

Research Briefing

22 September 2023

By Wendy Wilson

Leasehold and commonhold reform



Summary

- 1 The nature of leasehold ownership
- 2 The extent of leasehold ownership
- 3 Issues with leasehold ownership and proposals for reform
- 4 Leasehold reform in Wales
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Appendix: Methodology of DLUHC statistics

Contributing Authors

Cassie Barton – Section 2, statistics

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Summary

How many leasehold homes are there?

The Department for Levelling Up, Housing and Communities (DLUHC) estimates there are around 4.98 million leasehold homes in England, of which 70% are flats and 30% are houses. Most flats in the private sector are leasehold (an estimated 94% of owner-occupied flats and 71% of privately rented flats). Around 8% of houses in England are leasehold.

Land Registry data tells us more about leasehold sales in England and Wales. 24% of residential property transactions in 2022 were leasehold – around 207,000 transactions in total. Almost all flats are sold on a leasehold basis compared to 7% of houses.

The proportion of new-build houses sold as leasehold rose from 7% in 1995 to a peak of 15% in 2016. The proportion has subsequently fallen and was less than 1% in December 2022.

Leaseholders are owner-occupiers who are in a landlord and tenant relationship

Owners of long leasehold properties don't necessarily appreciate that although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, supplemented by statutory provisions. Essentially, long leaseholders buy the right to live in the property for a given period.

Problems associated with leasehold ownership

Leaseholders report a whole range of problems, including high service charges and a lack of transparency over charges; freeholders who block attempts to exercise the Right to Manage; excessive administration charges and charges for applications to extend lease agreements or enfranchise; and a lack of knowledge over their rights and obligations.

The trend of developers selling houses on a leasehold basis was accompanied by lease agreements setting ground rents at a relatively high level with

provision for regular reviews, resulting in the accrual of significant ground rent liabilities for long leaseholders.

Despite a good deal of legislative activity in this area over the last 50 years, much of which was aimed at strengthening long leaseholders' rights, they remain reluctant to seek dispute resolution through the tribunal system. An unfair balance of power, and potential to become liable for the freeholder's costs, are cited as barriers.

A Government commitment to tackle leasehold abuses

The Housing White Paper, [Fixing our broken housing market](#) (February 2017) included a commitment to "improve consumer choice and fairness in leasehold". The consultation paper, [Tackling unfair practices in the leasehold market](#), marked the first step in fulfilling this commitment. The consultation process attracted 6,000 responses.

A [summary of responses received and the Government response](#) was published in December 2017. In the Ministerial Foreword, then-Secretary of State, Sajid Javid, committed the Government to act on leasehold abuses. Specifically, the 2017 Government said it would:

- legislate to prohibit the creation of new residential long leases on houses, whether newly built or on existing freehold houses, other than in exceptional circumstances;
- restrict ground rents in newly established leases of houses and flats to a peppercorn value;
- Address loopholes to improve transparency and fairness for leaseholders and freeholders; and
- Work with the Law Commission to support existing leaseholders. This will include making buying a freehold or extending a lease "easier, faster, fairer and cheaper."

Then-Minister for Housing, Ester McVey, confirmed the Johnson Government's intention to take forward these measures in a [written statement](#) on 31 October 2019.

The Law Commission's 13th Programme of Law Reform

Following various calls for evidence and consultation exercises the Law Commission published three final reports on leasehold reform in 2020:

- [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (PDF, January 2020). There is also a [summary report](#) (PDF).
- [Leasehold home ownership: buying your freehold or extending your lease](#) (July 2020). There is also a [summary report](#) (PDF).
- [Leasehold home ownership: exercising the right to manage](#) (July 2020) There is also a [summary report](#) (PDF).

A further report summarised the Commission’s residential leasehold and commonhold reports and set out how they fit with other reforms the Government has announced: [The future of home ownership](#) (PDF).

The Commission was also tasked with considering how to “reinvigorate commonhold to provide greater choice for the consumer.” The Commonhold and Leasehold Reform Act 2002 introduced commonhold tenure but it has failed to take-off in England and Wales. This form of ownership already operates around the world, for example, the Australian Strata Title system and the condominium system in America.

The Law Commission published [Reinvigorating commonhold: the alternative to leasehold ownership](#) (PDF, July 2020) together with a [summary report](#) (PDF) and [an open letter to lenders on taking commonhold as security](#) (PDF).

A two-part legislative process

On 7 January 2021 [the Government announced](#) legislation would be introduced to set future ground rents to zero. [The Leasehold Reform \(Ground Rent\) Act 2022](#) came into force on 30 June 2022 and applies to new lease agreements created on or after that date.

On 11 January 2021 the Secretary of State provided additional information on planned reforms in a [written ministerial statement](#). In summary, future legislation will:

- Reform the process of enfranchisement valuation used to calculate the cost of extending a lease or buying the freehold.
- Abolish marriage value.
- Cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. An online calculator will simplify and standardise the process of enfranchisement.
- Keep existing discounts for improvements made by leaseholders and security of tenure.

- Retain the separate valuation methodology for low-value properties known as “section 9(1)”.
- Give leaseholders of flats and houses the same right to extend their lease agreements “as often as they wish, at zero ground rent, for a term of 990 years”.
- Allow for redevelopment breaks during the last 12 months of the original lease, or the last five years of each period of 90 years of the extension to continue, “subject to existing safeguards and compensation”.
- Enable leaseholders, where they already have a long lease, to buy out the ground rent without having to extend the lease term.

There is a commitment to respond to the Law Commission’s remaining recommendations “in due course.”

On 23 May 2023, during a debate on leasehold reform, the Housing Minister, Rachel Maclean said:

As hon. Members will know, it is a long-standing tradition of this House that Ministers cannot comment on precise timescales and details of forthcoming legislation, but I can reassure the House today that officials in my Department are working flat out to bring forward further leasehold reform.

Other relevant work

Mis-selling of leasehold properties – the Competition and Markets Authority carried out an [investigation of mis-selling and onerous leasehold terms](#).

The letting and managing agent market – the 2017 Government committed to regulating managing agents and to the introduction of an enforceable Code of Practice setting minimum standards. A Working Group led by Lord Best was established to develop the regulatory regime. The Group’s [report](#) (PDF) was published in July 2019.

Buying a leasehold property - the 2017 Government said it would set timescales for agents and freeholders to respond to leasehold queries and introduce maximum fees. There was an intention to introduce standard mandatory forms for leasehold information.

Complaint resolution - the 2017 Government said it would create a Redress Reform Working Group to work with industry and consumers to develop a new Housing Complaints Resolution Service. The new service would “help renters in private and social housing, leaseholders, and buyers of new homes.” The Government’s intention was to require freeholders of leasehold properties to be members of a redress scheme.

Leasehold reform in Wales

Existing leasehold legislation currently applies in both Wales and England. The Law Commission's [consultation paper](#) (PDF, September 2018) said "The extent to which leasehold enfranchisement is devolved to the Welsh Assembly is unclear." The Law Commission's work covered both England and Wales with the aim of producing "where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales."

On 1 May 2018, then-Welsh Housing and Regeneration Minister, Rebecca Evans said the Welsh Government had formally joined the Law Commission's leasehold reform project. A multi-disciplinary task and finish group on leasehold reform was also established. The group issued a report, [Residential Leasehold Reform](#), in July 2019.

[On 14 October 2020 Julie James AM](#), Minister for Housing and Local Government, told the Senedd:

...we are working very hard with the leasehold reform provisions that the Law Commission has looked at. They recently reported, and we're looking to see what can be done in conjunction with some UK legislation, if at all possible, just due to the lack of time we've now got in Senedd provisions to be able to do this.

On 17 March 2021, Julie James published a [written statement](#) on the [Welsh Government's research into the sale and use of leasehold in Wales](#), and the experience of those who live in leasehold properties. The statement referred to the Welsh Government's full support for the Law Commission's recommendations but went on:

...it acknowledges that these reforms will require significant primary legislation. This will need full support from the future Senedd following the elections to be held in May 2021.

The Leasehold Reform (Ground Rent) Act 2022 has effect in Wales.

1 The nature of leasehold ownership

In England and Wales, most owner-occupied flats are owned on a long leasehold basis with a lease of at least 21 years when first granted. Houses can be owned on a long lease but it's not as common as it used to be. There were indications of an increase before the 2017 Government announced plans to legislate to restrict its use in all but exceptional cases. All shared ownership properties (part own/part rent) are sold on a long lease.

Owners of long leasehold properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, which is supplemented by statutory provisions. The freeholder (landlord) retains ownership of the land on which the property is built.

Essentially, long leaseholders buy the right to live in their property for a given period. In the case of flat-owners, management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. In turn, the freeholder may employ a managing agent to carry out the day-to-day management of the block. The lease agreement usually makes provision for the costs of the freeholder, or his/her agent, in discharging these management functions to be met in full by the leaseholders; these payments are referred to as service charges. Service charges may be fixed or variable.¹

When a lease expires the landlord and tenant relationship continues. Unless either the tenant or the landlord takes specific steps to end the tenancy, it continues under the same terms. It is open to the tenant to surrender the tenancy. There are a limited number of grounds on which a landlord (freeholder) can regain possession; a tenant can only be made to leave by a court order. A landlord can also end the tenancy by replacing it with an assured periodic tenancy. At this point the tenant no longer has any rights of ownership and is subject to the terms of the new assured periodic tenancy.²

Most long leaseholders of houses and flats have the statutory right to buy the freehold interest of their homes (on a collective basis in the case of flat-owners) or extend their lease agreements.³ Exercising these rights means the risk of the lease expiring is substantially delayed or removed.

¹ The Leasehold Advisory Service (LEASE) has a helpful guide to leaseholder ownership: [Living in Leasehold Flats - A guide to how it works](#)

² For more information on what happens when a long lease expires see: [Security of tenure when the lease runs out](#), LEASE

³ Also referred to as enfranchisement.

Section 3 of this paper describes ongoing dissatisfaction with various aspects of leasehold tenure. The National Leasehold Survey 2016, conducted by the Leasehold Advisory Service (LEASE) with Brady Solicitors, attracted 1,244 responses from leaseholders. The main survey findings included:

- 57% of leaseholders who responded said that they regret buying a leasehold property.
- Two-thirds of leaseholders don't feel they get a good service from their managing agent.
- Just 6% are very confident the managing agent could resolve issues.
- 68% of leaseholders have little or no confidence that their managing agent could resolve issues efficiently and effectively.
- 51% of leaseholders see a change in managing agent would improve matters and benefit the block.
- 1 in 5 leaseholders are unaware they could replace a poorly performing managing agent.
- 55% of leaseholders consider changing managing agents would be a difficult process.
- 48% of leaseholders believe a lack of knowledge is a real barrier to changing managing agents.
- 40% of leaseholders strongly disagree that service charge is value for money.
- 62% of leaseholders say the service hasn't improved in the last two years.
- Resident management company (RMC) directors are generally happier with their leasehold properties than 'ordinary' leaseholders due to a greater sense of control over the property's management.
- Two-thirds of RMC directors feel they have a good relationship with fellow directors and leaseholders, but identify a need for a strong, wide skill set beyond legal and company expertise.
- 55% of leaseholders know where to go for information, but 32% definitely do not.
- 52% of leaseholders are confident they know their rights and responsibilities.⁴

The survey was conducted online and was open to all leaseholders in England and Wales. Respondents who completed the survey are not necessarily representative of all leaseholders, so these results are only broadly indicative of the types of issues that leaseholders face.

⁴ [National Leasehold Survey 2016 – report - The Leasehold Advisory Service](#) 2016

Commenting on the findings, the MD of Brady Solicitors, Clare Brady, said the survey demonstrated the challenges of communal living:

This is compounded where leaseholders – by their own admission – lack a clear understanding of their rights and obligations. This lack of leasehold knowledge, including understanding how to replace a poorly performing management company, underpins many of the reported problems. It also represents a vast opportunity for the UK’s leasehold sector, including its policy-makers, to bring about future change.⁵

NAEA Propertymark published a report based on responses from over 1,100 leaseholders who had bought within the last 10 years in September 2018. [Leasehold: A Life Sentence](#) recorded 94% of owners as regretting buying a leasehold property and 93% who would not buy another leasehold home.⁶

Propertymark updated this work in 2023 with a survey of members to investigate if anything had changed. Consumer awareness of leasehold issues had improved but members reported leasehold property as “harder to sell.”⁷ Members reported ongoing concerns around short leases, the high cost of renewal, difficulties obtaining information from management companies, and the need for more clarity on processes and rights for freehold acquisition.⁸

1.1

Leasehold in the devolved administrations

The legislation governing leasehold ownership currently applies in England and Wales but there are some differences in content and format requirements.⁹ The Law Commission’s consultation paper (September 2018) explained the position:

The extent to which leasehold enfranchisement is devolved to the Welsh Assembly is unclear. Aspects of enfranchisement have, in the past, been treated as a devolved issue. “Housing” was expressly devolved to Wales in the Government of Wales Act 2006. Following the Wales Act 2017, rather than expressly devolving competence in certain areas, competence is devolved unless expressly reserved. The Welsh Assembly cannot modify “the private law”, which includes the law of property. But that does not apply if the modification “has a purpose (other than modification of the private law) which does not relate to a reserved matter”.

Under our Protocol with the Welsh Ministers, the Commission will only undertake a project concerning a matter that is devolved to Wales if it has the support of the Welsh Ministers. To the extent that any of the matters in our

⁵ [National Leasehold Survey 2016 – report - The Leasehold Advisory Service](#) 2016

⁶ NAEA Propertymark, [Leasehold: A Life Sentence](#), September 2018, p6

⁷ Propertymark, [Leasehold-2023-has-anything-changed.pdf](#), July 2023

⁸ As above.

⁹ See Leasehold Advisory Service: [Wales- differences in notices and other documents](#) [accessed on 22 August 2022]

Terms of Reference are devolved to Wales, the Welsh Ministers have indicated their support for the Commission undertaking this project.

Our project, therefore, is intended to cover both England and Wales, and to result, where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales. Nevertheless, after outlining the new scheme that we provisionally propose in this Consultation Paper in Chapter 3, we ask consultees whether any specific considerations call for particular issues to be treated differently in England and in Wales.¹⁰

Information on the approach to reform in Wales can be found in section 4 of this paper.

There are very few leasehold properties in Scotland. The Property Factors (Scotland) Act 2011 created a statutory framework to protect homeowners who use factoring services (property managers) by providing minimum standards for their operation.

In Northern Ireland, the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 confers a general right on long leaseholders of houses to acquire the freehold or extend the lease. The Ground Rents Act (NI) 2001 allows homeowners of long leases of residential property in Northern Ireland to buy out (redeem) their ground rent.

The effect of this is that the resident owns the freehold and is no longer obligated to pay a ground rent. However, there are several exceptions, including flat-owners. Ownership of leasehold apartments in Northern Ireland is a relatively recent development. The Northern Ireland Law Commission considered a review of the [Law Relating to Apartments](#) in 2013.

¹⁰ Law Commission, [Leasehold home ownership: buying your freehold or extending your lease](#) (PDF), Consultation 238, 20 September 2018, paras 1.66-1.68

2 The extent of leasehold ownership

The Department for Levelling Up, Housing and Communities (DLUHC) has made estimates of the number of leasehold homes in England based on survey data (section 2.1). The Land Registry publishes data on sales of leasehold properties (section 2.2).

2.1 Estimating the stock of leasehold properties

DLUHC has estimated the number of leasehold homes in England by combining data from the English Housing Survey (EHS) with Land Registry records. [The latest estimates are for 2021/22.](#)¹¹

What types of homes are leasehold?

DLUHC estimates that there were 4.98 million leasehold residential dwellings in England in 2021/22, representing 20% of English housing stock.

The table below shows the number of leasehold homes in different types of housing. Around 3.5 million leasehold homes are flats (70% of the total), while 1.5 million (30%) are houses.

Number of leasehold homes, by type and tenure England, 2021/22			
Tenure of resident	Houses	Flats	Total
Private sector total	1,390,000	3,317,000	4,707,000
Owner occupied	1,128,000	1,732,000	2,861,000
Private rented	262,000	1,585,000	1,846,000
Social sector total	101,000	170,000	272,000
Local authority	10,000	38,000	48,000
Housing association	91,000	133,000	224,000
All tenures	1,491,000	3,487,000	4,978,000

Source: DLUHC, [Leasehold dwellings, 2021 to 2022](#), Table 1, 11 May 2023

Note: Figures are rounded to the nearest thousand, because these are survey estimates and subject to some uncertainty. Totals may not sum due to rounding.

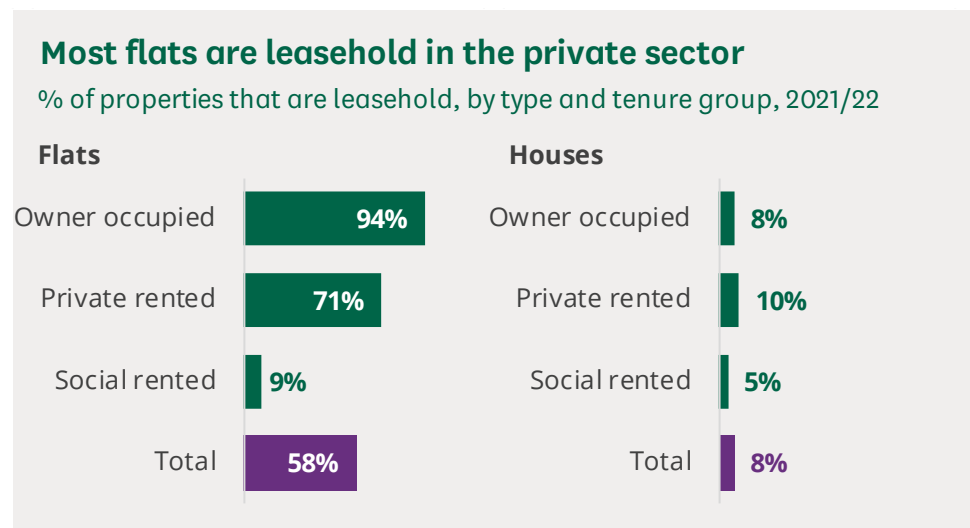
¹¹ DLUHC, [Leasehold dwellings, 2021 to 2022](#), 11 May 2023

An estimated 4.7 million leasehold homes are owned by leaseholders in the private sector (95% of the total). Around 2.9 million are owner-occupied and 1.8 million are privately rented.

A minority of leasehold homes are in the social sector – ie the leaseholder is a social landlord letting the property out to tenants. There are around 272,000 leasehold homes in the social sector, or 5% of the total. Most of these social-sector homes are owned by housing associations (224,000) rather than local authorities.

The charts below summarise how common leasehold is amongst flats and houses, and in different tenure groups. Most flats in the private sector are owned on a leasehold basis. An estimated 94% of owner-occupied flats in England are leasehold, as are 71% of privately owned flats.

Social-rented flats are not typically leasehold (9% are). Most houses are not owned leasehold – around 8% are across England.



Source: DLUHC, [Leasehold dwellings, 2021 to 2022](#), Table 1, 11 May 2023

Overall, leasehold is more common in the private rented sector than any other tenure group. 38% of privately rented homes are estimated to be leasehold, compared with 18% of owner-occupied homes and 7% of homes in the social sector.¹² This is partly because private rented homes are more likely to be flats than owner-occupied homes, and flats are more likely to be leasehold.

Regional variation

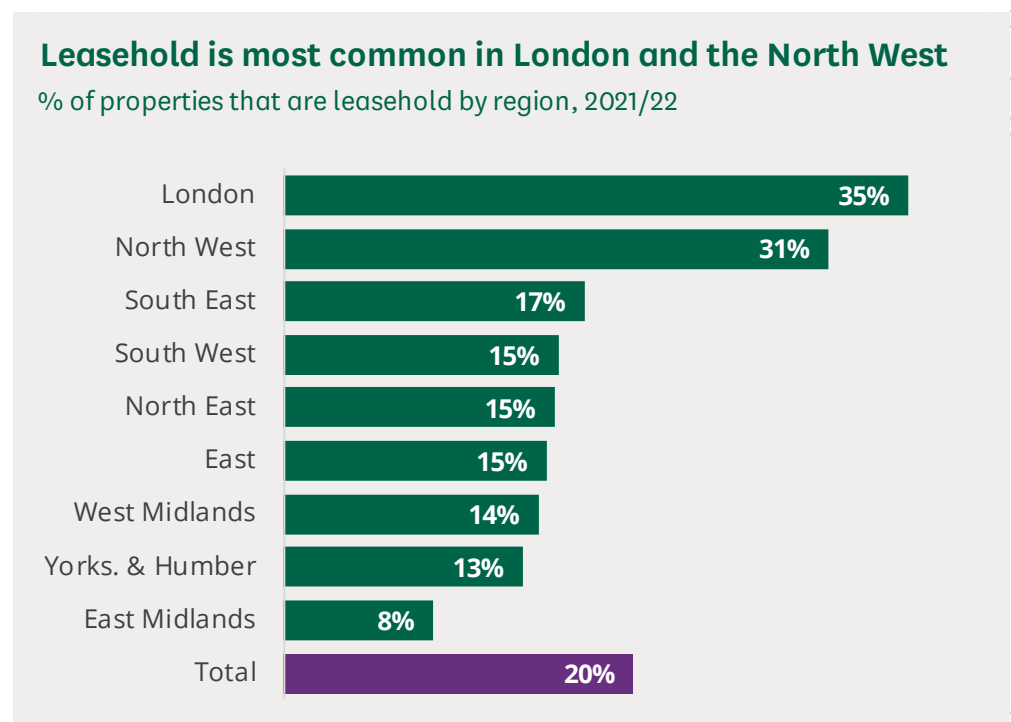
DLUHC also publishes estimates of leasehold housing by region. The chart overleaf shows the estimated prevalence of leasehold homes in each region in 2021/22.

