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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD REFORM (GROUND RENT) BILL [LORDS]

Second Sitting

Tuesday 7 December 2021

(Afternoon)

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Saturday 11 December 2021

The Committee consisted of the following Members:

Chairs: † Julie Elliott, Mr Philip Hollobone

† Aiken, Nickie *(Cities of London and Westminster)* (Con)
† Amesbury, Mike *(Weaver Vale)* (Lab)
† Byrne, Ian *(Liverpool, West Derby)* (Lab)
† Colburn, Elliot *(Carshalton and Wallington)* (Con)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Gideon, Jo *(Stoke-on-Trent Central)* (Con)
† Greenwood, Lilian *(Nottingham South)* (Lab)
† Greenwood, Margaret *(Wirral West)* (Lab)
† Grundy, James *(Leigh)* (Con)
† Hudson, Dr Neil *(Penrith and The Border)* (Con)
† Hughes, Eddie *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Long Bailey, Rebecca *(Salford and Eccles)* (Lab)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Mortimer, Jill *(Hartlepool)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Vickers, Martin *(Cleethorpes)* (Con)
† Young, Jacob *(Redcar)* (Con)

Huw Yardley, Bradley Albrow, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Tuesday 7 December 2021

(Afternoon)

[Julie Elliott *in the Chair*]

Leasehold Reform (Ground Rent) Bill [*Lords*]

Clause 9

Enforcement authorities

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I call Nickie Aiken to conclude her speech.

Nickie Aiken (Cities of London and Westminster) (Con): It is a pleasure to serve under your chairmanship, Ms Elliott. As I was saying earlier, having been the cabinet member for public protection at Westminster City Council, I know that enforcement is the cornerstone by which we put words into action and ensure that what we pass in legislation has the intended effect in real life.

It is a welcome provision that the income from financial penalties will be kept by local authorities, but we need sustainable funding sources for enforcement ahead of the game. Local authorities may eventually keep the income from penalties, but work will need to be undertaken before that by the trading standards teams to bring enforcement cases to fruition. That funding is particularly important given the increase in the range of new enforcement duties being placed on trading standards departments across the country.

It is also important to recognise that no two councils are the same. They come in all shapes and sizes—rural, urban, global cities such as my own—which all have different numbers of leaseholders who will be affected by the Bill. I would welcome the Minister giving consideration to the kinds of measures that councils will need in order to be appropriately supported, in proportion to the number of leaseholders they may have within their local authority area and the duties being placed upon them.

Of course, as I have said, I welcome the Bill—it does so much to ensure fair enforcement—but we need assurances that there will be guidance for trading standards teams, particularly on the new provisions we will be introducing on leasehold and freehold law, to ensure that trading standards officers are adequately trained to deal with what may become difficult enforcement situations. Trading standards officers may not be trained in landlord and tenancy law; they may require some more training. Ultimately, we need the provisions in the Bill that place additional duties on trading standards teams to be underpinned by proportionate support and adequate guidance.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Eddie Hughes): It is a pleasure to serve under your chairmanship, Ms Elliott. I thank my hon. Friend the Member for Cities of London and Westminster for her contribution, and also the Opposition spokespeople for their contributions.

I was asked why we are allowing authorities to range outside of their geographical area of responsibility, and whether there is precedent. There is precedent in the Tenant Fees Act 2019. A similar approach has been applied. There might be a landlord in one local authority area that owns some properties in another, and then it is most appropriate for a single local authority to pursue that claim. That is why that ranging is allowed. I much preferred the evocative imagery from the hon. Member for Garston and Halewood of people gallivanting across the country and trying to claim money in other areas, but the explanation is unfortunately much more mundane.

On associated costs for councils from the duty, because the move has been well telegraphed and we expect people to be compliant, we expect the number of claims to be small, but we will continue to review them and will work with the Local Government Association and others to ensure that local authorities are properly remunerated in preparation and that they are properly resourced.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

Financial penalties

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

The Chair: With this it will be convenient to discuss clauses 11 and 12 stand part.

Eddie Hughes: The Bill will allow enforcement authorities to act on unfair practices against leaseholders. Clause 10 enables an enforcement authority to impose a financial penalty on a landlord who has required a leaseholder to pay a prohibited rent. There is a separate power under clause 11 to make a recovery order to repay the prohibited rent.

It is important to note at this point that a conscious decision has been made for former landlords to be subject to penalties for breaches of the ground rent restrictions and to remain accountable for their actions at the commencement of the legislation. I am sure that the Committee will agree that we would not wish to see the development of the poor practice of landlords selling their leases in order to avoid financial penalties.

Clause 10 sets clear parameters for enforcement authorities to work within, but we must of course ensure adequate checks and balances so that those in breach are not unfairly treated. Before imposing a financial penalty, enforcement authorities must be "satisfied beyond reasonable doubt" that a breach has occurred. Where an enforcement authority is satisfied, subsection (2) clearly defines the parameters of the financial penalty that may be imposed. The Government's decision to increase the maximum penalty from £5,000 to £30,000 shows that we have listened to parliamentary stakeholders, who felt that a stronger deterrent was needed.

Subsection (3) permits only one financial penalty to be issued where multiple breaches have occurred on a single lease. However, where enforcement action has been taken against a landlord, and that landlord is found to have breached clause 3(1) again, they may be subject to a further financial penalty after their initial fine. I am sure that the Committee will agree that that is the right thing to do.

