# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# LEASEHOLD AND FREEHOLD REFORM BILL

*Sixth Sitting*

*Tuesday 23 January 2024*

*(Afternoon)*

CONTENTS


Clauses 9 to 11 agreed to.
Schedules 2to 5 agreed to, some with amendments.
Clauses12 to 19 agreed to, some with amendments.
Schedule 6 agreed to, with amendments.
Clauses 20 and 21 agreed to, one with an amendment.
Adjourned till Thursday 25 January at half-past Eleven o'clock.
Written evidence reported to the House.



PBC (Bill 13) 2023 - 2024

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**not later than**

**Saturday 27 January 2024**

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**The Committee consisted of the following Members:**

*Chairs:* † Dame Caroline Dinenage, Clive Efford, Sir Mark Hendrick, Sir Edward Leigh

Amesbury, Mike *(Weaver Vale)* (Lab)
† Carter, Andy *(Warrington South)* (Con)
Davison, Dehenna *(Bishop Auckland)* (Con)
† Edwards, Sarah *(Tamworth)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Gardiner, Barry *(Brent North)* (Lab)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Levy, Ian *(Blyth Valley)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Rowley, Lee *(Minister for Housing, Planning and Building Safety)*
† Smith, Chloe *(Norwich North)* (Con)
† Strathern, Alistair *(Mid Bedfordshire)* (Lab)

Huw Yardley, Katya Cassidy, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Tuesday 23 January 2024*

*(Afternoon)*

[Dame Caroline Dinenage *in the Chair*]

## Leasehold and Freehold Reform Bill

2 pm

### Clause 9

LRA 1967: determining price payable for freehold or lease extension

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss the following:

Clauses 10 and 11 stand part.

Government amendments 59, 62 to 65, 67 and 68.

Schedules 2 to 4.

Government amendment 72.

Schedule 5.

**The Minister for Housing, Planning and Building Safety (Lee Rowley):** This Bill reforms the valuation process for leaseholders when they buy their freehold or extend their lease. It does this by repealing parts of existing legislation and setting out a new valuation scheme that leaseholders and landlords must follow. We are debating a large group of measures, so I am afraid—and I apologise to the Committee in advance—that my comments may be slightly longer than normal, in order to cover all of those.

Clause 9 amends the Leasehold Reform Act 1967, which deals with lease extensions and freehold acquisitions of houses. Subsections (1) to (3) make necessary changes to sections 8 and 9 of the 1967 Act in relation to freehold acquisitions. It mandates the use of clause 11, which sets out the new valuation scheme for calculating the price payable. Subsection (4) applies that to lease extensions for houses. I will shortly come on to that new valuation scheme covered in clause 11, the detail of which is contained in schedule 2. However, these changes introduce the valuation reforms contained in the Bill. I commend clause 9 to the Committee.

Clause 10 makes the necessary changes to the Leasehold Reform, Housing and Urban Development Act 1993, which deals with flats. The clause amends sections 32 and 56, and repeals schedules 6 and 13 of the 1993 Act, which deal with the freehold acquisition of a block of flats and lease extensions of a flat. In a similar way to clause 9, clause 10 mandates the use of clause 11 in determining the price payable for enfranchisement transactions—in relation to flats, rather than houses—and sets out the new valuation scheme for calculating the price payable. I commend clause 10 to the Committee.

Clause 11 provides the basis of the new valuation scheme that must be used to determine the price payable when exercising any of the four enfranchisement rights, which are acquiring the freehold of a house, extending the lease of a house, acquiring the freehold of a block of flats and extending the lease of a flat. The clause sets out that the premium is comprised of two elements: first, the market value, which is to be calculated in accordance with schedule 2; and, secondly, any other compensation, which is to be calculated in accordance with schedule 3.

Schedule 2 details the steps for calculating the price payable for lease extensions and freehold acquisitions. It also contains key reforms to the valuation process, including the removal of marriage value and hope value, capping ground rent at 0.1% of the freehold value in the valuation calculation, and providing the Secretary of State with a power to prescribe two rates used to calculate the premium.

**Richard Fuller** (North East Bedfordshire) (Con): The Minister just mentioned that schedule 2 eliminates marriage value. He will be aware, from the impact assessment, that there is a financial value associated with marriage value. Can the Minister tell me whether the Government think that marriage value is a real value—that it has intrinsic value—or is it just a number that has no material value at all? Is there something behind what marriage value is, and what is the rationale for eliminating it?

**Lee Rowley:** That is an interesting philosophical question to debate straight after lunch. The Government recognise that marriage value is utilised in a number of transactions. Therefore, some people in the market—some individuals, some economic actors—must deem that there is some form of additional value by marrying the lease and the freehold up within a shorter period of time. How that works, what exactly that is, and how expansive it is, is for others and for the market to determine, in a traditional and—something that I think we both would support—a wholly capitalist way. However, there does seem to be something to it, hence why we are making some of the reforms that we are making, given the feedback that we have been given.

**Richard Fuller:** I am grateful to the Minister for his summary, which I think is very accurate. Given that the Government have assessed that there is something real there, and decided that they want to eliminate the marriage value—obviously, a lot of work has gone into the preparation for that—what representations has he received about the legal underpinnings of this particular aspect of the legislation for those from whom that value is being taken?

**Lee Rowley:** The Government remain confident that the proposals being put forward are compliant with their responsibilities. I have only been in post for a short period of time, and my hon. Friend the Member for Redditch may wish to comment on this. The conversations I have had with the people who—I say this without breaking their confidence, given that some of them might be in camera—have come to me to represent their position have not focused on that as the main issue.

Schedule 2 also sets out how to divide the premium into shares, where multiple landlords are entitled to receive a share—for example, where there are intermediate landlords. We will go through that in further detail when we consider schedules 2 and 3. I commend clause 11 to the Committee.

I now turn to amendment 59, which is in my name. This amendment exempts business tenancies which qualify for enfranchisement rights under the Leasehold Reform Act 1967 from the standard valuation method. It is not our intention for the standard valuation method—especially the rent cap—to apply to any business rent, and this amendment closes off that possibility for a relatively rare type of lease where it might otherwise have existed. I commend this amendment to the Committee.

Turning to amendments 62, 63 and 64, which are in my name. Amendment 62 makes minor technical changes to assumption 1 in schedule 2 so that the clause operates as intended. The change to sub-paragraph 15(2)(a) makes the phrasing clear that the clause is about freehold acquisitions. The change to sub-paragraph 15(2)(b) is a minor and technical correction so that where a lease extension is granted by someone other than the freeholder, such as a head lessee, the assumption of merger with the interest of the person granting the extended lease still takes place for the purposes of the valuation methodology for intermediate leases. Amendments 63 and 64 fix typographical errors, by changing the word "property" to "premises", as the latter is defined.

Turning to amendments 65, 67 and 68 in my name, these make small changes in schedule 2 so that the provision works as it was intended. Amendment 65 clarifies the valuation of the market value of a flat as it is to be used for the purposes of identifying the ground rent cap in the calculation of the term value. Amendment 67 makes a change to ensure that the definition of what is being valued is clear. Amendment 68 clarifies the valuation of the market value of a flat as it is to be used for calculating the reversion.

These amendments are intended to avoid any mis-interpretation of the standard valuation method. Some may mistakenly interpret the schedule as requiring a valuation of a flat as if it were a flying freehold which could cause it to be undervalued. Amendment 68 clarifies the meaning so that what is being valued is the share of the value of the freehold of the whole building and appurtenant property that is attributable to the flat. The amended text will make sure that the standard valuation method is interpreted as we intend it to be. I commend these amendments to the Committee.

Schedule 2 sets out how to apply the new standard methodology when calculating the premium that leaseholders of houses and flats need to pay to extend their lease or acquire their freehold. This includes fundamental reforms to the valuation process, including the removal of marriage value—which we have just discussed—and the capping of ground rent at 0.1% in the valuation calculation. These changes help to fulfil the Government's aim to make it cheaper and easier for leaseholders to extend their lease or buy their freehold. The schedule is extensive and broken into seven parts.

Part 1 introduces schedule 2 and requires that this schedule must be followed when calculating the market value of the premium for lease extensions and freehold acquisitions for houses and flats. It also sets out how to divide the premium into shares where loss is suffered by multiple landlords. Part 1 also makes clear three definitions for the purposes of this schedule: that of "collective enfranchisement", "freehold enfranchisement" and "lease extension".

Part 2 of 7 sets out the basis of the market value for freehold acquisitions and lease extensions. Paragraph 2 does this for freehold acquisitions. It sets out that the market value of the freehold used in calculating the premium is the value of the freehold as if sold on the open market by a willing seller. Paragraph 3 does this for lease extensions. It sets out that the market value of the lease extension used in calculating the premium is the value of the 990-year extended lease, at peppercorn ground rent, as if sold on the open market by a willing seller. Paragraph 4 states that the premium for both acquisitions and extensions is to be determined in accordance with part 3 and on the basis of the assumptions set out in part 4.

Part 3 of schedule 2 sets out that while in general the standard valuation method must be used to determine the value of acquiring a freehold or extending a lease, there are some exceptions. The specific exceptions are set out in paragraphs 6 to 8 and include where the lease has five years or less remaining, where the property is subject to a home finance plan lease and where the lease is a market rack rent lease. For these purposes, a market rack rent lease is where the leaseholder has either paid no premium or a very low price for the lease in return for paying a high rent.

Paragraphs 9 to 11 set out some further detailed exceptions, including where there has been a pre-commencement lease extension of a house for 50 years at a modern ground rent. These paragraphs also explain that the standard valuation method only applies to a relevant flat in collective enfranchisements, where relevant flat excludes, for example, flats with shared ownership leases. Paragraph 12 provides that the standard valuation method can still be used to determine the value of the relevant freehold acquisition or lease extension, even when it is not compulsory to do so. Paragraph 13 makes it clear that the standard valuation method is to be used if either part 3 requires it to be used or where it is used on a voluntary basis in relation to the property being valued.

Part 4 of schedule 2 sets out the assumptions on which the valuation of freehold acquisitions or lease extensions are to be based, whether or not the standard valuation method is being used. Assumption 1 is that intermediate leases and freehold interests are treated as merged for the purposes of valuation where they are acquired in a freehold acquisition or where they are affected by the lease extension claim. The effect of assumption 1 is to simplify the process and lead to savings in process costs and premiums in some cases. This does not apply to intermediate leases that are not acquired. Assumption 2 is that the leaseholder is not, and never will be, in the enfranchisement market, nor will the leasehold and freehold interests by other means be married. The effect of assumption 2 is that no marriage or hope value is payable for either a lease extension or freehold acquisition. This will reduce premiums where leases have 80 years or fewer remaining and remove the cliff edge that leaseholders currently face.

Assumption 3 is that the relevant property is assumed to be in good repair and has not been improved under the current lease. The effect of assumption 3 is to prevent the premium being either decreased in favour of the leaseholder, due to the property being held in disrepair, or increased in favour of the landlord, due to the leaseholder having made improvements. The latter case

*[Lee Rowley]*

would result in the leaseholders having paid for the improvements twice. In the case of a freehold house acquisition, assumption 3 will only apply to the current lease, removing the ability to chain together multiple long leases.

Assumption 4 is that where leasebacks are taken, their value is deducted from the freehold value, reducing the premium. Other assumptions can still be made when determining the market value, as long as they are consistent with assumptions 3 and 4 as well as the other provisions of schedule 2. The remaining paragraphs cover circumstances where the premium may have to vary, including to account for burdens or benefits on the title, differing terms in extended leases, leases with five years or fewer remaining, and where leaseholders own their immediately superior intermediate lease.

Part 5 sets out the standard valuation method, which is made up of three steps for lease extensions and freehold acquisitions. Combined with the assumptions set out in part 4, the resulting premium for many leaseholders will be lower than it otherwise would have been where they have leases with 80 years or fewer remaining, or high or escalating ground rents. The first step is to determine the term value, which is the capitalised value of the ground rent payable over the term of the lease. In other words, the landlord is compensated with a lump sum, instead of continuing to receive future ground rent for the remainder of the lease term. Part 7 must be used to determine the capitalised value.

In calculating the term value, a ground rent cap will now apply so that the valuation calculation will cap the ground rent at 0.1% of the freehold value. There are two exceptions. The first is where the leaseholder has paid no premium for the lease. The second is where the lease was purchased for a low premium in exchange for a high rent. In step two, the reversion value is determined. The reversion value compensates the landlord for the loss of the reversion at the expiry of the lease in the case of freehold acquisition and for the delayed reversion in the case of a lease extension.

For freehold acquisitions, the reversion value is the market value of the freehold at the expiry of the lease, discounted at the deferment rate. In a collective enfranchisement, this is calculated for each qualifying leaseholder's lease. For lease extensions, the reversion value is the market value of a 990-year lease at peppercorn ground rent on the same terms as the new, extended lease and beginning at the end of the term of the current lease, discounted by the deferment rate.

Step 3 requires that the market value of the property determined by the standard evaluation method is found by adding the term and the reversion values in steps 1 and 2, and in collective acquisitions all the relevant term reversion values subject to any adjustments, as provided for in other parts. Part 5 gives powers to the Secretary of State to specify the deferment rate used to calculate the reversion value and includes a requirement to review the rate every 10 years.

2.15 pm

**Richard Fuller:** Will the Minister explain why it is right to give the decision on those rates to the Secretary of State?

**Lee Rowley:** It is ultimately a balance, as we discussed this morning when talking about the fundamentals in clause 3, I think. We believe that it is proportionate to allow the Secretary of State to make a decision here, but I will be clear now and as we go through the Bill that that should be done only on an occasional basis, hence the reference to the 10-year review period.

**Richard Fuller:** Does the Minister accept that the absence of knowing what will be in the Secretary of State's mind about what rate he or she may set affects the analysis of what is being done economically with the Bill quite significantly? What thought has he given to the legal challenge risks of holding back what is in the Secretary of State's mind about what the rates would be?

**Lee Rowley:** I am grateful to my hon. Friend for his comments. I accept the point that we need to get as much of that information to members of the Committee, the House and the public as quickly as we are able to do so. I know that he and other Members recognise that we have a process that we need to go through in that period, and I hope that we give enough information about the process and changes, although I accept the interaction that he indicates. My hon. Friend is an experienced Member; it is not my intention in any way, but forgive me if I say anything that he knows.

Obviously we must get through the process of working through the legal risk. It is a very contested area—we can see that already. There have already been indications that people will look at it extremely closely, so it would not surprise me if it was looked at extremely closely in most ways. There are potential legal issues on both sides, in that whatever we come out with, any public policy change often or always creates a group of people who do not like it, and they have an ability through due process and the law to see if there is anything in there that they dislike. I guess this is no different, but equally the Government are cognisant that it creates a challenge in this domain. We must go through the process of having the consultation, which only closed quite recently, and giving enough time for that to be considered and transacted on before we come to a conclusion; otherwise, there is potential legal risk there as well.

Part 6 sets out how a premium determined under parts 1 to 5 should be divided among multiple parties, such as intermediate landlords and freeholders. That creates a saving in process costs for leaseholders, as the work of dividing the premium is picked up by the affected parties. The part specifies that the division is made according to how each person's interest has been devalued or lost by the claim, termed as "loss". It sets a formula that takes the market value, provided for in parts 1 to 5, multiplies it by that person's loss and divides it by the total losses of all the parties. Loss cannot include marriage value or hope value, which we are preventing from forming part of the premium.

Finally, part 7 of seven sets out how to calculate the term value—that is, the capitalised value of the ground rent payable for the remainder of the term of the lease. That is a component of the premium, as explained in part 5, under different rent review clauses. Depending on the lease, the ground rent payable may not be subject to review; or it may be subject to review such that the rent payable after the review is known; or it may be

subject to a review that makes reference to price inflation, for example, or the capital or rental value of the property. Part 7 is entirely technical and sets out the formulae that apply in each case. The inputs into the formulae are the rent payable, the term for which it is payable and the capitalisation rate. In all cases, where the rent payable exceeds 0.1% of the freehold value of the property, the ground rent cap applies, so that the rent payable is treated as if it is only 0.1% of the freehold value. Part 7 gives a power for the Secretary of State to specify the capitalisation rate used to calculate the term value, and includes a requirement to review that rate every 10 years. I commend the schedule to the Committee.

I turn to schedule 3. As stated in debate on clause 11, schedule 3 sets out when, and to whom, "other compensation" must be paid by enfranchising leaseholders. "Other compensation" is a concept in law; it acts as a top-up payment that landlords and other parties can claim if an enfranchisement claim impacts on their interest. The schedule permits other "reasonable" compensation to be paid in two types of cases. Although it continues an existing practice, it works to ensure that the top-up cannot be used to claim for values already covered by the standard valuation method in part 5.

First, other compensation is available where the enfranchisement claim causes a devaluing of property outside the premises subject to the claim. Secondly, other compensation is available where loss is caused to other property not subject to the claim, but only to the extent that it is referable to a person's ownership of any interest in other property. If, for example, a landlord owns an unbroken parade of terraced houses and there is a freehold acquisition of one house, the landlord might claim for other compensation if they can demonstrate that the value of the whole parade has been diminished due to one of the houses enfranchising. The schedule sets out that it does not matter whether the landlord had other options, such as leasebacks, but did not take them. It also sets out definitions, such as the meaning of development value. I commend the schedule to the Committee.

I turn to schedule 4, which defines many of the terms used in schedules 2 and 3 that determine the make-up of an enfranchisement premium. It points to different parts of the schedules to demonstrate the meaning of those terms. For instance, the meanings of "term value" and "reversion value" are as described in schedule 2. I commend the schedule to the Committee.

