



Updating leasehold value limits

Consultation



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About this consultation

Scope of the consultation

Topic of this consultation:	This consultation paper sets out proposals for increasing the value limits that determine eligibility to rights for long leaseholders to remain in their properties at the end of their lease terms (<i>Schedule 10 Local Government and Housing Act 1989</i>) and to extend the leases or purchase the freehold of their leasehold houses on particular terms (<i>Leasehold Reform Act 1967</i>). These value limits are set by reference to the upper rental threshold for assured tenancies which was increased on 1 October 2010 to take account of inflation in market rents. It is now proposed to introduce corresponding increases to the leasehold value limits which will restore consistency with the upper rental threshold for assured tenancies. The proposals are set out in paragraphs 15 and 30 of the paper.
Scope of this consultation:	The purpose of the consultation is to seek the views of interested parties on whether the leasehold value limits should be increased to restore consistency with the upper rental threshold for assured tenancies. These views will be used to inform a policy decision on this matter.
Geographical scope:	These proposals are in respect of properties in England only.
Impact Assessment:	A consultation stage Impact Assessment is included at the end of this consultation paper.

Basic information

To:	Long leaseholders, landlords and professionals in the leasehold sector.
Body/bodies responsible for the consultation:	Leasehold Branch Private Sector Housing Department for Communities and Local Government.
Duration:	14 June 2011 to 12 September 2011
Enquiries:	Ian Fuell (0303 44 43702) ian.fuell@communities.gsi.gov.uk
How to respond:	Responses can be submitted by email to: <u>leasehold.reform@communities.gsi.gov.uk</u> Alternatively, hard copy responses should be sent to: Ian Fuell Leasehold Branch Department for Communities and Local Government Zone 1/D1 Eland House Bressenden Place London SW1E 5DU
Additional ways to become involved:	This will be a purely written exercise at this stage.

After the consultation:	<p>A summary of responses to the consultation will be published on the Department's website within three months of the closing date for consultation. Information on the Department's consultations is available from:</p> <p>www.communities.gov.uk/corporate/publications/consultations</p>
Compliance with the Code of Practice on Consultation:	<p>These are specialist issues and the Department will bring the paper to the attention of contacts on its mailing lists to ensure that those with a known interest in leasehold matters have an opportunity to comment. A consultation exercise has previously taken place on the changes to the upper rental threshold for assured tenancies and a 12 week consultation period is being provided for responses to the proposals in this paper. Subject to the outcome of the consultation exercise, changes to these value limits can be put in place on the next convenient common commencement date (6 April or 1 October).</p>

Background

Getting to this stage:	<p>Consultation took place on the proposals to increase the upper rental threshold for assured tenancies. Research has also been carried out looking at evidence of yield rates from decisions of Leasehold Valuation Tribunals over the past five years. This helped to inform a decision on whether to include proposals to amend the yield or interest rate in the prescribed formula used to calculate a notional rent for long leasehold properties.</p>
Previous engagement:	<p>There has been no previous consultation with interested parties on these proposals for amendments to the leasehold value limits.</p>

Background

1. This consultation seeks views on proposals to update two different pieces of legislation that provide rights to the owners of long leasehold interests in properties¹. These rights are concerned with security of tenure and the ability of a long leaseholder of a house to purchase their freehold on particular terms or to extend their lease.
2. One of the requirements determining either the availability or nature of those rights is for the relevant properties to fall within specific value limits. These value limits are set by reference to a notional rental figure for the property that is calculated by using a prescribed formula. These limits were set by reference to the upper rental threshold (£25,000) for a tenancy to qualify as an assured tenancy. That limit was increased to £100,000 on 1 October 2010 for properties in England.²
3. We are now proposing to introduce a similar increase to the value limits in the leasehold legislation to restore consistency with the upper rental threshold for assured tenancies.

Assured tenancies

4. Assured tenancies were introduced by the *Housing Act 1988* and are the most common form of arrangement for the renting of houses and flats by private tenants. The term covers both assured tenancies (sometimes called “full” or “ordinary” assured tenancies) and assured shorthold tenancies. Full assured tenancies have greater security of tenure than assured shorthold tenancies - the landlord can only regain possession on certain grounds.
5. To qualify as an assured tenancy the annual rent payable had to be more than £250 (£1,000 in Greater London) but also no more than £25,000³. This upper limit was designed to exclude those tenancies at the higher end of the market which were not considered to need the protections afforded by assured tenancy status.

¹ Originally granted for a term of more than 21 years

² *The Assured Tenancies (Amendment) Order 2010* SI 2010/908

³ References to rating (Housing) Regulations 1990 SI 1990/434

6. In October 2010 the upper rental threshold was increased to £100,000. This increase applies to existing as well as new tenancies. It aimed to restore the original intention of the legislation to only exclude the higher end of the market, which had been eroded by inflation. In particular the £25,000 limit was excluding houses shared by three or four tenants on a single tenancy agreement, particularly in London and the South East.

Leasehold legislation and proposed amendments

i) Security of Tenure Rights: Local Government and Housing Act 1989 (the 1989 Act)

7. When their lease reaches the end of its term, most long leaseholders⁴ have security of tenure – ie the right to stay in the property as an assured tenant where they are occupying it as their only or principal home. This right is subject to two conditions being met – the “low rent test” and the value limit. We are not proposing any changes to the low rent test.

Value limits

8. Value limits used to determine eligibility to rights under the 1989 Act originally referred to the rateable value of the property. For leases granted before 1 April 1990 the rateable value of the property had to be no more than £1500 if in Greater London and £750 otherwise. These are the same value limits that determined whether tenancies entered into before 1 April 1990 could be assured tenancies.
9. A different test was then introduced⁵ for leases granted on or after 1 April 1990 to again take account of the abolition of domestic rates. A prescribed formula (see **Annex A**) was used to convert the price (or the ‘premium’) paid when the lease was granted into a notional rental figure which was then required to not exceed the existing upper rental threshold for assured tenancies of £25,000. In this way the test identifies those properties which if let on a tenancy without a premium having been paid, would have a rent falling within that upper threshold.
10. **Annex A** explains in further detail how the formula operates to convert the price paid when the lease was first granted into an equivalent annual notional rent for the property that would be payable during that lease term.

⁴ Exceptions include where the landlord is a local authority or housing association

⁵ Section 1(2A) of Schedule 10 *Local Government and Housing Act 1989* inserted by the *References to Rating (Housing) Regulations 1990* SI 1990/434

11. As indicated earlier the rental threshold for assured tenancies originally set in 1990 was increased to £100,000 in October 2010 to take account of inflation in market rents during the intervening period. The £25,000 figure in the 1989 Act was unaffected by this change.
12. However, inflation has also had an impact upon property prices during this period with the overall effect being to remove more properties from the protection provided by the 1989 Act. Increasing the relevant figure in the 1989 Act to £100,000 would restore the link with the upper rental limit for assured tenancies and in doing so also make allowance for the effect of property price inflation since 1990.
13. Applying this increase to all leases granted on or after 1 April 1990 would favour the owners of older leases granted at what were at the time relatively high premiums. An alternative would be to only apply the increase to 'new' leases i.e. those granted after the increases come into effect.
14. **Annex A** also includes a chart that indicates the properties in terms of the premiums payable for leases of different lengths that would have a notional rent falling within a £100,000 threshold as compared to one of £25,000.

