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GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Seventh Sitting

Thursday 25 January 2024

(Morning)

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Monday 29 January 2024

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

Thursday 25 January 2024

(Morning)

[Clive Efford *in the Chair*]

Leasehold and Freehold Reform Bill

Schedule 7

Right to vary lease to replace rent with peppercorn rent

11.30 am

Amendment made: 75, in schedule 7, page 118, line 35, leave out from "have" to end of line 4 on page 119 and insert—

"any obligation under the lease to pay rent varied so that the whole or part of the rent payable becomes and will remain a peppercorn rent".—*(Lee Rowley.)*

This amendment ensures that the nature of the right conferred by Schedule 7 is better described by paragraph 1(1).

Matthew Pennycook (Greenwich and Woolwich) (Lab): I beg to move amendment 6, in schedule 7, page 119, line 12, leave out sub-sub-paragraph (a).

This amendment would ensure that all leaseholders, not just those with residential leases of 150 years or over, have the right to vary their lease to replace rent with peppercorn rent.

The Chair: With this it will be convenient to discuss Government amendments 76 to 78.

Matthew Pennycook: It is a pleasure to continue our line-by-line consideration of the Bill with you in the Chair, Mr Efford. For the sake of probity, I declare once again that my wife is the joint chief executive of the Law Commission, whose reports on leasehold and commonhold reform I will continue to cite throughout my remarks.

Part 2 of the Bill makes changes to other rights of long leaseholders. Four of its five clauses are concerned with improving the right to manage, but as we touched on briefly at the end of the Committee's previous sitting, clause 21, which brings schedule 7 to the Bill into effect, makes provision for a new enfranchisement right to buy out the ground rent and vary it permanently to replace the relevant part of the rent with a peppercorn rent, without having to extend the lease.

We welcome the intent of the schedule. The reform will ensure that leaseholders can enjoy reduced premiums and secure nominal ground rent ownership of their properties without the need to go through the challenge and expense of repeated lease extensions. In the Law Commission's final report on enfranchisement rights, it considered in great detail whether there should be a range of lease extension rights in order to provide greater flexibility than is currently afforded to leaseholders as a result of the provisions in the Leasehold Reform, Housing and Urban Development Act 1993 that require them simultaneously to extend the terms of their lease and to extinguish their ground rent.

The rationale for providing greater flexibility in this area is that in allowing leaseholders to choose either only to extend their lease or only to extinguish their ground rent, leaseholders could avoid paying the landlord the value of the remainder of the original terms and the deferral of the reversion, with the result that premiums would be reduced accordingly.

While taking into account the clear benefits that greater flexibility would provide for in terms of reduced premiums, the Law Commission, in its reports, clearly wrestled with whether it was sensible to recommend a more nuanced approach to lease extension rights. It did so, because of the complexity that the availability of different lease extension options would inevitably create, and the corresponding opportunities that such complexity would present to unscrupulous landlords who might seek to take advantage of those leaseholders unable to access costly professional advice about the best choice to make from the available options.

Without doubt, allowing for choices other than a uniform right to a fixed additional term at a nominal ground rent will make the statutory right to a lease extension more complicated. I will return shortly to the implications of clause 21 and the schedule in that regard. However, on the principle of allowing for greater choice, the Law Commission ultimately decided that despite the increased complexity that it would engender, leaseholders who have a lease with a long remaining term should, on payment of a premium, be entitled to extinguish the ground rent payable under the lease without extending the terms of it.

The commission felt, rightly in our view, that that right is likely to be utilised mainly by those with relatively long leases who are subject to onerous ground rent provisions, or those with relatively long leases and ground rents that are not definitionally onerous but still entail, for a variety of reasons, a significant present or future financial burden. In such cases, even if the premium payable is not significantly reduced, the prescribed capitalisation rates provided for by schedule 2 to the Bill should make valuations simpler and enable the change to be made by means of a simple deed of variation, rather than a deed of surrender and regrant, as required to extend the terms of a lease now.

The schedule implements the Law Commission's recommendation for that right to extinguish the ground rent only. As I have made clear, we support it. We have, however, moved the amendment, which would delete the Government's proposed 150-year threshold, to press the Minister on the reason or reasons for which the Government have decided to confer that right only on leaseholders with leases with an unexpired term of more than 150 years.

To be clear, we understand fully the argument made by those who believe that the right to extinguish a ground rent without extending a lease should only be conferred on those with sufficiently long leases—namely, that the premium for the reversion increases significantly as the unexpired period of the lease reduces, and leaseholders with leases below a certain threshold should therefore be, in a sense, compelled to peppercorn their ground rent and to extend at the same time by means of the reduced premiums that clauses 7 and 8 of the Bill should enable.

However, what constitutes a sufficiently long lease for the purposes of conferring this new right is ultimately a matter of judgment. The Law Commission recommended

that the threshold should be set at 250 years on the basis that the reversion is of negligible value at that lease length. The Government chose not to accept that recommendation and instead are proposing a threshold of 150 years. The Minister may provide us with a different answer in due course, but we assume the reason they did so is simply that this will make the new right to extinguish a ground rent available to many more leaseholders.

However, if that is the case, it obviously follows that setting a threshold of, say, 125 years or even 100 years would make it available to even more of them. The argument against doing so is that leaseholders with leases below a certain threshold should be, in effect, compelled to extend their lease at the same time as peppercorning their rent because not doing so would, in many cases, disadvantage them.

However, that obviously raises more fundamental questions, such as whether it should be up to leaseholders to navigate the wider range of options that will be made available to them if and when this Bill receives Royal Assent, and whether the fact that some leaseholders with relatively short leases may either advertently or inadvertently disadvantage themselves by extinguishing without extending their lease should mean that everyone below the 150-year threshold is prohibited from enjoying the new right introduced by the schedule.

Even assuming one believes it is the role of Government to set a long-lease threshold, it is not entirely clear to us why the Government have alighted on 150 years given that there could be all sorts of reasons why someone with a lease shorter than such a term might want to only buy out their rent, including simply that they are unable to afford the premium required to secure a 990-year lease. As such, we would like the Minister to justify in some detail, if he could, why the Government alighted on a 150-year threshold as opposed to either the Law Commission's proposal of 250 years or a lower threshold that would give many more leaseholders the right to extinguish their ground rent. We would like to ask him to consider whether, as we believe on balance, there is a strong case for simply deleting the 150-year threshold entirely, given that the "remaining years" test that applies is inherently arbitrary. I hope the Minister will give amendment 6 serious consideration, and I look forward to his thoughts on it.

While we are considering this schedule, I also want to probe the Minister again on the Government's intentions in respect of the recently closed consultation on restricting ground rent for all existing leases, and specifically how any proposals arising from that consultation will interact with this schedule given that it provides a right to peppercorn ground rents in existing leases. As I made clear when we briefly considered this matter in relation to clauses 7 and 8, I am obviously not asking the Minister to provide this Committee with an advanced indication of what the Government's formal response to that consultation will be. However, we remain of the view that this Committee needs to know, if the Government ultimately do choose to enact any of the five options for intervention that were consulted upon, what the implications are for the provisions that are currently in the Bill that we are being asked to approve today.

On Second Reading, the Secretary of State was quite clear that at the conclusion of the consultation, the Government would

"legislate on the basis of that set of responses in order to ensure that ground rents are reduced, and can only be levied in a justifiable way."—[*Official Report*, 11 December 2023; Vol. 742, c. 659.]

As members of the Committee will know, he was also open with the Levelling Up, Housing and Communities Committee prior to Second Reading about the fact that his favoured approach would be a peppercorn rent—in other words, option 1 from the consultation. I am conscious that many people across the country who bear leaseholders no ill will whatever have invested, almost uniformly on advice and in good faith, in freehold funds. I have constituents who have invested, for example, in time investments and other such funds that have invested in freehold properties. However, I personally share the Secretary of State's preference not least because, while ground rents exist even at relatively low levels, they will be a major impediment to the widespread adoption of commonhold.

There is a more fundamental issue with ground rents that we need to grapple with. As we have discussed already, over the past two decades, the consequence of the kind of investment we have seen is a system increasingly focused on generating assets by gouging leaseholders through ground rents that are, in historical terms, high to start with and that escalate over the terms of the lease. Leaseholders who worked hard to purchase their own homes and did so in good faith are being asked to pay ever more money for no clear service in return and many are experiencing considerable financial distress and difficulties selling their property, all to sustain the income streams of third-party investors.

Unregulated ground rents of this nature in existing leases cannot be justified. Although we do not discount the risks involved in any of the five options outlined in the consultation, Labour is clear that the Government must act to protect leaseholders from ground rent exploitation and that they should be courageous in determining which of the consultation proposals should be enacted.

All that said, we obviously cannot pre-empt the consultation in question. What is important for the purposes of considering schedule 7, and clause 21, is that we get a clear answer from the Minister as to what the potential implications of any response would be for leaseholders. Specifically, will the schedule have to be revisited should the Government ultimately choose to enact one of the five options in the consultation? Are we correct in assuming that clause 21 and the schedule will have to be overhauled, if not removed from the Bill entirely, in that scenario? If not, how will the Government ensure that the various measures are aligned? It is a hypothetical question, as I am sure the Minister will indicate, but it is entirely reasonable, given that we are being asked to approve the inclusion of the schedule in the Bill. On our reading of the ground rent consultation, the schedule could entirely change the implications; indeed, it may well have to be removed entirely to ensure that the Bill is consistent. On that basis, I hope the Minister will give us a bit more detail. He gave us some on Tuesday, but we need a little more detail on that point.

The Minister for Housing, Planning and Building Safety (Lee Rowley): I am grateful for the comments from the hon. Member for Greenwich and Woolwich, and for his amendment. I will say a few words in general before turning to some of his specific questions.

[Lee Rowley]

As he indicated, the ground rent buy-out right enables leaseholders with very long leases to buy out their ground rent on payment of a premium, without having to extend their lease. A leaseholder with a very long lease who does not need an extension may want to buy out the ground rent without extending the lease, but others may wish to do it in a different way.

I appreciate the hon. Member's points about the amendment, and I understand why he is seeking to extend the right to vary one's lease to as many leaseholders as possible, so I will try to answer some of his questions. Inevitably, as he indicated, there is essentially an arbitrary decision to take on any number, because moving it up or down would change the provision slightly and incrementally each time, so there is an element of having to put a finger on the scale. As he said, the right is an implementation of the Law Commission's recommendation 3(2), which suggested that it should be available for leaseholders with 250 years remaining, but the Government have indicated that they want to set the term at 150 years. The reason given by the Law Commission for making this right available only to those with very long leases, which the Government support, is to limit it to leaseholders who are unlikely to be interested in, or do not need, a lease extension.

