PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

LEASEHOLD AND FREEHOLD REFORM BILL

Tenth Sitting

Tuesday 30 January 2024

(Afternoon)

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not later than

Saturday 3 February 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

Tuesday 30 January 2024

(Afternoon)

[Sir Edward Leigh *in the Chair*]

Leasehold and Freehold Reform Bill

2 pm

New Clause 6

Notice of future service charge demands

"In section 20B of the LTA 1985 (time limit on making service charge demands), in subsection (2), for the words from 'notified in writing' to the end substitute

'given a future demand notice in respect of those costs.

(3) A "future demand notice" is a notice in writing that—

(a) relevant costs have been incurred, and

(b) the tenant will subsequently be required under the terms of the lease to contribute to the costs by the payment of a variable service charge.

(4) A future demand notice must—

(a) be in the specified form,

(b) contain the specified information, and

(c) be given to the tenant in a specified manner.

"Specified" means specified in regulations made by the appropriate authority.

(5) The regulations may, among other things, specify as information to be contained in a future demand notice—

(a) an amount estimated as the amount of the costs incurred (an "estimated costs amount");

(b) an amount which the tenant is expected to be required to contribute to the costs (an "expected contribution");

(c) a date on or before which it is expected that payment of the variable service charge will be demanded (an "expected demand date").

(6) Regulations that include provision by virtue of subsection (5) may also provide for a relevant rule to apply in a case where—

(a) the tenant has been given a future demand notice in respect of relevant costs, and

(b) a demand for payment of a variable service charge as a contribution to those costs is served on the tenant more than 18 months after the costs were incurred.

(7) The relevant rules are—

(a) in a case where a future demand notice is required to contain an estimated costs amount, that the tenant is liable to pay the service charge only to the extent it reflects relevant costs that do not exceed the estimated costs amount;

(b) in a case where a future demand notice is required to contain an expected contribution, that the tenant is liable to pay the service charge only to the extent it does not exceed the expected contribution;

(c) in a case where a future demand notice is required to contain an expected demand date, that, if the demand is served after the expected demand date, the tenant is not liable to pay the service charge to the extent it reflects any of the costs.

(8) Regulations that provide for the relevant rule in subsection (7)(c) to apply may also provide that, in a case set out in the regulations, the rule is to apply as if, for the expected demand date, there were substituted a later date determined in accordance with the regulations.

(9) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(10) A statutory instrument containing regulations under this section is subject to the negative procedure.'"—*(Lee Rowley.)*

This new clause, to be inserted after clause 26, would require notice of future service charge demands under section 20B of the Landlord and Tenant Act 1985 to be given in accordance with regulations.

Brought up, read the First and Second time, and added to the Bill.

New Clause 7

Restriction on recovery of non-litigation costs of enfranchisement, extension and right to manage

"After section 20I of the LTA 1985 (as inserted by section 31) insert—

'**20J Limitation of variable service charges: non-litigation costs of enfranchisement etc**

(1) Non-litigation costs incurred, or to be incurred, by a landlord in connection with a relevant claim are not to be regarded as relevant costs to be taken into account in determining the amount of a variable service charge payable by a tenant who is a non-participating tenant in relation to that claim.

(2) A lease, contract or other arrangement is of no effect to the extent it makes provision to the contrary.

(3) In this section and section 20K—

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

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

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

"non-litigation costs" means costs incurred, or to be incurred, other than in connection with proceedings before a court or tribunal;

"non-participating tenant", in relation to a relevant claim, means a tenant who is not a participating tenant;

"participating tenant", in relation to a relevant claim, means a tenant who—

(a) in the case of a claim under Part 1 of the 1967 Act or Chapter 1 or 2 of Part 1 of the 1993 Act, is making the claim;

(b) in the case of a claim under Chapter 1 of Part 2 of the 2002 Act, is or has been a member of the RTM company making the claim;

"relevant claim" means—

(a) a claim under Part 1 of the 1967 Act (enfranchisement and extension of leases of houses);

(b) a claim under Chapter 1 or 2 of Part 1 of the 1993 Act (enfranchisement and extension of leases of flats);

(c) a claim under Chapter 1 of Part 2 of the 2002 Act (right to manage);

"RTM company" has the same meaning as in Chapter 1 of Part 2 of the 2002 Act (see section 71 of that Act).

(4) For provision about when a participating tenant is and is not liable in respect of non-litigation costs in relation to a relevant claim, see—

(a) section 19A of the 1967 Act;

(b) section 89A of the 1993 Act;

(c) section 87A of the 2002 Act.

20K Right to claim where non-litigation costs charged contrary to section 20J

(1) This section applies if, despite section 20J(1), a non-participating tenant in relation to a relevant claim pays a prohibited amount to any person.

(2) For the purposes of this section, a 'prohibited amount' is an amount that is—

(a) demanded as a variable service charge, and

(b) attributable to non-litigation costs incurred, or to be incurred, in connection with the claim.

(3) The appropriate tribunal may, on the application of the tenant, order the person to which the prohibited amount was paid to return all or any part of the amount to the tenant."—*(Lee Rowley.)*

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

Brought up, read the First and Second time, and added to the Bill.

New Clause 8

APPOINTMENT OF MANAGER: POWER TO VARY OR DISCHARGE ORDERS

"In section 24 of the LTA 1987 (appointment of manager by a tribunal)—

(a) in subsection (9), after 'interested' insert 'or of its own motion';

(b) in subsection (9A), omit 'on the application of any relevant person'."—*(Lee Rowley.)*

This new clause, to be inserted after NC7, would enable a tribunal to vary or discharge an order to appoint a manager of premises without an application, and require the tribunal to be satisfied that the variation or discharge is just and convenient and would not lead to a recurrence of the circumstances that led to the order being made.

Brought up, read the First and Second time, and added to the Bill.

New Clause 9

APPOINTMENT OF MANAGER: BREACH OF REDRESS SCHEME REQUIREMENTS

"In section 24(2) of the LTA 1987 (grounds for appointment of manager)—

(a) omit the 'or' at the end of paragraph (ac);

(b) after paragraph (ac) insert—

'(ad) where the tribunal is satisfied—

(i) that any relevant person has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) of the Leasehold and Freehold Reform Act 2024 (requirement to join redress scheme), and

(ii) that it is just and convenient to make the order in all the circumstances of the case;'".—*(Lee Rowley.)*

This new clause, to be inserted after NC8, would provide for a breach of regulations under the new Part after Part 4 (see NC15) to be grounds for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987.

Brought up, read the First and Second time, and added to the Bill.

New Clause 10

NOTICES OF COMPLAINT

"(1) An owner of a managed dwelling may give a notice of complaint to an estate manager.

(2) A notice of complaint is a notice that—

(a) sets out one or more complaints listed in subsection (3) in relation to the estate manager,

(b) states that, if the complaints are not remedied by the end of the qualifying period (see subsection (7)), the owner may make an application under section (*Appointment of substitute manager*) (application to appoint substitute manager), and

(c) contains any other information specified in regulations made by the Secretary of State.

(3) The complaints are—

(a) that the estate manager—

(i) is in breach of an obligation in relation to the dwelling, or

(ii) in the case of an obligation dependent on notice, would be in breach of such an obligation but for the fact that it has not been reasonably practicable to give the estate manager the appropriate notice;

(b) that sums payable by way of estate management charges by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, are not being applied in an efficient or effective manner;

(c) that an estate management charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(d) that an administration charge payable, or proposed or likely to be payable, by the owner, or, if the owner is a tenant or sub-tenant, by the landlord or superior landlord, is unreasonable;

(e) that the estate manager has failed to comply with a relevant provision of a code of practice approved by the Secretary of State under section 87 of the LRHUDA 1993 (codes of management practice).

(4) A notice of complaint may be given jointly by two or more persons if each of those persons is entitled to give a notice to the estate manager (whether or not in respect of the same dwelling).

(5) For that purpose, it is not necessary for every complaint set out in the notice, or every part of each complaint, to apply in relation to each dwelling owned by each of the persons giving the notice.

(6) The Secretary of State may by regulations make provision for determining when a notice of complaint is given.

(7) In this section and sections (*Appointment of substitute manager*) to (*Appointment orders: further provision*)—

'notice of complaint' means a notice of complaint under this section;

'qualifying period', in relation to a notice of complaint, means the period of six months beginning with the date on which the notice is given.

(8) A statutory instrument containing regulations under this section is subject to the negative procedure.—*(Lee Rowley.)*

This new clause, to be inserted after clause 55, would allow owners of managed dwellings to give their estate manager a notice of complaint, as a precursor to making an application for appointment of a substitute manager under NC11.

Brought up, and read the First time.

The Minister for Housing, Planning and Building Safety (Lee Rowley): I beg to move, That the clause be read a Second time.

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

Government new clause 11—*Appointment of substitute manager*.

Government new clause 12—*Conditions for applying for appointment order*.

Government new clause 13—*Criteria for determining whether to make appointment order.*

Government new clause 14—*Appointment orders: further provision.*

Lee Rowley: Homeowners who pay estate management charges for the upkeep and management of their estate must be able to hold their estate management company to account. The Government are committed to giving homeowners the right to apply to the appropriate tribunal to appoint a substitute manager where the estate management company is failing them. The intention is that the substitute manager will then carry out the services set out in an order that will be issued by the tribunal.

New clause 10 introduces the first stage in the procedure for doing so. It will require one or more homeowners to issue a notice of complaint to their estate management company.

Subsection (2) sets out what information must be contained in the notices. Subsection (3) sets out the grounds for issuing a complaint, which largely mirror the grounds set out under section 24 of the Landlord and Tenant Act 1987 that apply to leaseholders. Subsections (4) and (5) make it clear that a notice may be issued jointly with more than one complainant, and that it is not necessary for the grounds for complaint to be the same for each complainant.

Subsection (7) defines the term "qualifying period". It gives the estate management company a period of six months from the time at which a complaint is received to remedy the complaint before the homeowner can move towards the next step. That is a sensible period to ensure that estate management companies have sufficient time to address concerns fully. It gives homeowners time to gather the evidence required to demonstrate failings, should that be necessary, to any tribunal. I commend new clause 10 to the Committee.

New clause 11 will introduce arrangements to allow owners of managed dwellings to apply for the appointment of a substitute estate manager. Subsection (1) requires an application by an owner of a managed dwelling to be made to the appropriate tribunal. Once it receives an application, the appropriate tribunal may appoint a person to carry out functions in connection with estate management as the tribunal sees fit. That appointed person would then carry out functions instead of the estate manager or the agent acting on its behalf.

Subsections (2) to (4) refer to other new clauses that set out the process to be followed and the issues that must be take into account. Subsection (2) refers to new clause 12, which sets out the conditions that must be met for the person to make an application. Subsection (3) refers to new clause 13, which sets out the criteria that the appropriate tribunal must consider in deciding whether to make an order.

Subsection (4) refers to new clause 14, which makes further provision in relation to appointment orders, including what may be contained in such an order and under what terms an order may be varied or discharged. Subsection (5) sets out the two key definitions that apply to this new power: it defines an appointment order, and then defines a substitute manager as the person appointed under the appointment order. New clause 11 sets out the parameters for the new power and how it should be used; I commend it to the Committee.

New clause 12 sets out the conditions for an application for an appointment order to be made under new clause 11. Subsection (1) sets out the main condition that must be met: the homeowner must have given a notice of complaint and must have given the estate manager the required six-month period to resolve that complaint. The homeowner must also have issued a subsequent final warning notice, such that it is clear within a reasonable time period that either the estate manager is not capable of taking steps or not willing to take steps to remedy the problem.

Subsections (2) and (3) set out the arrangements for an appointment notice where it is given jointly by a number of homeowners. Critically, they allow additional homeowners to join the final warning notice even if they were not part of the initial complaint. Importantly, people who have provided the initial notice of complaint must also sign the final warning notice.

Subsection (4) sets out what a final warning notice must contain, such as the addresses and names of those issuing the notice. The notice must also set out the grounds on which those people consider that the appropriate tribunal should make that order. The final warning notice must give the estate manager a reasonable period in which to solve the problem. The Secretary of State and equivalent Welsh Ministers have the power to specify what other information might be required.

Subsection (6) allows the appropriate tribunal to dispense with the need to make a final warning notice if it is satisfied that it would not be reasonably practical to do so. New clause 12 provides clarity about what steps are required in order to make an appropriate order to the tribunal. I commend it to the Committee

New clause 13 sets out the criteria and grounds on which the appropriate tribunal may make an appointment order. Subsection (1) defines the estate management arrangements that are within scope of an appointment order by allowing the appropriate authority to set out in regulations any exemptions, should they be required.

Subsection (2)(a) states that the appropriate tribunal may make an appointment order if it is "just and convenient" in the circumstances. Subsections (2)(b) and (3) set out the grounds under which an appointment order may be made. In broad terms, these are where the estate manager has breached an obligation; where a management charge or an administration charge may be unreasonable; where a manager has failed to comply with a relevant code of practice; and where the estate manager has failed to belong to a redress scheme. However, the appropriate tribunal is also able to issue an order if it considers that there are other circumstances that make it just and convenient to do so.

Subsection (4) sets out the grounds under which an estate management charge under subsection (3)(b) is taken to be unreasonable. Subsection (5) will allow the appropriate tribunal additional freedom to make an order in circumstances in which

"a period specified in a final warning notice was not a reasonable period",

or in which the final warning notice did not contain all the required information. I commend new clause 13 to the Committee.

New clause 14 sets out further provision relating to the making of orders to appoint substitute estate managers. Subsection (1) sets out matters for which the appropriate tribunal may wish to make a provision in an appointment order, such as provision allowing the substitute manager to become party to certain rights and liabilities, provision for remuneration to be paid to a substitute manager by

the estate management company, and provision setting a time limit for how long the manager may carry out its functions.

Subsection (2) allows the appropriate tribunal to

"vary or discharge…an appointment order."

Subsection (3) sets out the conditions under which an appointment order may be varied or discharged. Subsection (4) states that

"the appropriate tribunal must have regard to whether"

or not the estate management company is part of a "redress scheme" in deciding the terms of the appointment order, or when it considers variation or discharge of the order. I commend new clause 14 to the Committee.

Question put and agreed to.

New clause 10 accordingly read a Second time, and added to the Bill.

New Clause 11

Appointment of substitute manager

"(1) The appropriate tribunal may, on the application of an owner of a managed dwelling, by order appoint a person to carry out, in place of an estate manager, such functions in connection with the estate management relating to that dwelling as the tribunal thinks fit.

(2) Section (*Conditions for applying for appointment order*) sets out conditions that must be met for a person to make an application.

(3) Section (*Criteria for determining whether to make appointment order*) sets out criteria the appropriate tribunal must consider in deciding whether to make an appointment order.

(4) Section (*Appointment orders: further provision*) makes further provision in relation to appointment orders.

(5) In this section and sections (*Conditions for applying for appointment order*) to (*Appointment orders: further provision*)—

'appointment order' means an order under subsection (1);

'substitute manager' means a person appointed under an appointment order."—*(Lee Rowley.)*

This new clause, to be inserted after NC10, would allow owners of managed dwellings to apply for the appointment of a substitute estate manager.

Brought up, read the First and Second time, and added to the Bill.

New Clause 12

Conditions for applying for appointment order

"(1) An owner of a managed dwelling may make an application for an appointment order in relation to an estate manager only if—

(a) the owner has given a notice of complaint to the estate manager,

(b) the qualifying period in relation to that notice has ended,

(c) the owner has, after the end of the qualifying period but before the application is made, given further notice to the estate manager (a 'final warning notice'), and

(d) the condition in subsection (5) is met in relation to the final warning notice.

(2) If the owner gave the notice of complaint jointly with other persons, the owner may not make an application for an appointment order unless—

(a) the owner does so jointly with each of those other persons that remain owners of managed dwellings in relation to the estate manager, and

(b) the final warning notice was given jointly by the owner and each of those other persons.

(3) The owner, or the owners acting jointly in accordance with subsection (2), may make an application jointly with an owner of a managed dwelling who did not give the notice of complaint to the estate manager (a 'joined applicant'), if the final warning notice was given jointly by the owner or owners and the joined applicant.

(4) A final warning notice must—

(a) specify—

(i) the name of the person (or persons) giving the notice,

(ii) the address of their dwelling (or the addresses of each of their dwellings), and

(iii) if different, an address (or addresses) at which a person may give notice to that person (or one or more of those persons) in connection with the application,

(b) state that the person or persons giving the notice intend to make an application for an appointment order in respect of the dwelling specified in the notice,

(c) specify the grounds on which the appropriate tribunal would be asked to make such an order and the matters that would be relied on by the person or persons for the purpose of establishing those grounds,

(d) where those matters are capable of being remedied by the estate manager, require the estate manager, within a reasonable period specified in the notice, to take specified steps for the purpose of remedying them,

(e) state that, if those matters are remedied, the person or persons will not make an application, and

(f) contain any other information specified in regulations made by the Secretary of State.

(5) The condition in this subsection is met if—

(a) the matters specified in the final warning notice were not capable of being remedied, or

(b) the period specified in the final warning notice for the matters to be remedied has expired without the estate manager having taken the required steps to remedy them.

(6) The appropriate tribunal may by order dispense with a requirement in subsection (1), (2) or (3) if the tribunal is satisfied in light of the urgency of the case that it would not be reasonably practicable for the requirement to be satisfied.

(7) But the tribunal may, when so ordering, direct that such other notices are given, or such other steps are taken, as it thinks fit.

(8) If the tribunal makes an order under subsection (6), an application for an appointment order may be made only if any notices required to be given, and any other steps required to be taken, by virtue of the order have been given or taken.

(9) The Secretary of State may by regulations make provision for determining when a notice under this section is given.

(10) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC11, would set out conditions for an application to be made under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

Criteria for determining whether to make appointment order

"(1) The appropriate tribunal may not make an appointment order in relation to an estate manager if the estate manager is specified, or is of a description specified, in regulations made by the Secretary of State.

(2) The appropriate tribunal may make an appointment order only if the tribunal is satisfied that—

(a) it is just and convenient to make the order in all the circumstances of the case, and

(b) either—

(i) those circumstances include those set out in subsection (3), or

(ii) there are other circumstances that make it just and convenient for the order to be made.

(3) The circumstances are—

(a) that the estate manager is—

(i) in breach of an obligation in relation to a dwelling, or

(ii) in the case of an obligation dependent on notice, would be in breach of the obligation but for the fact that it has not been reasonably practicable to give the estate manager the appropriate notice;

(b) that an estate management charge payable, or proposed or likely to be payable, is unreasonable;

(c) that an administration charge payable, or proposed or likely to be payable, is unreasonable;

(d) that the estate manager has failed to comply with a relevant provision of a code of practice approved by the Secretary of State under section 87 of the LRHUDA 1993 (codes of management practice);

(e) that the estate manager has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) of this Act (requirement to be member of redress scheme).

(4) For the purposes of subsection (3)(b), an estate management charge is to be taken to be unreasonable if—

(a) the amount is unreasonable having regard to the items for which it is payable,

(b) the items for which it is payable are of an unnecessarily high standard, or

(c) the items for which it is payable are of an insufficient standard with the result that additional charges are or may be incurred.

(5) An appointment order may be made despite the fact that—

(a) a period specified in a final warning notice was not a reasonable period, or

(b) a final warning notice otherwise failed to comply with a requirement under section (*Conditions for applying for appointment order*)(4).

(6) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC12, would set out criteria for the making of an order under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 14

APPOINTMENT ORDERS: FURTHER PROVISION

"(1) An appointment order may—

(a) make provision with respect to such matters relating to the exercise by the substitute manager of their functions under the order, and such incidental or ancillary matters, as the tribunal thinks fit, including—

(i) for rights and liabilities arising under contracts or other arrangements to which the substitute manager is not party to become rights and liabilities of the substitute manager;

(ii) for the substitute manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of their appointment;

(iii) for remuneration to be paid to the substitute manager by the estate manager;

(iv) for the substitute manager's functions to be exercisable during a specified period;

(b) be subject to such conditions as the tribunal thinks fit;

(c) be subject to suspension on terms set by the tribunal.

(2) The appropriate tribunal may, on the application of any interested person or of its own motion, vary or discharge (whether conditionally or unconditionally) an appointment order.

(3) The tribunal may not vary or discharge an appointment order unless the tribunal is satisfied that—

(a) the variation or discharge will not result in a recurrence of the circumstances which led to the appointment order being made, and

(b) it is just and convenient in all the circumstances of the case to vary or discharge the order.

(4) In deciding—

(a) the terms of an appointment order, or

(b) whether or how to vary or discharge an appointment order,

the appropriate tribunal must have regard to whether the estate manager in relation to which the order is made has breached regulations under section (*Leasehold and estate management: redress schemes*)(1) (requirement to be member of redress scheme)."—*(Lee Rowley.)*

This new clause, to be inserted after NC13, would set out further provision about orders to appoint substitute estate managers under NC11.

Brought up, read the First and Second time, and added to the Bill.

New Clause 15

LEASEHOLD AND ESTATE MANAGEMENT: REDRESS SCHEMES

"(1) The Secretary of State may by regulations require a person that carries out estate management in respect of a dwelling in England in a relevant capacity to be a member of a redress scheme.

(2) A person carries out estate management in a 'relevant capacity' if they do so—

(a) as a relevant landlord of the dwelling, or

(b) as an estate manager.

(3) But a person may not be required to be a member of a redress scheme under this section if they carry out estate management only—

(a) as a tenant, or

(b) as an agent.

(4) A 'redress scheme' is a scheme—

(a) which provides for a complaint against a member of the scheme made by or on behalf of a current or former owner of a dwelling in relation to which estate management is carried out to be independently investigated and determined by an independent individual, and

(b) which is—

(i) approved by the lead enforcement authority for the purposes of regulations under subsection (1), or

(ii) administered by or on behalf of the lead enforcement authority and designated by the lead enforcement authority for those purposes.

