



# Commonhold and Leasehold Reform Act 2002

## 2002 CHAPTER 15

An Act to make provision about commonhold land and to amend the law about leasehold property. [1st May 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### COMMONHOLD

##### *Nature of commonhold*

#### **1 Commonhold land**

- (1) Land is commonhold land if—
- (a) the freehold estate in the land is registered as a freehold estate in commonhold land,
  - (b) the land is specified in the memorandum of association of a commonhold association as the land in relation to which the association is to exercise functions, and
  - (c) a commonhold community statement makes provision for rights and duties of the commonhold association and unit-holders (whether or not the statement has come into force).
- (2) In this Part a reference to a commonhold is a reference to land in relation to which a commonhold association exercises functions.

- (3) In this Part—
- “commonhold association” has the meaning given by section 34,
  - “commonhold community statement” has the meaning given by section 31,
  - “commonhold unit” has the meaning given by section 11,
  - “common parts” has the meaning given by section 25, and
  - “unit-holder” has the meaning given by sections 12 and 13.
- (4) Sections 7 and 9 make provision for the vesting in the commonhold association of the fee simple in possession in the common parts of a commonhold.

### *Registration*

## **2 Application**

- (1) The Registrar shall register a freehold estate in land as a freehold estate in commonhold land if—
- (a) the registered freeholder of the land makes an application under this section, and
  - (b) no part of the land is already commonhold land.
- (2) An application under this section must be accompanied by the documents listed in Schedule 1.
- (3) A person is the registered freeholder of land for the purposes of this Part if—
- (a) he is registered as the proprietor of a freehold estate in the land with absolute title, or
  - (b) he has applied, and the Registrar is satisfied that he is entitled, to be registered as mentioned in paragraph (a).

## **3 Consent**

- (1) An application under section 2 may not be made in respect of a freehold estate in land without the consent of anyone who—
- (a) is the registered proprietor of the freehold estate in the whole or part of the land,
  - (b) is the registered proprietor of a leasehold estate in the whole or part of the land granted for a term of more than 21 years,
  - (c) is the registered proprietor of a charge over the whole or part of the land, or
  - (d) falls within any other class of person which may be prescribed.
- (2) Regulations shall make provision about consent for the purposes of this section; in particular, the regulations may make provision—
- (a) prescribing the form of consent;
  - (b) about the effect and duration of consent (including provision for consent to bind successors);
  - (c) about withdrawal of consent (including provision preventing withdrawal in specified circumstances);
  - (d) for consent given for the purpose of one application under section 2 to have effect for the purpose of another application;
  - (e) for consent to be deemed to have been given in specified circumstances;

- (f) enabling a court to dispense with a requirement for consent in specified circumstances.
- (3) An order under subsection (2)(f) dispensing with a requirement for consent—
- (a) may be absolute or conditional, and
  - (b) may make such other provision as the court thinks appropriate.

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

Schedule 2 (which provides that an application under section 2 may not relate wholly or partly to land of certain kinds) shall have effect.

#### **5 Registered details**

- (1) The Registrar shall ensure that in respect of any commonhold land the following are kept in his custody and referred to in the register—
- (a) the prescribed details of the commonhold association;
  - (b) the prescribed details of the registered freeholder of each commonhold unit;
  - (c) a copy of the commonhold community statement;
  - (d) a copy of the memorandum and articles of association of the commonhold association.
- (2) The Registrar may arrange for a document or information to be kept in his custody and referred to in the register in respect of commonhold land if the document or information—
- (a) is not mentioned in subsection (1), but
  - (b) is submitted to the Registrar in accordance with a provision made by or by virtue of this Part.
- (3) Subsection (1)(b) shall not apply during a transitional period within the meaning of section 8.

#### **6 Registration in error**

- (1) This section applies where a freehold estate in land is registered as a freehold estate in commonhold land and—
- (a) the application for registration was not made in accordance with section 2,
  - (b) the certificate under paragraph 7 of Schedule 1 was inaccurate, or
  - (c) the registration contravened a provision made by or by virtue of this Part.
- (2) The register may not be altered by the Registrar under Schedule 4 to the Land Registration Act 2002 (c. 9) (alteration of register).
- (3) The court may grant a declaration that the freehold estate should not have been registered as a freehold estate in commonhold land.
- (4) A declaration under subsection (3) may be granted only on the application of a person who claims to be adversely affected by the registration.
- (5) On granting a declaration under subsection (3) the court may make any order which appears to it to be appropriate.
- (6) An order under subsection (5) may, in particular—

- (a) provide for the registration to be treated as valid for all purposes;
- (b) provide for alteration of the register;
- (c) provide for land to cease to be commonhold land;
- (d) require a director or other specified officer of a commonhold association to take steps to alter or amend a document;
- (e) require a director or other specified officer of a commonhold association to take specified steps;
- (f) make an award of compensation (whether or not contingent upon the occurrence or non-occurrence of a specified event) to be paid by one specified person to another;
- (g) apply, disapply or modify a provision of Schedule 8 to the Land Registration Act 2002 (c. 9) (indemnity).

*Effect of registration*

## 7 Registration without unit-holders

- (1) This section applies where—
  - (a) a freehold estate in land is registered as a freehold estate in commonhold land in pursuance of an application under section 2, and
  - (b) the application is not accompanied by a statement under section 9(1)(b).
- (2) On registration—
  - (a) the applicant shall continue to be registered as the proprietor of the freehold estate in the commonhold land, and
  - (b) the rights and duties conferred and imposed by the commonhold community statement shall not come into force (subject to section 8(2)(b)).
- (3) Where after registration a person other than the applicant becomes entitled to be registered as the proprietor of the freehold estate in one or more, but not all, of the commonhold units—
  - (a) the commonhold association shall be entitled to be registered as the proprietor of the freehold estate in the common parts,
  - (b) the Registrar shall register the commonhold association in accordance with paragraph (a) (without an application being made),
  - (c) the rights and duties conferred and imposed by the commonhold community statement shall come into force, and
  - (d) any lease of the whole or part of the commonhold land shall be extinguished by virtue of this section.
- (4) For the purpose of subsection (3)(d) “lease” means a lease which—
  - (a) is granted for any term, and
  - (b) is granted before the commonhold association becomes entitled to be registered as the proprietor of the freehold estate in the common parts.

## 8 Transitional period

- (1) In this Part “transitional period” means the period between registration of the freehold estate in land as a freehold estate in commonhold land and the event mentioned in section 7(3).

- (2) Regulations may provide that during a transitional period a relevant provision—
  - (a) shall not have effect, or
  - (b) shall have effect with specified modifications.
- (3) In subsection (2) “relevant provision” means a provision made—
  - (a) by or by virtue of this Part,
  - (b) by a commonhold community statement, or
  - (c) by the memorandum or articles of the commonhold association.
- (4) The Registrar shall arrange for the freehold estate in land to cease to be registered as a freehold estate in commonhold land if the registered proprietor makes an application to the Registrar under this subsection during the transitional period.
- (5) The provisions about consent made by or under sections 2 and 3 and Schedule 1 shall apply in relation to an application under subsection (4) as they apply in relation to an application under section 2.
- (6) A reference in this Part to a commonhold association exercising functions in relation to commonhold land includes a reference to a case where a commonhold association would exercise functions in relation to commonhold land but for the fact that the time in question falls in a transitional period.

## **9 Registration with unit-holders**

- (1) This section applies in relation to a freehold estate in commonhold land if—
  - (a) it is registered as a freehold estate in commonhold land in pursuance of an application under section 2, and
  - (b) the application is accompanied by a statement by the applicant requesting that this section should apply.
- (2) A statement under subsection (1)(b) must include a list of the commonhold units giving in relation to each one the prescribed details of the proposed initial unit-holder or joint unit-holders.
- (3) On registration—
  - (a) the commonhold association shall be entitled to be registered as the proprietor of the freehold estate in the common parts,
  - (b) a person specified by virtue of subsection (2) as the initial unit-holder of a commonhold unit shall be entitled to be registered as the proprietor of the freehold estate in the unit,
  - (c) a person specified by virtue of subsection (2) as an initial joint unit-holder of a commonhold unit shall be entitled to be registered as one of the proprietors of the freehold estate in the unit,
  - (d) the Registrar shall make entries in the register to reflect paragraphs (a) to (c) (without applications being made),
  - (e) the rights and duties conferred and imposed by the commonhold community statement shall come into force, and
  - (f) any lease of the whole or part of the commonhold land shall be extinguished by virtue of this section.
- (4) For the purpose of subsection (3)(f) “lease” means a lease which—
  - (a) is granted for any term, and

- (b) is granted before the commonhold association becomes entitled to be registered as the proprietor of the freehold estate in the common parts.

## **10 Extinguished lease: liability**

- (1) This section applies where—
  - (a) a lease is extinguished by virtue of section 7(3)(d) or 9(3)(f), and
  - (b) the consent of the holder of that lease was not among the consents required by section 3 in respect of the application under section 2 for the land to become commonhold land.
- (2) If the holder of a lease superior to the extinguished lease gave consent under section 3, he shall be liable for loss suffered by the holder of the extinguished lease.
- (3) If the holders of a number of leases would be liable under subsection (2), liability shall attach only to the person whose lease was most proximate to the extinguished lease.
- (4) If no person is liable under subsection (2), the person who gave consent under section 3 as the holder of the freehold estate out of which the extinguished lease was granted shall be liable for loss suffered by the holder of the extinguished lease.

### *Commonhold unit*

## **11 Definition**

- (1) In this Part “commonhold unit” means a commonhold unit specified in a commonhold community statement in accordance with this section.
- (2) A commonhold community statement must—
  - (a) specify at least two parcels of land as commonhold units, and
  - (b) define the extent of each commonhold unit.
- (3) In defining the extent of a commonhold unit a commonhold community statement—
  - (a) must refer to a plan which is included in the statement and which complies with prescribed requirements,
  - (b) may refer to an area subject to the exclusion of specified structures, fittings, apparatus or appurtenances within the area,
  - (c) may exclude the structures which delineate an area referred to, and
  - (d) may refer to two or more areas (whether or not contiguous).
- (4) A commonhold unit need not contain all or any part of a building.

## **12 Unit-holder**

A person is the unit-holder of a commonhold unit if he is entitled to be registered as the proprietor of the freehold estate in the unit (whether or not he is registered).

## **13 Joint unit-holders**

- (1) Two or more persons are joint unit-holders of a commonhold unit if they are entitled to be registered as proprietors of the freehold estate in the unit (whether or not they are registered).

- (2) In the application of the following provisions to a unit with joint unit-holders a reference to a unit-holder is a reference to the joint unit-holders together—
- (a) section 14(3),
  - (b) section 15(1) and (3),
  - (c) section 19(2) and (3),
  - (d) section 20(1),
  - (e) section 23(1),
  - (f) section 35(1)(b),
  - (g) section 38(1),
  - (h) section 39(2), and
  - (i) section 47(2).
- (3) In the application of the following provisions to a 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) section 1(1)(c),
  - (b) section 16,
  - (c) section 31(1)(b), (3)(b), (5)(j) and (7),
  - (d) section 32(4)(a) and (c),
  - (e) section 35(1)(a), (2) and (3),
  - (f) section 37(2),
  - (g) section 40(1), and
  - (h) section 58(3)(a).
- (4) Regulations under this Part which refer to a unit-holder shall make provision for the construction of the reference in the case of joint unit-holders.
- (5) Regulations may amend subsection (2) or (3).
- (6) Regulations may make provision for the construction in the case of joint unit-holders of a reference to a unit-holder in—
- (a) an enactment,
  - (b) a commonhold community statement,
  - (c) the memorandum or articles of association of a commonhold association, or
  - (d) another document.

## **14 Use and maintenance**

- (1) A commonhold community statement must make provision regulating the use of commonhold units.
- (2) A commonhold community statement must make provision imposing duties in respect of the insurance, repair and maintenance of each commonhold unit.
- (3) A duty under subsection (2) may be imposed on the commonhold association or the unit-holder.

## 15 Transfer

- (1) In this Part a reference to the transfer of a commonhold unit is a reference to the transfer of a unit-holder's freehold estate in a unit to another person—
  - (a) whether or not for consideration,
  - (b) whether or not subject to any reservation or other terms, and
  - (c) whether or not by operation of law.
- (2) A commonhold community statement may not prevent or restrict the transfer of a commonhold unit.
- (3) On the transfer of a commonhold unit the new unit-holder shall notify the commonhold association of the transfer.
- (4) Regulations may—
  - (a) prescribe the form and manner of notice under subsection (3);
  - (b) prescribe the time within which notice is to be given;
  - (c) make provision (including provision requiring the payment of money) about the effect of failure to give notice.

## 16 Transfer: effect

- (1) A right or duty conferred or imposed—
  - (a) by a commonhold community statement, or
  - (b) in accordance with section 20,shall affect a new unit-holder in the same way as it affected the former unit-holder.
- (2) A former unit-holder shall not incur a liability or acquire a right—
  - (a) under or by virtue of the commonhold community statement, or
  - (b) by virtue of anything done in accordance with section 20.
- (3) Subsection (2)—
  - (a) shall not be capable of being disapplied or varied by agreement, and
  - (b) is without prejudice to any liability or right incurred or acquired before a transfer takes effect.
- (4) In this section—

“former unit-holder” means a person from whom a commonhold unit has been transferred (whether or not he has ceased to be the registered proprietor), and

“new unit-holder” means a person to whom a commonhold unit is transferred (whether or not he has yet become the registered proprietor).

## 17 Leasing: residential

- (1) It shall not be possible to create a term of years absolute in a residential commonhold unit unless the term satisfies prescribed conditions.
- (2) The conditions may relate to—
  - (a) length;
  - (b) the circumstances in which the term is granted;
  - (c) any other matter.



- (3) Subject to subsection (4), an instrument or agreement shall be of no effect to the extent that it purports to create a term of years in contravention of subsection (1).
- (4) Where an instrument or agreement purports to create a term of years in contravention of subsection (1) a party to the instrument or agreement may apply to the court for an order—
  - (a) providing for the instrument or agreement to have effect as if it provided for the creation of a term of years of a specified kind;
  - (b) providing for the return or payment of money;
  - (c) making such other provision as the court thinks appropriate.
- (5) A commonhold unit is residential if provision made in the commonhold community statement by virtue of section 14(1) requires it to be used only—
  - (a) for residential purposes, or
  - (b) for residential and other incidental purposes.

## **18 Leasing: non-residential**

An instrument or agreement which creates a term of years absolute in a commonhold unit which is not residential (within the meaning of section 17) shall have effect subject to any provision of the commonhold community statement.

## **19 Leasing: supplementary**

- (1) Regulations may—
  - (a) impose obligations on a tenant of a commonhold unit;
  - (b) enable a commonhold community statement to impose obligations on a tenant of a commonhold unit.
- (2) Regulations under subsection (1) may, in particular, require a tenant of a commonhold unit to make payments to the commonhold association or a unit-holder in discharge of payments which—
  - (a) are due in accordance with the commonhold community statement to be made by the unit-holder, or
  - (b) are due in accordance with the commonhold community statement to be made by another tenant of the unit.
- (3) Regulations under subsection (1) may, in particular, provide—
  - (a) for the amount of payments under subsection (2) to be set against sums owed by the tenant (whether to the person by whom the payments were due to be made or to some other person);
  - (b) for the amount of payments under subsection (2) to be recovered from the unit-holder or another tenant of the unit.
- (4) Regulations may modify a rule of law about leasehold estates (whether deriving from the common law or from an enactment) in its application to a term of years in a commonhold unit.
- (5) Regulations under this section—
  - (a) may make provision generally or in relation to specified circumstances, and
  - (b) may make different provision for different descriptions of commonhold land or commonhold unit.

**20 Other transactions**

- (1) A commonhold community statement may not prevent or restrict the creation, grant or transfer by a unit-holder of—
  - (a) an interest in the whole or part of his unit, or
  - (b) a charge over his unit.
- (2) Subsection (1) is subject to sections 17 to 19 (which impose restrictions about leases).
- (3) It shall not be possible to create an interest of a prescribed kind in a commonhold unit unless the commonhold association—
  - (a) is a party to the creation of the interest, or
  - (b) consents in writing to the creation of the interest.
- (4) A commonhold association may act as described in subsection (3)(a) or (b) only if—
  - (a) the association passes a resolution to take the action, and
  - (b) at least 75 per cent. of those who vote on the resolution vote in favour.
- (5) An instrument or agreement shall be of no effect to the extent that it purports to create an interest in contravention of subsection (3).
- (6) In this section “interest” does not include—
  - (a) a charge, or
  - (b) an interest which arises by virtue of a charge.

**21 Part-unit: interests**

- (1) It shall not be possible to create an interest in part only of a commonhold unit.
- (2) But subsection (1) shall not prevent—
  - (a) the creation of a term of years absolute in part only of a residential commonhold unit where the term satisfies prescribed conditions,
  - (b) the creation of a term of years absolute in part only of a non-residential commonhold unit, or
  - (c) the transfer of the freehold estate in part only of a commonhold unit where the commonhold association consents in writing to the transfer.
- (3) An instrument or agreement shall be of no effect to the extent that it purports to create an interest in contravention of subsection (1).
- (4) Subsection (5) applies where—
  - (a) land becomes commonhold land or is added to a commonhold unit, and
  - (b) immediately before that event there is an interest in the land which could not be created after that event by reason of subsection (1).
- (5) The interest shall be extinguished by virtue of this subsection to the extent that it could not be created by reason of subsection (1).
- (6) Section 17(2) and (4) shall apply (with any necessary modifications) in relation to subsection (2)(a) and (b) above.
- (7) Where part only of a unit is held under a lease, regulations may modify the application of a provision which—
  - (a) is made by or by virtue of this Part, and

- (b) applies to a unit-holder or a tenant or both.
- (8) Section 20(4) shall apply in relation to subsection (2)(c) above.
- (9) Where the freehold interest in part only of a commonhold unit is transferred, the part transferred—
  - (a) becomes a new commonhold unit by virtue of this subsection, or
  - (b) in a case where the request for consent under subsection (2)(c) states that this paragraph is to apply, becomes part of a commonhold unit specified in the request.
- (10) Regulations may make provision, or may require a commonhold community statement to make provision, about—
  - (a) registration of units created by virtue of subsection (9);
  - (b) the adaptation of provision made by or by virtue of this Part or by or by virtue of a commonhold community statement to a case where units are created or modified by virtue of subsection (9).

## **22 Part–unit: charging**

- (1) It shall not be possible to create a charge over part only of an interest in a commonhold unit.
- (2) An instrument or agreement shall be of no effect to the extent that it purports to create a charge in contravention of subsection (1).
- (3) Subsection (4) applies where—
  - (a) land becomes commonhold land or is added to a commonhold unit, and
  - (b) immediately before that event there is a charge over the land which could not be created after that event by reason of subsection (1).
- (4) The charge shall be extinguished by virtue of this subsection to the extent that it could not be created by reason of subsection (1).

## **23 Changing size**

- (1) An amendment of a commonhold community statement which redefines the extent of a commonhold unit may not be made unless the unit-holder consents—
  - (a) in writing, and
  - (b) before the amendment is made.
- (2) But regulations may enable a court to dispense with the requirement for consent on the application of a commonhold association in prescribed circumstances.

## **24 Changing size: charged unit**

- (1) This section 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 amendment may not be made unless the registered proprietor of the charge consents—
  - (a) in writing, and
  - (b) before the amendment is made.

- (3) But regulations may enable a court to dispense with the requirement for consent on the application of a commonhold association in prescribed circumstances.
- (4) If the amendment removes land from the commonhold unit, the charge shall by virtue of this subsection be extinguished to the extent that it relates to the land which is removed.
- (5) If the amendment adds land to the unit, the charge shall by virtue of this subsection be extended so as to relate to the land which is added.
- (6) Regulations may make provision—
  - (a) requiring notice to be given to the Registrar in circumstances to which this section applies;
  - (b) requiring the Registrar to alter the register to reflect the application of subsection (4) or (5).

### *Common parts*

## **25 Definition**

- (1) In this Part “common parts” in relation to a commonhold means every part of the commonhold which is not for the time being a commonhold unit in accordance with the commonhold community statement.
- (2) A commonhold community statement may make provision in respect of a specified part of the common parts (a “limited use area”) restricting—
  - (a) the classes of person who may use it;
  - (b) the kind of use to which it may be put.
- (3) A commonhold community statement—
  - (a) may make provision which has effect only in relation to a limited use area, and
  - (b) may make different provision for different limited use areas.

## **26 Use and maintenance**

A commonhold community statement must make provision—

- (a) regulating the use of the common parts;
- (b) requiring the commonhold association to insure the common parts;
- (c) requiring the commonhold association to repair and maintain the common parts.

## **27 Transactions**

- (1) Nothing in a commonhold community statement shall prevent or restrict—
  - (a) the transfer by the commonhold association of its freehold estate in any part of the common parts, or
  - (b) the creation by the commonhold association of an interest in any part of the common parts.
- (2) In this section “interest” does not include—
  - (a) a charge, or

- (b) an interest which arises by virtue of a charge.

## **28 Charges: general prohibition**

- (1) It shall not be possible to create a charge over common parts.
- (2) An instrument or agreement shall be of no effect to the extent that it purports to create a charge over common parts.
- (3) Where by virtue of section 7 or 9 a commonhold association is registered as the proprietor of common parts, a charge which relates wholly or partly to the common parts shall be extinguished by virtue of this subsection to the extent that it relates to the common parts.
- (4) Where by virtue of section 30 land vests in a commonhold association following an amendment to a commonhold community statement which has the effect of adding land to the common parts, a charge which relates wholly or partly to the land added shall be extinguished by virtue of this subsection to the extent that it relates to that land.
- (5) This section is subject to section 29 (which permits certain mortgages).

## **29 New legal mortgages**

- (1) Section 28 shall not apply in relation to a legal mortgage if the creation of the mortgage is approved by a resolution of the commonhold association.
- (2) A resolution for the purposes of subsection (1) must be passed—
  - (a) before the mortgage is created, and
  - (b) unanimously.
- (3) In this section “legal mortgage” has the meaning given by section 205(1)(xvi) of the Law of Property Act 1925 (c. 20) (interpretation).

## **30 Additions to common parts**

- (1) This section applies where an amendment of a commonhold community statement—
  - (a) specifies land which forms part of a commonhold unit, and
  - (b) provides for that land (the “added land”) to be added to the common parts.
- (2) The amendment may not be made unless the registered proprietor of any charge over the added land consents—
  - (a) in writing, and
  - (b) before the amendment is made.
- (3) But regulations may enable a court to dispense with the requirement for consent on the application of a commonhold association in specified circumstances.
- (4) On the filing of the amended statement under section 33—
  - (a) the commonhold association shall be entitled to be registered as the proprietor of the freehold estate in the added land, and
  - (b) the Registrar shall register the commonhold association in accordance with paragraph (a) (without an application being made).

*Commonhold community statement***31 Form and content: general**

- (1) A commonhold community statement is a document which makes provision in relation to specified land for—
  - (a) the rights and duties of the commonhold association, and
  - (b) the rights and duties of the unit-holders.
- (2) A commonhold community statement must be in the prescribed form.
- (3) A commonhold community statement may—
  - (a) impose a duty on the commonhold association;
  - (b) impose a duty on a unit-holder;
  - (c) make provision about the taking of decisions in connection with the management of the commonhold or any other matter concerning it.
- (4) Subsection (3) is subject to—
  - (a) any provision made by or by virtue of this Part, and
  - (b) any provision of the memorandum or articles of the commonhold association.
- (5) In subsection (3)(a) and (b) “duty” includes, in particular, a duty—
  - (a) to pay money;
  - (b) to undertake works;
  - (c) to grant access;
  - (d) to give notice;
  - (e) to refrain from entering into transactions of a specified kind in relation to a commonhold unit;
  - (f) to refrain from using the whole or part of a commonhold unit for a specified purpose or for anything other than a specified purpose;
  - (g) to refrain from undertaking works (including alterations) of a specified kind;
  - (h) to refrain from causing nuisance or annoyance;
  - (i) to refrain from specified behaviour;
  - (j) to indemnify the commonhold association or a unit-holder in respect of costs arising from the breach of a statutory requirement.
- (6) Provision in a commonhold community statement imposing a duty to pay money (whether in pursuance of subsection (5)(a) or any other provision made by or by virtue of this Part) may include provision for the payment of interest in the case of late payment.
- (7) A duty conferred by a commonhold community statement on a commonhold association or a unit-holder shall not require any other formality.
- (8) A commonhold community statement may not provide for the transfer or loss of an interest in land on the occurrence or non-occurrence of a specified event.
- (9) Provision made by a commonhold community statement shall be of no effect to the extent that—
  - (a) it is prohibited by virtue of section 32,
  - (b) it is inconsistent with any provision made by or by virtue of this Part,

- (c) it is inconsistent with anything which is treated as included in the statement by virtue of section 32, or
- (d) it is inconsistent with the memorandum or articles of association of the commonhold association.

## **32 Regulations**

- (1) Regulations shall make provision about the content of a commonhold community statement.
- (2) The regulations may permit, require or prohibit the inclusion in a statement of—
  - (a) specified provision, or
  - (b) provision of a specified kind, for a specified purpose or about a specified matter.
- (3) The regulations may—
  - (a) provide for a statement to be treated as including provision prescribed by or determined in accordance with the regulations;
  - (b) permit a statement to make provision in place of provision which would otherwise be treated as included by virtue of paragraph (a).
- (4) The regulations may—
  - (a) make different provision for different descriptions of commonhold association or unit-holder;
  - (b) make different provision for different circumstances;
  - (c) make provision about the extent to which a commonhold community statement may make different provision for different descriptions of unit-holder or common parts.
- (5) The matters to which regulations under this section may relate include, but are not limited to—
  - (a) the matters mentioned in sections 11, 14, 15, 20, 21, 25, 26, 27, 38, 39 and 58, and
  - (b) any matter for which regulations under section 37 may make provision.

## **33 Amendment**

- (1) Regulations under section 32 shall require a commonhold community statement to make provision about how it can be amended.
- (2) The regulations shall, in particular, make provision under section 32(3)(a) (whether or not subject to provision under section 32(3)(b)).
- (3) An amendment of a commonhold community statement shall have no effect unless and until the amended statement is registered in accordance with this section.
- (4) If the commonhold association makes an application under this subsection the Registrar shall arrange for an amended commonhold community statement to be kept in his custody, and referred to in the register, in place of the unamended statement.
- (5) An application under subsection (4) must be accompanied by a certificate given by the directors of the commonhold association that the amended commonhold community statement satisfies the requirements of this Part.

- (6) Where an amendment of a commonhold community statement redefines the extent of a commonhold unit, an application under subsection (4) must be accompanied by any consent required by section 23(1) or 24(2) (or an order of a court dispensing with consent).
- (7) Where an amendment of a commonhold community statement has the effect of changing the extent of the common parts, an application under subsection (4) must be accompanied by any consent required by section 30(2) (or an order of a court dispensing with consent).
- (8) Where the Registrar amends the register on an application under subsection (4) he shall make any consequential amendments to the register which he thinks appropriate.