¹² DLUHC, [Leasehold dwellings, 2021 to 2022](#), Table 1, 11 May 2023

Leasehold homes are more common in London (35% of homes) and the North West (31%) than in other regions.

In London, this is because a higher proportion of homes are flats (and flats are in general likely to be leasehold). Flats and houses are no more likely to be leasehold in London than anywhere else in England, but the high number of flats in London means that there are more leasehold homes overall.

In the North West, the total is driven by an unusually high proportion of leasehold houses. Around 28% of houses in the North West are leasehold, compared with 8% across England.¹³



Source: DLUHC, [Leasehold dwellings, 2021 to 2022](#), Table 2, 11 May 2023

Section 2.2 of this briefing discusses geographic trends in leasehold in more detail.

The methodology behind DLUHC's estimates has changed over time. The government's first set of estimates were published in April 2017 (relating to stock in 2014/15), and releases covering financial years up to 2018/19 were classed as 'Experimental statistics' while the methodology was being developed.¹⁴ Appendix 1 of this paper explains in more detail how the methodology and estimates have changed.

¹³ DLUHC, [Leasehold dwellings, 2021 to 2022](#), Table 2, 11 May 2023

¹⁴ DLUHC, [Collection: Leasehold dwellings](#), 11 May 2023

2.2

Trends in leasehold sales

While headline estimates are available for the stock of leasehold properties, more detailed trends are only available from data on leasehold sales. The Land Registry's Price Paid Data (PPD) file records all properties sold in England and Wales and includes details on the type of property, its location, and whether it was sold leasehold or freehold.

Looking at leasehold sales is not the same thing as looking at the stock of leasehold homes. A property only appears in the PPD if it has been sold, and a property sold multiple times will appear as multiple records in the PPD for a given year.

The following analysis uses the PPD file for 1995-2022.¹⁵ For more details on the content of the PPD and how it has been used here, see 'What is the Price Paid Data?' below.

All of the statistics in this section are available to download from the [landing page of this briefing paper](#).

What type of properties are sold as leasehold?

24% of residential property transactions were leasehold in England and Wales in 2021 – around 207,000 transactions.

Almost all flats were leasehold. 98% of all flats were sold as leasehold, and this pattern held for both new-builds (almost 100%) and resale properties (98%).

By contrast, leasehold house sales were not generally very common, with 7% of all houses sold as leasehold. New-build houses were less likely to be sold leasehold (1%) than resale properties (7%).

Across all properties, 27% of new-builds were sold leasehold compared with 24% of resale properties.¹⁶

Geographic variation in leasehold sales

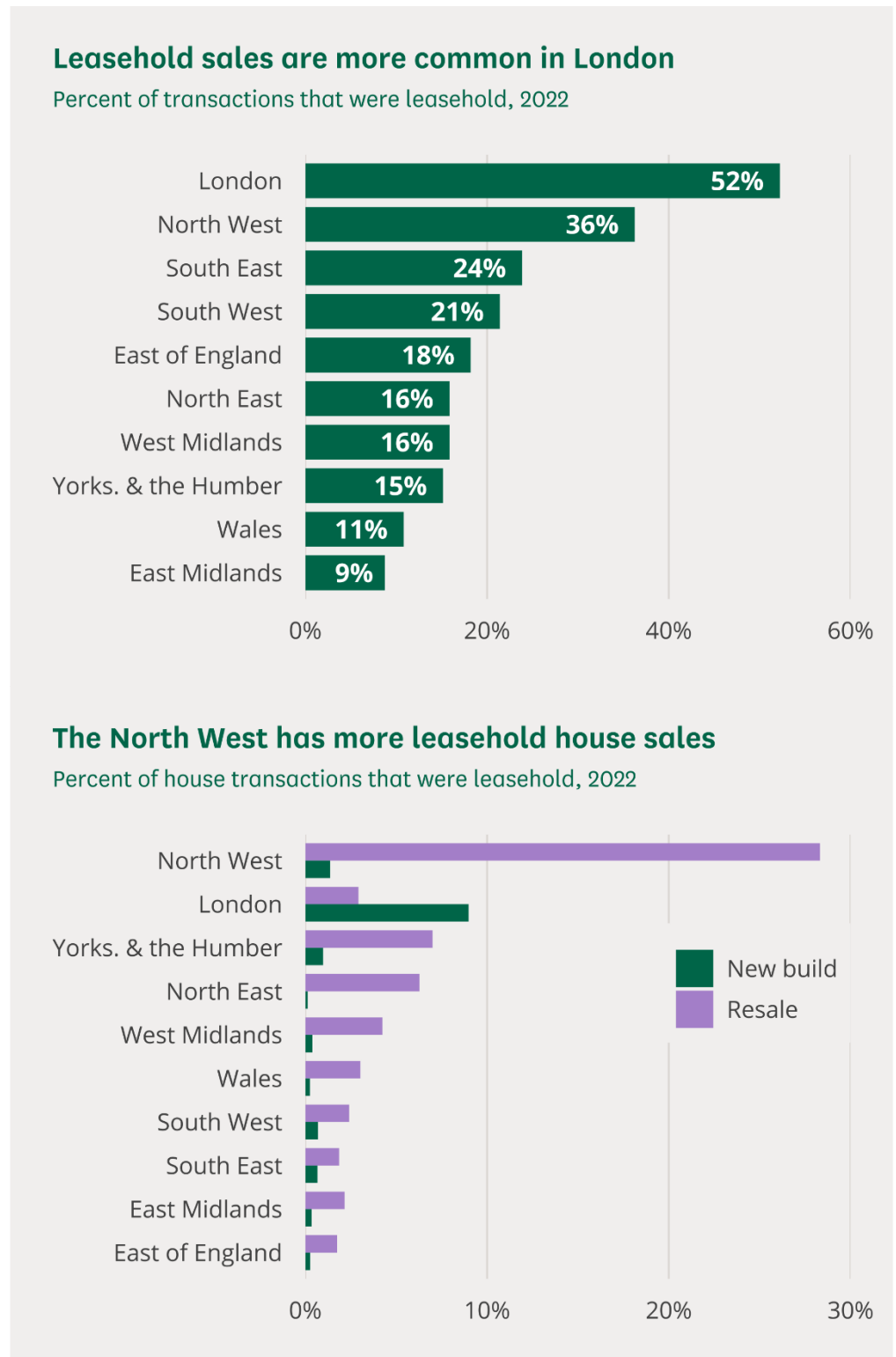
The charts overleaf show the regional variation in leasehold property sales. To some extent, these trends mirror the trends in the leasehold stock discussed in section 2.1.

In 2022, leasehold sales were most common in London (50% of transactions), followed by the North West (36%) and the South East (24%). In London, this is partly driven by the high volume of flat sales – 51% of London's transactions

¹⁵ HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 September 2023]. The PPD file is updated monthly as new sales transactions are registered.

¹⁶ HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 September 2023]

were on flats, compared with 19% across England and Wales. Flat sales are also relatively common in several other areas with high leasehold rates.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 September 2023]. Contains HM Land Registry data © Crown copyright and database right 2022. This data is licensed under the Open Government Licence v3.0.

In the North West this trend is mostly driven by high levels of leasehold house sales. Around 27% of house sales in the North West are leasehold, while across the rest of England and Wales proportions range from 2% to 6%.

As shown in the second chart overleaf, in the North West leasehold sales are more common amongst resale houses (28%) than they are amongst new builds (1%).

Most other areas show the same pattern, on a smaller scale – leasehold sales are less common for new-build houses than resale houses. In London, however, the opposite is true. 9% of new-build houses were sold leasehold compared with 3% of resale houses.

The maps and table over the next few pages show leasehold transactions by constituency. The first map shows the proportion of all transactions that were leasehold in 2022, while the second shows house transactions only.

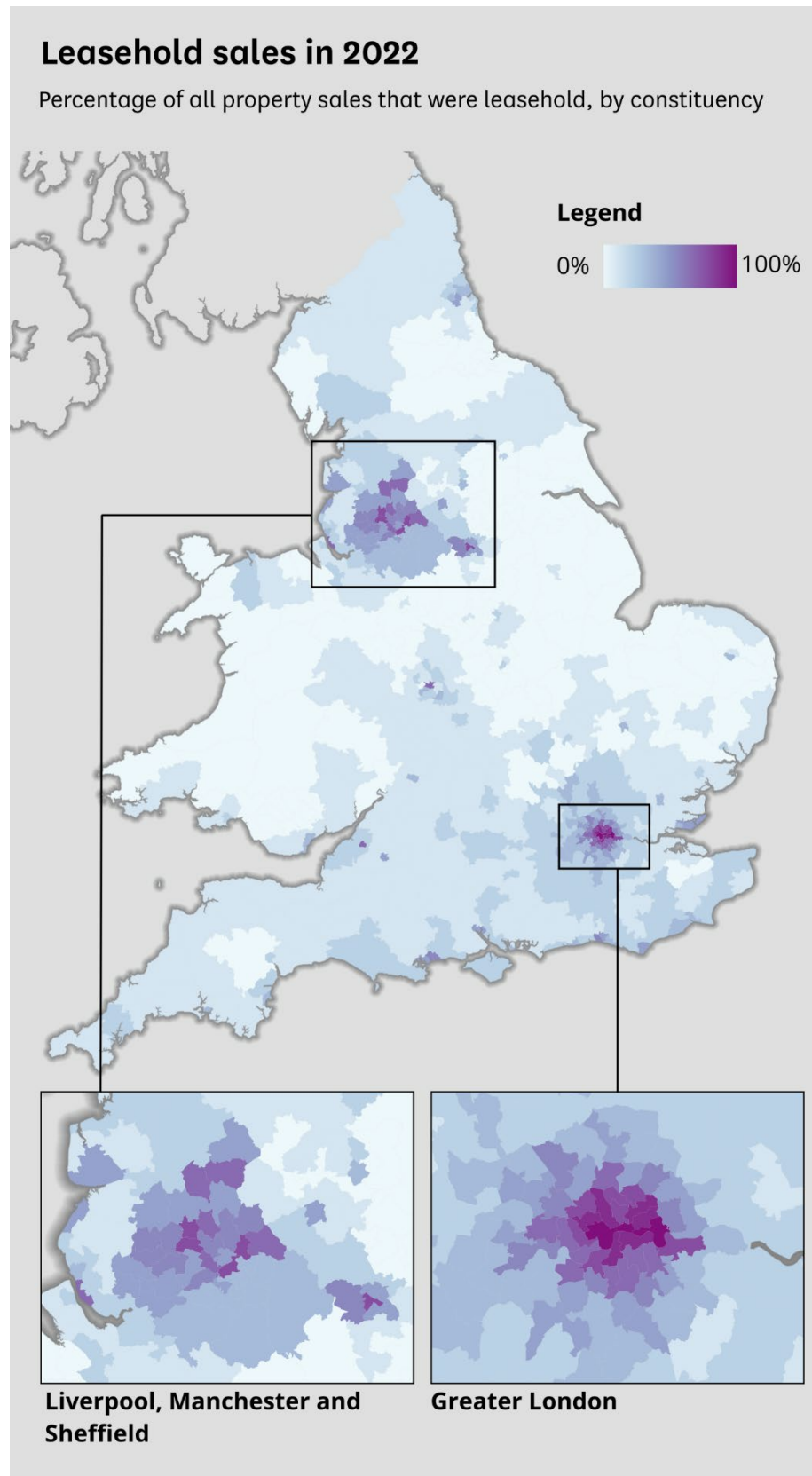
The number of new-build houses sold in a given year in each constituency is too low to make meaningful comparisons.

Constituency trends echo the regional data described above. Constituencies in central London had some of the highest rates in England and Wales, but this is only true when flats are included in the analysis. Leasehold house sales were most common in constituencies around Greater Manchester, Lancashire and Sheffield.

Full constituency-level data is available to download from the [landing page of this briefing paper](#).

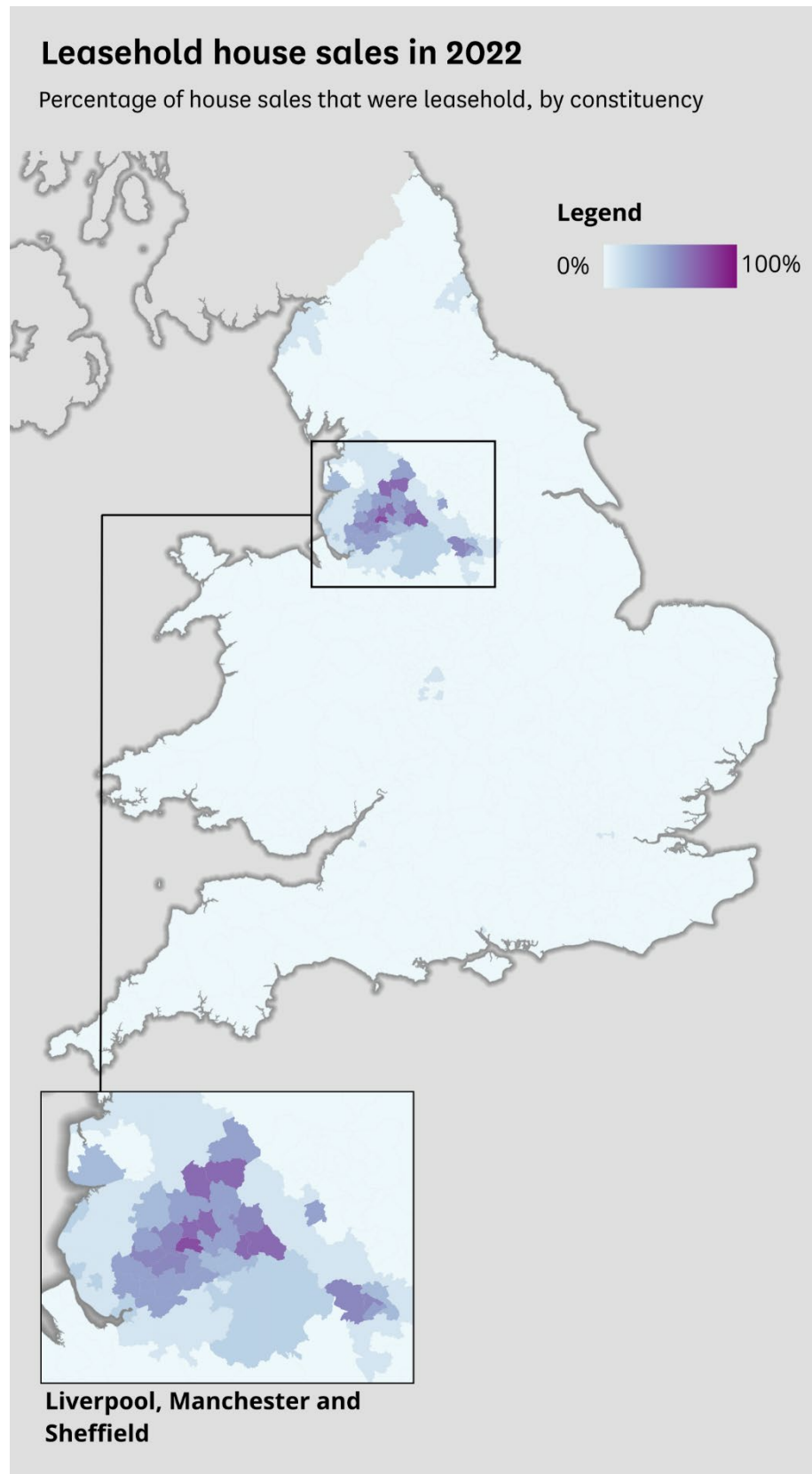
The Library has also examined geographic variation in leasehold house sales in an Insight article, [Leasehold houses: will reforms help in the North of England?](#), published in July 2019. The Insight includes a fine-grained geographical analysis of leasehold house sales: it finds that they are most common in specific areas including Salford and central Manchester, Blackburn, Huddersfield, and Sheffield.

While the sale of new-build houses as leasehold is more prevalent in certain parts of the country, the practice appears to have declined after Government policy announcements from 2017 onwards. This is discussed in the next section.



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Constituencies where leasehold is most common

Percent of transactions, 2022

All transactions

Constituency	Region	Percent
1 Poplar and Limehouse	London	95.9%
2 Cities of London and Westminster	London	90.3%
3 Bermondsey and Old Southwark	London	88.6%
4 Westminster North	London	85.8%
5 Bethnal Green and Bow	London	83.7%
6 Vauxhall	London	82.5%
7 Hackney South and Shoreditch	London	81.8%
8 Holborn and St Pancras	London	80.2%
9 Hackney North and Stoke Newington	London	78.0%
10 Islington South and Finsbury	London	77.7%
11 Manchester Central	North West	77.4%
12 Islington North	London	76.8%
13 Hampstead and Kilburn	London	75.8%
14 Kensington	London	75.8%
15 Bolton South East	North West	74.7%
16 Battersea	London	74.1%
17 Greenwich and Woolwich	London	72.6%
18 Bolton North East	North West	72.6%
19 Sheffield Central	Yorks. & the Humber	71.2%
20 Oldham West and Royton	North West	70.1%

Houses only

Constituency	Region	Percent
1 Bolton South East	North West	72.5%
2 Bolton North East	North West	69.8%
3 Oldham West and Royton	North West	69.0%
4 Burnley	North West	67.3%
5 Oldham East and Saddleworth	North West	66.7%
6 Bury North	North West	66.2%
7 Hyndburn	North West	62.7%
8 Bolton West	North West	55.9%
9 Rochdale	North West	55.0%
10 Makerfield	North West	54.2%
11 Leigh	North West	53.0%
12 Sheffield, Hallam	Yorks. & the Humber	51.7%
13 Sheffield Central	Yorks. & the Humber	51.6%
14 Wigan	North West	49.8%
15 Heywood and Middleton	North West	49.4%
16 Bury South	North West	48.7%
17 St Helens North	North West	45.8%
18 Huddersfield	Yorks. & the Humber	43.8%
19 Warrington North	North West	43.7%
20 Stretford and Urmston	North West	42.9%

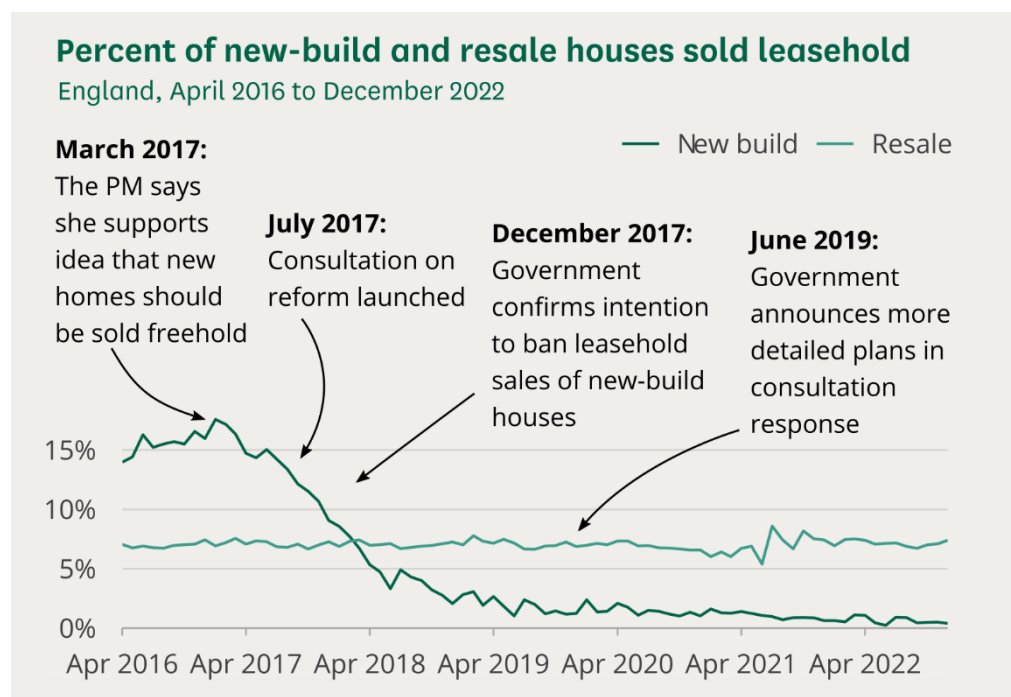
The decline in new-build leasehold sales

The chart below shows the proportion of new-build and resale houses sold as leasehold in England since April 2016.

