims for 12-months where an earlier claim fails to complete. Subsection (1)(c) and (d) remove provisions of the LRA 1967 that give the court the power to order compensation and prevent new enfranchisement or lease extension claims for five-years where a claim has failed, and the tenant did not act in good faith or attempted to misrepresent or conceal material facts. Additionally, subsection (1)(b) repeals the restriction in the LRA 1967 on bringing a further lease extension claim where a lease extension has already been obtained under the Act.

Clause 3: Change of non-residential limit on collective enfranchisement claims

50 Clause 3 amends section 4(1) of the LRHUDA 1993 so that a building is excluded from collective enfranchisement rights if more than 50% of the internal floorspace is used for non-residential purposes (such as a ground-floor shop).

Clause 4: Eligibility for enfranchisement and extension: specific cases

51 Clause 4 gives effect to Schedule 1, which repeals limitations on enfranchisement rights under the LRA 1967 and the LRHUDA 1993 relating to redevelopment or reoccupation by the landlord, and limitations on the rights of sublessees.

Clause 5: Acquisition of intermediate interests in collective enfranchisement

52 Clause 5 replaces section 2 of the LRHUDA 1993 with a new Schedule (Schedule A1) which

governs the acquisition of leases and parts of leases during a collective enfranchisement. The clause also makes consequential amendments of the LRHUDA 1993 to address the substitution of section 2 with Schedule A1.

53 Paragraph 1 of Schedule A1 introduces the provisions of the schedule. There are a series of gateways set out in the Schedule for acquiring leases (or parts of leases) during a collective enfranchisement claim:

a. The mandatory gateways, which require the nominee purchaser to acquire a lease, are listed in paragraph 1(2).

b. The optional gateways, which let the participating tenants choose whether the nominee purchaser will acquire a lease, are listed in paragraph 1(3).

54 Paragraph 2 deals with an intermediate lease (a) that is superior to the lease of a qualifying tenant and (b) that relates to the qualifying tenant's flat (or appurtenant property let with that flat). Under paragraph 2, there are two gateways for acquiring this intermediate lease, one mandatory and one optional. Which gateway is used depends on whether the qualifying tenant of the flat is participating in the collective enfranchisement claim.

a. If the qualifying tenant of the flat is participating, the superior intermediate lease must be acquired (under paragraph 2(4)).

b. If the qualifying tenant of the flat is not participating, the nominee purchaser may acquire the superior intermediate lease but does not have to do so (paragraph 2(5)).

55 These gateways only apply to the part of the intermediate lease that relates to the relevant flat (and associated appurtenant property). Any parts of the intermediate lease that relate to other property cannot be acquired under paragraph 2 (although they may be acquired under paragraph 3, if applicable).

56 Paragraph 2(6) deal with the situation in which an intermediate lease includes several flats sublet to non-participating qualifying tenants, as explained in the following example.

> A block of flats is let on a headlease. The flats are sublet to qualifying tenants and a collective enfranchisement claim is made. Flats A and B are let to non-participating qualifying tenants. The nominee purchaser can choose whether to acquire the part of the headlease that relates to Flat A, or the part that relates to Flat B, or both parts. But the nominee purchaser cannot choose to acquire only a part of the headlease that demises (for example) the kitchen of Flat A, without acquiring the rest of the headlease of Flat A.

57 Paragraph 2(6) deals with a situation in which a qualifying tenant has obtained a longer, superior lease of their flat (in addition to their qualifying lease), for example, as an alternative

to getting a lease extension. Provided the longer lease is immediately superior to the qualifying lease, it cannot be acquired by the nominee purchaser.

58 In certain circumstances, qualifying tenants may stop or start participating in a collective enfranchisement claim during the course of the claim. Given the new rules in paragraph 2, changes in participation may affect whether the acquisition of an intermediate lease of a flat is mandatory or optional. Subsection (10) of clause 5 allows corresponding amendments to be made to the claim notice, to add or remove the proposed acquisition of an intermediate lease.

59 Paragraph 3 sets out an optional gateway for acquiring leases of common parts of the building or leases of a "section 1(3)(b) addition". A section 1(3)(b) addition is property which a qualifying tenant in the building is entitled to use in common with other tenants and which is acquired with the building as part of the collective enfranchisement.

60 The participating tenants can choose how much of a lease of common parts or a section 1(3)(b) addition they want to acquire. This provision entrenches the decision of the Upper Tribunal in *Hemphurst Ltd v Durrels House Ltd* [2011] UKUT 6 (LC), which held that parts of common-parts leases could be acquired on a collective enfranchisement.

61 However, the acquisition of the lease of common parts or a section 1(3)(b) addition must meet the test in paragraph 3(3): acquiring the lease must be necessary for maintaining or managing the property demised by the lease on behalf of the qualifying tenants. However, under sub-paragraph (4), a lease cannot be acquired if the leaseholder grants easements that are sufficient to enable proper maintenance or management.

62 The gateway in paragraph 3 does not allow any parts of a lease to be acquired that relate to property other than common parts or a section 1(3)(b) addition.

63 Paragraph 4 sets out a further mandatory gateway for acquiring leases. It applies where the participating tenants have chosen to acquire a lease of common parts or a section 1(3)(b) addition, or an intermediate lease of a non-participating qualifying tenant's flat, under the optional gateways in paragraphs 2 and 3. The nominee purchaser must acquire any lease or part of a lease that is superior to the lease or part of a lease that is being acquired under the optional gateways.

64 Section 21(4) of the LRHUDA 1993 allows a landlord to require the nominee purchaser to acquire a freehold or leasehold interest in certain circumstances. Paragraph 5 applies if the landlord requires the nominee purchaser to acquire a lease (or part of a lease) that would have fallen within paragraph 4 had the participating tenants chosen to acquire it. In these circumstances, paragraph 5 applies the rule in paragraph 4. All leases (or parts of leases) that are superior to the lease being acquired under section 21(4) must also be acquired.

65 Paragraph 6 preserves the exception for public sector landlords formerly set out in section 2(5) and (6) of the LRHUDA 1993.

66 Paragraph 7 confirms that, where the nominee purchaser acquires part of a lease belonging to a landlord under Schedule A1, the lease is severed, and the landlord retains the other part.

See the tribunal's power to determine the terms of severance in clause 14 (new section 21(3) of the LRA 1967) and clause 16(6) (new section 91(1)(f) of the LRHUDA 1993).

67 Paragraph 8 clarifies that different parts of the same lease may be acquired via different gateways in Schedule A1, or via the repeated use of the same gateway.

68 Paragraph 9 sets out definitions for the purposes of Schedule A1.

Clause 6: Right to require leaseback by freeholder after collective enfranchisement

69 Clause 6 amends the LRHUDA 1993 to insert a new leaseback right for tenants participating in a collective enfranchisement claim. The participating tenants will be able to require the freeholder to take a leaseback of particular units in the building. The tenants can thereby reduce the price payable for acquiring the freehold.

70 Subsection (2) amends the LRHUDA 1993 to allow the participating tenants to state in their claim notice whether they are going to require the freeholder to take a leaseback. Subsections (3) and (4) make further amendments to establish the right of the participating tenants to require the freehold to accept a leaseback.

71 The details of the new right are set out in paragraphs 7A and 7B, inserted into Schedule 9 to the LRHUDA 1993 by subsection (5). The nominee purchaser, who conducts the claim on behalf of the participating tenants, can give the freeholder a notice requiring the freeholder to accept a leaseback of any flat or unit in the building, other than a flat let to a participating tenant. This right is similar to the power of the freeholder to require leasebacks under paragraph 5 of Schedule 9. But there are two significant differences.

a. The nominee purchaser can require the freeholder to accept a leaseback of a flat let to a qualifying tenant, so long as the qualifying tenant is not *participating* in the claim. The freeholder cannot require a leaseback of a flat let to a qualifying tenant, regardless of whether the tenant is participating.

b. Where the freehold reversion of a flat or unit is split, the nominee purchaser can require the freeholders to accept leasebacks of their respective parts of the property (under paragraph 7A(5)). Leasebacks must be granted of all parts of the flat or unit. A freeholder cannot insist on a leaseback of a unit if the freehold title is split.

72 Paragraph 7A(3) deals with a link between leasebacks and the acquisition of intermediate leases. Under paragraph 2(5) of Schedule A1 to the LRHUDA 1993 (inserted by clause 5),, the participating tenants can choose whether or not they acquire an intermediate lease of a flat let to a non-participating qualifying tenant. But if the tenants choose to acquire an intermediate lease, and so pay for some of the reversion to a flat, they cannot then avoid paying for the rest of the reversion by requiring the freeholder to take a leaseback of that flat.

73 Paragraph 7B sets out the terms on which a leaseback must be granted. The same rules apply as apply to leasebacks required by the freeholder: the leaseback must comply with the requirements of Part 4 of Schedule 9 (unless the parties agree otherwise or the tribunal orders otherwise). A new sub-paragraph (2A) is inserted into paragraph 10 to deal with cases in which the freehold reversion of the flat or unit is split.

Clause 7: Longer lease extensions; Clause 8: Lease extensions under LRA 1967 on payment of premium at peppercorn rent

74 Clauses 7 and 8 change the lease extension rights given to tenants of houses and flats by the LRA 1967 and LRHUDA 1993 and ensure that the rights available under each Act are equivalent to one another. The amendments made by these clauses mean that a qualifying tenant of either a house or a flat can obtain—

a. a 990-year lease extension,

b. at a peppercorn ground rent,

c. in exchange for the payment of a premium set by the amended valuation scheme set out in {clauses 9 to 11}.

75 Clause 8 also contains consequential amendments of the LRA 1967 which are required due to the change to the lease extension right.

Clause 9: LRA 1967: determining price payable for freehold or lease extension

76 This clause makes amendments to the LRA 1967 to provide that the premium payable to acquire the freehold of a house, or a lease extension of a house, must be calculated in accordance with clause 11.

Clause 10: LRHUDA 1993: determining price payable for collective enfranchisement or new lease

77 This clause makes amendments to the LRHUDA 1993 to provide that the premium payable to acquire the freehold of a block of flats, or a lease extension of a flat, must be calculated in accordance with {clause 11}.

Clause 11: Enfranchisement or extension: new method for calculating price payable

78 Clause {11} provides that a premium is payable when exercising any of the four enfranchisement rights, namely acquiring the freehold of a house; extending a lease of a house; acquiring the freehold of a block of flats; and extending a lease of a flat. The clause does not apply to premiums calculated under the preserved section 9(1) of the LRA 1967.

79 The clause provides that the premium comprises two elements:

a. the market value, which is to be calculated in accordance with Schedule {2}; and

b. any other compensation, which is to be calculated in accordance with Schedule {3}.

Clause 12: Costs of enfranchisement and extension under LRA 1967

80 Clause 12 replaces the separate costs regimes for enfranchisement and lease extension claims under the LRA 1967. The new regime is established in new sections 19A, 19B, 19C, 19D and 19E.

81 New section 19A sets out the general rules (and the exceptions to them) that neither a tenant

nor a former tenant are liable for any costs incurred by another person because of an enfranchisement or lease extension claim. Subsection (3) prevents arrangements to the contrary, however, subsection (5) ensures a former tenant and their successor in title may agree how to split their costs. The general rules do not apply to litigation costs awarded by the court or tribunal (subsection (4)). Subsection (6) clarifies what is not included under "costs" and subsection (7) defines "former tenant" for the purpose of the new regime.

82 New section 19B sets out an exception to the general rule where the tenant's claim ceases for a reason other than a "permitted reason", as defined in the new section. Where the criteria are met, the tenant will be liable to pay the landlord a prescribed amount.

83 New section 19C sets out an exception to the general rule where the price payable for the freehold or extended lease is below a prescribed amount. Where the costs incurred by the landlord are reasonable and do not exceed the prescribed amount, the tenant will be liable to pay the difference between the price payable and the reasonable costs incurred. Where the costs incurred by the landlord are reasonable and do exceed the prescribed amount, the tenant is liable to pay the difference between the price payable and the prescribed sum.

84 New section 19D gives the Secretary of State and the Welsh Ministers the power to set out the circumstances in which the reversioner is required to pay part of the prescribed amount received under new sections 19B or 19C to other landlords.

85 New section 19E prevents any arrangement for a tenant to pay an amount to another person in anticipation of having to pay that person's costs as a result of an enfranchisement or lease extension claim from having effect.

Clause 13: Costs of enfranchisement and extension under LRHUDA 1993

86 Clause 13 replaces the separate costs regimes for enfranchisement and lease extension claims under the LRHUDA 1993. The new regime is established in new sections 89A, 89B, 89C, 89D, 89E, 89F, 89G and 89H.

87 New section 89A sets out the general rules (and exceptions to them) that neither a tenant, former tenant, nor the nominee purchaser are liable for any costs incurred by another person because of a collective enfranchisement or lease extension claim. Subsection (4) prevents arrangements to the contrary. But the general rules do not apply to litigation costs awarded by the court or tribunal (subsection (8)). Subsections (5) and (6) allow tenants, former tenants and nominee purchasers involved in a collective enfranchisement claim to agree between themselves how to split their costs. A former tenant and their successor in title may also agree how to split their costs (subsection (7)). Subsection (9) cross-refers to section 15(7) of the LRHUDA 1993 for the nominee purchaser's liability where their appointment as nominee purchaser terminates. Subsection (10) clarifies what is not included under "costs" and subsection (11) defines "former tenant" and "nominee purchaser" for the purposes of new section 89A.

88 New sections 89B and 89E set out an exception to the general rules in collective enfranchisement and lease extension claims where the tenant's claim ceases for a reason other than a "permitted reason", as defined in the new section. Where the criteria are met in a

collective enfranchisement claim, the tenant, nominee purchaser and any other person liable under new section 89B are jointly and severally liable to pay the reversioner a prescribed amount. Where the criteria are met in a lease extension claim the tenant is liable to pay the competent landlord a prescribed amount.

89 New sections 89C and 89F set out an exception to the general rules in collective enfranchisement and lease extension claims where the price payable for the freehold or extended lease is below a prescribed amount. Where the costs incurred by the reversioner or competent landlord are reasonable and do not exceed the prescribed amount, the nominee purchaser (in collective enfranchisement claims) or the tenant (in lease extension claims) are liable to pay the difference between the price payable and the costs incurred. Where the costs incurred by the reversioner or competent landlord are reasonable and exceed the prescribed amount, the nominee purchaser (in collective enfranchisement claims) or the tenant (in lease extension claims) are liable to pay the difference between the price payable and the prescribed sum.

90 New section 89D set out an exception to the general rule in collective enfranchisement claims where the freeholder is required to accept a leaseback of a unit and incurs costs as a result. Where the criteria are met, the nominee purchaser is liable to pay the freeholder a prescribed amount.

91 With respect to collective enfranchisement claims, new section 89G gives the Secretary of State and the Welsh Ministers the power to set out the circumstances in which the reversioner is required to pay part of the prescribed amount received under new sections 89B or89C to other relevant landlords. With respect to lease extension claims, the Secretary of State and the Welsh Ministers may set out the circumstances in which the competent landlord is required to pay part of the prescribed amount received under new sections 89E or 89F to other landlords.