Making the right available to all leaseholders, irrespective of their term remaining, would mean that leaseholders who will need a lease extension at some point might opt first to buy out only the ground rent, but would need to extend their lease in due course. That would potentially disadvantage leaseholders in two ways. First, as the term on the lease runs down, the price on the lease extension accelerates. Secondly, a leaseholder who buys out their ground rent first and later extends the lease will pay two sets of transaction costs. It is entirely legitimate to say, "That is the choice of individuals," and I have some sympathy with that argument. On balance, however, the Government recognise that there is a series of things within leasehold law that are permissible but not necessarily advantageous for some groups and sectors. By moving further in this regard, we might inadvertently create another one, which future iterations of Ministers and shadow Ministers might debate removing.

I should make it clear—the hon. Member knows this—that it is not the case that leaseholders with fewer than 150 years remaining do not have the right to buy out their ground rent: they buy out their ground rent when they extend their lease or buy the freehold, and that buy-out will also be subject to the cap. However, the right to buy out the ground rent without extending the lease is for leaseholders with 150 years or more remaining, for the reasons I have given.

Turning to some of the hon. Member's specific points, the ultimate number is a matter of judgment, and we determined that setting the term at 150 years would offer the right to an incrementally larger group of people. We think that is a reasonable place to be. I accept that others may choose a different number, but that is the number we are proposing in the substantive part of the Bill. I also appreciate his point about the outcome of the consultation being the missing piece of the jigsaw puzzle at the moment.

I will not go through my multiple previous caveats around that, because he acknowledged at least one of them. Recognising that I will not be able to answer all of this, it may be that—subject to the outcome of the consultation—changes are needed. I cannot, however, pre-empt that, and we will have to cross that bridge when we came to it. I realise that is not the ideal place to be, but given that we all share the aim of trying to move this as quickly as possible, I hope it is an acceptable position to move forward from. We can return to it in due course should we need to.

11.45 am

I will now deal with amendments 76 to 78, which concern the nature of and right to a ground rent buy-out. Amendment 76 provides for the right to a ground rent buy-out to be available only where there is a right to an extended lease. Amendment 78 is consequential on amendment 76. Amendment 77 provides for the right to a ground rent buy-out of a house to also be available where there is no right to a lease extension only because either the low rent test or the low rateable value test is not met.

The Chair: I call Matthew Pennycook—

Rachel Maclean (Redditch) (Con) *rose*—

The Chair: Oh, I beg your pardon. I did not catch you out of the corner of my eye. I call Rachel Maclean.

Rachel Maclean: I apologise, Mr Efford. I was not quick enough on my feet. Thank you for calling me, and it is a pleasure to serve under your chairmanship.

I thank the Minister for his comprehensive answer to the shadow Minister's questions. My point is somewhat in the same vein, and I am very much thinking of the witnesses we had from the National Leasehold Campaign, who talked about this point in quite a bit of detail. Their concern was about having to pay to buy out the ground rent. Of course, there are a number of elements, factors and variables dependent and contingent on the outcome of the consultation. There are people who might be watching this thinking, "Well, when will I actually know how much it is going to cost me?" A year can go by and they may tip over that threshold. Can the Minister give a bit of clarification to those leaseholders who have been trapped for so long and want to see some light at the end of the tunnel? What signpost can he give on when this right will apply to them and how much they will have to pay if they want to exercise their individual right to have their ground rent reduced to a peppercorn?

Lee Rowley: I am grateful to my hon. Friend for raising that point. She is absolutely right that this matter is important to a number of people, and that it is important that we provide the greatest transparency at the earliest opportunity. I hope she will forgive me for not being able to answer her very valid question directly. We are dependent on an appropriate and detailed review of the consultation, which is necessary—for some of the reasons we talked about on Tuesday—given its importance to a number of parts of the sector and others. We need to allow that to conclude, hopefully as swiftly as possible, and then we need to get it through this place and our colleagues in the other place, who can often slow us down. Hopefully, that will happen as soon as possible.

Matthew Pennycook: I thank the Minister for his response. Let me just deal initially with the three Government amendments, with which we take no issue. On the ground rent consultation, I will not labour the point, because I get the sense we will not get any further information out of the Minister. It is always easier to say this from the Opposition side of the Committee, but it would have been logical to have had the ground rent consultation well in advance of the Bill, as then we could have had a Bill with all the elements properly integrated. It is not like the Government did not have enough time. I think that the previous Secretary of State, the right hon. Member for Newark (Robert Jenrick), announced the second part of the two-part seminal legislation back in 2019, so the Government have had time—but that is where we are. By the sound of what the Minister is saying, we will have to significantly overhaul many clauses in the Bill if the Government do decide to enact one of the five proposals.

On amendment 6, I do not find the Minister's argument convincing. The Law Commission recommended a 250-year threshold. The Government have clearly determined that they need not follow that recommendation to the letter, although they have implemented the principle of it. They have chosen to put their finger on the scale, as the Minister said, at a different threshold. I think trying to put one's finger on the scale on this particular issue is likely to cause more problems than it solves. I hope the Government might think again about cutting the Gordian knot entirely.

The most common forms of lease are 90, 99 and 125 years. Leaseholders with the most common forms of lease will not be able to enjoy this right. The Government are in effect saying to them, "You must buy out under clauses 7 and 8—your lease extension and your ground rent at the same time." From what the Minister said, it sounds like the Government think that is right because some leaseholders might disadvantage themselves by trying to exercise only the right in schedule 7. There is a case for giving those leaseholders the freedom to exercise their own judgment on that point—I am surprised the Minister has not agreed with it. A lot of leaseholders will be watching our proceedings who have leases of, say, 120 years and simply do not have the funds available to exercise their right to extend the lease and buy up the ground rent under clauses 7 and 8. This will therefore completely lock leaseholders with shorter leases out of extinguishing their ground rent provisions. We think that is inherently unfair.

Barry Gardiner (Brent North) (Lab): Does my hon. Friend share my view that the Minister is a reasonable gentleman? *[Laughter.]* I know it may be specific to us and not widely shared. My hon. Friend having made such an eloquent case, the Minister may go away, reconsider this, speak to his officials, and perhaps, once the consultation has concluded, be able to come back with a different answer.

Matthew Pennycook: I thank my hon. Friend for that intervention, which tempts me to give a number of responses. As I am feeling generous this morning, I will say that I do think the Minister is a reasonable individual —far more reasonable in Committee than he is in the main Chamber—and I suspect that he agrees with me about the 150-year threshold. To encourage him to go away and think further, I think we will press amendment 6 to a vote.

Richard Fuller (North East Bedfordshire) (Con): I want to take up the point the hon. Gentleman made about the timing of the ground rent review and the implications for subsequent change in the Bill. Has the Opposition looked at what the potential legal liability might be if we move forward with this Bill without clarity on what happens on ground rent, particularly as this is retrospective legislation, and whether there is a potential liability for the taxpayer if that co-ordination does not work effectively?

Matthew Pennycook: We have had access to the advice and opinion of a number of organisations and individuals, which have probably been sent to the whole Committee. We have also sought to engage the opinions of many relevant experts in this area. The honest answer is that we do not know. I think the Minister himself would say openly that there is a sliding scale of risk with each of those options. I fully expect any of those options, if they are introduced, to result in litigation against the Government that seeks to take the matter to Strasbourg under the relevant rules. That has to be factored in. The Secretary of State and the Minister will be getting the relevant advice. That is why I encourage the Minister to be courageous in the option they ultimately choose. We want to strike the right balance by addressing the problem as it exists for leaseholders—that is very clear—but ensuring that whatever option comes forward can stick and is defensible. That is a conversation we will have over the coming weeks and months, because this issue is going to rumble on for some time to come.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 4]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

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

Question accordingly negatived.

Amendments made: 76, in schedule 7, page 119, line 20, leave out "the freehold or".

This amendment provides for the right to reduce the rent of a house to be available only where there is right to an extended lease under the Leasehold Reform Act 1967.

Amendment 77, in schedule 7, page 119, line 22, leave out from "only" to "a" in line 25 and insert

"by virtue of—

(i) section 1(1)(a)(i) or (ii), (5) or (6) of that Act (requirements relating to rateable value etc),

(ii) section 1(1)(aa) of that Act (requirement relating to lease at a low rent), or

(iii)".

This amendment provides for the right to reduce the rent of a house to also be available where there is no right to acquire an extended lease because the rateable value of the house is not low.

Amendment 78, in schedule 7, page 119, line 38, leave out "the freehold or".—*(Lee Rowley.)*

This amendment is consequential on Amendment 76.

Lee Rowley: I beg to move amendment 79, in schedule 7, page 120, line 3, leave out from "to" to end of line 4 and insert

"—

(a) the landlord under the qualifying lease, and

(b) any other party to the qualifying lease."

This amendment expands the range of persons to whom a rent variation notice must be given to include persons who are party to the lease (but are not a landlord).

The Chair: With this it will be convenient to discuss Government amendments 80 to 88, 99 and 100, 102 to 104, 106, 118 and 120.

Lee Rowley: These amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 79 will expand the range of persons to whom a rent variation notice must be given, which should now include persons who are part of the lease but not landlords. Amendment 80 applies where a tenant is bringing a lease extension or a freehold acquisition claim. It sets out that the tenant cannot bring a ground buy-out claim while the preceding claim is still in play, because they do not need one and their ground rent will be bought out by the other enfranchisement claim.

Amendment 81 provides that a variation notice must specify the proposed premium and any variations to the lease consequential on the rent. Amendment 82 provides, first, that where a leaseholder has a ground rent buy-out claim and sells their lease, they may pass on the claim to the buyer, and secondly that where a ground rent buy-out claim has been brought and a landlord sells the reversion, the claim is binding on the purchasing landlord.

Amendment 83 applies where a rent variation notice and collective enfranchisement notice, where the leaseholder is not participating, are coincident on the same premises, irrespective of which was served first. It provides that the rent variation notice is suspended while the collective enfranchisement notice is current. It also provides that the landlord must inform the leaseholder of its suspension and must likewise inform the leaseholder if that suspension is later lifted because the enfranchisement claim has ceased to have effect. Amendment 84 provides that the landlord must specify an address at which notices can be given.

Amendment 85 makes technical amendments to remove unnecessary wording. Amendment 86 provides that the landlord must respond to the proposed premium and any variation to the lease consequential on the reduction of the rent in a variation notice in the counter-notice.

Amendment 87 makes technical amendments to remove unnecessary wording. Amendment 88 makes provision for the landlord or leaseholder to apply to the tribunal to determine the case where the landlord does not admit the leaseholder's right to a peppercorn rent or disputes the rent to which it applies, consequential variations or the proposed premium.