The proportion of new-build homes sold as leasehold decreased substantially after 2017. Around 14-16% of new-build homes were sold as leasehold throughout 2016, but by late 2017 the proportion had started to decline.

The proportion of new-build homes sold as leasehold was around 14-16% throughout 2016 but started to decline in late 2017. The proportion was less than 1% in December 2022.

By contrast, the proportion of resale homes sold as leasehold has remained very similar throughout this period, at around 7% of all transactions.



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This trend is likely to be a response to the Government’s stated intention to ban new-build houses from being sold on a long lease. The proposals for reform are described in more detail in section 3.2 of this briefing.

Following a commitment in the Housing White Paper (February 2017) to “improve consumer choice and fairness in leasehold”, a consultation on leasehold reform was launched in July 2017 ([Tackling unfair practices in the leasehold market](#)). The Government responded to the consultation in December 2017 saying it would legislate “to prohibit new residential long leases from being granted on houses, whether new build or on existing

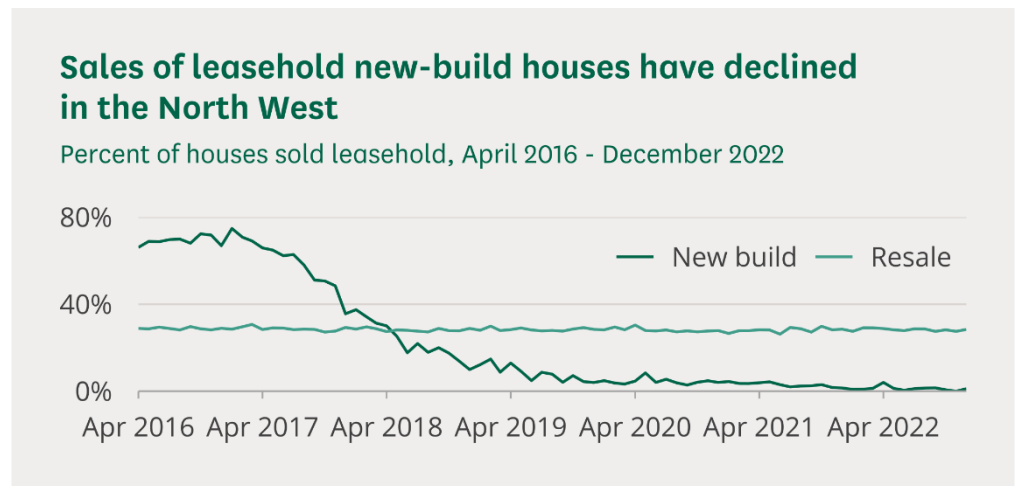
freehold houses”.¹⁷ By this time, the proportion of houses sold as leasehold had already declined to 9% and has continued to decrease since then. In June 2019, the Government announced more specific plans for how it would legislate in a consultation response.¹⁸

The North West region (as well as nearby areas such as Sheffield) has traditionally had a higher rate of leasehold house sales than other parts of the country.

In its July 2017 consultation document, the government noted this geographical variation and said that leasehold was becoming the “default tenure” for new-build houses in some places:

Leasehold houses are more prevalent in the North of England. Developers argue that the sale of new build leasehold houses in some areas of England is an accepted custom and practice, and that selling a freehold house could create a potential competitive disadvantage. In some parts of northern England this has resulted in leasehold becoming the default tenure for consumers wanting to buy a new build house. It is particularly common practice in parts of Cheshire, Greater Manchester, Lancashire and Merseyside, but is not limited to these parts of the country.¹⁹

The chart below shows trends in new-build and resale house sales in the North West. Around 75% of new-build homes were sold leasehold in the North West in January 2017, but the proportion has fallen substantially, reaching around 1% by late 2022. Resale transactions on leasehold houses have remained fairly constant at around 29%.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 September 2023]. Contains HM Land Registry data © Crown copyright and database right 2021. This data is licensed under the Open Government Licence v3.0.

¹⁷ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 38

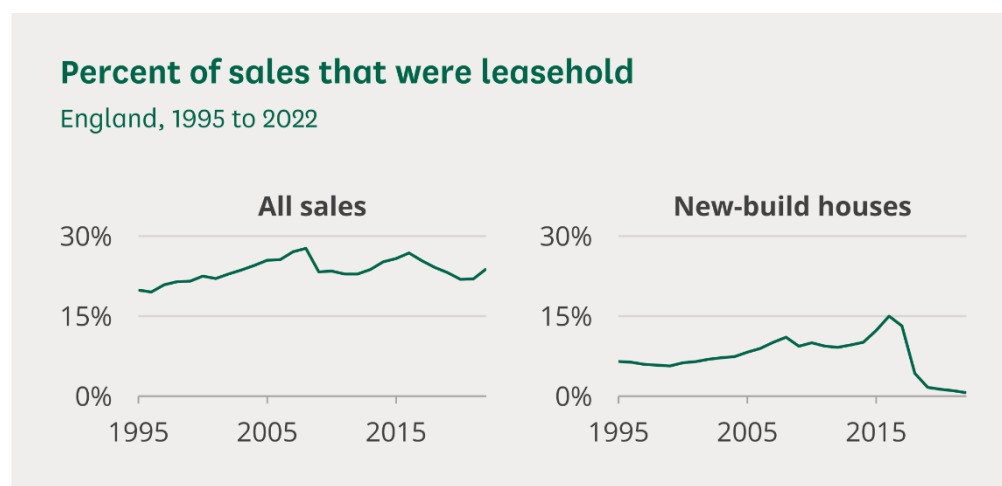
¹⁸ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), June 2019

¹⁹ MHCLG, [Tackling unfair practices in the leasehold market: a consultation paper](#), p13

Long-term trends

The charts below show trends in the proportion of properties sold on a leasehold basis since 1995. The proportion rose from around 20% to a peak of 28% in 2008, before dipping somewhat and then returning to 27% in 2016. The proportion has been in decline since then and was at 24% in 2022.

The proportion of new-build houses sold as leasehold rose from 7% in 1995 to a peak of 15% in 2016. The proportion has since declined sharply, and has been around 1% since 2020. This is likely a response to policy announcements – the decline is discussed in more detail in the previous section.



Source: HM Land Registry, [Price Paid Data Single File](#) [Accessed 12 September 2023]. Contains HM Land Registry data © Crown copyright and database right 2021. This data is licensed under the Open Government Licence v3.0.

Box 1: What is the Price Paid Data?

The Price Paid Data (PPD) is a dataset published by the Land Registry. It includes all residential properties sold for full market value and registered with the Land Registry. It does not include sales that were not for full market value, such as Right to Buy sales, gifts, or sales under a compulsory purchase order.²⁰

In 2013, the Land Registry expanded the PPD to include additional transactions: transfers under a power of sale (repossessions), buy-to-lets identifiable by a mortgage, and transfers to non-private individuals. This Additional Price Paid Data (sometimes known as the ‘B series’) is included in calculations in this briefing. The Additional Price Paid Data accounted for an extra 88,000 transactions in 2022, of which 27,000 were leasehold transactions. The proportion of leasehold sales is similar whether or not the Additional Price Paid Data is used.

²⁰ HM Land Registry, [How to access HM Land Registry Price Paid Data](#), 14 June 2016

The Office for National Statistics (ONS) has [published analysis of leasehold transactions in the PPD](#) that excludes the Additional Price Paid Data. For this reason, the ONS' estimates of the total number of transactions are lower than in this briefing.²¹

The analysis in this briefing paper covers transactions labelled as flats, detached, semi-detached or terraced. Transactions labelled 'other' are not included, as this category includes non-residential properties.

All regional and constituency analysis also excludes a small number of properties with no listed postcode, or a postcode that could not be matched to a specific constituency or region. Postcode matching was carried out using the Office for National Statistics (ONS) postcode directory.

²¹ ONS, [Leasehold and freehold residential property transactions in England and Wales: 2018](#), 15 July 2019

3 Issues with leasehold ownership and proposals for reform

3.1 Overview

The respective rights and obligations of long leaseholders and freeholders are set out in the lease agreement. Lease agreements are supplemented by several statutory provisions which have been introduced over the years. Some of the key provisions include:

- The Leasehold Reform Act 1967 which gave qualifying long leaseholders of houses the statutory right to buy the freehold of their homes.
- The Landlord and Tenant Act 1985 which provides that service charges must be “reasonable,” and services/works must be carried out to a “reasonable standard.”
- The Landlord and Tenant Act 1987 placed a duty on freeholders of blocks of flats to offer a ‘right of first refusal’ to long leaseholders when they are seeking dispose of their interest.²²
- The Leasehold Reform, Housing and Urban Development Act 1993 gave qualifying long leaseholders in blocks of flats the collective right to buy the freehold of their blocks and the individual right to a lease extension.
- The Commonhold and Leasehold Reform Act 2002 introduced a new form of ownership for blocks of flats and further strengthened long leaseholders’ rights in respect of service and administration charges. Restrictions were introduced to limit the circumstances in which forfeiture action could be taken for failure to pay ground rent. The Act also introduced a ‘no fault’ Right to Manage.

These Acts have been subject to repeated amendment.

Where freeholders or leaseholders are in breach of these and other statutory provisions, in most cases, enforcement takes place through an application to a First-Tier Tribunal (Property Chamber) in England, and to a Leasehold Valuation Tribunal (LVT) in Wales. Using the tribunal system was intended to provide long leaseholders with a cheaper and speedier means of resolving disputes without having to go through the courts.

²² Certain types of disposal are exempt.

Since 1 October 2014, all letting and managing agents in England have been required to be a member of a government approved redress scheme.²³ Complaints made against members of a redress scheme are investigated and determined by an independent person. Local authorities can impose a fine of up to £5,000 for non-compliance, with a right of appeal to the First-Tier Tribunal.

On 21 December 2017, then-Secretary of State, Sajid Javid, said the Law Commission would “take forward the work in our recent call for evidence on regulating managing agents.”²⁴ More information can be found in section 3.13 of this paper.

There are also approved Codes of Practice to which agents operating in this sector (in England) are expected to adhere:

[Service Charge Residential Management Code, 3rd Edition](#) (2016)

[ARHM revised Code of Practice for England](#) (PDF, 2016)

Despite legislative activity in this area, long leaseholders call for further reform. Organisations such as the [Leasehold Knowledge Partnership](#) and the related [Better Retirement Housing](#) campaign²⁵ argue the balance of power is weighted in freeholders’ favour, and have highlighted continuing issues associated with leasehold ownership.

An All-Party Parliamentary Group on Leasehold and Commonhold was established in 2016.²⁶

The following sections outline some of the key concerns with leasehold ownership and suggested ways forward, including responses announced by governments since 2017.

The Government has said leasehold reform legislation is expected in the 2023-24 parliamentary session.²⁷

3.2

Selling new-build houses on a long lease

The data in section 2.2 of this paper shows that the practice of selling new-build houses as leasehold increased in the 2000s and 2010s, reaching a peak in 2016. There were concerns that developers were choosing to sell on this

²³ [Redress Scheme for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014 \[Regulations made under the Enterprise and Regulatory Reform Act 2013\]](#)

²⁴ [HC Deb 21 December 2017 c65WS](#)

²⁵ Previously Carlex, the Campaign Against Retirement Leasehold Exploitation.

²⁶ [LKP, 29 March 2016](#)

²⁷ [PQ 21254 \[Leasehold\], 23 June 2022](#)

basis to create a future income stream from ground rent payments and the sale of the freehold interest to the long leaseholder.

From the buyer's point of view, the price of a long leasehold house may be lower than one sold as freehold, but the Government's consultation paper, [Tackling unfair practices in the leasehold market](#) (July 2017), observed "it is not clear that the 'leasehold discount' is always passed on to the consumer."²⁸

Most people who bought a leasehold property prior to 30 June 2022,²⁹ are liable to pay an annual ground rent (see section 3.3) and may, under the terms of the lease agreement, be required to seek the freeholder's consent before carrying out alterations. Administration charges are usually payable for seeking consents of this sort. The July 2017 consultation paper noted "these costs can total thousands of pounds more than envisaged at the point of sale."³⁰ Disputes over unreasonable administration charges can be referred to a First-Tier Tribunal (Property Chamber) in England³¹ but leaseholders are often reluctant to go down this route. Section 3.12 of this paper discusses the tribunal system and calls for alternative means of securing dispute resolution.

Most owners of leasehold houses have the statutory right to buy the freehold interest (enfranchise) once they've owned the property for two years.³² The Leasehold Advisory Service has information on its website in regard to [eligibility and the process to follow](#). Valuation of the freehold interest is a contentious area.

Box 2: Freehold valuation

The valuation process is complicated and depends on several factors including the rateable value of the house at different dates, the ground rent, the number of years left on the lease and the current value of the house. Valuations should be carried out by qualified professionals such as chartered surveyors. Leaseholders may be required to obtain the rateable value of the house in 1965 (or the first day of the lease, if later) and in 1990. These rateable values will dictate whether the valuation should be carried out using the [Original Valuation Basis or the Special Valuation Basis](#).

Marriage value³³ is payable on leases with fewer than 80 years left to run. Marriage value is split equally between the freeholder and leaseholder.

²⁸ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.5

²⁹ The date on which the Leasehold Reform (Ground Rent) Act 2022 came into force.

³⁰ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.12

³¹ Leasehold Valuation Tribunal (LVT) in Wales.

³² Leasehold Reform Act 1967 (as amended)

³³ Marriage value is the increase in the value of the property following the completion of enfranchisement or a lease extension. This reflects the additional market value of a longer lease or the freehold.

Long leaseholders are also liable to pay the reasonable costs of the freeholder in engaging in the enfranchisement process.

If the parties cannot reach agreement over the price payable, the matter can be referred to a First-Tier Tribunal (LVT in Wales) for determination.

Press reports indicate that buyers of new-build homes have sometimes been told they will be able to buy the freehold interest for a certain amount once they've owned for two years. However, developers often sell-on their freehold interest and the Government's July 2017 consultation paper said, "consumers can find that they are faced with significant legal and surveyor costs where they want to purchase the freehold."³⁴

There is no duty on a freeholder of a house to inform the leaseholder of a change in ownership, nor does the leaseholder have a 'right of first refusal' to buy the freehold interest at that point. However, a qualifying long leaseholder's statutory right to enfranchise is still exercisable against the new freeholder, and disputes over valuation can be referred to a First-Tier Tribunal (FTT) as outlined above.

The All-Party Parliamentary Group (APPG) on Leasehold and Commonhold Reform published [A preliminary report on improving key areas of leasehold and commonhold law](#) in April 2017 which referred to the practice of freeholders offering to sell the freehold interest on an informal basis outside the statutory process provided for by the 1967 Act. The APPG was told that freeholders sometimes use an informal approach "as a means of imposing onerous covenants".³⁵

Restricting developers' ability to sell houses on long leases

On 1 March 2017, then-Prime Minister Theresa May said she did not see why new homes should not be built and sold with the freehold interest except in exceptional circumstances.³⁶ [Tackling unfair practices in the leasehold market](#) (2017) sought views on what steps the Government should take to limit the sale of new-build houses on a leasehold basis.

Consultation on [Implementing reforms to the leasehold system in England](#) opened on 15 October 2018. This paper sought views on:

- potential exemptions to the proposed ban on the granting of unjustified new residential long leases on houses, and what other exceptional

³⁴ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

³⁵ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

³⁶ [HC Deb 1 March 2017 c295](#)

circumstances there may be where it is impossible to provide a house on a freehold basis; and

- how the ban should be enforced and implemented.³⁷

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019) said forthcoming legislation would:

- Provide that it will not be permissible for applicants to apply to HM Land Registry to register a non-compliant residential long lease of a house. If a lease is found to be contrary to the ban, the consumer will be entitled to zero cost enfranchisement as a means of redress.
- The ban will apply to residential long leases (over 21 years) for new build houses or existing freehold houses. Houses will be defined as single dwellings, self-contained buildings or parts of buildings (structurally detached or vertically divided).
- Exemptions will include shared ownership properties and community-led development, inalienable National Trust land and excepted sites on Crown land. Retirement properties and financial lease products will also be exempt where there is a non-assignable lease.
- Long leaseholders of properties that are exempt from the ban will have their ground rents restricted to £0. There will also be a statutory Right of First Refusal which will be triggered if the freeholder intends to sell their homes.
- There will be no transitional period once legislation is implemented. Owners of leasehold land at December 2017³⁸ can continue to develop leasehold houses unaffected by the ban but this retrospective application does not extend to those that did not own land at that date.³⁹

When giving evidence to the Housing, Communities and Local Government (HCLG) Select Committee on 4 February 2019, then-Minister, Heather Wheeler, said the number of new-build houses being sold on a long lease “have absolutely dropped dramatically.”⁴⁰ Section 2.2 of this briefing shows the trend in more detail: the proportion of new-build houses sold as leasehold fell from 16% in March 2017 to 1% in March 2022.

[Ending the Scandal: Labour’s new deal for leaseholders](#) (PDF, July 2019), contained a commitment to “end the sale of new private leasehold houses

³⁷ MHCLG, [Implementing reforms to the leasehold system in England](#), 15 October 2018

³⁸ The date of the Government’s announcement that they would ban the sale of leasehold houses.

³⁹ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, para 1.13

⁴⁰ [Housing, Communities and Local Government Committee Oral evidence: Leasehold Reform, HC 1468, 4 February 2019](#), Q515

with direct effect”.⁴¹ The paper posed the question of whether there should be any exemptions to this general prohibition.⁴²

A right of first refusal for house lessees

[Tackling unfair practices in the leasehold market](#) (July 2017) suggested transfers to third parties without the leaseholder’s knowledge were not in consumers’ best interests.⁴³

The Housing, Communities and Local Government (HCLG) Select Committee also supported an extension of the right of first refusal to leaseholders of houses and called for loopholes allowing developers to dispose of freeholds without offering the right to be closed.⁴⁴

[Responding to the Committee’s recommendations](#), the 2017 Government pointed to confirmation that a right of first refusal for house lessees would be introduced to apply to any houses exempt from the forthcoming leasehold ban and which would apply to existing leasehold houses. There was also a commitment to consider “the need to address legal loopholes within the existing Right of First refusal for flat lessees”.⁴⁵

Reforming Help to Buy Equity Loan support for leasehold houses

[Tackling unfair practices in the leasehold market](#) said the Government proposed to remove “as far as possible” Help to Buy Equity Loan support on new build houses where these are sold as leasehold.⁴⁶ [Tackling unfair practices in the leasehold market: government response](#) (PDF, December 2017) said the Secretary of State for CLG had written to developers to “strongly discourage” the use of Help to Buy equity loans for the purchase of leasehold houses in advance of new legislation.⁴⁷

On 27 June 2019, the then-Secretary of State confirmed the new Help to Buy scheme introduced in 2021 “will not be used to support the unjustified use of leasehold houses.” Contracts with developers were to be varied to ban the sale of leasehold houses “except in the rare cases where this can be justified, within the current help to buy scheme.”⁴⁸ The Help to Buy scheme has now closed.

⁴¹ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), (PDF) July 2019, pp12-13

⁴² As above, p14

⁴³ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

⁴⁴ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 56

⁴⁵ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 29

⁴⁶ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, paras 3.16-17

⁴⁷ DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 47

⁴⁸ Written Statement: [Housing Market: House Building and Leasehold Reform](#), 27 June 2019

Removing the two-year moratorium on the right to enfranchise

The APPG on Leasehold and Commonhold Reform recommended existing leaseholders of houses should not have to wait two years before being able to buy the freehold of their homes.⁴⁹ Respondents to [Tackling unfair practices in the leasehold market](#) (2017) also referred to this.

