
STATUTORY INSTRUMENTS

2004 No. 1829

The Commonhold Regulations 2004

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Commonhold Regulations 2004 and shall come into force on the day on which section 2 of the Act comes into force.

(2) In these Regulations a section referred to by number alone means the section so numbered in the Act and a Schedule referred to by number alone means the Schedule so numbered in these Regulations.

(3) In these Regulations—

- (a) “the Act” means the Commonhold and Leasehold Reform Act 2002; and
- (b) “the Rules” means the Commonhold (Land Registration) Rules 2004(1) and a Form referred to by letters alone or by letters and numbers means the Form so designated in Schedule 1 to the Rules.

Joint unit-holders

2.—(1) In the application of the following provisions to a commonhold unit with joint unit-holders a reference to a unit-holder is a reference to the joint unit-holders together—

- (a) regulations 10(2), 18(2)(a) and 18(3); and
- (b) paragraphs 4.8.5 to 4.8.9 in Schedule 3.

(2) In the application of the following provisions to a commonhold unit with joint unit-holders a reference to a unit-holder includes a reference to each joint unit-holder and to the joint unit-holders together—

- (a) regulations 11(1) and 18(2)(b);
- (b) articles 4(d) and 75 in Schedule 2; and
- (c) all provisions in Schedule 3 except paragraphs 4.8.5 to 4.8.9.

(3) In section 13(2)—

- (a) omit paragraphs (a), (c), (g) and (h);
- (b) in paragraph (b) omit “and (3)”; and
- (c) in paragraph (f) after “section 35(1)(b),” insert “and”.

(4) In section 13(3)—

- (a) after paragraph (a) insert—

- “(aa) section 14(3),
- (ab) section 15(3),”;
- (b) after paragraph (b) insert—
 - “(ba) section 19(2) and (3),”; and
- (c) after paragraph (f) insert—
 - “(fa) section 38(1),
 - (fb) section 39(2),”.

PART II

REGISTRATION

Consents required prior to the creation of a commonhold additional to those required by section 3(1)(a) to (c)

3.—(1) An application under section 2 may not be made in respect of a freehold estate in land without the consent of anyone who is—

- (a) the estate owner of any unregistered freehold estate in the whole or part of the land;
- (b) the estate owner of any unregistered leasehold estate in the whole or part of the land granted for a term of more than 21 years;
- (c) the owner of any mortgage, charge or lien for securing money or money’s worth over the whole or part of any unregistered land included in the application; or
- (d) subject to paragraph (2), the holder of a lease granted for a term of not more than 21 years which will be extinguished by virtue of section 7(3)(d) or 9(3)(f).

(2) An application under section 2 may be made without the consent of a person who would otherwise be required to consent by virtue of paragraph (1)(d) if—

- (a) the person is entitled to the grant of a term of years absolute—
 - (i) of the same premises as are comprised in the extinguished lease;
 - (ii) on the same terms as the extinguished lease, except to the extent necessary to comply with the Act and these Regulations and excluding any terms that are spent;
 - (iii) at the same rent as the rent payable under, and including the same provisions for rent review as were included in, the extinguished lease as at the date on which it will be extinguished;
 - (iv) for a term equivalent to the unexpired term of the lease which will be extinguished; and
 - (v) to take effect immediately after the lease is extinguished by virtue of section 7(3)(d) or 9(3)(f); and
- (b) before the application under section 2 is made, the person’s entitlement to the grant of a term of years absolute has been protected by a notice in the land register to the freehold title(s) for the land in the application or, in the case of unregistered land, by an entry in the land charges register in the name of the estate owner of the freehold title.

Details of consent

4.—(1) Consent to an application under—

- (a) section 2 must be given in Form CON 1; and
 - (b) section 8(4) must be given in Form CON 2.
- (2) Subject to paragraphs (3), (4) and (7), consent is binding on a person who gives consent or who is deemed to have given consent.
- (3) Consent may be given subject to conditions.
- (4) Subject to any condition imposing a shorter period, consent will lapse if no application is made within a period of 12 months beginning with the date on which consent was given.
- (5) Consent is deemed to have been given by—
- (a) the person making the application where that person’s consent would otherwise be required in accordance with section 3, but has not been expressly given; and
 - (b) a successor in title to a person who has given consent or who is deemed to have given consent.
- (6) Consent given for the purpose of one application has effect for the purpose of another application (“the new application”) only where the new application is submitted—
- (a) in place of a previous application which has been withdrawn by the applicant, or rejected or cancelled by the Registrar; and
 - (b) within a period of 12 months beginning with the date on which the consent was given.
- (7) Consent may be withdrawn at any time before the date on which any application is submitted to the Registrar.
- (8) In this regulation, “consent” means consent for the purposes of section 3.

