



Ministry of Housing,
Communities &
Local Government

Implementing reforms to the leasehold system in England

A consultation



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Scope of the consultation

<p>Topic of this consultation:</p>	<p>This consultation seeks views on how to implement the reforms to the leasehold system announced by the Government on 21 December 2017. Specifically, it seeks views on:</p> <p>How to implement a ban on the unjustified use of leasehold for new houses;</p> <p>How to implement the reduction of future ground rents to a nominal value;</p> <p>How to implement measures to ensure that the charges that freeholders must pay towards the maintenance of communal areas are fairer and more transparent; and</p> <p>How to implement measures to improve how leasehold properties are sold.</p>
<p>Scope of this consultation:</p>	<p>Views are sought on the reasons why houses should not be sold as freehold by default; the reasons why new ground rents should not be a nominal sum of £10 per annum (and circumstances where this may not be appropriate); when this requirement should come into force; how we ensure that freeholders who pay estate rent charges or freehold service charges are treated fairly; and what should be the appropriate time period and level of fees for the provision of leasehold information when homes are sold.</p>
<p>Geographical scope:</p>	<p>These proposals relate to England only.</p>
<p>Impact Assessment:</p>	<p>The information provided will inform government policy and any assessments required under the Government's Better Regulation Framework for this Parliament.</p>

Basic information

To:	This consultation is open to everyone.
Body/bodies responsible for the consultation:	The Ministry of Housing, Communities and Local Government.
Duration:	This consultation will last for 6 weeks from 15 October 2018.
Enquiries:	For any enquiries about the consultation please contact: leasehold.reform@communities.gov.uk
How to respond:	<p>You may respond by completing an online survey at: https://www.surveymonkey.co.uk/r/LeaseholdCon18</p> <p>Alternatively you can email your response to the questions in this consultation to: leasehold.reform@communities.gov.uk</p> <p>If you are responding in writing, please make it clear which questions you are responding to.</p> <p>Written responses should be sent to:</p> <p>Leasehold, Commonhold and Rentcharges Division Ministry of Housing, Communities and Local Government Third Floor, South West – Fry Building 2 Marsham Street London SW1P 4DF</p> <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including post-code), - an email address, and - a contact telephone number.

Ministerial Foreword

Everyone has a dream about what their perfect home should be. For many, the dream of home ownership has been something that has taken years – sometimes decades – to realise. Getting the keys to your own home is a momentous day in your life, an achievement worthy of celebration. A home of your own is a place to raise a family with the security of knowing you can stay in one place, without people influencing how long you live there, or how you use your property.

But for some, the reality of living in a leasehold home has not lived up to the dream.

Some people find themselves trapped by the small print in contracts which were never explained properly – with terms such as onerous ground rents which double every ten years.

I want to make the vision of the place you call home a reality. This means that the dream of home ownership for leaseholders should come with no surprises or unfair conditions which put corporate profit over consumer protection. It means taking a fundamental look at the way the leasehold market works with fresh eyes to make sure people have a choice of housing tenure that works for them, rather than accepting carte blanche the way things have been done in the past.

Last December, the Government set out our plans to end unfair leasehold practices following a consultation where we asked people how we should proceed. This included proposals to ban the unjustified use of leasehold in new houses. And also to reduce ground rents on newly established leases of houses and flats to a peppercorn.

Now I intend to deliver on our promises. I will introduce new legislation, when Parliamentary time allows, making the leasehold system in England fairer and more transparent.

I'm committed to making improvements as soon as I can. That is why I announced in July that any new government funding scheme will contain the condition that the money cannot support the unjustified use of leasehold for new houses.

This will bring real change – an essential step to restore pride and dignity to homeowners everywhere.

Rt Hon James Brokenshire MP
Secretary of State for Housing, Communities and Local Government

1. Introduction

- 1.1 In February 2017, the Government's White Paper, *Fixing our broken housing market* highlighted the need to improve consumer choice and fairness in the leasehold sector and committed to consult on a range of measures to tackle unfair and unreasonable abuses of leasehold.¹
- 1.2 Leasehold has been part of the UK's housing landscape for generations, usually put to sensible use in buildings with shared fabric and common areas, such as blocks of flats. But far too many new houses are being built and sold in this way. The proportion of new build houses that are leasehold has doubled over the past twenty years, accounting for 15 per cent of all new build house sales in more recent times. In some parts of the country, it is increasingly difficult to purchase a new build home on any other basis.
- 1.3 Ground rents on many properties have also risen from historically small sums to hundreds of pounds per year. In some cases ground rent terms can increase to significant sums amounting to thousands of pounds.
- 1.4 To consider issues around leasehold reform, a consultation, *Tackling unfair practices in the leasehold market* took place between July and September 2017.² We received an overwhelming response with over 6,000 replies, with the vast majority in favour of widespread reform.
- 1.5 The Government concluded that leasehold should not be a means of extracting ever more cash from the pockets of already over stretched house buyers. We found many purchasers did not make an active or informed choice to buy a leasehold house, and were not always aware of the medium and long-term costs associated with this. Far too many people reported being surprised to find that the freehold of their home had been sold on to a third party investor, with the cost of buying the freehold having risen considerably – sometimes running into tens of thousands of pounds.
- 1.6 The consultation also gave us evidence of instances where consumers with very onerous ground rent terms were effectively trapped in their own homes, unable to find a buyer. Some of these people have not been able to access redress, and do not know where to turn for support.
- 1.7 Therefore, in December 2017, the Government announced that the leasehold system as it stands is not working in consumers' best interests and needed to be reformed.³

¹ MHCLG, *Fixing our broken housing market*, see: <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

² MHCLG, *Tackling unfair practices in the leasehold market: a consultation paper*, see: <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

³ Leasehold and commonhold reform: Written Statement, see: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-21/HCWS384>

In the majority of cases, the use of leasehold for new build houses is entirely unjustified. Therefore, the Government would introduce legislation to prohibit the use of leasehold in new build leasehold houses, other than in exceptional circumstances.

- 1.8 We also announced that the Government would restrict ground rents to a peppercorn in newly granted leases of houses and flats, and address loopholes in the law to improve transparency and fairness for leaseholders and freeholders.
- 1.9 This consultation applies to England only and seeks to inform the detail which will underpin the legislation needed to enact these reforms. Where aspects of the December announcement, including the commitment to legislate to address loopholes in legislation to protect leaseholders and freeholders, are not referenced in this document, we are able to take the action we need outside of the consultation.
- 1.10 This consultation seeks your views on:

Implementing the ban on the unjustified use of leasehold in new build houses:

- Whether respondents agree with our proposed exemptions to the proposed ban on the granting of unjustified new residential long leases on houses, and what other exceptional circumstances there may be where it is impossible to provide a house on a freehold basis; and
- Seeking views on how the ban should be enforced and implemented.