Amendments 99, 100, 102 and 103 all make minor clarifications concerning circumstances when a variation notice ceases to have effect. Amendment 104 removes a provision for reviving suspended claims.

Amendment 106 provides for commutation following a ground rent buy-out, and the obligations and rights of superior landlords. It also provides for the sharing of copies of rent variation notices among landlords, and the application of superior landlords to the tribunal. A landlord in receipt of a rent variation notice must share a copy with anyone they believe to be a superior landlord and is liable for damages for any loss suffered by others should they fail to do so. Likewise, a superior landlord in receipt of a copy must share it with anyone else they believe to be a superior landlord, with the same consequences where there may be non-compliance. Amendments 118 and 120 are consequential on amendment 104. I commend the amendments to the Committee.

Amendment 79 agreed to.

Amendments made: 80, in schedule 7, page 120, line 5, leave out from "notice" to end of line 7 and insert

"is of no effect if it is given at a time when—

(a) a lease extension notice,

(b) a lease enfranchisement notice, or

(c) another rent variation notice,

which relates to the qualifying lease has effect.

(2A) Paragraph 3A makes provision about the suspension of a rent variation notice."

This provides that a rent variation notice may not be given if another such notice is already in effect; and changes the provision dealing with cases where there is a current claim for collective enfranchisement under the LRHUDA 1993.

Amendment 81, in schedule 7, page 120, line 15, at end insert—

"(4A) A rent variation notice must also specify—

(a) the premium which the tenant is proposing to pay for the rent reduction, and

(b) any other variations which need to be made to the lease in consequence of the reduction of the rent in accordance with this Schedule."

This requires a rent variation notice to specify the tenant's proposals for the premium payable for the reduction in rent and for consequential changes to the lease (eg. relating to rent reviews in the lease).

Amendment 82, in schedule 7, page 120, line 20, leave out sub-paragraphs (6) to (8) and insert—

"(6) Where a rent variation notice is given, the rights and obligations of the tenant are assignable with, but are not capable of subsisting apart from, the qualifying lease or that lease so far as it demises qualifying property (see paragraph 2(5) and (6)); and, if the qualifying lease or that lease so far as it demises qualifying property is assigned—

(a) with the benefit of the notice, any reference in this Schedule to the tenant is to be construed as a reference to the assignee;

(b) without the benefit of the notice, the notice is to be deemed to have been withdrawn by the tenant as at the date of the assignment.

(7) If a rent variation notice is the subject of a registration or notice of the kind mentioned in sub-paragraph (5), the notice is binding on—

(a) any successor in title to the whole or part of the landlord's interest under the qualifying lease, and

(b) any person holding any interest granted out of the landlord's interest;

and any reference in this Schedule to the landlord is to be construed accordingly."

This deals with the effect on a rent variation notice of an assignment of the lease or the reversion.

Amendment 83, in schedule 7, page 120, line 41, at end insert—

"*Suspension of rent variation notices*

3A (1) This paragraph applies if conditions A and B are met.

(2) Condition A is met if—

(a) a rent variation notice is current at the time when a collective enfranchisement notice is given, or

(b) a collective enfranchisement notice is current at the time when a rent variation notice is given.

(3) Condition B is met if—

(a) the rent variation notice relates to premises to which the claim for collective enfranchisement relates, and

(b) the tenant under the lease to which the rent variation notice relates is not a participating tenant in relation to the claim for collective enfranchisement.

(4) The operation of the rent variation notice is suspended during the currency of the claim for collective enfranchisement; and so long as it is so suspended no further notice may be given, and no application may be made, under this Schedule with a view to resisting or giving effect to the tenant's claim for a peppercorn rent.

(5) Where the operation of the rent variation notice is suspended by virtue of this paragraph, the landlord must, not later than the end of the relevant response period, give the tenant a notice informing the tenant of—

(a) the suspension, and

(b) the date on which the collective enfranchisement notice was given, and

(c) the name and address of the nominee purchaser for the time being appointed in relation to the claim for collective enfranchisement.

(6) The landlord must give that notice—

(a) as soon as is reasonably practicable, if a rent variation notice is current when a collective enfranchisement notice is given; or

(b) before the end of the period for responding specified in the rent variation notice in accordance with paragraph 4(7), if a collective enfranchisement notice is current when a rent variation notice is given.

(7) Where, as a result of the claim for collective enfranchisement ceasing to be current, the operation of the rent variation notice ceases to be suspended by virtue of this paragraph—

(a) the landlord must, as soon as possible after becoming aware of the circumstances by virtue of which the claim for collective enfranchisement has ceased to be current, give the tenant a notice informing the tenant that the operation of the rent variation notice is no longer suspended as from the date when the claim for collective enfranchisement ceased to be current;

(b) any time period for performing any action under this Schedule (including the response period) which was running when the rent variation was suspended begins to run again, for its full duration, from and including the date when the claim for collective enfranchisement ceased to be current.

(8) In this paragraph—

"claim for collective enfranchisement" means the claim to which the collective enfranchisement notice relates;

"collective enfranchisement notice" means a notice under section 13 of the LRHUDA 1993 (notice of claim to exercise right to collective enfranchisement)."

This provides for a rent variation notice to be suspended at any time when a claim for collective enfranchisement is current, and the tenant is not participating in the collective enfranchisement.

Amendment 84, in schedule 7, page 121, line 9, at end insert

"and which also specifies an address in England and Wales at which notices may be given to the landlord under this Schedule."

This requires a counter-notice to specify an address for service for the landlord.

Amendment 85, in schedule 7, page 121, line 13, leave out "qualifying".

This is a technical amendment which removes unnecessary wording.

Amendment 86, in schedule 7, page 121, line 19, at end insert

"and must also give the landlord's response to the proposed premium, and any other consequential variations to the lease, specified in the rent variation notice in accordance with paragraph 3(4A)."

This requires the landlord to respond to the tenant's proposals for the premium and consequential changes to the lease (see Amendment 81).

Amendment 87, in schedule 7, page 121, line 29, leave out "qualifying".

This is a technical amendment which removes unnecessary wording.

Amendment 88, in schedule 7, page 121, line 36, leave out paragraphs 5 and 6 and insert—

"*Application to appropriate tribunal where claim or terms not agreed*

5 (1) This paragraph applies if the landlord is given a rent variation notice by the tenant.

(2) If the landlord gives the tenant a counter-notice before the end of the response period which disputes—

(a) that the tenant had the right to a peppercorn rent,

(b) that the right applies to the rent in respect of which it is claimed,

(c) the amount of the premium which the tenant is proposing to pay, or

(d) the consequential variations of the lease proposed by the tenant,

the landlord or tenant may apply to the appropriate tribunal to determine the matters in dispute.

(3) Any application under sub-paragraph (2) must be made before the end of the period of 6 months beginning with the day after the day on which the counter-notice is given.

(4) If the landlord does not give the tenant a counter-notice before the end of the response period, the tenant may apply to the appropriate tribunal to determine—

(a) whether the tenant has the right to a peppercorn rent,

(b) what rent that right applies in respect of,

(c) the amount of the premium which the tenant is to pay, or

(d) the variations of the lease that are to be made.

(5) Any application under sub-paragraph (4) must be made before the end of the period of 6 months beginning with the day after the last day of the response period."—*(Lee Rowley.)*

This provides for the Tribunal to have jurisdiction where the tenant's claim for a peppercorn rent or the terms of lease variation are not agreed by the landlord.

Lee Rowley: I beg to move amendment 89, in schedule 7, page 123, line 12, after "tenant" insert

", and any other party to the qualifying lease,".

This requires any third parties to a lease to join in variation of the lease to reduce the rent payable.

The Chair: With this it will be convenient to discuss Government amendments 90 to 94.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 89 will require the new third parties referred to in amendment 79 to join in any variation of a lease. Amendment 90 removes reference to, and therefore the existence of, a payment period within which the leaseholder must pay the ground rent buy-out premium to the landlord after a rent variation notice has become enforceable.

Amendment 91 provides that a rent variation notice becomes enforceable once all aspects have been agreed or determined by the tribunal. Amendment 92 is consequential on amendment 91 and provides for a better description of the required rent variation.

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Amendment 93 provides for three exceptions to the standard valuation method in ground rent buy-outs: market rack rent leases; leases of houses that have already been extended under the old law; and business tenancies. In all cases, the premium will reflect the landlord's right to receive rent for the remainder of the lease and not be subject to the cap, since it is not our intention to cap the rent in these cases. Amendment 94 removes the definition of "payment period", which is consistent with amendment 90. I commend the amendments to the Committee.

Amendment 89 agreed to.

Amendments made: 90, in schedule 7, page 123, line 13, leave out

"before the end of the payment period".

This removes the separate period for payment of the premium for the rent reduction.

Amendment 91, in schedule 7, page 123, line 16, leave out from "when" to end of line 29 and insert

"the landlord admits or the appropriate tribunal determines—

(a) that the tenant has the right to a peppercorn rent, and

(b) all the terms on which the lease is to be varied, including what premium is payable."

This provides for a rent variation notice to be enforceable from the time when it is settled that there is a right to a peppercorn rent and the terms of the variation are settled (whether by agreement or by the Tribunal).

Amendment 92, in schedule 7, page 123, line 30, leave out from "is" to end of line 34 and insert

"the variation of the lease as admitted by the landlord or determined by the appropriate tribunal (see sub-paragraph (3)(b))."

This provides for the rent variation to be in accordance with the terms that are settled (whether by agreement or by the Tribunal).

Amendment 93, in schedule 7, page 123, line 35, after "is" insert

"the value of the right to receive rent over the remaining term of the qualifying lease.

(5A) Except in the case of a lease falling within paragraph 8, 10 or 10A of Schedule 2 (market rack rent lease, lease already renewed under the LRA 1967 or business tenancy), that value is".

This amendment would mean that, if a lease is at a market rack rent or has already been renewed under the LRA 1967, the premium payable for a rent reduction would be the value of the right to receive that rent for the rest of the term, and that value would not be calculated using paragraph 22 of Schedule 2.

Amendment 94, in schedule 7, page 123, leave out lines 38 to 40.—*(Lee Rowley.)*

This is consequential on Amendment 90.

Lee Rowley: I beg to move amendment 95, in schedule 7, page 123, line 43, at end insert—

"*Reduction of rent under intermediate leases*

7A (1) This paragraph applies if, at the time when a rent variation notice is given, there are one or more qualifying intermediate leases.

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

(a) the lease demises the whole or a part of the property to which the rent variation notice relates,

(b) the lease is immediately superior to—

(i) the lease to which the rent variation notice relates, or

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

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

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

(3) The landlord or the tenant under a qualifying intermediate lease may, by giving notice to the relevant landlord or landlords before the variation of lease to which the rent variation notice relates, require the rent payable under the qualifying intermediate lease to be reduced in accordance with sub-paragraphs (6) to (8).