92 New section 89H prevents any arrangement for a tenant or nominee purchaser to pay an amount to another person in anticipation of having to pay that person's costs as a result of a collective enfranchisement or lease extension claim from having effect. However, where new section 89D applies, new section 89H provides that the tribunal may order a nominee purchaser to pay an amount to another person or the tribunal in anticipation of that person's costs.

Clause 14: Replacement of sections 20 and 21 of LRA 1967

93 Clause 14 repeals and replaces sections 20 and 21 of the LRA 1967 with new sections 20, 21, 21A, 21B and 21C. The new sections transfer jurisdiction from the county court to the tribunal for a number of matters and provide the tribunal with additional powers to facilitate the exercise of the tribunal's expanded jurisdiction.

94 New section 20 replaces the provision of the LRA 1967 governing the jurisdiction of the county court.

95 New section 21 restates the tribunal's jurisdiction to determine certain matters under the LRA 1967 and extends that jurisdiction to include matters that were previously within the sole jurisdiction of the court or within the split jurisdiction of the court and tribunal. The new section also gives the tribunal new powers to make orders requiring a person to pay certain costs or compensation determined by the tribunal.

96 New section 21A gives both the court and the tribunal the power to make an order requiring a person to comply with any requirement imposed on them under the LRA 1967. Subsections (2) to (4) set out when an application for a compliance order can be made and whether it is to be made to the court or the tribunal. Subsection (5) makes provision in relation to enforcement of certain compliance orders made by the tribunal.

97 New section 21B gives the tribunal new powers to make orders in relation to the completion of a conveyance or the grant of an extended lease under the LRA 1967 in certain circumstances. Where there has been a failure to execute, or pay the price payable for, a conveyance or extended lease under the LRA 1967, an application can be made to the tribunal for an order appointing a person to execute the conveyance or lease on behalf of a party to the transaction and/or requiring the tenant to pay the price into the tribunal (or to a specified person).

98 New section 21C confers jurisdiction on the tribunal for proceedings for which no specific jurisdiction is otherwise identified or conferred by the provisions of the LRA 1967. But where only the court has the power to grant a remedy sought in such proceedings (even if other remedies that could be granted by the tribunal are also sought), new section 21C confers jurisdiction for the proceedings as a whole on the court. Where the court has jurisdiction in relation to the proceedings, new section 21C enables the court to transfer part of the proceedings to the tribunal where the tribunal would have the power to grant the relevant remedy.

Clause 15: References to "the court" in Part 1 of LRA 1967

99 Clause 15 amends the LRA 1967 to transfer jurisdiction for specific matters from the court to the tribunal. Subsection (3) amends various provisions to permit or require payment into the tribunal, rather than into court. Subsections (4) to (7) make various consequential amendments to provisions of the LRA 1967 to reflect the tribunal's expanded jurisdiction.

Clause 16: Amendment of Part 1 of LRHUDA 1993

100 Clause 16 amends and inserts new provision into the LRHUDA 1993 to transfer jurisdiction from the county court to the tribunal for a number of matters and provide the tribunal with additional powers to facilitate the exercise of the tribunal's expanded jurisdiction.

101 Subsection (2) inserts a new section 27A into the LRHUDA 1993 which gives the tribunal new powers to make orders in relation to the completion of a conveyance under Chapter 1 of the LRHUDA 1993 in certain circumstances. Where there has been a failure to execute, or pay the price payable for, a conveyance in accordance with the terms of a contract entered into pursuant to the provisions of Chapter 1, an application can be made to the tribunal for an

order appointing a person to execute the conveyance on behalf of a party to the transaction and/or requiring the nominee purchaser to pay the price into the tribunal (or to a specified person).

102 Subsections (3) and (4) amend sections 48 and 49 of the LRHUDA 1993 to permit the tribunal to make an order appointing a person to execute a new lease on behalf of a party to the transaction and/or requiring the price payable for a new lease to be paid into the tribunal (or to a specified person), where the conditions for making an order under section 48(3) or section 49(4) are

103 Subsection (5) amends section 90 of the LRHUDA 1993 (which covers the jurisdiction of the county court) to repeal section 90(2) and (4) of that Act. Those repeals follow from the general transfer of jurisdiction from the court to the tribunal. Section 90(2) of the LRHUDA 1993 is replaced with new section 91A of the LRHUDA 1993 (see clause {16(6)}).

104 Subsection (6) replaces section 91 of the LRHUDA 1993 with new sections 91 and 91A. New section 91 restates and extends the tribunal's jurisdiction to determine certain specified matters under the LRHUDA 1993. New section 91 also gives the tribunal new powers to apportion rent in certain circumstances and to make orders requiring a person to pay certain costs or compensation determined by the tribunal. New section 91A confers jurisdiction on the tribunal for proceedings arising under Chapters 1, 2 or 7 of the LRHUDA 1993 for which no specific jurisdiction is otherwise identified or conferred. But where only the court has the power to grant a remedy sought in such proceedings (even if other remedies that could be granted by the tribunal are also sought), new section 91A confers jurisdiction for the proceedings as a whole on the court. Where the court has jurisdiction in relation to the proceedings, new section 91A enables the court to transfer part of the proceedings to the tribunal where the tribunal would have the power to grant the relevant remedy.

105 Subsection (7) amends section 92 of the LRHUDA 1993 to give the tribunal the same power as the court to make an order requiring a person to comply with any requirement imposed on them by any provision in Chapters 1 or 2 of the LRHUDA 1993. The amendments set out when an application for a compliance order should be made to the court and when an application should be made to the tribunal and make provision in relation to enforcement of certain compliance orders made by the tribunal.

Clause 17: References to "the court" in Part 1 of LRHUDA 1993

106 Clause 17 amends the LRHUDA 1993 to transfer jurisdiction for specific matters from the court to the tribunal. Subsection (3) amends various provisions to permit or require payment into the tribunal, rather than into court. Subsections (4) to (14) make various consequential amendments to provisions of the LRHUDA 1993 to reflect the tribunal's expanded jurisdiction.

Clause 18: No first-instance applications to the High Court in tribunal matters

107 As part of its inherent jurisdiction, the High Court has the power to make declarations on matters that would otherwise fall within the jurisdiction of another court or tribunal. Clause

18 prevents an application being made to the High Court at first-instance in respect of an enfranchisement matter falling within the tribunal's jurisdiction under the LRA 1967 or the LRHUDA 1993. It is intended to prevent parties from using the High Court as an alternative forum to the tribunal for determining enfranchisement matters at first instance.

108 The provision does not affect the ability of a party to appeal a decision of the tribunal (under the Tribunals, Courts and Enforcement Act 2007) or the jurisdiction of the High Court to consider judicial review claims in respect of decisions of the tribunal that are not subject to a statutory appeal.

Clause 19: Miscellaneous amendments

109 Clause 19 brings Schedule 6 into effect, which contains miscellaneous amendments of the LRA 1967 and the LRUHDA 1993.

Clause 20: LRA 1967: preservation of existing law for certain enfranchisements

110 This clause preserves the right of leaseholders to acquire the freehold of a house using the LRA 1967 as it existed prior to amendment by this Act, but only where the property would be valued using the valuation basis for calculating premiums under section 9(1) of the unamended LRA 1967.

Part 2 - Other rights of long leaseholders

Clause 21: Right to vary long lease to replace rent with peppercorn rent

111 Clause 21 brings Schedule 7 into effect. Schedule 7 make provision for a new enfranchisement right to buy out the ground rent under a very long residential lease.

Clause 22: Change of non-residential limit on right to manage claims

112 Clause 22 amends Schedule 6 to the CLRA 2002 so that a building is excluded from the RTM if more than 50% of the internal floorspace is used for non-residential purposes (such as a ground-floor shop).

Clause 23: Costs of right to manage claims

113 Clause 23 replaces the existing costs regimes for RTM claims under the CLRA 2002. The new regime is established in new sections 87A and 87B. The clause also amends the CLRA 2002 to ensure a person complying with a duty to provide information under section 82 cannot withhold supplying a copy of a document to an RTM company until they receive a reasonable fee. The RTM company will be liable for the reasonable costs of a person complying with their duty under section 82.

114 New section 87A sets out the general rule that RTM companies and RTM company members are not liable for the costs incurred by another person because of an RTM claim. It contains a provision that prevents arrangements to the contrary. However, new section 87A also sets out the costs liability between RTM company members, and between RTM company members with an RTM company.

115 New section 87B allows the tribunal to order an RTM company to pay the reasonable costs of specified people that arise from an RTM claim being made. An order can only be made if the claim notice is withdrawn or ceases to have effect and the RTM company has acted unreasonably. Where an order is made, members and former members of the RTM company may be jointly and severally liable.

Clause 24: Compliance with obligations arising under Chapter 1 of Part 2 of CLRA 2002

116 Clause {24} amends the CLRA 2002 to transfer from the county court to the tribunal the power under section 107(1) of that Act to make an order requiring a person who has failed to comply with a requirement imposed under the right to manage provisions of the CLRA 2002 to make good the default within a specified time. The amendments also make provision in relation to enforcement of certain compliance orders made by the tribunal.

Clause 25: No first-instance applications to the High Court in tribunal matters

117 As part of its inherent jurisdiction, the High Court has the power to make declarations on matters that would otherwise fall within the jurisdiction of another court or tribunal. Clause 25 prevents an application being made to the High Court at first-instance in respect of a right to manage matter falling within the tribunal's jurisdiction under the CLRA 2002. It is intended to prevent parties from using the High Court as an alternative forum to the tribunal for determining right to manage matters at first instance.

118 The provision does not affect the ability of a party to appeal a decision of the tribunal (under the Tribunals, Courts and Enforcement Act 2007) or the jurisdiction of the High Court to consider judicial review claims in respect of decisions of the tribunal that are not subject to a statutory appeal.

Part 3 - Regulation of leasehold

Clause 26: Extension of regulation to fixed service charges

119 Clause 26 makes a number of technical amendments to the 1985 Act to extend part of the existing regulatory framework to cover fixed service charges. Under current provisions there is no regulation of fixed service charge, which are those charges where the charges are fixed at the start of a 12-month accounting period. This can be based on a prescribed formula, or a regular landlord assessment of cost, or some other mechanism.

120 Subsection (2)(b) amends section 18 of the 1985 Act to provide a new definition of "service charge" as an amount payable by a tenant which is payable, directly or indirectly, for the purposes of meeting, or contributing towards relevant costs, and "variable service charge" as a service charge the whole or part of which varies or may vary according to the relevant costs. Subsection 2(b) also defines relevant costs as costs incurred, to be incurred by or on behalf of the landlord or superior landlord, in connection with services repairs, maintenance, improvements or insurance, or landlord's cost of management. Subsection (2)(c) replaces "a service charge" with "a variable service charge" in section 18(3)(b) of the 1985 Act.

121 Subsections (3), (4) and (5) then amend various provisions of the 1985 Act to ensure that certain obligations only remain applicable with regard to variable service charges. These include subsection (4)(a) which requires service charges to be reasonable or that work carried out for the cost incurred is of a reasonable standard, subsection (4)(b) which sets out consultation requirements under section 20 of the 1985 Act, and subsections (4) (e)-(h) make changes in respect in respect of obligations introduced under Parts 4 and 5 of the Building Safety Act 2022 ("the 2022 Act"). Subsection (5) amends section 30E(3) of the 1985 Act.

122 Subsection (6) makes changes to the index of defined expressions to include variable service charge.

Clause 27: Service charge demands

123 Clause 27 replaces existing provisions in the 1985 Act with a new provision that requires landlords to demand a payment of a service charge using a specified form. This replaces the current obligation of landlords to issue any service charge demand form in accordance with the terms under the lease or, in the absence of such provision in any manner that suits them.

124 Subsection (1) states that the 1985 Act is to be amended in accordance with subsections (2) and (3). Subsection (2) omits existing sections 21, 21A and 21B of the 1985 Act.

125 Subsection (3) inserts a new section 21C into the 1985 Act. New section 21C(1) states that a landlord may not demand is in the specified form, contains the specified information and is provided to the tenant in a specified manner. The definition of "specified for his subsection means specified in regulations made by appropriate authority. New section 21C(2) states that where the demand for service charge payment does not comply with subsection (1) then a provision in the lease relating to late or non-payment does not apply in respect of that particular service charge. New section 21C(3) confers powers on the appropriate authority, by regulations, to exempt certain landlords, descriptions of service charges, or any other matter from the requirement to comply with the requirement of subsection (1).

126 New section 21C(4) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision.

127 New section 21C(5) sets out that the statutory instrument will be subject to the negative procedure.

128 Subsection (4) makes consequential amendments to sections 47 and 47A of the 1987 Act to give effect that, in the case of any potential overlap between information required in the form under new section 21C and the obligations under the 1987 Act, then the provisions of new section 21C take precedence.

Clause 28: Accounts and Annual reports

129 Clause 28 inserts new sections 21D and 21E into the 1985 Act. These provisions create a new requirement for a written Statement of Account to be provided by landlords within 6 months

of the end of the 12-month accounting period for which service charges apply, as well as an obligation on landlords to provide an annual report to leaseholders.

130 Under existing provisions individual service charge demands on leaseholders who pay variable service charges must be in writing and be accompanied by details of the landlord's name and address, as well as a summary of rights and obligations. If a landlord's address is outside England or Wales, the demand must contain an address in England or Wales which can be used to send notices to the landlord. Leaseholders may ask for a summary of the service charge account for the last accounting year or, if accounts are not kept by accounting years, the past 12 months. Leaseholders also have the right to inspect documents relating to the service charge to provide more detail on the summary.

131 Clause 28(1) makes clear that this Clause makes further amendments to the 1985 Act. Subsection (2) inserts a new section 21D on service charge accounts and a new section 21E on annual reports. New section 21D(1) sets out that the section applies to leases of a dwelling if (a) a variable service charge is or may be payable under the lease, and (b) any of the relevant costs which may be taken into account in determining that variable service charges are taken into account in determining the amount of variable service charge payable by the tenants of three or more other dwellings. These are known as "connected tenants".

132 New section 21D(2)(a) implies into leases that landlord must, on or before the account date for each accounting period, provide the tenant with a written statement of accounts in relation to variable service charges arising in the period. The statement must be in a specified form and manner and set out (i) the variable service charge arising in the period which are payable by each tenant and any connected tenants, (ii) the relevant costs relating to the service charge, and (iii) any other specified matters set out in legislation by the appropriate authority. New section 21D(2)(b) implies into a lease that landlords must also ensure the statement of account is certified by a qualified accountant as being a fair summary of relevant costs and sufficiently supported by documents. For the purposes of this subsection "specified" is defined as "specified in regulations made by the appropriate authority".

133 New section 21D(3) defines an accounting period as a period of 12 months as specified in the lease or, if the lease does not specify a period, 12 months starting from 1 April. New section 21D(4) sets the "account date" for an accounting period as being the final day of a period of six months from the final day of the accounting period.

134 New section 21D(5) allows the appropriate authority, through regulations, to provide for circumstances in which a term in subsection (2) is not implied into a lease or is to be implied into a lease in a modified form.