(5) Regulations under subsection (1) may require a person to remain a member of a redress scheme after ceasing to be a person mentioned in that subsection, for a period specified in the regulations.

(6) Before making regulations under subsection (1), the Secretary of State must be satisfied that all persons who are to be required to be a member of a redress scheme will be eligible to join such a scheme before being so required (subject to any provision in the scheme about expulsion, as to which see section (*Approval and designation of redress schemes*)(3)(k)).

(7) For potential consequences of breaching regulations under subsection (1), see—

(a) section 24(2)(ad) of the LTA 1987 and section (*Criteria for determining whether to make appointment order*)(3)(e) of this Act (appointment of manager by tribunal);

(b) section (*Financial penalties*) of this Act (financial penalties by enforcement authorities).

(8) In this Part—

'estate management' means—

(a) the provision of services,

(b) the carrying out of maintenance, repairs or improvements,

(c) the effecting of insurance, or

(d) the making of payments,

for the benefit of one or more dwellings;

'estate manager' means a body of persons (whether incorporated or not)—

(a) which carries out, or is required to carry out, estate management, and

(b) which recovers the costs of carrying out estate management by means of relevant obligations;

'the lead enforcement authority' means either—

(a) the Secretary of State, or

(b) another person designated by the Secretary of State as the lead enforcement authority,

and see section (*Lead enforcement authority: further provision*) for further provision about the lead enforcement authority;

'relevant landlord', in relation to a dwelling, means a landlord under a long lease of the dwelling;

"relevant obligation', in relation to a dwelling, means each of the following—

(a) a rentcharge which—

(i) is charged on or issues out of the land which comprises the dwelling or a building of which the dwelling forms part, and

(ii) is an estate rentcharge by virtue of section 2(4)(b) and (5) of the RA 1977;

(b) an obligation under a long lease of the dwelling;

(c) any other obligation that—

(i) runs with the land which comprises the dwelling or a building of which the dwelling forms part, or

(ii) otherwise (whether in law or in equity) binds the owner for the time being of the land which comprises the dwelling;

(d) any other obligation—

(i) to which the owner of the dwelling is subject, and

(ii) to which any immediate successor in title of that owner will become subject, if an arrangement to which a relevant landlord or an estate manager and that owner are parties is performed.

(9) The arrangements that are within paragraph (d) of the definition of 'relevant obligation' include an arrangement under which the owner is required (in particular by a limitation on transfer of title to the dwelling or on registration of a transfer of title) to ensure that any immediate successor in title to the owner enters into an obligation.

(10) The Secretary of State may by regulations make provision (including provision amending this Act) for the purpose of changing the meaning of 'relevant capacity', 'relevant landlord' or 'relevant obligation'.

(11) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted as the first clause of a new Part after Part 4, would enable the Secretary of State to make provision for redress schemes for property management work carried out other than by agents.

Brought up, read the First and Second time, and added to the Bill.

New Clause 16

REDRESS SCHEMES: VOLUNTARY JURISDICTION

"(1) Nothing in this Part prevents a redress scheme from providing (subject to regulations under section (*Approval and designation of redress schemes*))—

(a) for membership to be open to persons who wish to join as voluntary members;

(b) for the investigation or determination of any complaints under a voluntary jurisdiction (including complaints by persons who are not current or former owners of dwellings in relation to which estate management is carried out);

(c) for voluntary mediation services;

(d) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme.

(2) In this Part—

'complaints under a voluntary jurisdiction' means complaints in relation to which there is no duty to be a member of a redress scheme, where the members against which the complaints are made have voluntarily accepted the jurisdiction of the scheme over those complaints;

'voluntary mediation services' means mediation, conciliation or similar processes provided at the request of a member in relation to complaints made—

(a) against the member, or

(b) by the member against another person;

'voluntary members', in relation to a scheme, means members who are not subject to a duty to be a member of a redress scheme."—*(Lee Rowley.)*

This new clause, to be inserted after NC15, would provide for redress schemes to have the possibility of voluntary jurisdiction.

Brought up, read the First and Second time, and added to the Bill.

New Clause 17

FINANCIAL ASSISTANCE FOR ESTABLISHMENT OR MAINTENANCE OF REDRESS SCHEMES

"The Secretary of State may give financial assistance (by way of grant, loan, or guarantee, or in any other form) or make other payments to a person for the establishment or maintenance of—

(a) a redress scheme, or

(b) a scheme that would be a redress scheme if it were approved or designated under section (*Leasehold and estate management: redress schemes*)(4)(b)."—*(Lee Rowley.)*

This new clause, to be inserted after NC16, would allow the Secretary of State to give financial assistance for the establishment or maintenance of redress schemes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 18

APPROVAL AND DESIGNATION OF REDRESS SCHEMES

"(1) This section applies where the Secretary of State makes regulations under section (*Leasehold and estate management: redress schemes*)(1).

(2) The Secretary of State must by regulations set out conditions which are to be satisfied before a scheme is approved or designated under section (*Leasehold and estate management: redress schemes*)(4)(b).

(3) The conditions must include conditions requiring the scheme to include provision in accordance with the regulations—

(a) for an administrator of the scheme to appoint an individual, having obtained the lead enforcement authority's approval of the individual and the terms of the appointment, who is to be responsible for overseeing and monitoring the investigation and determination of complaints under the scheme;

(b) about the complaints that may be made under the scheme, which must include provision enabling the making of complaints about non-compliance with any codes of practice that are issued or approved by the Secretary of State;

(c) about the time to be allowed for scheme members to resolve matters before a complaint is accepted under the scheme in relation to those matters;

(d) about the circumstances in which a complaint may be rejected;

(e) about co-operation (which may include the joint exercise of functions) of an individual who is investigating or determining a complaint with persons who have functions under other schemes for providing redress and with enforcement authorities;

(f) about the provision of information to the persons mentioned in paragraph (e);

(g) if members are required to pay fees in respect of compulsory aspects of the scheme, about the level of those fees;

(h) if there are voluntary aspects of the scheme—

(i) for fees to be payable in respect of those aspects of the scheme, and

(ii) for the fees to be set at a level that, taking one year with another, is sufficient to meet the costs incurred in the administration of those aspects of the scheme;

(i) for the individual determining a complaint to be able to require members to provide redress of the following types to the complainant—

(i) providing an apology or explanation,

(ii) paying compensation, and

(iii) taking such other actions in the interests of the complainant as the individual determining the complaint may specify;

(j) about the enforcement of the scheme and decisions made under the scheme;

(k) for a person to be expelled from the scheme only—

(i) in circumstances specified in the regulations,

(ii) once steps to secure compliance that are specified in the regulations have been taken, and

(iii) once the decision to expel the person has been reviewed by an independent person in accordance with the regulations;

(l) for an expulsion to be revoked in circumstances specified in the regulations;

(m) prohibiting a person from joining the scheme when the person has been expelled from another redress scheme and the expulsion has not been revoked;

(n) for circumstances in which the administration of the scheme is to be transferred to a different administrator;

(o) about the closure of the scheme by an administrator of the scheme.

(4) Conditions set out in regulations under subsection (3)—

(a) may include conditions requiring an administrator or proposed administrator of a scheme to undertake to do things—

(i) on an ongoing basis following approval or designation;

(ii) after ceasing to be an administrator of the scheme;

(b) in the case of conditions set out in regulations by virtue of subsection (3)(d), may require a scheme to reject complaints by a current or former owner of a dwelling where that owner is of a description specified in the regulations;

(c) in the case of conditions set out in regulations by virtue of subsection (3)(n), may—

(i) require an approved scheme to provide for the administration of that scheme to be transferred to the lead enforcement authority or a person acting on behalf of the lead enforcement authority in circumstances specified in the regulations, and

(ii) where they so require, provide for a scheme whose administration is transferred to be treated as a designated scheme instead of an approved one.

(5) Subsections (3) and (4) do not limit the conditions that may be set out in regulations under subsection (2).

(6) The Secretary of State may by regulations make further provision about the approval or designation of redress schemes under section *(Leasehold and estate management: redress schemes)*(4)(b), including provision—

(a) about the number of redress schemes that may be approved or designated (which may be one or more);

(b) about the making of applications for approval;

(c) about the period for which an approval or designation is valid;

(d) about the withdrawal of approval or revocation of designation;

(e) authorising the approval or designation of a scheme which provides for fees payable by a compulsory member to be calculated by reference to the total of the costs incurred, or to be incurred, in the administration of the compulsory aspects of the scheme (including costs unconnected with the member in question).

(7) Regulations under this section may confer a discretion on the lead enforcement authority or require a scheme to do so.

(8) In this section—

'compulsory aspects', in relation to a scheme, means aspects of the scheme relating to complaints in relation to which there is a duty to be a member of a redress scheme;

'compulsory member', in relation to a scheme, means a member of the scheme who is subject to a duty to be a member of a redress scheme;

'voluntary aspects', in relation to a scheme, means aspects of the scheme that relate to—

(a) complaints under a voluntary jurisdiction,

(b) voluntary mediation services, or

(c) voluntary members.

(9) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC17, would make provision for the approval and designation of redress schemes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 19

Financial penalties

"(1) An enforcement authority may impose a financial penalty on a person if satisfied beyond reasonable doubt that the person has breached regulations under section (*Leasehold and estate management: redress schemes*)(1).

(2) The Secretary of State may by regulations make provision about the investigation by an enforcement authority of suspected breaches of regulations under section (*Leasehold and estate management: redress schemes*)(1) for the purpose of determining whether to impose a financial penalty.

(3) Regulations under subsection (2) may, among other things, make provision about—

(a) co-operation between enforcement authorities, and

(b) the sharing of information between enforcement authorities,

for the purposes of an investigation.

(4) The amount of a financial penalty imposed under this section is to be determined in accordance with section (*Financial penalties: maximum amounts*).

(5) More than one penalty may be imposed for the same conduct only if—

(a) the conduct continues after the end of 28 days beginning with the day after the day on which the final notice in respect of the previous penalty for the conduct was given to the person, unless the person appeals against that notice within that period, or

(b) if the person appeals against that notice within that period, the conduct continues after the end of 28 days beginning with the day after the day on which the appeal is finally determined, withdrawn or abandoned.

(6) Subsection (5) does not enable a penalty to be imposed after the final notice in respect of the previous penalty has been withdrawn or quashed on appeal.

(7) Schedule (*Redress schemes: financial penalties*) makes provision about—

(a) the procedure for imposing a financial penalty under this section,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) how enforcement authorities are to deal with the proceeds of financial penalties.

(8) For the purposes of this section and section (*Financial penalties: maximum amounts*)—

(a) a financial penalty is imposed on the date specified in the final notice as the date on which the notice is given;

(b) 'final notice' has the meaning given by paragraph 3 of Schedule (*Redress schemes: financial penalties*).

(9) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC18, would provide for an enforcement authority to impose a financial penalty for breach of regulations under NC15.

Brought up, read the First and Second time, and added to the Bill.

New Clause 20

FINANCIAL PENALTIES: MAXIMUM AMOUNTS

"(1) The amount of a financial penalty imposed on a person under section (*Financial penalties*) is to be determined by the enforcement authority imposing it, but—

(a) if Case A, B or C applies, the penalty must not be more than £30,000;

(b) otherwise, the penalty must not be more than £5,000.

(2) Case A applies if—

(a) a relevant penalty has been imposed on the person and the final notice imposing the penalty has not been withdrawn, and

(b) the conduct for which the penalty was imposed continues after the end of the period of 28 days beginning with—

(i) the day after the day on which the penalty was imposed on the person, or

(ii) if the person appeals against the final notice in respect of the penalty within that period, the day after the day on which the appeal is finally determined, withdrawn or abandoned.

(3) Case B applies if—

(a) a relevant penalty has been imposed on the person for a breach of regulations under section (*Leasehold and estate management: redress schemes*)(1) and the final notice imposing the penalty has not been withdrawn, and

(b) the person engages in conduct which constitutes a different breach of such regulations within the period of five years beginning with the day on which the penalty was imposed.

(4) Case C applies if—

(a) a relevant penalty has been imposed on the person for conduct in respect of which Case A, B or C applies and the final notice imposing the penalty has not been withdrawn, and

(b) the person breaches regulations under section (*Leasehold and estate management: redress schemes*)(1) within the period of five years beginning with the day on which the penalty was imposed.

(5) For the purposes of this section, 'relevant penalty' means a financial penalty imposed under section (*Financial penalties*) where—

(a) the period for bringing an appeal against the penalty under paragraph 5 of Schedule (*Redress schemes: financial penalties*) has expired without an appeal being brought,

(b) an appeal against the financial penalty under that paragraph has been withdrawn or abandoned, or

(c) the final notice imposing the penalty has been confirmed or varied on appeal.

(6) The Secretary of State may by regulations amend the amounts specified in subsection (1) to reflect changes in the value of money.

(7) A statutory instrument containing regulations under this section is subject to the negative procedure.'—*(Lee Rowley.)*

This new clause, to be inserted after NC19, would provide for the maximum penalties that may be imposed under NC19.

Brought up, read the First and Second time, and added to the Bill.

New Clause 21

DECISION UNDER A REDRESS SCHEME MAY BE MADE ENFORCEABLE AS IF IT WERE A COURT ORDER

"(1) The Secretary of State may by regulations make provision for, or in connection with, authorising an administrator of a redress scheme to apply to a court or tribunal for an order that a determination made under the scheme and accepted by the complainant in question be enforced as if it were an order of a court.

(2) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC20, would enable the Secretary of State to make regulations making a decision under a redress scheme enforceable as if it were a court order.

Brought up, read the First and Second time, and added to the Bill.

New Clause 22

LEAD ENFORCEMENT AUTHORITY: FURTHER PROVISION

"(1) The lead enforcement authority must oversee the operation of a redress scheme under this Part.

(2) The lead enforcement authority must provide—

(a) other enforcement authorities, and

(b) the public in England,

with information and advice about the operation of redress schemes, in such form and manner as the lead enforcement authority considers appropriate.

(3) The lead enforcement authority may disclose information to another enforcement authority for the purposes of enabling that authority to determine whether there has been a breach of regulations under section (*Leasehold and estate management: redress schemes*)(1).

(4) The lead enforcement authority may issue guidance to other enforcement authorities about the exercise of their functions under this Part.

(5) Enforcement authorities other than the lead enforcement authority must have regard to any guidance issued under subsection (4).

(6) If the Secretary of State designates a person as the lead enforcement authority for the purposes of this Part—

(a) the Secretary of State may make arrangements in connection with the person's role as the lead enforcement authority, which may include arrangements—

(i) for payments by the Secretary of State;

(ii) about bringing the arrangements to an end;

(b) the Secretary of State may give the lead enforcement authority directions as to the exercise of any of its functions, which—

(i) may relate to all or particular kinds of enforcement authorities, and

(ii) may make different provision for different purposes;

(c) the lead enforcement authority must keep under review and from time to time advise the Secretary of State about—

(i) the operation of redress schemes;

(ii) social and commercial developments relating to estate management (including by relevant landlords) in England, so far as it considers those developments relevant to redress schemes.

(7) The Secretary of State may by regulations make transitional or saving provision which applies when there is a change in the lead enforcement authority (which may relate to a specific change in the lead enforcement authority or to changes that might arise from time to time).

(8) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC21, would make further provision about lead enforcement authorities.

Brought up, read the First and Second time, and added to the Bill.

New Clause 23

GUIDANCE FOR ENFORCEMENT AUTHORITIES AND SCHEME ADMINISTRATORS

"(1) The Secretary of State may from time to time issue or approve guidance for enforcement authorities in England and administrators of redress schemes about co-operation between such enforcement authorities and persons exercising functions under the schemes.

(2) An enforcement authority in England other than the Secretary of State must have regard to any guidance issued or approved under this section.

(3) The Secretary of State must exercise the powers in section (*Approval and designation of redress schemes*) for the purpose of ensuring that every administrator of a redress scheme has regard to any guidance issued or approved under this section."—*(Lee Rowley.)*

This new clause, to be inserted after NC22, would enable the Secretary of State to issue guidance to enforcement authorities and scheme administrators.

Brought up, read the First and Second time, and added to the Bill.

New Clause 24

INTERPRETATION OF PART 4A

"In this Part—

'complaints under a voluntary jurisdiction" has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2);

'dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

'enforcement authority' means—

(a) the lead enforcement authority,

(b) the Secretary of State,

(c) a local housing authority, or

(d) another person designated by the Secretary of State as an enforcement authority;

'estate management' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'estate manager' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'the lead enforcement authority' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'local housing authority' means—

(a) a district council,

(b) a London borough council,

(c) the Common Council of the City of London (in its capacity as a local authority), or

(d) the Council of the Isles of Scilly;

'long lease' has the meaning given in section 77(2) of the LRHUDA 1993;

'owner', in relation to a dwelling, means—

(a) the owner of freehold land which comprises the dwelling;

(b) a tenant under a long lease of the dwelling;

'redress scheme' has the meaning given in section (*Leasehold and estate management: redress schemes*)(4);

'relevant capacity' has the meaning given in section (*Leasehold and estate management: redress schemes*)(2);

'relevant landlord' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

"relevant obligation' has the meaning given in section (*Leasehold and estate management: redress schemes*)(8);

'rentcharge" has the same meaning as in the RA 1977 (see section 1 of that Act);

'voluntary mediation services' has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2);

'voluntary members' has the meaning given in section (*Redress schemes: voluntary jurisdiction*)(2)."—*(Lee Rowley.)*

This new clause, to be inserted after NC22, would make interpretation provision for the purposes of the new Part to be inserted after Part 4.

Brought up, read the First and Second time, and added to the Bill.

New Clause 42

LEASEHOLD SALES INFORMATION REQUESTS

"(1) In the LTA 1985, after section 30J (as inserted by section 35) insert—

'Sales information requests

30K Sales information requests

(1) A tenant of a dwelling under a long lease may give a sales information request to the landlord.

(2) A "sales information request" is a document in a specified form, and given in a specified manner, setting out—

(a) that the tenant is contemplating selling a long lease of the dwelling,

(b) information that the tenant requests from the landlord for the purpose of the contemplated sale, and

(c) any other specified information.

(3) A tenant may request information in a sales information request only if the information is specified in regulations made by the appropriate authority.

(4)The appropriate authority may specify information for the purposes of subsection (3) only if the information could reasonably be expected to assist a prospective purchaser in deciding whether to purchase a long lease of a dwelling.

(5) The appropriate authority may by regulations provide that a sales information request may not be given until the end of a particular period, or until another condition is met.

(6) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

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

30L Effect of sales information request

(1) A landlord who has been given a sales information request must provide the tenant with any of the information requested that is within the landlord's possession.

(2) The landlord must request information from another person if—

(a) the information has been requested from the landlord in a sales information request,

(b) the landlord does not possess the information when the request is made, and

(c) the landlord believes that the other person possesses the information.

(3) That person must provide the landlord with any of the information requested that is within that person's possession.

(4) A person ("A") must request information from another person ("B") if—

(a) the information has been requested from A in a request under subsection (2) or this subsection (an "onward request"),

(b) A does not possess the information when the request is made, and(c)A believes that B possesses the information.

(5) B must provide A with any of the information requested that is within B's possession.

(6) A person who is required to provide information under this section must do so before the end of a specified period beginning with the day on which the request for the information is made.

(7) A person who—

(a) has been given a sales information request or an onward request, and

(b) as a result of not possessing the information requested, does not provide the information before the end of a specified period beginning with the day on which the request is made, must give the person making the request a negative response confirmation.

(8) A "negative response confirmation" is a document in a specified form, and given in a specified manner, setting out—

(a) that the person is unable to provide the information requested because it is not in the person's possession;

(b) a description of what action the person has taken to determine whether the information is in the person's possession;

(c) any onward requests the person has made and the persons to whom they were made;

(d) an explanation of why the person was unable to obtain the information, including details of any negative response confirmation received by the person;

(e) any other specified information.

(9) A person who is required to give a negative response confirmation must do so before the end of a specified period beginning with the day after the day on which the period referred to in subsection (7)(b) ends.

(10) The appropriate authority may by regulations—

(a) provide that an onward request may not be made until the end of a particular period, or until another condition is met;

(b) provide for how an onward request is to be made;

(c) make provision as to the period within which an onward request must be made;

(d) provide for circumstances in which a duty to comply with a sales information request or an onward request does not apply;

(e) make provision as to how information requested in a sales information request or an onward request is to be provided;

(f) make provision for circumstances in which a period specified for the purposes of subsection (6), (7) or (9) is to be extended.

(11) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

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

30M Charges for provision of information

(1) Subject to any regulations under subsection (2), a person ("P") may charge another person for—

(a) determining whether information requested in a sales information request or an onward request is in P's possession;

(b) providing or obtaining information under section 30L.

(2) The appropriate authority may by regulations—

(a) limit the amount that may be charged under subsection (1);

(b) prohibit a charge under subsection (1) in specified circumstances or unless specified requirements are met.

(3) If a landlord charges a tenant under subsection (1), the charge—

(a) is an administration charge for the purposes of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (see paragraph 1(1)(b) of that Schedule), and

(b) is not to be treated as a service charge for the purposes of this Act.

(4) For the purposes of the provisions of this Act relating to service charges, the costs of—

(a) determining whether information requested in a sales information request or an onward request is in a person's possession, or

(b) providing or obtaining information under section 30L,are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by any tenant.

(5) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

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

30N Enforcement of sections 30L and 30M

(1) A person who makes a sales information request or an onward request ("C") may make an application to the appropriate tribunal on the ground that another person ("D") failed to comply with a requirement under section 30L or 30M in relation to the request.

(2) The tribunal may make one or more of the following orders—

(a) an order that D comply with the requirement before the end of a period specified by the tribunal;

(b) an order that D pay damages to C for the failure;

(c) if D charged C in excess of a limit specified in regulations under section 30M(2)(a), an order that D repay the amount charged in excess of the limit to C;

(d) if D charged C in breach of regulations under section 30M(2)(b), an order that D repay the amount charged to C.

