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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Fifth Sitting

Tuesday 23 January 2024

(Morning)

CONTENTS

Clauses 1 to 4 agreed to.
Schedule 1 agreed to, with amendments.
Clauses 5 to 8 agreed to.
Adjourned till this day at Two o'clock.

PBC (Bill 13) 2023 - 2024

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

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

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

9.25 am

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch electronic devices to silent. No food or drink is permitted during sittings of the Committee, except for the water provided. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk or, alternatively, pass their written speaking notes to the *Hansard* colleague in the room.

We will now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room and shows how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or similar issue. Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates. Decisions on new clauses will be taken once we have completed consideration of the Bill's existing clauses. Members wishing to press a grouped amendment or new clause to a Division should indicate when speaking to it that they wish to do so.

Clause 1

Removal of qualifying period before enfranchisement and extension claims

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

The Minister for Housing, Planning and Building Safety (Lee Rowley): It is a pleasure to serve under your chairmanship, Mr Efford. Today, we begin our line-by-line consideration. I first want to note and put on record my thanks to all the witnesses who gave evidence to the Committee last week. It was hugely useful to hear their insights, which will improve the Bill over the coming days and weeks ahead.

I am delighted to bring the Bill to Committee, and I look forward to the debate that will follow. Before we proceed, I quickly draw the Committee's attention to a minor issue regarding the Bill's explanatory notes. Paragraph 18 refers incorrectly to the right

"for an intermediate landlord to reduce ('commute') the rents that they pay"

following statutory lease extensions and ground rent buy-out claims. That is a drafting error as the clauses were not in the Bill when introduced. I have since tabled an amendment to introduce those clauses on intermediate leases, which we will debate shortly. I apologise for that minor drafting error and reassure the Committee that the explanatory notes will be updated to reflect the latest clauses before the Bill enters the other place.

I also want to make a small point in relation to legal language that I will use throughout the session. In existing legislation, leaseholders are referred to as "tenants", which legally, they are. In everyday language, however, we often use the term "leaseholders" to differentiate long leaseholders from tenants holding shorter tenancies or those with less security of tenure. For simplicity, I will use the term "leaseholders". Likewise, I will use the term "landlord" to mean both landlords and freeholders. In many cases, the landlord will be the freeholder, although that is not always the case. Where the provisions concern freeholders, I will use that term rather than "landlord".

I now turn to part 1, which deals with leasehold enfranchisement and lease extension. When people buy a leasehold property, they will want to ensure that they have the long-term security and control they need to make it a home. They may have a short lease and wish to extend it, or they may have concerns about their landlord and wish to buy them out to have full ownership and control of that home.

The current requirement, where a homebuyer has to wait for two years before they can extend their lease or buy their freehold, is an obstacle for leaseholders and results in higher costs, as the price for enfranchising increases year on year. Furthermore, many investors take advantage of a loophole to avoid that requirement, while ordinary homeowners, who may be less familiar with the process, can find themselves in difficulties. There are also inconsistencies in the current law where, in certain circumstances, people can rely on a previous owner's period of ownership to satisfy the requirement whereas others are unable to do so.

Clause 1 seeks to remove that barrier to leaseholders who wish to exercise their enfranchisement rights. It removes the requirement to have owned the lease of a house for at least two years before qualifying to buy their freehold or extend their lease. It also removes the requirement to own the lease of a flat for two years before extending the lease. This gives leaseholders the flexibility to make a claim immediately upon buying a leasehold property, and it will reduce their costs. It also resolves inconsistencies in the current law. The measures will remove an unnecessary restriction for leaseholders. I commend the clause to the Committee.

Matthew Pennycook (Greenwich and Woolwich) (Lab): I thank the Minister for his explanation of clause 1. I add the Opposition's thanks to the witnesses who gave evidence to us last week. It was extremely useful. Before I begin, I would like to declare an interest. My wife is joint chief executive of the Law Commission, whose work we will be debating extensively in the days to come.

It is a pleasure to start line-by-line consideration with you in the Chair, Mr Efford. It is a genuine privilege to serve on a Public Bill Committee comprised of hon. Members who have not only a real interest in the subject matter, but real expertise. It is my sincere wish that we draw on all of it in the days ahead to improve this legislation and, as much as the Government Whip may discourage it, that hon. Members on the Government Benches, including the hon. Members for Walsall North and for Redditch, as former Housing Ministers, take the opportunity to participate actively in our deliberations.

Having not had a suitable chance to put it on the record, I would like to take this opportunity to formally welcome the hon. Member for North East Derbyshire back to his place. He and I disagree politically, often viscerally, when it comes to many, many issues, but he is a hard-working, diligent and thoughtful Minister. I look forward to the robust and, on the whole, constructive debates we will have over the coming sessions.

Before I turn to the detail of clause 1, I want to put some brief general remarks on the record to frame what is to follow. As we made clear on Second Reading, we are fully in support of the principle of the Bill and the intent behind its provisions. The range of measures that the Committee will consider will, without question, provide a degree of relief to leasehold and freehold homeowners in England and Wales, by giving them greater rights, powers and protections over their homes. That is obviously to be welcomed. However, during Second Reading we also expressed our deep regret about the Bill's lack of ambition and bemoaned the implications for leaseholders, who are being routinely gouged by freeholders under the present flawed system.

I want to be as clear as I possibly can with leaseholders who may be following our proceedings as to the Opposition's approach to the Committee stage. While we welcome in principle the provisions contained in the Bill, we do have concerns about the efficacy of several of them, including clause 1. As such, we will seek to probe and rectify their various defects and deficiencies so as to ensure that they truly deliver for leaseholders. We will also engage constructively with the Government in relation to any significant new measures introduced into the Bill, not least the glaring omission of provisions designed to ban the sale of new build leasehold houses. We will introduce a number of specific targeted measures designed to give leaseholders a little more control over their future and strengthen the foundations on which future, bolder reform will be enacted.

What we do not intend to do is attempt to persuade the Government of the benefits of using this Bill to enact all, or even significantly more, of the hundreds of Law Commission recommendations on enfranchisement, right to manage and commonhold, which the Government have chosen not to include in this Bill. The Government had the opportunity to bring forward ambitious legislation and enact all the Law Commission's recommendations from its three reports in 2020, thereby delivering on the promises that successive Ministers have made to leaseholders over the past years. They have made the political choice not to do so. Attempting to radically overhaul this piece of legislation by means of hundreds of amendments required to implement all those recommendations would not only be an onerous, perhaps impossible, undertaking, given its limited nature, but would delay the Bill's passage and, with a general election in the months ahead still a distinct possibility, put it at risk entirely.

We want leaseholders to benefit from the measures in the Bill as soon as possible. We therefore wish to see it, albeit suitably strengthened, out of Committee as quickly as possible to maximise its chances of receiving Royal Assent. Make no mistake, Labour is committed to bringing the current iniquitous leasehold system to an end, overhauling it to the lasting benefit of leaseholders and reinvigorating commonhold to such an extent that it will ultimately become the default and render leasehold obsolete. Leaseholders across the country therefore have our firm commitment to finish the job in due course.

Turning to clause 1 and the rest of part 1, one of the reasons that the Bill can reasonably expect a speedy passage out of Committee is that parts 1 and 2, together with related schedules, implement a subset of Law Commission recommendations that are almost entirely uncontentious. Part 1 of the Bill, as the Minister has said, concerns leasehold enfranchisement and extension.

As I have said, the clauses in this part implement some but not all of the Law Commission's recommendations designed to make it cheaper and easier for leaseholders in houses and flats to extend their lease or acquire their freehold. They include procedural changes as well as substantive ones that extend tenant rights and empower leaseholders by giving them greater control and value. There is in that respect, and as we touched on during the evidence sessions last week, an explicit and very welcome redistributive intent that underpins the legislation.

As the Law Commission exhaustively detailed in its final 2020 report on leasehold enfranchisement, the case for reforming the present enfranchisement regime is incontrovertible. It is not only incredibly complex but inconsistent. As a result, leaseholders face unnecessary litigation, uncertainty and costs when attempting to exercise their rights under it. The law in this area needs to be overhauled and we therefore welcome the objective that underpins each of the provisions in this part.

We wish to probe the Government further on various issues relating to the precise drafting of those provisions, as well as seeking to address the flaws of a limited number. As the Minister made clear, clause 1 removes the two-year qualifying period before enfranchisement and extension claims can proceed in respect of both houses and flats by amending the relevant sections of the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993, which I will hereafter refer to simply as the 1967 and 1993 Acts.

Clause 1 implements recommendation 29 from the Law Commission's final 2020 report on leasehold enfranchisement. We welcome the clause. A core objective of the Bill is to increase access to enfranchisement by rendering more leaseholders eligible for such rights. By liberalising this and other qualifying criteria, we are confident it will achieve that objective.

As the Committee is no doubt aware, the current two-year ownership requirement was designed primarily to prevent investors benefiting from enfranchisement rights intended for residential leaseholders. Yet it is patently not achieving that objective given the relatively simple workarounds that sophisticated commercial investors can and do take advantage of. Indeed, the requirement can fairly be said to have created a market designed explicitly to facilitate their doing so—a development entirely at odds with the rationale for the two-year ownership requirement. At the same time, that requirement presents a significant barrier to ordinary leaseholders exercising enfranchisement rights and, importantly, leads to rising premiums for many of them as a result of waiting for two years in which capital values may have increased or lease lengths reduced.

Abolishing the requirement for leaseholders to have owned premises for two years prior to exercising enfranchisement rights, so that they have the right to carry out an enfranchisement claim as soon as they acquire their lease, is an entirely sensible reform. It would also resolve the current inconsistency between the position

[Matthew Pennycook]

of trustees in bankruptcy and of personal representatives, and avoid the technical, costly and error-prone workarounds that have been created involving the assignment of a benefit of notice.

Although the clause is entirely uncontentious from our perspective, I do have one question for the Minister: why have the Government chosen to include subsection (2)(c) and, consequential on that reform, subsection (3) in this clause? Subsection (3A) of section 39 of the 1993 Act concerning what happens in the event of the death of a qualifying tenant clearly needs to be overhauled to account for the removal of the two-year qualifying period, but surely the Government wish to ensure that the right of a tenant's personal representative to exercise enfranchisement rights on their behalf in the event of their death is sustained? Will the Minister confirm whether I am right in believing that that is the Government's wish?

If so, given that the right would not appear to be sustained as a result of the drafting of clause 1, is it maintained by means of other provisions in the Bill? If not, surely the Government must accept that the decision to simply omit the relevant subsection (3A) needs to be reconsidered to ensure that the right is maintained in future? The omission may affect only a small number of leaseholders going forward, but it is important that we ensure their personal representatives are conferred the rights that they would have enjoyed had they lived. I look forward to the Minister's response.

Lee Rowley: First, let me echo the remarks of the hon. Member for Greenwich and Woolwich. He said some kind words about me and I would like to say the same about him. He has always been extremely constructive and helpful. We share the aim of trying to improve the legislation and I am grateful to be working with him. I hope we can work in many areas and agree more than we disagree. He was right when he said that this is incredibly complicated. Having tried for the past two months to get into all the details, there may still be areas where I am unable to answer all the questions from hon. and right hon. Members today. I will do my best, but I will write to them if I am unable to answer anything.

I am grateful to the hon. Gentleman for confirming that Labour will support this clause. On his specific point around where leaseholders have sadly passed away and there is a requirement for a personal representative or equivalent, it is not our intention to make that process any more difficult or to change the fundamental ability of people to make decisions about how to dispose or deal with properties that are left in the event of a death. Having spoken to officials and those involved in the drafting of this, my understanding is that the exemptions referred to in subsections (2)(c) and (3) become effectively moot. The removal of the two-year rule preventing a representative from taking action means that at the point they inherit the property—or whatever legal approach is taken to transfer it the estate to a new owner or representative—the problem goes away.

