



Commonhold and Leasehold Reform Act 2002

2002 CHAPTER 15

PART 2

LEASEHOLD REFORM

CHAPTER 2

COLLECTIVE ENFRANCHISEMENT BY TENANTS OF FLATS

Introductory

114 Amendments of right to collective enfranchisement

This Chapter amends the right to collective enfranchisement which is conferred by Chapter 1 of Part 1 of the 1993 Act.

Qualifying rules

115 Non-residential premises

In section 4(1) of the 1993 Act (right not to apply in case of premises having non-residential parts with floor area exceeding 10 per cent. of total), for “10 per cent.” substitute “25 per cent.”.

116 Premises including railway track

In section 4 of the 1993 Act (premises in the case of which right does not apply), insert at the end—

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“(5) This Chapter does not apply to premises falling within section 3(1) if the freehold of the premises includes track of an operational railway; and for the purposes of this subsection—

- (a) “track” includes any land or other property comprising the permanent way of a railway (whether or not it is also used for other purposes) and includes any bridge, tunnel, culvert, retaining wall or other structure used for the support of, or otherwise in connection with, track,
- (b) “operational” means not disused, and
- (c) “railway” has the same meaning as in any provision of Part 1 of the Railways Act 1993 (c. 43) for the purposes of which that term is stated to have its wider meaning.”

117 Qualifying leases

- (1) In section 5(1) of the 1993 Act (which provides that a qualifying tenant is a tenant under a long lease which is at a low rent or for a particularly long term), omit “which is at a low rent or for a particularly long term”.
- (2) In section 69(1)(b) of the 1993 Act (estate management schemes), for “by virtue of the amendments of that Chapter made by paragraph 3 of Schedule 9 to the Housing Act 1996 (c. 52)” substitute “in circumstances in which, but for section 117(1) of the Commonhold and Leasehold Reform Act 2002 and the repeal by that Act of paragraph 3 of Schedule 9 to the Housing Act 1996, they would have been entitled to acquire it by virtue of the amendments of that Chapter made by that paragraph”.

118 Premises with resident landlord

- (1) Section 10 of the 1993 Act (premises with a resident landlord) is amended as follows.
- (2) For subsection (1) (requirements that premises not be or form part of purpose-built block of flats and that they have been occupied for at least twelve months as only or principal home of owner of freehold or a family member) substitute—
 - “(1) For the purposes of this Chapter any premises falling within section 3(1) are premises with a resident landlord at any time if—
 - (a) the premises are not, and do not form part of, a purpose-built block of flats;
 - (b) the same person has owned the freehold of the premises since before the conversion of the premises into two or more flats or other units; and
 - (c) he, or an adult member of his family, has occupied a flat or other unit contained in the premises as his only or principal home throughout the period of twelve months ending with that time.”
- (3) For subsection (4) (premises held on trust) substitute—
 - “(4) Where the freehold of any premises is held on trust, subsection (1) applies as if—
 - (a) the requirement in paragraph (b) were that the same person has had an interest under the trust (whether or not also a trustee) since before the conversion of the premises, and
 - (b) paragraph (c) referred to him or an adult member of his family.”

119 Proportion of tenants required to participate

In section 13(2)(b) of the 1993 Act (persons by whom initial notice must be given), omit sub-paragraph (i) (initial notice to be given by at least two-thirds of qualifying tenants of flats contained in premises).

120 Abolition of residence condition

In section 13(2) of the 1993 Act, omit the words following paragraph (b) (which require at least one-half of the qualifying tenants by whom the initial notice is given to satisfy the residence condition).

Exercise of right

121 Right exercisable only by RTE company

- (1) Section 13 of the 1993 Act is amended as follows.
- (2) In paragraph (b) of subsection (2), after “given by” insert “a RTE company which has among its participating members”.
- (3) After that subsection insert—

“(2ZA) But in a case where, at the relevant date, there are only two qualifying tenants of flats contained in the premises, subsection (2)(b) is not satisfied unless both are participating members of the RTE company.”

122 RTE companies

After section 4 of the 1993 Act insert—

“4A RTE companies

- (1) A company is a RTE company in relation to premises if—
 - (a) it is a private company limited by guarantee, and
 - (b) its memorandum of association states that its object, or one of its objects, is the exercise of the right to collective enfranchisement with respect to the premises.
- (2) But a company is not a RTE company if it is a commonhold association (within the meaning of Part 1 of the Commonhold and Leasehold Reform Act 2002).
- (3) And a company is not a RTE company in relation to premises if another company which is a RTE company in relation to—
 - (a) the premises, or
 - (b) any premises containing or contained in the premises,has given a notice under section 13 with respect to the premises, or any premises containing or contained in the premises, and the notice continues in force in accordance with subsection (11) of that section.