The Law Commission's final report [Leasehold home ownership: buying your freehold or extending your lease](#) recommended abolition of the two-year ownership requirement to give all leaseholders flexibility to enfranchise at a time of their choosing.⁵⁰

Limiting the cost of enfranchisement and lease extensions

The APPG recommended the cost of enfranchisement and leasehold extensions should be moved to a 'formulaic model' that would not require mediation by tribunals.⁵¹

The Government committed to carry out further work in this area with the Law Commission.⁵²

The HCLG Committee expressed support for the Law Commission's work and the Government's objective of making enfranchisement simpler, easier and cheaper.⁵³ The Committee also called for the introduction of low-interest loans to assist leaseholders who cannot afford to enfranchise.⁵⁴

The Law Commission published its final report, [Leasehold home ownership: buying your freehold or extending your lease](#) (PDF) on 21 July 2020. See section 3.5 of this paper for more information on this and the Government response.

⁴⁹ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

⁵⁰ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 6.131

⁵¹ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

⁵² DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 86

⁵³ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 212

⁵⁴ As above, para 216

House owners will be able to extend their lease agreements for 990 years with ground set at zero.

On 7 January 2021 the Government [announced reforms](#) aimed at benefiting leasehold house owners who want to extend their lease agreements:

Leaseholders of houses will be able to extend their lease by a new 990 year term with a ground rent at zero. Marriage value⁵⁵ will be removed from the premium calculation.

The calculation rates will be set and an online calculator will be available to make it simpler for leaseholders to find out how much it will cost to buy the freehold or extend the lease.⁵⁶

The Leasehold Reform (Ground Rent) Act 2022 has set ground rents to zero for new leases created on or after 30 June 2022. Additional legislation is required to implement those aspects of the Law Commission’s recommendations the Government intends to take forward. This legislation is expected in the 2023-24 parliamentary session.

Removing incentives to impose onerous terms

The APPG recommended the Government should look at ways of reducing legal costs and removing incentives for landlords to impose onerous terms when selling/extending a freehold interest on an informal (non-statutory) basis.

Chapter 14 of [Leasehold home ownership: buying your freehold or extending your lease](#) (PDF) considers the implications of ‘voluntary’ enfranchisement/lease extensions in some detail. The Law Commission concluded the Government should “consider regulating transactions for lease extensions and individual freehold acquisitions that are not on statutory terms.”⁵⁷

A requirement for independent legal advice

The solicitors, Hart Brown, suggested developers can sometimes insist or encourage the use of a “pet solicitor” to handle the purchase of leasehold properties – this raises questions about the independence and standard of the advice given:

Many of our clients have complained that they were not properly made aware that they were buying a leasehold house or of the potential costs of acquiring the freehold at a later date. An independent solicitor has no relationship with the developer and is not dependant on the developers’ referrals for business.⁵⁸

⁵⁵ Marriage value assumes that the value of one party holding both the leasehold and freehold interest is greater than when those interests are held by separate parties.

⁵⁶ [Leasehold Advisory Service Newsletter](#), 7 January 2021

⁵⁷ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 14.122

⁵⁸ [Hart Brown Solicitors, Leasehold enfranchisement](#), 26 July 2017

The Government published [Improving the home buying and selling process: call for evidence](#) on 22 October 2017 which included questions about the transparency of referral arrangements.⁵⁹

A [summary of responses and the Government response](#) followed in April 2018. The Government wanted more transparency around referral fees “so customers can make an informed choice and feel they are being treated fairly.”⁶⁰ A commitment was made to:

- work with industry to standardise the presentation of referral fees and ensure that customers are made aware of any potential referral fee before they make a decision whether to purchase;
- task the National Trading Standards Estate Agency Team to proactively monitor the disclosure of referral fees; and
- look more closely at the case for banning referral fees, particularly for new build properties and instances when buyers are being referred.⁶¹

The 2017 edition of the [Consumer Code for Homebuilders \(PDF\)](#) was developed to make the home-buying process fairer and more transparent for purchasers of newly built homes. It provides that builders may offer incentives to new buyers and/or refer them to a panel of solicitors, but they “should not restrict their choice of legal representative.” This includes not restricting the financial advisor or mortgage intermediary the buyer may wish to use.⁶²

The relationship between developers and solicitors was addressed by the HCLG’s inquiry. Witnesses referred to the benefits use of a panel of solicitors can yield:

The real reason Persimmon uses a panel of solicitors is to save the customer money because they only need to review the title once. If you go each individual time, the biggest part of actual cost from a sale is to review the title.⁶³

Jonathan Smithers, of the Law Society of England and Wales, emphasised that arrangements with third parties who introduce business should not, according to the Solicitors Regulation Authority, “jeopardise that trust by, for example, compromising your independence or professional judgement”.⁶⁴ Evidence submitted to the inquiry referred to buyers who thought they were incentivised or coerced by developers to use their panel of solicitors. The Committee recommended “the Government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor.”⁶⁵

⁵⁹ DCLG, [Improving the home buying and selling process: call for evidence](#), October 2017, para 10

⁶⁰ MHCLG, [Improving the home buying and selling process: call for evidence – Summary of responses and Government response](#), April 2018, p8

⁶¹ As above.

⁶² [Consumer Code for Homebuilders: Summary of Changes to the Code, 2017 \(PDF\)](#)

⁶³ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 63

⁶⁴ As above, para 64

⁶⁵ As above, para 67

There was a further recommendation for the Government to undertake a review within the next six months:

...to determine whether existing routes, including to redress the Legal Ombudsman's scheme, are satisfactory or whether a new Alternative Dispute Resolution (ADR) scheme should be established for leaseholders with legitimate claims against their solicitors.⁶⁶

The Government's response agreed consumers should have access to independent and reliable advice when buying a property. There was reference to guidance published by the National Trading Standards Estate Agency Team in January 2019: Leasehold redress guidance for consumers.⁶⁷ The Team was to monitor whether the guidance was being followed and to report back to the Government in March 2020. The plan was to determine at that point whether further action should be taken.⁶⁸

Other measures referred to include proposals to create a New Housing Ombudsman⁶⁹, and action by the Solicitor's Regulation Authority and the Council of Licensed Conveyancers on the quality and price of advice provided by members.⁷⁰ The response detailed existing routes for complaints and redress for consumers if they are unhappy with the service provided by a lawyer and gave reasons for not introducing a new complaints process:

...introducing a new Alternative Disputes Resolution scheme for leaseholders to complain about their conveyancer may well cause confusion and could create problems with overlapping jurisdictions. Given this, and the above, the Government does not believe now is the correct time to conduct a wider review.⁷¹

3.3 Ground rents

Ground rent represents the consideration underpinning the contract (lease agreement) between a leaseholder and the freeholder. The lease will specify how much ground rent is payable, when it is due, and when it will be subject to review.

[Tackling unfair practices in the leasehold market](#) (2017) commented on significant increases in ground rents in recent years. A trend had developed of charging higher ground rents at the start of a lease with shorter review

⁶⁶ As above, para 78

⁶⁷ This guidance is no longer available online.

⁶⁸ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 35

⁶⁹ Provisions are included in Part 5 of the Building Safety Act 2022.

⁷⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, paras 36 and 37

⁷¹ As above, para 47

periods. This means long leaseholders can face “onerous and unsustainable ground rents”:

This has included cases of freeholders charging initial ground rents of £295 per year on properties purchased for just under £200,000, which increase to £9,440 per year after 50 years. In these cases the estimated cost of purchasing the freehold using a statutory valuation method would be over £35,000. In such cases leaseholders can also face difficulties selling or re-mortgaging.⁷²

The consultation paper referred to the attractiveness of ground rents as a revenue stream for major investment funds:

Developers have highlighted that the returns from selling on ground rents can be up to 35 times the annual ground rent value. In the current market this can be considerably more than the amount normally charged to the purchaser of a new build house for the freehold interest at the point of sale.⁷³

There are different perceptions of what constitutes an ‘onerous’ ground rent. Witnesses to the HCLG Select Committee’s inquiry into leasehold reform referred to the impact on the leaseholder’s ability to sell their home, and where the ground rent value “becomes disproportionate to the value of a home.”⁷⁴ The UK Finance Lenders’ Handbook requires ground rents “to be predictable, to be understood as to what the level is going to be, to be set out quite clearly, and to allow that to increase periodically by a reasonable amount.”

Not all witnesses agreed that ground rents which double after 10 years are onerous.⁷⁵ The Committee noted that some mortgage lenders had moved to restrict lending on leasehold properties with a ground rent which is over 0.1% of the property value.⁷⁶ The Committee concluded:

Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder’s ability to sell their property or obtain a mortgage. In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgageability of leasehold properties.⁷⁷

The Leasehold Reform (Ground Rent) Act 2022 for new leases on or after 30 June 2022

Having considered responses to [Tackling unfair practices in the leasehold market](#) the Government said they were minded to legislate to set ground

⁷² DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 3.13

⁷² As above, para 4.7

⁷³ As above, para 4.10

⁷⁴ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 84

⁷⁵ As above, para 86

⁷⁶ As above, para 88

⁷⁷ As above, para 91

rents on newly established lease agreements of houses and flats “at a peppercorn (zero financial value).”⁷⁸

The Leasehold Reform (Ground Rent) Act 2022 came into force on 30 June 2022.⁷⁹ This Act fulfilled the commitment to “set future ground rents to zero.” The provisions apply only to new lease agreements entered into on or after 30 June 2022. New leases of retirement properties came into scope on 1 April 2023.⁸⁰ For more information see [Leasehold Reform \(Ground Rent\) Act 2022: Guidance for leaseholders, landlords and managing agents](#).

Proposals for reform: existing leaseholders

Reports indicate these owners are experiencing difficulties in selling their homes or re-mortgaging as lenders have acted to restrict borrowing where the ground rent is viewed as onerous. There is no definitive information on the number of leaseholders affected; the Government has referred to an estimate of 100,000.⁸¹

In [Tackling unfair practices in the leasehold market](#) the Government sought views on steps that could be taken.⁸² [Tackling unfair practices in the leasehold market: government response](#) included a commitment to consider how to support existing leaseholders:

A number of developers have introduced schemes to compensate individuals, but these must go further and faster. The Government wants to see this support extended to all those with onerous ground rents, including second hand buyers, and for customers to be proactively contacted. We will be keeping a close eye on progress and will consider measures that could be pursued to take action if necessary.⁸³

In April 2017, Taylor Wimpey apologised for selling leasehold properties containing provisions for a doubling of ground rents every 10 years and set aside £130 million for a [Ground Rent Review Assistance Scheme](#).⁸⁴

Commentators said this would not assist long leaseholders where the company sells on its ground rent income streams to third-party investors. Taylor Wimpey’s chief executive reportedly said the aim was to reach agreement with all third-party freeholders “but that the group would give assistance to customers if a deal could not be reached.”⁸⁵ There are questions

⁷⁸ DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 69

⁷⁹ Information on debate as the Act progressed through Parliament can be found in the Library briefing [Leasehold Reform \(Ground Rent\) Bill 2021-22](#).

⁸⁰ [HCWS695](#), 11 January 2021

⁸¹ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, paras 92-93

⁸² DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 4.19

⁸³ DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 70

⁸⁴ Financial Times, Taylor Wimpey sets aside £130m to cover ground rent disputes, 27 April 2017

⁸⁵ As above.

amongst leaseholders as to whether converting to an RPI-based mechanism for ground rents is an attractive proposition. The Competition and Market Authority's (CMA) investigation into leasehold sales is relevant to the position of existing leaseholders with onerous ground rents (see section on mis-selling and unfair contract terms below).

MHCLG published an [industry pledge](#) in March 2019 “to stop leaseholders being trapped in unfair and costly deals”.⁸⁶ The pledge, which has been signed by at least 63 leading property developers and freeholders, commits them to removing “onerous ‘doubling clauses’ that can result in ground rents soaring exponentially over a short period of time.”⁸⁷ The pledge also contains a commitment to work with freeholders and stakeholders “to develop a comprehensive Code of Practice which establishes the responsibilities of freeholders and enshrines the highest standards for the management and maintenance of properties.”⁸⁸

Long leaseholders of houses have the option of enfranchising to remove the requirement to pay ground rent. In blocks of flats, collective enfranchisement is more challenging but flat owners can exercise their individual right to obtain a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993. This means they would be liable to pay only a peppercorn rent. If a leaseholder of a house extends their lease under the Leasehold Reform Act 1967 there is no premium payable, but the rent may increase to a modern ground rent.

In the announcement of 7 January 2021, the Government set out plans to legislate so both house and flat leaseholders will be able to extend their lease for 990 years with a ground rent at zero.⁸⁹ This was followed on 11 January 2021 by a Written Ministerial Statement in which then-Secretary of State Robert Jenrick said: “We will also enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.”⁹⁰

The HCLG Select Committee considered the position of existing leaseholders in some detail. The Committee's report acknowledged that RPI-based reviews “may still see ground rents rise above 0.1% of a property's value.” The Committee was “not convinced by the merits of the voluntary developer and freeholder led schemes” and called for stronger action from central Government.⁹¹ The Committee probed witnesses on the question of retrospective legislation to amend onerous terms in existing lease agreements.

⁸⁶ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019 [list updated on 27 June 2019]

⁸⁷ As above.

⁸⁸ As above.

⁸⁹ [MHCLG Press Release](#), 7 January 2021

⁹⁰ [HCWS695](#), 11 January 2021

⁹¹ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 106

Housing lawyers advised the Committee that human rights legislation would make retrospective legislation difficult – Giles Peaker (partner with Anthony Gold Solicitors) said it was “technically possible”:

Dealing with the situation for past leases could be done legally. It would undoubtedly, I think, face quite a serious article 1, protocol 1 challenge if you scrapped ground rents altogether, and probably, looking at the Strasbourg case law, successfully. That said, the legal mechanics of it are one thing. It is a policy decision in the end, rather than a legal one. It would be technically possible to do it.⁹²

Then-Minister Heather Wheeler confirmed she had obtained similar legal advice. The main barrier from the Government’s point of view would be the cost to leaseholders of compensating freeholders.⁹³ The Committee called on the Government to undertake a comprehensive study of ground rents to determine the scale of the problem and an appropriate level of compensation “consistent with human rights law.”⁹⁴

The Committee drew comparisons with the Government’s aim of reducing the cost of enfranchisement with buying freeholders out of a contractual income stream at a discount saying “there is little economic difference” between the two.⁹⁵ It is arguable that a freeholder cannot rely on income from leaseholders exercising their right to enfranchise at a future date, whereas they can currently rely on the income generated from the contractual commitment to pay ground rent.

The Committee concluded:

...that, within any retrospective legislation, existing ground rents should be limited to 0.1% of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism. While not as low as the Government’s proposed limit on ground rents for future properties, such a cap would reflect that leaseholders entered into a contract expecting to pay a modest ground rent over the course of their tenure and that freeholders have made an investment with a legitimate expectation of receiving some future revenue. Leaseholders should not face any charge, such as administrative and legal costs, or conditions for the variation of their lease to amend the level of ground rent as a consequence of retrospective legislation.

Alternatively, the Government should establish a compensation scheme for the mis-sale of onerous ground rents, funded by the relevant developers and the purchasers’ solicitors.⁹⁶

The [Government’s response](#) (PDF) expressed an understanding of the frustrations of existing leaseholders and referred to the use of the “public

⁹² Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 108

⁹³ As above, para 110

⁹⁴ As above, para 116

⁹⁵ As above, para 115

⁹⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, paras 117-118

pledge for leaseholders” as a voluntary arrangement aimed at tackling onerous ground rents.⁹⁷ There was a commitment to “monitor the actions of industry” and “take further action as necessary.”⁹⁸ Leaseholders with complaints about their solicitor, developer, estate agent or freeholder were referred to guidance issued by the National Trading Standards Estate Agency Team in January 2019: Leasehold redress guidance for consumers.⁹⁹

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (PDF, June 2019) confirmed the requirement, subject to certain exemptions, to set ground rents of zero financial value in future lease agreements, will apply to new leases created following a surrender of an existing lease.¹⁰⁰ However, the reduction will not apply where a lease is extended voluntarily (that is, where the statutory process is not used). The Government set out the rationale for this:

While a voluntary lease extension amounts to a new lease, it is effectively a continuation of the original duration of the lease with an extended period at the end.¹⁰¹

Thus, the zero financial value requirement will only apply to the newly extended part of the lease.¹⁰²

Where the variation of the lease is significant, for example, a lease extension or change in the property, this will amount to a new lease and the zero financial value requirement will apply. The requirement will not apply to minor lease variations.¹⁰³

As previously noted, the Law Commission recommended regulation of lease extensions and freehold acquisitions outside of the statutory process.¹⁰⁴

Heather Wheeler provided the following response to a PQ on impact assessments in relation to capping ground rents for existing leaseholders on 23 July 2019:

The Government understands the difficulties and frustrations of some existing leaseholders who are unhappy about the amount of ground rent they are required to pay and feel their leases should be changed.

There are many implications to be considered in relation to legislation which would interfere with individual contracts, for instance taking account of Article

⁹⁷ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 57

⁹⁸ As above.

⁹⁹ As above, para 58. Note the guidance document is no longer accessible online.

¹⁰⁰ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#), 27 June 2019, para 3.41

¹⁰¹ As above, para 3.43

¹⁰² As above, paras 3.45-3.46

¹⁰³ As above, para 3.47

¹⁰⁴ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 14.122

1 Protocol 1 of the European Convention on Human Rights and the principle of legal certainty.

There are no current plans to legislate in this area, and so no impact assessment has been done.¹⁰⁵

[Ending the Scandal: Labour’s new deal for leaseholders](#) (PDF, July 2019), committed to capping ground rents for existing leaseholders at 0.1% of property value, up to a maximum of £250 a year.¹⁰⁶

Exempting leaseholders from Ground 8 possession claims

As ground rents have risen, an unintended consequence is that where they exceed £1,000 per year in Greater London and £250 elsewhere, the lease agreements are classed as assured tenancies under the Housing Act 1988. In turn, this means landlords can seek a court order for eviction where three months’ ground rent is at least three months in arrears (where ground rent is payable annually) under Ground 8 of schedule 2 to the 1988 Act. Ground 8 is mandatory, meaning a judge cannot refuse to grant an order.

In [Tackling unfair practices in the leasehold market](#) the Government sought views on amendments to the 1988 Act to rectify this “unintended consequence.” The Government committed to address this “loophole.”¹⁰⁷

Clause 21 of the [Renters \(Reform\) Bill](#), which was introduced on 17 May 2023, will address this issue. Clause 21 will allow for leases over seven years to have a fixed term. Schedule 1 of the 1988 Act will be amended so fixed term tenancies of more than seven years will be added to the list of tenancies excluded from the assured tenancy system. The Explanatory Notes to the Bill advise:

This will mean landlords are no longer able to use the section 8 grounds to obtain possession of long leases which are also assured tenancies by virtue that they are not at low rent, including where a shared owner has built up arrears of rent.¹⁰⁸

This provision will come into effect two months after Royal Assent.¹⁰⁹

Mis-selling and unfair terms in lease agreements

Some respondents to the Government’s July 2017 consultation exercise felt they had been mis-sold a leasehold property. The Government said it would improve leaseholders’ routes to redress:

¹⁰⁵ [Written question – 279126](#), 23 July 2019

¹⁰⁶ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), (PDF) July 2019, p15

¹⁰⁷ DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 75

¹⁰⁸ [Explanatory Notes to the Renters \(Reform\) Bill \(Bill 308 of 2022-23\) \(PDF\)](#), para 158

¹⁰⁹ Commencement clause 67(8).

