



**Law
Commission**
Reforming the law

Leasehold home ownership: buying your freehold or extending your lease

Law Commission Consultation Paper

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The Law Commission is a statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed.

The aim of the Commission is to ensure that the law is fair, modern, simple and cost-effective.

- Longstanding concerns about leasehold
- Recent instances of bad practice → renewed interest in leasehold reform
- 13th Programme of Law Reform:
 - Enfranchisement
 - Commonhold
 - Right to manage



Residential leasehold and commonhold: Terms of Reference

General policy objectives identified by Government:

- promote transparency and fairness
- provide a better deal for leaseholders as consumers

Specific policy objectives identified by Government:

- To simplify the legislation
- To consider the case to improve access to enfranchisement
- To examine the options to reduce the premium (price) payable, whilst ensuring sufficient compensation is paid to landlords
- **To make enfranchisement easier, quicker and more cost-effective (by reducing the legal and other associated costs)**
- To prioritise solutions for existing leaseholders of houses



Consultation paper and summary of the consultation paper
www.lawcom.gov.uk/project/leasehold-enfranchisement

Online response form

www.consult.justice.gov.uk/law-commission/leasehold-homeownership

Leaseholder survey

www.consult.justice.gov.uk/law-commission/law-commission-leaseholder-survey

Our consultation closes on 7 January 2019

- Wide ranging review of current law of enfranchisement – right for leaseholders of houses and flats to buy their freehold or extend their lease.
- Cannot address all of concerns of leaseholders:
 - focus is on financial terms and removing obligation to pay ground rent in the future
 - not best means of dealing with problems with terms of existing leases – does not help those who cannot enfranchise
- Our further work – commonhold, right to manage, unfair terms in leases on assignment
- UK Government work – ground rents, managing agents
- Other problems for leaseholders remain



Four key questions:

- What should the enfranchisement rights be?
- Who should be entitled to exercise enfranchisement rights?
- How should enfranchisement rights be exercised?
- What should it cost to enfranchise?



What should the enfranchisement rights be?



- The right to a lease extension
- The right to acquire:
 - the freehold of a building individually, OR
 - the freehold of a building or estate collectively
- The new “right to participate” – the right for leaseholders who did not participate in a previous collective freehold acquisition to do so later



We propose:

- A universal right for leaseholders of houses and flats
- As often as desired
- At a nominal ground rent
- On payment of a premium



We ask:

- What should the length of any lease extension be?
- When should there be breaks for redevelopment?
- Should the right be a right to an extended term at a nominal ground rent in all cases, or should leaseholders also have the choice:
 - to extend the lease, without changing the ground rent; or
 - to extinguish the ground rent, without extending the lease?



We propose that all lease extensions should:

- Include the whole of the premises let under the existing lease
- Be granted on the same terms as the existing lease, save where either party elects to adopt non-contentious, modernising terms drawn from a prescribed list

We ask how voluntary lease extensions might be regulated, and canvass options



We propose that leaseholders should acquire the whole of:

- the building, whether or not it is within the existing lease; and
- the land included in the existing lease, even if it is not within the curtilage of the building



- Where the landlord does not retain any surrounding land:
 - should the transfer be subject to the existing rights and obligations attaching to the freehold, **or** on terms that reflect those in the existing lease?
- Where the landlord does retain surrounding land (and there is no estate management scheme in place):
 - should the transfer include terms that reflect those in the existing lease **or** terms drawn from a prescribed list of appropriate covenants?
 - what types of terms should be included on any prescribed list?

- Nominee purchaser to be a company limited by guarantee in majority of cases
- Extend right to allow acquisition of a whole estate consisting of multiple buildings – “estate enfranchisement”
- Leasebacks of all parts of the premises (other than common parts) not let to participating leaseholders
- No further collective freehold acquisition within five years
- Limited ability for nominee purchaser company to dispose of the freehold following acquisition



- Available where a building has already been the subject of a collective freehold acquisition
- Ability to purchase a “share” of the freehold interest at a later date – i.e. to acquire membership of the nominee purchaser company
- Aims to avoid the exclusion of leaseholders who were not invited to participate or could not participate
- Numerous questions remain: availability, terms, calculation of the premium payable, procedure, costs, incentives



Who should be entitled to exercise enfranchisement rights?



“Residential unit”: a unifying concept

- The terms “house” and “flat” to be replaced with “residential unit” – creating a single scheme of qualifying criteria
- Logical, two-stage approach:
 - Does this leaseholder qualify for a lease extension?
 - If so, can they also acquire the freehold, either individually or collectively?



“Residential unit” defined

- Separate, independent set of premises
- Constitutes or forms part of a building
- Constructed or adapted for the purposes of a dwelling
- Lease permits use for residential purposes

We do not propose to retain:

- Any qualification criteria based on financial limits (either rent or rateable values)
- The requirement (in all lease extension claims and claims to acquire the freehold of a house) to have owned the lease for the two years prior to making a claim
- The rule that prohibits leaseholders who own three or more flats in a building being qualifying leaseholders for the purposes of a collective enfranchisement claim



Additional criteria for freehold acquisition claims

- Self-contained building or part of a building – as per the 1993 Act
- Possibility of a Tribunal discretion to authorise acquisition where the building or part of a building is not self-contained
- 25% limit on non-residential use to be extended to all freehold acquisition claims
- A difficult case: flats above shops

- Shared ownership leases
- National Trust
- The Crown
- Community-led housing
- Other exceptions and limitations: cathedral precincts, charitable housing trusts, etc.



