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STATUTORY INSTRUMENTS

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**2009 No. 2363**

**COMMONHOLD, ENGLAND AND WALES**

**The Commonhold (Amendment) Regulations 2009**

*Made* - - - - - *27th August 2009*  
*Laid before Parliament* *3rd September 2009*  
*Coming into force* - - *1st October 2009*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 13(4) and (6), 31(2), 32 and 64 of, and paragraphs 2 and 16 of Schedule 3 to, the Commonhold and Leasehold Reform Act 2002(1), makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Commonhold (Amendment) Regulations 2009 and shall come into force on 1<sup>st</sup> October 2009.

**Amendments to the Commonhold Regulations 2004**

2. The Commonhold Regulations 2004(2) are amended in accordance with the following regulations.

3. In regulation 2(2)(b) (joint unit-holders), for “articles 4(d) and 75”, substitute “articles 9(d) and 75”.

4. In regulation 12 (the name of the commonhold association)—

(a) in paragraph (1)—

(i) for “Companies Act 1985”, substitute “Companies Act 2006(3)”; and

(ii) for “if the memorandum of association states that the commonhold association’s registered office is to be situated in Wales,”, substitute “if the commonhold association is a Welsh company”; and

(b) at the end of paragraph (3), insert “, and “Welsh company” has the meaning given by section 88 of the Companies Act 2006.”

5. Omit regulation 13 (memorandum of association).

6. In regulation 14 (articles of association)—

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(1) 2002, c.15, to which relevant amendments are made, with effect from 1st October 2009, by SI 2009/1941, article 2(1) and Schedule 1, paragraphs 194 and 195.  
(2) S.I. 2004/1829, amended by SI 2007/1898, article 6 and Schedule 1, paragraph 35.  
(3) 2006, c.46.

- (a) for paragraph (4), substitute—
    - “(4) The articles of association of a commonhold association may increase—
      - (a) the proportion and number of members in article 16;
      - (b) the notice periods in article 21;
      - (c) the number of consecutive months and meetings in article 49(f); and
      - (d) the proportion and number of directors in article 61;”;
  - (b) omit paragraphs (5) and (7);
  - (c) in paragraph (8)(j), for “articles 40, 41 and 54”, substitute “articles 41, 42 and 56”; and
  - (d) in paragraph (9)(a), for “articles 45 and 46”, substitute “articles 46 and 47”.
7. In regulation 19(2) (termination)—
- (a) for “section 13 of the Companies Act 1985”, substitute “section 15 of the Companies Act 2006”; and
  - (b) for “section 28”, substitute “section 80”.
8. Omit Schedule 1 (memorandum of association).
9. For Schedule 2 (articles of association), substitute Schedule 2 as set out in the Schedule to these Regulations.
10. In Schedule 3 (commonhold community statement)—
- (a) in paragraph 1.1.5(c), omit “memorandum or”;
  - (b) in paragraph 1.4.5—
    - (i) in the definition of “company number”, for “Companies Act 1985”, substitute “Companies Act 2006”;
    - (ii) omit the definition of “memorandum”;
    - (iii) for the definition of “ordinary resolution”, substitute—
      - ““ordinary resolution” has the meaning given in section 282 (ordinary resolutions) of the Companies Act 2006;”;
    - (iv) for the definition of “special resolution”, substitute—
      - ““special resolution” has the meaning given in section 283 (special resolutions) of the Companies Act 2006;”;
  - (c) in paragraph 4.8.3, for “Companies Act 1985”, substitute “Companies Act 2006”;
  - (d) in paragraph 4.10.3, omit “memorandum and”; and
  - (e) in paragraph 4.10.4, omit “memorandum and”.

Signed on the authority of the Lord Chancellor

27th August 2009

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

SCHEDULE

Regulation 9

“SCHEDULE 2

Regulation 14

ARTICLES OF ASSOCIATION OF A COMMONHOLD ASSOCIATION  
THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION OF .....  
COMMONHOLD ASSOCIATION LIMITED

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*Interpretation*

1. In these articles—  
“the Act” means the Commonhold and Leasehold Reform Act 2002;  
“the 2006 Act” means the Companies Act 2006;

“bankruptcy” includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

“chairman of the meeting” means the person chairing a general meeting, in accordance with article 18 or 19 (chairman of the meeting);

“clear days”, in relation to the period of a notice, means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

“the commonhold” means the land in respect of which the commonhold community statement is registered;

