

# Law Commission Residential Leasehold Reforms



**Kimberley Ziya**

## Terms of reference

*“The project will be a wide-ranging review of residential leasehold law, focussing in the first instance on reform to:*

- 1. enfranchisement;*
- 2. commonhold; and*
- 3. the right to manage.*

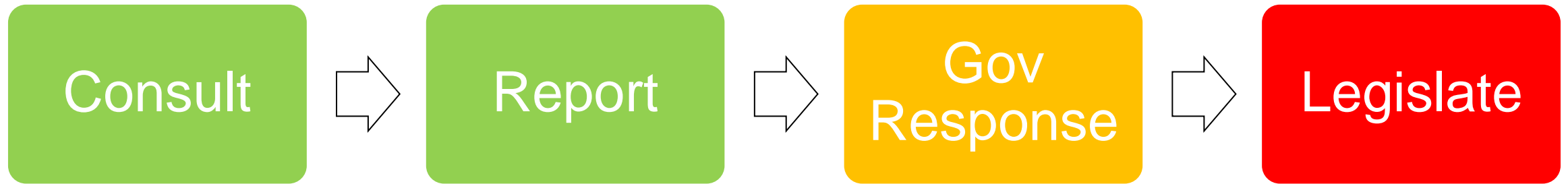
*The Commission and Government are discussing other areas of residential leasehold reform that could be included in the project.*

*The Government has identified the following policy objectives for the Law Commission's recommended reforms:*

### **Generally**

- to promote transparency and fairness in the residential leasehold sector;*
- **to provide a better deal for leaseholders as consumers;***

## Where are they up to?



## Enfranchisement: the rights

- Re-formulation of the rights under LRA 1967 and LRUDA 1993
  - 990 year lease extension for houses and flats
  - Buy out ground rent under an existing lease w/o extending term
  - Extend term w/o buying out “onerous” ground rent
  - “Individual” and “collective” freehold acquisition
    - Multiple buildings in a single claim
    - Require LL to take a leaseback of non-participating units

## Enfranchisement: qualifying criteria

- New unified scheme of qualifying criteria → more leaseholders eligible
  - Up to 50% of building non-resi
  - Abolish 2-year ownership requirement
  - Abolish low rent test and rateable values
  - New concept of “residential unit”
  - Flowchart: figure 6, para 6.393
  - Live-work units included
  - Shared ownership leaseholders given right to lease extension only
  - New exemption for community-led housing developments

## Enfranchisement: Procedure

- New, single procedure for all claims
  - Prescribed claim and response notices
  - Prescribed categories of addresses and deemed service
  - Competent LL responsible for serving on any intermediate LLs
  - Validity of notices only challengeable in limited circumstances
  - Where no response by LL in time, LHs can apply to FTT but not bound by terms in the Claim Notice
  - Claim not treated as withdrawn if LHs fail to apply to FTT for determination
  - Claim Notice no longer creates statutory contract
  - Benefit of Claim Notice automatically transfers upon assignment & doesn't have to be registered to bind on the LL

## Enfranchisement: Dispute resolution & costs

- No more split jurisdiction → FTT only
  - Powers to FTT to: (1) enforce a determination made or any agreement b/w the parties; (2) execute a lease extension or transfer; (3) access the Court Funds Office to take receipt of funds where necessary
  - Certain valuation only disputes heard by single valuer member only
- Control of LHs liability to pay for “non-litigation costs” of LL
  - Not required in most claims
  - Exceptions for low-value claims and where LH have made an election that increases costs (e.g. requiring LL to take a lease-back)
- Enfranchisement Restraint Order
- Standard Tribunal costs rules → anti-avoidance measures