(3) Damages under subsection (2)(b) may not exceed £5,000.

(4) The appropriate authority may by regulations amend the amount in subsection (3) if the appropriate authority considers it expedient to do so to reflect changes in the value of money.

(5) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

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

30P Interpretation of sections 30K to 30N

(1) In sections 30K to 30N—

"information" includes a document containing information, and a copy of such a document;

"landlord" includes—

(a) any person who has a right to enforce payment of a service charge;

(b) a RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (see section 73 of that Act);

"long lease" has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (see sections 76 and 77 of that Act);

"onward request" has the meaning given in section 30L(4)(a);

"sales information request" has the meaning given in section 30K(2);

"specified" means specified in, or determined in accordance with, regulations made by the appropriate authority.

(2)A reference in sections 30K to 30N to purchasing a long lease is a reference to becoming a tenant under the lease for consideration, whether by grant, assignment or otherwise, and references to selling a long lease are to be read accordingly.

(2) In section 172(1) of the CLRA 2002 (application to Crown of provisions of the LTA 1985), after paragraph (ac) (as inserted by section 35) insert—

"(ad) sections 30K to 30P of the 1985 Act (sales information requests),".'"—*(Lee Rowley.)*

This new clause, to be inserted after NC9, would require a landlord to provide specified information to a tenant, in anticipation of the tenant selling their property, within a specified time and at a specified cost, and request that information from other parties.

Brought up, and read the First time.

Lee Rowley: I beg to move, That the clause be read a Second time.

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

Government new clause 43—*Estate management: sales information requests.*

Government new clause 44—*Effect of sales information request.*

Government new clause 45—*Charges for provision of information.*

Government new clause 46—*Enforcement of sections (Effect of sales information request) and (Charges for provision of information).*

Lee Rowley: New clause 42 will introduce a requirement for a landlord to provide specific information requested by a leaseholder. That information is vital for a leaseholder to enable the sale of their property; it also provides the detail that a prospective purchaser needs to make an informed decision. Regulations will set out what information is to be provided, as well as a maximum timeframe and a maximum cost for providing that information. Regulations will further specify how a request must be made, how the requested information must be provided, in what circumstances a request can be refused and when the time period for its provision may be extended. The clause also sets out enforcement mechanisms, including the various orders that a tribunal may make such as requiring compliance, awarding damages and requiring the repayment of excessive fees.

Under the current system, there is no consistency for leaseholders, some of whom are left paying thousands of pounds and waiting months for this information. Some of them never receive the information at all. The clause will reduce the time that leaseholders have to wait to receive the information that they need, which should reduce delays in selling their properties. It will also make the selling process cheaper and less uncertain. I commend new clause 42 to the Committee.

2.15 pm

I turn to new clause 43. There is currently no obligation for an estate manager to respond to a sales information request from a homeowner who wishes to sell their property. Although many estate managers do provide information in a timely manner, failures by some managers mean that it can take weeks or months for homeowners on freehold estates to receive the information that they need, if they receive it at all.

The new clause, along with new clauses 44, 45 and 46, will provide for a fairer, more streamlined system in which homeowners can get the information they need when they need it. It will introduce a requirement for an estate manager to provide specific information requested by a homeowner who intends to sell their property. Subsection (2) will require the request to be set out in a specified form and given in a specified manner. This will ensure that the estate manager can confirm that it is indeed a request for sales information, rather than a general request for information. The information will be specified in regulations but must relate to estate management, estate managers, estate management charges or relevant obligations, and must be reasonably expected to help a prospective purchaser to decide whether to

purchase a property. We intend to work with estate managers, homeowners and other stakeholders when preparing the regulations, to ensure that we capture the right level of detail. I commend new clause 43 to the Committee.

New clause 44 will introduce a requirement for an estate manager to provide sales information requested by a homeowner on a freehold estate, within a timeframe set out in regulations. Subsections (2) and (3) will require estate managers to request from another party information that they do not hold, if they consider that the other party holds it; the other party must provide the information that they possess. Subsections (4) and (5) will place an additional obligation on the other party to forward on the request if it does not hold the information; the further party must provide the information that it possesses.

Subsection (6) requires that the information must be requested within a specified period. Subsection (7) states that if a person receives a request but does not hold the required information, they must confirm to the person who made the request that they do not hold that information. This is called a negative response confirmation. The negative response confirmation should detail that the individual does not hold the information and the actions taken by the individual to determine that. Subsection (10) allows regulations to set out the detail of how the process for making onward requests for information should work.

New clause 44 will create the framework for ensuring that relevant sales information is provided in a timely manner, and will cut the time that it takes for a homeowner to receive sales information. I commend it to the Committee.

I turn to new clause 45. Estate managers have considerable discretion as to what they can charge for collating and providing sales information. This means that homeowners can often be left paying an excessive amount. The new clause will allow for a maximum fee to be set out in regulations and will introduce a maximum fee for onward requests for information. The new clause also sets out that any cost incurred by the homeowner for the provision of sales information by the estate manager is to be an administration charge and should not be treated as an estate management charge. I commend it to the Committee.

I turn to new clause 46. Under the current arrangements, homeowners often feel powerless when information is not forthcoming or if they are charged what they consider an extortionate fee for obtaining it. New clause 46 will introduce an enforcement mechanism where sales information has not been provided or where the cost charged has exceeded the maximum permitted cost. Subsection (2) will allow a homeowner who has made a sales information request or an individual who has made an onward request to make an application to the relevant tribunal. The tribunal, in turn, may make one or more orders. This includes an order that the estate manager or other party provide the sales information within a specified time frame.

New clause 46 will also allow the tribunal to award damages of up to £5,000 to the homeowner or person making the onward request. In cases of overcharging, the tribunal may require the excess amount to be repaid or, where there has been a charge in breach of regulations, may require the full amount to be repaid. I commend the new clause to the Committee.

Matthew Pennycook (Greenwich and Woolwich) (Lab): I rise to say simply that the Opposition welcome this group of Government new clauses.

Barry Gardiner (Brent North) (Lab): I, too, welcome the new clauses, but I do so in the knowledge that they do not provide a perfect solution. My concern, and the question I put to the Minister, relates to situations such as the one that I outlined the other day. Where information is held by a series of Russian dolls, as it were, the ultimate one of which is located in the Cayman Islands—as is the case with Wembley Central Apartments in my constituency—what ultimate redress do the leaseholders have? Damages does not get to the nub of the problem.

Lee Rowley: As the hon. Member has outlined, we spoke about this issue on Thursday. I have a lot of sympathy for the point that he makes, and I think we agreed that we would explore it further; I was going to write to the hon. Gentleman and the Committee, if I recall correctly. He is right to raise and highlight that point. Where we can make further progress, we should try to do so. As I know he will appreciate, there is ultimately a challenge when entities move out of jurisdictions, but that should not mean that we should not have a look at whether we can make things better, if not perfect.

Question put and agreed to.

New clause 42 accordingly read a Second time, and added to the Bill.

New Clause 43

ESTATE MANAGEMENT: SALES INFORMATION REQUESTS

"(1) An owner of a managed dwelling may give a sales information request to the estate manager.

(2) A 'sales information request' is a document in a specified form, and given in a specified manner, setting out—

(a) that the owner is contemplating selling the dwelling,

(b) information that the owner requests from the estate manager for the purpose of the contemplated sale, and

(c) any other specified information.

(3) An owner of a managed dwelling may request information in a sales information request only if the information is specified in regulations made by the appropriate authority.

(4) The appropriate authority may specify information for the purposes of subsection (3) only if the information—

(a) relates to estate management, estate managers, estate management charges or relevant obligations, and

(b) could reasonably be expected to assist a prospective purchaser in deciding whether to purchase a dwelling.

(5) The appropriate authority may by regulations provide that a sales information request may not be given until the end of a particular period, or until another condition is met.

(6) In this section and sections (*Effect of sales information request*) to (*Enforcement of sections (Effect of sales information request) and (Charges for provision of information)*)—

(a) a reference to purchasing a dwelling is a reference to becoming an owner of the dwelling, and references to selling a dwelling are to be read accordingly;

(b) 'sales information request' has the meaning given in subsection (2);

(c) 'specified' means specified in, or determined in accordance with, regulations made by the appropriate authority.

(7) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC14, would provide for the owner of a managed dwelling to give a sales information request to the estate manager in anticipation of selling the dwelling.

Brought up, read the First and Second time, and added to the Bill.

New Clause 44

EFFECT OF SALES INFORMATION REQUEST

"(1) An estate manager who has been given a sales information request by the owner of a managed dwelling must provide the owner with any of the information requested that is within the estate manager's possession.

(2) The estate manager must request information from another person if—

(a) the information has been requested from the estate manager in a sales information request,

(b) the estate manager does not possess the information when the request is made, and

(c) the estate manager believes that the other person possesses the information.

(3) That person must provide the estate manager with any of the information requested that is within that person's possession.

(4) A person ('A') must request information from another person ('B') if—

(a) the information has been requested from A in a request under subsection (2) or this subsection (an 'onward request'),

(b) A does not possess the information when the request is made, and

(c) A believes that B possesses the information.

(5) B must provide A with any of the information requested that is within B's possession.

(6) A person who is required to provide information under this section must do so before the end of a specified period beginning with the day on which the request for the information is made.

(7) A person who—

(a) has been given a sales information request or an onward request, and

(b) as a result of not possessing the information requested, does not provide the information before the end of a specified period beginning with the day on which the request is made,

must give the person making the request a negative response confirmation.

(8) A 'negative response confirmation' is a document in a specified form, and given in a specified manner, setting out—

(a) that the person is unable to provide the information requested because it is not in the person's possession;

(b) a description of what action the person has taken to determine whether the information is in the person's possession;

(c) any onward requests the person has made and the persons to whom they were made;

(d) an explanation of why the person was unable to obtain the information, including details of any negative response confirmation received by the person;

(e) any other specified information.

(9) A person who is required to give a negative response confirmation must do so before the end of a specified period beginning with the day after the day on which the period referred to in subsection (7)(b) ends.

(10) The appropriate authority may by regulations—

(a) provide that an onward request may not be made until the end of a particular period, or until another condition is met;

(b) provide for how an onward request is to be made;

(c) make provision as to the period within which an onward request must be made;

(d) provide for circumstances in which a duty to comply with a sales information request or an onward request does not apply;

(e) make provision as to how information requested in a sales information request or an onward request is to be provided;

(f) make provision for circumstances in which a period specified for the purposes of subsection (6), (7) or (9) is to be extended.

(11) In this section and sections (*Charges for provision of information*) and (*Enforcement of sections (Effect of sales information request) and (Charges for provision of information)*), 'onward request' has the meaning given in subsection (4)(a).

(12) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC43, would require an estate manager who has been given a sales information request to provide the information requested, and request that information from other parties.

Brought up, read the First and Second time, and added to the Bill.

New Clause 45

CHARGES FOR PROVISION OF INFORMATION

"(1) Subject to any regulations under subsection (2), a person ('P') may charge another person for—

(a) determining whether information requested in a sales information request or an onward request is in P's possession;

(b) providing or obtaining information under section (*Effect of sales information request*).

(2) The appropriate authority may by regulations—

(a) limit the amount that may be charged under subsection (1);

(b) prohibit a charge under subsection (1) in specified circumstances or unless specified requirements are met.

(3) If an estate manager charges the owner of a managed dwelling under subsection (1), the charge—

(a) is an administration charge for the purposes of this Part, and

(b) is not to be treated as an estate management charge for the purposes of this Part.

(4) For the purposes of this Part, the costs of—

(a) determining whether information requested in a sales information request or an onward request is in a person's possession, or

(b) providing or obtaining information under section (*Estate management: sales information requests*),

are not to be regarded as relevant costs to be taken into account in determining the amount of any estate management charge.

(5) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC44, would regulate charges for the provision of information under NC44.

Brought up, read the First and Second time, and added to the Bill.

New Clause 46

ENFORCEMENT OF SECTIONS (*EFFECT OF SALES INFORMATION REQUEST*) AND (*CHARGES FOR PROVISION OF INFORMATION*)

"(1) A person who makes a sales information request or an onward request ('C') may make an application to the appropriate tribunal on the ground that another person ('D') failed to comply with a requirement under section (*Effect of sales information request*) or (*Charges for provision of information*) in relation to the request.

(2) The tribunal may make one or more of the following orders—

(a) an order that D comply with the requirement before the end of a period specified by the tribunal;

(b) an order that D pay damages to C for the failure;

(c) if D charged C in excess of a limit specified in regulations under section (*Charges for provision of information*)(2)(a), an order that D repay the amount charged in excess of the limit to C;

(d) if D charged C in breach of regulations under section (*Charges for provision of information*)(2)(b), an order that D repay the amount charged to C.

(3) Damages under subsection (2)(b) may not exceed £5,000.

(4) The appropriate authority may by regulations amend the amount in subsection (3) if the appropriate authority considers it expedient to do so to reflect changes in the value of money.

(5) A statutory instrument containing regulations under this section is subject to the negative procedure."—*(Lee Rowley.)*

This new clause, to be inserted after NC45, would provide for the enforcement of obligations under NC44 and NC45.

Brought up, read the First and Second time, and added to the Bill.

New Clause 1

ABOLITION OF FORFEITURE OF A LONG LEASE

"(1) This section applies to any right of forfeiture or re-entry in relation to a dwelling held on a long lease which arises either—

(a) under the terms of that lease; or

(b) under or in consequence of section 146(1) of the Law of Property Act 1925.

(2) The rights referred to in subsection (1) are abolished.

(3) In this section—

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"lease" means a lease at law or in equity and includes a sub-lease, but does not include a mortgage term;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002." —*(Matthew Pennycook.)*

This new clause would abolish the right of forfeiture in relation to residential long leases in instances where the leaseholder is in breach of covenant.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

It is a pleasure to continue our line-by-line proceedings with you in the Chair, Sir Edward. For the sake of probity, simply because I will make reference to the organisation's work, I once again declare that my wife is the joint chief executive of the Law Commission.

The reason for tabling the new clause is simple: forfeiture is a wholly disproportionate and horrifically draconian mechanism for ensuring compliance with a lease agreement, and it needs to be abolished through the Bill. To remind the Committee, the law of forfeiture gives the landlord the right, following a breach of a clause in the lease or an unpaid debt of £350, or a lesser sum if it has been outstanding for more than three years, to terminate the lease, regain possession of the property and pocket the unmerited windfall gain that would accrue from its sale.

Not all forfeiture actions relate to trivial breaches—some are made in response to serious transgressions of a covenant in a lease, such as instances of persistent and egregious antisocial behaviour—but many are initiated for entirely trivial breaches, such as nominal ground rent or service charge arrears. The current laws of forfeiture render it entirely possible, for example, for a tenant to lose possession of a £500,000 flat or house for a debt of as little as £351, or even £15 if unpaid for more than three years, with the landlord keeping the entire difference between the value of the property and the debt owed.

Eddie Hughes (Walsall North) (Con): The hon. Gentleman is making a compelling speech. It seems crazy that in the 21st century somebody can lose possession of their property for such a small amount of money. I sincerely hope that he continues his compelling speech in such a way that he has a very positive effect on the Minister.

Matthew Pennycook: I thank the hon. Gentleman for that helpful intervention. I hope that I do have that effect, and that he can use his good offices to persuade the Minister of the merits of adopting new clause 1.

Richard Fuller (North East Bedfordshire) (Con): The shadow Minister is making a good point, but to play the cynic on this issue, there is a difference between things that could take place and things that are taking place. What is the evidence? We should probably get rid of this latent power in any case, but how often is the power being used in practice? Is this a real thing that is happening?

Matthew Pennycook: I thank the hon. Gentleman. If he allows me to develop my case, I will address that very point, which was well made.

Not only is the potential penalty for a breach incredibly draconian in the circumstances in which it is used, but even in instances in which a lease is not terminated, with the landlord gaining the financial benefit of any capital loans attached to it, the laws of forfeiture can lead to a significant financial loss for leaseholders. Take the following scenario. For whatever reason, a leaseholder accumulates a small arrears—perhaps a demand has not been received—and the freeholder or managing agent issues reminders, which add to the initial debt. That debt is then handed over to a debt collector, whose means of remuneration incentivise them to pursue it aggressively. The leaseholder might then attempt to pay, but they also have to find the money to cover large legal costs. If there is a mortgage, the bank is often drawn in to secure its interest, so a compulsory loan is added to the leaseholder's account. In our view, it is the lack of any proportionate relationship between a breach of a lease and its consequences that makes forfeiture so unjust.

Since 1925, this House has regularly taken steps to make it more difficult for a freeholder to successfully forfeit a lease. For example, the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 introduced prohibitions on the serving of a section 146 notice under the Law of Property Act 1925 in relation to service charges and breach of a covenant, respectively, in instances in which the amount payable has not been determined. Those were not the first attempts to constrain the laws of forfeiture. History shows that Parliament

[Matthew Pennycook]

has returned to the matter every few decades in an attempt to mitigate forfeiture's manifest injustices. Despite the laws of forfeiture being made stricter, a great many freeholders and managing agents still routinely use forfeiture powers as a first resort when seeking to recover alleged arrears of payments from leaseholders, and they rely—this is in some ways the more important point—on the mere threat of forfeiture, and the financial risks it presents, to deter leaseholders from disputing any unreasonable costs and defending claims.

Those who advocate retaining forfeiture often argue that it is a minor issue that does not affect many leaseholders. However, although termination of a lease under forfeiture may be relatively rare—I deliberately use the word "may", because His Majesty's Courts and Tribunals Service does not track the number of cases—evidence from across the country shows hundreds of cases and scores of outright forfeitures on average each year. As I said, the threat is as damaging as the use of the power, because it puts landlords in a nearly unassailable position of strength in disputes vis-à-vis leaseholders, which is why forfeiture is routinely threatened in money disputes.

Because the law of forfeiture remains so manifestly unjust, despite successive attempts to render it more palatable, there have been many calls over recent decades for more wholesale reform. For example, hon. Members may know that in 2006 the Law Commission proposed abolishing the current law of forfeiture and replacing it with a statutory scheme for the termination of tenancies. It even drafted legislation, the Termination of Tenancies Bill, to implement that proposal. Yet nothing has been done. Indeed, the relevant section of the Law Commission's website states—this amused me—that, 18 years on,

"We are awaiting the Government's response to our recommendations"—

eighteen years and counting.

There is, of course, a need to carefully balance the rights and responsibilities of landlords and leaseholders, and there must be effective means of ensuring compliance with a lease agreement, but those means must be appropriate and proportionate to the breach in question. We can debate precisely what alternative arrangements are needed to deal with breaches of the covenant or unpaid arrears, whether orders of some kind are necessary to sell a property when a debt is not paid, and what kind of measured method is appropriate to removing problem tenants from a building—we heard about that in our oral evidence sessions. The starting point, however, must be that we finally grasp the nettle and abolish forfeiture, and the windfall it provides, once and for all. It operates to the prejudice of leaseholders and it cannot be justified.

The Secretary of State made clear on Second Reading that he was open to this Committee looking at how we end the abuse of forfeiture. I believe there is a broad consensus across the House—indeed across this Committee—that we should consign it to history, even if there is a debate about precisely what replace it with. Following the point made by the hon. Member for Walsall North, I sincerely hope that the Minister will not disappoint us and the many thousands of leaseholders who support the abolition of forfeiture by resisting this new clause out of hand. I very much look forward to his response.

2.30 pm

Rachel Maclean (Redditch) (Con): It is a pleasure to serve under your chairmanship, Sir Edward. I wish to place on the record my support for the eventual removal of this most feudal and abusive practice—one of the worst examples in this whole system—and I look forward to hearing the Minister's plans to eventually do that.

In response to my hon. Friend the Member for North East Bedfordshire, I just want to let him know that there is ample evidence that this abusive practice has had a deleterious impact on decent people who have bought their properties in good faith. Take, for example, the evidence from Free Leaseholders, which represents many people in this position. The organisation says,

"Forfeiture has no place in a modern housing market"

and that it gives

"the freeholder landlord complete whip hand over his 'tenant'."

It is a "draconian remedy" that really has very few comparators anywhere else. Unlike mortgage foreclosure, where there is a balancing payment at the end of it, someone loses all the equity in their own home. That means they could actually lose, for example, a flat worth half a million pounds because of non-payment of a £5,000 bill. The freeholder would seize that flat, take back the lease, and make a windfall irrespective of the size of the contested charge. It kicks in at just £350.

There are alternative ways of resolving these debts available in our system. For example, the freeholder could sue for an injunction. He does not need forfeiture and the windfall to enable him to carry out good management of the block. The Levelling Up, Housing and Communities Committee looked at this issue and also recommended its abolition, on the grounds that it puts the freeholders in an unassailable position of strength in disputes. Once again, it is about that power imbalance, which we have highlighted all the way through this Committee. We should absolutely take up the Law Commission's proposals to remove forfeiture. It is true that it is relatively rare, with perhaps an estimated 80 to 90 cases every year, but it is the threat that hangs over people—people who are not legal experts, fighting a very uneven battle against these big boys with deep pockets and plenty of lawyers on speed dial.

As well as the evidence I have just referred to, I want to represent again the fantastic testimony from the National Leasehold Campaign, which I think has 29,000 members. It has described again and again the impact of this sword of Damocles hanging over its members who have bought these properties in good faith, doing their best to navigate this thicket of rules, with the debt completely stacked against them. I look forward to hearing about the pathway that I am sure the Minister will set out for us, where we can remove this element from our laws once and for all.