(4) If—

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) In this paragraph—

'reduced rent lease' means—

(a) the lease to which the rent variation notice relates, or

(b) a qualifying intermediate lease;

'relevant landlord' means—

(a) the landlord under the qualifying lease, and

(b) any superior landlord who must be given a copy of the rent variation notice in accordance with paragraph 9D or 9E;

'relevant reduction' means—

(a) in relation to the lease to which the rent variation notice relates, a reduction resulting from that tenancy being varied in accordance with the other provisions of this Schedule;

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

'relevant rent' means rent that has been, or would properly be, apportioned to the whole or a part of the property to which the rent variation notice relates."

This provides for rent to be reduced (commuted) under leases that are superior to the lease in respect of which a rent variation notice is given under Schedule 7 .

Like amendment 106, amendment 95 provides for commutation following a ground rent buy-out, and the obligations and rights of superior landlords. Amendment 95 provides for commutation for ground rent buy-out and the provision is identical to the commutation provision for lease extensions.

As we have discussed, commutation is the process by which a reduction in the rent of the inferior occupational lease—in this case, by a ground rent buy-out—triggers a reduction in the rent of intermediate leases sitting between the most inferior lease and the freehold. The amendment provides that, if commuted, the relevant rent payable by a tenant of an intermediate lease will be reduced to a peppercorn, but the reduction in rent payable by a tenant of such an intermediate lease must not exceed the reduction in the rent they receive as a landlord of an intermediate lease. I commend the amendment to the Committee.

Amendment 95 agreed to.

Lee Rowley: I beg to move amendment 96, in schedule 7, page 124, line 9, at end insert—

"(2A) An order under this paragraph may appoint a person to execute the variation of the lease on behalf of a party to the variation; and a variation executed in consequence of such an order has the same force and effect (for all purposes) as if it had been executed by that party."

This authorises the Tribunal to appoint a person a execute the variation of a lease on behalf a party (eg. if they are absent or unco-operative).

The Chair: With this it will be convenient to discuss Government amendments 97 and 98.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 97 provides that in the event that there is a failure to vary the lease in response to an enforceable variation notice, an application made to the tribunal for enforcement must be made within four months of the date that that notice became enforceable. Amendment 96 provides that the tribunal may appoint a person to vary the lease on the landlord's behalf.

Amendment 98 provides that where the tribunal is satisfied that the landlord is missing and that the leaseholder has the right to a peppercorn rent, it may make an order to vary the lease and appoint someone to vary the lease on the landlord's behalf. I commend the amendments to the Committee.

Amendment 96 agreed to.

Amendments made: 97, in schedule 7, page 124, line 11, leave out from first "of" to end of line 12 and insert

"four months beginning with the day on which the rent variation notice becomes enforceable (within the meaning of paragraph 7)."

This changes the period within which an application under paragraph 8 may be made.

Amendment 98, in schedule 7, page 124, line 12, at end insert—

"*Missing landlord or third party*

8A (1) On an application made by the tenant under a qualifying lease, the appropriate tribunal may make a determination that the landlord under, or another party to, a qualifying lease cannot be found or their identity cannot be ascertained.

(2) The following provisions of this paragraph apply if the appropriate tribunal makes such determination.

(3) The appropriate tribunal may make such order as it thinks fit including—

(a) an order dispensing with the requirement to give notice under paragraph 3 to that landlord or other party, or

(b) an order that such a notice has effect and has been properly served even though it has not been served on that landlord or other party.

(4) If the appropriate tribunal is satisfied that the tenant has the right to a peppercorn rent, the tribunal make such order as it thinks fit with respect to the variation of the qualifying lease to give effect to that right.

(5) An order under sub-paragraph (4) may appoint a person to execute the variation of the lease on behalf of a party to the variation; and a variation executed in consequence of such an order has the same force and effect (for all purposes) as if it had been executed by that party.

(6) Before making a determination or order under this paragraph, the appropriate tribunal may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question.

(7) If, after an application is made under this paragraph and before the lease is varied to give effect to the right to a peppercorn rent, the landlord or other party is traced—

(a) no further proceedings shall be taken with a view to a lease being varied in accordance with this paragraph,

(b) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given the rent variation notice, and

(c) the appropriate tribunal may give such directions as it thinks fit as to the steps to be taken for giving effect to the right to a peppercorn rent, including directions modifying or dispensing with any of the requirements of this Schedule or any regulations."

This enables the Tribunal to deal with the situation where the landlord or third party to a lease cannot be found or identified.

Amendment 99, in schedule 7, page 124, line 15, after "landlord" insert

", before the lease is varied in pursuance of the rent variation notice,".

This clarifies that a notice of withdrawal can only be given before the lease is varied.

Amendment 100, in schedule 7, page 124, line 17, leave out from "is" to end of line 17 and insert

"varied in accordance with the notice".—*(Lee Rowley .)*

This provides that rent variation notice ceases to have effect when the lease is varied in accordance with the notice.

Lee Rowley: I beg to move amendment 101, in schedule 7, page 124, line 19, leave out paragraph (c) and insert—

"(c) a lease enfranchisement notice or lease extension notice which relates to the qualifying lease is given;".

This is consequential on Amendment 119.

The Chair: With this it will be convenient to discuss Government amendments 117 and 119.

Lee Rowley: Again, these amendments mostly simplify and clarify the provisions in schedule 7.

Amendment 101 provides that where a leaseholder has made a ground rent buy-out claim but, before the claim is settled, later makes an extension or acquisition claim, the ground rent buy-out claim ceases to have effect. Amendment 117 provides that the regulatory powers given to the Secretary of State by paragraph 12 are subject to the negative procedure.

Amendment 119 will insert a definition of "lease enfranchisement notice" as a notice for a freehold acquisition for a house or collective enfranchisement for a flat, and a definition of "lease extension notice" as a notice for a lease extension for a house or flat. Those definitions support amendments 80, 101 and 83. I commend the amendments to the Committee.

Amendment 101 agreed to .

Amendments made: 102, in schedule 7, page 124, line 21, leave out paragraph (d) and insert—

"(d) any order setting aside the notice is made by the appropriate tribunal or a court;".

This is a technical amendment to correct the reference to kind of order that would be made.

Amendment 103, in schedule 7, page 124, line 22, at end insert—

"(da) the appropriate tribunal determines on an application under paragraph 5 that the tenant does not have the right to a peppercorn rent;

(db) the period of six months mentioned in paragraph 5(3) or (5) ends, where the application mentioned there could be made, but is not made before the end of that period;

(dc) the period of four months mentioned in paragraph 8(3) ends, where the application mentioned there could be made, but is not made before the end of that period;".

This sets out additional circumstances in which a rent variation notice ceases to have effect.

Amendment 104, in schedule 7, page 124, line 28, leave out from "effect," to end of line 16 on page 125 and insert

"except for any obligation arising under any provision of the LRA 1967 or the LRHUDA 1993 that applies by virtue of paragraph 11."—*(Lee Rowley.)*

This clarifies which obligations continue after a rent variation notice ceases to have effect.

Lee Rowley: I beg to move amendment 105, in schedule 7, page 125, line 16, at end insert—

"*Tenant's liability for costs*

9A (1) A tenant is not liable for any costs incurred by any other person as a result of the tenant's exercise of the right to a peppercorn rent, except as referred to in—

(a) sub-paragraph (4),

(b) paragraph 9B (liability where claim ceases to have effect), and

(c) paragraph 9C (liability where tenant obtains the variation of the lease).

(2) A former tenant is not liable for any costs incurred by any other person as a result of the former tenant's claim to the right to a peppercorn rent, except as referred to in sub-paragraphs (4) and (5).

(3) A lease, transfer, contract or other arrangement is accordingly of no effect to the extent it would provide to the contrary.

(4) A tenant or former tenant is liable for costs incurred by another person in connection with proceedings before a court or tribunal if—

(a) the court or tribunal has power under this Schedule or another enactment to order that the tenant or former tenant pay those costs, and

(b) the court or tribunal makes such an order.

(5) A former tenant is liable for costs incurred by a successor in title to the extent agreed between the former tenant and that successor in title.

(6) In this paragraph and paragraphs 9B and 9C—

"claim" includes an invalid claim;

"former tenant" means a person who was a tenant making a claim to the right to a peppercorn rent, but is no longer a tenant.

Liability for costs: failed claims

9B (1) A tenant is liable to the landlord for a prescribed amount in respect of non-litigation costs if the tenant's claim ceases to have effect by virtue of paragraph 9(1), unless it ceases to have effect by virtue of—

(a) paragraph 9(1)(b), or

(b) paragraph 9(1)(e) because of the application of section 55 of the LRHUDA 1993.

(2) For the purposes of this paragraph—

(a) "prescribed" means prescribed by, or determined in accordance with, regulations made—

(i) in relation to England, by the Secretary of State;

(ii) in relation to Wales, by the Welsh Ministers;

(b) "non-litigation costs" are costs that are or could be incurred by a landlord as a result of a claim under this Schedule other than in connection with proceedings before a court or tribunal;

(c) where a claim ceases to have effect by virtue of a person who was a tenant assigning their lease without assigning the claim under paragraph 3(6), "tenant" includes that person.

(3) A statutory instrument containing regulations under this paragraph is subject to the negative procedure.

Liability for costs: successful claims

9C (1) A tenant is liable to the landlord for the amount referred to in subsection (2) if—

(a) the tenant makes a claim to the right to a peppercorn rent,

(b) the rent is reduced in consequence of the claim,

(c) the premium payable by the tenant for the variation of the lease is less than a prescribed amount,

(d) the landlord incurs costs as a result of the claim,

(e) the costs are incurred other than in connection with proceedings before a court or tribunal,

(f) the costs incurred by the landlord are reasonable, and

(g) the costs are more than the premium payable.

(2) The amount is the difference between—

(a) the premium payable by the tenant, and

(b) the costs incurred by the landlord, or, if those costs exceed a prescribed amount, that prescribed amount.

(3) In this paragraph "prescribed" means prescribed by, or determined in accordance with, regulations made—

(a) in relation to England, by the Secretary of State;

(b) in relation to Wales, by the Welsh Ministers.

(4) A statutory instrument containing regulations under this paragraph is subject to the negative procedure."

This provides for a tenant's liability for costs incurred by other persons in connection with a claim for a peppercorn rent .

This amendment applies the reformed cost regime to ground rent buy-out claims. The amendment makes cost provisions for the ground rent buy-out right. These match the cost provisions for lease extensions for houses and flats. There is a general no-costs rule, but a tenant may be liable for fixed costs if their claim fails, and may be liable for a fixed amount of costs, which would be charged by reducing the value of the premium, if the ground rent buy-out claim is a prescribed low-value claim. A tenant cannot be required to give security for costs. I commend the amendment to the Committee.