I turn to amendment 72 in my name, which corrects a typographical error in schedule 5 so that the provision works as intended. As a result of the amendment, Paragraph 7(3)(b) of that schedule will require the tenant, not the competent landlord, to pay into the tribunal the whole price payable. That is a new protection that could be used, for instance, where there are valid concerns about the conduct of a landlord handling the claim on behalf of others. I comment the amendment to the Committee.

Schedule 5 makes necessary consequential amendments that help to plug into existing law the new valuation methodology set out in clause 11 and schedule 2. It makes amendments to support the new valuation process in enfranchisement claims that involve multiple landlords, such as intermediate landlords and freeholders. That includes a fallback power, which enables leaseholders to require the transfer of property or grant of a lease, even if the landlords have not yet settled on how to divide the premium. That would be useful, for instance, if multiple landlords were in dispute with each other and it was threatening to hold up the claim.

The provisions also require the premium to be paid to the landlord handling the claim on behalf of the other landlords. They prevent landlords from requiring leaseholders to pay their share directly, as that would undermine the new valuation process where it involves intermediate leases. However, a new protection has been added that permits an individual landlord to require the whole price to be paid into the tribunal. That could be used, for example, where there are valid concerns about the conduct of a landlord handling the claim on behalf of others. With huge gratitude for allowing me to go through all of that, I commend schedule 5 to the Committee.

**Matthew Pennycook** (Greenwich and Woolwich) (Lab): The Minister made a commendable effort to explain the various Government amendments and schedules in this part of the Bill. Briefly, for purposes of clarity, let me say that we have a lot to say about valuation, but we will do so when we debate schedule 2.

**Rachel Maclean** (Redditch) (Con): I add my words of appreciation to those of the shadow Front-Bench spokesman for the Minister's explanation. I want to add one brief point of clarity on marriage value, which was alluded to by my hon. Friend the Member for North East Bedfordshire. It is fair to say that marriage value is seen as one of the outdated, feudal and predatory practices of freeholders. It prevents people who have bought a house or flat in good faith from enjoying their property as we would expect them to do in a free country such as the UK.

I will not detain the Committee, but I recommend that anybody watching these proceedings or interested in the subject reads an absolutely fantastic article on leaseholdknowledge.com. That is a leaseholders' charity that has done a superb and detailed work on this topic. An article by a gentleman called Linz Darlington explains that marriage value is particularly unfair, because people pay not only their own fees, but the freeholder's fees, and there is a concept of hypothetical profit. The whole thing is just a massive racket—I am not qualified to explain it any better than that, so I leave my comments there. Many people have told me that marriage value should go. It is part of an outdated system. Read the article on the website. I commend the Government for bringing forward this very important part of the overall package of reforms.

**Richard Fuller:** It is a good to see you in the Chair, Dame Caroline. We are blessed on this Committee to have three people who have been Housing Ministers, the great experience and expertise of the hon. Member for Brent North, and the good graces of the shadow Minister, the hon. Member for Greenwich and Woolwich. I was recently speaking about the Bill to my right hon. Friend the Member for Ashford (Damian Green), who pointed out that there were discussions about some of the measures in the Bill when he was the adviser to Sir John Major in No. 10 in the 1990s.

I have none of the expertise or experience of any of the people I have just mentioned, so it is with humility that I rise to make some observations. My first observation,

*[Richard Fuller]*

which is not specific to the Bill, is that whenever there is a clear consensus between Government and Opposition, problems usually arise subsequently. We have just spoken about 29 pages of schedules and two pages of clauses —31 pages of a 130-page Bill—and I heard one or two sentences from the shadow Minister. *[Interruption.]* Oh, the shadow Minister is coming back in later; good. I am encouraged. I was called to speak straight after my hon. Friend the Member for Redditch, rather than us bouncing between Government and Opposition Members, so I was worried. My first concern was that we were going through a very large proportion of the Bill very quickly. Grouping so much of the Bill together is a choice. It is perfectly within the ambit of the Opposition to say, in the Programming Sub-Committee, "We will do clause 9 stand part, then clauses 10 and clause 11, and then schedule 2 separately," but in the planning done by the Government and Opposition Whips, we decided to put all the provisions together, so that we brush past them very quickly, hoping that no one will notice. I notice a twinkle in the eye of the hon. Member for Brent North.

**Barry Gardiner** (Brent North) (Lab): Does the hon. Gentleman suspect that the reason why my hon. Friend the Member for Greenwich and Woolwich allowed such a grouping is that we hope that after the next general election, Parliament will be presented with a new Bill that does away with this nonsense altogether?

**Richard Fuller:** Well, maybe. I am not a mind reader, either of the mind of the shadow spokesperson or the mind of the great British public. They will make their decision at the next election and, I hope, return a Conservative Government for a fifth consecutive term, but that is not the import of my points today.

My first point was that the public should beware when they see such circumstances, not because anything is necessarily wrong, but because it is a leading indication that consensus is overwhelming scrutiny.

**Matthew Pennycook:** I rise to make two points. The first is that I will speak in great detail about valuation when we come to schedule 2, as I have indicated, because the meat of the Opposition's concern relates to the deferment rate, which we will come to. Secondly, does the hon. Gentleman broadly agree that one of the reasons why this or any Committee would struggle to properly scrutinise this large group of schedules and clauses is that none of us has relevant expertise as professional valuers? One of the reasons why the Levelling Up, Housing and Communities Committee asked to undertake pre-legislative scrutiny of the Bill was precisely that it is so complex in certain areas, this area being a case in point.

**Richard Fuller:** It is a fair point, but I think we can get our heads around most of it. The general principles in this Bill are no different from those of others. There are some formula there; and when we see a formula such as one over one minus c to the power of n with a deferment rate of theta, we get worried that we do not understand. It takes us back to doing calculus at school. However, we can understand it—though within it there are some important things. The shadow Minister makes a good point, but there are amendments to schedule 2: the Government's, his, and mine. I will make the point—and if I am wrong the Clerks will correct me, through the Chair—that we are debating the overall principle of schedule 2, not just the detail, though it is fair to raise some points about that.

2.30 pm

I will come on to calculations of particular discount rates later, when we debate schedule 2. I thought the Minister gave an excellent answer about the legal challenge and this being a hotly contested area. That is what I want to draw the Committee's attention to. On all sides, whatever our views, we want to ensure that we pass the Bill in a way that most minimises the chances of legal challenge. I want to do that from a Conservative perspective. I believe in property rights, competition, and freedom of choice.

I want to go through some of the issues raised by schedule 2 that we heard about in the evidence sessions, and in written evidence that the Committee received. The first is the recognition that, of necessity, the Bill deals with existing contracts that a buyer and a seller, for want of better phrases, have entered into. We can read into the circumstances in which a contract was undertaken. We have evidence that people did not know what they were getting into, and about the imbalance of power in some circumstances. My question is: what aspects of the buyer-seller contract and the imbalance of power are a particular matter for change? There have been good arguments on that so far. In my view, it is an open question. In dealing with existing contracts that, because of their terms, require certain other actions, have the Government in this Bill struck the right balance between extending freedom of choice and rebalancing rights on the one hand, and transfer of value on the other? I am not entirely sure that they have. Perhaps later we can discuss that a bit more. The first stage of dealing with existing contracts involves the question of whether the exchange of value has been a short-cut for expansion of freedom of choice. I do not know what the answer is, because I am not as smart as some of the people here.

Given that we are dealing with existing contracts, the second point is that a political decision has been made to redistribute. That word seems to have power beyond my intention; it seems perhaps that somehow I regard redistribution as evil. It is not, necessarily, but the point is that this is a political decision, and it involves redistribution. Schedule 2 determines the overall basis for that.

When we make a political decision, it is important to have the facts and figures in front of us. If we do not have them, what we are determining may have unintended consequences, or may overreach our intention. What we may believe is right in principle might in practice turn out to be a horrendous mistake. It is clear that, as a point of principle, people feel that we should make some changes, and I have no qualms about that, but in the absence of full facts and figures, there is a risk that we are making a decision in the context of trying to minimise legal challenge. The Secretary—the Minister, but he should be a Secretary of State—responded to two points about this.

First, there is the issue of the lack of full knowledge. We do not know what discount rate will be applied by the Secretary of State. Anyone who does any evaluation of any business or anything in finance will understand that a huge amount of value sway goes with what discount rate is used. We do not know what it is, so we will not know ultimately what it encompasses.

Secondly, we know from the impact assessment that there is line after line of transfers—not benefits—in the Bill. Colleagues can go to the impact assessment if they wish, and see line after line of transfers that are non-monetised. Frankly, most of these are pretty reasonable and probably minimal, but I do not know—maybe other Committees do and can tell me clearly—what the economic value of each of them was. "Non-monetised" is not the same as having no monetary value. The Committee ought to know whether they are non-monetised because it was too hard to monetise them, or because they were of no monetary value. I do not expect the Minister to respond on each one because, trust me, there are a lot of lines, but this adds to our lack of knowledge about the financial consequences of the political decision to redistribute.

Thirdly, we have a pending—it may now be finished—public consultation on ground rents. The Secretary of State will have the responses to analyse, and he was pretty clear about his intention at the start, which hon. Members mentioned, so I think it is important that that information comes forward. It is a pity that the information is not here right now for us to evaluate in Committee and come to a clear consensus on. The hon. Member for Brent North and I could shake hands across the aisle and agree on it. We do not have the information to reach that conclusion. For those three important reasons, we are a little in the dark when it comes to this political decision to redistribute. Perhaps the Minister can assist me on that.

This is important, because in schedule 2 we are eliminating completely value, which is a real thing. We know that. We are expunging it completely for a political reason. We have inadequate analysis on who that value is being taken. We have good insight into who they might be, but we do not know who they are. It is important to understand that that these are real values—values that have been subject to abuse. That goes to the political underpinning and political imperative for making these changes, which is, as I understand it—again, I am very naive on these issues—that there has been abuse in the system. I have listened to the evidence about the sources of that abuse, and it is clear that the abuses are real. The Government are not acting blindly on the basis of no facts, and the Opposition are supporting them because they see that there are some wrongs to be corrected.

**Andy Carter** (Warrington South) (Con): Not only have the Government accepted that, but this follows a very detailed investigation by the Competition and Markets Authority, which concluded that there were significant wrongs. It came to my constituency, interviewed my constituents and assessed that there were problems with mis-selling. That is why this is such an important issue for so many people. They put their hard-earned money into what they thought was going to be their property, but discovered that that was not the case.

**Richard Fuller:** My hon. Friend is absolutely right. That is why we are passing this legislation. I want to be clear about that, because there will be circumstances in freeholder-leaseholder relationships where the performance has been inadequate or poor. There may be circumstances where the performance has been perfectly reasonable.

**Matthew Pennycook:** In some ways, I am doing the Government's job, but I would just probe the hon. Gentleman on the Government's intention, specifically in relation to value. At least on the basis of my understanding, it is not to right an abuse in the system. It is to remove payments, which are very real for leaseholders, that are based on a hypothetical profit that some would argue should not exist in a fair market. It is not about righting specific wrongs but a systemic wrong in the valuation process, from the Government's point of view.

The hon. Gentleman may take issue with that, perhaps because he does not agree with one of the main objectives of the Bill—to make the enfranchisement process cheaper for leaseholders—or maybe he just takes issue with the fact that we do not know the prescribed figures that the Secretary of State will set, so we do not have a real sense of the values. The clause is attempting to right a systemic wrong as regards marriage value and other components of the existing valuation method. It is not just dealing with specific abuses in the system by bad faith actors.

**Richard Fuller:** I agree with the shadow Minister. I am not trying to undermine the intentions of the Bill—I agree with them—but I want them to be legally secure, and I want to probe and understand them. He said that these are hypothetical profits, but they are not quite hypothetical. They would only be hypothetical if they were not real, but as we have already heard, they are. They are calculated profits, and it is a matter of how that calculation is determined that is at issue, not whether they are hypothetical or real.

**Matthew Pennycook:** The hon. Member tempts me to engage in the philosophical debate that the Minister alluded to, and I think it is debatable whether they are real. Let me put it to him like this. If I own a vase, is the value of a second vase increased by the fact that I own the first one? That is what marriage value is doing; it is the hypothetical profit from the joining of the leases. I think it is at least debatable as to whether it is real in the sense that he advances, although it is very real for leaseholders who have to pay it if they seek to enfranchise under the current system.

**Richard Fuller:** Somebody had to mention the vase.

**Eddie Hughes** (Walsall North) (Con): Or the cup and saucer?

**Richard Fuller:** I am just so glad it was not me. The Minister and shadow Minister are far more experienced than I am on this matter, so I am drawing on a much more limited data set than they are. But, to date, I have not heard loud and clear that there is no such thing as marriage value. I have heard that there are questions about how it is calculated and that we do not think it should apply, which is a political point of view. If the

*[Richard Fuller]*

shadow Minister is trying to say that there is something else he wants, between the issues of calculation and of making a political decision to transfer it, that is interesting to me. I do not think that he has been trying to make that point, and I certainly do not think we have heard that evidenced.

It is a crucial point. The idea that we are expunging values that relate to something real, which is under contract, is a material point in trying to make this legislation bulletproof or, as the Minister rightly says, to ensure that, in a hotly contested area, the Government get it right. In circumstances where there are real values —although perhaps massively overemphasised—where performance has been exemplary or to contract, where there has been no question of the performance required under contract, and, finally, where there has not been price gouging, or this automatic doubling every two years, and the rents have remained the same, what is the reason to apply legislation retrospectively?

2.45 pm

**Rachel Maclean:** Does my hon. Friend not agree that the concept of ground rent itself is "gouging", to use his word, because it is a payment for nothing? Clearly, the freeholders are receiving payment through service charges and the price of buying and selling a lease. The ground rent is a payment for nothing. Whether it is, in his words, a reasonable one and not gouging but is kept low and so on, still, in my mind and certainly that of many leaseholders, the Competition and Markets Authority, the Government and the analysis, it is a payment for nothing and so, fundamentally, it is wrong and unfair. I wonder what my hon. Friend thinks about that.

**Richard Fuller:** The former Minister makes an excellent point. She knows much more about this than I do and therefore I am very wary about falling into the trap of answering her question directly. What I will say is that, for the purposes of my speech today, what I think is not important. What is important is this: what will the courts find, and how have we ensured that the Bill is robust in those circumstances? I will say, without answering my hon. Friend's question, that people sometimes sign contracts for things that they do not use or that have no value, but there is an argument that they signed a contract and it had these line items in it. People may sign a contract that gives them access to a swimming pool or gym and they may not use it. I do not mean to be pejorative, because these are very important issues. I am just saying that the principle is that, whether ground rent is real or not, it is still subject to the fact that it was part of a contract that was signed, and that will have weight in any legal challenge to the Bill.

**Barry Gardiner** *rose—*

**Richard Fuller:** I do not know whether the hon. Member for Brent North wants to intervene and give me some more knowledge.

**Barry Gardiner:** The hon. Member's colleague, the hon. Member for Redditch, made a pertinent intervention in relation to ground rent, but I wanted to try to address what philosophical issues he is having with marriage value. Marriage value is an additional element of value created by the combination of two or more assets or interests where the combined value is more than the sum of the separate values. That is why the cup and saucer and the vase analogies are apposite. He seems to me to be seeking to say, "Well, if this exists, if people are actually paying this, it's real; it's not a fiction." Let me set out my understanding of what the Government are trying to do and, indeed, what Parliament has tried to do on many occasions, going back to 1967, after we passed the legislation to right what had happened in the Custins *v.* Hearts of Oak case, where marriage value had been introduced against the will of Parliament. The point is this. If someone is the leaseholder, the person who owns that lease to the home, it is much more important to them than to anybody else in the world that they get the freehold together with it. That is the other vase; that is the saucer that goes with the cup. To them, that is important and it has a value that it does not have for the rest of the world. That is why they are constrained, and that is the constraint that Parliament has repeatedly tried to free people from, because they are not simply a willing seller in a free market with a willing buyer in a free market. This person, as the leaseholder, is a buyer under special measures.

**The Chair:** Order. May I interrupt you and point out very gently that this is quite a lengthy intervention, Mr Gardiner?

**Barry Gardiner:** I am happy to be guided by you, Dame Caroline. I think I have made the point and I hope that the hon. Member for North East Bedfordshire will be able to take it on board, because it does go to what I think he would recognise from a free market point of view as the essence of why this is important.

**Richard Fuller:** Dame Caroline, you were not in Committee when I made a point of order on the hon. Member for Brent North, perhaps inadvisably, but this time I thought his intervention was very helpful, so I would like to commend him. That point is very helpful to my understanding, and I appreciate his building my understanding further. We will have to see.

My purpose in making these points is to look at the possibilities of legal challenge. I am not a lawyer so I am probably one of the first to do that anyway, but the principles behind schedule 2 relate to existing contracts and make a political decision to redistribute value to full or some extent. In Committee, however, we are doing this where we do not have complete financial information about the extent to which we open ourselves to the charge that our decision will have unintended consequences. We are putting a lot of faith in the Government to get that right.

We are dealing with different situations: where, in a relationship between a freeholder and a leaseholder, freeholders are providing poor service or have been price gouging; or where other freeholders have entered into contracts, done all the right things under that contract and behaved in a very excellent way, but we are now retrospectively going to change all their contracts. I want to put on the record some of my concerns about doing so. I understand that the intention of the House as a whole is to move forward, but I am interested in whether the Minister has any comment on that—he does not need to—or has something interesting to add.

