These notes refer to the Commonhold and Leasehold Reform Act 2002 (c.15) which received Royal Assent on 1st May 2002

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Commonhold and Leasehold Reform Act which received Royal Assent on 1st May 2002. They have been prepared by the Lord Chancellor's Department (LCD) and the Department for Transport, Local Government and the Regions (DTLR) in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act sets out to achieve the following ends:

Part 1 - Commonhold

- to define the nature of commonhold;
- to specify the registration process;
- to define the commonhold unit and the transactions which may take place, such as transfer, leasing etc.;
- to define the common parts of a development and to regulate their use, maintenance, transactions, such as charging etc.;
- to define the form and content of a commonhold community statement;
- to define the constitution and operation of the commonhold association;
- to deal with winding up of a commonhold association, both voluntarily and by the court;
- to make other miscellaneous and general provisions.

Part 2 - Leasehold Reform

- to give leaseholders a new no-fault right to manage their block of flats;
- to define the body corporate which will take over management, which will also be a private company limited by guarantee;
- to define the eligibility criteria (similar to the revised criteria for collective enfranchisement);
- to set out the procedures for exercising the right;

- to set out the functions and responsibilities of the managing body when the right is exercised;
- to provide safeguards for the landlord's continuing interest;
- to provide for what happens to pre-existing management contracts when the right is exercised;
- to provide dispute resolution procedures;
- to provide for the termination of the right where the body fails to manage the building properly, or no longer wishes to exercise the right, or becomes insolvent;
- to make such other provisions as are necessary for the purposes of the right to manage;
- to amend the rules for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act");
- to require that a body corporate (a company limited by guarantee with a prescribed constitution) be used to own the building;
- to simplify the eligibility criteria, e.g. abolishing the residence test and the requirement for at least two thirds of the leaseholders to participate;
- to amend the procedures for exercising the right;
- to give every qualifying leaseholder the right to join the company and thus participate in the enfranchisement;
- to clarify and simplify details of the valuation arrangements;
- to make consequential changes to the rules for the right to a new lease of a flat under the 1993 Act reflecting the changes to the rules for collective enfranchisement;
- to make consequential changes to the rules for the right of leaseholders of houses to buy the freehold or extend their lease under the Leasehold Reform Act 1967 ("the 1967 Act") reflecting the changes to the rules for flats;
- to give leaseholders who have extended their leases under the 1967 Act, the right to buy their freehold and to security of tenure at the end of the lease; and to change the procedures for buying the freehold of houses where the landlord cannot be found in line with the law in relation to flats;
- to strengthen the protection of leaseholders against the demanding of unfair charges;
- to extend the definition of service charge to include the cost of improvements;
- to simplify and strengthen the existing consultation requirements relating to service charges;
- to simplify and strengthen the existing requirements covering accounting for and safeguarding service charge monies;
- to introduce the right to challenge the reasonableness of one-off charges not recovered as service charges ('administration charges');
- to give leasehold valuation tribunals ("LVTs") jurisdiction to hear any dispute over liability to pay service charges and the reasonableness of the charge or the works or services involved;

- to extend the scope of the right to apply to a LVT for the appointment of a manager under Part 2 of the Landlord and Tenant Act 1987 ("the 1987 Act");
- to extend and clarify the grounds for applying for lease variations under Part 4 of the 1987 Act and to transfer jurisdiction to LVTs;
- to provide that action cannot be taken to forfeit a long lease for non-payment of ground rent unless that sum has first been demanded for the landlord; and that forfeiture action cannot be taken on any other ground unless the validity of that ground has first been established;
- to provide that forfeiture action cannot be taken for amounts which are less than a prescribed sum unless the amount or any part of it has been outstanding for a prescribed period; and a power to prescribe additional or different requirements to those already in existing legislation before forfeiture can be exercised in relation to breach of contract or condition in a long lease of an unmortgaged dwelling;
- to apply existing and new rights in respect of service charges, administration charges and protection against forfeiture to tenants of the Crown.
- to provide new rights for leaseholders of houses who are required by the terms of their lease to insure with an insurer nominated or approved by the landlord;
- to provide that charges levied by landlords under estate management schemes are to be subject to a test of reasonableness to be determined by the LVT;
- to consolidate and rationalise existing provisions governing the constitution and procedures of LVTs, and to amend them;
- to require permission for appeals against LVT determinations to the Lands Tribunal;
- to implement the recommendations of the Financial Management and Policy Review covering the work of the LVTs.

Part 1 - Commonhold

Background

Problem

4. In England and Wales, there are two ways to own land, freehold and leasehold. Each has its advantages and disadvantages in particular circumstances. Freehold comes closer to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract, or lease.

5. A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another. There are two types of covenant: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it. However, both positive and restrictive covenants apply to leasehold property.

6. The problems with covenants are accentuated in the case of blocks of flats, where each flat will often depend on its neighbour for support and shelter, and the very stability of the building depends on the proper maintenance and repair both of the individual flats and the common parts. This means that, where it is desired to set up a scheme to allow for ownership of interdependent properties and for the management of the common parts and facilities, the scheme must, today, be based on leasehold ownership. There

is no satisfactory scheme at present which would allow for freehold ownership in such circumstances.

7. As long term residential leasehold has become more and more widely criticised, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold.

Brief outline of the proposed solution

The nature and creation of a commonhold development

8. Each separate property in the commonhold development will be called a unit. It might be a flat, or a house, a shop or a light industrial unit. The owner will be called a unit-holder. The body which will own and manage the common parts and facilities of the development will be called the commonhold association. The commonhold association will be a private company limited by guarantee, whose membership will be restricted to all the unit-holders within the development. The commonhold association will be registered at Companies House in the usual way and will have a standard set of memorandum and articles of association of the commonhold association which will be prescribed by the Lord Chancellor from time to time. This means that all the unit-holders in a development will have two interests in the property of the commonhold; a direct interest in the unit or units that they own and membership of the commonhold association which owns the common parts.

9. The commonhold association with its common parts and the associated units will be registered at HM Land Registry. In order to register, the developer of the commonhold development or the sponsor of a converting development will be required to present to HM Land Registry the memorandums and articles of association, and the commonhold community statement, which will contain the rules of the particular commonhold. There will need to be a degree of flexibility to allow for unique features of a particular development, for example to provide for the upkeep of a site of special scientific interest, or to make special arrangements for a sheltered housing component in the development. Allowance for this is to be made in the commonhold community statement where in addition to the prescribed matters, those relating to the individual attributes of the commonhold development can be set out. These discretionary elements will be registered and form part of the documentation maintained by HM Land Registry.

10. If it is necessary to obtain the consent of anyone with an interest in the land, those consents must be supplied at this stage and finally, a certificate will be required to confirm that the memorandum and articles of association and the commonhold community statement comply with the relevant Regulations. Once the required documents have been processed by HM Land Registry, the commonhold will be registered.

11. It will be possible for a unit to consist of two or more separate areas of land, for instance a flat with a garage in a detached block, or perhaps a shop with a separate storage unit. Units may be divided from each other vertically, as are terraced houses, horizontally, as are flats in a block, or may be free standing, as are detached houses or, often, light industrial units. However, where the divisions are horizontal, no part of the commonhold may be over any part of a building which is not part of the same or an associated commonhold development.

Conversion

12. It will be possible to convert from leasehold to commonhold but only if certain criteria are met. Details will be contained in Regulations, but it will be necessary to obtain the consent to conversion of 100% of the existing leaseholders and /or other owners of what would become units in the commonhold.

13. It is not intended that any scheme of conversion to commonhold should give rights to commercial leaseholders or rack rented commercial occupiers which would go beyond the scheme developed by the DTLR for collective leasehold enfranchisement. DTLR's scheme relating to qualifying buildings and tenants and rules relating to payments to existing landlords, where applicable, will be adopted so far as is possible, with the exception that to convert to commonhold will require 100% consents. Thus rules will be substantially the same for both types of conversion. Details will be contained in Regulations.

14. At the time of conversion all leasehold interests will cease to apply as will all terms of all leases and the units will be governed by the memorandum and articles of association and the commonhold community statement of the commonhold association.

Management of a commonhold development

15. It will be possible to add to and to diminish the size of the development by the purchase or sale of common parts provided that the specified majority of the members of the commonhold association is achieved at an appropriate meeting. There will be rules to govern the distribution of capital receipts arising from such a sale.

16. The voting rights of unit-holders in the commonhold association, the size of the various types of majority required for particular purposes, the minimum requirements for the maintenance of accounts and the machinery for the setting and for the payment of the commonhold assessment, which will be substantially similar to service charges, will all be set out in the standard memorandum and articles of association or the commonhold community statement.

17. The memorandum and articles of association or the commonhold community statement will set out the procedure for dealing with disputes arising within a commonhold. These are to be dealt with initially by use of internal procedures. Should these fail to settle matters, alternative dispute resolution (ADR) will be provided for. However, it is not intended to refuse access to the courts and tribunals as necessary. The Act will make provision for the making of Regulations which will provide for this.

18. The Act will make provision for the commonhold community statement to set out the rules governing rights of entry of the commonhold association for inspection and its right to carry out works and to recover costs of such works in cases of emergency or to facilitate its obligations to maintain and repair.

Winding up of a commonhold association

19. The detailed rules governing the winding up of a commonhold association will be contained in Regulations, though the scheme is set out substantially in the Act. The Regulations will require that the commonhold community statement sets out the rules governing the distribution of any profit arising on a voluntary winding up and other matters relating to the process. The winding up of an insolvent commonhold association will be carried out, so far as possible, under the standard insolvency rules. Any deviation from those Rules will be laid down in Regulations.

Part 2 - Leasehold Reform

Summary

19. Part 2 of the Act makes reforms to residential leasehold law. These reforms will give leaseholders new rights and enhance their existing ones. They will help those leaseholders who will not be able, or who may not wish, to convert to commonhold.

20. A new right is established to enable leaseholders of flats to take over the management of their building without the need to prove shortcomings on the part of the landlord and without the need to pay compensation. The Act will make it easier for leaseholders of flats to buy collectively the freehold of their building by simplifying the eligibility criteria for exercising the right and reducing the prospect of costly disputes over the

price payable. This will give all qualifying leaseholders the right to participate in such a purchase. Comparable changes are made to the right for individual leaseholders of flats to buy a new, longer lease and the right for leaseholders of houses to buy their freehold or extend their lease under the 1967 Act. Leaseholders of houses who have extended their leases under the 1967 Act will be given the right to buy their freehold and, if they do not, security of tenure when the extended lease expires.

21. This Part of the Act also provides greater protection for leaseholders against unreasonable service charges and other payments. It will enable leaseholders to resolve a wider range of disputes before a LVT. It will strengthen the existing requirements for landlords to consult leaseholders about major works and extend them to cover any contract for works or services lasting more than 12 months. It will provide new rights for leaseholders of houses who are required to insure their property through an insurer nominated or approved by the landlord. It will simplify and strengthen the existing requirements for accounting and safeguarding service charge monies. It will provide that charges levied by landlords under estate management schemes are to be subject to a test of reasonableness to be determined by the LVT. It will extend the scope of the right to apply to a LVT for the appointment of a new manager and make it easier to vary defective leases. It will restrict the charging of penalties for late payment of ground rent and prevent the commencement of forfeiture proceedings until the facts have been determined. It will also prevent the commencement of forfeiture proceedings for amounts which are less than a prescribed sum unless the amount or any part of it has been outstanding for a prescribed period.

Background

22. There are currently around one million leaseholders of flats in England and Wales and a similar number of leaseholders of houses. It has long been recognised that the leasehold system of tenure has many drawbacks for long term residential occupiers. An investment in a home steadily loses value as the lease approaches the end of its term. Many leaseholders experience serious difficulties with their landlords, ranging from neglect of their obligations under the lease to outright exploitation. The system is virtually unique to England and Wales.

23. There have been a number of leasehold reform measures over the past 30 years or so which have attempted to remedy the worst defects of this form of tenure and give leaseholders redress against landlords' abuse of their position. However, the protection afforded by the law remains incomplete and the remedies available to leaseholders are unduly difficult and costly to use. The commonhold system introduced by Part 1 of the Act will provide a new form of tenure for properties containing several units, which is free from the drawbacks of the leasehold system. However, as explained in the notes to Part 1, many existing leaseholders are unlikely to be able to convert to commonhold and there is therefore a need to address the problems they face with the existing system.

24. In November 1998, the Government issued a consultation paper, 'Residential Leasehold Reform in England and Wales – A Consultation Paper', which invited views on the broad principles of a wide range of reforms. This paper attracted considerable public interest with over 900 organisations and individuals responding. A summary of the responses was published in December 1999[1].

25. In the light of responses received, the Government published detailed proposals for leasehold reform, along with those for Commonhold, in the form of a draft Bill and consultation paper on 21 August 2000[2]. This also attracted considerable public interest with just under 1,100 organisations and individuals responding on leasehold issues.

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1 [1] An Analysis of Responses to 'Residential Leasehold Reform in England and Wales – A Consultation Paper' Final Report. Available from the Department for Transport, Local Government and the Regions, Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB tel: 0870 1226 236 e-mail: detr@twoten.press.net

2 [2] Commonhold and Leasehold Reform – Draft Bill and Consultation Paper: Cm 4843. Available free from The Stationery Office.

Chapter 1: Right to manage

26. This Chapter introduces the new right for leaseholders of flats to manage their own building. It sets out the qualifying conditions for exercising the right and provides that eligible leaseholders must set up a qualifying company, known as a RTM company, in order to exercise it. It specifies on the face of the Act, and through a power to make regulations, the constitution of the company, including its memorandum and articles of association and entitlement to membership. It sets out procedures for exercising the right to manage and for the subsequent management of the building. It includes safeguards to protect the legitimate interests of the landlord and any other occupiers of the building (e.g. tenants on short residential leases and commercial occupiers). It also provides for the termination of the right if the leaseholders wish to do so, or if the RTM company fails to manage the building properly or becomes insolvent.

Chapter 2: Collective enfranchisement by tenants of flats

27. This Chapter amends the provisions of the 1993 Act dealing with the right of leaseholders to buy collectively the freehold of their building. It simplifies the eligibility criteria. In particular, it removes the requirements that at least two thirds of the leaseholders in the block must participate and that at least half of the participating group must have lived in their flats for the previous 12 months (or periods totalling three years in the last ten). It abolishes the low rent test in the few circumstances where this still applies (leases of less than 35 years). It also increases the proportion of the building that can be occupied for non-residential purposes from 10% to 25% and reduces the scope of the exemption for certain resident landlords.

28. At present, the 1993 Act provides for the freehold to be purchased on behalf of the leaseholders by a ‘nominee purchaser’ approved by them. It does not make any provision as to the nature or constitution of the nominee purchaser. This Chapter amends the 1993 Act so that the purchase of the freehold and subsequent management of the building is carried out by a ‘RTE company’ of which the participating leaseholders are members. The Act contains provisions relating to the constitution of the RTE company and a power to prescribe others by regulation. The constitution is similar to that of the RTM company for the purposes of the right to manage introduced by Chapter 1. All qualifying leaseholders will have the right to participate in the purchase by joining the company.

29. This Chapter also amends the valuation principles in the 1993 Act. It provides that where marriage value exists, it should be divided equally between the landlord and the leaseholders in all cases. It also provides that no marriage value is payable in respect of any lease held by a qualifying leaseholder if the unexpired term of the lease exceeds 80 years.

Chapter 3: New leases for tenants of flats

30. This Chapter amends the provisions of the 1993 Act covering the right of individual leaseholders to buy a new lease. Many of the changes reflect those introduced by Chapter 2. The low rent test is abolished. Where marriage value exists, it is to be divided equally between the landlord and leaseholder, and no marriage value is payable where the unexpired term of the existing lease exceeds 80 years. The existing requirement that the leaseholder must have lived in the flat for the last three years (or periods totalling three years in the last ten) is replaced by a requirement to have held the lease for at least two years. Where deceased leaseholders would have been eligible to buy a new lease immediately before they died, their personal representatives will qualify for a period of two years after the date of granting probate or letters of administration.

Chapter 4: Leasehold houses

31. This Chapter amends the provisions of the 1967 Act covering the right of leaseholders of houses to buy their freehold or extend their lease. The changes reflect those introduced

by Chapters 2 and 3. The low rent test is abolished. Where marriage value would be payable, it is to be divided equally between the landlord and leaseholder, and no marriage value is payable where the unexpired term of the existing lease exceeds 80 years. The existing requirement that the leaseholder must have lived in the house for the last three years (or periods totalling three years in the last ten) is replaced by a requirement to have held the lease for at least two years, except in the case of certain business leases where the residence period is reduced to two years. Where deceased leaseholders would have been eligible to buy a new lease immediately before they died, their personal representatives will qualify for a period of two years after the date of granting probate or letters of administration.

32. This Chapter provides new rights for leaseholders who have extended their leases under the 1967 Act. They will be able to buy their freehold after the extended lease has commenced. The price will be determined in accordance with section 9(1A) of the 1967 Act. If they do not buy the freehold, they will become entitled to an assured tenancy under Part 1 of the Housing Act 1988 when their extended lease expires.

33. This Chapter also amends the 1967 Act to simplify the procedures for buying the freehold where the landlord cannot be found. It provides that leaseholders can apply to a county court (rather than the High Court) for a vesting order, and that a LVT will determine the price payable (rather than a surveyor appointed by the President of the Lands Tribunal). These procedures are the same as those applying for flats under the 1993 Act.

Chapter 5: Other provisions about leases

34. This Chapter makes a number of changes to provisions relating to leasehold management under the 1985 Act. It extends the definition of ‘service charge’ for the purposes of the 1985 Act to include any charge which is required to be paid under the terms of the lease to cover the costs of improvements. The effect of this change is that leaseholders’ existing rights in relation to service charges under the 1985 Act (e.g. a requirement of reasonableness and the right to challenge reasonableness at a LVT) are extended to cover improvements. It also includes a power further to extend the definition by secondary legislation.

35. This Chapter extends the jurisdiction of LVTs so that they can determine whether or not leaseholders are liable to pay service charges as well as the reasonableness of such charges.

36. This Chapter makes a number of changes to the existing requirements in the 1985 and 1987 Acts covering the accounting and safeguarding of service charge monies. Revised statements of account will make it easier for leaseholders to see where their money has gone. Service charge funds will have to be held in a separate designated trust account for each property or group of service charge payers. Leaseholders will have a new right to withhold payment of further service charges if key requirements are not met.

37. This Chapter introduces a new concept of ‘administration charge’ covering charges which are required to be paid under leases for approvals, for the provision of information, as a result of a failure to pay rent or other charges on time, or as a result of a breach of a covenant or condition of a lease. It sets out a requirement that administration charges must be reasonable. It enables leaseholders to challenge the liability to pay such charges, or their reasonableness, at a LVT. It also provides that charges levied by landlords under estate management schemes are to be subject to a test of reasonableness to be determined by the LVT.

