

From Lord Berkeley
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Baroness Scott of Bybrook
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Freehold and Leasehold Reform Bill
Undertaking from the Crown in relation to the Duchy of Cornwall

I was grateful to hear your responses on my Amendment 106 in the Committee Stage of the Bill on Wednesday 24 April and in particular...(Col 1535) where you stated that..

'The current position is that most Crown leaseholders enjoy the same lease extension and enfranchisement opportunities as other leaseholders, by virtue of the Crown's undertaking given to Parliament to act by analogy.... We also expect that the Crown will agree to act by analogy with the Bill before us. The effect will be that most leaseholders of the Crown will have the same opportunity to extend their lease or buy their freehold as any other leaseholder would, except in certain special circumstances set out in an undertaking we expect to be given by the Crown.'

You continued ...'The Law Commission recommended that the Crown should remain exempt from statutory enfranchisement rights on the basis that Crown bodies will give an undertaking to act by analogy with the new enfranchisement regime except in special circumstances. The Government are therefore implementing those recommendations.'

I write now in respect of the analogy and the special circumstances relating to the Duchy of Cornwall's land holdings.

The Law Commission set out the above 'special circumstances' in paragraph 7.151 as four groups of 'excepted areas' (7.152) noted that the Crown Estates and Duchy of Lancaster have agreed to 'adopt voluntary policies in respect of properties located in these areas.

Unfortunately, I understand that the Duchy of Cornwall has so far declined to join.

The Law Commission report continues 7.178 (2), 'we suggest that the first three categories of excepted areas under the current undertaking should remain excluded from any future undertaking. We have not heard of any issues relating to these categories, and we consider that the reasons for exempting properties in these categories from freehold acquisition rights (if our suggestion above is adopted) are self-evident.

'However, we are mindful of the consultation responses we have received from Duchy of Cornwall leaseholders in particular, explaining that their homes are perfectly ordinary properties, but nevertheless fall within the fourth category of

excepted areas because the surrounding area is deemed to have a “long historic or particular association with the Crown”. We agree that the wording of the fourth category of excepted areas is somewhat vague, with its reach being potentially much wider than the equivalent category in place prior to 1993. We therefore invite the Crown bodies, in formulating any future undertaking, to consider how any equivalent category might be framed (in respect of the Duchy of Cornwall) so as to capture only those where exemption is truly necessary.’

The Law Commission also suggested that the undertaking provides that, in these analogous cases, the Crown agrees to be bound by arbitration in the event of a dispute over valuation or other terms. (7.150)

So in summary, it appears that Government, on behalf of the Crown, accepts the recommendations of the Law Commission that the Crown should accept the terms of the Bill that its properties be treated as analogous to the other properties which come under the scope of the Bill. However, as a separate case, for Duchy of Cornwall properties, noting that although they fall within the fourth category of excepted area which, for Duchy of Cornwall properties is seen as ‘somewhat vague’, the Law Commission invited the Duchy and the Government to come up with an equivalent strategy to capture only those properties where exemption is truly necessary.

I would argue that there are no properties on the Isles of Scilly where an exemption is truly necessary; in which case the Duchy of Cornwall should abide by the assurances which will hopefully be given for the other parts of the Crown. If the Duchy of Cornwall really believes that there are some properties where an exemption is necessary, then it surely must state so in writing to Parliament, and at a time before Report Stage of this Bill. Only in this way would parliamentarians have an opportunity for the document to be debated and, if necessary, voted on.

So that leads me to request that we meet before Report Stage as you kindly promised, and that the Duchy attend the meeting so that we can reach a conclusion. A prerequisite is of course for us to have a copy of a draft Undertaking to discuss at the meeting.

Lord Berkeley