Lee Rowley: I am grateful to the hon. Member for Greenwich and Woolwich for this new clause and for the opportunity to debate it. The hon. Gentleman set me a challenge at the end of his speech. He said he hoped I would not resist the new clause out of hand—I will not resist it out of hand, but I may resist it. In all seriousness, this is an important part of the discussion and I do not disagree with what the hon. Member for Greenwich and Woolwich and my hon. Friend the Member for Redditch said—I absolutely accept it. I am happy to confirm that the Government are aware of the strength of feeling on

this issue and sympathetic to some of the objectives of the amendment. It is absolutely the case that forfeiture is an extreme measure. That is why we committed on Second Reading to look at this.

On the question from my hon. Friend the Member for North East Bedfordshire, it is difficult to get numbers. As has been outlined by others, the principle is clearly a real problem. The disproportionate nature of the outcome completely outweighs the likely loss being pursued. The Leasehold Knowledge Partnership, or one of the other witnesses, suggested in oral evidence that there were 80 to 90 forfeitures a year, but the Government do not have specific data to validate that at this stage. We understand that most of the threats are defused during the process—particularly if a mortgage company is involved, it tends to, in extremis, step in and offer to put the amount of money on to the mortgage or equivalent. The evidence base is and will always be challenging, but we absolutely accept that the principle is disproportionate and unreasonable.

However, as with so many of these clauses and elements of law, there is the question of how to make something in the system better while still ensuring the ability to balance all the things underneath. That is probably one of the reasons why this place has returned to this issue so often over the decades—it is not just because the Government may not respond in time, as the hon. Member for Greenwich and Woolwich indicated. This new clause is definitely well intentioned. We are sympathetic, but we do not necessarily believe in the full abolition of forfeiture without some form of replacement for some elements of it that may still have validity—not the forfeiture itself, but a recognition that people cannot just not pay things without some form of process to address that. That is one of the reasons we cannot accept this amendment at the moment.

However, I do not condone the abuse of forfeiture. I want to be absolutely clear that we are listening very carefully to the arguments being made. We have already committed to look at this again, and we are currently looking at it. I hope we will be able to say more at future stages of the Bill. With those reassurances, I hope the hon. Member for Greenwich and Woolwich will consider withdrawing his clause.

Matthew Pennycook: That was a slightly frustrating response from the Minister. I had hoped for a little more. I am glad that he thinks the new clause is well intentioned and sympathises with some of its objectives. From the Opposition's point of view, as with rent charges, another example of draconian and wholly disproportionate Victorian-era property law, we need to cut the knot and get rid of these provisions entirely. As I said, we can have a debate on what we replace them with. We are very clear that there must be a replacement. There must be an effective means of ensuring compliance with a lease agreement, but it must be appropriate and proportionate to the breach in question. We all agree that forfeiture is not proportionate or appropriate to the breach, so why retain it? What I did not get from the Minister, but had hoped for, was a clear indication that that is the Government's intent, at whatever stage of the Bill.

I suspect this is one of those new clauses that the Minister has resisted—perhaps not out of hand, but resisted none the less—but that we may see back in a different form at a later stage with the Government's seal of approval. However, I would like to make very clear our strength of feeling on the matter, and I will therefore press the clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 16]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 2

REQUIREMENT TO ESTABLISH AND OPERATE A MANAGEMENT COMPANY UNDER LEASEHOLDER CONTROL

"(1) The Secretary of State may by regulations make provision—

(a) requiring any long lease of a dwelling to include a residents management company ('RMC') as a party to that lease, and

(b) for that company to discharge under the long lease such management functions as may be prescribed by the regulations.

(2) Regulations under subsection (1) must provide—

(a) for the RMC to be a company limited by share (with each share to have a value not to exceed £1), and

(b) for such shares to be allocated (for no consideration) to the leaseholder of the dwelling for the time being.

(3) Regulations under subsection (1) must prescribe the content and form of the articles of association of an RMC.

(4) The content and form of articles prescribed in accordance with subsection (3) have effect in relation to an RMC whether or not such articles are adopted by the company.

(5) A provision of the articles of an RMC has no effect to the extent that it is inconsistent with the content or form of articles prescribed in accordance with subsection (3).

(6) Section 20 of the Companies Act 2006 (default application of model articles) does not apply to an RMC.

(7) The Secretary of State may by regulations make such provision as the Secretary of State sees fit for the enforcement of regulations made under subsection (1), and such provision may (among other things) include provision—

(a) conferring power on the First-Tier Tribunal to order that leases be varied to give effect to this section;

(b) providing for terms to be implied into leases without the need for any order of any court or tribunal.

(8) The Secretary of State may by regulations prescribe descriptions of buildings in respect of which regulations may be made under subsection (1).

(9) In this section—

'dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

'long lease' has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

'management function' has the meaning given by section 96(5) of the Commonhold and Leasehold Reform Act 2002.

(10) The Secretary of State may by regulations amend the definition of 'management function' for the purposes of this section."—*(Matthew Pennycook.)*

This new clause would ensure that leases on new flats include a requirement to establish and operate a residents' management company responsible for all service charge matters, with each leaseholder given a share.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

As I made clear at the outset of our line-by-line consideration of the Bill, while we have no intention of trying to convince this Government to radically overhaul this limited piece of legislation to enact the Law Commission's recommendations on enfranchisement, right to manage and commonhold in full, we do want to make the case for a limited number of new measures that would give future leaseholders greater control and strengthen the foundations on which bolder reform will be enacted. New clause 2 seeks to incorporate one of those measures into the Bill—namely, that all leases on new flats should include a requirement to establish and operate a residents' management company responsible for all service charge matters, with each leaseholder given a share.

The new clause seeks to remedy two significant flaws in the current leasehold system. The first is that unless leaseholders in blocks of flats either take it upon themselves to acquire the right to manage, collectively enfranchise and then establish an RMC or buy a property on a development where an RMC has been set up, they find that despite being the people who pay all the costs associated with maintaining and managing their building, they have no control whatever over how their money is spent. The second is that the rights that this House has chosen to give leaseholders to empower them to exercise a degree of control over the management of their buildings—for example, the right to make an application to the first-tier tribunal, to appoint a manager under section 24 of the Landlord and Tenant Act 1987 or to acquire the right to manage under the Commonhold and Leasehold Reform Act 2002—can be exercised only following what is often an arduous and costly legal process.

New clause 2 would go some way to remedying both of those problems. It would mean that, where a new residential block of flats was constructed and its units sold, the development would have to be a tripartite lease between the freeholder, leaseholder and a new residents' management company. Each leaseholder in the block would own a share of the RMC and it would be under their exclusive control, giving them full responsibility for services, repairs, maintenance, improvements, insurance and the cost of managing their building, and thereby enabling them to control how their money was spent. Their share of the company and ability to influence the management of their building would be theirs by right and at no additional cost.

The importance of this proposed measure lies not only in the greater control it would give to leaseholders over the maintenance and management of their buildings, but in it being one of several ways by which we can lay the groundwork for a future in which leasehold has been rendered obsolete and commonhold is the norm. New clause 2, even if it is in operation for only a few years prior to commonhold being made the default tenure for new blocks of flats, as is our intention, would facilitate the reinvigoration of that tenure by creating a cohort of leaseholders who, of necessity, have experience in running their building as they would under a commonhold arrangement, even if that experience extends only to appointing and overseeing a managing agent—hopefully one properly regulated as a result of the Government's accepting our new clause 25.

In facilitating leaseholder control of the operation of a site and giving them responsibility for everything covered by a service charge, new clause 2 would also further undermine freehold by depriving unscrupulous landlords of the ability to extract income from leaseholders using opaque and potentially unlawful practices such as appointing managing agents that are just related companies and using captive insurance brokers.

Lastly, if enacted in conjunction with leaseholders being given a mandatory share of freehold, as provided for by new clause 29, mandatory RMCs in new blocks of flats would ensure that we have a standardised management model and an agreed set of rules for those new blocks of flats where the freehold is collectively owned, making the process of converting buildings to commonhold at scale far easier.

Let me be clear with the Committee: we do not pretend that this is a perfect solution. It would obviously not help those leaseholders who have already purchased their flats and who do not currently have an RMC. We will need other solutions, building on the measures already in the Bill, to address the challenges that they will continue to face. However, if the Committee believes —as I think it does—that commonhold is the ideal form of tenure, and that reinvigorating it is the solution for blocks of flats, we should take practical steps to pave the way for that to happen. New clause 2 is one of the ways we can do so, and I urge the Minister to consider it.

2.45 pm

Lee Rowley: I thank the hon. Gentleman for his new clause which, as he has indicated, seeks to require the establishment of leaseholder-owned management companies for all new leasehold flats. I understand that his intention is to ensure that, by default, all leaseholders of new flats would be responsible for the management of their buildings. I support the well-intentioned desire to give more homeowners control over the management of their buildings. The Bill as a whole is intended to do that, and I hope everybody accepts that it is moving in the right direction.

As the hon. Gentleman knows, existing leaseholders can already use the right to manage to take over management responsibility for their building. It is an established no-fault right that allows leaseholders to take over management responsibility when a majority of them wish to do so. The Bill accepts and implements key elements of the Law Commission recommendations that broaden access to the right to manage and reduce leaseholders' costs when they make a claim. The Bill gives leaseholders the right to take control over their building, but it does not compel those who do not wish

to. There is an important point there: I understand the intentions behind the new clause, but there is a question about compulsion and there may be a question about operation if some leaseholders do not wish to step up. For that reason, the requirement would not easily apply in some scenarios and a blanket requirement to establish such companies is probably not appropriate.

Although I accept, understand and sympathise with the intention of the new clause, I am afraid that we will resist it because there are times when it would not be appropriate for it to apply, and we should not change the law on that basis.

Matthew Pennycook: I am disappointed by that response from the Minister, as he would expect. We very much agree that the Bill is moving in the right direction, but we do not think it goes far enough for two reasons, which I will reiterate to help the Committee to understand why we feel strongly about this issue. Yes, the right to manage is an established right. The Bill makes provisions to enhance and expand access to RTM, but the RTM application process comes after an arduous and costly legal process. We are saying that, as a matter of right, residents in new build blocks of flats would have an RMC put in place and a share of it, without that cost. That is one point.

There is a more fundamental difference of principle, which is that if we are serious about reinvigorating commonhold, we need a number of steps. We need the legal changes that are recommended by the Law Commission, and we need to do those as one process, not in a partial way. However, there are other non-legislative policy changes that we need to make if we are to pave the way for commonhold. This new clause is one of them, and we feel quite strongly that it should be included in the Bill.

The Minister argued that there may be limited cases in which a mandatory RMC is not appropriate. If the Government want to bring forward their own amendment to provide for general RMCs across the board with limited exceptions, they are more than welcome to do so. However, we feel strongly, on a point of principle, that we should take this step alongside providing a share of the freehold, which I will argue for when I speak to new clause 29. Given our strength of feeling on this issue, as with the previous new clause, I will press this one to a vote.

Question put, That the clause be read a second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 17]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 5

POWER TO ESTABLISH A RIGHT TO MANAGE REGIME FOR FREEHOLDERS ON PRIVATE OR MIXED-USE ESTATES

"In Section 71 of the Commonhold and Leasehold Reform Act 2002, after subsection (2) insert—

'(3) The Secretary of State may by regulations make provision to enable freeholder owners of dwellings to exercise a right to manage in a way which corresponds with or is similar to this Part.

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.'"—*(Matthew Pennycook.)*

This new clause would permit the Secretary of State to establish a Right to Manage regime for freeholders of residential property on private or mixed-use estates.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I will be relatively brief in speaking to the new clause, because I trust that it is self-explanatory, and we believe that the case for it is robust and well understood. Part 4 of the Bill, which we have already considered, will give residential freeholders on private and mixed-tenure estates rights to challenge the reasonableness of estate management charges and to hold estate management companies to account that are equivalent to those of leaseholders, but it does not give those same residential freeholders the right to take over the management functions on their estate.

We appreciate the concern among some that the right to manage would be too complex and onerous in a freehold estate setting, but it is only a right; it is not a requirement that it be exercised. We believe that there is evidence of an appetite among residential freeholders not only to be able to change a poorly performing or exploitative estate manager, for which part 4 provides, but to have more direct control of the management of their estates. We also believe that it is right in principle that there is parity between residential leaseholders and freeholders when it comes to the right to manage. New clause 5 simply seeks to provide them with that right.

In their June 2019 response to the 2018 consultation on reforms to the leasehold system in England, the Government committed to considering the implications of introducing a right to manage for residential freeholders, as part of their wider commitment to ensuring that leaseholders and residential freeholders enjoy equivalent rights. The Secretary of State made it clear on Second Reading that this Committee should look at the issue, as well as the issue of the abuse of forfeiture. On that occasion, the hon. Member for Redditch went even further. She stated:

"I know that the Government intend to introduce a right to manage for freeholders".—[*Official Report*, 11 December 2023; Vol. 742, c. 677.]

We hope that she is right and that that remains the Government's intent, but there are no Government amendments that would incorporate the power to establish a right to manage regime for freeholders on privately managed estates. New clause 5 would do so, and I hope the Minister will accept it.

Lee Rowley: I am grateful to the hon. Gentleman for tabling the new clause.

[Lee Rowley]

Let me separate my remarks into two parts. First, am I relatively sympathetic to the hon. Gentleman's point? The answer is yes: there is a strong case for the measure. It has not been brought forward to date, and we will have to see whether it is possible to do so in the future. I cannot guarantee that, but we are looking at it and listening carefully. I understand the hon. Gentleman's point, and he made a strong case for it. We will not be able to do everything that we have said throughout this process, in the end, but I assure him that we are interested in this potential area.

However, we will resist the new clause, not because it is the convention to do so but because we genuinely think that it is not the right measure, even if we did agree with the principle. To go back to the Henry VIII powers discussion, this is probably an area in respect of which, if we were to do something—again, there are no guarantees—we would do it on the face of the Bill.

Richard Fuller: I am listening carefully to the Minister, as I did to the shadow Minister. The current Minister says he is sympathetic to the intentions, but I take his point that it is the wrong new clause, so I will oppose it if it is pressed to a vote. However, the shadow Minister said that the Minister's predecessor, my hon. Friend the Member for Redditch, said on the Floor of the House that she was sympathetic to the measure. That is two up. Will the Minister outline what the impediments might be? Will he give some reassurance that by the time we get to Report the Government may have turned sympathy into action? By the way, I think it is empathy, not sympathy.

Lee Rowley: My hon. Friend makes a number of salient points—

Barry Gardiner: And puts you on the spot.

Lee Rowley: Indeed—so let me see how to get out of this one. Out of principle, from a Conservative perspective, we would want people to have choice about how they approach such things. It is also the case that there is an additional operator, which is the person who owns the capital or the asset. We need to consider that carefully. Having started conversations with officials in the Department, I think there is a challenge around complexity. There is always a challenge with complexity; that is not an argument in itself but a recognition of the reality. I recognise that there are people in this room with much more experience than me on this issue, and hope colleagues will take what I say in the spirit in which it is meant. There will be a point at the end of this process when the sheer number of additional things that have been requested mean that there will need to be prioritisation.

This is a good Bill, and we should not take away from that fact—I think everybody present acknowledges that—but as the Secretary of State said on Second Reading, where we can improve it, we will seek to do so. I confirm that we are looking at this issue in more detail and hope we will be able to say more in the Bill's following stages, if that is possible—I emphasise the "if", with no guarantees. I urge the hon. Member for Greenwich and Woolwich, if he is willing, to withdraw his new clause, solely on the basis that if something happens in the future, the provisions should be in primary legislation, not introduced under Henry VIII powers.

Matthew Pennycook: I think I quote the Minister accurately when I say that he said, "Let me see how to get out of this one." He is developing a reputation not just for reasonableness but for undue honesty. This is one of those features of the parliamentary process that I think anyone watching our proceedings will struggle to understand: there is clearly agreement here, and there is clearly a high chance that the Government are going to introduce a right to manage on privately managed estates, yet the Minister cannot accept the new clause.

I take the point about the particular drafting of the new clause. It was done to put the onus on the Government, who have the resources to bring forward the necessary amendments, given that it is a complex area. I did not hear a clear commitment from the Minister to bring forward those provisions. If he had given one, I would have withdrawn the new clause, but he has not. All he has said is, "We're looking and listening but won't be able to do everything"—despite the fact that the Government are dumping hundreds of amendments into the Bill at the last minute and no doubt will dump hundreds more. If we want to put these important measures in the Bill, we can, and we think we should. We feel strongly about this issue and I am going to press the new clause to the vote.

The Chair: We look forward to a Labour Government always accepting Opposition amendments. *[Laughter.]*

Question put, That the clause be read a second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 18]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 25

REGULATION OF PROPERTY AGENTS

"(1) The Secretary of State must by regulations make provision for implementing the proposals of the Regulation of Property Agents Working Group final report of July 2019 as far as they relate to—

(a) estate management;

(b) sale of leasehold properties; and

(c) sale of freehold properties subject to estate management or service charges.

(2) Regulations under this section—

(a) must be laid within 24 months of the date of Royal Assent to this Act,

(b) shall be made by statutory instrument, and

(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(3) If, at the end of the period of 12 months beginning with the day on which this Act is passed, the power in subsection (1) is yet to be exercised, the Secretary of State must publish a report setting out the progress that has been made towards doing so."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to make regulations to implement the proposals of the Regulation of Property Agents Working Group final report within 24 months of the Act coming into force and to report on progress to that end at the end of the period of 12 months.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I hope that on this occasion the Minister will give me enough reason to withdraw the new clause. I always prefer to withdraw a new clause with a commitment that the Government will introduce what we seek to incorporate into the Bill. New clause 25 raises the important issue of the regulation of property agents, particularly managing agents.

For all that the various measures in the Bill seek to give leaseholders greater control over the buildings in which they live, and to give residential freeholders greater control over their estates, managing agents will remain responsible for day-to-day management in almost all circumstances. In the case of newly empowered leaseholders involved in either an RMC or an RTM company, there will be managing agents they have to take advice from and instruct. The ultimate success of many of the provisions in the Bill, and the extent to which leaseholders experience a tangible improvement in the quality of the services they receive, is dependent on the performance of those managing agents.

3 pm

In its current form, the Bill contains no measures designed to prevent bad practice and improve performance in the industry. We believe that that issue should be addressed. We know that there are good managing agents who work hard to ensure that residents for whom they are responsible are safe and secure, and that the homes that they manage are properly looked after. However, we also know that there are a great many substandard agents whose behaviour reflects poorly on the industry as a whole.

If property agency were a well-functioning market, there would be no need for regulation—managing agents providing a bad service would eventually be dismissed, struggle to secure new contracts and go bust, and in instances where such companies broke the law, they would be investigated and prosecuted—but property agency is not a well-functioning market. In the main, residential leaseholders and freeholders do not choose and cannot easily remove poorly performing managing agents, and they do not have access to the information required effectively to hold such agents to account.

As we have repeatedly argued in recent years, the case for doing more to protect leaseholders from poor service and exploitation at the hands of unscrupulous managing agents by means of regulating the industry is extremely strong. In our view, the alternative—seeking to rely on incremental improvement, the sharing of best practice in the industry and the ability and willingness of RTMs and RMCs collectively to weed out poorly performing agents—is bound to fail.

The Government clearly recognise that it is a problem that currently there is no overarching statutory regulation of managing agents in England, and that the existing powers under consumer protection legislation do not provide leaseholders with sufficient protection. That is why, in their response in April 2018 to the "Protecting consumers in the letting and managing agent market" consultation, the Government committed to regulating managing agents to

"protect leaseholders and freeholders alike."

It is why they proposed to introduce a single mandatory and legally enforceable code of practice covering managing agents as well as letting agents, and it is why they established a working group and tasked it with bringing forward detailed recommendations on how a new regulatory framework for property agents should operate.

The working group was chaired by a respected Cross-Bench Member of the other place, Lord Best, and its membership included a number of distinguished professional bodies. It issued its final report in July 2019, which included a series of proportionate and sensible recommendations with appropriate transitional and grandfathering arrangements as necessary, designed to

"prevent bad practice and drive cultural change within the industry, focussing on prevention rather than enforcement after the event".

However, 55 months on, the Government have done nothing whatever to progress the implementation of those recommendations. Not only is the Government's general procrastination on the issue a matter of regret, but their decision not to take the opportunity to use this Bill to introduce relevant property agent regulation is incomprehensible, given the extent to which it would help to ensure that many of the provisions in it operate effectively. We believe that Ministers should think again.

The case for regulating property agents has been accepted in principle by the Government. There is extensive support for it, not just among leaseholders and residential freeholders, but in the sector itself, as attested to by Andrew Bulmer, CEO of the Property Institute, and others in our evidence sessions. The blueprint for making it a reality is ready and waiting to be implemented in the form of the working group's detailed final report. All that is required now is for Ministers to determine that the Government should use the Bill as the legislative vehicle for honouring the commitment they made in 2018 to regulate managing agents to protect leaseholders and freeholders alike.

Although the Government have had the working group's final report for more than four and a half years, we appreciate that introducing an entirely new regulatory framework is not without challenge. They may need to consider carefully how best to implement a number of the recommendations or how to appropriately phase in some requirements. They might even have good reason to refrain from implementing a limited number of the specific proposals made by the working group on the grounds that they are not necessary or are too burdensome.

We have therefore deliberately not sought to compel the Government to bring each and every one of the recommendations made by the working group into force on Royal Assent. Instead, new clause 25 would give the Government two years to implement the working group's proposals as far as they relate directly to matters in the scope of the Bill, with a requirement to report on progress to that end after 12 months to ensure that

sufficient progress is being made. We think that our new clause is a necessary and reasonable measure. I urge the Minister to accept it.

Lee Rowley: I will not detain the Committee particularly long on this provision. I regret that we will not be able to accept new clause 25, for two reasons. First, I accept that people come down in different places on the use of broad Henry VIII-type powers, but we are not sure that those would be proportionate here. This measure concerns a considerable framework that would require a significant level of scrutiny to make it work. We are not convinced that it would be agreeable or acceptable to the Delegated Powers and Regulatory Reform Committee, either.