To help consumers access justice we will work with the redress schemes and Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them, including where their conveyancer has acted negligently. We will also work with the Law Commission to consider whether unfair terms apply when a lease is sold on to a new leaseholder. This will help resolve the current ambiguity around this, and provide better protection for leaseholders.¹¹⁰

The [industry pledge](#) published on 28 March 2019 emphasised the need for legal advisors to act in the best interest of their clients:

As part of this, legal advisers should take all necessary steps to ensure a potential leaseholder is aware of all relevant costs associated with the lease before such a lease is signed, and these are presented in a plain-English, clear and transparent way.¹¹¹

The HCLG Committee took evidence from the National Leasehold Campaign saying they had evidence of “blatant mis-selling of leasehold homes by developers’ salespeople.”¹¹² This charge was strongly rejected by developers who questioned what more they could have done given the safeguards built into the mortgage and conveyancing process.¹¹³ The Committee favoured the introduction of a standard key features document at the start of the sales process to “very clearly outline the tenure of the property, the length of the lease, the ground rent and any permission fees.”¹¹⁴

The Secretary of State wrote to the Competition and Markets Authority (CMA) in November 2018 asking them to conduct a market study into the effect of onerous ground rents and raising the possibility of the CMA bringing a test case. Then-Minister Heather Wheeler provided the Committee with an update on the CMA’s response – at that point the CMA did not think an inquiry was needed.¹¹⁵

The Committee concluded the CMA “should investigate mis-selling in the leasehold sector within the next six months and, where appropriate, make recommendations for appropriate compensation with the option of enfranchisement.”¹¹⁶ The Committee also called for funding for the Law Commission to carry out work to identify how unfair terms could apply to existing leaseholders.¹¹⁷

¹¹⁰ DCLG, [Tackling unfair practices in the leasehold market: government response](#), (PDF) December 2017, para 71

¹¹¹ MHCLG, [Industry Pledge](#), 28 March 2019, para 19 [updated on 27 June 2019]

¹¹² Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 44

¹¹³ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 49

¹¹⁴ As above, para 51

¹¹⁵ [Housing, Communities and Local Government Committee Oral evidence: Leasehold Reform, HC 1468](#), Q516

¹¹⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 61

¹¹⁷ As above, paras 145-146

On 11 April 2019, the Government confirmed the CMA had been asked to investigate whether there has been mis-selling of leasehold properties. The Government also encouraged the Solicitors Regulation Authority to “investigate any firms for which there is evidence of misconduct.”¹¹⁸

On 14 May 2019, the CEO of the CMA wrote to the Chair of the HCLG Committee, Clive Betts, confirming an investigation would be carried out “to see the extent of any misselling and onerous leasehold terms, including whether they might constitute ‘unfair terms’ as legally defined.”¹¹⁹

The Government’s response to the Committee’s report referred to the CMA’s investigation and the fact that it could result in enforcement proceedings “if the evidence they uncover warrants it.”¹²⁰ The Government agreed that property agents should provide “clear and transparent information about the costs involved in purchasing a leasehold property”:

As a minimum, all leasehold properties must be clearly marked as such in marketing information and state the remaining period left on the lease. Sellers are required to provide a leasehold information pack to prospective buyers, which sets out key aspects of the lease such as ground rent and service charges.¹²¹

The Government also confirmed the Law Commission had been asked to undertake a project to consider the application of unfair terms in law to residential leases, particularly after assignment:

The scope of the project is expected to be relatively limited and would not be a “fix” for all onerous and unfair terms in leases. However, it would explore the possibility of bringing more leases within the purview of unfair terms law and could therefore provide consumers with another potential tool.¹²²

The CMA’s investigation has taken in several aspects of mis-selling:

- Ground rents insufficiently explained.
- Misleading information about the availability of freehold ownership on estates.
- Misleading information about the cost of enfranchisement.
- Unfair sales tactics.¹²³

¹¹⁸ [PQ 242260 \[Leasehold: Misrepresentation\], 11 April 2019](#)

¹¹⁹ [Letter to Chair from the CMA regarding the Committee's report on Leasehold reform, 14 May 2019 \(PDF\)](#)

¹²⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 33

¹²¹ As above, para 38

¹²² [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 67

¹²³ CMA, [Leasehold homes: CMA launches enforcement action](#), 4 September 2020

The CMA has also considered onerous grounds in relation to unfair contract terms:

The use of unfair contract terms that mean homeowners have to pay escalating ground rents, which in some cases can double every 10 years. This increase is built into contracts, meaning people can also struggle to sell their homes and find themselves trapped.¹²⁴

Progress made by the CMA's investigation can be found on the webpage [Leasehold - GOV.UK](#).¹²⁵ Undertakings have been obtained from a number of freeholders to remove doubling clauses from their leases, and any doubling terms that were converted and based on the Retail Price Index (RPI).

3.4 The Right to Manage (RTM)

Long leaseholders in blocks of flats buy the right to live in their property but the management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. The lease agreement usually makes provision for the costs of the freeholder or their agent in discharging these management functions to be met in full by the leaseholders. These payments are referred to as service charges.

The Commonhold and Leasehold Reform Act 2002 introduced a 'no fault' Right to Manage (RTM) for long leaseholders in blocks of flats.¹²⁶ The aim was to enable long leaseholders in blocks to collectively take over management without having to establish a failure on behalf of the freeholder/managing agent. Long leaseholders in blocks already had the right to apply to a Tribunal for the appointment of a manager, but to be successful the leaseholder(s) had to demonstrate serious abuse by the landlord.

The aim of the RTM was to provide an alternative option to leasehold enfranchisement for leaseholders who were unhappy with the management of their blocks but who could not for some reason, such as cost, buy the freehold. No compensation is payable to the freeholder when the RTM is exercised.

Problems with the RTM were raised by Oliver Colvile MP during a debate on leasehold reform on 20 December 2016.¹²⁷ During the same debate, Jim Fitzpatrick MP cited the case of Canary Riverside in his constituency where a Tribunal appointed manager took charge of the block's management under section 24 of the Landlord and Tenant Act 1987 with effect from October 2016. He said the appointed manager was being "ground down" by "continuous

¹²⁴ CMA, [Leasehold homes: CMA launches enforcement action](#), 4 September 2020

¹²⁵ Accessed on 29 August 2023

¹²⁶ Some exemptions apply, for example, local authority long leaseholders cannot exercise the RTM under the 2002 Act.

¹²⁷ [HC Deb 20 December 2016 c1347](#)

litigation” brought by the landlord to undermine the tribunal’s decision. Mr Fitzpatrick said section 24 was “not fit for purpose.”¹²⁸

The APPG suggested a review of the RTM legislation should be carried out and “consideration given to ending the ability of landlords to delay and add costs to the process.”¹²⁹

Premises with mixed residential and non-residential use, where the internal floor area of the non-residential parts exceeds 25% of the total internal floor area of the property, are excluded from the RTM. The APPG questioned this exclusion as the commercial element is excluded from the RTM’s role, saying “the 25% limit seems to serve no purpose.”¹³⁰

The APPG also called for improvements to the legislation to ensure it works for multi-site blocks and sites with a mixture of freehold and leasehold ownership.¹³¹

Oliver Colvile MP called for “a more flexible, more transparent and less complicated system for RTM, insurance issues and service charges for leasehold properties.”¹³²

In October 2017, the Government published [Protecting consumers in the letting and managing agent market: call for evidence](#). One of the questions posed in this paper concerned the Right to Manage:

How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord’s choice of managing agent?¹³³

The [Government response](#) (April 2018) said “we plan to simplify the Right to Manage process.”¹³⁴ There was also a commitment to enable leaseholders to veto a landlord’s choice of managing agent where justified and switch agents where “agreed levels of service have not been achieved and maintained.”¹³⁵

The [industry pledge](#) published on 28 March 2019, contains a commitment by the signatories to support the RTM:

¹²⁸ As above, cc1329-30

¹²⁹ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

¹³⁰ As above.

¹³¹ As above.

¹³² [HC Deb 20 December 2016 c1348](#)

¹³³ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence, October 2017, Q4.3](#)

¹³⁴ MHCLG, [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

¹³⁵ As above, para 129

Support leaseholders who wish to take over the collective management of their homes and any communal areas in accordance with leaseholder rights enshrined in legislation.¹³⁶

[Ending the Scandal: Labour’s new deal for leaseholders](#) (PDF, July 2019), included a commitment to “simplify the Right to Manage (RTM) so that leaseholders who wish to take full control of their building’s management can do so more easily.”¹³⁷

The Law Commission’s recommendations

On 4 July 2018, James Brokenshire, then-Secretary of State, asked the Law Commission to look at improving the RTM.¹³⁸ The Law Commission’s final report, [Leasehold home ownership: exercising the right to manage](#) was published on 21 July 2020.¹³⁹ There is also a [summary report](#) (PDF). The aim of the Commission’s recommendations in respect of the RTM is to:

- reduce the costs of making an RTM claim, and give leaseholders more control over those costs;
- make the RTM available to more leaseholders in a wider variety of buildings; and
- make the process of claiming the RTM less complicated and less likely to be frustrated because of small procedural errors.¹⁴⁰

The recommendations include, for example:

- An increase in the non-residential limit from 25% to 50%.
- The removal of the "resident landlord" exception which applies to premises containing fewer than five flats.
- New rights to obtain information relevant to exercising the RTM and clarification of where costs fall during the process.
- “Significant changes” to the allocation of costs incurred during acquisition of the RTM and disputes (para 1.88 of summary report).
- Extension of the Tribunal’s remit to determine disputes.

The Government launched a consultation exercise on some of the Law Commission’s recommendations for the RTM in January 2022 saying:

The UK and Welsh governments have considered these Law Commission recommendations and agree in principle that these proposals would fulfil our

¹³⁶ MHCLG, [Industry Pledge](#), 28 March 2019, para 6

¹³⁷ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), (PDF) July 2019, p18

¹³⁸ [Law reform needed to help leaseholders take control of their buildings](#), 4 July 2018

¹³⁹ Law Commission, HC 585, [Leasehold home ownership: exercising the right to manage](#), (PDF) 21 July 2021

¹⁴⁰ [Law Commission Right to Manage webpage](#) [accessed on 23 August 2022]

stated aims to broaden access to enfranchisement and the right to manage and reinvigorate commonhold as a future tenure. We are consulting to ensure that those affected by these proposals have an appropriate opportunity to share their views on the impact of these changes before final decisions are made.¹⁴¹

Responses are being analysed.

3.5 Enfranchisement and lease extensions

As previously noted, qualifying owners of leasehold houses have the right to buy the freehold interest under the Leasehold Reform Act 1967 and a right to a lease extension for a maximum term of 50 years. No premium is payable for a lease extension under the 1967 Act, but the ground rent may increase to a modern rent.

Qualifying leaseholders in blocks of flats have a collective right to buy the freehold interest and an individual right to a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993.

The impact of rising ground rents on the cost of exercising these rights is explained in section 3.3 of this paper. Aside from this, leaseholders have long expressed concerns over the complexity of the valuation process and price they are expected to pay. Valuation disputes can be referred to a First-Tier Tribunal where the leaseholders invoke their statutory right to buy the freehold or extend the lease. As with the RTM, there are reports of obstructive freeholders who seek to block leaseholders in exercising their right to enfranchise/extend their lease agreements.

Leaseholders of certain landlords may not have the right to enfranchise, for example, where the National Trust is the freeholder. Leaseholders of houses in this position have raised the fact that they can only apply for one lease extension of 50 years compared to qualifying leaseholders of flats who can buy multiple extensions.¹⁴² A further issue is the charging of a modern ground rent after exercising the right to a 50-year lease extension. The National Trust attracted some adverse publicity in 2017 with reports of some rent increases of 10,000%.¹⁴³ A press release issued by the Trust on 26 March 2018 said modern ground rents would be removed for “most of its leaseholders”.¹⁴⁴

¹⁴¹ DLUHC, [Reforming the leasehold and commonhold systems in England and Wales](#), 11 January 2022

¹⁴² Restrictions apply to certain leasehold owners of flats in terms of lease extensions where the freeholder is the National Trust, Crown or the property is in a cathedral precinct.

¹⁴³ See: Leasehold Knowledge Partnership, [Why are National Trust leaseholders in uproar over increases in ‘modern ground rents’?](#) 25 August 2017

¹⁴⁴ National Trust, [Modern Ground Rents](#), 26 March 2018

Removing the two-year moratorium on the right to buy

As previously noted, the Law Commission's final report [Leasehold home ownership: buying your freehold or extending your lease](#) recommended the abolition of the two-year ownership requirement before exercising the right to enfranchise.¹⁴⁵

Extending and standardising the right to a lease extension

The Law Commission recommended that both house owners and flat owners should have a uniform right to extend their lease agreements for 990 years.¹⁴⁶ On 7 January 2021 the Government said this would be implemented.¹⁴⁷

Limiting the costs of enfranchisement and lease extensions

In January 2020 the Law Commission published [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable \(PDF\)](#).¹⁴⁸ This report set out three alternatives for reducing premiums and for simplifying the way in which premiums are calculated. The Commission did not make recommendations in this area because political judgement was required:

...involves considerations of law, valuation, social policy, and political judgement, and is therefore for Government and ultimately Parliament to decide.¹⁴⁹

The Commission published the [Opinion of Catherine Callaghan QC on the options to reduce the price and human rights law](#) (PDF) alongside the January 2020 report, noting the options for reform must operate within human rights law.

[The Law Commission's summary report](#) (PDF) outlined the three alternative options in an accessible format with worked examples. The alternative options were:

Scheme 1 reflects what the landlord would receive if the lease ran its course and the leaseholder never chose to extend the lease or acquire the freehold:

¹⁴⁵ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 6.131

¹⁴⁶ Law Commission 392 (Summary) [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) 21 July 2020

¹⁴⁷ MHCLG, [Government reforms make it easier and cheaper for leaseholders to buy their homes](#), 7 January 2021

¹⁴⁸ Law Commission, HC13, [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#), (PDF) 9 January 2020

¹⁴⁹ Law Commission, [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (PDF, summary), 9 January 2020

the landlord would receive the ground rent (“the term”) and would get the property back at the expiry of the lease (“the reversion”).

Scheme 2 reflects what the landlord would receive if his or her interest were sold to a third party. An investor purchasing the freehold would not pay marriage value¹⁵⁰ (because the leasehold and freehold interests would remain in separate ownership, so marriage value would not be realised). But an investor might pay hope value, to reflect the fact that he or she might in the future be able to realise the marriage value by selling the interest to the leaseholder.

Scheme 3 reflects the way in which premiums are calculated under the current law, but when combined with other reforms Scheme 3 can still be used to reduce premiums.¹⁵¹

Additional options for reforms suggested by the Law Commission included:

- Prescribing the rates used in calculating the price, to remove a key source of disputes, and make the process simpler, more certain and predictable.
- Helping leaseholders with onerous ground rents, by capping the level of ground rent used to calculate the premium.
- The creation of an online calculator for determining the premium to make it easier to find out the cost of enfranchisement, and reduce uncertainty around the process.
- Enabling leaseholders who are collectively enfranchising a block of flats to avoid paying “development value” to the landlord unless and until they actually undertake further development.¹⁵²

On contributions to landlords’ non-litigation costs the Commission recommended:

...if leaseholders are to continue to receive a price for a lease extension or freehold that is calculated by reference to the open market value of the landlord’s asset, leaseholders should not also be required to make any contribution to their landlord’s non-litigation costs.¹⁵³

The Commission published the [Opinion of Catherine Callaghan QC on our recommendations on non-litigation costs \(PDF\)](#).

In a [written ministerial statement](#) of 11 January 2021 the Secretary of State, Robert Jenrick said:

¹⁵⁰ Marriage value is the increase in the value of the property following the completion of enfranchisement or a lease extension. This reflects the additional market value of a longer lease or the

¹⁵¹ Law Commission, [Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable](#) (PDF, summary), 9 January 2020, p16

¹⁵² [Law Commission Leasehold Enfranchisement webpage](#) [accessed 23 August 2022]

¹⁵³ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 12.35

The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. The Government will also introduce an online calculator, further simplifying the process for leaseholds and ensuring standardisation and fairness for all those looking to enfranchise.

Existing discounts for improvements made by the leaseholder and for security of tenure will be retained, alongside a separate valuation methodology for low-value properties known as “section 9(1)”. Leaseholders will also be able to voluntarily agree to a restriction on future development of their property to avoid paying “development value”.¹⁵⁴

He confirmed legislation to provide for ground rents of zero financial value on new leases would be brought forward¹⁵⁵ and said responses to the Law Commission’s remaining recommendations would be issued “in due course”. He confirmed that leasehold reform would be implemented through two-part legislation in this Parliament.¹⁵⁶

The non-residential limit for enfranchisement

As noted in section 3.4, the Government launched a further consultation exercise in January 2022 to test views on some of the Law Commission’s recommendations, including changes to eligibility for collective enfranchisement in mixed-use blocks:

Following consultation, the [Law Commission instead recommended that the non-residential limit should be increased to 50%](#). This would mean that in future leaseholders would only be excluded from enfranchisement if the non-residential parts of their building exceed 50% of the total internal floorspace of the premises. This limit would also apply in respect of each building or part of a building included in a multi-building claim, should relevant Law Commission recommendations be accepted.¹⁵⁷

Responses to the consultation are being analysed.

3.6 Service charges

The day-to-day management and maintenance of blocks of flats is usually the responsibility of the freeholder. This responsibility can be contracted out to an agent on the freeholder’s behalf. The cost of the work is usually recoverable from long leaseholders, as a condition of their lease agreements via a service charge. In its 2014 report, [Residential property management services: A market study \(PDF\)](#), the Competition and Markets Authority (CMA) estimated

¹⁵⁴ [HCWS695](#), 11 January 2021

¹⁵⁵ This took the form of the Leasehold Reform (Ground Rent) Act 2022

¹⁵⁶ [HCWS695](#), 11 January 2021

¹⁵⁷ DLUHC, [Reforming the leasehold and commonhold systems in England and Wales](#), 11 January 2022

the average service charge amounted to just over £1,100 annually, suggesting “that service charges could total £2.4–£3.5 billion a year.”¹⁵⁸

Service charges are a highly contentious area for long leaseholders. There are complaints about excessive charges and a lack of transparency over what services are provided and how they are charged. During the 20 December 2016 debate on leasehold, Jim Fitzpatrick MP referred to constituents who were charged for lifts in blocks with no lifts and for garden upkeep where there were no gardens.¹⁵⁹

There has been legislative activity in this area. Demands for service charges must contain the landlord’s name and address. The demand must include a summary of leaseholders’ rights and obligations. The Landlord and Tenant Act 1985 provides service charges must be reasonable and that the services provided are carried out to a reasonable standard.

Leaseholders can challenge the reasonableness of service charges and the standard of the work but are often reluctant to take legal action, citing cost as a significant barrier. Leaseholders can also request a summary of the service charge account and can inspect receipts and accounts in relation to the last accounting year, or where accounts are not kept by accounting years, the past 12 months preceding the request.¹⁶⁰

Service charge contributions must be held on trust by the landlord for the leaseholders. There are also provisions which limit the landlord’s ability to recover service charges that have not been demanded where the costs were incurred over 18 months ago.

Issues persist despite legislative activity aimed at strengthening leaseholders’ rights. Jim Fitzpatrick cited research by Which? into service charges:

In 2012, the consumer organisation Which? estimated that £700 million was being overcharged in service charges each year. That was when everyone thought that there were between 2 million and 2.5 million leasehold homes. Given the size of the sector as we now know it to be, that suggests that £1.4 billion may be being overcharged each year. That cannot be right either.¹⁶¹

Long leaseholders may also face one-off bills for major works to cover; for example, roof or lift replacement. This arose as a particular issue for leaseholders in the social rented sector as landlords worked towards achieving the Labour Government’s target of bringing all social sector stock up to the decent home standard by 2010.

Following the Grenfell Tower fire, the issue of long leaseholders facing substantial bills arising from essential fire safety works to their blocks has attracted attention. This was raised in several contributions during a

¹⁵⁸ CMA, [Residential property management services: A market study](#), (PDF) 2014, para 1.7

¹⁵⁹ [HC Deb 20 December 2016 c1329](#)

¹⁶⁰ Landlord and Tenant Act 1985, sections 21 and 22.

¹⁶¹ [HC Deb 20 December 2016 c1330](#)

Westminster Hall debate on leasehold and commonhold reform on 21 December 2017.¹⁶²

There is a mandatory consultation process which must be followed by landlords seeking to recover the cost of major works from long leaseholders where the expected cost is likely to be above a certain threshold. Failure to follow the correct process can result in landlords being unable to recover the full cost of the works. In the October 2017 paper, [Protecting consumers in the letting and managing agent market: call for evidence](#), the Government recorded difficulties with this process:

The cost of major works can be a particularly problematic. Section 20 is meant to ensure that consumers have a say on these works but, in reality, offers limited opportunity for leaseholders to influence decisions on whether work is necessary or the costs that are incurred.¹⁶³

The paper noted the Government was “in the process of reviewing Section 20 – but we believe that more can and should be done.”¹⁶⁴

There are some additional protections in place for social sector leaseholders in certain limited circumstances, these protections are explained in a separate Library briefing paper: [Leaseholders in social housing: paying for major works \(England\)](#).

Improved regulation of service charges

Contributions to the debate on 20 December 2016, and the APPG’s preliminary report, did not include specific reference to changes in the law in relation to service charges. However, there were calls for the introduction of overarching regulation. Currently, property agents in England must be members of a government approved redress scheme, but the sector is mainly subject to self-regulation.

In [Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017), the Government asked about potential changes to protect consumers from unfair fees and charges, including those for major works.¹⁶⁵

In April 2018, the Government announced that managing agents in the sector will be subject to regulation by an independent body and that a Code of Practice will set out minimum standards for key areas of activity, including service charges. See section 3.13 of this paper for more information.

