

Leasehold Reform News – May 2021

Leasehold Reform (Ground Rent) Bill

Following the Queen's speech on 11 May 2021 the 'Leasehold Reform (Ground Rent) Bill' was published on 12 May.

A copy of the bill can be viewed here:

<https://bills.parliament.uk/Publications/41495/Documents/246/5802001.pdf>

It is important to note that the Bill is subject to amendment as it passes through Parliament.

Prohibited Rent and Permitted Rent

The Bill provides that landlords will be prohibited from charging ground rents in long leases of dwellings in England and Wales, other than those permitted by the Bill.

The general rule will be that Landlords granting 'regulated leases' may only charge a notional peppercorn (£nil) ground rent.

Exceptions to this appear for Shared Ownership leases, where a ground rent can be charged for the landlord's share in the premises only, and 'replacement leases'.

Replacement leases

Replacement leases are described as being long leases of a dwelling¹ granted where the Tenant of a pre-commencement lease is granted a new lease (which is a 'regulated lease') of some or all of the premises, where the term of the replacement lease begins before the end of the term of the existing pre-commencement lease.

In the case of a replacement lease, the permitted rent is: -

- (a) in respect of the 'excepted period', a rent not exceeding the rent that would have been payable under the pre-commencement lease in respect of that period;
- (b) in respect of the 'regulated period', a peppercorn rent

The "excepted period" is the period which begins with the first day of the term of the replacement lease, and ends with the last day of the term of the pre-commencement lease.

The "regulated period" is the period which begins immediately after the excepted period (the last day of the pre-commencement lease), and ends with the last day of the term of the replacement lease.

¹ a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it.

Replacement Lease Example:

Fig. 1

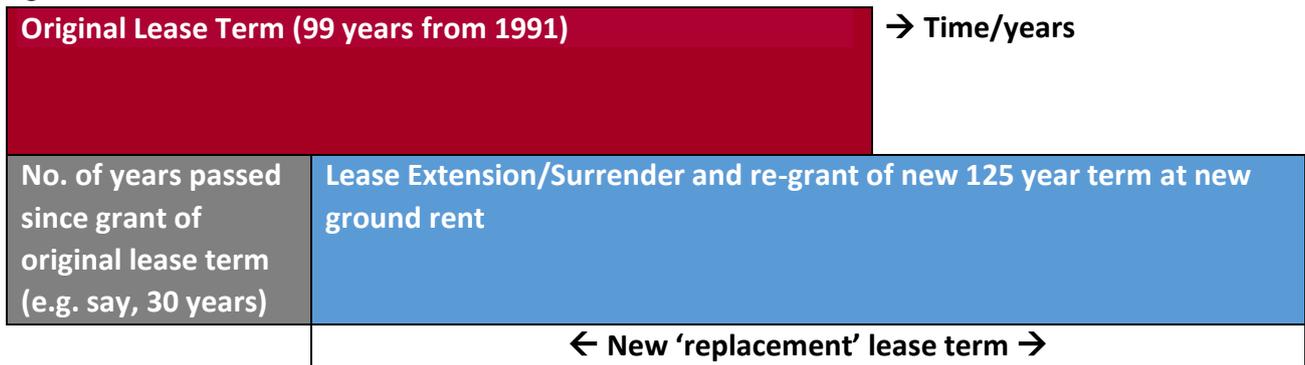
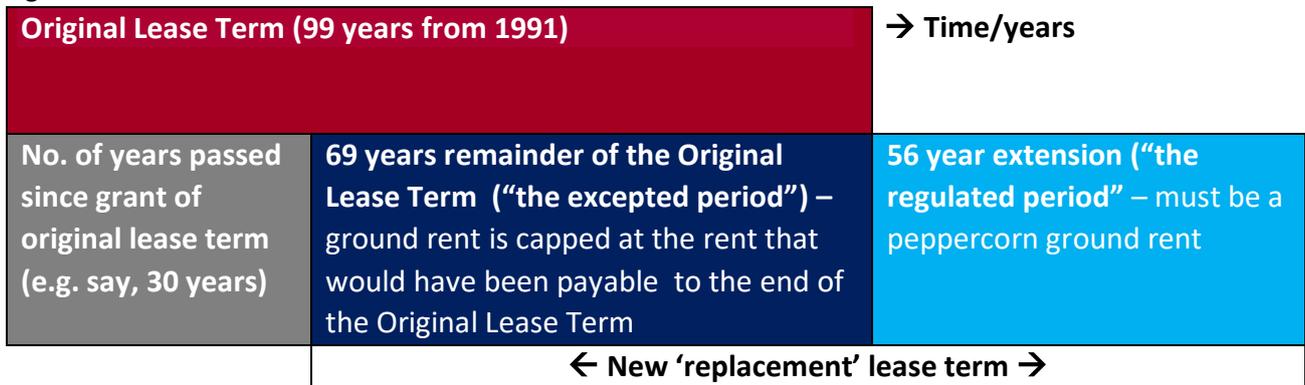