In a case in which a landlord has committed breaches in relation to multiple leases, an enforcement authority may impose a single financial penalty to cover all breaches. In that scenario, the minimum or maximum amount of the financial penalty is the sum of the minimum and maximum penalties that could have been imposed if each breach had been dealt with separately. If a landlord has breached clause 3 on two of their leases, for example, the enforcement authority could not decide to issue a single penalty of £600 as that total would mean that the landlord had paid a penalty below the minimum amount of £500 per breach. The enforcement authority will be required to consider issuing a penalty of at least £1,000.

Importantly, clause 10 ensures that landlords are protected from being charged twice for the same breach by two separate enforcement authorities. Should the minimum and maximum penalty thresholds need updating, the Secretary of State has the power to change them through regulations for England, and Welsh Ministers can do so for premises in Wales. Subsection (10) makes it clear that this may be done only to reflect changes in the value of money. Financial penalties are an important deterrent, but they must be managed appropriately. The clause sets out a clear framework for enforcement authorities to work within and provides a balanced and fair approach towards those in breach.

Clause 11 forms an important part of the Bill's deterrent measures to discourage landlords from including an inappropriate monetary ground rent in a regulated lease. Subsection (1) enables an enforcement authority to order the repayment of a prohibited rent where they are satisfied, on the balance of probabilities, that the leaseholder has made such a payment and the landlord has not already refunded it.

Subsection (2) sets out who the enforcement authority may order to repay the prohibited rent, including the landlord at the time when the payment was made, and the current landlord. That means, for example, that if it is not possible to trace a previous landlord, a leaseholder will still be able to recover the ground rent that they were wrongly charged. That is fair; a new landlord must take responsibility for the leases that he has taken over. Subsection (2)(c) makes it clear that an agent acting on behalf of the landlord may also be ordered to repay any prohibited rent that the leaseholder paid to them. That is important, as we know that there may be cases where the landlord is absent or unresponsive. A responsible managing agent would wish to ensure that leases, and their own practices, comply with the law.

There are protections in the clause to prevent duplication of recovery orders. Where the tenant has applied to the appropriate tribunal for a recovery order, the enforcement authority may not make such an order. If an enforcement authority has already made an order in respect of that payment, no further order may be made in respect of it.

Subsection (4) enables some administrative ease to assist enforcement authorities. It enables an enforcement authority to make a single order in respect of a number of prohibited rent payments, provided that they all relate to the same lease. The clause is vital to ensuring that an enforcement authority can act where a prohibited rent has been charged and order the landlord to repay it so that the leaseholder is not out of pocket.

On clause 12, it is only fair that where a prohibited rent has been wrongly paid, it should be possible for the leaseholder to recover interest on the amount that they are out of pocket. The clause makes provision for that. Interest is payable from the date of a payment of a prohibited rent until the date that it is repaid. The interest rate, as is standard practice for such matters, is the rate specified in section 17 of the Judgments Act 1838.

To ensure that the amount of interest to be paid is not disproportionate, subsection (5) places a cap on that amount. It must not exceed the original amount of prohibited rent that the landlord is required to repay. It is only fair that a leaseholder should not only be recompensed for the amount that they are out of pocket, but recover the interest on that amount.

Mike Amesbury (Weaver Vale) (Lab): It is a pleasure to welcome you to your place, Ms Elliott. I welcome the Minister's and the Government's response to some of the debates on the Bill in the other place about the maximum level of fine. Given that a number of landlords and freeholders have deep pockets, it will act as a more effective deterrent.

On multiple breaches, I am making an assumption that an element of sense will be applied, so that someone with multiple breaches would be looking at the maximum fine. I know that that will be a judgment call for the enforcement authorities and trading standards, which will be well resourced—we have had the assurance from the Minister today.

The clause picks up on several earlier points made on both sides of the Committee. It is essential that people are informed from the outset of the duties that will be not only implied but overt as a result of the Bill. Residents and leaseholders will be particularly keen to ensure that where they have been wrongly charged and levied—essentially, ground rent should never have happened in the first place—they will be able to retrieve that quickly. I welcome the clauses but there are still a number of questions for the Minister.

Maria Eagle (Garston and Halewood) (Lab): It is a pleasure to serve under your chairmanship, Ms Elliott. I have a couple of points for the Minister. There are extensive provisions on the recovery of prohibited rent, which I generally welcome. I notice that on page 14 of the explanatory notes, under the heading "Financial implications of the Bill", it says:

> "An Impact Assessment has been prepared for the Bill and covers the implications on private sector bodies and home purchasers… The Impact Assessment illustrates a de minimis impact of less than £5m."

It then says that there is an assumption

> "that the number of enforcement cases will be very small."

One would hope that that would be the case, because one would hope that landlords will not seek to charge and benefit from ground rent in the interim between the Bill coming in and peppercorn becoming payable, when

[Maria Eagle]

it becomes commenced, by putting provisions into new leases that charge ground rent. One hopes that that is a correct interpretation. The explanatory notes then say:

"Over and above the use of the proceeds arising from the enforcement action, a further amount of expenditure will be required to provide additional capacity within the National Trading Standards function to support local weights and measures authorities. Leasehold law is a complex area, and it is felt that a central support function will aid the effective introduction of the provisions of this Bill. The cost estimate of this support function is £29,000 per annum",

which is very precise. It is sort of a round figure, but it is quite a small sum. I wonder whether the Minister could explain the assumptions underlying the explanatory notes.

