

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Application for registration: Documents (section 2)

309. *Section 2* provides for the applicant for the registration of commonhold land to submit documents to the Registrar in support of the application and *Schedule 1* sets out what those documents should be.

Schedule 2: Land which may not be commonhold land (section 4)

310. *Paragraph 1* forbids the development of commonhold land at first floor level or above unless all the land below it and down to the ground is subject to the same application. This is to avoid the risk which attends ‘flying freeholds’, particularly the problems of enforcing any covenants relating to access and support.
311. *Paragraph 2* relates to the development of agricultural land and *paragraph 3* prevents commonhold land being created out of land which is held contingent on external events. In the first instance, land which is held subject to a grant under the Schools Sites Act 1841 reverts to the grantor when the land in question ceases to be used for a school, and in the second, the ownership of the land is contingent on some future event. For example, the land may be held by A until B reaches the age of 25, when it passes to B.

Schedule 3: Commonhold association (section 34)

Memorandum and articles of association

312. *Paragraph 1* defines ‘memorandum’ and ‘articles’ for the purpose of the Schedule. *Paragraph 2* requires regulations to be made providing for the form and content of the memorandum and articles of association of the commonhold association and further requires that the memorandums and articles of association must comply with those regulations. *Paragraph 3* provides for the alteration of the memorandum and articles of association and *paragraph 4* provides for the disapplication of parts of the Companies Act 1985 relating to the memorandum and articles of association. *Paragraph 5* provides for the membership of the company prior to the coming into effect of the commonhold and *paragraph 6* provides for membership during the period of transition, if there should be one. *Paragraph 7* defines who should be entitled to be entered into the register of members. *Paragraph 8* defines how joint unit-holders will be entered onto the company register. *Paragraph 9* specifies that a commonhold association may not be a member of itself. This covers the position where an association owns a unit, and in effect prevents the association from using the votes associated with the unit. *Paragraph 10* provides that no one may be a member of an association on any terms other than those in the Schedule; in effect, this means unit-holders or,

in the early days, company subscribers. *Paragraph 11* provides that membership of the commonhold association begins only with registration in the company register and *paragraph 12* provides for termination of association membership on ceasing to be a unit-holder or joint unit-holder. *Paragraph 13* makes provisions in relation to the register of members and *paragraph 14* makes certain provisions in relation to the Companies Act.

Schedule 4: Development rights (section 58)

313. *Schedule 4* sets out the various activities which are to be considered as development business for the purposes of section 58. These are set out under four headings; Works, Marketing, Variation and Commonhold Association (in this latter case, specifically, the appointment and removal of directors of the commonhold association).

Schedule 6: Premises excluded from right to manage (Section 72)

314. *Paragraph 1* excludes premises where more than 25% of the internal floor area is in non-residential use. This mirrors the exclusion from the right to collectively enfranchise.
315. *Paragraph 2* excludes premises which contain separate self-contained parts where the freehold of those parts is owned by different persons.
316. *Paragraph 3* excludes converted premises which consist of no more than four units where either the landlord or an adult member of the landlord's family occupies one of those units as their only or principal residence.
317. *Paragraph 4* excludes premises where a local housing authority is the immediate landlord of any of the qualifying tenants.
318. *Paragraph 5* excludes premises where the right to manage has already been acquired and continues to be exercisable. Where a RTM company ceases to be responsible for the management of the premises, it will not be possible for any party to acquire the right for those premises within four years of that event except with the agreement of a LVT. (This bar does not apply, however, if the right to manage has ceased for the property as a result of a RTM company being used to acquire the freehold.)

Schedule 7: Right to Manage: Statutory Provisions (Section 102)

319. *Schedule 7* makes consequential changes to existing rights and duties to make them applicable where the RTM company has acquired the right to manage.
320. *Paragraph 1* provides that the requirements on a landlord in section 19 of the Landlord and Tenant Act 1927 not to unreasonably withhold certain consents required under a lease apply to a RTM company where those consents are required to be given by the company by virtue of section 98. The company is, however, entitled to make its consent conditional upon the receipt of their reasonable costs incurred in deciding whether to give that consent.
321. *Paragraph 2* provides that the duty of care placed on a landlord by section 4 of the Defective Premises Act 1972 becomes a duty of care on the RTM company. This has the practical effect of making the company responsible for ensuring that the property is kept in a sufficient state of repair not to present a threat to public safety. Any liability arising from a failure to keep the property in good repair would therefore fall upon the company.
322. *Paragraph 3* provides that the obligation placed upon a landlord of a short lease under section 11 of the 1985 Act becomes an obligation of the RTM company insofar as that obligation applies to the common parts and fabric of the premises, but not insofar as