Implementing the reduction of future ground rents to a nominal financial value:

- Whether there are justifiable reasons why ground rents on newly created residential long leases should not be set at a rate of £10 per annum and the extent and application of the policy.

Implementing measures to ensure that the charges that freeholders must pay towards the maintenance of communal areas are fairer and more transparent:

- How we give freeholders an equivalent right to leaseholders so they can challenge the reasonableness of service charges levied through a deed of covenant or an estate rent charge;
- Whether there are any justifiable reasons why freeholders should not have a mechanism to change the provider of the services covered by a deed of covenant or an estate rent charge. In particular whether a right to apply to the tribunal to appoint a new manager is appropriate; and
- What the impact of these changes would be on companies or bodies that provide the long term management of communal areas and facilities.

Implementing 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.
- 1.11 All responses to the consultation should be submitted no later than midnight on 26 November. We encourage respondents to use the online survey available at <https://www.surveymonkey.co.uk/r/LeaseholdCon18>, although written responses can also be emailed to:

leasehold.reform@communities.gov.uk

or sent to:

Leasehold, Commonhold and Rentcharges Division
Ministry of Housing, Communities and Local Government
Third Floor, South West – Fry Building
2 Marsham Street
London
SW1P 4DF

2. Implementing the ban on the unjustified use of leasehold in new build houses

The problem with the unjustified use of leasehold in new build houses

- 2.1 Leasehold can be an effective tool for making multiple-ownership more straightforward, such as in blocks of flats with shared fabric and common areas. However, its increasing use for new houses has at best been unnecessary and at worst has been a platform for misuse.
- 2.2 Over the past twenty years, the proportion of new build houses sold as leasehold has more than doubled – from seven to sixteen per cent of all house sales.⁴ In some areas it has become increasingly impossible to buy a new build home on any other basis. In parts of the country, use of leasehold for houses has arisen due to longstanding custom and practice.
- 2.3 In recent years, large numbers of standalone houses with no shared facilities or fabric have been built and sold as leasehold simply to create a revenue stream for whoever owns the freehold.
- 2.4 We strongly believe that when someone buys a house, it should feel truly their own. House buyers should not be faced with a depreciating lease or a ground rent charge for any other purpose than to pay for the privilege of living in the house they have already bought.
- 2.5 It is unacceptable for home buyers to be exploited through unnecessary leaseholds, unjustified charges and onerous ground rent terms.
- 2.6 Our consultation last summer received over 6,000 responses.⁵ The vast majority considered there to be very few cases where the sale of new leasehold houses could be justified. Eighty per cent said use of leasehold for new houses could never be justified. This was a particularly strong view among existing or prospective homeowners.
- 2.7 The majority of developers agreed.

⁴ Office for National Statistics and HM Land Registry, Percentage of property transactions for new leasehold houses 1996 to 2017 (Figure 12), see:

<https://www.ons.gov.uk/peoplepopulationandcommunity/housing/bulletins/housepricestatisticsforsmallareas/yearendingseptember2017#new-properties-increasingly-sold-as-leasehold>

⁵ MHCLG, Tackling unfair practices in the leasehold market: a consultation paper, see:

<https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

- 2.8 While the numbers of new build leasehold houses have grown in recent years, the vast majority of houses have been and continue to be built and sold on a freehold basis. Most new houses have always been sold as freehold houses.
- 2.9 In December 2017 the Government announced that it will bring forward legislation to prohibit new residential long leases from being granted on houses, whether new build or existing freehold – to cut out unnecessary practices or misuse.⁶

Enforcement of the ban on unjustified new long leases for houses

- 2.10 The mechanism for prohibiting unjustified new residential long leases from being granted on houses will be based around how land and houses are registered. Following our legislation, if someone has been wrongly sold a leasehold house we want to explore the best means for cost effective and speedy redress for the consumer. In addition, we want to seek views on a workable definition of a house for the purpose of the proposed leasehold house ban, so there are no unintended consequences of loopholes which could cause confusion or be subject to misuse.
- 2.11 Anyone buying or selling land or property, or taking out a mortgage, must apply to HM Land Registry to register the land or property and any new owner. That requirement applies to many leases.⁷ When considering each application, HM Land Registry must decide whether and how it should be registered and in doing so, the requirements of the law are a key factor.⁸
- 2.12 Following the introduction of the proposed legislation, and subject to any exemptions provided, it will not be permissible to apply to register a residential long lease granted or assigned in the circumstances described in paragraphs 2.42 and 2.43 below or to register a lease of over 21 years with a ground rent in excess of the statutory cap (see Section Three) with HM Land Registry.
- 2.13 If, contrary to the proposed legislation, a new residential long lease is incorrectly granted on a house, the homeowner should be able to cancel the lease and have the freehold title transferred to them at the earliest possible opportunity, and with the minimum of cost and disruption to them.
- 2.14 We would welcome views on any further practical measures which would enable the ban to be enforced and what remedy should be available to those affected by a breach of the ban. While the freehold should transfer to the homeowner on any incorrectly granted leases, arrangements may need to be made to also transfer any necessary rights and obligations that were included in the lease.

⁶ MHCLG, Tackling unfair practices in the leasehold market: summary of consultation responses and Government response, see: <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

⁷ Sections 4 and 27 of the Land Registration Act 2002 sets out the circumstances in which a lease must be registered. A lease for a term of more than seven years from the date of grant is one of those.