Dispensing with a requirement for consent

5. The court may dispense with the requirement for consent to an application under section 2 if a person whose consent is required—
- (a) cannot be identified after all reasonable efforts have been made to ascertain his identity;
 - (b) has been identified but cannot be traced after all reasonable efforts have been made to trace him; or
 - (c) has been sent the request for consent and all reasonable efforts have been made to obtain a response but he has not responded.

Statement under section 9(1)(b): Registration with unit-holders

6. A statement under section 9(1)(b) which accompanies an application under section 2 must, in relation to each commonhold unit, state—
- (a) the full name of the proposed initial unit-holder or if there are proposed joint unit-holders the full name of each of them;
 - (b) the address for service of the proposed unit-holder or if there are proposed joint unit-holders the address for service of each of them;
 - (c) the unit number of the commonhold unit; and
 - (d) the postal address of the commonhold unit (if available).

Multiple site commonholds

7. For the purposes of an application under section 2 made jointly by two or more persons, each of whom is the registered freeholder of part of the land to which the application relates (“a part site”) section 11 is modified so that, in addition to complying with the requirements in section 11(3), in

defining the extent of a commonhold unit, the commonhold community statement must provide for the extent of each commonhold unit to be situated wholly upon one part site, and not situated partly on one part site and partly on one or more other part sites.

PART III COMMONHOLD UNIT

Requirements of a plan defining the extent of a commonhold unit

8. A plan referred to in a commonhold community statement for the purposes of defining the extent of a commonhold unit must delineate the boundaries of the commonhold unit with any adjoining property.

Definition of a commonhold unit

- 9.**—(1) In defining the extent of a commonhold unit a commonhold community statement—
- (a) may exclude, from the definition, the structure and exterior of a self-contained building, or of a self-contained part of a building, which only contains one commonhold unit or part of one commonhold unit; and
 - (b) must exclude, from the definition, the structure and exterior of a self-contained building, or of a self-contained part of a building, in any other case.
- (2) In this regulation—
- “self-contained building” means a building which is structurally detached;
- “self-contained part of a building” means a part of a building—
- (a) which constitutes a vertical division of the building;
 - (b) the structure of which is such that it could be redeveloped independently of the rest of the building; and
 - (c) in relation to which the relevant services provided for occupiers are provided independently of the relevant services provided for the occupiers of the rest of the building, or could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building;
- “relevant services” are services provided by the means of pipes, cables or other fixed installations; and
- “structure and exterior” includes the relevant services in or to the building but does not include those which are within and exclusively to one commonhold unit.

Requirement to notify Registrar

10.—(1) This regulation applies to an amendment of a commonhold community statement which redefines the extent of a commonhold unit over which there is a registered charge.

(2) The unit-holder of a commonhold unit over which there is a registered charge must give notice of the amendment to the Registrar in Form COE.

(3) On receipt of such notification the Registrar must alter the register to reflect the application of section 24(4) or (5).

Leasing of a residential commonhold unit

11.—(1) A term of years absolute in a residential commonhold unit or part only of a residential commonhold unit must not—

- (a) be granted for a premium;
- (b) subject to paragraph (2), be granted for a term longer than 7 years;
- (c) be granted under an option or agreement if—
 - (i) the person to take the new term of years absolute has an existing terms of years absolute of the premises to be let;
 - (ii) the new term when added to the existing term will be more than 7 years; and
 - (iii) the option or agreement was entered into before or at the same time as the existing term of years absolute;
- (d) contain an option or agreement to renew the term of years absolute which confers on the lessee or on the lessor an option or agreement for renewal for a further term which, together with the original term, amounts to more than 7 years;
- (e) contain an option or agreement to extend the term beyond 7 years; or
- (f) contain a provision requiring the lessee to make payments to the commonhold association in discharge of payments which are due, in accordance with the commonhold community statement, to be made by the unit-holder.

