

EXPLANATORY MEMORANDUM TO
THE COMMONHOLD (LAND REGISTRATION) (AMENDMENT) RULES 2009
2009 No. 2024

1. This explanatory memorandum has been prepared by Her Majesty's Land Registry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Commonhold (Land Registration) (Amendment) Rules 2009 (the rules) amend the Commonhold (Land Registration) Rules 2004 (the principal rules) so that "articles of association" is generally substituted for "memorandum and articles of association" and "memorandum or articles of association" where these terms appear in the principal rules and the forms prescribed by them.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 Part 1 of the Commonhold and Leasehold Reform Act 2002 (the Commonhold Act) introduced "commonhold" as an alternative to the conventional method of owning flats and other interdependent properties under a lease. It involves the freehold ownership of the flats or other units, with the common parts being owned by a company – the "commonhold association" – responsible for managing these parts and enforcing the unit-holders' rights and obligations. The land involved is called "commonhold land".

4.2 Section 65 of the Commonhold Act allows for rules to be made about the registration of freehold estates in commonhold land in the register of title kept by the Chief Land Registrar. The principal rules and the rules are made under this section.

5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 One effect of the Companies Act 2006 is that the memorandum of association is to serve a more limited purpose than was previously the case, with the company's internal rules being set out in the articles of association. Accordingly, the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 amends the requirement in the Commonhold Act for the memorandum of a commonhold association to state that an object of the company is to exercise the functions of a commonhold association; this statement is to appear in the articles instead. The Order also changes other references to “memorandum”, “memorandum or articles” and “memorandum and articles” in the Commonhold Act to “articles”.

7.2 As a result of the amendments made to the Commonhold Act, it is necessary to change references to “memorandum and articles” and “memorandum or articles” in the principal rules and forms prescribed by them to “articles”: this is done by the rules.

7.3 The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 and the rules are all to come into effect on 1 October 2009.

- *Consolidation*

7.4 The rules amend the principal rules for the second time: the first set of amendments were effected by the Commonhold (Land Registration) (Amendment) Rules 2008. A consolidated version of the principal rules showing the net effect of both sets of amendments will be available on the Land Registry website from 1 October 2009.

8. Consultation outcome

8.1 The following were specifically consulted: the Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills), British Bankers Association, Building Societies Association, Companies House, Council of Licensed Conveyancers, Council of Mortgage Lenders, General Council of the Bar, Insolvency Practitioners’ Association, Insolvency Service, Institute of Legal Executives, Law Society, Ministry of Justice and Notaries Society. The consultation (which was in letter form) was also published on Land Registry’s website and responses could be made online.

8.2 The consultation period ran for three weeks and ended on 12 June 2009. A longer consultation period was not possible. It was not feasible to issue the consultation letter earlier because the form of the Order referred to in paragraph 7.1 was not sufficiently settled. And this Order was planned to come into force on 1 October 2009, so the rules needed to come into force at the same time. For this to happen, time had to be allowed, following consultation, for the rules to be considered by the Rule Committee, made by the Minister and, ideally, laid before Parliament before the recess – so on or before 21 July.

8.3 Four responses to the consultation were received, and none disagreed with what was proposed. Further details are given in the report on the responses to the consultation, which is available on Land Registry's website:
http://www1.landregistry.gov.uk/assets/library/documents/LRR2009_report_on_responses_to_consultation.html

8.4 The rules are made with the advice and assistance of the Land Registration Rule Committee. The Rule Committee has met and has approved them in draft. Consideration of rules by the Rule Committee is a form of consultation because the Committee includes members appointed, respectively, by the Law Society, the Council of Mortgage Lenders, the Council for Licensed Conveyancers, the Royal Institution of Chartered Surveyors, and the Bar Council, and also a person with experience in, and knowledge of, consumer affairs appointed by the Lord Chancellor. (The remaining members are a High Court Judge and the Chief Land Registrar.)

9. Guidance

9.1 Land Registry has a page on its website stating that the rules have been made and are to come into force on 1 October 2009, explaining the nature of the amendments effected by the rules, referring readers to the general OPSI website for copies of the rules and adding that a consolidated version of the principal rules, taking account of the rules, will be available on the website from 1 October 2009.

9.2 The Land Registry Practice Guide on commonhold will be updated, either by way of a new edition or an addendum, before 1 October 2009.

9.3 Updated versions of the forms prescribed by the principal rules and affected by the rules will be available on Land Registry's website, and publishers of the forms will be informed of the changes, before 1 October 2009.

10. Impact

10.1 The impact on business, charities or voluntary bodies is insignificant.

10.2 The impact on the public sector is insignificant.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business, as it does to all making applications to Land Registry involving commonhold.

11.2 To minimise the impact of the amendments on conveyancing firms employing up to 20 people, which are the small businesses likely to be most immediately affected, as well as minimising the impact on others, Land Registry is taking the steps outlined in section 9 above.

12. Monitoring & review

12.1 Land Registry will monitor the working of the amendments (as it continually monitors all its practice), and will take appropriate steps to deal with any difficulties that are identified.

13. Contact

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