2.15 pm

I also notice from the clauses that we are debating that there is no provision for costs. While I understand that there is a hope that a small number of enforcement cases will be necessary, and that there is provision for enforcement authorities to retain whatever the fine ends up being, I wonder upon what assumptions the Department has concluded that there will not be costs to the enforcement authorities that may not be recoverable. As we have been discussing all day, this kind of land law is very complex and tends to require a specialist understanding. Although it may be a small point, and for a short period, and one hopes that it will not happen, if there needs to be enforcement it could be quite complex for the officers of the enforcement authority to get their head around what needs to be done in a particular case. Landlords may well seek to evade their responsibility and to find loopholes of some kind to get around the Bill. I wonder to what extent the Minister is clear that there is unlikely to be extensive costs, and whether he can explain further the figures in the impact assessment, referred to in the explanatory notes.

Eddie Hughes: I have two points. The hon. Member for Weaver Vale and I will be aligned in hoping that people decide to fine those who commit multiple breaches at the higher rather than the lower end of the spectrum. That would be our hope. We will have to see. It is not for he and I to decide those things; we need to leave that to others, and hopefully they will base that on their experience.

On the figure of £29,000 and the impact assessment, my understanding is that, given that we expect there to be a small number of cases, we would not necessarily expect all local authorities to need to stand up some sort of specialism. In the natural development of things, one local authority may develop some expertise and be able to act on behalf of others, and it will therefore be contained and concentrated in one place. This is obviously a developing theme. Until the law is enacted, we do not know exactly how it will work and how landlords might behave. It is something that we will need to return to and be mindful of. We must ensure that we keep an eye on it to see where the burden falls and then resource appropriately.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Clause 13

ENFORCEMENT AUTHORITIES: SUPPLEMENTARY

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

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

Government amendment 9.

That schedule 1 be the First schedule to the Bill.

Eddie Hughes: Clause 13 makes various supplementary provisions in relation to enforcement authorities. Importantly, it requires them to have regard to any guidance that may be issued by the Secretary of State and Welsh Ministers, depending on the location of the property. We have made it clear that the Government intend to issue guidance on various matters to ensure that enforcement authorities act with consistency. Subsection (3) amends schedule 5 to the Consumer Rights Act 2015 to ensure that enforcement authorities have the investigatory powers that they need to enforce the ground rent restrictions in the Bill.

The final subsection of clause 13 introduces the schedule, which sets out how an enforcement authority may impose a financial penalty or make a recovery order. This includes the relevant time limits, rights of appeal, the recovery of a financial penalty or an amount ordered to be paid if the landlord does not comply and retention of sums received. We will consider these details when we come to consideration of the schedule. The clause contains important supplementary provision to ensure that enforcement authorities receive the guidance necessary to perform their role properly and consistently. It gives them the powers they need to be effective and sets out procedures that are appropriate and fair.

I turn to Government amendment 9. Members will know that the Bill applies to both England and Wales. They will also know that in the other place the Government made a series of changes to give certain powers to Welsh Ministers. I would like to take this opportunity to once again thank colleagues in the Welsh Government for working constructively with us on these issues. Amendment 9 in my name is one more change in a similar spirit.

Clause 13 and paragraph 11 in the schedule allow enforcement authorities to keep the proceeds of any action to cover the cost of that action. With penalties of up to £30,000 per lease, that is vital so that local authorities or local trading standards are not left out of pocket for implementing the provisions in the legislation. To act as an effective deterrent, freeholders, landlords and managing agents need to understand that action will be taken if they charge a prohibited rent.

However, enforcement penalties have not been designed as a new income stream for the authorities. As such, any excess proceeds from a penalty beyond what is needed to cover the enforcement action in relation to the Bill and other residential leasehold enforcement cannot be kept, ensuring penalties remain proportionate to the breach and enforcement costs are still covered. In these circumstances, the Bill would see all such excess proceeds being paid to the Secretary of State. Amendment 9 would make sure that, if the penalty is imposed in relation to leases of premises in Wales, the excess proceeds

would go instead to Welsh Ministers. This is a small but sensible change, and I hope it will be supported by the Committee.

The schedule sets out the procedure that an enforcement authority must follow when they wish to impose a financial penalty or make an order requiring the repayment of a prohibited rent under the legislation. This will help to ensure consistency and fairness in enforcement. Enforcement authorities must give the relevant person notice of their intention to impose a financial penalty within six years of the breach occurring and within six months of the authority having evidence that they consider justifies serving the notice. The relevant person will usually be the landlord, but where the notice relates to a recovery order it may be a former landlord or agent. The notice must contain relevant information about the reasons for imposing the penalty or making the recovery order, the amount of the penalty or the terms of the order, and the right to make representations. The landlord then has 28 days to respond.

If, after considering any representations, the enforcement authority decides to impose a penalty or make a recovery order, it must give a final notice. This must set out the amount of penalty and/or terms of the recovery order and the reasons for the penalty or order. It must address how these will be paid, the landlord's rights of appeal and the consequences of failing to comply. An enforcement authority may at any time withdraw or amend a notice of intent or final notice by providing written notice to the relevant person. The landlord, or person acting on their behalf, has a right of appeal to the appropriate tribunal against the decision to impose the penalty or make the order, the amount of the penalty, or the terms of the order.

Any appeal must be brought within 28 days of the final notice and is to be a re-hearing of the enforcement authority's decision. However, the appropriate tribunal may admit new evidence that was not previously before the enforcement authority. In those cases, the existing final notice is suspended until the appeal is determined or withdrawn. The appropriate tribunal may confirm, vary or quash the final notice. It may increase or decrease the penalty imposed, but it is bound by the same minimum and maximum limits as the enforcement authority.