it applies only to the individual unit demised under that lease. It also provides that a RTM company will be under the same obligation to anyone who occupies a unit in the premises without having a lease of that unit (e.g. a resident freeholder) as it would be to any tenant with a short lease by virtue of the application of section 11 of the 1985 Act. This will have the practical effect of placing the company under an obligation to tenants under short leases and to residents with no leases to maintain the structure and exterior of the building and the installations for heating and sanitation and for the supply of water, electricity and gas.

323. *Paragraph 4* provides that the rights enjoyed by tenants in respect of service charges under sections 18 to 30 of the 1985 Act can be exercised against a RTM company by any tenant and any landlord who is required to pay a service charge to the RTM company by virtue of the provisions governing the right to manage. These rights are: the right to challenge the reasonableness of service charges; the right to be consulted on major works (as amended by section 151 of the Act); the rights to receive statements of account and to access other documents relevant to service charges (as introduced by sections 152 and 154 of the Act); and the right to establish a recognised tenants' association.
324. *Paragraph 5* provides that the rights enjoyed by tenants in respect of insurance by virtue of section 30A of the 1985 Act can be exercised against a RTM company by any tenant and any landlord. These rights are: the right to information on insurance and the right to challenge a nominated insurer.
325. *Paragraph 6* provides that the right enjoyed by a recognised tenants' association to be consulted about the choice of managing agent by virtue of section 30B of the 1985 Act can be exercised against a RTM company.
326. *Paragraph 7* provides that where the landlord serves an offer notice on qualifying tenants under the right of first refusal granted by Part 1 of the 1987 Act, a copy of that notice must also be served on the managing company. This will allow consideration of whether the company should be used as the vehicle for accepting the offer.
327. *Paragraph 8* provides that the right enjoyed by tenants of flats to seek the appointment of a new manager under Part 2 of the 1987 Act can be exercised against the RTM company by any tenant of a flat and any landlord. It will be possible to make an order appointing a new manager against a RTM company on the same grounds as apply for appointing one against a landlord. In addition, an order can be made against a RTM company where it fails to fulfil any of its obligations in respect of granting approvals or monitoring covenants, or where the company wishes itself to be replaced as manager. Furthermore, this power will include a power to order that the right to manage is no longer exercisable by the RTM company concerned and to make ancillary provisions.
328. *Paragraph 9* provides that where the right to manage has been exercised, the right of tenants to compulsorily acquire their landlord's interest under Part 3 of the 1987 Act is disapplied. That is because the right of compulsory acquisition is exercisable on the basis that the landlord is at fault, and it is therefore not appropriate for tenants to be able to exercise it where the landlord has been replaced as manager on a 'no fault' basis.
329. *Paragraph 10* provides that the RTM company is able to exercise the rights to seek variation of a lease granted to individual tenants of flats, and to landlords of those tenants, under Part 4 of the 1987 Act (but not the right of groups of tenants to seek variations under that Part).
330. *Paragraph 11* provides that the requirements to hold service charges in trust and in designated client accounts under sections 42 to 42B of the 1987 Act (see section 156) apply to any monies paid to the RTM company by either a tenant or a landlord.
331. *Paragraph 12* provides that the company is bound by the requirement under section 48 of the 1987 Act to provide tenants with an address at which notices can be

furnished. The company will also have to provide all landlords with such an address. In addition, the company will be bound by the requirement under section 47 of that Act to include its name and address in any written demand for money.

332. *Paragraph 13* provides that the company is bound by the requirements of the Landlord and Tenant Act 1988 not to unreasonably withhold certain consents. This in turn allows a tenant to bring civil proceedings against the company where he or she believes that the company has not complied with its duties under that Act.
333. *Paragraph 14* provides that the right of tenants to arrange for a management audit under Chapter 5 of Part 1 of the 1993 Act can be exercised against a RTM company by a tenant or by any landlord who is required to pay a charge to the company.
334. *Paragraph 15* provides that the right of a registered tenants' association to appoint a surveyor under section 84 of the Housing Act 1996 will apply against a RTM company as it does against a landlord.
335. *Paragraph 16* provides that the rights of a tenant in respect of variable administration charges as set out in *Schedule 11* are applicable against a RTM company. It also provides that the RTM company may exercise the right to seek the variation of a fixed administration charge.