Amendment 105 agreed to.

Amendment made: 106, in schedule 7, page 125, line 16, at end insert—

"*Duty of landlord to give copies of the rent variation notice to superior landlords*

9D (1) This paragraph applies if the landlord is given a rent variation notice by the tenant.

(2) The landlord must give a copy of the rent variation notice to any person whom the landlord believes is a superior landlord.

(3) But that duty does not apply if the landlord has been notified under paragraph 9E(5)(b) that a copy of the rent variation notice has been given to that person.

(4) The landlord must comply with that duty as soon as reasonably practicable after—

(a) being given the rent variation notice, or

(b) forming the belief that a person is a superior landlord (if that is after the rent variation notice was given).

(5) If the landlord gives a copy of the rent variation notice to a person under sub-paragraph (2), the landlord must, together with the copy, give that person the names of—

(a) all of the persons to whom the landlord has given a copy of the notice under this paragraph, and

(b) any other persons that the landlord is aware have been given a copy of the notice.

(6) If the landlord fails to comply with a duty in this paragraph, the landlord is liable in damages for any loss suffered by any other person as a result of the failure.

Duty of superior landlord to give copies of the rent variation notice to other superior landlords

9E (1) This paragraph applies if a superior landlord is given a copy of a rent variation notice under paragraph 9D or this paragraph.

(2) The superior landlord (the "forwarding landlord") must give a copy of the rent variation notice to any person whom the forwarding landlord believes is a superior landlord.

(3) But that duty does not apply if the forwarding landlord has been notified under paragraph 9D or this paragraph that a copy of the rent variation notice has been given to that person.

(4) The forwarding landlord must comply with that duty as soon as reasonably practicable after—

(a) being given the copy of the rent variation notice, or

(b) forming the belief that a person is a superior landlord (if that is after the copy of the rent variation notice was given).

(5) If the forwarding landlord gives a copy of the rent variation notice to a person under sub-paragraph (2), the forwarding landlord—

(a) must, together with the copy, give that person the names of—

(i) all of the persons to whom the forwarding landlord has given a copy of the notice under this paragraph, and

(ii) any other persons that the forwarding landlord is aware have been given a copy of the notice;

(b) must notify the landlord that the forwarding landlord has given the copy to that person.

(6) If the forwarding landlord fails to comply with a duty in this paragraph, the forwarding landlord is liable in damages for any loss suffered by any other person as a result of the failure."—*(Lee Rowley.)*

This requires notice of a claim for a peppercorn rent to be given to superior landlords.

Lee Rowley: I beg to move amendment 107, in schedule 7, page 125, line 18, leave out paragraph 10.

This is consequential on Amendment 109.

The Chair: With this it will be convenient to discuss Government amendments 108 to 116.

Lee Rowley: These amendments concern the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 as they apply to the right. Previously, provisions applying to ground rent buy-out claims on houses and flats were in separate paragraphs of the schedule: paragraphs 10 and 11, respectively. Amendment 109 amends paragraph 11 so that the provisions therein apply to claims on both houses and flats. Consequently, amendment 108 will change the title of paragraph 11 accordingly, and amendment 107 will remove paragraph 10.

Amendments 114 and 116 will amend the provisions of the 1993 Act that apply to the ground rent buy-out right, so that the provisions are properly carried across. Amendments 113 and 112 make a provision in relation to mortgages that applies to lease extensions under the 1993 Act, so that it applies appropriately to ground rent buy-out claims.

Amendment 115 will add a provision for dealing with inaccurate rent variation notices, to the effect that small inaccuracies do not invalidate the claim. Amendment 110 will require the leaseholder to pay off arrears of rent or service charges prior to a ground rent buy-out. Amendment 111 will ensure that the provisions in amendment 110 refer correctly to the ground rent buy-out premium. I commend the amendments to the Committee.

Amendment 107 agreed to .

Amendments made: 108, in schedule 7, page 127, leave out line 1 and insert

"Provisions of the LRHUDA 1993 that apply for the purposes of this Schedule".

This is consequential on Amendment 109.

Amendment 109, in schedule 7, page 127, line 4, leave out from first "Schedule" to end of line 5 and insert

"(whether in its application to a house or flat)".

This provides for paragraph 11 to apply to all claims under Schedule 7, not just to claims where the qualifying lease is of a flat (and so it means that paragraph 10 is longer needed).

Amendment 110, in schedule 7, page 127, line 19, first column, leave out "and (4)" and insert "(a) and (c)".

This alters the provision in section 56 of the LRHUDA 1993 which is applied to Schedule 7.

[Lee Rowley]

Amendment 111, in schedule 7, page 127, second column, leave out line 19 and insert

"The reference to any premium and other amounts payable by virtue of Schedule 13 has effect as a reference to the required premium payable under paragraph 7 of this Schedule".

This modifies the wording of section 56 of the LRHUDA 1993 in its application to Schedule 7.

Amendment 112, in schedule 7, page 127, line 24, first column, leave out

"(1), (2), (5), (6) and (7)"

and insert ", except for subsection (4)".

This alters the provision in section 58 of the LRHUDA 1993 which is applied to Schedule 7.

Amendment 113, in schedule 7, page 127, line 24, second column, insert

"A reference to the new lease has effect as a reference to the deed of variation of the lease".

This modifies the wording of section 58 of the LRHUDA 1993 in its application to Schedule 7.

Amendment 114, in schedule 7, page 127, leave out lines 28 to 31.

This removes provision of the LRHUDA 1993 which no longer needs to apply to Schedule 7.

Amendment 115, in schedule 7, page 128, line 10, at end insert—

"Schedule 12, paragraph 9
(inaccurate notices)"

This adds further provision of the LRHUDA 1993 which is to apply to Schedule 7.

Amendment 116, in schedule 7, page 128, line 21, at end insert—

"Property which the tenant is, or is not, entitled to have demised under a new lease	Property in respect of which the tenant has, or does not have, the right to a peppercorn rent under this Schedule
The premium payable for the new lease	The required premium payable under paragraph 7 of this Schedule
A notice under section 42 to claim the right to a new lease	A rent variation notice"

This provides for the modification of additional terminology used in the LRHUDA 1993 in its application to Schedule 7.

Amendment 117, in schedule 7, page 129, line 13, at end insert—

"(4A) Regulations under this paragraph are subject to the negative procedure."

This makes regulations under paragraph 12 subject to the negative procedure (see clause 62(4)).

Amendment 118, in schedule 7, page 129, line 18, leave out paragraph (d).

This is consequential on Amendment 104.

Amendment 119, in schedule 7, page 129, leave out lines 29 to 37 and insert—

"'lease enfranchisement notice' means a notice under—

(a) section 8 of the LRA 1967 (notice of desire to acquire freehold of house), or

(b) section 13 of the LRHUDA 1993 (notice of claim to exercise right to collective enfranchisement);

and a lease enfranchisement notice under section 13 of the LRHUDA 1993 relates to the qualifying lease if the tenant under the lease is one of the participating tenants in relation to the claim under the notice;

'lease extension notice' means a notice under—

(a) section 14 of the LRA 1967 (notice of desire to extend lease of house), or

(b) section 42 of the LRHUDA 1993 (notice of claim to exercise right to acquire new lease of flat);".

This provides for separate definitions of "lease enfranchisement notice" and "lease extension notice" (instead of a single definition of both terms).

Amendment 120, in schedule 7, page 129, leave out line 39.—*(Lee Rowley.)*

This is consequential on Amendment 104.

Question proposed, That the schedule, as amended, be the Seventh schedule to the Bill.

Lee Rowley: Schedule 7 will confer on leaseholders a right to buy out their ground rent without extending their lease. As the premium payable will be subject to the 0.1% cap on ground rent, this measure will be especially helpful for leaseholders with high or escalating rents. Paragraph 2 sets out that leaseholders who qualify for a lease extension will have this right as long as their remaining term is at least 150 years. Community housing leases and home finance plan leases are excluded, as they were from the Leasehold Reform (Ground Rent) Act 2022. Leaseholders may not qualify for lease extensions because they have a lease of Crown land, or because they do not satisfy the low rent test in the Leasehold Reform Act 1967. Such leaseholders will qualify for the new buy-out right.

Paragraphs 3 to 7 set out procedural arrangements for leaseholders and their landlords. They provide that the right is exercised by serving a rent variation notice on the landlord, including time limits for responses and arrangements for either party to apply to the tribunal if they so wish. The premium payable is the same as the term portion of the lease extension premium set out in schedule 2, and is subject to the ground rent cap. It is the capitalised value of the rent payable for the remainder of the lease.

Paragraph 8 provides that where the lease is not varied to provide that the future rent is a peppercorn rent, the leaseholder or landlord can apply to the tribunal. The tribunal shall decide whether it should be varied and, if it should, can appoint a person to execute the variation in place of the landlord. Paragraph 9 sets out the circumstances in which a rent variation notice ceases to have effect. A claim can be revived if it ceased to have effect due to a later extension or acquisition claim, where the later claim ceases to have effect.

Paragraph 10 sets out details of how the schedule applies in relation to the lease of a house; paragraph 11 does the same in relation to the lease of a flat. Finally, paragraph 12 gives various enabling powers to the Secretary of State, including giving effect to the rights, making provisions about notices and amending the details of how the schedule applies to the lease of a house or a flat.

Question put and agreed to.

Schedule 7, as amended, accordingly agreed to.

Clause 22

Change of non-residential limit on right to manage claims

Barry Gardiner: I beg to move amendment 129, in clause 22, page 38, line 21, leave out "50%" and insert "75%".

This amendment would allow leaseholders with a higher proportion of commercial or non-residential space in their building to claim the Right to Manage.

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

Barry Gardiner: First of all, let me say what this is not about: it is not about enfranchisement. It is quite simply about the right to manage. I say that because a few days ago, a journalist got this entirely wrong. We welcome the change to 50%. The amendment would allow leaseholders with a higher proportion of commercial or non-residential space in their building to claim the right to manage. It is not about shared services or the percentage of the leaseholders who can be contacted; it is about square footage.

I welcome the proposed increase from 25% to 50%, but as we heard in the witness sessions, the Law Commission was originally asked by the Government to remove the 25% rule on the right to manage completely on the basis that leaseholders who are paying a service charge should have control over the areas for which they are being charged. This would leave the management of the commercial premises absolutely unchanged. It was taken out by the Law Commission, which actually wanted to be more restrictive than the Government, who had said that it could be 100%. On its reason for that, it said, "There could be, at the top of the Shard, 30 residential properties. This could have the perverse result of them taking control of a much larger area." It used that special example to illustrate why it felt that 100% was not appropriate. The Government had suggested that we go a lot further, but the Law Commission said, "There are special cases, so let's row back on this." But then the Government came back with 50%.