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4B RTE companies: membership

- (1) Before the execution of a relevant conveyance to a company which is a RTE company in relation to any premises the following persons are entitled to be members of the company—
 - (a) qualifying tenants of flats contained in the premises, and
 - (b) if the company is also a RTM company which has acquired the right to manage the premises, landlords under leases of the whole or any part of the premises.
- (2) In this section—

“relevant conveyance” means a conveyance of the freehold of the premises or of any premises containing or contained in the premises; and

“RTM company” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.
- (3) On the execution of a relevant conveyance to the RTE company, any member of the company who is not a participating member ceases to be a member.
- (4) In this Chapter “participating member”, in relation to a RTE company, means a person who is a member by virtue of subsection (1)(a) of this section and who—
 - (a) has given a participation notice to the company before the date when the company gives a notice under section 13 or during the participation period, or
 - (b) is a participating member by virtue of either of the following two subsections.
- (5) A member who is the assignee of a lease by virtue of which a participating member was a qualifying tenant of his flat is a participating member if he has given a participation notice to the company within the period beginning with the date of the assignment and ending 28 days later (or, if earlier, on the execution of a relevant conveyance to the company).
- (6) And if the personal representatives of a participating member are a member, they are a participating member if they have given a participation notice to the company at any time (before the execution of a relevant conveyance to the company).
- (7) In this section “participation notice”, in relation to a member of the company, means a notice stating that he wishes to be a participating member.
- (8) For the purposes of this section a participation notice given to the company during the period—
 - (a) beginning with the date when the company gives a notice under section 13, and
 - (b) ending immediately before a binding contract is entered into in pursuance of the notice under section 13,

is of no effect unless a copy of the participation notice has been given during that period to the person who (in accordance with section 9) is the reversioner in respect of the premises.

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- (9) For the purposes of this section “the participation period” is the period beginning with the date when the company gives a notice under section 13 and ending—
- (a) six months, or such other time as the Secretary of State may by order specify, after that date, or
 - (b) immediately before a binding contract is entered into in pursuance of the notice under section 13,
- whichever is the earlier.
- (10) In this section references to assignment include an assent by personal representatives, and assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage); and references to an assignee shall be construed accordingly.

4C RTE companies: regulations

- (1) The Secretary of State shall by regulations make provision about the content and form of the memorandum of association and articles of association of RTE companies.
- (2) A RTE company may adopt provisions of the regulations for its memorandum or articles.
- (3) The regulations may include provision which is to have effect for a RTE company whether or not it is adopted by the company.
- (4) A provision of the memorandum or articles of a RTE company has no effect to the extent that it is inconsistent with the regulations.
- (5) The regulations have effect in relation to a memorandum or articles—
- (a) irrespective of the date of the memorandum or articles, but
 - (b) subject to any transitional provisions of the regulations.
- (6) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTE company—
- (a) sections 2(7) and 3 (memorandum), and
 - (b) section 8 (articles).”

123 Invitation to participate

- (1) After section 12 of the 1993 Act insert—

“The notice of invitation to participate

12A Notice by RTE company inviting participation

- (1) Before making a claim to exercise the right to collective enfranchisement with respect to any premises, a RTE company must give notice to each person who at the time when the notice is given—
- (a) is the qualifying tenant of a flat contained in the premises, but

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- (b) neither is nor has agreed to become a participating member of the RTE company.
- (2) A notice given under this section (a “notice of invitation to participate”) must—
- (a) state that the RTE company intends to exercise the right to collective enfranchisement with respect to the premises,
 - (b) state the names of the participating members of the RTE company,
 - (c) explain the rights and obligations of the members of the RTE company with respect to the exercise of the right (including their rights and obligations in relation to meeting the price payable in respect of the freehold, and any other interests to be acquired in pursuance of this Chapter, and associated costs),
 - (d) include an estimate of that price and those costs, and
 - (e) invite the recipients of the notice to become participating members of the RTE company.
- (3) A notice of invitation to participate must either—
- (a) be accompanied by a copy of the memorandum of association and articles of association of the RTE company, or
 - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTE company.
- (4) A statement under subsection (3)(b) must—
- (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
 - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
 - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
 - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (5) Where a notice given to a person includes a statement under subsection (3)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (6) A notice of invitation to participate shall not be invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.”
- (2) In section 13 of the 1993 Act, after subsection (2ZA) (inserted by section 121(3)) insert—
- “(2ZB) The initial notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.”

124 Consequential amendments

Schedule 8 (amendments consequential on sections 121 to 123) has effect.

125 Right of access

- (1) In subsection (1) of section 17 of the 1993 Act (access by reversioner or other relevant landlord for purposes of valuation), insert at the end “or if it is reasonable in connection with any other matter arising out of the claim to exercise the right to collective enfranchisement”.
- (2) For the sidenote of that section substitute “Rights of access.”

Purchase price

126 Valuation date

- (1) In Schedule 6 to the 1993 Act (purchase price payable), for “the valuation date” (in each place) substitute “the relevant date”.
- (2) In section 18(1) of the 1993 Act (duty to disclose existence of agreements affecting premises etc.), for “valuation date for the purposes of Schedule 6” substitute “time when a binding contract is entered into in pursuance of the initial notice”.

127 Freeholder’s share of marriage value

In paragraph 4(1) of Schedule 6 to the 1993 Act (freeholder’s share of marriage value), for the words after “freeholder’s share of the marriage value is” substitute “50 per cent. of that amount”.

128 Disregard of marriage value in case of very long leases

- (1) Paragraph 4 of Schedule 6 to the 1993 Act is amended as follows.
- (2) In sub-paragraph (2) (meaning of marriage value), insert at the beginning “Subject to sub-paragraph (2A),”.
- (3) After that sub-paragraph insert—
 - “(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.”