How should enfranchisement rights be exercised?



- A single, simpler procedure which applies to any enfranchisement claim
- Benefits:
 - Remove inconsistencies
 - Reduce scope for mistakes to be made
 - Remove traps for the unwary and windfall gains
 - Limit opportunities for tactical gaming

- Leaseholder serves a “Claim Notice” on his or her landlord
- Landlord serves a “Response Notice” on the leaseholder, accompanied by a draft contract, lease or transfer
- Leaseholder may apply to the Tribunal for a determination if any issues remain in dispute after a prescribed period
- Either party may apply to the Tribunal for an order giving effect to the transaction if the lease extension or transfer (as agreed or determined by the Tribunal) has not been executed by the date agreed or set by the Tribunal



Summary of the basic procedure

- Leaseholder is entitled to withdraw the Claim Notice at any time, with a requirement that they pay some of their landlord's costs
- No deemed withdrawal of claims where a leaseholder fails to take a procedural step in time, but the landlord may apply for the Claim Notice to be struck out (on 14 days' written notice to the leaseholder)

- Standard forms to be prescribed for leaseholders and landlords
- Deemed service of Claim Notices on landlords if posted to an address falling within specified categories
- Validity of notices challengeable only on a limited number of defined grounds
- Automatic assignment of notices on assignment of lease



Starting a claim: serving a Claim Notice

- Making starting a claim easier and more reliable – disputes less likely to arise
- Identify addresses for landlords where if Claim Notice sent it will be treated as having been served (even if landlord shows notice not received)
- Group A addresses: those addresses where there is a high probability that any notice sent will be received by the landlord:
 - any address (including an email address) that has been provided by the landlord to the leaseholders as an address at which an enfranchisement notice may be served

OR

- the landlord's current address



Starting a claim: serving a Claim Notice

- Group B addresses: those addresses where there is a reasonable likelihood that any notice sent will be received by the landlord:
 - the landlord's last known address
 - the latest address given by the landlord for the purposes of section 47 or section 48 of the Landlord and Tenant Act 1987, or
 - the latest email address given by the landlord for the purposes of serving notices (including notices in proceedings)

AND

- each of the addresses appearing as the addresses of the landlord as registered proprietor of the property at HM Land Registry



- Where leaseholder does not have an address for his or her landlord that falls within Group A or B, can apply to the Tribunal for permission to proceed with the claim
- Would apply where identity of landlord not known, or where known landlord is 'missing'
- Tribunal has power to award leaseholder costs of making that application

Balancing easier service with pre-service checks for both Service and No Service Routes



- All disputes to be determined by the Tribunal, including:
 - Entitlement to enfranchisement rights
 - Terms of acquisition
 - Terms of any contract, transfer or lease
 - Date of completion
- Potential for certain valuation-only disputes to be determined by a valuation member of Tribunal



- Seeking views as to whether leaseholders should be required to pay their landlord's non-litigation costs
- If so, how should their contribution be calculated? Options include:
 - Fixed costs
 - Capped costs
 - Categories of costs that are narrower, wider or the same as at present



- We propose that
 - The Tribunal’s existing (limited) powers to order one party to pay the other party’s litigation costs should apply to all disputes that it is to decide
 - The current scope of the Tribunal’s power to make an order based on the unreasonable conduct of one party should not be extended



What should it cost to enfranchise?



- A consistent valuation methodology, whilst retaining the section 9(1) valuation methodology (or an equivalent provision)
- Consideration of a separate valuation regime for low-value claims
- Differential pricing for different types of leaseholders
- Prescription of rates



- Two categories:
 - Option 1: the adoption of a simple formula
 - Option 2: options based on current valuation methodology



Option 1: the adoption of a simple formula

- A move away from determining market value
- Option 1A: ground rent multiplier
- Option 1B: set percentage of freehold value

- Ground rent
 - Take into account only one review;
 - Cap any reviewed rent at 0.1% of the freehold value
- Prescribe capitalisation rates
- Prescribe deferment rates
- Prescribe relativity or a “no-Act” deduction
- Remove the 80-year cut-off
- Enable leaseholders to require landlords to take leasebacks
- Disregard any right to hold over
- Retain or remove the discount for leaseholder’s improvements
- Provide a restriction on development in place of development value



Option 2: options based on current methodology

- Option 2A: term and reversion only, with or without prescribed rates
- Option 2B: term, reversion, marriage and hope value (but not any additional value), with or without prescribed rates
- Option 2C: current valuation methodology, but adopting any combination of possible reforms to valuation components



- Retain in its current form indefinitely
- Retain in its current form for a limited period by means of a sunset provision
- Introduce a new provision which provides a right to buy the freehold of certain houses at a price equivalent to that calculated in accordance with section 9(1), by simpler means

Applicability

- capital value
- council tax banding
- the location of the property.
- a version of the test for leases granted post-1 April 1990 test (i.e. find “R” under s 1(1)(a)(ii) of the 1967 Act)

Valuation

- a valuation based on term and reversion, e.g. term and reversion divided by three

Project webpage for residential leasehold and commonhold reform:

<https://www.lawcom.gov.uk/project/residential-leasehold-and-commonhold/>

or

www.lawcom.gov.uk

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