38. This Chapter replaces the existing section 20 of the 1985 Act (which provides that landlords must consult leaseholders before carrying out works costing more than a prescribed sum which are recoverable through service charges) with a revised section. It requires landlords to consult before entering into agreements for the provision of works or services where the agreement will last for more than 12 months if the amount payable

by any tenant through service charges exceeds an amount prescribed by regulations. If they fail to do so, they will be unable to recover any excess above that amount from leaseholders in relation to such a contract. It provides a power to make regulations exempting agreements of a prescribed description or in prescribed circumstances from this requirement. It also requires landlords to consult before carrying out works if the amount payable by any tenant through service charges exceeds an amount prescribed by regulations. If they fail to do so, they will be unable to recover any amount payable by a leaseholder which exceeded the prescribed amount. It provides a power to make regulations specifying detailed consultation requirements. It also provides that a LVT may dispense with any of the requirements, if the tribunal is satisfied that the landlord acted reasonably. The landlord may also apply to a LVT for a dispensation of the requirement to consult before the works are carried out.

39. This Chapter extends the right to apply to a LVT for the appointment of a new manager under Part 2 of the 1987 Act to leaseholders where the lease provides that management is carried out by a third party rather than the landlord. It also restricts the scope of the exemption for resident landlords.

40. This Chapter extends and clarifies the grounds on which applications may be made to vary a lease under Part 4 of the 1987 Act. It also transfers jurisdiction for handling such applications from the county courts to LVTs.

41. This Chapter provides new rights for leaseholders of houses who are required to insure their property through an insurer nominated or approved by the landlord.

42. This Chapter introduces a new requirement that ground rent is not payable unless it has been demanded by giving the tenant a prescribed notice, and prevents the application of any provisions of a lease relating to late or non-payment (e.g. additional charges) if the rent is paid within 30 days of the demand being issued. It also introduces additional restrictions on the commencement of forfeiture proceedings for breaches of covenants or conditions of a lease. It modifies section 81 of the Housing Act 1996 to prohibit the commencement of forfeiture proceedings, including the issue of a notice under section 146 of the Law of Property Act 1925, in respect of non-payment of service charges or administration charges unless the charge has been agreed or admitted by the tenant, or a court or LVT has determined that it is reasonable and due. It also prohibits the commencement of forfeiture proceedings for other breaches unless a court or LVT has determined that a breach has occurred. There is also a new provision which would prohibit forfeiture proceedings unless the amount outstanding exceeded a prescribed sum or the amount, or any part of it, had been outstanding for more than a prescribed period. There is a power to prescribe the content of a notice which must accompany service and administration charge demands. Furthermore, there is a new power to prescribe additional or different requirements which must be met before the right of re-entry or forfeiture may be exercised.

Chapter 6: Leasehold valuation tribunals

43. This Chapter consolidates existing provisions covering the procedures and jurisdiction of LVTs and makes a number of changes. It provides that in all cases permission to appeal to the Lands Tribunal against a decision of a LVT must be sought; from the LVT in the first instance and, if they refuse, from the Lands Tribunal. It removes the requirement that at least one member of the tribunal shall be a qualified valuer. It provides a power to make regulations which would enable LVTs to exclude the whole or parts of cases of parties who fail to comply with directions and to award costs up to £500, or any higher amount which may be prescribed, against a party who has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. It further provides that where a case involves an appeal against a decision made by a LVT the Lands Tribunal cannot make an award of costs against a party to proceedings unless that party has acted frivolously, vexatiously, abusively, disruptively or otherwise

unreasonably in relation to the appeal. The costs will be limited to £500 or such other amount as may be specified in regulations.

Chapter 7: General

44. This Chapter makes general provisions relating to application to Wales, procedures for making orders and regulations, and interpretation.

COMMENTARY ON THE SECTIONS: PART 1

Nature of commonhold

Section 1: Commonhold land

45. Section 1 defines commonhold land in terms of certain key elements necessary for its creation and existence rather than in terms of lists of attributes which might make up particular commonhold developments. Thus, first there must be a registered freehold estate in the land which is further registered as a freehold estate in commonhold land at HM Land Registry (*subsection (1)(a)*, and see also sections 2-5). Second, there must be in existence a commonhold association, which is a private company limited by guarantee and registered at Companies House with standard memorandum and articles of association whose business it will be to own and manage the common parts of the development *(subsection (1)(b)* and see also sections 34 and 35 and Schedule 3). Third, there must be a commonhold community statement, in effect the rules and regulations for the operation and management of the particular commonhold. This will also be required to be in a standard format *(subsection (1)(c)* and see also sections 31-33). *Subsection (3)* defines terms used in subsection (1) by reference to other sections in the Act.

Registration

46. Commonhold can only be created out of registered freehold land. The essence of its creation is a further registration process to be carried out by HM Land Registry. When the commonhold is fully effective, the Registry will have entries on the appropriate register which will show the individual ownership of units within the development and the ownership of the common parts by the commonhold association, with necessary cross references. Sections 2-5 set out the commonhold registration process.

Section 2: Application

47. *Section 2(1)* requires the Chief Land Registrar to register a freehold estate as an estate in commonhold land provided that the applicant is the registered freeholder of the land which is to become commonhold land and that no part of the land which is the subject of the application is already registered as commonhold. The first requirement is to ensure that the applicant has the necessary authority to make the significant change to the nature of the land holding that commonhold represents. The second requirement is to ensure that the land is not already part of a commonhold regime. If it were so, it would be or be about to become either a unit or common parts, and as appears later in the Act, there are rules governing adding to or subtracting from a commonhold which would be inconsistent with a freeholder purporting to create a new commonhold out of existing commonhold land. *Subsection (2)* specifies the documents which must accompany the application by reference to Schedule 1, which is covered later in these notes. *Subsection (3)* defines a registered freeholder for these purposes as either the person appearing on the Land Register as the freehold owner or as someone entitled to be so registered, having made an application, for instance an owner of unregistered land applying for first registration.

Section 3: Consent

48. As part of the essence of commonhold is that all those involved as unit-holders should have an equality of interest, it is important to ensure that there is full participation by all those who may be involved in a conversion from leasehold. Also, because of the distinct difference between commonhold and other forms of tenure, certain specified classes of persons with a registered interest in any land which it is intended to register as commonhold should consent to the change. *Subsection (1)* specifies four classes of person from whom it will be necessary to obtain consent. *Paragraph (a)* refers to freeholders of all or part of the land; *(b)* refers to the proprietor of a lease which was originally granted for a period of more than 21 years on a property which is converting to commonhold from leasehold; *paragraph (c)* will include mortgagees; *paragraph (d)* allows for other classes of person to be included in the list of those whose consent must be obtained.

49. *Subsection (2)* provides for the making of regulations governing consents, including forms, duration etc. In particular they may make provision for a court to dispense with consents in circumstances which the regulations would specify, and *subsection (3)* provides that such an order may either be an absolute dispensation or may, alternatively, be conditional on some specified action or circumstance prescribed by the court. The court may also make any other provisions which seem appropriate, which might include, for instance, in the right circumstances, an order for compensation.

Section 4: Land which may not be commonhold

50. Section 4 introduces Schedule 2, which lists types of land which may not, for a variety of reasons, be registered as commonhold. The three broad categories are:

   (i) developments in which it is intended to create a commonhold in land above ground level where the 'grounded' part of the structure is not part of the same commonhold application, the most obvious example of which would be flats developed over shops, where the shops continue to be let on standard commercial leases;

   (ii) specified sorts of agricultural land; and

   (iii) land the freehold title to which is contingent on some specified future circumstance (see Schedule 2).

Section 5: Registered details

51. *Section 5(1)* prescribes the documents which must be submitted to the Registrar and be kept in his custody and be mentioned in the register, and which will form an integral part of the information held by him for the use of those who wish to search for information in relation to a commonhold. Of particular importance are the commonhold community statement (see sections 31-33) and the memorandum and articles of association of the commonhold association (see section 34 and Schedule 3). *Subsection (2)* permits the Registrar to keep in his custody and to mention in the register any other document which is submitted to him if he sees fit to. This might include, but not be restricted to, such things as consents and certificates required at the application stage (see section 3 and Schedule 1 paragraph 7). *Subsection (3)* provides that, during the transitional period between the registration of the commonhold by the applicant and the sale of the first unit, the Schedule of unit-holders need not be filed with the Register. This is because, at that stage the applicant/developer would still be the registered owner of the whole freehold and so there would be no unit-holders.

Section 6: Registration in error

52. Section 6 provides that, where registration of a commonhold has been carried out but the application was not in accordance with or was in contravention of Part 1 of the Act,

the Registrar may not deal with it by alteration under the terms of the Land Registration Act 2002 but the court may make a declaration that the registration ought not to have been carried out. It may then go on to make provision either to require the land to cease to be commonhold land or to put right the defects. So far as possible, it is expected that the courts will strive to maintain the commonhold in existence by directing appropriate people to do or refrain from doing the things which have resulted in the declaration.

Effect of registration

53. Sections 7, 8, 9 and 10 make provision for the effect of registration in different development circumstances, distinguishing broadly between developments without occupiers, whether built afresh or re-developed whilst vacant, and those with existing occupiers.

Section 7: Registration without unit-holders

54. Section 7 makes provision for the registration of a development without unit-holders in occupation. *Subsection (1)* applies the section when the land is registered as commonhold following an application under section 2 and there is no statement under section 9(1)(b) (see note to section 9). *Subsection (2)* provides that, in these circumstances, the applicant shall continue to be registered as the owner of the whole freehold and that the provisions of the commonhold community statement should not yet have any effect except where modifications of the document are specifically provided for under the terms of regulations made under section 8(2)(b). *Subsection (3)* provides that, when a person buys the first unit, the Registrar must register the commonhold association as the owner of the common parts without the need for an application for that registration to be made, and will also bring the commonhold community statement into effect, thus beginning the management of the commonhold as such. Subsection (3) also provides that all leases of all or any part of the land being registered shall cease to exist (shall be extinguished). *Subsection (4)* defines the types of lease to which the section applies.

Section 8: Transitional period

55. Section 8 recognises that there will inevitably be a period during which it will be necessary to make decisions in relation to the land and the management of the development, between the time that the land is registered as commonhold and the time that commonhold is, so to speak, perfected by the sale of the first unit to a unit-holder under section 7(3). *Subsections (2) and (3)* together make provision for regulations to disapply or modify the effect of any provision of Part 1 of the Act, or any subordinate legislation made under it, or any provision of a commonhold community statement or memorandum and articles of a commonhold association. As pointed out in the introduction, part of the essence of commonhold will be standardisation of documents and rules and regulations, but whilst the transitional period has effect, it would be unworkable to insist that the applicant operate under the full panoply of commonhold regulation. *Subsection (4)* allows the applicant to apply for the registration of the land as commonhold to be undone, and *subsection (5)* ensures that all those from whom it was necessary to obtain consents in order to register also consent to the de-registration. Subsections (4) and (5) are chiefly to allow developers to respond to commercial circumstances. *Subsection (6)* provides for references in the Act to a commonhold association exercising functions in relation to commonhold land to apply also to land which is in a transitional period as defined by the earlier subsections of this section.

Section 9: Registration with unit-holders

56. Section 9 provides that, where an application to register under section 2 has

been successful and is accompanied by a request that section 9 should apply, the Registrar will register the commonhold association as owner of the common parts without need for an application, and the commonhold community statement will come into effect. This has the effect of ensuring that, where there are already people living in the development which is converting to commonhold and the Registrar has the necessary consents, the commonhold is set up at once and there is no transitional period.

Section 10: Extinguished lease: liability

57. *Section 10* provides for the case of a leaseholder in an existing development

whose property is to become a commonhold unit and whose lease does not fall into the class of lease which entitle the leaseholder to give consent and will therefore be extinguished following the giving of consent to conversion by qualified superior leaseholders or the freeholder. In the event that the inferior leaseholder should suffer loss by the extinguishment of their interest under this Part of the Act the most proximate consenting superior leaseholder, or, in the absence of a superior leaseholder, the freeholder from whom the extinguished lease is held will be liable for the loss.

Commonhold unit

58. Sections 11 to 24 make provision about the units which will be owned by unit-holders and which form the core of the commonhold development. Amongst others there are provisions covering definition, use, transfer, leasing and other transactions.

Section 11: Definition

59. *Section 11(2)* requires the commonhold community statement to define the extent of a commonhold unit and requires also that there must be at least two such units in the development because there can be no commonality or, indeed, common parts requiring the operation of the commonhold scheme unless there are interdependent units. *Subsection (3)* sets out the matters that the commonhold community statement must deal with for this purpose, including the provision of plans, and in particular allows for the unit to consist of one or more areas of land, whether or not contiguous, and *subsection (4)* makes it clear that a commonhold unit need not contain any part of a building.

Section 12: Unit-holder

60. Section 12 provides a definition of the unit-holder designed to ensure that, during the gap between the completion of the sale or other transfer of the unit and the registration of that transfer at HM Land Registry, the person to whom the unit has been transferred is the person who is the unit-holder. This is because, for that time, the person whose name appears on the register will still be the previous unit-holder. However, from the moment of transfer, the new owner is the person entitled to be registered, and this section thus provides a definition which covers the gap.

Section 13: Joint unit holders

61. Section 13 defines joint unit-holders and distinguishes between circumstances in which rights and responsibilities are joint and those in which they are both joint and individual. Lists of these circumstances are provided in *subsections (2) and (3).*

Section 14: Use and maintenance

62. *Section 14(1)* places a requirement on the commonhold community statement to make the necessary provisions and regulations governing the use of commonhold units. This

will be the place in which the statement will specify whether, for instance, the unit is to be residential only (see section 17(5)). *Subsection (2)* requires the statement to impose obligations to insure, maintain and repair each unit, but *subsection (3)* gives the flexibility of allowing each of those responsibilities to be imposed on either the unit-holder or on the commonhold association. For instance, the statement could require the unit-holder to take out an insurance policy on the fabric of a flat whilst making the commonhold association responsible for insuring and maintaining a balcony. It could also require a unit-holder to be responsible for the decoration of the inside of window units whilst making the commonhold association responsible for decoration of the outside of the same units.

Section 15: Transfer

63. *Section 15(1)* defines the word ‘transfer’ for the purposes of this Part as a transfer of the unit-holders freehold to someone else, whether or not any payment is made, and regardless of whether there are any terms applied to the transfer or that the transfer takes place as the result of a legal requirement. *Subsection (2)* provides that the commonhold community statement can neither stop a unit-holder from transferring their unit nor place restrictions on his right to do so. To ensure that the commonhold association always knows who owns a particular unit and thus also who its members are, an incoming unit-holder is required to inform the association of the transfer. The form of the notice required under *subsection (3)* and any time limit to be applied is to be laid down in regulations, as is provision for dealing with failure to comply with the requirements (*subsection (4)*).

Section 16: Transfer: effect

64. Section 16 sets out how the transfer of a unit will affect ‘new unit-holder’ and ‘former unit-holder’ (as defined in*subsection (4)*) in certain respects. *Subsection (1)* provides that transfer will not affect the existence of certain impositions or benefits related to the land created either by the commonhold community statement or by any action of the former unit-holder which was in accordance with section 20. The new unit-holder will have the same rights and responsibilities after transfer as the former unit-holder had before that date. *Subsection (2)* provides that a former unit-holder cannot be held responsible for any obligation arising after the date of transfer arising either out of the commonhold community statement or out of any action of his in conformity with section 20, and by the same token will not be entitled to any benefit accruing from the same sources after the same date. *Subsection (3)* provides that the rule in subsection (2) cannot be displaced by agreement, but has no effect on rights and obligations arising before the date of transfer. This means, in effect, that no contract for sale or other transfer document can contain a provision purporting to tie a former unit-holder to the unit beyond the transfer date. This aims to ensure that the current unit-holder is always the person with the full range of benefits and obligations relating to their unit, and that no-one has a greater interest in the unit than he does.

Section 17: Leasing: residential

65. Section 17 places one of the few restrictions that the commonhold scheme requires on the ability of a unit-holder to treat his unit as though freehold. It is Government policy that residential commonhold units should not be let for long unbroken periods. This is to avoid the possibility of repeating the difficulties which exist in leasehold blocks now. The intention is that regulations made under *subsection (1)* should set down both that no premium should be payable for a lease, which should be at a rack rent, and also that the maximum period for a single term lease should be restricted to seven years. Subsection (1) announces the restriction on granting leases unless the terms satisfy certain conditions, and *subsection (2)* sets out the matters which would form the basis of those conditions. *Subsection (3)* provides that, if a lease is granted which contravenes the prescribed terms, it shall be of no effect, and *subsection (4)* allows recourse to the courts by any party to such an ineffective lease, giving the court

powers to order that the ineffective lease should take effect, to order the return or payment of money by way of compensation, and to make any other provision which it thinks fit. *Subsection (5)* requires that a residential unit should be so described in the commonhold community statement.

Section 18: Leasing: non-residential

66. Section 18 provides that commercial leases for appropriate units are subject to the terms of the commonhold community statement.

Section 19: Leasing: supplementary

67. *Subsection 19(1)* provides that either or both of the regulations and the commonhold community statement should be able to impose obligations on the tenant of a unit and *subsection (2)* says specifically that a tenant might be required under the regulations to pay to the commonhold association or another unit-holder sums which are due to be paid by the tenant's landlord unit-holder, or by another tenant of the unit under the terms of the commonhold community statement. The regulations may provide (*subsection (3)*) that sums to be paid by a tenant under subsection (2) can be set off against amounts owed by him to his landlord unit-holder or some other person and for amounts paid under subsection (2) to be recovered from the unit-holder or another tenant of the unit. *Subsection (4)* gives power to vary rules of law, whether common law or statute law, about leases in order to bring them into line with the requirements of commonhold. *Subsection (5)* is a general regulation-making power.

Section 20: Other transactions

68. *Section 20(1)* forbids any provision of a commonhold community statement from preventing or restricting a unit-holder's exercise of his right to create, transfer or grant an interest or charge over his unit, for instance, in appropriate circumstances, granting a right of way, or borrowing on a mortgage and so charging the unit as security. *Subsection (3)* however requires that no interest, other than a lease, can be created unless the commonhold association is either a party to it or consents in writing. By *subsection (6)*, the subsection (3) requirement does not apply to the creation of charges, so the unit-holder's rights to charge the unit are restricted only so far as provided in the Act itself or in any subordinate legislation made under it. *Subsection (4)* provides that, where a commonhold association is to act under subsection (3) it must only act following approval by a 75% majority of the members voting. *Subsection (5)* renders void any agreement, however made, which is in contravention of subsection (3), so a unit-holder who purports to act where in fact there is no unanimous consent of the association members is unable to make an instrument or agreement that will have effect. *Subsection (2)* makes *subsection (1)* subject to the provisions of sections 17 and 19 about leasing. Section 20 only deals with matters that would appear on the register.

Section 21: Part-unit: interests.

69. Section 21,*subsection (1)* provides that the creation of interests in part only of a commonhold unit is not possible, and *subsection (3)* provides that an attempt to create such an interest in contravention of subsection (1) will have no effect. *Subsections (2) (a)* and *(b)* make the exception to subsection 1 for the creation of leases in part-units which, by virtue of *subsection (6)*, is made subject to the regulations on residential leases to be created under section 17. *Subsection (7)* provides that regulations may modify the application of provisions of the Act relating to the unit-holder or tenant where part of the unit is held under a lease, so that wrinkles in day-to-day operation can be ironed out. As to transfers of part units, *subsection (2) (c)* and *subsection (8)* provide that the transfer of the freehold estate in part of a commonhold unit is possible where the commonhold association consents in writing. However, the commonhold association will only be able to consent to the transfer following a resolution with at least 75 percent of those members who vote, voting in favour *(* section 20*, subsection (4))*.