Let us take the advice of the Law Commission and accept that 100% is not the right figure. I propose that we go to 75% and use that as the basis, because it would avoid that unique case that the Law Commission put forward. It would achieve what I think was the Government's original intention of allowing more people in that situation the right to manage.

12.15 pm

Lee Rowley: I am grateful to the hon. Member for tabling the amendment. He is correct that, as with many of these instances, there are balances to be struck. While I will argue for a different balance from the one he outlined, I accept, understand and acknowledge that a number of different cases can be made in this discussion.

As the hon. Member indicated, the Bill already includes a provision to increase the limit from 25% to 50%, following the Law Commission's extensive investigation. We believe that the increase to 50% seeks to strike a proportionate balance. He made a valid point about issues in a minority of cases, and we will not use extreme cases as a reason. However, there is the potential—this is why we have landed on 50%—to unfairly prejudice the interests of landlords and commercial tenants, for example, where a minority of leaseholders take over the management of a building that is predominantly commercial.

As I said, I recognise that there is a balance to be struck, but on the basis of the progress that is being made, which I am grateful to the hon. Member for acknowledging, 50% is where the Government would prefer to land, and that is what we are proposing.

Barry Gardiner: If the Minister casts his mind forward to the next two amendments, which seek to give the Secretary of State the authority to determine the limit, and should the Minister indicate that, in the future, the Secretary of State would almost certainly not determine it to be less than 50%—as the Government have already proposed—then I just might be persuaded to withdraw my amendment.

Lee Rowley: I am grateful to the hon. Gentleman for his comments. We are sticking with what we have suggested, but I hope he will consider withdrawing his amendment none the less. I will just say a few words on our reasons for sticking with what propose in clause 22. We have been clear that we want to improve access to right to manage—I think that view is shared across the House—and we accept that the current limit of 25% of floor space is not proportionate. Therefore, through this clause, we are seeking to increase the non-residential limit from 25% to 50%, as has been discussed. That replicates clause 3 on collective enfranchisement, recognising that this is not a debate about collective enfranchisement on a specific clause.

For the reasons that we have outlined, 50% is the place where the Government have landed, and where we feel is most proportionate. We hope that it will mean that more leaseholders in mixed-used buildings can take over the management responsibilities of their properties. I commend the clause to the Committee, and I hope that the hon. Gentleman will consider withdrawing his amendment.

Barry Gardiner: I am grateful to the Minister for his response; he is courteous, as ever. I just point out that the all-party group on leasehold and commonhold reform, co-chaired by the Father of the House, the hon. Member for Worthing West (Sir Peter Bottomley), also made the recommendation that the Government look again at this issue. I am prepared to throw my weight behind amendments 26 and 27, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn .

Matthew Pennycook: I beg to move amendment 26, in clause 22, page 38, line 21, at end insert—

"(b) after paragraph 1(4) insert—

'(5) The Secretary of State or the Welsh Ministers may by regulations amend this paragraph to provide for a different description of premises falling within section 72(1) to which this Chapter does not apply.'"

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 the right to manage. By virtue of Amendment 27, such a change would be subject to the affirmative resolution procedure.

The Chair: With this it will be convenient to discuss amendment 27, in clause 22, page 38, line 21, at end insert—

"(2) In section 178 of the CLRA 2002—

(a) in subsection (4), after '171', insert ', paragraph 1(5) of Schedule 6';

(b) after subsection (5), insert—

'(6) Regulations shall not be made by the Welsh Ministers under paragraph 1(5) of Schedule 6 unless a draft of the instrument has been laid before and approved by resolution of Senedd Cymru.'"

See explanatory statement to Amendment 26.

Matthew Pennycook: I rise to speak to the amendments in my name and that of my hon. Friend the Member for Weaver Vale. I do so making almost entirely the same argument as that made by my hon. Friend the Member for Brent North. *[Interruption.]* No, I am hoping for a very different response from the Minister to it.

As was made clear in a previous debate, this clause operates in precisely the way that clause 3 does in relation to collective enfranchisement claims: by making changes to the non-residential limit to the right to manage—and we welcome it. The clause will enact recommendation 7 of the Law Commission's final report on exercising that right.

Although I take the point made by my hon. Friend the Member for Brent North about the use of extreme outlier cases to undermine an argument, we accept the Law Commission's broad argument that abolishing the non-residential limit entirely could cause problems in a number of cases for certain landlords and commercial tenants. But as the Law Commission very clearly concluded, the current limit is

"an unwarranted impediment to the RTM, given that it can prevent premises which are mostly residential from qualifying."

We think it is right that the Bill seeks to increase that limit, and we hope that doing so will bring a greater number and variety—that is important—of premises into the right to manage and therefore help to boost the number of leaseholders who decide to take over the management function of their buildings.

As with the non-residential limit for collective enfranchisement claims, the threshold is inherently arbitrary, but we feel—here my hon. Friend is absolutely right—that we need to address the fact that 50% will leave large numbers of leaseholders shut out from the right to manage. He made the case for a 75% threshold, and I think that has a lot of merit. We sought to be slightly less prescriptive; instead, much in the way that we argued for powers to be put in the Bill for Ministers to further amend the non-residential limit for collective enfranchisement, we propose to give a degree of flexibility to the non-residential limit on right to manage claims, so that any future changes to increase it—and only to increase it—do not require primary legislation.

We want to be slightly more flexible, or less prescriptive, than my hon. Friend for the following reasons. First, we can imagine a range of scenarios in which we would need to look at the 50% threshold in terms of internal floor space. We also think, as with collective enfranchisement claims, that a future Government may wish to look at the entire criteria afresh—I am thinking of cases of the right to manage, for example, where we might consider whether there are better metrics for determining the residential nature of a building. It is notable that, although the Law Commission ultimately recommended retaining the use of floor space as the metric, it explored in great detail a comparison between the values of the residential and non-residential parts as a way into this. A future Government may therefore wish to look at the criteria afresh, so we sought to give the Secretary of State that power.

We think that that is entirely sensible, as we did when we argued for earlier amendments. It would be by regulation subject to the affirmative procedure, to give this House the chance to give any change due scrutiny, but we think it is a sensible principle to build some flexibility into the Bill.

I expect the Minister will resist the amendment, for the reasons that he previously resisted a similar amendment on collective enfranchisement. I will therefore probably not press the amendment to a vote. However, I think we will have to come back to the issue later, because on both collective enfranchisement and right to manage, the Government are being somewhat stubborn in saying that the 50% sticks and that future primary legislation, which could be many years away, is the only way to look at it afresh. I hope that the Minister will give the amendment serious thought.

Lee Rowley: I am grateful for the comments and questions from the hon. Members for Greenwich and Woolwich and for Brent North. As they anticipated —I may be becoming too conventional—I will resist the amendment. Again, this is about where primary legislation stops and secondary legislation begins, and the Opposition are right to test us on that. It is perfectly legitimate for people to take different views on where that starts and stops, and we know that our colleagues in the other place caution us, where we can be cautioned, not to take too many Henry VIII powers. We are undertaking a self-denying ordinance to not take an additional Henry VIII power today, on the basis that this is of sufficient magnitude, albeit recognising the challenges that have been outlined, that it should be in the Bill and be clear, and that any appropriate changes should come through similar processes. For that reason, although I understand the rationale for it, and I am always happy to listen to the underlying points, the Government will not support the amendment.

Matthew Pennycook: I will not labour the point, but I put on record that I look forward to the Minister standing up at some future point in what remains of his tenure and arguing for the absolute necessity of a Henry VIII power in one or other respect. It will come, but obviously not on this occasion. As I said, we will have to come back to this matter, but we will reflect on how best to do so. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 22 ordered to stand part of the Bill.

Clause 23

COSTS OF RIGHT TO MANAGE CLAIMS

Amendment made: 45, in clause 23, page 39, line 30, at end insert—

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

This amendment is consequential on NC7 .

Matthew Pennycook: I beg to move amendment 7, in clause 23, page 39, leave out from line 31 to line 32 on page 40.

This amendment would leave out the proposed new section 87B of the Commonhold and Leasehold Reform Act 2002 and so ensure that RTM companies cannot incur costs in instances where claims cease.

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

Matthew Pennycook: Clause 23 replaces the existing costs regimes for RTM claims under the Commonhold and Leasehold Reform Act 2002. The new regime is established in proposed new sections 87A and 87B.

Proposed new section 87A sets out the general rule that RTM companies and RTM company members are not liable for the costs incurred by another person because of an RTM claim. Proposed new section 87B allows the tribunal to order an RTM company to pay the reasonable costs of specified people that arise from an RTM claim notice being withdrawn or ceasing to have effect and the RTM company has acted unreasonably.

We welcome the intent behind new section 87A. At present, the RTM company is liable for the reasonable non-litigation costs that are incurred by a landlord in consequence of an RTM claim notice. Safe in the knowledge that the cost of the process is always recoverable from the RTM company, landlords are at present incentivised to conduct an overscrupulous analysis of the claim with a view to finding minor and inconsequential defects, in an attempt to disrupt the claim. That happens on far too many occasions.

If a claim is disputed and the tribunal decides that the RTM company is not entitled to acquire the RTM, the RTM company is liable to pay the landlord's reasonable costs, but the same rule does not apply if the landlord unsuccessfully challenges the claim. Landlords can therefore dispute claims safe in the knowledge that doing so is a one-way bet.

In instances where a landlord is obliged to pay litigation costs following a successful claim, they can and do frequently recover the moneys from leaseholders either through the service charge or as an administration charge under the leases. It is not that common, but in such shortfall scenarios the leaseholders end up paying, even if they are successful in the tribunal.

Given that RTM companies are almost always undercapitalised, have no assets and cannot collect service charges before the RTM is acquired, these costs, which cannot be limited or predicted and can have significant implications for large or complex developments, are often met by individual leaseholders, with any challenges to their reasonableness entailing all the burden and risk of going to the tribunal. By entailing unknown and potentially significant costs liability for which they are jointly and severally liable, the present costs regimes clearly act as a deterrent to leaseholders pursuing the RTM and participating in an RTM claim.

In our view, landlords can bear these costs, and by providing for a general rule that they do so, the clause will make the RTM procedure simpler, more accessible and less foreboding. It is for that reason that the Law Commission recommended significant changes to the allocation of costs incurred during acquisition of the right to manage, and in relation to disputes. The clause draws upon five of its proposals.

