

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Ground rent

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.

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

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.