If the landlord fails to pay all or part of the financial penalty, or to repay a prohibitive rent, the enforcement authority can seek repayment on the order of the county court as if the penalty or payment were payable under an order of the county court.

I am aware that concerns have been raised about the resources of local authorities to enforce the legislation. I trust the fact that the schedule enables an enforcement authority to retain the proceeds of any financial penalty for future residential and leasehold enforcement is very welcome. My officials have discussed with national trading standards and the Local Government Association what further options can be considered to support the Bill's implementation. Furthermore, we are producing guidance to which enforcement authorities must have regard and which will support those authorities in fulfilling their enforcement responsibilities under the legislation, as called for by my hon. Friend the Member for Cities of London and Westminster.

Mike Amesbury: With regard to the excess that could be generated, and terms of the clause and the amendments, there could be a transfer to the Welsh Secretary. Does the Minister envisage that happening in reality, given the situation that many local authority trading standards have faced over the past 11 years? That point has been echoed across the Committee today. Could the Minister elaborate on the discussions that he has had with the Welsh Government, because there are elements of a tidying up exercise here? The Minister said that he had further discussions of other mechanisms that would help trading standards effectively conduct and resource their enforcement role. What are those mechanisms and sources of other potential income?

Maria Eagle: I have a couple of probing questions. There is no doubt that it is good to see some enforcement provisions. Given the range of penalties from £500 to £30,000 and given that trading standards have to effectively obtain their costs from the proceeds when undertaking the enforcement activity, is the Minister concerned that that might offer an incentive to trading standards—the enforcement authority—to pitch their fine or notice at a higher level than perhaps might otherwise be the case? Does he agree that going through this administrative fining arrangements, with all the appeals that we see in the schedule, would probably not be worth it for an enforcement authority if it were only going to get £500 at the end of the day, given the difficulty of understanding all the nuance of landlord and tenant law and leases? Is it therefore much more likely that there will not be much enforcement activity?

One of the other concerns for such an officer and an enforcement authority, might be that if there is an appeal to the administrative tribunal by the landlord against the amount being levied by way of penalty, that might be reduced from what the authority originally set out to cover its costs, say, to a much lower figure, closer to £500, which would perhaps most certainly not cover its costs. Is there an incentive in part for the enforcement authority to pitch the fine high, but any tribunal that considers an appeal may cut the fine to such a level that the enforcement authority might not be able to obtain its costs back from the proceeds? Perhaps, therefore, the overall impact will be that the enforcement authority thinks better of engaging in enforcement if it does not have resources it can guarantee will be used to do that. I would be interested to know what the Minister and his Department have considered in respect of the incentives built into the system in the Bill.

2.30 pm

Eddie Hughes: In answer to both those points, there could be some confusion as to the motivation behind the level at which the fine is imposed. Our intention is to impose fines at a level that is a deterrent, and that is why the maximum limit has been lifted; however, as I said, the fines are not intended to be an income stream for the relevant authorities. The hon. Member for Garston and Halewood suggests that there might be a perverse incentive for authorities to impose fines at a higher level in order to increase their income. However, as the hon. Member for Weaver Vale said, how often would I expect money to be returned to the Secretary of State? The intention is to pitch the fine at the appropriate level, which is commensurate with the level of crime—let us put it that way—rather than associating it with the income that needs to be covered.

Maria Eagle: Will the Minister give way?

Eddie Hughes: I think it would be helpful if I conclude my contribution, and then the hon. Lady can come back in. *[Interruption.]* Well, it might be helpful if the hon. Lady let me respond to the points she made first. As I said, if the fine is set at a level that is appropriate to the crime, that might be in excess of what is necessary in order to cover the costs incurred by the authority. In that case, as it is not meant to generate revenue, the money would go back to the Secretary of State or the Welsh Minister, as appropriate.

The natural equilibrium of things will be reached by ensuring that the money generated covers the costs of administering the programme. If it does not, the Government will need to be mindful of that. As I have said, we are in conversation with the Local Government Association and we will see how that progresses. The hon. Lady is wise to raise that point. We do not want to see anything that disincentivises authorities from prosecutions because they do not think their costs will be covered. That is a really important point, and we will need to be mindful of it.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Amendment made: 9, in schedule 1, page 19, line 16, leave out from "paid" to end of line 17 and insert—

> "(a) where the penalty was imposed in relation to a lease of premises in England, to the Secretary of State, and
>
> (b) where the penalty was imposed in relation to a lease of premises in Wales, to the Welsh Ministers."—*(Eddie Hughes.)*

This amendment provides that penalty proceeds not used by the enforcement authority to meet enforcement costs must be paid to the Secretary of State, if the penalty was imposed in relation to premises in England, and the Welsh Ministers, if the penalty was imposed in relation to premises in Wales.

Schedule 1, as amended, agreed to.

Clause 14

Recovery of prohibited rent by tenant

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

The Chair: With this it will be convenient to discuss clause 15 stand part.

Eddie Hughes: Clause 14 provides leaseholders with an alternative route for redress should they wish to take action directly, instead of by approaching an enforcement authority. It enables the leaseholder to apply directly to the appropriate tribunal for a recovery order that requires the landlord to repay the prohibited rent.