⁸ HM Land Registry, see: <https://www.gov.uk/government/organisations/land-registry/about>

- 2.15 There is an existing legal definition of a 'house' set out in the Leasehold Reform Act 1967.⁹ This provides a broad and flexible interpretation of the types of properties that could be considered to be a house and is set out in the Act for the purposes of enfranchisement. However, this definition may not be appropriate for the purpose of banning new leasehold houses. We wish to ensure that we use a definition of a house that does not allow for the ban to be evaded and also provides a workable definition for the purpose of correctly registering houses in line with the ban.
- 2.16 When people think of leasehold properties, they tend to be buildings with shared fabric and facilities, such as blocks of flats. By contrast, people tend to think of houses as a single stand alone dwelling. As houses come in many configurations, shapes and sizes a workable definition is required so that there are no unintended consequences – such as limiting the design or layout of houses. For example, properties situated over garages could be prevented from being called houses because the garage directly beneath it is owned by the adjoining property. It is possible that a house may be more easily defined by what it is not. For example, part of a new definition could set out that a house is not a flat.
- 2.17 The Law Commission is in the process of reviewing existing enfranchisement legislation. One of its proposals is to introduce the concept of a 'residential unit', which may replace the existing definition of a house. However, any revision as a result of this review will likely remain unsuitable for the purposes of the ban, since it will relate to enfranchisement and will include flats, which the leasehold ban is not intended to cover.

Question 1: Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses? [Yes/No]

If you do, please explain.

Question 2: Do you have any views on how to provide appropriate redress for the home owners should (a) a long lease be incorrectly granted upon a house or (b) a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect?

If you do, please explain.

Question 3: To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should

⁹ Section 2 of the Leasehold Reform Act 1967, see: <http://www.legislation.gov.uk/ukpga/1967/88/section/2>

or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

Acceptable terms to the consumer

2.18 We are clear that any exemptions provided need to be on acceptable terms to the consumer. As a minimum, this should mean that any developments which are exempted from this policy are not automatically exempt from the nominal future ground rent (as described in Section Three). The only exception would be community-led housing, for the reasons given in paragraph 3.22.

Question 4: With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed? [Yes/No]

If you do not agree, please explain why.

Question 5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers? [Yes/No]

If yes, please explain what these conditions are.

Considering the case for exemptions

2.19 Since our announcement last year, we have been talking to developers, investors, land owners, and representatives of home buyers, as well as other partners about the detail of this reform and its implementation. Broadly, we have heard of little anticipated negative impacts as a result of the proposals to prohibit the unjustified use of new long leases on houses, either on the supply of housing or the release of land for development.

2.20 Indeed, many have suggested that the market has already started to adjust in advance of new legislation, with developers who previously sold leasehold houses stopping or beginning to phase out the practice. Signs of behaviour change have been reported both among developers and consumers in response to raised awareness and announcements on future policy direction.

- 2.21 Where necessary, there are a range of alternatives to leasehold to ensure house owners can contribute to the upkeep of shared spaces and services, such as through the use of covenants or estate rentcharges.¹⁰ In addition, the Government will be responding to the recommendations of the Law Commission's report *Making Land Work*¹¹ to make it easier to create long term arrangements for these purposes and plans to publish a draft Bill for consideration in 2019.
- 2.22 There have been however, a small number of examples where an exemption has been called for. In a few cases we are minded to agree with those who have sought an exemption, but for others we are yet to be convinced and would like to see more detailed evidence provided. We want to continue this conversation through this consultation and take views on a set of proposed exemptions as well as seek any further evidence about the case for any additional exemptions.
- 2.23 We think there is a case to consider exemptions for the following types of development:
- a. Shared ownership properties;
 - b. Community-led housing (Community Land Trusts, cooperatives and cohousing schemes); and
 - c. Inalienable National Trust land and excepted sites on Crown land.

Shared ownership

- 2.24 In our December 2017 announcement, we stated that we believe that an exemption will be needed to support shared ownership. Here, a leasehold title is required to manage the joint ownership of the property up until the point the homeowner has staircased to a 100 per cent interest and the freehold interest can be transferred. For this reason, we propose an exemption should be provided for all forms of shared ownership property, for both those with and without a restricted staircasing lease. This supports Government's commitment to shared ownership as a tenure, which helps people who otherwise may have been unable to afford homeownership. Government has supported the delivery of over 60,000 shared ownership homes since 2010, and continues to support delivery through the £9bn Affordable Homes Programme.

¹⁰ Covenants are legally binding commitments to do or not to do specified things: e.g. not to use a property for business purposes; or to maintain (or pay for) the upkeep of a fence or wall. In the case of freehold houses a Deed of Transfer is agreed to. This is a legal document similar to a contract and states what the freeholder is expected to contribute towards, when they will need to make the payments, and the proportion of costs which they will need to pay. Deeds of Transfer copies can be obtained from the Land Registry for a small fee. Estate rentcharges are often applied in mixed-use developments which contain a mixture of leasehold flats and houses and freehold houses.

¹¹ Law Commission, Easements, Covenants and Profits à Prendre, see: <https://www.lawcom.gov.uk/project/easements-covenants-and-profits-a-prendre/>

Question 6: Do you agree that there should be an exemption for shared ownership houses? [Yes/No]

If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of shared ownership houses.

Community-led housing

- 2.25 We have already stated that an exemption may also be needed for community led housing such as Community Land Trusts. For many forms of community-led housing, like Community Land Trusts, cohousing and cooperative housing developments¹² ownership of the homes by the community for the benefit of the community is core to the purpose for which the housing is provided.
- 2.26 Without continued community ownership there is a risk that land would not be made available for new supply. This could harm the development of small, often difficult sites, which are normally off limits or of no interest to mainstream developers. This puts at risk a substantial pipeline of new homes over the next few years, many supported by Government through the *Community Housing Fund*.¹³
- 2.27 The Government is making available £163 million across England over 2018/19 and 2019/20 through the *Community Housing Fund*. This is in addition to £60 million funding that has already been allocated directly by the Government to 148 councils in December 2016.
- 2.28 While Community Land Trusts are defined in law,¹⁴ other forms of community led housing are not. We intend to define community-led housing based around the principles of being not for profit and established for the benefit of the local community, and to provide an exemption across the range of community-led housing schemes.

Question 7: Do you agree that there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives? [Yes/No]

¹² Community Land Trusts (CLTs) are a form of community-led housing where houses are built and managed by individuals for the benefit of their local community. CLTs act as long-term stewards for sustainably affordable housing, ensuring that it remains affordable in perpetuity for future occupiers. CLTs are defined in s.79 of the 2008 Housing and Regeneration Act. Cohousing is not defined in legislation, however it can be described as a form of community led housing with self-contained homes as well as shared community space which is created and run by the residents. A housing cooperative is a housing organisation which exists as a landlord, managed partly or fully by its tenants. Cooperatives are not defined in legislation.

¹³ MHCLG Community Housing Fund, see: <https://www.gov.uk/government/collections/community-housing-fund>

¹⁴ [Section 79 of The Housing and Regeneration Act 2008](#)

If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of community-led housing.