**Eddie Hughes:** It is a pleasure to serve under your chairmanship, Dame Caroline. I was triggered to speak by some of the references to limiting ground rents to 0.1% of the property value, and am feeling nostalgic about my ten-minute rule Bill from June 2019, the Ground Rents (Leasehold Properties) Bill. That is an issue that I have been interested in and concerned about since I got to Parliament.

In my ten-minute rule Bill, I suggested that we limit ground rents to 0.1% of the property value, or £250, depending on which was the higher. In the evidence session, we heard that in some parts of the country, ground rents can very quickly become onerous for existing or prospective mortgage lenders. I want to ensure, however, that we do not let certain elements of our discussion of the clauses of the Bill pass by without celebrating the great things that are going on in it.

To some people, this might be a dry exchange, with some technical data about calculations—as a civil engineer, I love a bit of differential calculus, but it might not be to everyone's liking—but some great stuff is going on in the Bill. We should be enthusiastic about that and celebrating it, because it will genuinely make a difference to the lives of people who are listening. It has also made a great difference to my life, because I feel as if I am seeing my ten-minute rule Bill slowly come back to life in this Committee.

**Lee Rowley:** It is as if we have all the emotions in an all-encompassing and unexpectedly interesting post-lunch debate. Let me try to summarise as quickly as I can. I am grateful for everyone's contributions.

Turning to the substantive points made by my hon. Friend the Member for North East Bedfordshire, I, like him, start from the principle that if there is consensus, we should look at things in more detail without casting any aspersions on our colleagues on the other side of the aisle. I think there is consensus not because I have suddenly converted to social democracy or socialism—that is absolutely not the case—but because even from different angles we can see that there is a challenge. I will try to argue this a little from Conservative principles for a moment.

I recognise the absolutely reasonable points made by my hon. Friend about the additional information that is needed, which we have talked about on multiple occasions, and I recognise that there are always inherent dangers and unintended consequences in any change, which is why things need to be thought through in the manner in which he indicated. In the limited time I have had experience of this matter, however, I have been convinced that the proposal is proportionate, and that is why I am in Committee today on behalf of the Government.

My hon. Friend rightly made the point about how property rights and contract law are the absolute bedrock of our functioning as a society. In particular as Conservatives—to speak just for those on this side of the aisle for a moment—we seek not to move them around, change them, or amend them on a regular basis, because certainty and clarity are at the heart of a functioning and robust democracy. As Conservatives and from the centre-right, however, we also have a deep aversion to rent-seeking and middlemen, and we have a deep and avowed, if imperfect, commitment to free and more perfect markets.

There is a challenge with all manner of things, whether that is marriage value or the percentage used in ground rent. If we were dealing with a market in widgets, with very low barriers to entry, a plethora of supply, and the ability for people to come in and out on a regular basis, I would potentially draw a different conclusion, but the reality is that the housing market is severely constrained by a number of factors, and it has been for many decades. It is not a perfect market. Therefore, it is proportionate to regulate in the ways we are talking about.

On the point about rent-seeking and middlemen, we must be cautious about legislating via anecdote, which we should not do. We must absolutely do the kind of deep analysis that hon. Members suggested a moment ago that we should. I am led to believe that a lot of what we are seeing with ground rent and other aspects included in the Bill would not have been visible 20, 30 or 40 years ago, because it would not have happened. Effectively, a market has been created—at least in part if not wholly—because, for want of a better phrase and without being pejorative, loopholes have been exploited. That has enabled middlemen to take profit out and distort the market, making it less perfect and meaning we have ended up in the place where we are today.

I absolutely share the caution expressed by my hon. Friend the Member for North East Bedfordshire about making sure the elements are right. We may differ in the end about whether or not the changes are proportionate, but I know we share the ultimate objective that the market should be made perfect. The clauses take us in that direction. It is an absolute requirement from a Conservative perspective to smash middlemen and rent-seekers and make sure that they do not take money from people for no reason. For those reasons, I commend the clauses to the Committee.

*Question put and agreed to.*

*Clause 9 accordingly ordered to stand part of the Bill.*

*Clauses 10 and 11 ordered to stand part of the Bill.*

**Schedule 2**

Determining and sharing the market value

*Amendment made:* 59, in schedule 2, page 90, line 28, at end insert—

*"Business tenancies*

10A (1) This paragraph applies only to—

(a) the transfer of a freehold house under the LRA 1967, or

(b) the grant of an extended lease of a house under the LRA 1967.

(2) The standard valuation method is not compulsory for the property comprised in the current lease if that lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies (see section 1(1ZC) of the LRA 1967)."—*(Lee Rowley.)*

*This amendment would prevent the standard valuation method in Schedule 2 from being compulsory if the current lease is a business tenancy (which benefit from the rights of enfranchisement and extension under the LRA 1967 in the circumstances set out in section 1(1ZC) of the LRA 1967).*

**Lee Rowley:** I beg to move amendment 60, in schedule 2, page 90, line 28, at end insert—

*"Acquisition of a freehold house under the LRA 1967: shared ownership leases*

*[Lee Rowley]*

10A (1) This paragraph applies only to the transfer of a freehold house under the LRA 1967.

(2) The standard valuation method is not compulsory for any property comprised in the newly owned premises if it, or any part of it, is demised by a shared ownership lease.”

*This provides that the standard valuation method is not compulsory for the freehold enfranchisement of a shared ownership lease of a house (which is only possible if the shared ownership lease does not meet the criteria in section 33B of the LRA 1967).*

**The Chair:** With this it will be convenient to discuss the following:

Government amendments 61, 66, 69, and 74.

**Lee Rowley:** Amendment 60 disapplies the standard valuation method in cases where the freehold of a shared ownership house is being acquired. In general, shared ownership properties are excluded from freehold acquisition rights to prevent the shared ownership stock from being bought out, therefore undermining the policy intention, and because the freehold can be acquired once the shared ownership leaseholder has staircased to 100%. However, some shared ownership properties do qualify for acquisition rights. Generally speaking, where there are restrictions placed on whether and how the shared ownership leaseholder can staircase to 100%, they qualify. The amendment clarifies that the standard valuation method does not have to be used where the freehold of a shared ownership property can be acquired, because the standard method is not built to accommodate acquisitions of shared ownership property.

Amendment 61 is a minor and consequential amendment to paragraph 11(7) of schedule 2, as Government amendment 74 has moved the definition of “shared-ownership lease” from section 38(1) to section 101(1) of the Leasehold Reform, Housing and Urban Development Act 1993. This will allow the provisions of the Bill to operate as intended.

Amendments 66 and 69 concern the valuation of premiums for shared ownership lease extensions. Valuation involves calculating both the value of the term and the reversion in order to calculate the premium to be paid by the leaseholder. Amendment 66 provides that the rent used to calculate the term value in the premium is the rent payable for the leaseholder’s share of the property demised by the lease—that is, the ground rent— and not the rent they pay on the landlord’s share of the property. Where the rent is not clearly divided as such, it is treated as though it is all paid as rent for the landlord’s share.

Amendment 69 provides that when the reversion value is calculated as part of the premium, the full reversion value that would be calculated in the standard method is adjusted to reflect the proportion of the property which is already owned by the shared ownership leaseholder. I commend the amendments to the Committee.

3 pm

Turning to Government amendment 74, we have made it clear that shared ownership leaseholders should benefit from the same statutory rights as other leaseholders to extend their lease by 990 years. A number of Government amendments to schedules 2 and 6 have been introduced to make that possible. They implement Law Commission recommendation 42, although we will create further legislative support for that recommendation with later amendments.

Amendment 74 gives shared ownership leaseholders of both houses and flats the right to a 990-year lease extension, by amending the Leasehold Reform Act 1967 and the Housing and Planning Act 1986, as related to houses, and the Leasehold Reform, Housing and Urban Development Act 1993, as related to flats. Part 1A amends the LRA 1967. It repeals the current exclusion of shared ownership leases from enfranchisement rights and enables statutory lease extensions. However, it continues to exclude shared ownership leases from freehold acquisition rights, and gives powers to the Secretary of State to exclude further types of shared ownership leases from freehold acquisition rights where they are not excluded by this measure. It is important to continue to exclude shared ownership leaseholders from freehold acquisition rights to prevent the shared ownership stock from being bought out, thus undermining policy intent. Shared ownership leaseholders can already acquire the freehold once they have staircased to 100% ownership.

Where the shared ownership provider is the freeholder, they will be able to grant a lease extension to the shared ownership leaseholder. We will introduce further amendments to the Bill at a later stage to deal with situations where the shared ownership provider owns a headlease but is not the freeholder, in order to facilitate extensions by those providers. Even after we have introduced those further amendments, in a small number of cases shared ownership leaseholders may have to claim an extension against a landlord superior to the provider—that is likely to be the freeholder. Where that is the case, and a shared owner claims a lease extension from a landlord superior to the provider, new paragraph 5E allows the landlords to apply to the tribunal for a lease variation so that future staircasing payments made by the shared ownership leaseholder are shared between the provider and freeholder or other landlords to reflect their losses. New paragraph 5F inserts the important definitions of a shared ownership lease, the landlord’s share, and the tenant’s shar”, to give necessary clarity to the lease extension right.

**Matthew Pennycook:** With apologies for interrupting the Minister when he is providing a commendable explanation of this group of Government amendments, does he agree that although the Bill touches on shared ownership leases in a number of areas, it does not directly address many of the unique challenges that face shared owners? Is there a case for legislating separately to address the various challenges that shared owners face in the round? On this and a number of other issues that arose in the context of the Renters (Reform) Bill, it feels as if there is a good argument for doing so, to ensure that we are directly addressing the challenges that shared owners face.

**Lee Rowley:** I am grateful to the hon. Gentleman for his question. There is always a case for reform in all areas of public policy. I recognise the importance of getting it right on shared ownership. On both sides of the Committee, we share an objective to make sure that this works as best it can, given that it is giving people the opportunity of capital and a new opportunity to be able to acquire that in a way that is not available to them

through other means that the market offers. In half-answering the question, which is that there are always things that can be done—obviously I cannot anticipate the great fifth Conservative election victory that is coming or what the manifesto and the outcome may be—but I will certainly take on board the hon. Gentleman's comments, so that when that election victory comes we can accommodate his suggestion.

Part 1B amends the Leasehold Reform, Housing and Urban Development Act 1993 to make similar changes for flats. New paragraph 5I repeals the current exclusion, and 5K provides that shared ownership leaseholders are qualifying leaseholders for lease extension rights. New paragraph 5J excludes shared ownership leases from collective acquisition rights and gives a power to the Secretary of State to exclude other shared ownership leases from the same where they are not excluded by this section. New paragraph 5M requires leasebacks to the former freeholder of any shared ownership flats subject to a collective freehold acquisition if the former freeholder is the provider. New paragraph 5N deals with the sharing of staircasing premiums between relevant landlords, exactly as new paragraph 5E does for houses. Finally, new paragraph 5P inserts the necessary definitions, as new paragraph 5F did for houses. I commend the amendment to the Committee.

**Richard Fuller:** On a point of clarification, Dame Caroline, are we discussing the other amendments in this group?

**The Chair:** No, we are just speaking to amendments 60, 61, 66, 69, 70 and 74.

*Amendment 60 agreed to.*

*Amendments made*: 61, in schedule 2, page 91, line 21, leave out "38(1)" and insert "101(1)".

*This amendment is consequential on Amendment 74.*

Amendment 62, in schedule 2, page 92, line 15, leave out sub-paragraph (2) and insert—

"(2) Assumption 1: it must be assumed that—

(a) in the case of a freehold enfranchisement, any lease which the claimant is acquiring as part of the enfranchisement is merged with the freehold;

(b) in the case of a lease extension, any lease which is deemed to be surrendered and regranted as part of the lease extension is merged with the interest of the person granting the lease extension."

*This amendment would ensure that where an intermediate leaseholder grants a lease extension, the lease which is deemed to be surrendered and regranted as part of that extension is assumed to be merged with the intermediate leaseholder's lease for the purposes of valuation.*

Amendment 63, in schedule 2, page 94, line 22, leave out "property" and insert "premises".

*This amendment would amend the sub-paragraph to use the correct defined term.*

Amendment 64, in schedule 2, page 94, line 24, leave out "that property" and insert "those premises".

*This amendment would amend the sub-paragraph to use the correct defined term.*

Amendment 65, in schedule 2, page 97, line 14, leave out from second "of" to end of line 21 and insert "the premises being valued.

(4A) The "premises being valued" are the premises that—

(a) are demised by the lease being valued, and

(b) are subject to the standard valuation method.

(4B) The "market value" of the premises being valued is—

(a) in the case of a freehold enfranchisement, or lease extension, under the LRA 1967, the amount which the freehold of the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a collective enfranchisement or lease extension under the LRHUDA 1993, the share of the relevant freehold market value which is attributable to the premises being valued.

(4C) The "relevant freehold market value" is —

(a) in the case of a collective enfranchisement, the amount which the freehold to be acquired on the collective enfranchisement could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a lease extension under the LRHUDA 1993, the amount which the freehold of the building and any other land which contain the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date."

*This amendment would clarify that where the term value of a lease of a flat and any other property is being valued under Schedule 2, the market value is a share of the freehold value of the premises which contain the flat and other property.*

Amendment 66, in schedule 2, page 97, line 33, at end insert—

"(9) If the lease being valued is a shared ownership lease—

(a) the rent that is to be used for the purposes of sub-paragraph (1) and (2) is the rent that is payable under the lease in respect of the tenant's share in the property demised by the lease;

(b) where the lease does not reserve separate rents in respect of the tenant's share in the demised premises and the landlord's share in the property demised by the lease, any rent reserved is to be treated as reserved in respect of the landlord's share."

*This provides that, where there is a shared ownership lease, the rent payable in respect of the share owned by the tenant is to be taken into account when determining the term value; and deals with the case where no rent is specifically reserved in respect of the share owned by the tenant.*

Amendment 67, in schedule 2, page 97, line 39, leave out "the freehold of".

*This amendment is consequential on Amendment 68.*

Amendment 68, in schedule 2, page 98, line 7, leave out from first "of" to end of line 10 and insert "the premises being valued is—

(a) in the case of the transfer of a freehold house under the LRA 1967, the amount which the freehold of the premises being valued could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date;

(b) in the case of a collective enfranchisement, the share of the relevant freehold market value which is attributable to the premises being valued.

(3A) The "relevant freehold market value" is the amount which the freehold to be acquired on the collective enfranchisement could have been expected to realise if it had been sold on the open market with vacant possession by a willing seller at the valuation date."—*(Lee Rowley.)*

*This amendment would clarify that where the reversion value of a lease of a flat is being valued under Schedule 2 for the purposes of enfranchisement, the market value is a share of the value of the freehold being acquired on the collective enfranchisement.*

**Matthew Pennycook:** I beg to move amendment 2, in schedule 2, page 98, line 25, at end insert—

> "(7A) In setting the deferment rate the Secretary of State must have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost."

*This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 146, in schedule 2, page 98, line 25, at end insert—

"(7A) In setting the deferment rate the Secretary of State must have regard to market rates of interest."

*This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to market rates of interest.*

Amendment 3, in schedule 2, page 99, line 25, at end insert—

> "(6A) In setting the deferment rate the Secretary of State must have regard to the desirability of encouraging leaseholders to extend their lease at the lowest possible cost."

*This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to the desirability of encouraging leaseholders to extend their lease at the lowest possible cost.*

Amendment 147, in schedule 2, page 99, line 25, at end insert—

"(6A) In setting the deferment rate the Secretary of State must have regard to market rates of interest."

*This amendment would ensure that when determining the applicable deferment rate, the Secretary of State would have to have regard to market rates of interest.*

Amendment 148, in schedule 2, page 105, line 28, at end insert—

"(1A) In determining the applicable capitalisation rate in relation to the right to vary a long lease to replace rent with peppercorn rent, the Secretary of State must have regard to market rates of interest."

Amendment 149, in schedule 2, page 105, line 28, at end insert—

"(1B) In determining the applicable capitalisation rate in relation to the right to vary a long lease to replace rent with peppercorn rent, the Secretary of State must have regard to regional variations in market conditions."

**Matthew Pennycook:** We have already discussed valuation in some detail, and it is right that we do so. The concerns raised by the hon. Member for North East Bedfordshire are genuine, and it is important that the Committee engages with them and the aim he has in mind to ensure that this is the most robust piece of legislation it can be.

As the Minister has demonstrated, schedule 2 is incredibly technical and complex, so I hope that members of the Committee will forgive me if in advancing my argument I set out once again what some of the provisions do. The Minister has made it clear that clauses 9 and 10 make amendments to the 1967 Act and the 1993 Act respectively to provide that the premium payable to acquire either the freehold or lease extension of either a house or flat must be calculated in accordance with clause 11. That clause provides that the premium payable when exercising any such enfranchisement rights, with the exception of premiums calculated under the preserved section (9)(1) of the 1967 Act, is to be comprised of the market value and any compensation payable. As the Minister said, schedule 3 sets out the circumstances in which other compensation is payable and how the amount is determined. Schedule 2 sets out how the market value is to be determined and, in instances where loss is suffered by certain landlords other than the landlord transferring the freehold or granting the new lease, how it is divided into shares.

The schedules, particularly schedule 2, make a number of significant changes to the two main bases of valuation currently used. First, as we have discussed, they ensure that marriage value—the hypothetical profit arising from the new lease that schedule 13 to the 1993 Act specifies must be shared equally between the parties—and hope value, which is the additional value that may arise from the potential for marriage value to be realised in the future, are no longer to be taken into account in calculating the premium payable. Secondly, aside from in exceptional circumstances, they impose a 0.1% cap on the treatment of ground rents in the valuation calculation, as the Minister detailed. Thirdly, they introduce a new standard valuation method with the aim of making the process simpler, more certain and more predictable.