Subsections (4) and *(5)* provide that where land becomes commonhold land or is added to a commonhold unit in such a way that an interest over a part unit would exist, such an interest shall be extinguished. *Subsection (9)* provides that if the freehold interest in part of a unit is transferred the part transferred will become a new commonhold unit, unless the commonhold association allow it to become part of a unit specified in the request for consent under *subsection (2)(c)*. The commonhold community statement may require new units created in this way to be registered *(subsection 10)*.

Section 22: Part-units: charging

70. *Subsection (1)* of section 22 prohibits the creation of a charge over part only of an

interest in a commonhold unit. This reflects the technical point that a unit as such cannot be charged, rather it is the unit-holders' interest in the unit that is charged. *Subsection (2)* renders ineffective any attempt to create a charge over part only of an interest in a unit. *Subsections (3)* and *(4)* provide that where land is added to a commonhold in such a way that a charge over a part unit would exist, such a charge shall be extinguished.

Section 23: Changing size

71. Section 23 provides that, where for whatever reason, it is desired to change the size of a commonhold unit, for instance because an existing unit-holder has a garage in a block of garages which is, nonetheless designated as part of his unit, and the commonhold association wishes to demolish the garages for some purpose, the unit-holder's consent must be sought.

Section 24: Changing size: charged unit

72. Section 24 is intended to ensure that where a unit is subject to a registered charge and the commonhold community statement is amended such as to change its extent either by enlarging or diminishing, the owner of the charge consents in writing before the change is made. This is because, as there cannot be a charge over part of a commonhold unit, the section provides that where land is taken out of the charged unit, the charge in relation to that part is automatically extinguished, and in the case where land is added, the existing charge is extended to cover it. Consent is required as the charge is in effect the property of a third party and that party's rights must be protected. *Subsection (1)* defines when the section will apply, *subsection (2)* provides for the seeking of written consent in advance of the planned change, *subsection (3)* provides for a court to dispense with the need for consent, *subsection (4)* provides for automatic extinguishment where appropriate and *subsection (5)* for automatic extension, and *subsection (6)* provides for the making of regulations which would require notice to be given to the Registrar and requiring the Registrar to register changes arising from subsections (4) and (5).

Common parts

73. Sections 25-30 cover the same ground for the common parts as the previous section did for the individual units. The common parts may include conduits for the delivery of services and are, in effect, any part of the development not delineated in the commonhold community statement and the plans as units.

Section 25: Definition

74. Section 25 defines common parts as all those parts of the commonhold land which are not, for the time being, defined in the commonhold community statement as units. In effect, they will include hallways, stairwells, lift shafts, landscaping, gardens etc, though the status of a particular type of land in any particular commonhold development will be defined in the commonhold community statement for that development. *Subsection (2)* introduces the concept of the limited use area. This will remain part of the common parts but may be limited to the use of a single unit-

holder, for instance in the case of a balcony the only access to which is through the unit in question, or to a group of unit-holders, for instance the use by them of a garden associated with a particular group of units they occupy. This is expected to be a useful concept when dealing, for instance, with parking spaces, as opposed to garages, where the commonhold association may wish to take responsibility for maintenance but to allocate particular spaces to particular unit-holders. *Subsection (3)* provides that the commonhold community statement may make special provisions which affect only limited use areas and also which make different provisions for different such areas.

Section 26: Use and maintenance

75. Section 26 requires that the commonhold community statement must make provision for the regulation of the use of the common parts, in effect to set out the rules and regulations for corporate living in the development, and must also provide for the association to insure, repair and maintain the common parts.

Section 27: Transactions

76. Section 27 provides that the commonhold community statement must not restrict the right of the commonhold association to transfer its interest in any part of the common parts, i.e. to sell part of the common parts, or to create any interest over any part of the common parts, such as a right of way.

Section 28: Charges: general prohibition

77. Section 28 imposes, subject to section 29, the general prohibition on charging of common parts. *Subsections (2)* and *(3)* provide for the extinguishing both of charges in existence when the commonhold association comes into being, so far as they apply to the common parts and of charges on any part of common parts which are added at a later stage.

Section 29: New legal mortgages

78. Section 29 provides the exception to the general rule in section 28 allowing a commonhold association to borrow on the security of common parts providing it obtains, in advance, a unanimous resolution of members.

Section 30: Additions to common parts

79. Section 30 makes the necessary provision to achieve the registration of the commonhold association as the owner of common parts when new land is added to them. This is achieved on the submission of an amended commonhold community statement by the commonhold association under section 33, the Registrar registering the interest without the need for a separate application.

Commonhold community statement (CCS)

80. Sections 31-33 set out the provisions governing the commonhold community statement, which combines the functions of describing the physical attributes of the development and containing the rules and regulations by which the commonhold will be conducted. Although it is intended that there should be a significant degree of standardisation between the statements of all commonholds, there must inevitably be a degree of flexibility to take into account the different nature of, for instance, an existing block of long leasehold flats in an urban environment converting to commonhold and a development of detached houses together with a small block of flats with shops and other services provided.

Section 31: Form and content: general

81. Section 31 sets out at some length the core provisions to be made by the statement. *Subsection (1)* makes it clear that, in relation to the commonhold land in question, the statement makes provision both in respect of the commonhold association and the unit-holders. *Subsection (2)* requires the statement to be in a form to be prescribed and *subsection (3)* gives the power for the statement to confer rights or impose duties on both the commonhold association and on unit-holders. Subsection (3) also confers the power to regulate the taking of decisions in connection with the commonhold land, but *subsection (4)* makes these powers subject to any provision of Part 1 of the Act and to the memorandum and articles of association of the commonhold association. *Subsection (5)* lists examples of duties which the statement might impose, and *subsection (6)* provides that, where there is a duty to pay money, whether under subsection (5) or otherwise, that duty can be extended to the payment of interest if payment is late. *Subsection (7)* provides that easements, rights duties privileges etc may be created by the statement with no need for further formalities. It is often the case that such formalities would otherwise include the preparation and execution of a deed; that will not be necessary in the case of such grants or impositions arising from a statement. *Subsection (8)* provides that the statement may not make provision for the loss of any interest in land, to be contingent on any future event. *Subsection (9)* provides that any provision written into a statement that is contrary to the regulations governing the prescribed form and content (see section 32), to any provision of Part 1 of the Act or with the memorandum and articles of association of the commonhold association, will be of no effect.

Section 32: Regulations

82. Section 32 sets out the regulation making powers in relation to the commonhold community statement. *Subsections (1) and (2)* set out the general powers for the making of the regulations. *Subsection (3)* provides that, if a statement is defective in any respect set out in the regulations, it may be deemed to contain such matter or be allowed to contain provisions which stand in place of provisions which otherwise would be deemed by the regulations to exist in the statement. *Subsection (4)* permits regulations to make different provisions in different circumstances and *subsection (5)* sets out the sections to which the regulations may apply, whilst not restricting the scope to those listed.

Section 33: Amendment

83. *Section 33(1)* requires that regulations made under section 32 must contain provisions as to how the statement can be amended, particularly (*subsection (2)*) in respect of what the regulations may deem to be included (section 32(3)(a)) or what may be permitted to stand in place of a deemed provision (section 32(3)(b)). To have effect, the amended statement must be registered with HM Land Registry (*subsection (3)*) and the Registrar is required to keep in his custody the amended statement in place of the then existing statement if it is submitted in accordance with this section (*subsection (4)*). The commonhold association must file with the amended statement a certificate that the statement accords with the requirements of this Part (*subsection (5)*). Where the amendment changes the extent of a unit or of the common parts, the necessary consents relating to charges must be submitted, or the court orders dispensing with them, as required in section 24(3) and section 30(3) respectively (*subsections (6) and (7)*). *Subsection (8)* gives the Registrar the discretion, on filing the amended statement under subsection (4), to make any other amendments to the register as he thinks appropriate.

Commonhold association

84. Sections 34, 35 and 36 (and Schedule 3) set out the provisions relating to the commonhold association, which, as has been mentioned, owns and manages the common parts of the commonhold development and is a private company limited

by guarantee, its membership consisting exclusively of all the unit-holders in the development.

Section 34: Constitution

85. *Section 34(1)* makes provision about the type of company as mentioned above, and goes on to say (*subsection (1)(a)*) that one of the objects of the company must be to carry out the functions proper to a commonhold association in relation to specified commonhold land and (*subsection (1)(b)*) that the guarantee required of each member shall be £1. *Subsection (2)* brings Schedule 3 into effect.

Section 35: Duty to manage

86. *Section 35(1)* places on the commonhold association a duty to manage the development in such a way as to allow unit-holders (or their tenants (*subsection (4))* to exercise their rights and to enjoy their occupation of their units. However, *subsection (2)* also requires the association to use any of its rights and powers granted under section 37 to ensure that any unit-holder or tenant who is in breach of any requirement or duty imposed on him either complies or stops committing the breach. *Subsection (3)* gives the association discretion not to enforce if that would be more conducive to corporate harmony and requires the association to consider alternative dispute resolution before resorting to the courts.

Section 36: Voting

87. Section 36 relates to any voting provision in Part 1 of the Act which requires unanimity or a specified percentage of votes in favour of a resolution. *Subsection (2)* requires all members of the association to be given an opportunity to vote on such a resolution in accordance with any relevant provision in the commonhold community statement or the memorandum and articles of association of the commonhold association. *Subsection (3)* provides that a vote may be cast in person or, if such provision is made in the statement or the memorandum and articles of association, by proxy, by post or in any other way in accordance with the regulations governing the particular commonhold association. Except in relation to section 44 a vote is to be considered unanimous if all those members voting cast a vote in favour of the motion or proposition (*subsection (4)*).

Operation of commonhold

Section 37: Enforcement and compensation

88. *Section 37(1)* gives power to make regulations covering enforcement of rights or duties springing from the commonhold community statement, the memorandum and articles of association of the commonhold association or Part 1 of the Act or any subordinate legislation made under it. *Subsection (2)* lists matters about which the regulations may make provision. The list is not exhaustive. *Subsection (3)* provides that any mention of a provision for the payment of compensation that may be payable under such regulations or under the commonhold community statement should include provision for determining the amount of the compensation and provision for the payment of interest if payment is late. *Subsection (4)* makes it clear that regulations made in relation to commonhold community statement may include regulations under section 32(5)(b).

Section 38: Commonhold assessment

89. *Section 38(1)* requires the commonhold community statement to include provision for the setting of annual budgets (*subsection (1)(a)*) to meet the expenses of the association and to enable the setting of interim budgets (*subsection (1)(b)*) in addition to the annual budget from time to time. It must also specify the percentage of the annual and other estimates which fall to be collected from the unit-holders to be allocated to each unit (*subsection (1)(c)*), ensuring that the total of those percentages shall be

100 (*subsection (2)*) and must require each unit-holder to pay the required amount, to be called the commonhold assessment, in response to a notice or notices which the association must issue (*subsection (1)(e)*). *Subsection (2)(b)* makes it possible to specify a 0% share for a unit. This is chiefly to ensure that, where a commonhold association is the unit-holder, it is not in the anomalous position of having to levy assessments on itself. It will be possible for the commonhold community statement to specify a 0% for *any* unit.

Section 39: Reserve fund

90. Section 39 provides that regulations made under section 32 may require a commonhold community statement to include provision for the setting up and maintaining of reserve funds for the repair and maintenance of either or both of the common parts (*subsection (1)(a)*) and the units (*subsection (1)(b)*) within the commonhold. *Subsection (2)* provides that, where such fund or funds are set up, the statement must provide for the commonhold association to set a levy from time to time (*subsection (2)(a)*), allocate percentages of the levy to be paid by each unit (subsection *(2)(b)*), again with the requirement that the percentages total 100 (*subsection (3)*), (though also allowing the setting of a 0% share for specified units) requiring the unit holders to pay (*subsection (2)(c)*) and providing for the issue of notices requiring payment (*subsection (2)(d)*).

91. *Section 39(4)* provides that funds established under this section may not be used in satisfaction of any debt other than a judgement debt arising from an activity which, under the commonhold community statement, could properly be funded from such a fund. Thus, if regular roof replacement is an item to be funded by the reserve fund under a statement, and a roofing contractor has to proceed against the commonhold association, the reserve fund may be used in satisfaction of the debt if a court finds in the contractor's favour. However, if the association is required to pay a substantial excess to its insurer in connection with a claim and the payment of insurance is not a proper call on the reserve fund, the fund cannot be touched by the insurer, even if it is in possession of a judgement, except where the association is insolvent (see definition of reserve fund activity in *subsection (5)(a)*). Subsection (5)(a) defines reserve fund activity, (see note to *subsection (4)* above), *subsection (5)(b)* specifies what is meant by assets being used for purposes of debt enforcement, and *subsection (5)(c)* makes it clear that the term judgement debt includes any interest on such a debt.

Section 40: Rectification of documents

92. *Section 40(1)* makes provision for a unit-holder to apply to the court for a declaration that either (a) the memorandum and articles of association of the commonhold association relating to the commonhold association or (b) the commonhold community statement relating to the commonhold association do not comply with the provisions of the Act or regulations made under it. *Subsection (2)* provides that, where the court makes such a declaration, it may make any other order it thinks appropriate, and *subsection (3)* lists a number of matters that might be covered by such an order. These include requiring that the officers of the commonhold association take steps to alter or amend the offending document or take other specified steps, requiring the association to pay compensation and ultimately, ordering that the land cease to be commonhold. *Subsection (4)* sets a time limit for such an application of three months from the date the applicant became a unit-holder, three months from the alleged start of the failure to comply, or, failing these, subject to a time limit or any other permission laid down by the court.

Section 41: Enlargement

93. *Section 41* applies where a commonhold association relating to existing commonhold land votes unanimously and in advance (*subsection (3)*) (and see section 36 as to unanimity) to apply to bring further land into the commonhold to be held as part of

their commonhold land and an application under section 2 is submitted to the Registrar (*subsection (1)*). The requirement that all the documents listed in Schedule 1 should be submitted for registration is lifted in relation to this application by *subsection (2)* but consents will be required as set out in paragraph 6 of Schedule 1, as will an application as set out in section 33 to amend the commonhold community statement to take account of the new land. Also to be provided will be a certificate stating, first, that the application satisfies Schedule 2, which specifies which land may not become commonhold land, and second that the vote leading to the application was unanimous.

Section 42: Ombudsman

94. Section 42 gives the Lord Chancellor power to approve an Ombudsman scheme or schemes as part of the dispute resolution process available to commonhold associations and unit-holders.

Termination: voluntary winding-up

95. Sections 43-49 deal with the termination of a commonhold following from a voluntary winding up of the commonhold association, which might arise, for instance, from the decision to recognise the eventual demise of a building through old age, or from a particularly advantageous offer by a developer to buy the land. The sections differentiate between terminations which are the result of unanimous resolutions (section 44) and those which are the result of majority votes (section 45).

Section 43: Winding-up resolution

96. Section 43 provides that, for any winding-up resolution to be effective, there must have been a declaration of solvency by the directors in a specified form (so that the winding up will be commenced as a members' voluntary winding up rather than a creditors' voluntary winding up) and that a termination statement resolution (agreeing the details of the termination and disposition of assets) should have been passed, with at least 80% of the members voting in favour.

Section 44: 100 per cent agreement

97. Section 44 provides that the liquidator of a commonhold association shall make an application for termination within six months of the association's having achieved a 100% vote in favour of winding–up and termination-statement resolutions from the members. Should the liquidator fail to do so, the application may be made by a unit-holder or some other prescribed person.

Section 45: 80 per cent agreement

98. Section 45 provides for the liquidator to make an application to a court to determine the terms upon which a termination application may be made and also the terms of the termination statement which must accompany the application, in the event that a vote of between 80% and 100% is achieved in favour of winding-up and termination statement resolutions. The liquidator must make the application to the court within a period, prescribed by regulations, from the date of the passing of the winding-up resolution, and must make the termination application within 3 months of the court order. Should the liquidator fail to do so, the application may be made by a unit-holder or some other prescribed person.

Section 46: Termination application

99. *Section 46(1)* defines the termination application as the application to the Registrar to achieve the result of the termination resolution that all the commonhold land for which the commonhold association acts should cease to be commonhold. *Subsection (2)* requires that such an application should be accompanied by a termination statement

(see section 47) and *subsection (3)* requires the Registrar to note the application on the register on receipt.

Section 47: Termination statement

100. *Section 47(1)* requires the termination statement to specify what is to be done with the land which had been the commonhold land, when the commonhold association has acquired the freehold estate in all the units under section 49(3), and how any assets of the commonhold association will be distributed amongst the members. *Subsection (2)* provides that a commonhold community statement may make provisions as to how the termination statement will make arrangements "of a specific kind", or how it will determine in a specific manner about the rights of unit-holders in the event of termination. *Subsection (3)* requires any termination produced for the purposes of a termination application to comply with the terms of the commonhold community statement. *Subsection (4)* allows for a court to disapply subsection (3) as to all the terms of the statement or in respect of specific matters or for a specific purpose, and an application to the court for this purpose may be made by any unit-holder. This gives the court the power to take into account changed circumstances since the current statement reached its final state. It also allows challenges to the fairness of the statement in this respect which otherwise would not have given rise to a challenge.

Section 48: The liquidator

101. This section deals specifically with the position of a liquidator in a members' voluntary winding up and specifically his position *vis-à-vis* the termination application. Section 48 applies where a termination application has been made and a liquidator has been appointed (*subsection (1)*). *Subsection (2)* requires the liquidator to inform the Registrar of his appointment and *subsection (3)* requires him either to notify the Registrar that he is content with the termination statement or to make an application to the court under the Insolvency Act 1986 for an order determining the terms. *Subsection (4)* requires the liquidator to inform the Registrar of the outcome of any application to the court under *subsection (3)(b)*, *subsection (5)* specifies that the requirement under subsection (4) is to be satisfied in addition to anything which is required to be done under the terms of section 112(3) of the Insolvency Act 1986, and *subsection (6)*specifies that any duty placed on a liquidator by this section must be done as soon as possible (the term used by the parent Act being 'forthwith'). Subsection (7) explains that references to the liquidator encompass not only the person appointed in the members' voluntary winding up, but also, in the rare case where the members' voluntary winding up becomes a creditors' voluntary winding up, the person who thereupon acts as liquidator (who may be the same person).

Section 49: Termination

102. Section 49 provides that, where the Registrar receives notice from the liquidator that he is satisfied with the statement, or receives a copy order from the court in accordance with section 48(4), or an application is made under section 45, the commonhold association will become entitled to be registered as the owner of the freehold interests in all the units (*subsection* (3)). *Subsection* (4) then requires the Registrar to take the appropriate action to give effect to the termination statement.