(2) A term of years absolute in a residential commonhold unit or part only of a residential commonhold unit may be granted for a term of not more than 21 years to the holder of a lease which has been extinguished by virtue of section 7(3)(d) or 9(3)(f) if the term of years absolute—

- (a) is granted of the same premises as are comprised in the extinguished lease;
- (b) is granted on the same terms as the extinguished lease, except to the extent necessary to comply with the Act and these Regulations and excluding any terms that are spent;
- (c) is granted at the same rent as the rent payable under, and including the same provisions for rent review as were included in, the extinguished lease as at the date on which it was extinguished;
- (d) is granted for a term equivalent to the unexpired term of the lease immediately before it was extinguished or, if the unexpired term of the lease immediately before it was extinguished is more than 21 years, for a term of 21 years;
- (e) takes effect immediately after the lease was extinguished; and
- (f) does not include any option or agreement which-
 - (i) may create a term or an extension to a term which, together with the term of the term of years absolute, would amount to more than 21 years; or
 - (ii) may result in the grant of a term of years absolute containing an option or agreement to extend the term.

PART IV

COMMONHOLD ASSOCIATION

The name of the commonhold association

12.—(1) The name by which a commonhold association is registered under the Companies Act 1985⁽²⁾ must end with 'commonhold association limited' or, if the memorandum of association states that the commonhold association's registered office is to be situated in Wales, those words or the Welsh equivalent ('Cymdeithas Cydradd-Ddaliad Cyfyngedig').

(2) The name by which a company other than a commonhold association is registered may not end with 'commonhold association limited' or the Welsh equivalent 'Cymdeithas Cydradd-Ddaliad Cyfyngedig'.

(3) In this regulation references to the words "limited" and "cyfyngedig" include the abbreviations "ltd." and "cyf."

Memorandum of association

13.—(1) The memorandum of association of a commonhold association must be in the form in Schedule 1 (memorandum of association) or a form to the same effect.

(2) The memorandum of association of a commonhold association must contain all the provisions contained in the form in Schedule 1 and each provision in that Schedule will have effect for a commonhold association whether or not it is adopted under paragraph 2(2) of Schedule 3 to the Act.

(3) In its memorandum of association, a commonhold association must—

- (a) include the name of the commonhold association on the front page and in paragraph 1;
- (b) omit "England and Wales" or "Wales" from paragraph 2; and
- (c) include the name of the commonhold in paragraph 3.

(4) A commonhold association may include additional provisions in its memorandum of association immediately after the provision which appears as paragraph 5 in Schedule 1 where the additional provisions are preceded by a heading which must include "additional provision specific to this commonhold association" and each new provision must be given a number.

Articles of association

14.—(1) The articles of association of a commonhold association must be in the form in Schedule 2 (articles of association) or a form to the same effect.

(2) Subject to the following paragraphs, the articles of association of a commonhold association must contain all the provisions in the form in Schedule 2 and each provision in that Schedule will have effect for a commonhold association whether or not it is adopted under paragraph 2(2) of Schedule 3 to the Act.

(3) In its articles of association a commonhold must include the name of the commonhold association on the front page.

(4) In its articles of association a commonhold association may substitute—

- (a) any time period for the time periods in articles 7, 18 and 48(f) except that the time period may not be reduced below the time periods mentioned in those articles;
- (b) any number of meetings for the number of meetings in article 48(f) except that the number may not be reduced below three;

(2) 1985, c. 6.