In principle, we fully support the proposed new process for determining the price payable on enfranchisement or extension. There are the principled arguments in which we have engaged, and there is also the practical argument that the current valuation system has a number of flaws. The Law Commission argued in extensive detail in its 2020 report entitled "Report on options to reduce the price payable" that calculating premiums under the law as it stands is complex; has unpredictable and sometimes arbitrary outcomes; is subject to various inconsistencies and irrationalities inherent in the regime as a whole; and is affected by the artificiality of some of the statutory assumptions that valuers must work with. As I said in response to the hon. Member for North East Bedfordshire, this is not just a case of a couple of bad apples: these are systemic problems with the current valuation method. The result is that it regularly causes real difficulties for leaseholders and landlords engaged in the enfranchisement process.

In overhauling the process, however, it is important that we ensure that the new methodology not only addresses the various problems with the existing law, but reduces premiums for leaseholders across the board. That is an explicit objective of the Bill and—from memory—it is one of the terms of reference that the Government gave to the Law Commission when they asked it to produce its reports, and one that we very much share. It will be one of the tests in any litigation—I am sure litigation is to follow—but we believe it is a proportionate means of achieving a legitimate aim.

One of the most important inputs when it comes to the functioning of the proposed new standard valuation method will be the deferment rate, which I mentioned earlier. As the Committee will know, the deferment rate is the annual discount applied on a compound basis to an anticipated future receipt assessed at current prices, to arrive at its market value at an earlier date. We need not concern ourselves with the complexities of how such a rate is calculated precisely, but given its importance

as an input in freehold acquisition or lease-extension claims, it is important that the Committee grapples with the implications of the Secretary of State being given the power to prescribe both that and the capitalisation rate used to calculate the value of either the freehold reversion or the new 990-year lease, because that is what schedules 2 and 3 provide for.

Proposing to hand Ministers responsibility for setting both those rates is not uncontroversial. Some would argue that it will be detrimental to the interests of leaseholders and freeholders to seek to set fixed rates in legislation. I have had it put to me by several specialist leasehold valuers with considerable experience acting for both leaseholders and freeholders—indeed, Mr Fanshawe who gave evidence to the Committee last week made this point, too—that as a result of the 2007 Cadogan *v.* Sportelli case, rates of 4.75% for houses and 5% for flats are now the accepted starting point in any claim for determining what deferment rate should be applied for leases with at least 20 years to run. Those people would argue that the result is not only that such rates are rarely ever a matter of dispute, but that deviation from them tends to benefit leaseholders.

The problem with setting a fixed deferment rate in legislation, such individuals would argue, is that a one-size-fits-all fixed rate will stop leaseholders from agreeing higher and more favourable deferment rates in circumstances where that is a possibility—for example, in relation to buildings at risk of obsolescence at the expiry of the lease term or where an intermediate leaseholder is involved—and, as such, will leave those leaseholders worse off, because they will be denied the opportunity to acquire their freehold or extend their lease at a fair price. The concern that a fixed rate may prohibit leaseholders from benefiting from more favourable rates in certain circumstances should not be dismissed, given the objective of reducing premiums as well as simplifying the process by which they are calculated.

On balance, however, we believe it is right that the Secretary of State be given the power to set both the capitalisation and the deferment rates used to calculate the price payable on enfranchisement or extension. It may indeed be the case that the Sportelli judgment has produced deferment rates that are broadly adhered to as a starting point in most claims for leases with at least 20 years to run, but there are real problems in relying on 17-year-old case law to maintain generic rates over the long term, not least in terms of vested interests attempting to overturn the relevant judgments and because there is evidence to suggest that the assumptions made about the risk-free rate in that judgment require review. There are also clear benefits in simpler negotiations and reduced litigation to introducing greater certainty as to what the enfranchisement premium will be.

Getting that rate right, however, as well as keeping it under regular review so as to respond quickly to any unintended or adverse consequences that might arise from selecting one, will be key to the effective functioning of the new process. Here we come to the point made by the hon. Member for North East Bedfordshire: as things stand, we do not know what those rates are. As with much of the Bill, we await future regulations to understand the process by which the Secretary of State will determine those rates and what the initial rate that he determines will be.

With that in mind, I would be grateful if the Minister confirmed whether, first, it is the Government's intention, before they introduce the regulations required to bring the new process into force, to undertake a public consultation on precisely how the "applicable deferment rate" under part 5 of schedule 2 should be determined. I would also be grateful if he confirmed that it is the Government's intention to keep the deferment rate under regular review. The relevant paragraphs on pages 98 and 99 only commit the Secretary of State to review the rate or rates every 10 years, which feels a little too infrequent. Would that 10-year stipulation function as a minimum period for review, with Ministers in future free to undertake more frequent reviews if they felt it necessary? If not, we think that a degree of flexibility may be required for more regular assessments of whether the rate is correct.

3.15 pm

**Rachel Maclean:** I am listening with interest to the shadow Minister's comments. He is making a valid point and advancing a logical argument for the setting of these rates, which we all agree is vital. If it were not to be the case that the Secretary of State had the powers in this legislation to set these rates, what does he think is the best alternative? How would those rates be set?

**Matthew Pennycook:** I thank the hon. Lady for her intervention. To be very clear, we agree with the Government's proposal that the Secretary of State set the rate. The alternative would be, as Mr Fanshawe put to us in the evidence sessions, that we rely as a starting point on the Sportelli judgment, with its 4.75% and 5% rates respectively, and that leaseholders are free in the process of dispute to argue for more favourable rates on the grounds of particular circumstances being implied. On balance, we think that it is right that the Secretary of State sets the rate. What I am trying to drive at, which I will get to, is that how the Secretary of State sets the rate and what it should be are crucial to the outcomes for leaseholders in terms of the premium payable.

When it comes to the regulations required to bring the new valuation process into force, we obviously recognise that they are the means by which the detailed methodology for setting the applicable deferment rate will be brought forward. However, while it would not be right to pre-empt those regulations in Committee, we believe that the objective underpinning the setting of the deferment rate should be set out in the Bill. While the rate or rates will need to be set at a level that does not unfairly denude freeholders of value, we think it is important that the Bill states clearly that in determining what should be the rate or rates, the Secretary of State must have at the forefront of their mind the need to reduce premiums for leaseholders. Amendments 2 and 3 would ensure that that is the case in relation to both freehold acquisition and lease extensions. While other considerations will clearly need to be taken into account, not least how to ensure that landlords receive adequate compensation to reflect their legitimate property interests, these amendments would oblige Ministers to set a rate or rates with the overriding objective of encouraging leaseholders to acquire their freehold at the lowest possible cost.

That is important because with marriage and hope value abolished and the treatment of ground rents in the valuation calculation capped at peppercorn rates, it

*[Matthew Pennycook]*

is the deferment rate that will be the primary driver of price to be paid by leaseholders in enfranchisement or extension claims. It is essential that reducing premiums for leaseholders is the determining factor in the process by which such a rate or rates will be set and reviewed, and it must therefore be put on the face of the Bill. On that basis, I hope the Minister will consider accepting both amendments. I look forward to his response.

**Richard Fuller:** I rise in support of my amendments 146 to 149, which, similarly to the shadow Minister's amendment 2, seek to provide some framework and guidance around, and a better understanding of, how the Secretary of State will determine these very important discount rates. I go back to the point about the importance of trying to give as much clarity as possible about what we are passing into legislation and to avoid unintended consequences. The Minister will be aware that some of the businesses affected may be subject to statutory disclosures. It is very hard to make a formal statutory disclosure if one is not clear what the impact will be. My amendment seeks to provide that.

I want to explain some of the reasons why I have chosen to focus on the issues of market rates and interest, and regional trends. The shadow Minister made some very good points that I am sure the Minister will respond to. It is important to understand that it is always possible for Government to fix market rates and interest, either directly or by the courts, but interest rates do change; the world does change. We can find ourselves adrift on interest rates relatively quickly. The Sportelli judgment, I think, was made at a time when the Bank rate was 4.5%. In that context, the setting of the discount rate did not seem particularly inappropriate. Three years later, the Bank rate went to 0.5% as a consequence of quantitative easing, and stayed like that for seven years. Obviously, it is in the interests of party A for the rate to be set high and in the interests of party B for the rate to be set low, but there is a concern about the rate being fixed without certain guidance.

The shadow Minister has argued that the rate should have regard to the desirability of encouraging leaseholders to acquire their freehold at the lowest possible cost; that fits the imperative that informed the Bill. My view is that we ought to first encourage the Secretary of State to anchor his or her judgment on the market rate of interest—not a specific market rate of interest, but a set of market rates of interest. The reason is that there will be leases of certain terms: five, 10, 15, 30, 50 or 100 years. When someone buys an investment and ties up their money for a longer period of time, they pay a different rate of interest than when they do so for a shorter period of time. It is appropriate for the Government to have regard to that when setting the discount rates. That is why I have tabled this amendment. I am interested to know what the Minister has to say about it.

Amendment 149 is about regional variations in market conditions. The Minister will know that a large part of the Bill relates to London, but not all of it. The way property prices move in Bedfordshire—I see that another Bedfordshire MP, the hon. Member for Mid Bedfordshire, is here—and in other parts of the country is different from London. Market conditions vary. In order to be fair to participants, it is important that the Secretary of State has regard to regional variations. I hope the Minister can provide some encouraging words on market conditions and tying the discount rate to some form of understanding of market interest rates.

**Lee Rowley:** I am grateful to the hon. Member for Greenwich and Woolwich and my hon. Friend the Member for North East Bedfordshire for their contributions. We effectively have two sets of amendments from different sides of the discussion, which demonstrates both the importance and the challenge of getting this right. Before I turn to their points, the question before the Committee is whether we want to put further constraints or further elements into primary legislation, or are content in principle to allow most of them to be covered by the Secretary of State of the day at the time. The Government's view is that the latter is more proportionate and reasonable. That is why we have come forward with the current proposal. As a result, we will not be accepting the amendments, but I will add a few more comments to try to convince the hon. Gentlemen to withdraw their amendments.

The hon. Member for Greenwich and Woolwich made a number of points on consultation. Although I cannot anticipate or confirm at this stage, I think it is absolutely the case that we would need further discussion and careful consideration of the approach, as I hope we have made clear throughout the debate. On his point about the review every 10 years, the existing judgment has now stood for going on 16 years—I know he knows that, because he has referenced it—and has done so relatively successfully. However, I take his point about tribunals being able to change things. Effectively, this is coming in through a tribunal in the first instance. There is a balance to be struck.

We have put a reference to 10 years in the Bill so that there is a recognition that there would need to be a review—as opposed to an open-ended ability with no indication of when it is used—while being clear that, although it would be for the Government of the day to determine, regular reviews will have potential impacts and potential challenges to the market, and there has to be some form of consistency or clarity in order to give people the confidence to invest and make decisions on an economic basis. The reason we have approached the provision from this angle is both to provide flexibility through the ability to change not being in primary legislation, but also giving guidance that there will be reviews at least every 10 years—albeit not indicating that they should be on a more frequent basis in order not to get into a discussion about whether there is too much movement for consistency and clarity.

My hon. Friend the Member for North East Bedfordshire made a number of important points, particularly with regard to his general point about market conditions and the importance of getting that right, and also that there are regional variations. This is another detailed part of the conversation, which the Government seek to move into another discussion rather than being on the face of the Bill. I recognise that sometimes that is not ideal, but one reason we want to preserve flexibility is to give the Secretary of State of the day the ability to respond to market conditions where necessary.

On the first point that my hon. Friend raised, we have been clear from the outset—when the Government announced the reforms—that rates should be set at market

value to ensure that the amount landlords are compensated reflects their legitimate property interest. It is important that landlords receive sufficient compensation. To his earlier questions about legality, this is an important safeguard to ensure compatibility with various rights-based legislation, which we talk about extensively in this place.

The Secretary of State will set the deferment rate in secondary legislation. We have been engaging, and continue to engage, with the sector to understand its position to ensure that rates are set in a way that is fair to all those whose property rights are changed and interfered with, and fair to leaseholders. Although I cannot give an indication or a guarantee around regionality, I am happy to say that we want to set the levels at market rates, but also with the recognition that many different elements need to be considered, one of which may be regionality. That is why we need to continue this conversation beyond this discussion. The proposition that the Government are now putting to the Committee is to set these elements in primary legislation and to continue the discussions that my hon. Friend and others have asked for through other means that will come forward in due course.

**Matthew Pennycook:** I welcome that response from the Minister, in particular about the review period. If I have understood him correctly, he is saying that there must be a review every 10 years at a minimum, but there may be ongoing reviews within that time period if necessary—he can correct me if I have misunderstood. That would be welcome. There is a need to keep the rate, whatever it may be ultimately, under more regular review than just once every 10 years. I welcome also the indication he gave that the rate or rates may include some regional variation.

Where I take issue with the Minister's response is the debate about how much we need to prescribe on the face of the Bill. It may be the case that, when the methodology comes forward in regulations, it is an explicit objective of the rate-setting process that premiums for leaseholders are reduced to their lowest possible level, but we have no guarantee, and all hon. Members know the constraints under which we operate when it comes to secondary legislation and our ability to influence and scrutinise instruments. We think it important that this particular objective be put on the face of the Bill, and I will be frank with the Committee about why.

We are worried about a situation where either this Government or a future one are lobbied by vested interests to set a deferment rate that will be punitive for leaseholders—that is, lower than the Sportelli judgment rates. As things stand, that is a distinct possibility. We are not attempting to prescribe the rates; I think that there should be consultation to ensure that Parliament's view can be sustained, have legitimacy and have public backing. As the Minister will know, post-consultation is part of a regular process, as well as what this House attempts.

We are very much minded to say that, when setting the rate, there should be a guiding principle that, yes, it has to balance a number of considerations, but chief among them must be reducing premiums for leaseholders to their lowest possible level. It is explicit in the explanatory notes—and other parts of the Bill make reference to it—that the provision is to drive down costs for leaseholders; it is not set out in this schedule. For that reason, I am minded to press amendment 2 to the vote and also amendment 3, if we were to be successful in securing amendment 2—though it does not look so, from the balance of numbers.

**Lee Rowley:** I will take 10 seconds to try to convince the hon. Gentleman not to do that, although I might be unsuccessful.

On the ability to set these rates at a greater frequency, it is absolutely the case that "every ten years" is an indication as opposed to a limitation. Although I understand the hon. Gentleman's point about putting things on the face of the Bill—and I fear that my exhortation will not be successful—we cannot save ourselves from each other; there will always be the ability to change things. It would be a strange Government who were elected on the certain propositions that he has indicated. There will always be a way to untangle these things. I understand the point about making things more difficult, but giving the Secretary of State the flexibility to make these decisions is paramount. We will oppose the amendment if he pushes it to a vote.

3.30 pm

**Matthew Pennycook:** I am afraid the Minister is right in that he has failed to convince me. I fear he may misunderstand the point I am trying to make. It is not that we take issue with the Secretary of State having the flexibility to set the rate; we want instead to make very clear what must be the overriding objective in their mind when doing so, and we do think there is a strong case to put that on the face of the Bill in order to achieve the objectives that the Government have set themselves to make premiums as cheap as possible for leaseholders. For that reason, I will press amendment 2 to a vote.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 9.

**Division No. 2]**

**AYES**

Edwards, Sarah
Gardiner, Barry
Glindon, Mary
Pennycook, Matthew
Rimmer, Ms Marie
Strathern, Alistair

**NOES**

Carter, Andy
Everitt, Ben
Fuller, Richard
Hughes, Eddie
Levy, Ian
Maclean, Rachel
Mohindra, Mr Gagan
Rowley, Lee
Smith, rh Chloe

*Question accordingly negatived.*

*Amendment made:* 69, in schedule 2, page 99, line 19, at end insert—

"(5A) But if the current lease is a shared ownership lease—

(a) the amount determined under step 2 must be multiplied by the tenant's share in the premises being valued, and

(b) the amount so calculated is the "reversion value" of the premises being valued."—*(Lee Rowley.)*

*This requires that, in the case of a shared ownership lease, the reversion value is reduced in proportion to the share of the property owned by the tenant.*

**Lee Rowley:** I beg to move amendment 70, in schedule 2, page 101, line 5, at end insert

“, or

(c) the person is the landlord under a lease which is varied under paragraph 12A of Schedule 1 to the LRA 1967 or paragraph 12 of Schedule 11 to the LRHUDA 1993 as a result of the lease extension.”

*This amendment is consequential on Amendment 73.*

**The Chair:** With this it will be convenient to discuss Government amendments 71, 33, 34, 39, 40 and 73.

**Lee Rowley:** These amendments will address the division between landlords of a lease extension premium following the use of a new right to commute—that is, reduce—their intermediate rents. We intend to introduce the right to commutation as part of amendment 73, when we come to schedule 6.

Amendments 70 and 71 will enable the losses incurred by a landlord affected by the right to commutation to be considered when dividing up the lease extension premium. In simple terms, it will enable the shares of a premium to be adjusted so the commutation is “paid for”. I commend the amendments to the Committee.

Amendments 33 and 34 will support the introduction of a commutation. Commutation is a new right that will enable intermediate leaseholders to reduce the rent they pay to superior landlords, such as the freeholder. This will be available when a leaseholder extends their lease at a peppercorn ground rent, which reduces or extinguishes the income received by the landlords, where the landlords are intermediate leaseholders.

