

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

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.