“the commonhold association” means the commonhold association named in article 2;

“commonhold community statement” has the meaning given in section 31 (commonhold community statement: form and content: general) of the Act;

“commonhold unit” has the meaning given in section 11 (commonhold unit: definition) of the Act;

“the developer” means (see section 58(1) (development rights) of the Act) the person who makes an application to register a freehold estate in land as a freehold estate in commonhold land, and his successor in title who is treated as the developer, and who carries on development business on the commonhold land;

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“member” means a person whose name is entered as a member in the register of members of the commonhold association (see article 7 (membership) ) but excludes any person who has ceased to be a unit-holder or joint unit-holder or who has resigned as a member;

“ordinary resolution” has the meaning given in section 282 (ordinary resolutions) of the 2006 Act;

“pre-commonhold period” means the period beginning with incorporation of a commonhold association and ending when land specified in its articles becomes commonhold land;

“secretary” means the secretary of the commonhold association or any other person appointed to perform the duties of the secretary of the commonhold association, including a joint, assistant or deputy secretary;

“special resolution” has the meaning given in section 283 (special resolutions) of the 2006 Act;

“subscribers” means the persons who subscribed their names to the memorandum of association of the commonhold association;

“transitional period” has the meaning given in section 8 (transitional period) of the Act;

“unit-holder” has the meaning given in sections 12 (unit-holder) and 13 (joint unit-holders) of the Act;

“in writing”, and cognate expressions, in relation to any notice or document, means a notice or document sent or supplied in hard copy form or in electronic form as those expressions are defined in section 1168 (hard copy and electronic form and related expressions) of the 2006 Act.

Unless the context otherwise requires, other words and expressions contained in these articles bear the same meaning as in the Act including any statutory modification or re-enactment of it for the time being in force or, as the case may be, in the 2006 Act as in force on the date when these articles become binding on the commonhold association; and words in the singular include the plural and words in the plural include the singular.

*Name, registered office and object of the commonhold association*

2. The name of the company (referred to in this document as “the commonhold association”) is [ *insert name of commonhold association here* ].

3. The registered office of the commonhold association is to be situated in [ England and Wales ] [ Wales ] (*delete as appropriate*).

4. The object of the commonhold association is to exercise the functions of a commonhold association in relation to land known as [ *insert name or description of the land here* ] Commonhold in accordance with the commonhold community statement of that commonhold, as amended from time to time, and any provision made by or by virtue of Part 1 of the Act and the doing of all such things as are incidental or conducive to the attainment of that object.

*Liability of members*

5. The liability of the members is limited.

6. Without prejudice to any further liability which he may have under or arising out of the commonhold community statement, every member of the commonhold association undertakes to contribute such amount as may be required, not exceeding £1, to the assets of the commonhold association if it should be wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the commonhold association contracted before he ceases to be a member, and of the costs, charges and expenses of winding up the commonhold association, and for the adjustment of the rights of the contributaries among themselves.

*Members*

**Membership**

7. The persons who are entitled to be entered in the register of members of the commonhold association are—

- (a) in the pre-commonhold period, the subscribers to the memorandum of association of the commonhold association;
- (b) during the transitional period, the subscribers to the memorandum of association of the commonhold association and a person who for the time being is a developer in respect of all or part of the commonhold;
- (c) on transfer of a commonhold unit or where a commonhold unit becomes commonhold land by registration with unit-holders under section 9 of the Act, a person who becomes the unit-holder; and
- (d) on transfer of a commonhold unit; or, where a commonhold unit becomes commonhold land by registration with unit-holders under section 9 of the Act and two or more persons become joint unit-holders of a commonhold unit and—
  - (i) the joint unit-holders nominate, in writing to the commonhold association, one of themselves to be entered in the register of members, the person so nominated;
  - (ii) if no nomination is received by the commonhold association in accordance with sub-paragraph (i) within seven days beginning with the date on which the joint unit-holders are entitled to be registered as proprietors of the freehold estate in the commonhold unit, the person whose name appears first in the proprietorship register;
  - (iii) the court orders a joint unit-holder to be entered in the register of members in place of a person who is or who would be entitled to be registered under sub-paragraph (ii), the person so ordered by the court; or

- (iv) the joint unit-holders nominate one of themselves to be entered in the register of members in place of the person previously entered by virtue of sub-paragraph (i), (iii) or this sub-paragraph, the person so nominated.