### *Commonhold association*

## **34 Constitution**

- (1) A commonhold association is a private company limited by guarantee the memorandum of which—
  - (a) states that an object of the company is to exercise the functions of a commonhold association in relation to specified commonhold land, and
  - (b) specifies £1 as the amount required to be specified in pursuance of section 2(4) of the Companies Act 1985 (c. 6) (members' guarantee).
- (2) Schedule 3 (which makes provision about the constitution of a commonhold association) shall have effect.

## **35 Duty to manage**

- (1) The directors of a commonhold association shall exercise their powers so as to permit or facilitate so far as possible—
  - (a) the exercise by each unit-holder of his rights, and
  - (b) the enjoyment by each unit-holder of the freehold estate in his unit.
- (2) The directors of a commonhold association shall, in particular, use any right, power or procedure conferred or created by virtue of section 37 for the purpose of preventing, remedying or curtailing a failure on the part of a unit-holder to comply with a requirement or duty imposed on him by virtue of the commonhold community statement or a provision of this Part.
- (3) But in respect of a particular failure on the part of a unit-holder (the “defaulter”) the directors of a commonhold association—
  - (a) need not take action if they reasonably think that inaction is in the best interests of establishing or maintaining harmonious relationships between all the unit-holders, and that it will not cause any unit-holder (other than the defaulter) significant loss or significant disadvantage, and
  - (b) shall have regard to the desirability of using arbitration, mediation or conciliation procedures (including referral under a scheme approved under section 42) instead of legal proceedings wherever possible.
- (4) A reference in this section to a unit-holder includes a reference to a tenant of a unit.



## **36 Voting**

- (1) This section applies in relation to any provision of this Part (a “voting provision”) which refers to the passing of a resolution by a commonhold association.
- (2) A voting provision is satisfied only if every member is given an opportunity to vote in accordance with any relevant provision of the memorandum or articles of association or the commonhold community statement.
- (3) A vote is cast for the purposes of a voting provision whether it is cast in person or in accordance with a provision which—
  - (a) provides for voting by post, by proxy or in some other manner, and
  - (b) is contained in the memorandum or articles of association or the commonhold community statement.
- (4) A resolution is passed unanimously if every member who casts a vote votes in favour.

### *Operation of commonhold*

## **37 Enforcement and compensation**

- (1) Regulations may make provision (including provision conferring jurisdiction on a court) about the exercise or enforcement of a right or duty imposed or conferred by or by virtue of—
  - (a) a commonhold community statement;
  - (b) the memorandum or articles of a commonhold association;
  - (c) a provision made by or by virtue of this Part.
- (2) The regulations may, in particular, make provision—
  - (a) requiring compensation to be paid where a right is exercised in specified cases or circumstances;
  - (b) requiring compensation to be paid where a duty is not complied with;
  - (c) enabling recovery of costs where work is carried out for the purpose of enforcing a right or duty;
  - (d) enabling recovery of costs where work is carried out in consequence of the failure to perform a duty;
  - (e) permitting a unit-holder to enforce a duty imposed on another unit-holder, on a commonhold association or on a tenant;
  - (f) permitting a commonhold association to enforce a duty imposed on a unit-holder or a tenant;
  - (g) permitting a tenant to enforce a duty imposed on another tenant, a unit-holder or a commonhold association;
  - (h) permitting the enforcement of terms or conditions to which a right is subject;
  - (i) requiring the use of a specified form of arbitration, mediation or conciliation procedure before legal proceedings may be brought.
- (3) Provision about compensation made by virtue of this section shall include—
  - (a) provision (which may include provision conferring jurisdiction on a court) for determining the amount of compensation;
  - (b) provision for the payment of interest in the case of late payment.

- (4) Regulations under this section shall be subject to any provision included in a commonhold community statement in accordance with regulations made by virtue of section 32(5)(b).

### **38 Commonhold assessment**

- (1) A commonhold community statement must make provision—
- (a) requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the expenses of the association,
  - (b) enabling the directors of the commonhold association to make estimates from time to time of income required to be raised from unit-holders in addition to the annual estimate,
  - (c) specifying the percentage of any estimate made under paragraph (a) or (b) which is to be allocated to each unit,
  - (d) requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to his unit, and
  - (e) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.
- (2) For the purpose of subsection (1)(c)—
- (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
  - (b) a commonhold community statement may specify 0 per cent. in relation to a unit.

### **39 Reserve fund**

- (1) Regulations under section 32 may, in particular, require a commonhold community statement to make provision—
- (a) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of common parts;
  - (b) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of commonhold units.
- (2) Where a commonhold community statement provides for the establishment and maintenance of a fund in accordance with subsection (1) it must also make provision—
- (a) requiring or enabling the directors of the commonhold association to set a levy from time to time,
  - (b) specifying the percentage of any levy set under paragraph (a) which is to be allocated to each unit,
  - (c) requiring each unit-holder to make payments in respect of the percentage of any levy set under paragraph (a) which is allocated to his unit, and
  - (d) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.
- (3) For the purpose of subsection (2)(b)—

- (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
  - (b) a commonhold community statement may specify 0 per cent. in relation to a unit.
- (4) The assets of a fund established and maintained by virtue of this section shall not be used for the purpose of enforcement of any debt except a judgment debt referable to a reserve fund activity.
- (5) For the purpose of subsection (4)—
- (a) “reserve fund activity” means an activity which in accordance with the commonhold community statement can or may be financed from a fund established and maintained by virtue of this section,
  - (b) assets are used for the purpose of enforcement of a debt if, in particular, they are taken in execution or are made the subject of a charging order under section 1 of the Charging Orders Act 1979 (c. 53), and
  - (c) the reference to a judgment debt includes a reference to any interest payable on a judgment debt.

#### **40 Rectification of documents**

- (1) A unit-holder may apply to the court for a declaration that—
- (a) the memorandum or articles of association of the relevant commonhold association do not comply with regulations under paragraph 2(1) of Schedule 3;
  - (b) the relevant commonhold community statement does not comply with a requirement imposed by or by virtue of this Part.
- (2) On granting a declaration under this section the court may make any order which appears to it to be appropriate.
- (3) An order under subsection (2) may, in particular—
- (a) require a director or other specified officer of a commonhold association to take steps to alter or amend a document;
  - (b) require a director or other specified officer of a commonhold association to take specified steps;
  - (c) make an award of compensation (whether or not contingent upon the occurrence or non-occurrence of a specified event) to be paid by the commonhold association to a specified person;
  - (d) make provision for land to cease to be commonhold land.
- (4) An application under subsection (1) must be made—
- (a) within the period of three months beginning with the day on which the applicant became a unit-holder,
  - (b) within three months of the commencement of the alleged failure to comply, or
  - (c) with the permission of the court.

#### **41 Enlargement**

- (1) This section applies to an application under section 2 if the commonhold association for the purposes of the application already exercises functions in relation to commonhold land.

- (2) In this section—
- (a) the application is referred to as an “application to add land”, and
  - (b) the land to which the application relates is referred to as the “added land”.
- (3) An application to add land may not be made unless it is approved by a resolution of the commonhold association.
- (4) A resolution for the purposes of subsection (3) must be passed—
- (a) before the application to add land is made, and
  - (b) unanimously.
- (5) Section 2(2) shall not apply to an application to add land; but the application must be accompanied by—
- (a) the documents specified in paragraph 6 of Schedule 1,
  - (b) an application under section 33 for the registration of an amended commonhold community statement which makes provision for the existing commonhold and the added land, and
  - (c) a certificate given by the directors of the commonhold association that the application to add land satisfies Schedule 2 and subsection (3).
- (6) Where sections 7 and 9 have effect following an application to add land—
- (a) the references to “the commonhold land” in sections 7(2)(a) and (3)(d) and 9(3)(f) shall be treated as references to the added land, and
  - (b) the references in sections 7(2)(b) and (3)(c) and 9(3)(e) to the rights and duties conferred and imposed by the commonhold community statement shall be treated as a reference to rights and duties only in so far as they affect the added land.
- (7) In the case of an application to add land where the whole of the added land is to form part of the common parts of a commonhold—
- (a) section 7 shall not apply,
  - (b) on registration the commonhold association shall be entitled to be registered (if it is not already) as the proprietor of the freehold estate in the added land,
  - (c) the Registrar shall make any registration required by paragraph (b) (without an application being made), and
  - (d) the rights and duties conferred and imposed by the commonhold community statement shall, in so far as they affect the added land, come into force on registration.

## 42 Ombudsman

- (1) Regulations may provide that a commonhold association shall be a member of an approved ombudsman scheme.
- (2) An “approved ombudsman scheme” is a scheme which is approved by the Lord Chancellor and which—
- (a) provides for the appointment of one or more persons as ombudsman,
  - (b) provides for a person to be appointed as ombudsman only if the Lord Chancellor approves the appointment in advance,
  - (c) enables a unit-holder to refer to the ombudsman a dispute between the unit-holder and a commonhold association which is a member of the scheme,

- (d) enables a commonhold association which is a member of the scheme to refer to the ombudsman a dispute between the association and a unit-holder,
  - (e) requires the ombudsman to investigate and determine a dispute referred to him,
  - (f) requires a commonhold association which is a member of the scheme to cooperate with the ombudsman in investigating or determining a dispute, and
  - (g) requires a commonhold association which is a member of the scheme to comply with any decision of the ombudsman (including any decision requiring the payment of money).
- (3) In addition to the matters specified in subsection (2) an approved ombudsman scheme—
- (a) may contain other provision, and
  - (b) shall contain such provision, or provision of such a kind, as may be prescribed.
- (4) If a commonhold association fails to comply with regulations under subsection (1) a unit-holder may apply to the High Court for an order requiring the directors of the commonhold association to ensure that the association complies with the regulations.
- (5) A reference in this section to a unit-holder includes a reference to a tenant of a unit.

*Termination: voluntary winding-up*

**43 Winding-up resolution**

- (1) A winding-up resolution in respect of a commonhold association shall be of no effect unless—
- (a) the resolution is preceded by a declaration of solvency,
  - (b) the commonhold association passes a termination-statement resolution before it passes the winding-up resolution, and
  - (c) each resolution is passed with at least 80 per cent. of the members of the association voting in favour.
- (2) In this Part—
- “declaration of solvency” means a directors' statutory declaration made in accordance with section 89 of the Insolvency Act 1986 (c. 45),
  - “termination-statement resolution” means a resolution approving the terms of a termination statement (within the meaning of section 47), and
  - “winding-up resolution” means a resolution for voluntary winding-up within the meaning of section 84 of that Act.

**44 100 per cent. agreement**

- (1) This section applies where a commonhold association—
- (a) has passed a winding-up resolution and a termination-statement resolution with 100 per cent. of the members of the association voting in favour, and
  - (b) has appointed a liquidator under section 91 of the Insolvency Act 1986 (c. 45).
- (2) The liquidator shall make a termination application within the period of six months beginning with the day on which the winding-up resolution is passed.

- (3) If the liquidator fails to make a termination application within the period specified in subsection (2) a termination application may be made by—
- (a) a unit-holder, or
  - (b) a person falling within a class prescribed for the purposes of this subsection.

#### **45 80 per cent. agreement**

- (1) This section applies where a commonhold association—
- (a) has passed a winding-up resolution and a termination-statement resolution with at least 80 per cent. of the members of the association voting in favour, and
  - (b) has appointed a liquidator under section 91 of the Insolvency Act 1986.
- (2) The liquidator shall within the prescribed period 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.
- (3) The liquidator shall make a termination application within the period of three months starting with the date on which an order under subsection (2) is made.
- (4) If the liquidator fails to make an application under subsection (2) or (3) within the period specified in that subsection an application of the same kind may be made by—
- (a) a unit-holder, or
  - (b) a person falling within a class prescribed for the purposes of this subsection.

#### **46 Termination application**

- (1) A “termination application” is an application to the Registrar that all the land in relation to which a particular commonhold association exercises functions should cease to be commonhold land.
- (2) A termination application must be accompanied by a termination statement.
- (3) On receipt of a termination application the Registrar shall note it in the register.

#### **47 Termination statement**

- (1) A termination statement must specify—
- (a) the commonhold association’s proposals for the transfer of the commonhold land following acquisition of the freehold estate in accordance with section 49(3), and
  - (b) how the assets of the commonhold association will be distributed.
- (2) A commonhold community statement may make provision requiring any termination statement to make arrangements—
- (a) of a specified kind, or
  - (b) determined in a specified manner,
- about the rights of unit-holders in the event of all the land to which the statement relates ceasing to be commonhold land.

- (3) A termination statement must comply with a provision made by the commonhold community statement in reliance on subsection (2).
- (4) Subsection (3) may be disapplied by an order of the court—
  - (a) generally,
  - (b) in respect of specified matters, or
  - (c) for a specified purpose.
- (5) An application for an order under subsection (4) may be made by any member of the commonhold association.

#### **48 The liquidator**

- (1) This section applies where a termination application has been made in respect of particular commonhold land.
- (2) The liquidator shall notify the Registrar of his appointment.
- (3) In the case of a termination application made under section 44 the liquidator shall either—
  - (a) notify the Registrar that the liquidator is content with the termination statement submitted with the termination application, or
  - (b) apply to the court under section 112 of the Insolvency Act 1986 (c. 45) to determine the terms of the termination statement.
- (4) The liquidator shall send to the Registrar a copy of a determination made by virtue of subsection (3)(b).
- (5) Subsection (4) is in addition to any requirement under section 112(3) of the Insolvency Act 1986.
- (6) A duty imposed on the liquidator by this section is to be performed as soon as possible.
- (7) In this section a reference to the liquidator is a reference—
  - (a) to the person who is appointed as liquidator under section 91 of the Insolvency Act 1986, or
  - (b) in the case of a members' voluntary winding up which becomes a creditors' voluntary winding up by virtue of sections 95 and 96 of that Act, to the person acting as liquidator in accordance with section 100 of that Act.

#### **49 Termination**

- (1) This section applies where a termination application is made under section 44 and—
  - (a) a liquidator notifies the Registrar under section 48(3)(a) that he is content with a termination statement, or
  - (b) a determination is made under section 112 of the Insolvency Act 1986 (c. 45) by virtue of section 48(3)(b).
- (2) This section also applies where a termination application is made under section 45.
- (3) The commonhold association shall by virtue of this subsection be entitled to be registered as the proprietor of the freehold estate in each commonhold unit.

- (4) The Registrar shall take such action as appears to him to be appropriate for the purpose of giving effect to the termination statement.

*Termination: winding-up by court*

**50 Introduction**

- (1) Section 51 applies where a petition is presented under section 124 of the Insolvency Act 1986 for the winding up of a commonhold association by the court.
- (2) For the purposes of this Part—
- (a) an “insolvent commonhold association” is one in relation to which a winding-up petition has been presented under section 124 of the Insolvency Act 1986,
  - (b) a commonhold association is the “successor commonhold association” to an insolvent commonhold association if the land specified for the purpose of section 34(1)(a) is the same for both associations, and
  - (c) a “winding-up order” is an order under section 125 of the Insolvency Act 1986 for the winding up of a commonhold association.

**51 Succession order**

- (1) At the hearing of the winding-up petition an application may be made to the court for an order under this section (a “succession order”) in relation to the insolvent commonhold association.
- (2) An application under subsection (1) may be made only by—
- (a) the insolvent commonhold association,
  - (b) one or more members of the insolvent commonhold association, or
  - (c) a provisional liquidator for the insolvent commonhold association appointed under section 135 of the Insolvency Act 1986.
- (3) An application under subsection (1) must be accompanied by—
- (a) prescribed evidence of the formation of a successor commonhold association, and
  - (b) a certificate given by the directors of the successor commonhold association that its memorandum and articles of association comply with regulations under paragraph 2(1) of Schedule 3.
- (4) The court shall grant an application under subsection (1) unless it thinks that the circumstances of the insolvent commonhold association make a succession order inappropriate.

**52 Assets and liabilities**

- (1) Where a succession order is made in relation to an insolvent commonhold association this section applies on the making of a winding-up order in respect of the association.
- (2) The successor commonhold association shall be entitled to be registered as the proprietor of the freehold estate in the common parts.
- (3) The insolvent commonhold association shall for all purposes cease to be treated as the proprietor of the freehold estate in the common parts.



- (4) The succession order—
- (a) shall make provision as to the treatment of any charge over all or any part of the common parts;
  - (b) may require the Registrar to take action of a specified kind;
  - (c) may enable the liquidator to require the Registrar to take action of a specified kind;
  - (d) may make supplemental or incidental provision.

### **53 Transfer of responsibility**

- (1) Where a succession order is made in relation to an insolvent commonhold association this section applies on the making of a winding-up order in respect of the association.
- (2) The successor commonhold association shall be treated as the commonhold association for the commonhold in respect of any matter which relates to a time after the making of the winding-up order.
- (3) On the making of the winding-up order the court may make an order requiring the liquidator to make available to the successor commonhold association specified—
- (a) records;
  - (b) copies of records;
  - (c) information.
- (4) An order under subsection (3) may include terms as to—
- (a) timing;
  - (b) payment.

### **54 Termination of commonhold**

- (1) This section applies where the court—
- (a) makes a winding-up order in respect of a commonhold association, and
  - (b) has not made a succession order in respect of the commonhold association.
- (2) The liquidator of a commonhold association shall as soon as possible notify the Registrar of—
- (a) the fact that this section applies,
  - (b) any directions given under section 168 of the Insolvency Act 1986 (c. 45) (liquidator: supplementary powers),
  - (c) any notice given to the court and the registrar of companies in accordance with section 172(8) of that Act (liquidator vacating office after final meeting),
  - (d) any notice given to the Secretary of State under section 174(3) of that Act (completion of winding-up),
  - (e) any application made to the registrar of companies under section 202(2) of that Act (insufficient assets: early dissolution),
  - (f) any notice given to the registrar of companies under section 205(1)(b) of that Act (completion of winding-up), and
  - (g) any other matter which in the liquidator's opinion is relevant to the Registrar.
- (3) Notification under subsection (2)(b) to (f) must be accompanied by a copy of the directions, notice or application concerned.

(4) The Registrar shall—

- (a) make such arrangements as appear to him to be appropriate for ensuring that the freehold estate in land in respect of which a commonhold association exercises functions ceases to be registered as a freehold estate in commonhold land as soon as is reasonably practicable after he receives notification under subsection (2)(c) to (f), and
- (b) take such action as appears to him to be appropriate for the purpose of giving effect to a determination made by the liquidator in the exercise of his functions.

*Termination: miscellaneous*

**55 Termination by court**

- (1) This section applies where the court makes an order by virtue of section 6(6)(c) or 40(3)(d) for all the land in relation to which a commonhold association exercises functions to cease to be commonhold land.
- (2) The court shall have the powers which it would have if it were making a winding-up order in respect of the commonhold association.
- (3) A person appointed as liquidator by virtue of subsection (2) shall have the powers and duties of a liquidator following the making of a winding-up order by the court in respect of a commonhold association.
- (4) But the order of the court by virtue of section 6(6)(c) or 40(3)(d) may—
  - (a) require the liquidator to exercise his functions in a particular way;
  - (b) impose additional rights or duties on the liquidator;
  - (c) modify or remove a right or duty of the liquidator.

**56 Release of reserve fund**

Section 39(4) shall cease to have effect in relation to a commonhold association (in respect of debts and liabilities accruing at any time) if—

- (a) the court makes a winding-up order in respect of the association,
- (b) the association passes a voluntary winding-up resolution, or
- (c) the court makes an order by virtue of section 6(6)(c) or 40(3)(d) for all the land in relation to which the association exercises functions to cease to be commonhold land.

*Miscellaneous*

**57 Multiple site commonholds**

- (1) A commonhold may include two or more parcels of land, whether or not contiguous.
- (2) But section 1(1) of this Act is not satisfied in relation to land specified in the memorandum of association of a commonhold association unless a single commonhold community statement makes provision for all the land.

- (3) Regulations may make provision about 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.
- (4) The regulations may, in particular—
  - (a) modify the application of a provision made by or by virtue of this Part;
  - (b) disapply the application of a provision made by or by virtue of this Part;
  - (c) impose additional requirements.

## **58 Development rights**

- (1) In this Part—
  - “the developer” means a person who makes an application under section 2, and
  - “development business” has the meaning given by Schedule 4.
- (2) A commonhold community statement may confer rights on the developer which are designed—
  - (a) to permit him to undertake development business, or
  - (b) to facilitate his undertaking of development business.
- (3) Provision made by a commonhold community statement in reliance on subsection (2) may include provision—
  - (a) requiring the commonhold association or a unit-holder to co-operate with the developer for a specified purpose connected with development business;
  - (b) making the exercise of a right conferred by virtue of subsection (2) subject to terms and conditions specified in or to be determined in accordance with the commonhold community statement;
  - (c) making provision about the effect of breach of a requirement by virtue of paragraph (a) or a term or condition imposed by virtue of paragraph (b);
  - (d) disapplying section 41(2) and (3).
- (4) Subsection (2) is subject—
  - (a) to regulations under section 32, and
  - (b) in the case of development business of the kind referred to in paragraph 7 of Schedule 4, to the memorandum and articles of association of the commonhold association.
- (5) Regulations may make provision regulating or restricting the exercise of rights conferred by virtue of subsection (2).
- (6) Where a right is conferred on a developer by virtue of subsection (2), if he sends to the Registrar a notice surrendering the right—
  - (a) the Registrar shall arrange for the notice to be kept in his custody and referred to in the register,
  - (b) the right shall cease to be exercisable from the time when the notice is registered under paragraph (a), and
  - (c) the Registrar shall inform the commonhold association as soon as is reasonably practicable.

**59 Development rights: succession**

- (1) If during a transitional period the developer transfers to another person the freehold estate in the whole of the commonhold, the successor in title shall be treated as the developer in relation to any matter arising after the transfer.
- (2) If during a transitional period the developer transfers to another person the freehold estate in part of the commonhold, the successor in title shall be treated as the developer for the purpose of any matter which—
  - (a) arises after the transfer, and
  - (b) affects the estate transferred.
- (3) If after a transitional period or in a case where there is no transitional period—
  - (a) the developer transfers to another person the freehold estate in the whole or part of the commonhold (other than by the transfer of the freehold estate in a single commonhold unit), and
  - (b) the transfer is expressed to be inclusive of development rights,the successor in title shall be treated as the developer for the purpose of any matter which arises after the transfer and affects the estate transferred.
- (4) Other than during a transitional period, a person shall not be treated as the developer in relation to commonhold land for any purpose unless he—
  - (a) is, or has been at a particular time, the registered proprietor of the freehold estate in more than one of the commonhold units, and
  - (b) is the registered proprietor of the freehold estate in at least one of the commonhold units.

**60 Compulsory purchase**

- (1) Where a freehold estate in commonhold land is transferred to a compulsory purchaser the land shall cease to be commonhold land.
- (2) But subsection (1) does not apply to a transfer if the Registrar is satisfied that the compulsory purchaser has indicated a desire for the land transferred to continue to be commonhold land.
- (3) The requirement of consent under section 21(2)(c) shall not apply to transfer to a compulsory purchaser.
- (4) Regulations may make provision about the transfer of a freehold estate in commonhold land to a compulsory purchaser.
- (5) The regulations may, in particular—
  - (a) make provision about the effect of subsections (1) and (2) (including provision about that part of the commonhold which is not transferred);
  - (b) require the service of notice;
  - (c) confer power on a court;
  - (d) make provision about compensation;
  - (e) make provision enabling a commonhold association to require a compulsory purchaser to acquire the freehold estate in the whole, or a particular part, of the commonhold;
  - (f) provide for an enactment relating to compulsory purchase not to apply or to apply with modifications.

- (6) Provision made by virtue of subsection (5)(a) in respect of land which is not transferred may include provision—
- (a) for some or all of the land to cease to be commonhold land;
  - (b) for a provision of this Part to apply with specified modifications.
- (7) In this section “compulsory purchaser” means—
- (a) a person acquiring land in respect of which he is authorised to exercise a power of compulsory purchase by virtue of an enactment, and
  - (b) a person acquiring land which he is obliged to acquire by virtue of a prescribed enactment or in prescribed circumstances.

## **61 Matrimonial rights**

In the following provisions of this Part a reference to a tenant includes a reference to a person who has matrimonial home rights (within the meaning of section 30(2) of the Family Law Act 1996 (c. 27) (matrimonial home)) in respect of a commonhold unit—

- (a) section 19,
- (b) section 35, and
- (c) section 37.

## **62 Advice**

- (1) The Lord Chancellor may give financial assistance to a person in relation to the provision by that person of general advice about an aspect of the law of commonhold land, so far as relating to residential matters.
- (2) Financial assistance under this section may be given in such form and on such terms as the Lord Chancellor thinks appropriate.
- (3) The terms may, in particular, require repayment in specified circumstances.

## **63 The Crown**

This Part binds the Crown.

### *General*

## **64 Orders and regulations**

- (1) In this Part “prescribed” means prescribed by regulations.
- (2) Regulations under this Part shall be made by the Lord Chancellor.
- (3) Regulations under this Part—
- (a) shall be made by statutory instrument,
  - (b) may include incidental, supplemental, consequential and transitional provision,
  - (c) may make provision generally or only in relation to specified cases,
  - (d) may make different provision for different purposes, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 65 Registration procedure

- (1) The Lord Chancellor may make rules about—
  - (a) the procedure to be followed on or in respect of commonhold registration documents, and
  - (b) the registration of freehold estates in commonhold land.
- (2) Rules under this section—
  - (a) shall be made by statutory instrument in the same manner as land registration rules within the meaning of the Land Registration Act 2002 (c. 9),
  - (b) may make provision for any matter for which provision is or may be made by land registration rules, and
  - (c) may provide for land registration rules to have effect in relation to anything done by virtue of or for the purposes of this Part as they have effect in relation to anything done by virtue of or for the purposes of that Act.
- (3) Rules under this section may, in particular, make provision—
  - (a) about the form and content of a commonhold registration document;
  - (b) enabling the Registrar to cancel an application by virtue of this Part in specified circumstances;
  - (c) enabling the Registrar, in particular, to cancel an application by virtue of this Part if he thinks that plans submitted with it (whether as part of a commonhold community statement or otherwise) are insufficiently clear or accurate;
  - (d) about the order in which commonhold registration documents and general registration documents are to be dealt with by the Registrar;
  - (e) for registration to take effect (whether or not retrospectively) as from a date or time determined in accordance with the rules.
- (4) The rules may also make provision about satisfaction of a requirement for an application by virtue of this Part to be accompanied by a document; in particular the rules may—
  - (a) permit or require a copy of a document to be submitted in place of or in addition to the original;
  - (b) require a copy to be certified in a specified manner;
  - (c) permit or require the submission of a document in electronic form.
- (5) A commonhold registration document must be accompanied by such fee (if any) as is specified for that purpose by order under section 102 of the Land Registration Act 2002 (c. 9)(fee orders).
- (6) In this section—

“commonhold registration document” means an application or other document sent to the Registrar by virtue of this Part, and

“general registration document” means a document sent to the Registrar under a provision of the Land Registration Act 2002.