Termination: winding-up by the court

103. Sections 50, 51, 52, 53 and 54 deal with winding-up by the court following a petition to declare the commonhold association insolvent by a creditor. Section 51 makes provision for a successor commonhold association to be set up where the court approves, so that those members of the association who have paid all their liabilities to the creditors of the insolvent association may continue to live in a stable commonhold development.

Section 50: Introduction

104. Section 50 specifies that section 51 applies when a petition to wind up a commonhold association is made to the court and defines the terms ‘insolvent commonhold association’ and ‘successor commonhold association’.

Section 51: Succession order

105. Section 51 provides a mechanism for the continuation of a commonhold development in circumstances in which a proportion of the members of an insolvent association have paid the full extent of their liabilities. As it is essential to have a commonhold association in existence to have the benefits of commonhold, it is necessary to find a way to provide for the continuity of the association if there is to be a continuing element of commonhold following a winding-up on the petition of a creditor. Section 51 enables a court to make an order bringing a successor commonhold association into being whilst dealing with a winding up (requiring the court to make the order unless satisfied that this would not be appropriate) and specifies who may make the application for the successor association and the documentation which must accompany the application.

Section 52: Assets and liabilities

106. Section 52 applies where the court winds-up an association following a petition and puts in place a successor association. It provides that the successor association shall be entitled to be registered as the owner of the common parts and that the insolvent association should, at the same time, cease to be the owner.

Section 53: Transfer of responsibility

107. Section 53 makes provision for the transfer of responsibilities from the insolvent association to the successor association from the time of the winding-up order.

Section 54: Termination of commonhold

108. Section 54 makes provision for termination of a commonhold where the court has made a winding-up order and has not made a succession order, which will result in the requirements of section 1 not being met so that the land must cease to be commonhold land. The liquidator is required to inform the Registrar that this section applies and to give certain other information, and the Registrar is then required to take such action as will result in the land no longer being registered as commonhold land and also to give effect to the liquidator’s determinations.

Termination: miscellaneous

Section 55: Termination by court

109. Section 55 provides that, where the court orders under section 6(6)(c) that land should cease to be commonhold as it should never have been registered as such, or under section 40(3)(d) that it should cease to be commonhold because it has declared a fatal flaw in the memorandum and articles of association of the commonhold association or the commonhold community statement, it should have the same powers that it would have if it were making a winding-up order against the commonhold association. The liquidator appointed to carry out the termination will have like powers, but in these peculiar circumstances the court will have power to require the liquidator to carry out his functions in a particular way, may impose additional rights or duties on the liquidator and modify or remove the rights or duties of the liquidator. These powers are given to the court to mark the unusual nature of the commonhold association, and particularly the fact that winding up the company also fundamentally changes the nature of the tenure of the members of their homes.

Section 56: Release of reserve fund

110. Section 39(4) protects reserve funds from creditors whilst the commonhold association is a going concern, but once the association has decided to wind itself up voluntarily or is wound up by the court on the petition of a creditor or the court orders that the land should no longer be commonhold land (see section 55) that protection is lifted.

Miscellaneous

Section 57: Multiple site commonholds

111. Section 57 provides for the possibility of a commonhold association being made up of two or more areas of land which need not be contiguous. However, for that to apply the memorandum and articles of association of the commonhold association must specify that the association is to exercise commonhold functions over that land and a single commonhold community statement must apply to all the land in question. The section also makes provision for applications to register commonhold land coming from two or more people each of whom owns the freehold estate in part of the land to be registered, and gives a regulation making power to facilitate that.

Section 58: Development rights

112. This section and the next are designed to reserve to the developer certain rights to do things which will enable him both to develop and market the units in the development and to develop the common parts, and to react reasonably to commercial pressures.

113. *Section 58(1)* defines a developer as one who makes an application under section 2, and development business as set out in Schedule 4. Broadly, this relates to execution or completion of works, marketing and variation of the extent of the commonhold land. *Subsection (2)* permits the commonhold community statement to contain provisions to facilitate or permit the developer to do development business, and *subsection (3)* provides that those provisions may include a requirement that a unit-holder or the association co-operate with the developer for the appropriate purposes, but that the rights conferred on the developer may be constrained by terms and conditions set down in the commonhold community statement and that there may be provisions about breach of such a term or condition. *Subsection (4)* provides that any provisions for this purpose made under subsection (2) shall be subject to regulations under section 32, and in the case of development business under paragraph 7 of Schedule 4 which relates to the appointment and removal of directors, subject to the memorandum and articles of association of the commonhold association. *Subsection (5)* provides that the rights conferred under subsection (2) may be regulated or restricted by regulations. *Subsection (6)* provides that, should the developer have been granted rights under subsection (2) but subsequently surrenders them, he shall send a notice to the Registrar, who will note the register and inform the commonhold association and the rights will cease to apply from the date of registration.

Section 59: Development rights: succession

114. *Section 59(1) and (2)* provide that, where a developer transfers all or part of his rights in commonhold land to another person during a transitional period (see section 8) his successor in title shall be treated as the developer in relation to the land so transferred once the transfer has taken effect. *Subsection (3)* provides that if such a transfer takes place after the end of a transitional period, or where such a period has not applied, the successor in title shall be treated as the developer only if the transfer specifies that the development rights are part of the rights transferred and again, only after the transfer has taken effect. *Subsection (4)* provides that, other than during a transitional period, no one may have the status of developer and thus development rights unless he is or has at some time been registered owner of two or more units and is still owner of at least one.

Section 60: Compulsory Purchase

115. Section 60 makes special provisions for dealing with compulsory purchase of units or common parts, or of parts of units or common parts. *Subsection (1)* makes it clear that any land subject to compulsory purchase ceases to be commonhold land, unless *(subsection (2))* the Registrar is satisfied that the compulsory purchaser wishes it to remain as commonhold land. *Subsection (3)* disapplies the provision of section 21(2)(c), which would otherwise forbid a unit-holder from transferring only part of his unit, thus allowing compulsory purchase of a part-unit where necessary. *Subsection (4)* gives power to make regulations governing transfer of all or part of any commonhold land to a compulsory purchaser, and *subsection (5)* lists a number of matters which such regulations might cover. These matters include a provision at *subsection (5)(f)* which would allow the regulations to disapply or apply with modifications any legislation relating to compulsory purchase as it relates to commonhold land. *Subsection (6)* makes provision to deal with land which remains after compulsory purchase of part only of a commonhold development.

Section 61: Matrimonial rights

116. Section 61 provides that, where the term 'tenant' is used in Part 1 of the Act, it applies to anyone who has matrimonial home rights under the Family Law Act 1996. This says, at section 30(2), that a spouse who is not entitled to a property right in the matrimonial home has '(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33; (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.

Section 62: Advice

117. This section makes provision granting the Lord Chancellor, in respect of

commonhold law, a power analogous to the powers to provide financial assistance to advice providers given to the Secretary of State by the Housing Act 1996 in respect of leasehold. The Lord Chancellor will also have the power to make like provision in Wales as Part 1 of the Act is not devolved business. *Subsections (1)* and *(2)* specify that an individual who provides general advice about a residential matter of commonhold law may receive remuneration from the Lord Chancellor on such terms as he judges suitable.

General

Section 64: Orders and regulations

118. *Section 64(1)* provides that wherever the term 'prescribed' is used in Part 1 of the Act it refers to regulations to be made by the Lord Chancellor. *Subsection (3)* provides that such regulations shall be subject to the negative resolution procedure in both Houses.

Section 65: Registration procedure [Amended at Report stage]

119. *Section 65(1)* gives the Lord Chancellor power to make rules governing registration of commonhold land and the procedures to be followed in relation to commonhold registration documents. *Subsection (2)* provides that such rules should be made in the same way as the Land Registration Rules under the Land Registration Act 2002, that is to say, by statutory instrument with the advice and assistance of the Rule Committee. It also provides that the Rules so made may make provision for any matter that is or may be provided for under the Land Registration Rules, and particularly, to avoid the need to re-make all the Land Registration Rules to make them apply to commonhold, it allows for the application of the rules made under the 2002 Act to commonhold land registration in the same way as they apply to general registration. *Subsection (3)* sets out a number of areas in which the rules may make provision, and *subsection (4)*

deals with matters concerning commonhold registration documents, and particularly whether originals or copies are to be used for registration, if copies, whether and if so how they are to be certified and whether electronic documents might be permitted or required. *Subsection (5)* gives HM Land Registry the power to charge fees for commonhold land registration, and *subsection (6)* defines 'commonhold registration document' and 'general registration document' for the purposes of Part 1 of the Act.

Section 66: Jurisdiction

120. *Section 66(1)* provides that mention of 'court' in Part 1 of the Act refers to the High Court or a county court and *subsection (2)* provides that the allocation of business between tiers of court shall be subject to section 1 of the Courts and Legal Services Act 1991. *Subsection (3)* provides that mention of conferring jurisdiction on a court includes conferring jurisdiction on a tribunal as appropriate. *Subsection (4)* provides that rules of court or rules of procedure for a tribunal may make provision for dealing with proceedings brought under any provision of Part 1 of the Act or generally in relation to commonhold land.

Section 67: The register

121. Section 67 provides definitions in relation to registration and the powers

conferred on the Registrar in this Part of the Act and also provides that regulations made under any part of Part 1 may confer discretion on the Registrar.

Section 68: Amendments

122. Section 68 gives effect to Schedule 5 (consequential amendments).

Section 69: Interpretation

123. *Section 69(1)* defines a number of terms from Part 1 of the Act. *Subsection (2)* provides that a reference to an obligation to insure includes an obligation to use any payment under a claim against the insurance to re-instate or rebuild the structure or otherwise which was the subject of the claim. *Subsection (3)* provides that expressions used in Part 1 shall bear the meanings which they bear in any of the Law of Property Act 1925, the Companies Act 1985, or the Land Registration Act 2002 unless the Act provides an alternative definition.

Part 2: Leasehold Reform

Chapter 1: Right to manage

Section 71: Introductory

124. *Section 71* provides that this Chapter confers the right to acquire and exercise the management of the relevant property on a RTM company. This right is to be known as the 'right to manage'.

Qualifying rules

Section 72: premises to which Chapter applies

125. *Section 72* provides that the right can be exercised for any detached property or self-contained part property containing two or more flats held by qualifying tenants (as defined by section 75). This can include other property enjoyed by the tenants under the lease, such as garages or gardens, but does not have to. The eligibility of the property is subject to a further requirement that the qualifying tenants hold not less than two-thirds of the flats in the property. These criteria mirror those used for the right of collective enfranchisement under the 1993 Act. Certain properties are specified as not

being eligible for the right to manage. These are listed in Schedule 6 – see notes on Schedule 6 below.

Section 73: RTM companies

126. *Section 73* provides that in order to qualify to exercise the right to manage, a company must be a private company limited by guarantee and must include the acquisition and exercise of the right to manage as one of its objects. However, a company which is also a commonhold association cannot be a RTM company.

127. In order to prevent competing bids for the right to manage being mounted, a company does not qualify if there is already a RTM company for the premises. A RTM company which is used to acquire the freehold of the property by any means (including, but not solely, under the 1993 Act) ceases to enjoy the right to manage upon completion of that acquisition.

Section 74: RTM companies: membership and regulations

128. *Section 74* makes provision in respect of the membership and constitution of a RTM company.

129. Any person who is a qualifying tenant of a flat in the premises (as defined in section 75) is entitled to be a member of the RTM company at any time. Any person who is a landlord under a lease of the whole or part of the premises is also entitled to be a member of the company, but only after the time that the company takes over the management of the premises.

130. Regulations will be made about the form and content of the Memorandum and Articles of a RTM company. (These will cover, amongst other matters, the provisions for taking up membership of the company. The regulations will also set out default provisions governing voting rights in the company.) The regulations may over-ride any terms inconsistent with them included in the Memorandum and Articles. They can also require any compulsory terms to be deemed to be included if the company fails to include them. Certain provisions of the Companies Acts which would otherwise conflict with this provision are disapplied.

Section 75: Qualifying tenants

131. *Section 75* specifies which tenants are qualifying tenants for the purposes of acquiring the right to manage. These are effectively any tenant of a flat under a ‘long lease’ (as defined in sections 76 and 77), subject to the proviso that there can only be one qualifying tenant per flat. Business tenants cannot be qualifying tenants.

Sections 76 and 77: Long leases

132. *Section 76 and 77* specify what is a ‘long lease’ for the purposes of the right to manage. The provisions mirror the relevant existing provisions for the right to collectively enfranchise. A long lease is principally any lease originally granted for a term certain exceeding 21 years, but includes also certain other types of lease regardless of term, including leases of leaseholders whose long leases have expired and who remain as tenants under the provisions of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989. Where the lease is a shared ownership lease, it is only counted as a long lease for the purposes of the right to manage if the leaseholder owns a 100 per cent share of the lease.

Claim to acquire right

Section 78: Notice inviting participation

133. *Section 78* requires a RTM company to serve a notice on all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right. This is known as 'the notice of invitation to participate' and must be served before notice claiming the right to manage can be served on the landlord (see section 79). The notice of invitation to participate will have to comply with minimum requirements set out in the Act and any further ones specified in regulations. The notice will have to be either accompanied by a copy of the Memorandum and Articles of Association for the RTM company or include a statement explaining where these documents can be inspected and from where copies can be obtained. Any inaccuracies in the particulars of the notice will not invalidate the notice.

Section 79: Notice of claim to acquire right

134. *Section 79* specifies the procedures to be followed in acquiring the right to manage.

135. *Subsection (1)* provides that a RTM company claims acquisition of the right by giving notice of that claim. This is known as the 'claim notice'.

136. *Subsection (2)* provides that the claim notice may not be given unless at least fourteen days have passed following the service of any notice of invitation to participate.

137. *Subsections (3), (4) and (5)* provide that a claim notice may only be given if the correct number of qualifying tenants are members of the company. Ordinarily, the notice will be given by qualifying tenants who hold at least half of the flats in the premises. However, where there are only two qualifying tenants in the block, both must be members of the company at the time that the claim notice is served.

138. *Subsections (6) and (7)* provide that the claim notice must be served on anyone, other than a tenant, who is party to a lease of any part of the property and who can be traced at the time the claim notice is to be given. (That would include any landlord and any third party appointed manager under a lease). A claim notice must also be served upon anyone appointed manager of the premises under Part 2 of the 1987 Act. Where no party can be found to serve a claim notice upon, an application will need to be made to a LVT to exercise the right (see section 85).

139. *Subsection (8)* provides that a copy of the claim notice must be given to each qualifying tenant. This will allow those who have already become members to be aware that the company is proceeding to exercise the right, and will allow those who are not members to consider whether to do so in the light of the company proceeding.

140. *Subsection (9)* provides that, where a manager has been appointed under the 1987 Act, a copy of the claim notice must be given to the court or LVT which made the appointment. This will allow arrangements to be put in hand for the handover of management responsibility.

Section 80: Contents of claim notice

141. *Section 80* makes provision in respect of minimum requirements to be contained in the claim notice. These are designed to ensure that the company demonstrates that it qualifies to acquire the right to manage. The company must specify a date, which must be at least a month after the date of the claim notice, by which recipients of that notice are invited to give a counter-notice (see section 84). The company must also specify a date, which must be at least three months after the last day for giving a counter-notice, on which it intends to take over the management of the premises. There is a power to specify further requirements for the notice by secondary legislation.

Section 81: Claim notice: supplementary

142. *Section 81* makes supplementary provisions in respect of the claim notice. It provides that a claim notice is not to be considered invalid merely because of any inaccuracy in the details or form of the notice. (That does not in itself prevent the landlord being able to dispute entitlement to the right to manage - if, for example, the notice incorrectly states that a property is eligible for the right, the landlord would be able to mount a challenge on the basis that the property is not eligible.)

143. Specific provision is made for circumstances where any member of the company at the time that the claim notice is served is not a qualifying tenant for the purposes of the right to manage. Where that occurs, the claim notice would continue to be valid provided that the correct number of qualifying tenants were members of the company at the time the notice was served. (As set out in section 79, that would be qualifying tenants who held at least half of the flats in the premises or, where there are only two qualifying tenants in the block, both of those tenants.)

144. There may only be one claim notice served for an individual block at any given time. Where a notice is served, it is therefore not possible to serve a further notice while the first one remains in force. A claim notice could cease to be in force because, for example, the company withdraws it or because it is determined that the company is not entitled to take over the management of the premises.

Section 82: Right to obtain information

145. *Section 82* provides that the RTM company may require any person to provide it with information reasonably required for the purposes of ascertaining the particulars required to be included in a claim notice (by virtue of section 80 or any regulations made under that section). Any information required by virtue of this right must be provided within 28 days of it being requested.

Section 83: Right of access

146. *Section 83* grants the RTM company and any recipient of a claim notice, or anyone acting on their behalf, a general right of access to any part of the premises if needed in connection with the claim to acquire the right to manage. (For example, access might be required to measure floor area of non-residential parts to ensure that the property is eligible for the right to manage.) The right of access can be exercised at any reasonable time, subject to a requirement to give not less than ten days' notice to the occupier.

Section 84: Counter-notices

147. *Section 84* specifies the procedures governing the serving of counter-notices.

148. *Subsection (1)* states that anyone who receives a claim notice may give a notice to the RTM company by the date specified in the claim notice. This is known as a 'counter-notice'.

149. *Subsection (2)* specifies that a counter-notice may only either admit that the RTM company is entitled to acquire the right to manage or state that the company is not entitled to do so. To be effective, a counter-notice to the latter effect must state the grounds on which the company is considered not to comply with the eligibility criteria set out in the Act. The form of counter-notices may be prescribed by regulations.

150. *Subsections (3) and (4)* provide that where a RTM company receives a counter-notice disputing its entitlement to acquire the right to manage, it can apply to a LVT for a determination of its eligibility. Application to the LVT must be made within 2 months of the date of the counter-notice.

151. *Subsection (5)* provides that where a RTM company receives a counter-notice disputing its entitlement to acquire the right to manage, it cannot take over management of the

premises unless on an application to a LVT it is finally determined that it is eligible to acquire the right or the parties who disputed the entitlement subsequently agree in writing that the company is entitled.

152. *Subsection (6)* provides that a final determination that a company was not entitled to acquire the right to manage causes the claim notice to cease to have effect.

153. *Subsections (7) and (8)* explain what is meant by a final determination.

Section 85: Landlords etc. not traceable

154. *Section 85* provides that a RTM company may apply to a LVT to acquire the right to manage where no party can be found to serve a claim notice upon. Prior to making such an application, the company must first notify all qualifying tenants of its intention to do so. The LVT may order the company to take further steps to find any of the missing parties, or may make an order providing that the company is entitled to acquire the right to manage. If any of the absent parties is traced prior to the LVT making an order, no further proceedings will be taken regarding the making of the order and the LVT will instead order how the claim should be dealt with.

Section 86: Withdrawal of claim notice

155. *Section 86* makes provision for the withdrawal of a claim notice.

Section 87: Deemed withdrawal

156. *Section 87* sets out the circumstances under which a claim notice is deemed to be withdrawn. This would occur where the RTM company either fails to apply to a LVT following receipt of a counter-notice disputing entitlement to right to manage within the two months allowed, or where such an application is made and subsequently withdrawn. It would also occur where the company is wound up, enters receivership, becomes insolvent or is struck off.