¹⁶² [HC Deb 21 December 2017 c481WH](#)

¹⁶³ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 62

¹⁶⁴ As above, para 66

¹⁶⁵ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, Q4.1

Wider work on service charges

When giving evidence to the Housing, Communities and Local Government Select Committee on 4 February 2019, Lakhbir Hans, Deputy Director for Leasehold, Commonhold and Rentcharges at the department said:

There is a wider piece of work that we are doing within the Department, outside the Lord Best group, which covers the whole range of service charges. Within the team, we are looking at that. That will cover how we need to potentially strengthen or protect leaseholder funds as part of that.¹⁶⁶

The work I mentioned we are doing on service charges not only looks at the different types of charges, but will also consider the ways in which there can be redress or enforcement of rights within that.¹⁶⁷

I mentioned the service charges work—I keep coming back to this—which is a massive area that we are looking at. We are going to be considering in what circumstances some of those fees and charges might be capped or banned. That might include the use of restrictive covenants, leasehold restrictions, administrative charges or other charges placed on properties.¹⁶⁸

Sinking or reserve funds

Baroness Gardener of Parkes sought to insert a new clause into the Housing and Planning Bill 2015-16 which would have made it a requirement to establish ‘sinking’ or ‘reserve’ funds in respect of leasehold blocks.

Where these funds exist, long leaseholders make a regular payment into the fund which is then used to cover the cost of major works, thus avoiding the impact of significant one-off bills.¹⁶⁹ Viscount Younger of Leckie responded for the Government, saying that where the lease does not already provide for a sinking fund it would be possible for a variation of the lease to be agreed to do so.¹⁷⁰

The amendment was withdrawn. The Regulation of Property Agents Working Group chaired by Lord Best considered regulation of sinking funds as part of its work in this area (see below).¹⁷¹

The HCLG Committee recommended the Government should require the use of a standardised form for invoicing service charges which clearly identifies the individual parts making up the overall charge. Commission paid to the freeholder or agent should be clearly identified and the proportion of the cost this constitutes to improve transparency “and allow leaseholders to make

¹⁶⁶ [Housing, Communities and Local Government Committee Oral evidence: Leasehold Reform, HC 1468](#), 4 February 2019, Q543

¹⁶⁷ As above, Q551

¹⁶⁸ As above, Q575

¹⁶⁹ [HL Deb 17 March 2016 c1989](#)

¹⁷⁰ [HL Deb 17 March 2016 c1993](#)

¹⁷¹ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 156

comparisons with equivalent properties.”¹⁷² The Committee also called for regulation of sinking funds.¹⁷³

Regulation of Property Agents Working Group (July 2019) said the Government should consider making sinking funds mandatory in new and existing leases:

Where a sinking fund is used, we think that Government should consider how to ensure that it is effectively funded, such as being underpinned by a professionally certified asset management plan.¹⁷⁴

Improved transparency and enforcement

The Government response to the HCLG Committee referred to the Regulation of Property Agents Working Group’s work. They recommended improved transparency of leaseholder charges with the new regulator having a role in enforcement of compliance:

The new regulator should be given a statutory duty to ensure transparency of leaseholder and freeholder charges, and should work with the sector (property agents, developers and consumers) to draw up the detail of the regulatory codes to underpin this aim as it applies to property agents. The regulatory code should include standards for transparency; potential conflicts of interest (e.g. mandatory disclosure of commissions and management fee charges); communication and use of service charges; administration charges; permission fees; use of covenants; and protection of client money. Standard industry cost codes, as have been developed for commercial service charges, should be developed to help consumers to more easily identify and compare items of expenditure, and to form a standard basis for accounts for managing agents.¹⁷⁵

Charges for major works

On the issue of large one-off bills, the Committee proposed a new consultation process and a cap of £10,000 per leaseholder above which works could only be carried out with the agreement of a majority of leaseholders. Where consent is not given, freeholders would have to seek authorisation from a tribunal – the tribunal would consider whether proposed works are essential and represent value for money. The Committee also wanted freeholders to be obliged to offer low-interest long-term loans to affected leaseholders.¹⁷⁶

¹⁷² Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 153

¹⁷³ As above, para 157

¹⁷⁴ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p44

¹⁷⁵ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p4

¹⁷⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 170

The Government response agreed the consultation process for major works should be reviewed. The Regulation of Property Agents Working Group agreed with consultation on the process:

Ideally major works and associated costs should be planned, and leaseholders sighted well in advance, which may reduce the need for multiple one-off consultations.¹⁷⁷

The Government said they would consider the Group's recommendations alongside those of the Committee and "consult as necessary."¹⁷⁸

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), committed to:

...crack down on unfair fees and contract terms by publishing a reference list of reasonable charges, requiring transparency on service charges and giving leaseholders an improved system to challenge rip-off fees and conditions or poor performance from service companies.¹⁷⁹

3.7

Building insurance

It's common for a long lease to provide for the landlord to organise building insurance, recovering the cost from the leaseholder(s), or for the lease to require the long leaseholder to insure with a company nominated or approved by the landlord.

The Commonhold and Leasehold Reform Act 2002 gave long leaseholders of houses the right to organise their own building insurance provided certain requirements are fulfilled.¹⁸⁰ Long leaseholders in blocks of flats must abide by any provision in the lease concerning building insurance, although they can request a summary of the insurance policy and challenge the cost of the insurance if they think it is unreasonable.

There are specific concerns about the commission a landlord or agent may earn through organising insurance with a particular company. This was raised during the debate on 20 December 2016, Oliver Colvile MP said:

Some landlords also happen to own an insurance broker, as we heard earlier, creating loopholes and conflicts of interest across the board. The Financial Conduct Authority is fully aware that leasehold building insurance is a problem and has reported that high commissions—up to 40%—have been paid on insurance. In 2014, the Competition and Markets Authority investigated

¹⁷⁷ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p43

¹⁷⁸ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, paras 70 & 78

¹⁷⁹ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), (PDF) July 2019, p17

¹⁸⁰ For more information see Library briefing paper 1821: [Long leaseholders: building insurance requirements](#)

leasehold property management, and one of its specific recommendations was that the FCA should look into the matter.¹⁸¹

The issue has gained new prominence following significant increases in building insurance costs for blocks in the post-Grenfell fire era. In January 2022 the Government asked the Financial Conduct Authority (FCA), in consultation with the Competition and Markets Authority (CMA), to review the way the market for multi-occupancy buildings insurance operates. The FCA reported in September 2022.¹⁸² Based on feedback received, the FCA said it was considering rule changes to ensure:

- the interests of leaseholders (and others in similar positions) are properly considered when firms design their products
- prices are fair value to leaseholders as well as freeholders
- remuneration of all parties involved in insurance distribution has a fair relationship to the benefits provided to leaseholders
- leaseholders have sufficient information to challenge poor practices and unfair costs passed on to them¹⁸³

Consultation on the proposed rule changes closed on 9 June 2023.

The Secretary of State, Michael Gove, responded to the FCA's proposals in January 2023.¹⁸⁴ He welcomed the proposed changes but also said "I am clear that government too needs to act."¹⁸⁵ He set out intended actions:

I will take action to ban managing agents, landlords and freeholders from taking commissions and other payments when they take out buildings insurance, replacing such payments with more transparent fees. I will press insurance firms, managing agents, landlords and freeholders to change their practices as a matter of priority. I will also arm leaseholders with more information to enable them to better scrutinise their insurance costs, while also ensuring that leaseholders are not subject to unjustified legal costs and that they can claim their legal costs back from their landlord.¹⁸⁶

The Housing Minister, Rachel Maclean, responded to a PQ on leaseholder protections in regard to insurance commission on 28 June 2023:

The Secretary of State has previously announced that the Government intends to ban insurance brokers from sharing commissions with managing agents, landlords and freeholders. In parallel, we are working with industry to ensure charges can be justified based on work undertaken. Questions regarding the

¹⁸¹ [HC Deb 20 December 2016 c1348](#)

¹⁸² FCA, [Report on insurance for multi-occupancy buildings](#) (PDF), September 2022

¹⁸³ FCA, CP23/8: [Multi-occupancy building insurance](#), 21 April 2023

¹⁸⁴ [Response to the Financial Conduct Authority's \(FCA\) report on the buildings insurance market for multiple-occupancy residential buildings](#), (PDF) 30 January 2023

¹⁸⁵ As above.

¹⁸⁶ As above.

regulation of insurance brokers' commissions should be directed to the Financial Conduct Authority.

Individual leases set out what service charges pay for and the proportion of the charge that each leaseholder is required to pay. We are committed to protecting and empowering leaseholders by giving them more information on the things for which their service charges pay, and ensuring service charges are transparent and communicated effectively, removing barriers to challenge when things go wrong. This will help leaseholders more effectively challenge their landlord if they consider their fees are unreasonable. We are also planning reforms to prevent unjustified legal fees when challenging costs.¹⁸⁷

The Treasury Sub-Committee took oral evidence on the FCA's consultation on 12 July 2023.¹⁸⁸

Issues raised in relation to the inclusion of cover against terrorism in building insurance policies were debated in Westminster Hall on 22 October 2014. This is considered further in the Library briefing: [Long leaseholders: building insurance requirements](#).

3.8

Administration charges

A lease may make provision for leaseholders to pay for the landlord's costs when dealing with applications for approvals (for example, permission to adapt a property) or for the provision of documents. These are known as administration charges or permission fees. Long leaseholders can challenge unreasonable administration charges through the tribunal system.

High administration charges continue to be an issue. Justin Madders MP cited the following example during the debate on 20 December 2016:

The same constituent recently obtained planning permission to extend her home, but was told that she needed to obtain consent from Homeground in order to proceed, for which she was charged a fee of £333. However, following payment of that amount, an additional £2,440 was requested for the same purpose. This amounts to nothing less than racketeering and it should be stamped out.¹⁸⁹

Lord Young of Cookham sought to amend the Housing and Planning Bill 2015-16 to prevent landlords from recovering costs associated with legal proceedings as administration charges.¹⁹⁰

Viscount Younger of Leckie undertook to consider the matter further.¹⁹¹ An amendment was subsequently agreed so that, since 7 April 2017, tribunals or

¹⁸⁷ [PQ 190479 \[Buildings: Insurance\] 28 June 2023](#)

¹⁸⁸ [Multi-occupancy building insurance - Oral evidence - Committees - UK Parliament](#), 12 July 2023 [accessed 7 September 2023]

¹⁸⁹ [HC Deb 20 December 2016 c1343](#)

¹⁹⁰ [HL Deb 17 March 2016 cc1968-9](#)

¹⁹¹ [HL Deb 17 March 2016 c1973](#)

courts can consider, on application by the leaseholder, whether it is reasonable for a landlord to recover all or part of those costs.¹⁹²

[Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017) included reference to leaseholders facing “unfair administration fees when seeking permission to make changes to the property, or on sale.”¹⁹³ The paper asked, “How can we support consumers to challenge unfair fees and ensure that they have a route to redress?”¹⁹⁴

The [Government response](#) (April 2018), said a working group would be established which would, amongst other things:

...look into those fees and charges that go beyond leasehold service charges, but can impact both leaseholders and freeholders, and consider under what circumstances they are justified, and if they should be capped or banned. This includes the use of restrictive covenants, leasehold restrictions, administration charges and other charges placed on properties.¹⁹⁵

The HCLG Committee received evidence of leaseholders’ concerns about onerous administration/permission fees. Freeholders/agents defended the recovery of reasonable costs incurred for granting consent to property alterations. Views varied between the abolition of fees and their retention with a cap.¹⁹⁶ The Committee recommended a requirement for fees in leases of new-build properties not to exceed the true costs incurred by freeholders. A call was also included for legislation to restrict onerous permission fees.¹⁹⁷

The [Government response](#) to the Committee again referred to work carried out by the Regulation of Property Agents Working Group. As previously mentioned, the Working Group reported in July 2019. On fees other than service charges, such as administration/permission fees, they suggested consultation on establishing a statutory prescribed list of fees for inclusion in new leases:

Any fees that were not on the prescribed list could not be added to a lease nor charged to leaseholders. Alongside this, Government should also consider consulting on a set of tariffs of leaseholder and freeholder fees and charges (how much can be charged) – which unless explicitly stated in existing leases, could be applicable to both new and existing leases.¹⁹⁸

¹⁹² Under section 131 of the Housing and Planning Act 2016 which inserted a new provision into the Commonhold and Leasehold Reform Act 2002.

¹⁹³ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 63

¹⁹⁴ As above, Q4.2

¹⁹⁵ MHCLG, [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

¹⁹⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, paras 131-134

¹⁹⁷ As above, para 137

¹⁹⁸ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p46

The Group also commented on the use of restrictive covenants in lease agreements:

...we think that Government should promote better use of restrictive covenants by implementing the recommendations from the Law Commission's report [Making Land Work](#). In addition, Government should consider providing guidance on setting restrictive covenants.¹⁹⁹

The Group's recommendations on permission fees will be considered with those of the Committee and consultation will be carried out as necessary.²⁰⁰

[Ending the Scandal: Labour's new deal for leaseholders](#) (July 2019), committed to ending:

...the charging of unfair administration or 'permission' fees by limiting the circumstances in which fees can be charged and, for certain fees, being clear about the maximum fee that can be charged – for example for giving permission to install a doorbell. This could build on Law Commission proposals to tackle 'event fees' in retirement properties.²⁰¹

3.9

Forfeiture

Forfeiture of a lease is the ultimate sanction a landlord can take against a leaseholder who is in breach of the lease agreement (contract). To gain possession of the property the landlord must obtain a court order. This is initiated by the service of a notice under section 146 of the Law of Property Act 1925.

Restrictions are placed on the use of forfeiture for service charge arrears (for example, the arrears must be agreed by the leaseholder), and for ground rent arrears (the leaseholder must have received a demand for payment in the prescribed form²⁰²). The 2002 Act also placed some limits on the use of forfeiture based on the level of outstanding arrears. As a rule, the courts can grant relief from forfeiture.

The APPG's [A preliminary report on improving key areas of leasehold and commonhold law](#) (PDF) referred to "considerable injustice as a result of the use of forfeiture in the residential leasehold sector."²⁰³

The HCLG Committee considered forfeiture during its leasehold reform inquiry. Giles Peaker said there were no other mechanisms open to a landlord through which they can address breaches of a lease and, in practice, "it was

¹⁹⁹ As above, pp46-47

²⁰⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 64

²⁰¹ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), (PDF) July 2019, p17

²⁰² Commonhold and Leasehold Reform Act 2002, section 166

²⁰³ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

very rare for freeholders to actually achieve forfeiture”.²⁰⁴ Witnesses supplied examples of freeholders threatening forfeiture proceedings. Guy Fetherstonehaugh QC described it as a “fantastically draconian” remedy.²⁰⁵

The APPG recommended:

- The adoption of the Law Commission report on replacing residential forfeiture: [Termination of tenancies for tenant default](#) (PDF).²⁰⁶
- In bringing forward the Law Commission’s recommendations, the Government should consider how the use of forced sale applies in commonhold regimes around the world and “consider if the Commission’s wording might be adopted to any future review of commonhold in England.”²⁰⁷

The HCLG Committee recommended the Government take up the Law Commission’s 2006 proposals to reform forfeiture.²⁰⁸ The Government’s response confirmed the Law Commission had been asked to update the 2006 report to take account of the implications of reforms currently underway.²⁰⁹

[Ending the Scandal: Labour’s new deal for leaseholders](#) (PDF, July 2019), said “no one should be threatened with forfeiture of their home for breaking restrictive covenants” and committed to the abolition of forfeiture in respect of long leases:

...replacing it with a system akin to foreclosure on mortgage arrears. Under this system, freeholders would apply to the court for the sale of the lease in cases where a serious breach has had a proven detrimental effect on the property value, with the leaseholder receiving their remaining interest following sale.²¹⁰

3.10

Recognition of tenants’ associations

Gaining recognition rights for tenants’ associations in leasehold housing has been a longstanding issue, even though qualifying tenants of a residential leasehold property have a legal right to form a recognised association.

²⁰⁴ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 181

²⁰⁵ As above, paras 182-183

²⁰⁶ Law Commission, [Termination of tenancies for tenant default](#), (PDF) Cm 6946, October 2006

²⁰⁷ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

²⁰⁸ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 185

²⁰⁹ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform, \(PDF\) CP 99, 3 July 2019, para 85](#)

²¹⁰ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), (PDF) July 2019, p17

Amendments to the Housing and Planning Act 2016 require a landlord to supply the secretary of a residents' association with information to allow contact with absent leaseholders for the purpose of increasing the association's membership and, therefore, the likelihood of achieving recognition under section 29(1) of the Landlord and Tenant Act 1985.²¹¹

The Government consulted on the content of regulations under the new section 29A in 2017: [Recognising residents' associations, and their power to request information about tenants](#). The outcome was published on 15 October 2018.

The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 came into force on 1 November 2018.²¹² The then-Housing Minister's [written statement](#) of 31 October 2019 confirmed these changes would "shortly" be reviewed "to see how effectively it is working in practice."²¹³

The Regulation of Property Agents Working Group thought there was scope to consider extending the powers of Recognised Tenants' Associations and potentially those of other types of representative leaseholder groups, particularly in relation to tackling poor performance by managing agents.²¹⁴

Labour's proposals to strengthen Recognised Tenants Associations (RTAs) in [Ending the Scandal: Labour's new deal for leaseholders](#) (PDF, July 2019) included:

- building owners and managers being required to provide information to RTAs up-front about their spending each year;
- amendments to the existing statutory right to appoint a new property manager to give RTAs the right to change managing agent without having to establish mismanagement at a tribunal; and
- removing barriers to the establishment of RTAs.²¹⁵

3.11 Leasehold retirement properties

There are some specific issues that have arisen in relation to leasehold retirement properties. Companies owning or managing these properties often include a clause in their lease agreements requiring owners to pay an 'exit' or 'transfer' fee when they wish to sell or rent out their homes. The Law Commission has noted that payment of these fees is often triggered by an

²¹¹ Housing and Planning Act 2016 section 130 which inserted a new section 29A into the Landlord and Tenant Act 1985.

²¹² [SI 2018/1043](#)

²¹³ [Leasehold update: Written Statement - HCWS55](#), 31 October 2019

²¹⁴ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p48

²¹⁵ Labour Party, [Ending the Scandal: Labour's new deal for leaseholders](#), (PDF) July 2019, pp17-18

event (such as resale or sub-letting), and for this reason has referred to them collectively as ‘event fees.’

The fee, according to the Law Commission, can be up to 30% of the property’s resale price. Owners have questioned whether this practice is legal. The matter has attracted a good deal of media attention. Background and additional information can be found in Library briefing: [Leasehold retirement homes: exit/event fees.](#)

The Law Commission reported on [Event Fees in Retirement Properties](#) on 31 March 2017. The Commission identified significant problems associated with these fees:

- event fees can be hidden in complex leases
- leaseholders may be charged unexpectedly – even when their spouse or carer moves into the property
- event fees are often disclosed too late in the process for the consumer to take the fee into account
- that if consumers do spot event fees, they may fail to appreciate their financial consequences²¹⁶

The Commission did not recommend the abolition of event fees but recommended regulation through a Code of Practice supported by an amendment to the Consumer Rights Act 2015 to enable enforcement by consumers.

The APPG questioned some of the Law Commission’s findings. In particular, the idea that event fees may make retirement housing more affordable for older residents who are ‘capital rich and cash poor’ by deferring payments.

The APPG was critical of the Commission’s failure to consider counter evidence and the risk of a lack of transparency around event fees.²¹⁷ The APPG report concluded “the APPG is concerned that the proposed event fee system may have disadvantages and produce serious continuing consumer disadvantage.”²¹⁸ The report went on to call for more work to be carried out on the need for wider regulation of this part of the housing market.²¹⁹

A statutory code of practice and requirements for transparency

The Government’s announcement of a new industry pledge on 28 March 2019 included its response to the Law Commission’s 2017 report:

²¹⁶ Law Commission, [Event Fees in Retirement Properties](#), 31 March 2017

²¹⁷ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

²¹⁸ As above.

²¹⁹ As above.

