EXPLANATORY MEMORANDUM TO

THE LEASEHOLD REFORM (GROUND RENT) (BUSINESS LEASE NOTICES) REGULATIONS 2022

2022 No. 578

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Leasehold Reform (Ground Rent) Act 2022 ("the Act") excepts certain leases, including 'Business Leases', from the requirements of the Act.

2.2 These regulations specify the form, content and evidence of the method of giving written notices by landlord and tenant, in order for the lease to be excepted.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 Lord Greenhalgh, ('Minister of State for Building Safety and Fire at the Department for Levelling Up, Housing and Communities') has made the following statement regarding Human Rights:

"In my view the provisions of the Leasehold Reform (Ground Rent) (Business Lease Notices) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under sections 2(2) and 21(1) of the Act. This instrument specifies the form and content of the written notices that the tenant and landlord are required to give each other at or before the time that certain leases are granted, including several statements that must be made by the prospective landlord and tenant. This instrument also specifies the methods of evidencing giving of the written notices.

6.2 The Act put an end to ground rents for most new residential leasehold properties. The Act means that if any ground rent is demanded as part of a new residential long lease, it cannot be for more than one literal peppercorn per year.

6.3 The Act does not apply to a limited number of leases that are excepted from the provisions, including 'Business Leases'. This means that leases that fall within the Act's definition of 'Business Leases' have no such restriction in terms of the level of

ground rent charged. Business Leases are as defined by section 2(1) of the Act ***as*** where the premises demised (in other words conveyed) by the lease contain a dwelling, for example a flat above a shop, where the dwelling is part of the same lease and significantly contributes to the business purposes. The Act provides a power to the Secretary of State to make further regulations as to the form and content of the written notices to be given.

6.4 As part of the qualifying criteria for a 'Business Lease' exception, the landlord and tenant must give written notices at or before the time the lease is granted confirming the intention to use and continue to use the premises for the business purposes, including a dwelling, as set out in the lease.

7. Policy background

7.1 A consumer who buys a property under a long residential lease (the leaseholder) has in the past been typically required to pay an annual charge, known as a 'ground rent', to the freeholder of the building (the landlord) for the duration of the lease.

7.2 The Government consultation 'Implementing reforms to the leasehold system' in England, was conducted in 2018. Following this consultation, the Government announced in 2019 that it would make an exception for 'Business Leases' from the peppercorn restrictions policy. The intention was to avoid the peppercorn policy interfering with legitimate commercial practices. It was also decided that precautions should be included in the forthcoming legislation to prevent landlords of primarily residential leases seeking to avoid the restrictions by classifying what was primarily a residential lease as a 'Business Lease'.

7.3 As a result, the Act provided an exception for 'Business Leases' from the peppercorn provisions.

7.4 'Business Leases' are defined by section 2(1) of the Act as a single lease which covers both commercial premises and a dwelling in which the dwelling significantly contributes to the business purposes, and where a rent is charged. For a new 'Business Lease', the Act requires the tenant and landlord to give each other written notices at or before the time the lease is granted to confirm their intentions that the premises (including a dwelling, the use of which substantially contributes to the business purposes) will be used and continue to be used for the business purposes. This is to ensure that it is clear from the outset that both parties are aware of the reason that a rent may be charged for the property.

7.5 The Act does not specify the details that must be included in the written notices or how they may be given by the landlord and tenant. The Act provides a power to the Secretary of State to make further provision in regulations about the form and content of the written notices required to be given by the landlord and tenant.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no consolidation needed.

10. Consultation outcome

10.1 In the development of these Regulations, the Government consulted stakeholders who use similar notices and considered their feedback.

11. Guidance

11.1 The content of this SI is referred to in several pieces of guidance that the Government has produced to support with the implementation and enforcement of the Leasehold Reform (Ground Rent) Act.

11.2 Additionally, the Government has written to solicitors, legal executives, licensed conveyancers and relevant professional bodies detailing the new peppercorn restrictions, including reference to this statutory instrument.

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

12.4 An impact assessment was produced for the Leasehold Reform (Ground Rent) Act and can be found at: https://bills.parliament.uk/publications/41512/documents/258.

12.5 The Ground Rent Act requires a written notice to be given in order to meet the 'Business Lease' exception. This instrument will ensure landlords and tenants have a basis for easily replicating clear content for their written notices. This instrument will likely reduce the amount of work, uncertainty, and therefore costs involved in drawing up such notices either by the landlord and tenant themselves, or by a legal representative. This statutory instrument will also likely have the effect of minimising the number of disputes and associated costs in relation to whether a lease is exempt.

13. Regulating Small Business

13.1 This instrument will make the process more straightforward for small businesses to meet the 'Business Lease' exemption and reduce the risk of disputes. It applies to small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause given that it will make the process for businesses to meet the 'Business Lease' exemption more straightforward.

15. Contact

15.1 Jenny Frew at the Department for Levelling-Up, Housing and Communities. Email: Jenny.frew@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Robin Froggatt-Smith, Deputy Director for Leasehold, Commonhold and Rent Charges at the Department for Levelling up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Greenhalgh at the Department for Levelling up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.