Schedule 8: Enfranchisement by company: Amendments (Section 124)

336. *Schedule 8* includes a large number of amendments to, principally, the 1993 Act, consequential on sections 121, 122 and 123. They provide for the collective enfranchisement procedure to be carried out by the RTE company rather than, as now, initially by a group of qualifying tenants and subsequently by a nominee purchaser appointed by them. Rights and obligations currently applied to qualifying tenants, participating tenants and the nominee purchaser are generally transferred to members of the RTE company, participating members of the RTE company and the RTE company respectively.
337. *Paragraph 1* amends the Land Compensation Act 1973, which provides rights to compensation to tenants participating in collective enfranchisement in the event of compulsory purchase, to transfer those rights to the RTE company.
338. *Paragraph 3* amends section 1 of the 1993 Act to provide that the right to collective enfranchisement is exercisable by a RTE company.
339. *Paragraph 4* amends section 2(1) of the 1993 Act, which provides for the acquisition of certain leasehold interests, to provide that these interests are acquired by the RTE company.
340. *Paragraph 5* amends section 11(4) of the 1993 Act, which provides a right for qualifying tenants to obtain information about superior landlords, so that the tenants have the right to obtain such information in connection with a claim being made by a RTE company.
341. *Paragraph 6* amends section 13 of the 1993 Act to provide that the initial notice only needs to provide the names of those qualifying tenants who are participating members of the RTE company and that it should give the registered address of the RTE company (rather than the identity of the nominee purchaser). It introduces a new requirement that a copy of the initial notice must be given to all qualifying tenants in the premises.
342. *Paragraph 7* amends section 17 of the 1993 Act, which provides a right of access for valuation purposes, so that the RTE company (or its representative) have the right.
343. *Paragraph 8* amends section 18 of the 1993 Act, which requires the disclosure of agreements affecting premises, so that the disclosure obligations apply 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

344. *Paragraph 9* amends section 20 of the 1993 Act so that the reversioner may serve a notice on the RTE company requiring it to deduce the title of any qualifying tenant who is a participating member of the company.
345. *Paragraph 10* makes consequential amendments to section 21 of the 1993 Act, which sets out requirements for the reversioner's counter notice.
346. *Paragraph 11* amends section 22 of the 1993 Act, to enable the RTE company to apply to the court for a declaration that an initial notice is valid.
347. *Paragraph 12* makes consequential amendments to section 23 of the 1993 Act, which enables an enfranchisement claim to be defeated where the landlord intends to redevelop the premises.
348. *Paragraph 13* amends section 24 of the 1993 Act to enable the RTE company (as well as the reversioner) to apply to a LVT for a determination of matters in dispute.
349. *Paragraph 14* amends section 25 of the 1993 Act to enable the RTE company to apply to the court for an order transferring the freehold to the company on the terms set out in the initial notice where the reversioner has failed to give a counter-notice.
350. *Paragraph 15* amends section 26 of the 1993 Act to enable the RTE company to apply for a vesting order where the landlord cannot be found.
351. *Paragraph 16* makes consequential amendments to section 27 of the 1993 Act (supplementary provisions relating to vesting orders).
352. *Paragraph 17* amends section 28 of the 1993 Act, which provides for the withdrawal of the initial notice. It provides that the RTE company must serve notice of withdrawal on the reversioner, any other relevant landlord and all of the qualifying tenants in the premises. It also provides that in the event of withdrawal, the RTE company and any person who is or has been a participating member of the company shall be liable for the reversioner's and any other relevant landlord's costs. But this liability shall not apply if the lease has been assigned (or acquired by personal representatives, a mortgagee or trustee in bankruptcy) and the assignee has become a member of the RTE company.
353. *Paragraph 18* amends section 29 of the 1993 Act to provide that the initial notice shall be deemed to be withdrawn in the event of the insolvency, winding up or striking off of the RTE company.
354. *Paragraph 19* makes consequential amendments to section 30 of the 1993 Act which provides that an initial notice is of no effect if notice of compulsory purchase proceedings has been given.
355. *Paragraph 20* makes consequential amendments to section 31 of the 1993 Act which provides that an initial notice is of no effect if the property has been designated under the Inheritance Tax Act 1984.
356. *Paragraph 21* makes consequential amendments to section 32 of the 1993 Act which makes provision for the determination of the price payable for enfranchisement.
357. *Paragraph 22* makes consequential amendments to section 33 of the 1993 Act which sets out the landlord's costs in relation to the enfranchisement which are recoverable.
358. *Paragraph 23* makes consequential amendments to section 34 of the 1993 Act which provides for conveyance of the freehold.
359. *Paragraph 24* makes consequential amendments to section 35 of the 1993 Act which provides for the discharge of existing mortgages on conveyance of the freehold.
360. *Paragraph 25* makes consequential amendments to section 36 of the 1993 Act to require the RTE company to grant a leaseback to the former freeholder in certain circumstances.

