



MODERN LEASEHOLD: RESTRICTING GROUND RENT FOR EXISTING LEASES

CONSULTATION RESPONSE

PREPARED AND SUBMITTED BY

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Opening remarks

1. Land law in the UK recognises ground rent as a rent. It is charged for the exclusive use of land for the term of a lease. Its legal position is therefore unambiguous, and not to be confused with a service charge.
2. The property rights that go with the ground rent are also unambiguous. Value will be paid by freeholders to acquire such rights. Often, freeholders are investing in ground rents on behalf of other beneficiaries, for example pensioners' savings. Freeholders therefore have a duty to protect their beneficiaries' property rights, and the value of their investments. Extinguishing such rights will therefore inevitably face legal challenge under A1P1 of the European Convention.
3. The Government also recognises that a ground rent has value, as acknowledged in the Impact Assessment to the 2022 Act:

"For new qualifying leases, we expect that restricting ground rent to one peppercorn per year will not result in a cost to developers because we expect that they will be able to capitalise the 'lost' stream of ground rent into sale prices – i.e. we expect that they will be able to increase sale prices to cover any potential cost."

4. The Department's impact assessment goes on to quantify the benefit leaseholders receive, which is estimated as a c. 3.3% reduction in the purchase price of their properties, as compared to an equivalent freehold.
5. Freeholders receive ground rent as owners of property rights, not as service providers. Nevertheless, they also perform various valuable functions for the property market, which require ongoing effort and work, as acknowledged by the property market and the Government.
6. Lenders rely on freeholders to enforce various lending covenants, on property maintenance for example, or insurance. This safeguards the banks' loan security. If Government is determined to drive respectable freeholders out of the market, it should at the very least ascertain the position of the major mortgage lending banks and building societies, some of whom we know are concerned about the impact on the lending market.
7. Indeed, the consultation says little about an orderly transition, and how that might evolve. If respectable freeholders cannot derive their ground rent income, they are likely to be forced to leave the market through insolvency, or voluntary liquidation. Who will then take their place? Probably less respectable freeholders or managing agents, who will be keen to exploit the service charge. The Government may even be involved in such sales if they are transacted through the Treasury Solicitor. The Government's reputation may take a battering if it is found to have sold to less reputable freehold purchasers.
8. A cap on ground rents may result in freeholder insolvency. This would not be a surprise given some ground rent investors are highly leveraged. The Treasury Solicitor in such circumstances has a role in finding a new freeholder, but no role in the day-to-day management of buildings. We fear the Government will be creating another EWS1 scenario that will obstruct the lending market.

9. Freeholders also perform various useful functions for leaseholders. They enforce lease covenants for leaseholders, ensuring that the detrimental behaviour of one leaseholder does not impact the enjoyment of their home of the majority. They can also ensure the service charge account remains solvent in times of pressure on individual blocks. In such circumstances, the freeholder will often lend to the service charge account to tide it over unexpected expenditure. For example, an unexpected repair to a roof, or other fabric of a building.
10. The Government has also recognised the value of freeholders, by placing various duties on them via the Building Safety Act, to help co-ordinate the remediation of buildings, and sometimes fund it. This often involves significant work that cannot be recovered via the service charge account.
11. It is worth stressing that nearly half-of leasehold flats (46% from official statistics) are owned by investors to let out in the private rented sector. From our experience, the vast majority of these investors do not want to take an active role in the management of their blocks. The idea that the responsibilities of freeholders will conveniently flip to leaseholders, we think is therefore misplaced.
12. It is worth stressing too that the beneficiaries of ground rent funds are often members of the public - pensioners' investments, or charities, or other organisations providing services. The Government is often quoted as saying the impact of its proposals represents less than 1% of pension fund investments, but pension fund investments in the UK are valued at nearly £3trillion. Therefore, even a small percentage of pension fund investments being nullified by the state would represent a big loss in nominal terms.
13. The Impact Assessment that accompanies the consultation lays that bare, with a combined £32.4bn impact if option 1 were pursued. A loss of £5.1bn over ten years of income, and a £27.3bn impact on capital value, and this is likely to be an underestimate as we will explain.

What problem is Government seeking to solve?

14. Against this backdrop of a significant loss of income and value for the beneficiaries of ground rent income, the options set out in the consultation paper seem very broad-brush to quite a specific problem, and are disproportionate to that problem of rapidly escalating ground rents.
15. Moreover, there are very few complaints a year on ground rents to the Property Ombudsman Service (TPOS). In fact, ground rents do not even feature in the Ombudsman's 'top ten' complaints:

TPOS complaints by subject matter – 2023 to date

Complaint Type Description	Grouping	Complaint Type
Lease - Repairs/Maintenance	Repairs & Maintenance	575
Service Charges - To Leaseholder - Amount Charged	Service Charges	297
General - Complaints Handling	Complaint Handling	255
Advice about complaining		220
Service Charges - To Leaseholder - Administration	Service Charges	212
Service Charges - To Leaseholder - Communication	Service Charges	193
Agency Agreement - Repairs/Maintenance	Repairs & Maintenance	151
General - Advice	Other	142
Membership check		116
Agency Agreement - Communication	Communication	94