If, for some reason, we have missed something, I would be very happy to take anything from the hon. Member for Greenwich and Woolwich or others, either now or in writing, which I can go away and look at. Our understanding is that this does not need to continue, hence why we have chosen to remove it within the clause.

Matthew Pennycook: I welcome that clarification from the Minister and his indication that it is the Government's firm intent to ensure that personal representatives can exercise enfranchisement rights on behalf of a leaseholder who has died, because of the removal of the two-year rule. I urge the Minister or his officials to look at the precise wording of this clause, because we are worried that—his comments notwithstanding—it may not do this in practice, and there may be some ambiguity. I do, however, welcome the assurance he has given. On that basis, we will not oppose this clause standing part of the Bill.

Lee Rowley: To confirm, I am happy to double-check this, but I hope what I have just indicated stands.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Removal of restrictions on repeated enfranchisement and extension claims

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

Lee Rowley: Currently, the restrictions placed on leaseholders to make a claim to buy their freehold or extend their lease can be seen as excessively punitive. Leaseholders are prevented from making a claim to buy their freehold or extend their lease for 12 months, when a previous claim has failed even on a minor point. In addition, a claim for a lease extension on a house can be obtained only once, and we seek to remove those unnecessary barriers for leaseholders, which frustrate their ability to buy their freehold or extend their lease.

Clause 2 seeks to address this problem by removing the requirement to wait 12 months to submit a new claim if the previous one has failed. It will also remove the restriction on bringing a further claim where a lease extension has already been obtained for a house. This means that leaseholders will be able to put in a further claim to enfranchise or extend their lease as soon as they have resolved the issues with their failed claim. Leaseholders of houses will not be prevented from making a claim for a lease extension if one has already been obtained, preventing the landlord from being able to regain possession of the property from a leaseholder when the lease eventually comes to an end.

Clause 2 will also remove provisions that give courts powers to prevent new enfranchisement or lease extension claims for five years where a claim has failed, and the leaseholder did not act in good faith or attempted to misrepresent or conceal material facts. These powers are old and surplus to requirements, coming from the 1967 Act, which has been overtaken by developments in the law around civil restraint orders since then. These restraint orders are more flexible, better developed, subject to more rigorous checks, and may be fairer than the existing power. Therefore, the existing law and the Bill can still deal with meritless of abusive enfranchisement claims. The tribunal already has powers to award costs for such unreasonable behaviour. The removal of these

should not change that; it is simply a tidying-up exercise, and a recognition that other parts of the law do this better. These measures will remove barriers to leaseholders being able to take up their right to enfranchise or extend their lease without unnecessary delays.

Matthew Pennycook: I welcome that explanation of the clause, which, as the Minister says, removes various restrictions on repeated enfranchisement and extension claims. It is our understanding that they include the provisions in the 1967 Act and the 1993 Act that prevent tenants from starting new enfranchisement or lease-extension claims within 12 months of an earlier claim failing to complete; the provisions of the 1967 Act that give courts the power to order compensation and prevent new enfranchisement or lease extension claims for five years after a claim has failed; and the provisions of the 1967 Act that prevent tenants from bringing a further lease extension claim where a lease extension has already been obtained under the Act.

9.45 am

We welcome the clause, which enacts part of the Law Commission's first recommendation from its final report on leasehold enfranchisement. In our view, the existing restrictions on leaseholders making fresh enfranchisement or extension claims where an earlier claim in respect of the same premises has been withdrawn or struck out, or has otherwise failed, are not justified. On payment of an appropriate premium, leaseholders should, in principle, be entitled to obtain a new, extended lease as often as they wish and should be allowed to make repeat good-faith enfranchisement claims.

I have two questions for the Minister, both of which relate to bad-faith claims. First, page 13 of the explanatory notes accompanying the Bill makes it clear that subsections (1)(c) and (d) remove restrictions on new claims within five years where a tenant has not acted in good faith or has attempted to misrepresent or conceal material facts. For the record, I would be grateful if the Minister could clarify precisely how those subsections remove restrictions on tenants within the said circumstances, because it is not entirely clear to us from reading the clause. I would also be grateful if the Minister could clarify why the Government believe it is appropriate to remove restrictions on repeat claims where a leaseholder has acted in bad faith. Is it the case, as I suspect, that the provisions in the 1967 Act that restrict repeat claims on those grounds have rarely, if ever, been used? In effect, are the Government just tidying up the statute book in respect of the relevant historical provisions?

Secondly, the Minister will know that the Law Commission proposed that freeholders should have the right to apply to the tribunal for an enfranchisement restraint order, with the purpose of preventing leaseholders from making repeat claims that are entirely without merit or that are, either of themselves or when considered together, frivolous, vexatious or otherwise an abuse of process. The Minister gave an indication in his opening remarks that the Government's view is that the necessary order powers are already there, but I would like him to explain why they did not believe it was appropriate to incorporate into the clause the Law Commission's recommendation to give freeholders the right to seek such an order from the tribunal. Do the Government believe that the likelihood of leaseholders making bad-faith claims of the kind that an ERO would allow the tribunal to prohibit is negligible? If so, what evidence is that belief based on? If the Government accept that some leaseholders may make repeat bad-faith claims, why do they believe there is no need to provide a mechanism by which such behaviour could be prevented? I look forward to the Minister's response.

Lee Rowley: I am grateful to the hon. Gentleman for his comments and, again, for indicating his support for the intent of clause 2. On his question with regard to subsections (1)(c) and (d), I will write to him, given that it is a technical question about the specific description in the legislation. Hopefully, I will be able to provide the comfort he seeks.

As he indicated later in his remarks, we believe there is the ability for vexatious claimants, in whatever sense, to be accommodated by the existing legislation elsewhere, so there is no need to replicate that or to retain something that is very rarely used. That is the reason for removing it.

Finally, on his point about orders from a tribunal and the Law Commission's recommendation, it goes back to the fact that we believe the process that is in place is already mature and very capable of responding to the legitimate points he highlights. Therefore, there is no need to create an additional process in the Bill, but I will write to him to absolutely clarify that point and make sure that we have everything we need.

Matthew Pennycook: I welcome that clarification from the Minister and look forward to any further detail that he might provide to the Committee via written correspondence.

Rachel Maclean (Redditch) (Con): May I ask the Minister to confirm that clause 2(2) refers to schedule 7 to the Bill? In our evidence sessions last week, we heard from certain leaseholders who were concerned that they would not benefit from the provisions if their lease was less than a certain number of years. Paragraph 2(2)(a) of schedule 7 states that a lease will not qualify if

"the unexpired term of the lease is less than 150 years".

There was some debate about that length. Will the Minister address those leaseholders' concern that the period is too long and that there should not be that restriction? Or will he write to me later to address what considerations went into that provision? If we are excluding people from these welcome provisions, perhaps we should seek to otherwise widen the group of people who can benefit from having their leases converted to a peppercorn lease.

Lee Rowley: We will probably talk in detail about the 150-year decision—the Law Commission proposed 250 years—in relation to quite a number of areas later this morning, so I do not want to pre-empt that now. As I will explain later, the Government's intention was that, if a lease is coming up in a reasonably short period of time, it is advantageous to align everything together, as opposed to doing just one thing, because there will be the potential for double costs and the like. I am happy to talk about that more when we get further into line-by-line consideration.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

CHANGE OF NON-RESIDENTIAL LIMIT ON COLLECTIVE ENFRANCHISEMENT CLAIMS

Matthew Pennycook: I beg to move amendment 1, in clause 3, page 2, line 19, at end insert—

"(2) After section 4(5) of the LRHUDA 1993, insert—

'(6) The Secretary of State or the Welsh Ministers may by regulations amend this section to provide for a different description of premises falling within section 3(1) to which this Chapter does not apply.

(7) Regulations may not be made under subsection (6) unless a draft of the regulations has been laid before, and approved by resolution of—

(a) in the case of regulations made by the Secretary of State, both Houses of Parliament;

(b) in the case of regulations made by the Welsh Ministers, Senedd Cymru.'

(3) In section 100 of the LRHUDA 1993—

(a) in subsection (2), after 'making', insert 'provision under section 4(6) or';

(b) in subsection (3), after 'making', insert 'provision under section 4(6) or'."

This amendment would enable the Secretary of State or (in the case of Wales) the Welsh Ministers to change the description of premises which are excluded from collective enfranchisement rights. Such a change would be subject to the affirmative resolution procedure.

The Chair: With this it will be convenient to discuss clause stand part.

Matthew Pennycook: Clause 3 makes changes to the non-residential limit for collective enfranchisement claims. At present, section 4(1) of the 1993 Act excludes from the right to enfranchise buildings in which 25% or more of the internal floor area, excluding common parts, can be occupied or are intended to be occupied for non-residential use. The clause increases the non-residential use percentage to 50%.

We welcome the change, which enacts recommendation 38 of the Law Commission's final report on leasehold enfranchisement and was suggested by, among others, the National Leasehold Campaign. The purpose of the non-residential limit is to confine enfranchisement to predominantly residential blocks, but as the Law Commission determined, the existing 25% limit

"does not achieve that purpose."

There is a significant amount of evidence that it instead regularly prevents leaseholders from undertaking collective freehold acquisitions because a sizeable proportion of buildings fall slightly above it. As the Law Commission's final report puts it,

"the 25% limit provides a significant bar to the ability of leaseholders to undertake a collective freehold acquisition".

The Law Commission further argued that

"the arbitrary nature of the limit makes the bar to enfranchisement a source of considerable frustration for many leaseholders."

Deciding where to draw the line in respect of the level of non-residential use permitted in a building before collective enfranchisement rights cease to be available is inherently difficult. There will always be outlying cases that approach or go beyond an increased limit. However, given that one of the explicit purposes of the Bill is to bring as many leaseholders as possible within the enfranchisement regime and, in respect of the non-residential limit, specifically to prevent developers building around it in order to exclude blocks of flats from enfranchisement rights, an incremental increase to 30%, 35% or even 40% does not, instinctively, feel sufficient.

The issue is inherently subjective, and the Law Commission recognised as much, but if enfranchisement rights should be enjoyed by buildings that are primarily residential in nature, a 50% threshold feels appropriate and fair, because it would ensure that the predominant form of ownership in such buildings remains residential. A 50% non-residential limit is likely to mean that the number of genuine cases that are excluded by it will be small, and it will inevitably reduce gaming by developers, because to exceed the 50% limit a building will have to be genuinely commercial in nature. At least, that is the hope.

We very much hope the clause serves to significantly boost enfranchisement rates and in due course to assist more leaseholders of mixed-use buildings to convert to commonhold. However, our reservation about the clause as drafted is that it provides no flexibility to further amend the non-residential limit. We believe it would be sensible to build in a degree of flexibility so that any future changes to the limit for collective enfranchisement rights do not require primary legislation but can instead be enacted through regulations.

One can imagine a number of scenarios that might lead to the effectiveness or reasonableness of the Government's proposed 50% limit, which the Law Commission accepts is inescapably arbitrary, coming into question. For example, we might find in the years following its implementation that it does not manage to encompass a small but still unacceptable number of leaseholders in buildings that fall slightly above it, and we may wish to quickly take steps to allow them to exercise collective enfranchisement rights. Alternatively, a future Government may decide that they wish to use a criterion other than internal floor area to determine eligibility for such rights—for example, the percentage of the service charge paid by leaseholders. It is our understanding that, in both scenarios, new primary legislation would be required to make changes to the non-residential limit, either to increase the percentage of the internal floor area that can be occupied, or which is intended to be occupied, for non-residential use, or to entirely change the criteria upon which the limit is based. We therefore believe it would be preferable to give the Secretary of State the power, by means of regulations subject to the affirmative procedure, to vary the limit to account for changing circumstances. Amendment 1 would do so.