## 66 Jurisdiction

- (1) In this Part “the court” means the High Court or a county court.

- (2) Provision made by or under this Part conferring jurisdiction on a court shall be subject to provision made under section 1 of the Courts and Legal Services Act 1990 (c. 41) (allocation of business between High Court and county courts).
- (3) A power under this Part to confer jurisdiction on a court includes power to confer jurisdiction on a tribunal established under an enactment.
- (4) Rules of court or rules of procedure for a tribunal may make provision about proceedings brought—
  - (a) under or by virtue of any provision of this Part, or
  - (b) in relation to commonhold land.

## **67 The register**

- (1) In this Part—
  - “the register” means the register of title to freehold and leasehold land kept under section 1 of the Land Registration Act 2002,
  - “registered” means registered in the register, and
  - “the Registrar” means the Chief Land Registrar.
- (2) Regulations under any provision of this Part may confer functions on the Registrar (including discretionary functions).
- (3) The Registrar shall comply with any direction or requirement given to him or imposed on him under or by virtue of this Part.
- (4) Where the Registrar thinks it appropriate in consequence of or for the purpose of anything done or proposed to be done in connection with this Part, he may—
  - (a) make or cancel an entry on the register;
  - (b) take any other action.
- (5) Subsection (4) is subject to section 6(2).

## **68 Amendments**

Schedule 5 (consequential amendments) shall have effect.

## **69 Interpretation**

- (1) In this Part—
  - “instrument” includes any document, and
  - “object” in relation to a commonhold association means an object stated in the association’s memorandum of association in accordance with section 2(1) (c) of the Companies Act 1985 (c. 6).
- (2) In this Part—
  - (a) a reference to a duty to insure includes a reference to a duty to use the proceeds of insurance for the purpose of rebuilding or reinstating, and
  - (b) a reference to maintaining property includes a reference to decorating it and to putting it into sound condition.

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- (3) A provision of the Law of Property Act 1925 (c. 20), the Companies Act 1985 (c. 6) or the Land Registration Act 2002 (c. 9) defining an expression shall apply to the use of the expression in this Part unless the contrary intention appears.

## 70 Index of defined expressions

In this Part the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation provision</i>
Common parts	Section 25
A commonhold	Section 1
Commonhold association	Section 34
Commonhold community statement	Section 31
Commonhold land	Section 1
Commonhold unit	Section 11
Court	Section 66
Declaration of solvency	Section 43
Developer	Section 58
Development business	Section 58
Exercising functions	Section 8
Insolvent commonhold association	Section 50
Instrument	Section 69
Insure	Section 69
Joint unit-holder	Section 13
Liquidator (sections 44 to 49)	Section 44
Maintenance	Section 69
Object	Section 69
Prescribed	Section 64
The register	Section 67
Registered	Section 67
Registered freeholder	Section 2
The Registrar	Section 67
Regulations	Section 64
Residential commonhold unit	Section 17
Succession order	Section 51
Successor commonhold association	Section 50
Termination application	Section 46



<i>Expression</i>	<i>Interpretation provision</i>
Termination-statement resolution	Section 43
Transfer (of unit)	Section 15
Transitional period	Section 8
Unit-holder	Section 12
Winding-up resolution	Section 43

## PART 2

### LEASEHOLD REFORM

#### CHAPTER 1

##### RIGHT TO MANAGE

###### *Introductory*

### 71 The right to manage

- (1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).
- (2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.

###### *Qualifying rules*

### 72 Premises to which Chapter applies

- (1) This Chapter applies to premises if—
  - (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
  - (b) they contain two or more flats held by qualifying tenants, and
  - (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
  - (a) it constitutes a vertical division of the building,
  - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
  - (c) subsection (4) applies in relation to it.

- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
  - (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
  - (b) 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.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

### **73 RTM companies**

- (1) This section specifies what is a RTM company.
- (2) A company is a RTM company in relation to premises if—
  - (a) it is a private company limited by guarantee, and
  - (b) its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
- (3) But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).
- (4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.
- (5) If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.

### **74 RTM companies: membership and regulations**

- (1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—
  - (a) qualifying tenants of flats contained in the premises, and
  - (b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.
- (2) The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.
- (3) A RTM company may adopt provisions of the regulations for its memorandum or articles.
- (4) The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.
- (5) A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.

- (6) The regulations have effect in relation to a memorandum or articles—
  - (a) irrespective of the date of the memorandum or articles, but
  - (b) subject to any transitional provisions of the regulations.
- (7) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—
  - (a) sections 2(7) and 3 (memorandum), and
  - (b) section 8 (articles).

## 75 Qualifying tenants

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- (3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (4) Subsection (2) does not apply where—
  - (a) the lease was granted by sub-demise out of a superior lease other than a long lease,
  - (b) the grant was made in breach of the terms of the superior lease, and
  - (c) there has been no waiver of the breach by the superior landlord.
- (5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
- (6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.
- (7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

## 76 Long leases

- (1) This section and section 77 specify what is a long lease for the purposes of this Chapter.
- (2) Subject to section 77, a lease is a long lease if—
  - (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
  - (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
  - (c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage),
  - (d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,

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- (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
  - (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).
- (3) "Shared ownership lease" means a lease—
- (a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or
  - (b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.
- (4) "Total share", in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.

## 77 Long leases: further provisions

- (1) A lease terminable by notice after a death or marriage is not a long lease if—
- (a) the notice is capable of being given at any time after the death or marriage of the tenant,
  - (b) the length of the notice is not more than three months, and
  - (c) the terms of the lease preclude both its assignment otherwise than by virtue of section 92 of the Housing Act 1985 (assignments by way of exchange) and the sub-letting of the whole of the demised premises.
- (2) Where the tenant of any property under a long lease, on the coming to an end of the lease, becomes or has become tenant of the property or part of it under any subsequent tenancy (whether by express grant or by implication of law), that tenancy is a long lease irrespective of its terms.
- (3) A lease—
- (a) granted for a term of years certain not exceeding 21 years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and
  - (b) renewed on one or more occasions so as to bring to more than 21 years the total of the terms granted (including any interval between the end of a lease and the grant of a renewal),
- is to be treated as if the term originally granted had been one exceeding 21 years.
- (4) Where a long lease—
- (a) is or was continued for any period under Part 1 of the Landlord and Tenant Act 1954 (c. 56) or under Schedule 10 to the Local Government and Housing Act 1989 (c. 42), or
  - (b) was continued for any period under the Leasehold Property (Temporary Provisions) Act 1951 (c. 38),
- it remains a long lease during that period.
- (5) Where in the case of a flat there are at any time two or more separate leases, with the same landlord and the same tenant, and—
- (a) the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without appurtenant property), and

(b) the property comprised in every other lease consists of either a part of the flat (with or without appurtenant property) or appurtenant property only, there shall be taken to be a single long lease of the property comprised in such of those leases as are long leases.

*Claim to acquire right*

**78 Notice inviting participation**

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—
  - (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—
  - (a) state that the RTM company intends to acquire the right to manage the premises,
  - (b) state the names of the members of the RTM company,
  - (c) invite the recipients of the notice to become members of the company, and
  - (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.
- (3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either—
  - (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
  - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must—
  - (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
  - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

## **79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is—
- (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

## **80 Contents of claim notice**

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
- (a) the qualifying tenant of a flat contained in the premises, and
  - (b) a member of the RTM company,
- and the address of his flat.

- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
  - (a) the date on which it was entered into,
  - (b) the term for which it was granted, and
  - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

## **81 Claim notice: supplementary**

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
  - (a) the premises, or
  - (b) any premises containing or contained in the premises,may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—
  - (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  - (b) ceased to have effect by reason of any other provision of this Chapter.

## **82 Right to obtain information**

- (1) A company which is a RTM company in relation to any premises may give to any person a notice requiring him to provide the company with any information—
  - (a) which is in his possession or control, and

- (b) which the company reasonably requires for ascertaining the particulars required by or by virtue of section 80 to be included in a claim notice for claiming to acquire the right to manage the premises.
- (2) Where the information is recorded in a document in the person's possession or control, the RTM company may give him a notice requiring him—
- (a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and
  - (b) to supply the company with a copy of the document containing the information in a readily intelligible form on payment of a reasonable fee.
- (3) A person to whom a notice is given must comply with it within the period of 28 days beginning with the day on which it is given.

### **83 Right of access**

- (1) Where a RTM company has given a claim notice in relation to any premises, each of the persons specified in subsection (2) has a right of access to any part of the premises if that is reasonable in connection with any matter arising out of the claim to acquire the right to manage.
- (2) The persons referred to in subsection (1) are—
- (a) any person authorised to act on behalf of the RTM company,
  - (b) any person who is landlord under a lease of the whole or any part of the premises and any person authorised to act on behalf of any such person,
  - (c) any person who is party to such a lease otherwise than as landlord or tenant and any person authorised to act on behalf of any such person, and
  - (d) any manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, and any person authorised to act on behalf of any such manager.
- (3) The right conferred by this section is exercisable, at any reasonable time, on giving not less than ten days' notice—
- (a) to the occupier of any premises to which access is sought, or
  - (b) if those premises are unoccupied, to the person entitled to occupy them.

### **84 Counter-notices**

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).
- (2) A counter-notice is a notice containing a statement either—
- (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,
- and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of



counter-notices, as may be prescribed by regulations made by the appropriate national authority.

- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—
  - (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
  - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of—
  - (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.

## **85 Landlords etc. not traceable**

- (1) This section applies where a RTM company wishing to acquire the right to manage premises—
  - (a) complies with subsection (4) or (5) of section 79, and
  - (b) would not have been precluded from giving a valid notice under that section with respect to the premises,but cannot find, or ascertain the identity of, any of the persons to whom the claim notice would be required to be given by subsection (6) of that section.
- (2) The RTM company may apply to a leasehold valuation tribunal for an order that the company is to acquire the right to manage the premises.
- (3) Such an order may be made only if the company has given notice of the application to each person who is the qualifying tenant of a flat contained in the premises.
- (4) Before an order is made the company may be required to take such further steps by way of advertisement or otherwise as is determined proper for the purpose of tracing the persons who are—

- (a) landlords under leases of the whole or any part of the premises, or
  - (b) parties to such leases otherwise than as landlord or tenant.
- (5) If any of those persons is traced—
- (a) after an application for an order is made, but
  - (b) before the making of an order,
- no further proceedings shall be taken with a view to the making of an order.
- (6) Where that happens—
- (a) the rights and obligations of all persons concerned shall be determined as if the company had, at the date of the application, duly given notice under section 79 of its claim to acquire the right to manage the premises, and
  - (b) the leasehold valuation tribunal may give such directions as it thinks fit as to the steps to be taken for giving effect to their rights and obligations, including directions modifying or dispensing with any of the requirements imposed by or by virtue of this Chapter.
- (7) An application for an order may be withdrawn at any time before an order is made and, after it is withdrawn, subsection (6)(a) does not apply.
- (8) But where any step is taken for the purpose of giving effect to subsection (6)(a) in the case of any application, the application shall not afterwards be withdrawn except—
- (a) with the consent of the person or persons traced, or
  - (b) by permission of the leasehold valuation tribunal.
- (9) And permission shall be given only where it appears just that it should be given by reason of matters coming to the knowledge of the RTM company in consequence of the tracing of the person or persons traced.

## **86 Withdrawal of claim notice**

- (1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a “notice of withdrawal”).
- (2) A notice of withdrawal must be given to each person who is—
- (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant,
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, or
  - (d) the qualifying tenant of a flat contained in the premises.

## **87 Deemed withdrawal**

- (1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—
- (a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or
  - (b) such an application is so made but is subsequently withdrawn,
- the claim notice is deemed to be withdrawn.
- (2) The withdrawal shall be taken to occur—

- (a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and
  - (b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.
- (3) Subsection (1) does not apply if the person by whom the counter-notice was given has, or the persons by whom the counter-notices were given have, (before the time when the withdrawal would be taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.
- (4) The claim notice is deemed to be withdrawn if—
- (a) a winding-up order or an administration order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company,
  - (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
  - (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
  - (d) the RTM company's name is struck off the register under section 652 or 652A of the Companies Act 1985 (c. 6).

## **88 Costs: general**

- (1) A RTM company is liable for reasonable costs incurred by a person who is—
- (a) landlord under a lease of the whole or any part of any premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
- in consequence of a claim notice given by the company in relation to the premises.
- (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
- (3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.
- (4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.

## **89 Costs where claim ceases**

- (1) This section applies where a claim notice given by a RTM company—
- (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  - (b) at any time ceases to have effect by reason of any other provision of this Chapter.

- (2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.
- (3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).
- (4) But subsection (3) does not make a person liable if—
  - (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
  - (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—
  - (a) an assent by personal representatives, and
  - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

#### *Acquisition of right*

### **90 The acquisition date**

- (1) This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.
- (2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7).
- (3) For the purposes of this Chapter there is no dispute about entitlement if—
  - (a) no counter-notice is given under section 84, or
  - (b) the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.
- (4) Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.
- (5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.
- (6) Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order.

### **91 Notices relating to management contracts**

- (1) Section 92 applies where—
  - (a) the right to manage premises is to be acquired by a RTM company (otherwise than by virtue of an order under section 85), and

- (b) there are one or more existing management contracts relating to the premises.
- (2) A management contract is a contract between—
- (a) an existing manager of the premises (referred to in this Chapter as the “manager party”), and
  - (b) another person (so referred to as the “contractor party”),
- under which the contractor party agrees to provide services, or do any other thing, in connection with any matter relating to a function which will be a function of the RTM company once it acquires the right to manage.
- (3) And in this Chapter “existing management contract” means a management contract which—
- (a) is subsisting immediately before the determination date, or
  - (b) is entered into during the period beginning with the determination date and ending with the acquisition date.
- (4) An existing manager of the premises is any person who is—
- (a) landlord under a lease relating to the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises.
- (5) In this Chapter “determination date” means—
- (a) where there is no dispute about entitlement, the date specified in the claim notice under section 80(6),
  - (b) where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the date when the determination becomes final, and
  - (c) where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

## **92 Duties to give notice of contracts**

- (1) The person who is the manager party in relation to an existing management contract must give a notice in relation to the contract—
- (a) to the person who is the contractor party in relation to the contract (a “contractor notice”), and
  - (b) to the RTM company (a “contract notice”).
- (2) A contractor notice and a contract notice must be given—
- (a) in the case of a contract subsisting immediately before the determination date, on that date or as soon after that date as is reasonably practicable, and
  - (b) in the case of a contract entered into during the period beginning with the determination date and ending with the acquisition date, on the date on which it is entered into or as soon after that date as is reasonably practicable.
- (3) A contractor notice must—
- (a) give details sufficient to identify the contract in relation to which it is given,

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*Status: This is the original version (as it was originally enacted).*

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- (b) state that the right to manage the premises is to be acquired by a RTM company,
  - (c) state the name and registered office of the RTM company,
  - (d) specify the acquisition date, and
  - (e) contain such other particulars (if any) as may be required to be contained in contractor notices by regulations made by the appropriate national authority, and must also comply with such requirements (if any) about the form of contractor notices as may be prescribed by regulations so made.
- (4) Where a person who receives a contractor notice (including one who receives a copy by virtue of this subsection) is party to an existing management sub-contract with another person (the “sub-contractor party”), the person who received the notice must—
- (a) send a copy of the contractor notice to the sub-contractor party, and
  - (b) give to the RTM company a contract notice in relation to the existing management sub-contract.
- (5) An existing management sub-contract is a contract under which the sub-contractor party agrees to provide services, or do any other thing, in connection with any matter relating to a function which will be a function of the RTM company once it acquires the right to manage and which—
- (a) is subsisting immediately before the determination date, or
  - (b) is entered into during the period beginning with the determination date and ending with the acquisition date.
- (6) Subsection (4) must be complied with—
- (a) in the case of a contract entered into before the contractor notice is received, on the date on which it is received or as soon after that date as is reasonably practicable, and
  - (b) in the case of a contract entered into after the contractor notice is received, on the date on which it is entered into or as soon after that date as is reasonably practicable.
- (7) A contract notice must—
- (a) give particulars of the contract in relation to which it is given and of the person who is the contractor party, or sub-contractor party, in relation to that contract, and
  - (b) contain such other particulars (if any) as may be required to be contained in contract notices by regulations made by the appropriate national authority, and must also comply with such requirements (if any) about the form of contract notices as may be prescribed by such regulations so made.

### **93 Duty to provide information**

- (1) Where the right to manage premises is to be acquired by a RTM company, the company may give notice to a person who is—
- (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

requiring him to provide the company with any information which is in his possession or control and which the company reasonably requires in connection with the exercise of the right to manage.

- (2) Where the information is recorded in a document in his possession or control the notice may require him—
  - (a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and
  - (b) to supply the company with a copy of the document containing the information in a readily intelligible form.
- (3) A notice may not require a person to do anything under this section before the acquisition date.
- (4) But, subject to that, a person who is required by a notice to do anything under this section must do it within the period of 28 days beginning with the day on which the notice is given.

#### **94 Duty to pay accrued uncommitted service charges**

- (1) Where the right to manage premises is to be acquired by a RTM company, a person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.
- (2) The amount of any accrued uncommitted service charges is the aggregate of—
  - (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
  - (b) any investments which represent such sums (and any income which has accrued on them),less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.
- (3) He or the RTM company may make an application to a leasehold valuation tribunal to determine the amount of any payment which falls to be made under this section.
- (4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

#### *Exercising right*

#### **95 Introductory**

Sections 96 to 103 apply where the right to manage premises has been acquired by a RTM company (and has not ceased to be exercisable by it).

**96 Management functions under leases**

- (1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.
- (2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.
- (3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.
- (4) Accordingly, any provisions of the lease making provision about the relationship of—
  - (a) a person who is landlord under the lease, and
  - (b) a person who is party to the lease otherwise than as landlord or tenant,in relation to such functions do not have effect.
- (5) “Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.
- (6) But this section does not apply in relation to—
  - (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
  - (b) functions relating to re-entry or forfeiture.
- (7) An order amending subsection (5) or (6) may be made by the appropriate national authority.

**97 Management functions: supplementary**

- (1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.
- (2) A person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.
- (3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.
- (4) So far as any function of a tenant under a lease of the whole or any part of the premises—
  - (a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and
  - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,it is instead exercisable in relation to the RTM company.



- (5) But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.

## **98 Functions relating to approvals**

- (1) This section and section 99 apply in relation to the grant of approvals under long leases of the whole or any part of the premises; but nothing in this section or section 99 applies in relation to an approval concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant.
- (2) Where a person who is—
- (a) landlord under a long lease of the whole or any part of the premises, or
  - (b) party to such a lease otherwise than as landlord or tenant,
- has functions in relation to the grant of approvals to a tenant under the lease, the functions are instead functions of the RTM company.
- (3) Accordingly, any provisions of the lease making provision about the relationship of—
- (a) a person who is landlord under the lease, and
  - (b) a person who is party to the lease otherwise than as landlord or tenant,
- in relation to such functions do not have effect.
- (4) The RTM company must not grant an approval by virtue of subsection (2) without having given—
- (a) in the case of an approval relating to assignment, underletting, charging, parting with possession, the making of structural alterations or improvements or alterations of use, 30 days' notice, or
  - (b) in any other case, 14 days' notice,
- to the person who is, or each of the persons who are, landlord under the lease.
- (5) Regulations increasing the period of notice to be given under subsection (4)(b) in the case of any description of approval may be made by the appropriate national authority.
- (6) So far as any function of a tenant under a long lease of the whole or any part of the premises—
- (a) relates to the exercise of any function which is a function of the RTM company by virtue of this section, and
  - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,
- it is instead exercisable in relation to the RTM company.
- (7) In this Chapter “approval” includes consent or licence and “approving” is to be construed accordingly; and an approval required to be obtained by virtue of a restriction entered on the register of title kept by the Chief Land Registrar is, so far as relating to a long lease of the whole or any part of any premises, to be treated for the purposes of this Chapter as an approval under the lease.

**99 Approvals: supplementary**

- (1) If a person to whom notice is given under section 98(4) objects to the grant of the approval before the time when the RTM company would first be entitled to grant it, the RTM company may grant it only—
  - (a) in accordance with the written agreement of the person who objected, or
  - (b) in accordance with a determination of (or on an appeal from) a leasehold valuation tribunal.
- (2) An objection to the grant of the approval may not be made by a person unless he could withhold the approval if the function of granting it were exercisable by him (and not by the RTM company).
- (3) And a person may not make an objection operating only if a condition or requirement is not satisfied unless he could grant the approval subject to the condition or requirement being satisfied if the function of granting it were so exercisable.
- (4) An objection to the grant of the approval is made by giving notice of the objection (and of any condition or requirement which must be satisfied if it is not to operate) to—
  - (a) the RTM company, and
  - (b) the tenant,and, if the approval is to a tenant approving an act of a sub-tenant, to the sub-tenant.
- (5) An application to a leasehold valuation tribunal for a determination under subsection (1)(b) may be made by—
  - (a) the RTM company,
  - (b) the tenant,
  - (c) if the approval is to a tenant approving an act of a sub-tenant, the sub-tenant, or
  - (d) any person who is landlord under the lease.

**100 Enforcement of tenant covenants**

- (1) This section applies in relation to the enforcement of untransferred tenant covenants of a lease of the whole or any part of the premises.
- (2) Untransferred tenant covenants are enforceable by the RTM company, as well as by any other person by whom they are enforceable apart from this section, in the same manner as they are enforceable by any other such person.
- (3) But the RTM company may not exercise any function of re-entry or forfeiture.
- (4) In this Chapter “tenant covenant”, in relation to a lease, means a covenant falling to be complied with by a tenant under the lease; and a tenant covenant is untransferred if, apart from this section, it would not be enforceable by the RTM company.
- (5) Any power under a lease of a person who is—
  - (a) landlord under the lease, or
  - (b) party to the lease otherwise than as landlord or tenant,to enter any part of the premises to determine whether a tenant is complying with any untransferred tenant covenant is exercisable by the RTM company (as well as by the landlord or party).

**101 Tenant covenants: monitoring and reporting**

- (1) This section applies in relation to failures to comply with tenant covenants of leases of the whole or any part of the premises.
- (2) The RTM company must—
  - (a) keep under review whether tenant covenants of leases of the whole or any part of the premises are being complied with, and
  - (b) report to any person who is landlord under such a lease any failure to comply with any tenant covenant of the lease.
- (3) The report must be made before the end of the period of three months beginning with the day on which the failure to comply comes to the attention of the RTM company.
- (4) But the RTM company need not report to a landlord a failure to comply with a tenant covenant if—
  - (a) the failure has been remedied,
  - (b) reasonable compensation has been paid in respect of the failure, or
  - (c) the landlord has notified the RTM company that it need not report to him failures of the description of the failure concerned.

**102 Statutory functions**

- (1) Schedule 7 (provision for the operation of certain enactments with modifications) has effect.
- (2) Other enactments relating to leases (including enactments contained in this Act or any Act passed after this Act) have effect with any such modifications as are prescribed by regulations made by the appropriate national authority.

**103 Landlord contributions to service charges**

- (1) This section applies where—
  - (a) the premises contain at least one flat or other unit not subject to a lease held by a qualifying tenant (an “excluded unit”),
  - (b) the service charges payable under leases of flats contained in the premises which are so subject fall to be calculated as a proportion of the relevant costs, and
  - (c) the proportions of the relevant costs so payable, when aggregated, amount to less than the whole of the relevant costs.
- (2) Where the premises contain only one excluded unit, the person who is the appropriate person in relation to the excluded unit must pay to the RTM company the difference between—
  - (a) the relevant costs, and
  - (b) the aggregate amount payable in respect of the relevant costs under leases of flats contained in the premises which are held by qualifying tenants.
- (3) Where the premises contain more than one excluded unit, each person who is the appropriate person in relation to an excluded unit must pay to the RTM company the appropriate proportion of that difference.

- (4) And the appropriate proportion in the case of each such person is the proportion of the internal floor area of all of the excluded units which is internal floor area of the excluded unit in relation to which he is the appropriate person.
- (5) The appropriate person in relation to an excluded unit—
- (a) if it is subject to a lease, is the landlord under the lease,
  - (b) if it is subject to more than one lease, is the immediate landlord under whichever of the leases is inferior to all the others, and
  - (c) if it is not subject to any lease, is the freeholder.

### *Supplementary*

#### **104 Registration**

- (1) In section 49(1) of the Land Registration Act 1925 (c. 21) (rules to provide for rights, interests and claims to be protected by notice), insert at the end—
- “(1) the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”
- (2) In section 64 of that Act (production of certificates for noting on certain dealings etc.), insert at the end—
- “(8) Subsection (1) above shall also not require the production of the land certificate or of any charge certificate when a person applies for the registration of a notice in respect of the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”
- (3) After section 111 of that Act insert—

#### **“111A Caution relating to right to manage**

A caution may be lodged under section 53 of this Act in respect of the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”

#### **105 Cessation of management**

- (1) This section makes provision about the circumstances in which, after a RTM company has acquired the right to manage any premises, that right ceases to be exercisable by it.
- (2) Provision may be made by an agreement made between—
- (a) the RTM company, and
  - (b) each person who is landlord under a lease of the whole or any part of the premises,
- for the right to manage the premises to cease to be exercisable by the RTM company.
- (3) The right to manage the premises ceases to be exercisable by the RTM company if—
- (a) a winding-up order or an administration order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company,

- (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
  - (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
  - (d) the RTM company's name is struck off the register under section 652 or 652A of the Companies Act 1985 (c. 6).
- (4) The right to manage the premises ceases to be exercisable by the RTM company if a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, begins so to act or an order under that Part of that Act that the right to manage the premises is to cease to be exercisable by the RTM company takes effect.
- (5) The right to manage the premises ceases to be exercisable by the RTM company if it ceases to be a RTM company in relation to the premises.

#### **106 Agreements excluding or modifying right**

Any agreement relating to a lease (whether contained in the instrument creating the lease or not and whether made before the creation of the lease or not) is void in so far as it—

- (a) purports to exclude or modify the right of any person to be, or do any thing as, a member of a RTM company,
- (b) provides for the termination or surrender of the lease if the tenant becomes, or does any thing as, a member of a RTM company or if a RTM company does any thing, or
- (c) provides for the imposition of any penalty or disability if the tenant becomes, or does any thing as, a member of a RTM company or if a RTM company does any thing.

#### **107 Enforcement of obligations**

- (1) A county court may, on the application of any person interested, make an order requiring a person who has failed to comply with a requirement imposed on him by, under or by virtue of any provision of this Chapter to make good the default within such time as is specified in the order.
- (2) An application shall not be made under subsection (1) unless—
- (a) a notice has been previously given to the person in question requiring him to make good the default, and
  - (b) more than 14 days have elapsed since the date of the giving of that notice without his having done so.