16. As we understand it, the Government is concerned about leaseholders’ inability to mortgage or conveyance their property because of what might be termed ‘high’ or ‘rapidly rising’ ground rents.
17. We are sympathetic to this. We would point out, however, that valuers’ and conveyancers’ interpretation of what is ‘high’ and ‘rapidly rising’ is not consistent and feeds into a diminishing interpretation of ground rents.
18. Most leaseholders are comfortably able to afford most ground rents. The problem of ‘high’ and ‘rapidly rising’ ground rents is limited to a small proportion of the market (we estimate about 5,000 ‘onerous’ ground rents remain that have not been dealt with via the leaseholders’ pledge), and the impact that has on accessing mortgages. Most of the proposed solutions to this in the consultation paper are not proportionate to the problem the Government is seeking to address.
19. The sector was willing to tackle ‘high’ and ‘rapidly rising’ ground rents via a pledge signed by most of the large freehold owners. The industry was willing to go further with a code of practice as to how the industry would act, but that engagement with Government did not happen. The Government stresses in the consultation paper that it continues to receive complaints about ‘high’ and ‘rapidly rising’ ground rents, even against pledge signatories. However, the consultation paper does not cite the quantum of such complaints, nor what action the Government has taken. For example, contacting signatories to the pledge, where a complaint against them has been made.
20. Nevertheless, the pledge is an imperfect solution. Variations of leases are expensive, time-consuming and can be problematic. Primary legislation overriding this would potentially solve some of these problems.

21. Also, having different lenders with different interpretations of what is 'high' and 'rapidly rising' is unhelpful to consumers, and to the sector. Getting to a standard approach may therefore be advantageous.

Options

22. We believe the options in the consultation paper represent significant legal interference. Some are also too complex to be practicable. Most are significantly disproportionate to the problems the Government has identified. The impact on property rights will also weaken the UK's position as a place to invest in.
23. However, the Government could adopt a far more proportionate approach, which would still protect leaseholders, without disproportionately damaging the investments of millions of investors.

A proportionate solution

24. Notwithstanding our deep concerns about the options outlined in the consultation, we understand and support proportionate reform in the leasehold sector to achieve DLUHC's policy objectives. In our view, any proportionate capping of ground rents should follow the following principles:
- **Maintain the economic value of the original ground rent.** It is important that the value of the original ground rent is retained in any reform solution – the existence of this initial ground rent has been reflected via a reduction in the initial purchase price of a property paid by leaseholders. It is also a very clear contractual term laid out in the lease.
 - **Eliminate rapidly escalating ground rents.** Responsible investors and freeholders have already supported conversion of onerous increases (i.e., those that double more frequently than every twenty years) and we support legislating for this to capture any other parts of the market which have not yet been addressed voluntarily and ensure no leaseholders are subject to these terms.
 - **Include exemptions for buy-to-let and retirement properties.** Any reform solution should not include leaseholders who are investors, such as buy-to-let owners, and should also exempt retirement properties. As DLUHC states in its consultation, the Government is bringing forward these measures to support homeowners, and not to transfer value from one set of investors to another. Leaseholders in retirement properties (excluding new retirement properties post the 2022 Ground Rent Act) benefit from a significantly discounted purchase price and from additional communal spaces which require higher ground rents than standard owner-occupier properties. It would be unfair and disproportionate to include these types of properties in the reform.
25. We have consulted with a wide range of industry participants and determined that these objectives could be met by a proposal we are calling 'Option 6'. This proposal focuses on capping the ground rent at the original contract value in the lease, adjusted for a capped level of inflation. This builds on Option 4 in the consultation, but importantly it also preserves the real economic value of the original ground rent over time.
26. Under 'Option 6', on any review date under a lease, the ground rent for that review period would be calculated such that it is always the lower of:

- (i) the ground rent payable as per the terms of the lease; and
- (ii) the starting ground rent when the lease was agreed adjusted for historic RPI inflation (capped at 5% annualised)

27. This solution would immediately deal with any unfair escalations in ground rents, not just going forward but also historic, by ensuring they can never have been above a capped level of inflation (and therefore have never gone up in real terms), while recognising the economic value of the original ground rent to the leaseholder in the reduced purchase price of their property.
28. For example, a leaseholder who currently has a ten-doubling lease (a lease where the ground rent doubles every ten years) which commenced in 2005 with a starting ground rent of £200 would receive the following savings if our solution was applied:
- An immediate reduction in their current ground rent payable of £132 (33%) in 2024.
 - A saving of £380 (48%) on their 2025 ground rent payable.
 - A saving over the next 30 years of 71% of their ground rent payable over that period – based on OBR inflation assumptions.
29. Furthermore, it gives leaseholders transparent and uniform protection, and protects them in case of very high inflation, limiting the maximum amount they could have to pay. Historically, property price increases in the UK have far outstripped RPI meaning that if that continues over time, ground rents will continue reducing as a proportion of property values. While our solution would have negative economic consequences for investors, it would not be a complete appropriation of assets and cashflows or represent a retrospective change to the originally agreed contractual ground rent (so long as its real value is maintained).
30. We therefore believe it is a proportionate and appropriate way to meet DLUHC's stated policy aims, providing meaningful protection and improved transparency to leaseholders, with a lower risk of legal challenge and compensation claims.