Secondly, the new clause relates to an area that has been under debate for a number of years, as the hon. Member for Greenwich and Woolwich has outlined, and we think that it is without the scope of the Bill. It is a significant area on which further consideration is needed, and we do not think that there is space for that among all the other discussions. That will ultimately be a matter for the House to determine, but the Government do not think that this is the place to do it, given its significance and given the significance of the other things that we are trying to bring forward in the Bill.

Matthew Pennycook: I expected a little more from the Minister, because the Government have accepted in principle that property agents need to be regulated. We think it important that this matter be discussed in connection with this Bill, and that some form of regulation be introduced. As I say, the effective functioning of many of the provisions in this Bill will rely on the standard of managing agents being driven up, and on substandard agents being driven out of the market.

At the moment, all the Minister is saying is that the lack of an overarching regulatory framework in this area is fine. The Government have had four and a half years and are comfortable with taking many more years to come to consider this matter. From our point of view, that is not good enough. The Government have had the working group's report for some time. They should have made better progress in implementing at least some of its recommendations, if not the vast majority of them. I will press new clause 25 to a vote.

Lee Rowley: I should put it on record—just in case, although it was many years ago—that I used to be an estate agent. I should probably make that clear.

The Chair: Dear me—even lower than a politician.

Lee Rowley: Indeed, and via banking.

The Chair: Well, that's an admission.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 19]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 26

PRE-CONSOLIDATION AMENDMENTS OF LEGISLATION RELATING TO RESIDENTIAL LEASEHOLD AND FREEHOLD AND ESTATE MANAGEMENT

"(1) The Secretary of State may by regulations make such amendments and modifications of the Acts specified by subsection (2) as in the Secretary of State's opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or a substantial part of the Acts relating to—

(a) the relationship between landlords and tenants of residential properties;

(b) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(2) The Acts specified by this subsection are—

(a) the Leasehold Reform Act 1967;

(b) the Rentcharges Act 1977;

(c) the Landlord and Tenant Act 1985;

(d) the Leasehold Reform, Housing and Urban Development Act 1993;

(e) the Commonhold and Leasehold Reform Act 2002;

(f) the Building Safety Act 2022;

(g) the Leasehold Reform (Ground Rent) Act 2022;

(h) this Act;

(i) any other provision of an Act relating to—

(i) the relationship between landlords and tenants of residential properties;

(ii) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(3) For the purposes of this section, 'amend' includes repeal (and similar terms are to be read accordingly).

(4) Regulations made under this section do not come into force unless an Act is passed consolidating the whole or a substantial part of the Acts relating to—

(a) the relationship between landlords and tenants of residential properties;

(b) the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management.

(5) If such an Act is passed, any regulations made under this section come into force immediately before the Act comes into force.

(6) Regulations under this section are subject to the affirmative procedure."*—(Matthew Pennycook.)*

This new clause would make provision for the Secretary of State to amend certain Acts (insofar as they relate to the relationship between landlords and tenants of residential properties and the relationship between estate managers and the freeholders and leaseholders of properties in relation to which they carry out estate management) if the amendments would facilitate consolidation of those Acts.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

I do not intend to press new clause 26 to a vote, because it is very much a probing amendment. My remarks on it will be brief because it is extremely simple and straightforward.

Leasehold enfranchisement and the right to manage are extremely complex areas of law. There are at least eight Acts relevant to the rights of residential leaseholders, namely the Leasehold Reform Act 1967, the Landlord and Tenant Acts 1985 and 1987, the Housing Act 1988, the Local Government and Housing Act 1989, the Leasehold Reform, Housing and Urban Development Act 1993, the Commonhold and Leasehold Reform Act 2002 and the Building Safety Act 2022. There are also two Acts relevant to residential freeholders on private and mixed-tenure estates, namely the Rentcharges Act 1977 and the Law of Property Act 1925, both of which we have debated extensively.

This limited Bill has made significant changes to almost all of those Acts. If and when it receives Royal Assent, it will add a further layer of complexity and interpretation to a legislative landscape that is perplexing even to those with legal training. The law as it relates to residential and freehold leaseholders is crying out for consolidation. The statute law must be made clearer, shorter and more accessible so that those who work with the law, are concerned with making it or need to access or use it can do so more easily.

This is not a consolidation Bill, but the Opposition believe that it would be useful to give the Secretary of State the power to amend a number of the Acts to which I referred, so as to facilitate their consolidation. I trust that the Minister will see the benefit of incorporating such a power into the Bill, and I hope that he will accept it.

Lee Rowley: I am grateful to the hon. Member for Greenwich and Woolwich for moving new clause 26. He is right that this is an extremely complicated area of law and that there is a significant amount of interaction and overlap between the relevant legislation, which has built up over many decades. He is also right that there is a legitimate question to be asked about whether consolidation or spring cleaning of the relevant Acts is reasonable and proportionate. I am grateful to him and his party for seeking to provide the Government with additional powers to do so. The challenge is in whether that would be proportionate and whether the broad powers are necessary, even given the points that he made.

While I understand the points that the hon. Gentleman highlighted, the Government are taking a self-denying ordinance. We believe that such broad powers should be used only when absolutely necessary and that the test is not met in the case, so we will resist the new clause if the hon. Gentleman chooses to press it, although I hope that, as he indicated, he will not do so.

Matthew Pennycook: I commend the Minister for continuing to deny himself additional powers to do very sensible things. Notwithstanding that self-denying ordinance, I hope that he will at least take on board the point and give some further consideration to how we might tidy up the statute law in this area. It has been complex for all members of the Committee to understand. As I said, it is complex even for those with legal training, let alone those who need to access or use the law, whether or not it is through one of the means of redress we have been debating.

I hope that the Government will give some further thought to what might be done on the issue, but I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 27

QUALIFYING LEASES FOR THE PURPOSES OF THE REMEDIATION OF BUILDING DEFECTS

"Section 119 of the Building Safety Act 2022 is amended by the insertion after subsection (4) of the following —

'(5) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of lease within the definition of "qualifying lease".'" —*(Matthew Pennycook.)*

This new clause would give the Secretary of State the power to bring "non qualifying" leaseholders within the scope of the protections of the Building Safety Act 2022.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 28—*Meaning of "relevant building" for the purposes of the remediation of building defects—*

"Section 117 of the Building Safety Act 2022 is amended by the insertion after subsection (6) of the following—

'(7) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of building within the definition of "relevant building".'"

This new clause would give the Secretary of State the power to bring buildings which are under 11m in height or have fewer than four storeys within the scope of the protections of the Building Safety Act 2022.

Matthew Pennycook: New clauses 27 and 28 concern building safety. The building safety crisis exists within the context of leasehold property and has been rendered more acute by the iniquities on which the leasehold system rests, yet the solutions to the specific problems faced by leaseholders in unsafe buildings are different from the general failings of the leasehold tenure that the Bill has sought to address in a limited number of areas. However, while the provisions in parts 1, 2 and 3 of the Bill are not answers to the problems of dangerous cladding and non-cladding defects, the relationship between the building safety crisis and residential leasehold properties makes the Bill the ideal vehicle for implementing a number of those solutions.

As the Committee will know, the building safety crisis is far from over. It has been almost seven years since the horrific fire at Grenfell Tower that claimed the lives of 72 innocent men, women and children, yet the Minister will know that there remain many thousands of unsafe buildings across the country that still require remediation.

Barry Gardiner: The Minister may also know that last night in my constituency the London fire brigade had to attend with 125 firefighters and 25 fire engines—three with the tall turntables—to put out a fire at King Edward Court. More than 100 people were evacuated from the building—safely, I am pleased to add—but the cladding on that building was similar to that at Grenfell. Here we are, seven years on from Grenfell, and three and a half

[Barry Gardiner]

years since the survey of that building took place in which it was reported that the cladding was of that combustible type, and still the Building Safety Act 2022 has not been able to ensure that, between the manager and the developer, those residents remain safe.

Matthew Pennycook: I am very glad that the residents were evacuated safely, but my hon. Friend highlights a problem that will apply to many other buildings across the country. The pace of remediation is far too slow. We often talk about remediation works as if they were just a practical issue—"When will it start and when will I be updated?"—but for so many residents there remains a very real risk to their health, their safety and in many cases their life. That is why we need to grip the crisis and ensure that it is addressed. No one disputes the fact that some progress has been made over recent years in addressing the building safety crisis, or the fact that the Minister has personally devoted considerable time and attention to the issue, but it really is a damning indictment of the Government's record that nearly seven years on, the crisis remains unresolved for the vast majority of blameless leaseholders whose lives remain blighted by it.

3.15 pm

It has been the Labour party's consistent position that all blameless leaseholders should be protected from the costs of fixing historic cladding and non-cladding defects and associated secondary costs, irrespective of circumstances. That is why we sought to reduce leaseholder non-cladding remediation contributions to zero during the passage of the Building Safety Act 2022; it is why we opposed the Government's decision to arbitrarily divide blameless leaseholders into those who qualify for protections under that Act and those who do not; and it is why we have always taken issue with the imposition of a crude and arbitrary height threshold that not only fails to adequately reflect the complexity of fire risk, but remains an entirely unsound basis for determining which leaseholders in unsafe buildings can and cannot access state support to cover the costs of remediation, should they need it.

Our firmly held belief that all affected leaseholders should be fully protected from the costs of remediation is a principled one. The building safety crisis is the product of pernicious industry practice and state regulatory failure. Affected leaseholders played no part whatever in causing it, and none of them should have to pay to resolve a scandal of which they are the victim. It is manifestly unjust that a minority of them remain trapped in their homes physically, mentally and financially, having been all but abandoned by their Government. If hon. Members doubt the impact that non-qualifying status is having on leaseholders so designated, I recommend spending just a few minutes on the "End Our Cladding Scandal" website and listening to some of the testimonies.

We also take our view for practical reasons, because we know that the decision to exclude a minority of leaseholders from protections under the Building Safety Act and to prohibit a limited number of unsafe low-rise buildings from accessing central Government grant funding will almost certainly ensure in many cases that remediation simply does not take place.

In tabling new clauses 27 and 28, we seek once again to press the Government to reconsider their decision to exclude certain categories of leaseholders and buildings from the protections that have been afforded to others. New clause 27 would give the Secretary of State the power to bring non-qualifying leases within the scope of the protections of the Building Safety Act 2022; new clause 28 would do the same in relation to non-qualifying buildings. I have no doubt that I will be disappointed by the Minister, given the Government's intransigence on the matter. Nevertheless, I urge him, as I have urged his predecessors on countless occasions, to think again and consider accepting our new clauses.

New clauses 27 and 28 also provide me with the opportunity to raise a number of specific problems that arise from the Building Safety Act and that this Bill could potentially rectify. Some of those problems were unforeseen; many others are the entirely predictable result of the manner in which and the pace at which the Building Safety Bill, which was already a complex and technical Bill when it completed its Commons stages, was overhauled in the other place to reflect the Government's belated change of approach.

We know that the Government are considering using the Leasehold and Freehold Reform Bill to address a number of outstanding building safety problems. The background briefing notes accompanying last year's King's Speech explicitly signalled the Government's intention to use the Bill to build on the 2022 Act and to ensure that freeholders and developers are unable to escape their liabilities to fund building remediation work and that leaseholders are protected by extending the measures in the 2022 Act to

"ensure it operates as intended."

As we approach the conclusion of the Bill's Committee stage in this place, the Government have not tabled any building safety-related amendments to achieve those objectives. On Second Reading, in response to an intervention from me, the Minister made it clear that he was

"looking at what may be possible."—[*Official Report*, 11 December 2023; Vol. 742, c. 712.]

Even accounting for the Christmas break, he has had many weeks to do so. I would therefore be grateful if the Minister set out for the Committee the Government's current thinking on how we might use the Bill to better protect blameless leaseholders who are struggling with the inability or unwillingness of their freeholder or original developer to progress remediation works, or are still waiting for such works to commence.

In addition, I would appreciate it if the Minister provided me with answers to the following questions. First, will the Government amend the Bill to make it clear that leaseholder protections under schedule 8 to the Building Safety Act apply irrespective of when service charge demands were issued, and thereby prevent the Court of Appeal from potentially overturning the November 2023 ruling of the upper tribunal to that effect?

Secondly, will the Government amend the Bill to protect qualifying leaseholders in buildings classed as leaseholder-owned and excluded from schedule 8 protections simply because a company owns the freehold and a director of the company personally has a lease or leases of a flat or flats in the building? For us, that was a

hypothetical problem; in recent cases that I have seen, it has become a reality. We think that it needs to be addressed.

Thirdly, will the Government amend the Bill to finally address the detrimental impact on property valuation and mortgage lending resulting from the fact that non-qualifying leases are designated as such in perpetuity, irrespective of whether a building has been fully remediated?

Fourthly, given the extent to which the Bill seeks to encourage leaseholders to acquire their freehold, will the Government amend it to protect leaseholders in enfranchised buildings from the impact of building safety defects? The call for evidence on that subject closed on 14 November 2022, and unless I am mistaken we have heard nothing since then.

Fifthly and finally, if the Government persist in refusing to review the definitions of a qualifying lease and qualifying building in part 5 of the Building Safety Act, will the Minister at least consider amending the Bill to ensure that freeholders and managing agents acting on their behalf must agree reasonable prepayment plans and a permitted maximum annual sum, to provide a measure of protection for non-qualifying leaseholders who are horrifically exposed by their current liability for payment of costs within what are often extremely short timelines? Will the Minister also consider protecting non-qualifying leaseholders from litigation costs relating to building safety?

I look forward to the Minister's response to those questions and to the more fundamental issues raised by new clauses 27 and 28.

Lee Rowley: I am grateful to the hon. Members for Greenwich and Woolwich and for Brent North for the new clause and the contributions to the debate. I put on record how sorry I was to hear about Petworth Court, on which I was briefed overnight. It must have been a real challenge, and very scary for the residents of the property. I hope that we can move that on as quickly as we can. I am grateful for the efforts of London Fire Brigade and others, which ensured that no one came to any harm. It is a salutary reminder of the importance of the work that has been outlined by the hon. Members, which we all support.

The hon. Member for Greenwich and Woolwich asked me a number of detailed questions. We have had many exchanges on these issues in the past, so he will appreciate that this is a sensitive and detailed area, and one that we need to get right. The Building Safety Act 2022 made huge steps forward, and there have been many steps forward in the practical reality of building remediation. I want to ensure that we deal with those questions in turn and in the depth that they deserve. We will have different views on some of those questions. Take, for example, the perpetuity issue. Without going into detail, my answer is that all the buildings have pathways to remediation, so long as they choose one or, in extremis, an actor in the system forces them to take one, and that once the remediation has happened the perpetuity point should become moot and fall away. However, it is better that I write to the hon. Gentleman and the Committee on all those points in due course.

Putting those important matters aside, we come to the question of whether the Secretary of State should have specific powers to amend the definition of "qualifying". This gets to the point of where the Secretary of State's powers should lie, which is obviously a contested matter. It is one on which the Government have a clear view, which we have articulated, notwithstanding the challenges that that brings to some people who are impacted by it. That is better dealt with in primary legislation, rather than through the Secretary of State making changes or having the ability to make regular changes. On that basis, we will resist the new clause.

Let me turn to new clause 28 on buildings under 11 metres, in the name of the hon. Members for Greenwich and Woolwich and for Weaver Vale. I have taken a particular interest in buildings that are under 11 metres, and I and the hon. Gentlemen have had interactions on the issue in the past. There are specific issues about a small set of buildings that are under 11 metres. The previous Minister, my right hon. Friend the Member for Pudsey (Stuart Andrew), and I have made repeated commitments from the Dispatch Box, from as far back as 2022, to look into each and every one of those buildings, and we have done so. A number of them have been raised with us, and we are working through them and getting to the end of the processes.

I encourage any hon. Members with examples—and I see occasional repetitions in parliamentary questions—to raise them with the Department, as I know members of the Committee have, and we will see what we can do to move those cases on or get clarity that no works are required. With almost all under-11 metre buildings, when we get to the end of the discussion there are no works required under the PAS 9980 assessment. That is positive. There is a clear reality that buildings under 11 metres are less likely to be impacted by this issue, and we will resist the new clause on that basis.

As a result of the fire, as I said to the hon. Member for Brent North, it is important that we make progress. Significant progress has been made, and I am grateful to the hon. Member for Greenwich and Woolwich for his recognition of that. Every month, we see more buildings complete and more buildings starting the process. Where freeholders are willing to make their buildings safe, we have mechanisms and processes in place, both centrally and locally, to make sure that is happening; and I continue to see lots of progress. It will take time, but we are cognisant of the importance of moving fast, and we have certainly sped up over recent months.

Matthew Pennycook: I thank the Minister for his response. I will pass over his criticisms of the technical flaws of the new clauses. Their intent is very clear; we can debate whether primary or secondary legislation is the best means of achieving it. I think there is a point of disagreement on qualifying and non-qualifying leaseholders. On a point of principle, we think that the distinction is arbitrary and we should get rid of it. From the evidence I have seen across the country, we should also undoubtedly get rid of it on a practical basis. I do not have responsibility for building safety directly any more—my hon. Friend the Member for Weaver Vale does—but I continue to hear of cases where buildings with a significant proportion of non-qualifying leaseholders see remediation works stalled or held up entirely.

I have always conceded that buildings under 11 metres are small in number and that there is not a systemic issue, but because of the drafting of the Building Safety Act, there remains a problem about liability. In those

[Matthew Pennycook]

cases where the Government certify that the buildings are unsafe and require remediation—as the Minister knows, I have a case in my constituency—the stage that we have got to, after many years, is that the Government ask the original developer to put them right. We do not know what lies behind that request or whether there is any enforcement of it, so we are at the same point that we were at many years ago.

We come back to the question, "What is the need for the distinction?" I would argue that if under-11 metre buildings are that small in number, that is all the more reason for opening them up to access for Government grants should they require that—where the developer will not remediate them voluntarily. But that is beside the point.

I thank the Minister for his willingness to provide me detailed answers to all five of the non-specific questions—that is very welcome—but on the point of principle raised by new clauses 27 and 28, there is a clear difference of opinion. I think it is worth us putting on record, again, our strong feelings about that, so I will push both new clauses to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 20]

AYES

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

NOES

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

Question accordingly negatived.

3.30 pm

New Clause 28

MEANING OF "RELEVANT BUILDING" FOR THE PURPOSES OF THE REMEDIATION OF BUILDING DEFECTS

"Section 117 of the Building Safety Act 2022 is amended by the insertion after subsection (6) of the following—

'(7) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of building within the definition of "relevant building".'"—*(Matthew Pennycook.)*

This new clause would give the Secretary of State the power to bring buildings which are under 11m in height or have fewer than four storeys within the scope of the protections of the Building Safety Act 2022.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 21]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 29

REPORT ON PROVIDING LEASEHOLDERS IN FLATS WITH A SHARE OF THE FREEHOLD

"(1) The Secretary of State must publish a report outlining legislative options to ensure that all qualifying tenants in newly-constructed residential properties containing two or more flats have a proportionate share of the freehold of their property.

(2) The report must be laid before Parliament within three months of the commencement of this Act."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to publish a report outlining legislative options to provide leaseholders in flats with a share of the freehold.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

When making the case for new clause 2, which sought to ensure that all leases on new flats should include a requirement to establish and operate an RMC with each leaseholder given a share, I stressed that it was one of several ways by which we could lay the groundwork for a future where commonhold is the norm. New clause 29 seeks to press the Government to bring forward legislative options to enact another—namely, mandating that leaseholders in all new blocks of flats should automatically be granted a share of the freehold.

I want to be clear about what such a proposition entails. It is not an alternative to leasehold. If such a measure were brought into force, any leaseholder resident in a new block of flats would own both a lease and a share of the freehold. It would, in effect, ensure that all new blocks of flats were collectively enfranchised by default, without the need for leaseholders in them to go through the process of acquiring their freehold. The advantages of having a default share in the freehold is that it would give the leaseholder a direct say in what happens in their building, as is the case with those that have been collectively enfranchised. It would also provide for additional valuable rights, such as the right to a long lease extension on the basis of a peppercorn rent—or, in other words, the rights that will be accorded to existing leaseholders under clauses 7 and 8 but without the cost of paying a premium to the freeholder that is still required to exercise that modified right.

As we know, having flat owners with a share of freehold can cause tensions—for example, in agreeing how to proceed on crucial decisions such as whether to cover the costs of major works through service charges. That is why it is essential that proper management arrangements are in place as a matter of course, to reduce the likelihood of damaging disputes between neighbours, and why we proposed mandatory RMCs on new blocks of flats as a corollary to the new clause. Much like new clause 2, new clause 29 would also help give leaseholders greater control over their buildings and pave the way for commonhold as the default tenure.

Labour is unequivocal about the fact that commonhold is a preferable tenure to leasehold, in that it gives the benefits of freehold ownership to owners of flats without the burdensome shortcomings of leasehold ownership. As we have heard, the Law Commission made 121 recommendations on commonhold, designed to provide a legal scheme that would enable commonhold to work more flexibly and in all contexts. We share the concern expressed by Professor Nick Hopkins in our evidence sessions:

"With commonhold having failed once, there is a risk of partial implementation"—[*Official Report*, *Leasehold and Freehold Reform Public Bill Committee*, 16 January 2024, c. 39, Q84.]

of those recommendations and "a second false start" that could be "fatal" to the tenure. That is why we have not sought to persuade the Government to incorporate any subset of Law Commission commonhold recommendations into the Bill. We need to reform the legal regime for commonhold in one go, and Labour is committed to doing so if the British people give us the opportunity to serve after the next general election. Given your indication earlier, you are confident of that outcome too, Sir Edward.

