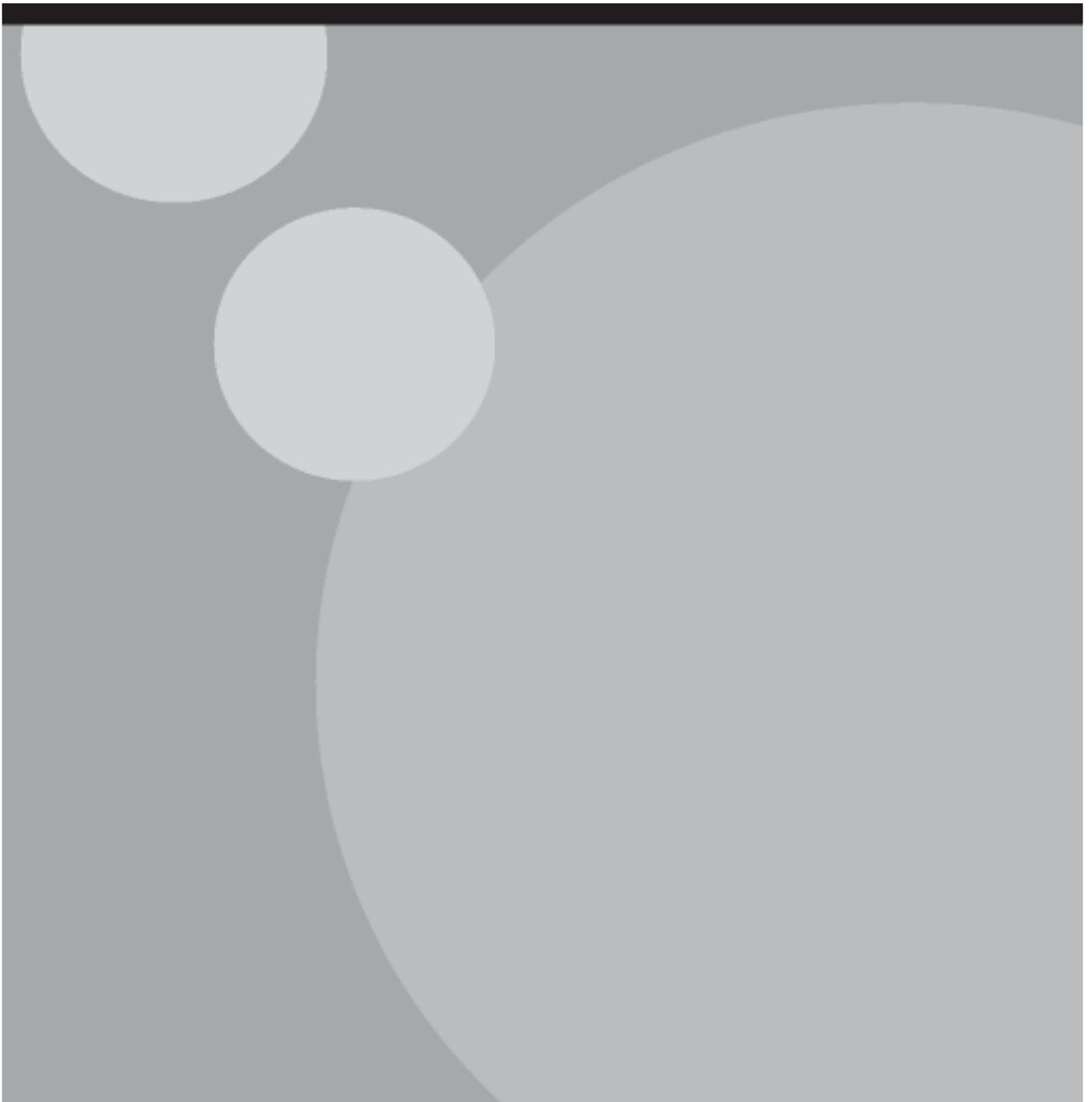




Updating Leasehold Value Limits - consultation

Summary of responses



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Contents

Section 1: Background

Section 2: Summary of key findings and future actions

Section 3: Outcome of the consultation

Section 1

Background

1. The Department for Communities and Local Government conducted a consultation exercise between 14 June and 12 September 2011 to seek views on proposals for increasing the upper value limits that determine the eligibility of residential long leaseholders to rights in two specific areas.
2. These are rights to remain in their properties at the end of their lease terms (in Schedule 10 to the *Local Government and Housing Act 1989*) and to extend the leases or purchase the freehold of their leasehold houses on particular terms (in the *Leasehold Reform Act 1967*).
3. These value limits are designed to exclude properties at the higher end of the market from the scope of these rights. Following the abolition of domestic rates in 1990, these upper value limits were set by reference to a notional rental figure for the property (rather than to its rateable value) and applied to all long leases granted on or after 1 April 1990. A prescribed formula was applied to calculate a notional rental figure from the premium paid when the lease of the property was granted.
4. The main notional rental limit set in 1990 was in line with the one introduced at the same time to determine whether a tenancy qualified for the additional protection provided by assured tenancy status. The upper rental limit for assured tenancies was increased on 1 October 2010 for properties in England to take account of the effects of rental inflation since 1990.
5. The consultation exercise sought the views of interested parties on whether we should update these leasehold value limits to take account of property price inflation in the period since 1990. It proposed that these value limits should be increased in line with the uplift that had been applied to the assured tenancy rental limit in October 2010.
6. The paper sought views in particular on whether this uplift should apply to all leases or alternatively only to new leases granted after the legislation was introduced. This alternative option was put forward on the basis that applying the uplift to all leases could extend the rights to some owners of older leases sold at what were at the time relatively high premiums. This possibility arises from the fact that the notional rent for the property used to determine the availability of these rights is calculated by reference to the price paid when the lease was granted rather than its current market value.
7. The consultation also included questions designed to gather data on the likely impact of the proposals in order to help calculate the costs and benefits that would arise for landlords, leaseholders and other parties.

Conducting the consultation exercise