Question 8: We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption.

Inalienable National Trust land and excepted sites on Crown land

- 2.29 The vast majority of National Trust land and the properties that sit upon are held inalienably and cannot be sold on a freehold basis.¹⁵ This is so the National Trust can retain ownership of such land and properties to look after them on behalf of the nation.
- 2.30 The National Trust rarely develops new leasehold housing on this land, but does sometimes seek to convert existing buildings into leasehold properties (houses and flats) so that the buildings can be protected and maintained, but where ownership can be retained by the National Trust. On this land, without an exemption the Trust would be prohibited from developing any houses. Therefore, we are minded to provide an exemption for land held inalienably by the National Trust. For other land held by the Trust, the proposed restrictions to prohibit the granting of new long leases on houses should continue to apply.
- 2.31 The owners of Crown land are not bound by existing rules concerning enfranchisement which gives leaseholders rights to purchase their freehold.¹⁶ However, they do act by analogy with the legislation and follow the rules as if they did apply, with the exception of a few specific geographic locations, such as land and properties around Royal Parks and Palaces or other locations with a long historic association with the Crown.¹⁷ Freehold ownership is restricted in these areas as land may be held inalienably, for security reasons or as part of longstanding arrangements connected to the provision and funding of local services and infrastructure. New development rarely takes place in such excepted places where houses cannot currently be provided on a freehold basis, we are minded to provide an exemption from the ban on new long leases for existing and new houses so that the development of any new houses is not impeded. For other land held by the Crown authorities the proposed restrictions should continue to apply.
- 2.32 The Law Commission is currently reviewing existing legislation concerning leasehold enfranchisement to make buying a freehold or extending a lease easier, cheaper and

¹⁵ Land or property declared as 'inalienable land' i.e. land that can't be bought, sold or transferred to a new owner without permission from Parliament.

¹⁶ Further details concerning Crown land is set out in s.94(11) of the Leasehold Reform, Housing and Urban Development Act 1993, see: <https://www.legislation.gov.uk/ukpga/1993/28/section/94>

¹⁷ Crown leaseholders and Parliamentary undertaking regarding enfranchisement, see: <https://api.parliament.uk/historic-hansard/written-answers/2001/dec/11/crown-leaseholders>

faster for existing leaseholders.¹⁸ As part of this work the Law Commission will consider the need for exemptions to enfranchisement. We believe that exemptions regarding the ban to grant new long leases on houses should be consistent with the approach we take to exemptions concerning enfranchisement. We will keep under review findings from the Law Commission's work. The Law Commission published its consultation on the 20th September 2018 and will report their recommendations to Ministers next year.

Question 9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land? [Yes/No]

If you do not, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of the National Trust and owners of Crown land.

Other calls for exemptions

2.33 We would like to hear any further examples of practical challenges why houses could not be provided on a freehold basis and where the use of long leases could therefore be justified. For example, are there any types of complex development sites where the land cannot be provided on a freehold basis (for example, due to houses being developed on or adjoining particular types of infrastructure)? We would like evidence on why any further exemptions may be needed, the prevalence of such issues and why alternative arrangements cannot be used. We would also like evidence on how such development should be defined for the purposes of an exemption without giving rise to misuse or gaming.

2.34 The Government is committed to supporting the development of housing for older people to help them live independently in their own homes. Developers and operators of specialist retirement villages provide housing alongside packages of support, care and hospitality services as well as extensive communal facilities. These arrangements are often managed through leases, which secure payments via deferred management charges (also known as event fees) and are used to reduce the upfront costs to the homeowners. Parts of the sector have suggested that they can deploy alternative vehicles to leasehold to maintain management and payment arrangements on future sites and that the leasehold ban should not affect the small numbers of houses that are provided on these sites alongside the greater number of flats provided. We would welcome views from any developers or operators that disagree.

¹⁸ Law Commission, Leasehold enfranchisement, see: <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

- 2.35 The Government will respond shortly to the Law Commission's report on *Event Fees in Retirement Properties*.¹⁹ This report confirmed the benefits of event fees in making specialist housing more affordable in support of independent living, but has stressed the need for much greater transparency in terms of how these charges are presented to consumers.
- 2.36 In some existing Garden Cities and some other forms of development, estate management schemes have been established (under the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993²⁰) to allow obligations set out in leases to be maintained on properties after the freehold has been acquired. This enables the landlord of the estate to maintain the same management arrangements for both leaseholders and freeholders as part of a single management regime. The existing legislation however, only allows for the transfer of obligations in an existing long lease which has been enfranchised. As a consequence, the legislation does not allow a newly created freehold to be included in the existing estate management regime. This could create complicated two-tier arrangements, with one estate management regime for leaseholders and enfranchised freeholders and another management regime for newly created freeholds. A possible solution may be to amend the existing legislation and permit the inclusion of a newly created freehold within an existing estate management scheme.
- 2.37 Some land owners have stated that they would wish to retain the ability to use building leases. These can be employed by land owners to support the development of land in a timely manner. The granting of a building lease does not however mean that houses built by a developer have to be sold to the consumer on a leasehold basis. So long as at the end consumer can buy houses as a freehold, we see no problem with the continued use of building leases.
- 2.38 Some stakeholders have queried whether the proposed ban on the granting of residential long leases for houses will also apply to agricultural tenancies. It is not our intention for these reforms to apply to agricultural tenancies which are governed by the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995. Farm businesses and agricultural landlords negotiate length of tenure to suit their business needs and it is intended that this should continue as longer term leases can help ensure farmers have security to invest in their business over time.

¹⁹ <https://www.lawcom.gov.uk/project/event-fees-in-retirement-properties/>

²⁰ An estate management scheme is a scheme that regulates the use or appearance of a property that is within a specified area. They allow the landlord to retain some management control over properties, amenities and common areas, where the freehold has been sold to leaseholders. These schemes were made under Section 19 of the Leasehold Reform Act 1967, or under Chapter 4 or Section 93 of the Leasehold Reform, Housing and Urban Development Act 1993 (LEASE, see: <https://www.lease-advice.org/faq/estate-management-scheme-ems/>).

Question 10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes? [Yes/No]

If you do not agree, please explain why.

Question 11: Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals? [Yes/No]

If yes, please state what further exemptions may be required and why and, if possible, provide examples or further evidence.