### **Register of members**

**8.** In accordance with Chapter 2 (register of members) of Part 8 (a company's members) of the 2006 Act, the commonhold association must—

- (a) keep a register of members and enter in it—
  - (i) the name, address and unit number, where applicable, of each member and an address for correspondence (if different);
  - (ii) the date on which the person was registered as a member; and
  - (iii) the date at which the person ceased to be a member; and
- (b) keep the register available for inspection at its registered office or at a place specified in regulations under section 1136 (regulations about where certain company records are to be kept available for inspection) of the 2006 Act.

**9.** The commonhold association must enter the particulars of a person in the register of members of a commonhold association where the person is entitled to be entered in the register within fourteen days beginning with—

- (a) in the pre-commonhold period, the date of incorporation of the commonhold association;
- (b) in the transitional period, the date on which the developer notifies the commonhold association of his right to be registered;
- (c) on registration with unit-holders, the date on which Land Registry gives notice that the registration of the land as commonhold land has been completed;
- (d) on the transfer of a commonhold unit, the date on which the commonhold association receives notification, in writing, from the new unit-holder that the transfer has taken place;
- (e) in the event that no nomination is received from joint unit-holders under article 7(d)(i)—
  - (i) the date on which the commonhold association becomes aware that the joint unit-holders are registered as the freehold proprietors in the commonhold unit; or
  - (ii) if the court orders a joint unit-holder to be entered in the register of members in place of a person who is or who would be entitled to be registered under paragraph (i), the date the commonhold association receives notice of the court order; or
- (f) in the event that joint unit-holders nominate one of themselves to be entitled to be entered in the register of members in place of the person entered by virtue of paragraph (d), (e)(ii) or this paragraph, the date on which the commonhold association receives the nomination.

### *General meetings*

#### **Annual general meetings**

**10.** The commonhold association must hold an annual general meeting.

### *Notice of general meetings*

#### **Contents of notice**

**11.** Without derogation from any requirement of the 2006 Act, the notice must specify the time, date and place of the meeting and, in the case of an annual general meeting, must specify the meeting as an annual general meeting. Meetings should take place within the commonhold or at a similarly convenient location.

**12.** The notice must also include or be accompanied by a statement of the agenda of the business to be transacted at the meeting, the text of any written resolution to be proposed and a brief written explanation of them.

#### **Entitlement to receive notice**

**13.** The notice must be given to every member and every director of the commonhold association; but, subject to the 2006 Act, if any person entitled to receive notice is not sent it or does not receive it, this does not invalidate the proceedings at the meeting if the failure to notify was accidental.

### *Proceedings at general meetings*

#### **Business to be transacted**

**14.** Business must not be transacted at any general meeting unless details of it were included in the notice convening the meeting in accordance with article 12. In the event that the text of an ordinary resolution is given in the notice convening the meeting in accordance with article 12, a proposal to amend an ordinary resolution may, however, be voted upon if the terms of the proposed amendment were received by the commonhold association at its registered office, or at an address specified in the notice convening the meeting for the purpose of receiving electronic communications, before the time appointed for the meeting. The decision of the chairman as to the admissibility of any proposed amendment will be final and conclusive and does not invalidate any proceedings on the substantive resolution.

#### **Order of business**

**15.** At any general meeting, so far as practicable and subject to any contrary ordinary resolution of the meeting, any business arising from a requisition of members will be transacted before any other business and, if there is more than one requisition, the business arising from them will be transacted in the order in which the requisitions were received by the commonhold association.

#### **Quorum**

**16.** Business must not be transacted at any general meeting unless a quorum is present. The quorum for the meeting is one-fifth of the members of the commonhold association or two members of the commonhold association (whichever is the greater) present in person or by proxy or, if the member is a corporation, by authorised representative (second and additional proxies or authorised representatives of the same member being disregarded for the purpose of establishing whether a quorum is present).

**17.** If the relevant quorum is not present within half an hour after the time set for the meeting or, if during a meeting such a quorum ceases to be present, the meeting is adjourned to the same day in the next week at the same time and place or to another day, time and place as decided by the directors.

### **Chairman of the meeting**

18. The chairman, if any, of the board of directors or in his absence some other director or person nominated by the directors will preside as chairman of the meeting. If neither the chairman nor such other director or person (if any) is present within fifteen minutes after the time set for the meeting and willing to act, the directors present may elect one of themselves to be chairman or, if there is only one director present and willing to act, he will be chairman.

19. If no director is willing to act as chairman or if no director is present within fifteen minutes after the time set for the meeting, the members present and entitled to vote must choose one of themselves to be chairman.