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361. *Paragraph 26* amends section 37A of the 1993 Act, which provides for compensation to be payable to the freeholder if termination of a lease is postponed by an ineffective claim for enfranchisement, to provide that compensation is payable by any person who is a participating member of the RTE company immediately before the claim ceases to have effect.
362. *Paragraph 27* extends subsection (1) of section 38 of the 1993 Act to define 'participating member', 'the notice of invitation to participate', and 'RTE company', and makes a consequential amendment to subsection (2).
363. *Paragraph 28* makes consequential amendments to subsections (4) and (5) of section 41 of the 1993 Act, which require the recipient of a notice served by a tenant seeking information from a landlord in connection with a possible claim to acquire a new lease to inform the tenant of any outstanding enfranchisement claim.
364. *Paragraph 29* makes consequential amendments to section 54 of the 1993 Act which provides for the suspension of a tenant's claim to acquire a new lease while a claim for enfranchisement is outstanding.
365. *Paragraph 30* makes consequential amendments to section 74 of the 1993 Act which makes provisions covering the exercise of the right to enfranchise when a request for approval of an estate management scheme is outstanding.
366. *Paragraph 31* makes consequential amendments to section 91 of the 1993 Act which sets out the jurisdiction of LVTs.
367. *Paragraph 32* amends section 93 of the 1993 Act to prohibit agreements which restrict a leaseholder's right to become a member of a RTE company or do anything as a member of such a company in the course of exercising the right to enfranchise.
368. *Paragraph 33* makes consequential amendments to section 93A of the 1993 Act which empowers trustees who are qualifying tenants to participate in enfranchisement.
369. *Paragraph 34* amends section 97(1) of the 1993 Act to enable a qualifying company to register an initial notice under the Land Charges Act 1972 or as a notice or caution under the Land Registration Act 1925.
370. *Paragraph 35* makes consequential amendments to section 98(2) of the 1993 Act which enables regulations to be made prescribing procedure.
371. *Paragraph 36* makes consequential amendments to Schedule 1 to the 1993 Act which enables the court to appoint the reversioner to conduct proceedings on behalf of all relevant landlords.
372. *Paragraph 37* makes consequential changes to Schedule 3 to the 1993 Act which prescribes procedures in relation to initial notices, places restrictions on participation where forfeiture proceedings have already been commenced and restricts the commencement of forfeiture proceedings against participants once an initial notice has been served. In particular, it provides that an initial notice shall not be invalid if a member of a RTE company is not entitled to be a member because he is not a qualifying tenant, provided that the number of members who are entitled to be members meets the minimum requirement for a RTE company.
373. *Paragraph 38* makes consequential changes to Schedule 4 to the 1993 Act which requires the reversioner to provide specified information with a counter notice and subsequently.
374. *Paragraph 39* makes consequential changes to Schedule 5 to the 1993 Act which prescribes procedures for vesting orders under sections 24 and 25 of the Act.
375. *Paragraph 40* makes consequential changes to Schedule 6 to the 1993 Act which prescribes rules for valuing the interests to be acquired.

376. *Paragraph 41* makes consequential changes to Schedule 7 to the 1993 Act which prescribes procedures for the conveyance of the freehold.
377. *Paragraph 42* makes consequential changes to Schedule 8 to the 1993 Act which prescribes procedures for the discharge of mortgages on conveyance of the freehold.
378. *Paragraph 43* makes consequential changes to Schedule 9 to the 1993 Act which provides for the granting of leases back to the former freeholder.