The government has today announced its response to the Law Commission’s report on event fees. The majority of the recommendations have been accepted which include:

- A new statutory code of practice which will ensure that these fees cannot be charged unexpectedly, while fees that breach it will be regarded as unenforceable.
- Developers and estate agents will be required to make all such fees crystal clear to people before they buy, so prospective buyers can make an informed decision before forming a financial or emotional attachment to a property.²²⁰

The then-Housing Minister’s [written statement](#) of 31 October 2019 confirmed an intention to consider recommendations on succession rights and a database of leasehold retirement properties with event fees to “further determine the most effective way of improving the system for consumers”.²²¹

3.12 Dispute resolution

There are references throughout this paper to leaseholders’ rights to challenge aspects of how their blocks are managed and the valuation of a lease extension/enfranchisement. Challenges primarily take place through the tribunal system. The use of the tribunal system was intended to give long leaseholders access to a speedier and cheaper means of redress. In practice, leaseholders are reluctant to go down this route. During the Westminster Hall debate on 20 December 2016 Jim Fitzpatrick MP said:

When the dispute resolution procedure was originally designed, was it not supposed to create a relatively informal arrangement whereby residents could go to a tribunal to argue their case? That has been completely distorted by some of these unscrupulous freeholder landlords bringing in high-powered barristers and then charging their fees to the residents, whether they win or lose.²²²

In the same debate, Sir Peter Bottomley referred to the inability of tribunals “to fine for repeat offences”²²³ and described the experience of an elderly couple on Plantation Wharf in Battersea who successfully challenged a demand for £9,000 (reduced to £2,000) but following an application for costs ended up owing over £70,000.²²⁴

Justin Madders MP said:

²²⁰ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019

²²¹ [Leasehold update: Written Statement - HCWS55](#), 31 October 2019

²²² [HC Deb 20 December 2016 c1336](#)

²²³ [HC Deb 20 December 2016 c1338](#)

²²⁴ [HC Deb 20 December 2016 c1333](#)

It is not enough to say that leasehold valuation tribunals are there to resolve these issues, because these companies are going out of their way to obstruct and delay the process. I do not know whether anybody here has taken the time to read one of the tribunals' decisions, but I suspect that very few people would feel comfortable going into one of them without a lawyer, and probably also a surveyor. Certainly the freeholders seem to do that, and from what I have seen they also put the cost of their representation back on to the homeowners as well, rubbing salt into an already very expensive wound.²²⁵

Section 3.8 of this paper explains changes which came into force on 7 April 2017 to enable tribunals and courts to consider, on application by the leaseholder, whether it is reasonable for the landlord to recover all or part of their costs through administration charges. Giles Peaker (partner with Anthony Gold Solicitors), told HCLG Committee that the burden of seeking such an order lies “with the often-unrepresented leaseholder”, he argued for a reversal of the default position.²²⁶

The APPG was concerned about an imbalance in the cost regime and resources available to landlords and tenants. The APPG's 2017 report referred to the inability of leaseholders to claim their costs:

The costs imbalance limits the proportion of leaseholders able or likely to defend their position. The knowledge of this limit to this risk of challenge encourages some landlords to overcharge.²²⁷

The APPG argued that leaseholders are less likely to defend their position as a case rises through the higher courts given the potential to incur costs while “landlords with multiple properties under their control have every incentive to defend a case on one site so as to protect their position on other sites”.²²⁸

In [Protecting consumers in the letting and managing agent market: call for evidence](#) (October 2017), the Government noted:

Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that is too daunting, costly and uncertain.²²⁹

The paper asked for views on what could be done to ensure consumers have a route to redress.²³⁰

The APPG called for:

- Consideration of how the cost balance might be changed such that a landlord faces the same prospect of the leaseholder's costs as the

²²⁵ [HC Deb 20 December 2016 c1345](#)

²²⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 178

²²⁷ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

²²⁸ As above.

²²⁹ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, para 4

²³⁰ As above, Q4.2

leaseholder might face against the landlord were it not for the cost advantage given to the landlord via the terms of the lease.

- That the landlord should face the deterrent risk of some form of penalty for repeat offences.
- That a system be considered where a standard set of costs might be set on matters such as sublet fees.²³¹

An independent regulator and minimum standards

The Government response to the October 2017 call for evidence set out an intention to create an independent regulator which will enforce minimum standards in a variety of areas, including dispute resolution in relation to managing agents (see section 3.13 below).²³²

The Government launched a further consultation process, [Strengthening consumer redress in the housing market](#), on 18 February 2018. This process sought views on “better ways for consumers across the private-rented, leasehold, social-housing and owner-occupied sector to resolve their complaints.”²³³ [A summary of responses together with the Government’s response](#) was published in January 2019.

The Government said it would create a Redress Reform Working Group to work with industry and consumers to develop a new Housing Complaints Resolution Service. The new service will “help renters in private and social housing, leaseholders, and buyers of new homes.” The Government said they intended to require freeholders of leasehold properties to be members of a redress scheme:

The Government is proposing to extend mandatory membership to a redress scheme to all freeholders of leasehold properties and will introduce primary legislation to this effect as soon as Parliamentary time allows.²³⁴

Then-Minister, Eddie Hughes, responded to a PQ on progress on 15 June 2022:

In summer 2019 the department established the Redress Reform Working Group to help improve redress across the housing market and consider a Housing Complaints Resolution Service. We continue to work on improving redress and meet with members of the Redress Reform Working Group, and the group continues to meet independently and provides updates to the department.

There is a gap in redress for leaseholders where their freeholder does not employ a managing agent and carries out their own property management on

²³¹ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

²³² MHCLG, [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

²³³ MHCLG, [Strengthening consumer redress in the housing market](#), 18 February 2018

²³⁴ MHCLG, [Strengthening consumer redress in the housing market: Summary of responses to the consultation and the Government response](#), January 2019, para 123

their leasehold property. In such circumstances, the freeholder is not required to sign up to a redress scheme. As part of filling the gaps in redress the government intends to require freeholders of leasehold properties who do not employ a managing agent to join a redress scheme and will seek a suitable legislative slot to do so.²³⁵

Closing loopholes on fees payable

On 28 March 2019, the Government announced plans to “close legal loopholes” relating to fees payable when leaseholders take freeholders to court:

Ministers have also today announced plans to close the legal loopholes that force leaseholders to pay unjustified fees when they take their freeholders to court over pernicious service charges. This includes consultation with industry on whether these changes should apply to existing leases too.

Under current rules, leaseholders who wish to take their landlords to court to challenge exorbitant fees or unfair hikes in annual charges also run the risk of being forced to pay their landlord’s legal fees. This applies even if the court rules in their favour – hitting some tenants with bills of tens of thousands of pounds

Scrapping this loophole will reset the relationship between freeholders and leaseholders – stopping tenants being unfairly burdened with legal fees and ensuring they can access justice.²³⁶

The announcement said “options are being explored” to close the legal loophole and next steps will be announced in due course. The industry will be consulted. The Government said it would “raise awareness for how leaseholders can avoid paying their landlords legal fees through current legislation.”²³⁷

The HCLG Committee recommended legislation to provide that freeholders’ tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder wins the case, unless the leaseholder has behaved badly.²³⁸

The Government response referred to the announcement of 28 March 2019 (see above), and pointed out legitimate circumstances where a landlord may need to take legal action against a leaseholder, for example, for failure to pay a service charge. There was an intention to “explore this issue further to see if exemptions are needed.”²³⁹ The response went on:

²³⁵ [PQ 13787 \[Leasehold Reform\] 15 June 2022](#)

²³⁶ MHCLG, [James Brokenshire announces industry pledge to crack down in toxic leasehold deals](#), 28 March 2019

²³⁷ As above.

²³⁸ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 179

²³⁹ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, paras 81-82

The Government will explore the best means to challenge unjustifiable legal costs including what changes to legislation are needed and if they should apply to existing leases. Changes to legislation to prevent the recovery of unjustifiable legal costs from leaseholders will be implemented as soon as Parliamentary time allows.²⁴⁰

The response also referred to the call for evidence, [Considering the case for a Housing Court](#) (November 2018). The outcome of this consultation was published in June 2022. The Government will not create a housing court but instead intends to implement a “package of wide-ranging reforms” to resolve the issues raised. This includes “trialling a new system in the First-tier Tribunal (Property Chamber) to streamline how specialist property cases are dealt with.”²⁴¹

Improved regulation of the sector (see section 3.13 below) should, according to the Regulation of Property Agents Working Group, “provide the opportunity to prevent bad practice and drive cultural change within the industry, focussing on prevention rather than enforcement after the event.”²⁴²

3.13

A new regulatory model for managing agents

[Protecting consumers in the letting and managing agent market: call for evidence](#), (October 2017) identified specific issues with agents operating in the leasehold sector:

The structure of the leasehold system itself is partially to blame. The very nature of the agreement means that leaseholders are typically excluded from decisions on property management. Government has introduced a number of protections to address the imbalance of power in leasehold over time, but these are often inconsistent and complex and can be abused by those that they were meant to protect against. Rights to challenge service charges, or to take on management directly, can be undone in a tribunal system that is too daunting, costly and uncertain.²⁴³

The paper sought views on whether an overhaul of regulation in the property agent market was needed, including empowering leaseholders by making it easier for them to choose and switch agents. As previously noted, the [Government response](#) was published in April 2018.²⁴⁴

The Government committed to regulating managing agents in addition to letting agents “to protect leaseholders and freeholders alike”.²⁴⁵ A single,

²⁴⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 83

²⁴¹ DLUHC, [Considering the case for a Housing Court: call for evidence](#), 16 June 2022

²⁴² [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019, p12

²⁴³ DCLG, [Protecting consumers in the letting and managing agent market: call for evidence](#), 18 October 2017, para 4

²⁴⁴ MHCLG, [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

²⁴⁵ As above.

mandatory and legally enforceable Code of Practice covering letting and managing agents will be introduced which will set minimum standards in certain key areas of activity, including:

- transparency of potential conflicts of interest;
- transparency of current and future financial commitments to which clients are agreeing;
- service charges;
- communication and customer service;
- handling of clients' money; and
- dispute resolution.²⁴⁶

Managing agents will be required to have a nationally recognised qualification to practice. An independent regulator will own the Code of Practice and will have enforcement powers. The Government said:

We also want to empower leaseholders to switch managing agents where they perform poorly or break the terms of their contract. Furthermore, we plan to simplify the Right to Manage process.²⁴⁷

As previously noted, a working group led by Lord Best was tasked with making recommendations on a future regulatory regime. [Membership](#) of the Group and its [terms of reference](#) (PDF) were published on 12 October 2018.²⁴⁸ The Group reported in July 2019.²⁴⁹ The key features of the proposed regime are as follows:

- The regulatory framework should cover estate agents across the UK and letting and managing agents in England. All those carrying out property agency work should be regulated, including rent-to-rent firms, online agents and property guardians. Some exclusions would apply, including the short-let sector, but legislation would allow for the future extension of regulation.
- The Government should create a list of 'reserved activities' which can only be performed by a licensed property agent at a regulated firm.
- Property agents and qualifying agents should be required to hold and display a licence to practise from the new regulator. The regulator will check that the agent has fulfilled their legal obligations and passed a fit-and-proper person test. The regulator should be able to vary licensing conditions and maintain records of licensed property agents.

²⁴⁶ MHCLG, [Protecting consumers in the letting and managing agent market: Government response](#), April 2018

²⁴⁷ As above.

²⁴⁸ [MHCLG Press Release](#), 12 October 2018

²⁴⁹ [Regulation of Property Agents Working Group – Final Report](#), (PDF) July 2019

- All property agents should be required to adhere to a code of practice which is described as “a single, high level set of principles applicable to all property agents which is set in statute”. Underneath would sit regulatory codes specific to various aspects of property agent practice.
- All agents would have to ensure their staff are trained to the appropriate level. The Group recommend that licensed agents should be qualified to a minimum level 3 of Ofqual’s Regulated Qualification Framework. Company directors and managing agents should be qualified to a minimum of level 4. The requirement for qualifications would apply only to licensed agents who carry out reserved activities. The regulator would set and review a modular syllabus. Continuing professional development should also be mandatory for licensed agents.
- The regulator would replace First-Tier Tribunals to block a landlord’s choice of managing agent where the leaseholders have reasonably exercised a veto.
- The regulator would provide information on managing agent performance and would have a role in enforcing compliance with any new requirements in relation to leasehold/freehold charges which will apply to managing agents.
- The regulator should be a new public body which is accountable to the Secretary of State at MHCLG. It should publish an annual report on progress in raising standards of property agents. Funding would come from regulated firms and individuals but initial ‘seed corn’ funding would be provided by the Government.
- The regulator should take over responsibility for approving property agent redress and client money protection schemes. The regulator would be able to consider complaints from all sources.
- The regulator would have a range of enforcement options from agreeing remedial actions to revocation of licences and prosecutions for unlicensed practice. Rights of appeal would apply to the First-Tier Tribunal.²⁵⁰

The Government is considering the group’s recommendations.

3.14

Buying a leasehold property

The Government ran a separate call for evidence between October and December 2017 on [Improving the home buying and selling process](#).²⁵¹ This paper identified specific issues with buying leasehold properties:

We know that leasehold properties typically take longer to buy than an equivalent freehold property, and are more prone to delay. This may be because of the difficulties and expense of obtaining and interpreting the

²⁵⁰ As above, pp3-6

²⁵¹ DCLG, [Improving the home buying and selling process](#), October 2017

necessary management information. We believe that there is some poor practice in this area and that action can and should be taken to make improvements.

We want to use this Call for Evidence to explore ways of making sure leasehold information is released to a more predictable timescale, more consistently and at a reasonable cost.²⁵²

The outcome was published in April 2018. The Government committed to several actions:

- set fixed time frames and maximum fees for the provision of leasehold information, potentially with a statutory underpinning, and encourage managing agents to make this information available electronically to enable instant access;
- work with industry to standardise the leasehold information form; and
- use our ‘How to Sell’ guide to encourage sellers to have early contact with their freeholder.²⁵³

In [Implementing reforms to the leasehold system in England](#) (October 2018) the Government posed questions on the following measures to improve how leasehold properties are sold:

- What a reasonable deadline would be for managing agents and freeholders to provide leasehold information; and
- What maximum fees would be reasonable for managing agents and freeholders to charge for providing leasehold information.²⁵⁴

[Implementing reforms to the leasehold system in England: summary of consultation responses and government response](#) (June 2019) announced the Government’s intention to:

- Set a turnaround time of no more than 15 working days to provide leasehold information to a prospective buyer – this will be a statutory requirement.
- Set a maximum fee of £200+VAT for producing leasehold information to prospective buyers in the form of a leasehold property enquiry pack (LPE1). Despite the cap, freeholders and agents will be expected to charge a fee that reflects the reasonable cost of providing this information below the cap. The Government believes that this will be achieved by ensuring that consumers can challenge a fee they believe not to be reasonable. Consumers will have to the power to challenge unreasonable fees through a First-Tier Tribunal.

²⁵² DCLG, [Improving the home buying and selling process](#), October 2017, paras 34-35

²⁵³ MHCLG, [Improving the home buying and selling process: call for evidence – Summary of responses and Government response](#), April 2018, para 20

²⁵⁴ MHCLG, [Implementing reforms to the leasehold system in England, 15 October 2018, section 5](#)

- There will be a maximum fee for updating leasehold information of £50.²⁵⁵

Mechanisms will provide for amendments to these fees to reflect changes in inflation.

The HCLG Committee also expressed support for the introduction of a standardised key features document for use at the start of the sales process by a developer or estate agent.²⁵⁶

The Government response to the Committee's recommendations agreed that a standardised key features document "which provides full lease details at the start of the sales process would be welcome" and committed to:

...work with major housebuilders to ensure that all purchasers of new-build leasehold homes have all of the pertinent information relating to the lease, and that this is set out clearly, before they make a decision to purchase.²⁵⁷

The Government published: [How to lease: a guide for current and prospective leaseholders in England](#). There is also consolidated online CMA and Government guidance: [Buying or owning a leasehold home](#).

3.15

Simplification of the law

The legislation governing leasehold tenure has developed in something of an ad hoc way and has been subject to good deal of amendment. The APPG called for the Law Commission to be tasked with simplifying and consolidating existing legislation into a single Act. The APPG also called for the development of standard lease agreements:

...at present the sector is burdened with entirely nonstandard lease written by the landlord's lawyer for their clients' advantage. There would be considerable consumer benefit by moving to a standard model of lease with appendices where relevant to meet the specific needs of the site.²⁵⁸

The HCLG Committee supported "a thorough review of leasehold legislation":

The Government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation, that would incorporate a

²⁵⁵ MHCLG, [Implementing reforms to the leasehold system in England: summary of consultation responses and government response, 27 June 2019, pp42-43](#)

²⁵⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 51

²⁵⁷ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 25

²⁵⁸ APPG, [A preliminary report on improving key areas of leasehold and commonhold law](#), (PDF) April 2017

full review of the Commonhold and Leasehold Reform Act 2002, the Landlord and Tenant Act 1987 and other relevant legislation.²⁵⁹

The Government response emphasised the desire to ensure “concrete change for consumers”:

We wish to prioritise our current programme and ensure these changes are delivered and embedded before considering further review of existing legislation.²⁶⁰

²⁵⁹ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, para 226

²⁶⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 105

4

Leasehold reform in Wales

Leasehold reform in England will not necessarily apply in Wales.

On 6 March 2018, then-Welsh Housing and Regeneration Minister, Rebecca Evans, announced agreement had been reached with some of the larger developers in respect of houses and flats which qualified for support under Help to Buy – Wales, such that:

- new criteria will require a developer to present a genuine reason for a house to be marketed as leasehold
- leasehold contracts will have to meet minimum standards, including limiting the starting ground rent to a maximum of 0.1% of the property's sale value
- leasehold agreements will have to run for a minimum of 125 years for flats and 250 years for houses.²⁶¹

The same leasehold rules apply to properties built by developers supported by affordable loans through the Wales Property Development Fund. The Minister said:

We have acted swiftly to take targeted and tangible action over concerns about leasehold sales on newbuild homes, and where leasehold is already the tenure, I am setting up a new group to recommend reforms to the system. I intend to put in place a voluntary Code of Practice to underpin these measures, improve standards and to promote best practice.

This is only the start of my plans to address concerns around leasehold. I have not ruled out the possibility of legislation in the future, which may well be needed to make leasehold, or an alternative to it, fit for the modern housing market.²⁶²

On 1 May 2018, the Minister announced the Welsh Government had formally joined the Law Commission's leasehold reform project. She said:

I've been clear that I am not ruling out future legislation to make leasehold or Commonhold fit for the modern housing market. When I receive the Law Commission's report and our own research, I will set out our next steps.

In the meantime, I continue to explore every avenue available to address the valid concerns being raised.²⁶³

²⁶¹ [Written Statement - Leasehold reform in Wales](#), 6 March 2018

²⁶² As above.

²⁶³ Welsh Government, "[Wales joins project on residential leasehold reform](#)," 1 May 2018

A multi-disciplinary task and finish group on leasehold reform was established to assist with this work and, on 13 July 2018, Rebecca Evans provided details of those bodies invited to participate and the main tasks they had been asked to consider:

The areas I have agreed the group should consider include:

- Failings in the leasehold system in Wales: how they impact on leaseholders, and any recommendations to address these.
- Advising on production and dissemination of awareness raising materials, guidance and relevant training for all those involved in buying / selling leasehold property.
- Proposals for a voluntary code of practice for property / estate management agents.
- Options for freehold homeowners on private estates to challenge estate charges.

The group has been convened for up to two years, although the initial tasks assigned are anticipated to be completed, and a report issued to me, by summer 2019.²⁶⁴

The Task and Finish Group issued [Residential Leasehold Reform](#) (PDF) on 17 July 2019. The report was described as “just the end of the first key stage of the work”. Many of the issues identified and the proposed solutions echo those referred to elsewhere in this paper. On publication, alongside a related report on unadopted roads, Julie James AM, Minister for Housing and Local Government, said:

We will carefully consider the recommendations provided in both reports and subject them to appropriate analysis before deciding on how best to proceed.

Leasehold, as tenure, is governed by complex legislation and before deciding on the full suite of actions, we will also need to consider the findings from the Law Commission review, in the context of our devolved powers.

As the then Minister for Housing and Regeneration stated when launching the Task and Finish Group we will not shy away from taking legislative action if necessary. However, we can only properly consider the potential need for legislative change when we also have the benefit of the reports due from the Law Commission which we expect later this year.

In the meantime there are recommendations in the Unadopted Roads report which we are able to take forward immediately to reduce the likelihood of issues experienced to date being repeated. We will also consider the recommendations from the Leasehold Reform Task and Finish Group to identify those actions we can take forward with immediate effect drawing on the ‘tools’ we already have at our disposal.