The clause mirrors the provisions in clause 11 in relation to enforcement authorities, enabling a leaseholder—or someone acting on their behalf—to apply to the tribunal for a recovery order if they have paid a prohibited rent and it has not been refunded. As in clause 11, the recovery order may apply to the landlord at the time the prohibited rent was paid, or to the current landlord. It may also apply to a person acting on the landlord's behalf, where that person received the money. As I said, the provisions are fair, and are included in the Bill to ensure that the prohibited rent can be recovered effectively and repaid to the leaseholder. The person ordered to repay the rent has up to 28 days following the date of the recovery order to make the repayment. That ensures that the repayment is made promptly. Later in our discussion we will come to provisions in the Bill for the landlord to appeal if they consider it appropriate.

The clause also includes, as clause 11 did, provision that a single order may be made in respect of multiple wrongful payments. It prevents duplication by clarifying that the tribunal may not make an order if one has already been made successfully by an enforcement authority in respect of the same payment. The clause gives choice to leaseholders, which I am sure we are all in favour of, to seek their own resolution to any prohibited rents that have been paid. They can choose to apply to the appropriate tribunal without involving their local enforcement authority. I hope that we can all agree that that is a helpful provision to ensure that leaseholders can take their own action if desired.

Clause 15 makes equivalent provision to that in clause 12 in relation to interest that may be ordered on top of an order to repay prohibited rent. Clause 15 applies where the recovery order is made by the appropriate tribunal rather than an enforcement authority. As in clause 12, the clause provides that interest is payable from the date of a payment until the date it is repaid. The interest rate is the normal rate that applies to court judgments: a simple interest rate of 8% per annum. To ensure that the amount of interest to be paid is not disproportionate, there is a cap on the amount of interest that a person may be required to pay. It must not exceed the amount of the wrongly paid rent that the tribunal orders to be repaid. As I said in relation to clause 11, which clause 15 mirrors, it is only fair that a leaseholder should not only be recompensed for the amount that they are out of pocket but recover interest on it.

Mike Amesbury: With regard to the tribunal, I referenced the evidence from the National Leasehold Campaign and the Leasehold Knowledge Partnership, and that David versus Goliath arena. I do not think it is a matter of choice; I wonder why anyone would opt for this route versus the other provisions in the Bill. Clause 15 is very straightforward, applying the same principle.

Eddie Hughes: I thank the hon. Gentleman for his contribution. Just because we cannot imagine the circumstances in which it would be necessary does not mean that they do not exist. Whether a person should choose to pursue it themselves depends on how well informed and able they are. Perhaps they might find it easier or quicker. I am not sure, but the option should at least be available to them.

Mike Amesbury: That demonstrates why clause 8 and the duty to inform were so important. That would, again, help with this potential.

Eddie Hughes: I can say only what I said earlier: I do not think that clause 8 and the duty to inform are required. I am not sure that it would necessarily make it easier. The hon. Gentleman questioned why somebody

would want to pursue it themselves. As I said, they would no doubt be a well informed and able person. I am not sure that the duty to inform would have applied.

Lilian Greenwood (Nottingham South) (Lab): Will the Minister expand on clause 15(5), on the amount of interest payable not exceeding

"the amount ordered to be paid under section 14",

and the equity of that? It strikes me that if someone is required to make a payment and a long period has expired, which is why interest is being added to the amount, for what reason would that be deemed not payable? How would that be fair on someone who has been disadvantaged in that way?

Eddie Hughes: I think it simply represents the fact that, in reality, we will ensure that we pursue these things more quickly. We should not be in a position where the two are of equal level. I understand the hon. Lady's point and will consider this further as the Bill progresses.

Maria Eagle: The difference between these clauses and the previous clauses we discussed is that the organisation that will in the first instance decide the size of the fine is the tribunal, rather than the enforcement authority—I think I am right about that—because the tenant will make an application to the tribunal for a fine to be levied and to get back the money they have wrongly paid. Do the Government intend to give some guidance to the tribunal as to how to set that fine? There is quite a wide range; it is between £500 and £30,000. Does the Minister expect that the tribunal, in making such a determination, will follow the same kind of guidance as the enforcement authority would follow were it initially setting the level of fine? Has he given any thought to consistency between the two ways of getting to a fine in this instance—whether through the tribunal or the enforcement authority?

Eddie Hughes: It would absolutely be our intention, through guidance or otherwise, to ensure consistency across both approaches.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clauses 15 and 16 ordered to stand part of the Bill.

Clause 17

Assistance

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

Eddie Hughes: Clause 17 enables enforcement authorities to assist leaseholders, where they request it, with various applications to the appropriate tribunal for redress. We have discussed that a leaseholder may apply to the tribunal for a recovery order to recover any permitted rent, along with any interest that would have been payable. We have also discussed the provision to apply to the tribunal for a declaration that will establish for the record whether a term in a lease is a prohibited rent, and if so, what the permitted rent is.

We want to ensure that the system of redress for leaseholders is easy to navigate. That is why we have taken a belt-and-braces approach whereby enforcement may take place via the enforcement authorities or a leaseholder may seek redress directly by application to the appropriate tribunal. Should a leaseholder wish to do this, the clause makes it clear that an enforcement authority may offer assistance to the leaseholder with that process. I hope hon. Members agree that it is important to give enforcement authorities the power to offer appropriate assistance to leaseholders who wish to seek redress directly from the tribunal. The clause achieves that.

Mike Amesbury: The clause seems fairly proactive, essentially hand-holding through the process, which in one dimension is most welcome. However, I still question the incentives for people to go down the enforcement authority route—trading standards—rather than the tribunal route for cost recovery. I am curious.