The amendment would amend clause 3, which itself amends section 4 of the 1993 Act by inserting new subsections into it. It would allow the Secretary of State to amend the whole of section 4 of the 1993 Act in any way they see fit to create a different description of a non-qualifying property. In short, it would hardwire flexibility in respect of the non-residential limit for collective enfranchisement claims into the Bill. We believe it is a sensible and reasonable amendment, and I hope the Minister agrees and makes it clear that the Government are happy to accept it. One lives in hope—I have done more of these Committees than I care to admit, so I know that even if I am right the Minister will not accept the amendment and will bring back a proposal at a later stage, but I hope he accepts the principle.

Before I conclude, I want to raise a separate but related matter to the non-residential limit that this clause makes changes to: how we define a building for the purposes of freehold acquisitions and right to manage claims, which we will debate in due course, and specifically whether buildings need to be structurally detached, with parts vertically divided, in order to be eligible for such rights. As hon. Members will recall, concerns about structural detachment and shared services were raised by several witnesses who gave evidence to the Committee last week. The fear that they highlighted was that the existing rules around structural dependency, particularly for buildings with extensive levels of overhang, such as those that arise when multiple blocks of flats are built over a shared car park, would frustrate many legitimate enfranchisement claims otherwise made possible by clause 3 and other provisions in the Bill that liberalise qualifying criteria and remove obstacles to enfranchisement.

The counter argument would be that rules around structural detachment and their applicability to the non-residential limit are necessary to avoid the creation of so-called flying freeholds and the block management problems that arise in such cases, and that such buildings are eligible for enfranchisement by a single claim if the tenants of the various blocks proceed together. The Law Commission appear to have agreed. It recommended retaining the existing test but making a small tweak that would allow minor deviations from the strict vertical division otherwise required for a part of a building to be separately enfranchisable. Notwithstanding the Law Commission's reasoning, we believe it is important to properly consider whether the structural detachment rules will limit the opportunities for leaseholders to enfranchise using the liberalised qualifying criteria that clause 3 provides for.

Our amendment does not directly probe that issue because it is concerned with providing future flexibility in respect of legal title rather than physical building exclusions, but it is important that this Committee considers the impact of structural detachment rules as they currently operate, and the extent to which they may frustrate the Bill's objective to expand access to enfranchisement. I would therefore be grateful if the Minister can tell us whether the Government have considered whether the rules on structural detachment may indeed frustrate leaseholders in that respect and whether they consider that a problem. If not, and they are convinced that there is good reason for the existing tests to remain in place, will the Minister tell us why they chose not to implement recommendation 33 of the Law Commission's final report on leasehold enfranchisement, which would have provided for a relaxation of the currently strict approach to the 1993 Act's vertical division condition? I look forward to the Minister's response.

10 am

Barry Gardiner (Brent North) (Lab): I rise to support amendment 1. My hon. Friend the Member for Greenwich and Woolwich made an excellent speech in favour of it, and he is right to distinguish between this clause, dealing with enfranchisement, and later clauses on which we will look at the issues from the point of view of right to manage. Given the amount of reference to the Secretary of State in the Bill and that so much is left to him to decide afterwards, it is reasonable to ask the Minister why that has not been applied to this clause—otherwise, it looks as if the Government have considered the matter and ruled out any change in this area, which, as my hon. Friend suggests, is reasonable.

Mike Amesbury (Weaver Vale) (Lab): I, too, rise to support this very generous amendment from my hon. Friend the shadow Minister. It is pragmatic, and it would power up the Secretary of State, whoever that might be, to ensure that leaseholders are able to take control in hopefully larger numbers through extended enfranchisement. I hope the Minister will give the amendment very strong consideration.

Rachel Maclean: May I throw the general issue of collective enfranchisement into the mix? The Minister may wish to come back on it at a later point if it suits him better. Many people in this situation have raised with me the sheer practicalities and difficulties of doing a collective enfranchisement. When people live in a huge block of flats with vast numbers of flats, they do not necessarily know who the other people are and certainly do not have their contact details. That, in and of itself, presents a barrier and an obstacle for some of these claims. We have heard evidence from groups affected by this situation—most notably the Free Leaseholders group, but there are many others—who have made this point repeatedly.

Matthew Pennycook: The hon. Member raises a very pertinent issue. Is she minded to support our new clauses 30 and 31, which deal precisely with it?

Rachel Maclean: The hon. Gentleman is a very persuasive orator in this Committee, as he is in many other fora, and I will definitely listen to those arguments when they are made. We all work in the spirit of improving this Bill. I very much hope that the Government will provide the explanations I have asked for, and specifically on this issue at this point.

Lee Rowley: I thank hon. Members and Friends for their contributions. I will take them in turn. On the amendment, I find myself in the slightly unusual place of arguing against a Henry VIII power, as they are occasionally called and as he referred to them. As indicated, there are a number of Henry VIII powers in the Bill, and I am sure that people will have views on them when we get to them. Our colleagues in the other place often have very strong views on such powers. It is an unusual place to be, but I happily take it up.

I absolutely understand the point that hon. Members have made and the reality of what they are trying to articulate. The fact that we are making a change indicates that there are times when it is proportionate and reasonable to make changes. The reason for the Government's not taking powers in secondary legislation—which I know, joking aside, that hon. Members would accept—is that there is a continuum for drawing or not drawing lines, and we think that this does not necessarily need to be on the line of taking powers in order to do things in secondary legislation, simply because this is a substantial change. It is being actively debated; Members are debating whether it is sufficient and, as my hon. Friend the Member for Redditch asked, precisely how it will work to improve the situation in practice. I think the Government's preference is to keep that discussion in

[Lee Rowley]

primary legislation. We recognise that primary legislation is always more challenging in terms of timelines and space in this place, but it is a sufficiently important change that it should be able to be debated in the way we are doing today.

Eddie Hughes (Walsall North) (Con): I understand that it is appropriate to future-proof legislation and allow for flexibility, but I agree with the Minister that a substantial change has already been made. Proportionately, we are talking about the number of buildings that have already been constructed, and therefore the people that we are helping. I fully appreciate that the shadow Minister is concerned about future developers gaming the system, but in terms of proportion, it is important that we focus our efforts on the buildings that have been built.

Lee Rowley: I am grateful to my hon. Friend for highlighting that. The shadow Minister expressed hope that the Government would agree with some of his amendments at some point. I am afraid that I will have to dash his hope on this one. We understand its purpose, but on the basis that I have articulated, we would prefer to keep this in primary legislation. I hope that the shadow Minister might consider withdrawing the amendment.

On clause 3, as it stands, we have been clear that we want to improve access to collective enfranchisement so that more leaseholders of flats can enjoy the benefit of freehold ownership. Many leaseholders in mixed-use but predominantly residential buildings are currently prevented from buying their freehold, as hon. Members have indicated. Clause 3 amends the 1993 Act to increase that limit from 25% to 50%. This has been consulted on widely and was recommended by the Law Commission. Where residential leaseholders take up the majority of the floor space in a building, it is our view that they should be able to access the long-term security and control that comes with freehold ownership, if they choose to do so.

We recognise that this change impacts freeholders. If the leaseholders choose to buy their freehold, the freeholder stands to lose ownership of individual buildings, and that may fragment ownership of some areas over a longer timeframe. We believe that impact to be justified not only because of the significant benefit to leaseholders but because freeholders will be compensated for that loss. We do not believe, as a principle, that the single contiguous ownership of space is absolutely necessary for buildings to be managed well.

We have also heard arguments from leaseholders that they will be unable to professionally manage mixed-use buildings. Although I understand their point, through, for example, the delegation of a building's management to an agent, that should be overcome. I accept the points made and understand the shadow Minister's point on the difficulty of ensuring that leaseholders can be engaged to the point where they pass the threshold, whatever the number—and all numbers are ultimately arbitrary. As he has indicated, I think the Committee will return to this, but we think the clause, as it stands, is the right approach. Therefore, we resist the amendment and hope that the shadow Minister will withdraw it.

Matthew Pennycook: First, on the Minister's response, I am slightly reassured but not wholly convinced. I would like the opportunity to go away, look carefully at his remarks and consider whether we need to come back to this, and I reserve that right, Mr Efford.

On amendment 1, I am frankly not convinced by the arguments made by the Minister and the hon. Member for Walsall North. We well understand the concerns that they have both drawn attention to. As I have said, it is an inherently subjective decision as to where that threshold is drawn. We also accept that, when it comes to existing buildings, the number of leaseholders who are potentially excluded will be small in number. But we want to avoid a situation where our constituents are coming to us in buildings with a 51% or 52% rate and saying, "We can't collectively enfranchise as you intended. We are frustrated by the powers in the Bill." On the basis of the Minister's argument, we will have to say to them, "You have to wait a good few years for another leasehold Bill—maybe many years based on the history of leasehold reform—for such a change to come forward." It is a continuum; this a substantial change, and we are trying to build some flexibility into that change.

Barry Gardiner: Does my hon. Friend agree that this will probably affect the little people a lot more than the big, because of the likelihood of achieving 50% commercial within a leasehold block? Many of our town and city centres have buildings with commercial below and very few flats above. Therefore, it is much more likely that it will be a group of people—yes, a small group—living in that situation, rather than in the Shard, coming to us complaining.

Matthew Pennycook: My hon. Friend makes a good point: it is not just the number but the type of leaseholder who we are potentially excluding. All we are saying, as I argued in great detail, is that Ministers should have flexibility to change, if there is sufficient evidence to suggest that large numbers are being excluded or—I refer to the gaming point—we see developers building with a 51% area just to escape the threshold. We do not propose that the 50% change; we think it is an appropriate and fair starting point, but surely the Government need some flexibility in this area.

I must say to the Minister that this is the first time I have heard a Government Minister say no to Henry VIII powers, but I am afraid that his argument for saying no to them was, from my point of view, entirely expedient and not particularly well justified. I urge the Government to think again. I am minded, purely because of the way in which the Minister has responded, to push the amendment to a vote. If the Government are flatly refusing to look at the issue, we must make clear that we feel strongly about it.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

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

NOES

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

Question accordingly negatived.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Eligibility for enfranchisement and extension: specific cases

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

Lee Rowley: Clause 4 introduces schedule 1, which repeals rights that enable landlords to block a lease extension or freehold acquisition claim for a house or flat where the landlord intends to redevelop or reoccupy the property. Where the blockers are used, compensation is only paid to leaseholders in houses, not those in flats. The blockers apply to a minority of leases that have not been extended and are very near to ending.

Although that means that, in practice, rights are rarely used, enfranchising leaseholders should have the opportunity to make their decisions about the need and scope of redevelopment once they own the freehold. Leaseholders with few years remaining on their lease should have the option of extending and securing their tenure. Where a lease is extended, landlords will continue to have statutory break rights that can terminate leases for redevelopment. We will consider break rights in schedule 6 and cover further details about the blockers when we come to consider schedule 1. I commend the clause to the Committee.

Matthew Pennycook: As the Minister has made clear, clause 4 concerns eligibility for enfranchisement and extension in specific cases. It gives effect to schedule 1, which repeals specific limitations on those rights under the 1967 and 1993 Acts. As the Minister has detailed, they include: the right of a landlord to defend a lease extension or collective enfranchisement claim on grounds of redevelopment; the right to defeat a freehold acquisition or lease extension claim for the purposes of retaking possession of the property for personal use; and the limitations that prevent a sublessee from claiming a lease extension if their sub-lease was granted by an intermediate leaseholder out of a lease that had been extended under the relevant Act.

