



Ministry of Housing,
Communities &
Local Government

Implementing reforms to the leasehold system in England

Summary of consultation responses and Government
response



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Ministerial Foreword

Last year, I asked for people's views on how we should implement our plans to tackle exploitative practices in the leasehold sector. Leases that are unjustified, include onerous terms or unfair conditions, or put corporate profit over consumer protection have no place in today's housing market. Since then, I have met leaseholders, developers and others within the sector. I have listened carefully to those who have suggested how the leasehold and commonhold market could be improved – so it is fair to the homeowner, and effective in delivering new homes across the country.

I am grateful to all those who responded to our technical consultation. Over 1,200 people or organisations got in touch to help shape our plans and tell us how they should work in practice, and we will use your evidence to inform how we draft the necessary legislation.

As a result, unless there are exceptional circumstances, all new houses will be sold on a freehold basis. Your responses to our consultation have helped me to clarify how we can ensure the delivery of freehold houses, and how we can ensure redress is quickly provided if something goes wrong.

Your views have also enabled me to refine our plans to ensure no monetary value is attached to future ground rents. Rather than a financial cap of £10 per year, I intend to fully restrict ground rents in newly established leases of houses and flats to a peppercorn – zero financial value. Consumers see no clear benefit from ground rents. I want to ensure that consumers only pay for services that they receive, so ground rents on newly established leases should be set at £0.

I know that the process of buying or selling a home can be stressful, time-consuming and costly for buyers and sellers alike – and even more so if that property is leasehold. I am going to make this easier, so people can make the biggest purchase of their lives with confidence, with transparency and fairness at every stage for leaseholders and freeholders alike.

Having read and listened to your views on the future of leasehold, it is clearer to me than ever before that Government needs to take urgent action to reset the system. I will do so, delivering on our manifesto pledge to crack down on unfair practices in leasehold and revitalising the leasehold and commonhold market so everyone can choose the home that's right for them.

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

1. Introduction

- 1.1 The Government is committed to promoting fairness and transparency for leaseholders and freeholders and ensuring that consumers are protected from abuse and poor service. Latest figures show that in 2016-17, there were an estimated 4.3 million leasehold dwellings in England, equating to 18% of the English housing stock. Two thirds (67%, 2.9 million) of these properties were flats and one third (33%, 1.4 million) were houses.¹ Leasehold is a major tenure and for many people supports communal living and the effective management of buildings.
- 1.2 However, problems exist within the leasehold market. These include new build houses being sold as leasehold, where there is no obvious reason for them not to be sold as freehold. We have also seen many ground rents rising from traditionally nominal or peppercorn levels to more than 0.1% of the property's value, and with short ground rent review periods where the amounts double, and where the consumer receives no return or value for their payments. This contrasts with payment of service charges which support the maintenance and repair of buildings or associated shared spaces or infrastructure.
- 1.3 The Government is intent on addressing these issues, and in December 2017, we pledged to end unfair leasehold practices. Our consultation, *Tackling unfair practices in the leasehold market*, set out a package of measures which included proposals to ban the unjustified use of leasehold for new houses and to reduce ground rents on newly established leases of houses and flats to a peppercorn (zero financial value).²
- 1.4 In October 2018, we published a further technical consultation, *Implementing reforms to the leasehold system in England*, asking for views on the detail of the implementation of these proposals, including consideration of circumstances where exemptions may be necessary.³ The consultation also outlined measures to improve how leasehold properties are bought and sold, and promoted fairness for freeholders with proposals to ensure that the charges that freeholders may pay towards the maintenance of communal areas are fairer and more transparent.
- 1.5 This report summarises the views we heard and how we intend to progress. We will bring forward legislation as soon as Parliamentary time allows to enact these measures.

¹ MHCLG, Estimating the number of leasehold dwellings in England, 2016 to 2017, see: <https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2016-to-2017>

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

³ MHCLG, Implementing reforms to the leasehold system in England: a consultation, see: <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>

- 1.6 However, our work will not stop there. We have already begun to address some of the wider issues in the market. This includes establishing a working group of housing experts chaired by Lord Best to look at raising standards across the entire property agent sector so homebuyers, sellers, tenants, landlords and leaseholders receive the best service possible.⁴ This will include advising on the regulation and the introduction of mandatory qualifications for all property agents so tenants, homebuyers and sellers can be confident they are getting a professional service and are being charged fairly. The working group will also consider under what circumstances leaseholder and freeholder fees and charges 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.
- 1.7 We are also improving support and advice available to leaseholders. We have been working with Trading Standards to provide leaseholders with comprehensive information on the various routes to redress available to them if things do go wrong.⁵ We have also produced a *How to Lease* guide to help those living in a leasehold property or who are thinking of buying one.⁶ The Government has also included specific information on buying and selling leasehold properties within its *How to Buy* and *How to Sell* guides which we have recently published.⁷ We have also announced that we will extend mandatory membership to a redress scheme, beyond managing agents, to all freeholders of leasehold properties⁸ and we continue to work with industry to help existing leaseholders with onerous ground rent review terms.
- 1.8 We are putting pressure on developers who have sold onerous leases, including those that double more frequently than every 20 years, to provide support for current leaseholders. Some developers have introduced schemes to assist individuals with onerous leases which is welcome, but these must go further and faster. To facilitate this process, the Government announced a *Public Pledge for Leaseholders*. This contains a commitment by freeholders to identify any existing leases within their portfolio which contain ground rents that double more frequently than every 20 years. They have also committed to contact the relevant leaseholders and offer to vary their leases.⁹
- 1.9 We are also working closely with the Law Commission on their 13th Programme of Law Reform, which includes reinvigorating commonhold as an alternative to

⁴ Regulation of Property Agents working group, see:

<https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

⁵ Trading Standards, Leasehold redress guidance for consumers, see:

<https://en.powys.gov.uk/article/7263/Guidance-for-consumers-seeking-redress-for-leasehold-matters>

⁶ MHCLG, How to Lease guide, see: <https://www.gov.uk/government/publications/how-to-lease>

⁷ MHCLG, How to Buy and How to Sell guides, see: <https://www.gov.uk/government/publications/how-to-buy-a-home> and <https://www.gov.uk/government/publications/how-to-sell-a-home>

⁸ MHCLG, Strengthening consumer redress in the housing market: summary of responses to the consultation and Government response, see:

<https://www.gov.uk/government/consultations/strengthening-consumer-redress-in-housing>

⁹ MHCLG, Leaseholder Pledge, see: <https://www.gov.uk/government/publications/leaseholder-pledge>

leasehold ownership;¹⁰ reviewing Right to Manage legislation to make it easier for leaseholders to take control over the management of their buildings;¹¹ and reforming the enfranchisement process, to make buying a freehold or extending a lease easier, faster, fairer and cheaper.¹² Government has also made it easier to form Recognised Tenants' Associations. Recognised Tenants' Associations have legal standing and empower leaseholders to further hold their freeholder to account.¹³

Consultation process and responses

1.10 Our public consultation *Implementing reforms to the leasehold system in England* ran for six weeks from 15 October to 26 November 2018. The consultation received 1,237 responses; 1,038 via an online survey and 199 via email and post.

1.11 Of those responding to the online survey providing background information, 1,029 respondents said they were private individuals and 208 identified themselves as replying to the consultation on behalf of an organisation. Responses received from organisations were from a mixture including legal firms, representation groups, managing agents, investors and developers. A full breakdown of respondents and responses to questions can be found at **Annex A**.

1.12 This report summarises respondents' views by considering comments made in relation to each of the questions included in the consultation document. It also sets out the Government's proposed response in each case.

Summary of Government response

1.13 The Government in this response sets out the following positions with regards to the forthcoming legislation:

Implementing the ban on the unjustified use of new leases for houses:

- **Enforcement and redress:** following legislation it will not be permissible for applicants to apply to register a non-compliant residential long lease on a house with HM Land Registry. If a lease is found to be contrary to the ban, the consumer will be entitled to zero cost enfranchisement as means of redress – (pages 10-12).
- **Definition of house:** the ban will apply to residential long leases (over 21 years) for new build houses or existing freehold houses. "Houses" will be

¹⁰ Law Commission, Commonhold, see: <https://www.lawcom.gov.uk/project/commonhold/>

¹¹ Law Commission, Right to Manage, see: <https://www.lawcom.gov.uk/project/right-to-manage/>

¹² Law Commission, Enfranchisement, see: <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

¹³ MHCLG, Recognising resident's associations and their powers to request information about tenants, see: <https://www.gov.uk/government/consultations/recognising-residents-associations-and-their-power-to-request-information-about-tenants>

defined for the purpose of the ban as single dwellings, and self-contained buildings or parts of buildings (structurally detached or vertically divided) – (pages 13-14).

- Acceptable to the consumer: exemptions provided to the ban should have their ground rents restricted (as per the future ground rent policy). We will also bring forward a Right of First Refusal which will protect leaseholders in exempted properties as well as existing leasehold house owners by notifying them of a landlord's intention to sell their freehold and give them first refusal to buy it – (pages 15-17).
- Exemptions from the ban: will be provided for shared ownership properties and community-led development as well as inalienable National Trust land and excepted sites on Crown land. Exemptions will also be provided for retirement properties as well as financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease – (pages 17-21).
- Implementation: there will be no transitional period following legislation. Owners of leasehold land at the date of the December 2017 announcement will continue to be able to develop leasehold houses unaffected by the ban – but this retrospective application will not extend to those that did not own the land as of that date (including those with options on the land) – (pages 21-23).

Implementing the reduction of future ground rents to a peppercorn (zero financial value):

- Reducing the level of ground rents: the Government will legislate to restrict ground rents to a peppercorn (zero financial value) in future leases. Future ground rents must have zero financial value (£0) rather than be capped at £10 per annum (as proposed in the consultation) – (pages 24-25).
- Exemptions from the reduction: will be provided for retirement properties and community-led developments, as proposed in the consultation. Exemptions will also be provided for financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease. An exemption will not be provided for shared ownership properties – (pages 26-33).
- Mixed-use and replacement leases: mixed-use leases will be excluded from the legislation and ground rent can continue to be charged where a single lease covers both commercial and residential property. For replacement leases, the reduction of future ground rents will only apply to the newly extended part of the lease – (pages 29-32).
- Implementation: there will be no transitional period after the legislation has come into force. We believe that by the time the legislation comes

into force our proposals will have been in the public domain long enough for the sector to prepare for the changes – (pages 33-34).

- Enforcement and redress: other than any exempted properties, leases with ground rents above a peppercorn (zero financial value) will be unenforceable in law. We will also give leaseholders the right to apply to the First-tier Tribunal to seek a refund for any incorrectly paid ground rent and any associated costs, with no time limitations. We will give the Courts the power to impose a civil fine on freeholders who have set ground rents contrary to the legislation – (pages 34-35).