Section 88: Costs: general

157. *Section 88* specifies that any recipient of a claim notice is entitled to recover from the company the reasonable costs incurred in dealing with that notice. Such costs cannot include any costs incurred in proceedings before a LVT unless the tribunal finds that the RTM company is not eligible to acquire the right to manage. Application can be made to a LVT for a ruling on the amount which can be recovered.

Section 89: Costs where claim ceases

158. *Section 89* makes provision for liability for costs where a claim notice ceases to have effect. That could occur, for example, where the notice is withdrawn (under section 86), deemed to be withdrawn (under section 87) or where a LVT determines that a company is not entitled to acquire the right to manage. In such circumstances, both the RTM company and all persons who are or have been members of the company (other than people who have assigned their lease to someone who has then become a member of the company) are liable for the costs incurred up to that point of all parties who received the claim notice. Liability is placed upon the members as well as the company in order to avoid the company being deliberately wound up at this stage as a means of avoiding the payment of costs.

Acquisition of right

Section 90: The acquisition date

159. *Section 90* makes provision for deciding the date upon which the RTM company acquires the right to manage ('the acquisition date').

160. *Subsections (2) and (3)* (taken together) provide that where no recipient of a claim notice serves a counter-notice disputing the entitlement of the company to acquire the right to manage, the company is entitled to take over the management of the premises on the date specified for that purpose in the claim notice.

161. *Subsection (4)* provides that where the entitlement of the company to acquire the right to manage is disputed and it is determined on an application to a LVT that the company is so entitled, the company takes over the management of the premises one month after the determination becomes final.

162. *Subsection (5)* provides that where the entitlement of the company to acquire the right to manage is disputed and the parties who disputed that entitlement subsequently agree in writing that the company is so entitled, the company takes over the management of the premises one month after the last of those parties gives their written agreement.

163. *Subsection (6)* provides that where the right to manage is acquired by virtue of an order made by a LVT under section 85, the right is acquired on the date specified in that order.

Sections 91 and 92: Notices relating to management contracts

164. *Sections 91 and 92* place an obligation on the manager of premises where the right to manage is acquired by a RTM company to serve notices in respect of management contracts he has entered into prior to the date on which the company takes over the management of the premises. These requirements are intended to allow all parties employed in the management of the premises to make the necessary arrangements to prepare for the company taking over the management of the premises. That could include negotiating with the company to continue to provide the services in question.

165. The first notice to be served by virtue of these provisions is a notice to each of the contractors employed by the existing manager to carry out the management of the premises. This is known as a ‘contractor notice’. This notice will inform all such contractors that the right to manage is to be acquired, and state the date on which the company is to take over the management of the premises.

166. The second notice to be served by virtue of these provisions is a notice informing the RTM company of the contractors already employed by the existing manager to carry out the management of the premises. This is known as a ‘contract notice’.

167. Where a contractor receives a ‘contractor notice’, he is in turn required to serve a copy of that notice on any sub-contractor employed by him to carry out the management of the premises. He must also serve a ‘contract notice’ on the RTM company to notify it of such sub-contractors.

Section 93: Duty to provide information

168. *Section 93* places an obligation on any landlord, third party to a lease or manager appointed under the 1987 Act to provide, following a written request, any information required by the RTM company in connection with the exercise of the right to manage. Such information might include, for example, copies of leases or service charge accounts. Any request for such information must be complied with within 28 days of the request being made, subject to the proviso that any party cannot be compelled to hand over any information under this section within four months of the date of the claim notice or the date the company takes over management (whichever is the later). This will mean that if the RTM company specifies an earlier date as the date on which it wishes to take over management responsibility, it will do so in the knowledge that it would not be immediately entitled to any necessary supporting documents.

Section 94: Duty to pay accrued uncommitted service charges

169. *Section 94* places an obligation on any landlord, third party to a lease or manager appointed under the 1987 Act to pay over to the company any sums held on behalf of the tenants in respect of the premises on the acquisition date. They are not, however, required to hand over such sums as are required to meet costs incurred before the right is acquired for which those monies are entitled to be used. Nor are they required to hand over such monies before four months has elapsed since the service of the claim notice or, if later, the date on which the company takes over the management of the premises. As for information (under section 93), this will mean that if the RTM company specifies an earlier date as the date on which it wishes to take over management responsibility, it will do so in the knowledge that it would not immediately be entitled to any necessary supporting funds.

170. The company or the party required to hand over the monies may apply to a LVT for a determination of the sum to be paid over.

Exercising the right

Section 95: Introductory

171. *Section 95* states that sections 96 to 103 apply while the RTM company is responsible for the management of the premises.

Section 96: Management functions under leases

172. *Section 96* sets out the functions, duties and responsibilities taken on by the RTM company by virtue of acquiring the right to manage.

173. *Subsections (2) to (4)* provide that where a landlord, or a third party, is obliged to carry out any of the management functions under any lease of the premises, those functions become functions of the company.

174. *Subsections (5) and (6)* define the management functions to be taken on by the company. They include matters for which the company is to be responsible and matters for which the company is not to be responsible. In particular, the company is not to be responsible for the management of any unit which is not held by a qualifying tenant (e.g. a commercial unit or a flat of a renting tenant). The company will, however, be responsible to all parties for the management of the common parts and the fabric of the building. The company is also not to be entitled to take any forfeiture action.

175. *Subsection (7)* provides a power to further specify by order what is or is not to be a management function of the RTM company.

Section 97: Management functions: supplementary

176. *Section 97* makes further provision in respect of the management functions of the RTM company.

177. *Subsection (1)* provides that any obligation owed by the company to any tenant by virtue of taking on the management functions is also an obligation to any landlord.

178. *Subsections (2) and (3)* provide that any landlord of any part of the premises, any third party to a lease or anyone appointed manager under the 1987 Act is not entitled to carry out any of the management functions taken on by the RTM company without the company's agreement. That does not, however, prevent any party insuring the premises at his own expense.

179. *Subsections (4) and (5)* provide that any function or obligation owed by a tenant to a landlord or to a third party under a lease will instead be owed to the RTM company if it relates to any of the management functions taken on by the company. (For example,

where a tenant is obliged under a lease to meet the management costs incurred by the landlord, he or she will instead be required to meet the costs incurred by the RTM company.) This does not, however, prevent the tenant still having to pay any management costs incurred prior to the company taking on the management functions.

Section 98: Functions relating to approvals

180. *Section 98* specifies the procedure to be followed under the right to manage where an approval (including a consent or a licence) is required under a lease.

181. *Subsections (2) and (3)* provide that where a tenant is required to seek approval under a lease, the functions of the landlord, or of a third party, in granting approvals become functions of the company. This only applies to residential long leases.

182. *Subsection (4)* provides that the company must not grant approval without having given 30 days' written notice to the landlord in respect of approvals for specified matters, and 14 days' written notice in all other cases.

183. *Subsection (5)* provides for regulations to specify other matters for which the landlord is to be given longer than 14 days' notice, and what period should apply.

184. *Subsection (6)* provides that any obligation placed on a tenant under a lease to obtain the approval of a landlord or a third party for any matter will instead be an obligation to obtain the approval of the RTM company.

Section 99: Approvals: supplementary

185. *Section 99* specifies the procedures which apply where a landlord objects to the granting of an approval under section 96.

186. *Subsection (1)* provides that where the landlord objects to the granting of approval within the period allowed, the company may not grant approval except in accordance with the agreement of the landlord or in accordance with a determination of (or on an appeal from) a LVT.

187. *Subsections (2) and (3)* provides that a landlord may not object to the granting of an approval (including an objection which has effect if the tenant fails to comply with a condition imposed by the landlord) unless he would have been able to do so were he the person responsible for granting the approval. That would include the landlord being bound not to unreasonably object to the granting of the approval in circumstances where he would be bound not to unreasonably withhold consent under section 19 of the Landlord and Tenant Act 1927 (such as, for example, in dealing with a request for consent for the assignment of the lease). (The RTM company is also bound not to unreasonably withhold such consents by virtue of paragraph 1 of Schedule 7.)

188. *Subsection (4)* provides that a landlord who objects to the granting of an approval under section 98 must give notice of that objection to both the RTM company and the tenant seeking the approval.

189. *Subsection (5)* provides that application made be made to a LVT for its adjudication on the matter by either the landlord, the company, or the tenant who applied for the approval.

Section 100: Enforcement of tenant covenants

190. *Section 100* provides that a RTM company may take action to enforce any obligation entered into by any tenant of the premises under a lease. The company may exercise any power granted under a lease to enter the premises to check compliance with the terms of that lease, but may not exercise any powers of re-entry or forfeiture.

Section 101: Tenant covenants: monitoring and reporting

191. *Section 101* sets out the responsibilities of the RTM company in respect of the covenants of the tenants under their leases. The company is required to monitor tenants' compliance with the terms of their leases, and to report to the landlord any breaches of those terms which are not put right within three months of the breach coming to the attention of the company (unless the landlord has asked not to be so notified or reasonable compensation has been paid in respect of the failure).

Section 102: Statutory functions

192. *Section 102* introduces Schedule 7, which makes consequential amendments to existing statutory rights and duties to make them applicable where the RTM company has acquired the right to manage. Details are set out in the notes on Schedule 7 below. Regulations may specify how any other statutory requirements should apply where the right to manage has been exercised.

Section 103: Landlord contributions to service charges

193. *Section 103* places landlords under an obligation to meet any shortfall in the costs recovered by the RTM company caused by the proportions payable by tenants under their leases failing to add up to 100 per cent of the total. Where that obligation applies, a landlord of a unit which is not held on a long lease is required to pay his proportion of the shortfall. Where there are two or more units, the proportion to be paid by an individual landlord is calculated by reference to the proportion of the total internal floor area of such units which relates to units for which he is the landlord. Where a unit is not subject to a lease, the payment must be made by the freeholder.

Supplementary

Section 104: Registration

194. *Section 104* amends the Land Registration Act 1925 to make the right to manage a registrable interest in land. The Land Registration Act 2002 will, when it comes into force, replace the 1925 Act and as a result the Act makes provision for section 104 to be repealed.

Section 105: Cessation of management

195. *Section 105* specifies the circumstances in which the company ceases to be entitled to exercise the right to manage. This will occur:

- where the company wishes to cease exercising the right and all landlords agree;
- because the company is wound up, enters receivership, becomes insolvent or is struck off;
- where a manager appointed to replace the RTM company begins to act or where an order is made which withdraws the right to manage from the RTM company under Part 2 of the 1987 Act; or
- where the company ceases to be a RTM company (which may happen, for example, because the company is used to purchase the freehold of the property).

Section 106: Agreements excluding or modifying right

196. *Section 106* provides that any agreement which has the effect of either restricting the ability of a tenant to participate in the right to manage or penalising the tenant as a result of an action of RTM company is void.

Section 107: Enforcement of obligations

197. *Section 107* provides that any interested party may apply to a county court to enforce any obligation imposed by virtue of this Chapter.

Section 108: Application to Crown

198. *Section 108* applies the right to manage to the holdings of the Crown Estate and the Duchies of Cornwall and of Lancaster and to Government properties. Leaseholders in such premises will therefore be eligible to acquire the right. It also enables the Duchies of Lancaster and of Cornwall to make any payments required of it as landlord under this Chapter out of either revenue or capital funds.

Section 109: Powers of trustees in relation to right

199. *Section 109* provides that trustees who are the qualifying tenant of a flat may become members of the RTM company, unless the instrument regulating the trust specifically provides otherwise.

Section 110: Power to prescribe procedure

200. *Section 110* provides that regulations may make further provisions governing the procedure for giving effect to a claim notice. (Such provisions may be required in the light of experience should it prove that circumstances may arise which it would be difficult to accommodate within the normal procedures for acquiring the right to manage.)

Section 111: Notices

201. *Section 111* sets out the procedures to be followed in serving any notice under this Chapter.

Chapter 2: Collective enfranchisement by tenants of flats

Section 114: Amendments of right to collective enfranchisement

202. *Section 114* provides that this Chapter amends the right to collective enfranchisement under the 1993 Act.

Qualifying rules

Section 115: Non-residential premises

203. *Section 115* amends section 4(1) of the 1993 Act to enable premises where the proportion of the internal floor area used for non-residential purposes is up to 25% to qualify for the right. This replaces the present limit of 10%.

Section 116: Premises including railway track

204. *Section 116* amends section 4 of the 1993 Act and exempts property from the right to enfranchise, where the freehold of the property includes part of an operational railway track.

Section 117: Qualifying leases

205. *Section 117* amends the definition of qualifying tenant in section 5(1) of the 1993 Act to remove the current requirement that the tenant's long lease should be at a low rent or for a particularly long term (i.e. over 35 years). Subsection (2) amends section 69(1)(b) of the 1993 Act to ensure that it continues to be possible to request consent for the making of an application for the approval of an estate management scheme in connection with acquisitions under Chapter 1 of Part 1 of the 1993 Act.

Section 118: Premises with resident landlord

206. *Section 118* amends section 10 of the 1993 Act which exempts premises converted into four or fewer flats where the landlord or an adult family member has occupied one of the flats as their only or principal home for at least twelve months. This exemption will now apply only if the landlord has owned the freehold since before the conversion. Where the freehold of the premises is held on trust, the exemption will only apply where the person, or at least one of the persons, occupying one of the flats as their only or principal home for at least twelve months had also been a beneficiary of the trust since before the conversion.

Section 119: Proportion of tenants required to participate

207. *Section 119* amends section 13(2) of the 1993 Act to remove the current requirement that an initial notice of claim to exercise the right must be given by at least two-thirds of the qualifying tenants of flats in the premises.

Section 120: Abolition of residence condition

208. *Section 120* amends section 13(2) of the 1993 Act to remove the current requirement that at least half of the tenants giving the initial notice must satisfy a residence test.

Exercise of right

Section 121: Right exercisable only by RTE company

209. *Section 121* amends section 13 of the 1993 Act to require an initial notice to be given by a RTE company whose membership includes the required number of tenants in the block who both qualify to participate in the enfranchisement and have elected to participate (i.e. the participating members must hold long leases on at least half of the flats in the building). This replaces the existing requirement that a qualifying group of tenants themselves give the notice. Where there are two qualifying tenants in the block, both must be participating members of the RTE company.

Section 122: RTE companies

210. *Section 122* inserts new sections 4A, 4B and 4C into the 1993 Act.

211. *Section 4A* defines a RTE company. To qualify, the company must be a private company limited by guarantee, and its memorandum must include as one of its objects the exercise of the right to collective enfranchisement. But (in order to prevent competing bids for enfranchisement being mounted) it does not qualify if another RTE company is already taking forward an ongoing enfranchisement claim for the same premises. In addition, a company which is also a commonhold association cannot be a RTE company.

212. *Section 4B* specifies who may be a member of a RTE company prior to the company acquiring the freehold of the property. *Subsection (1)(a)* provides that all qualifying tenants are entitled to membership. *Subsection (1)(b)* provides that where a RTE company is already a RTM company which has acquired the right to manage under Chapter 1 of Part 2 of the Act, any landlords under leases of the whole or part of the premises may also be members. *Subsection (3)* provides that once the freehold is conveyed to the RTE company any member who is not a participating member ceases to be a member.

213. *Subsection (4)* defines a participating member as a member who is a qualifying tenant and who has given a participation notice (see subsection (7)) before the date when the company gives the initial notice under section 13 of the 1993 Act or during the participation period (see subsection (9)), or is an assignee of a lease held by a participating member in the circumstances set out in subsection (5),

or the personal representatives of such a member in the circumstances set out in subsection (6). *Subsection (5)* provides that, where a qualifying tenant who was a participating member has assigned his lease to another qualifying tenant, that person can become a participating member by giving a participation notice to the RTE company within 28 days starting from the date of the assignment. *Subsection (6)* provides that if a participating tenant dies, his or her personal representatives (if they are a member) may become a participating member if they give a participation notice to the company at any time.

214. *Subsection (7)* defines a participation notice as a notice which states that a member wishes to be a participating member. *Subsection (8)* will ensure that the landlord will be notified if leaseholders decide to join the RTE Company after the initial notice has been served on him. *Subsection (9)* defines the participation period as starting at the date of the initial notice and lasting for 6 months afterwards (or any other period which may be specified by order), or, if earlier, until just before contracts are exchanged for the purchase of the freehold.

215. *Section 4C* provides a power to make regulations specifying the content of the memorandum and articles of RTE companies. The regulations will over-ride any terms inconsistent with them included in the memorandum and articles. The regulations may also require any compulsory terms to be deemed to be included if the company has failed to include them. Provisions of the Companies Act 1985 which would otherwise conflict with regulations made under this section are disapplied.

Section 123: Invitation to participate

216. *Section 123* inserts new section 12A into the 1993 Act. This requires the RTE company, before making a claim to exercise the right, to serve a 'notice of invitation to participate' on any qualifying tenants in the block who have not yet agreed to become participating members. Provision is made as to the content of this notice. The notice will have to either be accompanied by a copy of the Memorandum and Articles of Association for the RTE company or include a statement of where these documents can be inspected and from where copies can be obtained. The company cannot go on to serve an initial notice until fourteen days after service of the invitation to participate. Any inaccuracies in the particulars of the notice will not invalidate the notice.

Section 124: Consequential amendments

217. *Section 124* provides that Schedule 8 has effect. This Schedule includes a large number of amendments, principally to the 1993 Act, consequential on sections 117 to 119. They provide for the collective enfranchisement procedure to be carried forward by the RTE company rather than, as now, initially by a group of qualifying tenants and subsequently by a nominee purchaser appointed by them. Details are set out in the notes on Schedule 8 below.

Section 125: Right of access

218. *Section 125* extends the existing right of access by the landlord for valuation purposes under section 17(1) of the 1993 Act, so that it applies for any purpose in connection with a claim to exercise the right of collective enfranchisement.

Purchase price

Section 126: Valuation date

219. *Section 126* amends Schedule 6 to the 1993 Act to provide that the various values included in the price payable by the RTE company shall be determined as at the 'relevant date' – that is, the date of service of the initial notice – instead of as at the 'valuation date' – that is, the date at which it has been agreed or determined what freehold interests will be acquired by the company.

Section 127: Freeholder's share of marriage value

220. *Section 127* amends paragraph 4(1) of Schedule 6 to the 1993 Act to provide that the freeholder's share of marriage value should be 50% in all cases, rather than the greater of (a) such proportion as is agreed by the parties or determined by a LVT and (b) 50%.

Section 128: Disregard of marriage value in case of very long leases

221. *Section 128* amends paragraph 4 of Schedule 6 to the 1993 Act to provide that, in calculating the purchase price, marriage value is ignored on any participating member's lease which has more than 80 years left until its expiry.

Chapter 3: New leases for tenants of flats

Section 129: Introductory

222. *Section 129* provides that this Chapter amends the right of tenants to acquire new leases under the 1993 Act.

Qualifying rules

Section 130: Replacement of residence test

223. *Section 130* removes the previous requirement that tenants must satisfy a residence test to qualify for this right. Instead, it introduces a new requirement that the tenant must have been a qualifying tenant (i.e. a long leaseholder) for at least two years before they can exercise this right.