### **Role of director**

20. A director, despite not being a member, is entitled to attend, speak and propose (but, subject to article 26, not vote upon) a resolution at any general meeting.

### **Adjournment**

21. The chairman may adjourn the meeting with the consent of any quorate meeting (and must if so required by the meeting), but no business is to be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. No notice is required of an adjourned meeting unless the meeting is adjourned for fourteen days or more, in which case at least seven clear days' notice must be given of the time, date and place of the adjourned meeting and the general nature of the business to be transacted.

### **Vote on a resolution and demand for a poll**

22. A resolution put to the vote of a meeting will be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded. A poll may be demanded—

- (a) by the chairman; or
- (b) by at least two members having the right to vote on the resolution; or
- (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote on the resolution;

and a demand by a person as proxy for a member, or as authorised representative of a corporate member, is the same as a demand by the member.

23. Unless a poll is demanded, a declaration by the chairman that a resolution has been carried or lost on a show of hands, whether unanimously or by a particular majority, or an entry to that effect in the minutes of the meeting is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

### **Proceedings on a poll**

24. The demand for a poll may be withdrawn before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll does not invalidate the result of a show of hands declared before the demand for the poll was made.

25. A poll will be taken in such manner as the chairman directs, having particular regard to the convenience of members, and he may appoint scrutineers (who need not be members). The result of the poll will be announced at the meeting at which the poll takes place and is deemed to be the resolution of the meeting at which the poll was demanded.

26. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman is entitled to a casting vote in addition to any other vote he may have.

27. A poll demanded on the election of a chairman, or on a question of adjournment of a meeting, must be taken immediately. A poll demanded on any other question may be taken at such time as the chairman directs, having regard to the convenience of members, and not being more than thirty days after the poll is demanded. The demand for a poll does not prevent the meeting dealing with any business other than the business being determined by poll. If a poll is demanded before the declaration of the result of a show of hands and the demand is withdrawn, the meeting will continue as if the demand had not been made.

28. No notice need be given of a poll not taken immediately if the time, date and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice must be given of the time, date and place at which the poll is to be taken.

### *Votes of members*

#### **Allocation of votes on show of hands**

29. On a show of hands, every member who (being an individual) is present in person or (being a corporation) is present by an authorised representative, not being himself a member entitled to vote, has one vote.

#### **Allocation of votes on a poll**

30. On a poll—

- (a) during the pre-commonhold period or the transitional period, every member has one vote; and
- (b) at any other time, every member has the number of votes that are allocated in the commonhold community statement to him in respect of the commonhold unit of which he is the member and, where a member is a member in respect of more than one unit, the sum of the votes allocated to him in respect of those units.

#### **Entitlement to vote – lack of mental capacity**

31. A member in respect of whom any order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his deputy or other person authorised in that behalf appointed by that court, and any such deputy or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote may be deposited at the registered office or at such other place as is specified in accordance with the articles for the deposit of an appointment of proxy, before the time appointed for the meeting or adjourned meeting at which the right to vote is to be exercised; or such evidence may be presented to the directors at the meeting. In default the right to vote is not exercisable.

#### **Entitlement to vote – receiver, administrator, trustee in bankruptcy, commissioner in sequestration or similar person**

32. A receiver appointed by the court or by a mortgagee, an administrator, a trustee in bankruptcy, a commissioner in sequestration or similar person may vote in place of a member, whether on a show of hands or on a poll. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote may be deposited at the registered office or at such other place as is specified in accordance with the articles for the deposit of an appointment of proxy, before the

time appointed for the meeting or adjourned meeting at which the right to vote is to be exercised; or such evidence may be presented to the directors at the meeting. In default the right to vote is not exercisable.

#### **Entitlement to vote – mortgagee in possession**

**33.** A mortgagee who provides—

- (a) a certificate confirming that possession has been taken of a commonhold unit; and
- (b) an official copy of the charges register of the title to the commonhold unit showing it as the registered proprietor of the charge,

is entitled to vote in place of a member, whether on a show of hands or on a poll. The person claiming to exercise the right to vote must deposit such evidence at the registered office or at such other place as is specified in accordance with the articles for the deposit of appointments of proxy, before the time appointed for the meeting or adjourned meeting at which the right to vote is to be exercised; or such evidence may be presented to the directors at the meeting. In default the right to vote is not exercisable.

