

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Commonhold unit

58. Sections 11 to 24 make provision about the units which will be owned by unit-holders and which form the core of the commonhold development. Amongst others there are provisions covering definition, use, transfer, leasing and other transactions.

Section 11: Definition

59. Section 11(2) requires the commonhold community statement to define the extent of a commonhold unit and requires also that there must be at least two such units in the development because there can be no commonality or, indeed, common parts requiring the operation of the commonhold scheme unless there are interdependent units. Subsection (3) sets out the matters that the commonhold community statement must deal with for this purpose, including the provision of plans, and in particular allows for the unit to consist of one or more areas of land, whether or not contiguous, and subsection (4) makes it clear that a commonhold unit need not contain any part of a building.

Section 12: Unit-holder

60. Section 12 provides a definition of the unit-holder designed to ensure that, during the gap between the completion of the sale or other transfer of the unit and the registration of that transfer at HM Land Registry, the person to whom the unit has been transferred is the person who is the unit-holder. This is because, for that time, the person whose name appears on the register will still be the previous unit-holder. However, from the moment of transfer, the new owner is the person entitled to be registered, and this section thus provides a definition which covers the gap.

Section 13: Joint unit holders

61. Section 13 defines joint unit-holders and distinguishes between circumstances in which rights and responsibilities are joint and those in which they are both joint and individual. Lists of these circumstances are provided in subsections (2) and (3).

Section 14: Use and maintenance

62. Section 14(1) places a requirement on the commonhold community statement to make the necessary provisions and regulations governing the use of commonhold units. This will be the place in which the statement will specify whether, for instance, the unit is to be residential only (see section 17(5)). Subsection (2) requires the statement to impose obligations to insure, maintain and repair each unit, but subsection (3) gives the flexibility of allowing each of those responsibilities to be imposed on either the unit-

holder or on the commonhold association. For instance, the statement could require the unit-holder to take out an insurance policy on the fabric of a flat whilst making the commonhold association responsible for insuring and maintaining a balcony. It could also require a unit-holder to be responsible for the decoration of the inside of window units whilst making the commonhold association responsible for decoration of the outside of the same units.

Section 15: Transfer

63. *Section 15(1)* defines the word ‘transfer’ for the purposes of this Part as a transfer of the unit-holders freehold to someone else, whether or not any payment is made, and regardless of whether there are any terms applied to the transfer or that the transfer takes place as the result of a legal requirement. *Subsection (2)* provides that the commonhold community statement can neither stop a unit-holder from transferring their unit nor place restrictions on his right to do so. To ensure that the commonhold association always knows who owns a particular unit and thus also who its members are, an incoming unit-holder is required to inform the association of the transfer. The form of the notice required under *subsection (3)* and any time limit to be applied is to be laid down in regulations, as is provision for dealing with failure to comply with the requirements (*subsection (4)*).

Section 16: Transfer: effect

64. *Section 16* sets out how the transfer of a unit will affect ‘new unit-holder’ and ‘former unit-holder’ (as defined in *subsection (4)*) in certain respects. *Subsection (1)* provides that transfer will not affect the existence of certain impositions or benefits related to the land created either by the commonhold community statement or by any action of the former unit-holder which was in accordance with section 20. The new unit-holder will have the same rights and responsibilities after transfer as the former unit-holder had before that date. *Subsection (2)* provides that a former unit-holder cannot be held responsible for any obligation arising after the date of transfer arising either out of the commonhold community statement or out of any action of his in conformity with section 20, and by the same token will not be entitled to any benefit accruing from the same sources after the same date. *Subsection (3)* provides that the rule in *subsection (2)* cannot be displaced by agreement, but has no effect on rights and obligations arising before the date of transfer. This means, in effect, that no contract for sale or other transfer document can contain a provision purporting to tie a former unit-holder to the unit beyond the transfer date. This aims to ensure that the current unit-holder is always the person with the full range of benefits and obligations relating to their unit, and that no-one has a greater interest in the unit than he does.

Section 17: Leasing: residential

65. *Section 17* places one of the few restrictions that the commonhold scheme requires on the ability of a unit-holder to treat his unit as though freehold. It is Government policy that residential commonhold units should not be let for long unbroken periods. This is to avoid the possibility of repeating the difficulties which exist in leasehold blocks now. The intention is that regulations made under *subsection (1)* should set down both that no premium should be payable for a lease, which should be at a rack rent, and also that the maximum period for a single term lease should be restricted to seven years. *Subsection (1)* announces the restriction on granting leases unless the terms satisfy certain conditions, and *subsection (2)* sets out the matters which would form the basis of those conditions. *Subsection (3)* provides that, if a lease is granted which contravenes the prescribed terms, it shall be of no effect, and *subsection (4)* allows recourse to the courts by any party to such an ineffective lease, giving the court powers to order that the ineffective lease should take effect, to order the return or payment of money by way of compensation, and to make any other provision which it thinks fit. *Subsection (5)* requires that a residential unit should be so described in the commonhold community statement.

Section 18: Leasing: non-residential

66. **Section 18** provides that commercial leases for appropriate units are subject to the terms of the commonhold community statement.