- (c) any figure for the figures in article 13 except that the figure may not be reduced below the figures mentioned in that article and different provision may be made for different purposes; and
 - (d) a time or date for “at any time” in article 36.
- (5) A commonhold association may omit “Failing that it may be delivered at the meeting to the chairman, secretary or to any director.” from article 36 of its articles of association.
- (6) A commonhold association may include additional provisions in its articles of association where each additional provision is immediately preceded by a heading which must include “additional provision specific to this commonhold association” and is identified with the numeral of the immediately preceding article followed by a capital letter, such letters to be allocated in alphabetical order in respect of each number.
- (7) Where the articles of association of a commonhold association contain provisions for the appointment of alternate directors, article 38 is to have effect for a commonhold association with “(other than alternate directors)” inserted after “the number of directors”.
- (8) Where the commonhold community statement gives the developer the right to appoint and remove directors the following provisions have effect for a commonhold association whether or not they are adopted under paragraph 2(2) of Schedule 3 to the Act—
- (a) during the transitional period the developer may appoint up to two directors in addition to any directors appointed by the subscribers, and may remove or replace any director so appointed;
 - (b) after the end of the transitional period and for so long as the developer is the unit-holder of more than one quarter of the total number of commonhold units in the commonhold, he may appoint up to one quarter of the directors of the commonhold association, and may remove or replace any director so appointed;
 - (c) a director appointed by the developer pursuant to paragraph (a) or (b) is known as a “developer’s director”;
 - (d) any appointment or removal of a developer’s director made pursuant to paragraph (a) or (b) must be by notice in writing signed by or on behalf of the developer and will take effect immediately it is received at the office of the commonhold association or by the secretary, or as and from the date specified in the notice (if later);
 - (e) if at any time the commonhold association resolves to specify or reduce the maximum number of directors, and as a consequence the number of developer’s directors exceeds the number permitted under paragraph (b), the developer must immediately reduce the number of developer’s directors accordingly and where such reduction has not been effected by the start of the next directors’ meeting, the longest in office of the developer’s directors must cease to hold office immediately so as to achieve the required reduction in numbers;
 - (f) if the developer ceases to be the unit-holder of more than one quarter of the total number of units in the commonhold, he may no longer appoint, replace or remove a director and any developer’s directors previously appointed by him under this article will cease to hold office immediately;
 - (g) a developer’s director who is removed from office or who ceases to hold office under this article will not have any claim against the commonhold association in respect of such removal from, or cessation to hold, office;
 - (h) at any time at which the developer is entitled to exercise the power to appoint and remove developer’s directors, the developer is not entitled to vote upon a resolution fixing the number of directors of the commonhold association, or upon a resolution for the appointment or removal from office of any director not appointed by him, or upon any resolution concerning the remuneration of any director not appointed by him;

- (i) a developer’s director may provide information to the developer that he receives by virtue of his being a director; and
- (j) the provisions in articles 40, 41 and 54 do not apply to a developer’s director.
- (9) Where the provisions in paragraph (8) have effect for a commonhold association—
 - (a) articles 45 and 46 are to have effect for a commonhold association but with “(other than a vacancy in respect of a developer’s director)” inserted after “fill a vacancy”; and
 - (b) article 61 is to have effect for a commonhold association but with “At least one of the persons present at the meeting must be a director other than a developer’s director.” inserted at the end.
- (10) In this regulation an article referred to by number alone means the article so numbered in Schedule 2.

Commonhold community statement

15.—(1) The commonhold community statement must be in the form in Schedule 3 (commonhold community statement) or a form to the same effect.

(2) The commonhold community statement must contain all the provisions contained in the form in Schedule 3 and will be treated as including those provisions.

(3) The commonhold community statement must include the name of the commonhold on the front page and signature page and must include the information relevant to the commonhold in the paragraphs in the Annexes.

(4) The commonhold community statement must be signed at the end in the following form—

(a) on application for registration under section 2—

Signed [by] [on behalf of] the applicant:

Name: (please print)

Title:

(b) where an amended commonhold community statement is registered in accordance with section 33—

Signed [by] [on behalf of] [the commonhold association] [the developer]:

.....

Name: (please print)

Title:

(5) The commonhold community statement must include information relevant to the commonhold in—

(a) paragraph 2 of Annex 3 if the directors of the commonhold association have established funds to finance the repair and maintenance of the common parts or commonhold units; and

(b) paragraph 5 of Annex 4 if there are other risks insured in addition to fire.

(6) The commonhold community statement is treated as including “0 per cent.” in paragraph 1 of Annex 4 unless different provision is made in its place.

(7) Where, by virtue of regulation 9(1)(b), in defining the extent of a commonhold unit, the commonhold community statement excludes the structure and exterior of a self-contained building, or of a self-contained part of a building, the commonhold community statement is treated as including provision which imposes a duty on the commonhold association to insure the whole of the self-contained building, or self-contained part of the building.