Please include your evidence of how prevalent this issue may be (for example, the number of developments/units likely to be affected) and why alternative arrangements to leasehold cannot be employed, as well as how such a development might be defined for the purposes of an exemption.

Implementation and retrospective application of the ban

2.39 By the time the legislation comes into force, our clear commitment to banning the unjustified use of new leasehold interests in houses will have been in the public domain for several years. We are therefore minded to consider that this should provide sufficient lead-in time for developers and sales teams to plan ahead to ensure that the sales and registrations of leasehold houses are completed in advance of the new legislation taking effect.

Question 12: Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses? [Yes/No]

If not, please explain why transitional arrangements are needed and what they should be.

Retrospective application of the ban

- 2.40 We believe that if a house can be built and sold as freehold then it should be. Where land is subject to a lease it will not be possible to build freehold houses. That is why as part of our 21 December 2017 announcement, we stated that any leasehold land held on or before that date would not be subject to the proposed leasehold ban. On such land, long leases will be able to be granted on houses as they were prior to the proposed ban.
- 2.41 It will also still be possible to grant long leases on houses before the new legislation takes effect, as the legislation to underpin the ban will not yet be in force.
- 2.42 Subject to any exemptions, following our proposed legislation coming into force, the ban on the granting of long leases for houses will apply to:
- i. any land held as freehold at any time; and
 - ii. any leasehold land acquired from 22 December 2017 onwards.
- 2.43 The ban also will apply to assignments of leasehold land once the legislation is in force if a house or houses have been developed on that land after the legislation comes into force.
- 2.44 The Government believes that houses developed on freehold land should be provided on a freehold basis. We also believe that the proposed restrictions should be placed on new leases granted or assigned on land following our 21 December 2017 announcement so that land is not acquired for the purpose of circumventing the proposed ban.
- 2.45 The purchase of land or buildings normally occurs over several stages. Firstly, the parties exchange contracts. Then the sale completes, either through transfer of the title or through the lease being granted. Finally, the legal ownership of the purchaser is registered at HM Land Registry.
- 2.46 We believe that for the purposes of banning the unjustified use of leasehold houses, the key date should be completion, that is, the grant of the lease.
- 2.47 If you have any further thoughts about how our proposals could, or should, work in practice, please email them to leasehold.reform@communities.gov.uk

3. Implementing the reduction of future ground rents to a nominal value

The problem with ground rents in long leases

- 3.1 Although long leaseholders pay a premium when they buy their properties, unlike freeholders, they do not own them outright and their ownership is for a set period of time. For that reason they generally have to pay rent as an acknowledgment that they are not the ultimate owner. This is called “ground rent” to distinguish it from a rack (market) rent that a short term tenant pays to their landlord.
- 3.2 Average ground rents are estimated at £371 per annum for a new build and £327 for a property pre-2016,²¹ although there is considerable variation between individual leases, even for similar properties. We have heard of ground rents as high as £700 being charged for flats in some mainstream developments. Rent levels have risen significantly in the sector over the past 10 years or so, especially for new build flats. In most cases these modern leases permit reviews, with ground rent increases in line with inflation, but there are a number which contain onerous review provisions, such as those that permit the doubling of the rent every ten years. The significant increase over the last decade reflects the modern practice of buying and selling ground rents as an economic asset.
- 3.3 The Government’s view is that as a long lease is a tenancy, it is necessary for leaseholders to pay consideration in the form of ground rent. However, it is unfair for them to be required to pay economic rents at levels which are solely designed to serve the commercial purposes of the developer and any future investors. Furthermore, leaseholders see no material benefits from these payments.
- 3.4 Both the Housing White Paper and Conservative Party manifesto committed to tackling onerous ground rents. The Government wants to ensure that consumers only pay for services that they receive and gain material benefits from. Therefore, in December 2017 the Government committed to introduce legislation so that, in the future, ground rents on newly established leases of houses and flats are set at a peppercorn (zero financial value).

Engagement with the sector since December 2017

- 3.5 Since the December announcement the Department has continued to work with those likely to be affected by the proposal, including developers of mainstream

²¹ <https://www.directlineforbusiness.co.uk/landlord-insurance/knowledge-centre/news/property-pain-service-charges-increasing-rapidly> (as of March 2016)

housing and those operating in the retirement sector, investors in ground rents, managers of leasehold blocks and the voluntary sector. We are most grateful for their representations and evidence that has been provided in support of their positions and concerns. Those concerns have mainly focused on impacts on supply, on Section 106 contributions and stewardship of blocks.

- 3.6 However, we have also heard from developers who do not use capitalised ground rent income towards leasehold land acquisition and development costs, and we remind ourselves that the potential of such income is not available when buying or developing freehold properties. We are also aware of large institutional investors who do not include ground rents in their investment portfolio, but nevertheless do hold significant residential property interests.
- 3.7 We have heard concerns that by removing the ability of developers to receive capitalised ground rent income towards land acquisition and development costs, this will reduce viability and negatively impact on supply. We consider any impact will be small and short term as land acquisition costs adjusts to the new market.
- 3.8 We acknowledge that developers contribute through Section 106 agreements to the provision of affordable housing and other measures to mitigate impacts of their developments on local areas. The Government believes these obligations are for the developer to fund, rather than purchasers of leasehold properties contributing to that funding through ground rents.
- 3.9 Much has also been made of the need to maintain stewardship of blocks by professional freeholders, which we are told will be lost if ground rents were limited to zero financial value. It is essential that leasehold blocks are effectively managed to a good standard and that this continues in the future. However, that is not synonymous with a need for a professional freeholder nor does owning a block of flats for the purpose of collecting ground rent income necessarily equate to being a professional freeholder.
- 3.10 Although issues around the impact of supply of new build and management of future developments are important matters to which the Government will give full consideration, our engagement thus far has not persuaded us to depart from the principle that payment of economic ground rents by leaseholders does not provide them with any material benefit in return.

The level at which ground rents should be capped

- 3.11 Whilst the current practice and interpretation is that a peppercorn rent has nothing more than a notional or nominal value, we are concerned that if we do not make clear what we mean by a nominal sum, it may misinterpreted in the future.
- 3.12 We have considered the option of implementing a percentage of the value of the leasehold property – in particular in the range of 0.1 per cent and 0.15 per cent. However, the Government believes this will not result in the consumer seeing a benefit, particularly as such an amount is unlikely to equate to a nominal rent.