Proposals

15. We propose to increase the value limit used in Schedule 10 of the *Local Government and Housing Act 1989*⁶ to determine whether the owners of long leasehold properties in England are eligible for the security of tenure rights to £100,000. This will restore consistency between this figure and the upper rental threshold for assured tenancies.

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.

⁶ Section 1 (2A) (b)

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.

ii) Enfranchisement and Lease Extension Rights: Leasehold Reform Act 1967

16. Section 1 of the *Leasehold Reform Act 1967* (the 1967 Act) introduced rights for a long leaseholder of a house to either purchase their freehold (enfranchisement) or to extend their lease. The availability of these rights was originally dependent upon the rent payable under the lease and the value of the property falling within certain limits, as for rights under the 1989 Act. The intention being to again exclude higher value properties. There was formerly a residence test which has now been replaced with a requirement for the lease to have been held for at least two years.
17. Enfranchisement (although not lease extension) rights under the 1967 Act have now been extended to houses whose rents and values exceed such limits. However these values still have a role to play in determining the basis for valuing the interest being acquired and whether any additional compensation is payable where the sale of the freehold lowers the value or causes other loss or damage to other property owned by the landlord. As with the security of tenure provisions, we are not proposing to make changes to the low rent test.

Value limits

18. As with the security of tenure provisions the value limits vary depending upon when the lease of the house was granted. For those granted before 1 April 1990 they are referable to specific rateable values for the property in question. However for leases granted on or after 1 April 1990, the value limits established in 1990⁷ were set by reference to a notional rental figure for the property calculated using the same formula as under the 1989 Act (see **Annex A**).

⁷ Section 1 (1) (a) (ii) *Leasehold Reform Act 1967* substituted by SI 1990/434

Enfranchisement

19. The 1967 Act as amended, makes detailed provisions about how the interests being acquired under enfranchisement rights are to be valued. For leases granted on or after 1 April 1990 it is necessary as with the security of tenure rights under the 1989 Act to establish whether a notional rental figure when applying the prescribed formula referred to above exceeds £25,000. This figure was also set by reference to the upper rental threshold for assured tenancies established in 1990.
20. Where an additional value requirement is met, the owners of long leases of houses exercising enfranchisement rights will pay a price for the interest being acquired that is valued under what is known as the *original valuation basis*. This approach to valuation is based upon the principle that the freeholder owns the land and the leaseholder the house therefore it focuses on the value of the site.
21. This additional value requirement⁸ is that if the house had a rateable value on 31 March 1990 then this must have been below £1,000 in Greater London and £500 elsewhere. In other cases the R figure applying the formula referred to above must be no more than £16,333 which represents a notional rent for the property that is approximately two-thirds of the £25,000 figure.
22. For leasehold houses that fall outside of these requirements a different basis is applied for valuing the interest being acquired under enfranchisement rights. This takes account of the landlord's interest in both the site and house and any value created by the freehold and leasehold interest being under the same control (termed *marriage value*)⁹. This is referred to as the *special valuation basis* and will generally result in a higher price being paid than under the *original valuation basis*.
23. Finally, additional compensation can be payable to a landlord where the R figure exceeds £25,000 when applying the prescribed formula. This consists of any loss resulting where the sale of the freehold lowers the value of other property owned by the landlord or results in loss or damage connected to the landlord's ownership of other property.

⁸ Section 9 (1A) (ii) *Leasehold Reform Act 1967*.

⁹ Marriage value is only payable where the unexpired term of the leases is more than 80 years and is shared between the leaseholder and landlord.

Lease extensions

24. Eligibility to lease extension rights for long leaseholders of houses has not been widened in the same way as enfranchisement rights. This means that there is still a requirement for the rent payable under the lease to pass the low rent test and for the property to fall within the relevant value limits. For leases granted before 1 April 1990, the value limits refer to the rateable value of the property concerned whilst for those granted after this date the limits are again based upon the R figure when applying the prescribed formula being no more than £25,000.
25. Whilst no price is payable for such a lease extension the leaseholder will be required to pay what is known as a 'modern ground rent' during the period of the extension with the landlord having a right to a rent review after 25 years. A 'modern ground rent' will be based upon the 'letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy'¹⁰ which will be less than the rent for the house and site.

Increasing the Vale Limits

26. As indicated earlier the £25,000 rental threshold for assured tenancies originally set in 1990 was increased to £100,000 in October 2010 to take account of inflation in market rents during the intervening period. The £25,000 and £16,333 figures in the 1967 Act were also unaffected by this change. However property price inflation since 1990 will as with rights under the 1989 Act have had the effect of removing properties from eligibility to the 1967 Act rights.
27. Increasing the £25,000 value limit under the 1967 Act to £100,000 would restore the link with the upper rental limit for assured tenancies whilst making allowance for the effect of property price inflation since 1990. Increasing the associated value limit from £16,333 to £66,666 would follow on the basis that this should remain at a level that is 2/3rds of the main value limit.
28. As mentioned in paragraph 14 above **Annex A** includes a chart that indicates the properties in terms of the premiums payable for leases of different lengths that would have a notional rent falling within a £100,000 threshold as compared to £25,000.

¹⁰ Section 15 *Leasehold Reform Act 1967*.

29. Applying these increases to all leases granted on or after 1 April 1990 is likely as with the 1989 Act rights to have the effect of favouring the owners of older leases granted at what were at the time relatively high premiums. An alternative would be to once again only apply the increases to 'new' leases ie those granted after the relevant legislation is introduced.

Proposals

30. We propose to increase the value limits in the *Leasehold Reform Act 1967*¹¹ used to determine whether the owners of long leasehold properties in England are eligible for a lease extension and the basis upon which they can exercise enfranchisement rights to £100,000 (the current upper rental threshold for assured tenancies) and £66,666.

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.

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.

¹¹ Sections 1 (1) (a) (ii) and 9 (1A) (ii)

Impact assessment

31. **A consultation stage impact assessment is included at the end of this consultation at Annex A. This includes questions about the impact of the proposals. Such information including any estimates of the costs and benefits identified with these proposals would be welcomed. This would include the numbers of properties likely to be affected and any associated costs for landlords, leaseholders or other parties.**
32. Any information that would also help identify whether the proposals would have an impact upon different equality groups such as people from black and minority ethnic communities, women, disabled people, older people or people from different faith groups would be welcomed.

Summary of questions

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.

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.

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.

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.

ANNEX A

The Formula

$$R = \frac{P \times I}{1 - (1 + I)^{-T}}$$

P is the premium paid to purchase the leasehold interest (if none was paid, P is 0);

I is the interest, or yield, currently fixed at 6% (expressed as 0.06 for the purposes of the formula); and

T is the length of the lease term.