#### **Objections to qualification of voter**

**34.** Objections to the qualification of any voter may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid. Any objection made in due time must be referred to the chairman whose decision is final and conclusive.

#### **Votes on a poll in person or by proxy**

**35.** On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.

#### **Form of appointment of proxy**

**36.—**(1) The appointment of a proxy must be in writing, signed by or on behalf of the appointor and must be in the following form (or a form to the same effect or in any other form which the directors may approve in writing)—

“[ *Name of commonhold association* ]

I/We [ *name(s)* ], of [ *address* ], being a member/members of the above-named commonhold association, appoint [ *name* ] of [ *address* ] or, failing him, [ *name* ] of [ *address* ] as my/our proxy to vote in my/our name and on my/our behalf at the (annual) general meeting of the commonhold association to be held on [ *date* ] and at any adjournment of it.

Signed on [ *date* ] by [ *name* ]”

(2) Where the member wishes to instruct the proxy how he must act, the appointment of a proxy must be in the following form (or a form to the same effect or in any other form which the directors may approve in writing)—

“[ *Name of commonhold association* ]

I/We [ *name(s)* ], of [ *name of commonhold association* ], being a member/members of the above-named commonhold association, appoint [ *name* ] of [ *address* ] or, failing him, [ *name* ] of [ *address* ] as my/our proxy to vote in my/our name and on my/our behalf at the (annual) general meeting of the commonhold association to be held on [ *date* ] and at any adjournment of it.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 for\* against\* abstain\*

Resolution No. 2 for\* against\* abstain\*

Etc.

\*Delete as appropriate

Unless instructed otherwise, the proxy may vote as he thinks fit or abstain from voting.

Signed on [ *date* ] by [ *name* ]”.

(3) Unless a proxy notice indicates otherwise, it must be treated as allowing the person appointed under it a proxy discretion as to how to vote on any resolution put to the meeting, including any ancillary or procedural resolution.

### **Notice of proxy**

**37.**—(1) The appointment of a proxy and any authority under which it is signed or a copy of such authority properly certified notarially or approved in another way by the directors may—

- (a) in the case of an appointment contained in electronic form, where an address has been specified for the purpose of receiving documents in electronic form—
  - (i) in the notice convening the meeting, or
  - (ii) in any form of appointment of proxy sent out by the commonhold association in relation to the meeting, or
  - (iii) in any invitation in electronic form to appoint a proxy issued by the commonhold association in relation to the meeting,be received at that address; or
- (b) in any other case, be deposited at the registered office of the commonhold association or at such other place within the United Kingdom as is stated either in the notice convening the meeting or in any form of appointment of proxy sent out by the commonhold association in relation to the meeting,

by the times stated in paragraph (2).

(2) The times are—

- (a) the time for holding the meeting or adjourned meeting, at which the person named in the appointment or authority proposes to vote (or, failing that, at the meeting or adjourned meeting, by delivering the appointment or authority to the chairman, secretary or any director); or
- (b) in the case of a vote to be given in a poll taken not more than 48 hours after the poll was demanded, the time at which the poll was demanded; or
- (c) in the case of a vote to be given in a poll taken more than 48 hours after the poll was demanded, the time appointed for taking the poll.

(3) The appointment of a proxy, and any authority (or copy of the authority) under which the appointment is signed, are valid only if deposited, received or delivered in accordance with this article.

### **Notice of termination of authority**

**38.**—(1) The validity of a vote given or poll demanded or of anything done as chairman of a meeting, by a proxy for a member or by the authorised representative of a corporation, or whether the proxy or authorised representative counts in deciding whether there is a quorum at a meeting, is not

affected by the previous termination of his authority unless notice of the termination was received by the commonhold association at—

- (a) the registered office; or
- (b) at such other place at which the appointment of proxy was deposited; or
- (c) where the appointment of the proxy was in electronic form, at the address at which such appointment was received,

before the start of the meeting or adjourned meeting at which the vote is given, the poll is demanded, the chairman acts, or the question as to whether there is a quorum arises; or (in the case of a vote given in a poll taken not more than 48 hours after the poll was demanded) by the time at which it was demanded; or (in the case of a vote given in a poll taken more than 48 hours after the poll was demanded) before the time appointed for taking the poll.

(2) In calculating the period mentioned in paragraph (1), no account shall be taken of any part of a day that is not a working day.

#### *Number of directors*

**39.** The number of directors must not be less than two, of whom one must be a natural person (who may hold the office of director as a corporation sole or otherwise by virtue of an office).