135 New section 21D(6) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision. New section 21D(7) sets out that the statutory instrument will be subject to the negative procedure.

136 New section 21E(1) places the obligation on landlords to provide an annual report in respect

of service charges arising in that period. New section 21E(2) allows the appropriate authority through regulations to set out (a) the information that must be contained in the report; (b)the form of the report and (c) the manner for providing the report. New section 21E(3) gives the ability of the appropriate authority to make provision requiring information to be contained in the report in respect of other matters which the appropriate authority considers are likely to be of interest to the tenant, whether or not they directly relate to service charges or service charges arising in the period.

137 New section 21E(4) defines an accounting period as a period of 12 months as specified in the lease or, if the lease does not specify a period, 12 months starting from 1 April. New section 21E(5) defines the "report date" for an accounting period as being the final day of the period of one month beginning with the day after the final day of the accounting period. New section 21E(6), allows the appropriate authority to set the exceptions to this duty through (a)descriptions of the landlord, (b) descriptions of the service charge, or (c) any other matter.

138 New section 21E(7) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision.

139 Section 21E(8) sets out that the statutory instrument will be subject to the negative procedure

140 Clause 28(3) makes a consequential amendment to section 28 of the 1985 Act on the definition of qualified accountant. Clause 28(4) makes a consequential amendment to section 39 of the 1985 Act (index of defined expressions), substituting new section 21D(2)(b) in place of existing section 21(6).

Clause 29: Right to obtain service charge information on request

141 Clause 29(1) makes clear that this Clause makes further amendments to the 1985 Act to create a new right for tenants to request information from their landlord.

142 Clause 29(2) introduces a new section 21F which sets out provisions that enable tenants to obtain information on request. New section 21F(1) allows a tenant to request specified information from their landlord. New section 21F(2) details that the appropriate authority may specify information only if it relates to (a) service charges or (b) services, repairs, maintenance, improvements, insurance or management of dwellings. New section 21F(3) requires the landlord to provide the tenant with any of the information requested that is in their possession.

143 New section 21F (4) requires the landlord to request information from another person if three conditions are met: (a) the information has been requested under subsection (1); (b) landlord does not possess the information when the request is made, and (c) the landlord believes that the other person possesses the information. New section 21F(5) requires that person to provide the landlord with any of the information requested that is in their possession.

144 New section 21F(6) requires a person ("A") to request the information from another person ("B") individual if (a) the person receives an information request under subsection (4) or

subsection (6), (b) the person does not hold that information and (c) person A believes that person B possess that information. New section 21F(7) requires person B to provide person A with any of the information requested that is in person B's possession.

145 New section 21F(8) confers powers on the appropriate authority to make regulations to (a) provide for how a request may be made under this subsection; (b) provide that a request may not be made until the end of a particular period, or until after a condition is met; (c) provide for circumstances when a request under subsection (4) or (6) must be made; (d) provide for circumstance in which a duty to comply with a request under this section does not apply.

146 New section 21F(9) details that new section 21G makes further provision about information requests under this section. New section 21F(10) sets out the definition of "information" for this section as includes a document containing information, and a copy of such document. It also confirms that references to a tenant includes the secretary of a recognised tenants' association representing the tenant, in circumstances where the tenant has consented to the association acting on their behalf.

147 New section 21F(11) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision. New section 21F(12) sets out that the statutory instrument containing regulations under this section will be subject to the negative procedure.

148 New section 21G gives further details on information requests under new section 21F. New section 21G(1) details that subsections (2) to (6) apply where a person (R) requests information under new section 21F from another person (P). New section 21G(2) states that person (R) may request that another person (P) provides them with by allowing (R) access to premises where (R) may inspect and/or make and remove a copy of the information. New section 21G(3) details that Person (P) must provide the information they are required to provide under new section 21F (a) before the end of a specified period that begins on the day of the request, and (b) if R has made a request under subsection 2, allow person (R) the access requested during a specified period. "Specified" under this subsection means "specified" in regulations made by the appropriate authority.

149 New section 21G (4) details that Person (P) is allowed to charge person (R) for doing anything required under the section. New section 21G(5) details that if (P) is a landlord, they may not charge the tenant for accessing the premises to inspect information but can charge for the cost of making copies. New section 21G(6) details that the costs referred to in subsection (4) may be relevant costs for the purposes of a variable service.

150 New section 21G(7) details that regulations under new section 21G(3) may make provision for circumstances where a specified period can be extended. New section 21G(8) confers powers on the appropriate authority to set out in regulations further provision on how information under new section 21F is to be provided.

151 New section 21G(9) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different

provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision.

152 New section 21G(10) sets out that the statutory instrument containing regulations under this section will be subject to the negative procedure.

153 New section 21H(1) provides that the assignment of tenancy does not affect an obligation arising as a result of the request under new section 21F before the assignment. New section 21H(2) states that, in the circumstances of such assignment, a person is not obliged to provide the same information more than once in respect of the same dwelling.

154 Clause 29(3) seeks to omit existing sections 22, 23 and 24 of the 1985 Act.

Clause 30: Enforcement of duties relating to service charges

155 Clause 30 substitutes existing section 25 of the 1985 Act to create new enforcement measures for the new requirements of landlords under sections 21C, E and F of the 1985 Act. Clause 30(2) omits existing section 25 of the 1985 Act.

156 Clause 30(3) inserts a new section 25A into the 1985 Act. New section 25A (1) allows a tenant to apply to the appropriate tribunal where their landlord (a) did not demand a service charge payment in accordance with section 21C, or (b) failed to provide a report in accordance with section 21E.

157 New section 25A(2)(a) allows, on an application made under subsection (1), the appropriate tribunal to make an one or more of the following orders; (a) an order that the landlord must, within 14 days from the date of the Order (i) demand payment of a service charge in accordance with section 21C or (ii) provide a report in accordance with section 21E; (b) an order that the landlord to pay damages to the tenant, and (c)any other order that the tribunal finds consequential under new sections 25A(2)(a) and 25A (2)(b).

158 New section 25A(3) grants a person "C" the right to make an application to the appropriate tribunal on the grounds that person D has breached section 21F or 21G. New section 25A(4) of the Act allows the tribunal to make one or more of the following orders: a) an order that D comply with section 21F within 14 days of the order being made, b) an order for D to pay damages to C, and c) an order which the tribunal finds relevant to section 25A(4)(a) and section 25A (4)(b).

159 New section 25A(5) requires that the damages paid must not exceed £5,000. New section 25A(6) confers powers on the appropriate authority to amend the amount in subsection (5) by regulations if it considers it expedient to do so to reflect changes in the value of money.

160 New section 25A(7) prohibits the landlord from making any present or future person(s) liable for the damages payable to the tenant under this section of the Act.

161 New section 25A(8) makes provision that where the landlord uses services charge held in trust as defined by Section 42 of the 1987 Act to pay damages under section 25A of the 1985 Act, this is classed as a breach of that trust.

162 New section 25A(9) makes clear that damages awarded under this section are not classed as

relevant costs when determining the amount of any variable service charge payable by a tenant (whether or not a tenant to which the damages are paid).

163 New Section 25A (10) prevents provisions set out in a lease, contract, or other arrangement from having effect where contrary to subsections (7) to (9) of section 25A.

164 New section 25A(11) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision. New section 25A(12) sets out that the statutory instrument containing regulations under this section will be subject to the negative procedure.

165 Clause 30(4) makes consequential amendments to section 26(1) of the 1985 Act to replace references to existing sections 18 to 25 with "sections 18 to 25A" and existing section 25 with "section 25A".

Clause 31: Limitation on ability of landlord to charge insurance costs

166 Clause 31 inserts new sections 20G, 20H and 20I into the Landlord and Tenant Act 1985. These provisions prevent excluded insurance costs from being charged in a variable service charge and create a new right to claim damages through the Tribunal when a tenant considers that these excluded insurance costs or related insurance costs have been charged.

167 Section 20G defines excluded insurance costs as those that are linked to placing and managing insurance and which provide an incentive for those placing and managing the insurance to enter in a particular contract, for instance remuneration from the broker.

168 Section 20G provides that excluded insurance costs cannot be charged or else the service charge is not to be considered valid and payable by tenants. The only payment that can be charged is the general premium for the building or a "permitted insurance payment" which will be set out in regulations. The intention is that the permitted insurance payment will cover the transparent insurance handling fee which can be charged for work to place or manage the insurance, so long as the cost is commensurate with work and time undertaken.

169 Section 20H gives the Tribunal powers to award tenants damages in cases where the tenant has paid any excluded insurance costs or any separate fee that is attributable to any excluded insurance costs. The damages will be ordered to be paid by the landlord or the person that has benefitted from the payment of the prohibited amount. The damages are capped at an amount that is three times the amount of the excluded insurance cost. In England, the Tribunal will be the First-tier Tribunal and in Wales it will be the Leasehold Valuation Tribunal.

170 Section 20I outlines the right of the landlord to obtain costs of a permitted insurance payment. This is for cases where the lease may be constructed in a way that makes it unclear whether the leaseholder is liable to pay the permitted insurance payment.

Clause 32: Duty to provide information about insurance to tenants

171 Clause 32 amends the Schedule to the 1985 Act about rights in relation to insurance. Clause

32(2) inserts a new Paragraph 1A and 1B into the Schedule.

172 New paragraph 1A(1) makes it clear that sub-paragraph (2) applies where a service charge is payable by a tenant directly or indirectly for insurance. New paragraph 1A(2) details that the landlord must (a) obtain the specified information about the insurance, including requesting it from another person and (b) within a specified period after insurance is affected in relation to the dwelling, provide the information about the insurance to the tenant. New paragraph 1A (2) defines "specified" as meaning specified in regulations made by an appropriate authority.

173 New paragraph 1A(3) details that regulations under sub-paragraph (2) may make provision for circumstances where a specified period can be extended.

174 New paragraph 1A(4) details that new paragraph 1B makes further provision about requests by the landlord under sub-paragraph (2)(a) where the landlord must obtain information about the insurance, including requesting it from another person.

175 New paragraph 1A(5) confers powers on the appropriate authority to make provision, by regulations, on the form and manner in which the information is to be provided. New paragraph 1A(6) states that insurance is "effected" in relation to a dwelling whenever an insurance policy is purchased or renewed in relation to that dwelling.

176 New paragraph 1A(7) allows the landlord to charge the tenant for the costs of complying with the duty in sub-paragraph (2).

177 New paragraph 1A(8) allows the appropriate authority, by regulations, to provide for exceptions to the duty in sub-paragraph (2) by reference to (a) descriptions of landlord, (b) descriptions of insurance, or (c) any other matter. New paragraph 1A (9) states that, for the purposes of the new paragraph, "information" includes a document containing information and a copy of such a document.

178 New paragraph 1A(10) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision.

179 New paragraph 1A(11) sets out that the statutory instrument containing regulations under this paragraph will be subject to the negative procedure.

180 New paragraph 1B sets out details of further provisions for requests by a landlord under paragraph 1A where they must request information from another individual. New paragraph 1B(1) details that sub-paragraph (2) applies where a landlord requests information from another person under new paragraph 1A(2)(a). Sub paragraph (2) sets out that the person must provide the information to the landlord that has been requested if it is in their possession.

181 New paragraph 1B(3) sets out when a person (A) must request information from another person (B) where (a) the information has been requested from A under paragraph 1A(2)(a) or this sub-paragraph, (b) A does not possess the information when the request is made and (c)

A believes that B possesses the information.

182 New paragraph 1B(4) requires person B to provide person A with any of the information requested that is in B's possession. New paragraph 1B (5) details that a person must provide the information they are required to provide before the end of a specified person which begins on the day the request is made. New paragraph 1B (6) details that, in this paragraph, "specified" means specified in regulations made by the appropriate authority.

183 New paragraph 1B(7) sets out that a person who provides the information to another person may charge that person for the cost of providing the information.

184 New paragraph 1B(8) confers powers on an appropriate authority to make regulations to (a) provide for how a request may be made under paragraph 1A(2)(a) or this paragraph; (b) provide that a request may not be made until the end of a particular period, or until after a condition is met; (c) provide for circumstances when a request under subsection (3) must be made; (d) provide for circumstance in which a duty to comply with a request under paragraph 1A(2)(a) or this paragraph and (e) provide for how the requested information is to be provided.

185 New paragraph 1B(9) details that regulations under this section are (a) to be made by statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision. New paragraph 1B (10) sets out that the statutory instrument containing regulations under this paragraph will be subject to the negative procedure.

186 New paragraph 1C sets out the enforcement of the duty to provide information. New paragraph 1C(1) grants tents the right to apply to the appropriate tribunal on the ground that a landlord has failed to comply with a requirement under paragraph 1A. New paragraph 1C(2)(a) confers powers on the tribunal to make one or both of the following orders; (a) an order for the landlord to provide information to the tenant within a period specified in regulations by an appropriate authority; and (b) allows the tribunal to make an order for damages to be paid by the landlord to the tenant.

187 New paragraph 1C(3) sets out that a person ("C) may apply to the appropriate tribunal on the ground that another person (D) failed to comply with a requirement under new paragraph 1B.

188 New paragraph 1C(4) details that on application made under sub-paragraph 3 the tribunal may make one or both of the following orders; (a) D comply with the requirement before the end of a period specified in regulations by the appropriate authority (b) an order that D pay damages to C.

189 New paragraph 1C(5) details that the damages cannot exceed £5,000, with new paragraph 1C(6) conferring powers on the appropriate authority to amend the amount in new paragraph 1C(5) by regulations if it considers it expedient to do so to reflect changes in the value of money.

190 New paragraph 1C(7) details that regulations under this section are (a) to be made by

statutory instrument; (b) may make provision generally or for specific cases; (c) may make different provision for different purposes; (d) may include supplementary, incidental, transitional or saving provision.

191 New paragraph 1C(8) sets out that the statutory instrument containing regulations under this paragraph will be subject to the negative procedure.

192 Clause 32(3) omits paragraphs 2 to 6 of the Schedule of the 1985 Act. Clause 32(4) makes consequential amendments to paragraph 9(1) of the Schedule to refer to the new paragraph.

Clause 33: Duty to publish administration charge schedules

193 Clause 33 substitutes paragraph 4 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to create a new provision to require landlords to publish administration charge schedules. Subsection (a) omits existing paragraph 4 to Schedule 11of the 2002 Act, while subsection (b) inserts a new paragraph 4A.

194 New paragraph 4A(1) requires that a person must produce and publish an administration charge schedule in relation to a building if they are the landlord of one or more dwellings in that building.

195 New paragraph 4A(2) defines an "administration charge schedule" as a document which sets out: (a) the administration charges the landlord considers to be payable by those tenants, and (b) for each charge, (i) its amount or, (ii) if it is not possible to determine its amount before it is payable, how the amount will be determined if it becomes payable.

196 New paragraph 4A(3) allows the landlord to (a) revise its published administration charge schedule, and (b) if they do, the landlord must publish the revised schedule.

197 New paragraph 4A(4) states that a landlord must provide a tenant with the administration charges schedule for the time being published in relation to their building.