How the formula works

33. As indicated the purpose of the formula is to work out the annual rental figure for the property payable over the term of the lease that would be equivalent in value to a single premium paid at the start of the lease. This is done by calculating a value for **R** which as the nominal rental figure for the property needs to be equal to or less than the £25,000 threshold set out in the legislation.
34. The same mathematical formula is applied that is used by investors to establish the capital sum that they should pay for the right to receive a particular income stream. It incorporates the standard compound interest formula $(1 + i)^{-t}$ which works out the present value of the right to receive £1 at the end of a given year, discounted at a given rate of interest. The formula is generally used to produce a 'multiplier'¹² that is applied to the rent to calculate what such a stream of income should be worth as a capital sum, taking into account the number of years for which the income will be received and the rate of return required.
35. However the reverse applies here where the formula uses the premium paid and the number of years granted on the lease to establish what the expected annual rental income would be, assuming a 6 per cent return on capital (the yield rate). In practice most valuers would obtain the required figure from tables published on line or in hard copy rather than effectively carrying out the calculation 'from scratch' using the formula.

¹² Known variously as 'years purchase' or 'the amount of £1 per annum'.

Example

36. The following example may be helpful to demonstrate how the formula works in practice for leases granted on or after 1 April 1990.

A 21-year lease on a residential flat granted in May 1990 at a premium of £210,000 will expire in May 2011. In order to see if the tenancy qualifies for assured status we need to establish whether the rental value equivalent (**R**) is £25,000 or less.

So we know that **P** is £210,000; **I** is 0.06; and **T** is 21.

$$R = \frac{£210,000 \times 0.06}{1 - (1 + 0.06)^{-21}}$$

$$£210,000(\mathbf{P}) \times 0.06(\mathbf{I}) = £12,600$$

$$R = \frac{£12,600}{1 - (1 + 0.06)^{-21}}$$

$$1 + 0.06(\mathbf{I}) = 1.06$$

$$R = \frac{£12,600}{1 - (1.06)^{-21}}$$

$$1.06^{-21(\mathbf{T})} = 0.294155$$

$$R = \frac{£12,600}{1 - 0.294155}$$

$$1 - 0.294155 = 0.705845$$

$$R = \frac{£12,600}{0.705845}$$

So £12,600 divided by 0.705845 = **£17,851(R)**. Therefore the tenancy qualifies for assured status under the provisions of the Act.

37. On 1 October the upper rental threshold for assured tenancies increased to £100,000. Although the £25,000 figure in the 1989 Act that is used to determine eligibility to security of tenure rights for long leaseholders was set on the same basis, it was not linked in legislation. It was not, therefore, affected by this change. An increase is now being proposed to the £25,000 figure in the 1989 Act to restore the consistency between these two figures and to allow for the effect of house price inflation since 1990 for long leaseholds. This uplift could be applied to all leases granted on or after 1 April 1990.

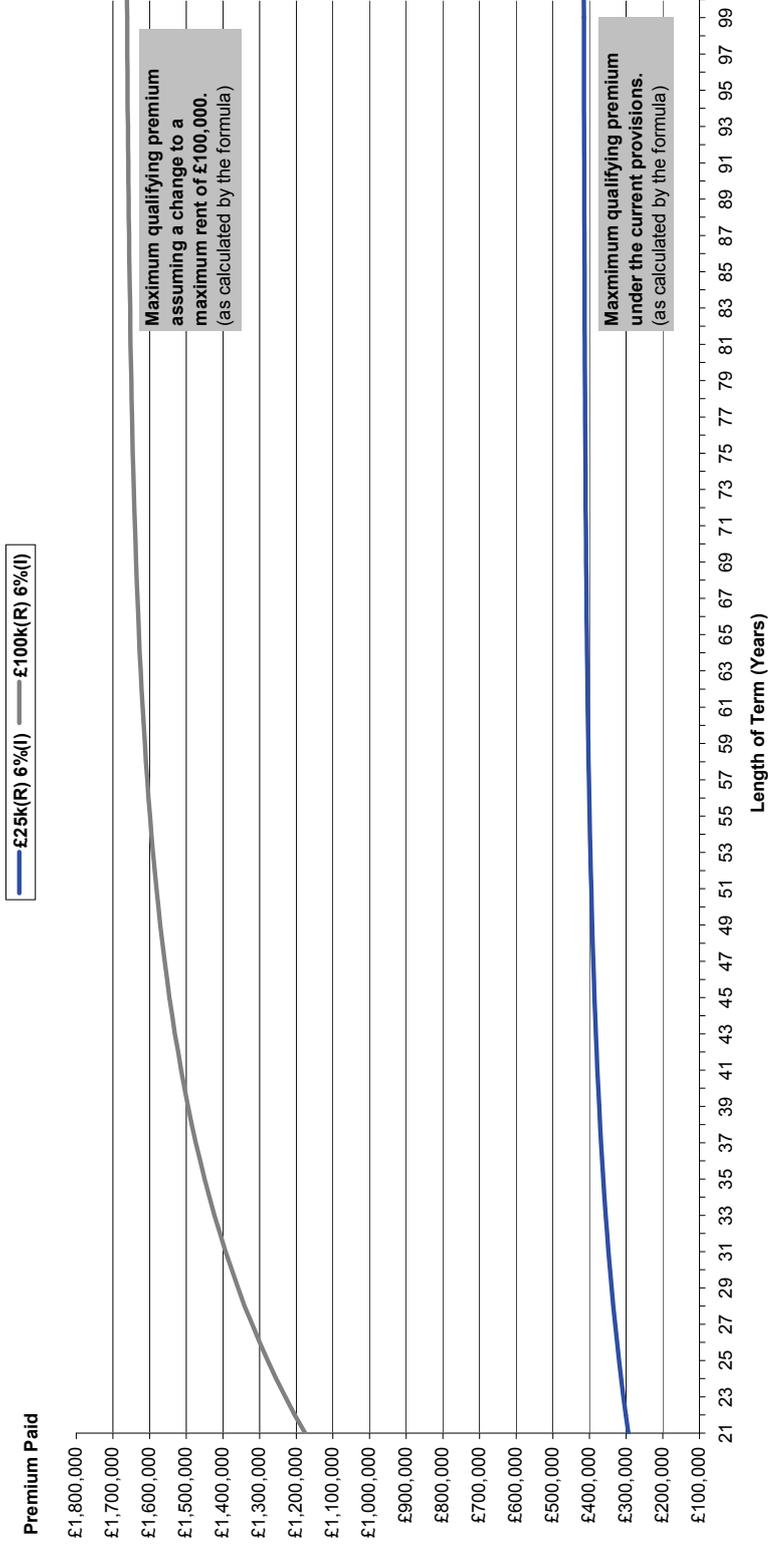
Impact of changing the maximum qualifying rent

38. The chart over shows the maximum premium (or price) that could be paid for a lease, to within the current rental maximum of £25,000 and the proposed increase to £100,000. This varies according to the term of the lease. For example at present the maximum qualifying premium for a 99 year lease would be £415,250, however by increasing the maximum rent from £25,000 to £100,000, the maximum qualifying premium would be £1,662,000.

Interest (yield) rate

39. As explained above a part of the formula used to convert the purchase price for the property into a yearly rental figure is an interest or yield rate based upon the return or yield that the property owner would expect to receive on his investment. This is currently prescribed at 6% or 0.06 for the purposes of the formula. A fixed rate has the advantage of helping to avoid arguments about what the rate should be and therefore additional costs being incurred as a result.
40. When considering the changes that should be made to the formula we also looked at whether this interest rate needed be amended to reflect current property market conditions. In coming to a view on this we have considered evidence from relevant Leasehold Valuation Tribunal decisions over the past five years which does not provide a compelling case for amending the current rate. Therefore we have concluded that the interest rate should remain at 6 per cent.