8. The consultation paper was made available on the Department's website and was intended to be essentially a written exercise. There were over 1800 visits to the page on the DCLG website containing the consultation document and over 1400 downloads of the paper between June and September 2011. This interest resulted in only 17 written responses being received, which represents a very low overall response rate from those with a potential interest in this area.

Section 2

Summary of key findings and future actions

9. While the majority of the 17 respondents broadly agreed with the proposals, there were some concerns raised by and on behalf of the landlord sector about the potential losses to landlords, particularly if the uplift in the value limits were applied to all leases granted since 1 April 1990.
10. Those who supported the proposals generally did so on the basis that their implementation would offset the effect that property price inflation would otherwise have in gradually eroding important rights for leaseholders. Agreement was also expressed for increasing those limits in line with the updated assured tenancy limits in order to restore the link that had previously been established between those thresholds. The majority of respondents who supported the proposals also favoured applying the uplift to all leases in order to avoid introducing additional complexity into this area.
11. Those who opposed the proposals highlighted the negative financial impact that they would have upon landlords, particularly if the uplift in value limits was applied to all relevant leases. Their view was that it would not be appropriate to use the increased assured tenancy value limit for this purpose.
12. In support of this, they referred to the fact that since the notional rent used as the threshold for the leasehold rights is based upon historic premiums, the proposed increase would lead to high value properties (granted at what were at the time substantial premiums) being brought within the scope of those rights. The effect of this would be felt particularly where leaseholders of houses would become eligible to enfranchise on more favourable terms under the *Leasehold Reform Act 1967*. This would in their view mean a significant transfer of value from landlords to those leaseholders.
13. The consultation exercise sought information upon the possible impact of the various proposals with the intention of using any data provided to help update the Impact Assessment and measure the costs and benefits that would arise for landlords, leaseholders and other parties. Unfortunately, little substantive data was forthcoming.

Next Steps

14. While there was a low level of response to the consultation, there was general support for updating the value limits. In the light of the overall response, the Government has decided that - subject to a revised Impact Assessment - legislation on these value limits should proceed in the course of 2012.
15. The Government is, however, of the view that any new value limit should not come into force until April 2014, giving businesses and leaseholders ample time to become aware of and plan for the new limit.