#### **108 Application to Crown**

- (1) This Chapter applies in relation to premises in which there is a Crown interest.
- (2) There is a Crown interest in premises if there is in the premises an interest or estate—
- (a) which is comprised in the Crown Estate,

- (b) which belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) which belongs to the Duchy of Cornwall, or
  - (d) which belongs to a government department or is held on behalf of Her Majesty for the purposes of a government department.
- (3) Any sum payable under this Chapter to a RTM company by the Chancellor of the Duchy of Lancaster may be raised and paid under section 25 of the Duchy of Lancaster Act 1817 (c. 97) as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy.
- (4) Any sum payable under this Chapter to a RTM company by the Duke of Cornwall (or any other possessor for the time being of the Duchy of Cornwall) may be raised and paid under section 8 of the Duchy of Cornwall Management Act 1863 (c. 49) as an expense incurred in permanently improving the possessions of the Duchy.

### **109 Powers of trustees in relation to right**

- (1) Where trustees are the qualifying tenant of a flat contained in any premises, their powers under the instrument regulating the trusts include power to be a member of a RTM company for the purpose of the acquisition and exercise of the right to manage the premises.
- (2) But subsection (1) does not apply where the instrument regulating the trusts contains an explicit direction to the contrary.
- (3) The power conferred by subsection (1) is exercisable with the same consent or on the same direction (if any) as may be required for the exercise of the trustees' powers (or ordinary powers) of investment.
- (4) The purposes—
- (a) authorised for the application of capital money by section 73 of the Settled Land Act 1925 (c. 18), and
  - (b) authorised by section 71 of that Act as purposes for which moneys may be raised by mortgage,
- include the payment of any expenses incurred by a tenant for life or statutory owner as a member of a RTM company.

### **110 Power to prescribe procedure**

- (1) Where a claim to acquire the right to manage any premises is made by the giving of a claim notice, except as otherwise provided by this Chapter—
- (a) the procedure for giving effect to the claim notice, and
  - (b) the rights and obligations of all parties in any matter arising in giving effect to the claim notice,
- shall be such as may be prescribed by regulations made by the appropriate national authority.
- (2) Regulations under this section may, in particular, make provision for a person to be discharged from performing any obligations arising out of a claim notice by reason of the default or delay of some other person.

## 111 Notices

- (1) Any notice under this Chapter—
  - (a) must be in writing, and
  - (b) may be sent by post.
- (2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).
- (3) That address is—
  - (a) the address last furnished to a member of the RTM company as the landlord’s address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or
  - (b) if no such address has been so furnished, the address last furnished to such a member as the landlord’s address in accordance with section 47 of the 1987 Act (landlord’s name and address to be contained in demands for rent).
- (4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.
- (5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.

### *Interpretation*

## 112 Definitions

- (1) In this Chapter—
  - “appurtenant property”, in relation to a building or part of a building or a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat,
  - “copy”, in relation to a document in which information is recorded, means anything onto which the information has been copied by whatever means and whether directly or indirectly,
  - “document” means anything in which information is recorded,
  - “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling,
  - “flat” means a separate set of premises (whether or not on the same floor)—
    - (a) which forms part of a building,
    - (b) which is constructed or adapted for use for the purposes of a dwelling, and
    - (c) either the whole or a material part of which lies above or below some other part of the building,
  - “relevant costs” has the meaning given by section 18 of the 1985 Act,
  - “service charge” has the meaning given by that section, and
  - “unit” means—
    - (a) a flat,

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- (b) any other separate set of premises which is constructed or adapted for use for the purposes of a dwelling, or
  - (c) a separate set of premises let, or intended for letting, on a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits)—
- (a) a sub-lease or sub-tenancy, and
  - (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),
- but do not include a tenancy at will or at sufferance.
- (3) The expressions “landlord” and “tenant”, and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly.
- (4) In this Chapter any reference (however expressed) to the lease held by the qualifying tenant of a flat is a reference to a lease held by him under which the demised premises consist of or include the flat (whether with or without one or more other flats).
- (5) Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require.
- (6) In the case of a lease which derives (in accordance with section 77(5)) from two or more separate leases, any reference in this Chapter to the date of the commencement of the term for which the lease was granted shall, if the terms of the separate leases commenced at different dates, have effect as references to the date of the commencement of the term of the lease with the earliest date of commencement.

### 113 Index of defined expressions

In this Chapter the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation provision</i>
Approval (and approving)	Section 98(7)
Appurtenant property	Section 112(1)
Acquisition date	Sections 74(1)(b) and 90
Claim notice	Section 79(1)
Contractor party	Section 91(2)(b)
Copy	Section 112(1)
Counter-notice	Section 84(1)
Date of the commencement of the term of a lease	Section 112(6)
Determination date	Section 91(5)
Document	Section 112(1)



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<i>Expression</i>	<i>Interpretation provision</i>
Dwelling	Section 112(1)
Existing management contract	Section 91(3)
Flat	Section 112(1)
Landlord	Section 112(3) and (5)
Lease	Section 112(2) to (4)
Letting	Section 112(3)
Long lease	Sections 76 and 77
Manager party	Section 91(2)(a)
No dispute about entitlement	Section 90(3)
Notice of invitation to participate	Section 78
Notice of withdrawal	Section 86(1)
Premises to which this Chapter applies	Section 72 (and Schedule 6)
Qualifying tenant	Sections 75 and 112(4) and (5)
Relevant costs	Section 112(1)
Relevant date	Section 79(1)
Right to manage	Section 71(2)
RTM company	Sections 71(1) and 73
Service charge	Section 112(1)
Tenancy	Section 112(2)
Tenant	Section 112(3) and (5)
Tenant covenant	Section 100(4)
Unit	Section 112(1)

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## CHAPTER 2

### COLLECTIVE ENFRANCHISEMENT BY TENANTS OF FLATS

#### *Introductory*

#### **114 Amendments of right to collective enfranchisement**

This Chapter amends the right to collective enfranchisement which is conferred by Chapter 1 of Part 1 of the 1993 Act.

### *Qualifying rules*

#### **115 Non-residential premises**

In section 4(1) of the 1993 Act (right not to apply in case of premises having non-residential parts with floor area exceeding 10 per cent. of total), for “10 per cent.” substitute “25 per cent.”.

#### **116 Premises including railway track**

In section 4 of the 1993 Act (premises in the case of which right does not apply), insert at the end—

“(5) This Chapter does not apply to premises falling within section 3(1) if the freehold of the premises includes track of an operational railway; and for the purposes of this subsection—

- (a) “track” includes any land or other property comprising the permanent way of a railway (whether or not it is also used for other purposes) and includes any bridge, tunnel, culvert, retaining wall or other structure used for the support of, or otherwise in connection with, track,
- (b) “operational” means not disused, and
- (c) “railway” has the same meaning as in any provision of Part 1 of the Railways Act 1993 (c. 43) for the purposes of which that term is stated to have its wider meaning.”

#### **117 Qualifying leases**

- (1) In section 5(1) of the 1993 Act (which provides that a qualifying tenant is a tenant under a long lease which is at a low rent or for a particularly long term), omit “which is at a low rent or for a particularly long term”.
- (2) In section 69(1)(b) of the 1993 Act (estate management schemes), for “by virtue of the amendments of that Chapter made by paragraph 3 of Schedule 9 to the Housing Act 1996 (c. 52)” substitute “in circumstances in which, but for section 117(1) of the Commonhold and Leasehold Reform Act 2002 and the repeal by that Act of paragraph 3 of Schedule 9 to the Housing Act 1996, they would have been entitled to acquire it by virtue of the amendments of that Chapter made by that paragraph”.

#### **118 Premises with resident landlord**

- (1) Section 10 of the 1993 Act (premises with a resident landlord) is amended as follows.
- (2) For subsection (1) (requirements that premises not be or form part of purpose-built block of flats and that they have been occupied for at least twelve months as only or principal home of owner of freehold or a family member) substitute—
  - “(1) For the purposes of this Chapter any premises falling within section 3(1) are premises with a resident landlord at any time if—
    - (a) the premises are not, and do not form part of, a purpose-built block of flats;
    - (b) the same person has owned the freehold of the premises since before the conversion of the premises into two or more flats or other units; and

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- (c) he, or an adult member of his family, has occupied a flat or other unit contained in the premises as his only or principal home throughout the period of twelve months ending with that time.”

(3) For subsection (4) (premises held on trust) substitute—

“(4) Where the freehold of any premises is held on trust, subsection (1) applies as if—

- (a) the requirement in paragraph (b) were that the same person has had an interest under the trust (whether or not also a trustee) since before the conversion of the premises, and
- (b) paragraph (c) referred to him or an adult member of his family.”

## **119 Proportion of tenants required to participate**

In section 13(2)(b) of the 1993 Act (persons by whom initial notice must be given), omit sub-paragraph (i) (initial notice to be given by at least two-thirds of qualifying tenants of flats contained in premises).

## **120 Abolition of residence condition**

In section 13(2) of the 1993 Act, omit the words following paragraph (b) (which require at least one-half of the qualifying tenants by whom the initial notice is given to satisfy the residence condition).

### *Exercise of right*

## **121 Right exercisable only by RTE company**

- (1) Section 13 of the 1993 Act is amended as follows.
- (2) In paragraph (b) of subsection (2), after “given by” insert “a RTE company which has among its participating members”.
- (3) After that subsection insert—

“(2ZA) But in a case where, at the relevant date, there are only two qualifying tenants of flats contained in the premises, subsection (2)(b) is not satisfied unless both are participating members of the RTE company.”

## **122 RTE companies**

After section 4 of the 1993 Act insert—

### **“4A RTE companies**

- (1) A company is a RTE company in relation to premises if—
  - (a) it is a private company limited by guarantee, and
  - (b) its memorandum of association states that its object, or one of its objects, is the exercise of the right to collective enfranchisement with respect to the premises.

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- (2) But a company is not a RTE company if it is a commonhold association (within the meaning of Part 1 of the Commonhold and Leasehold Reform Act 2002).
- (3) And a company is not a RTE company in relation to premises if another company which is a RTE company in relation to—
  - (a) the premises, or
  - (b) any premises containing or contained in the premises,
 has given a notice under section 13 with respect to the premises, or any premises containing or contained in the premises, and the notice continues in force in accordance with subsection (11) of that section.

#### **4B RTE companies: membership**

- (1) Before the execution of a relevant conveyance to a company which is a RTE company in relation to any premises the following persons are entitled to be members of the company—
  - (a) qualifying tenants of flats contained in the premises, and
  - (b) if the company is also a RTM company which has acquired the right to manage the premises, landlords under leases of the whole or any part of the premises.
- (2) In this section—
  - “relevant conveyance” means a conveyance of the freehold of the premises or of any premises containing or contained in the premises; and
  - “RTM company” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.
- (3) On the execution of a relevant conveyance to the RTE company, any member of the company who is not a participating member ceases to be a member.
- (4) In this Chapter “participating member”, in relation to a RTE company, means a person who is a member by virtue of subsection (1)(a) of this section and who—
  - (a) has given a participation notice to the company before the date when the company gives a notice under section 13 or during the participation period, or
  - (b) is a participating member by virtue of either of the following two subsections.
- (5) A member who is the assignee of a lease by virtue of which a participating member was a qualifying tenant of his flat is a participating member if he has given a participation notice to the company within the period beginning with the date of the assignment and ending 28 days later (or, if earlier, on the execution of a relevant conveyance to the company).
- (6) And if the personal representatives of a participating member are a member, they are a participating member if they have given a participation notice to the company at any time (before the execution of a relevant conveyance to the company).
- (7) In this section “participation notice”, in relation to a member of the company, means a notice stating that he wishes to be a participating member.

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- (8) For the purposes of this section a participation notice given to the company during the period—
- (a) beginning with the date when the company gives a notice under section 13, and
  - (b) ending immediately before a binding contract is entered into in pursuance of the notice under section 13,
- is of no effect unless a copy of the participation notice has been given during that period to the person who (in accordance with section 9) is the reversioner in respect of the premises.
- (9) For the purposes of this section “the participation period” is the period beginning with the date when the company gives a notice under section 13 and ending—
- (a) six months, or such other time as the Secretary of State may by order specify, after that date, or
  - (b) immediately before a binding contract is entered into in pursuance of the notice under section 13,
- whichever is the earlier.
- (10) In this section references to assignment include an assent by personal representatives, and assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage); and references to an assignee shall be construed accordingly.

#### **4C RTE companies: regulations**

- (1) The Secretary of State shall by regulations make provision about the content and form of the memorandum of association and articles of association of RTE companies.
- (2) A RTE company may adopt provisions of the regulations for its memorandum or articles.
- (3) The regulations may include provision which is to have effect for a RTE company whether or not it is adopted by the company.
- (4) A provision of the memorandum or articles of a RTE company has no effect to the extent that it is inconsistent with the regulations.
- (5) The regulations have effect in relation to a memorandum or articles—
  - (a) irrespective of the date of the memorandum or articles, but
  - (b) subject to any transitional provisions of the regulations.
- (6) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTE company—
  - (a) sections 2(7) and 3 (memorandum), and
  - (b) section 8 (articles).”

### **123 Invitation to participate**

- (1) After section 12 of the 1993 Act insert—

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*“The notice of invitation to participate*

**12A Notice by RTE company inviting participation**

- (1) Before making a claim to exercise the right to collective enfranchisement with respect to any premises, a RTE company must give notice to each person who at the time when the notice is given—
  - (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a participating member of the RTE company.
- (2) A notice given under this section (a “notice of invitation to participate”) must—
  - (a) state that the RTE company intends to exercise the right to collective enfranchisement with respect to the premises,
  - (b) state the names of the participating members of the RTE company,
  - (c) explain the rights and obligations of the members of the RTE company with respect to the exercise of the right (including their rights and obligations in relation to meeting the price payable in respect of the freehold, and any other interests to be acquired in pursuance of this Chapter, and associated costs),
  - (d) include an estimate of that price and those costs, and
  - (e) invite the recipients of the notice to become participating members of the RTE company.
- (3) A notice of invitation to participate must either—
  - (a) be accompanied by a copy of the memorandum of association and articles of association of the RTE company, or
  - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTE company.
- (4) A statement under subsection (3)(b) must—
  - (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
  - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (5) Where a notice given to a person includes a statement under subsection (3)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (6) A notice of invitation to participate shall not be invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.”

- (2) In section 13 of the 1993 Act, after subsection (2ZA) (inserted by section 121(3)) insert—

“(2ZB) The initial notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.”

#### **124 Consequential amendments**

Schedule 8 (amendments consequential on sections 121 to 123) has effect.

#### **125 Right of access**

- (1) In subsection (1) of section 17 of the 1993 Act (access by reversioner or other relevant landlord for purposes of valuation), insert at the end “or if it is reasonable in connection with any other matter arising out of the claim to exercise the right to collective enfranchisement”.
- (2) For the sidenote of that section substitute “Rights of access.”

#### *Purchase price*

#### **126 Valuation date**

- (1) In Schedule 6 to the 1993 Act (purchase price payable), for “the valuation date” (in each place) substitute “the relevant date”.
- (2) In section 18(1) of the 1993 Act (duty to disclose existence of agreements affecting premises etc.), for “valuation date for the purposes of Schedule 6” substitute “time when a binding contract is entered into in pursuance of the initial notice”.

#### **127 Freeholder’s share of marriage value**

In paragraph 4(1) of Schedule 6 to the 1993 Act (freeholder’s share of marriage value), for the words after “freeholder’s share of the marriage value is” substitute “50 per cent. of that amount”.

#### **128 Disregard of marriage value in case of very long leases**

- (1) Paragraph 4 of Schedule 6 to the 1993 Act is amended as follows.
- (2) In sub-paragraph (2) (meaning of marriage value), insert at the beginning “Subject to sub-paragraph (2A),”.
- (3) After that sub-paragraph insert—
- “(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.”

### CHAPTER 3

#### NEW LEASES FOR TENANTS OF FLATS

##### *Introductory*

#### **129 Amendments of right to acquire new lease**

This Chapter amends the right of tenants of flats to acquire new leases which is conferred by Chapter 2 of Part 1 of the 1993 Act.

##### *Qualifying rules*

#### **130 Replacement of residence test**

- (1) Section 39 of the 1993 Act (the right) is amended as follows.
- (2) In subsection (2)(a) (requirement that tenant is qualifying tenant of flat on the relevant date), for “is” substitute “has for the last two years been”.
- (3) Omit subsections (2)(b), (2A) and (2B) (requirement that tenant has occupied flat as only or principal home for three years).

#### **131 Qualifying leases**

In section 39(3) of the 1993 Act (which applies for the purposes of Chapter 2 of Part 1 of the 1993 Act the definition of qualifying tenant in Chapter 1 of that Part), omit paragraphs (c) and (d) (leases at a low rent and leases for a particularly long term).

#### **132 Personal representatives**

- (1) In section 39 of the 1993 Act, after subsection (3) insert—

“(3A) On the death of a person who has for the two years before his death been a qualifying tenant of a flat, the right conferred by this Chapter is exercisable, subject to and in accordance with this Chapter, by his personal representatives; and, accordingly, in such a case references in this Chapter to the tenant shall, in so far as the context permits, be to the personal representatives.”
- (2) In section 42 of the 1993 Act (notice by qualifying tenant of claim to exercise right), before subsection (5) insert—

“(4A) A notice under this section may not be given by the personal representatives of a tenant later than two years after the grant of probate or letters of administration.”

#### **133 Crown leases**

In section 94 of the 1993 Act (Crown land), for subsection (2) substitute—

- “(2) Chapter 2 applies as against a landlord under a lease from the Crown if—
- (a) a sub-tenant is seeking a new lease under that Chapter and the landlord, or a superior landlord under a lease from the Crown, is entitled to grant



- such a new lease without the concurrence of the appropriate authority,  
or
- (b) the appropriate authority notifies the landlord that, as regards any Crown interest affected, it will grant or concur in granting such a new lease.”

#### *Purchase price*

### **134 Valuation date**

In Schedule 13 to the 1993 Act (premium and other amounts payable by tenant on grant of new lease), for “the valuation date” (in each place) substitute “the relevant date”.

### **135 Landlord’s share of marriage value**

In paragraph 4(1) of Schedule 13 to the 1993 Act (landlord’s share of marriage value), for the words after “landlord’s share of the marriage value is” substitute “50 per cent. of that amount”.

### **136 Disregard of marriage value in case of very long leases**

- (1) Paragraph 4 of Schedule 13 to the 1993 Act (meaning of marriage value) is amended as follows.
- (2) In sub-paragraph (2), insert at the beginning “Subject to sub-paragraph (2A),”.
- (3) After that sub-paragraph insert—
- “(2A) Where at the relevant date the unexpired term of the tenant’s existing lease exceeds eighty years, the marriage value shall be taken to be nil.”

## **CHAPTER 4**

### **LEASEHOLD HOUSES**

#### *Introductory*

### **137 Amendments of 1967 Act**

This Chapter amends the Leasehold Reform Act 1967 (c. 88) (referred to in this Part as “the 1967 Act”).

#### *Qualifying rules*

### **138 Abolition of residence test**

- (1) In subsection (1) of section 1 of the 1967 Act (tenants of houses entitled to enfranchisement or extension), omit—
- (a) “, occupying the house as his residence,” and
- (b) “, and occupying it as his residence,”.

(2) After that subsection insert—

“(1ZA) Where a house is for the time being let under two or more tenancies, a tenant under any of those tenancies which is superior to that held by any tenant on whom this Part of this Act confers a right does not have any right under this Part of this Act.

(1ZB) Where a flat forming part of a house is let to a person who is a qualifying tenant of the flat for the purposes of Chapter 1 or 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), a tenant of the house does not have any right under this Part of this Act unless, at the relevant time, he has been occupying the house, or any part of it, as his only or main residence (whether or not he has been using it for other purposes)—

- (a) for the last two years; or
- (b) for periods amounting to two years in the last ten years.”

(3) In subsection (3) of that section (exception where house is let to and occupied by tenant with other land or premises to which it is ancillary), for “occupation of it as his residence (but shall apply as if he were not so occupying it)” substitute “being a tenant of it”.

(4) In section 2(4) of the 1967 Act (premises previously let with house), for “occupied and used as mentioned in subsection (3) above” substitute “subject to a tenancy vested in him”.

(5) In section 6(1) of the 1967 Act (rights in case of trusts), for the words from the beginning to “right of the tenancy” substitute “A tenant of a house shall for purposes of this Part of this Act be treated as having been a tenant of it at any earlier time”.

(6) In section 7(3) and (4) of the 1967 Act (rights of members of family succeeding to tenancy on death), for “with him” substitute “in the house”.

### **139 Reduction of qualifying period as tenant etc**

(1) In subsection (1)(b) of section 1 of the 1967 Act (requirement that person claiming entitlement to enfranchisement or extension has been tenant of house for last three years or for periods amounting to three years in last ten), for “three years or for periods amounting to three years in the last ten years” substitute “two years”.

(2) After subsection (1A) of that section insert—

“(1B) This Part of this Act shall not have effect to confer any right on the tenant of a house under a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies unless, at the relevant time, the tenant has been occupying the house, or any part of it, as his only or main residence (whether or not he has been using it for other purposes)—

- (a) for the last two years; or
- (b) for periods amounting to two years in the last ten years.”

(3) In—

- (a) section 9(3)(b) of the 1967 Act (no new notice for three years after withdrawal), and
- (b) section 23(2)(b) of the 1967 Act (agreements excluding or restricting for period not exceeding three years right to give further notice),

for “three years” substitute “twelve months”.

#### **140 Exclusion of certain business tenancies**

After subsection (1ZB) of section 1 of the 1967 Act (inserted by section 138(2)) insert—

“(1ZC) The references in subsection (1)(a) and (b) to a long tenancy do not include a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (business tenancies) applies unless—

- (a) it is granted for a term of years certain exceeding thirty-five years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise,
- (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, unless it is a tenancy by sub-demise from one which is not a tenancy which falls within any of the paragraphs in this subsection,
- (c) it is a tenancy taking effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage), or
- (d) it is a tenancy which—
  - (i) is or has been granted for a term of years certain not exceeding thirty-five years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and
  - (ii) is or has been once or more renewed so as to bring to more than thirty-five years the total of the terms granted (including any interval between the end of a tenancy and the grant of a renewal).

(1ZD) Where this Part of this Act applies as if there were a single tenancy of property comprised in two or more separate tenancies, then, if each of the separate tenancies falls within any of the paragraphs of subsection (1ZC) above, that subsection shall apply as if the single tenancy did so.”

#### **141 Tenancies not at low rent**

(1) Section 1AA of the 1967 Act (additional right to enfranchisement where tenancy of house not at low rent) is amended as follows.

(2) Omit—

- (a) in subsection (1)(b), “falls within subsection (2) below and”, and
- (b) subsection (2) (tenancies for more than 35 years etc.).

(3) In subsection (3) (exceptions)—

- (a) in paragraph (b), for “the coming into force of section 106 of the Housing Act 1996 (c. 52)” substitute “1st April 1997 (the date on which section 106 of the Housing Act 1996 came into force)”, and
- (b) for paragraph (c) substitute—
  - “(c) the tenancy either—
    - (i) was granted on or before that date, or

- (ii) was granted after that date, but on or before the coming into force of section 141 of the Commonhold and Leasehold Reform Act 2002, for a term of years certain not exceeding thirty-five years.”

## 142 Personal representatives

- (1) After section 6 of the 1967 Act insert—

### “6A Rights of personal representatives

- (1) Where a tenant of a house dies and, immediately before his death, he had under this Part of this Act—
- (a) the right to acquire the freehold, or
  - (b) the right to an extended lease,
- the right is exercisable by his personal representatives while the tenancy is vested in them (but subject to subsection (2) below); and, accordingly, in such a case references in this Part of this Act to the tenant shall, in so far as the context permits, be to the personal representatives.
- (2) The personal representatives of a tenant may not give notice of their desire to have the freehold or an extended lease by virtue of subsection (1) above later than two years after the grant of probate or letters of administration.”
- (2) In paragraph 6(2) of Schedule 3 (particulars to be contained in notice), after “6” (in both places) insert “, 6A”.

## 143 Abolition of limits on rights after lease extension

- (1) In section 16 of the 1967 Act (limits on rights after extension of lease), omit—
- (a) subsection (1)(a) (no right for tenant under extended tenancy to acquire freehold after end of original lease), and
  - (b) in subsection (4) (no right to freehold or extended lease in case of tenancy created by sub-demise under extended tenancy), the words “the freehold or”.
- (2) For subsection (1B) of that section (extended tenancy not an assured tenancy or assured agricultural occupancy or a tenancy to which Schedule 10 to the Local Government and Housing Act 1989 (c. 42) applies) substitute—
- “(1B) Schedule 10 to the Local Government and Housing Act 1989 applies to every tenancy extended under section 14 above (whether or not it is for the purposes of that Schedule a long tenancy at a low rent as respects which the qualifying condition is fulfilled).”
- (3) Paragraph (a) of subsection (1) and subsection (2) apply whether the tenancy in question is extended before or after the coming into force of that paragraph or subsection; and paragraph (b) of subsection (1) applies whether the lease by sub-demise in question is created before or after the coming into force of that paragraph.
- (4) In section 9 of the 1967 Act (purchase price), after subsection (1A) insert—
- “(1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—

- (a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and
- (b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph (b) of that subsection applies as if the words “at the end of the tenancy” were omitted.”

#### **144 Exclusion of shared ownership leases**

- (1) Schedule 4A to the 1967 Act (exclusion of certain shared ownership leases) is amended as follows.
- (2) In paragraph 2 (exclusion of certain leases granted by certain public authorities when interest of landlord belongs to authority)—
  - (a) in sub-paragraph (1), after “such a body” insert “, to a registered social landlord”,
  - (b) in sub-paragraph (3)(b), at the end insert “or to a registered social landlord”, and
  - (c) at the end insert—
    - “(5) In this paragraph “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996 (c. 52).”
- (3) In paragraph 3(2)(d) (conditions to be satisfied for exclusion of lease granted by a housing association), omit “assign”.

#### *Purchase price*

#### **145 Tenant’s share of marriage value**

- (1) Section 9 of the 1967 Act (purchase price etc.) is amended as follows.
- (2) In subsection (1C) (purchase price payable where the right to acquire freehold arises by virtue of section 1A, 1AA or 1B), omit paragraph (a) (tenant’s share of marriage value not to exceed one-half).
- (3) After that subsection insert—
  - “(1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it.”

#### **146 Disregard of marriage value in case of very long leases**

In section 9 of the 1967 Act (purchase price etc.), after subsection (1D) (inserted by section 145) insert—

- “(1E) But where at the relevant time the unexpired term of the tenant’s tenancy exceeds eighty years, the marriage value shall be taken to be nil.”

**147 Purchase price for enfranchisement during lease extension**

- (1) In section 9 of the 1967 Act (purchase price on enfranchisement), in subsection (1C) (cases where price is to be determined in accordance with subsection (1A)), after “1B above” insert “, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy,”.
- (2) In section 9A(1) of the 1967 Act (compensation payable in certain cases), after “1B above” insert “or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy”.