Schedule 9: Meaning of service charge and management (Section 150)

Loans in respect of service charges

379. *Paragraphs 1 to 6* make changes to the provisions of the Housing Act 1985 which enable, and in some cases require, local authorities and registered social landlords to provide loans to their leaseholders to cover the costs of maintenance and repairs recoverable through service charges. The changes extend these provisions to cover the costs of improvements where these are payable by leaseholders.

Service charges

380. *Paragraph 7* extends the definition of ‘service charge’ in section 18(1)(a) of the 1985 Act to cover improvements.

Appointment of manager

381. *Paragraph 8* extends the meaning of management for the purposes of section 24 of the 1987 Act to include improvements. Failings in relation to improvements will also be grounds for the appointment of a manager under that section.

Right to acquire landlord’s interest

382. *Paragraph 9* similarly extends the grounds for the right to acquire the landlord’s interest under section 29 of the 1987 Act to include failings in relation to improvements.

Tenants’ right to management audit

383. *Paragraph 10* extends the definition of ‘management functions’ in section 84 of the 1993 Act, which gives tenants a right to a management audit, to include improvements.

Codes of management practice

384. *Paragraph 11* extends the definitions of ‘management functions’ and ‘service charge’ in section 87(8) of the 1993 Act, which provides for the approval of codes of management practice, to cover improvements.

Right to appoint surveyor

385. *Paragraph 12* extends the definition of ‘management functions’ for the purposes of paragraph 4(2) of Schedule 4 to the Housing Act 1996, which gives recognised tenants’ associations the right to appoint a surveyor who has rights to inspect premises, to cover improvements.

Power to amend certain provisions

386. *Paragraph 13* provides that any of the provisions referred to in paragraphs 7 to 12 or section 27A of the 1985 Act (as inserted by *section 155* of the Act) may be further amended, by order, to change the meaning of ‘service charge’, ‘management’ or ‘management functions’.

Schedule 10: Service charges: Minor and Consequential Amendments (Section 157)

Information held by superior landlord

387. *Paragraph 1* amends section 23 of the 1985 Act (which deals with information held by a superior landlord) to bring it in line with the new sections 21 and 22 that will be introduced by sections 152 and 154. Under the new section 23A, landlords are entitled to obtain information from a superior landlord, where it was needed to produce an accounting statement. Where a superior landlord held documents which were relevant to an accounting statement, tenants will also have the right to inspect them, or to have copies provided to them on payment of a reasonable fee.

Change of Landlord

388. *Paragraph 2* inserts a new section 23A, which makes provision to ensure that where a landlord disposes of his interest, he remains under an obligation to provide accounting information to his former tenants where he was in a position to do so. The new owner will also be under an obligation to provide accounting information relating to the activities of the previous owner, to the extent that he was able to do so.

Assignment

389. *Paragraph 3* amends section 24 of the 1985 Act to reflect the changes to section 22 (see section 152) and to reflect the insertion of section 23A (see preceding paragraph).

Offences

390. *Paragraph 4* amends section 25 of the 1985 Act to reflect the insertion of section 23A into the 1985 Act.

Exceptions

391. *Paragraph 5* amends sections 26 and 27 of the 1985 Act to reflect the changes to sections 21 and 22 of the 1985 Act (see sections 152 and 154).

Accountants

392. *Paragraphs 6 and 7* amend section 28 of the 1985 Act to reflect the changes to sections 21 and 22 of the 1985 Act (see sections 152 and 154). As the new accounting provisions in the 1985 Act will also apply to the Crown, section 28(6) is amended to apply to the Crown in the same way as other public bodies.

Insurance

393. *Paragraphs 8 to 13* amend the Schedule to the 1985 Act. They enable leaseholders to inspect the insurance policy for their building without first having to ask for a summary of the insurance cover. They will also be able to take copies of the insurance policy and associated documents, or have copies provided to them, on payment of a reasonable fee. Requests will have to be complied with within 21 days, rather than within one month. A new paragraph 4A is inserted to cover cases where a landlord disposes of his interest. It also makes a number of other minor and consequential amendments to the Schedule to the 1985 Act.