- 3.13 The Government believes the actual amount of ground rent payable must be specified in legislation, applying to all new leasehold properties, regardless of their actual value.
- 3.14 There is already precedent for a nominal ground rent. Since 1980 council tenants have been allowed to buy their home under the Right to Buy, whether it is a flat or a house, at a lower price than the market value. Part 3 of Schedule 6 of the Housing Act 1985 sets out that, for Right to Buy properties, ground rent must not exceed £10 per year for the whole term of the lease (125 years).
- 3.15 We therefore propose making £10 (ten pounds) per annum a standard cap for future ground rents, whether the leasehold has been purchased through Right to Buy or on the open market.
- 3.16 We need to ensure there are a number of safeguards to ensure that the new legislation functions effectively. We wish to ensure that no new lease provides for payment of more than the £10 ground rent cap. It also needs to be clear when the payment is due. In addition, some landlords may consider the amount too small to collect and may delay issuing demands. We therefore propose legislation should provide that:
- any provision in a lease that permits (whether triggered by an event or otherwise) a ground rent greater than the cap or any other replacement charge greater than the cap is void;
 - the lease must specify the date on which the annual rent is payable; and
 - a notice demanding payment of ground rent must be made at least 28 days before it is due to be paid. Such a notice cannot include a demand for rent which was payable in a previous year.

Question 13: Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value? [Yes/No]

If so please explain (a) what that rate should be and (b) your reasons in support of that value. Please provide any evidence to support your reasons.

Considering the case for exemptions

Shared ownership

- 3.17 In the 21 December 2017 Government response, we specified that our proposals will not interfere with shared ownership schemes which are specifically designed to support affordable housing. A shared ownership lease is, by definition, owned in shared equity (i.e. partly owned by the tenant with the remainder retained by the landlord). Whilst the part of the tenant's equity is long term ownership, rent is payable

for the landlord's retained equity (until such time as it is fully bought out). The rent payable is set out in the lease - which will also contain a review mechanism - and is normally proportionate to the landlord's retained equity.

- 3.18 However, we believe there are some shared ownership leases which require the leaseholder to pay both a rent for the landlord retained equity and additionally a ground rent in respect of their share of the property. We have been told that sometimes this may not be proportionate, and the ground rent charged is not an insignificant sum.
- 3.19 At this stage our evidence is anecdotal, and we want to gauge how much of a problem this is.

Question 14: Are you aware of separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases? [Yes/No]

If so, do you know how much ground rent is charged? Can you say how widespread this practice is? If known, what is the justification for such a practice?

Community-led housing

- 3.20 Unlike commercial developers, ground rent income used in community led housing is not normally used to off-set development costs, nor is there any question of selling them to raise profits. The leasehold system is seen by the providers of some community-led housing as a means of retaining control over, and management of, their stock.
- 3.21 We have received representations that the reduction in ground rents will impact on voluntary organisations, such as Community Land Trusts, only source of income, as not-for-profit organisations. Such rents are often used to support the management of the organisation and the running of community activities.
- 3.22 There is a risk that without the use of such rents, the valuable activities which support and bring the community together would dwindle. We are therefore minded to exempt community-led housing schemes from nominal ground rents. However, we think that there could be better alternatives to ground rents. Lease management fees and community levies, for example, involve more accountability and require transparency. This is often lacking if these services are paid for through ground rents.
- 3.23 We would like to use this consultation to gather evidence of how alternative methods have been successful in raising revenue.

Question 15: Do you represent a community-led housing provider which does not rely on ground rent income? [Yes/No]

If so, what alternative methods of funding have proved successful and could be replicated elsewhere?

Retirement properties

- 3.24 England has a rapidly aging population, whose needs and aspirations are different from previous generations. A better choice of accommodation for older people can help them to live independently for longer, improve their quality of life and free up more family homes for other buyers. In addition, ensuring a wide selection of suitable types of housing for older people can reduce costs to the social care and health systems.
- 3.25 Some older home owners downsize to flats or houses in retirement villages²² or other developments where extra care facilities are available on site. However, the majority of older people who move into specialist housing for the first time choose other properties (normally flats) in developments designed for independent or assisted community living, with other types of support available on request, such as assistance from a warden when needed. These developments normally contain community facilities, such as a home owners' lounge, guest suites, landscaped gardens and car parking. Some developments also include additional facilities, such as a restaurant, laundry room and hairdresser salon, and so on.
- 3.26 Because of the additional community facilities provided in such developments for the benefit of the residents, the building costs of such specialist housing is higher than that for mainstream blocks. Moreover, according to some developers, the provision of such facilities can account for up to 30 per cent of the total floor space of a development.
- 3.27 The cost of constructing these facilities cannot be recovered through service charges, but is nevertheless payable by the leaseholders who benefit from them under the terms of their lease. According to some specialist housing developers the contribution towards the construction cost of these additional facilities would increase property sale prices by around £15,000 in new build blocks. This would, they believe, reduce the affordability of these properties for many potential purchasers. In practice, therefore, they recover the cost through economic ground rents, normally starting at £500 per annum, but rising through inflation linked reviews.
- 3.28 There is a risk, therefore, that by reducing future ground rents, there could be a knock-on impact on the affordability of properties available to older people, and the availability of sites which require capitalised ground rents to be financially viable.

²² As described in Section Two

- 3.29 The Government wants to see a thriving specialist housing sector for older people, which provides them with choice and meets their individual and often complex needs. To ensure older people continue to have access to good quality home ownership with appropriate services and facilities which meet their lifestyle choice and needs, special arrangements need to be put in place for the retirement sector to reflect its unique character in the home ownership market.
- 3.30 Unlike most parts of the leasehold market where the leaseholders do not gain any tangible benefit from paying ground rent, it is evident that they do in the retirement sector. Communal facilities are an important part of specialist housing and ground rents support their provision.
- 3.31 Our Housing White Paper committed to improve consumer choice and fairness in the leasehold sector, and we believe older people should have a choice in how to pay for their retirement housing. We are proposing not to implement the restrictions on ground rents to developments of specialist housing for older people, subject to:
- a potential buyer having the choice to either pay a higher sale price at a ground rent of £10 per annum or a lower sale price with a specified economic ground rent;
 - an explanation of what the higher price or ground rent pays for and how the ground rent is reviewed;
 - no charge or fee being made for exercising an option;
 - independent legal advice provided on the choice available to them; and
 - a redress or complaint mechanism in place.

Question 16: Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments? [Yes/No]

Please give your reasons.

Question 17: What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.