We welcome the clause, which implements, although is not confined to, recommendation 98 of the Law Commission's final report on leasehold enfranchisement. When considering the case for reform in this area, the Law Commission made clear that its proposal could reduce the value of the leaseholder's lease as a result of the transfer of some enfranchisement rights from a leaseholder who has previously extended his or her lease pursuant to the legislation to the leaseholder to whom they had subsequently granted a sub-lease. However, the Law Commission ultimately determined that any such loss of value was overstated. Its reasoning was—assuming that I have understood the relevant technical arguments correctly—that there would be no difference in value between the sum that the intermediate leaseholders could expect to obtain if their lease was acquired in a collective freehold acquisition under the present law and the value of the intermediate leaseholder's interest in the light of its proposal.

10.15 am

This may not be an issue that the Government have deliberated on further in any way—it is extremely technical—but, if the Minister is able and if they did, will he tell us whether they are confident that clause 4 would not reduce the value of the leaseholder's lease as a result of the transfer of some of their enfranchisement rights in accordance with its provisions? In short, do the Government believe that the Law Commission was correct to assert that the potential for any such loss of value is overstated and that, therefore, we can approve clause 4 without any concern?

Lee Rowley: I am grateful to the hon. Gentleman for his contribution. As he indicates, this is—I think by common consent—a rare issue in the first place, not that that diminishes the importance of ensuring that we get it right. It is very complicated, as he has indicated; different leases will have different elements within them and it is impossible to comment on every single case or every single instance, as has been indicated, because of the complexity. I am not aware that there is an indication that there is a general reduction in the value of leases for the very small number that this will cover. I will write to the Committee if what I have just said is incorrect or needs clarification in any way. I hope that, on that basis, we can make progress.

Matthew Pennycook: I welcome that clarification from the Minister and the offer to provide us with further details should they be needed.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Schedule 1

ELIGIBILITY FOR ENFRANCHISEMENT AND EXTENSION: SPECIFIC CASES

Lee Rowley: I beg to move amendment 57, in schedule 1, page 82, line 16, at end insert—

"Exception to enfranchisement for certified community housing providers

3A (1) The LRA 1967 is amended as follows.

(2) In section 1 (tenants eligible for enfranchisement and extension), after subsection (1B) insert—

'(1C) This Part of this Act does not confer on a tenant a right to acquire the freehold of a house and premises if the landlord under the existing tenancy is a certified community housing provider (see section 4B).'

(3) After section 4A insert—

'4B Meaning of "certified community housing provider'

(1) For the purposes of this Part of this Act, a person is a "certified community housing provider" if the appropriate tribunal has issued a community housing certificate in respect of the person.

(2) A community housing certificate is a certificate that the tribunal has determined that the person—

(a) is a community land trust within the meaning of section 2(7A) of the Leasehold Reform (Ground Rent) Act 2022, or

(b) is of a description, or satisfies conditions, specified for this purpose in regulations made by the Secretary of State.

(3) The tribunal may issue a community housing certificate only in respect of a person that has made an application to the tribunal for the certificate.

(4) The tribunal may cancel a community housing certificate—

(a) on the application of the person in respect of which the certificate is issued, or

(b) on the application of a tenant affected by the certificate, if the tribunal considers that—

(i) the person in respect of which the certificate is issued does not fall within subsection (2)(a) or (b), or

(ii) the certificate was obtained by deception or fraud.

For this purpose a tenant is "affected by" a certificate if, by virtue of section 1(1C), the tenant does not have the right to acquire the freehold because the certificate is issued in respect of their landlord.

(5) The effect of the tribunal cancelling the certificate is that the person is not a certified community housing provider unless the tribunal issues a new community housing certificate.

(6) The Secretary of State may by regulations provide for—

(a) the procedure to be followed in connection with an application for a community housing certificate;

(b) the procedure to be followed for the cancellation of a community housing certificate (including in connection with an application for the cancellation);

(c) any matters to which the tribunal must have regard in deciding whether to issue or cancel a community housing certificate.

(7) The Secretary of State may by regulations make provision about the application of this Part in circumstances where—

(a) a landlord's application for a community housing certificate has not been concluded when a tenant gives notice of their desire to have the freehold of a house and premises under this Part, or

(b) a tenant's claim to have the freehold of a house and premises under this Part has not been concluded when a landlord's application for a community housing certificate is made.

(8) Regulations under subsection (7) may in particular provide for—

(a) the claim for the freehold to be paused or to have no effect;

(b) a time period for the purposes of this Part to be extended in connection with the application;

(c) the landlord to compensate a tenant or reversioner in respect of reasonable costs incurred in connection with a claim to acquire the freehold—

(i) if the tenant ceases to have the right to acquire the freehold because of the issue of a certificate under this section, or

(ii) if the costs are incurred as a result of the claim being suspended because of an application for a certificate under this section;

(d) enforcement by the appropriate tribunal of any of the requirements of the regulations;

(e) the appropriate tribunal to make orders that are supplementary to the issue of a community housing certificate.

(9) Regulations under this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(10) A statutory instrument containing regulations under this section (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.'

3B (1) The LRHUDA 1993 is amended as follows.

(2) In section 5 (qualifying tenants for enfranchisement), after subsection (2)(a) insert—

'(aa) the immediate landlord under the lease is a certified community housing provider (see section 8B); or'

(3) Before section 9 insert—

'8B Meaning of "certified community housing provider'

(1) For the purposes of this Chapter, a person is a "certified community housing provider" if the appropriate tribunal has issued a community housing certificate in respect of the person.

(2) A community housing certificate is a certificate that the tribunal has determined that the person—

(a) is a community land trust within the meaning of section 2(7A) of the Leasehold Reform (Ground Rent) Act 2022, or

(b) is of a description, or satisfies conditions, specified for this purpose in regulations made by the Secretary of State.

(3) The tribunal may issue a community housing certificate only in respect of a person that has made an application to the tribunal for the certificate.

(4) The tribunal may cancel a community housing certificate—

(a) on the application of the person in respect of which the certificate is issued, or

(b) on the application of a leaseholder affected by the certificate, if the tribunal considers that—

(i) the person in respect of which the certificate is issued does not fall within subsection (2)(a) or (b), or

(ii) the certificate was obtained by deception or fraud.

For this purpose a leaseholder is "affected by" a certificate if, by virtue of section 5(2)(aa), the leaseholder is not a qualifying tenant because the certificate is issued in respect of their immediate landlord.

(5) The effect of the tribunal cancelling the certificate is that the person is not a certified community housing provider unless the tribunal issues a new community housing certificate.

(6) The Secretary of State may by regulations provide for—

(a) the procedure to be followed in connection with an application for a community housing certificate;

(b) the procedure to be followed for the cancellation of a community housing certificate (including in connection with an application for the cancellation);

(c) any matters to which the tribunal must have regard in deciding whether to issue or cancel a community housing certificate.

(7) The Secretary of State may by regulations make provision about the application of this Chapter in circumstances where—

(a) a landlord's application for a community housing certificate has not been concluded when a nominee purchaser gives notice under section 13 of a claim to exercise the right to collective enfranchisement, or

(b) a claim to exercise the right to collective enfranchisement has not been concluded when a landlord's application for a community housing certificate is made.

(8) Regulations under subsection (7) may in particular provide for—

(a) the claim for the freehold to be paused or to have no effect;

(b) a time period for the purposes of this Chapter to be extended in connection with the application;

(c) the landlord to compensate the nominee purchaser, a tenant or a reversioner in respect of reasonable costs incurred in connection with a claim to exercise the right to collective enfranchisement—

(i) if a person ceases to be a participating tenant because of the issue of a certificate under this section (and in this case the compensation may relate to reasonable costs for which the person is liable that are incurred after the person ceases to be a participating tenant),

(ii) if the participating tenants cease to have the right to collective enfranchisement because of the issue of a certificate under this section, or

(iii) if the costs are incurred as a result of the claim being suspended because of an application for a certificate under this section;

(d) enforcement by the appropriate tribunal of any of the requirements of the regulations;

(e) the appropriate tribunal to make orders that are supplementary to the issue of a community housing certificate.'

(4) In section 39(3)(a) (qualifying tenants for extension), before '(5)' insert '(2)(aa), '.

(5) In section 100 (orders and regulations), after subsection (2) insert—

'(2A) But a statutory instrument containing regulations under section 8B (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.'"

This amendment would provide for an exception to enfranchisement (but not extension) for tenants of certified community housing providers (persons certified as managing land for the benefit of local communities).

The Chair: With this it will be convenient to discuss Government amendments 30 and 32.

Lee Rowley: As we considered regarding clause 4, schedule 1 repeals blockers to enfranchisement claims. The schedule repeals blockers that enable landlords to block claims for lease extensions and freehold acquisitions where the landlord intends to redevelop a property. The rights apply to cases where leases are very near to ending and, again, are rarely used. Compensation is paid to leaseholders only where the blockers are used in houses, not flats.

The schedule also repeals blockers that apply to niche cases, including: a blocker allowing a landlord or their family to reoccupy a house, which now applies to very few leases, due to its criteria; a public authority development blocker that has fallen from use; and a blocker to sub-lease extensions, where they are granted out of a superior extended lease.

The schedule makes consequential amendments that are necessary because of the repeals that I have just described. Where a lease is extended, landlords continue to have statutory break rights, which we will consider in later deliberations, and they may continue to seek voluntary agreements to end a lease. Public landlords may also have access to compulsory purchase orders. I commend that measure to the Committee.

I will now speak to amendment 57 and the consequential amendments 30 and 32. While we want to encourage many more leaseholders to buy their freeholds, there are good reasons for certain properties to be exempt from freehold ownership. For instance, certain community-led developments, providing affordable housing for local people, wish to be exempt from freehold acquisition—that is not their original purpose and it should not become so—so that the homes can remain affordable for the benefit of the community in perpetuity.

These amendments exempt community land trusts, a form of community-led housing, from freehold acquisition, as that model of housing relies on land being held in single ownership to remain as community-led housing. The amendments also provide a power for the Secretary of State to define in regulations further types of community-led housing, should that be necessary in future.

The exemption will only apply to an organisation once it has obtained a certificate from the tribunal that it satisfies the definition of community-led housing. That ensures that the exemption is properly targeted and not misused. An organisation will cease to benefit from the exemption if the certificate is cancelled by the tribunal. That includes where the organisation no longer satisfies the definition of a community-led housing organisation, or where the organisation asks the tribunal to cancel the certificate.

These amendments will protect the benefits of genuine community-led housing schemes from being lost to future generations. I therefore commend them to the Committee.

Finally, I beg to move amendment 58 in my name.

The Chair: Order. Amendment 58 is in the next group. We are debating Government amendments 57, 30 and 32 to schedule 1.

Lee Rowley: My apologies, Mr Efford. I thought that we were debating these as a group. I will come to amendment 58 when we get to that group.

Matthew Pennycook: I rise briefly to speak to these four Government amendments and to make a wider comment on them and the other 116 amendments that have been tabled in the Minister's name over recent days.

Having scrutinised these amendments as carefully as we could in the time available, we are as confident as we can be that none is problematic. Indeed, we very much welcomed the exemption provided for community-led housing.

[Matthew Pennycook]

As confirmed to the Committee by Professor Nick Hopkins, 18 of the 120 Government amendments tabled in Committee implement Law Commission policy that was not in the Bill as introduced and on which Law Commission staff have been involved in instructing parliamentary counsel. The vast majority of the other 102 amendments are merely technical in nature. Providing that the Minister sets out clearly their effect and rationale, as he just has in relation to this group of amendments, we do not intend to detain the Committee over the coming sessions by exploring the finer points of each.