Service Charge Contributions: appointment of a manager

394. *Paragraph 14* amends section 24 of the 1987 Act (which sets out grounds on which a LVT may be asked to appoint a new manager for a block). It introduces a new ground for seeking the appointment of a new manager - that there has been a failure to comply with section 42 or 42A of the 1987 Act (requirements to hold service charge funds in

trust and in separate client accounts). This is subject to the requirement that it be just and convenient to appoint a new manager.

Trust of service charges paid only by one tenant

395. *Paragraph 15* amends section 42 of the 1987 Act (which requires service charges to be held in trust). It extends the application of section 42 to cases where only one tenant has to pay the service charge in question.

Management Audit

396. *Paragraphs 16 to 18* make various consequential changes to the 1993 Act, to reflect the changes being made to the 1985 Act.

Schedule 11: Administration charges (Section 158)

Part 1: Reasonableness of administration charges

Meaning of ‘administration charge’

397. *Paragraph 1(1)* defines ‘administration charge’ for the purposes of Part 1 of the Schedule. This covers charges payable for approvals required as a condition of a lease, for the provision of information to leaseholders or other parties (e.g. prospective purchasers), penalty charges for late payment of rent or other charges, or charges in connection with a breach (or alleged breach) of a covenant or condition of a lease. *Paragraph 1(5)* provides a power to amend this definition by order.
398. *Paragraph 1(3)* defines a ‘variable administration charge’. This is any administration charge where neither the sum nor a formula for calculating the sum is specified in the lease.

Reasonableness of administration charges

399. *Paragraph 2* provides a requirement that variable administration charges are only payable to the extent that they are reasonable.
400. *Paragraph 3* provides a right for any party to a lease to apply to a LVT for the variation of a fixed administration charge. Such an application can be made on the grounds that either a fixed sum specified in the lease or a formula specified in the lease is unreasonable. Where a tribunal agrees that a fixed administration charge is unreasonable, it can order the lease to be changed accordingly.

Notice in connection with demands for administration charges

401. *Paragraph 4* requires landlords to include with administration charge demands a summary of leaseholders’ rights and obligations in relation to administration charges. *Paragraph 2* provides a power to prescribe the form and content of such summaries by regulations. *Paragraphs 3 and 4* give leaseholders a specific right to withhold payment of administration charges if the required information is not provided.

Liability to pay administration charges

402. *Paragraph 5* provides that an application may be made to a LVT for a determination whether or not an administration charge is payable and if so, by whom it is payable, to whom it is payable, the amount which is payable, the date on which it is payable or the manner in which it is payable. The jurisdiction of the LVT in such matters is in addition to any jurisdiction of a court. No application may be made in respect of a matter which has been agreed or admitted by a leaseholder or which has been determined by a court or arbitral tribunal. However, payment of all or part of a charge does not constitute admitting it or any other matter. Certain agreements providing for questions

about administration charges to be determined in a particular manner are void. As with service charges arbitration agreements will be void unless they are entered into after a dispute has arisen.

Part 2: Amendments of 1987 Act

- 403. *Paragraph 8* amends section 24 of the 1987 Act to extend the grounds on which a LVT may order the appointment of a manager to include the making of unreasonable variable administration charges.
- 404. *Paragraph 9* amends section 46 of the 1987 Act, which interprets terms used in Part 6 of that Act, to include the definition of variable administration charge in paragraph 1.
- 405. *Paragraph 10* amends section 47 of the 1987 Act to provide that administration charges are not recoverable if the landlord has failed to provide his name and address in accordance with the requirements of that section.
- 406. *Paragraph 11* amends section 48 of the 1987 Act to provide that administration charges are not recoverable if the landlord has failed to provide an address for the service of notices.

Schedule 12: Leasehold Valuation Tribunals: Procedure (Section 174)

- 407. These provisions are essentially a consolidation of existing provisions. New substantive provisions are indicated in the following notes.

Procedure regulations

- 408. *Paragraph 1* provides a power to make regulations about the procedure of a LVT ('procedure regulations').

Applications

- 409. *Paragraph 2* provides that procedure regulations may include specified matters relating to LVT applications.

Transfers

- 410. *Paragraph 3* provides a discretion for a court to transfer any matter before it that is within the jurisdiction of a LVT to a LVT for a determination and for the court to give effect to that determination in an order of the court. It also provides for detailed procedures to be prescribed under rules of court (in the case of a court) and procedure regulations (in the case of a LVT) to apply in cases where a case is so transferred.