Mixed use leases

- 3.32 We do not intend to apply the ground rents policy to long commercial leases granted for business purposes, such as those subject to Part II of the Landlord and Tenant Act 1954.²³
- 3.33 This means a lease of a building comprising of a shop with a self-contained flat above would not be subject to the policy. But if a long sub-lease of the flat, for residential use, were subsequently created, that lease would be subject to the policy and the cap.

Question 18: Do you agree with our approach to the treatment of mixed use leases? [Yes/No]

Question 19: Are there any other circumstances in which mixed use (a) should be within scope of the policy or (b) excluded from the scope of the policy?

Please explain your reasons.

Replacement leases

- 3.34 We intend to apply this policy to any new lease created following a surrender of an existing lease, even where the parties are the same. This would apply, for example, if the parties have agreed a new lease to replace the existing lease of the property. It would also apply if, for example, the description of the property to which the original lease applied has in substance altered or the terms of the lease have been varied so significantly that it amounts to a new lease.
- 3.35 Surrender and the grant of a replacement lease can be agreed expressly by the parties. But where that does not happen and the variation is significant, the law implies a surrender and re-grant of the lease. In such a case the maximum ground rent payable will be limited to the cap, regardless of any provision in the lease to the contrary, and takes effect from when the variation was agreed.
- 3.36 Voluntary lease extensions, that is those agreed outside the statutory provisions²⁴ and granted after commencement of the proposed ground rents cap, will be deemed under the legislation to be replacement leases. The ground rent for any extended period of such a lease will, therefore, be fixed at the maximum cap (unless the parties agree a lower amount).

²³ Landlord and Tenant Act 1954, see: <https://www.legislation.gov.uk/ukpga/Eliz2/2-3/56/part/II>

²⁴ Leasehold Reform Act 1967 and Leasehold Reform, Housing and Urban Development Act 1993

3.37 Where the parties have agreed a correction to an existing lease (or it has been varied by the First-tier Tribunal (Property Chamber)) and the variation is minor, for example it involves a change of names of the parties, such variations will not be sufficient to trigger the cap in ground rent.

Question 20: Do you agree with the circumstances set out above in which a capped ground rent will apply in replacement leases? [Yes/No]

**Are there any other circumstances in which it should or should not apply?
Please explain why.**

Implementation period

3.38 Given the length of time some developments have been planned, it has been argued that a three to five year implementation period should be introduced in order to give time to prepare.

3.39 The Government made clear its intention to restrict ground rents on 21 December 2017. Should our proposals be taken forward in 2019, any legislation would unlikely to complete its passage until mid 2020 at the earliest. A further transitional period of three to five years post 2020 would place consumers at a potential disadvantage for between six and eight years after our initial announcement. By the time the legislation comes into force our proposals would have been in the public domain for three years.

3.40 Therefore, we propose that the cap on ground rents for all newly created leases will come into force three months after commencement of the Act.

Question 21: Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum? [Yes/No]

If not, please explain why.

4. Implementing measures to ensure that the charges that freeholders must pay towards the maintenance of communal areas are fairer and more transparent

- 4.1 As part of the response to the consultation *Tackling unfair practices in the leasehold market* the Government committed to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed tenure estate can access equivalent rights as leaseholders to challenge their reasonableness.
- 4.2 The charges freeholders must pay in this context are either provided by a deed of covenant arrangement or through an estate rent charge. Broadly speaking, these charges are equivalent to what would generally be considered to be service charges, were those properties let on a leasehold basis. A typical example of an estate rent charge would cover the provision of services such as gardening and, or the maintenance of shared spaces on an estate.
- 4.3 To meet our commitment we are proposing, in principle, to provide freeholders with a regime based on the relevant provisions within the Landlord and Tenant Act 1985.²⁵ These provisions provide the statutory rights enjoyed by leaseholders and are set out in Sections 18-30 of the 1985 Act. We will need to ensure that in creating a regime for freeholders we are taking into account the different requirements of this tenure. Some provisions within the 1985 Act that are available to leaseholders will be less relevant to freeholders than others.
- 4.4 Having analysed Sections 18-30 of the 1985 Act, our view is that we should create a regime for freeholders which provides that maintenance charges must be reasonably incurred and that services provided are of a reasonable standard. We will also replicate consultation requirements and obligations on the provider of services to provide information to the freeholder. Finally we will provide freeholders with the ability to challenge the reasonableness of the charges they are required to pay towards the maintenance of communal areas and facilities at the First-tier Tribunal.
- 4.5 There are two issues on which we would welcome views. Firstly, we would like views on whether freeholders should have a right to apply to change the management of the services which are covered by an estate rent charge or via a freehold service charge, the payment of which is a requirement of the deed of transfer on a property.

²⁵ These provisions may be subject to change as we review the effectiveness of the service charge regime for leaseholders.

- 4.6 This could be equivalent to the current right a leaseholder of a flat has to apply to the tribunal to appoint a manager to act in relation to the management of the premises (Sections 21-24 of the Landlord and Tenant Act 1987). Section 24 of the Landlord and Tenant Act 1987 allows the First-tier Tribunal to appoint a manager to carry out obligations contained within a 'management order' issued by the tribunal. It is often the case that relevant leaseholders apply for a manager to be appointed because the landlord has breached the management obligations it owes to them in some way. Freeholders may benefit from an equivalent right if, for example, they are dissatisfied with the level of service provided or charges are perceived to be unreasonable and remedial action is not taken within a reasonable period.
- 4.7 Although a commitment to provide such a right was not included in our response to the consultation last year we are open minded as to whether it would be useful to freeholders. Such a right could complement Law Commission work to reform the Right To Manage on estates, including where there are freehold houses. We would welcome views on whether freeholders require a provision which may enable them to change the management of services and, if so, whether the right a leaseholder of a flat has to appoint a manager to act provides an appropriate model we could seek to replicate.

Question 22: Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement? [Yes/No]

If so, what should this look like?

- 4.8 Secondly, we would welcome views on the impact of these proposals, including any right to apply to change the management of services, on companies or bodies that provide the long term management of communal areas and facilities which are paid through an estate rent charge or through a deed of covenant arrangement.
- 4.9 These responsibilities may be undertaken by developers, Residents' Management Companies or managing agents depending on the structure of the arrangements. Our starting point is that, in many cases, the provider of services covered by an estate rent charge or through a deed of covenant arrangement will also be providing services to leaseholders and will be familiar with the protections we are seeking to give freeholders and the processes and obligations this entails.
- 4.10 In addition, we believe that a provider of services should be transparent about the charges and should already be providing information to freeholders, for example a breakdown of costs and what they are for. However, we want to ensure that we receive views from all affected parties including companies or bodies that may be affected by these changes.