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

- Equal rights for freeholders: we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987) – (pages 36-38).
- Right to Manage for freeholders: we will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported to the Government (on their review of Right to Manage for leaseholders) as part of creating greater parity between leaseholders and residential freeholders – (pages 38-39).

Implementing measures to improve how leasehold properties are sold:

- Deadline to provide information: the Government believes that setting a turnaround time of no more than 15 working days to provide leasehold information to a prospective buyer would be appropriate and we will bring forward legislation to make this a statutory requirement – (pages 40-41).
- Maximum fee for information: we will set a maximum fee of £200+VAT for producing leasehold information to prospective buyers in the form of a leasehold property enquiry (LPE1) pack. Despite this cap, we will still expect freeholders and managing agents to charge a fee which reflects the reasonable cost of providing this information below the cap – (page 41-43).

2. Implementing the ban on the unjustified use of new leases for houses

Enforcement and redress

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?

Question 2: Do you have any views on how to provide appropriate redress for the homeowners should (a) a long lease be incorrectly granted upon a house? (Question 2b is summarised in section 3)

Summary of responses

- 2.1 In the consultation the proposed mechanism for prohibiting unjustified new residential long leases from being granted on houses was that following the legislation, and subject to any exemptions provided, it would not be permissible to apply to register a non-compliant residential long lease with HM Land Registry.
- 2.2 We also stated that if, contrary to the proposed legislation, a new residential long lease was incorrectly granted on a house, the homeowner should be able to have the freehold transferred to them at the earliest possible opportunity with the minimum of cost and disruption to them.
- 2.3 Many respondents took the opportunity to reiterate their support for the ban. Some called for leasehold to be abolished altogether and where properties could not be provided as freehold, commonhold be used as an alternative tenure. However, others argued that leasehold could provide a useful function to support multiple ownership or manage complex sites, so long as it was not abused to generate an income stream through excessive ground rents, enfranchisement or lease extensions.
- 2.4 There was support for the use of land registration to support the enforcement of the ban. Some were keen to ensure that this did not place burdens on HM Land Registry or lead to delays in registrations. HM Land Registry's role should not be to police or inspect developments. To minimise administration, some respondents suggested the use of prescribed clauses within leases to certify compliance with the ban or for those making a registration to declare compliance.
- 2.5 A small number of respondents called for other bodies such as estate agents, lenders and conveyancers to help enforce the ban and ensure that consumers were appropriately informed and protected. Others thought there could be a role for the planning system to restrict development of new leasehold houses.

- 2.6 If a consumer incorrectly acquired a leasehold house contrary to the ban, there was a strong desire to ensure that the correct party was held to account and that the consumer received swift and effective remedy. The majority of respondents considered that it should be the responsibility of the developer to ensure that they were bringing a compliant property to market. A small number of respondents called for developers to be fined, but most thought that they should just be liable for rectifying the situation by providing the consumer with the freehold of the property that they should have originally acquired.
- 2.7 One in five respondents suggested that developers should provide compensation and one in six suggested that there should be an automatic right for the homeowner to enfranchise without the payment of a premium – and indeed for any additional legal costs to be borne by the developer. Enlargement, under Section 153 of the Law of Property Act 1925, was considered another possible mechanism for consumers to acquire their freehold.¹⁴ It was suggested that enfranchisement could more easily be used as a process to help replicate any necessary obligations contained within the lease in a transfer to a freehold structure.
- 2.8 A small number of respondents thought that redress should be provided through either the First-tier Tribunal, the Courts or via an ombudsman type service to assess whether a long lease had been incorrectly granted on the house. Some respondents argued that there should be no time limit imposed on seeking appropriate remedy as the discovery of an incorrectly granted lease could occur long after the initial sales transaction was made.

Government response

- 2.9 Outside of any exemptions, following the legislation we wish to stop new leasehold houses coming onto the market. However, if a consumer acquires a leasehold house, which contravenes the ban, we have stated that the consumer should be remedied by having the freehold title transferred to them with minimum cost and disruption to them.
- 2.10 The numbers of new-build leasehold houses coming onto the market has already dramatically reduced in advance of legislation (2% of new build houses were registered as leasehold in Quarter 4 2018 compared to 17% in Quarter 1 2017).¹⁵
- 2.11 Only very small numbers of leasehold houses are likely to reach the market post legislation, limited to exempted properties (see pages 17-21) or development by owners of leasehold land where the land was held prior to the date of the 21 December 2017 announcement (see paragraph 2.57). The vast majority of cases are likely to be straight forward and uncomplicated. To aid

¹⁴ Law of Property Act 1925, see: <http://www.legislation.gov.uk/ukpga/Geo5/15-16/20/contents>

¹⁵ MHCLG analysis of HM Land Registry Price Paid Data, see: <https://www.gov.uk/government/statistical-data-sets/price-paid-data-downloads>

this, we will seek to ensure that any exemptions are carefully expressed and that the definition of “house” for the purpose of the ban is workable and effective (see pages 13-14).

- 2.12 Nevertheless, some disputes may still arise, and it is possible that consumers may by accident or design by an unscrupulous developer, purchase a leasehold house contrary to the ban. During the sales and conveyancing process, exchange of monies will likely take place before a property is registered. We agree that the onus should be on the developer to ensure that the property is marketed correctly and that they should be liable to put things right and provide the freehold to the consumer that they should have acquired from the outset.
- 2.13 The effect of the legislation to enforce the ban could be to make void any leases which contravene the ban. However, this would have the effect of making the asset the consumer has paid for, and may be living in, into something that does not legally exist. It may result in limited options for redress (particularly if the consumer wishes to keep the property) as a void contract is unenforceable in law. This could cause significant harm and distress to any consumers, however few, this might apply to. Also, should a void lease be accidentally registered with HM Land Registry, this could expose HM Land Registry to liability to pay indemnity to a person suffering any loss as a result.
- 2.14 An alternative to making leases void is to allow them to continue to be valid. The applicant seeking registration at HM Land Registry will need to declare that they have a lease compliant with the legislation (the consumer or solicitor/conveyancer acting upon their behalf), but ultimately **if the lease is found to be contrary to the ban following a sale, the legislation will set out that the consumer will be entitled to zero cost enfranchisement as a means of redress.**
- 2.15 We think this would drive developer behaviour to market the property appropriately in the first place. Failure to do so would make the developer liable to pay the consumer’s costs of enfranchisement (both the premium and legal costs). This may include compensating a third party if they did not themselves own the freehold. Enfranchisement also allows for the transfer of any necessary obligations set out in the incorrect lease to be replicated in a freehold arrangement in the usual way. **We propose there should be no time limit, in case disputes arise in the future well past the point of sale or for subsequent owners.**
- 2.16 Many respondents thought that requiring developers to pay the costs of putting right a contravention to the ban (by providing the freehold to the consumer) was sanction enough. The volume of non-compliant leases is likely to be low and the level of any fine on its own (beyond paying for enfranchisement) is unlikely to be a strong deterrent. There was not a compelling call for a civil penalty for contravention of the leasehold house ban through the consultation, but we think it could send out a strong message to developers and provide assurance to consumers. **We will within the**

legislation be providing enabling powers to the Secretary of State to make regulations around civil penalties, with potential for higher penalties for repeat offenders, should they be required in future.

Definition of a house

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

Summary of responses

- 2.17 It is important that there is an effective definition of house for the purpose of the leasehold house ban. We wish to ensure that a definition minimises ambiguity and opportunity for error or evasion.
- 2.18 There was general agreement that the definition of house in the Leasehold Reform Act 1967 was not fit for the purpose of the ban. Many respondents highlighted useful components of a definition which are also under consideration by the Law Commission as they seek to define properties capable of enfranchisement – as part of their review of enfranchisement legislation.¹⁶ A strong case was made for consistency between the definition of house for the purpose of the ban and the definition of a house in the context of the Law Commission’s work on enfranchisement – as both policies respectively determine which kind of properties should either be freehold from the outset or are capable of becoming freehold in the future.
- 2.19 Suggestions of components of a definition included a building used solely as a residential building, a single dwelling or unit, or even having your own front door. Other suggestions included a house having to include a ground level floor or be vertically, rather than horizontally, divided from neighbouring properties, or simply put, not a flat.
- 2.20 In particular, there have been calls for houses constructed over other structures, such as an underground car park, not to be included within the definition. There are significant complexities with regards to freehold properties that are built over or under another property or structure, known as “flying freeholds”.
- 2.21 Enforcing positive covenants is a key concern. As flying freeholds are structurally interdependent, the failure of certain owners to repair their property could cause significant damage to other owners’ properties. Once a freehold property has been sold for the first time, subsequent owners will not generally be under an obligation to repair their property. These types of arrangements are supported by very few mortgage lenders. Even if a lender

¹⁶ Law Commission, Leasehold enfranchisement, see: <https://www.lawcom.gov.uk/project/leasehold-enfranchisement/>

will lend, there is no guarantee that a future lender will do so, potentially leaving the property blighted. For these reasons, the Law Commission's recent enfranchisement consultation proposed that such properties should not be considered appropriate for enfranchisement (becoming freehold).

Government response

- 2.22 We are grateful for the contributions and suggestions provided by respondents to the consultation. **A fully worked up legal definition will be provided in draft regulations as part of a forthcoming Bill, but we set out here what we consider to be the key components of a definition of a "house" for the purpose of the ban.** In particular, we agree that the definition of a house should not include properties that are above or below (horizontally divided) another property or associated structure (e.g. such as an underground car park).
- 2.23 Some respondents have suggested that an unintended consequence of the ban could be to prevent rebuilding or replacement of existing leasehold houses (e.g. as a result of fire). The rebuild of an existing house will not in itself require the grant of a new lease and therefore would not be affected by the ban.
- 2.24 The ban will apply to new, residential long leases (over 21 years) for new build or existing freehold houses. We consulted on the key components required to define a "house" for the purposes of the ban.
- 2.25 A "house" – for the purpose of the leasehold house ban will be based upon the following components of a definition:
- a) building "built or erected structure with a significant degree of permanence, which can be said to change the physical character of the land";
 - b) single dwelling or unit of living accommodation (i.e. one house) – with or without appurtenant property; and
 - c) self-contained "building" of part of a "building":
 - i. a building is self-contained if it is structurally detached (stands alone, can be redeveloped independently);
 - ii. a part of a building is self-contained if it is vertically divided (does not sit above or below another structure); the structure of the building must be such that the part in question could be redeveloped independently of the remainder of the building (e.g. a house constructed above a communal underground car park would not be considered a house for the purpose of the ban).

