

# COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS: PART 1

#### ***Registration***

46. Commonhold can only be created out of registered freehold land. The essence of its creation is a further registration process to be carried out by HM Land Registry. When the commonhold is fully effective, the Registry will have entries on the appropriate register which will show the individual ownership of units within the development and the ownership of the common parts by the commonhold association, with necessary cross references. Sections 2-5 set out the commonhold registration process.

#### ***Section 2: Application***

47. *Section 2(1)* requires the Chief Land Registrar to register a freehold estate as an estate in commonhold land provided that the applicant is the registered freeholder of the land which is to become commonhold land and that no part of the land which is the subject of the application is already registered as commonhold. The first requirement is to ensure that the applicant has the necessary authority to make the significant change to the nature of the land holding that commonhold represents. The second requirement is to ensure that the land is not already part of a commonhold regime. If it were so, it would be or be about to become either a unit or common parts, and as appears later in the Act, there are rules governing adding to or subtracting from a commonhold which would be inconsistent with a freeholder purporting to create a new commonhold out of existing commonhold land. *Subsection (2)* specifies the documents which must accompany the application by reference to Schedule 1, which is covered later in these notes. *Subsection (3)* defines a registered freeholder for these purposes as either the person appearing on the Land Register as the freehold owner or as someone entitled to be so registered, having made an application, for instance an owner of unregistered land applying for first registration.

#### ***Section 3: Consent***

48. As part of the essence of commonhold is that all those involved as unit-holders should have an equality of interest, it is important to ensure that there is full participation by all those who may be involved in a conversion from leasehold. Also, because of the distinct difference between commonhold and other forms of tenure, certain specified classes of persons with a registered interest in any land which it is intended to register as commonhold should consent to the change. *Subsection (1)* specifies four classes of person from whom it will be necessary to obtain consent. *Paragraph (a)* refers to freeholders of all or part of the land; *(b)* refers to the proprietor of a lease which was originally granted for a period of more than 21 years on a property which is converting to commonhold from leasehold; *paragraph (c)* will include mortgagees; *paragraph (d)* allows for other classes of person to be included in the list of those whose consent must be obtained.

49. *Subsection (2)* provides for the making of regulations governing consents, including forms, duration etc. In particular they may make provision for a court to dispense with consents in circumstances which the regulations would specify, and *subsection (3)* provides that such an order may either be an absolute dispensation or may, alternatively, be conditional on some specified action or circumstance prescribed by the court. The court may also make any other provisions which seem appropriate, which might include, for instance, in the right circumstances, an order for compensation.

#### ***Section 4: Land which may not be commonhold***

50. *Section 4* introduces Schedule 2, which lists types of land which may not, for a variety of reasons, be registered as commonhold. The three broad categories are:
- (i) developments in which it is intended to create a commonhold in land above ground level where the ‘grounded’ part of the structure is not part of the same commonhold application, the most obvious example of which would be flats developed over shops, where the shops continue to be let on standard commercial leases;
  - (ii) specified sorts of agricultural land; and
  - (iii) land the freehold title to which is contingent on some specified future circumstance (see Schedule 2).

#### ***Section 5: Registered details***

51. *Section 5(1)* prescribes the documents which must be submitted to the Registrar and be kept in his custody and be mentioned in the register, and which will form an integral part of the information held by him for the use of those who wish to search for information in relation to a commonhold. Of particular importance are the commonhold community statement (see sections 31-33) and the memorandum and articles of association of the commonhold association (see section 34 and Schedule 3). *Subsection (2)* permits the Registrar to keep in his custody and to mention in the register any other document which is submitted to him if he sees fit to. This might include, but not be restricted to, such things as consents and certificates required at the application stage (see section 3 and Schedule 1 paragraph 7). *Subsection (3)* provides that, during the transitional period between the registration of the commonhold by the applicant and the sale of the first unit, the Schedule of unit-holders need not be filed with the Register. This is because, at that stage the applicant/developer would still be the registered owner of the whole freehold and so there would be no unit-holders.

#### ***Section 6: Registration in error***

52. *Section 6* provides that, where registration of a commonhold has been carried out but the application was not in accordance with or was in contravention of Part 1 of the Act, the Registrar may not deal with it by alteration under the terms of the Land Registration Act 2002 but the court may make a declaration that the registration ought not to have been carried out. It may then go on to make provision either to require the land to cease to be commonhold land or to put right the defects. So far as possible, it is expected that the courts will strive to maintain the commonhold in existence by directing appropriate people to do or refrain from doing the things which have resulted in the declaration.