198 New paragraph 4A(5) allows an appropriate national authority to make regulations as to (a) the meaning of "building" for the purpose of this paragraph; (b) the form an administration charge must make; (c) how an administration charge must be published; and (d) the content an administration charge schedule must have.

199 New paragraph 4A(6) provides that an administration charge is payable by a tenant if (a) the amount appeared on the published administration charge schedule for the required period; or (b) the amount was determined in accordance with a method that appeared on the administration charge schedule for the specified period.

200 New paragraph 4A(7) states that the "required period" is the period of 28 days ending with the day the administration charge is demanded to be paid.

201 New paragraph 4B sets out the enforcement provisions of the duty to publish and administration charge schedule. New paragraph 4B (1) allows a tenant to make an application to the relevant tribunal on the grounds that the landlord has not complied with paragraph 4A, or regulations made under it.

202 New paragraph 4B(2) gives the appropriate tribunal the power to make one or both of the following orders; (a)an order that the landlord comply with that order or regulations made under it before the end of the period 14 days beginning with the day after the date of the order and (b)an order that the landlord pay damages to the tenant. New paragraph 4B (3) states that the damages may not exceed £1000.

203 New paragraph 4B(4) confers powers on the appropriate authority to amend the amount in subparagraph (3) by regulations if it considers it expedient to do so to reflect changes in the value of money.

Clause 34: Limits on rights of landlords to claim litigation costs from tenants

204 Clause 34 amends the Landlord and Tenant Act 1985 (LTA 1985) by replacing the existing section 20C with the new section 20CA as set out in subsections (2) and (3); and amends Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) by replacing the existing paragraph 5A with the new paragraph 5B as set out in subsections (4) to (6).

205 New section 20CA(1) means that a landlord's litigation costs are not regarded as relevant costs when determining the amount of a variable service charge. This applies whether or not leaseholders are participating in the proceedings.

206 New section 20CA(2) requires landlords to make an application to the relevant court or tribunal for an order that subsection (1) does not apply to any or all of their litigation costs in relation to a variable service charge payable by a person specified in the application. The landlord must specify in the application those persons who it is seeking to pay its litigation costs as a variable service charge. Litigation costs include any costs incurred, or to be incurred, by the landlord in proceedings to which the landlord and leaseholder are a party and that concern a lease of a dwelling.

207 New section 20CA(3) provides that an order may only be made by the relevant court or tribunal under subsection (2) if the landlord's litigation costs would have been able to be taken into account when determining the amount of a variable service charge if it weren't for subsection (1). Subsection (3) also provides that an order may only be made by the relevant court or tribunal under subsection (2) on litigations costs that are <u>not</u> incurred (or to be incurred) by proceedings arising from leasehold enfranchisement as set out in Part 1 of the Leasehold Reform Act 1967, or Chapter 1 or 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993, or from right to manage as set out in Chapter 1 of Part 2 of the CLRA 2002.

208 New section 20CA(4) provides for the relevant court or tribunal to make such order on the application made by a landlord under subsection (2) as it considers just and equitable in the circumstances.

209 New section 20CA(5) provides that the "appropriate authority" (which is defined elsewhere in the Bill as the Secretary of State or Welsh Ministers) may by regulation specify matters the relevant court or tribunal must take into account when deciding whether to make an order under subsection (2).

210 New section 20CA(6) provides that the "appropriate authority" (which is defined elsewhere in the Bill as the Secretary of State or Welsh Ministers) may make regulations to provide how an application by a landlord under subsection (2) is made; whether and how notice of application by a landlord is to be given to person(s) specified and not specified in the application; the effect of giving notice of an application and failing to give notice of an application under (6)(b); and circumstances where a person not specified in an application by a landlord is to be treated as having been specified in the application.

211 New section 20CA(7) provides that a lease, contract or other arrangement has no effect if it says differently to this section, including regulations made under this section or an order made under this section.

212 New section 20CA(8) defines terms used in section 20CA.

213 New section 20CA(8) provides through the definition of "the relevant court or tribunal" that in most cases the court or tribunal who is hearing the proceedings (which creates the litigation costs) should consider the section 20CA application. It also sets out where an application should be made after the proceedings are concluded.

214 New section 20CA(9) provides that regulations in this section under subsection (5) and (6) are to be made by statutory instrument; may make provision generally or only in relation to specific cases; may make different provision for different purposes or different areas; and may include supplementary, incidental, transitional or saving provision.

215 Clause 34(5) amends section 172(1) of the CLRA 2002 (application of provision to the Crown) so that the new section 5B applies to Crown land in Wales (as well as England).

216 New paragraph 5B(1) means that a landlord's litigation costs are not payable by a leaseholder as an administration charge.

217 New paragraph 5B(2) requires landlords to make an application to the relevant court or tribunal for an order that subsection (1) does not apply to any or all of their litigation costs in relation to an administration charge. Litigation costs include any costs incurred, or to be incurred, by the landlord in proceedings to which the landlord and leaseholder are a party and that concern a lease of a dwelling.

218 New paragraph 5B(3) provides that an order may only be made by the relevant court or tribunal under subsection (2) if the landlord's litigation costs would have been payable by a leaseholder as an administration charge if it weren't for subsection (1). Subsection (3) also provides that an order may only be made by the relevant court or tribunal under subsection (2) on litigations costs that are <u>not</u> incurred (or to be incurred) by proceedings arising from leasehold enfranchisement as set out in Part 1 of the Leasehold Reform Act 1967, or Chapter 1 or 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993, or from right to manage as set out in Chapter 1 of Part 2 of the CLRA 2002.

219 New paragraph 5B(4) provides for the relevant court or tribunal to make such order on the application made by a landlord under subsection (2) as it considers just and equitable in the circumstances.

220 New paragraph 5B(5) provides that the "appropriate national authority" (which is defined as the Secretary of State or Welsh Ministers) may by regulation specify matters the relevant court or tribunal must take into account when deciding whether to make an order under subsection (2).

221 New paragraph 5B(6) provides that a lease, contract or other arrangement has no effect if it says differently to this paragraph, including regulations made under this paragraph or an order made under this paragraph.

222 New paragraph 5B(7) defines terms used in paragraph 5B.

223 New paragraph 5B(7) provides through the definition of "the relevant court or tribunal" that in most cases the court or tribunal who is hearing the proceedings (which creates the litigation costs) should consider the paragraph 5B application. It also sets out where an application should be made after the proceedings are concluded.

Clause 35: Rights of tenants to claim litigation costs from landlords

224 Subsection (1) amends the Landlord and Tenant Act 1985 (LTA 1985) by inserting the new section 30J after the existing section 30I.

225 New section 30J(1) implies a term into leases which gives 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 incurred in connection with relevant proceedings concerning the lease. Litigation costs include any costs incurred, or to be incurred, by the leaseholder in proceedings to which the landlord and leaseholder are a party and that concern a lease of a dwelling.

226 New section 30J(2) provides for the relevant court or tribunal to make such order on the application made by a leaseholder under subsection (1) as it considers just and equitable in the circumstances.

227 New section 30J(3) provides that the "appropriate authority" (which is defined elsewhere in the Bill as the Secretary of State or Welsh Ministers) may by regulation specify matters the relevant court or tribunal must take into account when deciding whether to make an order under subsection (2).

228 New section 30J(4) clarifies that where a landlord has incurred costs as a result of a leaseholder claiming their litigation costs from the landlord under subsections (1) and (2), the landlord must apply to the relevant court or tribunal under new section 20CA of LTA 1985 or new paragraph 5B of Schedule 11 of the CLRA 2002 in order to recover these as either a variable service charge or administration charge.

229 New section 30J(5) provides that a lease, contract or other arrangement has no effect if it says differently to this section, including regulations made under this section or an order made under this section.

230 New section 30J(6) defines terms used in section 30J.

231 New section 30J(6) provides through the definition of "relevant proceedings" that the "appropriate authority" (which is defined elsewhere in the Bill as the Secretary of State or

Welsh Ministers) may make regulations that describe what "relevant proceedings" relate to.

232 New section 30J(6), provides through the definition of "the relevant court or tribunal" that in most cases the court who is hearing the proceedings (which creates the litigation costs) should consider the section 30J application. It also sets out where an application should be made after the proceedings are concluded.

233 New section 30J(7) provides that regulations in this section under subsections (3) and (6) are to be made by statutory instrument; may make provision generally or only in relation to specific cases; may make different provision for different purposes or different areas; and may include supplementary, incidental, transitional or saving provision.

234 Clause 35(2) amends section 172(1) of the CLRA 2002 so that the new section 30J applies to Crown land.

Clause 36: Regulations under the LTA 1985

235 Clause 36 makes changes to the 1985 Act, the effect of which is to provide general provisions that apply to regulation-making powers under the 1985 Act. Clause 36(2) introduces a new section 37A which relates to procedures applicable to statutory instruments. New section 37A(1) details that a statutory instrument subject to the affirmative procedure may not be made unless (a) a draft of the instrument has been laid before and approved by resolution of each House of Parliament, where it contains regulations or an order made by the Secretary of State; (b) a draft of the instrument has been laid before and approved by resolution of the Senedd Cymru, where it contains regulations or an order made by Welsh Ministers.

236 New section 37A(2) details that if a statutory instrument is subject to the negative procedure it is (a) subject to annulment in pursuance of a resolution by either House of Parliament, where it contains regulations or an order made by the Secretary of State; (b) subject to annulment in pursuance of a resolution by the Senedd Cymru, where it contains regulations or an order made by Welsh Ministers.

237 Clause 36(3) inserts the definition of "the appropriate authority" into section 38 (minor definitions) of the LTA 1985/ It defines "the appropriate authority" in relation to England as meaning the Secretary of State, and in relation to Wales as meaning the Welsh Ministers. Clause 36(4) makes an addition to section 39 (index of defined expressions) to add reference to "appropriate authority".

Clause 37: Part 3: consequential amendments

238 Clause 37 gives effect to Schedule 8 which contains a number of consequential amendments to this Part.

Clause 38: Application of Part 3 provisions to existing leases

239 Clause 38 makes clear that the new provisions introduced by this part of the Act extends to leases entered into before the date the section comes into force.

Part 4 - Regulation of Estate Management

Clause 39: Meanings of "estate management" etc

240 Clause 39 sets out key definitions that have effect for Part for of this Bill. Subsection (2) defines estate management as meaning: the provision of services; the carrying out of maintenance, repairs or improvements, the effecting of insurance or the making of payments for the benefit of one or more dwellings. Subsection (3) defines an "estate manager" as a body of persons (whether incorporated or not) which carries out, or is required to carry out, estate management; and which recovers the cost of carrying out estate management by means of relevant obligations.

241 Subsection (4) sets out that an estate manager in relation to a managed dwelling means an estate manager which carries out, or is required to carry out, estate management in relation to that dwelling. Subsection (5) defines a "managed dwelling" as a dwelling in relation to which an estate manager carries out, or is required to carry out, estate management.

242 Subsection (6) defines a "relevant obligation" in relation to a dwelling. This includes: an estate rentcharge set out under the Rentcharge Act 1977 ("the 1977 Act"); an obligation under a lease (that is not a service charge); any other obligation which runs with the land that comprises the dwelling or binds the owner for the time being of the land which comprises the dwelling; and any other obligation to which the owner of the dwelling is subject and to which any immediate successor in title of that owner will become subject, if an arrangement to which the estate manager and that owner are parties is performed. Subsection (7) makes it clear that subsection (6)(d) includes an arrangement under which the owner is required to ensure that any immediate successor in title to the owner enters into an obligation.

243 Subsections (8) and (9) define what is meant by, and what is excluded from the definition of an estate management charge. Subsection (2) makes it clear that the costs are amounts payable by people that own a dwelling, contribute towards the costs incurred by an estate manager in carry out estate management for the benefit of the homeowner and other homeowners, and are obliged to pay through a relevant obligation. Subsection (9) sets out those payments that do not count as an estate management charge. These include costs paid as part of an estate management scheme (under the 1967 Act and the 1993 Act), rent reserved under a lease, and services charges as defined in the 1985 Act.

244 Subsection (10) defines "relevant costs", in relation to a dwelling, as costs which are incurred by an estate manager in carrying out estate management for the benefit of that dwelling, or that dwelling and other dwellings.

245 Subsection (11) states that costs are relevant costs in relation to an estate management charge whether they are incurred, or to be incurred, in the period for which the charge is payable or in an earlier or later period.

Clause 40: Estate Management Charge: general limitations

246 Clause 40(1) states that any charge demanded as an estate management charge is payable (a) only to the extent the amount of that charge reflects relevant costs; and (b) only to the extent not otherwise limited under this Part. Clause 40(2) introduces Clauses 41 to 43 and the costs that would otherwise be relevant costs are not relevant costs or are relevant costs only to a

limited extent.

Clause 41: Limitation of estate management charges: reasonableness

247 Clause 41 mirrors Section 19 of the 1985 Act in relation to leasehold service charges. Subsection (1) states that costs incurred by estate managers are relevant costs only to the extent they are reasonably incurred, and they are incurred in the provision of services or carrying out works, only if the services or works are of a reasonable standard. Subsection (2) explains that where an estate management charge is payable before relevant costs are incurred, then no greater amount that is reasonable is so payable and, after costs have been incurred, a necessary adjustment must be made to the charge (by repayment, reduction of service charges or otherwise).

Clause 42: Limitation of estate management charges: consultation requirements

248 Clause 42 introduces requirements for estate managers to consult managed owners if the cost of any works to be charged as an estate management charge exceeds an appropriate amount. Subsection (2) makes it clear that this amount will be set in regulations by an appropriate authority, while subsection (3) makes it clear that regulations may make provision for an appropriate amount to be an (a) amount prescribed by or determined in accordance with regulations or (b) amount which results in the relevant contribution of any one or more managed owners being an amount prescribed by, or determined in accordance with, the regulations. Subsection (4) defines relevant contribution as the amount a managed owner may be required to contribute by way of a payment of an estate management charge to the relevant costs incurred in carrying out the works.

249 Subsection (5) explains that the contribution made by the owner of managed dwelling is limited in accordance with subsections (9) and (10), except where the consultation requirements have been met or the tribunal has dispensed with these requirements.

250 Subsection (6) sets out that the consultation requirements are to be set out in regulations made by an appropriate authority, while subsection (7) sets out that these regulations may include provisions on estate managers to: (a) provide details of the proposed works to managed owners, (b) obtain estimates for the proposed works, (c) invite managed owners to give the names of persons from which the manager should try to obtain other estimates, (d) have regard to observations made by managed owners in relation to proposed works and estimates, (e) and give reasons in prescribed circumstances for carrying out works.

251 Subsection (8) states that an appropriate tribunal may make a determination that all or any of the consultation requirements are to be dispensed with only if the tribunal is satisfied that it is reasonable to dispense with the requirements.

252 Subsection (9) states that where an appropriate amount is set by virtue of subsection (3)(a), costs in excess of the appropriate amount are not relevant costs. Subsection (10) states that where an appropriate amount is set by virtue of subsection (3)(b), costs in the amount of the relevant contribution of the managed owners, or each of the owners, whose relevant contribution would otherwise exceed the amount prescribed or determined in accordance

with the regulations, are not to that extent relevant costs.

