

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Exercise of right

Section 121: Right exercisable only by RTE company

209. *Section 121* amends section 13 of the 1993 Act to require an initial notice to be given by a RTE company whose membership includes the required number of tenants in the block who both qualify to participate in the enfranchisement and have elected to participate (i.e. the participating members must hold long leases on at least half of the flats in the building). This replaces the existing requirement that a qualifying group of tenants themselves give the notice. Where there are two qualifying tenants in the block, both must be participating members of the RTE company.

Section 122: RTE companies

210. *Section 122* inserts new sections 4A, 4B and 4C into the 1993 Act.

211. *Section 4A* defines a RTE company. To qualify, the company must be a private company limited by guarantee, and its memorandum must include as one of its objects the exercise of the right to collective enfranchisement. But (in order to prevent competing bids for enfranchisement being mounted) it does not qualify if another RTE company is already taking forward an ongoing enfranchisement claim for the same premises. In addition, a company which is also a commonhold association cannot be a RTE company.

212. *Section 4B* specifies who may be a member of a RTE company prior to the company acquiring the freehold of the property. *Subsection (1)(a)* provides that all qualifying tenants are entitled to membership. *Subsection (1)(b)* provides that where a RTE company is already a RTM company which has acquired the right to manage under Chapter 1 of Part 2 of the Act, any landlords under leases of the whole or part of the premises may also be members. *Subsection (3)* provides that once the freehold is conveyed to the RTE company any member who is not a participating member ceases to be a member.

213. *Subsection (4)* defines a participating member as a member who is a qualifying tenant and who has given a participation notice (see subsection (7)) before the date when the company gives the initial notice under section 13 of the 1993 Act or during the participation period (see subsection (9)), or is an assignee of a lease held by a participating member in the circumstances set out in subsection (5), or the personal representatives of such a member in the circumstances set out in subsection (6). *Subsection (5)* provides that, where a qualifying tenant who was a participating member has assigned his lease to another qualifying tenant, that person can become a participating member by giving a participation notice to the RTE company

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

within 28 days starting from the date of the assignment. *Subsection (6)* provides that if a participating tenant dies, his or her personal representatives (if they are a member) may become a participating member if they give a participation notice to the company at any time.

214. *Subsection (7)* defines a participation notice as a notice which states that a member wishes to be a participating member. *Subsection (8)* will ensure that the landlord will be notified if leaseholders decide to join the RTE Company after the initial notice has been served on him. *Subsection (9)* defines the participation period as starting at the date of the initial notice and lasting for 6 months afterwards (or any other period which may be specified by order), or, if earlier, until just before contracts are exchanged for the purchase of the freehold.
215. *Section 4C* provides a power to make regulations specifying the content of the memorandum and articles of RTE companies. The regulations will over-ride any terms inconsistent with them included in the memorandum and articles. The regulations may also require any compulsory terms to be deemed to be included if the company has failed to include them. Provisions of the Companies Act 1985 which would otherwise conflict with regulations made under this section are disapplied.

Section 123: Invitation to participate

216. *Section 123* inserts new section 12A into the 1993 Act. This requires the RTE company, before making a claim to exercise the right, to serve a 'notice of invitation to participate' on any qualifying tenants in the block who have not yet agreed to become participating members. Provision is made as to the content of this notice. The notice will have to either be accompanied by a copy of the Memorandum and Articles of Association for the RTE company or include a statement of where these documents can be inspected and from where copies can be obtained. The company cannot go on to serve an initial notice until fourteen days after service of the invitation to participate. Any inaccuracies in the particulars of the notice will not invalidate the notice.

Section 124: Consequential amendments

217. *Section 124* provides that Schedule 8 has effect. This Schedule includes a large number of amendments, principally to the 1993 Act, consequential on sections 117 to 119. They provide for the collective enfranchisement procedure to be carried forward by the RTE company rather than, as now, initially by a group of qualifying tenants and subsequently by a nominee purchaser appointed by them. Details are set out in the notes on Schedule 8 below.

Section 125: Right of access

218. *Section 125* extends the existing right of access by the landlord for valuation purposes under section 17(1) of the 1993 Act, so that it applies for any purpose in connection with a claim to exercise the right of collective enfranchisement.