Fig. 2



In this example, the tenant owning the residue of a 99 year lease requests a non-statutory lease extension after 30 years of that term has passed. Let's assume that the landlord agrees to grant a new lease for a term of 125 years. Currently, the landlord would be able to charge whatever ground rent can be agreed with the tenant. This invariably results in an increase in the ground rent from commencement of the new 125 year term – see figure 1 above.

The Bill proposes that in the same situation, the landlord would only be permitted to charge the ground rent that would have been payable under the original lease up to the date that the original lease term would have expired (the 'excepted period') and, after that date, the ground rent must be a peppercorn until the end of the term of the replacement lease (the 'regulated period') – see figure 2 above.

Regulated Leases

The law will apply to 'regulated leases' which are defined as long leases of dwellings (which carries its own definition² and will include residential flats and leasehold houses), granted after the commencement date for the new legislation (which is yet to be confirmed, but in the case of retirement homes will be no earlier than 1 April 2023) unless there is a prior contract or agreement for lease³ made before that date, or where the lease is an 'excepted lease'.

It is important to note therefore that this will also extent to situations where there will be a deemed surrender and re-grant of the lease, such as where there is a deed of variation to the extend or term of the deed, and may extend to rectification of lease plans.

² See footnote 1 for definition.

³ Which expressly excludes an option or right of first refusal

Excepted Leases

There are four categories of excepted leases, including business leases (which carries its own definition⁴), statutory lease extensions, community housing leases⁵, and home finance plan leases⁶.

Statutory lease extensions would be: -

- a) a new lease of a flat under the Leasehold Reform Housing and Urban Development Act 1993 (which already requires the ground rent to be a peppercorn from the commencement of the new lease) or;
- b) a new lease of a leasehold house under the Leasehold Reform Act 1967.

Penalties

The Bill provides for enforcement action to be taken against landlords and includes penalties of up to £5,000 for landlords charging prohibited rents (as well as repaying any prohibited rent paid by the tenant with interest).

Note

This guide is designed to illustrate the proposed terms and requirements of the Leasehold Reform (Ground Rent) Bill as published on 12 May 2021 and is accurate at the time of writing. It is designed to be a summary of the points to consider, rather than detailed advice. This guide should not be relied upon as legal advice and you should contact leasehold@coolebevisllp.com or call a member of the Leasehold Enfranchisement team on **01903 213511** for advice on your specific circumstances.

⁴ A business lease is described as a lease where: -

“(a) the terms of the lease expressly permit premises demised by the lease to be used for purposes which are business purposes (and do not require any further consent from the landlord for such use), (b) the nature of the business purposes permitted by the lease is such that the use of premises demised by the lease as a dwelling significantly contributes to the business purposes, and (c) at or before the time the lease is granted, the landlord and tenant (or prospective landlord and tenant) each give the other a written notice to the effect that they intend premises demised (or to be demised) by the lease to be used, and to continue to be used, for the purposes mentioned in paragraph (a)”.

⁵ A lease is defined as a community housing lease if— (a) the landlord under the lease is a community land trust within the meaning of section 79 of the Housing and Regeneration Act 2008, or (b) it is a lease of a dwelling in a building within paragraph 2B of Schedule 14 to the Housing Act 2004 (buildings controlled or managed by co-operative societies), disregarding sub-paragraph (3)(b) of that paragraph.

⁶ A lease is defined as a home finance plan lease if— (a) it is granted pursuant to an arrangement which is a regulated home reversion plan for the purposes of Chapter 15A of Part 2 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), or (b) it is granted by a finance provider to a home buyer pursuant to a rent to buy arrangement.