Maximum premium required to qualify for assured status under the Act



ANNEX B

About this consultation

This consultation and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the *Freedom of Information Act 2000* the *Data Protection Act 1998* and the *Environmental Information Regulations 2004*).

If you want the information that you provide to be treated as confidential, please be aware that, under the *Freedom of Information Act*, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the *Data Protection Act* and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact :

DCLG Consultation Co-ordinator
Zone 4/J1
Eland House
London SW1E 5 DU

or by e-mail to: consultationcoordinator@communities.gsi.gov.uk



Updating leasehold value limits Impact assessment

June 2011

Title: Updating leasehold value limits Lead department or agency: Communities and Local Government Other departments or agencies:	Impact Assessment (IA)
	IA No: 0027
	Date: 09/02/2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: chris.humphreys@communities.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Certain rights are available to the owners of residential long leasehold properties that fall within certain value limits. These rights provide protection in the form of security of tenure at the end of the lease term and enable long leaseholders of houses to extend their leases or buy their freeholds (enfranchisement) on particular terms. The current threshold was set in 1990 by reference to the £25,000 upper rental limit for assured tenancies (a particular form of statutory tenancy at a market rent) which has now been updated. We are now looking to update the leasehold value limits to take account of property price inflation and ensure that these rights continue to be available to those leaseholders intended to benefit from them.

What are the policy objectives and the intended effects?

To ensure that the protections and benefits offered by the security of tenure rights and those allowing long leaseholders of houses to extend their leases or enfranchise on particular terms continue to be available to those long leaseholders intended to benefit from them. This will be done by updating the existing thresholds to take account of property price inflation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Raise the value limits to £100k for all leases granted since 1 April 1990. 2. Raise the value limits for new leases only. 3. Do nothing and leave the value limits unchanged.

An uplift to £100k would restore consistency with the rental threshold for assured tenancies which is also aimed at excluding particular protections from properties at the very top end of the market. However applying the uplift to all leases granted since 1 April 1990 would extend the rights to some higher value properties granted under older leases. An alternative would be to only apply it to new leases. Doing nothing would not address the issue of relevant rights for long leaseholders being increasingly eroded as the value limits in the legislation fail to keep up with the effects of property price inflation. It was felt that an indexed linked increase would introduce a considerable amount of additional complexity into the process.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 10/2016

What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis and Evidence

Policy Option 1

Description:

1. Raise the value limits to £100k for all leases granted since 1 April 1990.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

See evidence base.

Other key non-monetised costs by 'main affected groups'

Landlords: Loss of vacant possession may involve some loss although they will receive a market rent. More leaseholders exercising rights to enfranchise or extend leases on particular terms will result in reduced receipts. Leaseholders: Future purchase prices of leasehold houses may rise with additional rights to enfranchise/obtain a lease extension on particular terms. Some costs may be involved in adjusting to the new limits.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

See evidence base.

Other key non-monetised benefits by 'main affected groups'

Leaseholders who take advantage of the increase in the threshold for the security of tenure rights will be able to remain in their homes and avoid the costs/stress of moving to a new property. Leaseholders of houses who exercise new rights to enfranchise or obtain a lease extension based on the property's site value will generally benefit from paying a lower purchase price or rent which may feed into higher future sale prices for landlords.

Key assumptions/sensitivities/risks

Discount rate (%)

Whilst relevant figures are unavailable it is unlikely that many long leaseholders would change their behaviour as a result of any increased availability of the security of tenure rights and choose not to renew their leases. There is also likely to be little impact upon the rental yield that would otherwise be available or upon a landlord's ability to redevelop premises.

The available options and returns for landlords of leasehold houses could be reduced by extending the number of properties that qualify for rights to enfranchise or to obtain a 50 year lease extension at a cost related to the value of the site only.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/10/2011				
Which organisation(s) will enforce the policy?	Leaseholders				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	14
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	14
Small firms Small Firms Impact Test guidance	Yes	14
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	14
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	15
Human rights Human Rights Impact Test guidance	Yes	15
Justice system Justice Impact Test guidance	No	15
Rural proofing Rural Proofing Impact Test guidance	No	15
Sustainable development Sustainable Development Impact Test guidance	No	15

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Raise the value limits to £100k for new leases only

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

See evidence base.

Other key non-monetised costs by 'main affected groups'

Landlords: Loss of vacant possession may involve some loss in due course although they will receive a market rent. More leaseholders exercising rights to enfranchise or extend leases on particular terms will result in reduced receipts although only for new leases. Leaseholders: Future purchase prices of leasehold houses may rise with additional rights to enfranchise or obtain a lease extension on particular terms. Some costs may be involved in adjusting to the new limits.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

See evidence base.

Other key non-monetised benefits by 'main affected groups'

Future leaseholders who benefit from and take advantage of the increase in the threshold for the security of tenure rights will be able to remain in their homes and avoid the costs/stress of moving to a new property. Future leaseholders of houses who exercise new rights to enfranchise or obtain a lease extension based on the property's site value will generally benefit from paying a lower purchase price or rent which may feed into higher future sale prices for landlords.

Key assumptions/sensitivities/risks

Discount rate (%)

It is unlikely that many future long leaseholders will change their behaviour as a result of any increased availability of the security of tenure rights and choose not to renew their leases. There is also likely to be little impact upon the rental yield that would otherwise be available or upon a landlord's ability to redevelop premises. The available options and returns for landlords of new leases of leasehold houses could be reduced by extending the properties that qualify for rights to enfranchise or to obtain a 50 year lease extension paying a price related to the value of the site only.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/10/2011				
Which organisation(s) will enforce the policy?	Leaseholders				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

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Social impacts		
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Human rights Human Rights Impact Test guidance	Yes	15
Justice system Justice Impact Test guidance	No	15
Rural proofing Rural Proofing Impact Test guidance	No	15
Sustainable development Sustainable Development Impact Test guidance	No	15

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Local Government and Housing Act 1989
2	Leasehold Reform Act 1967
3	The Private Rented Sector: its contribution and potential by Julie Rugg and David Rhodes (2008) http://www.communities.gov.uk/archived/publications/housing/responseruggreview
4	The private rented sector: professionalism and quality, The Government response to the Rugg Review, Consultation http://www.communities.gov.uk/documents/housing/doc/1241033.doc
5	2007 – 2008 Survey of English Housing

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Background

Certain rights are available to the owners of long leasehold properties (where the lease was originally granted for a term exceeding 21 years) which fall below specific thresholds relating to the ground rent payable and the value of the property. This reflected the original intention that such rights should only be available to the owners of properties that fell within certain value limits since higher value properties did not need the protections being provided. These rights are for (a) long leaseholders to remain in their properties at the end of the lease term and (b) for long leaseholders of houses to either extend their existing lease terms or to purchase the freeholds of their properties (enfranchisement) on particular terms.