Summary of responses to the proposals

16. This summary contains a breakdown of the numbers of responses received. It also gives a summary of the comments made, but does not purport to give a full account of all of the comments or suggestions received.
17. Some comments received dealt with topics outside of the scope of the consultation, including wider matters of leasehold reform, which have not been referred to in the summary. In addition, since not all of the respondents commented on or responded to every question raised as part of the consultation exercise, the total responses received to each question differ.
18. The consultation document was made available on the Department's website and flagged up on the *info4local* website for local authorities. Alerts were also sent by email or letter to a number of those with a known interest in the proposed changes, including specialist publications.
19. Responses were received from a number of representative bodies: Association of Residential Managing Agents (ARMA), Federation of Private Residents Associations (FPRA), Campaign for the Abolition of Residential Leasehold (CARL), British Property Federation (BPF), Liverpool Law Society, Association of Leasehold Enfranchisement Practitioners (ALEP) and the Southern Leasehold Valuers Forum. While these have been counted as single responses in this summary, it is recognised that the views given by these bodies could well be representative of more widely-held views among their membership. (A meeting was held with the BPF at their request during the consultation period, allowing officials to deal with a number of questions about the paper and its contents raised by the BPF.)
20. A response was also received from The Leasehold Advisory Service (LEASE), an independent specialist body funded by this Department to provide free initial advice and information on a wide range of residential leasehold issues, and the Residential Property Tribunal Service, the umbrella organisation which includes the Leasehold Valuation Tribunals, an independent service in England for settling disputes involving leasehold property, now sponsored by the Ministry of Justice.
21. A couple of respondents did not specifically answer any of the questions in the paper but only raised wider concerns about the leasehold system.
22. Regardless of whether an individual body or organisation has been identified below, all responses and representations received to the consultation paper are carefully considered when deciding the way forward. An indication of the type of respondents is set out in the table below.

Section 3

Outcome of the Consultation

Overview of responses

Occupation/type of Correspondent	Number of Responses
Representative body	5
Individual Leaseholder	3
Landlord	2
Professionals	5
Other organisation	2
Total	17

Summary of responses by question

23. The consultation document asked four questions on specific issues. It also included a consultation stage Impact Assessment and invited respondents to provide information on the impacts of the proposal, including the numbers of properties affected, and costs and benefits.

Security of Tenure Rights: *Local Government and Housing Act 1989*

Question 1: Do you agree with this proposal for increasing the value limits for long leaseholder security of tenure rights under the *Local Government and Housing Act 1989* to £100,000? If not please say why including whether a different figure should be used.

24. Of the 11 people or organisations who responded to this question, 10 agreed with the proposal. Where additional comments were provided, a number of respondents specifically referred to the desirability of restoring consistency with the upper value limit for assured tenancies. In one case, this course of action was also seen as consistent with the policy of extending leaseholder's rights while in another it was felt that it would be perverse if the legislation discriminated against leaseholders whose leases were granted on or after 1 April 1990. The view was also expressed that any concerns about the losses that landlords might suffer from being deprived of vacant possession of the properties and therefore the ability to realise their capital value should be allayed by the fact that they would receive adequate compensation in the form of a market rent and have the grounds for possession available under the *Housing Act 1988*.

25. A couple of the respondents expressed broad agreement with this and the other proposals without any further comment.
26. The respondent who disagreed with the proposal questioned more generally the justification for this and the other proposals as a tidying up exercise to re-establish the link with the increased assured tenancy rental limit. They highlighted the fact that the new assured tenancy rental limit had included an element of inflation proofing (rather than being based upon the actual increase in market rents during the relevant period). It was considered that even though the proposals were limited to leases granted on or after 1 April 1990, the consequences would be significant given the difference between the market value of property with or without vacant possession, and that this would result in an unanticipated transfer of value from landlord to leaseholder.

SUMMARY

27. Amongst those who responded there was almost complete agreement for the proposal to increase the value limit determining security of tenure rights for leaseholders to £100,000. This was in order to restore consistency with the threshold for assured tenancies and to avoid discriminating against a particular group of leaseholders.

Question 2: Do you think that any changes to the value limits for the security of tenure rights should apply to all leases granted on or after 1 April 1990 or should any changes apply to new leases only? Please give reasons for your answer.

28. There were 10 responses to this question with 7 being in favour of the increase in value limits applying to all leases granted on or after 1 April 1990. A couple of these respondents stressed the need to prevent disadvantage to leaseholders owning leases granted between 1 April 1990 and the date any legislation comes into force. While a couple of these respondents acknowledged that some leaseholders of high value properties may benefit from this proposal, they together with another respondent emphasised the benefit of having consistency in this area and avoiding the additional complexity of having two different value limits. Another argument put forward in favour of applying the uplift to all leases granted on or after 1990 was that this would help those leaseholders who could not afford to either extend their lease or enfranchise.
29. The three respondents who supported the uplift only applying to new leases felt this was necessary to avoid interfering with contractual arrangements entered into under different market conditions, and to minimise or avoid the adverse financial effects that landlords would otherwise be seen to suffer.