The five options the consultation paper offers

31. None of the other options offered in the consultation paper are satisfactory. All have their flaws.

Option 1: Peppercorn. Has the most on impact on freeholder investors and their beneficiaries. It is also the most disproportionate in terms of who benefits and who is disadvantaged. The consultation impact assessment illustrates this.

Option 2: Capping at an absolute value. Most of the benefit of this measure would go to high value properties.

Option 3: A ratio of ground rent to property value. The main drawback of this option is its complexity, and the cost involved, in ascertaining the property value. It would also be problematical for some types of property, for example forms of retirement housing, where the ground rent supports the provision of communal spaces, and so be high, but the property value relatively low.

Option 4: This is the simplest solution. As explained, however, it is important that the value of the original ground rent is retained in any reform solution – the existence of this initial ground rent has been reflected via a reduction in the initial purchase price of a property paid by leaseholders.

Option 5: Freeze at the current ground rent. This option would not maintain the value of the beneficiaries of ground rent income in real terms. It would also not tackle ground rents that had already risen rapidly.

32. It is vital to stress that the investment made by pension funds is on behalf of current and future pensioners, and therefore the importance of keeping pace with inflation, so that pensioners' incomes are not impacted. The impact of removing RPI escalations for example, would result in ~50% of the value being immediately lost.

Exemptions

33. The consultation paper asks about exemptions based on the options offered, and our response is therefore predicated on that, and set out in paragraphs 33 to 36. We would stress, however, that if the Government accepted our alternative option, then the necessity for exemptions largely becomes far more limited, because 'Option 6' is far better targeting the problem of rapidly escalating ground rents. There would still need to be exemptions where ground rents are being used to fund significant communal facilities, such as in retirement housing, or park homes, but this is a smaller subset of the market than with other options.
34. The emphasis of the consultation is on supporting homeownership. A large proportion of leasehold flats, about 46 per cent, are owned by investors, to be let in the Private Rented Sector (PRS). We cannot see the benefit in transferring wealth between different types of investors. About two in five landlords in the PRS do not even have a mortgage, so the argument they are trapped by escalating ground rents is not relevant. We do not think therefore that any investment property should be included in any caps or other interventions.
35. Another exemption the Government should consider is various forms of retirement housing. The charging of a ground rent in the provision of various forms of housing with care will be helping to support facilities such as common rooms, laundry rooms, etc. It is also unlikely that such properties will be mortgaged and therefore suffering from the inability to be transacted because of an escalating ground rent.
36. Our understanding is that most landlords in the affordable housing sector do not pass on ground rents to their leaseholders, including shared-owners, but we will not be pressing for an exemption. There is significant transfer of affordable housing between the social housing and private sectors, and creating a two-tier situation would be unhelpful. Also, although many shared-owners do not achieve full-ownership, some do, and again a two-tier approach would be unhelpful. We would stress though that this is complex, and care will need to be taken to capture ground rents and not 'true' rent.

Impact assessment

37. The double impact of leasehold extension/enfranchisement pricing calculations in the bill with ground rent cap Options 2, 4, and 5 particularly is of utmost concern. When taken in

combination these elements will directly and disproportionately impact the value of freeholders' interests. As a result, this will further amplify the immediate and irrecoverable loss of value to assets owned. The effect of changed lease extension pricing and implementation of a ground rent cap is a material concern that has not been acknowledged, analysed, or addressed in any documentation provided to Parliamentary decision makers. Crucially, it is not demonstrated in the Impact Assessment for the Consultation that was released on 6 December 2023 and we consider this to be a serious omission.

38. There is an assumption in the impact assessment that only 18% of leases have escalating clauses. We believe this assumes that all leases post 2000 have an escalation clause, and all leases prior, do not. Members' data would suggest that circa 50% of leases from pre 2000 have an escalating review term, and therefore the figure of 18% would be closer to 80%.
39. In the rest of this response, we seek to answer the consultation questions, although as a trade association many are not applicable to us.

Consultation questions

Demographic questions

Are you based in England or Wales?

England

What is your name?

Ian Fletcher

What is your email address?

ifletcher@bpf.org.uk

Are you responding as a leaseholder? (Please select "No" if: you are not a leaseholder and/or if you are responding on behalf of an organisation)

No

If "No", are you responding on behalf of an organisation?

Yes

Questions for organisations

What is the name of your organisation?

British Property Federation

If you are responding to this consultation on behalf of an organisation, what is the main interest of your organisation? Choose the most relevant option:

A Trade Association (for the property investment sector)

We understand that some organisations will have a diverse interest in this consultation. If your organization has a diverse interest, please select all of the below which apply. My organisation is:

An organisation representing freeholders

A Trade Association

Do you receive ground rent revenue?

No

Has your approach to residential ground rent changed since the government announced its intention to significantly reform the leasehold system (c.2017)? If so, how?