Section 131: Qualifying leases

224. *Section 131* amends the definition of qualifying tenant. Previously, a qualifying tenant had to either have a lease of more than 35 years (a lease for a particularly long term) or a lease of more than 21 years at a low rent. The amendments remove the 'low rent' and lease for a 'particularly long term' tests. Following these changes, a qualifying tenant is, for the purposes of the right to acquire a new lease, a long leaseholder of a flat.

Section 132: Personal representatives

225. *Section 132* makes special provision for the benefit of those who inherit leases. Provided that the deceased had been a qualifying tenant for at least two years (see section 130), their personal representatives will have the right to a new lease notwithstanding the fact that they have not, themselves, held the lease for at least two years. This right can only be exercised during a period of two years starting from the date of grant of probate or of letters of administration.

Section 133: Crown leases

226. *Section 133* inserts a new version of section 94(2) of the 1993 Act. It ensures that any long leaseholder of a flat in a Crown property can obtain a new lease under that Act where their immediate landlord is not the Crown. Where the Crown is the immediate landlord, the long leaseholder can obtain a new lease outside the 1993 Act under the voluntary undertaking given by the Crown to that effect.

Purchase price

Section 134: Valuation date

227. *Section 134* provides that the determination of the various values included in the price payable by the tenant under Schedule 13 to the 1993 Act shall be as at the 'relevant date' – that is, the date of service of the initial notice under section 39 of that Act, instead of

as at the 'valuation date' – that is, the date at which it has been agreed or determined what will be acquired by the tenant.

Section 135: Landlord's share of marriage value

228. *Section 135* provides that the freeholder's share of marriage value shall be 50% in all cases, rather than - as now - at least 50% with a higher share going to the landlord where it is agreed by the parties or where a LVT determines that the landlord should have a greater share.

Section 136: Disregard of marriage value in case of very long leases

229. *Section 136* provides that where the unexpired term of the existing lease exceeds 80 years at the relevant date, the marriage value shall be taken to be nil.

Chapter 4: Leasehold houses

Section 137: Introductory

230. *Section 137* provides that this Chapter amends the 1967 Act.

Qualifying rules

Section 138: Abolition of residence test

231. *Section 138* amends section 1 of the 1967 Act. It abolishes the residence test as it applies to leasehold houses. Consequentially, it also provides that where a person has a superior lease to a qualifying tenant, that person does not have the right to enfranchise and the right to extend his lease. It also makes a number of other consequential changes to the 1967 Act.

Section 139: Reduction of qualifying period as tenant etc

232. *Section 139* amends section 1 of the 1967 Act. It introduces a requirement for the leaseholder to have held his or her lease for a least two years before exercising the right to enfranchise or the right to an extended lease. It also excludes leaseholders from these rights if their tenancy of the house was a business tenancy *unless* they could pass a residence test. Business tenants are required to have occupied the house as their only or main residence for the last two years or periods amounting to at least two years in the last ten in order to obtain the right to enfranchise and the right to extend their leases. *Subsection (2)* provides that a head lessee of a house which has been converted into flats and let to qualifying tenants cannot exercise the right to enfranchise unless they can satisfy a similar residence condition.

233. This section also brings sections 9(3)(b) and 23(2)(b) of the 1967 Act into line with sections 13(9) and 42(7) of the 1993 Act. Where the leaseholder of a house withdraws his notice of their desire to enfranchise, he will be prohibited from issuing a fresh notice for twelve months (as opposed to three years).

Section 140: Exclusion of certain business tenancies

234. *Section 140* provides that business tenants (who must also meet the residence condition in section 140 above) do not qualify for the right to enfranchise unless they were granted a lease with an original term of more than 35 years, or the lease contained a covenant or obligation for renewal which has been exercised to make the total of the term more than 35 years.

Section 141: Tenancies not at a low rent

235. *Section 141* amends section 1AA of the 1967 Act. Subject to an exemption which applies to certain properties in rural areas, it extends the right to enfranchise to leaseholders of houses who were originally granted leases for more than 21 years, but less than 35 years, and who are unable to pass the relevant low rent test. It also makes consequential amendments to the rural exemption.

Section 142: Personal Representatives

236. *Section 142* amends section 6 of the 1967 Act. It improves the rights of those who inherit leasehold houses. Where the deceased leaseholder qualified for the right to extend the lease and/or enfranchise at the time of death, personal representatives would be able to exercise those rights within two years of the grant of probate or letters of administration. It also makes a consequential amendment to Schedule 3 to the 1967 Act.

Section 143: Abolition of limits on rights after lease extension

237. *Section 143* amends section 16 of the 1967 Act. Section 16 currently limits the rights of leaseholders of houses who have exercised their right to extend their lease. By removing paragraph (a) of subsection (1), leaseholders with extended leases will be given the right to acquire the freehold. Similarly, the removal of subsection (4) will also give sub-tenants of a tenant with an extended lease the right to acquire the freehold if otherwise qualified to do so. These rights will apply to leases extended before these provisions come into force in the same way as it will apply to those extended after that date.

238. *Subsection (2)* replaces section 16(1B) of the 1967 Act. The existing subsection (1B) prevents an extended tenancy from being an assured tenancy and disapplies the provisions of Schedule 10 to the Local Government and Housing Act 1989. It will be replaced with a provision that allows those with extended leases to benefit from security of tenure even if they can no longer meet the relevant low rent test. This is necessary because the higher ground rent payable under an extended lease will normally be above the limits of that test.

239. *Subsection (3)* makes it clear that the above changes apply to leases which have been extended before the coming into force of these provisions. *Subsection (4)* clarifies the operation of the valuation principles in section 9(1A) of the 1967 Act after the original term date of the lease.

Section 144: Exclusion of shared ownership leases

240. *Section 144* corrects technical defects in the 1967 Act relating to shared ownership properties. Such properties are exempt from the right to enfranchise under certain circumstances. The section allows the existing exemption to apply in cases where property is or has been transferred from a local authority to a registered social landlord (within the meaning of Part 1 of the Housing Act 1996). It also allows the exemption to apply in cases where a lease restricts a tenant's power to assign the lease.

Purchase price

Section 145: Tenant's share of marriage value

241. *Section 145* provides that, where relevant, marriage value on a house should be split equally between leaseholder and landlord.

Section 146: Disregard of marriage value in case of very long leases

242. *Section 146* provides that marriage value should be disregarded where the lease on a house has more than 80 years left to expiry.

Section 147: Purchase price for enfranchisement during lease extension

243. *Section 147* provides that, where a leaseholder gains the right to enfranchise by virtue of section 142 above, he pays a price that includes a share of marriage value, where relevant.

Absent Landlords

Section 148: Applications to be to county court

244. *Section 148* amends section 27 of the 1967 Act. Section 27 confers powers on the High Court in cases where a leaseholder of a house wishes to buy the freehold but the landlord cannot be found. The amendments transfer jurisdiction from the High Court to a county court. This will allow a county court to issue a vesting order so that the freehold can be bought in the absence of the landlord, where it is satisfied that certain conditions have been met. In addition, the sum paid by the leaseholder for the freehold will be paid to a county court rather than the Supreme Court following these changes.

Section 149: Valuation by leasehold valuation tribunal

245. *Section 149* replaces the existing section 27(5) of the 1967 Act with a new section 27(5). It also amends section 21(1) of that Act. The effect of the amendments is to transfer jurisdiction to determine the price to be paid for the freehold in cases where the landlord cannot be found from the President of the Lands Tribunal to a LVT.

Chapter 5: Other provisions about leases

Service charges, administration charges etc.

Section 150: Extending meaning of service charge and management etc

246. *Section 150* gives effect to Schedule 9 which makes a number of changes to existing provisions relating to the management of, and service charges in respect of, leasehold properties. In short the changes apply the provisions to, or in relation to, improvements and, with the exception of loans to local authority or registered social landlord leaseholders, any other matters which may be specified by order. The changes are described in detail in the notes on Schedule 9 below.

Section 151: Consultation about service charges

247. Section 151 substitutes two new sections (20 and 20ZA) for section 20 of the 1985 Act (which requires landlords to consult tenants before carrying out works to which a tenant is obliged to contribute through a service charge, and restricts their right to recover the cost if they fail to do so).

248. The new sections provide a power to prescribe, through regulations, the consultation requirements that landlords must comply with before carrying out any qualifying works or entering into a qualifying long term agreement. A qualifying long term agreement is an agreement entered into by or on behalf of the landlord or a superior landlord for a term of more than twelve months. The consultation requirements will apply where, in the case of works, the costs exceed a specified amount and, in the case of a long term agreement, the costs payable under the agreement as a whole or the costs incurred during a specified period exceed a specified amount. The specified amount, or period, will in each case, be set by regulations and may be set by reference to the amount which will be payable by any one or more tenants as service charges.

249. If landlords do not comply with the consultation requirements the amount that they will be able to recover will be limited to an amount specified in regulations. Landlords will be able to apply to a LVT for a determination to dispense with all or any of the prescribed consultation requirements. Regulations may provide that agreements which would otherwise be qualifying long term agreements may be exempt from the

consultation requirements in prescribed circumstances or if they are agreements of a particular description.

Section 152: Statements of account

250. *Section 152* substitutes a new section for section 21 of the 1985 Act (which gives tenants the right to request a summary of the costs on which their service charge is based).

251. The new section 21 will instead require landlords to provide annual accounting statements. The statements will include information about monies paid into a service charge fund, or standing to the credit of the service charge fund, as well as costs incurred by the landlord. Statements will have to be certified by a qualified accountant, except where exempted by regulations. This is similar to the existing requirement to have summaries certified, except where they relate to a service charge paid by the tenants of four or fewer dwellings. Landlords will also have to provide leaseholders with a summary of their rights and obligations in relation to service charges.

252. The form and content of statements, accountants' certificates and summaries of rights and obligations will be prescribed by regulations. Different provision could be made for different cases - for example, special provision could be made for landlords of smaller properties. The regulations will be subject to annulment by either House.

253. Statements of account will have to be provided no later than six months after the end of an accounting period. The first accounting period will begin on the day on which the new section 152 comes into force or, if later, on the first day on which service charges become payable by a tenant under a lease of any of the dwellings. The landlord will choose the last day of the accounting period, subject to the requirement that no accounting period should be more than 12 months long. Subsequent accounting periods will be consecutive.

254. This section also introduces a new section 21A. This will allow tenants to withhold payments where landlords fail to provide documents which exactly or substantially meet the relevant requirements. The sum that they will be able to withhold will be equal to the sum standing to their credit at the beginning of the accounting period in question, plus any charges that they had paid during that particular accounting period. However, the right to withhold will not apply where a LVT determines that the landlord has a reasonable excuse for his failure. The right to withhold ceases once satisfactory documents are provided, even if these are provided after the relevant deadline.

255. In interpreting the new sections 21 and 21A, it should be noted that section 30 of the 1985 Act defines a "landlord" as including any person who has a right to enforce payment of a service charge.

Section 153: Notice to accompany demands for service charges

256. *Section 153* requires landlords to include with service charge demands a summary of leaseholders' rights and obligations in relation to service charges. It inserts a new section 21B into the 1985 Act. Subsection (2) of that new section provides a power to prescribe the form and content of such summaries by regulations.

257. Subsections (3) and (4) of the new section 21B give leaseholders a specific right to withhold payment of service charges if the required information is not provided.

Section 154: Inspection etc. of documents

258. *Section 154* substitutes a new section for section 22 of the 1985 Act (which allows tenants to inspect documentation which supports a summary of costs). The new section 22 will give tenants the right to inspect documentation relevant to their accounting statements within 21 days of their request. They will also be able to take copies of that information, or have copies provided to them, on payment of a reasonable

fee. The right to inspect documents ends six months after they are provided with the corresponding statement of accounts or, if later, six months after the deadline for providing that statement.

Section 155: Liability to pay service charges: jurisdiction

259. *Subsection (1)* inserts new section 27A into the 1985 Act. *Subsection (1)* of the new section provides that landlords or tenants may apply to a LVT for a determination as to whether service charges are payable and, if they are payable, by whom they are payable, to whom they are payable, the amount which is payable, the date they are payable and the manner in which they are payable. *Subsection (2)* of the new section makes it clear that an application may be made even if a payment has already been made. *Subsection (3)* of the new section enables landlords or tenants to apply for such a determination before relevant costs are incurred.

260. *Subsection (4)* of the new section provides that an application cannot be made to a tribunal under this section if the matter in question has been agreed or admitted, if it has already been determined elsewhere, or if it is subject to a 'post-dispute arbitration agreement' (see below). *Subsection (5)* of the new section makes clear that a matter has not been agreed or admitted for these purposes by virtue of a person having paid all or part of the sum in question.

261. These provisions replace and extend the existing provisions under section 19(2A) to (3) of the 1985 Act (which enable LVTs to determine the reasonableness of service charges) which are repealed by Schedule 14. *Subsection (6)* of new section 27A now provides that arbitration agreements are void unless arbitration is agreed to after a particular dispute has arisen. Previously LVTs were unable to hear disputes where leases contained a section requiring the use of arbitration. *Subsection (7)* of that new section provides that this new jurisdiction for LVTs is in addition to any existing jurisdiction of the courts.

262. *Subsections (2) and (3)* of this section define 'post-dispute arbitration agreement' for the purposes of the 1985 Act.

Section 156: Service charge contributions to be held in separate account

263. Section 156 amends the 1987 Act. It introduces a new section 42A which will require payees to hold service charge funds from separate groups of service charge payer in separate accounts. Payees are defined in section 42 of the 1987 Act as "the landlord or other person to whom any such charges are payable under the terms of their leases". Certain classes of landlord are exempt from section 42 – these exemptions also apply to new section 42A.

264. The new section 42A will also require payees to notify the relevant financial institution, in writing, that sums standing to the credit of a trust fund are to be (or are) held in it. Regulations under section 42A(2) and 42A(11) will prescribe the type of account in which service charge funds can be kept (for example, this might include an interest-bearing account) and the sort of financial institution that can be used (for example, these might include recognised banks and building societies). The regulations will be subject to annulment by either House. Section 42A(10) provides a power to make regulations exempting managers from the requirement to use separate bank accounts for separate groups of service charge payers.

265. Tenants will have the right to ask for proof that the relevant requirements have been complied with. Payees will have 21 days in which to provide such proof. In addition, tenants will be able to withhold service charges where they have reasonable grounds for believing that section 42A has not been complied with.

266. Section 157 also inserts a new section 42B into the 1987 Act. This makes it an offence for any person to fail to comply with section 42A without reasonable excuse. On

conviction, they would be liable to a fine not exceeding level 4 on the standard scale (currently £2,500).

Section 157: Service charges: minor and consequential amendments

267. *Section 158* gives effect to Schedule 10 to the Act, which makes a number of minor, consequential amendments. The changes are described in detail in the notes on Schedule 10 below.

Section 158: Administration charges

268. *Section 158* gives effect to Schedule 11. The changes are described in detail in the notes on Schedule 11 below.

Section 159: Charges under estate management schemes

269. *Section 159* provides that charges levied by landlords under estate management schemes shall be subject to a test of reasonableness to be determined by the LVT.

270. *Subsection (1)* defines the schemes that are covered by the section. They are schemes made under section 19 of the 1967 Act or under Chapter 4 or section 93 of the 1993 Act. *Subsection (2)* defines 'variable estate charge' and provides that a variable estate charge is only payable to the extent that it is reasonable.

271. *Subsection (3)* provides a right for any person subject to an estate charge to apply to a LVT for the variation of the estate management scheme. Such an application can be made on the grounds that either the estate charge specified in the scheme is unreasonable or that any formula for the calculation of estate charges is unreasonable. *Subsections (4) and (5)* provide that where a tribunal agrees that an estate charge is unreasonable, it can order the scheme to be changed accordingly.

272. *Subsection (6)* provides that an application may be made to a LVT for a determination whether or not an estate charge is payable and, if so, by whom it is payable, to whom it is payable, the amount which is payable, the date on which it is payable or the manner in which it is payable. *Subsection (8)* provides that the jurisdiction of the LVT in such matters is in addition to any jurisdiction of a court. *Subsection (9)* provides that no application may be made in respect of a matter which has been agreed or admitted by a leaseholder or which has been determined by a court or arbitral tribunal. *Subsection (10)* provides that payment of all or part of a charge does not constitute admitting or agreeing it. *Subsection (11)* provides that certain agreements providing for questions about estate charges to be determined in a particular manner are void.

Manager appointed by leasehold valuation tribunal

Section 160: Third parties with management responsibilities

273. *Section 160* corrects a defect in the appointment of a manager procedures under Part 2 of the 1987 Act. By virtue of the amendments made by this section leaseholders will be able to apply to a LVT for the appointment of a new manager where a lease provides for management functions to be carried out by a third party manager rather than the landlord. At present, leaseholders with such leases do not have the same rights as other leaseholders to apply for a new manager where the existing one is failing to manage the building properly. The grounds for appointment are extended by this section to cover acts or omissions by a third party manager as well as a landlord.

Section 161: Restriction of resident landlord exception

274. *Section 161* restricts the current exemption from the provisions of Part 2 of the 1987 Act for resident landlords in converted houses. The exemption will not apply if at least

half of the flats in the building are held on long leases which are not business tenancies under Part 2 of the Landlord and Tenant Act 1954.

Variation of leases

Section 162: Grounds for application by party to lease

275. *Section 162* extends and clarifies the grounds for applying for a variation of a lease under section 35 of the 1987 Act. New subsection (2)(b) of section 35 of the 1987 Act is intended to make it clear that a lease of a flat which does not require the building as a whole to be insured under a single policy does not make satisfactory provision for insurance. New subsection (2)(g) of that section provides a power to specify further grounds by regulations. New subsection (3A) of that section makes it clear that in considering whether a lease makes satisfactory provision for the recovery of expenditure incurred, the factors include whether the lease makes provision for interest or other charges in the event of late payment.

Section 163: Transfer of jurisdiction of court to tribunal

276. *Section 163* transfers jurisdiction for applications to vary leases under any of the grounds in Part 4 of the 1987 Act from county courts to LVTs.

Insurance

Section 164: Insurance otherwise than with landlord's insurer

277. *Section 164* provides new rights for leaseholders who are required by the terms of their lease to insure with an insurer nominated or approved by their landlord.

278. Subsection (2) and (3) provide that the leaseholders may arrange their own insurance provided certain conditions are met. The conditions are that the leaseholder must insure the property with an insurer authorised to carry on business in the UK; the policy must note the interests of both the landlord and the leaseholder; it must cover the risks that are required to be covered in the lease; the amount of cover must not be less than that required by the lease; the leaseholder must provide the landlord with evidence of cover or renewal within 14 days of the insurance being taken out or renewed. Provision is also made for notification of insurance details to a new landlord if the freehold is sold.

279. Subsection (5) sets out the contents of the notice of cover which is to be supplied to the landlord under subsection (3). The notice, which must be in the form prescribed by regulations, must include the name of the insurer, the risks covered by the policy, and the amount and period of the cover and any other prescribed information.

Section 165: Extension of right to challenge landlord's choice of insurer

280. *Section 165* amends paragraph 8 of the Schedule to the 1985 Act, which deals with the leaseholders' right to challenge the landlord's choice of insurer, and extends the provisions of that paragraph so that it applies where the landlord has the right to approve the insurer.