These value limits originally consisted of specific upper rateable value thresholds for the property in question. With the abolition of domestic rates in 1990 they were replaced (for leases granted on or after 1 April 1990) by specific sums representing maximum notional rental figures for the property. This was calculated from the price paid at the beginning of the lease term using a prescribed formula (see below). The notional rental limits were referable to the £25,000 upper rental limit established at the same time as the upper rental threshold for assured tenancies, a particular type of statutory tenancy at a market rent without a premium being paid. The assured tenancy upper rental limit was also intended to exclude only the most expensive properties that were considered to form a separate market, not needing the same protections (such as the landlord now having to protect the deposit paid) as more ordinary homes.

The £25,000 upper rental threshold for assured tenancies was increased to £100,000 on 1 October 2010 for properties in England. This was done in order to take account of the effect of inflation in market rents which had the effect of taking more and more properties out of the protection being provided by assured tenancy status. The earlier Review of the Private Rented Sector carried out by Julie Rugg and David Rhodes had reported strong support for a change to the £25,000 figure and quoted a figure of £52,000 as the appropriate figure. The Government then put forward a proposal to raise the threshold to £100,000 in order to meet the original policy objective of excluding high value properties from the protection provided.

The changes to the assured tenancy rental threshold did not automatically update the leasehold value limits and so the link between the two was broken.

The formula used to calculate a notional rent for leasehold properties

$$R = \frac{P + I}{1 - (1 + I)^{-T}}$$

P is the premium paid to purchase the leasehold interest (if none was paid, P is 0);

I is the interest, or yield, currently fixed at 6% (expressed as 0.06 for the purposes of the formula); and

T is the length of the lease term.

How the formula works

The purpose of the formula is to work out the annual rental figure for the property payable over the term of the lease that would be equivalent in value to the single premium paid at the start of the lease. This is done by calculating a value for R which as the nominal rental figure for the property needs to be equal to or less than the £25,000 threshold set out in the legislation.

The same mathematical formula is applied that is used by investors to establish the capital sum that they should pay for the right to receive a particular income stream. It incorporates the standard compound interest formula $(1 + i)^{-t}$ which works out the present value of the right to receive £1 at the end of a given year, discounted at a given rate of interest. The formula is generally used to produce a 'multiplier' that is applied to the rent to calculate what such a stream of income should be worth as a capital sum, taking into account the number of years for which the income will be received and the rate of return required.

However the reverse applies here where the formula uses the premium paid and the number of years granted on the lease to establish what the expected annual rental income would be, assuming a 6 per cent return on capital (the yield rate). In practice most valuers would obtain the required figure from tables published on line or in hard copy rather than effectively carrying out the calculation 'from scratch' using the formula.

Nature of the Rights

Long leaseholders who are eligible to remain in their properties at the end of the lease term are able to do so under an assured tenancy paying a market rent. This provides them with a certain amount of security of tenure with the landlord only able to regain possession of the property on certain grounds. Long leaseholders of houses qualifying for lease extension rights can have a term of 50 years added to their lease term during which they will be required to pay what is referred to as a modern ground rent.

Whilst enfranchisement rights for long leaseholders of houses have now been extended for properties that exceed the original value limits, such limits still play a role in determining how the freehold interest being acquired is valued in enfranchisement actions. Where the notional rent for the property falls within the £25,000 limit, those long leaseholders of houses exercising enfranchisement rights will not have to compensate their landlords for any lowering in the value of other property they own resulting from the sale of the freehold. Where that rent falls within a lower threshold of £16,333 such leaseholders benefit from having the freehold interest being acquired valued on the basis of the site only.

Rationale for intervention

As explained certain rights were provided to the owners of those leasehold properties that fell below certain value limits and who were considered to need the available benefits and protections. With the abolition of domestic rates in 1990 the threshold was set to correspond with that used to determine whether a tenancy of that property if let at a market rent without the payment of a premium, would qualify for statutory protection as an assured tenancy. The assured tenancy threshold was increased on 1 October 2010 to take account of the effect of inflation in market rents since 1990.

Leaving the current leasehold value limits in place will effectively mean that the availability of the associated rights for leaseholders of houses will be increasingly eroded by the effects of property price inflation. This will mean fewer long leaseholders will benefit from rights to remain in their properties at the end of the lease term as assured tenants and to extend the leases or buy the freehold of a leasehold house on particular terms.

Any decision on this would need to be directed primarily at preserving the intention of the original legislation whilst taking account of how the particular value requirements for long leaseholders operate including that it is the price paid at the commencement of the lease that is used to determine whether a property falls within value limits and that the existing requirement for the ground rent payable to fall below certain limits will remain unchanged.

Link with the Assured Tenancy Threshold

The relevant rights and protections provided for long leaseholders and for assured tenants were aimed at properties falling within the same value limits. This was achieved by requiring the notional rent for the long leasehold properties calculated by applying the relevant formula was not exceed the £25,000 upper rental threshold for assured tenancies. The upper rental threshold for assured tenancies was increased to £100,000 on 1 October 2010 to take account of rental inflation since 1990 but the leasehold value limits were not automatically updated.

Leasehold Thresholds

The thresholds that determine the availability of the leasehold rights are based upon both the value of the property and the ground rent that is payable under the terms of the relevant lease (the low rent test). Under the low rent test, the ground rent payable under the lease is now required to fall below a certain level which now corresponds to the lower rental limit for assured tenancies. Since the lower rental limits for assured tenancies was not amended we do not propose to amend the low rent test for leasehold properties.

Cost uncertainty

Increasing the value limits that determine the availability of these specific rights for long leaseholders will have an impact for landlords as greater numbers of those leaseholders are able to exercise those rights. This will include the impact of landlords not being able to recover possession of those long leasehold properties at the end of the lease term meaning that their options in relation to those properties will be reduced. Similarly with more leaseholders of houses exercising rights to extend their leases, landlords will again be prevented from regaining possession of their properties at the end of the lease term whilst only receiving a modern ground rent throughout the term of the lease extension rather than a higher market rent for the house and site. More long leaseholders of houses will also be able to enfranchise on more favourable terms as a result of these changes which is likely to lead to increased take up of enfranchisement options by those leaseholders and a corresponding reduction of the price that would otherwise be payable in such cases.

It has not been possible to quantify the level of such impacts upon landlords. This would require complex calculations and the availability of information about the purchase price and ground rent payable on relevant long leasehold properties in order to calculate how many additional properties would be brought within the scope of specific rights as a result of increasing the thresholds to particular levels.

For the security of tenure provisions it would also be necessary to predict how many leases would be allowed to expire. From the existing data it has only been possible to estimate how many leases have unexpired terms of below 21 years. This does not indicate how many of those leases would expire without being extended and then how many of the leaseholders concerned would then choose to exercise any available security of tenure rights. Data is also not available to indicate what landlords would be likely to do were these additional rights not available i.e. grant a new long lease of the property or sell the freehold (which could still be done although subject to the assured tenancy) or the extent to which they would in any case choose to let the property on an assured tenancy. Information would also be required on any difference between the value of a freehold subject to an assured tenancy as compared to one with vacant possession. Any quantification of such costs and benefits associated with the proposals would also require a value to be given to the properties concerned that would otherwise be sold or let on long leases which cannot be done from the available data.

