



**Leasehold home ownership: buying your freehold or extending your lease
Law Commission Consultation Paper**

Myth-buster: Why is the Law Commission discussing landlords' human rights?

Terms of Reference

- Our Terms of Reference require us to:

“examine the options to reduce the premium (price) payable by existing and future leaseholders to enfranchise, whilst ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests”.

- An important part of compensation being “sufficient” is that it is compatible with human rights law.

Why are human rights relevant at all?

- Human rights protection is part of English law. The European Convention on Human Rights (the “ECHR”) was incorporated into English law by the Human Rights Act 1998.
- The 1998 Act requires Government to confirm that, in its view, a proposed law is compatible with the human rights set out in the ECHR. The 1998 Act also allows a court to declare that any provision of an Act that Parliament that has been passed is incompatible with the ECHR.
- Any reduction in premium which is not compatible with human rights law is therefore liable to be struck down.

Whose human rights are relevant?

- The ECHR states that ‘every natural or legal person is entitled to the peaceful enjoyment of his possessions.’ (Article 1 to the First Protocol to the ECHR: “A1P1”). That means that property rights are protected whether held by an individual or a company, and whether the company is based in the UK or elsewhere. The ECHR also provides that “everyone has the right to respect for his private and family life, [and] his home...” (Article 8(1) of the ECHR).
- Leaseholders and landlords have property rights to be protected under A1P1. Additionally, leasehold homeowners benefit from the protection of their home under Article 8. However, case law has established that enfranchisement specifically involves an interference with the landlord’s property under A1P1.

- But A1P1 is what is known as a 'qualified right': the interference with a landlord's property can be justified where a legitimate aim is being pursued by reasonably proportionate means. Proportionality requires a balance to be struck between the needs of the community – including the interests of leasehold homeowners – and the landlord's human rights.

How does this affect the law on enfranchisement?

- Landlords' human rights do not prevent leaseholders buying their freeholds or extending their leases against the wishes of their landlord.
- But the acquisition of a freehold or lease extension will only be permitted if the level of compensation payable to a landlord is sufficient to justify the interference with the landlord's property rights. Views on what amounts to sufficient compensation differ, although some guidance exists from the current law.
- It is not necessary for landlords to be provided with full market value for their interest. There is some discretion within which property rights can be interfered with to achieve a legitimate aim. But the further away from market value the compensation is, the more difficult it may be to justify the interference.

How does this affect our consultation paper?

- We have set out options for reducing premiums payable by leaseholders, and invited views on them.
- We have begun the work of considering whether those options are likely to be considered to provide landlords with sufficient compensation and therefore be compatible with the ECHR.
- In our final report, we will set out the options for reducing premiums and our conclusions on their compatibility with the ECHR.
- It will then be for Government to decide whether, and if so how, premiums should be reduced.