253 Subsection (11) requires that any statutory instrument containing regulations under this section is subject to the negative procedure.

Clause 43: Limitation of estate management charges: time limits

254 Clause 43 makes it clear that costs are not "relevant costs" and therefore not chargeable to managed homeowners in circumstances where the estate manager both 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.

Clause 44: Determination of tribunal as to estate management charges

255 This Clause sets out the circumstances under which a managed owner may seek to challenge the reasonableness of the estate management charge.

256 Subsection (1) allow for applications to be made to the appropriate tribunal for a determination as to whether an estate management charge is payable and, if so, the persons by which and to which it is payable, the amount which is payable, the date at or by which it is payable, and the manner in which it is payable. Subsection (2) provides that an application may be made whether or not any payment has been made.

257 Subsection (3) provides that an application may also be made to the appropriate tribunal for a determination as to whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, an estate management charge would be payable for the costs and, and if so , the persons by which and to which it is payable, the amount which is payable, the date at or by which it is payable, and the manner in which it is payable.

258 Subsection (4) sets out the circumstances under which an application to the relevant tribunal under subsections (1) and (3) cannot be made. This includes matters: agreed or admitted by the managed owner; has been or is referred to arbitration pursuant to a post-dispute arbitration agreement to which the managed owner is a party; has been subject of a determination by a court; or are in respect of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

259 Subsection (5) makes it clear that, for the purpose of subsection (4) simply by paying the estate management charge does not mean that the managed owner has agreed or admitted any matter. Subsection (6) provides that an agreement by a managed owner (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner or on particular evidence on any question which may be subject of an application.

Clause 45: Demand for payment

260 Clause 45 creates a requirement for estate managers to demand a payment of an estate management charge using a specified form. Under current provisions estate managers may issue a demand in any manner that suits them. Clause 45 introduces a standardised demand form that landlords must use, subject to any exemptions.

261 Subsection (1) confers a power on the appropriate authority to prescribe the form, its contents and how it may be provided to the tenant. It does not restrict landlords from including other relevant information on the form should they wish. Subsection (2) states that where the demand for an estate management charge does not comply with subsection (1) then a provision of a deed, lease, contract or other arrangement or instrument relating to late or non-payment does not apply in respect of that particular estate management charge. Subsection (3) confers powers on the appropriate authority, by regulations, to provide for exceptions by reference to descriptions of person making the demand, or any other matter from the requirement to comply. Subsection (4) makes it clear that any statutory instrument containing regulations is subject to the negative procedure.

Clause 46: Annual reports

262 Clause 46 creates a new obligation on estate managers to provide an annual report to an owner of a managed dwelling.

263 Subsection (1) places the obligation to provide a report in circumstances where an estate manager provides estate management and an owner of the managed dwelling is or may be required to pay estate management charges. Subsection (2) places the obligation on estate to provide an a~~n~~nual report on or before the report date for an accounting period.

264 Subsection (3) allows the appropriate authority through regulations to set out the information that must be contained in the report, along with the form and manner for doing so. Subsection (4) defines an accounting period as a period of 12 months agreed between the estate manager and the owner or, if no such period is agreed, a period of 12 months- from 1 April. Subsection (5) defines the "report date" for an accounting period as being one month beginning with the end of the accounting period.

265 Subsection (6) allows the appropriate authority to set the exceptions to this duty through descriptions of the landlord, the service charge, or any other matter. Subsection (7) states that any statutory instrument containing regulations under this section is subject to the negative procedure.

Clause 47: Right to obtain service charge information on request

266 Clause 47 creates a new provision that entitles owners of managed dwellings to request and receive information.

267 Subsection (1) confers a right o<u>n</u> an owner of a managed dwelling to require an estate manager carrying out estate management in relation to the dwelling to provide specified information. Subsection (<u>3</u>) requires the estate manager to provide the owner with any of the

information requested that is in their possession.

268 Subsection (4) requires the estate manager to request information from another person if three conditions are met: (a) the information has to be requested under subsection (1); (b) the estate manager does not possess the information when the request is made, and (c) the estate manager believes that the other person possesses the information. Subsection (5) requires that person to provide the estate manager with any of the information requested that is in their possession.

269 Subsection (6) requires a person ("A") to request the information from another person ("B") individual if (a) the person receives an information request under subsection (3) or subsection (5), (b) the person does not hold that information and (c) person A believes that person B possess that information. Subsection (7 requires person B to provide person A with any of the information requested that is in person B's possession. Subsection (9) states that Clause 48 makes further provision about requests under this Clause.

270 Subsection (8) confers powers on an appropriate authority to make regulations to (a) specify the information that may be requested;(b) provide that a request may not be made until the end of a particular period, or until after a condition is met; (c) make provision as to the period within which a request under subsection (3) or (5) must be made; (d) provide for circumstance in which a request under this section may be refused.

271 Subsection (1) makes it clear that any statutory instrument containing regulations is subject to the negative procedure.

Clause 48: Requests under section 47: further provision

272 Clause 48 sets out further provisions in cases where a person ("R) requests information under Clause 47 from another person ("P). Subsection (2) states that R may request that person P allows access to premises so that R may inspect and/or make and remove a copy of the information. Subsection (3) requires person P to provide this information under Section 47 before the end of a specified period, or give person R the access requested during a specified period. "Specified" is defined as specified in regulations made by the appropriate authority. Subsection (4) allows person P to charge person R for doing anything required under Clause 47 or Clause 48. Subsection (5) states that where person "P" is the estate manager, that person may not charge an owner of a managed dwelling for the costs of allowing the owner access to premises to inspect information (but they may charge for the making of copies).

Clause 49: Enforcement of sections 45 to 48

273 Clause 49 creates new enforcement measures for Sections 45 to 48.

274 Subsection (1) allows an owner of a managed dwelling to make an application to the appropriate tribunal on the ground that (a) a person demanded the payment of an estate management charge otherwise than in accordance with Section 45(1) or (b) failed to provide a report in accordance with Section 46.

275 Subsection (2) allows the appropriate tribunal to make one or more of the following orders; (a) an order that the estate manager must, within 14 days of the order being made, either (i) demand payment of an estate management charge in accordance with Section 45(1); or (ii) provide a report in accordance with Section 46; (b) an order that an estate manager pay damages to the owner and (c)any other order that the tribunal finds consequential under paragraph (a) or (b).

276 Subsection (3) grants a person "C" the right to make an application to the appropriate tribunal on the grounds that another person "D" failed to comply with a requirement under section 47 or 48. Subsection (4) states that an application under subsection (3) the tribunal to make one or more of the following orders: a) an order that D comply with the requirement within 14 days of the order being made; (b) an order that D pay damages to C; and (c) any other order that the tribunal finds consequential under paragraph (a) or (b). Subsection (5) states that damages [must not exceed £5,000][under this section (a) must equal or exceed a specified amount; and (b) may not exceed a specified amount. "Specified" means specified by, or determined in accordance with, regulations made by the appropriate authority].

277 Subsection (6) makes it clear that any statutory instrument containing regulations is subject to the negative procedure.

Clause 50: Meaning of Administration charge

278 Subsection (1) defines administration charge as an amount payable directly or indirectly: (a) for or in connection with the grant of approvals in connection with a relevant obligation, or applications for such approvals; (b) for or in connection with the provision of information or documents by or on behalf of an estate manager; (c) for or in connection with the sale or transfer of land to which a relevant obligation relates, or the creation of an interest in or right over that land; (d) in respect of a failure by the owner to make a payment to the estate manager by the due date under a relevant obligation; and (e) in connection with a breach (or alleged breach) of a relevant obligation.

279 Subsection (2) allows an appropriate authority by regulations to make provision (including provision amending this Act) to amend the definition of "administration charge" while subsection (3) makes it clear that a statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure.

Clause 51: Duty to publish administration charge schedules

280 Subsection (1) states that if an estate manager expects to charge an administration charge, the estate manager must produce and publish an administration charge schedule.

281 Subsection (2) defines an "administration charge schedule" as a document setting out: (a) the administration charges the estate manager considers to be payable, and (b) for each charge, (i) its amount or, (ii) if it is not possible to determine its amount before it is payable, how the amount will be determined if it becomes payable.

282 Subsection (3) allows the estate manager to revise the schedule~~,~~ and if they do, they must publish the revised schedule. Subsection (4) requires the estate manager to provide the administration charges schedule for the time being published setting out the charges that may be payable by that person.

283 Subsection (5) allows an appropriate national authority to make regulations as to the form and content of an administration charge schedule; how an administration charge must be published; and how an administration charge schedule is to be provided to an owner of a dwelling.

284 Subsection (6) makes it clear that any statutory instrument containing regulations is subject to the negative procedure.

Clause 52: Enforcement of section 51

285 Clause 52 sets out the enforcement provisions of the duty to publish an~~d~~ administration charge schedule. Subsection(1) allows a tenant to make an application to the relevant tribunal on the grounds that the estate manager has not complied with Section 51 or regulations made under it.

286 Subsection (2) allows the tribunal the power to make one or both of the following orders; (a) an order that the manager comply with section 51 or regulations made under it before the end of the period 14 days beginning with the day after the date of the order and (b)an order that the manager pay damages to the owner. Subsection (3) states that any damages may not exceed £1000.

Clause 53: Limitation of administration charges

287 Subsection (1) states that an administration charge is payable only to the extent that the amount of the charge is reasonable. Subsection (2) enables an administration charge to be payable to an estate manager only if (a) its amount for the required period appeared on an administration charge schedule published under section 51 or (b) its amount was determined in accordance with a method that appeared on the published administration charge schedule fort the required period.

288 Subsection (3) defines "required period" as the period of 28 days ending with the day on which the administration charge is demanded to be paid.

289 Subsection (4) states that an administration charge is not payable to an estate manager if all three of the following conditions are met: (a) the charge relates to the same matter as, or a matter of a similar nature to, a matter for which an administration charge is payable by another person to that estate manager; (b) the amount of the charge is different from the charge payable by that person, and (c) it is not reasonable for the amount of the charge to be different.

290 Clause 53 states that any charge demanded as an estate management charge is payable by a

managed owner (a) only to the extent the amount of that charge reflects relevant costs; and (b) only to the extent not otherwise limited under this Part.

Clause 54: Determination of tribunal as to administration charges

291 Clause 54 creates a new right for managed owners to challenge the reasonableness of administration charges.

292 Subsection(1) provides that an application may be made to the appropriate tribunal for a determination as to whether an administration charge is payable, and if it is, as to: the persons by which and to which it is payable, the amount which is payable, the date at or by which it is payable, and the manner in which it is payable. Subsection(2) provides that the requirement for an administration charge to be reasonable applies whether or not any payment has been made.

293 Subsection(3) sets out the circumstances under which an application to the relevant tribunal cannot be made. These circumstances are in respect of a matter which: (a) has been agreed or admitted by every owner of the dwelling; (b) has been or is referred to arbitration pursuant to a post-dispute arbitration agreement to which the managed owner is a party; (c) has been subject of a determination by a court; or are in respect of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

294 Subsection(4) provides that simply-paying the estate management charge does not mean that the managed owner has agreed or admitted any matter. Subsection (5) provides that an agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner or on particular evidence on any question which may be subject of an application.

Clause 55: Codes of management practice: extension to estate managers

295 Clause 55 makes amendments to section 87 of the 1993 Act, the effect of which is to allow the Secretary of State to approve or publish a Code or management practice in relation to freehold estates. This Code may be taken into account as evidence at a Tribunal or Court.

Clause 56: Part 4: application to government departments

296 Clause 56 sets out the extent to which the provisions of Part 4 apply to the Crown. It requires that the provisions Part 4 apply in relation to estate management carried out by, or on behalf of, a government department.

Clause 57: Interpretation of Part 4

297 Clause 57 defines various terms used throughout Part 4. Subsection(1) sets out the meaning of "appropriate authority" to mean the Secretary of State in relation to England and to mean the Welsh Ministers in relation to Wales. It also sets out the meaning of "the appropriate tribunal" to mean in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal procedure Rules, the Upper Tribunal; and in relation to a dwelling in Wales, a leasehold valuation tribunal. The definition of "long lease" is also set out as having the meaning given in Section 77(2) of the 1993 Act. Subsection(1) also gives

meaning to other terms.

298 Subsection(1) also defines as "dwelling" as meaning a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it. Subsection (2) sets out that for the purposes of this Part, a person "owns" a dwelling if (a) the person owns freehold land which comprises a dwelling or (b) the person is a tenant of a dwelling under a long lease.

Part 5 - Rentcharges

Clause 58: Meanings of "estate rentcharge"

299 Clause 58 amends the definition of "estate rentcharge" in section 2(4)(b) of the 1977 Act to cover improvements.

Clause 59: Regulation of remedies for arrears of rentcharges

300 Clause 59 provides remedies for arrears of rentcharges, where the rentcharge remains unpaid for a period of 40 days. Clause 59(1) details that the Law of Property Act 1925 is to be amended with this new section.

301 Clause 59(2) inserts new sections 120A, 120B, 120C, 120D and 122A into the Law of Property Act 1925 ("the 1925 Act").

302 New section 120A defines various terms used throughout this Clause. New section 120A(1) details that for new sections 120B to 122, a rentcharge is "regulated" if it is a rentcharge that could not be created under section 2 of the 1977 Act; it relates to historic rentcharges.

303 New section 120A(2) defines, for the purposes of sections 120B and 120C, "charged land" means the land which is, or the land the income of which is, charged by the rentcharge. It also set outs out the meaning of "demand for payment" as meaning a notice under section 120(1)(a) demanding payment of regulated rentcharge arrears, and "landowner" is defined as, in relation to a sum that is charged by rentcharge, meaning the person who hods the charged land.

304 New section 120A(2) also sets out the meaning of "regulated rentcharge arrears" means a sum charged by a regulated rentcharge that is unpaid after the time appointed for its payment. This new section also sets out the definition of "rent owner" as, in relation to a sum that is charged by rentcharge, meaning the person who hold title to the rentcharge.

305 New section 120B(1) details that no action to recover or require payment of regulated rentcharge arrears may be taken unless (a) a notice has been served by the rent owner to the landowner demanding payment of the rentcharge arrears; (b) the demand complies with the requirements of new section 120B(2); (c) the demand for payment either (i) complies with the requirements of new section 120B(3) or (ii) does not need to comply with those requirements and (d) the period of 30 days, which begins on the day that the demand is served, has ended.

306 New section 120B(2) details that the demand for payment must set out (a) the name of the

rent owner; (b) the address of the rent owner, with an address in England and Wales at which notices may be served on the rent owner by the landowner, if the rent owner address is not in England and Wales; (c) the amount of regulated rentcharge arrears; (d) how the amount has been calculated; (e) how to pay the amount.

307 New section 120B(3) details that the demand for payment must set out or be served with (a) a copy of the instrument that created the regulated rentcharge; (b) proof that the rent owner holds the title to the regulated rentcharge.