Not relevant to my organisation

Questions on the experience of leaseholders

Question 1: Think about how leaseholders experience ground rent. What do you see as the key problems that ground rents are causing for leaseholders? (select all which apply)

That the property cannot be bought or sold because some mortgage providers interpret a rapidly rising ground rent as constraint on the future transaction of the property. It is worth stressing that some lenders are also looking at service charge amounts as part of their affordability assessments, and so resolving rapidly rising ground rents through allowing amounts to be passed for service provision through the service charge may simply shift the problem.

Question 2: Do you have any evidence about the scale of any problems that ground rents cause to leaseholders?

Yes, earlier in our response we provided statistics from TPOS that illustrate ground rent issues are not in its top ten in 2023. There are some grounds rent that rise rapidly, but they are a very small part of the overall market, and a diminishing part, due to the Leaseholder Pledge, and other previous policy interventions.

If you answered "Yes", please expand on this by providing evidence

We come across examples of lending criteria which restrict loans on property which have a rapidly rising ground rent. There is no consistency, however, between lenders as to the criteria of what constitutes 'rapidly rising'. Also, the diligence with which the criteria is applied varies from lender to lender. The 0.1% ground rent to property value ratio the Government cites is not widely applied. And even those lenders that do apply such a figure, will offer flexibility, generally up to a 0.5% threshold.

Proposals to cap ground rent in existing leases

Question 3: If government were to legislate to rectify problems with ground rents in existing leases, which of the proposed options could achieve this? (Tick all which apply)

We have set out an alternative option 6. This builds on Option 4 in the consultation, but importantly it also preserves the real economic value of the original ground rent over time.

If you selected "None of the above" please explain why

None of the other options offered strike a proportionate response between the detriments cited, which are restricted to a minority of leases, and the impacts on investors' beneficiaries, which are wide-ranging and profound. Imagine if the Government were to declare it was raising the nation's

pension funds of £billions, there would be an uproar, but that is the effect of the options it is offering.

Question 4: Considering all options to cap ground rent, please rank the following in order of preference (1 being your most preferred option and 5 your least) and/or provide an alternative option.

We offer an alternative option 6. None of the other options we believe are proportionate or workable.

Please explain why you have ranked them in this way. You may wish to consider why you believe that your chosen option/s is the best approach for government to take.

Please see paragraphs 22 to 30 of our opening statement above.

Impacts of the options to cap ground rent

Question 5: Please consider Option 1 of capping ground rent at a peppercorn.

Please think about the impacts that this cap would have on:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders and the wider property market (developers, conveyancers, estate agents etc.)

A. Would capping ground rents at peppercorn have a positive, neutral, or negative impact on the following groups:

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Leaseholders				Not sure
Freeholders/intermediate landlords			-ve	

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Investors (including local authorities, pension funds and others)			-ve	
Mortgage lenders			-ve	
The wider property market (developers, conveyancers, estate agents etc).			-ve	

B-F. Please consider the impacts of a peppercorn cap on leaseholders, freeholders/intermediate landlords, investors – including local authorities, pension funds and others, mortgage lenders, and the wider property market.

As we explain in our opening remarks, a peppercorn cap is a disproportionate response to the predominant consumer detriment the consultation identifies, which is ‘rapidly rising’ ground rents.

This option has a severe impact on the investments of investors and their beneficiaries, such as pensioners and charities.

It has a high risk of legal challenge, and therefore potential compensation claims against Government.

It risks replacing more reputable freeholders with less reputable freeholders, therefore impacting on the quality of property management.

As some freeholders become insolvent it risks a far greater call on the services of the Treasury Solicitor, and a disorderly transition, with chaos in the lending market.

In the longer term, there is a risk that lenders feel less secure in lending on leasehold blocks as there is no strong freeholder to ensure the banks’ lending covenants are being observed.

G. Imagine government chooses a peppercorn cap. Consider whether there should be a period of delay between the legislation passing and a peppercorn cap coming into force. Which of the following statements do you agree with the most?

We do not support a peppercorn cap on ground rents, regardless of any period of delay.

H. If you selected "I would prefer for there to be a period of delay before a peppercorn cap was introduced", imagine that a peppercorn cap was introduced. What do you think would be the best time period between the law being passed and implementing the cap?

Not applicable

I. Imagine that a peppercorn cap was introduced with a period of delay before implementation. Which of the following statements do you agree with the most?

Ground rents should continue as they are, including the potential to increase, until the new cap is implemented.

J. Imagine that the peppercorn cap was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

No

Question 6: Please consider Option 2 of capping ground rent at an absolute value. Please think about the impacts that this cap would have on:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders
- the wider property market (developers, conveyancers, estate agents etc.)

A. Please consider whether this cap would have a positive, neutral, or negative impact on the following groups:

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Leaseholders				Not sure
Freeholders/intermediate landlords			-ve	
Investors (including local authorities, pension funds and others)			-ve	
Mortgage lenders			-ve	
The wider property market (developers, conveyancers, estate agents etc).			-ve	

B. Considering those impacts, what are the advantages of a cap at an absolute value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

We do not support this option.

