



From Lord Berkeley  
07710 431542 [berkeleyafg@parliament.uk](mailto:berkeleyafg@parliament.uk)

Baroness Scott of Bybrook  
Minister of State, Department for Levelling Up, Housing and Communities  
8 February 2024

### **Leasehold Reform and Freehold Bill – Crown Immunity and the Duchy of Cornwall**

I wanted to give you advance notice of my intentions in respect of this Bill when it reaches the Lords.

My interest in this is that I live in the Isles of Scilly in a house leased by my wife from the Duchy and am in touch with many residents there. You may be aware that the Duchy, in claiming to own the Isles of Scilly, have special and perhaps unique leases with many of the residents, which often puts the residents at a severe disadvantage in terms of security of tenure, future lengths of leases as well as issues of maintenance and renewals and upkeep of common parts such as roads.

Some of these issues are put down by the Duchy about shortage of money and difficulties of attracting workers to the islands, although one can dispute both these issues as well as compare any such issues with other major estates on the mainland: for better for worse.

The leasehold changes proposed in this Bill are welcome and I am pleased that your government is resisting many of the special pleading issues that undoubtedly occur regularly and are dealt with. There are a number of Duchy leaseholders who have tried, so far unsuccessfully, to buy the freeholds of their properties, and who see the present Bill as providing the opportunity for this welcome democratic process to apply to them too.

The Duchy of Cornwall, however, appear to believe that it should have exceptions from parts of this Bill on the basis that the Duchy is part of the Crown and Crown Lands, and that it would be unthinkable for properties considered to be 'Royal' or historic buildings or properties to be subject to the long leases (990 years) and effectively sold off. The same comment would apply, of course to the Crown Estates offshore oil and gas holdings.

However, I believe that the Duchy of Cornwall comes into a different category because it claims to be in the private sector; see its website '*The **Duchy of Cornwall** is a private estate established by Edward III in 1337 to provide independence to his son and heir, Prince Edward.*' The Duchy also has many special privileges achieved over the years, but it is now a major landowner with thousands of leaseholders/tenants and, in this regard, there can no longer be any justification for the Duchy to treat their leaseholders/tenants in any manner differently to the way that other landlords, be they small private owners with one property to let out, or the Duke of Westminster. This Bill should catch all when it becomes law.

As the Bill now stands, the one exception is that Crown Immunity is applied to this and to most other bills unless specifically excluded. I see no evidence that there is any intention of the Crown or the Duchy to apply to have this general immunity removed; this would in any event be inappropriate in respect of the Crown Estates and probably the Duchy of Lancaster properties. However, for most of the Duchy of Cornwall properties, I believe that there is a strong case for the Duchy of Cornwall's Crown Immunity to be removed from this Bill.

The attached letter to me from the Duchy of Cornwall, 21 December 2023 confirms that the Duchy believes that the status quo can be maintained through a 'ministerial undertaking that will be provided at an appropriate time in the parliamentary process.'

Clauses 7.173, 7.174 and 7.175 of the Law Commission's Report refer in some detail.

Clause 7.174 states that *'The Crown has given an undertaking which ought to ensure that most of its "ordinary" properties will have the same enfranchisement rights as other leaseholders. The properties not covered by the undertaking – those in the "exception areas" – will, in general, be those in respect of which there is a good reason for the usual enfranchisement rights to be unavailable.'*

However, nowhere is there any text of the Undertaking, or locations of properties in the category of 'ordinary' or 'excepted areas' and, on past performance, the Duchy will attempt to delay provision of such information until it is too late to debate in this Bill.

So, I have several concerns about this process.

1. The definition of 'exception areas' which might justify special treatment. Whereas this might apply to Carlton House Terrace and other historic buildings in London and elsewhere, I can see no argument for applying this to any buildings on the Isles of Scilly, even the few adjacent to St Mary's Garrison which was built several hundred years ago. The Duchy appears to want to include small houses of little architectural merit on St Mary's and the Off Islands. The absurd situation prevails in that leaseholders on one side of the Garrison Wall on St Mary's can claim enfranchisement, but on the other side enfranchisement is not available as the Duchy claims an exception area.
2. There needs to be an appeal mechanism included in the legislation to enable those who disagree with the Duchy, or with any Ministerial Undertaking, to be heard.
3. We need to know the timing of the publication of any such Ministerial Undertaking.

There are many in the Isles of Scilly and elsewhere who believe that the status quo is not acceptable, as this puts them, as leaseholders, at a serious disadvantage in security of tenure as well as cost. I can see no reason why the Duchy of Cornwall should expect to retain these privileges whilst at the same time claiming to be in the private sector. Why should their leaseholders be treated differently from others in the private sector?

The present system of Leasehold Tenure has been described as 'medieval' and 'feudal' by many experts, including Dr John Kirkhope. Now we see the possibility of leasehold tenants being liberated by this Bill from that 'medieval' system of land tenure, except if the tenants are of a 'private' estate called the Duchy of Cornwall. So, as the Bill stands, the tenants of the Duchy of Cornwall are to continue to be subject to a 'medieval' system of tenure which dates back to the Norman Conquest, for no good reason except that the Duchy considers itself special. As Dr Kirkhope has stated, 'it is discriminatory and just plain wrong. It's a breach of leaseholder's human rights. It is corrupt.'

So, my default position is to put down an amendment at Committee Stage in the Lords that removes the Crown Immunity from the Duchy of Cornwall in respect of this bill. I believe that this is a much cleaner way of safeguarding the Duchy leaseholders than having a complicated debate about "exception" areas' etc.

If, as may be the case, Government accepts the Duchy pleadings and seeks to go forward with a 'Ministerial Undertaking' I would appreciate the opportunity to discuss this with you at an early stage.

I look forward to your comments.

Lord Berkeley



## DUCHY of CORNWALL

10 BUCKINGHAM GATE LONDON SW1E 6LA

Telephone: 020-7834 7346 Facsimile: 020-7931 9541

20 December 2023

Lord Berkeley  
House of Lords  
Houses of Parliament  
Parliament Square  
London SW1A 0PW

*Dear Tony,*

### **Leasehold and Freehold Reform Bill**

Thank you for your letter of 9 December. Before responding to your question, please can I assure you that your letters and email correspondence are always considered carefully, and their content duly noted. We take very seriously all your comments, including those made directly, relayed through meetings with my team or received third hand through the Hansard record.

Regarding the Leasehold and Freehold Reform Bill, as you know, the Law Commission's recommendation (para 7.175) was that any new enfranchisement regime maintain the position on 'Crown interests', and that the practical application of the regime to 'Crown land' continue to be governed by a Ministerial undertaking. As a result, I was not expecting the Bill to set out the Crown position, and that has proven to be the approach the Department has adopted. I expect that position to be set out, in common with other Crown interests, in the Ministerial undertaking that will be provided at the appropriate time in the Parliamentary process. I, of course, respect your right as a Member of the House of Lords to set down amendments as you see fit, even if at odds with the Law Commission's recommendation.

In terms of our relationships with our tenants, we have considered carefully the observations and recommendations of the Law Commission and how best to address them. Once the Bill is in a more settled state, we fully intend to work with our tenants to ensure that they understand the implications of the new law and the changes it will make for them depending on the nature of each

of their particular tenancies. Given the uncertainties in the evolution of the primary legislation at this time, we are monitoring the impact the new law will have across a range of properties.

I am sure we will have further exchanges on this matter.

Yours Ever,



Alastair Martin  
Secretary

AGM/LCH