#### *Appointment and retirement of directors*

##### **Qualification**

**40.** A director need not be a member of the commonhold association.

##### **Retirement by rotation**

**41.** At the first annual general meeting after the end of the transitional period, all of the directors must retire from office. At every subsequent annual general meeting, one-third of the directors who are subject to retirement by rotation must retire. If the number of directors is not three or a multiple of three, the number nearest to one-third must retire from office. If there is only one director who is subject to retirement by rotation, he must retire.

**42.** The directors to retire by rotation are those who have been in office longest since their last appointment or reappointment. Where there are directors who were appointed or re-appointed on the same day, those to retire must be determined by lot, unless the directors agree otherwise among themselves.

**43.** If the commonhold association, at the meeting at which a director retires by rotation, does not fill the vacancy, the retiring director, if willing to act, is deemed to have been re-appointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the director is put to the meeting and lost.

##### **Appointment and re-appointment of directors at general meetings**

**44.** No person other than a director retiring by rotation may be appointed or re-appointed as a director at any general meeting unless—

- (a) he is recommended by the directors; or
- (b) at least fourteen and not more than thirty-five clear days before the date appointed for the meeting, notice signed by a member qualified to vote at the meeting has been given to the commonhold association of the intention to propose that person for appointment or

reappointment and stating the particulars which would be required to be included in the commonhold association's register of directors under the 2006 Act, if he were appointed or re-appointed, together with notice signed by that person of his willingness to be appointed or re-appointed.

#### **Notice of proposed appointment**

**45.** At least fourteen and not more than twenty-eight clear days before the date appointed for holding a general meeting, notice must be given to all who are entitled to receive notice of the meeting of any person (other than a director retiring by rotation at the meeting) who is recommended by the directors for appointment or reappointment as a director at the meeting or in respect of whom notice has been given to the commonhold association of the intention to propose him at the meeting for appointment or reappointment as a director. The notice must give the particulars of that person which would, if he were appointed or reappointed, be required to be included in the commonhold association's register of directors.

#### **Appointment by members**

**46.** Subject to these articles, the commonhold association may by ordinary resolution appoint a person, who is willing to act, to be a director either to fill a vacancy or as an additional director and may also determine the rotation in which any additional directors are to retire.

#### **Appointment by directors**

**47.** The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed the maximum number (if any) fixed by these articles. A director so appointed will hold office only until the next following annual general meeting and is not taken into account in determining the directors who are to retire by rotation at the meeting. If not re-appointed at such annual general meeting, he must vacate office at the end of the meeting.

#### **Re-appointment following retirement at annual general meeting**

**48.** Subject to these articles, a director who retires at an annual general meeting may, if willing to act, be re-appointed. If he is not re-appointed, he must hold office until the meeting appoints someone in his place or, if it does not do so, until the end of the meeting.

#### *Disqualification and removal of directors*

- 49.** The office of a director must be vacated if—
- (a) an ordinary resolution is passed at a meeting by the members in favour of removing a director (where special notice of the resolution has been given in accordance with the 2006 Act);
  - (b) he ceases to be a director by virtue of the 2006 Act or he is prohibited by law from being a director; or
  - (c) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (d) he is, or may be, suffering from mental disorder and either—
    - (i) he is admitted to hospital in pursuance of an application for admission to treatment under the Mental Health Act 1983 or, in Scotland, in pursuance of the Mental Health (Care and Treatment) (Scotland) Act 2003; or

- (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a deputy or other person to exercise powers with respect to his property or affairs; or
- (e) he resigns his office by notice to the commonhold association; or
- (f) he is absent for more than three consecutive months from meetings of the directors held during that period or from three consecutive meetings (whichever is the greater) without permission from the directors and the directors resolve that his office be vacated.

**50.** Where there is only one or one remaining director of the commonhold association, an appointment of a new director must take place before the director disqualified or being removed vacates his office.

#### *Register of directors*

**51.** In accordance with the 2006 Act, the commonhold association must keep, and keep open for inspection, a register of its directors containing the required particulars of each person who is a director of the commonhold association.

#### *Powers of directors*

**52.** Subject to the 2006 Act, the articles, and any directions given by special resolution, the directors must manage the business of the commonhold association and may exercise all the powers of the commonhold association. No alteration of the articles and no such direction invalidates any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article are not limited by any special power given to the directors by the articles and the directors' powers may be exercised at a meeting at which a quorum is present.