C. Considering those impacts, what are the disadvantages of a cap at an absolute value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

This is sub-optimal option. It still has a significant impact on investors, but disproportionately benefits those with high value properties. A high ground rent may not be an 'onerous' one. Similarly, a low ground rent may be 'onerous' if it rises rapidly. We think it will be a fraught process to find a cap value that delivers the policy outcome. The benefits may also flow more to investor owners, rather

than live-in homeowners, given the proportion of high value leasehold flats in places like central London.

D. What should the absolute value figure be (£)?

We do not support this option.

E. What do you think would be the best time period between the law being passed and implementing the cap?

Not applicable

F. Imagine that the absolute value cap was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

Not applicable.

Question 7: Please consider Option 3 of capping ground rents at a percentage of the property value.

Please think about the impacts that this cap would have on:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders and the wider property market (developers, conveyancers, estate agents etc.)

A. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Leaseholders				Not sure
Freeholders/intermediate landlords			-ve	

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Investors (including local authorities, pension funds and others)			-ve	
Mortgage lenders			-ve	
The wider property market (developers, conveyancers, estate agents etc).			-ve	

B. Considering those impacts, what are the advantages of capping ground rents at a percentage of the property's value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

We do not support this option.

C. Considering those impacts, what are the disadvantages of capping ground rents at a percentage of the property's value?? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

We think the complexities of this solution rule it out. Getting property valuations is not something that people do regularly. Ground rents are predominantly small sums of money, and the cost of a valuation may exceed the value of the ground rent. There are simpler, cheaper, online valuation tools available in the market now, but nevertheless they still come with some cost. We can just see this option leading to more disputes as leaseholder and freeholder obtain valuation and counter valuation.

D. If the government did pursue this option, what percentage of the property value should this be and why?

We do not support this option.

E. Who should be responsible for undertaking such valuations?

We do not support this option.

F. What do you think would be the best time period between the law being passed and implementing the cap?

We do not support this option.

G. Imagine that the cap limiting ground rent to a percentage of the property's value was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

We have already set out that there should two exemptions regardless of option. The first, is exempting investment property. The second, various forms of property with communal service provision that goes beyond simple common parts. For example, retirement housing, and park home facilities. We explain our reasoning elsewhere.

Question 8: Please Consider Option 4 of limiting ground rents in existing leases to the original amount in the lease.

Please think about the impacts that this cap would have on:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders and the wider property market (developers, conveyancers, estate agents etc.)

A. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Leaseholders				Not sure
Freeholders/intermediate landlords			-ve	

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Investors (including local authorities, pension funds and others)			-ve	
Mortgage lenders	+ve			
The wider property market (developers, conveyancers, estate agents etc).		Neutral		

B. Considering those impacts, what are the advantages of capping ground rents at their original value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

It is a relatively simple solution. It removes the problem of rapidly escalating ground rents, by removing the escalation that has taken in place. Providing value is maintained through an RPI link, it means that the beneficiaries of ground rent investment do not see a disproportionate impact on their savings. It treats homeowners who bought a freehold fairly. Making it legislative means it does away with the time and hassle involved in varying leases, which is what current voluntary arrangements involve. It should dispense with different lender policies on what is 'rapidly rising' and what is not, ensuring all mortgage borrowers are treated the same.

C. Considering those impacts, what are the disadvantages of at their original value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

There will be some impact on the value of freeholder-held investments, but providing that value is maintained in real terms via indexing (i.e. a link to RPI) then the impact will not be as profound as other options, and compensation would not be sought.

D. Will ascertaining the original ground rent value in leases (i.e., the ground rent charged in the first year of the lease) create a significant problem for implementing this option across existing leases?

No

E. If the original ground rent amount (i.e., the ground rent charge in the first year of the lease) cannot be ascertained, how should the value of the cap be determined?

We do not think this will be a problem. It should be reflected in the lease.

F. What do you think would be the best time period between the law being passed and implementing the cap?

1 year – There will be some administrative work to look through leases and ascertain the original ground rent. Communication will take some time between freeholders and leaseholders, as to what is happening, and ensuring they understand the legislative requirement.

G. Imagine that the cap limiting ground rents in existing leases to the original amount was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

No

If you selected “Yes”, please list each circumstance or type of property you are thinking of. For each, please explain i) why they need for the additional leeway and ii) what should the transition period look like? Please provide evidence and account for all types of circumstance to which your response applies.

Question 9: Please Consider Option 5 of freezing ground rents at their current value. Please think about the impacts that this cap would have on:

- leaseholders,
- freeholders/intermediate landlords,
- investors (including local authorities, pension funds and others),
- mortgage lenders and the wider property market (developers, conveyancers, estate agents etc.)

A. Please consider whether this cap would have a positive, neutral or negative impact on the following groups:

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Leaseholders			-ve	

	Positive Impact	Neutral Impact	Negative Impact	Not sure
Freeholders/intermediate landlords			-ve	
Investors (including local authorities, pension funds and others)			-ve	
Mortgage lenders			-ve	
The wider property market (developers, conveyancers, estate agents etc).			-ve	

B. Considering those impacts, what are the advantages of freezing ground rent at their current value? Please explain your answer with reference to the key groups listed above and the scale of the advantageous impacts.

