

Report to the Tyne and Wear Trading Standards Joint Committee

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Update on Implementation of the Leasehold Reform (Ground Rent) Act 2022

**Anneliese Hutchinson, Service Director, Economy, Innovation & Growth,
Gateshead Council**

Purpose of the report

1. The purpose of this report is to inform Members of the implementation of the Leasehold Reform (Ground Rent) Act 2022 ('the Act').
2. The Act puts an end to ground rents for most new long residential leasehold properties in England and Wales. Royal Assent was granted on 8 February 2022 and the Act was brought into force on 30 June 2022.
3. The Government takes the view that the Act will make home ownership fairer and more transparent for millions of future leaseholders. The Government believes that the reputation of the leasehold system has been damaged by unfair practices that have seen some leaseholders contractually obligated to pay onerous and escalating ground rents, with no clear service in return. The Act is seen as preventing this from happening in future, tackling significant ambiguity and unfairness for future leaseholders.

What the Ground Rent Act means

4. From 30 June 2022, landlords of regulated leases must not require a leaseholder to make a payment of prohibited rent.
5. The peppercorn limit generally only applies to new residential leases that were granted after commencement of the Act, that is leases granted on or after 30 June 2022. If a consumer bought a new (regulated) lease after this date they will not be faced with financial demands for ground rent. There are some exceptions to this, which are listed below.

What is Ground Rent?

6. A 'ground rent' is a property industry term given to a rent that is usually paid annually by owners of residential long leases to their landlord.
7. Long leases (those exceeding 21 years) frequently require a leaseholder to pay an annual ground rent, often hundreds of pounds a year, for which the landlord does not have to provide a clear service in return.
8. A ground rent is not defined in law in England and Wales – the term 'rent' is used in legislation covering the long leasehold sector as it is in other areas of property law.

What is a ‘peppercorn’ ground rent?

9. Historically, a ‘peppercorn’ ground rent often meant a rent that was of nominal or low value.
10. The Act defines a peppercorn rent for the first time, which is ‘an annual rent of one peppercorn’. The Act restricts ground rents on new leases (unless an excepted or non-regulated lease) to a peppercorn rent, effectively restricting these ground rents to zero financial value. There is no obligation on a landlord to levy a peppercorn rent.

What does the Act do?

11. The Act means that any ground rent demanded as part of a new regulated residential long lease where a premium is paid may not exceed more than one peppercorn per year. Most new leaseholders will not be faced with financial demands for ground rent.
12. The Act also bans landlords from charging administration fees for collecting a peppercorn rent. If a landlord charges ground rent in contravention of the Act, they are liable to receive a financial penalty between £500 to £30,000.
13. The Act also bans landlords from charging a fee related to the collection of a peppercorn rent, which reduces the incentive to charge a leaseholder an actual peppercorn.

Transition period

14. There is a transition period that applies to regulated leases of retirement homes, which means the Act will not come into force for these leases any earlier than 1 April 2023.

Enforcement

15. Enforcement will be the duty of the local weights and measures authority (Trading Standards teams) in England and Wales.

Generally, a lease will be regulated by the Act where:

- It is granted on or after 30 June 2022.
- It is a long lease (exceeding 21 years) for a single dwelling.
- It was granted for a premium (a premium is usually known as the “purchase price”), this also includes where a lease has been changed (referred to as ‘varied’) by a ‘deemed surrender and regrant’ and no premium was required.
- It is not an excepted lease.
- Statutory lease extensions for flats must already be granted at a peppercorn (regardless of this Act).

The Act will not apply where:

- A lease is not a regulated lease.
- Buyers and sellers enter into a legally binding contract (i.e., exchange of contracts) for the grant of a lease (other than an option or right of first refusal) before 30 June 2022, even if the lease itself is granted after 30 June 2022.
- Leases are for of community-led housing, certain financial products, and business leases.
- Voluntary or non-statutory lease extensions, which can retain the existing level of ground rent for the remainder of the original lease period.
- In a shared ownership lease, where rent is payable on the landlord's owned share and the peppercorn rent limit applies to the leaseholder's owned share.

Business leases

16. A landlord may charge ground rent of more than 'an annual rent of one peppercorn' if the lease is a business lease. A business lease is where:

- The lease allows the premises to be used for business purposes (without needing further consent from the landlord for this use).
- The use of the dwelling significantly contributes to this business purpose, for example a residential flat above a commercial shop which is where the shop keeper lives who is also required to open the shop at certain times.
- At or before the time the lease is granted the landlord and leaseholder exchange written notices confirming that the use of the premises is for the business purposes specified in the lease.

What does the written notice for business premises need to contain?