In homeownership, intermediate leases are the middle rungs on the ladder. Amendments to clause 14 would permit the tribunal to make determinations and orders in houses regarding the new right of commutation. Amendments 39 and 40 to clause 16 will permit the tribunal to make terminations and orders in flats regarding this new right. The provisions for the function of the new right are introduced by amendment 73 to schedule 6. The amendments implement the Law Commission’s enfranchisement report recommendation 100. Amendments 33 and 34 will facilitate the new right by allowing the tribunal to make decisions on any issue related to commutation. That includes the question of how much of the rent an intermediate lease receives is attributable to a specific house or flat where a lease extension is claimed.

The tribunal has powers to address situations where landlords are absent so that commutation can proceed. It can make orders about appointing persons to vary the intermediate leases in accordance with the new commutation provisions, and can order that commutation should proceed where an intermediate leaseholder’s notice is determined to have no effect but another landlord was eligible to claim commutation.

As previously discussed, amendments 39 and 40 support the introduction of the new right of commutation. Amendments to clause 16 will permit the tribunal to make determinations and orders in flats regarding commutation. They replicate the same changes for houses made by amendments 33 and 34 to clause 14. The new right of commutation will be introduced by amendment 73 to schedule 6.

Finally, Government amendment 73 will introduce a new right for landlords to commute—that is, reduce—the rent they pay following certain enfranchisement claims. It implements Law Commission recommendation 100. The new right would mean that, when a lease extension happens, landlords can elect to reduce their rent. That would prevent intermediate leases from entering a financial imbalance, which can occur when ground rent income is extinguished but the intermediate leaseholder must still pay a rent to a superior landlord. Such an imbalance may cause companies to wind up and the provision of building management to suffer. That situation would not work and would be to the detriment of leaseholders, landlords and freeholders alike.

When the new right is used, it would reduce the rent in proportion to the reduction in the ground rent related to the house or flat. In return, the superior landlord will be entitled to a share of the premium that the leaseholder has paid for their lease extension. The new right will be available to all landlords up to and including the freeholder in houses, and all landlords up to and including the competent landlord in flats. The right will not be available if a lease extension or a ground rent buy-out claim is not being undertaken. It is also not available if an intermediate lease is not required to pay rent of more than a peppercorn.

*Amendment 70 agreed to.*

*Amendment made:* 71, in schedule 2, page 101, line 6, leave out from “is” to end of line 7 and insert “—

(a) where sub-paragraph (1)(a) or (b) applies, the grant of the statutory lease, or

(b) where sub-paragraph (1)(c) applies, the variation of the lease.”—*(Lee Rowley.)*

*This amendment is consequential on Amendment 73.*

*Schedule 2, as amended, agreed to.*

*Schedules 3 and 4 agreed to.*

## Schedule 5

Amendments consequential on section 11 and schedules 2 to 4

*Amendment made:* 72, in schedule 5, page 115, line 27, leave out second “competent landlord” and insert “tenant”.—*(Lee Rowley.)*

*This amendment would mean that a tenant may be required to pay the price payable into the tribunal.*

*Schedule 5, as amended, agreed to.*

## Clause 12

Costs of enfranchisement and extension under the LRA 1967

**Lee Rowley:** I beg to move amendment 29, in clause 12, page 15, line 6, at end insert—

“(8) See also sections 20CA and 20J of the Landlord and Tenant Act 1985, which prevent costs in connection with a claim under this Part being recovered by way of a variable service charge (within the meaning of section 18 of that Act).”

*This amendment is consequential on NC7.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 4, in clause 12, page 16, leave out from line 19 to line 12 on page 17.

*This amendment would leave out the proposed new section 19C of the Leasehold Reform Act 1967, and so ensure that leaseholders are not liable to pay their landlord’s non-litigation costs in cases where a low value enfranchisement or extension claim is successful.*

Clause stand part.

Government amendment 31.

Amendment 5, in clause 13, page 21, leave out from line 26 to line 12 on page 22.

*This amendment would leave out the proposed new section 89C of the Leasehold Reform, Housing and Urban Development Act 1993, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a low value enfranchisement or extension claim is successful.*

Amendment 128, in clause 13, page 22, leave out lines 13 to 39.

*This amendment would leave out the proposed new section 89D of the Leasehold Reform, Housing and Urban Development Act 1993, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a leaseback has been granted under Chapter 1.*

Clause 13 stand part.

Government amendments 45, 49 to 51 and 121 to 123.

Government new clause 7—*Restriction on recovery of non-litigation costs of enfranchisement, extension and right to manage*.

*This new clause, to be inserted after clause 35, would prevent variable service charges being paid by a tenant for non-litigation costs in connection with enfranchisement, extension and right to manage claims made by other tenants.*

**Lee Rowley:** New clause 7 is a key amendment to close a loophole that landlords could potentially use to recoup process costs from tenants via variable service charges. These are costs to which they are not entitled under the new cost regime. The new clause is supported by a number of consequential amendments.

The new clause will support the new cost regime introduced in the Bill, which, as the Committee will be aware, seeks to prevent landlords from recovering process costs from leaseholders making enfranchisement or right-to-manage claims in the appropriate tribunal. In its current form, the Bill takes active steps to prevent a potential loophole by ensuring that variable service charges cannot be used by landlords as a mechanism to charge leaseholders for their litigation or process costs in connection with any of the aforementioned claims made by leaseholders.

**Eddie Hughes:** Can the Minister clarify whether the prescribed format would include the application of charges for insurance?

**Lee Rowley:** I hope to clarify that issue for my hon. Friend in the next few minutes. If I am unable to do so, I will write to him.

New clause 7 seeks to go a step further in blocking the loophole by ensuring that landlords are unable to recoup costs through variable service charges issued to other tenants who are not actively participating in the claim. To be certain that the new clause is effective, we are clarifying that these costs are not defined as relevant costs that a landlord is allowed to include in service charges. We are also giving the appropriate tribunal a new power to order landlords to repay leaseholders in cases in which they have wrongly been charged for such costs.

Although we recognise that it is unlikely that landlords will seek to circumvent the intent of the Bill, it is important that our efforts to remove barriers to leaseholders bringing applications to enfranchise or to exercise the right to manage are not undermined, and that we ensure that the cost regime is watertight and fairer for leaseholders. I reiterate that new clause 7 will have the effect of preventing landlords from using service charges to obtain from leaseholders costs to which they are not entitled. This will be supported by a power for the tribunal to order landlords to repay leaseholders to whom they have incorrectly passed on such costs. I commend the new clause to the Committee.

I turn to the Government's position on the amendments tabled to clauses 12 and 13. Amendments 4 and 5 would remove proposed new section 19C of the Leasehold Reform Act 1967 and proposed new section 89C of the Leasehold Reform, Housing and Urban Development Act 1993, which together would establish an exception to the new general rule that each side will bear its own costs in tribunal proceedings for enfranchisement and lease extension claims for flats and houses respectively. The exception exists to entitle landlords to receive a portion of their process costs from leaseholders in low-value claims—those for which the premium to be paid to the landlord by the leaseholder is less than the process costs.

I should note that I share the worthwhile desire of the hon. Member for Greenwich and Woolwich to make it cheaper for leaseholders to enfranchise or extend their leases. For too long, the balance of power has been weighted too much in favour of landlords. We have introduced changes to the cost regime because we believe that they will make it fairer, and because we wish to remove the risk and uncertainty facing leaseholders bringing such claims. While restoring balance, however, it is important that the new regime is fair for both sides when there are claims of this nature. Rightly, leaseholders have a statutory ability to enfranchise or extend when they like. In low-value claims, it is not fair for landlords to be required to incur a net financial loss at any time that leaseholders wish to exercise their rights. In claims that are not low-value, the landlord will receive sufficient compensation and will be able to use this to cover the costs incurred; in low-value claims, that is not possible, as the premium is less than the process costs.

Part of the reason why leaseholders have been liable to pay their landlord's reasonable process costs is to ensure that landlords are protected from unfairly burdensome costs. They could face these costs at any time. In many cases, landlords have no choice but to pay out, given their duty to honour the statutory rights of leaseholders to enfranchise or extend their lease. The low-value claim cost provisions create protection. They mean that leaseholders will be liable for some of their freeholders' costs, but their exposure to cost will not be excessive. Although it is right that the cost regime changes, we must continue to ensure that there are protections in place both for leaseholders and for landlords. I ask the hon. Member for Greenwich and Woolwich kindly not to press his amendments.

We have been clear that we want to make it cheaper and easier for leaseholders to extend their lease or buy their freehold; that is the whole point of this Bill. Clause 12 will make it cheaper for owners of leasehold houses to exercise their enfranchisement rights. It introduces a new cost regime with a general rule that, in future, both landlords and leaseholders will bear their own process costs during an enfranchisement claim. Process costs could include costs for services such as valuation, conveyancing and other legal costs. This could save a leaseholder thousands of pounds. Leaseholders will no

*[Lee Rowley]*

longer be deterred from bringing a claim because of the process costs demanded by their landlord, and a leaseholder will no longer face unknown costs from their landlord, making it much simpler to buy their freehold or extend their lease.

3.45 pm

There are some exceptions to the new rules to protect landlords in certain circumstances. Proposed new section 19A(1) lists the exceptions that protect landlords, including where a leaseholder's claim ceases for a reason that does not count as a permitted reason, which we have sought to define clearly, and where a landlord's non-litigation costs exceed the premium payable in low-value cases. Proposed new section 19A(4) confirms the continuing role of the tribunal to make orders on litigation costs. Proposed new section 19E makes it clear that, since there will be no general requirement for leaseholders to pay a landlord's process costs, they will also no longer need to make a security payment.

The legislation also closes a potential loophole by preventing landlords from passing their costs to the enfranchising leaseholder via a service charge or a similar contract. The amounts to which landlords will be entitled under the exceptions will be prescribed in regulations; proposed new sections 19B(3) and 19C(3) provide powers for the Secretary of State and the Welsh Ministers to make such regulations. Together, these measures will level the playing field, making it cheaper for leaseholder owners of houses to extend their lease or buy their freehold, and removing a core barrier deterring leaseholders from enfranchising. I commend clause 12 to the Committee.

I thank the hon. Member for Brent North for tabling amendment 128. The Bill introduces a general new rule that each side will bear its own costs for enfranchisement and lease-extension claims. The hon. Gentleman's amendment would remove proposed new section 89D of the 1993 Act, which would establish an exception to that rule with regard to process costs where a freeholder in a collective enfranchisement claim takes a 990-year leaseback of some property in a building. In such situations, freeholders will receive a portion of their process costs. I share the desire of my hon. Friends and of the hon. Member for Brent North to lower cost, risk and uncertainty for leaseholders, but it is still important that the new regime be fair for both sides. The Government will not be accepting the amendment today.

Process costs will be greater for the landlord in such cases in which there are more complicated transactions overall: a new lease will need to be granted and registered, and new terms will need to be negotiated. Those will add to the freeholder's process costs. In addition, the price or premium payable to the freeholder will still be lower than if the leaseback were not part of a transaction, because the freeholder will be retaining a proprietary interest with a substantive value, which has the effect of reducing the premium.

As I noted in response to the proposition of removing the exception for low-value claims in amendments 4 and 5, it would not be fair for landlords to be required to incur a net financial loss if leaseholders wish to exercise their enfranchisement rights. Although it is right that we reform the cost regime, we must ensure that there are protections in place for both sides. I therefore ask the hon. Member for Brent North not to press his amendment. Having covered the detail of the clauses, I commend them to the Committee.

Finally, in reply to the question of my hon. Friend the Member for Walsall North on insurance, the answer is generally no. There is little reason why insurance should be part of the process. There may be exceptions; if there are, we will write to my hon. Friend to indicate them, but the general answer is no.

**Matthew Pennycook:** I thank the Minister for his explanation of the Government amendments and for his initial response to my amendments and the amendment tabled by my hon. Friend the Member for Brent North.

We welcome the new costs regime provided for by these provisions. The Minister is absolutely right that, as things stand, there is no balance of power: the playing field is tilted very much in favour of landlords rather than leaseholders. That needs to be addressed. Under the current law, leaseholders are required to pay for certain non-litigation costs incurred by their landlord when responding to an enfranchisement or lease extension claim. That obviously does not reflect normal practice in residential conveyancing, where each party bears their own costs.

The argument for imposing non-litigation costs has always been that in enfranchisement or lease extension claims, a landlord is being forced to sell his or her asset, and that that justifies a departure from the costs arrangements that operate in open market sales of residential property, where any valuations and final price will reflect the fact that each party must pay their own costs. However, when it comes to lease extensions or freehold purchases, a landlord is obviously not simply being compensated for the value of the asset they are being compelled to sell. They are instead securing, through the payable premium, a share of the profit to be made from selling to the leaseholders in question. In addition, as things stand, through capitalised ground rents they are extracting funds from leaseholders over long periods—often decades—prior to securing that profit share for no explicit services in return, a point that the hon. Member for Redditch made.

The valuations of lease extensions and freehold acquisitions under the existing statutory regime rely on prices agreed via an open market transaction, but those valuations do not account for the fact that leaseholders are expected to pay their landlord's non-litigation costs. A landlord in an enfranchisement or extension transaction therefore receives both a price for the asset being sold, which reflects the market rate without non-litigation costs factored in, and their reasonably incurred non-litigation costs on top.

As the Law Commission's 2020 final report on enfranchisement puts it, the effect of the law and current market practice is that

"the landlord is over-compensated for the non-litigation costs that he or she has to incur in order to transfer the interest to the leaseholder."

In addition to the fact that landlords are over-compensated for non-litigation costs, many of those who are better resourced use the fact that such costs are borne by leaseholders as leverage in negotiations on the price of

the lease extension or freehold acquisition, confident that the expense of challenging those costs in tribunal will dissuade many leaseholders from doing so.

The Opposition's view is that freeholders should not receive compensation in respect of non-litigation costs. The fact that a landlord sells his or her asset and receives a share of the profit as a result is not sufficient justification for departing from an arrangement in which reasonable non-litigation costs are factored into the ultimate price. That is not least because the decision to enfranchise or extend a lease is often not discretionary; it is often a requirement brought about by the fact that a lease is due to expire, because the payable premium is rising as the lease shortens or as a result of the decision to move or re-mortgage.

We therefore fully support the intention behind clauses 12 and 13 to provide for a new regime based on the principle that leaseholders are not required to pay the freeholder's non-litigation costs in those circumstances. We note the Law Society's concern that landlords are being asked to bear their own non-litigation costs despite the fact that the proposed standard valuation method provided for by schedule 2, which the Committee has just considered, will lead to payable premiums below full open market value because it caps the capitalisation rate. However—this point touches on one of our previous debates—political decisions set the rules of the game for market competition. In our view, it is simply not the case that there is some kind of inherent market value for premiums that is entirely independent and autonomous of legislation in this area. Every sale of a flat and every lease extension process relating to a flat since 1993 has been undertaken against the backdrop of the 1993 Act, which reduced ground rents to a peppercorn.

The market value for premiums is shaped by the laws this House passes, and it is right in principle that, to achieve the Bill's objectives of making it cheaper and easier for leaseholders in houses and flats to extend their lease or buy their freehold, leaseholders do not pay non-litigation costs in addition to the payment of a premium, as determined by the new method proposed in schedules 2 and 3. It is because we believe that leaseholders should not be liable for these costs as a result of an enfranchisement or lease extension claim on principle, irrespective of the method by which the premium is calculated, that we take issue with the fact that the clause as drafted does not protect all leaseholders from liability for costs incurred.

As the Minister has made clear, the clause entails only a selective extension of rights in this area, because it does not ensure—as the press release that accompanied the publication of the Bill claims it does—that all leaseholders will no longer have to pay their freeholder's costs when making a claim. Instead, by means of proposed new section 19C, it makes exceptions to the general rule whereby the price payable for the freehold or extended lease is below an amount to be prescribed in regulations.

We understand the rationale for the proposed new section, namely that leaseholders should pay a freeholder's non-litigation costs in such circumstances, so that low-value claims do not cost the freeholder money; the Minister has been very clear that the Government believe that that must happen to ensure that the process is fair for both sides. We also appreciate that there are risks in prohibiting a landlord from passing on non-litigation costs to leaseholders in instances in which they would be required to spend more in carrying out the transaction than they received for the asset. The Law Commission highlighted a number of those risks in its final report on enfranchisement, including the incentive created for landlords not to co-operate with a claim, or for them to transfer the low-value freehold into the name of a shell company, then liquidate the company and ensure that the lease becomes bona vacantia.

We are concerned, however, that exempting claims below a certain value will create a different set of practical problems. I hope I can get the Minister to engage with those problems, with a view to convincing him to reconsider. They include costly and time-consuming disputes in cases in which the price payable is close to the level of the non-litigation costs in question for low-value claims, and the potential for landlords to game the new system by arguing for a price payable below the threshold, in order to secure both it and associated non-litigation costs because of the burden of disputing the amount.

We appreciate that the Government have incorporated into the clause the Law Commission's recommended remedy, namely that in low value claims for which the non-litigation costs are higher than the premium payable, the leaseholder would be required to pay the lower of the two values, one of which is to be prescribed by the Secretary of State. However, we believe that it does not entirely remove the potential for significant disputes to arise between leaseholders and freeholders, with leaseholders in a weak position to challenge them because of the cost and time required. We therefore worry that the prescribed sum, at whatever level it is ultimately set, will become the minimum sum payable to enfranchise. We are concerned that the difficulties of challenging a claim to the prescribed sum will deter some leaseholders from initiating the process of extending their lease or from acquiring their freehold altogether.