*Absent landlords***148 Applications to be to county court**

- (1) Section 27 of the 1967 Act (enfranchisement where landlord cannot be found) is amended as follows.
- (2) In subsection (1)—
  - (a) for “the High Court” (in both places), and
  - (b) for “the Court”,
 substitute “the court”.
- (3) In subsection (2)—
  - (a) for “the High Court” (in each place), and
  - (b) for “the Court” (in both places),
 substitute “the court”.
- (4) In subsection (3)—
  - (a) for “the Supreme Court”, and
  - (b) for “High Court” (in both places),
 substitute “court”.
- (5) In subsection (4), for “High Court” substitute “court”.
- (6) In subsection (6), for “the Supreme Court” substitute “court”.
- (7) In subsection (7)—
  - (a) for “the High Court” (in both places), and
  - (b) for “the Court”,
 substitute “the court”.

**149 Valuation by leasehold valuation tribunal**

- (1) In section 27 of the 1967 Act (enfranchisement where landlord cannot be found), for subsection (5) substitute—
  - “(5) The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of—

- (a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above; and
  - (b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.”
- (2) In section 21(1) of the 1967 Act (jurisdiction of leasehold valuation tribunals), after paragraph (c) insert—
- “(cza) the amount of the appropriate sum to be paid into court under section 27(5);”.

## CHAPTER 5

### OTHER PROVISIONS ABOUT LEASES

#### *Service charges, administration charges etc.*

#### **150 Extending meaning of service charge and management etc**

Schedule 9 (which amends certain provisions about management of, and service charges in respect of, leasehold properties and confers power further to amend certain of those provisions) has effect.

#### **151 Consultation about service charges**

For section 20 of the 1985 Act (limitation of service charges: estimates and consultation) substitute—

##### **“20 Limitation of service charges: consultation requirements**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or

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- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

### **20ZA Consultation requirements: supplementary**

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
- “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
- (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
  - (b) to obtain estimates for proposed works or agreements,



- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## 152 Statements of account

For section 21 of the 1985 Act (request for summary of relevant costs) substitute—

### “21 Regular statements of account

- (1) The landlord must supply to each tenant by whom service charges are payable, in relation to each accounting period, a written statement of account dealing with—
- (a) service charges of the tenant and the tenants of dwellings associated with his dwelling,
  - (b) relevant costs relating to those service charges,
  - (c) the aggregate amount standing to the credit of the tenant and the tenants of those dwellings—
    - (i) at the beginning of the accounting period, and
    - (ii) at the end of the accounting period, and
  - (d) related matters.
- (2) The statement of account in relation to an accounting period must be supplied to each such tenant not later than six months after the end of the accounting period.
- (3) Where the landlord supplies a statement of account to a tenant he must also supply to him—
- (a) a certificate of a qualified accountant that, in the accountant's opinion, the statement of account deals fairly with the matters with which it is required to deal and is sufficiently supported by accounts, receipts and other documents which have been produced to him, and
  - (b) a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (4) The Secretary of State may make regulations prescribing requirements as to the form and content of—
- (a) statements of account,
  - (b) accountants' certificates, and

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- (c) summaries of rights and obligations,  
required to be supplied under this section.
- (5) The Secretary of State may make regulations prescribing exceptions from the requirement to supply an accountant's certificate.
- (6) If the landlord has been notified by a tenant of an address in England and Wales at which he wishes to have supplied to him documents required to be so supplied under this section, the landlord must supply them to him at that address.
- (7) And the landlord is to be taken to have been so notified if notification has been given to—
- (a) an agent of the landlord named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the landlord;
- and where notification is given to such an agent or person he must forward it as soon as may be to the landlord.
- (8) For the purposes of this section a dwelling is associated with another dwelling if the obligations of the tenants of the dwellings under the terms of their leases as regards contributing to relevant costs relate to the same costs.
- (9) In this section “accounting period” means such period—
- (a) beginning with the relevant date, and
  - (b) ending with such date, not later than twelve months after the relevant date,
- as the landlord determines.
- (10) In the case of the first accounting period in relation to any dwellings, the relevant date is the later of—
- (a) the date on which service charges are first payable under a lease of any of them, and
  - (b) the date on which section 152 of the Commonhold and Leasehold Reform Act 2002 comes into force,
- and, in the case of subsequent accounting periods, it is the date immediately following the end of the previous accounting period.
- (11) Regulations under subsection (4) may make different provision for different purposes.
- (12) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **21A Withholding of service charges**

- (1) A tenant may withhold payment of a service charge if—
- (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or
  - (b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section.

- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  - (a) the service charges paid by him in the accounting period to which the document concerned would or does relate, and
  - (b) so much of the aggregate amount required to be dealt with in the statement of account for that accounting period by section 21(1)(c)(i) as stood to his credit.
- (3) An amount may not be withheld under this section—
  - (a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or
  - (b) in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the requirements prescribed by regulations under section 21(4) has been supplied to the tenant by the landlord by way of replacement of the one previously supplied.
- (4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
- (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.”

### **153 Notice to accompany demands for service charges**

After section 21A of the 1985 Act (inserted by section 152) insert—

#### **“21B Notice to accompany demands for service charges**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**154 Inspection etc. of documents**

For section 22 of the 1985 Act (request to inspect documents supporting summary of relevant costs) substitute—

**“22 Inspection etc. of documents**

- (1) A tenant may by notice in writing require the landlord—
  - (a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be dealt with in a statement of account required to be supplied to him under section 21 and for taking copies of or extracts from them, or
  - (b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
- (3) A notice under this section may not be served after the end of the period of six months beginning with the date by which the tenant is required to be supplied with the statement of account under section 21.
- (4) But if—
  - (a) the statement of account is not supplied to the tenant on or before that date, or
  - (b) the statement of account so supplied does not conform exactly or substantially with the requirements prescribed by regulations under section 21(4),
 the six month period mentioned in subsection (3) does not begin until any later date on which the statement of account (conforming exactly or substantially with those requirements) is supplied to him.
- (5) A notice under this section is duly served on the landlord if it is served on—
  - (a) an agent of the landlord named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the landlord;
 and a person on whom such a notice is so served must forward it as soon as may be to the landlord.
- (6) The landlord must comply with a requirement imposed by a notice under this section within the period of twenty-one days beginning with the day on which he receives the notice.
- (7) To the extent that a notice under this section requires the landlord to afford facilities for inspecting documents—
  - (a) he must do so free of charge, but
  - (b) he may treat as part of his costs of management any costs incurred by him in doing so.

- (8) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this section.”

## **155 Liability to pay service charges: jurisdiction**

- (1) After section 27 of the 1985 Act insert—

### **“27A Liability to pay service charges: jurisdiction**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

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- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.”
- (2) In section 38 of the 1985 Act (definitions), at the end of the definitions of “arbitration agreement”, “arbitration agreement” and “arbitral tribunal”, insert “and post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen;”.
- (3) In section 39 of the 1985 Act (index of defined expressions), in the first column, in the entry “arbitration agreement, arbitration agreement and arbitral tribunal”, for “and arbitral tribunal” substitute “, arbitral tribunal and post-dispute arbitration agreement”.

## **156 Service charge contributions to be held in separate account**

- (1) After section 42 of the 1987 Act insert—

### **“42A Service charge contributions to be held in designated account**

- (1) The payee must hold any sums standing to the credit of any trust fund in a designated account at a relevant financial institution.
- (2) An account is a designated account in relation to sums standing to the credit of a trust fund if—
- (a) the relevant financial institution has been notified in writing that sums standing to the credit of the trust fund are to be (or are) held in it, and
  - (b) no other funds are held in the account,
- and the account is an account of a description specified in regulations made by the Secretary of State.
- (3) Any of the contributing tenants, or the sole contributing tenant, may by notice in writing require the payee—
- (a) to afford him reasonable facilities for inspecting documents evidencing that subsection (1) is complied with and for taking copies of or extracts from them, or
  - (b) to take copies of or extracts from any such documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (4) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
- (5) A notice under this section is duly served on the payee if it is served on—
- (a) an agent of the payee named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the payee;
- and a person on whom such a notice is so served must forward it as soon as may be to the payee.

- (6) The payee must comply with a requirement imposed by a notice under this section within the period of twenty-one days beginning with the day on which he receives the notice.
- (7) To the extent that a notice under this section requires the payee to afford facilities for inspecting documents—
  - (a) he must do so free of charge, but
  - (b) he may treat as part of his costs of management any costs incurred by him in doing so.
- (8) The payee may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this section.
- (9) Any of the contributing tenants, or the sole contributing tenant, may withhold payment of a service charge if he has reasonable grounds for believing that the payee has failed to comply with the duty imposed on him by subsection (1); and any provisions of his tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (10) Nothing in this section applies to the payee if the circumstances are such as are specified in regulations made by the Secretary of State.
- (11) In this section—
  - “recognised tenants' association” has the same meaning as in the 1985 Act, and
  - “relevant financial institution” has the meaning given by regulations made by the Secretary of State;and expressions used both in section 42 and this section have the same meaning as in that section.

#### **42B Failure to comply with section 42A**

- (1) If a person fails, without reasonable excuse, to comply with a duty imposed on him by or by virtue of section 42A he commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Where an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in such a capacity, or
  - (b) to be due to any neglect on the part of such an officer or person, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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(5) Proceedings for an offence under this section may be brought by a local housing authority (within the meaning of section 1 of the Housing Act 1985 (c. 68)).”

(2) In section 53(2)(b) of the 1987 Act (regulations subject to negative procedure), insert at the end “or 42A”.

### **157 Service charges: minor and consequential amendments**

Schedule 10 (minor and consequential amendments about service charges) has effect.

### **158 Administration charges**

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

### **159 Charges under estate management schemes**

(1) This section applies where a scheme under—

- (a) section 19 of the 1967 Act (estate management schemes in connection with enfranchisement under that Act),
- (b) Chapter 4 of Part 1 of the 1993 Act (estate management schemes in connection with enfranchisement under the 1967 Act or Chapter 1 of Part 1 of the 1993 Act), or
- (c) section 94(6) of the 1993 Act (corresponding schemes in relation to areas occupied under leases from Crown),

includes provision imposing on persons occupying or interested in property an obligation to make payments (“estate charges”).

(2) A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and “variable estate charge” means an estate charge which is neither—

- (a) specified in the scheme, nor
- (b) calculated in accordance with a formula specified in the scheme.

(3) Any person on whom an obligation to pay an estate charge is imposed by the scheme may apply to a leasehold valuation tribunal for an order varying the scheme in such manner as is specified in the application on the grounds that—

- (a) any estate charge specified in the scheme is unreasonable, or
- (b) any formula specified in the scheme in accordance with which any estate charge is calculated is unreasonable.

(4) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the scheme in such manner as is specified in the order.

(5) The variation specified in the order may be—

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(6) An application may be made to a leasehold valuation tribunal for a determination whether an estate charge is payable by a person and, if it is, as to—

- (a) the person by whom it is payable,



- (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (7) Subsection (6) applies whether or not any payment has been made.
- (8) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of subsection (6) is in addition to any jurisdiction of a court in respect of the matter.
- (9) No application under subsection (6) may be made in respect of a matter which—
- (a) has been agreed or admitted by the person concerned,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which that person is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (10) But the person is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (11) An agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under subsection (6).
- (12) In this section—
- “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen, and
- “arbitration agreement” and “arbitral tribunal” have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

*Managers appointed by leasehold valuation tribunal*

**160 Third parties with management responsibilities**

- (1) The 1987 Act has effect subject to the following amendments.
- (2) In section 22 (notice by tenant before application for appointment of manager is made)
- 
- (a) in subsection (1), for “on the landlord by the tenant” substitute “by the tenant on—
    - (i) the landlord, and
    - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy”,
  - (b) in subsection (2)(a), for “the landlord” substitute “any person on whom the notice is served”,

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- (c) in subsection (2)(b), for “landlord complies with the requirement specified in pursuance of that paragraph” substitute “requirement specified in pursuance of that paragraph is complied with”,
  - (d) in subsection (2)(d), for “the landlord, require the landlord” substitute “any person on whom the notice is served, require him”, and
  - (e) in subsection (3)—
    - (i) after “this section” insert “on a person”, and
    - (ii) for “landlord” substitute “person”.
- (3) In section 23(1) (application to tribunal for appointment of manager), for “landlord having taken the steps that he was required to take in pursuance of that provision” substitute “person required to take steps in pursuance of that paragraph having taken them”.
- (4) In section 24 (appointment of manager by tribunal)—
- (a) in subsection (2), for “the landlord” (in both places) substitute “any relevant person”,
  - (b) after that subsection insert—
 

“(2ZA) In this section “relevant person” means a person—

    - (a) on whom a notice has been served under section 22, or
    - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.”,
  - (c) in subsection (5), for “the landlord” substitute “any relevant person”,
  - (d) in subsection (9A), for “a landlord’s application” substitute “the application of any relevant person”, and
  - (e) in subsection (11), for “section” substitute “Part”.
- (5) In section 29(3), insert at the end “which was made by reason of an act or omission on the part of the landlord.”

## **161 Restriction of resident landlord exception**

In section 21 of the 1987 Act (tenant’s right to apply to tribunal for appointment of manager), after subsection (3) insert—

“(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.”

### *Variation of leases*

## **162 Grounds for application by party to lease**

- (1) Section 35 of the 1987 Act (application by party to lease for variation of lease) is amended as follows.
- (2) In subsection (2) (grounds for application), for paragraph (b) substitute—
  - “(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);”.

- (3) After paragraph (f) of that subsection insert—
- “(g) such other matters as may be prescribed by regulations made by the Secretary of State.”
- (4) After subsection (3) insert—
- “(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.”
- (5) In section 53(2)(b) of the 1987 Act (regulations subject to negative Parliamentary procedure), after “section 20(4)” insert “or 35(2)(g)”.

### **163 Transfer of jurisdiction of court to tribunal**

- (1) Part 4 of the 1987 Act (variation of leases) is amended as follows.
- (2) In section 35 (application by party to lease for variation of lease)—
- (a) in subsection (1), for “the court” substitute “a leasehold valuation tribunal”, and
- (b) in subsection (5), for “Rules of court” substitute “Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002”.
- (3) In section 36(1) (application by respondent for variation of other leases), for “court” substitute “tribunal”.
- (4) In section 37(1) (application by majority of parties for variation of leases), for “the court” substitute “a leasehold valuation tribunal”.
- (5) In section 38 (orders varying leases)—
- (a) in subsections (1) to (5), for “court” (in each place) substitute “tribunal”,
- (b) in subsection (6)—
- (i) for “The court” substitute “A tribunal”, and
- (ii) for “the court” substitute “the tribunal”,
- (c) in subsections (7) to (9), for “The court” substitute “A tribunal”, and
- (d) in subsection (10)—
- (i) for “the court”, in the first place, substitute “a tribunal”, and
- (ii) for “the court”, in the other two places, substitute “the tribunal”.
- (6) In section 39 (applications by third parties for orders varying leases)—
- (a) in subsection (3)(b), for “the court” substitute “a leasehold valuation tribunal”,
- (b) in subsection (4), for “The court” substitute “A tribunal”, and
- (c) in subsection (5)(b), for “court” substitute “tribunal”.
- (7) In section 40(1) (variation of insurance provisions of dwelling other than flat), for “the court” substitute “a leasehold valuation tribunal”.
- (8) In consequence of the preceding provisions, in section 52(2)(a) of the 1987 Act (jurisdiction of county courts), for “, 3 and 4” substitute “and 3”.

### *Insurance*

#### **164 Insurance otherwise than with landlord's insurer**

- (1) This section applies where a long lease of a house requires the tenant to insure the house with an insurer nominated or approved by the landlord (“the landlord’s insurer”).
- (2) The tenant is not required to effect the insurance with the landlord’s insurer if—
  - (a) the house is insured under a policy of insurance issued by an authorised insurer,
  - (b) the policy covers the interests of both the landlord and the tenant,
  - (c) the policy covers all the risks which the lease requires be covered by insurance provided by the landlord’s insurer,
  - (d) the amount of the cover is not less than that which the lease requires to be provided by such insurance, and
  - (e) the tenant satisfies subsection (3).
- (3) To satisfy this subsection the tenant—
  - (a) must have given a notice of cover to the landlord before the end of the period of fourteen days beginning with the relevant date, and
  - (b) if (after that date) he has been requested to do so by a new landlord, must have given a notice of cover to him within the period of fourteen days beginning with the day on which the request was given.
- (4) For the purposes of subsection (3)—
  - (a) if the policy has not been renewed the relevant date is the day on which it took effect and if it has been renewed it is the day from which it was last renewed, and
  - (b) a person is a new landlord on any day if he acquired the interest of the previous landlord under the lease on a disposal made by him during the period of one month ending with that day.
- (5) A notice of cover is a notice specifying—
  - (a) the name of the insurer,
  - (b) the risks covered by the policy,
  - (c) the amount and period of the cover, and
  - (d) such further information as may be prescribed.
- (6) A notice of cover—
  - (a) must be in the prescribed form, and
  - (b) may be sent by post.
- (7) If a notice of cover is sent by post, it may be addressed to the landlord at the address specified in subsection (8).
- (8) That address is—
  - (a) the address last furnished to the tenant as the landlord’s address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or

- (b) if no such address has been so furnished, the address last furnished to the tenant as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
- (9) But the tenant may not give a notice of cover to the landlord at the address specified in subsection (8) if he has been notified by the landlord of a different address in England and Wales at which he wishes to be given any such notice.
- (10) In this section—
- “authorised insurer”, in relation to a policy of insurance, means a person who may carry on in the United Kingdom the business of effecting or carrying out contracts of insurance of the sort provided under the policy without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (c. 8),
- “house” has the same meaning as for the purposes of Part 1 of the 1967 Act,
- “landlord” and “tenant” have the same meanings as in Chapter 1 of this Part,
- “long lease” has the meaning given by sections 76 and 77 of this Act, and
- “prescribed” means prescribed by regulations made by the appropriate national authority.

### **165 Extension of right to challenge landlord's choice of insurer**

- (1) Paragraph 8 of the Schedule to the 1985 Act (right to challenge landlord's nomination of insurer) is amended as follows.
- (2) In sub-paragraphs (1) and (2), after “nominated” insert “or approved”.
- (3) In sub-paragraph (4), after “nominate” (in both places) insert “or approve”.

### *Ground rent*

### **166 Requirement to notify long leaseholders that rent is due**

- (1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.
- (2) The notice must specify—
- the amount of the payment,
  - the date on which the tenant is liable to make it, and
  - if different from that date, the date on which he would have been liable to make it in accordance with the lease,
- and shall contain any such further information as may be prescribed.
- (3) The date on which the tenant is liable to make the payment must not be—
- either less than 30 days or more than 60 days after the day on which the notice is given, or
  - before that on which he would have been liable to make it in accordance with the lease.

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*Status: This is the original version (as it was originally enacted).*

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- (4) If the date on which the tenant is liable to make the payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent have effect accordingly.
- (5) The notice—
- (a) must be in the prescribed form, and
  - (b) may be sent by post.
- (6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).
- (7) In this section “rent” does not include—
- (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
  - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).
- (8) In this section “long lease of a dwelling” does not include—
- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (9) In this section—
- “dwelling” has the same meaning as in the 1985 Act,
- “landlord” and “tenant” have the same meanings as in Chapter 1 of this Part,
- “long lease” has the meaning given by sections 76 and 77 of this Act, and
- “prescribed” means prescribed by regulations made by the appropriate national authority.

### *Forfeiture of leases of dwellings*

#### **167 Failure to pay small amount for short period**

- (1) A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) (“the unpaid amount”) unless the unpaid amount—
- (a) exceeds the prescribed sum, or
  - (b) consists of or includes an amount which has been payable for more than a prescribed period.
- (2) The sum prescribed under subsection (1)(a) must not exceed £500.
- (3) If the unpaid amount includes a default charge, it is to be treated for the purposes of subsection (1)(a) as reduced by the amount of the charge; and for this purpose “default charge” means an administration charge payable in respect of the tenant’s failure to pay any part of the unpaid amount.

- (4) In this section “long lease of a dwelling” does not include—
- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (5) In this section—
- “administration charge” has the same meaning as in Part 1 of Schedule 11,
  - “dwelling” has the same meaning as in the 1985 Act,
  - “landlord” and “tenant” have the same meaning as in Chapter 1 of this Part,
  - “long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share,
  - “prescribed” means prescribed by regulations made by the appropriate national authority, and
  - “service charge” has the meaning given by section 18(1) of the 1985 Act.

## **168 No forfeiture notice before determination of breach**

- (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
- (2) This subsection is satisfied if—
- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
  - (b) the tenant has admitted the breach, or
  - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
- (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
- (5) But a landlord may not make an application under subsection (4) in respect of a matter which—
- (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (b) has been the subject of determination by a court, or
  - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

**169 Section 168: supplementary**

- (1) An agreement by a tenant under a long lease of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,
 of any question which may be the subject of an application under section 168(4).
- (2) For the purposes of section 168 it is finally determined that a breach of a covenant or condition in a lease has occurred—
  - (a) if a decision that it has occurred is not appealed against or otherwise challenged, at the end of the period for bringing an appeal or other challenge, or
  - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3).
- (3) The time referred to in subsection (2)(b) is the time when the appeal or other challenge is disposed of—
  - (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
  - (b) by its being abandoned or otherwise ceasing to have effect.
- (4) In section 168 and this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (5) In section 168 and this section—
 

“arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),

“dwelling” has the same meaning as in the 1985 Act,

“landlord” and “tenant” have the same meaning as in Chapter 1 of this Part, and

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.
- (6) Section 146(7) of the Law of Property Act 1925 (c. 20) applies for the purposes of section 168 and this section.
- (7) Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—
  - (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
  - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).



**170 Forfeiture for failure to pay service charge etc**

- (1) Section 81 of the Housing Act 1996 (c. 52) (restriction on forfeiture for failure to pay service charge) is amended as follows.
- (2) In subsection (1), for the words from “to pay” to the end substitute “by a tenant to pay a service charge or administration charge unless—
  - (a) it is finally determined by (or on appeal from) a leasehold valuation tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
  - (b) the tenant has admitted that it is so payable.”
- (3) For subsection (2) substitute—

“(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.”
- (4) For subsection (3) substitute—

“(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—
  - (a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or
  - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).

(3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—
  - (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
  - (b) by its being abandoned or otherwise ceasing to have effect.”
- (5) After subsection (4) insert—

“(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).”
- (6) In subsection (5), after “this section” insert—
  - (a) “administration charge” has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,
  - (b) “arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,
  - (c) “dwelling” has the same meaning as in the Landlord and Tenant Act 1985 (c. 70), and
  - (d)”.

**171 Power to prescribe additional or different requirements**

- (1) The appropriate national authority may by regulations prescribe requirements which must be met before a right of re-entry or forfeiture may be exercised in relation to a breach of a covenant or condition in a long lease of an unmortgaged dwelling.
- (2) The regulations may specify that the requirements are to be in addition to, or instead of, requirements imposed otherwise than by the regulations.
- (3) In this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (4) For the purposes of this section a dwelling is unmortgaged if it is not subject to a mortgage, charge or lien.
- (5) In this section—
 

“dwelling” has the same meaning as in the 1985 Act, and

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

*Crown application***172 Application to Crown**

- (1) The following provisions apply in relation to Crown land (as in relation to other land)
  - (a) sections 18 to 30B of (and the Schedule to) the 1985 Act (service charges, insurance and managing agents),
  - (b) Part 2 of the 1987 Act (appointment of manager by leasehold valuation tribunal),
  - (c) Part 4 of the 1987 Act (variation of leases),
  - (d) sections 46 to 49 of the 1987 Act (information to be furnished to tenants),
  - (e) Chapter 5 of Part 1 of the 1993 Act (management audit),
  - (f) section 81 of the Housing Act 1996 (c. 52) (restriction on termination of tenancy for failure to pay service charge etc.),
  - (g) section 84 of (and Schedule 4 to) that Act (right to appoint surveyor), and
  - (h) in this Chapter, the provisions relating to any of the provisions within paragraphs (a) to (g), Part 1 of Schedule 11 and sections 164 to 171.
- (2) Land is Crown land if there is or has at any time been an interest or estate in the land—
  - (a) comprised in the Crown Estate,
  - (b) belonging to Her Majesty in right of the Duchy of Lancaster,
  - (c) belonging to the Duchy of Cornwall, or
  - (d) belonging to a government department or held on behalf of Her Majesty for the purposes of a government department.

- (3) No failure by the Crown to perform a duty imposed by or by virtue of any of sections 21 to 23A of, or any of paragraphs 2 to 4A of the Schedule to, the 1985 Act makes the Crown criminally liable; but the High Court may declare any such failure without reasonable excuse to be unlawful.
- (4) Any sum payable under any of the provisions mentioned in subsection (1) by the Chancellor of the Duchy of Lancaster may be raised and paid under section 25 of the Duchy of Lancaster Act 1817 (c. 97) as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy.
- (5) Any sum payable under any such provision by the Duke of Cornwall (or any other possessor for the time being of the Duchy of Cornwall) may be raised and paid under section 8 of the Duchy of Cornwall Management Act 1863 (c. 49) as an expense incurred in permanently improving the possessions of the Duchy.
- (6) In section 56 of the 1987 Act (Crown land)—
  - (a) in subsection (1), for “This Act” substitute “Parts 1 and 3 and sections 42 to 42B (and so much of this Part as relates to those provisions)”, and
  - (b) in subsection (3), for “this Act” substitute “the provisions mentioned in subsection (1)”.

## CHAPTER 6

### LEASEHOLD VALUATION TRIBUNALS

#### 173 Leasehold valuation tribunals

- (1) Any jurisdiction conferred on a leasehold valuation tribunal by or under any enactment is exercisable by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (c. 42).
- (2) When so constituted for exercising any such jurisdiction a rent assessment committee is known as a leasehold valuation tribunal.

#### 174 Procedure

Schedule 12 (leasehold valuation tribunals: procedure) has effect.

#### 175 Appeals

- (1) A party to proceedings before a leasehold valuation tribunal may appeal to the Lands Tribunal from a decision of the leasehold valuation tribunal.
- (2) But the appeal may be made only with the permission of—
  - (a) the leasehold valuation tribunal, or
  - (b) the Lands Tribunal.
- (3) And it must be made within the time specified by rules under section 3(6) of the Lands Tribunal Act 1949 (c. 42).
- (4) On the appeal the Lands Tribunal may exercise any power which was available to the leasehold valuation tribunal.