17. The written notice must contain:

- The address (or an identifying description sufficient to identify the premises) for the lease in question, and statements to the effect that:
- The landlord or leaseholder (or prospective landlord or leaseholder) intends the premises demised by the lease to be used, and to continue to be used for purposes which are business purposes, and this is expressly permitted by the lease (and no further consent is required from the landlord for such use).
- The nature of the business purposes permitted by the lease (or prospective lease) is such that the use of the premises demised by the lease as a dwelling significantly contributes to the business purposes.
- The lease (or prospective lease) is excepted from the Act and the lease can require the leaseholder to pay a rent which is more than a peppercorn rent.
- The name and signature of the landlord or leaseholder (or prospective landlord or leaseholder) giving the notice, or the person authorised to give the notice on that person's behalf.
- The notice can be given by hand, left at the address, sent by post or via electronic communication. The notice must not be included as part of the lease.

If I am a leaseholder?

18. What should a consumer do if their lease says that they have to pay a ground rent?

- The consumer needs to check whether the lease is covered by this Act. The Act's peppercorn limit only applies to leases granted on or after 30 June 2022.
- If the lease is regulated by the Act and says a prohibited rent is required initially they should speak to their landlord informally and request that the lease complies with the Act. If this does not resolve the situation and the consumer wants to take further action, there a number of organisations that may assist.
- The Act requires that, where a regulated lease has a term requiring payment of a prohibited ground rent it must be treated as if that prohibited rent is replaced with a permitted rent. This happens without any formal change to the lease being required.

19. There may be situations where a leaseholder or landlord want the lease formally varied and may seek a declaration from the First-tier Tribunal (Property Chamber) as to the effect of a term in a lease that requires the payment of ground rent. This might be desirable if there is disagreement on whether a ground rent term in a lease a prohibited rent is or what permitted rent it should be replaced with, under section 7 of the Act.

What should I do if I a consumer has paid a prohibited ground rent?

20. Where a lease is regulated by the Act, and a consumer has wrongly been required to pay and have paid a prohibited rent, they should speak to their landlord to request that they repay the amount within 28 days, as the Act requires them to do.

21. Where a landlord or a person acting on their behalf (such as a managing agent) requires a payment of prohibited rent and/or does not refund it within 28 days, an enforcement authority may investigate and consider taking enforcement action against that person. This can include requiring the payments to be refunded by the person who received them and issuing a financial penalty against the landlord (but not a person acting on their behalf).

22. Alternatively, the consumer or their guarantor, or a person acting on their behalf may apply to the First-tier Tribunal for a recovery order, instead of one being issued by an enforcement authority. Consumers may be able to seek support with doing this from their local Trading Standards service.

How does the Act affect a non-statutory (voluntary) lease extension of existing leases that charge ground rent?

23. Where a consumer negotiates a non-statutory (voluntary) lease extension and the lease is regulated by the Act, the new portion of the lease that extends beyond the date of the original term must only charge a peppercorn ground rent. The ground rent charged on the balance of the term of the original lease must not exceed the original ground rent and the parties may agree to a lower ground rent for the balance of the original term.

24. Specialist advice should be taken when considering a lease extension. If a consumer has extended the lease and the landlord charges a rent that is prohibited, the consumer should take legal advice. Trading Standards may investigate and consider taking enforcement action against that person.

What should I do if I am a landlord?

25. What should I do if I, or a person acting on my behalf, charge a leaseholder a prohibited ground rent?

- Where the rent is prohibited by the Act, you must refund it within 28 days of the payment being made. If you fail to refund all of the payment(s) you should be aware that you could be investigated by an enforcement authority, issued with a penalty and the prohibited amount can be recovered through a recovery order (issued by either an enforcement authority or the First-tier Tribunal) in the County Court.

What action can an enforcement authority take against me as a landlord?

- Prior to making a final decision about what enforcement action should be taken, the landlord will be invited in a notice of intent to make written representations about the alleged breaches under investigation. The landlord will have 28 days in which to respond to this notice.

Financial penalty

26. Following issuing a notice of intent, and a final notice, where the enforcement authority has sufficient evidence that a breach has been committed, it may impose a financial penalty on a landlord (but not a person acting on their behalf). The amount of the financial penalty that may be issued for a breach of the Act is subject to the discretion of the enforcement authority, within the limits of a minimum of £500 and a maximum of £30,000.

Recovery order

- A recovery order can be issued by the enforcement authority against the landlord, or the person acting on their behalf who received the prohibited rent payment. An enforcement authority cannot issue a recovery order where a leaseholder (or person acting on behalf of the leaseholder) has made their own application to the First-tier Tribunal for a recovery order under section 13 of the Act. This restriction also applies if another enforcement authority has previously made a recovery order for the payments.
- Managing agents must refund ground rent which has been collected in breach of the Act, but they will not be liable for a financial penalty under the provisions of the Act.