Ground rent

Section 166: Requirement to notify long leaseholders that rent is due

281. *Section 166* provides that a residential long leaseholder is not liable to pay rent unless the landlord has issued a notice in accordance with the requirements of this section.

282. *Subsection (2)* provides that the notice must specify the amount of the payment, the date on which the leaseholder is liable to pay it and (if different) the date on which it

would have been payable under the terms of the lease. It also provides that it should contain such further information as may be prescribed by regulations.

283. *Subsection (3)* provides that the date on which the payment is due must be at least 30 days and not more than 60 days after the day on which the notice is given, and not before the date it would have been due under the terms of the lease.

284. *Subsection (4)* provides that where the due date under the notice is later that that specified in the lease, any provisions in the lease which enable the landlord to impose a charge or take other action for late or non-payment will not apply until after the due date in the notice.

285. *Subsection (5)* provides that the notice must be in the form prescribed by regulations and may be sent by post.

286. *Subsection (6)* provides that a notice sent by post must be sent to the leaseholder at the dwelling in question unless the leaseholder has notified the landlord in writing that it should be sent to another address.

287. *Subsection (7)* provides that rent does not include a service charge or an administration charge within the meaning of this Chapter.

288. *Subsection (8)* provides that the requirements of this section do not apply to a business tenancy or an agricultural tenancy.

Forfeiture of leases of dwellings

Section 167: Failure to pay small amount for short period

289. *Section 167* prevents the use of forfeiture for amounts due under the lease which are less than a prescribed sum unless the amount or any part of it has been outstanding for more than a prescribed period. The section applies to rent, service charges and administration charges.

290. Subsection (3) provides that additional charges applied for non-payment of any amount will not be taken into account in considering whether the prescribed sum has been exceeded.

Section 168: No forfeiture notice before determination of breach

291. *Section 168* places restrictions on the service of notices under section 146(1) of the Law of Property Act 1925 in respect of breaches of covenants or conditions in a residential long lease. *Subsection (1)* prohibits the serving of a notice unless one of the conditions of *subsection (2)* is satisfied. These are:

a) that on an application to a LVT it has been finally determined that a breach has occurred;

b) the breach has been admitted;

c) a court in any proceedings, or arbitral tribunal in proceedings pursuant to a post dispute arbitration agreement, has finally determined that a breach has occurred.

292. *Subsection (3)* provides that a notice cannot be served until 14 days after a final determination has been made under (a) or (c) above.

293. *Subsection (4)* provides that a landlord may apply to a LVT for a determination that a breach of covenant or condition has occurred but *subsection (5)* precludes this where the matter is to be referred to arbitration under a post dispute arbitration agreement (see section 169(5)) or where the matter has already been determined by a court or arbitral tribunal pursuant to such an agreement.

Section 169: Section 168: supplementary

294. *Section 169* makes supplementary provisions to section 168.

295. *Subsection (1)* provides that certain agreements providing for determination of questions under a lease in a particular manner are void. *Subsections (2) and (3)* provide that where a decision is appealed against, the matter has finally been determined when the appeal or challenge has been decided and the period for making a further appeal has expired.

296. *Subsection (6)* provides that this section and section 168 apply to leases terminable by re entry on breach of covenant of the type described in section 146(7) of the Law of Property Act 1925. *Subsection (7)* provides that this section does not apply to the service of a notice under section 146(1) of the 1925 Act for non payment of service or administration charges (covered by section 170).

Section 170: Forfeiture for failure to pay service charge etc

297. *Section 170* amends section 81 of the Housing Act 1996 (which places restrictions on forfeiture for non-payment of service charges).

298. *Subsection (5)* inserts new subsection (4A) which provides that restrictions on the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925.

Section 171: Power to prescribe additional or different requirements

299. *Section 171* provides a power to prescribe additional or alternative requirements to those already in existing legislation before forfeiture can be exercised, in relation to breach of covenant or condition in a long lease of an unmortgaged dwelling.

Section 172: Application to Crown

300. *Section 172* applies various provisions of the 1985 Act, 1987 Act, 1993 Act and the Housing Act 1996 relating to payment and holding of service charges, appointment of replacement managers, and variation of leases, to the Crown Estate, Duchies of Cornwall and Lancaster and Government departments. It also applies the new provisions on administration charges, ground rent, nominated insurers and forfeiture of leases to those authorities. Tenants of those authorities will therefore be able to exercise or enjoy the benefit of the rights, and those authorities as landlord will be bound by the requirements contained in those provisions.

301. *Subsection (3)* provides that the Crown authorities will not be subject to any criminal prosecution for a failure to comply with any of the provisions, but will be subject to a declaration of unlawful behaviour in the High Court. This is required because the Crown is unable to prosecute itself. *Subsections (4) and (5)* allow the Duchies of Cornwall and Lancaster to make any payments required of them under the provisions applied to it by this section out of either revenue or capital funds.

Chapter 6: Leasehold Valuation Tribunals

302. This Chapter consolidates and amends existing provisions relating to the jurisdiction and procedures of LVTs. Consolidated provisions are repealed by Schedule 14.

Section 173: Leasehold Valuation Tribunals

303. *Section 173* provides that a rent assessment committee constituted in accordance with Schedule 10 of the Rent Act 1977 shall carry out any functions conferred on a LVT under any legislative provisions, and that a committee performing such functions shall be known as a LVT.

Section 174: Procedure

304. *Section 174* gives effect to Schedule 12 which sets out procedures for LVTs. These are described in detail in the notes on Schedule 12 below.

Section 175: Appeals

305. *Section 175* provides for appeals against LVT decisions. Any party to proceedings before a LVT will be able to appeal to the Lands Tribunal. The existing requirement that the person must have appeared before the LVT is removed. But in all cases permission must be obtained from the LVT in the first instance or, if permission is refused, from the Lands Tribunal. Existing provisions which prohibit an appeal against a LVT decision to the High Court and prevent a LVT from appealing against a Lands Tribunal decision are retained. Subsections (6) and (7) provide that, where a case involves an appeal against a decision made by a LVT, the Lands Tribunal cannot make an award of costs against a party to proceedings unless that party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal. The maximum costs will be limited to £500, or such other amount as may be specified in regulations.

Section 176: Consequential amendments

306. *Section 176* gives effect to Schedule 13 which makes a number of minor and consequential amendments as a result of this Chapter. Details of these changes are set out in the notes on Schedule 13 below.

Chapter 7: General

Section 177: Wales

307. *Section 177* has the effect of ensuring that any powers to make regulations inserted into the 1985 Act, the 1987 Act or the 1993 Act are exercisable by the National Assembly for Wales as they apply in Wales. (The existing powers to make regulations in those Acts are already exercised by the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999.)

Section 178: Orders and regulations

308. *Section 178* provides that any orders or regulations made under Part 2 of this Act may make different provisions for different circumstances. It further provides that regulations under Schedule 12 (procedure regulations for LVTs) may make different provisions for different areas. In England, orders or regulations will be made by statutory instrument subject to annulment by Parliament, except those made under paragraphs 9(3)(b) or 10(3)(b) of Schedule 12 or under sections 167 or 171, (setting a fee for application to a LVT, or a limit for the award of costs by a LVT, exceeding £500) where a draft of the instrument must be laid before and approved by a resolution of each House of Parliament. A separate procedure for making statutory instruments applies for the National Assembly for Wales.

SCHEDULES

Schedule 1: Application for registration: Documents (section 2)

309. Section 2 provides for the applicant for the registration of commonhold land to

submit documents to the Registrar in support of the application and *Schedule 1* sets out what those documents should be.

Schedule 2: Land which may not be commonhold land (section 4)

310. *Paragraph 1* forbids the development of commonhold land at first floor level

or above unless all the land below it and down to the ground is subject to the same application. This is to avoid the risk which attends 'flying freeholds', particularly the problems of enforcing any covenants relating to access and support.

311. *Paragraph 2* relates to the development of agricultural land and *paragraph 3* prevents commonhold land being created out of land which is held contingent on external events. In the first instance, land which is held subject to a grant under the Schools Sites Act 1841 reverts to the grantor when the land in question ceases to be used for a school, and in the second, the ownership of the land is contingent on some future event. For example, the land may be held by A until B reaches the age of 25, when it passes to B.

Schedule 3: Commonhold association (section 34)

Memorandum and articles of association

312. *Paragraph 1* defines 'memorandum' and 'articles' for the purpose of the

Schedule. *Paragraph 2* requires regulations to be made providing for the form and content of the memorandum and articles of association of the commonhold association and further requires that the memorandums and articles of association must comply with those regulations. *Paragraph 3* provides for the alteration of the memorandum and articles of association and *paragraph 4* provides for the disapplication of parts of the Companies Act 1985 relating to the memorandum and articles of association. *Paragraph 5* provides for the membership of the company prior to the coming into effect of the commonhold and *paragraph 6* provides for membership during the period of transition, if there should be one. *Paragraph 7* defines who should be entitled to be entered into the register of members. *Paragraph 8* defines how joint unit-holders will be entered onto the company register. *Paragraph 9* specifies that a commonhold association may not be a member of itself. This covers the position where an association owns a unit, and in effect prevents the association from using the votes associated with the unit. *Paragraph 10* provides that no one may be a member of an association on any terms other than those in the Schedule; in effect, this means unit-holders or, in the early days, company subscribers. *Paragraph 11* provides that membership of the commonhold association begins only with registration in the company register and *paragraph 12* provides for termination of association membership on ceasing to be a unit-holder or joint unit-holder. *Paragraph 13* makes provisions in relation to the register of members and *paragraph 14* makes certain provisions in relation to the Companies Act.

Schedule 4: Development rights (section 58)

313. *Schedule 4* sets out the various activities which are to be considered as

development business for the purposes of section 58. These are set out under four headings; Works, Marketing, Variation and Commonhold Association (in this latter case, specifically, the appointment and removal of directors of the commonhold association).

Schedule 6: Premises excluded from right to manage (Section 72)

314. *Paragraph 1* excludes premises where more than 25% of the internal floor area is in non-residential use. This mirrors the exclusion from the right to collectively enfranchise.

315. *Paragraph 2* excludes premises which contain separate self-contained parts where the freehold of those parts is owned by different persons.

316. *Paragraph 3* excludes converted premises which consist of no more than four units where either the landlord or an adult member of the landlord's family occupies one of those units as their only or principal residence.

317. *Paragraph 4* excludes premises where a local housing authority is the immediate landlord of any of the qualifying tenants.

318. *Paragraph 5* excludes premises where the right to manage has already been acquired and continues to be exercisable. Where a RTM company ceases to be responsible for the management of the premises, it will not be possible for any party to acquire the right for those premises within four years of that event except with the agreement of a LVT. (This bar does not apply, however, if the right to manage has ceased for the property as a result of a RTM company being used to acquire the freehold.)

Schedule 7: Right to Manage: Statutory Provisions (Section 102)

319. *Schedule 7* makes consequential changes to existing rights and duties to make them applicable where the RTM company has acquired the right to manage.

320. *Paragraph 1* provides that the requirements on a landlord in section 19 of the Landlord and Tenant Act 1927 not to unreasonably withhold certain consents required under a lease apply to a RTM company where those consents are required to be given by the company by virtue of section 98. The company is, however, entitled to make its consent conditional upon the receipt of their reasonable costs incurred in deciding whether to give that consent.

321. *Paragraph 2* provides that the duty of care placed on a landlord by section 4 of the Defective Premises Act 1972 becomes a duty of care on the RTM company. This has the practical effect of making the company responsible for ensuring that the property is kept in a sufficient state of repair not to present a threat to public safety. Any liability arising from a failure to keep the property in good repair would therefore fall upon the company.

322. *Paragraph 3* provides that the obligation placed upon a landlord of a short lease under section 11 of the 1985 Act becomes an obligation of the RTM company insofar as that obligation applies to the common parts and fabric of the premises, but not insofar as it applies only to the individual unit demised under that lease. It also provides that a RTM company will be under the same obligation to anyone who occupies a unit in the premises without having a lease of that unit (e.g. a resident freeholder) as it would be to any tenant with a short lease by virtue of the application of section 11 of the 1985 Act. This will have the practical effect of placing the company under an obligation to tenants under short leases and to residents with no leases to maintain the structure and exterior of the building and the installations for heating and sanitation and for the supply of water, electricity and gas.

323. *Paragraph 4* provides that the rights enjoyed by tenants in respect of service charges under sections 18 to 30 of the 1985 Act can be exercised against a RTM company by any tenant and any landlord who is required to pay a service charge to the RTM company by virtue of the provisions governing the right to manage. These rights are: the right to challenge the reasonableness of service charges; the right to be consulted on major works (as amended by section 151 of the Act); the rights to receive statements of account and to access other documents relevant to service charges (as introduced by sections 152 and 154 of the Act); and the right to establish a recognised tenants' association.

324. *Paragraph 5* provides that the rights enjoyed by tenants in respect of insurance by virtue of section 30A of the 1985 Act can be exercised against a RTM company by any tenant and any landlord. These rights are: the right to information on insurance and the right to challenge a nominated insurer.

325. *Paragraph 6* provides that the right enjoyed by a recognised tenants' association to be consulted about the choice of managing agent by virtue of section 30B of the 1985 Act can be exercised against a RTM company.

326. *Paragraph 7* provides that where the landlord serves an offer notice on qualifying tenants under the right of first refusal granted by Part 1 of the 1987 Act, a copy of that notice must also be served on the managing company. This will allow consideration of whether the company should be used as the vehicle for accepting the offer.

327. *Paragraph 8* provides that the right enjoyed by tenants of flats to seek the appointment of a new manager under Part 2 of the 1987 Act can be exercised against the RTM company by any tenant of a flat and any landlord. It will be possible to make an order appointing a new manager against a RTM company on the same grounds as apply for appointing one against a landlord. In addition, an order can be made against a RTM company where it fails to fulfil any of its obligations in respect of granting approvals or monitoring covenants, or where the company wishes itself to be replaced as manager. Furthermore, this power will include a power to order that the right to manage is no longer exercisable by the RTM company concerned and to make ancillary provisions.

328. *Paragraph 9* provides that where the right to manage has been exercised, the right of tenants to compulsorily acquire their landlord's interest under Part 3 of the 1987 Act is disapplied. That is because the right of compulsory acquisition is exercisable on the basis that the landlord is at fault, and it is therefore not appropriate for tenants to be able to exercise it where the landlord has been replaced as manager on a 'no fault' basis.

329. *Paragraph 10* provides that the RTM company is able to exercise the rights to seek variation of a lease granted to individual tenants of flats, and to landlords of those tenants, under Part 4 of the 1987 Act (but not the right of groups of tenants to seek variations under that Part).

330. *Paragraph 11* provides that the requirements to hold service charges in trust and in designated client accounts under sections 42 to 42B of the 1987 Act (see section 156) apply to any monies paid to the RTM company by either a tenant or a landlord.

331. *Paragraph 12* provides that the company is bound by the requirement under section 48 of the 1987 Act to provide tenants with an address at which notices can be furnished. The company will also have to provide all landlords with such an address. In addition, the company will be bound by the requirement under section 47 of that Act to include its name and address in any written demand for money.

332. *Paragraph 13* provides that the company is bound by the requirements of the Landlord and Tenant Act 1988 not to unreasonably withhold certain consents. This in turn allows a tenant to bring civil proceedings against the company where he or she believes that the company has not complied with its duties under that Act.

333. *Paragraph 14* provides that the right of tenants to arrange for a management audit under Chapter 5 of Part 1 of the 1993 Act can be exercised against a RTM company by a tenant or by any landlord who is required to pay a charge to the company.

334. *Paragraph 15* provides that the right of a registered tenants' association to appoint a surveyor under section 84 of the Housing Act 1996 will apply against a RTM company as it does against a landlord.

335. *Paragraph 16* provides that the rights of a tenant in respect of variable administration charges as set out in *Schedule 11* are applicable against a RTM company. It also provides that the RTM company may exercise the right to seek the variation of a fixed administration charge.

Schedule 8: Enfranchisement by company: Amendments (Section 124)

336. *Schedule 8* includes a large number of amendments to, principally, the 1993 Act, consequential on sections 121, 122 and 123. They provide for the collective enfranchisement procedure to be carried out by the RTE company rather than, as now, initially by a group of qualifying tenants and subsequently by a nominee purchaser

appointed by them. Rights and obligations currently applied to qualifying tenants, participating tenants and the nominee purchaser are generally transferred to members of the RTE company, participating members of the RTE company and the RTE company respectively.

337. *Paragraph 1* amends the Land Compensation Act 1973, which provides rights to compensation to tenants participating in collective enfranchisement in the event of compulsory purchase, to transfer those rights to the RTE company.

338. *Paragraph 3* amends section 1 of the 1993 Act to provide that the right to collective enfranchisement is exercisable by a RTE company.

339. *Paragraph 4* amends section 2(1) of the 1993 Act, which provides for the acquisition of certain leasehold interests, to provide that these interests are acquired by the RTE company.

340. *Paragraph 5* amends section 11(4) of the 1993 Act, which provides a right for qualifying tenants to obtain information about superior landlords, so that the tenants have the right to obtain such information in connection with a claim being made by a RTE company.

341. *Paragraph 6* amends section 13 of the 1993 Act to provide that the initial notice only needs to provide the names of those qualifying tenants who are participating members of the RTE company and that it should give the registered address of the RTE company (rather than the identity of the nominee purchaser). It introduces a new requirement that a copy of the initial notice must be given to all qualifying tenants in the premises.

342. *Paragraph 7* amends section 17 of the 1993 Act, which provides a right of access for valuation purposes, so that the RTE company (or its representative) have the right.

343. *Paragraph 8* amends section 18 of the 1993 Act, which requires the disclosure of agreements affecting premises, so that the disclosure obligations apply to the RTE company.

344. *Paragraph 9* amends section 20 of the 1993 Act so that the reversioner may serve a notice on the RTE company requiring it to deduce the title of any qualifying tenant who is a participating member of the company.

345. *Paragraph 10* makes consequential amendments to section 21 of the 1993 Act, which sets out requirements for the reversioner’s counter notice.

346. *Paragraph 11* amends section 22 of the 1993 Act, to enable the RTE company to apply to the court for a declaration that an initial notice is valid.

347. *Paragraph 12* makes consequential amendments to section 23 of the 1993 Act, which enables an enfranchisement claim to be defeated where the landlord intends to redevelop the premises.

348. *Paragraph 13* amends section 24 of the 1993 Act to enable the RTE company (as well as the reversioner) to apply to a LVT for a determination of matters in dispute.

349. *Paragraph 14* amends section 25 of the 1993 Act to enable the RTE company to apply to the court for an order transferring the freehold to the company on the terms set out in the initial notice where the reversioner has failed to give a counter-notice.

350. *Paragraph 15* amends section 26 of the 1993 Act to enable the RTE company to apply for a vesting order where the landlord cannot be found.

351. *Paragraph 16* makes consequential amendments to section 27 of the 1993 Act (supplementary provisions relating to vesting orders).