SUMMARY

30. While a clear majority, there was slightly less overall agreement on whether the proposals should apply to all leases granted on or after 1 April 1990. The arguments in favour of the proposal were again based upon fairness to those leaseholders who would otherwise be disadvantaged by the effects of property price inflation and the need for consistency and the avoidance of additional

complexity being introduced into the area. Those arguing for the uplift to only apply to new leases felt that this would either avoid or reduce the potential adverse financial impacts that would otherwise arise for landlords.

Enfranchisement and Lease Extension Rights: *Leasehold Reform Act 1967*

Question 3: Do you agree with these proposals for increasing the value limits that apply to enfranchisement and lease extension rights under the *Leasehold Reform Act 1967* to £100,000 and the additional value limit that applies in enfranchisement cases to £66,666? If not please say why including whether different figures should be used.

31. Out of a total of 12 responses to this question, nine supported this proposal. Amongst those that commented further there was agreement that the threshold needed to be increased to take account of property price inflation. One felt that while an uplift to £100,000 was more than what was required to compensate for the effects of such inflation this would still be desirable in the interests of consistency with the assured tenancy limits. They also expressed the opinion that while it was not clear why lease extension rights had not been widened in previous reforms this anomaly should now be corrected. Another suggested that the obligations imposed upon leaseholders to pay compensation to landlords in return for the exercising of rights under the *Leasehold Reform Act 1967* adequately addressed any concerns that may arise about the impact of the proposals upon landlords.
32. One response suggested that the threshold ought to be increased for lease extension rights but opposed the increase for enfranchisement rights which mainly appeals to those who see the property as a quick investment.
33. Two respondents opposed the proposals. One of these made reference to the previous policy of not extending lease extension rights under the 1967 Act and the abandoning of the original valuation basis for new enfranchisement rights in 1974, and that a reversal of this trend would unfairly deprive landlords of value. It was further suggested that consistency with the assured tenancy limits would only be restored if the notional rent was derived from current property values rather than historic ones that produced in effect a historic rent.
34. The other respondent while agreeing that some increase was necessary felt that an increase to £100,000 is arbitrary and too high with property price inflation since 1990 supporting a figure of around £60,000. It was proposed that this figure should be used with provision for index linking to the House Prices Index to create certainty and fairness.
35. It was also suggested that an increase to £100,000 could be destabilising on the market for high value houses and increase the opportunities opened up by the *Commonhold and Leasehold Reform Act 2002* through the removal of the residence test, for speculators to benefit from enfranchisement rights. Finally, it was suggested that if the £100,000 is to be used then all valuations should be under the 'special valuation basis' (which takes account of the value of the

landlord's interest in the land and premises and of any marriage value payable, rather than just the land).

SUMMARY

36. A substantial majority of those responding agreed with the proposal and those commenting further all referred to the need to increase the threshold to take account of property price inflation since 1990.
37. The respondents opposing the proposals questioned the underlying basis for the proposals to increase the existing value limits and in particular the link to the assured tenancy rental limits.

Question 4: Do you think that any changes to these value limits under the *Leasehold Reform Act 1967* should apply to all leases granted on or after 1 April 1990, or should any changes apply to new leases only? Please give reasons for your answer.

38. Of the eight respondents who specifically responded to this question, five were in favour of the changes applying to all leases granted on or after 1 April 1990. Three of them specifically referred to the importance of avoiding creating additional complexity in the area, and the need to restore consistency with the assured tenancy rental limits. One of those in favour also stressed the need to avoid those with leases granted after 1 April 1990 being denied rights through the effects of property price inflation.
39. For the three respondents who argued that the changes should only apply to new leases, the important consideration was the impact that a backdated increase would have upon existing contractual arrangements, in particular the losses that landlords would be seen to suffer as a result. These were, as previously stated, the losses arising from them being denied vacant possession of houses where any additional lease extension rights are exercised, and greater numbers of existing leaseholders being able to enfranchise for a more favourable price.

SUMMARY

40. There was once again a majority of respondents in favour of the proposal although the margin was smaller than with the previous proposals. Those in favour once again stressed the benefits of consistency and avoiding introducing additional complexity, along with the necessity of avoiding leaseholders being unfairly deprived of being able to exercise existing rights.
41. Those opposing the proposal again emphasised the loss to landlords that would result from interfering with existing contractual arrangements.

Impact Assessment

42. The Impact Assessment included a number of questions seeking data on the overall impact of the proposals. Although none of the respondents specifically addressed these questions, one respondent provided some case studies

illustrating the impact of the proposals in specific instances. Further data gathering and analysis in respect of those questions is now underway, in order to inform a revised Impact Assessment.