Similar issues arise for any quantification of the costs and benefits of the proposals to update the value limits that apply in relation to the leasehold houses provisions. In addition, further detailed data is also not available to enable a meaningful estimate to be reached about the potential loss that landlords would be likely to suffer in cases where additional rights are exercised. This would require estimates for example of the average difference in the price that would be payable if a leaseholder was able to enfranchise for example for a price determined on the original valuation basis rather than the special valuation basis. This would depend upon a number of factors such as the value of the property, length of the lease and any ground rent

payable. The availability of increased enfranchisement and lease extension rights for leaseholders of houses may also result in higher future purchase prices for such properties although once again it has not been possible to quantify what the impact of this would be on both landlords and leaseholders.

This IA includes specific questions intended to gather available data about the impact of the proposals which will be used to inform any final stage IA.

Policy objective

To update the value thresholds that determine the availability of specific rights for long leaseholders to the appropriate level by taking account of the effects of property price inflation and in doing so make those rights available to those intended to benefit from them.

Policy options considered

Option 1: Raise the value limits in line with the increase in rental limits for assured tenancies to £100k for all leases granted since 1 April 1990

This option would increase the value limits currently used to determine the eligibility of long leaseholders to security of tenure rights and the rights of long leaseholders of houses to a lease extension or to enfranchise on more favourable terms. Introducing an increase in the value limit to £100k (and associated lower limits in relation to the enfranchisement provisions) for all leases granted since 1 April 1990 would restore consistency with the upper rental limit for assured tenancies.

Costs and benefits

The consultation paper includes a chart that shows the maximum qualifying premiums payable for properties that would fall within £25,000 and £100,000 value limits using the formula on page 13 above. This demonstrates the difference between the properties identified by premium payable at the commencement of the lease and the length of the term that would qualify under each of the value limits. For example at present the maximum qualifying premium for a 99 year lease would be £415,250, however by increasing the maximum rent from £25,000 to £100,000, the maximum qualifying premium for such a lease would be £1,662,000. It should also be borne in mind that the relevant qualifying premium for properties qualifying for enfranchisement at a valuation on the original valuation basis would be correspondingly lower.

Figures from the Nationwide house prices index, show that increases in house prices in the period since 1990 have ranged from around 240 per cent in Greater London to 132 per cent in Yorkshire & Humberside. Whilst an increase in the relevant value thresholds in line with the related upper rental limit for assured tenancies would represent an uplift of 400%, this would restore the consistency that previously existed in terms of the properties that would fall within the protections being provided in both areas.

Security of tenure provisions

Any increase in the value limits that determine eligibility to the security of tenure rights could have an impact for landlords in terms of them being unable to gain vacant possession of some of those leasehold properties that will qualify for protection as a result of the changes.

Data is not available to indicate exactly how many existing long leasehold properties are likely to be affected by these changes. If the increase is applied to all leasehold houses granted since 1 April 1990, then those properties let on a long lease at a premium since that date with a nominal rental figure of between £25,000 and £100,000 (when applying the relevant formula) would be brought within the scope of these rights. Based upon the information from the chart this would include properties granted at a premium of between £415,250 and £1.6m at anytime since 1 April 1990.

Even where the increase is backdated, long leasehold properties will also be required to pass a low rent test which is remaining unchanged and so this is likely to have a downward effect upon the numbers qualifying. Information is not available to indicate the number of properties that currently have rents that would be classified as a low rent for these purposes. It would also be difficult to estimate exactly how many of those additional leaseholders would then choose to exercise these rights. However it is anticipated that they would be relatively small in number consisting of those who are either unwilling or unable to renew their leases before the expiry of the term.

Whilst the landlord will not be receiving the capital value of the flat where security of tenure rights are exercised by those long leaseholders who were not previously protected, there may in practice be little real loss or reduction in the value of their interest in the property. They will be

entitled to receive a return on their investment representing the market rental for the property from a settled occupant. They will also not be prevented from selling the freehold or a leasehold interest in the property although subject to the assured tenancy.

Whilst provision is made in the legislation for a landlord to recover possession of the property on specific grounds only, this does include where this is required for redevelopment work. This means that any extension of these rights should not act as a barrier to any such redevelopment work.

As indicated the assumption is that any resulting increase in the number of assured tenancies is likely to be small and unlikely to have any wider impact in creating a less flexible rental market. However important protections will be provided to the long leaseholders concerned by restoring the qualifying threshold in line with that for assured tenancies.

With any resulting increase in the numbers of assured tenancies there is some scope for more disputes arising about the correct level of market rent payable for the property concerned being referred to Rent Assessment Committees. However with the numbers of such additional tenancies not expected to be significant for the reasons outlined above, any increase in the numbers of such disputes should also be fairly limited.

Q1 How many additional long leasehold properties are likely to benefit from security of tenure rights through raising the leasehold value limits to £100k for all leases granted since 1 April 1990?

Q2 Is it possible to estimate the likely cost to landlords, leaseholders or others of these proposals?

Leasehold houses provisions

As with the security of tenure provisions any increase in the relevant value limits that was applied to all leasehold houses granted since 1 April 1990 would mean an increase in the numbers of properties that would benefit from the associated rights. This would also consist of those properties let on a long leases at a premium since that date with a notional rental figure of between £25,000 and £100,000 (equating to premiums of between £415,250 and £1,662,000). A lower range of notional rental figures (£16,333 and 66,666) and corresponding premium figures would determine the increase in the numbers of properties that would become eligible for enfranchisement based upon the value of the site only (original valuation basis). If the increase is just applied to new leases only then there would be no impact on landlords in respect of existing leases.

It is difficult to quantify the overall size of any such loss to landlords and corresponding gain for leaseholders where additional rights to enfranchise on enhanced terms are provided through changes to the relevant value limits. The potential loss to the landlord would arise where the freehold he is being required to sell is valued on a less favourable basis as far as he is concerned, as a result of the changes. This would arise where following the changes, the leaseholder could enfranchise for a price based upon the value of the site only (termed original valuation basis) rather than one that takes account of the landlord's interest in both the site and house and any value created by the freehold and leasehold interest being under the same control (termed marriage value). Loss could also arise from the leaseholder no longer having to pay additional compensation even where the sale of the freehold lowers the value of other property owned by the landlord.

Firstly data is not available to indicate how many additional leaseholders are likely to benefit as a result of the proposed amendments and then it would be difficult to estimate how many of those leaseholders would then choose to exercise these enhanced rights. The price payable in enfranchisement cases also depends upon a number of factors and in particular the length of the lease and the value of the property. Applying the new value limits to all leases granted since April 1990 would benefit in particular properties held under older leases which would generally have been granted for what were at the time relatively higher premiums and in such cases there

would be a greater incentive for those additional enfranchisement rights to be exercised. However the low rent test which is remaining unchanged will continue to determine eligibility to enfranchisement rights in relation to leases granted before 7 September 2009. Any resulting increase in the numbers of enfranchisement claims is likely to lead to an increase in applications to Leasehold Valuation Tribunals in particular to determine disputes about the acquisition terms.

A greater number of leaseholders would also be eligible for lease extension rights entitling them to a 50 year extension at no cost although on the condition that a modern ground rent would be paid during the period of that extension. A modern ground rent will be based upon the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the current tenancy. The receipt of a modern ground rent during the term of the 50 year extension in lieu of possession of the house is also likely to represent a loss to the landlord who could otherwise have let the property at a market rent.