Taking a step back, we fail to see the logic in the Government's position. On the one hand, they seem to be ignoring the Law Commission's recommendations in relation to costs; they have chosen to provide for a general rule that leaseholders are not required to make a contribution to their landlord's non-litigation costs, but have not chosen to adopt a valuation methodology that seeks to reflect open market value, which was the commission's stated prerequisite for such a rule. On the other hand, they are following strictly the commission's recommendations in respect of low-value claims.

Put simply, we believe that, by means of this Bill, we should take the political decision—it is an explicit political decision—to exempt all leaseholders from paying the costs incurred by landlords in processing enfranchisement or lease extension claims. Amendments 4 and 5 would omit proposed new section 19C of the 1967 Act and proposed new section 89C of the 1993 Act, thereby removing any exception to the general rule that leaseholders are not required to pay the freeholder's non-litigation costs in such circumstances. Having argued my case on the basis of the practicalities, I live in hope that the Minister might reconsider.

**Barry Gardiner:** Can my hon. Friend clarify whether the proposals in his amendments 4 and 5 would cover my own amendment 128, which deals with the exactly parallel situation in which each side bears its own costs, but in relation to leasebacks?

**Matthew Pennycook:** I will have to come back to my hon. Friend on that point, but my understanding is that, by deleting the relevant proposed new sections, amendments 4 and 5 would ensure that in all circumstances non-litigation costs will not be chargeable to leaseholders. That was certainly the Opposition's intent in proposing the amendments.

**Rachel Maclean:** I ask the Minister to clarify a couple of points. It is extremely unusual for me ever to find anything in his comments to disagree with or depart from. If I heard him correctly, however, I think he stated that he thought it was unlikely that landlords would ever seek to circumvent the intent of the Bill. Possibly I took that out of context, but I suggest strongly that, on the contrary, it is extremely likely that landlords will intend or try to circumvent the intent of the Bill, because that is what we have seen from freeholders over decades. That is why we are in the position that we are in.

4 pm

We are obviously starting from the position that we want this to be fair—each side needs to see justice—but, as I think most of us have remarked, there is a massive imbalance of power. The Minister spoke powerfully about how it is not Conservative to promote a market with such imbalances of power and, in such situations, it is incumbent on us as Conservatives, who believe in free markets, to free those leaseholders—those tenants, who have bought those properties in good faith—from under the yoke of the freeholders, who hold all the power and, in particular, the threat of blocking those court actions and tribunal claims.

The difficulties that those leaseholders face are such that they often give up years of their lives to them. These people are just doing normal jobs, already working hard to pay their mortgage on the flat that they thought they had bought and owned, but instead they might have to spend hours, days or years of their life trying to familiarise themselves with incredibly dry, complex bits of legislation that we are grappling with in this Committee with great difficulty, even though we all have a reasonable degree of familiarity with it. Imagine being a flat owner who finds themselves wondering what on earth they are going to do to challenge their freeholder in a court of law. They face the stress and difficulty of mounting a claim, wondering who is going to help them, and fearing that they will be lumbered with all the costs at the end.

I have two specific questions for the Minister. First, is he confident that we have addressed to the best of our ability, with all the information and work that we have done, the statement that—I believe this; I am very cynical—landlords will seek to circumvent what we are doing? They are probably already doing so. Does the Minister feel confident that he, his excellent officials and the whole Department have scrutinised the matter to the best of our ability to prevent that?

Secondly, in the Minister's view, are we addressing the egregious situations that we heard about in some of the evidence sessions in Committee? Groups of leaseholders have taken freeholders to court because of all sorts of spurious and seemingly tiny and insignificant things, and they have found that the freeholders have had the costs awarded to them and they are then seeking to recoup those costs through the service charges of the leaseholders. To me, that seems an absolute violation of justice. We believe in a fair market, but this cannot be one when leaseholders are operating in a dark room—they cannot see the prices, or the other buyers and sellers. It is not a free market in any shape or form. We are inching towards some degree of freedom, but I would welcome some reassurance from the Minister.

**Barry Gardiner:** Here was me thinking I was going to be helpful to the Minister with my amendment 128, that I was going with the grain of the Bill—its whole point. He was so eloquent, and said that it is absolutely right that each party should bear its own costs, and I was thinking, "Great, we've got one here. They're going to support us", and then he said that he could not accept the amendment. I urge the Minister to consider it again.

I am trying to take out that whole proposed new section 89D, because it is a new class of cost—this whole idea of a leaseback. These are new ways in which landlords will be able to increase the costs of enfranchisement, because they will engage a series of lawyers to review separately every single one of the contracts of the non-enfranchising leaseholders and, indeed, all the individual elements of the commercial premises that they are being forced to take the leaseback off. Those costs will be absolutely enormous, because they will do it on an individual basis. The hon. Member for Redditch spoke eloquently about her cynicism, and I am afraid that it is not cynicism: it is reality. It is an understanding of what is happening in the commercial world out there.

The Minister really needs to look at this again. I understand that he has a commitment not to accept the amendments put forward by my hon. Friend the Member for Greenwich and Woolwich, or, indeed, by me, but I urge him to think again and actually see what that might cost in practice—he can get his officials to look at that—for a large development where, we must remember, only 50% of the residential element may have enfranchised, meaning that 50% may not have; they will be leasebacks. The whole of the commercial element, which could be up to 50% of the development, will also be leasebacks, which will be individuated. The cost of an individual review by a landlord of every single one of those lease contracts will make it impossible for the 50% residential interest to enfranchise. It goes against the grain of the Bill. I urge the Minister to look at that again and come back at a later stage with his own amendments.

**Lee Rowley:** I will briefly address those points. I understand the broad point made by the hon. Member for Greenwich and Woolwich. If we need to look at specific areas in more detail, I would be happy to receive those from him outside the Committee. We think that the structure will work and is effective. On the point that my hon. Friend the Member for Redditch made a moment ago, officials have spent a significant amount of time trying to make the provisions as watertight as possible. Can I guarantee on absolutely everything that there is no possibility that we have missed something? No. That is why I am happy to take further information from any colleagues on the Committee, but we think that this is a valid prospectus on which to proceed.

My hon. Friend made a point about my potential naivety, although that is not how she described it. I assure her that having dealt with freeholders from a building safety perspective now for 16 months, even

though I have dealt with this sector for only a couple of months, I am under no illusions about the cynicism of part of that sector. Even when we go through legal processes—I know that colleagues in this room have had a great deal of this, particularly those who represent urban areas—and it is absolutely clear and staring us in the face that there are responsibilities and requirements to do things with regard to building safety, it is absolutely extraordinary that some freeholders continue to seek to get around their obligations and must be dragged kicking and screaming to them.

I listened to a rather erroneous and misleading discussion on the "Today" programme this morning where the BBC presenter said, "It is all terrible on building safety. An insufficient amount of progress has been made in terms of building safety a number of years on from the very sad events of Grenfell." It is also the case that a substantial amount of work is going into dragging some of the freeholders to do the things that they are supposed to do in the first place and have the basic humanity to recognise that they need to provide buildings that are safe for people to live in.

I hope that I have assured the Committee that, if nothing else, I am absolutely cognisant of some of the challenges that were indicated by my hon. Friend the Member for Redditch. We hope that the elements that I articulated in my initial comments address some of the egregious situations. One of the reasons why we are tightening covenants is to ensure that there is not a workaround or way around some of the things that we have talked about.

I say to all three hon. Members, including the hon. Member for Brent North, that there is always a balance to be struck, but we are trying to make this as watertight as it can be. Although we cannot accept the amendment, if there is something that we genuinely think we have forgotten or missed, I will happily take further information, separately, and look at it again. We think this provision is okay, but I am always happy to take further information, if it would be helpful.

**Matthew Pennycook:** I thank the Minister for that response. Before turning to amendments 4 and 5, I have a brief note about the amendment tabled by my hon. Friend the Member for Brent North. It is a very strong idea, and there is a genuine deficiency in the law. If he is minded to press it to a vote, I would certainly support him. He may want to return to it at another date.

On amendments 4 and 5, perhaps I have misunderstood the Minister. We are not trying to make the argument that the Government have forgotten to include something in the Bill or that there is something missing; the point is that the exemption that they are providing for low-value claims will cause problems. I have taken on board what the Minister said about the Government's position being that the exemption is essential to ensure that the new process is fair, but we are very concerned that the prescribed sum that the Secretary of State will bring forward will become the de facto minimum amount payable for those low-value claims. Because of the problems challenging that, I think that leaseholders will be deterred from taking this process forward. That is the best-case scenario.

The worst-case scenario—I fear that this is the more likely scenario, for the reasons outlined by my hon. Friend the Member for Brent North and the hon. Member for Redditch in relation to the behaviour of some freeholders —is that it will become a recipe for litigation and gaming of the low-value exemption in ways that will be detrimental to leaseholders. With that in mind, I am minded to press amendment 4 to a vote and, if that is successful, amendment 5 as well.

**Barry Gardiner:** There is a word in the clause that the Minister should pay very specific attention to. Line 29 of proposed new section 89D states that

"'non-litigation costs' means costs that are or could be incurred by a freeholder"—

I stress "could". If the Minister is minded to look at this again, he should ask his officials to do some calculations about what the costs could be. I recognise the figures and have no wish to detain the Committee by pressing this to a vote. I am happy to support my hon. Friend in pressing amendment 4 to a vote, but if the Minister can give me an assurance that he will ask his officials to do that homework, I will not press the amendment.

**Lee Rowley:** We are certainly happy to write to the hon. Member to articulate the position in more detail and to seek to reassure him on some of the points that he has made.

*Amendment 29 agreed to.*

*Amendment made:* 30, in clause 12, page 15, line 14, at end insert—

"(za) the claim ceasing to have effect under regulations under section 4B (landlord certified as community housing provider);"—*(Lee Rowley.)*

*This amendment is consequential on Amendment 57.*

*Amendment proposed*: 4, Clause 12, page 16, leave out from line 19 to line 12 on page 17.—*(Matthew Pennycook.)*

*This amendment would leave out the proposed new section 19C of the Leasehold Reform Act 1967, and so ensure that leaseholders are not liable to pay their landlord's non-litigation costs in cases where a low value enfranchisement or extension claim is successful.*

Question put, *That the amendment be made.*

*The Committee divided:* Ayes 6, Noes 8.

**Division No. 3]**

**AYES**

Edwards, Sarah
Gardiner, Barry
Glindon, Mary
Pennycook, Matthew
Rimmer, Ms Marie
Strathern, Alistair

**NOES**

Carter, Andy
Everitt, Ben
Fuller, Richard
Levy, Ian
Maclean, Rachel
Mohindra, Mr Gagan
Rowley, Lee
Smith, rh Chloe

*Question accordingly negatived.*

*Clause 12, as amended, ordered to stand part of the Bill.*

**Clause 13**

COSTS OF ENFRANCHISEMENT AND EXTENSION UNDER THE LRHUDA 1993

4.15 pm

*Amendments made:* 31, in clause 13, page 20, line 12, at end insert—

"(12) See also sections 20CA and 20J of the Landlord and Tenant Act 1985, which prevent costs in connection with a claim under Chapter 1 or 2 being recovered by way of a variable service charge (within the meaning of section 18 of that Act)."

*This amendment is consequential on NC7.*

Amendment 32: in clause 13, page 20, line 20, at end insert—

"(za) the claim ceasing to have effect under regulations under section 8B (landlord certified as community housing provider);". —*(Lee Rowley.)*

*This amendment is consequential on Amendment 57.*

*Clause 13, as amended, ordered to stand part of the Bill.*

**Clause 14**

Replacement of sections 20 and 21 of the LRA 1967

*Amendments made:* 33, in clause 14, page 26, line 12, at end insert—

"(ha) any matter arising under paragraph 12A of Schedule 1 (reduction of rent under intermediate leases on grant of an extended lease), including what rent under an intermediate lease is apportioned to the house and premises;"

*This amendment is consequential on Amendment 73.*

Amendment 34, in clause 14, page 26, line 41, at end insert—

"(5A) In relation to paragraph 12A of Schedule 1—

(a) if the landlord under a qualifying intermediate lease cannot be found or their identity cannot be ascertained, the appropriate tribunal may make such order as it thinks fit, including—

(i) an order dispensing with the requirement to give notice under paragraph 12A(3) of Schedule 1 to that landlord, or

(ii) an order that such a notice has effect and has been properly served even though it has not been served on that landlord;

(b) the appropriate tribunal may make an order appointing a person to vary a lease in accordance with paragraph 12A of Schedule 1 on behalf of the landlord or tenant;

(c) if the appropriate tribunal makes a determination that a notice under paragraph 12A(3) of Schedule 1 was of no effect, it may—

(i) determine whether another landlord or tenant could have given such a notice, and

(ii) if it determines that they could have done so, order that paragraph 12A of Schedule 1 is to apply as if they had done so.

(5B) The variation of a lease on behalf of a party in consequence of an order under subsection (5A)(b) has the same force and effect (for all purposes) as if it had been executed by that party." .—*(Lee Rowley.)*

*This would give the tribunal jurisdiction to deal with cases where landlords cannot be found or identified, to appoint a person to execute a variation of a lease (eg. if a party to the lease is absent or unco-operative), and to enable the Schedule to continue to apply if the notice given was of no effect.*

**Lee Rowley:** I beg to move amendment 35, in clause 14, page 27, line 15, at end insert—

**"21ZA Jurisdiction for other proceedings**

(1) This section applies to proceedings—

(a) relating to the performance or discharge of obligations arising out of a tenant's notice of their desire to have the freehold or an extended lease under this Part, and

(b) for which jurisdiction has not otherwise been conferred under or by virtue of this Part.

(2) Jurisdiction is conferred on the appropriate tribunal for proceedings to which this section applies.

(3) But jurisdiction is instead conferred on the court where a purpose of the proceedings is to obtain a remedy that could not be granted by the appropriate tribunal but could be granted by the court.

(4) If, in proceedings before the court to which this section applies, it appears to the court that—

(a) the remedy (or remedies) sought could be granted by the appropriate tribunal, it must by order transfer the proceedings to the appropriate tribunal;

(b) a remedy sought could be granted by the appropriate tribunal and another remedy sought could only be granted by the court, it may by order transfer the proceedings to the appropriate tribunal insofar as the proceedings relate to the remedy that could be granted by the appropriate tribunal.

(5) Following a transfer of proceedings under subsection (4)(b)—

(a) the court may dispose of all or any remaining proceedings pending the determination of the transferred proceedings by the appropriate tribunal,

(b) the appropriate tribunal may determine the transferred proceedings, and

(c) when the appropriate tribunal has done so, the court may give effect to the determination in an order of the court.

(6) Rules of court may prescribe the procedure to be followed in a court in connection with or in consequence of a transfer under this section.

(7) A reference in this Part to the jurisdiction conferred on the appropriate tribunal or the court includes that conferred by this section.

(8) This section does not prevent the bringing of proceedings in a court other than the county court where the claim is for damages or pecuniary compensation only."

*This amendment moves the provision that would have been inserted into the 1967 Act as section 21C. It also includes a new subsection (8) to clarify the effect of the new section.*

**The Chair:** With this it will be convenient to discuss the following:

Government amendments 36 to 38.

Clause stand part.

Clause 15 stand part.

Government amendments 41 and 42.

Clauses 16 and 17 stand part.

Government amendment 43.

Clause 18 stand part.

**Lee Rowley:** These are minor technical amendments to support the changes that we are introducing—to the jurisdiction of the county court and the property chamber of the first-tier tribunal respectively—to simplify dispute resolution so that leasehold enfranchisement and right to manage cases sit all in one place and in the hands of experts. Amendments 35 and 38 work together to amend and replace a new section to be added to the 1967 Act, which lays out the jurisdiction of the court and the tribunal in relation to particular matters. This section will move to earlier in the Act, as following sections will rely on this provision, and so it is clearer for it to be featured earlier.

Amendment 36 changes the 1967 Act to clarify the jurisdictional boundaries of the county court and the tribunal. Specifically, it clarifies that a party cannot

go to the court for an order for compliance with enfranchisement obligations unless their application is linked to other proceedings in that court, and for which the court has jurisdiction. It increases conciseness and clarity.

Amendment 37 is consequential on the amendments that I have set out and serves to ensure that both the Bill and the 1967 Act continue to make sense. These are minor and technical amendments, as opposed to material policy changes. I hope that they will not be contentious and commend them to the Committee.

Turning to clause 14, we have been clear repeatedly today that we want to make it cheaper and easier for people to extend their lease or buy their freehold. However, it is equally important that people can effectively seek redress or launch challenges where needed. Clause 14 will move all enfranchisement disputes to the tribunal so that these matters are dealt with in one place. That will not only make the system simpler to understand but save leaseholders money. They are less likely to need legal advice just to understand the process, and it reduces cases where money is wasted because challenges are launched incorrectly.

On top of that, the new system will ensure that these complex matters are dealt with by those with the right experience, knowledge and expertise at the tribunal that is best equipped to handle these matters. The clause also gives the tribunal important new powers so that it can effectively deal with disputes in its new, expanded jurisdiction. These include requiring parties to comply with duties under the Act, such as payment of compensation to a leaseholder, appointing someone to complete a conveyance, or ordering leaseholders to pay the price due to extend their lease or acquire the freehold. Taken together, these measures simplify and strengthen the system for dispute resolution, and I commend clause 14 to the Committee.

Turning to clause 15, currently some disputes that arise during the enfranchisement process for leasehold houses can be resolved in the first-tier tribunal in England and the leasehold valuation tribunal in Wales, but others must be resolved in the court, which creates a complex situation and causes confusion and additional costs for all parties involved.