#### *Agents and managing agents*

**53.** The directors may, by power of attorney or otherwise, appoint any person to be the agent of the commonhold association for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

**54.** The directors have the power on behalf of the commonhold association to appoint and enter into contracts with managing agents of the commonhold on such terms as they think fit including a term providing for cancellation of the contract and return of records and monies paid. The directors remain bound to supervise the managing agent so appointed.

#### *Delegation of directors' powers*

**55.** Where an ordinary resolution is passed in favour, the directors may delegate any of their powers to any committee consisting of one or more directors, members of the commonhold association and others as they think fit, provided that the majority of the persons on any such committee from time to time are members of the commonhold association. They may also delegate to any managing director or any director holding any other executive office or any managing agent such of their powers as they consider desirable to be exercised by him. Any such delegation is subject to the provisions of the commonhold community statement, may be made subject to any conditions the directors may impose, may be made either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more persons are governed by the articles regulating the proceedings of directors so far as they are capable of applying. A record must be kept giving details of any powers that have been delegated.

#### *Remuneration of directors*

56. Directors are entitled to such remuneration as the commonhold association may determine by ordinary resolution, where the directors are not members of the commonhold association, and by special resolution, where the directors are members of the commonhold association. Unless the resolution provides otherwise, the remuneration is deemed to accrue from day to day.

#### *Directors' expenses*

57. The directors may be paid all travelling, hotel and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of directors or committees set up by the directors or general meetings or separate meetings of the members of the commonhold association or otherwise in connection with the discharge of their duties.

#### *Directors' appointments*

##### **Executive appointments**

58. Subject to the 2006 Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the commonhold association and may enter into an agreement or arrangement with any director for his employment by the commonhold association or for the provision by him of any services outside the scope of the ordinary duties of a director. Any appointment of a director to an executive office must terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the commonhold association.

#### *Register of directors' interests*

59. A commonhold association must keep a register of directors' interests and whenever it receives information from a director given in fulfilment of an obligation imposed on him by the 2006 Act, it is under an obligation to enter in the register, against the director's name, the information received and the date of the entry.

#### *Proceedings of directors*

##### **Regulation and notice of meetings**

60. Subject to these articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director must, call a meeting of the directors. It is not necessary to give notice of a meeting to a director who is absent from the United Kingdom unless he has given to the commonhold association an address to which notices may be sent in electronic form. In such case the director is entitled to have notices given to him at that address. In all other cases, a notice calling a meeting of directors need not be in writing. Questions arising at a meeting will be decided by a majority of votes. In the case of an equality of votes, the chairman will have a second or casting vote.

##### **Quorum**

61. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other greater number, is half of the number of appointed directors for the time being or two directors (whichever is the greater).

**62.** The continuing directors or a sole continuing director may act despite any vacancies in their number but, if the number of directors is less than the number fixed as the quorum, the continuing director or directors may act only for the purpose of filling vacancies or calling a general meeting.

#### **Chairman of the board of directors**

**63.** The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed must preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within fifteen minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.

#### **Validity of acts**

**64.** All acts done by a meeting of directors, or of a committee set up by the directors, or by a person acting as a director are valid even if it is discovered later that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote.

#### **Resolutions in writing**

**65.** A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee set up by the directors is as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee set up by the directors convened and held, and may consist of several documents in similar form each signed by one or more directors.

#### **Entitlement to vote – conflict of interest**

**66.** A director must not vote at a meeting of directors or a committee set up by the directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the commonhold association. For the purposes of this article, an interest of a person who is, for any purpose of the 2006 Act (including any statutory modification of it not in force when this article becomes binding on the commonhold association), connected with a director is treated as an interest of the director.

**67.** A director must not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.

**68.** The commonhold association may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provisions of these articles prohibiting a director from voting at a meeting of directors or of a committee set up by the directors.

**69.** If a question arises at a meeting of directors or of a committee set up by the directors as to the right of a director to vote, the question may be referred to the chairman of the meeting before the end of the meeting, and his ruling in relation to any director other than himself is final and conclusive.

#### *Secretary*

**70.** The directors may appoint a secretary of the commonhold association for such terms, at such remuneration and upon such conditions as they think fit, and any secretary so appointed may be removed by them.

*Written records*

**71.** The directors must cause written records to be made of—

- (a) all appointments of officers made by the directors or by the developer; and
- (b) all proceedings at meetings of the commonhold association and of the directors, and of committees, including the names of the persons present at each such meeting, the date of the meeting and any action agreed at the meeting (including a record of every unanimous or majority decision taken by the directors).