Maria Eagle: I have a similar concern to my hon. Friend's. The clause states that, "An enforcement authority may," not "must", which means that it may not. It may decide that it does not wish to. If it were to take enforcement action itself, it can retain the proceeds of any enforcement that occurs, but there is no indication that the costs of assisting a tenant, which may be just as an extensive as if it were to carry out the enforcement action itself, are recoverable in any way. Does that not suggest that the relevant enforcement authority may choose not to?

2.45 pm

The provision in the Bill is permissive, so it is not a requirement that the enforcement authority helps the tenant if the tenant approaches it. It may choose to enforce under previous provisions, but under this provision, it seems that it will not have any chance of recovering the costs of assisting the tenant, so is it not likely or possible that it will decide not to help the tenant? If it had decided to enforce itself, it would recover the costs in the same circumstances—the same dwelling, the same lease, the same wrongful acquiring of ground rent that the landlord had indulged in to ensure that the enforcement authority had a role at all.

I wonder why clause 17 is in the Bill. The Minister has referred to it as belt and braces, so why does it not say, "An enforcement authority must" help a tenant? Surely, if it is not going to recover its costs, but could if it did it itself, it will decline to help them.

Eddie Hughes: I feel as though the hon. Lady has almost answered her own question. If somebody comes to the authority seeking advice, and it decides that, given its expertise in the field, it would be better if it pursued the claim itself, perhaps it might be minded to do that. In that case, it would be "may" rather than "must". That leaves the leaseholder with a choice as to the route that they take. It is appropriate that both options are available to them.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

Interpretation of enforcement provisions

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

Eddie Hughes: Clause 18 defines which is the appropriate tribunal for a lease of premises that is in England or in Wales. The clause also glosses the meaning of "tenant" in clauses 11 and 14, which relate to recovery orders, and in clause 17, which relates to assistance by an enforcement authority.

I should note that, in discussing the Bill, I have generally referred to "leaseholders", rather than tenants, as that is the term that most people are familiar with in the context of a long lease. However, Members will have observed that the Bill uses the term "tenant". The clause defines "tenant" for the enforcement clauses in the Bill, so to avoid confusion I shall refer to "tenant" in my comments on this clause.

Clause 18 has the effect that in those clauses, references to tenants include former tenants and people acting on behalf of a tenant, but not former tenants or people who have guaranteed the payment of a rent for a tenant in relation to making an application as to the effect of clause 7 on the terms of a regulated lease. That wide definition will ensure that any party that has been affected by a breach of the terms of the Bill will be able to seek redress.

The clause excludes former tenants and guarantors from the definition of tenant in clause 17(1)(b), because that provision relates to an enforcement authority helping a tenant to seek a declaration of the application of the Bill to a lease, something that will not be needed by a former tenant and cannot be actioned by a guarantor. For example, a former tenant who has sold on their interest in a property will have no need to seek a declaration as to whether a rent term in that sold-on lease should be a peppercorn. I commend the clause to the Committee.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

Administration charges for peppercorn rents

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

Eddie Hughes: Clause 19 is included to prevent a potential loophole whereby a landlord might charge an administration fee in relation to a peppercorn rent. This measure is achieved by amending the Commonhold and Leasehold Reform Act 2002, thereby requiring that no administration charge is payable in relation to the collection of any ground rent that is restricted to a peppercorn by this Bill. Subsection (5) provides a leaseholder with recourse to redress, if needed. It enables a leaseholder to apply to the first-tier tribunal in England or to a leasehold valuation tribunal in Wales for an order varying the lease on the ground that such an administration charge is not payable.

A further measure, should it be needed, is included in subsection (6), which amends the Landlord and Tenant Act 1987. This enables a leaseholder to apply to the relevant tribunal to request that it makes an order appointing a manager where prohibited administration charges have been made. A tribunal-appointed manager does not act on behalf of the landlord; they are appointed by the tribunal to take over the landlord's right to manage the building. This is a strong measure, intended to provide a deterrent to help ensure that a landlord does not continue to seek administration charges in relation to a peppercorn rent under the Bill. Clause 19 is necessary to ensure we guard against any potential loopholes in this legislation.

Mike Amesbury: I welcome clause 19. The interest in charges that are applied under various titles is well documented. I think the clause does close a loophole. Of course, the Opposition have stated our desire and concern to see these provisions extended to some 4.5 million leaseholds. There are 1.5 million households that are in leaseholds, with some 270,000 in the north-west and a similar figure in Wales. This measure obviously applies to those going forward. I welcome the clause within the narrow scope of the Bill.

Eddie Hughes: I commend the clause to the Committee.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

Amendments to the Housing Act 1985

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

The Chair: With this it will be convenient to consider clauses 21 and 22 stand part.

Eddie Hughes: Clause 20 makes two amendments to the Housing Act 1985. Specifically, they amend part V of the Act on the right to buy. The purpose of the amendments is the same: they update the 1985 Act to ensure that requirements in it relating to ground rent are aligned with the provisions in the Bill.

Clause 21 gives the Secretary of State the power to make provision that is consequential on the Bill through regulations, including provisions amending an Act of Parliament. We do not take such a power lightly, and in drafting this legislation we have sought to identify and make all necessary consequential amendments on the face of the Bill. The changes to the Housing Act 1985 in clause 20 are a good example of this.