We have also expressed a clear preference for commonhold to be the default tenure. That would be a policy decision distinct from the implementation of the Law Commission's recommendations and would necessarily have to follow the legal scheme those recommendations would introduce. However, there will inevitably be a transitional period after the reformed legal regime for commonhold has been introduced, during which Government would need to consult thoroughly on the practicalities of making commonhold the default tenure for flats. The introduction of a mandatory share of freehold in all new blocks of flats, as proposed by the new clause, alongside the requirement to establish and operate an RMC with each leaseholder given a share, would be a sensible staging post on the path towards a commonhold future by making conversion to commonhold at a later date a far simpler process. We urge the Government to accept the new clause.

Lee Rowley: I am grateful to the hon. Gentleman for his new clause. As he has outlined, in share-of-freehold arrangements leaseholders will own the freehold in larger blocks; they are usually the shareholders of a resident management company from which directors are elected to manage the property. As such, there is no third-party landlord, but instead the leaseholders are themselves joint landlords. We appreciate that there are benefits to share-of-freehold arrangements, and obviously there is the opportunity for people, should they wish, to look at that when making decisions about the properties they live in.

Without seeking to detain the Committee, the reality is that although the new clause is well intentioned and understandable, it would be a significant building out of the Bill; it would be a significant additional framework. Again, it goes back to the point about the size of the Bill and exactly what it is able to do. I realise that we return to that often, and some colleagues in this room will wish us to go as far as we possibly can. That is understandable, but given the scale of the new clause—I realise that the hon. Gentleman probably will push it to a vote as a result of my comments—a pretty large and complicated legal framework would need to be put in place. I am afraid that at the current time it is challenging to have the space to do that, as much as I share the hon. Gentleman's overall objective of trying to give people greater choice, and as a consequence we will resist the new clause.

Matthew Pennycook: I welcome the Minister's response to the extent that he recognised the benefits of share of freehold. I am not surprised that he resists the new clause; there is no doubt that it would be a significant build-out of the Bill, as he put it. We hope that we will see other significant build-outs of the Bill and finally see a ban on new leasehold houses, as the Government have committed to, at some point. Maybe we will even get a couple of hours to debate that—who knows?

We think that this is an important provision that should be incorporated in the Bill for the reasons I have give, but mainly because—perhaps this is a point of disagreement between us and the Government—we think that we must be serious about paving the way for commonhold with the Bill and cannot leave everything to a future Government to enact. As I said, we should take some practical and specific steps to lay the groundwork for that future, which I think we all want to see. As we felt with mandatory RMCs, we feel that these two specific measures would enable us to go some way on that journey. For that reason, I will push the new clause to a vote—it will probably be the final one.

Rachel Maclean: I want to make a brief remark in sympathy with the shadow Minister's policy objectives. I will not be supporting his new clause, but I have had extensive discussions with the Minister, who knows that I feel strongly that we should have a pathway to commonhold in the future.

Commonhold is a system that works well. Commonhold, or a version of it, works extremely well in almost every other major developed country in the world. We are quite unique in the UK—for some bizarre reason—in having this leasehold system, which is to the great regret of me and the leaseholders who live in such houses and flats. Unfortunately, something like 1.5 million people live in leasehold houses and something like 5 million people overall live in leasehold dwellings. It does not need to be that way.

In 2002, the former Labour Government did try to legislate in this regard, but a number of those measures were not enacted—we are going back into ancient history. Nobody really seems to know why it did not happen, but we now need to seize the opportunity. This Bill has been a long time in gestation; it has benefited from the contributions of many Ministers to get it to this point. I know that the Minister is listening to me, and I think it is important that we do not miss the opportunity, even at this late stage, to introduce some of the commonhold framework measures that the Department has been looking at in great detail. I hope that the Minister has listened, and he and his officials will take that point away.

Barry Gardiner: The hon. Lady is absolutely right to go back to the 2002 Act. In fact, I think in a speech on its Second Reading, I said that we would have to return to that Act in six or seven years' time to amend the deficiencies in it. I am sad to say that here we are, 22 years later, still not having amended those deficiencies, and the Minister's response, I am afraid, has indicated that we will not amend them again under this Bill.

[Barry Gardiner]

This is urgent, and leaseholders have been waiting for far too long for the remedy that my hon. Friend the Member for Greenwich and Woolwich has proposed. That is why I feel that it is vital that I support his new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 10.

Division No. 22]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 30

REVIEW OF THE PERCENTAGE OF QUALIFYING TENANTS REQUIRED TO PARTICIPATE IN AN ENFRANCHISEMENT CLAIM

"The Secretary of State must before the end of the period of two years beginning with the day on which this Act is passed—

(a) review the effect of the participation limit contained in section 13(2)(b)(ii) of the Leasehold Reform, Housing and Urban Development Act 1993, with particular consideration given to whether it represents an unjustified barrier to leaseholders exercising their rights under this Chapter, and

(b) report to Parliament, in whatever manner the Secretary of State thinks fit, with proposals for reform."—*(Matthew Pennycook.)*

This new clause would require the Secretary of State to consider, within two years of the Act coming into force, whether the current requirement that 50% of leaseholders must support an enfranchisement application should be lowered.

Brought up, and read the First time.

Matthew Pennycook: I beg to move, That the clause be read a Second time.

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

New clause 31—*Review of the percentage of qualifying tenants required to participate in a claim to acquire the Right to Manage—*

"The Secretary of State must before the end of the period of two years beginning with the day on which this Act is passed—

(a) review the effect of the participation limit contained in section 79(5) of the Commonhold and Leasehold Reform Act 2002, with particular consideration given to whether it represents an unjustified barrier to leaseholders exercising their rights under Chapter 1 of Part 2 of that Act, and

(b) report to Parliament, in whatever manner the Secretary of State thinks fit, with proposals for reform."

This new clause would require the Secretary of State to consider, within two years of the Act coming into force, whether the current requirement that 50% of leaseholders must support an application for the Right to Manage should be lowered.

New clause 33—*Proportion of qualifying tenants required for a notice of claim to acquire right to manage—*

"Section 79 of the CLRA 2002 is amended, in subsection (5), by leaving out 'one-half' and inserting 'one-third'."

This new clause would reduce the proportion of qualifying tenants who must be members of a proposed right to manage company for an RTM claim to be made.

Matthew Pennycook: These are the last new clauses that I will speak to on behalf of the Opposition. In our fifth sitting, we considered eligibility for leasehold enfranchisement and extension, including the welcome changes that the Bill makes to the non-residential limit on collective enfranchisement claims. However, increasing access to collective enfranchisement by rendering more leaseholders eligible does not necessarily mean that take-up will significantly increase. That is because there are other barriers to exercising the statutory right to freehold acquisition. Some relate to the complexity of the process, but perhaps the most notable is the requirement under section 13 of the 1993 Act that at least half of qualifying tenants in a building must participate in the claim.

While there is no escaping the need to organise collectively to initiate a claim, in some buildings, particularly large blocks of flats, securing the participation of the minimum numbers of tenants required to take part in the service of the initial notice can be next to impossible, given the number of units that are occupied by tenants renting privately from the leaseholder. We therefore believe that there is a strong case for considering whether the minimum participation rate for collective enfranchisement should be reduced.

Precisely what the revised minimum participation rate might be is a matter for debate. We have not sought to be prescriptive in order to allow the Government the freedom to consider what threshold best strikes the right balance between encouraging enfranchisement and ensuring that there is sufficient participation to sustain the proper ongoing management of the building.

New clause 30 would simply require the Secretary of State to consider, within two years of the Act coming into force, whether the current 50% participation threshold should be lowered. New clause 31 would have the same effect in relation to the right to manage, where, in many ways, the argument for lowering the participation threshold is even stronger, owing to the fact that there is really no need for half of all qualifying tenants to remain involved in an RTM company once it has been established.

Again, determining the revised minimum participation rate is a matter for debate, and we have left that question for another day. If I am right in remembering, my hon. Friend the Member for Brent North is proposing, by way of his new clause 33, that that threshold should be a third of qualifying tenants, which strikes us as a reasonable proportion. However, what new clause 31 seeks to secure is the Government's agreement in principle that the 50% threshold for an RTM acquisition should be reconsidered. These, quite consciously, are probing amendments, but I very much look forward to the Government's thoughts on the principle of whether that 50% threshold is right, and whether there should be scope in the future to look at it again.

3.45 pm

Barry Gardiner: I am grateful to my hon. Friend for the way in which he has introduced his new clause 30. We heard from witnesses the difficulty faced by leaseholders on larger developments in attaining that 50% participation threshold for the right to manage. It can be a more permissive regime than collective enfranchisement, wherein someone else's property interests are being compulsorily purchased. Right to manage is just regulating the management of the building and ensuring democratic resident control of the managing agent and service charges.

We heard from Philip Rainey KC in the oral evidence, who said, almost 10 years ago, that the right to manage should be a no-fault right and it should not be caveated with the need to solicit half of the entire building. He suggested the 50% threshold should be reduced to 35%. We have heard leaseholders say that this is not enough, because the threshold is even harder to meet nowadays with high levels of buy to let and overseas leaseholder populations, as suggested by Harry Scoffin of Free Leaseholders, when he gave oral evidence to the Committee. This proposal could help leaseholders to bring their service charges under resident control and scrutiny.

That is the position for flat owners almost everywhere else in the world, including north of the border in Scotland. I believe that the Government should support the amendment from my hon. Friend the Member for Greenwich and Woolwich. If I were to hear any indication that the Government might be so inclined or that they would introduce a measure that would achieve the same effect, I would happily withdraw new clause 33.

Lee Rowley: After a number of days of often great agreement across the Committee, it is my job, unfortunately, to point out where we cannot agree, so I apologise for doing that again. The hon. Member for Greenwich and Woolwich has indicated that he is probing the Government with new clauses 30 and 31—at least, I hope he is. We understand the point that he is making, but we are seeking to apply the Law Commission's recommendation that the participation level should remain at 50%. On that basis, we are not proposing to change that at this time. I do not think it is necessary to create the report, because we have taken a view within this legislation that—

Matthew Pennycook: Will the Minister give way?

Lee Rowley: I will, happily.

Matthew Pennycook: This may not be the case in the Minister's constituency, but I have very large blocks of flats in my constituency that, as my hon. Friend the Member for Brent North has just made clear, consist of hundreds of buy-to-let flats and flats owned by overseas investors. Are the Government really content to say that in those cases—in large urban centres, these blocks are springing up all over the place—the barrier to collective enfranchisement and RTM acquisition is higher? Effectively, many of these leaseholders will be locked out of the rights in this Bill purely by the design and ownership arrangements in their building. Surely the Minister must recognise that there is a subset of buildings that will not enjoy the rights that the Bill provides for, and that the Government should look again at what can be done in those circumstances.

Lee Rowley: There is no doubt that there are challenges. There are always challenges with individual buildings, but there is a specific challenge here, which the hon. Gentleman has outlined. My hon. Friend the Member for Cities of London and Westminster (Nickie Aiken), who is not serving on this Committee, has outlined that to me, and I have had the privilege of talking to a number of her constituents who are impacted by the understandable challenges that the hon. Gentleman raised.

The question is not about the Government being unwilling to look at this in the future or unwilling to discuss this further in relation to the Bill. I know this is a probing amendment, but the narrow sense of the question is: should we be legislating to create reports? I am always reluctant to legislate in that way. I understand why the Opposition would do it and why the other place do it, all too often, in my view, but I am not sure I am keen on this happening, so the Government are keen to resist it on that basis. But on the broad point about whether we would return to this if it was not working, either in this discussion or more broadly, the answer is: of course—that would be a reasonable thing for the Government to do in the future.

I appreciate the points made by the hon. Member for Brent North about new clause 33, and I know that the measure is potentially in operation elsewhere. I hope that he will agree that, when a minority can make decisions, a whole heap of additional considerations and questions are opened up. At this stage, we remain of the view that the proportion should be 50%, and for those reasons we will oppose the new clause, should it be pressed to a vote.

Matthew Pennycook: I will end on an optimistic note, because I got enough from the Minister to suggest that he is conscious of the issue and is open to looking at it again, either in the context of the Bill or at a later date. Setting aside the precise drafting of the new clauses, which have allowed us to debate the issues, the Minister recognised that we may need to look at the substantive point again. We may well come back to this at a later stage of the Bill.

The Chair: Barry Gardiner, do you wish to comment?

Barry Gardiner: Thank you, Sir Edward. It has long been recognised that my hon. Friend the Member for Greenwich and Woolwich is a much more reasonable gentleman than I am. I would be inclined to press the new clause to a vote, but I do not want to try the patience of the Committee. My hon. Friend and I will discuss these matters further and, if the Government do not act, we will see what we might do on Report. I will therefore not press the new clause.

Matthew Pennycook: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 32

PREMISES TO WHICH LEASEHOLD RIGHT TO MANAGE APPLIES

"Section 72 of the CLRA 2002 is amended in subsection (1)(a), by the addition at the end of the words 'or of any other building or part of a building which is reasonably capable of being managed independently.'"—*(Barry Gardiner.)*

This new clause which is an amendment to the Commonhold and Leasehold Reform Act 2002 adopts the Law Commission's Recommendation 5 in its Right to Manage report which would allow leaseholders in mixed-use buildings with shared services or underground car park to exercise the Right to Manage.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

I am very happy to move the new clause, which would amend the Commonhold and Leasehold Reform Act 2002 to adopt recommendation 5 of the Law Commission's right to manage report. That would allow leaseholders in mixed-use buildings with shared services or an underground car park to exercise the right to manage.

We had some debate on this issue last week. I recall, from the time of the 2002 Act, that flatted developments—especially mixed-use blocks—had not taken off yet in England in the same way as they have over the past 22 years. Given the proliferation of mixed-use buildings, the paradigms of the 2002 Act are therefore now outdated and unfair. Developers have sought to use the Act to secure the exclusion of leaseholders on the basis of shared services. If the Government do not move on the issue of shared services, many of the leaseholders in mixed-used buildings who would otherwise have benefited from the uplift in the non-residential limit from 25% to 50%—which, as I said last week, I welcome—will still not qualify for the right to manage or for enfranchisement.

We heard from the founders of the National Leasehold Campaign and from Free Leaseholders on this point. It was clear from the evidence that the presence of a plant room or underground car park alone can disqualify leaseholders from appointing their own managing agent and controlling the service charges, which they already have to pay but do not have any influence over.

The Law Commission did a great deal of work on the right to manage. It stated:

"We recommend that premises should be eligible for the RTM if they are a building or part which is reasonably capable of being managed independently. This means that if leaseholders cannot demonstrate that their premises are either a self-contained building or self-contained part of a building, the RTM will still be available if the premises are nevertheless a building or part which is reasonably capable of being managed independently. This might be straightforwardly demonstrated where parts of a building are already subject to separate management arrangements."

That is the Law Commission's case, and it looked into this with great care. It said:

"We think this will lead to fewer Tribunal cases and where there are still disputes the focus will instead switch to whether the premises can properly be managed autonomously, rather than their physical attributes."

So I plead the backing of the Law Commission; I plead the common sense of some of the foremost jurors of our age. I am sure that the Minister will take on board their wisdom, if not mine.

Lee Rowley: I am grateful to the hon. Member for Brent North for moving the new clause. The Government support the aim of the amendment to improve leaseholders' rights. As he indicates, we are taking forward key recommendations of the Law Commission to do that. The Bill takes forward the most significant measures to increase access to the right to manage and makes it simpler and cheaper for leaseholders to make a claim.

To implement the wider recommendations, the Government need to proceed carefully and undertake further work to ensure that the regime will operate satisfactorily. The Government will keep the remaining recommendations from the Law Commission's right to manage report under consideration following the implementation of the Bill's provisions. I thank the hon. Member for bringing forward the amendment, but I hope that because the most significant measures have already been introduced, he may be convinced enough not to push the new clause to a vote.

Barry Gardiner: With that very reasonable response, I am happy to beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 34

COMMENCEMENT OF SECTION 156 OF THE CLRA 2002

"(1) Section 181 of the CLRA 2002 is amended as follows.

(2) In subsection (1), after '104' insert ', section 156'.

(3) After subsection (1) insert—

'(1A) Section 156 comes into force at the end of the period of two months beginning with the day on which the Leasehold and Freehold Reform Act 2024 is passed.'"—*(Barry Gardiner.)*

This new clause would bring into force a requirement of the Leasehold and Freehold Reform Act 2024 that service charge contributions be held in designated accounts.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 34 would bring into force the requirement that service charge contributions be held in designated accounts. The new clause seems like a quick win for the Government: it would boost the security of leaseholder funds and would implement a policy that was in the Commonhold and Leasehold Reform Act 2002 which, unusually—22 years later—has still not been brought into force.

We have heard from witnesses such as Martin Boyd at the Leasehold Knowledge Partnership and Andrew Bulmer at the Property Institute, who have signalled support for such a policy. I understand that the British Property Federation has been actively lobbying for section 156 of the CLRA 2002 to be enacted since at least October 2012, so I hope that the Minister will see the new clause as eminently reasonable and will be prepared to comply.

Lee Rowley: Landlords and managing agents hold significant sums of leaseholder money, and it is right that they should be held to account for ensuring that such money must be managed effectively, as the hon. Member for Brent North indicates. Those who hold service charge moneys must hold them in trust, and the moneys must be deposited at a bank, building society or financial institution that is regulated by the Financial Conduct Authority. This ensures that those moneys can be used only for their intended purpose and that they are treated separately from the landlord's other assets. This approach seeks to provide protection.

As the hon. Gentleman indicated, the effect of his new clause would be to commence section 156 of the CLRA 2002. The Government are not convinced that it is necessary. Procedurally, primary legislation is not required. I know that the hon. Gentleman will say, "Well, you've had the primary legislation for a significant time, so I'm giving you help to get it through," but it can be done through secondary legislation, and I am afraid that we would seek to move it back into that domain. There is a perfectly reasonable discussion to be had about whether this provision is enacted, but I do not think that we need this primary challenge in order to continue that debate.

Barry Gardiner: Once bitten, twice shy. We were promised this measure in 2002. I am not convinced that I should accept the same blandishments once again, so I am afraid that I really do want to push this one to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 1, Noes 9.

Division No. 23]

AYES

Gardiner, Barry

NOES

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

Question accordingly negatived.

The Chair: It was close, Barry.

New Clause 35

DUTY TO NOTIFY PURCHASERS OF LIABILITY FOR ESTATE MANAGEMENT CHARGES

"(1) The Secretary of State must by regulations make provision to ensure that any purchaser of a property which is subject to estate management charges—

(a) is notified about their liability for estate management charges at the point at which an offer is accepted by the seller on the property; and

(b) is provided with the most recent set of accounts of the property management company.

(2) Regulations under this section—

(a) must be laid within 24 months of the date of Royal Assent to this Act,

(b) shall be made by statutory instrument, and

(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."—*(Richard Fuller.)*

This new clause would require the Secretary of State to make regulations to ensure that purchasers of properties subject to estate management charges are notified of those charges.

Brought up, and read the First time.

4 pm

Richard Fuller: I beg to move, That the clause be read a Second time.

New clause 35 seeks further to improve the rights of those who will be liable for estate management charges. We know from written and oral evidence that people do not know what they are getting into right at the start of the purchase of a property. My clause asks the Government to make it clear by regulations that purchasers of properties who will get management charges are notified about them. It would ensure that people have access to the latest set of accounts, enabling them not only to understand what charges may be due, but to see what liabilities there were in the past.

Lee Rowley: I am grateful to my hon. Friend the Member for North East Bedfordshire for moving new clause 35. I share his concern that purchasers should know about estate management charges; we talked a little about that issue in our sitting this morning.

There is nothing worse than facing a bill that we know nothing about at a time when we can do nothing about it. That is why the Government have been working with the national trading standards estate and letting agency team to develop guidance for property agents on what constitutes material information. The information must be included in property listings to meet the obligations under the Consumer Protection from Unfair Trading Regulations 2008. Estate management charges are considered material if they will have an impact on a decision to purchase. That should mean that purchasers get information on the expected level of estate management charges when they see the property particulars before they even view the property, let alone make an offer.

In addition to the measures that we discussed this morning, we are seeking to include in the Bill a requirement that freehold estate management information be provided to potential sellers, meaning that conveyancers acting on behalf of those sellers can quickly get the detailed information that they need to provide to potential purchasers. That could include accounts, if the estate manager is a resident-owned company, as well as any previous or future charges. With that reassurance in mind, I hope that my hon. Friend will consider withdrawing his new clause.

Richard Fuller: I think that that reassurance has been provided. The particular issue is that when people buy these homes, the solicitors are usually appointed by the people selling them. It is important that the Minister thinks carefully about that, and it sounds very much as if he is doing so. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 36

ASBESTOS REMEDIATION

"(1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows.

(2) After section 37B, insert—

'**37C Asbestos remediation**

(1) This section applies where a claim to exercise the right to collective enfranchisement in respect of any premises is made by tenants of flats contained in the premises and the claim is effective.

(2) The landlord must cause a survey of the premises to be undertaken by an accredited professional to ascertain whether asbestos is, or is liable to be, present in those parts of the premises which the landlord is responsible for maintaining.

(3) Where the survey required by subsection (2) reveals the presence of asbestos, the landlord must, at the landlord's cost, arrange for its safe removal.

(4) If the removal of asbestos required by subsection (3) is not carried out before the responsibility for maintaining the affected parts transfers to another person under the claim to exercise the right of collective enfranchisement, the landlord is liable for the costs of its removal.'"—*(Barry Gardiner.)*

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

The Minister will be relieved to know that this is genuinely a probing new clause, which I am pleased to move on behalf of my right hon. Friend the Member for East Ham (Sir Stephen Timms). He is not a member of the Committee, but he certainly wishes to raise the issue on Report.