308 New section 120B(4) details that the demand for payment complies with new section 120B(3)(b) if (a) the demand includes a copy of the registered title, where the rent owner's title to the registered charge is registered at Land Registry or (b) the demand includes copies of instruments by which title to the rent charge has passed to the rent owner, where the title to the regulated charge is not registered at Land Registry.

309 New section 120B(5) details that a demand for payment served by a rent owner on a landowner in relation to a regulated rentcharge does not need to comply with new section 120B(3) if: (a) a previous demand for payment served by the rent owner on the landowner in relation to the rentcharge complied with new section 120B(3); and (b) there has been no material change in the matters of new section 120B(3) since the previous demand was served.

310 New section 120B(6) details that no sum is payable by the landowner for the preparation or service of a demand for payment, which includes getting or preparing documents or copies to comply with new section 120B(3).

311 New section 120B(7) sets out that new section 120B applies to the action to recover or compel payment of rentcharge arrears whether the action is authorised by this Act or is otherwise available, including bringing proceedings.

312 New section 120C inserts into the 1925 Act relates to additional requirements for the service of notice under section 120B. New section 120C(1) details that new section 120C applies if (a) notice served under new section 120B demanding the payment of rentcharge arrears is served in compliance with the requirements of section 196(3) or (4), but (b) the address the notice is left at or sent to, in compliance with those requirements is not the charged land.

313 New section 120C(2) details that the notice is sufficiently served only if, in addition to complying with existing requirements under section 196(3) or (4) of the 1925 Act, (a) it is left for the landowner on the charged land or (b) it is sent by post in a registered letter addressed to the landowner, by name, at the charged land, with the letter not being returned undelivered by the postal operator; and the serving of the notice will be deemed to be made at the time the registered letter would be delivered.

314 New section 120D inserts into the 1925 Act new administrative charge provisions relating to regulated rentcharge arrears. New section 120D (1) confers powers on the Secretary of State to set out in regulations a limit of the amounts payable by landowners, directly or indirectly, in relation to the action of recovering or requiring payment of regulated rentcharge arrears.

315 New section 120D(2) details that regulations under this section may provide that no amount

is to be payable by landowners in respect of particular descriptions of action to recover or compel payment of regulated rentcharge arrears. New section 120D(3) details that regulations under this section may make (a) different provisions for different cases; (b) transitional or saving provision. New section 120D(4) details that regulations will be made by statutory instrument and (5) details that the negative resolution procedure will be used.

316 Clause 59(3) inserts new subsection (1A) into section 121 of the 1925 Act. New subsection (1A) details that where a sum is charge 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 first reading of the Bill).

317 Clause 59(4) inserts new subsection (1A) into section 122 of the 1925 Act. New subsection (1A) details that on and after 27 November 2023 (the date of the first reading of the Bill), such a rentcharge or another annual sum may not be granted, reserved, charged or created out of or on another rentcharge if it is a regulated rentcharge.

318 Clause 59(5) details that the amendments made by subsections (1) to (4) are to be applied to both rentcharge arrears that have arisen before and after these changes come into force.

319 Clause 59(6) inserts new section 122A into the 1925 Act. New section 122A details that an instrument creating a rentcharge or a contract or any other arrangement is of no effect to the extent that it makes provision that is contrary to (a) section 120B, 120C, 121(1A) or 122(1A) or (b) regulations under section 120D.

Part 6 – General

Clause 60: Interpretation of references to other Acts

320 Clause 60 sets out the meaning of terms used throughout the Act.

Clause 61: Power to make consequential provision

321 Clause 61 allows the Secretary of State to make consequential amendments by affirmative regulations as regards amendments to primary legislation (i.e. an Act) and to make consequential amendments to any other legislation by regulations subject to annulment by a resolution of either House of Parliament in accordance with the negative procedure.

Clause 62: Regulations

322 Clause 62(1) provides that where regulations are made under this Act, those regulations may make consequential, supplementary, incidental, transitional or saving provision. Clause 62(1)(b) also allows regulations to make different provision for different purposes.

323 Clause 62(2) clarifies that regulations under this Act are to be made by statutory instrument.

324 Clauses 62(3) and (4) define the "affirmative" and "negative" scrutiny procedures that apply to the making of regulations under the Act whether made by the Secretary of State or by the Welsh Ministers.

325 Clause 62(5) is self-explanatory.

326 Clause 63 sets out the territorial extent of this Act, that is the jurisdiction which the Act forms part of the law. In addition, amendments and repeals made by this Act have the same territorial extent as the legislation that they are amending or repealing.

Clause 63: Extent

327 Clause 63 sets out the territorial extent of this Act, that is the jurisdiction which the Act forms part of the law. In addition, amendments and repeals made by this Act have the same territorial extent as the legislation that they are amending or repealing.

Clause 64: Commencement

328 Clause 64(1) lists provisions which will commence two months after Royal Assent. Clause 64(2) sets out that the remaining provisions of the Act come into force on the day or days specified by the Secretary of State in regulations. Clause 64(3) provides that Part 6 of the Act comes into force on the day that this Act is passed.

329 Clause 64(4) gives a power to make regulations which include transitional or saving provision in connection with the coming into force of any provision of the Act. Clause 64(5) confirms that the power to make regulations under this section includes power to make different provision for different purposes. Clause 64(6) is self-explanatory.

Clause 65: Short title

330 Clause 65 provides that the Act may be cited as the Leasehold and Freehold Reform Act 2024.

Schedule 1 - Eligibility for Enfranchisement and Extension

331 Paragraph 1 repeals the sections of the LRA 1967 and the LRHUDA 1993 that allow a landlord to defend a lease extension claim (for a house or a flat) or a collective enfranchisement claim because they intend to redevelop the property.

332 Paragraph 2 repeals the power in the LRA 1967 for the landlord to defeat a freehold acquisition or lease extension claim and retake possession of the property so that the landlord or their family can reside in it.

333 Paragraph 3 repeals the power in the LRA 1967 for a Minister to certify that property belonging a public authority is needed for development and thereby prevent a tenant of the property bringing a lease extension or freehold acquisition claim.

334 Paragraph 4 removes the limitations in the LRA 1967 and the LRHUDA 1993 that prevent a sublessee from claiming a lease extension if their sublease was granted by an intermediate leaseholder out of a lease that had been extended under the relevant Act.

335 Paragraphs 5 to 36 make consequential amendments of the LRA 1967 and the LRHUDA 1993 that are necessary because of the repeals and amendments in paragraphs 1 to 4.

Schedule 2 - Determining and sharing the market value

Part 1: Introduction

336 Paragraph {1(1)} provides that Schedule {2} must be followed when calculating the market value element of the premium for any enfranchisement claim, namely acquiring the freehold of a house, extending the lease of a house, acquiring the freehold of a block of flats or extending the lease of a flat.

337 Paragraph {1(2)} provides that Schedule {2} also sets out how to divide the premium into shares where loss is suffered by multiple landlords.

Part 2: The Market Value

338 Paragraph {2} sets out that the premium (under Schedule {2}) in a freehold acquisition claim (under either the LRA 1967 or the LRHUDA 1993), is the open market value of acquiring the freehold of the premises subject to the claim.

339 Paragraph {3} sets out that the premium (under Schedule {2}) in a lease extension claim (under either the LRA 1967 or the LRHUDA 1993) is the open market value of acquiring a notional lease with the following length: 990 years plus the years remaining on the leaseholder's lease when they claim the lease extension. The notional lease is for a peppercorn ground rent and is over the premises which are subject to the lease extension claim. It must also be assumed that the leaseholder's existing lease will continue until its expiry.

340 Paragraph {4} provides that Part {3} and {4} of Schedule {2} set out how the premium is to be determined, and that the premium in respect of different parts of the premises can be calculated in different ways.

Part 3: Determining the Market Value

341 Paragraph {5} sets out that, in general, the standard valuation method must be used to determine the value of acquiring the relevant freehold or notional lease. However, the standard valuation method is not required to be used where the property (or parts of the property) fall into paragraphs {6} to {11}: kinds of property for which the standard valuation method is not compulsory.

342 Paragraph {6} sets out that the standard valuation method is not compulsory where the lease has five years or less remaining before it expires when the enfranchisement claim is made.

343 Paragraph {7} sets out that the standard valuation method is not compulsory for property comprised in a lease that is an excepted home finance plan lease, as defined by the Leasehold Reform (Ground Rent) Act 2022.

344 Paragraph (8) sets out that the standard valuation method is not compulsory if the lease is a "market rack rent lease". A market rack rent lease is defined as a lease which is granted for no (or a very low) premium, is at a market rack rent, and which the parties intend to be at a market rack rent.

345 Paragraph (9) sets out that the standard valuation method is not compulsory for parts of the

property which are included in the enfranchisement claim under section 2(4) of the LRA 1967 (property that was originally let to the leaseholder, but which is no longer owned by the leaseholder at the date of the enfranchisement claim).

346 Paragraph {10} sets out that the standard valuation method is not compulsory where there has been a pre-commencement lease extension of a house for 50 years at a modern ground rent.

347 Paragraph 11 sets out that the standard valuation method only applies in a collective enfranchisement to a relevant flat (and appurtenant property leased with a relevant flat). A relevant flat is a flat demised to: a qualifying tenant; a person who would be a qualifying tenant but for section 5(5) and (6) of the LRHUDA (which exclude a tenant from being a qualifying tenant where they own the leases of three or more flats in the same building); or an intermediate leaseholder of flat (where that intermediate leaseholder is also the qualifying tenant of the flat). However, a flat will not be a relevant flat where it is let to an intermediate leaseholder whose lease is not being acquired, or where it is let to a shared ownership leaseholder.

348 Paragraph 12 provides that the standard valuation method can still be used to determine the value of the relevant freehold or notional lease, even when it is not compulsory to do so.

349 Paragraph 13 explains that property is subject to the standard valuation method if the method is required to be used or is used voluntarily.

Part 4: Assumptions And Other Matters Affecting Determination of Market Value

350 Paragraph {14} provides that Part 4 applies to the determination of the premium regardless of whether the standard valuation method is being used. Paragraph {14(2)} provides that certain matters (under paragraphs {18} and {20}) must only be taken into account when the standard valuation method is being used.

351 Paragraph {15} sets out assumptions 1 and 2. Paragraph {15(1)} explains that these assumptions must be made when determining the value of the relevant freehold or notional lease.

352 Paragraph 15(2) sets out assumption 1, under which various leases are treated as merged with the freehold for valuation purposes. The leases which fall within assumption 1 are those which, under the LRA 1967 or the LRHUDA 1993, are acquired in a freehold acquisition claim or are deemed surrendered and regranted in a lease extension claim. The effect of assumption 1 is that the presence of intermediate leases in a property will not generally have an effect on the premium.

353 Paragraph 15(3) sets out assumption 2, which has the effect of ensuring that marriage value and hope value do not form part of the premium. Marriage value is the additional value that may arise when the landlord's and leaseholder's separate interests are joined into single ownership. Hope value is the additional value that may arise from the potential for marriage value to be realised in the future.

354 Paragraph {15(4)} provides that other assumptions can be made when determining the market value, so long as they are consistent with assumptions 1 and 2.

355 Paragraph {16} sets out that assumption 3 applies when calculating the premium in a freehold acquisition claim under the LRA 1967 and a lease extension clause under the LRA 1967 or LRHUDA 1993. This. This assumption has two parts:

a. First, it must be assumed that the leaseholder has complied with the repairing obligations in their lease. As a result, a leaseholder's property which has fallen into disrepair (in breach of the repairing obligations in the lease) will not be devalued, and so their premium will not be reduced by reason of their breach.

b. Secondly, it must be assumed that the leaseholder (or previous leaseholders) has not made any improvements to their property. As a result, the premium will not be increased because the leaseholder has, at their own expense, made improvements to their property so that it is more valuable.

356 Paragraph {16(3)} provides that assumption 3 applies to the leaseholder's existing lease.

357 Paragraph {16(4)} allows other assumptions to be made when determining the market value provided, they are consistent with assumption 3.

358 Paragraph {16(5)} defines the term "tenant's repairing obligation", for the purposes of assumption 3.

359 Paragraph {17} sets out that assumptions 3 and 4 are to be used when calculating the premium for a collective enfranchisement claim. Paragraph {17(2)} sets out that Assumption 3 has two parts:

a. First, it must be assumed that the leaseholder has complied with the repairing obligations in their lease. As a result, a leaseholder's property which has fallen into disrepair (in breach of the repairing obligations in the lease) will not be devalued, and so their premium will not be reduced by reason of their breach.

b. Secondly, it must be assumed that the participating leaseholder (or previous leaseholders) has not made any improvements to their property. As a result, the premium will not be increased because the leaseholder has, at their own expense, made improvements to their property so that it is more valuable.

360 Paragraph {17(3)} provides that assumption 3 applies to the leaseholder's existing lease.

361 Paragraph {17(4)} sets out assumption 4, under which It must be assumed that the freehold being acquired in the collective is subject to any leasebacks that will be granted under section 36 of the LRHUDA 1993 as part of the claim.

362 Paragraph {17(5)} allows other assumptions to be made when determining the market value provided, they are consistent with assumption 3.

363 Paragraph {17(6)} defines the term "tenant's repairing obligation", for the purposes of assumption 3.

364 Paragraph {18} sets out that the premium must be increased or reduced to reflect certain specified matters (when they arise) when determining the market value. Those specified matters include any defects in title to the relevant freehold or statutory lease, and any property rights that burden or benefit that title.

365 Paragraph {19} applies where a lease has five years or less remaining before it expires. Where leaseholders of these leases have a right to remain in the property at the end of the lease under the Local Government and Housing Act 1989, and the right is likely to be exercised, the premium must be discounted to reflect that right. This paragraph also sets out that the discount does not apply to leases with more than five years remaining before expiry at the date of the enfranchisement claim.

366 Paragraph {20} covers the two situations: Paragraph {20} covers two situations:

a. In a lease extension claim (under either the LRA 1967 or the LRHUDA 1993), where the standard valuation method is being used and the terms of the extended lease are different the terms of the leaseholder's existing lease, the premium must be increased or decreased to reflect the effect of the change in terms where necessary.

b. In a collective enfranchisement claim, where a qualifying tenant is also the owner of the immediately superior lease of their flat, the standard valuation method applies to the superior lease rather than the inferior lease.

Part 5: The Standard Valuation Method

367 Paragraph 21 introduces the standard valuation method set out in Part 5. The standard valuation method consists of steps 1 to 3, and there are two alternative versions of step 2 (depending on whether the claim is a freehold acquisition or lease extension claim).

368 Paragraph 22 sets out step 1: the determination of the "term value". The term value is the capital value of the landlord's right to receive ground rent for the remainder of the lease. The term value must be calculated in accordance with the provisions in Part 7 of Schedule 2. The rent that is to be used when calculating the term value is set out in paragraph 23. Paragraph 22 makes clear that where the ground rent in the lease is nil or a peppercorn, the term value is nil.

369 Paragraph 22 also makes provision for calculating the term value in respect of collective enfranchisements, as well as for where a leaseholder has two (or more) leases over the property that is subject to the enfranchisement claim (which are a "deemed single lease" under section 3(6) of the LRA 1967 or section 7(6) of the LRHUDA 1993): the term value must be calculated for each constituent lease.