Section 19: Leasing: supplementary

67. **Subsection 19(1)** provides that either or both of the regulations and the commonhold community statement should be able to impose obligations on the tenant of a unit and **subsection (2)** says specifically that a tenant might be required under the regulations to pay to the commonhold association or another unit-holder sums which are due to be paid by the tenant's landlord unit-holder, or by another tenant of the unit under the terms of the commonhold community statement. The regulations may provide (**subsection (3)**) that sums to be paid by a tenant under subsection (2) can be set off against amounts owed by him to his landlord unit-holder or some other person and for amounts paid under subsection (2) to be recovered from the unit-holder or another tenant of the unit. **Subsection (4)** gives power to vary rules of law, whether common law or statute law, about leases in order to bring them into line with the requirements of commonhold. **Subsection (5)** is a general regulation-making power.

Section 20: Other transactions

68. **Section 20(1)** forbids any provision of a commonhold community statement from preventing or restricting a unit-holder's exercise of his right to create, transfer or grant an interest or charge over his unit, for instance, in appropriate circumstances, granting a right of way, or borrowing on a mortgage and so charging the unit as security. **Subsection (3)** however requires that no interest, other than a lease, can be created unless the commonhold association is either a party to it or consents in writing. By **subsection (6)**, the subsection (3) requirement does not apply to the creation of charges, so the unit-holder's rights to charge the unit are restricted only so far as provided in the Act itself or in any subordinate legislation made under it. **Subsection (4)** provides that, where a commonhold association is to act under subsection (3) it must only act following approval by a 75% majority of the members voting. **Subsection (5)** renders void any agreement, however made, which is in contravention of subsection (3), so a unit-holder who purports to act where in fact there is no unanimous consent of the association members is unable to make an instrument or agreement that will have effect. **Subsection (2)** makes **subsection (1)** subject to the provisions of sections 17 and 19 about leasing. Section 20 only deals with matters that would appear on the register.

Section 21: Part-unit: interests.

69. **Section 21, subsection (1)** provides that the creation of interests in part only of a commonhold unit is not possible, and **subsection (3)** provides that an attempt to create such an interest in contravention of subsection (1) will have no effect. **Subsections (2) (a) and (b)** make the exception to subsection 1 for the creation of leases in part-units which, by virtue of **subsection (6)**, is made subject to the regulations on residential leases to be created under section 17. **Subsection (7)** provides that regulations may modify the application of provisions of the Act relating to the unit-holder or tenant where part of the unit is held under a lease, so that wrinkles in day-to-day operation can be ironed out. As to transfers of part units, **subsection (2) (c)** and **subsection (8)** provide that the transfer of the freehold estate in part of a commonhold unit is possible where the commonhold association consents in writing. However, the commonhold association will only be able to consent to the transfer following a resolution with at least 75 percent of those members who vote, voting in favour (section 20, **subsection (4)**). **Subsections (4) and (5)** provide that where land becomes commonhold land or is added to a commonhold unit in such a way that an interest over a part unit would exist, such an interest shall be extinguished. **Subsection (9)** provides that if the freehold interest in part of a unit is transferred the part transferred will become a new commonhold unit, unless the commonhold association allow it to become part of a unit specified in the

request for consent under *subsection (2)(c)*. The commonhold community statement may require new units created in this way to be registered (*subsection 10*).

Section 22: Part-units: charging

70. *Subsection (1)* of section 22 prohibits the creation of a charge over part only of an interest in a commonhold unit. This reflects the technical point that a unit as such cannot be charged, rather it is the unit-holders' interest in the unit that is charged. *Subsection (2)* renders ineffective any attempt to create a charge over part only of an interest in a unit. *Subsections (3)* and *(4)* provide that where land is added to a commonhold in such a way that a charge over a part unit would exist, such a charge shall be extinguished.

Section 23: Changing size

71. *Section 23* provides that, where for whatever reason, it is desired to change the size of a commonhold unit, for instance because an existing unit-holder has a garage in a block of garages which is, nonetheless designated as part of his unit, and the commonhold association wishes to demolish the garages for some purpose, the unit-holder's consent must be sought.

Section 24: Changing size: charged unit

72. *Section 24* is intended to ensure that where a unit is subject to a registered charge and the commonhold community statement is amended such as to change its extent either by enlarging or diminishing, the owner of the charge consents in writing before the change is made. This is because, as there cannot be a charge over part of a commonhold unit, the section provides that where land is taken out of the charged unit, the charge in relation to that part is automatically extinguished, and in the case where land is added, the existing charge is extended to cover it. Consent is required as the charge is in effect the property of a third party and that party's rights must be protected. *Subsection (1)* defines when the section will apply, *subsection (2)* provides for the seeking of written consent in advance of the planned change, *subsection (3)* provides for a court to dispense with the need for consent, *subsection (4)* provides for automatic extinguishment where appropriate and *subsection (5)* for automatic extension, and *subsection (6)* provides for the making of regulations which would require notice to be given to the Registrar and requiring the Registrar to register changes arising from subsections (4) and (5).