352. *Paragraph 17* amends section 28 of the 1993 Act, which provides for the withdrawal of the initial notice. It provides that the RTE company must serve notice of withdrawal

on the reversioner, any other relevant landlord and all of the qualifying tenants in the premises. It also provides that in the event of withdrawal, the RTE company and any person who is or has been a participating member of the company shall be liable for the reversioner's and any other relevant landlord's costs. But this liability shall not apply if the lease has been assigned (or acquired by personal representatives, a mortgagee or trustee in bankruptcy) and the assignee has become a member of the RTE company.

353. *Paragraph 18* amends section 29 of the 1993 Act to provide that the initial notice shall be deemed to be withdrawn in the event of the insolvency, winding up or striking off of the RTE company.

354. *Paragraph 19* makes consequential amendments to section 30 of the 1993 Act which provides that an initial notice is of no effect if notice of compulsory purchase proceedings has been given.

355. *Paragraph 20* makes consequential amendments to section 31 of the 1993 Act which provides that an initial notice is of no effect if the property has been designated under the Inheritance Tax Act 1984.

356. *Paragraph 21* makes consequential amendments to section 32 of the 1993 Act which makes provision for the determination of the price payable for enfranchisement.

357. *Paragraph 22* makes consequential amendments to section 33 of the 1993 Act which sets out the landlord's costs in relation to the enfranchisement which are recoverable.

358. *Paragraph 23* makes consequential amendments to section 34 of the 1993 Act which provides for conveyance of the freehold.

359. *Paragraph 24* makes consequential amendments to section 35 of the 1993 Act which provides for the discharge of existing mortgages on conveyance of the freehold.

360. *Paragraph 25* makes consequential amendments to section 36 of the 1993 Act to require the RTE company to grant a leaseback to the former freeholder in certain circumstances.

361. *Paragraph 26* amends section 37A of the 1993 Act, which provides for compensation to be payable to the freeholder if termination of a lease is postponed by an ineffective claim for enfranchisement, to provide that compensation is payable by any person who is a participating member of the RTE company immediately before the claim ceases to have effect.

362. *Paragraph 27* extends subsection (1) of section 38 of the 1993 Act to define 'participating member', 'the notice of invitation to participate', and 'RTE company', and makes a consequential amendment to subsection (2).

363. *Paragraph 28* makes consequential amendments to subsections (4) and (5) of section 41 of the 1993 Act, which require the recipient of a notice served by a tenant seeking information from a landlord in connection with a possible claim to acquire a new lease to inform the tenant of any outstanding enfranchisement claim.

364. *Paragraph 29* makes consequential amendments to section 54 of the 1993 Act which provides for the suspension of a tenant's claim to acquire a new lease while a claim for enfranchisement is outstanding.

365. *Paragraph 30* makes consequential amendments to section 74 of the 1993 Act which makes provisions covering the exercise of the right to enfranchise when a request for approval of an estate management scheme is outstanding.

366. *Paragraph 31* makes consequential amendments to section 91 of the 1993 Act which sets out the jurisdiction of LVTs.

367. *Paragraph 32* amends section 93 of the 1993 Act to prohibit agreements which restrict a leaseholder's right to become a member of a RTE company or do anything as a member of such a company in the course of exercising the right to enfranchise.

368. *Paragraph 33* makes consequential amendments to section 93A of the 1993 Act which empowers trustees who are qualifying tenants to participate in enfranchisement.

369. *Paragraph 34* amends section 97(1) of the 1993 Act to enable a qualifying company to register an initial notice under the Land Charges Act 1972 or as a notice or caution under the Land Registration Act 1925.

370. *Paragraph 35* makes consequential amendments to section 98(2) of the 1993 Act which enables regulations to be made prescribing procedure.

371. *Paragraph 36* makes consequential amendments to Schedule 1 to the 1993 Act which enables the court to appoint the reversioner to conduct proceedings on behalf of all relevant landlords.

372. *Paragraph 37* makes consequential changes to Schedule 3 to the 1993 Act which prescribes procedures in relation to initial notices, places restrictions on participation where forfeiture proceedings have already been commenced and restricts the commencement of forfeiture proceedings against participants once an initial notice has been served. In particular, it provides that an initial notice shall not be invalid if a member of a RTE company is not entitled to be a member because he is not a qualifying tenant, provided that the number of members who are entitled to be members meets the minimum requirement for a RTE company.

373. *Paragraph 38* makes consequential changes to Schedule 4 to the 1993 Act which requires the reversioner to provide specified information with a counter notice and subsequently.

374. *Paragraph 39* makes consequential changes to Schedule 5 to the 1993 Act which prescribes procedures for vesting orders under sections 24 and 25 of the Act.

375. *Paragraph 40* makes consequential changes to Schedule 6 to the 1993 Act which prescribes rules for valuing the interests to be acquired.

376. *Paragraph 41* makes consequential changes to Schedule 7 to the 1993 Act which prescribes procedures for the conveyance of the freehold.

377. *Paragraph 42* makes consequential changes to Schedule 8 to the 1993 Act which prescribes procedures for the discharge of mortgages on conveyance of the freehold.

378. *Paragraph 43* makes consequential changes to Schedule 9 to the 1993 Act which provides for the granting of leases back to the former freeholder.

Schedule 9: Meaning of service charge and management (Section 150)

Loans in respect of service charges

379. *Paragraphs 1 to 6* make changes to the provisions of the Housing Act 1985 which enable, and in some cases require, local authorities and registered social landlords to provide loans to their leaseholders to cover the costs of maintenance and repairs recoverable through service charges. The changes extend these provisions to cover the costs of improvements where these are payable by leaseholders.

Service charges

380. *Paragraph 7* extends the definition of ‘service charge’ in section 18(1)(a) of the 1985 Act to cover improvements.

Appointment of manager

381. *Paragraph 8* extends the meaning of management for the purposes of section 24 of the 1987 Act to include improvements. Failings in relation to improvements will also be grounds for the appointment of a manager under that section.

Right to acquire landlord's interest

382. *Paragraph 9* similarly extends the grounds for the right to acquire the landlord's interest under section 29 of the 1987 Act to include failings in relation to improvements.

Tenants' right to management audit

383. *Paragraph 10* extends the definition of 'management functions' in section 84 of the 1993 Act, which gives tenants a right to a management audit, to include improvements.

Codes of management practice

384. *Paragraph 11* extends the definitions of 'management functions' and 'service charge' in section 87(8) of the 1993 Act, which provides for the approval of codes of management practice, to cover improvements.

Right to appoint surveyor

385. *Paragraph 12* extends the definition of 'management functions' for the purposes of paragraph 4(2) of Schedule 4 to the Housing Act 1996, which gives recognised tenants' associations the right to appoint a surveyor who has rights to inspect premises, to cover improvements.

Power to amend certain provisions

386. *Paragraph 13* provides that any of the provisions referred to in paragraphs 7 to 12 or section 27A of the 1985 Act (as inserted by *section 155* of the Act) may be further amended, by order, to change the meaning of 'service charge', 'management' or 'management functions'.

Schedule 10: Service charges: Minor and Consequential Amendments (Section 157)

Information held by superior landlord

387. *Paragraph 1* amends section 23 of the 1985 Act (which deals with information held by a superior landlord) to bring it in line with the new sections 21 and 22 that will be introduced by sections 152 and 154. Under the new section 23A, landlords are entitled to obtain information from a superior landlord, where it was needed to produce an accounting statement. Where a superior landlord held documents which were relevant to an accounting statement, tenants will also have the right to inspect them, or to have copies provided to them on payment of a reasonable fee.

Change of Landlord

388. *Paragraph 2* inserts a new section 23A, which makes provision to ensure that where a landlord disposes of his interest, he remains under an obligation to provide accounting information to his former tenants where he was in a position to do so. The new owner will also be under an obligation to provide accounting information relating to the activities of the previous owner, to the extent that he was able to do so.

Assignment

389. *Paragraph 3* amends section 24 of the 1985 Act to reflect the changes to section 22 (see section 152) and to reflect the insertion of section 23A (see preceding paragraph).

Offences

390. *Paragraph 4* amends section 25 of the 1985 Act to reflect the insertion of section 23A into the 1985 Act.

Exceptions

391. *Paragraph 5* amends sections 26 and 27 of the 1985 Act to reflect the changes to sections 21 and 22 of the 1985 Act (see sections 152 and 154).

Accountants

392. *Paragraphs 6 and 7* amend section 28 of the 1985 Act to reflect the changes to sections 21 and 22 of the 1985 Act (see sections 152 and 154). As the new accounting provisions in the 1985 Act will also apply to the Crown, section 28(6) is amended to apply to the Crown in the same way as other public bodies.

Insurance

393. *Paragraphs 8 to 13* amend the Schedule to the 1985 Act. They enable leaseholders to inspect the insurance policy for their building without first having to ask for a summary of the insurance cover. They will also be able to take copies of the insurance policy and associated documents, or have copies provided to them, on payment of a reasonable fee. Requests will have to be complied with within 21 days, rather than within one month. A new paragraph 4A is inserted to cover cases where a landlord disposes of his interest. It also makes a number of other minor and consequential amendments to the Schedule to the 1985 Act.

Service Charge Contributions: appointment of a manager

394. *Paragraph 14* amends section 24 of the 1987 Act (which sets out grounds on which a LVT may be asked to appoint a new manager for a block). It introduces a new ground for seeking the appointment of a new manager - that there has been a failure to comply with section 42 or 42A of the 1987 Act (requirements to hold service charge funds in trust and in separate client accounts). This is subject to the requirement that it be just and convenient to appoint a new manager.

Trust of service charges paid only by one tenant

395. *Paragraph 15* amends section 42 of the 1987 Act (which requires service charges to be held in trust). It extends the application of section 42 to cases where only one tenant has to pay the service charge in question.

Management Audit

396. *Paragraphs 16 to 18* make various consequential changes to the 1993 Act, to reflect the changes being made to the 1985 Act.

Schedule 11: Administration charges (Section 158)

Part 1: Reasonableness of administration charges

Meaning of ‘administration charge’

397. *Paragraph 1(1)* defines ‘administration charge’ for the purposes of Part 1 of the Schedule. This covers charges payable for approvals required as a condition of a lease, for the provision of information to leaseholders or other parties (e.g. prospective purchasers), penalty charges for late payment of rent or other charges, or charges in connection with a breach (or alleged breach) of a covenant or condition of a lease. *Paragraph 1(5)* provides a power to amend this definition by order.

398. *Paragraph 1(3)* defines a ‘variable administration charge’. This is any administration charge where neither the sum nor a formula for calculating the sum is specified in the lease.

Reasonableness of administration charges

399. *Paragraph 2* provides a requirement that variable administration charges are only payable to the extent that they are reasonable.

400. *Paragraph 3* provides a right for any party to a lease to apply to a LVT for the variation of a fixed administration charge. Such an application can be made on the grounds that either a fixed sum specified in the lease or a formula specified in the lease is unreasonable. Where a tribunal agrees that a fixed administration charge is unreasonable, it can order the lease to be changed accordingly.

Notice in connection with demands for administration charges

401. Paragraph 4 requires landlords to include with administration charge demands a summary of leaseholders' rights and obligations in relation to administration charges. Paragraph 2 provides a power to prescribe the form and content of such summaries by regulations. Paragraphs 3 and 4 give leaseholders a specific right to withhold payment of administration charges if the required information is not provided.

Liability to pay administration charges

402. *Paragraph 5* provides that an application may be made to a LVT for a determination whether or not an administration charge is payable and if so, by whom it is payable, to whom it is payable, the amount which is payable, the date on which it is payable or the manner in which it is payable. The jurisdiction of the LVT in such matters is in addition to any jurisdiction of a court. No application may be made in respect of a matter which has been agreed or admitted by a leaseholder or which has been determined by a court or arbitral tribunal. However, payment of all or part of a charge does not constitute admitting it or any other matter. Certain agreements providing for questions about administration charges to be determined in a particular manner are void. As with service charges arbitration agreements will be void unless they are entered into after a dispute has arisen.

Part 2: Amendments of 1987 Act

403. *Paragraph 8* amends section 24 of the 1987 Act to extend the grounds on which a LVT may order the appointment of a manager to include the making of unreasonable variable administration charges.

404. *Paragraph 9* amends section 46 of the 1987 Act, which interprets terms used in Part 6 of that Act, to include the definition of variable administration charge in paragraph 1.

405. *Paragraph 10* amends section 47 of the 1987 Act to provide that administration charges are not recoverable if the landlord has failed to provide his name and address in accordance with the requirements of that section.

406. *Paragraph 11* amends section 48 of the 1987 Act to provide that administration charges are not recoverable if the landlord has failed to provide an address for the service of notices.

Schedule 12: Leasehold Valuation Tribunals: Procedure (Section 174)

407. These provisions are essentially a consolidation of existing provisions. New substantive provisions are indicated in the following notes.

Procedure regulations

408. *Paragraph 1* provides a power to make regulations about the procedure of a LVT ('procedure regulations').

Applications

409. *Paragraph 2* provides that procedure regulations may include specified matters relating to LVT applications.

Transfers

410. *Paragraph 3* provides a discretion for a court to transfer any matter before it that is within the jurisdiction of a LVT to a LVT for a determination and for the court to give effect to that determination in an order of the court. It also provides for detailed procedures to be prescribed under rules of court (in the case of a court) and procedure regulations (in the case of a LVT) to apply in cases where a case is so transferred.

Information

411. *Paragraph 4* empowers a LVT to require any party to proceedings to provide information within a specified period of time (but not less than 14 days). It provides that failure to comply with such a requirement without reasonable excuse is a summary offence punishable by a fine not exceeding level 3 on the standard scale (currently £1,000).

Pre-trial reviews

412. *Paragraph 5* provides that procedure regulations may enable LVTs to hold a pre-trial review and that such a review can be conducted by a single person who has been appointed by the Lord Chancellor (to act as a Chairman of a LVT).

Parties

413. *Paragraph 6* provides that procedure regulations may enable persons to be joined as parties to proceedings.

Dismissal

414. *Paragraph 7* provides that procedure regulations may give LVTs the power to dismiss applications, or part of an application, on specified grounds.

Determination without hearing

415. *Paragraph 8* provides a new power to provide in procedure regulations that determinations can be made without an oral hearing. It further provides that procedure regulations may enable a single member of a LVT to determine such a case.

Fees

416. *Paragraph 9* provides that procedure regulations may require payment of application fees and additional fees for an oral hearing for disputes where fees are currently payable (i.e. those relating to service charges under the 1985 Act, as amended by this Act,[3] and for the appointment of a manager under Part 2 of the 1987 Act), for disputes about administration charges under Schedule 11 to the Act, for applications for variation of a lease under Part 4 of the 1987 Act (as amended by section 163 of the Act) and for determination of breaches of covenant or condition under section 168 of the Act. Regulations may empower a LVT to require a party to the proceedings to reimburse a fee paid by another party. Regulations may also provide for fees to be reduced or waived in cases where the applicant has limited financial resources. The amount of any fees shall be prescribed by regulations. Where regulations set a total fee for both an application and oral hearing exceeding £500 (*paragraph 9(3)(b)*) a draft of

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3 [3] Note that this Act extends the jurisdiction of LVTs under the 1985 Act (see *Sections 150, 151, 152 and 155*). The power to set fees would also apply in such cases.

the regulations must be laid before, and approved by resolution of, each House (Section 178).

Costs

417. *Paragraph 10* is a new provision which enables a LVT to determine that a party shall pay costs incurred by another party where an application by that party has been dismissed on the grounds set out in paragraph 7 or where that party has acted unreasonably during the proceedings. The costs shall not exceed £500, or such higher amount as may be specified by regulations. A draft of any such regulations must be laid before, and approved by resolution of, each House (Section 178).

Enforcement

418 *Paragraph 11* provides for procedure regulations to enable a county court to enforce a decision of a LVT.

Schedule 13: Leasehold valuation tribunals: amendments (Section 176)

The 1967 Act

419. *Paragraphs 1 to 6* make various consequential amendments to the 1967 Act. These replicate the effects of paragraphs 4, 5 and 6 of Schedule 22 of the Housing Act 1980, which will be repealed as part of the consolidation exercise (schedule 14).

Housing Act 1980 (c.51)

420. *Paragraph 7* amends section 142 of the Housing Act 1980 so that that section refers directly to a LVT. This is a consequence of section 163. It also makes a minor amendment to section 142 in consequence of the repeal of Part 1 of Schedule 22 to that Act.

The 1987 Act

421. *Paragraphs 8 to 11* make amendments to the 1987 Act which were consequential to the Housing Act 1996, but were omitted from that Act.

The 1993 Act

422. *Paragraphs 12 to 15* amend the 1993 Act. *Paragraph 13* provides that certain persons who currently have the right to appear at a hearing before a LVT only have the right to do so where there is to be an oral hearing (in consequence of the new provision for certain cases to be dealt with through written representations only). It also replicates the effect of section 91(10)(b) of the 1993 Act which will be repealed as part of the consolidation exercise (Schedule 14), whilst widening its effect to apply to certain persons who make representations to a LVT, even if they did not appear at a hearing. Again this is a consequence of the new provision for certain cases to be dealt with by written representations only. *Paragraphs 14 and 15* amend references to a rent assessment committee, in consequence of section 173.

Housing Act 1996 (c.52)

423. *Paragraph 16* replicates the effect of section 31C(3) of the 1985 Act which will be repealed as part of the consolidation exercise (Schedule 14).

COMMENCEMENT

Part 1: Commonhold

424. The provisions of Part 1 of the Act will be brought into force by commencement orders made by the Lord Chancellor for England and Wales. Commencement orders may bring all provisions into force, or may bring only certain provisions into force. Different provisions may be brought into force on different dates.

Part 2: Leasehold Reform

425. The provisions of Part 2 of the Act will be brought into force by commencement orders made by the Secretary of State, as they apply to England, and the National Assembly for Wales, as they apply to Wales. Commencement orders may bring all provisions into force, or may bring only certain provisions into force. Different provisions may be brought into force on different dates.

426. Commencement orders may also make arrangements for how the new provisions interact with existing law. For example, they may provide that where proceedings have been started under existing law, the existing law will continue to apply to those proceedings until they are concluded.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act through Parliament.

Stage	***Date***	***Hansard Ref.***	
House of Lords			
Introduction	21 June 2001	Vol. 626	Col. 25
Second Reading	5 July 2001	Vol. 626	Col. 885 – 924
Committee Stage	16 October 2001 and 22 October 2001	Vol. 627	Col. 482 – 547, Col. 562 – 584
			Col. 819 – 826, Col. 840 – 894
Report Stage	13 November 2001	Vol. 628	Col. 463 – 528, Col. 542 – 558
Third Reading	19 November 2001	Vol. 628	Col. 907 – 947
House of Commons			
Second Reading	08 January 2002	Vol. 377	Col. 422-515
Committee (SCD)	15, 17, 22 and 24 January 2002	Standing Committee D	
Report Stage	11 and 13 March 2002	Vol. 381	Col. 640-729
Third Reading	13 March 2002	Vol. 381	Col. 907-987
House of Lords			
Consideration of Commons Amendments	15 April 2002	Vol. 633	Col. 683 - 725
Royal Assent – 01 May 2002		House of Lords Hansard Vol. 634 col. 681	
		House of Commons Hansard Vol. 384 col. 949	