Information

- 411. *Paragraph 4* empowers a LVT to require any party to proceedings to provide information within a specified period of time (but not less than 14 days). It provides that failure to comply with such a requirement without reasonable excuse is a summary offence punishable by a fine not exceeding level 3 on the standard scale (currently £1,000).

Pre-trial reviews

- 412. *Paragraph 5* provides that procedure regulations may enable LVTs to hold a pre-trial review and that such a review can be conducted by a single person who has been appointed by the Lord Chancellor (to act as a Chairman of a LVT).

Parties

413. *Paragraph 6* provides that procedure regulations may enable persons to be joined as parties to proceedings.

Dismissal

414. *Paragraph 7* provides that procedure regulations may give LVTs the power to dismiss applications, or part of an application, on specified grounds.

Determination without hearing

415. *Paragraph 8* provides a new power to provide in procedure regulations that determinations can be made without an oral hearing. It further provides that procedure regulations may enable a single member of a LVT to determine such a case.

Fees

416. *Paragraph 9* provides that procedure regulations may require payment of application fees and additional fees for an oral hearing for disputes where fees are currently payable (i.e. those relating to service charges under the 1985 Act, as amended by this Act,¹ and for the appointment of a manager under Part 2 of the 1987 Act), for disputes about administration charges under Schedule 11 to the Act, for applications for variation of a lease under Part 4 of the 1987 Act (as amended by section 163 of the Act) and for determination of breaches of covenant or condition under section 168 of the Act. Regulations may empower a LVT to require a party to the proceedings to reimburse a fee paid by another party. Regulations may also provide for fees to be reduced or waived in cases where the applicant has limited financial resources. The amount of any fees shall be prescribed by regulations. Where regulations set a total fee for both an application and oral hearing exceeding £500 (*paragraph 9(3)(b)*) a draft of the regulations must be laid before, and approved by resolution of, each House (Section 178).

Costs

417. *Paragraph 10* is a new provision which enables a LVT to determine that a party shall pay costs incurred by another party where an application by that party has been dismissed on the grounds set out in paragraph 7 or where that party has acted unreasonably during the proceedings. The costs shall not exceed £500, or such higher amount as may be specified by regulations. A draft of any such regulations must be laid before, and approved by resolution of, each House (Section 178).

Enforcement

- 418 *Paragraph 11* provides for procedure regulations to enable a county court to enforce a decision of a LVT.

Schedule 13: Leasehold valuation tribunals: amendments (Section 176)

The 1967 Act

419. *Paragraphs 1 to 6* make various consequential amendments to the 1967 Act. These replicate the effects of paragraphs 4, 5 and 6 of Schedule 22 of the Housing Act 1980, which will be repealed as part of the consolidation exercise (schedule 14).

¹ Note that this Act extends the jurisdiction of LVTs under the 1985 Act (see *Sections 150, 151, 152 and 155*). The power to set fees would also apply in such cases.

Housing Act 1980 (c.51)

420. *Paragraph 7* amends section 142 of the Housing Act 1980 so that that section refers directly to a LVT. This is a consequence of section 163. It also makes a minor amendment to section 142 in consequence of the repeal of Part 1 of Schedule 22 to that Act.

The 1987 Act

421. *Paragraphs 8 to 11* make amendments to the 1987 Act which were consequential to the Housing Act 1996, but were omitted from that Act.

The 1993 Act

422. *Paragraphs 12 to 15* amend the 1993 Act. *Paragraph 13* provides that certain persons who currently have the right to appear at a hearing before a LVT only have the right to do so where there is to be an oral hearing (in consequence of the new provision for certain cases to be dealt with through written representations only). It also replicates the effect of section 91(10)(b) of the 1993 Act which will be repealed as part of the consolidation exercise (Schedule 14), whilst widening its effect to apply to certain persons who make representations to a LVT, even if they did not appear at a hearing. Again this is a consequence of the new provision for certain cases to be dealt with by written representations only. *Paragraphs 14 and 15* amend references to a rent assessment committee, in consequence of section 173.

Housing Act 1996 (c.52)

423. *Paragraph 16* replicates the effect of section 31C(3) of the 1985 Act which will be repealed as part of the consolidation exercise (Schedule 14).