Acceptable terms to the consumer

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?

Question 5: Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

Summary of responses

- 2.26 The Government wants to ensure that any changes made do not have an adverse impact on supply or the long-term sustainability of shared facilities, structures and open spaces – and we are prepared to listen where evidence is provided that demonstrates practical challenges to delivering houses on a freehold basis. We are also clear that any exemptions provided need to be on acceptable terms to the consumer. As a minimum we suggested that exemptions from the ban should be covered by the related legislation to restrict future ground rents to a peppercorn (zero financial value) (see section 3). The majority of respondents to the consultation agreed.
- 2.27 Two-thirds of respondents thought that no further conditions were required, beyond the application of restrictions on ground rents, to properties exempted from the ban. However, a range of other issues were raised. There were calls for greater transparency and information provided about leasehold properties for prospective buyers. Others thought that there should be restrictions on the use of covenants or administration or permission fees associated with leasehold houses exempt from the ban – as well as for existing leasehold houses and existing and new leasehold flats.
- 2.28 A small number of respondents called for minimum lease terms of 250 or 999 years for any exempted houses – seeking to provide the effect of a virtual freehold, where a lease extension or enfranchisement would not be necessary for the foreseeable future.
- 2.29 There was also a call for a Right of First Refusal to apply to house lessees to prevent sales of freehold to third parties without the knowledge of the leaseholders or opportunity for them to buy the freehold ahead of a third party. Fewer than 1 in 10 respondents thought there should be no exemptions at all in any circumstances – most advocating the use of commonhold where freehold was not possible.

Government response

- 2.30 **Government remains of the view that any exemptions provided must be provided on acceptable terms to the consumer.** We also remain of the view that as a minimum, properties that are exempted from the leasehold house ban should have their ground rents restricted (as per the future ground rent policy – see section 3).

- 2.31 We do agree with respondents that clearer information should be provided to prospective buyers so that they make an informed decision when buying a leasehold property. Last year the Government published its *How to Lease* guide to provide information to both existing and prospective leaseholders.¹⁷ The Government has also included specific information on buying and selling leasehold properties within its *How to Buy* and *How to Sell* guides.¹⁸
- 2.32 The Government also recognises general concerns raised about the transparency of service charges and the use of covenants and permission fees. It was for these reasons that we stated in our consultation response document *Protecting consumers in the letting and managing agent market*¹⁹ that the *Regulation of Property Agents* working group chaired by Lord Best would be asked to consider standards around service charges and use of covenants, administration charges and permission fees. The *Regulation of Property Agents* working group is expected to report back to Ministers later this summer.²⁰ The Government will consider recommendations made by the *Regulation of Property Agents* working group alongside those made by the Select Committee on leasehold and freehold fees and charges and consult as necessary.
- 2.33 We are yet to be convinced of the merit of a minimum lease term as a condition for an exempted leasehold house. It is common practice for developers to provide reasonable length leases on houses, which are also often required by mortgage lenders. We will keep this issue under review as the Law Commission finalise their work on enfranchisement, which also considers issues around lease extensions.
- 2.34 A key concern of leasehold campaign groups has been the onward sale of freeholds to third parties. In the December 2017 response we stated that we would consider introducing a Right of First Refusal for house lessees (to buy their freehold).²¹ This is also recommended by the recent Select Committee report on leasehold reform. **For the small number of leasehold houses that do come onto the market following the ban we will ensure they are protected from both financial ground rents and also from the sale of their freeholds to third parties without their knowledge, by extending the**

¹⁷ MHCLG, *How to Lease* guide, see: <https://www.gov.uk/government/publications/how-to-lease>

¹⁸ MHCLG, *How to Buy* and *How to Sell* guides, see: <https://www.gov.uk/government/publications/how-to-buy-a-home> and <https://www.gov.uk/government/publications/how-to-sell-a-home>

¹⁹ MHCLG, *Protecting consumers in the letting and managing agent market*, see: <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>

²⁰ *Regulation of Property Agents: Working Group*, see: <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

²¹ MHCLG, *Tackling unfair practices in the leasehold market: consultation paper and government response*, see: <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>

Right of First Refusal to these leasehold house owners. This right will also apply to existing leasehold house owners.

- 2.35 Introducing the Right of First Refusal for leasehold house owners will help to rebalance power between freeholders and leaseholders, provide parity with the rights of leasehold flat owners and improve transparency so that sales of freeholds cannot be sold behind leaseholders' backs. As part of this work we will consider the need to address legal loopholes within the existing Right of First Refusal for flat lessees, as identified by the Select Committee, and whether these loopholes could also affect house lessees.²²

Exemptions

Question 6: Do you agree that there should be an exemption for shared ownership houses?

Question 7: Do you agree there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

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.

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?

Summary of responses

- 2.36 In the consultation we stated that there should be exemptions from the leasehold house ban for shared ownership properties and community-led housing. In both these cases, ownership is required by two parties and is best facilitated via a lease. We also said this should be the case for inalienable National Trust land and excepted sites on Crown land. In these cases, where freehold development is not possible, a ban would restrict any form of residential development.
- 2.37 Just under half (48%) of respondents supported an exemption for community-led housing developments – and slightly fewer agreed with the need for an exemption for shared ownership houses (43%). Just over half (56%) of respondents agreed that there should be an exemption for land held inalienably by the National Trust and excepted sites on Crown land.

²² HCLG Committee, Leasehold Reform Inquiry, see: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries/parliament-2017/leasehold-reform-17-19/>

- 2.38 Many individual respondents and leasehold campaign groups were not in favour of leasehold in any circumstances (often advocating commonhold as an alternative). However, continued use of leasehold for houses in exceptional circumstances was supported by many professional groups such as developers and legal respondents.
- 2.39 Few respondents provided a view on the components of a definition for community-led housing. Respondents in favour of an exemption for community-led housing suggested that a suitable definition should ensure that it covered Community Land Trusts, cohousing and cooperative housing developments – and also leave room for further innovation in the sector. Key components of a definition suggested by respondents include principles that community-led housing should be: not-for-profit organisations, be accessible for local residents in perpetuity, be for the benefit of the wider community and provide affordable housing.

Government response

- 2.40 **Government remains of the view that there should be an exemption from the ban for shared ownership properties and community-led housing. We also remain of the view that there should be an exemption from the ban for inalienable National Trust land and excepted sites on Crown land.**
- 2.41 We are grateful for suggestions of the components for a definition of community-led housing for the purpose of an exemption from the ban. We will continue to work with the community-led housing sector to develop a legal definition for regulations in future legislation.

Question 10: Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

Summary of responses

- 2.42 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 1993²³) 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

²³ 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.leaseadvice.org/faq/estate-management-scheme-ems/>).

which has been enfranchised. Consequently, 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 solution proposed in the consultation was to amend the existing legislation and permit the inclusion of a newly created freehold within an existing estate management scheme.

- 2.43 Almost nine out of ten (87%) respondents agreed with our proposals and thought that the law should be amended. Some respondents agreed with the proposal but stressed that such freeholders – and freeholders in general on private and mixed tenure estates – should be given the same rights as leaseholders to challenge charges such as estate rent charges. This already forms part of the Government’s leasehold reform programme proposals (see section 4).

Government response

- 2.44 The Government will, as part of bringing forward legislation for the ban, amend the existing legislation and **permit the inclusion of a newly created freehold within an existing estate management scheme.**

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?

Summary of responses

- 2.45 In the consultation, we asked for 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. In particular, we asked for views on the need for an exemption for retirement villages. Fewer than one in ten (124) respondents answered this question. However, a range of calls for specific exemptions were provided.
- 2.46 Representatives of retirement housing developers/operators have called for an exemption for retirement villages. They suggest leasehold on such schemes is justified and the ban would negatively affect new as well as existing supply. Here houses do not stand alone, they are part of a wider institution with extensive communal facilities and packages of support care and hospitality services. Event fees are also commonly used in retirement villages which require the use of a lease.
- 2.47 The sector suggests that there would be complexities and risks associated with operating two-tier arrangements on their sites (freehold for houses and leasehold for flats). Risks arise as it can be problematic to enforce positive covenants (a promise to do something or pay monies in relation to the provision or maintenance of facilities and services) against subsequent owners of a property within a freehold arrangement.

- 2.48 Without an exemption, developers suggest that they would not develop new houses as part of future retirement schemes if they were subject to the ban. Few new build houses would likely be affected as the majority of properties on such developments are flats – but this would act to the detriment of consumer choice.
- 2.49 There are also concerns for some existing stock as some schemes operate buy-back arrangements, where a new lease is generated for every re-sale which would be prevented by the ban. We also note that the recent Select Committee report on leasehold reform also concluded that leasehold was an appropriate tenure for this kind of housing.²⁴
- 2.50 The consultation has also highlighted several financial products that rely on the use of a lease that could be negatively affected by the ban. These include home reversion plans (equity release), home purchase plans (lifetime leases and Islamic/Sharia compliant finance). Concerns were also raised suggesting that use of leasehold could be justified where development takes place on complex sites such as above an underground car park (note we have addressed this issue within the proposed definition of a house – see page 13).

Government response

- 2.51 On balance, we feel there is merit in concerns raised about banning the use of leases in retirement properties, not least as such properties are part of a wider communal setting. The Government has also recently announced support for the Law Commission's recommendations on the use of event fees, which recommends their continued use alongside improved transparency and consumer protections.²⁵ The Government is committed to supporting the development of housing for older people to help them live independently in their own homes. **We will provide an exemption from the ban for retirement properties.**
- 2.52 It is not the intention of the policy to affect lease-based financial products (home reversion plans - equity release, home purchase plans - lifetime leases and Islamic/Sharia compliant finance), so long as they do not provide a loophole from which to evade the ban. For both home reversion and home purchase plans the provider acquires the freehold and the consumer has a non-assignable lifetime lease. Because these leases are not assignable to another party there is no risk of such leasehold houses coming onto the open market. These products help people release capital from their homes or help them to buy a home and are for the sole use of an individual consumer. **We will provide an exemption from the ban for these financial products.**
- 2.53 Some land owners, such as local authorities, have stated that they would wish to retain the ability to use building leases. These can be employed by land

²⁴ HCLG Committee, Leasehold Reform Inquiry, see:

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries/parliament-2017/leasehold-reform-17-19/>

²⁵ MHCLG, see: <https://www.gov.uk/government/news/james-brokenshire-announces-industry-pledge-to-crack-down-on-toxic-leasehold-deals>

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 must be sold to the consumer on a leasehold basis. **We remain of the view that so long as, at the end, consumers can buy houses on a freehold basis, we see no problem with the continued use of building leases.**

- 2.54 We highlighted in the consultation that some stakeholders have queried whether the proposed ban on the granting of residential long leases for houses will also apply to agricultural tenancies. **We remain of the view that 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.