However, I feel I must put on record our intense frustration at the fact that so many detailed Government amendments were tabled just days before commencement of line-by-line scrutiny began. The practice of significantly amending Bills as they progress through the House has become common practice for this Government and in our view it is not acceptable. Other Governments have done it, but it has become the norm under this Government. It impedes hon. Members in effectively scrutinising legislation and increases the likelihood that Acts of Parliament contain errors that subsequently need to be remedied, as happened with the Building Safety Act 2022; as the Minister will know, we have had to pass a number of regulations making technical corrections to that Act.

When it comes to this Bill, the Government have had the Law Commission's recommendations for almost four years and access to Law Commission staff to aid parliamentary counsel with drafting. There really is no excuse for eleventh-hour amendments introducing Law Commission policy or technical amendments designed to clarify, correct mistakes, or ensure consistency across provisions.

Barry Gardiner: Is my hon. Friend as surprised as I was to find that a 133-page Bill has a 102-page amendment paper? As he says, this came late. It is not just Opposition Members who mind; it is hon. Members of all parties who want to adequately scrutinise the Bill. It makes life very difficult to go through detailed amendments, often amending previous legislation—therefore, we have to get that legislation and see what the impact of the changes is—and it impedes the work of Parliament in that respect. The Minister should explain why many of these amendments were tabled so late in the day.

Matthew Pennycook: I completely agree with my hon. Friend. I think I am justified in saying that it is frankly laughable that this has happened. We have an amendment paper that is almost—and may be, in due course—larger than the Bill itself. It reeks of a Government in disarray. Though I know that the Minister has picked up this Bill part-way through its development, I urge him not only to do what he can to ensure that when the Government publish any Bill it is broadly in the format they wish it to proceed in and see passed, but also to table any further amendments to this Bill in good time so that we can give them the level of scrutiny that leaseholders across the country rightfully expect.

Rachel Maclean: I will not detain the Committee for long. In response to those comments from the Opposition, I observe only that when they were last in government—in 2002, if I am correct—they had the opportunity to address the system and rectify the failures that we are now dealing with. It is now left to this Government to do it. On that note, I want to say to my hon. Friend the Minister how important it is that the community-led housing sector is excluded. I would not normally say that about any form of housing, but we have recently strengthened the national planning policy framework to encourage more of that type of housing. We know it is popular and often commands local support, while other types of housing sadly do not, and we need to see more of it built. The sector has had extensive discussions. This is a sensible amendment, which I support.

Lee Rowley: I thank my hon. Friend for confirmation of the importance of community-led housing, which we have spoken about previously. I absolutely agree about its importance.

I will not get into a broader conversation about the processes of government, other than to say that I note the concerns of the hon. Members for Brent North and for Greenwich and Woolwich. The intention is to give the Committee and the House as a whole as much scrutiny as possible. I am sure that the hon. Members will understand that, outside the bounds of the points that they are making, getting proposed legislation ready is often a complicated process—in particular ensuring that it is as correct as it can be. None the less, I have noted their points, but I hope to be grateful for their support for the underlying provision we are debating.

Amendment 57 agreed to.

Lee Rowley: I beg to move amendment 58, in schedule 1, page 82, line 28, at end insert—

"Eligibility of leases of National Trust property for extension

4A For section 32 of the LRA 1967 (saving for National Trust) substitute—

'32 National Trust property

(1) Property is "inalienable National Trust property" for the purposes of this section if an interest in the property is vested inalienably in the National Trust for Places of Historic Interest or Natural Beauty under section 21 of the National Trust Act 1907.

(2) This Part does not prejudice the operation of section 21 of the National Trust Act 1907, and accordingly a tenant does not have the right under this Part to acquire the freehold of inalienable National Trust property.

(3) The right to an extended lease has effect subject to the following provisions of this section only if and to the extent that the existing tenancy demises inalienable National Trust property.

(4) In a case where the existing tenancy is a post-commencement protected National Trust tenancy, the tenant does not have the right to an extended lease.

(5) In a case where the existing tenancy is a pre-commencement protected National Trust tenancy, this Act is to have effect in relation to the right to an extended lease without the amendments made by the Leasehold and Freehold Reform Act 2024 (but without altering the effect of this subsection).

(6) In any other case, the right to an extended lease has effect subject to subsections (7) and (8).

(7) In determining whether the tenant has the right to an extended lease, the following requirements in section 1 do not apply—

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

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

(8) If the tenant exercises the right to an extended lease, the new tenancy must contain the buy-back term which is prescribed for this purpose in regulations made by the Secretary of State (the "prescribed buy-back term").

(9) A "buy-back term" is a term which gives the National Trust the right to buy the whole or part of the extended lease if—

(a) it is proposed to make a disposal of the extended lease that is of a description specified in that term (which may be a disposal of the whole or a part of the property demised), or

(b) the National Trust exercises a prescribed buy-back term that is contained in a lease which is inferior to the extended lease.

(10) The prescribed buy-back term may, in particular, make provision about—

(a) the procedure where it is proposed to make a disposal that is of a description specified in the term;

(b) the procedure for exercising the right to buy;

(c) the price payable;

(d) the payment of costs incurred in connection with the operation of the term (including requirements for one person to pay costs incurred by another person);

(e) the operation of the term if the National Trust is not a party to the extended lease.

(11) If the National Trust is not the landlord under the extended lease, the National Trust may at any time apply to the appropriate tribunal for an order to secure that the extended lease is varied to contain (if or to the extent that it does not already do so) the prescribed buy-back term; and an order made on such an application may appoint a person who is not party to the extended lease to execute a variation of the lease.

32ZA Section 32: supplementary provision

(1) For the purposes of section 32, the existing tenancy is a "protected National Trust tenancy" if the tenancy is prescribed, or is of a description of tenancies prescribed, in regulations made by the Secretary of State.

(2) Regulations may not provide for a tenancy to be a protected National Trust tenancy unless the tenancy is within case A or case B.

(3) Case A: some or all of the property let under the tenancy is—

(a) property to which the general public has access, or

(b) part of property to which the general public has access (whether or not the general public has access to any property let under the tenancy),

whether the arrangements for public access are managed by the National Trust, the tenant or another person.

(4) Case B: the existing tenancy was granted to—

(a) a former owner,

(b) a relative of a former owner, or

(c) the trustees of a trust whose beneficiaries are or include—

(i) a former owner, or

(ii) a relative of a former owner.

(5) Regulations under section 32 or this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(6) A statutory instrument containing regulations under section 32 or this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In section 32 and this section—

"commencement" means the day on which paragraph 4A of Schedule 1 to the Leasehold and Freehold Reform Act 2024 comes into force;

"disposal" , in relation to an extended lease, includes—

(a) the grant of a sub-lease of property demised by the extended lease;

(b) a change in control of a body (whether or not incorporated) which owns the extended lease;

(c) the surrender of the extended lease;

(d) a disposal (of any kind) for no consideration;

"former owner" , in relation to inalienable National Trust property let under a tenancy, means—

(a) a person who transferred the freehold of the property to the National Trust,

(b) a person who owned the freehold of the property immediately before its transfer to the National Trust by, or at the direction of—

(i) the Commissioners for His Majesty's Revenue and Customs,

(ii) the Commissioners of Inland Revenue, or

(iii) the Treasury,

(c) a person whose executors transferred, or directed the transfer of, the freehold of the property to the National Trust, or

(d) a person who was a beneficiary under a trust whose trustees transferred, or directed the transfer of, the freehold of the property to the National Trust;

"post-commencement protected National Trust tenancy" means a tenancy which—

(a) was granted on or after commencement, unless it was granted under an agreement made before commencement, and

(b) is a protected National Trust tenancy;

"pre-commencement protected National Trust tenancy" means a tenancy which—

(a) was granted—

(i) before commencement, or

(ii) on or after commencement under an agreement made before commencement, and

(b) is a protected National Trust tenancy;

"relative" includes a person who is related by marriage or civil partnership;

"right to an extended lease" means the right under this Part to acquire an extended lease.'

4B For section 95 of the LRHUDA 1993 (saving for National Trust) substitute—

'95 National Trust property

(1) Property is "inalienable National Trust property" for the purposes of this section if an interest in the property is vested inalienably in the National Trust for Places of Historic Interest or Natural Beauty under section 21 of the National Trust Act 1907.

(2) Chapter 1 does not prejudice the operation of section 21 of the National Trust Act 1907, and accordingly there is no right under Chapter 1 to acquire an interest in inalienable National Trust property.

(3) The right to a new lease has effect subject to the following provisions of this section only if and to the extent that the existing lease demises inalienable National Trust property.

(4) In a case where the existing lease is a protected National Trust tenancy, the tenant does not have the right to a new lease.

(5) If—

(a) the existing lease is not a protected National Trust Tenancy, and

(b) the tenant exercises the right to a new lease,

the new lease must contain the buy-back term which is prescribed in regulations made by the Secretary of State (the "prescribed buy-back term").

(6) A "buy-back term" is a term which gives the National Trust the right to buy the whole or part of the new lease if—

(a) it is proposed to make a disposal of the new lease that is of a description specified in that term (which may be a disposal of the whole or a part of the property demised), or

(b) the National Trust exercises a prescribed buy-back term that is contained in a lease which is inferior to the extended lease.

(7) The prescribed buy-back term may, in particular, make provision about—

(a) the procedure where it is proposed to make a disposal that is of a description specified in the term;

(b) the procedure for exercising the right to buy;

(c) the price payable;

(d) the payment of costs incurred in connection with the operation of the term (including requirements for one person to pay costs incurred by another person);

(e) the operation of the term if the National Trust is not a party to the new lease.

(8) If the National Trust is not the landlord under the new lease, the National Trust may at any time apply to the appropriate tribunal for an order to secure that the new lease is varied to contain (if or to the extent that it does not already do so) the prescribed buy-back term; and an order made on such an application may appoint a person who is not party to the new lease to execute a variation of the lease.

95A Section 95: supplementary provision

(1) For the purposes of section 95, the existing lease is a "protected National Trust tenancy" if the lease is prescribed, or is of a description of leases prescribed, in regulations made by the Secretary of State.

(2) Regulations may not provide for a lease to be a protected National Trust tenancy unless the lease is within case A or case B.

(3) Case A: some or all of the property let under the lease is—

(a) property to which the general public has access, or

(b) part of property to which the general public has access (whether or not the general public has access to any property let under the lease),

whether the arrangements for public access are managed by the National Trust, the tenant or another person.

(4) Case B: the existing lease was granted to—

(a) a former owner,

(b) a relative of a former owner, or

(c) the trustees of a trust whose beneficiaries are or include—

(i) a former owner, or

(ii) a relative of a former owner.

(5) Regulations under section 95 or this section—

(a) may make different provision for different purposes;

(b) are to be made by statutory instrument.

(6) A statutory instrument containing regulations under section 95 or this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In section 95 and this section—

"disposal" , in relation to a new lease, includes—

(a) the grant of a sub-lease of property demised by the new lease;

(b) a change in control of a body (whether or not incorporated) which owns the new lease;

(c) the surrender of the new lease;

(d) a disposal (of any kind) for no consideration;

"former owner" , in relation to inalienable National Trust property let under a tenancy, means—

(a) a person who transferred the freehold of the property to the National Trust,

(b) a person who owned the freehold of the property immediately before its transfer to the National Trust by, or at the direction of—

(i) the Commissioners for His Majesty's Revenue and Customs,

(ii) the Commissioners of Inland Revenue, or

(iii) the Treasury,

(c) a person whose executors transferred, or directed the transfer of, the freehold of the property to the National Trust, or

(d) a person who was a beneficiary under a trust whose trustees transferred, or directed the transfer of, the freehold of the property to the National Trust;

"relative" includes a person who is related by marriage or civil partnership;

"right to a new lease" means the right under Chapter 2 to a new lease.'"