- (5) And a decision of the Lands Tribunal on the appeal may be enforced in the same way as a decision of the leasehold valuation tribunal.
- (6) The Lands Tribunal may not order a party to the appeal to pay costs incurred by another party in connection with the appeal unless he has, in the opinion of the Lands Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal.
- (7) In such a case the amount he may be ordered to pay shall not exceed the maximum amount which a party to proceedings before a leasehold valuation tribunal may be ordered to pay in the proceedings under or by virtue of paragraph 10(3) of Schedule 12.
- (8) No appeal lies from a decision of a leasehold valuation tribunal to the High Court by virtue of section 11(1) of the Tribunals and Inquiries Act 1992 (c. 53).
- (9) And no case may be stated for the opinion of the High Court in respect of such a decision by virtue of that provision.
- (10) For the purposes of section 3(4) of the Lands Tribunal Act 1949 (which enables a person aggrieved by a decision of the Lands Tribunal to appeal to the Court of Appeal) a leasehold valuation tribunal is not a person aggrieved.

## 176 Consequential amendments

Schedule 13 (minor and consequential amendments about leasehold valuation tribunals) has effect.

## CHAPTER 7

### GENERAL

## 177 Wales

The references to the 1985 Act, the 1987 Act and the 1993 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) are to be treated as referring to those Acts as amended by this Part.

## 178 Orders and regulations

- (1) An order or regulations under any provision of this Part—
  - (a) may include incidental, supplementary, consequential and transitional provision,
  - (b) may make provision generally or only in relation to specified cases, and
  - (c) may make different provision for different purposes.
- (2) Regulations under Schedule 12 may make different provision for different areas.
- (3) Any power to make an order or regulations under this Part is exercisable by statutory instrument.
- (4) Regulations shall not be made by the Secretary of State under section 167 or 171 or paragraph 9(3)(b) or 10(3)(b) of Schedule 12 unless a draft of the instrument

containing them has been laid before and approved by a resolution of each House of Parliament.

- (5) A statutory instrument containing an order or regulations made by the Secretary of State under this Part shall, if not so approved, be subject to annulment in pursuance of a resolution of either House of Parliament.

### **179 Interpretation**

- (1) In this Part “the appropriate national authority” means—

- (a) the Secretary of State (as respects England), and
- (b) the National Assembly for Wales (as respects Wales).

- (2) In this Part—

“the 1967 Act” means the Leasehold Reform Act 1967 (c. 88),  
“the 1985 Act” means the Landlord and Tenant Act 1985 (c. 70),  
“the 1987 Act” means the Landlord and Tenant Act 1987 (c. 31), and  
“the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

## **PART 3**

### **SUPPLEMENTARY**

### **180 Repeals**

Schedule 14 (repeals) has effect.

### **181 Commencement etc**

- (1) Apart from section 104 and sections 177 to 179, the preceding provisions (and the Schedules) come into force in accordance with provision made by order made by the appropriate authority.
- (2) The appropriate authority may by order make any transitional provisions or savings in connection with the coming into force of any provision in accordance with an order under subsection (1).
- (3) The power to make orders under subsections (1) and (2) is exercisable by statutory instrument.
- (4) In this section “the appropriate authority” means—
- (a) in relation to any provision of Part 1 or section 180 and Schedule 14 so far as relating to section 104, the Lord Chancellor, and
  - (b) in relation to any provision of Part 2 or section 180 and Schedule 14 so far as otherwise relating, the Secretary of State (as respects England) and the National Assembly for Wales (as respects Wales).

### **182 Extent**

This Act extends to England and Wales only.

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*Status: This is the original version (as it was originally enacted).*

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**183 Short title**

This Act may be cited as the Commonhold and Leasehold Reform Act 2002.

## SCHEDULES

### SCHEDULE 1

Section 2

#### APPLICATION FOR REGISTRATION: DOCUMENTS

##### *Introduction*

- 1 This Schedule lists the documents which are required by section 2 to accompany an application for the registration of a freehold estate as a freehold estate in commonhold land.

##### *Commonhold association documents*

- 2 The commonhold association's certificate of incorporation under section 13 of the Companies Act 1985 (c. 6).
- 3 Any altered certificate of incorporation issued under section 28 of that Act.
- 4 The memorandum and articles of association of the commonhold association.

##### *Commonhold community statement*

- 5 The commonhold community statement.

##### *Consent*

- 6 (1) Where consent is required under or by virtue of section 3—
- (a) the consent,
  - (b) an order of a court by virtue of section 3(2)(f) dispensing with the requirement for consent, or
  - (c) evidence of deemed consent by virtue of section 3(2)(e).
- (2) In the case of a conditional order under section 3(2)(f), the order must be accompanied by evidence that the condition has been complied with.

##### *Certificate*

- 7 A certificate given by the directors of the commonhold association that—
- (a) the memorandum and articles of association submitted with the application comply with regulations under paragraph 2(1) of Schedule 3,
  - (b) the commonhold community statement submitted with the application satisfies the requirements of this Part,
  - (c) the application satisfies Schedule 2,
  - (d) the commonhold association has not traded, and
  - (e) the commonhold association has not incurred any liability which has not been discharged.

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE 2

Section 4

## LAND WHICH MAY NOT BE COMMONHOLD LAND

*“Flying freehold”*

- 1 (1) Subject to sub-paragraph (2), an application may not be made under section 2 wholly or partly in relation to land above ground level (“raised land”) unless all the land between the ground and the raised land is the subject of the same application.
- (2) An application for the addition of land to a commonhold in accordance with section 41 may be made wholly or partly in relation to raised land if all the land between the ground and the raised land forms part of the commonhold to which the raised land is to be added.

*Agricultural land*

- 2 An application may not be made under section 2 wholly or partly in relation to land if—
- (a) it is agricultural land within the meaning of the Agriculture Act 1947 (c. 48),
  - (b) it is comprised in a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5), or
  - (c) it is comprised in a farm business tenancy for the purposes of the Agricultural Tenancies Act 1995 (c. 8).

*Contingent title*

- 3 (1) An application may not be made under section 2 if an estate in the whole or part of the land to which the application relates is a contingent estate.
- (2) An estate is contingent for the purposes of this paragraph if (and only if)—
- (a) it is liable to revert to or vest in a person other than the present registered proprietor on the occurrence or non-occurrence of a particular event, and
  - (b) the reverter or vesting would occur by operation of law as a result of an enactment listed in sub-paragraph (3).
- (3) The enactments are—
- (a) the School Sites Act 1841 (c. 38) (conveyance for use as school),
  - (b) the Lands Clauses Acts (compulsory purchase),
  - (c) the Literary and Scientific Institutions Act 1854 (c. 112) (sites for institutions), and
  - (d) the Places of Worship Sites Act 1873 (c. 50) (sites for places of worship).
- (4) Regulations may amend sub-paragraph (3) so as to—
- (a) add an enactment to the list, or
  - (b) remove an enactment from the list.



## SCHEDULE 3

Section 34

### COMMONHOLD ASSOCIATION

#### PART 1

#### MEMORANDUM AND ARTICLES OF ASSOCIATION

##### *Introduction*

- 1 In this Schedule—
- (a) “memorandum” means the memorandum of association of a commonhold association, and
  - (b) “articles” means the articles of association of a commonhold association.

##### *Form and content*

- 2 (1) Regulations shall make provision about the form and content of the memorandum and articles.
- (2) A commonhold association may adopt provisions of the regulations for its memorandum or articles.
- (3) The regulations may include provision which is to have effect for a commonhold association whether or not it is adopted under sub-paragraph (2).
- (4) A provision of the memorandum or articles shall have no effect to the extent that it is inconsistent with the regulations.
- (5) Regulations under this paragraph shall have effect in relation to a memorandum or articles—
- (a) irrespective of the date of the memorandum or articles, but
  - (b) subject to any transitional provision of the regulations.

##### *Alteration*

- 3 (1) An alteration of the memorandum or articles of association shall have no effect until the altered version is registered in accordance with this paragraph.
- (2) If the commonhold association makes an application under this sub-paragraph the Registrar shall arrange for an altered memorandum or altered articles to be kept in his custody, and referred to in the register, in place of the unaltered version.
- (3) An application under sub-paragraph (2) must be accompanied by a certificate given by the directors of the commonhold association that the altered memorandum or articles comply with regulations under paragraph 2(1).
- (4) Where the Registrar amends the register on an application under sub-paragraph (2) he shall make any consequential amendments to the register which he thinks appropriate.

*Disapplication of Companies Act 1985*

- 4 (1) The following provisions of the Companies Act 1985 (c. 6) shall not apply to a commonhold association—
- (a) sections 2(7) and 3 (memorandum), and
  - (b) section 8 (articles of association).
- (2) No application may be made under paragraph 3(2) for the registration of a memorandum altered by special resolution in accordance with section 4(1) of the Companies Act 1985 (objects) unless—
- (a) the period during which an application for cancellation of the alteration may be made under section 5(1) of that Act has expired without an application being made,
  - (b) any application made under that section has been withdrawn, or
  - (c) the alteration has been confirmed by the court under that section.

**PART 2**

## MEMBERSHIP

*Pre-commonhold period*

- 5 During the period beginning with incorporation of a commonhold association and ending when land specified in its memorandum becomes commonhold land, the subscribers (or subscriber) to the memorandum shall be the sole members (or member) of the association.

*Transitional period*

- 6 (1) This paragraph applies to a commonhold association during a transitional period.
- (2) The subscribers (or subscriber) to the memorandum shall continue to be members (or the member) of the association.
- (3) A person who for the time being is the developer in respect of all or part of the commonhold is entitled to be entered in the register of members of the association.

*Unit-holders*

- 7 A person is entitled to be entered in the register of members of a commonhold association if he becomes the unit-holder of a commonhold unit in relation to which the association exercises functions—
- (a) on the unit becoming commonhold land by registration with unit-holders under section 9, or
  - (b) on the transfer of the unit.

*Joint unit-holders*

- 8 (1) This paragraph applies where two or more persons become joint unit-holders of a commonhold unit—
- (a) on the unit becoming commonhold land by registration with unit-holders under section 9, or

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- (b) on the transfer of the unit.
- (2) If the joint unit-holders nominate one of themselves for the purpose of this sub-paragraph, he is entitled to be entered in the register of members of the commonhold association which exercises functions in relation to the unit.
- (3) A nomination under sub-paragraph (2) must—
  - (a) be made in writing to the commonhold association, and
  - (b) be received by the association before the end of the prescribed period.
- (4) If no nomination is received by the association before the end of the prescribed period the person whose name appears first in the proprietorship register is on the expiry of that period entitled to be entered in the register of members of the association.
- (5) On the application of a joint unit-holder the court may order that a joint unit-holder is entitled to be entered in the register of members of a commonhold association in place of a person who is or would be entitled to be registered by virtue of sub-paragraph (4).
- (6) If joint unit-holders nominate one of themselves for the purpose of this sub-paragraph, the nominated person is entitled to be entered in the register of members of the commonhold association in place of the person entered by virtue of—
  - (a) sub-paragraph (2),
  - (b) sub-paragraph (5), or
  - (c) this sub-paragraph.

#### *Self-membership*

- 9 A commonhold association may not be a member of itself.

#### *No other members*

- 10 A person may not become a member of a commonhold association otherwise than by virtue of a provision of this Schedule.

#### *Effect of registration*

- 11 A person who is entitled to be entered in the register of members of a commonhold association becomes a member when the company registers him in pursuance of its duty under section 352 of the Companies Act 1985 (c. 6) (duty to maintain register of members).

#### *Termination of membership*

- 12 Where a member of a commonhold association ceases to be a unit-holder or joint unit-holder of a commonhold unit in relation to which the association exercises functions—
  - (a) he shall cease to be a member of the commonhold association, but
  - (b) paragraph (a) does not affect any right or liability already acquired or incurred in respect of a matter relating to a time when he was a unit-holder or joint unit-holder.

- 13 A member of a commonhold association may resign by notice in writing to the association if (and only if) he is a member by virtue of paragraph 5 or 6 of this Schedule (and not also by virtue of any other paragraph).

*Register of members*

- 14 (1) Regulations may make provision about the performance by a commonhold association of its duty under section 352 of the Companies Act 1985 (c. 6) (duty to maintain register of members) where a person—
- (a) becomes entitled to be entered in the register by virtue of paragraphs 5 to 8, or
  - (b) ceases to be a member by virtue of paragraph 12 or on resignation.
- (2) The regulations may in particular require entries in the register to be made within a specified period.
- (3) A period specified under sub-paragraph (2) may be expressed to begin from—
- (a) the date of a notification under section 15(3),
  - (b) the date on which the directors of the commonhold association first become aware of a specified matter, or
  - (c) some other time.
- (4) A requirement by virtue of this paragraph shall be treated as a requirement of section 352 for the purposes of section 352(5) (fines).

*Companies Act 1985*

- 15 (1) Section 22(1) of the Companies Act 1985 (initial members) shall apply to a commonhold association subject to this Schedule.
- (2) Sections 22(2) and 23 of that Act (members: new members and holding company) shall not apply to a commonhold association.

**PART 3**

MISCELLANEOUS

*Name*

- 16 Regulations may provide—
- (a) that the name by which a commonhold association is registered under the Companies Act 1985 must satisfy specified requirements;
  - (b) that the name by which a company other than a commonhold association is registered may not include a specified word or expression.

*Statutory declaration*

- 17 For the purposes of section 12 of the Companies Act 1985 (registration: compliance with Act) as it applies to a commonhold association, a reference to the requirements of that Act shall be treated as including a reference to a provision of or made under this Schedule.

## SCHEDULE 4

Section 58

### DEVELOPMENT RIGHTS

#### *Introductory*

- 1 This Schedule sets out the matters which are development business for the purposes of section 58.

#### *Works*

- 2 The completion or execution of works on—
- (a) a commonhold,
  - (b) land which is or may be added to a commonhold, or
  - (c) land which has been removed from a commonhold.

#### *Marketing*

- 3 (1) Transactions in commonhold units.
- (2) Advertising and other activities designed to promote transactions in commonhold units.

#### *Variation*

- 4 The addition of land to a commonhold.
- 5 The removal of land from a commonhold.
- 6 Amendment of a commonhold community statement (including amendment to redefine the extent of a commonhold unit).

#### *Commonhold association*

- 7 Appointment and removal of directors of a commonhold association.

## SCHEDULE 5

Section 68

### COMMONHOLD: CONSEQUENTIAL AMENDMENTS

#### *Law of Property Act 1922 (c. 16)*

- 1 At the end of paragraph 5 of Schedule 15 to the Law of Property Act 1922 (perpetually renewable leases) (which becomes sub-paragraph (1)) there shall be added—
- “(2) Sub-paragraph (3) applies where a grant—
- (a) relates to commonhold land, and
  - (b) would take effect by virtue of sub-paragraph (1) as a demise for a term of two thousand years or a subdemise for a fixed term.

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- (3) The grant shall be treated as if it purported to be a grant of the term referred to in sub-paragraph (2)(b) (and sections 17 and 18 of the Commonhold and Leasehold Reform Act 2002 (residential and non-residential leases) shall apply accordingly).”

*Law of Property Act 1925 (c. 20)*

- 2 After section 101(1) of the Law of Property Act 1925 (mortgagee’s powers) there shall be added—

“(1A) Subsection (1)(i) is subject to section 21 of the Commonhold and Leasehold Reform Act 2002 (no disposition of part-units)”.

- 3 At the end of section 149 of that Act (90-year term in place of certain determinable terms) there shall be added—

“(7) Subsection (8) applies where a lease, underlease or contract—

- (a) relates to commonhold land, and
- (b) would take effect by virtue of subsection (6) as a lease, underlease or contract of the kind mentioned in that subsection.

- (8) The lease, underlease or contract shall be treated as if it purported to be a lease, underlease or contract of the kind referred to in subsection (7)(b) (and sections 17 and 18 of the Commonhold and Leasehold Reform Act 2002 (residential and non-residential leases) shall apply accordingly).”

*Limitation Act 1980 (c. 58)*

- 4 After section 19 of the Limitation Act 1980 (actions for rent) there shall be inserted—

*“Commonhold*

**19A Actions for breach of commonhold duty**

An action in respect of a right or duty of a kind referred to in section 37(1) of the Commonhold and Leasehold Reform Act 2002 (enforcement) shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

*Housing Act 1985 (c. 68)*

- 5 At the end of section 118 of the Housing Act 1985 (the right to buy) there shall be added—

“(3) For the purposes of this Part, a dwelling-house which is a commonhold unit (within the meaning of the Commonhold and Leasehold Reform Act 2002) shall be treated as a house and not as a flat.”

*Insolvency Act 1986 (c. 45)*

- 6 At the end of section 84 of the Insolvency Act 1986 (voluntary winding-up) there shall be added—

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“(4) This section has effect subject to section 43 of the Commonhold and Leasehold Reform Act 2002.”

*Law of Property (Miscellaneous Provisions) Act 1994 (c. 36)*

- 7 (1) Section 5 of the Law of Property (Miscellaneous Provisions) Act 1994 (discharge of obligations) shall be amended as follows.
- (2) In subsection (1) for the words “or of leasehold land” substitute “of leasehold land or of a commonhold unit”.
- (3) After subsection (3) insert—
- “(3A) If the property is a commonhold unit, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the commonhold community statement that are for the time being imposed on him in his capacity as a unit-holder or as a joint unit-holder.”
- (4) For subsection (4) substitute—
- “(4) In this section—
- (a) “commonhold community statement”, “commonhold unit”, “joint unit-holder” and “unit-holder” have the same meanings as in the Commonhold and Leasehold Reform Act 2002, and
- (b) “mortgage” includes charge, and “mortgagor” shall be construed accordingly.”

*Trusts of Land and Appointment of Trustees Act 1996 (c. 47)*

- 8 At the end of section 7 of the Trusts of Land and Appointment of Trustees Act 1996 (partition by trustees) there shall be added—
- “(6) Subsection (1) is subject to sections 21 (part-unit: interests) and 22 (part-unit: charging) of the Commonhold and Leasehold Reform Act 2002.”

SCHEDULE 6

Section 72

*PREMISES EXCLUDED FROM RIGHT TO MANAGE*

*Buildings with substantial non-residential parts*

- 1 (1) This Chapter does not apply to premises falling within section 72(1) if the internal floor area—
- (a) of any non-residential part, or
- (b) (where there is more than one such part) of those parts (taken together), exceeds 25 per cent. of the internal floor area of the premises (taken as a whole).
- (2) A part of premises is a non-residential part if it is neither—
- (a) occupied, or intended to be occupied, for residential purposes, nor
- (b) comprised in any common parts of the premises.

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- (3) Where in the case of any such premises any part of the premises (such as, for example, a garage, parking space or storage area) is used, or intended for use, in conjunction with a particular dwelling contained in the premises (and accordingly is not comprised in any common parts of the premises), it shall be taken to be occupied, or intended to be occupied, for residential purposes.
- (4) For the purpose of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.

*Buildings with self-contained parts in different ownership*

- 2 Where different persons own the freehold of different parts of premises falling within section 72(1), this Chapter does not apply to the premises if any of those parts is a self-contained part of a building.

*Premises with resident landlord and no more than four units*

- 3 (1) This Chapter does not apply to premises falling within section 72(1) if the premises—
  - (a) have a resident landlord, and
  - (b) do not contain more than four units.
- (2) Premises have a resident landlord if—
  - (a) the premises are not, and do not form part of, a purpose-built block of flats (that is, a building which, as constructed, contained two or more flats),
  - (b) a relevant freeholder, or an adult member of a relevant freeholder’s family, occupies a qualifying flat as his only or principal home, and
  - (c) sub-paragraph (4) or (5) is satisfied.
- (3) A person is a relevant freeholder, in relation to any premises, if he owns the freehold of the whole or any part of the premises.
- (4) This sub-paragraph is satisfied if—
  - (a) the relevant freeholder, or
  - (b) the adult member of his family,
 has throughout the last twelve months occupied the flat as his only or principal home.
- (5) This sub-paragraph is satisfied if—
  - (a) immediately before the date when the relevant freeholder acquired his interest in the premises, the premises were premises with a resident landlord, and
  - (b) he, or an adult member of his family, entered into occupation of the flat during the period of 28 days beginning with that date and has occupied the flat as his only or principal home ever since.
- (6) “Qualifying flat”, in relation to any premises and a relevant freeholder or an adult member of his family, means a flat or other unit used as a dwelling—
  - (a) which is contained in the premises, and
  - (b) the freehold of the whole of which is owned by the relevant freeholder.



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- (7) Where the interest of a relevant freeholder in any premises is held on trust, the references in sub-paragraphs (2), (4) and (5)(b) to a relevant freeholder are to a person having an interest under the trust (whether or not also a trustee).
- (8) A person is an adult member of another’s family if he is—
- (a) the other’s spouse,
  - (b) a son, daughter, son-in-law or daughter-in-law of the other, or of the other’s spouse, who has attained the age of 18, or
  - (c) the father or mother of the other or of the other’s spouse;
- and “son” and “daughter” include stepson and stepdaughter (“son-in-law” and “daughter-in-law” being construed accordingly).

*Premises owned by local housing authority*

- 4 (1) This Chapter does not apply to premises falling within section 72(1) if a local housing authority is the immediate landlord of any of the qualifying tenants of flats contained in the premises.
- (2) “Local housing authority” has the meaning given by section 1 of the Housing Act 1985 (c. 68).

*Premises in relation to which rights previously exercised*

- 5 (1) This Chapter does not apply to premises falling within section 72(1) at any time if—
- (a) the right to manage the premises is at that time exercisable by a RTM company, or
  - (b) that right has been so exercisable but has ceased to be so exercisable less than four years before that time.
- (2) Sub-paragraph (1)(b) does not apply where the right to manage the premises ceased to be exercisable by virtue of section 73(5).
- (3) A leasehold valuation tribunal may, on an application made by a RTM company, determine that sub-paragraph (1)(b) is not to apply in any case if it considers that it would be unreasonable for it to apply in the circumstances of the case.

SCHEDULE 7

Section 102

RIGHT TO MANAGE: STATUTORY PROVISIONS

*Covenants not to assign etc.*

- 1 (1) Section 19 of the Landlord and Tenant Act 1927 (c. 36) (covenants not to assign without approval etc.) has effect with the modifications provided by this paragraph.
- (2) Subsection (1) applies as if—
- (a) the reference to the landlord, and
  - (b) the final reference to the lessor,
- were to the RTM company.

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- (3) Subsection (2) applies as if the reference to the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or neighbouring premises belonging to the landlord were omitted.
- (4) Subsection (3) applies as if—
  - (a) the first and final references to the landlord were to the RTM company, and
  - (b) the reference to the right of the landlord to require payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or neighbouring premises belonging to him were omitted.

#### *Defective premises*

- 2 (1) Section 4 of the Defective Premises Act 1972 (c. 35) (landlord’s duty of care by virtue of obligation or right to repair demised premises) has effect with the modifications provided by this paragraph.
- (2) References to the landlord (apart from the first reference in subsections (1) and (4)) are to the RTM company.
- (3) The reference to the material time is to the acquisition date.

#### *Repairing obligations*

- 3 (1) The obligations imposed on a lessor by virtue of section 11 (repairing obligations in short leases) of the Landlord and Tenant Act 1985 (c. 70) (referred to in this Part as “the 1985 Act”) are, so far as relating to any lease of any flat or other unit contained in the premises, instead obligations of the RTM company.
- (2) The RTM company owes to any person who is in occupation of a flat or other unit contained in the premises otherwise than under a lease the same obligations as would be imposed on it by virtue of section 11 if that person were a lessee under a lease of the flat or other unit.
- (3) But sub-paragraphs (1) and (2) do not apply to an obligation to the extent that it relates to a matter concerning only the flat or other unit concerned.
- (4) The obligations imposed on the RTM company by virtue of sub-paragraph (1) in relation to any lease are owed to the lessor (as well as to the lessee).
- (5) Subsections (3A) to (5) of section 11 have effect with the modifications that are appropriate in consequence of sub-paragraphs (1) to (3).
- (6) The references in subsection (6) of section 11 to the lessor include the RTM company; and a person who is in occupation of a flat or other unit contained in the premises otherwise than under a lease has, in relation to the flat or other unit, the same obligation as that imposed on a lessee by virtue of that subsection.
- (7) The reference to the lessor in section 12(1)(a) of the 1985 Act (restriction on contracting out of section 11) includes the RTM company.

#### *Service charges*

- 4 (1) Sections 18 to 30 of the 1985 Act (service charges) have effect with the modifications provided by this paragraph.

- (2) References to the landlord are to the RTM company.
- (3) References to a tenant of a dwelling include a person who is landlord under a lease of the whole or any part of the premises (so that sums paid by him in pursuance of section 103 of this Act are service charges).
- (4) Section 22(5) applies as if paragraph (a) were omitted and the person referred to in paragraph (b) were a person who receives service charges on behalf of the RTM company.
- (5) Section 26 does not apply.

#### *Right to request information on insurance*

- 5 (1) Section 30A of, and the Schedule to, the 1985 Act (rights of tenants with respect to insurance) have effect with the modifications provided by this paragraph.
  - (2) References to the landlord are to the RTM company.
  - (3) References to a tenant include a person who is landlord under a lease of the whole or any part of the premises and has to make payments under section 103 of this Act.
  - (4) Paragraphs 2(3) and 3(3) of the Schedule apply as if paragraph (a) were omitted and the person referred to in paragraph (b) were a person who receives service charges on behalf of the RTM company.

#### *Managing agents*

- 6 Section 30B of the 1985 Act (recognised tenants' associations to be consulted about landlord's managing agents) has effect as if references to the landlord were to the RTM company (and as if subsection (6) were omitted).

#### *Right of first refusal*

- 7 Where section 5 of the 1987 Act (right of first refusal: requirement that landlord serve offer notice on tenant) requires the landlord to serve an offer notice on the qualifying tenants of the flats contained in the premises, he must serve a copy of the offer notice on the RTM company.

#### *Appointment of manager*

- 8 (1) Part 2 of the 1987 Act (appointment of manager by leasehold valuation tribunal) has effect with the modifications provided by this paragraph.
  - (2) References to the landlord are to the RTM company.
  - (3) References to a tenant of a flat contained in the premises include a person who is landlord under a lease of the whole or any part of the premises.
  - (4) Section 21(3) (exception for premises where landlord is exempt or resident or where premises are functional land of a charity) does not apply.
  - (5) The references in paragraph (a)(i) of subsection (2) of section 24 to any obligation owed by the RTM company to the tenant under his tenancy include any obligations of the RTM company under this Act.

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- (6) And the circumstances in which a leasehold valuation tribunal may make an order under paragraph (b) of that subsection include any in which the RTM company no longer wishes the right to manage the premises to be exercisable by it.
- (7) The power in section 24 to make an order appointing a manager to carry out functions includes a power (in the circumstances specified in subsection (2) of that section) to make an order that the right to manage the premises is to cease to be exercisable by the RTM company.
- (8) And such an order may include provision with respect to incidental and ancillary matters (including, in particular, provision about contracts to which the RTM company is a party and the prosecution of claims in respect of causes of action, whether tortious or contractual, accruing before or after the right to manage ceases to be exercisable).

#### *Right to acquire landlord's interest*

- 9 Part 3 of the 1987 Act (compulsory acquisition by tenants of landlord's interest) does not apply.