Implementation and retrospective application

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?

Summary of responses

- 2.55 By the time the legislation comes into force, the Government's commitment to banning the unjustified use of new leasehold interests in houses will have been in the public domain for several years. The consultation proposed therefore to consider that this should provide enough 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. A clear majority of respondents agreed.
- 2.56 However, a small number of those who responded to this question suggested that grandfathering provisions should be provided to enable those who have pre-existing contractual arrangements or planning permissions to continue with the development of leasehold houses. These respondents suggest that a small number of these could be land owners and developers that have entered into a legal agreement (options, development agreements or pre-emption rights) to acquire and build on land prior to the December 2017 announcement but who did not at that time own the land. In such cases there is usually a legal agreement between a developer and a landowner giving them the right to buy land at a certain point in the future, often triggered when planning permission is granted.
- 2.57 In the consultation the Government restated its position with regards to retrospectivity. 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.

- 2.58 A small number of respondents suggested that that date from which the retrospective element should commence should be the date of the October 2018 technical consultation rather than the original December 2017 announcement.

Government response

- 2.59 **The Government remains of the view that there should be no transitional period for the ban following the commencement of legislation.**

- 2.60 **We remain of the view, as expressed in the original consultation, that it will remain 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. But 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 currently held only as freehold (i.e. with no leasehold also on the title) regardless of when the freehold title was acquired; and**
- ii. any leasehold land acquired from 22 December 2017 onwards.**

- 2.61 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.

- 2.62 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.

- 2.63 We do not agree that there is a strong case to providing an exemption for option agreements entered into prior to December 2017. This would likely introduce significant complexity and risk confusion and disputes arising as to whether a house was compliant with the ban or not. Ultimately, options are entirely that – optional, and it is the choice of the buyer to exercise that right or not.

- 2.64 We understand that it is very rare in practice for land options to be on a leasehold (rather than a freehold) basis. Should an option agreement be affected by a change in legislation, it would be unlikely that the developer could not get hold of the freeholder and change the terms of the option to acquire the freehold. If a freeholder is absent or unknown, this could ultimately cause problems for a subsequent consumer acquiring a leasehold house on the site.

- 2.65 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.
- 2.66 **We remain of the view 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.** One of the objectives for the retrospective element of the policy is to prevent developers from stockpiling leasehold land in advance of the legislation, in order to evade the ban and bring forward leasehold houses after the legislation. This objective would be undermined by any exemption to allow contracts to be exchanged before the legislation but completed after the ban comes into force.
- 2.67 Finally, the Government believes that the information provided in the October 2018 consultation on retrospectivity merely sets out what was clear in the 21 December 2017 announcement. December 2017 remains an adequate date for the retrospection to start as Government clearly signalled its intention to legislate on this matter.

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

Reducing the level of ground rents

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?

Summary of responses

- 3.1 In the consultation, the Government's view was that as a long lease is a tenancy, it is necessary for leaseholders to pay consideration in the form of ground rent. However, it would not be fair 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.
- 3.2 The Government's thinking at the time was that the actual amount of ground rent payable must be specified in legislation, applying to all new leasehold properties, regardless of their actual value. We therefore proposed making £10 (ten pounds) per annum a standard cap for future ground rents and sought views on that proposal.
- 3.3 This question by far generated the most responses, with a small majority agreeing with our proposal to cap ground rents in newly created leases at £10 per annum. Of those who agreed, there were no detailed comments other than a small number saying that a £10 cap was fair, nominal or that it reflected the existing rules for ground rents set under Right to Buy.
- 3.4 Of those who provided additional comments (68% of respondents to this question), the majority thought that ground rent should be reduced to a peppercorn (zero financial value). Most gave this response as they believed that leaseholders receive no tangible benefit from paying ground rent; a smaller proportion argued for ground rents to be abolished all together on the basis that they believed that leasehold as a tenure should no longer exist.
- 3.5 Developers and investors were in support of a cap, but most argued that an economic ground rent was required to provide an incentive for professional landlords to operate in the leasehold market. Some suggested ground rents should be regulated with maximum starting rents fixed between £200 and £250 per annum or as fixed percentage of the price of the property, for example 0.1% following the Nationwide building societies' lending criteria cap. These respondents believed that it was essential that such rents could rise in accordance with inflation in order that they retain a real value in future years.
- 3.6 The same respondents in favour of economic ground rents thought that a £10 cap would result in less qualified landlords taking over the running of leasehold blocks, thus resulting in lower standards of their maintenance. It was suggested

that such arrangements would adversely impact the long-term stewardship of leasehold developments. The long-term asset management of blocks of flats through the provision of adequate reserves to deal with major capital works, would no longer be available.

- 3.7 A number of investors thought that the proposal seemed contrary to the Hackitt Review's focus on clear lines of responsibility for this type of building, and the role of a "duty holder" to carry the responsibility for the maintenance and safety of larger buildings and their residents.²⁶ They thought that on the one hand, the Government was adding additional burden onto landlords, yet at the same time, removing any material income stream.

Government response

- 3.8 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, ground rent is generally paid as an acknowledgment that they are not the ultimate owner. The Government wants to ensure that consumers only pay for services that they receive and gain material benefits from. We proposed a monetary cap of £10 for ground rents on future leases to provide certainty and reduce the scope for potential abuse. We also believed that it would become a peppercorn (zero financial value) over time, which made it compatible with the commitment we made in our response to *Tackling unfair practices in the leasehold market*.²⁷
- 3.9 However, the Government recognises the concerns that leaseholders have over the proposal to introduce a monetary cap of £10. We know that many respondents argued that even a small financial value could be capitalised, which would leave the door open for leaseholders to be exploited in the future.
- 3.10 With this in mind, **the Government will legislate to restrict ground rents to a peppercorn (zero financial value) in future leases.** This means that no monetary value can be charged (£0).
- 3.11 We have analysed the responses of freeholders who wish to retain an economic ground rent in detail. While we are clear that it is essential that leasehold blocks are effectively managed to a good standard and that this continues in the future, we stand by our position set out in the consultation that we do not believe ground rent income is necessary to provide this. Ground rent is unconnected with any maintenance obligation and allows freeholders who wish to engage in supervision to do so if they wish, but without any accountability if they do not. The costs of management and supervision are generally recoverable under the

²⁶ MHCLG, Independent Review of Building Regulations and Fire Safety: Hackitt Review, see: <https://www.gov.uk/government/collections/independent-review-of-building-regulations-and-fire-safety-hackitt-review>

²⁷ 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>

leases from residential leaseholders through the service charge. It is therefore possible for any stewardship functions to be paid for via the service charge.

Shared ownership

Question 14: Are you aware of separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

Summary of responses

- 3.12 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 secures their long-term ownership, rent is payable for the landlord's retained equity (until it is fully bought out).
- 3.13 We understood that there may be some shared ownership leases which require the leaseholder to pay both a rent for the landlord's retained equity and additionally a ground rent and we asked for evidence of this practice.
- 3.14 The majority of respondents to this question were not aware of a separate ground rent being charged in addition to rent on retained equity in shared ownership leases.
- 3.15 However, we did receive some evidence from local authorities and housing associations who do charge an additional ground rent in these shared ownership leases. One local authority told us that in some shared ownership properties, they charge annual ground rents of up to £300 which also double periodically. They were not able to provide a justification for this charge. A housing association respondent argued that ground rent income from shared ownership properties was useful to them to fund the building of further affordable homes.
- 3.16 Overall, most respondents had not come across the double charging of rents and ground rents in shared ownership properties. However, a small number of examples were cited – so it's clear this practice can and does happen. Where it does, annual ground rents charged have been quoted as ranging between £100 and £500.

Government response

- 3.17 The consultation exercise did not provide the Government the evidence to exempt shared ownership leases from the ground rents policy. While in the vast majority of cases ground rents are not charged in the first place, in the small number of cases where they are, no valid justification was given for charging shared ownership leaseholders ground rents. This means that ground rents on newly established shared ownership leases following the legislation will have no financial value. However, **the legislation will clarify that the policy will not**

affect the payment of rent for the landlord's retained equity in shared ownership leases.

Community-led housing

Question 15: Do you represent a community-led housing provider which does not rely on ground rent income?

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

Summary of responses

3.18 The Government's understanding as set out in the consultation was that ground rent income in community-led housing is not used for development for profit, nor is there any question of selling the freehold to raise profits. Rather, the leasehold system is seen by developers of some community-led housing as enabling the retention of control over, and management of, their stock in order to ensure it remains affordable housing in the long-term.

3.19 We used the consultation to gather evidence of how alternative methods have been successful in raising revenue to support the day-to-day running of community land trusts.

3.20 Only a very small number of respondents (1%) represented a community-led housing provider which did not rely on ground rent income. Those who did rely on ground rent income argued that it is used to cover the role of developers as stewards of the land. This work takes the form of wider community engagement, governance and development of future initiatives.

3.21 Some respondents argued that community levies, like the Strata system used in Australia and a number of other countries, were successful and could be replicated in our leasehold reform proposals.²⁸

Government response

3.22 We did not receive enough evidence to suggest that alternative funding schemes would be feasible for community-led housing schemes. Although some respondents did argue that the Strata system was successful in other countries, they did not explain how it would work in practice in England. The inability to recover ground rents could therefore threaten the growth of community-led housing, which is an objective of the Government. **To maintain this growth,**

²⁸ Strata titles allow individual ownership of part of a property (such as a flat), combined with shared ownership in the remainder of the property (called Common Property, such as reception areas, hallways, driveways, and gardens) through a legal entity called the owners corporation or strata company.

the Government will exempt community-led housing schemes from the measure to reduce ground rents to a peppercorn (zero financial value).

Retirement housing

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?

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.

Summary of responses

- 3.23 In retirement properties, ground rent income is sometimes used to recover the development costs of the communal facilities contained within. In the consultation document, we explained that these costs cannot be recovered through service charges but were nevertheless charged to leaseholders through ground rents. Developers indicated in their responses that without ground rent income, they would have to increase purchase prices of retirement properties by around £15,000. We therefore consulted on an exemption for retirement properties. In the consultation, we proposed that this exemption be subject to a number of conditions, including offering prospective leaseholders the choice of paying a higher purchase price in exchange for a ground rent at a peppercorn (zero financial value).
- 3.24 The majority of respondents did not agree that there was a case for higher ground rents in retirement properties. Of those that provided further comments, most believed that leaseholders in retirement properties receive no tangible benefit from paying a ground rent. More respondents argued that the impacts of paying ground rent on older people were more negative than positive.
- 3.25 The most common negative impacts cited related to the perceived unaffordability of ground rent for older people. For example, many argued that older people could suffer financial hardship and debt – particularly for pensioners on a fixed income where ground rents may increase in cost over time. Another common view was that many retirement properties with high ground rent may depreciate in value and becomes harder to recover the original sale price. Many respondents pointed out that this could be a problem for both the leaseholders or the future executors of the estate.
- 3.26 The minority of respondents who supported our proposals believed that leaseholders in retirement properties do enjoy positive impacts from paying ground rent. Some respondents argued that communal areas are maintained and developed to a higher standard through the payment of this ground rent (beyond the payment of a service charge for such repair and upkeep). Another view expressed in the consultation was that people often pay a lower purchase price for these properties as developers/freeholders can anticipate a future

income from ground rent. Linked to this, some respondents argued that the ground rent income maintains supply in the retirement sector by funding the cost of future developments, which means that people benefit from greater consumer choice.