It is again a simple solution. However, it doesn't achieve the policy objective of relieving leaseholders of the burden of past rapid rises in ground rents if they have a ground rent of that nature.

C. Considering those impacts, what are the disadvantages freezing ground rent at their current value? Please explain your answer with reference to the key groups listed above and the scale of the disadvantageous impacts.

Like option 4, the impact on investors could be minimised through indexing of the ground rent, but it would be at the escalated value because of past rapid rises.

D. What do you think would be the best time period between the law being passed and implementing the cap?

We do not support this option.

Please explain why you have opted for that time period?

No response.

E. Imagine that the cap freezing ground rents at their current level was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

We do not support this option.

If you selected "Yes", please list each circumstance or type of property you are thinking of. For each, please explain i) why they need for the additional leeway and ii) what should the transition period look like? Please provide evidence and account for all types of circumstance to which your response applies.

F. Imagine that the cap freezing ground rents at their current level was introduced. Are there any circumstances or types of property which should be subject to different transitional arrangements?

We do not support this option.

If you selected "Yes", please list each circumstance or type of property you are thinking of. For each, please explain i) why they need for the additional leeway and ii) what should the transition period look like? Please provide evidence and account for all types of circumstance to which your response applies.

Question on uprating the chosen cap

Question 10: Imagine that a ground rent cap comes into force. Which of the following mechanisms for increasing ground rent do you most agree with?

Ground rents should increase by a pre-determined index link, such as the retail price index (RPI).

If you chose an option which allows for ground rents to be uprated, how regularly do you think ground rents should be reviewed, in years?

Annually.

If you chose an option which allows for ground rents to be uprated, please share further details on how you think your preferred mechanism should work.

We are conscious that in a high inflation environment, inflation itself to lead to ground rents rapidly rising. We have therefore recommended a further cap of 5%, with the ground rent rising by the lower of RPI or 5%. This will provide an additional protection to leaseholders in times of high inflation.

Questions on freeholder management functions and the transparency of costs

Question 11: Are there any specific freeholder management functions which cannot be charged through the service charge?

Yes

11a If you selected "yes" above, please set out what these functions are. Please provide this in the form of a list if there are multiple functions.

All leases confer responsibilities and obligations on both leaseholders and freeholders. Some freeholder obligations involve tasks which have a cost attributable to them, which is recovered through the service charge. Others, such as having the obligation to 'step in' to take over the management of a block if the residents management company or right to manage company fails or is wound up, do not have an identifiable current cost attached to them. Other (real world) examples include:

- **Assisting leaseholders with the unwinding of their RTM process after six months, during which the leaseholders realise that their main rationale for exercising their Right To Manage (the perception that their service charges would be lower as a result) is unfounded;**
- **Providing funding to enable leaseholders to replace the roof of their building where the Residents Management Company has failed to set up a reserve fund to cover such eventualities;**
- **Protecting leaseholders where the membership of an RTM company has paved the way for Air BnB rentals to the clear detriment of the building and its residents.**

In the absence of a ground rent, there is no reason for anyone to willingly assume this latter (and similar) obligations and responsibilities, regardless of whether tangible costs incurred can be recovered from the service charge, given the length of the lease term (which governs the relevant period of commitment).

Question 12: Our aim of making sure that freeholder management functions can be funded through the service is to improve the transparency and accountability of costs. Can you foresee any unintended consequences of bringing all freeholder management functions into the service charge regime?

Yes

If "Yes", please explain your thinking.

It is worth highlighting that ground rent is a specified, known amount recorded in the lease. This is the only sum a freeholder can currently receive for performing its obligations under the lease, regardless of the costs of performance. If the costs of meeting those obligations are brought into the service charge regime, which is open-ended, there is potential for the service charge payable to increase by more than the saving in the ground rent.

Most ground rent investors are backed by pension funds who are attracted by the fact that ground rent is an investable asset. If ground rent income were to be replaced by service charge income (which does not constitute an investable asset) these pension funds would become devalued overnight and at the very least require a) immediate write-offs of value and b) greater capital resourcing.

It is correct to say that “service charges are the route through which freeholders should charge...for management and maintenance costs”, this is a completely separate issue from the “obligation on the freeholder to realise these outcomes”. This latter requirement comes from the lease; without the ground rent it is hard to understand why any entity or individual would accept the obligations placed on the freeholder by the lease.

Question 13: Do you believe there are any specific considerations we need to give to blocks that have exercised the Right to Manage?

No

Please explain why you have given this response, including what any such considerations should be

Question 14: In instances where leaseholders have exercised the Right to Manage, does the freeholder or intermediate landlord continue to provide any specific freeholder management functions which contribute to the ongoing maintenance or smooth running of the building?