The clause addresses that problem by transferring the jurisdiction for dealing with specific matters from the courts to the tribunal. This will result in the majority of enfranchisement disputes for leasehold houses being dealt with and resolved solely by the experienced tribunal. The clause will also allow for payments that would normally be paid into court, such as the premium payable when there is a missing landlord, to be paid into the tribunal. That will mean that the process for resolving enfranchisement disputes for leasehold houses will be easier to navigate and reduce the number of claims that need to go to the courts and the tribunal, which will save time and legal costs. The measures will ensure that the process for resolving disputes is simpler, quicker and cheaper.

Amendments 41 and 42 are also minor technical amendments that support the changes we are introducing. Amendment 41 to clause 16 changes the 1993 Act to clarify the jurisdictional boundaries of the county court and tribunal. Specifically, the amendment clarifies that a party cannot go to the court for an order for compliance with enfranchisement obligations unless their application is linked to other proceedings in the court where the court has jurisdiction. Amendment 42 is consequential on amendment 41. It ensures that both the Bill and the 1993 Act continue to make sense.

Clause 16 makes changes very similar to those made by clause 14, but in relation to the Leasehold Reform, Housing and Urban Development Act 1993, which applies to flats rather than houses. The clause will move a number of matters from the county court to the tribunal so that they are all dealt with in one place. The costs rules in the tribunal, where each side bears their own costs, are also favourable to leaseholders in many cases, while in the county court the loser pays the other party's litigation costs. The tribunal has the knowledge and experience to deal with those matters best. The clause gives the tribunal the powers it needs to deal with disputes in its new jurisdiction, such as apportioning rent in some cases and requiring parties to comply with the requirements of the amended Leasehold Reform, Housing and Urban Development Act.

Clause 17 addresses jurisdiction for disputes during the enfranchisement process for leasehold flats. It does this in a similar way to clause 15, which relates to leasehold houses. As is the case for houses, some disputes that arise during the enfranchisement process for leasehold flats can be resolved in the tribunal, but others must go to court. The clause will address that problem by transferring the jurisdiction to the tribunal. It will also allow for payments that would normally be paid into court to be paid into the tribunal.

Amendment 43 is another minor technical amendment to support the changes that we are introducing to the jurisdiction of the county court and first-tier tribunal. It simplifies dispute resolution and places things in one place, in the hands of experts. The amendment works together with amendments 35 and 38 to amend and replace a proposed new section to be added to the 1967 Act, which lays out the jurisdiction of the court and tribunal in relation to particular matters. The proposed new section will be moved to earlier in the Act, because following sections rely on it. Again, it is a minor and technical change.

Finally, I turn to clause 18. The current division of power to deal with enfranchisement disputes between different courts and the tribunal creates complexity. Furthermore, High Court cases are much more expensive than the tribunals. Leaseholders often have more limited resources than landlords, and landlords may use the threat of going to the High Court in future as a tactic to place pressure on leaseholders. The clause complements clauses 14 to 17, which shift jurisdiction for most enfranchisement matters to the first-tier tribunal and the leasehold valuation tribunal in Wales.

Clause 18 prevents parties from using the High Court as an alternative forum to the tribunals for determining enfranchisement matters in the first instance, but it does not prevent a party from appealing a decision of the tribunals or affect the jurisdiction of the High Court to consider judicial review claims in respect of the tribunals. The tribunals have the skills and expertise to deal with all aspects of an enfranchisement dispute, including complex questions of valuation, and they are well placed to take over enfranchisement claims. The measure should help to reduce costs and inconvenience, and ensure that disputes are handled by judges with specialist knowledge.

**Matthew Pennycook:** We take no issue with any of the Government amendments in the group. I rise to speak briefly in relation to clauses 14 to 17, which, as the Minister has said, concern the jurisdiction of the county court and tribunals.

The current law divides the responsibility for resolving enfranchisement disputes between the county court and the tribunal, but there is considerable evidence that this creates complexity, can cause confusion and additional expense for the parties, and creates discrepancies due to the differing powers of the county court and of the tribunal to order one party to pay the other's litigation costs. The workaround that has been attempted—namely, the increased deployment of tribunal judges as county court judges and vice versa—has not overcome the inherent tensions regarding the division of power in this area.

As the Minister has said, clauses 14 to 17 variously amend both the 1967 and 1993 Acts to transfer jurisdiction from the county court to the first-tier tribunal for a number of matters and provide the FTT with the necessary additional powers to exercise its expanded jurisdiction. We welcome these sensible clauses, which enact recommendation 82 of the Law Commission's final report on leasehold enfranchisement. Although it is our hope that a number of measures in the Bill will have the effect of reducing the frequency with which disputes arise during enfranchisement claims, a great many still will. It is sensible to give a single body responsibility for them, and for that body to be the FTT, given its skills and expertise.

We welcome these clauses, but I want to probe the Minister on the issue of the first-tier tribunal's ability to deal with all enfranchisement disputes. The tribunal's present caseload is not unduly onerous, but, following the end of the pandemic, it has reported a gradual increase in its leasehold management work—in particular, challenges relating to service charge costs—as well as more applications for rent repayment orders. In addition, it now has responsibility for resolving the vast majority of disputes arising from the Building Safety Act 2022, including those concerning remediation orders and remediation contribution orders under part 5 of that Act.

The Government are proposing to increase the tribunal's workload through the changes that they are making through the Renters (Reform) Bill, which is still making its way through the House. In particular, the new statutory procedure for increases of rent that that Bill provides for, with an expanded right for tenants to challenge, is likely to see the level of market rent referrals that the tribunal deals with rise. Now the Government are proposing, through this Bill, that the tribunal also be given responsibility for resolving all enfranchisement disputes. As I said, although we welcome the proposal to do so, the obvious risk of enacting this combination of further and expanded jurisdictions for the tribunal, in the absence of additional funding, judges and court staff, is that it will result in backlogs.

We therefore seek reassurances from the Minister that the Government are thinking seriously about how they will ensure that the first-tier tribunal will be adequately resourced to effectively and efficiently discharge all its new and proposed responsibilities, including in relation to this Bill. Could he tell us what additional resources the Government are proposing to allocate to the property tribunal, and what initiatives are being considered to ensure that it has the relevant skills and capacity to guarantee that it can do that?

**Lee Rowley:** I welcome the support from the Opposition. As the hon. Gentleman also indicates, these are sensible approaches to take. He is right to highlight his very valid point about capacity within the first-tier tribunal; I am glad that we agree on the principle. He is absolutely right that there is a practicality element, should it survive the continuation of the processes in both this House and the other House. It would be subject to a justice impact test, which, as I understand it, includes a review of capacity, and it would be considered at that point, should it progress through to legislation.

**Matthew Pennycook:** I welcome those reassurances from the Minister.

*Amendment 35 agreed to.*

*Amendments made:* 36, in clause 14, page 27, line 27, leave out subsections (3) and (4) and insert—

"(3) An application may not be made under subsection (1) to the court unless the application relates to proceedings in respect of which the court has jurisdiction under or by virtue of any provision of this Part (including section 21ZA)."

*This amendment provides that applications under section 21A of the 1967 Act may be made to the county court only if the court is dealing with related proceedings under the 1967 Act.*

Amendment 37, in clause 14, page 28, line 5, leave out subsection (7).

*This amendment is consequential on Amendment 36.*

Amendment 38, in clause 14, page 29, line 8, leave out from beginning to end of line 41.—*(Lee Rowley.)*

*This amendment removes provision that is reproduced by Amendment 35.*

*Clause 14, as amended, ordered to stand part of the Bill.*

*Clause 15 ordered to stand part of the Bill.*

## Clause 16

AMENDMENT OF PART 1 OF THE LRHUDA 1993

*Amendments made:* 39, in clause 16, page 32, line 43, at end insert—

"(ha) any matter arising under paragraph 12 of Schedule 11 (reduction of rent under intermediate leases on grant of a new lease), including what rent under an intermediate lease is apportioned to the flat;".

*This amendment is consequential on Amendment 73.*

Amendment 40, in clause 16, page 33, line 26, at end insert—

"(5A) In relation to paragraph 12 of Schedule 11—

(a) if the landlord under a qualifying intermediate lease cannot be found or their identity cannot be ascertained, the appropriate tribunal may make such order as it thinks fit, including—

(i) an order dispensing with the requirement to give notice under paragraph 12(3) of Schedule 11 to that landlord, or

(ii) an order that such a notice has effect and has been property served even though it has not been served on that landlord;

(b) make an order appointing a person to vary a lease in accordance with paragraph 12 of Schedule 11 on behalf of the landlord or tenant;

(c) if the appropriate tribunal makes a determination that a notice under paragraph 12(3) of Schedule 11 was of no effect, it may—

(i) determine whether another landlord or tenant could have given such a notice, and

(ii) if it determines that they could have done so, order that paragraph 12 of Schedule 11 is to apply as if they had done so.

(5B) The variation of a lease on behalf of a party in consequence of an order under subsection (5A)(b) has the same force and effect (for all purposes) as if it had been executed by that party."

*This would give the tribunal jurisdiction to deal with cases where landlords cannot be found or identified, to appoint a person to execute a variation of a lease (eg. if a party to the lease is absent or unco-operative), and to enable the Schedule to continue to apply if the notice given was of no effect.*

Amendment 41, in clause 16, page 34, line 36, leave out from beginning to end of line 2 on page 35 and insert—

"(3) An application may not be made under subsection (1) to the court unless the application relates to proceedings in respect of which the court has jurisdiction under or by virtue of any provision of Chapter 1, 2 or 7 (including section 91A)."

*This amendment provides that applications under section 92 of the 1993 Act may be made to the county court only if the court is dealing with related proceedings under the 1993 Act.*

Amendment 42, in clause 16, page 35, line 17, leave out subsection (7).—*(Lee Rowley.)*

*This amendment is consequential on Amendment 41.*

*Clause 16, as amended, ordered to stand part of the Bill.*

*Clause 17 ordered to stand part of the Bill.*

## Clause 18

### No first-instance applications to the High Court in tribunal matters

4.30 pm

*Amendment made:* 43, in clause 18, page 37, line 28, leave out "section 21C" and insert "section 21ZA".—*(Lee Rowley.)*

*This amendment is consequential on Amendments 35 and 38.*

*Clause 18, as amended, ordered to stand part of the Bill.*

## Clause 19

### Miscellaneous amendments

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss schedule 6.

**Lee Rowley:** Clause 19 brings schedule 6 into effect, including a series of amendments that follow on from the introduction of 990-year lease extensions and statutory break rights where 990-year lease extensions occur. Those rights allow a landlord to end an extended lease at limited windows of opportunity so that they may redevelop, such as to enable the continued good use of land where a building is beyond its useable lifespan. The schedule removes defunct rules regarding staying on in properties after a lease extended by 990 years expires, and includes a definition of a shared ownership lease.

Schedule 6 assists with the introduction of 990-year lease extensions. The schedule removes provisions that prevent sub-leaseholders from having various statutory rights to security of tenure when their lease ends. The provisions are no longer relevant as we are expanding lease extension rights for sub-leaseholders. It is also unlikely buildings would still be standing in 990 years' time—much as we would like many of them to be—and that reduces the relevance of what happens when such a lease ends.

The schedule accommodates 990-year lease extensions by adjusting the limited windows in which statutory break rights can be used by landlords to redevelop a property. In houses and flats, the rights will be available in the last 12 months of the original lease term and the last five years of each subsequent 90-year period of a 990-year lease extension.

We understand and recognise the strong concerns leaseholders have about the use of break rights by landlords. It is likely, however, that a building will not outlast the term of a 990-year extended lease. Break rights will therefore be necessary, by logic, to enable the continued good use of land over long periods of time. They can only be used where a landlord obtains a court order, and compensation must be paid to leaseholders. We hope we have made a necessary balance between enabling longer lease extensions and addressing the practicality of the lifespan of buildings.

The schedule also repeals redundant provisions on estate management schemes, which the law no longer permits to be approved. An estate management scheme allowed a landlord to retain some management control over properties, amenities and common areas where the freehold has been sold to leaseholders. The schedule inserts a new definition of "shared ownership lease" for enfranchisement law. The definition is required for the exclusion of shared ownership leaseholds from freehold acquisition rights. It will also be required for upcoming amendments, by which we will give lease extension rights to shared owners and shared ownership providers in respect of their intermediate leases.

Existing provisions on right to enfranchise companies are also repealed. The provisions were never commenced but would have set new requirements for who can be the nominee purchaser in a collective enfranchisement. The provisions have been identified as problematic and burdensome for leaseholders, and it is therefore appropriate to repeal them.

*Question put and agreed to.*

*Clause 19 accordingly ordered to stand part of the Bill.*

## Schedule 6

### Leasehold enfranchisement and extension: miscellaneous amendments

*Amendments made:* 73, in schedule 6, page 117, line 39, at end insert—

"*Reduction of rent under intermediate leases*

5A In Schedule 1 to the LRA 1967 (enfranchisement and extension by sub-tenants), after paragraph 12 insert—

'12A(1) This paragraph applies if at the relevant time (see section 37(1)(d))—

(a) relevant rent is payable under the tenancy in possession,

(b) that relevant rent is more than a peppercorn rent, and

(c) there are one or more qualifying intermediate leases.

(2) For the purposes of this paragraph a lease is a "qualifying intermediate lease" if—

(a) the lease demises the whole or a part of the house and premises,

(b) the lease is immediately superior to—

(i) the tenancy in possession, or

(ii) one or more other leases that are themselves qualifying intermediate leases,

(c) relevant rent is payable under the lease, and

(d) that relevant rent is more than a peppercorn rent.

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the reversioner and other landlords before the grant of the lease under section 14, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

(a) under sub-paragraph (3) the rent under a lease is required to be reduced in accordance with this paragraph, and

(b) that lease is superior to one or more other qualifying intermediate leases,

the rent payable under the other qualifying intermediate lease or leases is also to be reduced in accordance with sub-paragraphs (6) to (8).

(5) The landlord and tenant under a qualifying intermediate lease must vary the lease—

(a) to give effect to a reduction of the rent in accordance with sub-paragraphs (6) to (8); and

(b) to remove any terms of the lease which provide for an increase in the rent, or part of the rent, so reduced.

(6) If the whole of the rent under a qualifying intermediate lease is relevant rent, the rent under that lease is to be reduced to a peppercorn rent.

(7) If only part of the rent under a qualifying intermediate lease is relevant rent—

(a) that part of the rent is to be reduced to zero, and

(b) the total rent is to be reduced accordingly.

(8) But the amount of the reduction in a person's rental liabilities as tenant is limited to the amount of the reduction in the person's rental income as landlord; and here—

(a) "reduction in a person's rental liabilities as tenant" means the reduction in accordance with sub-paragraph (6) or (7) of the rent payable by the person as tenant under the qualifying intermediate lease;

(b) "reduction in that person's rental income as landlord" means the amount (or total amount) of the relevant reduction (or reductions) in rent payable to that person as landlord of one or more other reduced rent leases.

(9) In this paragraph—

"reduced rent lease" means—

(a) the tenancy in possession, or

(b) a qualifying intermediate lease;

"relevant reduction" means—

(a) in relation to the tenancy in possession, a reduction resulting from that tenancy being substituted by the tenancy at a peppercorn rent granted under section 14;

(b) in relation to a qualifying intermediate lease, a reduction resulting from this paragraph.

"relevant rent" means rent that has been, or would properly be, apportioned to the whole or a part of the house and premises'.

5B In Schedule 11 to the LRHUDA 1993 (procedure where competent landlord is not tenant's immediate landlord), after paragraph 11 insert—

'Part 3

Reduction of rent under intermediate leases

12 (1) This paragraph applies if at the relevant date—

(a) relevant rent is payable under the existing lease,

(b) that relevant rent is more than a peppercorn rent, and

(c) there are one or more qualifying intermediate leases.

(2) For the purposes of this paragraph a lease is a "qualifying intermediate lease" if—

(a) the lease demises the whole or a part of the relevant flat,

(b) the lease is immediately superior to—

(i) the existing lease, or

(ii) one or more other leases that are themselves qualifying intermediate leases,

(c) relevant rent is payable under the lease, and

(d) that relevant rent is more than a peppercorn rent;

but a lease is not a qualifying intermediate lease if it is superior to the lease whose landlord is the competent landlord.

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the competent landlord and other landlords before the grant of the lease under section 56, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

(a) under sub-paragraph (3) the rent under a lease is required to be reduced in accordance with this paragraph, and

(b) that lease is superior to one or more other qualifying intermediate leases,

the rent payable under the other qualifying intermediate lease or leases is also to be reduced in accordance with sub-paragraphs (6) to (8).

(5) The landlord and tenant under a qualifying intermediate lease must vary the lease—

(a) to give effect to a reduction of the rent in accordance with sub-paragraphs (6) to (8); and

(b) to remove any terms of the lease which provide for an increase in the rent, or part of the rent, so reduced.

(6) If the whole of the rent under a qualifying intermediate lease is relevant rent, the rent under that lease is to be reduced to a peppercorn rent.

(7) If only part of the rent under a qualifying intermediate lease is relevant rent—

(a) that part of the rent is to be reduced to zero, and

(b) the total rent is to be reduced accordingly.

(8) But the amount of the reduction in a person's rental liabilities as tenant is limited to the amount of the reduction in the person's rental income as landlord; and here—

(a) "reduction in a person's rental liabilities as tenant" means the reduction in accordance with sub-paragraph (6) or (7) of the rent payable by the person as tenant under the qualifying intermediate lease;

(b) 'reduction in that person's rental income as landlord' means the amount (or total amount) of the relevant reduction (or reductions) in rent payable to that person as landlord of one or more other reduced rent leases.

