

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Qualifying rules

Section 138: Abolition of residence test

231. *Section 138* amends section 1 of the 1967 Act. It abolishes the residence test as it applies to leasehold houses. Consequentially, it also provides that where a person has a superior lease to a qualifying tenant, that person does not have the right to enfranchise and the right to extend his lease. It also makes a number of other consequential changes to the 1967 Act.

Section 139: Reduction of qualifying period as tenant etc

232. *Section 139* amends section 1 of the 1967 Act. It introduces a requirement for the leaseholder to have held his or her lease for a least two years before exercising the right to enfranchise or the right to an extended lease. It also excludes leaseholders from these rights if their tenancy of the house was a business tenancy *unless* they could pass a residence test. Business tenants are required to have occupied the house as their only or main residence for the last two years or periods amounting to at least two years in the last ten in order to obtain the right to enfranchise and the right to extend their leases. *Subsection (2)* provides that a head lessee of a house which has been converted into flats and let to qualifying tenants cannot exercise the right to enfranchise unless they can satisfy a similar residence condition.
233. This section also brings sections 9(3)(b) and 23(2)(b) of the 1967 Act into line with sections 13(9) and 42(7) of the 1993 Act. Where the leaseholder of a house withdraws his notice of their desire to enfranchise, he will be prohibited from issuing a fresh notice for twelve months (as opposed to three years).

Section 140: Exclusion of certain business tenancies

234. *Section 140* provides that business tenants (who must also meet the residence condition in section 140 above) do not qualify for the right to enfranchise unless they were granted a lease with an original term of more than 35 years, or the lease contained a covenant or obligation for renewal which has been exercised to make the total of the term more than 35 years.

Section 141: Tenancies not at a low rent

235. *Section 141* amends section 1AA of the 1967 Act. Subject to an exemption which applies to certain properties in rural areas, it extends the right to enfranchise to leaseholders of houses who were originally granted leases for more than 21 years, but

less than 35 years, and who are unable to pass the relevant low rent test. It also makes consequential amendments to the rural exemption.

Section 142: Personal Representatives

236. *Section 142* amends section 6 of the 1967 Act. It improves the rights of those who inherit leasehold houses. Where the deceased leaseholder qualified for the right to extend the lease and/or enfranchise at the time of death, personal representatives would be able to exercise those rights within two years of the grant of probate or letters of administration. It also makes a consequential amendment to Schedule 3 to the 1967 Act.

Section 143: Abolition of limits on rights after lease extension

237. *Section 143* amends section 16 of the 1967 Act. Section 16 currently limits the rights of leaseholders of houses who have exercised their right to extend their lease. By removing paragraph (a) of subsection (1), leaseholders with extended leases will be given the right to acquire the freehold. Similarly, the removal of subsection (4) will also give sub-tenants of a tenant with an extended lease the right to acquire the freehold if otherwise qualified to do so. These rights will apply to leases extended before these provisions come into force in the same way as it will apply to those extended after that date.
238. *Subsection (2)* replaces section 16(1B) of the 1967 Act. The existing subsection (1B) prevents an extended tenancy from being an assured tenancy and disapplies the provisions of Schedule 10 to the Local Government and Housing Act 1989. It will be replaced with a provision that allows those with extended leases to benefit from security of tenure even if they can no longer meet the relevant low rent test. This is necessary because the higher ground rent payable under an extended lease will normally be above the limits of that test.
239. *Subsection (3)* makes it clear that the above changes apply to leases which have been extended before the coming into force of these provisions. *Subsection (4)* clarifies the operation of the valuation principles in section 9(1A) of the 1967 Act after the original term date of the lease.

Section 144: Exclusion of shared ownership leases

240. *Section 144* corrects technical defects in the 1967 Act relating to shared ownership properties. Such properties are exempt from the right to enfranchise under certain circumstances. The section allows the existing exemption to apply in cases where property is or has been transferred from a local authority to a registered social landlord (within the meaning of Part 1 of the Housing Act 1996). It also allows the exemption to apply in cases where a lease restricts a tenant's power to assign the lease.