New clause 36 would address the problems relating to enfranchisement when asbestos has been found, or is liable to be found, in the structure of a building. It requires that a survey be done prior to any enfranchisement process, and sets out that the landlord would be responsible for the remediation if asbestos should need to be cleared from the building. I am laying out the new clause before the Committee so that the Minister can set out his thinking about such problems in buildings, in the full knowledge that my right hon. Friend the Member for East Ham will speak to it on Report.

Lee Rowley: I thank the hon. Member for Brent North for moving the new clause. I heard the right hon. Member for East Ham make his case clearly on Second Reading, and I asked officials at the Department to go and look at it. I will read this into the record for their benefit and that of the right hon. Gentleman.

The Government recognise the devastating impact that asbestos-related disease has on those who are exposed and on their families, and we are committed to ensuring that the risk of asbestos exposure is properly managed. New clause 36 would either duplicate existing UK law or change the well-established evidence-based policy in this area.

Specifically, proposed new subsection (3) would mostly duplicate the existing duty in regulation 4 of the Control of Asbestos Regulations 2012 for landlords to survey the common areas of their property, where they are responsible for maintenance. It is true that there is no current requirement for the survey to be done by an accredited professional. That is partly because currently only organisations, not individuals, can be accredited to carry out surveys. The Health and Safety Executive is carrying out research to see whether changes to the accreditation of surveyors would be beneficial. That is in response to a recommendation from the recent inquiry into asbestos by the Work and Pensions Committee, chaired by the right hon. Member for East Ham.

Proposed new subsection (3) would be a significant departure from current health and safety policy regarding asbestos. It could increase the risk of exposure to asbestos: it could create a situation in which asbestos was removed, irrespective of whether it was in good condition. Evidence shows that any removal of asbestos is difficult and inevitably involves disturbing asbestos fibres and making them airborne. In some cases, asbestos can be removed only if there is significant and highly invasive work to the fabric of the building. For that reason, the HSE's long-held view is that asbestos that is unlikely to be disturbed or is in good condition gives rise to less risk if it is left in situ and monitored until a suitable opportunity to remove it arises, such as refurbishment or demolition. That part of the new clause goes against HSE policy. Such a policy shift in this case would have significant implications for the legal framework for the management of asbestos across the built environment. Understandably for such a hazardous substance as asbestos, any proposed changes to how it is managed in the UK must be considered carefully.

While I appreciate the points that the hon. Member for Brent North has made on behalf of the right hon. Member for East Ham, I hope that that explains why the Government are not supporting new clause 36. I look forward to comments from them, should we have missed anything. I hope that the hon. Member for Brent North will consider withdrawing the new clause.

Barry Gardiner: I am grateful to the Minister for reading that into the record. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 37

ELIGIBILITY FOR ENFRANCHISEMENT

"(1) The LHRUDA 1993 is amended as follows.

(2) In section 3—

(a) in subsection (2)(a), after third 'building', insert ', or could be separated out by way of the granting of a mandatory leaseback on the non-residential premises to the outgoing freeholder';

(b) after sub-paragraph (2)(b)(ii), insert 'or

(iii) are reasonably capable of being managed independently or are already subject to separate management arrangements;'

(3) In section 4(1)(a)(ii), after 'premises;', insert 'nor

(iii) reasonably capable of being separated out by way of the granting of a mandatory leaseback and reasonably capable of being managed independently from the residential premises;'"—*(Barry Gardiner.)*

This new clause would ensure that leaseholders in mixed-use blocks with shared services with commercial occupiers would qualify to buy their freehold.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 37 would ensure that leaseholders in mixed-use blocks with shared services with commercial occupiers would qualify to buy their freehold. We have covered this ground to a certain extent, and I do not wish to detain the Committee unduly.

I commend the Government for bringing forward the reforms that promised to liberate leaseholders in mixed-use buildings and developments, including the lifting of the 25% non-residential premises limit to 50%. However, with the advent of compulsory leasebacks on commercial space to the departing freeholder, there is now a workable mechanism to split out the commercial units and their management from the ownership and management of residential leasehold homes and the common parts for the other side of the building.

It is imperative to remove any other outdated impediments to freehold purchase faced by leaseholders of flats in mixed-use buildings, if the reforms to enfranchisement are to be successful on the ground. Without moving on shared services and the structural dependency rules that bedevilled the 1993 Act, many leaseholders in mixed-use blocks, who would otherwise stand to benefit from the proposed changes that the Government have put forward, could be instantly disqualified from exercising their enfranchisement rights to gain control of their building and their service charges because of a shared plant room or a car park that connects them to the commercial occupiers and that they had no hand in constructing. That seems unfair, especially given that developers are increasingly building flatted developments in which the flats have shared services with commercial units for matters of efficiency and cost.

Mixed-use schemes are proliferating in our constituencies. The issue of shared services, structural dependency and structural detachment will continue to be a major one for leaseholders seeking self-rule, so long as the Government do not cut the red tape in the 1993 Act and, relatedly, in the 2002 Act in relation to the right to manage. I look forward to the Minister's considered response.

Lee Rowley: I am grateful to the hon. Member for Brent North for moving new clause 37. As he says, we have talked about the issue before, including on new clause 33, so I will not detain the Committee for more than a few moments. However, the brevity of my remarks does not in any way seek to diminish the importance of this discussion.

We agree with the overall ambition behind new clause 37; as the hon. Gentleman has graciously accepted, we are seeking to increase the non-residential limit. This is a discussion about whether the improvements that are already in the Bill should go any further. I hope that I have already articulated, in our debates on previous amendments and previous clauses, the reasons why we are not seeking to agree to that at this time. I hope that on this occasion the hon. Gentleman will agree to withdraw his amendment.

Barry Gardiner: We have indeed been over this ground. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 38

RIGHT TO MANAGE: PROCEDURE FOLLOWING AN APPLICATION TO THE APPROPRIATE TRIBUNAL

"(1) The CLRA 2002 is amended as follows.

(2) After section 84, insert—

'**84A Procedure following an application to the appropriate tribunal**

(1) Where an application is made to the appropriate tribunal under section 84(3) for a determination that an RTM company was on the relevant date entitled to acquire the right to manage the premises, the Tribunal may, if satisfied that it is reasonable to do so, dispense with—

(a) service of any notice inviting participation;

(b) service of any notice of claim;

(c) any of the requirements in the provisions set out in subsection (2); or

(d) any requirement of any regulations made under this part of this Act.

(2) Subsection (1)(c) applies to the following provisions of this Act—

(a) section 73;

(b) section 74;

(c) section 78;

(d) section 79;

(e) section 80;

(f) section 81.'"—*(Barry Gardiner.)*

This new clause would provide the appropriate tribunal with the discretion to dispense with certain procedural requirements where it is satisfied that it is reasonable to do so. It is designed to deal with cases where a landlord attempts to frustrate an RTM claim by procedural means.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

New clause 38 would provide the appropriate tribunal with the discretion to dispense with certain procedural requirements where it is satisfied that it is reasonable to do so. It is designed to deal with cases in which a landlord attempts to frustrate a right to manage claim by procedural means.

Let me enlighten the Committee. This morning I received the following email: "Your amendment NC38 to the Bill—right to manage—is the single best thing to happen to the right to manage since it was introduced in 2002. It will put an end to the litigation over detailed procedural objections which has frustrated this important statutory right." The gentleman went on to say that he believes this "despite me (1) earning a good living from right to management disputes and (2) being chair of the local Tory association."

The Law Commission report from four years ago highlighted "the tactical, game-playing approach" of some freeholders and how the current law is acting to incentivise unnecessary litigation between the parties. Mark Loveday's proposal, which I have adopted, seems eminently sensible to provide the tribunal with the discretion to waive a right to manage application of leaseholders where the breaches are deemed to be non-material. That is a necessary guard against vexatious litigation by freeholders to thwart legitimate right to manage bids. Sadly, as a barrister, Mr Loveday has seen all too many cases in which landlords have used irrelevant technicalities in the existing legislation to try to scupper leaseholders trying to exercise their right to manage. I want to put on the record my thanks for Mr Loveday's defence of leaseholders' rights in the Settlers Court case and the Canary Gateway case.

I hope the Committee will understand that Mr Loveday gave evidence in writing to this Committee. The new clause draws on his proposals, which are contained within his written submission. Mr Loveday is not just a barrister, but the editor of the standard work, the fifth edition of "Service Charges and Management". He is not just somebody who has a passing knowledge; he is recognised as an authority in these matters.

For the sake of full disclosure, I should add that the gentleman who wrote to me so effusively about my new clause was in fact Mr Loveday, so it was really about his own amendment.

The Chair: It is the greatest amendment since 2002, apparently.

4.15 pm

Lee Rowley: I am grateful to the hon. Member for Brent North for tabling new clause 38. I understand that he seeks to reduce landlords' ability to frustrate right to manage claims. We all share his view, and we also do not want leaseholders to fail on minor technicalities, but at the risk of disappointing his Conservative friend, we believe that there are good reasons for the procedural requirements in a right to manage claim. For example, standard requirements provide legal certainty for all parties. I recognise that there is a valid discussion to be had around the issue, but that is the position that the Government come down on. We are concerned about giving a broad, sweeping power in respect of disapplication.

There are also potential unintended consequences. All qualifying leaseholders are entitled to become members of the right to manage company, and no one person can be excluded for any reason. The legislation opens membership to all qualifying leaseholders. The procedural requirement to serve the notice inviting participation informs leaseholders of their rights to join the claim and become directors of the right to manage company. Providing discretion to the tribunal to disapply this could result in some leaseholders failing to receive adequate information about the claim and being denied such an opportunity. I am not saying that that is likely to happen; I am simply taking it to its logical extent. There are other potential areas where it would go. I am not saying that it is likely, but it is possible.

It is accepted that some landlords have sought to defend right to manage claims on the basis of minor, technical flaws in compliance with the procedural requirements. The tribunal, however, generally takes a common-sense, pragmatic approach to errors that are not critical or of primary importance. That should limit the scenarios in which there is a problem. Landlords will also have an added disincentive to raise vexatious disputes, as they will now pay their own litigation costs.

On the basis of both those points, I hope that the hon. Member for Brent North might be willing to withdraw his new clause and convince his new Conservative friend that it is not necessary at this time.

Barry Gardiner: I will press the new clause to a vote and leave it to the Minister to persuade his Conservative friends.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 7.

Division No. 24]

AYES

Gardiner, Barry	Pennycook, Matthew
Glindon, Mary	Rimmer, Ms Marie

NOES

Davison, Dehenna	Mohindra, Mr Gagan
Fuller, Richard	Rowley, Lee
Levy, Ian	
Maclean, Rachel	Smith, rh Chloe

Question accordingly negatived.

New Clause 39

SERVICE CHARGES: CONSULTATION REQUIREMENTS

"(1) The Landlord and Tenant Act 1985 is amended as follows.

(2) In section 20ZA, after subsection (1), insert—

'(1A) "Reasonable" for the purpose of subsection (1) is a matter of fact for the tribunal, which—

(a) may or may not consider the matter of relevant prejudice to the tenant. If prejudice is to be considered the burden is on the landlord to demonstrate a lack of prejudice or to prove the degree of prejudice;

(b) must include consideration of the objectives of increasing transparency and accountability, and the promotion of professional estate management, as well as of ensuring that leaseholders are protected from paying for inappropriate works or paying more than would be appropriate;

(c) must consider the dignity and investment of the tenant, who should be treated as a core participant in the process of service charge decisions;

(d) must have regard to the tenant's legitimate interest in a meaningful consultation process, bearing in mind that minor or technical breaches may not impinge on the tenant's interest, nor prejudice the tenant;

(e) at its discretion may or may not consider a reconstruction of the 'what if' situation, analysing what would have happened had the consultation been followed properly. The landlord is liable for the costs of such a reconstruction.'"—*(Barry Gardiner.)*

This new clause would set matters for the tribunal to consider when deciding whether to dispense with all or any of the requirements for landlords to consult tenants in relation to any major works.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would set matters for the tribunal to consider when deciding whether to dispense with all or any of the requirements for landlords to consult tenants in relation to any major works. That is something that I am particularly concerned about, because in 2002 I sought to bolster transparency over the nature and costs of major works that leaseholders were paying for, and the troubles that they were experiencing in their blocks. I am also concerned because the freeholder that successfully neutered key provisions on major works is the same Daejan—then Daejan Holdings, part of the Freshwater Group—which over the years has caused absolute misery for many leaseholders in my constituency and in many other right hon. and hon. Members' constituencies. It was one of the landlords whose behaviour saw me begin my campaign against the iniquities of leasehold back in the 1990s.

Since the Daejan *v.* Benson Supreme Court case of 2013, the factual burden on freeholders has been transferred to leaseholders. It was ruled that the conduct of the landlord is irrelevant, no matter how flagrantly it might have behaved in failing to adhere to the consultation requirements, unless it can be shown that the conduct caused actual prejudice. As a result of that decision, in many first-tier tribunal cases, it is now freeholders who are seeking dispensation from consultation requirements on major works. Hapless leaseholders are left trying to prove prejudice in the face of clear breaches of the legal requirements, and landlords, who of course are much better resourced, are able to game the system accordingly.

In Daejan, Lord Wilson issued a strong dissenting judgment, as did Lord Hope. Both thought, correctly, that what is reasonable should be left to the tribunal. They mentioned transparency and accountability, both ignored by the Supreme Court. In fact, Lord Wilson described the conclusion of the majority as subverting the intention of Parliament. I urge the Government to revisit their position on major works in the Bill and ensure that leaseholders have, at the very least, the same transparency and accountability that they were assured under the 2002 Act, before the Supreme Court interfered in 2013 with Daejan, fettered the tribunal's discretion in this vital area and accordingly undermined leaseholders' rights.

Lee Rowley: I am being tempted again to comment on the Supreme Court and the veracity of its decisions, but I will stick to the new clause. As the hon. Gentleman indicated, it seeks to amend the Landlord and Tenant Act 1985. We agree that there should be protections for leaseholders when their landlord is seeking to dispense with the requirements to consult on major works. Where a landlord has failed to comply with the statutory requirements, they must apply to the appropriate tribunal to dispense with the requirements to consult. Should they fail to consult and fail in any application for dispensation, the costs that they may pass on to the tenant are limited to a £250 threshold.

We believe that the appropriate tribunal is best placed to consider the circumstances of each application for dispensation. We would not wish to fetter the tribunal's ability to consider a wide range of matters when deciding whether it is reasonable to dispense with the consultation requirements.

Barry Gardiner: What has happened here is that the whole weight of proof has been shifted by the Court's decision. It has been shifted precisely against what was the legislative intent, which is why I think it is appropriate that the Minister seeks to reinstate what Parliament originally said it had decided and wanted to be the case, and ensure that the tribunal has the ability to exercise its judgment in that way.

Lee Rowley: Let me ask the hon. Gentleman whether he is willing to allow me to go away and look at this issue without any promises or guarantees. I am not across the level of detail that he obviously is, and I need to be in order to discharge the very legitimate questions that he has asked. If he is prepared to withdraw the new clause, I am happy to write to him, and if there is something that we need to take forward, I would be happy to look at it in future phases of the Bill.

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

Clause, by leave, withdrawn.

New Clause 40

MEANING OF "ACCOUNTABLE PERSON" FOR THE PURPOSES OF THE BUILDING SAFETY ACT 2022

"(1) Section 72 of the Building Safety Act 2022 is amended in accordance with subsections (2) and (3).

(2) After subsection (2)(b), insert—

'(c) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of a manager appointed under section 24 of the Landlord and Tenant Act 1987 in relation to the building or any part of the building.'

(3) In subsection (6), in the definition of 'relevant repairing obligation', after 'enactment', insert

'or by virtue of an order appointing a manager made under section 24 of the Landlord and Tenant Act 1987'.

(4) Section 24 of the Landlord and Tenant Act 1987 is amended in accordance with subsection (5).

(5) Omit subsection (2E)."—*(Barry Gardiner.)*

This new clause would provide for a manager appointed under section 24 of the Landlord and Tenant Act 1987 to be the "accountable person" for a higher-risk building.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a second time.

New clause 40 would provide for a manager appointed under section 24 of the Landlord and Tenant Act 1987 to be the accountable person for a higher-risk building. A number of stakeholders raised in the evidence sessions that there is a major problem with the way in which the Building Safety Act 2022 is interacting with the 1987 Act, with the practical effect of depriving leaseholders of redress and the ability to replace a failed or failing freeholder from controlling their homes and service charges.

The accountable person regime of the 2022 Act has critically undermined the section 24 court-appointed manager scheme, which has been a lifeline for leaseholders who cannot afford to buy the freehold or mobilise 50% of their neighbours to participate in an enfranchisement claim but who face a predatory—or very often absentee—freeholder, have high and opaque service charges or suffer block deterioration and badly require independent and professional management. That was the whole point of having the accountable person in the court-appointed manager scheme.

The section 24 regime also gives leaseholders who do not qualify for the right to management the ability to replace freeholder management of their building and moneys by applying to tribunal to consider whether it is just and convenient to install an officer of the court—a section 24 manager—to steward the development with tribunal backing and a special management order that provides them with a bespoke scheme of management and effectively replaces the leases. The section 24 manager essentially steps into the shoes of the landlord. But the Building Safety Act has expressly disallowed a section 24 manager from double-hatting as the accountable person and the principal accountable person through its definition of accountable persons and its amendments to the Landlord and Tenant Act 1987.

That must be an oversight by Government or an unintended consequence of the Building Safety Act, because fettering a section 24 manager in this way will encourage tribunals not to grant new section 24 orders on the basis that while such an order may be just because of freeholder failure, it would not be convenient, since there would now be two squabbling managers for functions under the BSA versus a court appointee installed under the 1987 Act. Even with the reforms to enfranchisement and right to manage in this Bill, many leaseholders will still be unable to meet the qualifying criteria to remove

[Barry Gardiner]

freeholder management. We need to keep that pathway for a court-appointed manager open and accessible to leaseholders seeking relief. With the BSA, Parliament quite rightly sought to give leaseholders new statutory protections. Surely the intention of the BSA was not to take away leaseholders' existing rights.

At Christmas, a tribunal heard about this issue as part of the long-running litigation at Canary Riverside, an estate in east London where leaseholders have enjoyed court protection via the section 24 scheme since 2016. Regrettably, it determined that section 72 of the Building Safety Act and the amendments made to section 24 by section 110 of the 2022 Act prohibit a section 24 manager from being an appointed person, and a tribunal cannot order a section 24 manager to carry out building safety responsibilities that Parliament has decided should fall outside the section 24 regime and which should be the responsibility of an AP.

The tribunal said,

"We accept that this conclusion is likely to have significant practical consequences"

for the manager. It also said,

"We accept too that there is a risk of disagreement between him and the PAP as to how the cladding-removal works should be progressed."

The 22 December 2023 tribunal decision in the Canary Riverside case has effectively given the freeholder licence to take back control of leaseholders' homes and moneys, despite being stripped of management rights by the court in 2016 because of its poor financial transparency and non-existent accountability to leaseholders. It now runs the risk of allowing the freeholder to take up to £20 million in public money from the building safety fund. The same freeholder's related company, Westminster Management Services, wrongly demanded £1.6 million in insurance commission and fee—a kick-back from the leaseholders, as determined by a tribunal in December 2022.

4.30 pm

The emotional and financial cost of the arbitrary law change to leaseholders here is enormous. As the Canary Riverside leaseholders cannot easily afford legal counsel, they are using the services of a barrister under the direct access scheme, which has cost them £25,000. The leaseholders are also having to pay the section 24 manager's costs for their solicitor and barrister, which could easily be double theirs—£50,000. For the two-day hearing and the preparation required beforehand, all the participating leaseholders and the section 24 manager will have racked up a legal bill of more than £100,000 to have a tribunal decide a very narrow legal point. Meanwhile, the leaseholders on a nearby estate, West India Quay, who have raised an impressive six-figure sum for a section 24 bid because of sky-high and escalating service charges and a rundown building, now face the invidious position of not going ahead with the application unless the law is changed in the Bill to allow a manager appointed under section 24 to be the accountable person and principal accountable person where a tribunal makes such a determination.

End Our Cladding Scandal has also made clear its opposition to this Building Safety Act policy. Leading landlord and tenant barrister Philip Rainey KC, whom we heard from in oral evidence, even provided suggestions for amendments in his testimony to the Committee. I am grateful for that and have echoed them in my new clause. It is nonsensical that a freeholder who needs to have no qualification in fire safety or management and is not vetted by a tribunal can be the accountable person while a professional property manager, who has had his or her credentials heavily scrutinised by tribunal and who has been appointed by a judge and tribunal panel because they are deemed to be a fit and proper person with suitable experience, is literally barred from taking on the accountable person and principal accountable person role.

On the point that the section 24 manager does not own the freehold or have a possession in land and so cannot be an AP or a PAP, a non-freehold-owning resident management company or right to management company can be an AP or a PAP, so the policy is contradictory. I believe that comes from a misunderstanding of section 24 and the importance of this backstop scheme for leaseholders with recalcitrant freeholders who need court protection.

Before the Minister points to the special measures manager provision in the BSA as a mitigator, that still damages the section 24 scheme because a special measures manager can be appointed by tribunal only if the Building Safety Regulator—an unknown entity—makes its own application to tribunal. Before the Building Safety Act, the whole management of a block and stewardship of leaseholders' moneys would be decided by a tribunal in one application made by leaseholders and, if successful, all handed over to the section 24 manager. Now, the leaseholders would have to petition a separate body for a special measures manager, and there is no guarantee that the Building Safety Regulator would make such a tribunal application, especially where the tribunal has not found fault against the freeholder, because no section 24 order is in existence for the leaseholders to point to.

Naturally, cautious tribunals will refuse to grant section 24 managers going forward because the split management will be so messy and so fraught with risk. That is a travesty of the section 24 scheme, which successive Governments have sought to protect. The Government, in background notes to the King's Speech, pledged to use this Leasehold and Freehold Reform Bill to revisit the Building Safety Act, building on the legislation that was brought forward by the 2022 Act, to ensure that freeholders and developers are unable to escape their liabilities to fund building remediation work and protecting leaseholders by extending the measures in the 2022 Act to ensure that it operates as intended.