The directors must ensure that the commonhold association keeps all such records for at least ten years from the date of the appointment, meeting, action or decision in question.

*No distribution of profits*

**72.** Save in accordance with a termination statement or in a winding up, the commonhold association must not distribute its profits or assets, whether in cash or otherwise, to its members.

*Retention, inspection and copying of books and records*

**73.** In addition to, and without derogation from, any right conferred by statute, any member has the right, on reasonable notice and at a reasonable time and place, to inspect and to be provided with a copy of, any book, minute, register, document, or accounting record of the commonhold association, upon payment of any reasonable charge for copying. Such rights are subject to any ordinary resolution of the commonhold association in general meeting and, in the case of any book, minute, register, document, or accounting record which the directors reasonably consider contains confidential material, the disclosure of which would be contrary to the interests of the commonhold association or to another member, to the exclusion or excision of such confidential material (the fact of such exclusion or excision being disclosed to the member), and to any other reasonable conditions that the directors may impose.

**74.** Any books, minutes, registers, documents, or accounting records of the commonhold association which are not subject to a statutory minimum retention period must be retained by the commonhold association for a minimum period of three years.

**75.** Up-to-date copies of the commonhold community statement and the articles of association must be kept at the registered office of the commonhold association and any unit-holder has the right, on reasonable notice and at a reasonable time and place, to inspect the commonhold community statement or the articles of association.

*Notices*

**76.** Unless otherwise stated, any notice to be given under these articles must be in writing.

**77.** Any notice may be given—

- (a) personally;
- (b) by leaving it at an address given to the commonhold association as an address for correspondence;
- (c) by sending it by first class post in a prepaid envelope properly addressed to the member at an address given to the commonhold association as an address for correspondence; or
- (d) where an electronic address has been provided as an address for correspondence, in electronic form sent to that address in accordance with any terms or conditions as previously specified by the recipient.

**78.** Proof that an envelope containing a notice was properly addressed, prepaid and posted by first class post is conclusive evidence that the notice was given to a postal address. Electronic confirmation of receipt is conclusive evidence that a notice was given to an address.

**79.** A notice is deemed to be given, unless proved otherwise—

- (a) on the day it was handed to the recipient or left at the address for correspondence;
- (b) on the second day after it was posted to the recipient; or
- (c) on the day after it was transmitted in electronic form.

#### *Indemnity*

**80.** Without affecting any indemnity to which he may otherwise be entitled, every director or other officer of the commonhold association must be indemnified out of the assets of the commonhold association against any liability incurred by him in defending any proceedings, whether civil or criminal, alleging liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the commonhold association, and in which judgment is given in his favour, or in which he is acquitted, or in connection with any application in which relief is granted to him by a court.

Signed by the subscribers to the memorandum of association of the commonhold association

Dated:

Witness to the above signature(s)”

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Commonhold Regulations 2004 ([SI 2004/1829](#)) (“the 2004 Regulations”) in consequence of the coming into force on 1st October 2009 of the company law provisions of the Companies Act 2006 (“the 2006 Act”), which consolidates and amends general company law, and of the consequential amendments prospectively made to Part 1 (Commonhold) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 ([SI 2009/1941](#)). Of particular relevance to commonhold associations, which are private companies limited by guarantee, are the changed roles of the memorandum of association and of the articles of association. From 1st October 2009, the memorandum will be restricted to providing evidence of the intention of each subscriber to form a company and become a member of the company; while the company’s articles alone will contain its internal rules, including any objects.

These Regulations make consequential changes to the 2004 Regulations, for example, changing references to “memorandum” or “memorandum or articles” to “articles”; deleting Schedule 1 (Memorandum of association); and substituting new prescribed articles for commonhold associations in Schedule 2 (Articles of association of a commonhold association) which cover constitutional issues (company name; location of registered office; objects; liability of members) dealt with by the old style memorandum. The new prescribed articles also reflect other changes to general company law made by the 2006 Act. For example, the 2006 Act deals comprehensively with convening meetings, notice of meetings and directors’ interests; thus articles dealing with these

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topics have been removed from the new prescribed commonhold articles. The enhanced importance for private companies of the written resolution procedure is reflected in a number of amendments to the articles. There are also minor consequential changes in relation to, for example, proxy notices, the number of directors, the company secretary, and the keeping of the commonhold association's written records which fall within the purview of the 2006 Act.