For lease extensions the loss in each case would represent the difference between the rent payable for the value of the site (termed a modern ground rent) and the rent potentially receivable for the site and house and alternative options that would have been available to the landlord to realise his investment.

However once again data is not available to indicate how many additional leaseholders are likely to benefit as a result of the proposed amendments and it would then be difficult to estimate how many of those leaseholders would then choose to exercise these rights.

However where lease extension rights are exercised then the landlord does retain a right to terminate the tenancy within twelve months of the original term date on certain grounds including that he requires the property for redevelopment or that it is required for his own use in some circumstances. This will be enforced through a court order. It is understood that the lease extension option is not generally seen as a particularly attractive one. Eligibility will also again be dependent upon the lease passing the low rent test which will remain unchanged. Therefore whilst applying the increased value limits to all leases would increase the number of long leaseholders qualifying for lease extension rights and favour in particular the owners of older leases, the overall number of leaseholders who are likely to take advantage of new rights to extend their leases is likely to be small.

Finally the future prices of leasehold houses may rise for those properties that have lease extension and enhanced enfranchisement rights as a result of these changes although it has also not been possible to quantify the impact of this.

However as with the proposed changes to the value limits applying in enfranchisement cases for leasehold houses, restoring the link with the assured tenancy threshold will prevent these rights being gradually removed for the owners of those properties intended to benefit from them, through the effects of property price inflation.

- Q3 How many long leasehold houses are likely to benefit from being able to enfranchise on more favourable terms or to extend their leases by raising the leasehold value limits to £100k (and associated changes in relation to the enfranchisement provisions) for all leases granted since 1 April 1990?
- Q4 Is it possible to estimate the likely cost to landlords, leaseholders or others of these proposals?

Option 2: Raise the value limits in line with the increase in rental limits for assured tenancies to £100k for new leases only

This option would increase the value limits used to determine the availability of security of tenure rights and the rights to a lease extension or enfranchisement on more favourable terms for leaseholders of houses for new leases only. This would mean the value limits would only be increased in line with those that apply for assured tenancies, for new leases.

Costs and benefits

Referring once again to the chart on page 13 of the consultation paper, this would indicate that the properties granted on 99 year leases that would be covered by the uplift in the threshold would increase to cover properties sold for premiums of up to £1,662,000 rather than £415,250. The relevant qualifying premium for properties qualifying for enfranchisement on more favourable terms would be again be correspondingly lower.

Security of tenure provisions

Any increase in the value limits that determine eligibility to the security of tenure rights could have an impact for landlords in terms of them being unable to gain vacant possession of some of those leasehold properties that will qualify for protection as a result of the changes. The information in the chart in the consultation paper indicates that the additional properties that would be brought within the scope of the provisions as a result of these changes would be those granted at a premium of between £415,250 and £1,662,000 at any time after those changes come into effect. There would be no impact on landlords holding existing leases.

Leaseholders will also be required to pass a low rent test which is remaining unchanged. It would also be difficult to estimate exactly how many of those additional leaseholders would then choose to exercise these rights although it is anticipated that they would be relatively small in number. Once again where additional rights are provided landlords will also be entitled to receive a return on their investment representing the market rental for the property from a settled occupant. They will also not be prevented from selling the freehold or a leasehold interest in the property subject to the assured tenancy or from recovering possession of the property on specific grounds including for redevelopment work.

There is also an assumption as under option 1 that any resulting increase in the number of assured tenancies is likely to be small and unlikely to have any wider impact in creating a less flexible rental market or have a significant impact upon the number of additional disputes being referred to Rent Assessment Committees.

- Q5 How many additional long leasehold properties are likely to benefit from security of tenure rights through raising the leasehold value limits to £100k for new leases only?
- Q6 Is it possible to estimate the likely cost to landlords, leaseholders or others of such proposals?

Leasehold houses provisions

Introducing an increase in the relevant value limits that determine the availability of specific rights for the owners of long leasehold houses only for new leases will lead to a corresponding increase in the numbers of properties that would qualify for those rights. The information in the chart in the consultation paper again indicates that this would consist of those properties let on a long leases at a premium granted at premium of between £415,250 and £1,662,000 at any time after those changes come into effect. A lower range of nominal rental figures (£16,333 and 66,666) and corresponding premium figures would determine the increase in the numbers of properties that would become eligible for enfranchisement based upon the value of the site only (original valuation basis). There would be no impact on landlords holding existing leases.

The potential loss for landlords would arise when as a result of the changes they are required to sell a freehold on a less favourable basis including where the leaseholder no longer has to pay additional compensation even where the sale of the freehold lowers the value of other property owned by the landlord.

It is not possible to estimate how many additional leaseholders are likely to benefit as a result of the proposed amendments which will depend upon future decisions of landlords to grant long leases of houses and then subsequently upon how many of those leaseholders would then choose to exercise these enhanced rights. Any resulting loss to the landlord in such cases would then depend upon the difference in the price payable by the leaseholder for the freehold as a result of the changes. This will depend upon a number of factors and in particular the length of the specific lease and the value of the particular property.

Any resulting increase in the numbers of enfranchisement claims is likely to lead to an increase in applications to Leasehold Valuation Tribunals in particular to determine disputes about the acquisition terms.

A greater number of future leaseholders would also be eligible for lease extension rights entitling them to a 50 year extension at no cost although on the condition that a modern ground rent would be paid during the period of that extension. It is also not possible to estimate how many additional future leaseholders are likely to benefit as a result of the proposed amendments which will depend upon future decisions of landlords to grant long leases of houses and then subsequently upon how many of those leaseholders would then choose to exercise these rights. Potential losses to landlords in such cases would represent the difference between the rent payable for the value of the site (termed a modern ground rent) and the rent potentially receivable for the site and house and alternative options that would have been available to the landlord to realise his investment. Once again the landlord would right to terminate the tenancy within twelve months of the original term date on certain grounds. It is also likely that the take up of the lease extension option would remain small.

Finally the future prices of leasehold houses may rise for those properties that have lease extension and enhanced enfranchisement rights as a result of these changes although it has not been possible to quantify the impact of this.

- Q7 How many long leasehold properties are likely to benefit from being able to enfranchise on more favourable terms or to extend their leases by raising the leasehold value limits to £100k (and associated changes in relation to the enfranchisement provisions) for new leases only?
- Q8 Is it possible to estimate the likely cost to landlords, leaseholders or others of such proposals?

Option 3: Do Nothing

This option would leave the existing value limits in place to determine whether the owners of long leasehold interests in properties have access to both the security of tenure rights in the Local Government and Housing Act 1989 and the rights to a lease extension or more favourable terms for enfranchisement under the Leasehold Reform Act 1967. The previous consistency between this value limit and the upper rental limit for assured tenancies would not be restored.

Costs and benefits

By following the appropriate procedures, landlords would at the end of the lease term, be able to recover possession of those long leasehold properties whose notional rents (when applying the relevant formula) exceeded a figure of 25k. The owners of leasehold houses which exceeded the current value limits (when applying the existing formula) would also not benefit from more favourable enfranchisement rights. This would mean that access to these rights would continue to be eroded by the ongoing effects of property price inflation.