Government response

3.27 The Government believes that there is merit in the argument that ground rent is used to fund building costs in retirement developments. As retirement developments are often in central areas of towns and villages close to local amenities, developers must pay a higher price for land. In comparison to a normal leasehold block, there are fewer saleable units in a retirement development. This is because a higher proportion of floor space is needed for the communal areas. Ground rent, therefore, is used by retirement developers to recover this lost income and maintain their ability to invest in future projects.

3.28 One retirement developer told us that the number of sites they have delivered has reduced since our announcement to reduce ground rents in December 2017, which they stated was because they were not including ground rent income in their land purchase viability assessments. This suggests that the supply of retirement developments would be negatively impacted if no exemption is granted to the retirement sector.

3.29 **We will therefore proceed with the proposal to exempt retirement properties from the policy.** This will apply to both newly established leases and existing buildings where a new lease is granted. It will also apply to conversions of existing buildings (for example, conversion of a large existing freehold house into retirement flats with a ground rent). However, this exemption will be subject to the conditions listed in the consultation document. This includes offering prospective leaseholders the choice of paying a higher purchase price in exchange for a ground rent at a peppercorn (zero financial value). These conditions will also apply on re-sale of retirement properties. Some retirement developers rely on the use of event fees and others on ground rents as part of their business models. To avoid the risk of double charging, the retirement ground rent exemption will only apply where event fees are not used.

Mixed-used leases

Question 18: Do you agree with our approach to the treatment of mixed-use leases?

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?

Summary of responses

3.30 We proposed that mixed-use leases, which are used for a building comprising of a mix of commercial and residential, for example 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. We consulted on this approach.

- 3.31 Just over half of respondents agreed with our proposed approach. Some respondents gave views to support this approach, the main justification being that mixed-use leases are complex due to the combination of commercial and residential in a single lease and therefore do need to recover a higher ground rent.
- 3.32 There was a misunderstanding among some respondents about whether the consultation was referring to mixed-use leases or mixed-use developments. Mixed-use developments, as opposed to mixed-use leases, are sites that consist of a mix of residential leases and commercial leases, with a proportion of the development being commercial space. There was concern that developers would “game the system” by building developments that could be classified as mixed-use, and therefore leaving them able to charge a higher ground rent.
- 3.33 The proposal however, was only to exclude mixed-use leases. For example, this would mean that a lease of a building comprising a shop with a self-contained flat above would not be subject to the policy. But if a separate long sub-lease of the flat, for residential use, were subsequently created, that lease would be subject to the policy and the cap.
- 3.34 Respondents also referred to the recent propensity of mixed-use leases especially in regenerated inner parts of major cities and thought it would be unfair for the Government to exclude future leaseholders who live in these types of properties. They argued that mixed-use leases should be within scope of the policy. These responses appear to relate to mixed-use developments, rather than mixed-use leases.

Government response

- 3.35 **The Government will exclude mixed-use leases from the scope of the ground rents policy.** This means that ground rent can continue to be charged where a single lease covers both commercial and residential elements. However, if a sub-lease is granted on the residential part, that lease will be subject to the policy.
- 3.36 However, **mixed-use developments will be subject to the policy.** The management and supervision of mixed-use developments is no different to that of single use developments. The costs of management and supervision are generally recoverable under the leases from residential leaseholders through the service charge and from commercial tenants in either the same way or as a part of the rent. The Government does not accept that ground rents are necessary in mixed-use developments.

Replacement leases

Question 20: Do you agree with the circumstances set out above in which a capped ground rent will apply in replacement leases?

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

Summary of responses

- 3.37 The consultation recommended that voluntary lease extensions, that is those agreed outside the statutory provisions²⁹ and granted after commencement of the proposed ground rents cap, will be deemed under the legislation to be replacement leases, and sought views on this approach.
- 3.38 The majority of respondents to this question agreed with our proposal that the ground rent cap should apply to replacement leases. Of those that did not agree, two main themes emerged.
- 3.39 It was firstly argued that the ground rent cap should not automatically apply when a lease is extended. Respondents believed that this would remove the flexibility of a voluntary lease extension at a higher ground rent, and would also lead to more expensive premiums for lease extensions as freeholders will want to be compensated for the loss of future ground rent due to the cap.
- 3.40 It was also argued that the variation of ground rent clauses should also give rise to a new lease and therefore be subject to the ground rent cap. Some specifically referred to cases in which doubling ground rents were varied.

Government response

- 3.41 **As proposed in the consultation the policy will apply to new leases created following a surrender of an existing lease.** The consultation used lease extensions as the main example of this.
- 3.42 The Government understands that voluntary lease extensions, which include the payment of ground rent, reduce the upfront premium that leaseholders would have to pay through the statutory process. These terms are agreed between the leaseholder and freeholder as an alternative to the statutory process.
- 3.43 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. **For the purposes of implementing our peppercorn (zero financial value) ground rents policy, we will not require ground rents that already exist to be removed from leases when they are voluntarily extended.**

²⁹ Leasehold Reform Housing and Urban Development Act 1993

- 3.44 That will avoid the peppercorn ground rent policy having the effect of requiring leaseholders to pay an increased upfront premium when they extend their leases voluntarily. The peppercorn (zero financial value) ground rents policy will only apply to the newly extended part of the lease.
- 3.45 Therefore, if a lease with 80 years remaining was extended to mean that the new lease was for a term of 120 years, only the final 40 years would be subject to the policy, which would mean a ground rent agreed between the parties could run for the unexpired period of the original lease.
- 3.46 This essentially means that the unexpired part of the lease (at the time of the extension) will be exempt from the policy. The parties will also be able to agree a new ground rent if they so wish but checks and balances will be introduced in our legislation to ensure that these do not become onerous.
- 3.47 As proposed in our consultation, **where a variation of a lease is significant, usually limited to an extension of the lease or a change in the property to which it applies, this would amount to a new lease and the peppercorn ground rents policy will apply.** Where a variation to a lease is minor the peppercorn ground rents policy will not apply.
- 3.48 Alongside the Government's work on leasehold reform, the Law Commission consulted on whether the statutory lease extension process should allow leaseholders to make a choice to continue paying the ground rent in order to reduce the upfront premium. The Law Commission also consulted on the more general question of whether, and if so how, voluntary lease extensions should be prohibited or regulated. We will consider these issues when responding to the Law Commission's forthcoming recommendations on enfranchisement reform.

Other exemptions

Summary of responses

- 3.49 A number of respondents to the consultation also drew attention to several other areas where they considered an exemption was needed. These included: leases granted through home reversion plans (equity release); home purchase plans (lifetime leases and Islamic/Sharia compliant finance); and developers of low-cost housing.

Government response

- 3.50 Leases granted through home reversion plans are a type of equity release product which allow consumers to release capital by selling their property to a provider, who in turn takes ownership of the freehold and grants a lifetime lease to the consumer. Under some plans, consumers agree to pay a ground rent for the duration of the lease to release a higher amount. It is not the intention of the policy to affect these lease-based financial products. **We will therefore exempt leases granted through equity release from the policy**, as it is clear that some of these products would not be able to function without ground rents.

3.51 Similarly, an exemption is also needed for home purchase plans which require the payment of a ground rent. An example of this is the Islamic/Sharia compliant finance, in which the lender buys the freehold of the property and grants a non-assignable lease to the consumer. Instead of paying interest on a mortgage, the consumer pays a monthly rent and completes the purchase of the freehold at the end of the lease term. Under this lease agreement, the monthly payment is a ground rent. **These types of purchase plans use ground rents to increase the number of people who can buy their own home, so the Government will exempt them from the policy to reduce ground rents.**

3.52 Some respondents also suggested that an exemption was needed for developers of 'low-cost' housing for first-time buyers with moderate incomes. They argued that ground rent income allowed developers to compete for land, and that they would build significantly fewer affordable homes without this income. However, the Government believes that the majority of developers that use ground rent income to support land acquisition are in the same position. Additionally, the Government is mindful of the particular importance of protecting consumers on lower incomes making their first steps onto the housing ladder. First-time buyers will often have significantly higher mortgage costs than other homeowners and therefore be particularly at risk of financial difficulties from additional ongoing costs such as ground rents. **Therefore, we will not be providing an exemption for developers of 'low-cost' housing.**

Transitional period

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

Summary of responses

3.53 In the consultation, the Government proposed that the ground rent policy would not receive a further transitional period after commencement of the legislation. Given the announcement was first made in December 2017, we considered industry to have had sufficient time to adjust prior to implementation. We sought views on this approach.

3.54 Seventy-two percent of respondents agreed that no further transitional period was needed for the ground rent cap. Some believed that the retrospection should apply from the date of the original announcement in December 2017 rather than at the point the proposed legislation takes effect.

3.55 Responses arguing for a further transitional period were limited. The main reason given was that developers need more time to prepare, particularly those that have started building leasehold properties in the last year or on large sites with a long build-out period. Some developers also said that it would affect the viability of existing sites.

Government response

3.56 The Government is aware that the original announcement to reduce ground rents on future leases was made in December 2017 and Government clearly signalled its intention to legislate on this matter. We are keen to move forward with this policy, and it is clear from the responses to the consultation that consumers are too.

3.57 Therefore, **we will proceed with the proposal made in the consultation paper to not have a transitional period.**

Enforcement and redress

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

Summary of responses

3.58 We also asked respondents how the policy should be enforced if leaseholders are charged ground rent contrary to the legislation. The most frequent relevant response (19%) was that all costs associated with redress and rectifying leases should be borne by developers and/or freeholders.

3.59 One in five respondents argued that freeholders should compensate leaseholders for any ground rent overpayments, with 4% believing that additional fines should be placed on freeholders. A smaller proportion of respondents argued that conveyancers should compensate leaseholders.