²⁶⁴ [Written Statement: update on actions relating to Leasehold Reform](#), 13 July 2018

We will provide further information to Members in the autumn.²⁶⁵

All the Law Commission's final reports published in July 2020 refer to the law in Wales. The Commission's project "is intended to cover both England and Wales, and to result, where reasonably possible, in a uniform set of recommendations that are suitable for both England and Wales."²⁶⁶

The Task and Finish Group noted it would be up to the Welsh and UK Governments to decide what legislation, if any, should be pursued by each administration: "For the Welsh Government this will need to include consideration of whether the legislative recommendations fall within the competence of the Assembly."²⁶⁷

On 14 October 2020 Julie James, Minister for Housing and Local Government, told the Senedd they were working on leasehold reform provisions:

...we are working very hard with the leasehold reform provisions that the Law Commission has looked at. They recently reported, and we're looking to see what can be done in conjunction with some UK legislation, if at all possible, just due to the lack of time we've now got in Senedd provisions to be able to do this.²⁶⁸

On 17 March 2021, she published a written statement on the [Welsh Government's research into the sale and use of leasehold in Wales](#), and the experience of those who live in leasehold properties. The statement referred to the Welsh Government's full support for the Law Commission's recommendations but went on:

...it acknowledges that these reforms will require significant primary legislation. This will need full support from the future Senedd following the elections to be held in May 2021.²⁶⁹

The Leasehold Reform (Ground Rent) Act 2022 has effect in Wales.

Mark Drakeford, First Minister of Wales, responded to an oral question on leasehold reform on 6 June 2023:

We have taken action already in Wales, Llywydd, to reduce the number of new-build houses that are sold on a leasehold basis. In fact, Land Registry use figures suggest that, in the last year for which figures are available, the number of new-build houses sold on a leasehold basis in Wales was in single figures. So, significant progress has been made there. And the 2022 Leasehold Reform (Ground Rent) Act does allow us to take new action in Wales in relation to excessive ground rent charges. However, there is a great deal more that needs to be done, and it was disappointing to read recent reports that Michael

²⁶⁵ Written Statement - [The publication of the reports from the Task and Finish Group for Leasehold Reform and the Unadopted Roads Taskforce](#), 17 July 2019

²⁶⁶ Law Commission, HC584, [Leasehold home ownership: buying your freehold or extending your lease](#), (PDF) July 2020, para 2.65

²⁶⁷ Task and Finish Group, [Residential Leasehold Reform, \(PDF\) 17 July 2019](#)

²⁶⁸ [Senedd Cymru, Question to the Minister for Housing and Local Government, OA123](#) 14 October 2020,

²⁶⁹ [Welsh Government - Written Statement: Next steps on leasehold reform - The Leasehold Advisory Service](#), 18 March 2021

Gove's promise in January this year to abolish leasehold now looks as though it's not to be taken forward, following a clash with Downing Street. The things that we were looking for in that piece of legislation include the points that Mike Hedges has made, Llywydd, about commonhold. Commonhold needs to be reformed so that it becomes a genuine viable model for multi-occupancy buildings, and the Law Commission's work identified the reforms that were required to make commonhold that workable alternative. Here in Wales, we very much support that. We hope it will still be taken forward by the UK Government, because, in this area, the combination of the housing responsibilities that we hold here, but the private law, including the law of property responsibilities that remain non-devolved, means that the most effective way of putting right the wrongs that still exist in the leasehold area is to legislate on that Wales-and-England basis.²⁷⁰

²⁷⁰ [Plenary 06/06/2023 - Welsh Parliament \(assembly.wales\)](#)

5 Commonhold tenure

5.1 Background

The Commonhold and Leasehold Reform Act 2002 introduced commonhold as a new tenure. One of the aims was to overcome the disadvantages of leasehold ownership. It was assumed, once in place, commonhold would become the standard form of tenure for new-build blocks of flats.

The consultation paper which accompanied publication of the Draft Commonhold and Leasehold Reform Bill (August 2000) summarised the challenges that developing a scheme for owning and managing interdependent properties presented:

In England and Wales, there are two ways to own land, freehold and leasehold. Each has its advantages and disadvantages in particular circumstances. Freehold comes closest to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract, or lease.

A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another. There are two types of covenant: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it on. However, both positive and restrictive covenants apply to leasehold property.

The problems with covenants are accentuated in the case of blocks of flats, where each flat will often depend on its neighbour for support and shelter, and the very stability of the building depends on the proper maintenance and repair both of the individual flats and the common parts. This means that, where it is desired to set up a scheme to allow for ownership of interdependent properties and for the management of the common parts and facilities, the scheme must, today, be based on leasehold ownership. There is no satisfactory scheme at present that would allow for freehold ownership in such circumstances.

As long term residential leasehold has become more and more widely discredited, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold.²⁷¹

²⁷¹ Cm 4843, para 1.2

The regulatory impact assessment (RIA) which accompanied the first Commonhold and Leasehold Reform Bill²⁷² described commonhold as follows:

...the name given in this jurisdiction to a scheme widely used throughout the rest of the world with greater or lesser degrees of variation. It provides for multiple occupation of developments, such as blocks of flats, or mixed flats and shops, or business parks in which unit owners have an interest in their unit of occupation, whatever that may be, which is closely analogous to a freehold interest. A body corporate, the commonhold association, made up exclusively of unit holders, owns and manages the common parts of the development, which may be no more than hallways and stairs, but might run to parks, sports halls, lakes, etc.

LEASE has information on commonhold tenure: [Commonhold - The Leasehold Advisory Service](#).

Commonhold tenure is viewed as offering several advantages over the leasehold system. It does not remove the obligation on residents to contribute to management/maintenance and major works, but it is argued to be a more transparent system. The September 2000 issue of Lovells' property newsletter identified the following perceived advantages of commonhold:

- Commonhold will address the problem of lessees being beholden to an absentee landlord who cannot be bothered to carry out building maintenance and management, or who is more interested in trying to make a profit at their expense.
- Commonhold will also remove the problem of leasehold property being a wasting asset. Commonholders will each have a perpetual interest, effectively akin to a freehold, in their individual unit.
- Standardised commonhold constitutional documents should be of general benefit.

The newsletter went on to point out that commonhold would not make it any easier to live alongside difficult neighbours who are noisy or who refuse to pay reasonable service charges:

Large multi-occupied buildings of a certain age are expensive to maintain. Commonhold will not make any difference to this, but unit holders may feel happier about spending large amounts of money on building maintenance if they feel they are in control and no one is trying to rip them off.

The British Property Federation's (BPF) briefing note on commonhold (2000) also emphasised that it is not a panacea for problems associated with residential long leasehold:

The demands, problems and requirements of community living and block management will be the same, regardless of the legal basis of which the property is owned.²⁷³

²⁷² This Bill fell for lack of time before the 2001 General Election (HL Bill 11 of 2000-01)

²⁷³ 11 February 2000

The Commonhold and Leasehold Reform Act 2002 was an attempt to introduce a new tenure for multi-occupied blocks. The principle of commonhold had broad support across the political parties. The previous Government had twice consulted on draft Commonhold Bills, and the genesis of the provisions in the 2002 Act can be traced back to 1965.²⁷⁴

The 1997 Labour Government had a manifesto commitment to introduce commonhold ownership; the 2002 Act honoured this commitment. During the debate on second reading in the House of Lords on the 2000-01 Bill, the Lord Chancellor, Lord Irvine of Lairg, said he did not expect the commonhold provisions to be the subject of controversy “either in this House or in another place.”²⁷⁵

5.2

Why has commonhold tenure failed to grow?

Although Part 1 of the Act has been in force since 2004, commonhold tenure has failed to take-off. There are very few blocks in commonhold ownership. It appears there may be two main reasons for this:

- conversion from leasehold to commonhold requires unanimity from everyone with an interest in the block – this has provided difficult to achieve; and
- developers have not been persuaded to build new commonhold developments. Commentators argue there are no incentives for them to do this and, in fact, leasehold offers opportunities as a source of future revenue through the purchase of lease extensions or selling off the freehold interest.

Witnesses to the HCLG Committee’s inquiry into leasehold reform identified the following additional factors as contributing to the lack of commonhold developments:

- drafting deficiencies within the 2002 Act – it is viewed as inappropriate for mixed-use developments;
- a reluctance by lenders to provide mortgages for commonhold properties – commonhold associations may be viewed as at greater risk of insolvency. UK Finance told the Committee that 40 providers will loan against commonhold; and

²⁷⁴ Cmnd. 2719. The consultation paper that accompanied publication of the Draft Commonhold and Leasehold Reform Bill (Cm 4843) contains a brief history of efforts to amend the law of positive and restrictive covenants and introduce commonhold tenure at pages 79-8.

²⁷⁵ HL Deb 29 January 2001 c455

- a loss of consumer protection arising from the leasehold model and a reluctance amongst residents to take an active management role – however it would be open to residents to appoint a managing agent.²⁷⁶

As the legislation progressed through Parliament, there was a good deal of debate over whether there should be a requirement for all new blocks to be developed as commonhold – amendments along these lines were resisted.

Over the years there have been several calls for governments to review Part 1 of the 2002 Act to address issues inhibiting the development of commonhold units and the conversion of leasehold blocks to commonhold.

Dr Blackman-Woods attempted to amend the Housing and Planning Bill 2015-16 by adding a new clause entitled “conversion of leasehold to commonhold for interdependent properties.”²⁷⁷ The aim was to end leasehold tenure by converting existing leasehold blocks to commonhold by 1 January 2020.

The Minister, Marcus Jones, responded for the Government:

Abolishing leasehold and forcing leaseholders into commonhold may seem attractive to some, but would that be the right thing to do in all circumstances? The Government believe that it would not. Removing choice in this instance and, with it, the rights and protections currently afforded to leasehold homeowners and at the same time forcing existing leaseholders to become commonholders against their will would not be desired by all. Considerable care needs to be taken before embarking on legislation that would force existing leaseholders and landlords to transfer to the commonhold model, which would not in all cases be appropriate. Commonhold should remain a voluntary alternative to long leasehold ownership.

On that basis, I hope that the hon. Lady will, as she says, withdraw the motion.²⁷⁸

The motion was withdrawn.

During the Westminster Hall debate on 20 December 2016, both Sir Peter Bottomley and Ruth Cadbury called on the Government to review commonhold and implement necessary changes. Both referred to the fact that commonhold operates effectively around the world and should be made to work in England and Wales.²⁷⁹

²⁷⁶ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, paras 31-37

²⁷⁷ [PCB 10 December 2015 c684](#)

²⁷⁸ As above.

²⁷⁹ [HC Deb 20 December 2016 c1337 and c1351](#)

5.3

An appetite for reform?

In 2014, Lord Faulks said there were no plans for a review of commonhold.²⁸⁰ The Minister’s response to an attempt to amend the Housing and Planning Bill 2015-16 made it clear the Government had “no plans to abolish residential leasehold.”²⁸¹

However, just over one year later the Government published a Housing White Paper, [Fixing our broken housing market](#) (February 2017), in which a commitment was given to “...consider further reforms through the consultation to improve consumer choice and fairness in leasehold, and whether and how to reinvigorate Commonhold.”²⁸²

The July 2017 consultation paper, [Tackling unfair practices in the leasehold market](#), was described as “the first step” as it included a commitment to carry out a wide ranging project looking at several issues, including “improving commonhold.”²⁸³

[Tackling unfair practices in the leasehold market: government response](#) (December 2017) confirmed the Law Commission, as part of its 13th Programme of Law Reform, would consider “the re-introduction and re-involution of commonhold as an alternative tenure.”²⁸⁴ The Government said they would consider what more could be done to support commonhold tenure:

We also want to look at ways to reinvigorate commonhold. One of the reasons commonhold was not successful when first introduced was because of the financial incentives for developers in building leasehold. The measures we outline in this response will help address this by removing unfair financial gains, but there are other issues that we need to consider including access to finance, and consumer awareness. This will help ensure that the market puts consumers’ needs ahead of those of developers or investors. We will also look at what more we can and should do to support commonhold to get off the ground working across the sector, including with mortgage lenders.²⁸⁵

The Law Commission issued [Commonhold: A Call For Evidence \(PDF\)](#) on 22 February 2018. The views and evidence gathered were to be used to prepare a detailed consultation paper.²⁸⁶ Consultation on [proposed reforms](#) to “support the expansion of commonhold as an alternative to leasehold” was

²⁸⁰ [HL Deb 7 May 2014 c1471](#)

²⁸¹ [PCB 10 December 2015 c684](#)

²⁸² Cm 9352, para 4.38

²⁸³ DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 7.1

²⁸⁴ DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 82

²⁸⁵ As above, para 87

²⁸⁶ Law Commission, [Commonhold: A Call For Evidence](#), (PDF) 22 February 2018,

launched on 10 December 2018.²⁸⁷ The Law Commission described the purpose of the proposed reforms:

- Allow a commonhold development to include both residential units (incorporating different types of affordable housing such as shared ownership), as well as commercial units (such as restaurants and shops)
- Make it easier to convert from leasehold to commonhold
- Increase lender confidence in commonhold so as to increase the choice of mortgage lenders available for purchasers
- Replace service charges set by a landlord with commonhold contributions which have to be approved by a majority of those paying them.²⁸⁸

The HCLG Committee urged the Government to “ensure that Commonhold becomes the primary model of ownership of flats in England and Wales”. The Committee said it supported the work of the Law Commission and would like to see early implementation, but thought the Government should go further to limit incentives to build leasehold properties “particularly, monetary ground rents and permission fees:”

At the same time, the Government will need to ensure that concerns regarding commonhold properties are meaningfully addressed, including ensuring appropriate resident participation in the management of buildings. This might include the provision of training to residents in management roles and ensuring external expert support is made available in extreme circumstances.

Our expectation is that once commonhold legislation is reformed, leaseholds begin to convert, and more commonhold developments are brought forward, leasehold as a tenure will become increasingly redundant. While it may be the case that some retirement properties and the most complex, mixed-use developments would continue to require some form of leasehold ownership, there is no reason why the majority of residential buildings could not be held in commonhold; free from ground rents, lease extensions, and with much greater control for residents over service charges and major works.²⁸⁹

The Government’s response to the Committee’s recommendations referred to a number of issues highlighted by respondents to the Law Commission’s call for evidence “which may be making [commonhold] unattractive to homeowners, developers and mortgage lenders.”²⁹⁰

The Law Commission’s proposals are aimed at expanding the use of commonhold for larger mixed-use developments and making it easier for leaseholders to convert to a commonhold structure. The Government’s priority is to address the “perceived shortcomings” of commonhold so it can

²⁸⁷ [The time is right for commonhold announce Law commission](#), 10 December 2018

²⁸⁸ As above.

²⁸⁹ Housing, Communities and Local Government Committee, [Leasehold Reform](#), (PDF) 19 March 2019, HC 1468 2017-19, paras 42-43

²⁹⁰ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 21

“flourish as an alternative to leasehold”.²⁹¹ However, the Government noted that leasehold for flats “can work effectively in many circumstances and there may be homeowners who do not want the responsibilities that come with commonhold.”²⁹² There was a commitment to increase awareness of commonhold and its advantages.²⁹³

In [Ending the Scandal: Labour’s new deal for leaseholders](#) (PDF, July 2019), the Labour Party described a reformed commonhold model as “the best alternative for leaseholders”. Labour’s ambition was for commonhold to supersede leasehold ownership of flats. There was a commitment to bring forward early legislation to end the building of new leasehold properties:

...putting in place the necessary reforms to ensure that commonhold can work for consumers, developers and lenders, just as it does in other countries. This early legislative declaration of intent will help manage the transition to commonhold over several years, allowing developers to maintain a strong planned programme of development.²⁹⁴

5.4 The Law Commission’s proposals 2020

The Law Commission’s final report, [Reinvigorating commonhold: the alternative to leasehold ownership](#) (PDF)²⁹⁵ was published on 21 July 2020. There is a [summary report](#) (PDF) and [an open letter to lenders on taking commonhold as security](#) (PDF). The detailed recommendations “seek to make commonhold not only a workable, but a preferred form of homeownership to residential leasehold”- they include measures designed to:

- make it easier for leaseholders to convert to commonhold and gain greater control over their properties;
- enable commonhold to be used for larger, mixed-use developments which accommodate not only residential properties but also shops, restaurants and leisure facilities;
- allow shared ownership leases to be included within commonhold;
- give owners a greater say in how the costs of running their commonhold are met and ensure they have sufficient funds for future repairs and emergency works;
- make it easier to take action against those who fail to pay their share of the commonhold’s costs;

²⁹¹ [Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform](#), (PDF) CP 99, 3 July 2019, para 22

²⁹² As above, para 23

²⁹³ As above, para 24

²⁹⁴ Labour Party, [Ending the Scandal: Labour’s new deal for leaseholders](#), (PDF) July 2019, pp13-14

²⁹⁵ Law Commission, HC 568, [Reinvigorating commonhold: the alternative to leasehold ownership](#), (PDF) 21 July 2020

- ensure commonholds are well maintained and insured, with new powers to replace directors who are not complying with the commonhold's rules;
- provide owners with flexibility to change the commonhold's rules while improving the protections available to those affected by the change; and
- improve mortgage lenders' confidence in commonhold to increase the choice of financing available for home buyers.²⁹⁶

On 11 January 2021, then-Secretary of State, Robert Jenrick, announced the establishment of a Commonhold Council:

Having closely reviewed their report, I am confirming I will establish a new Commonhold Council as a partnership of industry, leaseholders and Government that will prepare homeowners and the market for the widespread take-up of commonhold. I will start this work immediately, including considering legislation. I know this will take time and close working with consumers and industry, and the Commonhold Council will be the critical first step of this.²⁹⁷

The Council was launched on 13 May 2021.²⁹⁸

Consultation opened in January 2022 asked for views on how shared ownership products could work in commonhold settings and about the provision of information for buying and selling a commonhold property.²⁹⁹ Responses are being analysed.

²⁹⁶ [Law Commission's Commonhold webpage](#) [accessed on 24 August 2022]

²⁹⁷ [HCWS695](#), 11 January 2021

²⁹⁸ MHCLG, [Expert group to help homeowners gain more control over their homes](#), 13 May 2021

²⁹⁹ DLUHC, [Reforming the leasehold and commonhold systems in England and Wales](#), 11 January 2022

Appendix: Methodology of DLUHC statistics

Section 2.1 of this briefing describes estimates of the number of leasehold homes in England, published by DLUHC.

The methodology behind DLUHC's estimates has changed over time. The current estimate is based on a methodology first outlined in a 2014 technical paper.³⁰⁰

The estimate used by the government up until that point had been 2.5 million households in 2011/12, based on responses to the English Housing Survey (EHS). Private tenants responding to the EHS are not asked whether their property is leasehold, on the basis that they would be unlikely to know. The technical paper acknowledged that attempts to model leasehold in the private rented sector failed to account of a higher proportion of flats in the sector, resulting in an under-estimate.

The first set of estimates in DLUHC's current series was released in April 2017 and related to housing stock in 2014/15. The release was classed as 'Experimental statistics', meaning that the methodology was recognised to be under development. It put the number of leasehold properties in the private sector at 4.0 million and did not attempt to estimate the number of leasehold properties in the social rented sector.³⁰¹

The 2014/15 estimates were created by matching data from the English Housing Survey (EHS), which captures the attributes of a sample of properties, with data from the Land Registry, which shows whether those properties are leasehold or freehold.³⁰²

A subsequent release looked at housing stock in 2015/16. It included an expanded methodology which combined 2014/15 and 2015/16 data to produce an estimate for the social rented sector for the first time. This estimate incorporated a further 200,000 social rented homes for a total of 4.2 million leasehold homes overall.³⁰³

Similar methods were used for releases for 2016/17 onwards. The 2019/20 release, published in July 2021, was the first not to be classed as 'Experimental'.³⁰⁴ The statistics are currently produced in line with the UK's

³⁰⁰ MHCLG, [Residential leasehold dwellings in England: technical paper \[PDF\]](#), August 2014

³⁰¹ MHCLG, [Estimating the number of leasehold dwellings in England, 2014-15](#), October 2018, p.1

³⁰² As above

³⁰³ MHCLG, [Estimating the number of leasehold dwellings in England, 2015-16](#), September 2017

³⁰⁴ DLUHC, [Collection: leasehold dwellings](#), 7 July 2022

Code of Practice for Statistics, but have not yet been designated as ‘National Statistics’ (ie fully compliant with the Code) by the Office for Statistics Regulation.

The release for 2021/22 found that there were around 4.98 million leasehold homes in England. The release also looked at whether the change in the number of leasehold homes has been statistically significant.

DLUHC’s estimates are based on a survey sample and are therefore not precise. It is therefore important to assess whether changes are statistically significant, by interpreting the confidence intervals for each estimate. A confidence interval expresses the degree of uncertainty associated with a statistic and gives an indication of the range in which the ‘true’ value is likely to lie.

We can’t say with certainty whether the number of leasehold homes increased between 2015/16 and 2018/19. However, DLUHC’s analysis found that the number of leasehold homes increased from around 4.5 million in 2018/19 to around 4.98 million in 2021/22. We can’t say with certainty whether there was an increase between 2020/21 and 2021/22, however.³⁰⁵


³⁰⁵ DLUHC, [Leasehold dwellings, 2021 to 2022](#), 11 May 2023

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