This amendment would provide for tenants of National Trust properties to have the right to extension, subject to exceptions, and subject to a requirement to grant the National Trust the right to buy back the property in certain circumstances.

Lee Rowley: My enthusiasm for the amendment was such that I started to speak to it earlier, but I am now moving it in the correct place.

The National Trust play a big role in looking after the heritage of the nation. Inalienable National Trust land is held for the benefit of the nation, forever. In order to ensure that that land remains in national ownership for future generations, freehold acquisition is restricted on National Trust land. None the less, the Government want to see National Trust leaseholders' rights improved.

The amendment means that National Trust leaseholders will benefit from the new lease extension rights in line with other leaseholders, so that the 990 years will apply in this instance. The new rights will be subject to a narrow exception for a small number of leases of specified visitor attraction properties and donor leases. That will allow the trust to make bespoke lease agreements when a noteworthy property comes into its ownership—for example, where a property could be opened to the public in whole or in part, or where arrangements have been made with family members when a property has been gifted to the state and the trust itself. Those limited exceptions will be set out in regulations made by the Secretary of State in due course. Those leaseholders will retain their existing lease extension rights where they already have them.

The amendment also makes provision for the National Trust to buy back an extended lease at market value, if the existing leaseholder chooses to dispose of their lease. That will allow the National Trust to manage the long-term use of its inalienable land on behalf of the nation. I commend the amendment to the Committee.

Amendment 58 agreed to.

Schedule 1, as amended, agreed.

Clause 5

Acquisition of intermediate interests in collective enfranchisement

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

Lee Rowley: The clause sets out how intermediate leases and leases of common parts are treated in collective enfranchisement claims for flats. In home ownership, intermediate leases are the middle rungs on a ladder between the freeholder at the top, and the leaseholder with rights at the end. Leases of common parts might cover parts of premises such as stairways.

The clause will introduce proposed new schedule A1 to the 1993 Act. The schedule sets out a series of gateways that require leaseholders to acquire certain interests, but also grants them further choices to reduce premiums. Qualifying leaseholders who participate in a claim must acquire all intermediate leases superior to their leases. They can, however, choose to leave in place the part of an intermediate lease superior to those qualifying leaseholders who are not participating. The intention is that this will help to reduce the premium where not all leaseholders wish to participate.

For example, leaseholders could leave the head lease in place above two out of eight flats, where the two are not participating. Where leaseholders acquire only part of a lease, they still need to acquire the relevant parts of leases above it in the chain to prevent a disrupted management structure.

The schedule sets out that leaseholders do not need to acquire a whole lease of common parts where certain legal tests are met, which will help to reduce premiums. The schedule prevents the acquisition of special cases of intermediate leases in collective enfranchisement. That includes qualifying leaseholders who own the immediately superior intermediate lease and landlords with enfranchisement rights over a flat. Those parts of leases can be retained by the owners to preserve their homes or tenure at the property. The schedule sets out various mechanisms for allowing leases to be left in place. That is done via an existing process called severing, and clause 16(6) gives the tribunal new powers to determine the terms of that.

The schedule preserves the necessary elements of the existing law that prevent ill effects arising from collective enfranchisement. Landlords can continue to require leaseholders to acquire interest, for instance where it would be impossible to maintain the premises. An exception that prevents the acquisition of interest held by public sector landlords continues. I commend the clause to the Committee.

10.30 am

Matthew Pennycook: Clause 5 is extremely technical. It concerns the treatment of intermediate leases during a collective enfranchisement. I beg the Committee's forgiveness for the level of complexity I am about to throw at the Minister; nevertheless, it is important to the leaseholders who stand to be affected. As the Minister said, the clause replaces section 2 of the 1993 Act on to the acquisition of leasehold interest, with a new schedule, A1, that will henceforth govern the acquisition of intermediate interests during a collective enfranchisement process.

New schedule A1 enacts part or all of five recommendations made by the Law Commission in chapter 13 of its 2020 report, and is uncontentious. However, when considering the treatment of intermediate leases and other leasehold interests in that chapter, the Law Commission recommended that a duty be imposed on the landlord dealing with the enfranchisement claim

"to act in good faith and with reasonable skill and care"

toward other landlords involved. Any such landlord should be able to apply for directions from the tribunal about the conduct of the response to the claim. It also recommended corresponding requirements for landlords who are not dealing with the claim to provide all necessary information and assistance to the landlord who is, and to contribute to the non-litigation costs of that landlord.

My reading of schedule A1 is that its effect will be that any settlement reached between a leaseholder and the landlord who is dealing with a claim, and any determination of that claim by the tribunal, will be binding on all other landlords. Assuming that I have interpreted the schedule correctly, can the Minister make clear why it does not appear to implement the duties and requirements that the Law Commission recommended should apply to landlords who are dealing with the claim and landlords who are not, respectively?

Finally, while I appreciate that we will consider the issue of valuation in more detail when we come to consider clauses 9, 10 and 11, I would be grateful if the Minister could also provide some clarification on how the Bill proposes to calculate enfranchisement premiums in instances where there are intermediate leases. Am I right in believing that schedule 2 treats intermediate leases as merged for the purposes of valuation?

On a related matter, the Minister will also be aware that the Law Commission set out the option of generally disregarding the existence of an intermediate lease when determining the premium payable on enfranchisement on the grounds that it would simplify the calculation and create greater fairness between leaseholders and between landlords, as premiums would not differ solely because of the existence or otherwise of one or more intermediate leases. It also recommended that on any individual lease extension claim, the rent payable by an intermediate landlord should be commuted on a pro rata basis.

If I have understood the relevant provisions correctly, neither proposal was incorporated into the Bill as first published. The second of those recommendations appears to be addressed by Government amendments 73 and 95. I would be grateful if the Minister could confirm whether my reading of those amendments is correct in that regard—via correspondence, if he needs to, as I appreciate

[Matthew Pennycook]

that these are extremely technical questions. Broadly, we would like the Minister to expand on his remarks and provide some clarity about the treatment of intermediate leases during collective enfranchisement and the extent to which this part of the Bill as a whole reflects the Law Commission's proposals. I look forward to hearing the Minister's response.

Lee Rowley: My response is short. I will happily write to the hon. Gentleman and to the Committee in due course on the technicalities to ensure that is correct.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

Right to require leaseback by freeholder after collective enfranchisement

Barry Gardiner: I beg to move amendment 127, in clause 6, page 9, line 42, at end insert—

"(3A) Any lease granted to the freeholder under paragraph 7A must contain a provision that any sub-lease created by the freeholder under their leaseback must contain a provision requiring the sub-lessee to contribute to the service charges reasonably incurred by the managing agent directly or indirectly appointed by the nominee purchaser.

(3B) The provision mentioned in subsection (3A) is implied into all pre-existing subordinate leases to a leaseback granted to a freeholder under paragraph 7A."

The Chair: With this it will be convenient to discuss clause stand part.

Barry Gardiner: It is helpful to the Committee that we had the evidence session, because Liam Spender, the lawyer from Velitor Law, spoke directly about this matter.

We welcome leaseback because it is an important part of enabling tenants in commercial, or partly commercial, buildings to enfranchise. However, imagine that a person has just newly enfranchised, and some of the residents in that block have not participated in the enfranchisement process. It has been quite an acrimonious job debating and arguing with the landlord to get the enfranchisement to happen, but they finally have it. However, the landlord, or the former landlord, may not be happy about it. His capacity, now as the tenant, to cause problems is enhanced by the existing lease that those who have not enfranchised have with him. The moneys that need to be collected for the new landlord's service charge do not come directly to them.

The whole point of the clause is to minimise those problems. There should be a condition in the leaseback to make it clear that any sub-lease that the former landlord gives, or retains, must contain a provision to say that the service charge is payable to the new landlord. Otherwise, we have a very torturous process in which those sums, which are required for the servicing of the building, may be delayed by a former landlord who feels aggrieved that he has lost control.

Matthew Pennycook: My hon. Friend raises an interesting point, which has value. However, if he will forgive me, I would like some more time to consider any unintended consequences before I determine whether we could support it. Perhaps we could come back to it at a later stage, but if he is determined to push it I will come up with a position from the Front-Bench team.

Clause 6 inserts into the 1993 Act a new leaseback right for tenants participating in a collective enfranchisement claim, enabling them to require their landlord to take a leaseback of particular flats or units in the building, other than flats let to a participating tenant. We welcome the clause, as my hon. Friend made clear, which implements recommendation 21 of the Law Commission's final report on leasehold enfranchisement.

At present, leasebacks are mandatory in certain circumstances. A landlord can also require leaseholders to grant them a leaseback of any unit not let to a qualifying tenant, or any flat or unit occupied by them and of which they are the qualifying tenant. However, leaseholders do not enjoy the right to require their landlord to take a leaseback with the effect that, in instances where the landlord refuses a request for a leaseback, perhaps because they are deliberately seeking to frustrate the process entirely, the premium payable in an enfranchisement claim includes the value of that interest.

The new leaseback right introduced by the clause will ensure that premiums that leaseholders would otherwise have to pay will be reduced. Collective freehold acquisition will become a possibility for larger numbers of them because a key funding constraint—namely having to pay for the reversionary value of those flats and units as part of their claim—will have been removed, and in many cases, collective freehold acquisition claims will be made considerably more affordable as a result. It will also increase certainty by ensuring that leaseholders have a far more accurate estimate of the costs of a claim at the outset. Finally, it is essential to ensuring that the increase in the non-residential limit from 25% to 50%, which we debated earlier, is of practical benefit to leaseholders. Without a new leaseback right, many leaseholders who would otherwise be interested in collectively enfranchising would be deterred because the cost of purchasing the whole of a building containing up to 50% commercial space would be prohibitive.

I have two questions for the Minister. The first concerns intermediate leases, which we have just considered under the previous clause. As I believe may have been highlighted by some respondents to the Law Commission consultation, there will be circumstances in which a leaseback of some units to the landlord would not reduce the premium by any significant amount, because the majority of the value in the units in question will be held not by the landlord but by an intermediate interest. This obviously raises again the issue of how the Bill treats the calculation of enfranchisement premiums in instances in which there is an intermediate lease. I would be grateful if the Minister could clarify whether the Bill seeks in any way to address the impact that intermediate leases might have on the benefits that leaseholders could otherwise expect to secure as a result of the new leaseback right.

My second question concerns the terms of the leaseback required under the new right. My understanding is that these will be for a term of 999 years at a peppercorn ground rent, as under the current law, but I would be

grateful if the Minister could confirm that that is the case and perhaps provide the Committee with any other important detail about leaseback terms that will apply to them.

Lee Rowley: I will turn first to the amendment from the hon. Member for Brent North. I appreciate the point that he has made, and he articulated it very well. He is rightly concerned that all those who have an interest in a building should need to pay for it. The amendment's intent is to require any leases granted to include a requirement to make contributions to service charges, as he articulated. Our understanding—I have checked, following the introduction of his amendment—is that the existing law should sufficiently cover this and it should be unlikely that intermediate landlords will not ensure that their sub-lessees contribute to the service charges of a property. But I recognise that the hon. Gentleman has a lot of experience, knowledge and background in this area over many years, so if he wants to write to me separately, with examples of where we potentially have not understood the detail of the point that he is making, I will be happy to look at that in more detail.