3.60 Some respondents suggested that there should be an automatic reduction of the ground rent to £10 or a peppercorn (zero financial value), with others arguing that the policy should be enforced by making the ground rent above the cap or peppercorn (zero financial value) unenforceable or unrecoverable through the courts.

3.61 A further 12% of respondents suggested that the lease should be automatically rescinded and there be a transfer to a freehold tenure at a nominal value which would effectively nullify the ground rent.

Government response

3.62 The Government will legislate so that, subject to any exemptions, any ground rent above a zero value will be unenforceable in law. If a freeholder seeks to charge a ground rent contrary to the legislation the leaseholder should not pay it and the freeholder will have no legal means to recover it. Once the policy comes into force, if leaseholders pay ground rent contrary to the legislation, they should be able to recover it. We also believe that any costs related to this recovery, including court and legal fees, should be borne by freeholders. **To this effect,**

we will give leaseholders the right to apply to the First-tier Tribunal to seek a refund for any incorrectly paid ground rent and any associated costs, with no time limitations.

3.63 We also believe that a further sanction is needed to ensure compliance with the ground rents policy. This is because unscrupulous freeholders may be willing to evade the legislation by charging ground rents if they know that the only penalty is the repayment of rents already collected plus associated costs. As this may represent relatively small amounts, it may not be enough to deter all freeholders from charging ground rents. **We will therefore give the courts the power to impose a civil fine of up to £5,000 per property on freeholders who have charged ground rent contrary to the legislation.** This level of fine aligns with other housing dispute schemes. **We will also provide in legislation enabling powers to the Secretary of State to change the regulations around civil penalties, with potential for higher penalties for repeat offenders, should they be required in future.**

4. Implementing measures to ensure that the charges that freeholders 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 the equivalent rights as leaseholders to challenge their reasonableness.³⁰
- 4.2 To meet this commitment, we suggested providing freeholders with a regime based on the relevant provisions within the Landlord and Tenant Act 1985. These provisions provide the statutory rights enjoyed by leaseholders and are set out in Sections 18-30 of the 1985 Act.
- 4.3 We proposed to create a regime for freeholders which provided that maintenance charges must be reasonably incurred and that services provided were of a reasonable standard. We would also replicate consultation requirements and obligations on the provider of services to provide information to the freeholder. Freeholders would be given 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.
- 4.4 We recognised that the requirements of leaseholders and residential freeholders can be different. To ensure that in creating a regime for freeholders we were taking these differences into account, we welcomed views on the following questions.

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?

If so, what should this look like?

Summary of responses

- 4.5 The consultation proposed creating an equivalent freeholder right based upon Sections 21 to 24 of the Landlord and Tenant Act 1987. This would allow freeholders to petition the First-tier Tribunal to appoint a manager to carry out obligations contained within a 'management order' issued by the tribunal.

³⁰ 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>

Freeholders would benefit from this equivalent right if they were dissatisfied with the level of service provided, perceived charges to be unreasonable or remedial action was not taken within a reasonable period. The Government welcomed views on this way forward.

- 4.6 A majority (76%) of respondents agreed that residential freeholders should have the right to change the management of the services covered by an estate rent charge or contained within a deed of covenant arrangement. It was suggested that this would enable residential freeholders to have a say in the management of communal services and shared areas.
- 4.7 Some responses argued in favour of introducing a Right to Manage for residential freeholders. However, others suggested it was too complex and onerous and would prefer a faster mechanism in order to change provider. Other respondents suggested that management of common areas on new-build estates should be adopted by local authorities as council tax should already be covering the cost of maintaining these areas.
- 4.8 The minority of respondents who disagreed with the proposals argued that third party management companies are a professional service that residents would find difficult to replicate. They thought that if a right to change management were to be permitted, it should only be in the event of unfair charges or negligence by the management company, and only after there had been time to rectify the issues.
- 4.9 There was support for the First-tier Tribunal as the appropriate forum for resolving freeholder management disputes, although some expressed concerns about the accessibility and costs of the First-tier Tribunal.

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?

Summary of responses

- 4.10 The Government recognises that there are a range of organisations already undertaking estate management services that could be impacted by freeholders having equivalent rights to leaseholders to challenge charges. These organisations may be providing a range of services covered by estate rent charges and deed of covenant arrangements, to both freeholders and leaseholders. The Government welcomed views on the potential impact of the proposals on their operation.
- 4.11 A significant portion of respondents used the opportunity to express their general dissatisfactions, providing their own personal experience of property managers and did not provide an answer to the question.
- 4.12 However, many respondents (49%) argued that these proposals would significantly improve the quality of long-term management of communal areas

by making companies accountable for the provision of services. It was argued that these proposals would help to ensure that fees charged by these companies are competitive, reasonable and transparent.

4.13 A few respondents suggested these proposals would have minimal or no financial or administrative impact since most companies are already providing a good service. Some called for a statutory code of practice to provide a regulatory framework to ensure standards in the provision of such services.

Government response

4.14 Leaseholders have a number of protections and rights which enable them to hold management companies to account. Residential freeholders have no such equivalents even though they may be paying for the same or similar services. **The Government has previously committed to introducing legislation to correct this disparity.**

4.15 The Government recognises the clear answer delivered by consultation responses and remains committed to legislating to address this disparity. **We will legislate to give freeholders equivalent rights to leaseholders to challenge the reasonableness of estate rent charges.** We will achieve this by replicating the relevant provisions within Sections 18-30 of the Landlord and Tenant Act 1985. **This will include a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges based on those rights leaseholders have under Sections 21-24 of the Landlord and Tenant Act 1987.**

4.16 The Government does not consider the impact of these proposals on companies or bodies that provide the long-term management of communal areas and facilities to be such as to preclude the need for addressing the disparity in protections and rights between leaseholders and residential freeholders. The majority of respondents supported this point of view and their major concern remains improving the quality of long-term management of communal areas by making companies accountable for the provision of services.

4.17 We note calls for greater regulation of managing agents and statutory codes of practice to set and maintain standards. The Government has already tasked a working group of experts from across the property sector, chaired by Lord Best to advise the Government on a new regulatory framework for property agents.³¹

4.18 The Government also notes the mixed responses relating to a Right to Manage for residential freeholders. Some responses have argued in favour of a Right to Manage, while others have suggested it would be too complex and onerous in a freeholder setting, and they would prefer a quicker mechanism to change

³¹ Regulation of Property Agents working group, see: <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

management organisation. The Law Commission is looking to reform Right to Manage to make it easier for leaseholders to exercise this right.³² **We will consider the implications for introducing a Right to Manage for residential freeholders after the Law Commission has reported, and as part of our wider commitment to create parity between leaseholders and residential freeholders.**

³² Law Commission, Right to Manage, see: <https://www.lawcom.gov.uk/project/right-to-manage/>

5. Implementing measures to improve how leasehold properties are sold

- 5.1 In the consultation document, we recognised 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 the response to the *Home Buying and Selling Call for Evidence* published in April 2018, 94% of respondents agreed that managing agents and freeholders should be required to respond to enquiries within a fixed time, and 86% agreed that maximum fees should be set for providing this information.
- 5.3 We asked three questions (Questions 24, 25 and 26) within this consultation which could help us to determine an appropriate fee and timescale.

Reasonable deadline to provide leasehold information

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

Summary of responses

- 5.4 This was a closed question with no option for open-ended answers. The majority of respondents (58%) suggested that a reasonable deadline for providing information would be less than 10 working days. Next was 10-15 working days at 36%. Lastly, 6% of respondents suggested a deadline of more than 15 working days would be reasonable.
- 5.5 Of the personal responses to this question, 65% wanted a deadline of less than 10 days; 32% wanted a deadline of 10-15 days and 3% wanted a deadline of more than 15 days. Of the organisational responses to this question, 28% chose less than 10 days; 56% chose 10-15 days and 16% chose more than 15 days.
- 5.6 Of the management agents that answered this question, 7 respondents chose less than 10 working days, 8 chose less than 10-15 working days, and 3 chose more than 15 days. No law firms chose less than 10 working days, heavily favouring 10-15 days as a deadline. Local authorities and housing associations also favoured 10-15 working days as a deadline.

Government response

- 5.7 There is a clear appetite from respondents to set a timescale for the turnaround of leasehold information. We note that personal respondents were in overwhelmingly in favour of turnaround time of less than 10 working days, but we are also conscious that responses from organisations, including the people

who would need to provide this information, were more balanced with the majority selecting 10-15 working days as an appropriate turnaround time.

- 5.8 Considering these responses, the **Government believes that setting a turnaround time of no more than 15 working days would be appropriate** and government will aim to set this in legislation when Parliamentary time allows.

Reasonable maximum fee to provide and update leasehold information

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

Summary of responses

- 5.9 This was also a closed question. The clear majority (77%) stated that the fee for providing information should be less than £100, while 10% suggested a fee of more than £150 would be reasonable.
- 5.10 Personal respondents were overwhelmingly in favour of a fee of less than £100 with 86% choosing this option; 7% chose £100, 4% chose £150 and only 3% chose more than £150. Organisational responses showed a different pattern with 44% of organisations choosing more than £150; 27% choosing less than £100, 23% choosing £150 and 6% choosing £100.
- 5.11 Managing agents were overwhelmingly in favour of a higher cap with 16 choosing more than £150 and just 2 in favour of a cap of £150, with none below that. Most housing associations and law firms also favoured a cap of more than £150, with a few choosing £150 and below.
- 5.12 Some respondents said that if the Government set a fee, there would need to be a mechanism for adjusting the fee in response to changes in inflation. A number of respondents echoed a recommendation made by the Conveyancing Association in their response, that where responsibilities for providing this information were split between different bodies the consumer should not be charged multiple times.

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?

- 5.13 This question gave a choice of four different fee amounts as well as an open-ended "other" option, which was also often used to give additional information relating to the two previous questions. The majority (67%) said there should be no additional cost to the consumer to update information; 14% said this service should cost less than £25, 13% said between £25-50 and 6% said more than £50 would be a reasonable fee.

- 5.14 One hundred and fifty-six respondents gave a written response in the “Other” category: 35% of these said no fees should be charged at all; 24% said the fee should vary based on the information requested or the format, for example, paper-heavy, lengthy or legally complex information; 23% gave general open-ended responses that didn’t answer the question; 9% said there should be a variable fee depending on the requesting organisation or the property price and 8% gave a figure from £50 to £450 (“more than £50”). One percent said there should be no cap, and a further 1% recommended setting the initial fee high enough to cover further information requests. Many also stated that on most occasions the level of information will be minimal and there should be no additional charge.
- 5.15 There were 12 organisations that gave a written answer to this consultation question many of which defended higher levels of fees. A common comment was that even if there is no change in the information provided, firms must still need to check that there was no change to be prudent and this comes with a cost.
- 5.16 Management agents agreed that requests for information outside of the standard leasehold property enquiry information form (LPE1 form) may incur higher costs.³³ Several agents also pointed out that in many cases, re-issuing and checking certain information could well involve the same amount of work as providing it for the first time, especially if a new financial year is involved as there will be new information about service charges and the status of accounts.
- 5.17 Managing agents and law firms agreed that when information is requested, the response needs to be accurate, legally robust and produced by professionals. They said that capping costs could mean the increased use of junior staff, giving non-committal answers to protect themselves or even missing out the provision of important information.