Yes

If yes, please give details of the role of the freeholder or intermediate landlord in these instances

Leaseholders who have exercised their Right To Manage often return the management responsibility to the freeholder once they no longer wish to take responsibility for the management of their own block. Under most leases the freeholder is also required to ‘step in’ if a resident-led body ceases to exist. It should be possible for those leaseholders who do not want to take responsibility for the management of their block to pass this to a freeholder. See also 11(a) above.

Questions on making our proposals work

Questions on compensation

Question 15: Imagine that a ground rent cap was introduced. Do you think that compensation should be paid to freeholders or intermediate landlords for any loss of ground rent revenue?

Yes

Please explain why you have given this response

Investors should be compensated at fair market value for their loss of income, and the loss in capital value of their assets.

It is not clear from the consultation, however, who pays the compensation? The Government has gone on record as saying it won't pay compensation. That, then begs the question who will pay compensation? Is the Government suggesting it should be leaseholders?

Even with compensation, a freeholder will be left with a ‘zombie’ asset. If the Government pursues a peppercorn cap for example, freeholders would be left with assets that are generating no revenue, but still come with liabilities, something compensation will not resolve.

As we have set out in paragraphs 7-10 of our introductory remarks, little obvious thought has been given to the transition from where we are to the Government's ultimate destination. Creating a situation where freeholders have zombie buildings is not good for them, but it is also not good for

leaseholders. It puts the management of such blocks at risk. It also, makes more difficult to transact such leasehold properties.

Question 16: Imagine that a ground rent cap is introduced. Do you think that leaseholders should be reimbursed for past payments of ground rent where they were above the newly introduced cap?

No

Please explain why you have given this response

Any retrospection would simply add to the £32.4bn estimated cost (in the case of a peppercorn rent) of the measures in the Impact Assessment, and make the impact even more disproportionate, ultimately harming pensioner and other beneficiaries of ground rent investments even more.

Question 17: Imagine that a ground rent cap is introduced. Do you think that leaseholders should pay any related administrative or legal costs?

No. Which is why we have focused on a simple solution. That also seeks to avoid freeholders' justifiable right to compensation.

Please explain why you have given this response

We think most of the Government's five options fail to strike the right balance in dealing proportionally with a problem in a small percentage of leases, whilst protecting pensioners' and other investors' income.

One of the upsides of our proposed alternative is that because it is proportionate any cost burden is relatively small and can be absorbed by freeholders.

Questions on enforcement

Question 18: For each option to cap ground rents, please indicate whether you agree or disagree that the enforcement provisions could mirror those set out in the Leasehold Reform (Ground Rent) Act 2022, including the financial penalties if freeholders and intermediate landlords impose a ground rent on leaseholders which falls outside of the reformed ground rents regime?

No response.

For any options where you indicated 'disagree' please explain your rationale.

We do not think that much enforcement activity would be required for the option 6. we have suggested. The simplicity of the solution means all parties should be aware of the legislative requirements. The 2022 provisions are fine, but we don't believe will be much used.

Questions on exemptions

Question 19: Please select any type of leases which you agree should be given an exemption to a cap on existing ground rent?

We agree that all of the categories listed should have an exemption.....

Where a lease has been granted for fewer than 21 years in length

A long residential lease where the current freeholder or intermediate landlord can prove they have negotiated an agreement resulting in the current leaseholder not having to pay a premium

Where leases are for community-led housing: where it is a community housing lease (where the landlord is a community land trust) or it is in a building controlled or managed by a co-operative society

Leases that are for home reversion plans or 'rent to buy' arrangements that rely upon rent to operate as a route to purchase a home

Business leases as defined by the Leasehold Reform (Ground Rent) Act 2022.

And, other

If "other" please specify, with reference to which types of leases should be exempt.

Investment property, for example leases held by buy-to-let landlords.

Various forms of retirement housing.

Park home facilities.

Please explain your rationale for selecting the options that you chose.

We have explained this in paragraphs 32. to 36. of our opening remarks.

Question 20: Do you think that Shared Ownership leases should be subject to the ground rent cap, for the share owned by the leaseholder?

Yes/No – see below

If "No", please explain your answer

Care will be needed to ensure in the legislation that true ground rent is targeted. The shared ownership lease structure should be excluded from the provisions to allow the payment through of rent in relation to the unacquired percentage.

A few shared ownership schemes do have true ground rent contained within them. The number is small. These broadly come under two approaches:

Ground rent payment obligations kick in once a tenant has staircased to 100% ownership whereupon the payment obligation in relation to ground rent to the ultimate landlord will apply. It would seem logical that these payments/ground rents are caught by the legislation;

Even rarer – an obligation to pay ground rent to the ultimate landlord or the RP (for the RP to pass on to the ultimate landlord through the RPs head lease) in addition to the rent in relation to the unacquired equity position to the RP. These can often be defined as being rent payments and therefore would the approach be for the exclusion to only apply to rents being paid in relation to unacquired ownership positions?

Questions on impacts:

Practical considerations

Question 21: Are you aware of any costs – other than lost ground rent revenue – that introducing a cap on ground rents would generate?

Yes

It depends on which option the Government pursues. There are some options, which for example, require valuations, or other administrative burdens in terms of checking what the existing lease terms are and whether they meet proposed cap methods.