The Law Commission did recommend, however, that an exception ought to be made where an RTM claim has been withdrawn or otherwise ceased early and the RTM company has acted unreasonably in bringing the RTM claim. In such cases, it recommends that the landlord should be able to apply to the tribunal for any reasonable costs that it has incurred in consequence of the RTM claim, down to the time that the claim ceased. They did so

"to address the risk of landlords potentially having to bear the cost of responding to unreasonable or vexatious claims issued by leaseholders which are subsequently withdrawn."

Proposed new section 87B enacts that proposal. While the Law Commission made clear that it expected that the tribunal would apply the test in question narrowly, we are concerned about its inclusion for two reasons. First, there is a principled argument that leaseholders should not be put at risk of having to pay costs simply for exercising statutory rights—in this case, the right to seek to acquire and exercise rights in relation to the management of premises in which one has a leasehold interest.

The first-tier tribunal already has the power under rule 13(1)(a) to punish unreasonable behaviour by making the parties' legal or other representative pay to the other party any costs incurred as a result of improper, unreasonable or negligent acts or omissions. As such, we would ask why we need a new statutory provision to create yet further scenarios where leaseholders might have to pay.

Secondly, we are concerned that unscrupulous landlords will use the rights provided for by new section 87B as a means of recovering costs from RTM companies that act reasonably and in good faith, and by implication that it will discourage RTM companies from initiating a claim because of the financial risk it still entails for individual participating leaseholders. Put simply, we fear that new section 87B will incentivise scrupulous landlords to fight claims on the basis that they are defective in the hope of recovering costs by means of it. Amendment 7 leaves out proposed new section 87B of the 2002 Act, thereby ensuring that all leaseholders are protected from costs for RTM claims. I hope the Minister will consider accepting that.

12.30 pm

Lee Rowley: I thank the shadow Minister for the amendment. Again, while I understand and acknowledge the underlying intent behind it, and share his inclination to reduce the cost for leaseholders to exercise the rights to form a company and bring a claim, we will not accept the amendment today for reasons that I will explain. It is perfectly clear that, and I think we will all accept this across the Committee, up until now the situation has been balanced in favour of landlords, who have been able to recover their process costs from leaseholders at times. The Bill will change that, as has been acknowledged, and will significantly broaden the cases in which each party will be required to bear their own costs. However, it is important that we take steps to protect landlords from unfair costs.

On amendment 7, the Government judge that it would be unfair if a landlord were required to meet their own process costs where a right to manage claim is withdrawn or ceases to have effect as a direct result of unreasonable conduct from the RTM company. The power for the tribunal to order payment of costs for such ceased claims also includes protections for leaseholders. The landlord will not be entitled to costs automatically and it will be necessary to make an application to the tribunal for an order to that effect. If the tribunal does not consider that costs should be payable, it can decline to make an order. I note that the shadow Minister acknowledged that in his initial remarks.

[Lee Rowley]

In aggregate, and with that in mind, my and the Government's view is that, while the cost regime must change, if the amendment were passed, it would expose freeholders to the risk of facing burdensome and unfair costs. I ask the shadow Minister, if he is willing, to withdraw the amendment.

Turning to clause 23 itself, as has been indicated, leaseholders bringing forward a right to manage claim currently face unknown and potentially significant costs. That is because, under current rules, they must meet reasonable costs of a landlord as well as their own costs, and the costs of others often run into thousands of pounds. Those costs—also known as non-litigation costs—include professional services, surveyors, accountants and insurers from which a landlord may incur costs as a result of the claim. Clause 23 seeks to help by removing the requirement for right to manage companies and their leaseholder members to contribute towards those non-litigation costs, meaning that both parties to a claim will bear their own. It does so by replacing the existing cost regime in the 2002 Act.

A requirement that landlords should bear their costs means that they have an incentive to keep costs down, which hopefully reduces some of the issues that the shadow Minister highlighted, and to process claims quickly because they will not be able to pass those costs on to leaseholders bringing forward the claim, potentially reducing the overall cost for both landlords and leaseholders. To protect landlords from frivolous right to manage claims, the clause includes an exception, so landlords can claim costs where the claim has been withdrawn, abandoned, struck out or otherwise ceases, or where a RTM company has acted unreasonably. Under those circumstances, as has been outlined, the landlords can apply to a tribunal.

To reduce existing obstructions to the process, the clause amends the 2002 Act to ensure that a person complying with the duty to provide information cannot withhold supplying a copy of a document to a right to manage company on the basis that they are waiting to receive a reasonable fee. However, the right to manage company will still be liable for reasonable cost of a person complying with that duty.

The clause also removes the current one-way cost shifting rule for litigant costs, which means that only landlords can currently claim the litigation costs from the RTM company, if they are successful. It is only fair that parties to litigation should bear their own costs, and that is the change that has been made.

Finally, the clause prevents landlords from passing costs on to leaseholders via the service charge. We believe that, in aggregate, these measures will reduce uncertainty in making a right to management claim by making sure that each side to a claim bears their own costs. I commend the clause to the Committee.

Alistair Strathern (Mid Bedfordshire) (Lab): I rise briefly to support the comments from my hon. Friend the Member for Greenwich and Woolwich. Although I welcome much of the Minister's message about removing some of the deterrents to taking on the right to manage on estates, having spoken to a number of residents and campaigners in my constituency, I know that if the clause is not removed it will continue to be a real deterrent and to expose them to a risk of significant financial liability that they would be poorly placed to take on. I know the Minister has already set out that he is unwilling to support the amendment today, but I hope that the Government will reflect on whether they might be willing to come back to the point to ensure there is no unnecessary deterrent to leaseholders in obtaining the right to manage effectively.

Matthew Pennycook: I thank the Minister for his response. There are two differences of opinion, the first of which is on the principled point of whether it is right that leaseholders should be charged for exercising their statutory right. We lean quite strongly towards the argument that they should not be, in principle.

The more pertinent argument for me is the second point I made, which, in all fairness, I do not think the Minister addressed. Let us be clear: in many respects, the Bill forces the Government to judge the right balance to strike between the interests of leaseholders and landlords. In coming to that view, the Bill has to account for the possibility that it creates quite perverse incentives, and I do not think it does that here or in a number of other places. This is one example of where that might happen. If a landlord wants to frustrate, disrupt or stop an RTM claim, the way in which the Government have implemented the exception to the general rule will incentivise them to fight the claim on the basis that they can try and convince the adjudicating party that the claim is defective, in the hope of recovering costs. A leaseholder exploring whether to take forward a claim is then faced with the risk of significant liabilities, as mentioned by my hon. Friend the Member for Mid Bedfordshire.

That will deter a huge number of leaseholders from exercising the right. Landlords will know it and fight more claims because they know that the deterrent effect of the exception to the general rule will be quite powerful in a number of cases. We argue quite strongly that we should just end the process costs for leaseholders as a matter of principle. That will incentivise many more groups of leaseholders to seek to acquire the right to manage. For that reason, we are minded to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 5]

AYES

Amesbury, Mike	Pennycook, Matthew
Gardiner, Barry	
Glindon, Mary	Strathern, Alistair

NOES

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

Question accordingly negatived.

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

Clause 24

COMPLIANCE WITH OBLIGATIONS ARISING UNDER CHAPTER 1 OF PART 2 OF THE CLRA 2002

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

Lee Rowley: The tribunal needs the power to order compliance with obligations under the Commonhold and Leasehold Reform Act 2002. Clause 24 amends section 107(1) of that Act to enable the tribunal to make an order requiring a person who has failed to comply with the requirement on them to address that failure and comply with the requirement within the time set out in the order. The clause also provides that where an order other than an order to pay money has been made by the appropriate tribunal, a person may apply to the county court for the enforcement of the order, or the tribunal may transfer proceedings to the county court for the enforcement of the order. If the tribunal makes an order for compliance, it will be enforceable by the county court in the same way as if it were an order of the county court itself. The clause also inserts a signpost to a general provision in the 2002 Act about the enforcement of tribunal decisions and to provisions in the Tribunals, Courts and Enforcement Act 2007 about the enforcement of an order to pay a sum of money. The measures will allow the appropriate tribunal and courts to exercise their proper enforcement function. I commend the clause to the Committee.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

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

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

Lee Rowley: Clause 25 complements clause 24 by removing the risk that the change of jurisdiction for right to manage disputes to the tribunal will be circumvented through applications being brought in the High Court instead in the first instance. The clause prevents such applications being brought in the High Court. The tribunal already has exclusive jurisdiction over proceedings, and it is well placed to take over proceedings concerning the compliance with the right to manage provisions in the 2002 Act in the same way that they do for the acquisition of the right to manage. The clause does not prevent an appeal of the decision of the tribunal to the High Court or the jurisdiction of the High Court to consider judicial review claims. The measure will make the determination of disputes clearer, help to reduce costs and ensure that disputes are handled by judges with specialist knowledge. I commend the clause to the Committee.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

Extension of regulation to fixed service charges

Matthew Pennycook: I beg to move amendment 10, in clause 26, page 42, leave out lines 12 and 13.

This amendment would ensure that the statutory test of reasonableness would apply to fixed service charges.

In considering part 3 of the Bill, we move away from provisions that draw on recommendations made by the Law Commission across its leasehold enfranchisement and right to manage reports from 2020 and instead turn to other Government proposals on the regulation of leasehold. The first five clauses in this part concern service charges in residential leases. The Government's stated objective in including the clauses in the Bill is to improve the consumer rights of leaseholders by requiring freeholders or managing agents acting on their behalf to issue service charge demands and annual reports in a standardised format and a more transparent manner so that leaseholders can more easily assess—and, in theory, challenge—any unreasonable or erroneous charges.

We very much welcome the intent of the clauses. While much of the detail will await the statutory instruments required to bring them into force, the clauses have the potential to improve tangibly what is without doubt one of the most contentious and, for leaseholders, injurious aspects of the feudal leasehold tenure. My office receives scores of complaints, literally on a weekly basis, from leaseholders in my constituency who believe that when it comes to the setting of their service charges, they have been subjected to unreasonable costs; costs artificially inflated as a result of outright error, such as the duplication of charges for the same service; large periodic increases that are rarely justified; or abusive practices, such as the deliberate misuse of funds. Even when leaseholders do not believe that there is a specific problem with their service charge amounts, my experience talking to many thousands of them over the years in Greenwich and Woolwich is that most nevertheless feel that they are not particularly aware of or informed about what their charges are spent on or what their future liabilities might be.

That may well be a trend that is particularly prevalent in constituencies such as my own that contain a significant number of new-build leasehold flats, but my team and I increasingly find—as I am sure other hon. Members find in their own caseloads—that a sizeable proportion of the work we do involves simply demanding from freeholders and managing agents, on behalf of leaseholders pushed to the financial brink, a detailed breakdown of service charge costs. We are then frequently required to assist individual leaseholders or informal groupings of them in probing the relevant freeholder or managing agent on the justification for individual charges, and more often than not we expose discrepancies or charges levied for services that are not provided as a result.