## Enfranchisement: valuation

- Separate Valuation Options Paper → “Options to reduce the price payable”
- Three schemes:
  - Scheme 1 – leaseholder never in market → term + reversion only
  - Scheme 2 – leaseholder may be in market in future → term + reversion + (sometimes) hope value
  - Scheme 3 – leaseholder in market → term + reversion + marriage value
- Sub-options
  - **Prescribing rates; capping treatment of ground rent; restriction on future development (and therefore DV); 80-year cut off for marriage value; discount for LH improvements; discount for risk of holding-over**
- Online calculator



## Right to Manage: the highlights

- RTM for LH houses – same process as for flats
- Codify case law on meaning of “building”
- Non-resi limit increased to 50%
- Shared-ownership leases over 21 years incl. (even if not staircased to 100%)
- Abolish resident LL exclusion
- Single claim by single RTM co. for multiple buildings
- No prohibition on using RTM cos. as NPs for collective freehold acquisition
- More than one RTM co. can exist in relation to each premises
- Training requirements and resources for RTM co. directors
- Changes to simplify and clarify acquisition process

## Right to Manage: the highlights (continued)

- Greater rights to obtain information (& model forms)
- Strengthened notice requirements in relation to management contracts
- Reforms to “management functions” acquired by RTM co., specifically:
  - Regulated activities; insurance; shared appurtenant property; lease variations; uncommitted service charges; recovery of management costs
- Clear division of responsibility b/w RTM Co. and LL for giving lease consents
- Costs → very similar to enfranchisement (no non-litigation costs; usual Tribunal costs rules apply; anti-avoidance mechanism)
- Exclusive jurisdiction for FTT to determine whether RTM reqs. satisfied
- Clarification of procedure for and consequences of termination of RTM

## Commonhold: the highlights

- Aim to make commonhold a preferable alternative to leasehold
- Facilitating conversion to commonhold for existing LHs
  - Removal of unanimous consent to conversion
  - Reforms to make procedure simpler and more cost-effective
- Reforms to provide greater flexibility for new commonhold developments
  - Introduction of “sections” (e.g. resi vs commercial interests)
  - “Development rights” to enable completion of dev. post sale of some units
- Reforms to the commonhold community statement (CCS)
- Enabling shared ownership leases to be granted w/in commonhold
- Robust regime for financing and managing the commonhold
  - Incl. compulsory reserve funds
  - Provision for responding to emergencies e.g. selling off common parts

## Commonhold: the highlights (continued)

- Dispute resolution
  - Jurisdiction transferred to FTT but future-proofed to account for plans for New Homes Ombudsman and combined Housing Court
  - Reinforced role for ADR
- New regime for minority protection – right to go to the FTT
- Power for CH assoc. to apply to court for sale of defaulting owner's unit
- Protections against striking off and insolvency of CH assoc.
- Reforms to voluntary termination
  - Greater power for FTT to protect minority who don't consent
  - Right for lenders to apply to FTT at any time to protect their interests
  - Provision for termination of part of a commonhold

## Government Response

- 11 January 2021, statement by Robert Jenrick
  - Two-part legislation: (1) future ground rents set to zero; (2) all the rest
  - Enfranchisement:
    - Valuation: abolish marriage value, cap treatment of ground rents at 0.1% of freehold value, prescribe rates for calcs. at market value, online calculator, retain LH improvement discounts and s.9(1) method for low-value properties, allow voluntary restriction on future dev.
    - Also yes to: 990 year lease extension for houses and flats (w/ re-dev. Breaks) & right to buy out ground rent
  - New Commonhold Council
  - Response to remaining reports in due course...

# Thank you for listening

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## London

180 Fleet Street  
London, EC4A 2HG  
+44 (0)20 7430 1221

## Birmingham

4th Floor, 2 Cornwall Street  
Birmingham, B3 2DL  
+44 (0)121 752 0800

## Contact us

✉ [clerks@landmarkchambers.co.uk](mailto:clerks@landmarkchambers.co.uk)  
🌐 [www.landmarkchambers.co.uk](http://www.landmarkchambers.co.uk)

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