Question 23: What will be the impact of these proposals on companies or bodies that provide the long term management of communal areas and facilities?

5. Implementing measures to improve how leasehold properties are sold

- 5.1 We know that transactions involving leasehold properties can take weeks longer than those involving freehold only, largely due to delays in obtaining information from the freeholder or managing agent.
- 5.2 In our recent Home Buying and Selling Call for Evidence, we asked what improvements could be made to the purchase of a leasehold property. Ninety four per cent of respondents agreed that managing agents and freeholders should be required to respond to enquiries within a fixed time period and 86 per cent of respondents agreed that maximum fees should be set for providing this information.
- 5.3 On the basis of this feedback, we are committed to setting fixed time frames and maximum fees for the provision of leasehold information and we want to use this consultation to help us to determine what these should be. We are also keen to ensure sellers can have any leasehold information refreshed for a reasonable sum of money if they ask within six months of the original request.

Question 24: What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

- **Less than 10 working days**
- **10 - 15 working days**
- **More than 15 working days**

Question 25: What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

- **Less than £100**
- **£100**
- **£150**
- **More than £150**

Question 26: What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

- **No additional cost**
- **less than £25**
- **£25 - £50**
- **More than £50**

If more than £50 – please specify the fee.

Annex A: Consultation Questions

Implementing the ban on the unjustified use of leasehold in new build houses

Q1: Do you have views on any further means to implement the ban on unjustified new residential long leases being granted on non-exempt houses?

- Yes
- No

If you do, please explain.

Q2: Do you have any views on how to provide appropriate redress for the home owners should (a) a long lease be incorrectly granted upon a house or (b) a long lease be granted at a ground rent in excess of the cap, after the legislation has taken effect?

If you do, please explain.

Q3: To ensure there is a workable definition of a 'house', we would welcome your views on the type of arrangements and structures which should or should not be considered to be a 'house' for the purpose of the ban on new leasehold houses.

Q4: With the exception of community-led housing, do you agree that any exemptions provided which allow the continued granting of new long leases on houses should have their ground rents restricted as proposed?

- Yes
- No

If you do not agree, please explain why.

Q5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

- Yes
- No

If yes, please explain what these conditions are.

Q6: Do you agree that there should be an exemption for shared ownership houses?

- Yes
- No

If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of shared ownership houses.

Q7: Do you agree that there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

- Yes
- No

If you do not agree, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of community-led housing.

Q8: We would welcome views on the features or characteristics that should be included within a definition of community-led housing for the purpose of an exemption.

Q9: Do you agree that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land?

- Yes
- No

If you do not, please explain why, including what alternatives to leasehold arrangements could be employed to fulfil the requirements of the National Trust and owners of Crown land.

Q10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

- Yes
- No

If you do not agree, please explain why.

Q11: Are you aware of any other exceptional circumstances why houses cannot be provided on a freehold basis that should be considered for an exemption, in order to protect the public interest or support public policy goals?

- Yes
- No

If yes, please state what further exemptions may be required and why, and if possible provide examples or further evidence.

Please include your evidence of how prevalent this issue may be (for example, the number of developments/units likely to be affected) and why alternative arrangements to leasehold cannot be employed, as well as how such a development might be defined for the purposes of an exemption.

Q12: Do you agree that there should be no further transitional arrangements after the commencement of the legislation to permit the sale of leasehold houses?

- Yes
- No

If not, please explain why transitional arrangements are needed and what they should be.

Implementing the reduction of future ground rents to a nominal value

Q13: Are there justifiable reasons why ground rents on newly created leases should not be capped as a general rule at a maximum value of £10 per annum, but instead at a different financial value?

- Yes
- No

If so, please explain (a) what that rate should be and (b) your reasons in support of that value. Please provide any evidence to support your reasons.

Q14: Are you aware of a separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

- Yes
- No

If so, do you know how much ground rent is charged? Can you say how widespread this practice is? If known, what is the justification for such a practice?

Q15: Do you represent a community-led housing provider which does not rely on ground rent income?

- Yes
- No

If so, what alternative methods of funding have proved successful and could be replicated elsewhere?

Q16: Do you agree there is a case for making specialist arrangements permitting the charging of ground rents above £10 per annum for properties in new build retirement developments?

- Yes
- No

Please give your reasons.

Q17: What positive or negative impacts does paying ground rents have on older people buying a home in the retirement sector? Please give your reasons and if you think the impacts are negative explain what measures might mitigate them.

Positive impacts

Negative impacts

Q18: Do you agree with our approach to the treatment of mixed use leases?

- Yes
- No

Q19: Are there any other circumstances in which mixed use (a) should be within scope of the policy or (b) excluded from the scope of the policy?

Please explain your reasons.

Q20: Do you agree with the circumstances set out in paragraphs 3.34 to 3.37 in which a capped ground rent will apply in replacement leases?

- Yes
- No

Are there any other circumstances in which it should or should not apply? Please explain why.

Q21: Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum?

- Yes
- No

If not, please explain why.

Implementing measures to ensure that the charges that freeholders must pay towards the maintenance of communal areas are fairer and more transparent

Q22: Should we provide freeholders with a right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement?

- Yes
- No

If so, what should this look like?

Q23: What will be the impact of these proposals (paragraphs 4.8 to 4.10) on companies or bodies that provide the long term management of communal areas and facilities?

Implementing measures to improve how leasehold properties are sold

Q24: What would constitute a reasonable deadline for managing agents and freeholders to provide leasehold information?

- Less than 10 working days
- 10 - 15 working days
- More than 15 working days

Q25: What would constitute a reasonable maximum fee for managing agents and freeholders to provide leasehold information?

- Less than £100
- £100
- £150
- More than £150

Q26: What would constitute a reasonable fee for managing agents and freeholders to update leasehold information within 6 months of it first being provided?

- No additional cost
- Less than £25
- £25 - £50
- More than £50

If more than £50 - please specify the fee:

Annex B: About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at the end of this annex.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gsi.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest, i.e. a consultation.

3. With whom we will be sharing your personal data

Survey Monkey will collect some data for this consultation. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation.

5. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. The data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system. Data provided to Survey Monkey will be moved from there to our internal systems by March 2019.