#### *Variation of leases*

- 10 Sections 35, 36, 38 and 39 of the 1987 Act (variation of long leases relating to flats) have effect as if references to a party to a long lease (apart from those in section 38(8)) included the RTM company.

#### *Service charges to be held in trust*

- 11 (1) Sections 42 to 42B of the 1987 Act (service charge contributions to be held in trust and in designated account) have effect with the modifications provided by this paragraph.
- (2) References to the payee are to the RTM company.
  - (3) The definition of "tenant" in section 42(1) does not apply.
  - (4) References to a tenant of a dwelling include a person who is landlord under a lease of the whole or any part of the premises.
  - (5) The reference in section 42(2) to sums paid to the payee by the contributing tenants by way of relevant service charges includes payments made to the RTM company under section 94 or 103 of this Act.
  - (6) Section 42A(5) applies as if paragraph (a) were omitted and the person referred to in paragraph (b) were a person who receives service charges on behalf of the RTM company.

#### *Information to be furnished to tenants*

- 12 (1) Sections 46 to 48 of the 1987 Act (information to be furnished to tenants) have effect with the modifications provided by this paragraph.
- (2) References to the landlord include the RTM company.

- (3) References to a tenant include a person who is landlord under a lease of the whole or any part of the premises; and in relation to such a person the reference in section 47(4) to sums payable to the landlord under the terms of the tenancy are to sums paid by him under section 103 of this Act.

*Statutory duties relating to certain covenants*

- 13 (1) The Landlord and Tenant Act 1988 (c. 26) (statutory duties in connection with covenants against assigning etc.) has effect with the modifications provided by this paragraph.
- (2) The reference in section 1(2)(b) to the covenant is to the covenant as it has effect subject to section 98 of this Act.
- (3) References in section 3(2), (4) and (5) to the landlord are to the RTM company.

*Tenants' right to management audit*

- 14 (1) Chapter 5 of Part 1 (tenants' right to management audit by landlord) of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (referred to in this Part as “the 1993 Act”) has effect with the modifications provided by this paragraph.
- (2) References to the landlord (other than the references in section 76(1) and (2) to “the same landlord”) are to the RTM company.
- (3) References to a tenant include a person who is landlord under a lease of the whole or any part of the premises and has to make payments under section 103 of this Act.
- (4) Section 80(5) applies as if the reference to a person who receives rent were to a person who receives service charges.

*Right to appoint surveyor*

- 15 (1) Section 84 of the Housing Act 1996 (c. 52) and Schedule 4 to that Act (apart from paragraph 7) (right of recognised tenants' association to appoint surveyor to advise on matters relating to service charges) have effect as if references to the landlord were to the RTM company.
- (2) Section 84(5) and paragraph 4(5) of Schedule 4 apply as if the reference to a person who receives rent were to a person who receives service charges.

*Administration charges*

- 16 Schedule 11 to this Act has effect as if references to the landlord (or a party to a lease) included the RTM company.

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE 8

Section 124

## ENFRANCHISEMENT BY COMPANY: AMENDMENTS

*Land Compensation Act 1973 (c. 26)*

- 1 (1) Section 12A of the Land Compensation Act 1973 (tenants participating in collective enfranchisement or entitled to individual lease extension) is amended as follows.
- (2) In subsection (2)(b)—
- (a) in sub-paragraph (i), for “participating tenant in relation to” substitute “participating member of a RTE company which is making”, and
  - (b) in sub-paragraph (ii), for the words from “one” to “made” substitute “a member of a RTE company which has made an acquisition”.
- (3) In subsection (4), for “nominee purchaser” substitute “RTE company”.
- (4) In subsection (9), for paragraph (b) substitute—
- “(b) “participating member” and “RTE company” have the same meanings as in Chapter 1 of Part 1 of that Act; and
  - (c) the reference to the making of an acquisition by a RTE company shall be construed in accordance with section 38(2) of that Act.”

*Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

- 2 The 1993 Act has effect subject to the following amendments.
- 3 (1) Section 1 (right to collective enfranchisement) is amended as follows.
- (2) In subsection (1), for the words from “on qualifying tenants” to the end of paragraph (b) substitute “the right to acquire the freehold of premises to which this Chapter applies on the relevant date, at a price determined in accordance with this Chapter, exercisable subject to and in accordance with this Chapter by a company (referred to in this Chapter as a RTE company) of which qualifying tenants of flats contained in the premises are members;”.
- (3) In subsection (2)(a), for the words from “the qualifying tenants” to “have acquired,” substitute “the RTE company by which the right to collective enfranchisement is exercised is entitled, subject to and in accordance with this Chapter, to acquire,”.
- (4) In subsection (5)—
- (a) for “qualifying tenants” substitute “a RTE company”, and
  - (b) for “those tenants are” substitute “the RTE company is”.
- 4 For section 2(1) (acquisition of leasehold interests) substitute—
- “(1) Where the right to collective enfranchisement is exercised by a RTE company in relation to any premises to which this Chapter applies (“the relevant premises”), then, subject to and in accordance with this Chapter—
- (a) there shall be acquired by the RTE company every interest to which this paragraph applies by virtue of subsection (2); and
  - (b) the RTE company shall be entitled to acquire any interest to which this paragraph applies by virtue of subsection (3);
- and any interest which the RTE company so acquires shall be acquired in the manner mentioned in section 1(1).”

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- 5 In section 11(4) (right of qualifying tenant to obtain information about superior interests), for “by the tenant in connection with the making” substitute “in connection with the making by a RTE company”.
- 6 (1) Section 13 (initial notice) is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (e), after “premises” insert “who are participating members of the RTE company”, and
- (b) for paragraph (f) substitute—
- “(f) state the name and registered office of the RTE company;”.
- (3) After subsection (5) insert—
- “(5A) A copy of a notice under this section must be given to each person who at the relevant date is the qualifying tenant of a flat contained in the premises specified under subsection (3)(a)(i).”
- (4) In subsection (11), for “nominee purchaser” substitute “RTE company”.
- (5) In subsection (13), for “contains restrictions on participating in the exercise of the right to collective enfranchisement” substitute “specifies circumstances in which the fact that a qualifying tenant is a member of a RTE company is to be disregarded when considering whether the requirement in subsection (2)(b) is satisfied”.
- 7 (1) Section 17 (access for valuation purposes) is amended as follows.
- (2) In subsection (1), for “nominee purchaser” substitute “RTE company”.
- (3) In subsection (2)—
- (a) for “nominee purchaser” (in both places) substitute “RTE company”, and
- (b) for “his” substitute “its”.
- 8 (1) Section 18 (duty to disclose existence of agreements affecting premises etc.) is amended as follows.
- (2) In subsection (1)—
- (a) for “nominee purchaser”, in the first and last place, substitute “RTE company”, and
- (b) for “tenant”, in the first place, substitute “member”.
- (3) In subsection (2)—
- (a) for “nominee purchaser” (in each place) substitute “RTE company”, and
- (b) for “tenants” substitute “members”.
- 9 (1) Section 20 (right of reversioner to require evidence of tenant’s right to participate) is amended as follows.
- (2) In subsection (1), for “nominee purchaser a notice requiring him, in the case of any person by whom the initial notice was given, to deduce the title of that person” substitute “RTE company a notice requiring it, in the case of any qualifying tenant of a flat contained in the specified premises who was a participating member of the company at the relevant time, to deduce the title of that qualifying tenant”.
- (3) In subsection (2), for “nominee purchaser” substitute “RTE company”.
- (4) In subsection (3)—

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- (a) for “nominee purchaser” (in both places) substitute “RTE company”,
  - (b) for “person” (in each place) substitute “qualifying tenant”, and
  - (c) for “included among the persons who gave the notice” substitute “members of the RTE company”.
- 10 (1) Section 21 (reversioner’s counter notice) is amended as follows.
  - (2) In subsection (1), for “nominee purchaser” substitute “RTE company”.
  - (3) In subsection (2), for “participating tenants were” (in both places) substitute “RTE company was”.
  - (4) In subsection (3), for “nominee purchaser” (in each place) substitute “RTE company”.
  - (5) In subsection (4)—
    - (a) for “nominee purchaser may be required to acquire on behalf of the participating tenants” substitute “RTE company may be required to acquire”, and
    - (b) for “by the nominee purchaser” substitute “by the RTE company”.
  - (6) In subsection (5)—
    - (a) for “nominee purchaser” (in both places) substitute “RTE company”,
    - (b) for “his” substitute “its”, and
    - (c) for “him” substitute “it”.
- 11 (1) Section 22 (proceedings relating to validity of initial notice) is amended as follows.
  - (2) In subsection (1)—
    - (a) in paragraph (a), for “nominee purchaser” substitute “RTE company”, and
    - (b) in paragraph (b), for “nominee purchaser, that the participating tenants were” substitute “RTE company, that it was”.
  - (3) In subsections (2), (3) and (6), for “nominee purchaser” substitute “RTE company”.
- 12 In section 23 (claim liable to be defeated where landlord intends to redevelop), for “nominee purchaser” (in each place) substitute “RTE company”.
- 13 (1) Section 24 (applications where terms in dispute or failure to enter contract) is amended as follows.
  - (2) In subsection (1), for “nominee purchaser” (in both places) substitute “RTE company”.
  - (3) In subsection (2), for “nominee purchaser” substitute “RTE company”.
  - (4) In subsection (3), for “nominee purchaser” (in both places) substitute “RTE company”.
  - (5) In subsection (4)—
    - (a) for “nominee purchaser” (in both places) substitute “RTE company”, and
    - (b) for “him” (in both places) substitute “it”.
  - (6) In subsections (7) and (8), for “nominee purchaser” substitute “RTE company”.
- 14 (1) Section 25 (application where reversioner fails to give counter-notice or further counter-notice) is amended as follows.



- (2) In subsection (1), for—
    - (a) “nominee purchaser” (in each place), and
    - (b) “he”,substitute “RTE company”.
  - (3) In subsection (3), for “participating tenants were” substitute “RTE company was”.
  - (4) In subsections (4) and (5), for “nominee purchaser” substitute “RTE company”.
  - (5) In subsection (6)—
    - (a) for “nominee purchaser” (in both places) substitute “RTE company”, and
    - (b) for “him” (in both places) substitute “it”.
- 15 (1) Section 26 (applications where relevant landlord cannot be found) is amended as follows.
- (2) In subsection (1)—
    - (a) for the words from “not less” to “those premises” substitute “a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement”,
    - (b) for “qualifying tenants in question” substitute “RTE company”, and
    - (c) for “on behalf of those tenants” substitute “by the RTE company”.
  - (3) In subsection (2)—
    - (a) for the words from “not less” to “those premises” substitute “a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement”, and
    - (b) for “qualifying tenants in question” substitute “RTE company”.
  - (4) In subsection (3), for “those tenants” substitute “the RTE company”.
  - (5) In subsection (3A)—
    - (a) for the words from “not less” to “those premises” substitute “a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement”, and
    - (b) for “qualifying tenants in question” substitute “RTE company”.
  - (6) In subsection (4)—
    - (a) for “applicants” substitute “RTE company”, and
    - (b) insert at the end (but not as part of paragraph (b)) “and that the RTE company has given notice of the application to each person who is the qualifying tenant of a flat contained in those premises.”
  - (7) In subsection (5)—
    - (a) for “applicants” (in both places) substitute “RTE company”, and
    - (b) for “their” substitute “its”.
  - (8) In subsection (6), for “applicants” (in each place) substitute “RTE company”.
  - (9) In subsection (9), for “persons making the application on any person who the applicants know or have” substitute “RTE company on any person who it knows or has”.

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- 16 (1) Section 27 (supplementary provisions about vesting orders under section 26(1)) is amended as follows.
- (2) In subsection (1)—
- (a) for “such person or persons as may be appointed for the purpose by the applicants for the order” substitute “the RTE company”,
  - (b) for “that person or those persons” substitute “the RTE company”,
  - (c) for “applicants had” substitute “RTE company had”, and
  - (d) for “their” (in both places) substitute “its”.
- (3) In subsection (3)—
- (a) for “any person or persons” substitute “the RTE company”,
  - (b) for “his or their” substitute “its”, and
  - (c) for “person or persons to whom the conveyance is made” substitute “RTE company”.
- (4) In subsection (6)—
- (a) for “any person or persons” substitute “the RTE company”, and
  - (b) for “applicants for the vesting order under section 26(1), their personal representatives or assigns” substitute “RTE company”.
- (5) In subsection (7)—
- (a) for “any person or persons” substitute “the RTE company”, and
  - (b) for the words from “his or their” to the end substitute “its acquisition of that interest.”
- 17 (1) Section 28 (withdrawal from acquisition) is amended as follows.
- (2) In subsection (1), for “participating tenants” substitute “RTE company”.
- (3) For subsection (2) substitute—
- “(2) A notice of withdrawal must be given to—
- (a) each person who is the qualifying tenant of a flat contained in the specified premises;
  - (b) the reversioner in respect of the specified premises; and
  - (c) every other relevant landlord who has given to the RTE company a notice under paragraph 7(1) or (4) of Schedule 1.”
- (4) In subsection (4), for the words from “participating tenants” to the end of paragraph (b) substitute “RTE company under subsection (1)—
- (a) the company, and
  - (b) (subject to subsection (5)) every person who is, or has at any time been, a participating member of the company.”.
- (5) In subsection (5)—
- (a) in paragraph (a), for “participating” substitute “qualifying”,
  - (b) in paragraph (b), for “tenant in accordance with section 14(4)” substitute “member of the RTE company”, and
  - (c) for “shall be construed in accordance with section 14(10)” substitute “includes an assent by personal representatives, and assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee

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- under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage)”.
- (6) In subsections (6) and (7), for “nominee purchaser” substitute “RTE company”.
- (7) In the sidenote, for “participating tenants” substitute “RTE company”.
- 18 (1) Section 29 (deemed withdrawal of initial notice) is amended as follows.
- (2) After subsection (4) insert—
- “(4A) The initial notice shall be deemed to have been withdrawn if—
- (a) a winding-up order or an administration order is made, or a resolution for voluntary winding up is passed, with respect to the RTE company,
- (b) a receiver or a manager of the RTE company’s undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTE company comprised in or subject to the charge,
- (c) a voluntary arrangement proposed in the case of the RTE company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
- (d) the RTE company’s name is struck off the register under section 652 or 652A of the Companies Act 1985 (c. 6).”
- (3) In subsection (8), for “nominee purchaser is, or would (apart from subsection (7)) be,” substitute “RTE company is”.
- 19 In section 30(5) (service of notice to treat before completion of acquisition), for “nominee purchaser” substitute “RTE company”.
- 20 (1) Section 31 (effect on initial notice of designation or application for designation for inheritance tax purposes) is amended as follows.
- (2) In subsection (5)—
- (a) in paragraph (a), for “nominee purchaser” substitute “RTE company”, and
- (b) in paragraph (b), for the words from “liable” to the end substitute “liable to the RTE company for all reasonable costs incurred in the preparation or giving of the notice or in pursuance of it.”
- (3) In subsection (6), for “nominee purchaser” (in both places) substitute “RTE company”.
- 21 (1) Section 32 (determination of price) is amended as follows.
- (2) In subsection (1)—
- (a) for “nominee purchaser” substitute “RTE company”, and
- (b) for “him” substitute “it”.
- (3) In subsection (5)—
- (a) for “nominee purchaser” substitute “RTE company”,
- (b) for “him” substitute “it”, and
- (c) for “he” substitute “it”.
- 22 (1) Section 33 (costs of enfranchisement) is amended as follows.

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- (2) In subsection (1), for “nominee purchaser” (in both places) substitute “RTE company”.
- (3) In subsection (3)—
- (a) for “nominee purchaser's” substitute “RTE company's”, and
  - (b) for “him” substitute “it”.
- (4) In subsections (4) and (5), for “nominee purchaser” substitute “RTE company”.
- 23 In section 34 (conveyance), for “nominee purchaser” (in each place, including the sidenote) substitute “RTE company”.
- 24 In section 35 (discharge of existing mortgages on transfer), for “nominee purchaser” (in each place, including the sidenote) substitute “RTE company”.
- 25 (1) Section 36 (requirement to grant leases back to former freeholder) is amended as follows.
- (2) In subsection (1)—
- (a) for “him” substitute “it”, and
  - (b) for “nominee purchaser” substitute “RTE company”.
- (3) In subsection (2), for “nominee purchaser” substitute “RTE company”.
- (4) In the sidenote, for “Nominee purchaser” substitute “RTE company”.
- 26 (1) Section 37A (compensation for postponement of termination in connection with ineffective claims) is amended as follows.
- (2) In subsection (1), for “tenants of flats contained in the premises” substitute “a RTE company”.
- (3) In subsection (2), for “person who is a participating tenant” substitute “qualifying tenant who is a participating member of the RTE company”.
- 27 (1) Section 38 (interpretation) is amended as follows.
- (2) In subsection (1), after the definition of “introductory tenancy” insert—
- ““participating member” has the meaning given by section 4B;
- “the notice of invitation to participate” means the notice given under section 12A;”.
- (3) In that subsection, after the definition of “the right to collective enfranchisement” insert—
- ““RTE company” shall be construed in accordance with sections 1(1) and 4A;”.
- (4) In subsection (2), for—
- (a) “the nominee purchaser”, in the first place, substitute “a RTE company”, and
  - (b) for “nominee purchaser, on behalf of the participating tenants,” substitute “RTE company”.
- 28 (1) Section 41 (right of qualifying tenant to obtain information in connection with right to acquire new lease) is amended as follows.

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- (2) In subsection (4), for the words from “address” to the end substitute “registered office of the RTE company by which it was given.”
- (3) In subsection (5), for “nominee purchaser” substitute “RTE company”.
- 29 (1) Section 54 (suspension of tenant’s notice during currency of claim under Chapter 1) is amended as follows.
- (2) In subsection (3), for the words from “address” to the end substitute “registered office of the RTE company by which it was given.”
- (3) In subsection (11), for “nominee purchaser” substitute “RTE company”.
- 30 (1) Section 74 (effect of scheme application on claim to acquire freehold) is amended as follows.
- (2) For “nominee purchaser” (in each place) substitute “RTE company”.
- (3) In subsection (3), for “him” substitute “it”.
- 31 (1) Section 91 (jurisdiction of leasehold valuation tribunals) is amended as follows.
- (2) In subsection (2), for “nominee purchaser” substitute “RTE company”.
- (3) In subsection (11), for ““the nominee purchaser” and “the participating tenants” have” substitute ““RTE company” has”.
- 32 (1) In section 93 (agreements excluding or modifying rights of tenant) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “participate in the making of a claim to exercise” substitute “be, or do any thing as, a member of a RTE company for the purpose of the exercise of”,
- (b) in paragraph (b), for “a participating tenant for the purposes of Chapter 1 or” substitute “, or doing any thing as, a member of a RTE company (within the meaning of Chapter 1) or of such a RTE company doing any thing or in the event of a tenant”, and
- (c) in paragraph (c), for “on the tenant in that event” substitute “in the event of a tenant becoming, or doing any thing as, a member of such a RTE company or of such a RTE company doing any thing”.
- (3) In subsection (4)(a), for “participate in the making of a claim to exercise” substitute “be, or do any thing as, a member of a RTE company for the purpose of the exercise of”.
- 33 (1) Section 93A (powers of trustees in relation to rights) is amended as follows.
- (2) In subsection (1), for “participate in” substitute “become a member (and participating member) of a RTE company for the purpose of”.
- (3) In subsection (4), for “participation in” substitute “becoming a member (or participating member) of a RTE company for the purpose of”.
- 34 In section 97(1) (registration)—
- (a) for “the tenant” substitute “a RTE company, tenant”, and
- (b) for “a tenant” substitute “a RTE company or tenant”.

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- 35 In section 98(2) (power to prescribe procedure), for “nominee purchaser” substitute “RTE company”.
- 36 (1) Schedule 1 (conduct of proceedings by reversioner on behalf of other landlords) is amended as follows.
- (2) For “nominee purchaser” (in each place) substitute “RTE company”.
- (3) In paragraph 6(3), for “participating tenants” substitute “RTE company”.
- 37 (1) Schedule 3 (restrictions on participation, effect of claim on other notices, forfeitures etc.) is amended as follows.
- (2) In paragraphs 1, 2(1), 3(1) and (2) and 4(1), for “not participate in the giving of” substitute “be disregarded when considering whether the requirement in section 13(2)(b) is satisfied in relation to”.
- (3) In paragraph 3(3), for “to participate in the giving of such a notice of claim” substitute “such a notice of claim to be given”.
- (4) In paragraph 4(2)—
- (a) in paragraph (b), for “participating” substitute “qualifying”, and
- (b) for the words from “entitled” to the end substitute “a member of the RTE company.”
- (5) In paragraphs 5 and 6(1), for “participating tenant” substitute “participating member of the RTE company”.
- (6) In paragraph 7—
- (a) in sub-paragraph (1), for “participating tenant” substitute “participating member of the RTE company”,
- (b) in that sub-paragraph, for “tenant is participating in the making of the claim” substitute “member is a participating member”, and
- (c) in sub-paragraph (2), for the words from “entitled” to the end substitute “a member of the RTE company.”
- (7) In sub-paragraph (1) of paragraph 12—
- (a) for “qualifying tenants” substitute “RTE company”, and
- (b) for “them” substitute “it”,
- and in the heading before that paragraph, for “Qualifying tenants” substitute “RTE company”.
- (8) In paragraph 12A(1)—
- (a) for “qualifying tenants” substitute “RTE company”, and
- (b) for “them” substitute “it”.
- (9) In paragraph 13(3), for “qualifying tenants by whom” substitute “RTE company by which”.
- (10) In paragraph 14—
- (a) in sub-paragraph (1), for “any of the qualifying tenants by whom” substitute “a qualifying tenant who was a member of the RTE company by which”, and
- (b) in sub-paragraph (2), for “qualifying tenants by whom” substitute “RTE company by which”.
- (11) In paragraph 15(1), after “required by” insert “or by virtue of”.

(12) For paragraph 16 (and the heading before it) substitute—

*“Effect on initial notice of member’s lack of qualification*

16 Where any of the members of the RTE company by which an initial notice is given was not the qualifying tenant of a flat contained in the premises at the relevant date even though his name was stated in the notice, the notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company at that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises at that date.”

38 In Schedule 4 (information to be furnished by reversioner about exercise of rights under Chapter 2), for “nominee purchaser” (in each place) substitute “RTE company”.

39 (1) Schedule 5 (vesting orders under sections 24 and 25) is amended as follows.

(2) For “nominee purchaser” (in each place) substitute “RTE company”.

(3) In paragraph 4, for “the participating tenants” substitute “its members”.

40 (1) Schedule 6 (purchase price) is amended as follows.

(2) For “nominee purchaser” (in each place, including the heading) substitute “RTE company”.

(3) For “participating tenant” (in each place) substitute “participating member of the RTE company”.

(4) In paragraph 3(1)(c), for “the tenant” substitute “the member”.

(5) In paragraph 4(2)—

(a) for “participating tenants, as” substitute “persons who are participating members of the RTE company immediately before a binding contract is entered into in pursuance of the initial notice, as”, and

(b) for “participating tenants, once” substitute “those participating members, once”.

(6) In paragraph 10(2), for “he” substitute “it”.

41 (1) Schedule 7 (conveyance to nominee purchaser on enfranchisement) is amended as follows.

(2) For “nominee purchaser” (in each place, including the heading) substitute “RTE company”.

(3) In paragraph 4, for “him” (in both places) substitute “it”.

42 (1) Schedule 8 (discharge of mortgages etc: supplementary provisions) is amended as follows.

(2) For “nominee purchaser” (in each place) substitute “RTE company”.

(3) In paragraph 3(1)—

(a) for “any participating tenant” substitute “any member of the RTE company”, and

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- (b) for “a participating tenant” substitute “any of its members”.
- (4) In paragraph 4(3), for “him” (in both places) substitute “it”.
- 43 In Schedule 9 (grants of lease back to former purchaser), for “nominee purchaser” (in each place) substitute “RTE company”.

## SCHEDULE 9

Section 150

### MEANING OF SERVICE CHARGE AND MANAGEMENT

#### *Loans in respect of service charges*

- 1 The Housing Act 1985 (c. 68) has effect subject to the following amendments.
- 2 (1) Section 450A (right to a loan in respect of service charges for repairs in certain cases after exercise of right to buy) is amended as follows.
- (2) In subsection (2), after “repairs” insert “or improvements”.
- (3) In subsection (5)(a), after “repairs” insert “or improvements”.
- 3 In section 450B(1)(b) (power to make loan in respect of service charges for repairs in other cases), after “repairs” insert “or improvements”.
- 4 In section 458(1) (minor definitions for purposes of Part 14 of the Act), insert at the end—
- ““service charge” has the meaning given by section 18(1) of the Landlord and Tenant Act 1985 (c. 70).”
- 5 In section 459 (index of defined expressions for Part 14 of the Act), in the entry relating to “service charge”, for “section 621A” substitute “section 458”.
- 6 In section 621A (meaning of service charge for purposes of the Act), insert at the end—
- “(5) But this section does not apply in relation to Part 14.”

#### *Service charges*

- 7 In section 18(1)(a) of the 1985 Act (meaning of service charge), after “maintenance” insert “, improvements”.

#### *Appointment of manager*

- 8 In section 24(11) of the 1987 Act (appointment of manager by leasehold valuation tribunal: meaning of management), after “maintenance” insert “, improvement”.

#### *Right to acquire landlord’s interest*

- 9 (1) Section 29 of that Act (conditions for making orders for compulsory acquisition by tenants of landlord’s interest) is amended as follows.
- (2) In subsection (2), in paragraph (a), omit “repair, maintenance, insurance or”.



(3) After that subsection insert—

“(2A) The reference in subsection (2) to the management of any premises includes a reference to the repair, maintenance, improvement or insurance of those premises.”

*Tenants' right to management audit*

10 In section 84 of the 1993 Act (interpretation of provisions concerning tenants' right to management audit), in the definition of “management functions”, after “maintenance” insert “, improvement”.

*Codes of management practice*

11 In section 87(8) of that Act (approval by Secretary of State of codes of management practice: meaning of management functions and service charge)—  
(a) in paragraph (a), after “maintenance” insert “, improvement”, and  
(b) in paragraph (c)(i), after “maintenance” insert “, improvements”.

*Right to appoint surveyor*

12 In paragraph 4(2) of Schedule 4 to the Housing Act 1996 (c. 52) (right of surveyor appointed by tenants' association to inspect premises: meaning of management functions), after “maintenance” insert “, improvement”.

*Power to amend certain provisions*

13 An order amending—  
(a) any of the provisions amended by paragraphs 7 to 12, or  
(b) section 27A(3) of the 1985 Act (as inserted by section 155),  
may be made by the appropriate national authority for or in connection with altering the meaning of “service charge”, “management” or “management functions”.