Enforcement

27. Enforcement of the Act is the duty of local weights and measures enforcement authorities.

28. Trading Standards services are delivered by officers in these authorities. As a leaseholder, if you think there has been a breach of the Act and you have already discussed this with your landlord, but the issue has not been resolved, you can report the breach to the Citizens Advice Consumer Helpline. The helpline team will pass your report to Trading Standards. Trading Standards officers will then use this information to decide what action is required, and this could include investigating, or issuing a penalty, if require. Citizens Advice may also give a leaseholder individual advice on what to do next.

Recovery orders issued by the enforcement authority

29. If the enforcement authority has sufficient evidence, it may order the repayment of the prohibited rent by:

- The landlord at the time when the prohibited rent was paid
- The landlord at the time when the enforcement authority issues the order; or
- A person acting on behalf of one of the above where the payment was paid to that person.

30. However, an enforcement authority cannot issue such an order where a leaseholder (or person acting on behalf of the leaseholder) has made their own application to the First-tier Tribunal for recovery order under section 13 of the Act.

31. Where a person fails to pay an amount ordered under a recovery order, the enforcement authority may seek to recover it via a County Court order.

Leaseholder application for recovery orders from the First-tier Tribunal

32. The Act allows leaseholders (or person acting on behalf of a leaseholder) under a regulated lease who have paid prohibited rent that has not been refunded to apply to the First-tier Tribunal (Property Chamber) for a recovery order.

33. If a landlord, or the person acting on their behalf, fail to pay all of the recoverable rent by the date given, the outstanding amount may be recovered through the County Court. Trading Standards may be able to provide assistance with that application.

34. An enforcement authority may assist leaseholders with applications to the First-tier Tribunal. A lawyer or Citizens Advice may also be able to support a consumer with their application.

Managing agents (acting on a landlord's behalf)

- Managing agents play an important role in acting on behalf of landlords to demand and collect money from leaseholders, including ground rent charges.
- Managing agents must only collect charges that are legal and also must be prepared to take responsibility where their actions contravene the Act.
- Managing agents must refund incorrectly collected ground rent but they will not be liable for a financial penalty under the provisions of the Act.

- This Act implements strong measures to make sure both landlords and managing agents cannot charge ground rent and must refund it where it is incorrectly charged.
- A recovery order can be issued against the landlord, or the person acting on their behalf who received the prohibited rent payment.

Penalties

35. Where the enforcement authority has sufficient evidence, it may impose a financial penalty on a landlord (not a person acting on their behalf). The amount of the financial penalty that may be issued for a breach of the Act is subject to the discretion of the enforcement authority, within the limits of a minimum of £500 and a maximum of £30,000.

Trading Standards assistance for leaseholders

36. The Act allows Trading Standards to assist leaseholders with applications for a recovery order (where Trading Standards have not already issued one) and an application for a declaration on whether a lease contains a prohibited ground rent term.

37. Trading Standards, **subject to their own discretion**, may conduct proceedings or give advice. Trading Standards may also help a person make an application for a County Court order concerning any unpaid amounts that are already subject to a recovery order (one that the leaseholder or person acting on their behalf has pursued).

Costs for leaseholders when taking the landlord to the First-tier Tribunal

- Each party (leaseholder and landlord) will pay their own costs unless ordered otherwise by the First-tier Tribunal or Court.

Leaseholder applications to the tribunal where administration charges are required by a landlord

- The Act states that no administration charge is payable in relation to the collection of any ground rent that is restricted to a peppercorn rent by this Act. It does this by amending relevant provisions in the Commonhold and Leasehold Reform Act 2002.
- A leaseholder can apply to the First-tier Tribunal (Property Chamber) for a determination as to whether an administration charge is payable or for an order varying the lease.
- A leaseholder may also apply to the First-tier Tribunal (Property Chamber) to request that it makes an order appointing a manager where prohibited administration charges have been made. This will enable the First-tier Tribunal (Property Chamber) to take action where, for example, a landlord includes prohibited administration charges in leases on numerous occasions.

Recommendation

38. The Committee is asked to note the information.

35. Further information can be found at:

<https://www.gov.uk/government/publications/the-leasehold-reform-ground-rent-act-user-guidance/leasehold-reform-ground-rent-act-2022-guidance-for-leaseholders-landlords-and-managing-agents#:~:text=The%20Act%20puts%20an%20end,for%20millions%20of%20future%20leaseholders>

Contact: David Ellerington, City of Newcastle Council,
David.c.ellerington@newcastle.gov.uk