370 Paragraph {23} sets out the rent which must be used when calculating the term value under paragraph {22}, and a ground rent cap which applies in certain circumstances. Where the actual rent in the lease is higher than the "notional rent", the term value must be calculated using the notional rent (rather than that actual rent). The notional rent is an annual rent of 0.1% of the open market value of the freehold of the relevant property.

371 Despite the ground rent cap, the actual rent must be used to calculate the term value in two exceptional circumstances: where the tenant did not pay a premium for their lease; and where the seller can show that the lease was specifically negotiated to be at a high ground rent, in order to compensate for a corresponding reduction to the premium.

372 Paragraph {23(2)} also limits the rent that is relevant to calculating the term value to rent which is payable only in respect of property that is subject to the standard valuation method. For example:

> A leaseholder has a single lease of a house and a neighbouring field. Under the lease, the leaseholder pays £60 ground rent per year. £50 is ground rent for the house, and £10 is ground rent for the field.
>
> The leaseholder extends the lease of the house, but not of the neighbouring field. The property that is subject to the standard valuation method consists only of the house. As a result, the ground rent taken into account in calculating the term value is £50 per year.

373 Paragraphs {24} and {25} set out the two versions of Step 2, for freehold acquisitions and lease extensions respectively.

374 Paragraph {24} sets out step 2 for freehold acquisition claims (of houses or blocks of flats): the determination of the "reversion value". The reversion value is the market value of the freehold of the premises subject to the standard valuation method, deferred until the expiry of the leaseholder's lease. Paragraph {24(2)} requires the reversion value to be calculated by establishing the market value of the freehold and reducing it through the reversion value formula (in which the applicable deferment rate must be used). There will be a separate reversion value for each qualifying tenant's lease in a collective enfranchisement.

375 Like paragraph 22, paragraph 24 provides that where the leaseholder has two (or more) leases that constitute a deemed single lease, there will be a separate reversion value for each of those leases.

376 Paragraph 25 sets out step 2 for lease extension claims (of houses or flats): the determination of the "reversion value". The reversion value is the market value of a 990-year lease granted at a peppercorn ground rent and on the same terms as the extended lease, deferred until the end of the term of the qualifying tenant's lease. Paragraph 25 also makes provision for deemed single leases.

377 Paragraph {26} sets out step 3 for all calculations being carried out following the standard valuation method. Under Step 3, the term value and the reversion value must be added together. In the case of a collective enfranchisement, all the term values and all the reversion values must be added together. Paragraph 26(4) provides that the step 3 amount (adjusted, if necessary, in accordance with paragraph 18 and 20) is the market value to be paid for the part (or parts) of the property that are valued using the standard valuation method. Paragraph

{26(5)} provides that further sums may be payable in respect of the other parts of the premises (which are not subject to the standard valuation basis).

Part 6: Entitlement Of Eligible Persons to Shares of the Market Value

378 Part 6 is concerned with the apportionment of the premium which has been determined under Parts {1} to {5} of Schedule {2}. It provides that the premium should be paid on a pro rata basis to all persons whose interests have been devalued or lost as a result of the enfranchisement claim.

379 Paragraph {27} provides that where there are two or more eligible persons, each is entitled to be paid a share of the premium. The share that each person is entitled to is determined using the formula provided, which involves taking the market value (calculated under Parts {1} to {5} of Schedule {2}) and multiplying it by the total of that person's loss divided by the total losses suffered by all the eligible persons.

380 Paragraph {28} defines an eligible person for freehold acquisition claims (or houses or blocks of flats) as a person who has had the whole (or part) of their interest acquired in the claim. The paragraph also sets out that the eligible person's qualifying transaction is the acquisition (in whole or in part) of their interest.

381 Paragraph {29(1)} defines an eligible person for the purposes of lease extension claims, as a person: who has granted the extended lease our of (the whole or part of) their interest or who has had their interest deemed surrendered and regranted as a result of the claim. The paragraph also sets out that the eligible person's qualifying transaction is the grant of an extended lease or the deemed surrender and regrant of their lease.

382 Paragraph {30} sets out how to determine what loss is suffered by an eligible person. Subparagraph {(1)} provides that their loss is the combination of any loss they suffer as a result of their qualifying transaction, and any other loss they suffer resulting from the reduction in value of any of the interests they own as a result of the enfranchisement claim. For example:

> A qualifying tenant of a flat extends their lease by 990 years. Their immediate landlord (the "intermediate leaseholder") has 150 years remaining on their lease. The extended lease is granted by the freeholder, and the intermediate leaseholder's lease is deemed surrendered and granted (and is subject to the extended lease).
>
> The intermediate leaseholder is an eligible person, as their interest has been deemed surrendered and regranted. The qualifying transaction is the deemed surrender and regrant of their intermediate lease.
>
> The loss they have suffered as a result of the deemed surrender and regrant is: (1) the qualifying tenant will no longer pay any ground rent to them (as the extended lease is granted for a peppercorn); and (2) they will not recover possession of the property at the end of the qualifying tenant's lease (as the extended lease is now longer than their

intermediate lease).

The freeholder is also an eligible person as the extended lease has been granted out of their interest. The qualifying transaction is the grant of the extended lease out of their interest. The loss they have suffered is that they will not recover possession of the property for 990 more years following the lease extension than they would have done before it.

383 Subparagraph (2) provides that no marriage value or hope value is taken into account when each eligible person's loss is calculated, by requiring assumption 1 to be made in that calculation. Assumption 1 is set out at paragraph 15 of Schedule 2. Marriage value is the additional value that may arise when the landlord's and the leaseholder's separate interests are joined into single ownership. Hope value is the additional value that may arise from the potential for marriage value to be realised in the future.

384 Subparagraph (3) sets out that an eligible person cannot increase the value of their interest (and so increase the amount of loss they suffer) by entering into any transaction after the qualifying tenant's claim is made which involves the creation or transfer of interests (or any alteration of the terms of interests) superior to the qualifying tenant's interest.

385 Paragraph {31} defines a number of the terms used in Part {6} of Schedule {2}.

Part 7: Determining the Term Value

386 Paragraph 32 provides that Part 7 is used to work out step 1 of the standard valuation method: determination of the term value.

387 Paragraph 33 is used to determine the term value where the ground rent that the leaseholder must pay is not subject to a rent review. The prescribed capitalisation rate, ground rent that the leaseholder pays, and length of time (in years) until the lease expires must be entered into the formula at paragraph 33(3). Where the ground rent is more than the "notional rent", the notional rent not the actual rent must be used in the formula. Paragraph 23 sets out that the notional rent is 0.1% of the open market value of the freehold of the relevant property.

388 Paragraph 34 is used to determine the term value where the ground rent that the leaseholder must pay is subject to a rent review, and it is clear from the terms of the lease when and by what amount the ground rent will change. Paragraph 34(3) sets out the formula to be used to work out the term value in respect of the ground rent that is payable until the first rent review (after the date of the claim). Paragraph 34(5) sets out the formula to be used for all subsequent rent review periods. Where the ground rent is more than the "notional rent", the notional rent not the actual rent must be entered into the relevant formula.

389 Paragraph 35 is used to determine the term value where the ground rent that the leaseholder must pay is subject to a rent review, and the lease does not otherwise fall under paragraph

34. Paragraph 35(2) sets out the formula that must be used to determine the term value of these leases. It also sets out how to determine the amount by which the ground rent will change in two types of rent review provisions.; where neither is applicable to the lease being valued, the paragraph requires that amount to be determined in accordance with the terms of the lease. Where the ground rent is more than the "notional rent", the notional rent not the actual rent must be entered into the formula at paragraph 35(2).

390 Paragraph 36 defines a number of terms used in Part 7 of Schedule 2.

Schedule 3 - Other compensation

391 Schedule {3} sets out when and to whom other compensation is payable in addition to the premium determined under Schedule {2}.

392 Paragraph {1} provides that other compensation can be claimed in any freehold acquisition or lease extension claim.

393 Paragraph {2(1)} provides that the qualifying tenant must pay a person reasonable compensation where that person has an interest in property which is not subject to the freehold acquisition or lease extension claim and which is devalued by that claim. The qualifying tenant must also pay reasonable compensation for any other loss or damage to that person's other property that is caused by the claim. Subparagraph {(2)} provides that the loss or damage can include the loss of development value (in the property subject to the claim), to the extent that this loss is referable to that person's other property. Subparagraph {3} provides that, in determining the amount of compensation payable in a collective enfranchisement claim, it does not matter if the freeholder could have reduced their loss by requiring a leaseback to be granted to them but chose not to do so. Subparagraph {4} sets our relevant definitions of paragraph {2}.

Schedule 4 - Schedule 2 and Schedule 3: Interpretation

394 Schedule {4} sets out the definitions of many terms used in Schedules {2} and {3}.

Schedule 5 - Amendments consequential on section 11 and Schedules 2 to 4

395 Paragraphs 1 removes section 9A of the LRA 1967, which is a necessary consequential amendment to permit the price to be calculated in its entirety under Schedules 2 and 3 as required by clause 11.

396 Paragraph 2 makes consequential changes to section 70 of the LHRUDA 1993 to reflect the fact that the enfranchisement premium in freehold acquisition claims (under either the LRA 1967 or LRHUDA 1993) will be determined under Schedule 2.

397 Paragraphs 4 to 7 of Schedule 5 amend the LRA 1967 and the LRUHDA 1993 to make two changes, which apply where multiple landlords are affected by an enfranchisement claim.

a. First, where the overall price for the freehold or extended lease and all other relevant terms have been agreed between the tenant (or nominee purchaser) and the landlord who is responsible for the claim, the amendments ensure that the tenant (or nominee purchaser) can insist that the landlord completes the transfer or grant. The transfer or grant must take place even if the share of the price due to each individual landlord has not yet been agreed or determined.

b. Secondly, the amendments ensure that the landlord responsible for the claim can receive the entire price, which they will hold on behalf of themselves and all other affected landlords. The amendments remove the power of other landlords to insist on being paid their share of the price directly. But they provide a new protection for other landlords by giving them the power to insist that the whole price must be paid into the Tribunal rather than to the landlord responsible for the claim.

Schedule 6 – Leasehold Enfranchisement and Extension: Miscellaneous Amendments

398 Paragraph 1 removes the restrictions in the LRA 1967 and the LRHUDA 1993 on the extent to which a tenant whose lease has been extended can enjoy various kinds of statutory security of tenure.

399 Given the removal of the restrictions on the enfranchisement rights of sublessees and rights to security of tenure in paragraph 1 of Schedule 6 and paragraph 4 of Schedule 1, paragraph 2 of Schedule 5 removes the obligation to state in an extended lease that is has been extended under the LRA 1967 or the LRHUDA 1993 (as applicable).

400 Paragraph 3, sub-paragraph (1), adjusts the periods in which a landlord can apply to terminate a lease of a house that has been extended under the LRA 1967 for the purposes of redevelopment (and on payment of compensation to the tenant). The new periods take account of the change from 50-year to 990-year lease extensions – see clause 7. Under paragraph 7, the landlord can apply to retake possession:

a. in the last 12 months of the term of the tenant's original lease (before it was replaced by the new extended lease);

b. in the last five years of each 90-year period of the 990-year extension; and

c. in the last five years of each 90-year period of any further 990-year extension.

401 Sub-paragraph (2) makes the same adjustment to the periods for exercising break rights under the LRHUDA 1993 in relation to an extended lease of a flat.

402 Paragraph 4 repeals provisions of the 1967 Act that have become redundant due to other repeals.

403 Paragraph 5 repeals provisions of the LRA 1967 that concern the interaction between enfranchisement claims under the Act and the approval of estate management schemes

under section 19. As estate management schemes can no longer be approved, these provisions are obsolete.

404 Paragraphs 6 and 7 insert a new definition of "shared ownership lease" into the LRA 1967 and the LRHUDA 1993.

405 Paragraph 8 repeals provisions of the CLRA 2002 that have not been commenced. They would have required, in collective enfranchisement claims, the freehold to be acquired by a Right to Enfranchise company.

Schedule 7 – Right to vary lease to replace rent with peppercorn rent

406 Paragraph 1 explains the purpose of Schedule 7, which is to confer on a qualifying tenant the right to buy out their ground rent ("the right to a peppercorn rent"). The exercise of the right involves a variation of the tenant's lease permanently to replace the (relevant part of the) rent with a peppercorn rent.

407 Paragraph 2, sub-paragraphs (1) to (4) set out that tenants who qualify for a lease extension under the LRA 1967 or LRHUDA 1993 also have a right to a peppercorn rent.

408 However, under sub-paragraph (2), the tenant must have at least 150 years left on their lease to qualify. Additionally, community housing leases and home finance plan leases, which were excepted by the Leasehold Reform (Ground Rent) Act 2022, do not qualifying for the right to a peppercorn rent.

409 Under sub-paragraphs (3)(b) and (4)(b), tenants who do not have a lease extension right because they have a tenancy of Crown land, or because they do not satisfy the low rent test in the LRA 1967, can still qualify to claim a peppercorn rent.

410 Under sub-paragraphs (5) and (6), the right to a peppercorn rent only applies to the part of the rent relating to the property that would be included in a lease extension under the LRA 1967 or LRHUDA 1993. If a qualifying lease also includes additional property, the tenant cannot reduce the rent relating to that additional property to a peppercorn. For example, if a tenant has a long residential lease of a house plus neighbouring farmland, they can reduce the part of their rent that relates to the house to a peppercorn but cannot reduce any part of their rent that relates to the farmland.

411 Paragraph 3(1) provides that the right to a peppercorn rent is exercised by serving a "rent variation notice" on the landlord. However, under sub-paragraph (2), a claim for a peppercorn rent cannot be made while there is an ongoing lease extension or freehold acquisition claim in progress in relation to the property.

412 If the right to a peppercorn rent only applies to some property let under the tenant's lease, sub-paragraphs (3) to (4) state that the tenant must identify the relevant property in their rent

variation notice.

413 Sub-paragraphs (5) to (7) deal with how a claim for a peppercorn rent can be protected and how it can continue to be effective if the landlord or the tenant disposes of their interest in the property during the claim.

414 Paragraph 4 requires the landlord to reply to the tenant's notice with a counter-notice before the end of the response period specified in the tenant's notice. The landlord must be given at least two months to respond. The counter-notice must explain whether or not the landlord admits that the tenant had the right to a peppercorn rent on the relevant date, and whether or not they admit that the right applies to the portion of the rent in respect of which the right is claimed.

415 Paragraph 5 applies where the landlord's counter-notice denies that the tenant has a right to a peppercorn rent or denies that the right applies in relation to the rent specified by the tenant. The landlord must apply within two months of the counter-notice to the tribunal, which will decide the issue. If the tribunal decides that the tenant has no right to a peppercorn rent, the tenant's claim will cease to have effect. If the tenant does have the right, the tribunal can declare what rent the right applies to.