(8) Subject to paragraphs (9) to (12), the commonhold community statement may include further definitions and may include further numbered provisions relevant to the commonhold at the end of a Part or a Section or in an Annex.

(9) Where further definitions are included in the commonhold community statement each definition must be inserted in alphabetical order into paragraph 1.4.5 in the commonhold community statement.

(10) Where further provisions are included in the commonhold community statement which confer rights on the developer—

- (a) the provisions must be inserted in an Annex headed “DEVELOPMENT RIGHTS”, such Annex must be numbered and be the last Annex in the commonhold community statement and a reference to its heading must be included in the table of contents in the commonhold community statement;
- (b) a paragraph containing “Annex [] specifies the rights of the developer which are designed to permit him to undertake development business or to facilitate his undertaking of development business.” must be inserted in Section 1.3 in the commonhold community statement with the Annex number inserted in place of the brackets; and
- (c) paragraph 4.8.14 in the commonhold community statement is treated as including “; or to remove any surrendered development rights” at the end.

(11) Where any other provisions are included in the commonhold community statement in a Part or Section—

- (a) each additional provision must be inserted in numerical order continuing the numbers within the relevant Part or Section;
- (b) each additional provision must be immediately preceded by a heading which must include “additional provision specific to this commonhold” in the relevant Part or Section; and
- (c) a reference to the heading must be included in the table of contents in the commonhold community statement.

(12) Where any other provisions are included in the commonhold community statement in an Annex—

- (a) a heading which must include “ADDITIONAL PROVISIONS SPECIFIC TO THIS COMMONHOLD” must be inserted at the end of Part 4 followed by a numbered paragraph which reads “Additional provisions are set out in Annex” followed by the number given to the Annex by the commonhold association;
- (b) a paragraph must be inserted in Section 1.3 in the commonhold community statement giving the number of the Annex and details of its contents; and
- (c) a reference to its heading must be included in the table of contents in the commonhold community statement.

(13) In this regulation “commonhold community statement” means the commonhold community statement of a commonhold and a reference to a Part, Section or Annex means a Part, Section or Annex in the commonhold community statement.

Forms

16. The Forms contained in Schedule 4 (forms) or forms to the same effect must be used in accordance with the commonhold community statement of a commonhold.

PART V

OPERATION OF A COMMONHOLD

Enforcement

17. Jurisdiction is conferred on the court to deal with the exercise or enforcement of a right conferred, or duty imposed, by or by virtue of—

- (a) a commonhold community statement;
- (b) these Regulations; or
- (c) Part 1 of the Act.

Development Rights

18.—(1) The rights (if any) conferred on the developer in a commonhold community statement are restricted or regulated in accordance with the following paragraphs.

(2) The developer must not exercise development rights in such manner as to interfere unreasonably with—

- (a) the enjoyment by each unit-holder of the freehold estate in his unit; and
- (b) the exercise by any unit-holder or tenant of his rights under the commonhold community statement.

(3) The developer may not remove land from the commonhold that has been transferred to a unit-holder unless the unit-holder consents in writing before the land is removed.

(4) Any damage to the common parts or a commonhold unit caused by the developer in the course of undertaking development business must be put right by the developer as soon as reasonably practicable taking into account the future works required to complete the development and the degree of interference caused by the damage.

(5) The developer must not exercise development rights if the works for which the development rights were conferred have been completed, save that any rights permitting or facilitating the undertaking of development business of the type referred to in paragraph 3 of Schedule 4 to the Act may be exercised for such further period as the developer continues to undertake that type of development business in relation to the whole or, as the case may be, the relevant part, of the commonhold.

(6) In this regulation “developer” includes a person acting on his authority.

PART VI

TERMINATION

Termination

19.—(1) The liquidator must, in accordance with section 45(2), apply to the court for an order determining—

- (a) the terms and conditions on which a termination application may be made; and
- (b) the terms of the termination statement to accompany a termination application

within the period of 3 months beginning with the date on which the liquidator was appointed.

(2) An application under section 51(1) must be accompanied by the certificate of incorporation of the successor commonhold association given in accordance with section 13 of the Companies Act 1985 and any altered certificates of incorporation issued under section 28 of that Act.

Signed by authority of the Lord Chancellor

Dated 14th July 2004

David Lammy
Parliamentary Under Secretary of
StateDepartment for Constitutional Affairs