Matthew Pennycook: I intervene just briefly so that I can put this on the record. One of my slight concerns about the amendment from my hon. Friend the Member for Brent North is that it could complicate pro rata charges for leaseholders. I just wonder whether the Government have given that any thought. In many ways, the amendment is entirely unproblematic, and we support the intention, but there are a couple of concerns, that being one. Is that part of the Government's thinking on my hon. Friend's amendment?

Lee Rowley: I am grateful to the hon. Gentleman for pointing that out. As indicated, this all needs to be considered in the round. Very few things come without trade-offs and without consideration of other implications. One reason why we are not able to support this amendment today is that we do not think that it is necessary. As a result, I hope that the hon. Member for Brent North will not push it to a vote but will withdraw it. If we have missed something, I will be happy to look at that separately. As the hon. Member for Greenwich and Woolwich suggested, this is something that we do not think is necessary in the wider scheme of things, but if there is a thing that we have missed, I will happily take further information on it.

I will now turn to clause 6, which has been discussed already to some extent. The Government want to broaden access to collective enfranchisement, so that more leaseholders can buy their freehold. However, we recognise that increased access will remain theoretical if many leaseholders are unable to afford to buy their freehold. Therefore, this enfranchisement must be cheaper if leaseholders are to gain the benefits of the ownership that is being sought.

Clause 6 introduces a leaseback right for leaseholders that, if they elect to use it as part of a claim, will in some cases significantly reduce the up-front price that they must pay. "Leaseback", as has been indicated, is the term commonly used to refer to an intermediate lease over part of a building that is granted to the outgoing freeholder as part of an enfranchisement claim. This leaseback covers the value of the unit, which is therefore retained by the outgoing freeholder and reduces the cost for leaseholders of buying the freehold. Currently, the outgoing freeholder can require the leaseholders taking forward a collective enfranchisement to grant the freeholder a leaseback of any non-qualifying units in a building. Clause 6 gives leaseholders an equivalent right to require the outgoing freeholder to take a 999-year leaseback, at a peppercorn rate, of any non-participating units in the building as part of the claim.

In mixed-use buildings, the question of affordability is even more acute, as leaseholders must pay for the freehold interest in non-residential parts of the building, which they have no existing financial interest in, as well as their flats, which they already partly own.

10.45 am

As we have discussed, clause 3 will increase the non-residential limit to 50%, allowing collective enfranchisement claims to take place in buildings with more non-residential elements. Leasebacks will therefore be of particular benefit to leaseholders who take advantage of the broader access that clause 3 provides. Subsections (2) to (4) will allow leaseholders to require the freeholder to take a leaseback.

Clause 6(5) will insert new paragraphs 7A and 7B in schedule 9 to the 1993 Act. Paragraph 7A sets out which types of units can be subject to a leaseback and which cannot, and the arrangements for where the freehold title of a unit is split. Leaseholders can require the outgoing freeholders to take a leaseback of their respective parts, but leasebacks must be granted for all parts of the unit overall. This differs from the slightly narrower right for outgoing freeholders, because they cannot insist on a leaseback of a unit if the freehold title is split.

Paragraph 7B sets out the terms of leasebacks where leaseholders require them to be granted. The terms are the same as those that apply when a freeholder requires a leaseback to be granted. These terms are chiefly that the leaseback must be for 999 years at a peppercorn ground rent; I hope that that answers the second question from the hon. Member for Greenwich and Woolwich. Any departure from these terms must be agreed by both parties or directed by the appropriate tribunal. This change will mean that collective enfranchisement is more affordable for leaseholders who wish to buy their freehold. Leaseholders will be less financially constrained by the number of flats that do not qualify or do not wish to participate in a claim, because, if they choose, they will not need to pay for those units.

Those leaseholders in mixed-use buildings that meet the requisite qualifying criteria for collective enfranchisement will no longer be limited by the non-residential element. This change will significantly improve access to collective enfranchisement in a practical sense, allowing more leaseholders real choice over whether they wish to own their freehold.

I think I have dealt with the second question from the hon. Member for Greenwich and Woolwich, which was about 999-year leases and peppercorn rents. I am happy to write to him on the specifics of intermediate leaseholders if that is helpful. I commend the clause to the Committee.

Barry Gardiner: I am grateful to the Minister for his remarks. It is clear that the Government do not feel that the amendment is necessary and that there will not be a problem with the newly enfranchised freeholder being

[Barry Gardiner]

able to obtain the service charge from all the leaseholders. If that is the case, I will be happy to withdraw the amendment.

I would, however, like the Minister to set out in writing to me and the Committee precisely why he believes that there is not a problem. If we still disagree, we can then bring the amendment back on Report and discuss it further. It would be really helpful to be clear about why the Government are confident that problems will not arise. We have made legislation on the basis of optimism before, and unfortunately our experience is that freeholders can often be quite vindictive.

Lee Rowley: I am happy to give the hon. Gentleman that assurance, and I will be happy to write to him.

Barry Gardiner: On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

Longer lease extensions

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

The Chair: With this it will be convenient to discuss clause 8 stand part.

Lee Rowley: Currently, leaseholders of houses can claim a lease extension of 50 years, and leaseholders of flats can claim an extension of 90 years. Leaseholders of houses can only ever make one lease extension claim; leaseholders of flats will need to claim repeated extensions both within and between generations, with associated costs. Leaseholders often have to worry about the value of their lease falling as the term runs down.

Clause 7 will amend the lease extension term for houses in the 1967 Act, from 50 to 990 years, and for flats in the 1993 Act, from 90 to 990 years. There is no restriction on the number of claims that can be made, although with a 990-year extended term it is envisaged that only one extension will be necessary; 990 years is as long an extension as can be reasonably given while facilitating multiple periods of 90 years to allow for consistency with existing leases and redevelopment breaks.

Increasing to 990 years the term of the statutory lease extension right maximises the benefit to leaseholders and gives leaseholders much greater security in their homes. This is particularly important where leaseholders do not qualify or are not in a position to buy their freehold.

The increase in the extension term will mean that leaseholders do not have to claim repeated extensions, pay associated repeated transaction costs or worry about the value of their property falling as the lease runs down. Leaseholders of flats and houses will be able to obtain a lease extension of 990 years at a peppercorn ground rent, in exchange for a premium determined by the amended valuation scheme set out in clauses 9 to 11.

I turn to clause 8. Currently, a lease extension for a house under the 1967 Act is made without payment of a premium, but in return for a modern ground rent during the period of the extension, where that rent is similar to a market rent. Because we are increasing the extension term to 990 years at a peppercorn rent, landlords will need to be compensated by payment of a premium, as is the case for flats. The clause makes amendments to the 1967 Act to ensure that landlords will be sufficiently compensated when a 990-year lease extension at a peppercorn is granted for a house. A qualifying leaseholder can obtain an extension of 990 years at a peppercorn ground rent in exchange for a premium determined by the amended valuation scheme set out in clauses 9 to 11.

Matthew Pennycook: I will spend some time on the clauses, because they are important.

As the Minister set out, clause 7 changes the lease extension rights given to tenants of houses and tenants of flats by the 1967 and 1993 Acts, respectively, to provide for a 990-year lease extension rather than, as is currently the case, a 50-year extension under the 1967 Act and a 90-year extension under the 1993 Act. Clause 8 works in conjunction with clause 7 to that end, by making consequential amendments to the 1967 Act that are required to set ground rents under such extensions at a peppercorn and ensure that the premium payable is based on the amended valuation scheme set out in clauses 9 to 11, as the Minister made clear.

Taken together, the clauses not only provide for the standard lease extension term to increase to 990 years at a peppercorn rent, but ensure that the rights available to tenants under each of the Acts are made equivalent. This reform, which draws on recommendations 1 and 2 of the Law Commission's final report on leasehold enfranchisement, is long overdue. The right to extend one's lease is important for leaseholders who do not qualify for a right of freehold acquisition or who do enjoy such a right but, for whatever reason, either cannot or do not wish to purchase the freehold. It is particularly important for leaseholders who live in blocks of flats, as the vast majority do in constituencies such as mine, because it is the only enfranchisement right they can exercise when acting alone. However, both the 50-year lease extension available to leaseholders of houses under the 1967 Act and the 90-year extension available to leaseholders of flats under the 1993 Act are too short to provide adequate security of tenure.

The principle of a right to an extension of a considerably longer time is therefore the right one. As the Minister argued, it will particularly help to protect those leaseholders with short remaining lease terms at the point at which the extension is secured, and will avoid the need for a second extension to be sought and secured in short order. We also feel that the choice of a standard 990-year lease is the right one. Once the principle of a very long lease extension has been accepted, the case for taking the additional period as close to 999 years is watertight. A more modest extension, which the Law Commission did consider, would provide only temporary relief and would require many leaseholders to make a second claim in relatively quick succession. The proposed 990-year lease extension right will avoid the need for further lease extension claims in the future, will provide leaseholders with a substantially enhanced interest in their homes and will bring leaseholders extremely close to outright freehold ownership.

It is also right that we legislate to introduce a uniform right applicable and available to both leaseholders of houses and leaseholders of flats, so we support the alignment of the lease extension rights for which the clause provides. There is no justification for maintaining the discrepancy in the law as it stands, where the right to a lease extension for a house is considerably less favourable than the equivalent right to a lease extension for a flat. In sum, we fully support leaseholders who qualify for a lease extension under the 1967 or 1993 Act being given the right, on payment of an appropriate premium, to extend their lease and in so doing to secure a peppercorn rent.

I have five questions for the Minister about these important clauses. The first relates to redevelopment. In recommending that an additional period of 990 years should be added to the remaining term of the existing lease in the cases of both houses and flats, the Law Commission also proposed that redevelopment break rights should be maintained. These are rights accorded to a landlord to terminate a lease that has been extended and to regain possession of the property in order to carry out redevelopment work. The Law Commission recommended that they should be maintained during the last 12 months of the term of the original lease or the last five years of each period of 90 years after the commencement of the extended term.

We fully appreciate that many leaseholders will find the very notion of such break rights problematic, and the Law Commission recognises that maintaining rolling break rights, as under the 1967 Act, would create unnecessary uncertainty. However, difficulties relating to the lifespan of buildings are an issue we have to grapple with, not least because they will become more pressing over time when lease extensions become significantly longer by default. As the Law Commission's recommendation on development break rights has not made it into the Bill, I would be grateful if the Minister explained the Government's determination to omit it. Some would argue that there is a strong case, in a world in which 990-year lease extensions are the default, for the sensible provision of development break rights.

My second question concerns when the rights provided by clauses 7 and 8 will come into effect. The clauses present leaseholders who have recently obtained a lease extension, or who will be compelled to obtain one—for the purposes of moving home or mortgaging, say—before the commencement date, with a real dilemma, because the only way they will benefit from a 990-year extension and a peppercorn ground rent in instances where that is not already the case is by making a further extension claim in short order. The fact that any such leaseholders will have recently extended their lease with, in all likelihood, a peppercorn ground rent will mean that the premium payable will be low, but there will still be a cost.

I would be grateful if the Minister made it clear whether the Government have given any consideration to how to ensure that the premium in such cases is as low as possible, to avoid some leaseholders facing costs that others will not face, simply as a result of the sharp transition from one set of arrangements to another. Better still, could he outline precisely how commencement will operate in respect of the clauses? Will he tell us whether the Government might consider amending the Bill to ensure that the new rights come into force on, or very soon after, Royal Assent, so that they can be enjoyed by leaseholders confronting the need for an extension as quickly as possible?

My third question relates to ground rents. We will explore the issue in considerable detail when we consider clause 21, but I would be grateful if the Minister told us, in relation specifically to lease extensions, how clauses 7 and 8 will operate if the Government's response to the consultation "Modern leasehold: restricting ground rent for existing leases", which closed last week, is, as per the Secretary of State's declared preference, to table amendments to enact option 1, namely capping ground rent at a peppercorn for all existing leases from a given date.