416 Paragraph 6, sub paragraphs (1) and (2), apply if the landlord has not provided a counter-notice to the tenant's rent variation notice or fails to apply to the tribunal under paragraph 5 within two months. The tenant can apply to the tribunal to make an order declaring that they have a right to a peppercorn rent and specifying the portion of rent in relation to which the right applies. Under sub-paragraphs (3) and (4), the tribunal must only make the declaration if it is satisfied that the tenant's claim was properly served and the tenant has a right to a peppercorn rent; otherwise, the tribunal must declare that the tenant does not have the right. The tenant's application must be made within the time limit specified in sub-paragraph (5).

417 Paragraph 7 applies if the landlord admits in their counter-notice that the tenant has a right to a peppercorn rent or the tribunal declares that they have the right, and the parties agree, or the tribunal declares which rent the right relates to. Under sub-paragraphs (2) and (6), the tenant must pay a premium to the landlord within two months, and the landlord and tenant must agree a variation of the tenant's lease. Under sub-paragraph (4), the variation must put in the place the peppercorn rent claimed by the tenant or, where appliable, determined by the tribunal.

418 Sub-paragraph (5) specifies what premium is payable in exchange for the variation of the lease. The premium is the same as the "Term" portion of the premium payable on a lease extension under paragraph {22} of Schedule 2. This premium reflects the capital value of the landlord's right to receive a ground rent for the remainder of the lease.

419 Paragraph 8 explains that, where a qualifying lease is not varied in accordance with paragraph 7, the landlord or tenant can apply to the tribunal. The tribunal—

1 can order that the rent variation notice is to cease to have effect; or

2 can make a suitable order to ensure the variation takes place. The tribunal's power

include ordering that the variation of the lease should be executed by a person appointed by the tribunal in place of the landlord (see the references to tribunal jurisdiction in paragraphs 10 and 11).

420 Paragraph 9(1) sets out the circumstances in which a rent variation notice ceases to have effect – for example where the notice is withdrawn (sub-paragraph (a)) or where the tribunal declares the right is not exercisable (sub-paragraph (d)). If the notice ceases to have effect, then, under sub-paragraph (2), the landlord is under no further obligation to deal with the claim, unless the tribunal orders otherwise under sub-paragraph (3).

421 However, sub-paragraphs (4) and (5) allow a claim for a peppercorn rent to be revived if it ceases to have effect because of a later lease extension or freehold acquisition, and the later claim then ceases to have effect.

422 A person who receives a notice that purports to be a rent variation notice can apply to the tribunal under sub-paragraph (6) for a declaration that the notice is not really a rent variation notice.

423 Paragraph 10 sets out which provisions of the LRA 1967 apply for the purposes of Schedule 7, and how these provisions may have a modified effect in relation to claims under Schedule 7.

424 Paragraph 11 sets out which provisions of the LRHUDA 1993 apply for the purposes of Schedule 7, and how these provisions may have a modified effect in relation to claims under Schedule 7.

425 Paragraph 12 establishes a power which enables regulations to be made for the purpose of giving effect to the rights of the tenant under Schedule 7. In particular, sub-paragraphs (2) and (3) explain that the regulations may make provision about notices, and sub-paragraph (4) explains that regulations may be used to amend paragraphs 10 and 11.

426 Paragraph 13 sets out the definitions for the purposes of Schedule 7.

Schedule 8 - Part 3: consequential amendments

Part 1: Amendments consequential on page 36

427 This Schedule, introduced by Clause 37, sets out consequential amendments to reflect the insertion of Part 3 of the Bill.

428 Part 1 details amendments consequential on section 36, with amendments being made to the LTA 1985 according to paragraphs (2) to (13).

429 New paragraph 2(a) makes amendments to subsection (3) of section 5 (information to be contained in rent books). Paragraph 2(b) inserts a new subsection (4) so that "a statutory instrument containing regulations under this section is subject to the negative procedure".

430 New paragraph 3 amends section 10B (8) to substitute "may not be made" with "is subject to the affirmative procedure".

431 New paragraph 4 seeks to substitute "Secretary of State" with "appropriate authority" under

subsections (4) and (5) of section 20 of the 1985 Act. New paragraph 5 substitute "Secretary of State" with "appropriate authority" under subsections (3) and (4) of section 20ZA of the 1985 Act, omits the words from "which shall" to the end in subsection (7) and after subsection (7) inserts "a statutory instrument containing regulations under this section is subject to the negative procedure".

432 New paragraphs 6, 7 and 9 seek to amend section 20E (4), section 20F (7), section 29A subsection (7) by substituting from "annulment" to the end with "the negative procedure".

433 New paragraph 8 amends section 29 of the 1985 Act in three ways: in subsection (5) substitute "Secretary of State" with "appropriate authority"; in subsection (6), omits the words from "which shall" to the end; and after subsection (6) insert a new subsection (7) "A statutory instrument containing regulations under subsection (5) is subject to the negative procedure".

434 New paragraph 10 amends section 30D (9) of the 1985 Act to substitute "may not be made" to the end with "is subject to the affirmative procedure".

435 New paragraph 11 amends section 31 of the 1985 Act substitute "Secretary of State" with "appropriate authority" under subsection (1), omits the words from "which shall" to the end in subsection (4), and after subsection (4) inserts "a statutory instrument containing regulations under this section is subject to the negative procedure".

436 New paragraph 12 amends section 35 of the 1985 Act by omitting the words from "which shall" to the end in subsection (2), and after subsection (2) inserting "a statutory instrument containing regulations under this section is subject to the negative procedure".

437 New paragraph 13 amends paragraph 7(5) of the Schedule to the 1985 Act to substitute "Secretary of State" with "appropriate authority".

Part 2: Other consequential amendments

438 Part 2 of Schedule 8 makes other consequential amendments to account for the new measures in Part 3 of the Bill.

439 New paragraph 14 makes changes to section 23A of the 1985 Act by: (a) in subsection (1) replacing "section 21 to 23" with "sections 21D to 21H"; (b) in subsection (4) for "sections 21 to 23 and any regulations under section 21" substituting "sections 21D to 21H and any regulations under those sections", omit paragraph (b) and the "but" preceding it; an omitting paragraph (c).

440 New paragraph 15 omits paragraph 9(2) in Schedule 5 to the Housing and Planning Act 1986.

441 New paragraph 16 seeks to omit paragraphs 1, 5 and 6 along with the italic heading preceding the paragraphs from Schedule 2 of the 1987 Act..

442 New paragraph 17 omits 91 from Schedule 11 of the Local Government and Housing Act 1989.

443 New paragraph 18 omits paragraph 12 from Schedule 1 of the Housing Grants, Construction

and Regeneration Act 1996.

444 New paragraph 19 seeks to omit a number of provisions from the 2002 Act, including sections 152-154, section 172(3), paragraphs 4(4) and 5(4) of Schedule 7, paragraph 7 of Schedule 9, and various parts of Schedule 10.

445 New paragraph 20 seeks to omit paragraphs 1 to 10 of Schedule 12 and omit the entry for the LTA1985 in Schedule 16 to the Housing and Regeneration Act 2008.

446 New paragraph 21 omits section 128 from the Housing (Wales) Act 2014, while new paragraph 22 omits subsection (40 to section 112, and paragraph 17 from Schedule 8 to the Building Safety Act 2022.

Commencement

447 Clause 63 makes provision about when the provisions of this Bill will come into force.

Financial implications of the Bill

448 The Bill will result in financial impacts for different groups in the leasehold sector. We are undertaking a robust assessment of the costs and benefits of the reforms on the impacted groups, including freeholders, leaseholders, managing agents and other professionals. The impact assessment will be published in due course.

449 In addition, work is underway to complete a Justice Impact Test and a New Burden Assessment setting out the additional costs of dealing with any disputes and enforcing the new regulation. We expect courts will see an overall increase in cases following implementation of the reforms. We also expect local authorities will see some increase in burden as a result of the reforms, but we expect this to be low. We will ensure these new burdens are fully funded.

Parliamentary approval for financial costs or for charges imposed

450 The Bill does not contain any provisions which require a money resolution or ways and means resolution.

Compatibility with the European Convention on Human Rights

451 The Secretary of State for the Department for Levelling Up, Housing and Communities, Michael Gove MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

a. "In my view the provisions of the Leasehold and Freehold Reform Bill are compatible

with the Convention rights."

452 The Secretary of State for the Department for Levelling Up, Housing and Communities, Michael Gove MP, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

453 The following documents are relevant to the Bill and can be read at the stated locations:

a. December 2014 - Competition and Markets Authority leasehold market study, CMA investigation was the catalyst for much of the leasehold reform agenda

b. October 2017 - DLUHC Call for Evidence into 'protecting consumers in the letting and managing agent market'

c. December 2017 - Tackling unfair practices in the leasehold market, DLUHC consultation on leasehold and Gov response)

d. January 2019 - DLUHC consultation on 'strengthening consumer redress in housing' and Govt response

e. March 2019 – MHCLG Select Committee report 12th report on session of 2017-2019: Leasehold Reform

f. June 2019 – Implementing reforms to the leasehold system – GOV.UK (www.gov.uk)

g. July 2019 - Lord Best, advising on the proposed regulation of property agents and service charges.

h. February 2020 - Redress for Purchasers of New Build Homes and the New Homes Ombudsman: Summary of responses to the consultation and the Government's response (publishing.service.gov.uk)

i. July 2020 – Law Commission's report on leasehold enfranchisement

j. July 2020 – Law Commission's report on right to manage

k. November 2023 - Modern leasehold: restricting ground rent for existing leases

Annex A - Territorial extent and application in the United Kingdom

Subject matter and legislative competence of devolved legislatures

1 Clause 63 sets out the territorial extent of clauses in the Bill, which is England and Wales. The extent of a Bill is the legal jurisdiction of which it forms part of the law; application refers to where it has practical effect. The application of the Bill is England and Wales.

2 In line with the Legislative Consent Motion Convention (the "Sewel Convention"), the UK Parliament will not normally legislate for areas within devolved legislative competence without the consent of the devolved legislature concerned.

3 The main subject matter of this Bill is the law of property which is a restricted matter in relation to Wales but within the legislative competence of the Scottish and Northern Irish legislatures.

4 The exceptions are in regard to the subject matters of legal costs as they relate to the leasehold valuation tribunal, banning insurance commissions, service charge regulation, challenging estate management administration charges and other modifications in relation to the Leasehold Valuation Tribunal which are within the legislative competence of the Welsh legislature. We are seeking an LCM in regard to these areas.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 Leasehold Enfranchisement and extension							
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	No	No	No	No	No
Clause 4	Yes	Yes	No	No	No	No	No
Clause 5	Yes	Yes	Yes	No	No	No	No
Clause 6	Yes	Yes	Yes	No	No	No	No
	Yes	Yes	No	No	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 7	Yes	Yes	Yes	No	No	No	No
Clause 8	Yes	Yes	No	No	No	No	No
Clause 9							
Clause 10	Yes	Yes	No	No	No	No	No
Clause 11	Yes	Yes	No	No	No	No	No
Clause 12	Yes	Yes	Yes	No	No	No	No
Clause 13	Yes	Yes	Yes	No	No	No	No
Clause 14	Yes	Yes	Yes	No	No	No	No
Clause 15	Yes	Yes	Yes	No	No	No	No
Clause 16	Yes	Yes	Yes	No	No	No	No
Clause 17	Yes	Yes	Yes	No	No	No	No
Clause 18	Yes	Yes	Yes	No	No	No	No
Clause 19	Yes	Yes	No	No	No	No	No
Clause 20	Yes	Yes	No	No	No	No	No

2 OTHER RIGHTS OF LONG LEASEHOLDERS							
Clause 21	Yes	Yes	No	No	No	No	No
Clause 22	Yes	Yes	No	No	No	No	No
Clause 23	Yes	Yes	Yes	No	No	No	No
Clause 24	Yes	Yes	Yes	No	No	No	No
Clause 25	Yes	Yes	Yes	No	No	No	No
3 Regulation of leasehold							
Clause 26	Yes	Yes	Yes	No	No	No	No
Clause 27	Yes	Yes	Yes	No	No	No	No
Clause 28	Yes	Yes	Yes	No	No	No	No
Clause 29	Yes	Yes	Yes	No	No	No	No
Clause 30	Yes	Yes	Yes	No	No	No	No
Clause 31	Yes	Yes	Yes	No	No	No	No
Clause 32	Yes	Yes	Yes	No	No	No	No
Clause 33	Yes	Yes	Yes	No	No	No	No
Clause 34	Yes	Yes	Yes	No	No	No	No
Clause 35	Yes	Yes	Yes	No	No	No	No
Clause 36	Yes	Yes	Yes	No	No	No	No
Clause 37	Yes	Yes	Yes	No	No	No	No
Clause 38	Yes	Yes	Yes	No	No	No	No
4 Regulation of Estate Management	Yes	Yes	Yes	No	No	No	No
Clause 39	Yes	Yes	No	No	No	No	No
Clause 40	Yes	Yes	No	No	No	No	No
Clause 41	Yes	Yes	No	No	No	No	No
Clause 42	Yes	Yes	Yes	No	No	No	No
Clause 43	Yes	Yes	No	No	No	No	No
Clause 44	Yes	Yes	Yes	No	No	No	No
Clause 45	Yes	Yes	No	No	No	No	No
Clause 46	Yes	Yes	No	No	No	No	No
Clause 47	Yes	Yes	No	No	No	No	No
Clause 48	Yes	Yes	No	No	No	No	No
Clause 49	Yes	Yes	Yes	No	No	No	No
Clause 50	Yes	Yes	Yes	No	No	No	No
Clause 51	Yes	Yes	Yes	No	No	No	No
Clause 52	Yes	Yes	Yes	No	No	No	No
Clause 53	Yes	Yes	Yes	No	No	No	No
Clause 54	Yes	Yes	Yes	No	No	No	No

Clause 55	Yes	Yes	Yes	No	No	No	No
Clause 56	Yes	Yes	Yes	No	No	No	No
Clause 57	Yes	Yes	Yes	No	No	No	No
5 Rent charges	Yes	Yes	Yes	No	No	No	No
Clause 58	Yes	Yes	No	No	No	No	No
Clause 59	Yes	Yes	No	No	No	No	No
6 General	Yes	Yes	No	No	No	No	No
Clause 60	Yes	Yes	No	No	No	No	No
Clause 61	Yes	Yes	No	No	No	No	No
Clause 62	Yes	Yes	No	No	No	No	No
Clause 63	Yes	Yes	Yes	No	No	No	No
Clause 64	Yes	Yes	Yes	No	No	No	No
Clause 65	Yes	Yes	No	No	No	No	No
Schedule 1	Yes	Yes	No	No	No	No	No
Schedule 2	Yes	Yes	Yes	No	No	No	No
Schedule 3	Yes	Yes	No	No	No	No	No
Schedule 4	Yes	Yes	No	No	No	No	No
Schedule 5	Yes	Yes	No	No	No	No	No
Schedule 6	Yes	Yes	Yes	No	No	No	No
Schedule 7	Yes	Yes	No	No	No	No	No
Schedule 8	Yes	Yes	Yes	No	No	No	No
	Yes	Yes	Yes	No	No	No	No

LEASEHOLD AND FREEHOLD REFORM BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Leasehold and Freehold Reform Bill as introduced in the House of Commons on 27 November 2023.

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