That is what the Government said, and the Government are already moving amendments to reform the section 24 scheme, so we cannot say that section 24 is out of scope or that section 24 reform will not be pursued by the Government at this juncture. The Government's own estimate, as of February 2021, is that there are more than 11,000 higher-risk buildings—blocks from 18 metres or 7 storeys high containing 1.31 million residents. That means that there are over 11,000 buildings where hundreds or thousands of leaseholders, at least, have had their lifeline right of applying for a section 24 court-appointed manager stripped of them by the Government by obscure clauses in the Building Safety Act.

I urge the Minister to consider the desperate situation of leaseholders who already have a section 24 manager or are, at this moment, preparing their applications to have one installed. I urge the Government to expeditiously remedy the situation brought about by major policy change that flew under the radar of Parliament, was never put out to public consultation and has affected the lifeline right for leaseholders who have predatory freeholders or are in a situation whereby management is dire and service charges excessive.

One witness told us that the Secretary of State is taking "a personal interest in this"—[Official Report, Leasehold and Freehold Reform Public Bill Committee, 16 January 2024; c. 57, Q146.]
area and that he sent a letter to the leaseholders at Canary Riverside ahead of the December hearing. I believe that that is another of the lease extension nightmares that saw qualifying leaseholders lose their statutory remediation costs protection under the Building Safety Act because they extended their lease, and that saw the BSA amended by the Levelling-up and Regeneration Act 2023.

In the same way, Parliament could not have intended to deprive leaseholders of cost protection rights when extending their lease under the BSA. I believe that Parliament could not have intended to deprive them of the long-cherished right to secure a section 24 manager, where there is an extensive fault against their freeholder proven in a court of law. It is absolutely imperative that the Minister acts on this.

Lee Rowley: I am grateful to the hon. Gentleman for outlining that in such detail. I will be brief and to the point. We are reviewing this, and I think that an important point has been raised. In the meantime, we have asked the Building Safety Regulator to review all higher-risk buildings that currently have a section 24 manager in place, with a view to considering whether an application for a special measures order should be made for any of the buildings impacted. On that basis, I hope that the hon. Member may withdraw the new clause until we have concluded the review.

Barry Gardiner: I want to press the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 7.

Division No. 25]

AYES

Gardiner, Barry	Pennycook, Matthew
Glindon, Mary	Rimmer, Ms Marie

NOES

Davison, Dehenna	Maclean, Rachel
Everitt, Ben	Mohindra, Mr Gagan
Fuller, Richard	
Levy, Ian	Rowley, Lee

Question accordingly negatived.

New Clause 47

COLLECTIVE ENFRANCHISEMENT: REMOVAL OF PROHIBITION ON PARTICIPATION

"(1) Section 5 of the LRHUDA 1993 is amended in accordance with subsection (2).

(2) Omit subsections (5) and (6)."—*(Barry Gardiner.)*

This new clause would implement recommendation 41 of the Law Commission's report on enfranchisement, that the prohibition on leaseholders of three or more flats in a building being qualifying tenants for the purposes of a collective enfranchisement claim should be abolished.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would implement recommendation 41 of the Law Commission's report on enfranchisement, that the prohibition on leaseholders of three or more flats in a building being qualifying tenants for the purposes of a collective enfranchisement claim should be abolished. The Law Commission could not be clearer on this issue. It said:

"We remain firmly of the view that this rule–that a leaseholder of three or more flats in a building is not a qualifying tenant in respect of any–is ineffective in excluding investors from collective enfranchisement rights. It is easily avoided by sophisticated investors, and thus only penalises less well-informed leaseholders of multiple units. We do not think that there is any good justification for retaining the exclusion in its current form… Crucially, we think that removing the restriction will provide the opportunity to enfranchise to a number of leaseholders who should benefit from enfranchisement rights, but who currently do not do so. Take the building which we gave as an example in the Consultation Paper: one containing seven flats let on long leases, of which three are owned by the same person. This building is ineligible for collective enfranchisement, as there are only four qualifying tenants (and therefore the two-thirds requirement is not fulfilled). However, it may well be in the interests of the four qualifying tenants to carry out a collective freehold acquisition: indeed, the investor who owns the three other leasehold flats may also wish to participate. It may be asked why, from the point of view of the five owners in the building, it is desirable that they be prevented from acquiring the freehold jointly. In this case, the four owners of their individual flats would still have the largest say in the control of the building following the claim (assuming every owner participated)."

Removing the bar on leaseholders with three or more properties from qualifying for a collective enfranchisement is a Law Commission recommendation. It could be done easily and have the practical effect of ensuring that more leaseholders can acquire the freehold and gain control of their homes and service charges, meeting a key Government goal for this Bill.

I am aware that some freeholders buy up leases in a block using separate special purpose vehicle companies in order to make it harder for leaseholders to hit the 50% participation threshold and thwart enfranchisement bids. Meanwhile, innocent leaseholders who have three flats in their name as part of their retirement plan are instantly disqualified from participating in the freehold purchase. That is unfair, but it could be easily remedied by this amendment or another amendment were it to come from the Government.

Lee Rowley: The Government recognise that the Law Commission did not think that there was a justification for keeping the exclusion in its current form and recommended its removal, as the hon. Gentleman has indicated. However, there might be unexpected consequences if the exclusion is removed, and the Government need to proceed carefully. For example, removal of the restriction may spur investors and speculators to buy up blocks, which may not be in the interests of the remaining leaseholders and take properties out of the market that could otherwise be acquired by owner-

[Lee Rowley]

occupiers. Investors would be able to buy multiple flats in a building in order to take control of the building following a collective acquisition claim.

Furthermore, the exclusion as it applies currently has the effect of limiting the circumstances that could result in one leasehold owner monopolising the freehold once it has been acquired. Leaseholders of a single flat may find that they escape the control of one freeholder to find that they are now subject to the control of a single owner of multiple flats, creating the same issues.

I recognise that the restriction has the effect of denying some leaseholders the right to collective enfranchisement, and there is no equivalent requirement when claiming the right to manage. However, the nature of the interest being acquired is different and the difference in approach is appropriate. I hope I can assure the hon. Member that the Government understand his concern. I hope he agrees, although I hear he might not, that the current restriction provides a level of protection for leaseholders. I ask him to consider withdrawing his new clause.

Barry Gardiner: I am grateful to the Minister for recognising the problem here. I urge him to consider coming back on Report with his own amendment to try to circumvent the other issues that he has rightly raised, which might counterbalance on the other side. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 48

RIGHT TO PARTICIPATE IN ENFRANCHISEMENT

"(1) The Secretary of State may by regulations make provision to enable qualifying leaseholders to buy a share of the freehold at a development where a collective enfranchisement has already taken place.

(2) Provision made under subsection (1) is to be known as a 'right to participate'."—*(Barry Gardiner.)*

This new clause would enable the Secretary of State to make regulations allowing those residential leaseholders whose unit qualified for a collective enfranchisement, but whose leaseholders were unable or unwilling to do so at the time, to exercise the right to participate in the enfranchisement upon payment of a proportionate sum.

Brought up, and read the First time.

Barry Gardiner: I beg to move, That the clause be read a Second time.

This new clause would enable the Secretary of State to make regulations allowing those residential leaseholders whose unit qualified for a collective enfranchisement, but whose leaseholders were unable or perhaps unwilling to do so at the time, to exercise the right to participate in the enfranchisement subsequently upon payment of a proportionate sum.

Through its work the Law Commission emphasised the inequity of leaseholders who did not have the money to participate in the freehold purchase or were not even holding a lease on the qualifying flat at the time of the enfranchisement, having no right under the current law to buy a share in the freehold to make their home more saleable and to be part of the decision-making process of those enfranchisement leaseholders with management control.

The Law Commission stated that

"in the Consultation Paper, we proposed that a leaseholder who did not participate in a collective freehold acquisition should, at a later date, be able to purchase a share of the freehold interest held by those who did participate. We maintain our view that the policy has merit. Indeed, a clear majority of consultees were supportive of our provisional proposal."

The Chair: We will suspend for Divisions in the House.

4.45 pm

Sitting suspended for Divisions in the House.

5.37 pm

On resuming—

Barry Gardiner: We were discussing the right to participate, and I was quoting the Law Commission, which stated that

"in the Consultation Paper, we proposed that a leaseholder who did not participate in a collective freehold acquisition should, at a later date, be able to purchase a share of the freehold interest held by those who did participate. We maintain our view that the policy has merit. Indeed, a clear majority of consultees were supportive of our provisional proposal."

Additionally, the Law Commission believes that

"the existence of the right to participate"—

attaching to an individual leasehold unit—

"might even encourage leaseholders making a collective freehold acquisition claim to invite others to join in the first place, and might also be a partial solution to the ping-pong problem",

as the Law Commission describes it; I will not go into detail about that. The Law Commission states that, unlike with the right to manage and the notice inviting participation, leaseholders

"proposing to make a collective enfranchisement claim are not obliged to invite all other leaseholders in the building to participate in the proposed claim, nor even to inform them of their intentions. This means that leaseholders can be excluded from the opportunity to exercise their enfranchisement rights, either inadvertently or deliberately."

The Law Commission received various suggestions as to how leaseholders could be made aware that a collective freehold acquisition has taken place and therefore that the right to participate is available to them. The new clause seeks to give the Government the flexibility to bring forward—through either regulations or, preferably, their own amendments—some provision to remedy the situation. I look to the Minister for his advice.

Lee Rowley: The principle of a right to participate is sound, and I think we all agree on that across both sides of the Committee. However, as with many of the new clauses, there are practical issues with such a right, and we struggle to see a way that it is addressed through the Bill.

I will not detain the Committee for too long, but currently leaseholders who did not participate in a previous collective acquisition claim have no means to require the previous participants to allow them to join, as the hon. Gentleman outlined. There is an existing route around that for the non-participant leaseholders if they can agree with the participating enfranchised leaseholders to allow them to obtain a share in the ownership of the building through negotiation; however, enabling that through a statutory right is complicated. The Law Commission gave considerable thought to the

issues and how they may be resolved, and, although it too agreed with the principle of such a right, it was not able to make a recommendation for the creation of the right to participate without separate and detailed work on the measure. Its report analysing the difficulties that arise is publicly available.

As set out by the Law Commission, a number of highly complex questions need to be resolved, including when and to whom the right should apply; whether to include former landlords in possession of a leaseback; the terms of participation; the premium payable; the cost of the claim; and any remedies available if damages are appropriate. Bluntly, they go to the core of an individual's rights, so the whole framework for the regime needs to be in place in order to ensure certainty on who has those rights and how they can best be exercised in practice. As a result, while I understand and appreciate the sentiment behind the new clause, it is a broad power to set out a regime that is extremely complicated, and the Government are unable to accept it at this time, while accepting the principle and hoping that in the future we can make progress on it.

Barry Gardiner: I am grateful to the Minister for recognising the need to do something in this area and accepting that there is a problem here that it would be best to resolve. I simply point out that leasehold reform Bills tend to come infrequently before Parliament, and I urge him to come back at a later stage with his best endeavours to resolve the problem. On that basis, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 50

CONTROL OF BOARDS OF ESTATE MANAGERS

"(1) Within six months of the passage of this Act, the Secretary of State must by regulations provide for—

(a) every estate manager (see section 39(3)) to be constituted such that a controlling majority on its board is held by an owner or lessor of a managed dwelling (see section 39(5));

(b) the requirement stipulated in paragraph (a) to be in place within two years of the sale or lease of the first managed dwelling.

(2) Regulations under subsection (1) may amend primary legislation."—*(Richard Fuller.)*

This new clause would provide for the Secretary of State by regulations to oblige every estate management company to have a majority of residents on its board within two years of the sale or let of the first house or flat on the managed estate.

Brought up, and read the First time.

Richard Fuller: I beg to move, That the clause be read a Second time.

I am receiving some interesting guidance from the Government Whip that I should seek to speak at length on the new clause, which is contrary to all his earlier exhortations, which were rather of the flavour that I should shut up entirely. I am not getting any further guidance from the Whip, so I will go at my own pace.

New clause 50 is a suggestion to the Minister. We have discussed the general hope that people subject to estate management charges should have much greater control over their estate management companies. They potentially should have the right to self-manage and it should be much easier for them to change from one estate manager to another. At the moment it can take a considerable time for estate management companies essentially to be set up and/or for them to go through what is essentially a transfer to resident control. I think all members of the Committee know this, but I will just inform them that we have had a number of representations from people who have talked about how long they have had to wait, including someone who said that a family had to wait up to 13 years for the right to manage their own estate management company and endured poor service over that entire period.

As the Minister thinks about his options to bring forward on Report or in further deliberations improvements to the rights of people, the new clause suggests that, by law, within two years of the sale or lease of the first building a majority of the directors of the estate management companies should be residents of their community.

Lee Rowley: This is an interesting new clause that bears a few moments' consideration, and I am grateful to my hon. Friend for tabling it. Obviously, the first challenge is the matter of Henry VIII powers. I will put that aside for the moment, but we have genuine concerns about whether the new clause would get past the Delegated Powers and Regulatory Reform Committee on the basis of whether it is proportionate.

5.45 pm

As with a number of other very well-intentioned amendments, we come back to the question of unintended consequences. For example—without being overly difficult—if homeowners are reluctant or unavailable to become directors, problems could potentially arise with respect to compliance with company law requirements. For instance, if a company does not meet the requirement cited in the Companies Act 2006 for the minimum number of directors, it could face a sanction. An estate management company might be unable to function because of the reluctance of homeowners to be represented on the board. I accept my hon. Friend's point and recognise the challenge that he puts forward—of course, we want as many householders and homeowners to participate in these companies as possible—but this is a narrow new clause that we cannot accept, although I am happy to continue the broader conversation with him.

It is also the case that the Competition and Markets Authority study of housebuilding, which will include the private management of public amenities on housing estates, is due to report by 27 February. I do not know what is in the report, but it may be that we return to this matter in later stages once we know the CMA's thoughts about estate management. I hope that I have convinced my hon. Friend to withdraw the new clause.

Richard Fuller: That was a very helpful and thoughtful response from the Minister, so I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 51

ABILITY TO CHANGE ESTATE MANAGEMENT COMPANY

"(1) Within three months of the passing of this Act, the Secretary of State must consider and report to Parliament on the situation of homeowners who have been told that they cannot change their estate management company because they are named on a TP1.

(2) The report required by subsection (1) must include proposals for legislative change to enable such homeowners to change their estate management company where appropriate."—*(Richard Fuller.)*

Brought up, and read the First time.

Richard Fuller: I beg to move, That the clause be read a Second time.

Again, this new clause originates from some of the inbound traffic that we have received as we have considered the Bill. I seek clarification from the Minister about the extent of these changes. The Committee was advised by a number of citizens about the status of estate management companies that are written into the deeds or other legal documents that are signed upon purchase. One such citizen wrote:

"Our management company…is named in the TP1, so we have no rights to do this"—

that is, to essentially appoint their own managers.

This is a probing new clause: I just want the Minister to be clear about the impact of the Bill on individuals such as the person whom I just quoted. As a consequence of the Bill's provisions, will they be able to change their estate management company, or is there some legal trick about the original documents that were signed on purchase that would mean they are not brought into the ambit of those new rights?

Lee Rowley: As my hon. Friend outlined, the new clause would introduce a requirement for the Government to assess the situation of homeowners with estate management companies explicitly named on their deeds within a three-month timeframe.

I am sympathetic to the concerns that my hon. Friend raised. I know that he recognises that this is a complex area and that there are detailed issues to be worked through. As well as being clear about the nature of the problem, there could be issues about defining the scope of estate management functions and what criteria need to be met. The Law Commission carried out a review of the right to manage for flats, but that is not always directly transferable to freehold estates. It will take some time to carry out a review, and we need to engage with people across the sector. Then, the CMA report is coming. None the less, I recognise my hon. Friend's concerns that the comprehensive measures in the Bill do not go far enough, and I acknowledge his desire for the Government to go further. I am listening carefully to his concerns on this matter. On that basis, I hope that he might withdraw his new clause.

Richard Fuller: It is not actually clear that the Minister was addressing new clause 51 as I was expecting; that may be the fault of my hearing. I was seeking clarification about the TP1—transfer of part of registered title—form, which is used by developers when selling a house to explicitly name an estate management company that will be in situ. That may be the norm; I do not know. However, can the Minister clarify, if the way that it is originally set up is not the norm and it is a legal device, whether it has greater legal standing, and whether the rights of people for whom the estate management company is defined in form TP1 will be included in the rights that we are trying to establish with the rest of the Bill? If we introduce changes that increase the right to manage and so on, will they be covered? I may well have missed it, because the Minister is much more knowledgeable about the Bill than I am, even after all our deliberations. However, just to the specific point about the legal forms, will he consider bringing that in as part of this?

Lee Rowley: I want to double-check the valid points made by my hon. Friend. I will commit to writing to him on that specific point to make sure that we are covering in the way that he expects.

Richard Fuller: That is very kind of the Minister. With that assurance, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Schedule 1

REDRESS SCHEMES: FINANCIAL PENALTIES

"*Notice of intent*

(1) Before imposing a financial penalty on a person under section (Financial penalties), an enforcement authority must give the person notice of its proposal to do so (a 'notice of intent').

(2) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the conduct to which the financial penalty relates.

(3) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(4) The notice of intent must set out—

(a) the date on which the notice of intent is given,

(b) the amount of the proposed financial penalty,

(c) the reasons for proposing to impose the penalty, and

(d) information about the right to make representations under paragraph 2.

Right to make representations

2 (1) A person who is given a notice of intent may make written representations to the enforcement authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after the day on which the notice of intent was given to the person ('the period for representations').

Final notice

3 (1) After the end of the period for representations the enforcement authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the enforcement authority decides to impose a financial penalty on the person, it must give a notice to the person (a 'final notice') imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after the day on which the notice was given.

(4) The final notice must set out—

(a) the date on which the final notice is given,

(b) the amount of the financial penalty,

(c) the reasons for imposing the penalty,

(d) information about how to pay the penalty,

(e) the period for payment of the penalty,

(f) information about rights of appeal, and

(g) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4 (1) An enforcement authority that gives a notice of intent or final notice may at any time—

(a) withdraw the notice of intent or final notice, or

(b) reduce an amount specified in the notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

5 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after the day on which the final notice is given to the person.

(3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.

(4) An appeal under this paragraph—

(a) is to be a re-hearing of the enforcement authority's decision, but

(b) may be determined having regard to matters of which the enforcement authority was unaware.

(5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.

(6) The final notice may not be varied under sub-paragraph (5) so as to impose a financial penalty of more than the enforcement authority could have imposed.

Recovery of financial penalty

6 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The enforcement authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

Proceeds of financial penalties

(1) Where an enforcement authority imposes a financial penalty under section (Financial penalties), it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its functions under this Part of this Act.

(2) Any proceeds of a financial penalty imposed under section (Financial penalties) by an enforcement authority other than the Secretary of State which are not applied in accordance with sub-paragraph (1) must be paid to the Secretary of State."—*(Lee Rowley.)*

This new Schedule, to be inserted after Schedule 8, would make further provision about the imposition of financial penalties under NC19.

Brought up, read the First and Second time, and added to the Bill.

Title

Lee Rowley: I beg to move amendment 28, in title, line 5, leave out "charges and costs payable by residential" and insert

"the relationship between residential landlords and".

This amendment is consequential on amendments to Part 3.

This is a consequential amendment to remove the reference to part 3 in the long title of the Bill. It ensures that it provides an accurate description of the Bill's contents to reflect the impact of the measures the Committee has brought forward. That includes the amendments to enable the first-tier tribunal to vary or discharge an order to appoint a manager of a premises without an application.

Amendment 28 agreed to.

Matthew Pennycook: On a point of order, Sir Edward, may I take the opportunity to put on record our sincere thanks to you and your colleagues in the Chair for overseeing our proceedings over recent weeks; our hard-working Clerks for their assistance; the Doorkeepers and Hansard reporters for facilitating the Committee's work; and officials in the Department and our own staff for their support? I also briefly thank all hon. Members who have contributed to the Committee's deliberations and debates. It is not entirely unexpected, given the uncontentious nature of the Bill; nevertheless, we very much appreciate the generally constructive and good-humoured nature of our proceedings.

Finally, I thank the Minister for his thoughtful engagement with the arguments the Opposition have made in an attempt to improve this limited Bill. He has dutifully held the line in attempting to justify the decision to resist a large number of sensible and reasonable amendments. Nevertheless, I suspect we can look forward to seeing a number of them return with the Government's seal of approval in the Bill's remaining stages.

Lee Rowley: Further to that point of order, Sir Edward, I wish to put on record my thanks. I echo the thanks of the hon. Member for Greenwich and Woolwich to everybody who has been involved in the Bill, and I thank him and all colleagues here who have helped us get through this. I am grateful for colleagues' time and also—even though I may not be in order in making this acknowledgment—I thank those in the Gallery who have taken the time to come here and listen. I am grateful to everyone for getting the Bill through this stage and I look forward to seeing everyone on Report.

The Chair: I thank both of you for those gracious words. The Opposition spokesperson warned me at the beginning that the Bill was as dry as dust. It is certainly very complicated and you have all done extremely well in a very complex part of the law. We should all be proud of ourselves. Order.

Bill, as amended, to be reported.

5.54 pm

Committee rose.

Written evidence reported to the House

LFRB62 Pensions and Lifetime Savings Association (PLSA)

LFRB63 Joe Ogden

LFRB64 Jonathan Hewitt

LFRB66 National Leasehold Campaign

LFRB67 Henley Holdings Limited

LFRB68 Propertymark