All we want to know is whether the ground rent provisions in clause 8 would be rendered irrelevant. In other words, are they unnecessary? If so, will the Government have to make further amendments to the clause to ensure that, in conjunction with clause 7, it provides only for a 990-year lease extension and does not make changes to ground rent provisions in any way? Presumably they will need to be abolished by further Government amendments that will potentially abolish ground rents for all existing leases.

My fourth question concerns the technical matter of who the competent landlord is for the purpose of lease extensions under the 1993 Act. The provisions within clauses 7 and 8 will mean that even in circumstances where there is a head lease of 999 years at a peppercorn rent, which is a fairly common occurrence, the owner will be entitled to all of the premium. Nevertheless, it is the freeholder, not the head lessee, who will have to handle the claim. That raises the obvious question of why a freeholder should engage with the process at all, given that it will leave them out of pocket.

Schedule 1 to the 1967 Act includes provisions designed to overcome the problem by providing that a long head lessee is the reversioner. Will the Minister tell us why a similar set of provisions is not being introduced to the 1993 Act to provide that a very long head lessee in a block of flats is to be regarded as the competent landlord, not the freeholder? If there is no justification for that omission, might the Government go away and consider whether it is necessary to overcome that problem?

My fifth and final question concerns the Government's commitment to use the Bill to legislate for a ban on new leasehold houses. The Government amendments providing for such a ban have still not been tabled, so we cannot engage with the detail. However, given that it is the Government's stated intention effectively to do away with leasehold houses, I would like to probe the Minister on the reasoning behind providing, by means of clauses 7 and 8, leaseholders in houses with a right to a 990-year lease extension at a peppercorn rent, for which the premium will be the same as if it were a freehold enfranchisement. Is this—I am being generous to the Minister—an example of muddled thinking on the Government's part that might require review? I look forward to hearing the Minister's response.

11 am

Richard Fuller (North East Bedfordshire) (Con): I want to speak briefly in support of the third point made by the shadow Minister, the hon. Member for Greenwich and Woolwich, in which he addressed the interaction of the Bill with the Government's ground rent consultation.

[Richard Fuller]

If I heard him correctly, he was asking the Government at least to be clear as to how those recommendations will affect the Bill. He was asking the Government to be clear on their position; I will not go as far as that, because I think the Government have the discretion to decide when they want to announce that or not.

However, there is another issue that the Minister could perhaps consider: the impact assessment on the valuation, which we, as Members of Parliament, are being asked to address in this Bill. As we heard in the evidence sessions, the current impact assessment may potentially omit a significant amount of value that will be taken into account as part of the ground rent reform. If it is the Government's intention to introduce amendments on that, as the shadow spokesman was asking, it would be useful to have clarity from the Minister on that, but we should also ask the Minister whether an updated impact assessment can be presented to incorporate what the value of those recommendations would be.

Rachel Maclean: I rise briefly to add my support for some of the comments and, most importantly, for the ability of leaseholders to extend their leases. As we know, this is one of the most egregious features of the current system: people buy properties that they then find have short leases, after which they are whacked with massive charges coming out of the blue; they do not understand how those charges are calculated, and they end up having to pay them because they have no choice. They are completely over a barrel. I know that leaseholders will massively welcome this change, which is one of the most important parts of the whole Bill.

Having said that, it is vital that we understand when we will see the Government's response on the ground rent consultation, as my hon. Friend the Member for North East Bedfordshire and the shadow spokesperson, the hon. Member for Greenwich and Woolwich, have said. It will, of course, affect the calculations.

I also want to raise with the Committee the number of people who have sat in front of me and asked, "When will you bring this forward? I don't know whether to extend my lease now or wait another year or for another consultation". It is a huge number of people. I want to make this point to everybody: if we get this right, it will affect a lot of people very beneficially.

Barry Gardiner: I am glad that co-operation is breaking out across the aisle. It seems that this change is one of the really big issues of the Bill. Looking through the Bill, yes, there was disappointment that it does not go far enough and there is no commonhold, but this is a real change. It is something that Members on both sides of the Committee have welcomed, and we heard evidence from our witnesses about just how important it is. It is strange, therefore, that we do not now see the meat of it in the Bill. I will not go so far as to say that it is more than strange, as my hon. Friend the Member for Greenwich and Woolwich suggested, but we do need it.

This provision will liberate a whole group of people who fear what we call the ground rent grazers. They are the ones—the freeholders—who have created a rentier structure over the past 15 years. It did not even exist 25 years ago. What people used to do 25 years ago, when the ground rent was payable, was write a cheque to the freeholder, and the freeholder would bin it. Then, three weeks later, the freeholder would send a lawyer's letter to the tenant, saying that because they had not paid their ground rent on time, they were now being charged £625 for their legal fees in having to chase it, including the £25 ground rent. That is a bad practice that has evolved and the Government need to clamp down on it and get it sorted.

Lee Rowley: I thank hon. Members for their questions and comments, which I will try to address. There is obviously a desire to understand the interaction of the two clauses with the outcome of the consultation that closed last week. We saw to some extent in our deliberations last week, on the first two days in Committee, when we took evidence, that this is a contested area. As a result and notwithstanding the fact that by convention in this place we have the ability to speak freely, I hope the Committee will understand that I will limit my remarks.

I understand the eagerness, enthusiasm and legitimate desire of the Committee to understand the position that we will seek to provide. We will provide that to the Committee, and publicly, as soon as possible. It will not be possible for me to answer all the questions that were asked today. I accept the point made by my hon. Friend the Member for North East Bedfordshire that there is a difference between process and decision, but some elements of the process could be impacted by the decision and it will therefore be difficult to engage in hypotheticals at this stage. However, we will respond to the legitimate points that the Committee has made as soon as we are able to do so.

I agree with the points made by the hon. Member for Greenwich and Woolwich and by my hon. Friend the Member for Redditch about the importance of clarifying how quickly the provisions will come into force. Again, that is a difficult one to answer because we need to get through this process. We have no idea what the other place might or might not do or how quickly the process will go. Although we are all grateful for the confirmation from my Labour colleagues that we are seeking to move this as quickly as possible, it is difficult to be able to answer the question at this stage, but I hope to say more in due course.

On the fourth question posed by the hon. Member for Greenwich and Woolwich, about the competent landlord, my understanding is that we are not changing the law in that regard.

Richard Fuller: I am listening carefully to the Minister and sort of accept what he says, but may I make a couple of points? First, he has talked about how the Bill has to go through the House of Lords, but we are the democratically elected Chamber. The interaction of the two provisions represents substantial transfers in value between different parts of our community—rightly or wrongly. Decisions should correctly be made with the full information by this House. We should not go through a procedure when information is presented in the unelected House, which then comes back to the Commons. With our remit as Back-Bench Members of Parliament, we are very restricted in what we can do to amend that.

Secondly, the Minister talked about how the points about value are hypothetical. That is the case only because the Government have not made a decision. Once they make a decision, those points of value can be forecast. They are no longer hypothetical but judgmental,

so it really is within the Minister's remit to be able to move from hypothetical to his own forecast. Having said that, I fully accept what the Minister has said so far.

Lee Rowley: I am grateful to my hon. Friend for his legitimate points. He is absolutely right that it is important that right hon. and hon. Members have an opportunity to debate at the earliest possible opportunity the complex interaction of what we may or may not choose to do with the consultation. I take his point about hypotheticals. My point was simply that there are a number of different options in the Bill. Some of them are substantially different, as my hon. Friend indicated in some of his questions last week. To go through all the elements of the potential outcomes in all of those different options would be a substantial amount of work and potentially not necessary on the basis that we are likely to choose some rather than all of them. None the less, where I have missed anything out, I will—

Eddie Hughes: The point being made is one of proportion. We are talking about a couple of a billion pounds versus up to £25 billion, £27 billion, which is a significant amount of money for the Government to be considering transferring, as my hon. Friend says, from one party to another. The size of the costs that might be incurred from one party to another makes it important for us to know as soon as possible.

Lee Rowley: I absolutely accept the potential significance of the quantum involved, which is why we all seek to be as clear as we can at the earliest opportunity.

Barry Gardiner: I am conscious that we are talking about the transfer of value as if it were neutral, but leaseholders have been telling us for a long time that this value has been unjustly acquired from them in the first place. The Government seek simply to remediate the position that the law has got itself into. When we consider this, we must understand the injustice that has been perpetrated on people who live in leasehold houses, and have been paying ground rents that have been racked up in an unconscionable way for far too long.

Lee Rowley: The hon. Gentleman is articulating his argument with passion, as he did last week on a similar point in some of the witness sessions. I reconfirm to the Committee that we seek to process the outcome of that consultation as quickly as we are able, and to provide hon. Members and the public with clarity at the earliest opportunity. None the less, while recognising the important interaction of clauses 7 and 8 with the consultation, I hope that underneath there is general consent for clauses 7 and 8. I hope I have covered most of the questions asked. I will write to the Committee in response to the question from the hon. Member for Greenwich and Woolwich about redevelopment, because I need to obtain clarity on that.

Matthew Pennycook: I welcome the Minister's response. He did not address—perhaps he will find time on another occasion—the Government's potential inconsistency in, on the one hand, extending lease extension terms at peppercorn for houses, under the 1967 Act, and, on the other, seeking to ban leasehold houses in their entirety. The Government might want to explore that, to ensure the package as whole is consistent and working as intended. He is welcome to write to me on that point, as well as on redevelopment rights.

I take the Minister's point on the competent landlord. My point was not whether the Bill is fine as drafted; it is the fact that we need to change the 1993Act to account for the set of circumstances I outlined. There is provision in the 1967 Act to cover that problem. As far as we can tell, this Bill does not amend the 1993 Act to account for it. I encourage him to look at that.

On the two substantive issues, there is inherent uncertainty about commencement. Of course, we want the Bill to progress and apply to as many leaseholders as possible. I was trying to stress to the Minister the need to look at the point at which the Bill kicks in. In some Bills, certain provisions come into force at First Reading. We are worried, as the Bill goes through Parliament, about a set of leaseholders being left out of these rights unfairly, given the time we have spent progressing the Law Commission's recommendations. I encourage him to give some thought to that.

On ground rents, I understand entirely that the matter is commercially sensitive. I am not asking for an opinion from the Minister on the consultation, although we do need an indication of the Government's thinking as soon as possible. We also need to understand, as I will come to when we debate clause 21, whether the Government intend to enact any recommendations from that consultation, via this Bill.

What I am looking for is clarity, which he should be able to give us at this stage, on this hypothetical point. If any proposals from that consultation are enacted, clauses 7, 8 and 21 are potentially redundant. We simply need to know whether the Government will further overhaul those clauses, if they take forward any of those recommendations. That is hypothetical, but the Minister should be able to answer. The Government have presumably thought, "Yes: if that scenario occurs and we take forward one of the five options, we will or will not have to revise the Bill." That is the answer that I am simply looking for from the Minister. If he wants to take this opportunity to clarify that, I would welcome it.

Lee Rowley: The hon. Gentleman tempts me to go into hypotheticals. Let me at least dip my toe into that for a moment. Let us take some of the potential outcomes of the consultation discussed today, for example, and the question of whether they potentially will make redundant some of the clauses. In one of the instances, where there is a fear, concern or question, it would still be the case that potentially amendments to clause 8 would need to be introduced, for example, on ground rents, so depending on the scenario it would not make that entirely redundant. I will not go into hypotheticals to their logical and total extent, but I hope that that gives some assurance that consultation has been held and we will bring forward what is appropriate in due course.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

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

11.16 am

Adjourned till this day at Two o'clock.