(9) In this paragraph—

"reduced rent lease" means—

(a) the existing lease, or

(b) a qualifying intermediate lease;

"relevant flat" means the flat and any garage, outhouse, garden, yard and appurtenances that are to be demised by the lease granted under section 56;

"relevant reduction" means—

(a) in relation to the existing lease, a reduction resulting from that lease being substituted by the lease at a peppercorn rent granted under section 56;

(b) in relation to a qualifying intermediate lease, a reduction resulting from this paragraph.

"relevant rent" means rent that has been, or would properly be, apportioned to the whole or a part of the relevant flat.'"

*This would provide for rent under superior leases to be reduced where a lease is extended under the LRA 1967 or LRHUDA 1993 (at a peppercorn rent).*

Amendment 74, in schedule 6, page 118, leave out lines 1 to 22 and insert—

"PART 1A

SHARED OWNERSHIP LEASES AND THE LRA 1967 ETC

*Amendment of the LRA 1967*

5A The LRA 1967 is amended in accordance with paragraphs 5B to 5F.

*Repeal of exclusions of shared ownership leases from Part 1 of the LRA 1967*

5B (1) In section 1 (tenants entitled to enfranchisement or extension), omit subsection (1A).

(2) In section 3(2) (tenancies deemed to be long tenancies), omit the words from '(other than' to 'this Act)'.

(3) Omit section 33A and Schedule 4A (exclusion of certain shared ownership leases).

*Rateable value limits and low rent tests not to apply to shared ownership leases*

5C In section 1 (tenants entitled to enfranchisement or extension), after subsection (6) insert—

'(6A) In determining whether a tenant under a tenancy which is a shared ownership lease has the right to acquire a freehold or extended lease under this Part, the following requirements of this section do not apply—

(a) any requirement for the tenancy to be at a low rent;

(b) any requirement in subsection (1)(a)(i) or (ii) for the house and premises or the tenancy to be above a certain value.'

*No right of enfranchisement for certain shared ownership leases*

5D Before section 36 insert—

'33B Shared ownership leases which provide for 100% acquisition etc

(1) A notice of a person's desire to have the freehold of a house and premises under this Part is of no effect if, at the relevant time, the tenancy—

(a) is a shared ownership lease, and

(b) meets conditions A to D.

(2) But conditions C and D do not need to be met if the shared ownership lease is of a description prescribed for this purpose in regulations made by the Secretary of State.

(3) Condition A: the tenancy allows for the tenant to increase the tenant's share in the demised premises by increments of 25% or less (whether or not the tenancy also provides for increments of more than 25%).

(4) Condition B: the tenancy provides—

(a) for the price payable for an increase in the tenant's share in the demised premises to be proportionate to the market value of the premises at the time the share is to be increased, and

(b) if the tenant's share is increased, for the rent payable by the tenant in respect of the landlord's share in the demised premises to be reduced by an amount reflecting the increase in the tenant's share.

(5) Condition C: the tenancy allows for the tenant's share in the demised premises to reach 100%.

(6) Condition D: if and when the tenant's share of the demised premises is 100%, the tenancy—

(a) allows for the tenant to acquire the freehold of the premises (if the landlord has the freehold), or

(b) provides that the terms of the lease which make the lease a shared ownership lease cease to have effect (if the landlord does not have the freehold),

without the payment of any further consideration.

(7) Regulations under this section are to be made by statutory instrument.

(8) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section 'demised premises' means the premises demised under the shared ownership lease.'

*Inclusion of terms for sharing staircasing payments*

5E In Schedule 1 (enfranchisement and extension by sub-tenants), after paragraph 12A insert—

'12B(1) This paragraph applies if—

(a) at the relevant time—

(i) the tenancy in possession is a shared ownership lease (the "original shared ownership lease"), and

(ii) the tenant's share of the dwelling is less than 100%, and

(b) the landlord who grants the new tenancy (the "new shared ownership lease") is not the immediate landlord under the original shared ownership lease.

(2) At any time after the grant of the new shared ownership lease—

(a) the immediate landlord under the new shared ownership lease, or

(b) the landlord under any relevant intermediate lease,

may apply to the appropriate tribunal for an order making provision to secure that each relevant intermediate lease is varied to include (if or to the extent that it does not already do so) a payment sharing term.

(3) A "payment sharing term" is a term under which staircasing payments are to be shared between—

(a) the immediate landlord under the new shared ownership lease, and

(b) each landlord under a relevant intermediate lease,

in a way which fairly and reasonably reflects staircasing losses that are incurred after the variation of the lease to include this term.

(4) An order under this paragraph may include—

(a) an order relating to a relevant intermediate lease not specified in the application;

(b) an order appointing a person who is not party to a relevant intermediate lease to execute a variation of the lease.

(5) A lease is a "relevant intermediate lease" if—

(a) the lease demises some or all of the shared ownership premises, and

(b) the lease is intermediate between—

(i) the new shared ownership lease, and

(ii) the interest of the landlord who granted the new shared ownership lease.

(6) In this paragraph—

"shared ownership premises" means the premises demised by the new shared ownership lease;

"staircasing loss", in relation to a staircasing payment, means the loss that a landlord incurs because of the increase in the tenant's share in the shared ownership premises to which the staircasing payment relates;

"staircasing payment" means a payment made by the tenant under the new shared ownership lease to their immediate landlord in consideration of an increase in the tenant's share in the shared ownership premises.'

*Meaning of "shared ownership lease"*

5F (1) In section 37(1) (interpretation of Part 1)—

(a) after paragraph (b) insert—

'(bza) "landlord's share", in relation to a shared ownership lease, means the share in the premises demised by the lease which is not comprised in the tenant's share;';

(b) after paragraph (d) insert—

'(da) "shared ownership lease" means a lease of premises—

(i) granted on payment of a premium calculated by reference to a percentage of the value of the premises or of the cost of providing them, or

(ii) under which the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the premises;

(db) "tenant's share", in relation to a shared ownership lease, means the tenant's initial share in the premises demised by the lease, plus any additional share or shares in those demised premises which the tenant has acquired;'.

*Amendment of the Housing and Planning Act 1986*

5G (1) Schedule 4 to the Housing and Planning Act 1986 is amended as follows.

(2) Omit paragraphs 3 to 6 (amendments of the LRA 1967 relating to shared ownership leases).

(3) In paragraph 11—

(a) in sub-paragraph (1), after 'this Schedule' insert '(other than the amendment made by paragraph 7)';

(b) omit sub-paragraph (2) (saving of section 140 of the Housing Act 1980, which excludes certain shared ownership leases from Part 1 of the LRA 1967).

PART 1B

SHARED OWNERSHIP LEASES AND THE LRHUDA 1993

*Amendment of the LRHUDA 1993*

5H The LRHUDA 1993 is amended in accordance with this Part of this Schedule.

*Repeal of special provision for shared ownership leases in definition of "long lease"*

5I In section 7 (definition of 'long lease')—

(a) at the end of subsection (1)(c) insert 'or';

(b) omit subsection (1)(d);

(c) in subsection (7), omit the definitions of 'shared ownership lease' and 'total share'.

*No right to collective enfranchisement for certain shared ownership leases*

5J (1) In section 5 (qualifying tenants), after subsection (2)(c) insert 'or

(d) the lease is an excluded shared ownership lease (see section 5A);'.

(2) After section 5 insert—

'5A Excluded shared ownership leases

(1) For the purposes of this Chapter a lease is an 'excluded shared ownership lease' if it—

(a) is a shared ownership lease, and

(b) meets conditions A to D.

(2) But conditions C and D do not need to be met if the shared ownership lease is of a description prescribed for this purpose in regulations made by the Secretary of State.

(3) Condition A: the lease allows for the tenant to increase the tenant's share in the demised premises by increments of 25% or less (whether or not the lease also provides for increments of more than 25%).

(4) Condition B: the lease provides—

(a) for the price payable for an increase in the tenant's share in the demised premises to be proportionate to the market value of the premises at the time the share is to be increased, and

(b) if the tenant's share is increased, for the rent payable by the tenant in respect of the landlord's share in the demised premises to be reduced by an amount reflecting the increase in the tenant's share.

(5) Condition C: the lease allows for the tenant's share in the demised premises to reach 100%.

(6) Condition D: if and when the tenant's share in the demised premises is 100%, the tenancy provides that the terms of the lease which make the lease a shared ownership lease cease to have effect, without the payment of any further consideration.

(7) In this section 'demised premises' means the premises demised under the shared ownership lease."

(3) In section 38(1) (interpretation of Chapter 1 of Part 1), after the definition of "conveyance" insert—

'"excluded shared ownership lease" has the meaning given in section 5A;'.

*Tenant under shared ownership lease to have right to new lease*

5K In section 39(3)(a) (definition of qualifying tenant: application of section 5), after 'subsections' insert '(2)(d),'.

*Consequential amendment*

5L In section 77(2)(b) (qualifying tenants for audit rights), for 'that section' substitute 'section 101'.

*Collective enfranchisement: mandatory leaseback*

5M In Schedule 9 to the LRHUDA 1993 (grant of leases back to the former freeholder),

after paragraph 3 insert—

*'Flats etc let under shared ownership leases*

3A (1) This paragraph applies where immediately before the appropriate time—

(a) any flat falling within sub-paragraph (2) is let under an excluded shared ownership lease (and accordingly the tenant is not a qualifying tenant of the flat), and

(b) the landlord under the lease is the freeholder.

(2) A flat falls within this sub-paragraph if—

(a) the freehold of the whole of it is owned by the same person, and

(b) it is contained in the specified premises.

(3) Where this paragraph applies, the nominee purchaser shall grant to the freeholder (that is to say, the landlord under the shared ownership lease) a lease of the flat in accordance with section 36 and paragraph 4 below.

(4) In this paragraph any reference to a flat includes a reference to a unit (other than a flat) which is used as a dwelling.'

*Inclusion of terms for sharing staircasing payments*

5N In Schedule 11 (procedure where competent landlord is not tenant's immediate landlord), after paragraph 10 insert—

'10A(1) This paragraph applies if—

(a) at the relevant date—

(i) the existing lease is a shared ownership lease (the "original shared ownership lease"), and

(ii) the tenant's share of the dwelling is less than 100%, and

(b) the landlord who grants the new tenancy (the "new shared ownership lease") is not the immediate landlord under the original shared ownership lease.

(2) At any time after the grant of the new shared ownership lease—

(a) the immediate landlord under the new shared ownership lease, or

(b) the landlord under any relevant intermediate lease,

may apply to the appropriate tribunal for an order making provision to secure that each relevant intermediate lease is varied to include (if or to the extent that it does not already do so) a payment sharing term.

(3) A "payment sharing term" is a term under which staircasing payments are to be shared between—

(a) the immediate landlord under the new shared ownership lease, and

(b) each landlord under a relevant intermediate lease,

in a way which fairly and reasonably reflects staircasing losses that are incurred after the variation of the lease to include this term.

(4) An order under this paragraph may include—

(a) an order relating to a relevant intermediate lease not specified in the application;

(b) an order appointing a person who is not party to a relevant intermediate lease to execute a variation of the lease.

(5) A lease is a "relevant intermediate lease" if—

(a) the lease demises some or all of the shared ownership premises, and

(b) the lease is intermediate between—

(i) the new shared ownership lease, and

(ii) the interest of the landlord who granted the new shared ownership lease.

(6) In this paragraph—

"shared ownership premises" means the premises demised by the new shared ownership lease;

"staircasing loss", in relation to a staircasing payment, means the loss that a landlord incurs because of the increase in the tenant's share in the shared ownership premises to which the staircasing payment relates;

"staircasing payment" means a payment made by the tenant under the new shared ownership lease to their immediate landlord in consideration of an increase in the tenant's share in the shared ownership premises.'

*Meaning of "shared ownership lease"*

5P (1) In section 101(1) (general interpretation of Part 1)—

(a) after the definition of 'interest' insert—

'"landlord's interest" in relation to a shared ownership lease, means the share in the premises demised by the lease which is not comprised in the tenant's share;'

(b) after the entry relating to 'lease' and 'tenancy' insert—

'"shared ownership lease" means a lease of premises—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the premises or of the cost of providing them, or

(b) under which the tenant (or the tenant's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the premises;

"tenant's share", in relation to a shared ownership lease, means the tenant's initial share in the premises demised by the lease, plus any additional share or shares in those demised premises which the tenant has acquired;'.—*(Lee Rowley.)*

*This adds provision about the treatment of shared ownership leases under the LRA 1967 and LRHUDA 1993.*

*Schedule 6 agreed to.*

## Clause 20

LRA 1967: PRESERVATION OF EXISTING LAW FOR CERTAIN ENFRANCHISEMENTS

*Question proposed,* That the clause stand part of the Bill.

**Lee Rowley:** Clause 20 preserves the right of leaseholders to acquire the freehold of a house using the Leasehold Reform Act 1967 as it existed prior to amendment by the Bill. This will be applicable only where the property

*[Lee Rowley]*

would be valued using the valuation basis for calculating premiums under section 9(1) of the unamended 1967 Act. Claims made under the section 9(1) valuation basis will remain as a separate freehold acquisition right, independent of the new reforms. Leaseholders who do not qualify for a section 9(1) claim will still benefit from our wider reforms, which will make it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold. I commend the clause to the Committee.

*Question put and agreed to.*

*Clause 20 accordingly ordered to stand part of the Bill.*

### Clause 21

Right to vary long lease to replace rent with peppercorn rent

**Lee Rowley:** I beg to move amendment 44, in clause 21, page 38, line 16, leave out

"a peppercorn rent is payable"

and substitute

"the whole or part of the rent payable becomes and will remain a peppercorn rent".

*This amendment corresponds to the change to paragraph 1(1) of Schedule 7 which would be made by Amendment 75.*

**The Chair:** With this it will be convenient to discuss the following:

Government amendment 75.

Clause stand part.

**Lee Rowley:** The ground rent buy-out right was recommended by the Law Commission and enables leaseholders to buy out their ground rent without extending their lease. As the buy-out is subject to the 0.1% freehold value cap, with some exceptions, the right will be especially useful for leaseholders with high or escalating rents. The right is introduced by clause 21, which introduces schedule 7, where the right is detailed. Ground rent buy-out claims can be brought by the leaseholder serving a rent variation notice on the landlord for the lease to be varied on payment of a premium, so that the rent payable is a peppercorn. The ground rent buy-out amendments, which stand in my name, mostly simplify and clarify the provisions in schedule 7.

Amendments 44 and 75 concern the nature of, and right to, a ground rent buy-out. Amendment 44 would amend clause 21, and amendment 75 would make a similar amendment to the first paragraph of schedule 7. Both have the intention of better describing the nature of the right, and I commend the amendments to the Committee.

I turn now to clause 21 itself. As I have explained, leaseholders with very long remaining leases may want to buy out their ground rent without having to extend their lease. For some leaseholders, adding further years to an already long lease might be considered unnecessary or involve additional costs. The buy-out will be useful to those leaseholders with high or escalating ground rents who find themselves in difficulty when trying to sell or remortgage their property. There is currently no statutory right for buying out ground rent without extending a lease, and a voluntary buy-out, if it could be negotiated, would not benefit from the cap. A new right for leaseholders to buy out their ground rent is therefore necessary.

Clause 21 brings schedule 7 into effect. Schedule 7 makes provision for a new right to buy out the ground rent under a lease with a remaining term of 150 years or more. As we discussed this morning, 150 years was chosen as the threshold for this right so that the term remaining is long enough for the leaseholder to be unlikely to want to extend the lease. A lower minimum term would create a risk that poorly advised leaseholders might buy out the ground rent when an extension is in their interest, only to find that they need to extend later and have to pay for two sets of transaction costs.

On the payment of a premium to the landlord, the lease is varied so that the future ground rent payable is a peppercorn. The buy-out premium is subject to a 0.1% freehold value cap, so any future ground rent payable that exceeds 0.1% of the freehold value of the property is treated in the calculation of the premium as if it is only 0.1% of the freehold value. This ensures that high or escalating ground rents, such as those that were articulated in the Committee's discussions last week, do not make the premium unaffordable for leaseholders. As such, the ground rent buy-out right will be especially useful for leaseholders with long terms remaining who have high or escalating ground rents. I commend the clause to the Committee.

**Matthew Pennycook:** For the purposes of anyone following our proceedings, there are several issues that we wish to raise in relation to clause 21 and schedule 7, but we will do so when we come specifically to debate schedule 7, which, as the Minister said, is where the right is detailed.

**Rachel Maclean:** If it is the case that I can speak to schedule 7 at a later time, I will defer my comments till then.

**Lee Rowley:** I look forward to hearing colleagues' comments in due course.

*Amendment 44 agreed to.*

*Clause 21, as amended, ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned.—*(Mr Mohindra.)*

4.40 pm

*Adjourned till Thursday 25 January at half-past Eleven o'clock.*

## Written evidence reported to the House

LFRB47 Just Group

LFRB48 Bowlwonder Ltd

LFRB49 Residential Freehold Association

LFRB50 PDC Law

LFRB51 Stephen Desmond

LFRB52 Alan Mattey Group

LFRB53 Professor Nick Hopkins, Commissioner for Property, Family and Trust Law, The Law Commission (supplementary)

LFRB54 Church Commissioners for England

LFRB55 CMS Cameron McKenna Nabarro Olswang LLP

LFRB56 Timothy Martin BSc (Hons) MRICS & RICS Registered Valuer on behalf of Marr-Johnson & Stevens LLP, Chartered Surveyors