However, long residential leasehold is a complex and interdependent area of law. Therefore, we consider it prudent to take the power in clause 21 to ensure that, should any further interdependencies be identified at a later date, these can be addressed appropriately. There are various precedents for such provisions, including section 92 of the Immigration Act 2016, section 213 of the Housing and Planning Act 2016 and section 42 of the Neighbourhood Planning Act 2017.

The Delegated Powers and Regulatory Reform Committee considered the powers in the Bill, including this one, and noted that there was nothing in the Bill that it would wish to draw to the attention of the House.

Maria Eagle: Clause 21(2) states that

"the provision that may be made by regulations under subsection (1) includes provision amending an Act (including an Act passed in the same session as this)."

Can the Minister tell the Committee why that is? What Act being passed in this Session could possibly need to be amended as a consequence? Is there another Bill that has provisions about such things? Why is that part in parentheses included?

Eddie Hughes: My understanding is that consideration has been given and we do not think there is anything, but we need to be prepared should the circumstance arise. That is my understanding of the requirement.

Mike Amesbury: What would those circumstances be? Can the Minister give us examples?

Eddie Hughes: As I said in my speech, the law is complex and there are interdependencies between various Acts. The provision makes sure that there is nothing that we have missed in terms of another piece of legislation that would be relevant and would have an impact; it gives us the opportunity to make an amendment appropriately. That is my understanding.

Maria Eagle: I am sorry to press the Minister on this, but clause 21 says,

"including an Act passed in the same session as this".

What other Bill or Act in this Session could possibly have a provision that may need amending as a consequence of the Department overlooking something? This is complex housing law. What other Bill that is being passed through Parliament in this Session has complex housing law in it?

Eddie Hughes: I can only say again that we do not know the answer to that, otherwise we would obviously have made the necessary amendment at this point.

Maria Eagle: This is ridiculous.

Eddie Hughes: I appreciate that the hon. Lady is not happy with the answer, but unfortunately that is the circumstance.

Clause 22 makes provision relating to regulations under the Bill. Subsection (1) is a standard provision that enables consequential, supplementary, incidental, transitional, saving or differential provision to be made, if necessary, in connection with the exercise of powers under the Bill. As is usual, subsection (2) provides that regulations under the Bill must be made as a statutory instrument. Subsections (3) to (4) relate to the procedure for making regulations under the Bill. Regulations under the Bill will follow the negative procedure, unless they make provision under clause 20 amending an Act. As we have discussed, for provisions under clause 20, the affirmative procedure will be followed, requiring active approval from both this House and the other place.

Dr Neil Hudson (Penrith and The Border) (Con): It is a great pleasure to serve under your chairship, Ms Elliott. I am grateful to the Minister. I very much welcome the Bill. It is a tightly scripted, focused Bill, which will accelerate its passage. I welcome these clauses, which allow the Secretary of State and the Government to bring in subsequent and consequent amendments, if need be.

One of the key themes of the Bill is that it gives homeowners and leaseholders more of a sense that they have rights over the building they own and that is their home. Currently, in many cases, the leaseholder has to apply to the freeholder for permission to do things to the property that they consider to be their home. That can include whether they can keep a pet in the building. Is that something that the Government will look at as we move forward? When someone owns their home, they should have the right, as a responsible pet owner, to keep a pet. I declare a strong interest in that, both personally and professionally—I am a veterinary surgeon and am fully aware of the physical and mental health benefits to people and animals of the companionship of responsible pet ownership. Will the Government look at those rights moving forward?

Mike Amesbury: The hon. Gentleman spoke about people owning their home. This is the whole issue with leasehold; people do not own their home. I wish him well with the pets, and his practice.

3 pm

Dr Hudson: I take on board that comment, but a key theme for leaseholders is having more of a sense of belonging, ownership and ability to make decisions such as whether to keep a pet. I realise that this is a tightly worded Bill, but can the Minister say whether we will consider that issue in future?

Maria Eagle: I have every sympathy with the hon. Gentleman's plea that homeowners—leaseholders think they are homeowners, but they do not own everything—should have the right to do things such as own pets. The Minister will tell me if I am wrong, but I think that the regulations and consequential amendments that we are discussing relate only to the power to deal with landlords seeking to continue ground rent, other than peppercorn rent, in the interim period between Royal Assent to the Bill and when the regulations are brought in to commence it properly, which we understand might be in six months' time.

Talking about these provisions is a bit like dancing on the head of a pin. I know I have been contributing significantly to that, but they apply in a very narrow range of circumstances that relate to landlords who seek to continue to charge ground rent, or put clauses into leases that come into existence after Royal Assent but before the commencement of the provision seeking to get ground rent payments from their leaseholders-to-be. We are dealing here with a very narrow range of circumstances in what one hopes would be a very short period. The Minister has suggested a period of six months until commencement. I suppose that if a landlord were then to continue to try to have leases with provision for ground rent that was other than peppercorn, these provisions could apply in those circumstances. We are talking about badly behaved landlords after the commencement of the legislation that keeps ground rent as peppercorn. Can the Minister confirm that the regulations that we are talking about do not relate to anything other than that?

Eddie Hughes: That is my understanding. My hon. Friend the Member for Penrith and The Border rightly said again that this is a tightly crafted Bill. The point that he made would fall outside the scope of the Bill, but given the importance that many people place on ownership and his expert experience as a vet, I look forward to discussing this topic with him as we look at future legislation next year.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clauses 21 and 22 ordered to stand part of the Bill.