Question 22: Are you aware of any practical barriers to introducing a cap on existing ground rents, which you have not addressed in your previous answers?

Yes

We have already identified the primary practical barriers. Firstly, whether a cap is legally in line with A1P1 of the European Convention.

Secondly, what follows in terms of the transition from current freehold owners to future ones, and how that is managed well, so it does not suck in less reputable freeholders, or lead to mortgage market chaos.

The consultation as a whole does not really talk about the risks to the public purse, lending market, and good property management.

Litigation is inevitable if the Government seeks to deprive investors and their beneficiaries of value, without appropriate compensation. The impact assessment illustrates that could amount to £32.4 bn.

There would also be significant consequences should freeholders become insolvent or opt for voluntary liquidation. Freehold interests would be disowned and revert to the Crown, inevitably resulting in building remediation being stymied, with the concomitant risk to leaseholder safety and the peaceful enjoyment of their homes. Transacting such homes would become far harder, as it would be unclear who owner the freehold, and was responsible for property management.

More freeholds could be driven into the hands of less reputable freeholders, who are only interested in exploiting the service charge. The Government could face reputational damage for letting that happen.

Lenders may also become more conservative as freeholders help ensure lease covenants are followed, and therefore lenders' security – the building – is protected and maintained.

The Leasehold and Freehold Reform Bill does not regulate property managers, and therefore there is a risk with more leaseholder-run blocks that they end up being run by unregulated managing agents.

It is also not clear where the volunteers are coming from to take on the freeholder function, particularly in circumstances where building safety is making volunteers more wary of coming forward.

Question 23: We want to hear about additional measures that could minimise the impacts of a cap on different stakeholder groups (leaseholders, freeholders and intermediate landlords, investors, mortgage lenders, the wider property market). What other measures, if any, should be considered to minimise any negative impact that a cap may have.

We have already mentioned the two main mitigations that should be considered. Our proposed option 6. is a far more proportionate approach to tackling the problem of rapidly rising ground rents – the primary problem the Government is seeking to resolve. By indexing ground rents, it also helps to mitigate against some of the most extreme and significant negative impacts on investor beneficiaries than other options.

The other major mitigation would be to exclude investment property (homes in the PRS) from any intervention. Thus, targeting the primary group the Government is seeking to protect – homeowners.

Question 24: Thinking about the responses that you have given to Questions 1-23. Do you believe any of the proposals put forward could negatively or positively impact individuals who have a protected characteristic. Please explain your rationale, and evidence your thinking where possible.

Age, disability & religion
Please explain your rationale

Some of the beneficiaries of ground rent income are charities. For example, the largest medical charity in the UK. Also, one of the largest religious charities. Inevitably their work will be hit by the loss of income derived from their ground rent investments. There may be charities that support other protected characteristics too, which we don't know about.

The measures being proposed will also have a disproportionate impact on older people, whose pension savings will be impacted by the measures being proposed.

Questions to freeholders and intermediate landlords

Throughout this section, please expand on answers given to previous questions. Where helpful, feel free to replicate evidence given previously.

Question 25: Do you wish to complete the questions aimed at freeholders/intermediate landlords and investors?

No

Question 26: As a freeholder or intermediate landlord, what income streams do you have available to you? Please indicate all which apply.

Not applicable to our response.

Question 27: As a freeholder or intermediate landlord, what are the key uses for ground rents income (select all which apply)

Not applicable to our response.

Question 28: As a freeholder or intermediate landlord, could you meet any ongoing loan obligations if government were to cap ground rent in existing leases?

Not applicable to our response.

28a If "Yes", how would you meet those obligations?

If "Yes", please explain how

Question 29: If you use ground rent revenue to perform freeholder management functions, would there be any impact on the management of your portfolio if you could no longer collect ground rent revenue?

Not applicable to our response.

29a. If yes, please set out what this impact would be? Feel free to replicate evidence supplied for Question 5 if helpful.

Question 30: If you use ground rent revenue to perform freeholder management functions, would there be any impact on the leaseholders in your block/s if you could no longer collect ground rent revenue?

Not applicable to our response.

If yes, what would the impact be?

Questions to investors:

Question 31: As an investor, have you lent against a residential portfolio and/or are you directly involved in the ownership and/or management of the property? If helpful, please provide further detail.

Not applicable to our response.

Question 32: As an investor, what proportion of your portfolio is currently invested in residential freehold/leasehold? If helpful, please provide further detail.

Not applicable to our response.

Questions for organisations involved in the wider property market:

Question 33: As a property professional, do you recognise the statement "residential ground rents can have a negative or undesirable impact on the sale of leasehold properties" to be true?

Not applicable to our response.

Question 34: In your view, how often do ground rents considerations either slow down or cause the collapse of leasehold property sales?

Not applicable to our response.

Question 35: As a lender, what are your key considerations when thinking about lending against a property? (Please select all which apply)

Not applicable to our response.

Question 36: As a lender, have you ever refused to lend on a leaseholder property owing to the level of ground rent?

Not applicable to our response.