Given that a Member of Parliament is involved in those cases, most freeholders, head lessees or managing agents will, in such circumstances, ensure that the aggrieved leaseholders are reimbursed, thus avoiding the need for them—*[Interruption.]* My hon. Friend the Member for Brent North laughs, but we have had success on occasion, once the relevant error is exposed. In those circumstances, it avoids the need for the leaseholders in question to take the matter to tribunal, with the detrimental implications that the current cost regime entails. However, many—perhaps most—do not, instead relying on the barriers that leaseholders face in going to tribunal to ensure that the unjustified costs are still paid and not challenged. I would wager that, in the scenario that I just set out, I am not alone among Members of the House in dealing with service charge disputes of that kind on a regular basis. To my mind, that is a clear indication that the current service charge regime is woefully failing to adequately serve leaseholders or protect their interests. The Opposition take the view that there is a cast-iron case for making changes to the regime, with a view to ensuring that service charges are levied in a more appropriate, transparent and fair way.

12.45 pm

Although we welcome clauses 26 to 30 in principle, they will introduce a further degree of complexity into what is already a somewhat byzantine regime. Given that the Government are not proposing to repeal and replace the entire service charge regime with a consolidated and codified set of regulatory provisions that apply to all services and works, we think it is important to ensure that the new provisions are entirely consistent with those in the various Acts that underpin the existing regime, particularly the Landlord and Tenant Acts 1985 and 1987. They will improve its functioning in practice, and the various amendments we have tabled to these clauses seek to achieve that aim.

Clause 26 makes a number of technical amendments to the 1985 Act to extend part of the existing regulatory framework to cover fixed service charges. To the best of my knowledge, there is no formal definition of what a fixed service charge is, but these can be understood as charges that apply at the start of a 12-month accounting period, that are set by the tenancy or lease, and that are not based on the actual cost of the service provided and incurred by the landlord, as is the case with variable service charges. Such charges can be extremely burdensome. The 2015 case of Arnold *v.* Britton, for example, involved a provision that increased the service charges by a fixed compound amount each year, with the result that leaseholders of some fairly modest holiday chalets on the Gower peninsular became liable, on the basis of the freeholder's interpretation of the relevant provisions, for fixed annual service charges, rising to over £1 million by the year 2072.

We take no issue with the clause, save for the fact that subsections (3), (4) and (5) amend various provisions of the 1985 Act to ensure that certain obligations remain applicable only to variable service charges, not fixed service charges. As such, various protections in the 1985 Act will continue to apply to variable service charges alone. Although some remedies are extended to the small number of leaseholders with fixed service charges under the Landlord and Tenant Act 1987, we struggle to understand why, in bringing fixed service charges within part of the existing regulatory framework, the Government have decided to exempt them from numerous protections under the 1985 Act.

Amendment 10 is an attempt to probe the Government's decision to exempt fixed service charges from the test of reasonableness. Fixed service charges can and do include all sorts of unreasonable costs, and it strikes us as wrong that leaseholders who are obliged to pay them—not least those living in for-profit retirement developments without care, where this is a particularly prevalent arrangement—will not have the ability to challenge such costs if they feel that they are unreasonable. We are also concerned that exempting fixed service charges from the test of reasonableness may incentivise unscrupulous freeholders to create more of them, rather than relying on variable service charges, which are made more transparent by the other changes made in this part of the Bill. Amendment 10 would delete subsection (4)(a) to ensure that the test of reasonableness applies to fixed service charges, so that leaseholders subject to them are afforded greater protection. I hope the Minister will give it serious consideration.

Lee Rowley: I thank the hon. Member for his amendment. Even though I will not be accepting it today, it raises an important question and he is right to allow us to debate it. We absolutely recognise that leaseholders who pay fixed service charges do not have the same rights of challenge as leaseholders who pay variable service charges—that is accepted and understood—but it is also the case that there are good reasons for that.

As the hon. Member indicated, the main sectors where fixed charges exist are the retirement and social housing sectors, where households are often on limited and fixed incomes, as I do not need to explain to the Committee. Leaseholders, especially those on low incomes, who pay a fixed service charge have certainty about that charge, whereas those who pay variable service charges do not. Landlords benefit from not having to consider tribunal applications but, in return, they should have a clear imperative to provide value for money.

If we were to grant the right to challenge fixed service charges in a similar way to how variable service charges can be challenged, there would be some operational and practical challenges, which is one of the reasons why we will not agree to the amendment today. For example, if landlords underestimate costs in one year, but overestimate them in another, is it feasible and reasonable to be able to challenge the reasonableness only in the year in which the costs are overestimated? Should a reciprocal ability to challenge or to recover the balance of an underestimated cost in a year, on the basis that it would be reasonable to do so, not be proposed? Landlords might move away from employing fixed service charges and switch to variable service charges, which could have unintended consequences.

Fundamentally, I share the hon. Gentleman's view that there are challenges in all parts of service charges, and so there will be challenges within fixed service charges. The whole point of other elements of the Bill is to provide transparency and visibility of the reasoning for charges being made. For the reasons I have outlined, we are not of the view that this extension should be made for fixed charges.

Eddie Hughes (Walsall North) (Con): I want to pick up on the shadow Minister's point about ambiguity. There is no definition of what exactly would constitute a fixed charge, so there is the opportunity for flexibility or the law of unintended consequences. Given the lack of opportunity for subsequent challenge, a landlord might choose to move a charge from one column to the other. When the Minister said he would not accept the amendment today, did he mean he would give this point some further consideration in the future, or was he just being polite?

Lee Rowley: I am grateful to my hon. Friend for his question. Notwithstanding the tone of my responses, given the Committee's interest I will happily write to it to make sure there is clarity on that point. I hope that, as a general and broad macro point, my comment still stands.

Barry Gardiner: The Minister has yet again confirmed his reputation for being reasonable. Can I probe him on the point about reasonableness? Many leaseholders complain that there is an amount in their service charges, which they may think is either reasonable or unreasonable, for a particular service, but when they enquire about the service provider, they find that it is in fact their landlord

under another name. They then pay not only the cost of that arm's length contractor providing the service, but a 15% service charge on top of it. Many people would feel that this is another rentier practice that landlords are using. I appreciate that the issue does not relate specifically to amendment 10, but I would very much like to get the Minister's thoughts about the reasonableness of that practice on record.

Lee Rowley: I am grateful to the hon. Gentleman for raising that point. He articulates another example of good law being used in a way that is, in my view—without talking about individual incidents—both unintended and inappropriate. I am not a lawyer, and do not seek or have any desire to be one, but as I understand it, there is a concept of reasonableness within the legal domain based on an Act from a number of years ago. Hopefully that helps to answer part of his question, at least from a structural perspective. On the variable service charge side, without talking about individual instances, that kind of instance is a clear example of where those impacted would be able to go through the process of challenging it, which I think would be very sensible. If I were a leaseholder, I might be very tempted to do that, unless the charge could be justified in a different way. On the fixed service charge side, although I accept that there is the potential for these kinds of challenges, conceptually that needs to be balanced with the fact that when the contract was entered, an agreement was made to consent to that amount, for whatever reason—good or otherwise. That is why we are pursuing this. However, I take the hon. Gentleman's broader point.

Rachel Maclean: This discussion goes to the heart of some practices and problems that leaseholders have experienced across the sector. On behalf of the many retirement leaseholders, mentioned by the shadow Minister, the hon. Member for Greenwich and Woolwich, I will make a point and ask for reassurance from the Minister.

What we are talking about with this amendment is different from the ground rent issue. Ground rent is a payment for nothing—nothing is being provided—whereas something is being provided for service charges. There is a service, so there is a need for a charge; that is perfectly legitimate. As Conservatives, we do not dispute the fact that there should be financial recompense for services. However, we find ourselves with a problem, the law of unintended consequences and the drivers of business models.

I would welcome if the Minister could touch on this in his response, but my fear is that if ground rents are removed and business models need to adjust to make recompense for that, the natural behaviour of unethical operators in the retirement sector and possibly elsewhere—some are unethical and do not think about the people who bought properties in good faith—will surely be to seek to load their charges, their profit and loss, back on to the service charge in some way. I am not close enough to existing contracts to know whether they will be able to do that with a fixed charge, so the discussion might be better suited to when we talk about the variable charge. The Minister can help me on that.

The broad point stands, however, in the case of someone dealing with the estate of a loved one, perhaps someone who has passed on, is in care, is suffering from dementia or otherwise does not have the capacity to deal with all this—the Minister will be familiar with such cases. They might be stuck with a property that they cannot sell, and that often applies in such cases when service charges are racking up in a way that is difficult for people to get a handle on—

Barry Gardiner: I agree with all the points that the hon. Lady is making. I wonder whether she is aware of the report by Hamptons last year, which said that service charges had increased by 50% over the past five years. That is an indication of just how much of the gouging she is talking about is going on. Furthermore, leaseholders paid a staggering £7.6 billion in service charges last year. Of course, much of that is for the proper renovation of the property, but it seems an extraordinary amount. In fact, 10 years ago, Which? estimated that leaseholders were being overcharged by £700 million.

Rachel Maclean: I thank the hon. Gentleman for bringing those figures to the attention of the Committee. I am familiar with them, as are others. *[Interruption.]* I do not wish to detain the Committee any longer—I can see the Whip making that plain to me. I will leave my remarks there, perhaps to continue at a later point, but the Minister may wish to respond in detail.

Lee Rowley: I, too, do not wish to challenge the patience of my colleague the Whip. There will be people who have existing fixed charges; that should not change. There will also be people who have choices about whether to enter into new fixed charges, whether absolute or indexed to some extent. For an inappropriate attempt to do something with variable service charges, there will be the ability to apply to tribunals. I hope that we are closing off all the options that would allow the kind of instances mentioned.

Matthew Pennycook: I will be brief, so as to dispose of the amendment.

I appreciate what the Minister said. He provided some useful clarity. In particular, he highlighted the practical challenges in addressing this matter, and the potential for landlords possibly moving away from fixed charges and into variable. I think that there is a corresponding risk the other way. I appreciate and take on board what he said about the certainty of the charge.

I think the Minister alluded to the point that I am trying to make, which is that residents should have value for money, and they do not always get it on each occasion. We have deliberately not sought to apply all the protections that apply to variable service charges, but focused on the test of reasonableness. With the help of two former Housing Ministers, I think I had an indication from the Minister that he will do this, but I would appreciate it if the Government went away to satisfy themselves that the protections are in place for that category of leaseholder. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

12.59 pm

Adjourned till this day at Two o'clock.