

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

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.