Other options considered

Consideration was also given to the option of introducing an indexed linked increase to the value limits backdated to 1990. This would also counter the specific impact of applying any increase to all relevant long leasehold properties which is to extend the associated rights to the owners of comparatively higher value properties granted on older long leases when overall purchase prices were lower. However this would introduce a considerable amount of additional complexity into the process and would mean that the established link with the assured tenancy would be lost completely. For these reasons this option was not put forward.

Assumptions and risks

It has been assumed from industry estimates that there are approximately 2 million leasehold flats with 1.5 million of those in the private sector and a total of approximately 1 million leasehold houses which will be predominantly in the private sector. Based on data from the 2007-08 Survey of English Housing, it is estimated, that less than one per cent of leaseholders in England have leases with an unexpired term of less than 21 years.

SECURITY OF TENURE PROVISIONS

The security of tenure provisions apply to long leaseholders in the social sector and it is estimated that there could be around 12,500 eligible long leaseholders with less than 21 years left on their leases. This provides an indication of the numbers of long leasehold properties which at any given moment will have leases which may reach the end of their term. However a large proportion of this group may still have a significant number of years unexpired on their leases which will mean that any new security of tenure rights will not be exercised for some time and a number will also be covered by the current thresholds. There is also an assumption that of the remainder, only a proportion will be either unable to or unwilling to renew their leases before the expiry of the term or want to opt for an assured tenancy given their likely preference for purchasing over renting. Applying the increase to new leases only would significantly reduce the overall effect of the changes.

LEASEHOLD HOUSES PROVISIONS

There are approximately one million long leaseholders of houses. Although applying the increase in value limits to all leases could significantly extend the availability of lease extension rights it is assumed any increase in the number of lease extension applications would be fairly small with enfranchisement being seen as the more favourable option. However there may be some cases where long leaseholders whose houses are brought within the new value limits decide to take advantage of their newly acquired rights to extend their leases at no cost because they are unable to afford enfranchisement.

Wider impacts

Specific Impact Tests

Statutory equality duties

Where racial groups are affected by the proposals they will be affected equally. There is no evidence to indicate that any particular racial group will be affected differently from any other, that it will affect relations between racial groups, or that any one racial group will be unlawfully discriminated against either directly or indirectly. All those affected will also have the same expectations.

The proposals will not have any specific impact in relation to disability equality. It will also affect those women and men that it applies to equally and will not affect either gender differently or disproportionately. It is possible that a comparatively larger number of older leaseholders will benefit from any increase in the availability of the security of tenure rights, although it is not anticipated that the overall impact would be significant.

Economic impacts

COMPETITION

We have assessed the impact of the proposals against the Office of Fair Trading checklist criteria and believe that there is unlikely to be a negative competition impact as a result. The relevant legislation will generally continue to have an impact upon the landlords of residential long leasehold properties in England, with certain exceptions for the security of tenure provisions. However it is unlikely that this will lead to a significant reduction in the number of landlords in the sector or the ability of some of them to compete.

SMALL FIRMS

The majority of landlords of long leasehold properties could be considered small businesses, although there are a few landlords with larger portfolios of properties. These provisions will generally apply equally to all landlords regardless of size. Applying the increase in the value limits to all properties held on a long lease granted on or after 1 April 1990 is likely to extend the availability of these rights to higher value properties. Any impact that this would have in terms of the numbers exercising additional security of tenure rights or enfranchising on particular terms or extending their leases in the case of leasehold houses would have an impact upon such small landlords.

Environmental impacts

GREENHOUSE GAS ASSESSMENT

The proposals will not have any discernable impact on the sectors or key sources of greenhouse gas emissions. Namely energy, industrial processes, solvents and other product use, agriculture, land-use change and forestry and waste. We do not therefore believe there is a need to undertake a full carbon impact assessment.

WIDER ENVIRONMENTAL ISSUES

The proposals will not have an impact on other environmental issues identified in the environmental impact guidance published by DEFRA. Namely the predicted effects of climate change; a change in the financial costs or the environmental and health impacts of waste management; air quality; the appearance of the landscape or townscape; the degree of water pollution; levels of abstraction of water; exposure to flood risk; disturb or enhance habitat or wildlife; or affect the number of people exposed to noise or the levels to which they are exposed.

Social impacts

HEALTH AND WELL-BEING

The proposals would appear to have no direct impact upon the health of those that it is designed to benefit, long leaseholders at the end of their lease term seeking to remain in their properties and long leaseholders of houses wishing to either extend their leases or buy the freeholds. However the greater availability of the relevant rights should have a positive impact upon those able to benefit from the changes by helping to alleviate concerns that they may otherwise have experienced.

HUMAN RIGHTS

The proposals will engage the rights of landlords and leaseholders under Article 1 of Protocol 1 (peaceful enjoyment of property rights) of the European Convention on Human Rights. Any interference with these rights must be in pursuance of a legitimate aim and be proportionate in terms of the means employed. It is our view that the proposed changes have a legitimate aim. This is because it is in the general interest for the law applicable to long leases to protect leaseholders, who will often have made substantial investment in their property, when their leases expire. It is also our view, in relation to new leases, that the measures proposed to achieve these aims are proportionate. This is because adequate protections are in place to ensure that landlords are compensated where their rights are affected. It is our belief that applying the changes to new leases only would achieve an acceptable balance between the aim of the interference and the means used to achieve this. Applying the uplift to all leases granted since 1 April 1990 would represent a greater interference with landlords' rights, but in our view it is arguable that the importance of the pursued aim, and the measures in place to mitigate any negative effect, could be used to justify this option.

JUSTICE

It is not anticipated that there should be any significant legal aid impacts as a result of increasing the value thresholds. Whilst it is possible that legal aid will be available in certain cases concerning rights under the legislation that we are proposing to amend, there is no reason to believe that there will be a significant increase in the number of disputes as a result of the changes. This will also mean that there should be no implications for the public purse in terms of funding the various bodies charged with determining such disputes.

RURAL PROOFING

The proposals will not have a different or disadvantageous impact on anyone in rural areas that will be affected by it. They will generally apply to everyone in exactly the same way, including those in urban areas.

Sustainable Development

The proposals which recognise the need for improving leaseholders' rights, will not have any discernable effect on sustainable development issues.

Summary of preferred option and implementation plan

The proposals are to increase the existing value limits that determine eligibility for the security of tenure rights available to long leaseholders in the private sector and the lease extension and enhanced enfranchisement rights for long leaseholders of houses in line with the amendments that have been made to the assured tenancy upper rental limits. This would maintain consistency between the two value limits and serve to similarly update the value limits and offset the effect of inflation in reducing the availability of these rights. The intention is for the increases to come into effect on 1 October 2011.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)]; As part of policy to periodically review legislation.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] To consider the impact of any increase in the value limits applied and whether any further changes are required.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Considering the views and feedback from interested parties and the results of any review of the assured tenancy upper rental limit.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The intention is to update eligibility criteria referable to property values established in 1990 in order to take account of inflation since that date and into the immediate future as with the recent uplift to the upper rental limits for assured tenancies. No figures are available to establish a baseline representing the properties covered when the value limits were established in 1990.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] The criteria is that broadly only long leasehold properties at the higher end of the market are excluded by the relevant value limits.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] Feedback and views from interested parties.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>