Government response

- 5.18 The responses to Questions 25 and 26 show that there is an appetite from consumers for any fees to be set as low as possible, with some respondents suggesting there should be no fees at all and one commenting that these fees were ‘legalised extortion’.
- 5.19 However, organisations and managing agents responded differently, with the clear majority of them selecting a fee greater than £150 for providing leasehold information. One of the leading managing agents suggested that the fee for providing the information for a leasehold pack (LPE1) should be more than £150 but less than £250 +VAT. A number of other organisations also suggested a figure that fell within this range, with some respondents commenting that fees should be higher for London based firms, reflecting their higher costs. There was also a suggestion that costs may need to go up if the Government sets a

³³ LPE1, Leasehold Property Enquiries forms, see: <https://www.lawsociety.org.uk/support-services/advice/articles/leasehold-property-enquiries-form/>

faster turn-around time. **We will therefore set a maximum fee of £200 +VAT for producing leasehold information in the form of a LPE1 pack.** When setting this fee, we will include a mechanism to ensure that the fee can be amended to reflect changes in inflation.

5.20 Despite the £200 +VAT maximum fee, **the Government will still expect freeholders and managing agents to charge a fee which reflects the reasonable cost of producing this information.** The Government believes that the best way to achieve this outcome is to ensure that consumers can challenge a fee where they feel it is not reasonable. The Government has committed to extending mandatory membership of a redress scheme to all freeholders of leasehold properties which will give consumers a new route to challenge the reasonableness of fees. **The Government will also review the relevant legislation and make any amendments where necessary, to ensure that consumers have the power to challenge unreasonable fees through the First-tier Tribunal.** We will also look to identify and resolve any other potential barriers which stop consumers bringing forward a complaint.

5.21 The Government recognises that there are occasions where leaseholders need to refresh this information, particularly when the purchase spans financial years. We also believe that the charge for this updating should be reasonable and can be less than the original charge for producing the whole pack. **We will therefore set a maximum fee of £50 for updating leasehold information.** When setting this fee, we will include a mechanism to ensure that the fee can be amended to reflect changes in inflation.

Annex A - Breakdown of consultation responses

This Annex details a full analysis of responses to the questions posed in the consultation.

Method of response	
Survey Monkey	1,038
Email	193
Hard copy	6
Total	1,237

Viewpoint	Number of Responses	Percentage
Personal View	1,029	83%
Organisational	208	17%

If you are responding on behalf of your organisation, which of the following best describes your organisation:

Organisation	Number of Responses	Percentage
Other*	43	21%
Law Firm	32	15%
Representation Groups	26	13%
Management Agent	23	11%
Investor	20	10%
Developer	18	9%
Retirement Sector	17	8%
Housing Association	14	7%
Professional Body	15	7%
Government Body	13	6%
Trade Association	8	4%
Land Owner	5	2%

Some respondents chose more than one type of organisation, for example, "other" and "retirement sector/ representative group".

*Some respondents mentioned multiple answers in one response and therefore total figures may not tally in each of the following tables.

Responses which amounted to less than 1% have not been included in the analysis below.

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?

Response	Number of Responses	Percentage
Yes	420	69%
No	193	31%
Total	613	
Further qualitative responses	461	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	252	51%
Reiterated support for the ban	72	15%
Support for the abolition of all leasehold houses (no exemptions)	59	12%
Utilise conveyancers/solicitors to implement ban	21	4%
Enforce through HM Land Registry	20	4%
Comments on encouraging the Government to tackle "fleecehold"	20	4%
Empower third parties (HM Land Registry/Courts) to change the title from leasehold to freehold	8	2%
Planning permission restricted to prevent development of leasehold houses	8	2%
Prescribed clauses under the Land Registration Rules 2003	9	2%
Utilise estate agents at point of sale	3	1%
Penalties for house builders/developers to discourage them	4	1%
Feel that enforcing through HM Land Registry lead to delays/ increased resource requirements	6	1%
Unsupportive of the ban	3	1%

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?

Response	Number of Responses
a)	483
b)	385

	Number of respondents who mentioned this response	Percentage of respondents
a) A long lease be incorrectly granted upon a house		
Automatic transfer of freehold at no cost	138	26%
Compensation from developers	124	23%
General response that doesn't answer the question	96	18%
General compensation	67	13%
Transfer to freehold at minimal/reasonable cost	55	10%
Redress via the First-tier Tribunal	20	4%
Compensation from conveyancers	14	3%
Fines for developers	10	2%
Ombudsman service to assess cases	9	2%

b) A long lease be granted at a ground rent in excess of the cap	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	90	21%
All costs to rectify lease to be paid by developer/landlord	79	19%
Compensation from landlord for overpayment of ground rent	76	18%
Automatic reduction of ground rent to £10 cap	54	13%
Rescind the lease and/or transfer freehold for nominal value	51	12%
Independent/clear redress scheme should be implemented (e.g. ombudsman or tribunal)	26	6%
Automatic reduction of ground rent to a peppercorn	17	4%
Fines placed on landlord	18	4%
Compensation from conveyancer	6	1%
Any ground rent above peppercorn irrecoverable	6	1%
Legal obligation to make ground rent payment only enforceable at capped amount	4	1%

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

Number of Responses	483
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	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	214	41%
A structure intended for residential purposes	73	14%
No shared spaces or communal area within the property	48	9%
Situated on its own plot of land	37	7%
Properties divided vertically and not horizontally	32	6%
The property must have its own entrance	34	6%
Lived in by one family, and not a HMO	33	6%
Content with definition under the Leasehold Reform Act 1967	28	5%
A single building	9	2%
The property must include a ground floor	7	1%
Should be in line with the Law Commission's definition of 'residential unit'	7	1%
Constructed over a basement carpark	3	1%

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?

Response	Number of Responses	Percentage
Yes	347	59%
No	242	41%
Total	589	
Further qualitative responses	310	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	151	49%
Disagree, should be restricted to peppercorn	138	45%
Disagree, higher ground rent needed for housing industry (supply, landlord standards, stewardship etc)	11	4%
Disagree, ground rent should vary in different types of property	7	2%
Disagree, extended leases granted under the Lease Reform Act 1967 should be exempt	3	1%

Question 5. Are there any other conditions that should be applied to exemptions from the leasehold house ban to make them acceptable to consumers?

Response	Number of Responses	Percentage
Yes	199	37%
No	335	63%
Total	534	
Further qualitative responses	324	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	117	34%
Landlords should not be able to collect permission fees/ require consent for alterations	57	16%
Ground rents should be capped if house exempt	36	10%
If unable to build on land as freehold, occupation of house should only be for rent.	34	10%
Limits on additional fees such as service charges	27	8%
No exemptions whatsoever	23	7%
Transparency of tenure -must be clearly advertised as leasehold at point of sale	20	6%
No restrictive covenants on freehold properties	16	5%
Only long leases to be granted (e.g. minimum 999 or 250)	8	2%
No other conditions	7	2%
General issues voiced about leasehold	4	1%

Question 6. Do you agree that there should be an exemption for shared ownership houses?

Response	Number of Responses	Percentage
Yes	232	43%
No	312	57%
Total	544	
Further qualitative responses	315	

	Number of respondents who mentioned this response	Percentage of respondents
If you do not agree, please explain why		
General response that doesn't answer the question	93	29%
No, support for the implementation of commonhold	81	26%
Support of no exemption for shared ownership	42	13%
General criticism of shared ownership	28	9%
No, service charges and ground rents should be capped	25	8%
No, share of freehold should be given instead	22	7%
Current system is restrictive as financial responsibility for maintenance and upkeep of the property is not shared with the landlord	11	3%
No, implement controls on the use of restrictive covenants	5	2%
Yes, until homeowner staircases 100% and then enfranchise to freeholder	5	2%
Yes, once property is genuine shared ownership tenure	3	1%

Question 7. Do you agree there should be an exemption for community-led housing developments such as Community Land Trusts, cohousing and cooperatives?

Response	Number of Responses	Percentage
Yes	253	48%
No	276	52%
Total	529	
Further qualitative responses	273	

	Number of respondents who mentioned this response	Percentage of respondents
If you do not agree, please explain why		
General response that doesn't answer the question	117	40%
Could lead to developers abusing the exemption	37	13%
Support of the abolition of Leasehold	37	13%
Commonhold should be used instead	31	11%
Support for no exemptions from the ban	29	10%
Included in consultation without debate	28	9%
Framework of community ownership in perpetuity required	5	2%
Properties should be for rent if freehold cannot be provided	4	1%
The property should be sold back to CLT if disposed	3	1%
Restrictive covenants could achieve continued community ownership	3	1%

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.

Response	Number of Responses
Answered	162

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	85	25%
Not for profit and in the interests of the local community	36	22%
Affordability restrictions/ community benefit/ help disadvantaged groups	14	9%
Support for the introduction of commonhold on such sites	8	5%
For the benefit of local occupants only	6	4%
Communal space/shared gardens/ shared buildings on site	4	2%
Community involvement in governance of organisation and decision-making processes	4	2%
Support for exemption but peppercorn/ capped ground rent should apply	3	2%
Housing that is allocated on a means tested basis	2	1%

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?

Response	Number of Responses	Percentage
Yes	286	56%
No	229	44%
Total	515	
Further qualitative responses	253	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	132	50%
No, all the National Trust and Crown should have the same rules as everyone else	38	14%
No, the National Trust have acted badly/abused their charity status	30	11%
No, developments on such land should be for rent only	26	10%
Peppercorn ground rents should be implemented on such land	20	8%
No, their developments should be freehold or not residential	10	4%
No, should be controls through planning restrictions	2	1%
No, houses should be freehold with land covenants	3	1%

Question 10. Do you agree that the law should be amended to allow the inclusion of newly created freeholds within existing estate management schemes?