Clause 23

Interpretation

Eddie Hughes: I beg to move amendment 7, in page 14, line 13, leave out "consideration in money or money's worth" and insert "pecuniary consideration"

This amends the definition of a premium so that only pecuniary consideration, rather than any consideration in money or money's worth, is included.

Government amendment 7 makes a minor technical change to clarify the definition of "premium" used in the Bill. Members who are closely watching proceedings in the other place will know that the Government amended the Bill there to make it clear that it applied only to leases where a premium was paid. That was done to ensure that the legitimate practice of longer leases on a rack or market rent could continue. This amendment is a further clarification, again in response to concerns raised in the other place by the Earl of Lytton, about the impact that the newly added definition of a premium would have on properties with a "repairing covenant". We are talking about a relatively small number of properties where a leaseholder agrees to take on the cost of repair works in a property. That could be, for example, for the renovation or upkeep of a home. As currently drafted, the definition risks inadvertently reducing the rack rent on such properties to a peppercorn. That is not, and never has been, the intention of this legislation. We are therefore removing the words "money or money's worth" and substituting for them the words "pecuniary consideration". "Pecuniary consideration" is of course a much more preferable phrase, as it is broadly any consideration sounding like or expressed in terms of money. This amendment will ensure that the Bill operates as intended.

Amendment 7 agreed to.

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

Eddie Hughes: Clause 23 defines key terms for the purposes of the Bill. For example, it defines "long lease" and "rent". Only long leases are regulated by the Bill. A long lease is generally a lease granted for more than 21 years, although some other types of lease are also captured. These are leases for a term fixed by law under a grant with a covenant or obligation for perpetual renewal—that excludes a situation where the lease is a sublease from a lease that is not a long lease—and leases terminable after a death, marriage or civil partnership. In the Bill, "rent" includes

"anything in the nature of rent, whatever it is called."

Clause 23 also signposts where other terms, such as "peppercorn rent" and "regulated lease", are defined elsewhere in the legislation.

We have arrived at these definitions after careful consideration. They have been drafted with the intention of avoiding the creation of loopholes that could be exploited to get around the intention of the legislation. The fact that ground rent has not been specifically defined is a very conscious decision, and has been arrived at following a great deal of deliberation. Rent has been defined broadly, and in the way it has been, to ensure that it captures the nature of ground rent without being too specific and risking landlords reintroducing it by another name.

Changing these definitions risks undermining the intention of the legislation. We have, however, provided some further clarification to the definition of rent in response to issues raised in the other place. Specifically, clause 23(3) makes it clear that other legitimate charges—such as service charges, insurance and so on—that might be reserved as rent in a lease will not be reduced to a peppercorn under the legislation merely because they are reserved as rent in the lease.

Mike Amesbury: Again, I welcome the intention of the clause and its various provisions and the amendment, but in relation to service charges, which relate to an earlier narrative under other clauses, there is still the potential that, as we deal with the issue of ground rents, the issue will become service charges. They are not at all transparent. We can look at managing agents, for example. They seem to be accountable to nobody other than themselves. You, Ms Elliott, or I, or anybody in this room, could set up as a management agent and tuck away some interesting so-called service charges. As I said, they are not transparent. We are absolutely clueless as to what some of them are for. An example is car-parking payments. Additional charges for that are sometimes astronomical. I think we could see those consequences that I referred to before. I gave the example of charges going up by 500% or 400% across the country as a result of this measure. We need assurances about that. I know that the Government and the Minister have tried to tighten things up, to prevent those loopholes, but assurance is needed, particularly for leaseholders out there who may be listening to our proceedings.

Eddie Hughes: I completely understand the hon. Gentleman's point. It is incumbent on the Government to ensure that when the legislation is in force, we are in contact with professional organisations, tenants groups and so on to ensure that, if we see a pattern of egregious behaviour of the type that he has described—people effectively trying to reclaim costs through some other route—we find a means to address it. I understand his concern, and I look forward to working with him, once the legislation has taken effect, to ensure that we track any unfortunate consequences.

Question put and agreed to.

Clause 23, as amended, accordingly ordered to stand part of the Bill.

Clause 24

Crown application

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

The Chair: With this it will be convenient to discuss clause 25 stand part.

Eddie Hughes: Clause 24 deals with the issue of Crown land and makes it clear that the Bill will apply to Crown land, including that belonging to the Crown Estate, the Duchy of Lancaster, the Duchy of Cornwall or a Government Department. Prior to the introduction of the Bill, both the Queen and the Prince of Wales granted consent in writing.

Clause 25 states the territorial extent of the Bill, which extends to England and Wales. We have worked closely with the Welsh Government throughout the passage of the Bill to ensure that the legislation meets the needs of leaseholders in England and Wales. As a result, the Bill specifically transfers executive competence to Welsh Ministers in a number of areas, including on the definition of community housing leases in clause 2(6)(b); the penalty amounts to account for the value of money, in clause 10(9); and the provision of guidance in clause 13(1)(b). That will ensure that the legislation works for leaseholders in both England and Wales.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Scott Mann.)*

3.12 pm

Adjourned till Thursday 9 December at half-past Eleven o'clock.

Written evidence reported to the House

LRGRB01 Christopher Jessel

LRGRB02 Stephen Clacy

LRGRB03 Linz Darlington, Director, Homehold

LRGRB04 Leasehold Knowledge Partnership

LRGRB05 The National Leasehold Campaign

LRGRB06 Justin Neal, Strategy & Planning Director, Homewise Ltd

LRGRB07 Churchill Retirement plc