Response	Number of Responses	Percentage
Yes	467	87%
No	71	13%
Total	538	
Further qualitative responses	171	

	Number of respondents who mentioned this in response	Percentage of respondents
If you do not agree, please explain why.		
General response that doesn't answer the question	84	45%
Proposal will require the implementation of the Law Commission's 2011 work on positive covenants	21	11%
All houses should be converted in full to freehold	17	9%
No, estate management companies are unregulated	14	8%
Councils should adopt public areas	12	7%
Must not create a 2-tier tenure system (existing leaseholders with higher ground rents vs new leaseholders with capped ground rents)	12	7%
No, as it would promote "fleecehold"	11	6%
Estates shouldn't be managed by a 3rd party company	4	2%
Comments in support of commonhold	3	2%
Exemption not required for agricultural land	4	2%
Yes, only if they were subject to the same conditions as those outside of the estate management scheme	2	1%

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?

Response	Number of Responses	Percentage
Yes	124	22%
No	429	78%
Total	553	
Further qualitative responses	159	

If yes, please state what further exemptions may be required and why and if possible provide examples of further evidence.	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	84	50%
Specific rail/ local authority land answer	27	16%
Retirement communities	18	11%
Complex site e.g. car parks underground / infrastructure	12	7%
Protection of historic or architectural value	8	5%
Life tenancy/ equity release/home reversion	6	4%
In the case of compulsory purchase	5	3%
Rural exception sites/affordable housing	3	2%
Public body exemptions	4	2%
Family members granting leases to relatives	1	1%
Freeholder is unknown and therefore only leasehold can be granted	1	1%

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?

Response	Number of Responses	Percentage
Yes	459	80%
No	113	20%
Total	572	
Further qualitative responses	200	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	77	38%
The ban should start immediately	64	32%
The ban should come into effect the commencement date of the legislation	28	14%
Grandfathering provisions required/ Pre-existing contractual agreements or planning permissions that should be honoured after legislation comes into force	26	13%
No, the policy needs further clarification and additional scenarios cited	4	2%
The reforms create a two-tier system	3	1%

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?

Response	Number of Responses	Percentage
Yes	354	46%
No	412	54%
Total	766	
Further qualitative responses	523	

	Number of respondents who mentioned this response	Percentage of respondents
Support of a peppercorn/zero value ground rent - leaseholders receive no benefits from paying ground rent	257	48%
General response that doesn't answer the question	83	15%
Support of a peppercorn/zero value ground rent - as leasehold should not exist	76	14%
Higher ground rent value required to maintain professional landlord standards	40	7%
Support of a peppercorn/zero value ground rent - £10 costly to recover for landlord	33	6%
Higher ground rent value required to attract investment	16	3%
Ground rent should be capped at 0.1% of property's value	16	3%
No amount specified, but against a cap as will create a two-tier system	8	1%
Support of a peppercorn/zero value ground rent peppercorn/zero value - to avoid legal implications	5	1%

Question 14. Are you aware of a separate ground rent being charged in addition to a rent on the retained equity in shared ownership leases?

Response	Number of Responses	Percentage
Yes	131	20%
No	519	80%
Total	650	
Further qualitative responses	163	

	Number of respondents who mentioned this response	Percentage of respondents
Yes, common practice/anecdotal evidence	72	42%
General response that doesn't answer the question	60	35%
Yes, an economic ground rent at more than £100 pa	15	9%
No, not common practice	8	5%
Yes, widespread practice	6	4%
Yes, a low ground rent at less than £100 pa	5	3%
Yes, to keep properties and enfranchisement premiums affordable	3	2%
Yes, to provide for maintenance of communal areas	2	1%

Question 15. Do you represent a community-led housing provider which does not rely on ground rent income?

Response	Number of Responses	Percentage
Yes	7	1%
No	689	99%
Total	696	
Further qualitative responses	61	

	Number of respondents who mentioned this response	Percentage of respondents
If so, what alternative methods of funding have proved successful and could be replicated elsewhere?		
Ground rents cap should also apply to the community-led housing	34	56%
General response that doesn't answer the question	24	40%
Lease management fees/ community levies or look to strata title system implemented in Australia	2	3%
Ground rents need to be retained to enable the stewardship	1	2%

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?

Response	Number of Responses	Percentage
Yes	119	17%
No	589	83%
Total	708	
Further qualitative responses	464	

	Number of respondents who mentioned this response	Percentage of respondents
Disagree, there should be no exemption as leaseholders receive no benefit	136	25%
Disagree, discriminates against elderly/those living in retirement sector who may not be able to afford higher ground rents	117	22%
General response that doesn't answer the question	98	18%
Disagree, costs should be paid through other means (service charges/ premium/ increased purchase price)	99	18%
Agree, higher ground rent ensures maintenance quality and consumer choice	79	15%
Disagree, higher ground rent makes it harder to sell properties	13	2%

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.

Response	Number of Responses
Answered	458

* Some respondents answered both negative and positive impacts and provided multiple examples for either question

	Number of respondents who mentioned this response	Percentage of respondents
Positive Impacts		
No positive impacts	102	44%
Lower initial purchase price of property	43	19%
General response that doesn't answer the question	37	16%
Better maintenance/development of communal areas	33	14%
Provides incentive for developers to build in this sector	10	4%
Provides certainty/ affordable as opposed to exit fees	6	3%

Negative Impacts	Number of respondents who mentioned this response	Percentage of respondents
Financial detriment to the occupier	258	45%
No tangible benefit is received in exchange for the ground rent	99	17%
Property depreciates in value and difficult to sell in a restricted market	82	14%
General response that doesn't answer the question	74	13%
Can cause stress/worry/confusion if ground rent unaffordable	65	11%

Question 18. Do you agree with our approach to the treatment of mixed-use leases?

Response	Number of Responses	Percentage
Yes	243	51%
No	237	49%
Total	480	

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?

Response	Number of Responses
Answered	240

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	188	78%
Excluded, mixed-use developments are complex and need higher ground rent income for maintenance/business costs	20	8%
Within scope otherwise developers may use this as a loophole	19	8%
Within scope as many residential flats are in mixed-use blocks	10	4%
Within scope to avoid confusion (definition of mixed-use is unclear)	5	2%

Question 20. 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?

Response	Number of Responses	Percentage
Yes	346	59%
No	244	41%
Total	590	
Further qualitative responses	309	

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	164	52%
Agree, no clear reason stated	57	18%
Disagree, leaseholders may benefit from voluntary lease extensions at a higher ground rent	21	7%
Disagree, law on surrender and re-grant of leases too complex	18	6%
Disagree, the cap should be a peppercorn only	20	6%
Disagree, should only apply where onerous lease has been varied	15	5%
Disagree, landlords likely to increase cost of re-grant of lease to compensate for lost ground rent	9	3%
Disagree, no comment made	6	2%
Disagree, should apply where lease has been sold on	4	1%

Question 21. Do you agree there should be no further transitional period after commencement of the legislation permitting ground rents above £10 per annum?

Response	Number of Responses	Percentage
Yes	466	72%
No	182	28%
Total	648	
Further qualitative responses	276	

	Number of respondents who mentioned this response	Percentage of respondents
Agree, no clear reason stated	156	55%
General response that doesn't answer the question	65	23%
Disagree, no clear reason stated	24	9%
Disagree, developers/sellers need more time to prepare	17	6%
Agree, but should be further retrospective application	11	4%
Agree, developers may use transitional period to find loopholes/ exploit leaseholders	5	1%
Disagree, grandfathering provisions should be implemented	4	1%

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?

Response	Number of Responses	Percentage
Yes	565	76%
No	182	24%
Total	747	
Further qualitative responses	509	

	Number of respondents who mentioned this response	Percentage of respondents
Yes, equivalence of rights/protections as leaseholders	172	28%
Yes, right to choose/change/create Management Companies	131	21%
Expressed leaseholder concerns	76	12%
Local councils should adopt shared areas or roads /Council tax rebate due	49	8%
General response that doesn't answer the question	37	6%
Yes, introduction of a Right to Manage equivalence	30	5%
Support of improved transparency of fees /monthly review/ regulation of the sector	28	5%
Support a free market approach to choosing Managing Agents/Competitive Quotes	16	3%
Introduction of elected management/community committees	18	3%
Abolish management companies	16	3%
Yes, right to appoint a manager (by tribunal)	15	2%
Introduction of an Ombudsman Service/ Dispute resolution	5	1%
Support of Commonhold/Shared communal areas ownership	4	1%
No, Right to Manage is complex	5	1%
No reform required	6	1%

Question 23. 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?

Response	Number of Responses
Answered	485

	Number of respondents who mentioned this response	Percentage of respondents
General response that doesn't answer the question	170	34%
More/ improved transparency/accountability	117	24%
Improved competition/fairer price	89	18%
Better service/efficiency/quality	35	7%
None	29	6%
Minimal administrative and financial burdens	21	4%
Poorer quality of service/rising costs/lower profits	14	3%
Administrative burdens	5	1%
Less abuse of the system by companies	5	1%
More time consuming/ resource intensive	4	1%
Loss of revenue	6	1%

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

Response	Number of Responses	Percentage
Less than 10 working days	412	58%
10-15 working days	253	36%
More than 15 working days	40	6%
Total Responses	705	

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

Response	Number of Responses	Percentage
Less than £100	520	77%
£100	49	7%
£150	45	7%
More than £150	65	10%
Total Responses	679	

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?

Response	Number of Responses	Percentage
No additional cost	454	67%
Less than £25	96	14%
£25-£50	86	13%
More than £50	41	6%
Total Responses	677	
Other (please specify)	144	

Other (please specify)	Number of respondents who mentioned this response	Percentage of respondents
No fees should be charged at all	54	35%
Variable fees depending on the complexity/ information requested/ format of information provided	37	24%
General response that doesn't answer the question	36	23%
Variable fees depending on the frequency of information request/ type of organisation/ property price	14	9%
Figure suggested ranging from £50 + VAT to £450 + VAT	12	8%
Initial fee set high enough to cover further information requests	1	1%
No cap on fees (no reform required)	2	1%

Further information – open ended response

Response	Number of Responses
Answered	321

	Number of respondents who mentioned this response	Percentage of respondents
Reform of existing leasehold is required	53	13%
Reform the system to make it easier to enfranchise – extend the lease/ purchase the freehold	53	13%
Onerous ground rent levels/doubling ground rent clauses	41	10%
Fees and deadlines related to the sale of leasehold properties	35	9%
Abolish leasehold for all properties	34	8%
Responder mis-sold leasehold property	34	8%
Unclassified	33	8%
Make estate management fees transparent/ regulated	19	5%
Poor conduct of management companies/freeholders	19	5%
Lack of transparency of service charges	18	4%
Support of commonhold as an alternative/ optional tenure	17	4%
Poor conduct of solicitor/ conveyancer	14	3%
Support of peppercorn rents	10	2%
Specific National Trust leaseholders with lease extension issues	9	2%
Support for exemptions from ban of leasehold houses or ground rents on strategic sites/ lifetime leases/low cost home ownership	6	1%
No exemptions for retirement properties	4	1%