SCHEDULE 10

Section 157

SERVICE CHARGES: MINOR AND CONSEQUENTIAL AMENDMENTS

*Information held by superior landlord*

1 For section 23 of the 1985 Act (information held by superior landlord) substitute—

**“23 Information held by superior landlord**

(1) If a statement of account which the landlord is required to supply under section 21 relates to matters concerning a superior landlord and the landlord is not in possession of the relevant information—

(a) he may by notice in writing require the person who is his landlord to give him the relevant information (and so on, if that person is not himself the superior landlord), and

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- (b) the superior landlord must comply with the requirement within a reasonable time.
- (2) If a notice under section 22 imposes a requirement in relation to documents held by a superior landlord—
  - (a) the landlord shall immediately inform the tenant or secretary of that fact and of the name and address of the superior landlord, and
  - (b) section 22 then applies in relation to the superior landlord (as in relation to the landlord).”

### *Change of landlord*

2 After that section insert—

#### **“23A Effect of change of landlord**

- (1) This section applies where, at a time when a duty imposed on the landlord or a superior landlord by or by virtue of any of sections 21 to 23 remains to be discharged by him, he disposes of the whole or part of his interest as landlord or superior landlord to another person.
- (2) If the landlord or superior landlord is, despite the disposal, still in a position to discharge the duty to any extent, he remains responsible for discharging it to that extent.
- (3) If the other person is in a position to discharge the duty to any extent, he is responsible for discharging it to that extent.
- (4) Where the other person is responsible for discharging the duty to any extent (whether or not the landlord or superior landlord is also responsible for discharging it to that or any other extent)—
  - (a) references to the landlord or superior landlord in sections 21 to 23 are to, or include, the other person so far as is appropriate to reflect his responsibility for discharging the duty to that extent, but
  - (b) in connection with its discharge by the other person, section 22(6) applies as if the reference to the day on which the landlord receives the notice were to the date of the disposal referred to in subsection (1).”

### *Assignment*

3 For section 24 of the 1985 Act substitute—

#### **“24 Effect of assignment**

The assignment of a tenancy does not affect any duty imposed by or by virtue of any of sections 21 to 23A; but a person is not required to comply with more than a reasonable number of requirements imposed by any one person.”

### *Offences*

4 In section 25(1) of the 1985 Act (offences), for “by section 21, 22 or 23” substitute “by or by virtue of any of sections 21 to 23A”.

### *Exceptions*

- 5 In sections 26(1) and 27 of the 1985 Act (exceptions from sections 18 to 25), for “and requests for information about costs)” substitute “, statements of account and inspection etc. of documents)”.

### *Accountants*

- 6 (1) Section 28 of the 1985 Act (meaning of “qualified accountant”) is amended as follows.
- (2) In subsection (1), for “21(6) (certification of summary of information about relevant costs)” substitute “21(3)(a) (certification of statements of account)”.
- (3) In subsection (4)(d), for “any of the costs covered by the summary in question relate” substitute “the statement of account in question relates”.
- (4) In subsection (5A)—
- (a) for “any costs relate” substitute “a statement of account relates”, and
  - (b) for “those costs” substitute “costs covered by the statement of account”.
- (5) In subsection (6), after “landlord is” insert “an emanation of the Crown.”.
- 7 In section 39 of the 1985 Act (defined expressions), in the entry relating to “qualified accountant”, for “21(6)” substitute “21(3)(a)”.

### *Insurance*

- 8 (1) Paragraph 2 of the Schedule to the 1985 Act (request for summary of insurance cover) is amended as follows.
- (2) In sub-paragraph (1), for “require the landlord in writing” substitute “by notice in writing require the landlord”.
- (3) In sub-paragraph (2), for “request may be made” substitute “notice may be served”.
- (4) In sub-paragraph (3)—
- (a) for “request is duly” substitute “notice under this paragraph is duly”, and
  - (b) for “whom a request” substitute “whom such a notice”.
- (5) In sub-paragraph (4), for “one month of the request,” substitute “the period of twenty-one days beginning with the day on which he receives the notice,”.
- (6) In sub-paragraph (6), for “request” substitute “notice”.
- 9 For paragraph 3 of that Schedule (request to inspect insurance policy etc. after obtaining summary of insurance cover) substitute—

#### *“Inspection of insurance policy etc.*

- 3 (1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may by notice in writing require the landlord—
- (a) to afford him reasonable facilities for inspecting any relevant policy or associated documents and for taking copies of or extracts from them, or

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- (b) to take copies of or extracts from any such policy or documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
  - (2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
  - (3) A notice under this paragraph is duly served on the landlord if it is served on—
    - (a) an agent of the landlord named as such in the rent book or similar document, or
    - (b) the person who receives the rent on behalf of the landlord;
 and a person on whom such a notice is so served shall forward it as soon as may be to the landlord.
  - (4) The landlord shall comply with a requirement imposed by a notice under this paragraph within the period of twenty-one days beginning with the day on which he receives the notice.
  - (5) To the extent that a notice under this paragraph requires the landlord to afford facilities for inspecting documents—
    - (a) he shall do so free of charge, but
    - (b) he may treat as part of his costs of management any costs incurred by him in doing so.
  - (6) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this paragraph.
  - (7) In this paragraph—
    - “relevant policy” includes a policy of insurance under which the dwelling was insured for the period of insurance immediately preceding that current when the notice is served (being, in the case of a flat, a policy covering the building containing it), and
    - “associated documents” means accounts, receipts or other documents which provide evidence of payment of any premiums due under a relevant policy in respect of the period of insurance which is current when the notice is served or the period of insurance immediately preceding that period.”
- 10 (1) Paragraph 4 of that Schedule (insurance effected by superior landlord) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “a request is made” substitute “a notice is served”,
  - (b) for “to whom the request is made” substitute “on whom the notice is served”,
  - (c) for “make a written request for the relevant information to the person who is his landlord” substitute “by notice in writing require the person who is his landlord to give him the relevant information”,
  - (d) for “that request” substitute “the notice”, and

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(e) for “secretary’s request” substitute “secretary’s notice”.

(3) In sub-paragraph (2)—

(a) for “request under paragraph 3 relates” substitute “notice under paragraph 3 imposes a requirement relating”, and

(b) for “to whom the request is made” substitute “on whom the notice is served”.

11 After that paragraph insert—

*“Effect of change of landlord*

4A (1) This paragraph applies where, at a time when a duty imposed on the landlord or a superior landlord by virtue of any of paragraphs 2 to 4 remains to be discharged by him, he disposes of the whole or part of his interest as landlord or superior landlord).

(2) If the landlord or superior landlord is, despite the disposal, still in a position to discharge the duty to any extent, he remains responsible for discharging it to that extent.

(3) If the other person is in a position to discharge the duty to any extent, he is responsible for discharging it to that extent.

(4) Where the other person is responsible for discharging the duty to any extent (whether or not the landlord or superior landlord is also responsible for discharging it to that or any other extent)—

(a) references to the landlord or superior landlord in paragraphs 2 to 4 are to, or include, the other person so far as is appropriate to reflect his responsibility for discharging the duty to that extent, but

(b) in connection with its discharge by that person, paragraphs 2(4) and 3(4) apply as if the reference to the day on which the landlord receives the notice were to the date of the disposal referred to in sub-paragraph (1).”

12 In paragraph 5 of that Schedule, for the words from “the validity” onwards substitute “any duty imposed by virtue of any of paragraphs 2 to 4A; but a person is not required to comply with more than a reasonable number of requirements imposed by any one person.”

13 In paragraph 6 of that Schedule, for “paragraph 2, 3 or 4” substitute “any of paragraphs 2 to 4A”; and for the heading before that paragraph substitute “Offence of failure to comply”.

*Service charge contributions: appointment of manager*

14 In section 24(2) of the 1987 Act (grounds for appointment of manager), before paragraph (ac) insert—

“(abb) where the tribunal is satisfied—

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;”.

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*Trust of service charges paid by only one tenant*

- 15 (1) Section 42 of the 1987 Act (service charge contributions of tenants to be held in trust) is amended as follows.
- (2) In subsection (1)—
- (a) after “costs” insert “, or the tenant of a dwelling may be required under the terms of his lease to contribute to costs to which no other tenant of a dwelling may be required to contribute,”,
  - (b) at the end of the definition of “the contributing tenants” insert “and “the sole contributing tenant” means that tenant;”, and
  - (c) in the definition of “the payee”, for “under the terms of their leases” substitute “, or that tenant, under the terms of their leases, or his lease”.
- (3) In subsection (2), after “tenants” insert “, or the sole contributing tenant,”.
- (4) In subsection (3), insert at the end “, or the person who is the sole contributing tenant for the time being.”
- (5) In subsection (4), insert at the end “or the sole contributing tenant shall be treated as so entitled to the residue of any such fund.”
- (6) In subsection (6), for “a contributing tenant” substitute “any of the contributing tenants”.
- (7) In subsection (7), for “If after the termination of any such lease there are no longer any contributing tenants,” substitute “On the termination of the lease of the last of the contributing tenants, or of the lease of the sole contributing tenant,”.
- (8) In subsection (8)—
- (a) for “a contributing tenant” substitute “any of the contributing tenants, or the sole contributing tenant,”, and
  - (b) after “his lease” insert “(whenever it was granted)”.
- (9) In subsection (9)—
- (a) after “so created” insert “, in the case of a lease of any of the contributing tenants,”, and
  - (b) insert at the end “or, in the case of the lease of the sole contributing tenant, before the commencement of paragraph 15 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002.”

*Management audit*

- 16 (1) Section 79 of the 1993 Act (rights exercisable in connection with management audit) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”.
- (3) For subsection (2) substitute—
- “(2) The right conferred on the auditor by this subsection is a right to require the landlord—
- (a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be shown in any statement of account required to be supplied to the qualifying

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- tenants of the constituent dwellings under section 21 of the 1985 Act and for taking copies of or extracts from them, or
- (b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (2A) The right conferred on the auditor by this subsection is a right to require the landlord or any relevant person—
- (a) to afford him reasonable facilities for inspecting any other documents sight of which is reasonably required by him for the purpose of carrying out the audit and for taking copies of or extracts from them, or
- (b) to take copies of or extracts from any such documents and either send them to him or afford him reasonable facilities for collecting them (as the auditor specifies).”
- (4) In subsection (3), for “subsection (2)” substitute “subsections (2) and (2A)”.
- (5) For subsections (5) and (6) substitute—
- “(5) To the extent that a requirement imposed under this section on the landlord or any relevant person requires him to afford facilities for inspecting documents, he shall do so free of charge; but the landlord may treat as part of his costs of management any costs incurred by him in doing so.
- (6) The landlord or a relevant person may make a reasonable charge for doing anything else in compliance with such a requirement.”
- (6) In subsection (8)(a), for “being afforded any such facilities as are mentioned in subsection (2)” substitute “a requirement imposed under subsection (2) or (2A)”.
- 17 In section 80(3) of the 1993 Act (matters to be contained in notice of exercise of right management audit), for paragraph (c) substitute—
- “(c) specify any documents or description of documents in respect of which a requirement is imposed on him under section 79(2) or (2A); and”.
- 18 (1) Section 81 of the 1993 Act (procedure following giving of notice under section 80) is amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) substitute—
- “(a) comply with it so far as it relates to documents within section 79(2);
- (b) either—
- (i) comply with it, or
- (ii) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice,
- so far as it relates to documents within section 79(2A); and”.
- (3) In subsection (3), for the words from “requiring him” to the end substitute “, then within the period of one month beginning with the date of the giving of the notice, he shall either—
- (a) comply with it, or
- (b) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice,

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in the case of every document or description of document specified in the notice.”

- (4) In subsection (5), for “paragraph (a) or (b) of section 79(2)” substitute “section 79(2) or (2A)”.
- 19 In section 82 of the 1993 Act (information held by superior landlord), for subsections (1) and (2) substitute—
- “(1) Where the landlord is given a notice under section 80 imposing on him a requirement relating to any documents which are held by a superior landlord, he shall inform the auditor as soon as may be of that fact and of the name and address of the superior landlord.
- (2) The auditor may then give the superior landlord a notice requiring him to comply with the requirement.”

## SCHEDULE 11

Section 158

### ADMINISTRATION CHARGES

#### PART 1

#### REASONABLENESS OF ADMINISTRATION CHARGES

##### *Meaning of “administration charge”*

- 1 (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.



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- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

*Reasonableness of administration charges*

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
- (a) any administration charge specified in the lease is unreasonable, or
  - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
  - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

*Notice in connection with demands for administration charges*

- 4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

*Liability to pay administration charges*

- 5 (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

*Interpretation*

- 6 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) “Tenant” includes a statutory tenant.
- (3) “Dwelling” and “statutory tenant” (and “landlord” in relation to a statutory tenant) have the same meanings as in the 1985 Act.
- (4) “Post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.
- (5) “Arbitration agreement” and “arbitral tribunal” have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

**PART 2**

## AMENDMENTS OF LANDLORD AND TENANT ACT 1987

- 7 The 1987 Act has effect subject to the following amendments.

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- 8 (1) Section 24 (appointment of manager by leasehold valuation tribunal) is amended as follows.
- (2) In subsection (2), after paragraph (ab) insert—
- “(aba) where the tribunal is satisfied—
- (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;”.
- (3) After subsection (2A) insert—
- “(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.”
- 9 In section 46 (interpretation of provisions concerning information to be furnished to tenants), insert at the end—
- “(3) In this Part “administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.”
- 10 (1) Section 47 (landlord’s name and address to be contained in demands for rent etc.) is amended as follows.
- (2) In subsection (2), after “service charge” insert “or an administration charge”.
- (3) In subsection (3), after “service charges” insert “or (as the case may be) administration charges”.
- 11 (1) Section 48 (notification by landlord of address for service of notices) is amended as follows.
- (2) In subsection (2), for “or service charge” substitute “, service charge or administration charge”.
- (3) In subsection (3)—
- (a) for “or service charge” substitute “, service charge or administration charge”, and
- (b) for “or (as the case may be) service charges” substitute “, service charges or (as the case may be) administration charges”.

## SCHEDULE 12

Section 174

### LEASEHOLD VALUATION TRIBUNALS: PROCEDURE

#### *Procedure regulations*

- 1 The appropriate national authority may make regulations about the procedure of leasehold valuation tribunals (“procedure regulations”).

#### *Applications*

- 2 Procedure regulations may include provision—

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- (a) about the form of applications to leasehold valuation tribunals,
- (b) about the particulars that must be contained in such applications,
- (c) requiring the service of notices of such applications, and
- (d) for securing consistency where numerous applications are or may be brought in respect of the same or substantially the same matters.

### *Transfers*

- 3 (1) Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court—
- (a) may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question, and
  - (b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any remaining proceedings pending the determination of that question by the leasehold valuation tribunal, as it thinks fit.
- (2) When the leasehold valuation tribunal has determined the question, the court may give effect to the determination in an order of the court.
- (3) Rules of court may prescribe the procedure to be followed in a court in connection with or in consequence of a transfer under this paragraph.
- (4) Procedure regulations may prescribe the procedure to be followed in a leasehold valuation tribunal consequent on a transfer under this paragraph.

### *Information*

- 4 (1) A leasehold valuation tribunal may serve a notice requiring any party to proceedings before it to give to the leasehold valuation tribunal any information which the leasehold valuation tribunal may reasonably require.
- (2) The information shall be given to the leasehold valuation tribunal within such period (not being less than 14 days) from the service of the notice as is specified in the notice.
- (3) A person commits an offence if he fails, without reasonable excuse, to comply with a notice served on him under sub-paragraph (1).
- (4) A person guilty of an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Pre-trial reviews*

- 5 (1) Procedure regulations may include provision for the holding of a pre-trial review (on the application of a party to proceedings or on the motion of a leasehold valuation tribunal).
- (2) Procedure regulations may provide for the exercise of the functions of a leasehold valuation tribunal in relation to, or at, a pre-trial review by a single member of the panel provided for in Schedule 10 to the Rent Act 1977 (c. 42) who is qualified to exercise them.
- (3) A member is qualified to exercise the functions specified in sub-paragraph (2) if he was appointed to that panel by the Lord Chancellor.

### *Parties*

- 6 Procedure regulations may include provision enabling persons to be joined as parties to proceedings.

### *Dismissal*

- 7 Procedure regulations may include provision empowering leasehold valuation tribunals to dismiss applications or transferred proceedings, in whole or in part, on the ground that they are—
- (a) frivolous or vexatious, or
  - (b) otherwise an abuse of process.

### *Determination without hearing*

- 8 (1) Procedure regulations may include provision for the determination of applications or transferred proceedings without an oral hearing.
- (2) Procedure regulations may provide for the determinations without an oral hearing by a single member of the panel provided for in Schedule 10 to the Rent Act 1977.

### *Fees*

- 9 (1) Procedure regulations may include provision requiring the payment of fees in respect of an application or transfer of proceedings to, or oral hearing by, a leasehold valuation tribunal in a case under—
- (a) the 1985 Act (service charges and choice of insurers),
  - (b) Part 2 of the 1987 Act (managers),
  - (c) Part 4 of the 1987 Act (variation of leases),
  - (d) section 168(4) of this Act, or
  - (e) Schedule 11 to this Act.
- (2) Procedure regulations may empower a leasehold valuation tribunal to require a party to proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him.
- (3) The fees payable shall be such as are specified in or determined in accordance with procedure regulations; but the fee (or, where fees are payable in respect of both an application or transfer and an oral hearing, the aggregate of the fees) payable by a person in respect of any proceedings shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) Procedure regulations may provide for the reduction or waiver of fees by reference to the financial resources of the party by whom they are to be paid or met.
- (5) If they do so they may apply, subject to such modifications as may be specified in the regulations, any other statutory means-testing regime as it has effect from time to time.

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### *Costs*

- 10 (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

### *Enforcement*

- 11 Procedure regulations may provide for decisions of leasehold valuation tribunals to be enforceable, with the permission of a county court, in the same way as orders of such a court.

## SCHEDULE 13

Section 176

### LEASEHOLD VALUATION TRIBUNALS: AMENDMENTS

#### *Leasehold Reform Act 1967 (c. 88)*

- 1 The 1967 Act has effect subject to the following amendments.
- 2 In section 9 (costs of enfranchisement), after subsection (4) insert—
- “(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.”
- 3 In section 14 (costs of lease extension), after subsection (2) insert—
- “(2A) Subsection (2) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.”
- 4 In section 20 (county court), after subsection (4) insert—
- “(4A) Where the court certifies particulars of delay or default to the Lands Tribunal under subsection (4)(b) above, the Lands Tribunal may make any order as to costs of proceedings before the Lands Tribunal which the court may make in relation to proceedings in the court.”
- 5 In section 21 (leasehold valuation tribunals), after subsection (2) insert—

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“(2A) For the purposes of this Part of this Act a matter is to be treated as determined by (or on appeal from) a leasehold valuation tribunal—

- (a) if the decision on the matter is not appealed against, at the end of the period for bringing an appeal; or
- (b) if that decision is appealed against, at the time when the appeal is disposed of.

(2B) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended; or
- (b) if it is abandoned or otherwise ceases to have effect.”

6 In paragraph 8 of Schedule 2 (county court), after sub-paragraph (1) insert—

“(1A) Where the court certifies particulars of delay or default to the Lands Tribunal under sub-paragraph (1)(b) above, the Lands Tribunal may make any order as to costs of proceedings before the Lands Tribunal which the court may make in relation to proceedings in the court.”

#### *Housing Act 1980 (c. 51)*

7 (1) Section 142 of the Housing Act 1980 (role of leasehold valuation tribunals under 1967 Act) is amended as follows.

(2) In subsection (1), for “rent assessment committee constituted under Schedule 10 to the 1977 Act” substitute “leasehold valuation tribunal”.

(3) In subsection (3), for “Part 2 of that Schedule” substitute “Schedule 22 to this Act”.

#### *Landlord and Tenant Act 1987 (c. 31)*

8 The 1987 Act has effect subject to the following amendments.

9 In section 24(9A) (appointment of manager), for “court” substitute “tribunal”.

10 In section 47(3) (landlord’s name and address to be contained in demands for rent etc.), after “court” insert “or tribunal”.

11 In section 48(3) (notification by landlord of address for service of notices), after “court” insert “or tribunal”.

#### *Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

12 The 1993 Act has effect subject to the following amendments.

13 (1) Section 70 (approval by leasehold valuation tribunal of estate management scheme) is amended as follows.

(2) For subsection (6) substitute—

“(6) Where the application is to be considered in an oral hearing, the tribunal shall afford to any person making representations under subsection (4)(b) about the application an opportunity to appear at the hearing.”

(3) After subsection (10) insert—

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“(10A) Any person who makes representations under subsection (4)(b) about an application for the approval of a scheme may appeal from a decision of the tribunal in proceedings on the application.”

14 In section 88(2) (jurisdiction of leasehold valuation tribunals in cases of Crown enfranchisement), for “rent assessment committee constituted for the purposes of this section” substitute “leasehold valuation tribunal”.

15 In section 91(1) (jurisdiction of leasehold valuation tribunals), for “such a rent assessment committee” substitute “a leasehold valuation tribunal”.

*Housing Act 1996 (c. 52)*

16 In section 81 of the Housing Act 1996 (restriction on termination of tenancy for failure to pay service charge), after subsection (5) insert—

“(5A) Any order of a court to give effect to a determination of a leasehold valuation tribunal shall be treated as a determination by the court for the purposes of this section.”

SCHEDULE 14

Section 180

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Leasehold Reform Act 1967 (c. 88)	<p>In section 1—</p> <p>in subsection (1), the words “, occupying the house as his residence,” and the words “, and occupying it as his residence,”,</p> <p>subsection (2), and</p> <p>in subsection (3)(a), the words “and occupied by”.</p> <p>In section 1AA—</p> <p>in subsection (1)(b), the words “falls within subsection (2) below and”, and subsections (2) and (4).</p> <p>In section 2—</p> <p>in subsection (3), the words “and occupied by” and the words from “and are occupied” to the end, and</p> <p>in subsection (4), the words “or a subletting”.</p> <p>In section 3(3), the words “, except section 1AA,”.</p> <p>In section 6—</p> <p>in subsection (2), the words “in respect of his occupation of the house”,</p> <p>subsection (3), and</p>



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<i>Short title and chapter</i>	<i>Extent of repeal</i>
	in subsection (5), the words “or statutory owners, as the case may be,” the words “or them” and the words “or (3)”.
	In section 7— in subsection (1), the words “while occupying it as his residence”, the words “, and occupying the house as his residence,” and paragraph (b) and the word “and” before it, in subsection (4), the words “while so occupying the house” and the words “occupying in right of the tenancy”, and subsection (6).
	In section 9— in subsection (1), the words “who reside in the house”, in subsection (1A)(a), the words “and, where the tenancy has been extended under this Part of this Act, that the tenancy will terminate on the original term date”, and subsection (1C)(a).
	In section 16— subsection (1)(a), in subsection (2), the words “or occupied”, the words “(a) or” and the words “the freehold or”, in subsection (3), the words “the freehold or” and the proviso, and in subsection (4), the words “the freehold or”.
	Section 21(1A) and (3) to (4A).
	In section 37— in subsection (4), the words “, except section 1AA,”, and in subsection (5), the words from the beginning to “but”.
	In Schedule 3, in paragraph 6, sub-paragraph (1)(d) and, in sub-paragraph (2), the words “and (d)”.
	In Schedule 4A, in paragraph 3(2)(d), the word “assign,”.
Land Compensation Act 1973 (c. 26)	In section 12A(9), the word “and” at the end of paragraph (a).
Housing Act 1980 (c. 51)	In section 142— subsection (2), and

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	in subsection (3), the words from the beginning to “and”.
	In Schedule 21, paragraph 1.
	In Schedule 22— Part 1, and in Part 2, paragraph 8(4) to (6).
Landlord and Tenant Act 1985 (c. 70)	Section 19(2A) to (3). Sections 31A to 31C. In section 39, the entry relating to the expression “flat”. In the Schedule— in the heading before paragraph 2, the words “ <i>Request for</i> ”, in the heading before paragraph 4, the words “ <i>Request relating to</i> ”, in the heading before paragraph 5, the words “ <i>on request</i> ”, and paragraph 8(5).
Housing and Planning Act 1986 (c. 63)	In Schedule 5, paragraph 9(2).
Landlord and Tenant Act 1987 (c. 31)	Section 23(2). Sections 24A and 24B. In section 29(2)(a), the words “repair, maintenance, insurance or”. In section 38, in the sidenote, the words “by the court”. In section 42— in subsection (2), the words “, and any investments representing those sums,”, subsection (5), and in subsection (8), the words “(whether the lease was granted before or after the commencement of this section)”. Section 52A. In section 53(2), the words “, 42(5)” and the words “under section 52A(3) or”. Section 56(2). In Schedule 2, paragraphs 3, 5, 6 and 7.
Local Government and Housing Act 1989 (c. 42)	In Schedule 11, paragraphs 10 and 91.
Tribunals and Inquiries Act 1992 (c. 53)	In Schedule 3, paragraph 13.

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)	<p>In section 2(3), the words “, on behalf of the tenants by whom the right to collective enfranchisement is exercised”.</p> <p>In section 5—</p> <p>    in subsection (1), the words “which is at a low rent or for a particularly long term”, and</p> <p>    in subsection (2)(c), the words “at a low rent or for a particularly long term”.</p> <p>Section 6.</p> <p>In section 7(3), the words “at a low rent”.</p> <p>Section 8.</p> <p>Section 8A.</p> <p>In section 10—</p> <p>    subsection (2),</p> <p>    subsection (3),</p> <p>    subsection (4A), and</p> <p>    in subsection (6), the definition of “qualifying flat”.</p> <p>In section 11(6), the words “by the qualifying tenant”.</p> <p>In section 12—</p> <p>    subsection (1)(a),</p> <p>    subsection (2),</p> <p>    subsection (4), and</p> <p>    subsection (6).</p> <p>In section 13—</p> <p>    in subsection (2), sub-paragraph (i) of paragraph (b) and the words following that paragraph, and</p> <p>    in subsection (3)(e), the words “the following particulars”, the word “namely” and sub-paragraphs (ii) and (iii).</p> <p>Section 14.</p> <p>Section 15.</p> <p>Section 16.</p> <p>In section 18—</p> <p>    in subsection (1), paragraph (b) and the word “or” before it, the words “or shareholding” (in both places) and the words “or established”, and</p> <p>    in subsection (2), the words “or shareholding” and the words “or (b)”.</p>

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In section 28— subsection (3), and in subsection (4), the words “or (3)”.
	In section 29— subsection (5)(a) and (b), and subsection (7).
	In section 33— in subsection (1), the words “, 29(7)”, and subsections (6) and (7).
	In section 37A— subsection (7), and in subsection (8)(a), the words “(whether by persons who are qualifying tenants or not)”.
	In section 38(1), the definitions of “the nominee purchaser” and “the participating tenants”.
	In section 39— in subsection (2), paragraph (b) and the word “and” before it, subsections (2A) and (2B), subsection (3)(c) and (d), and subsections (4A) and (5).
	Section 42(3)(b)(iii) and (iv) and (4).
	In section 45(5), the words “and (b)”.
	Section 62(4).
	Section 75(4) and (5).
	In section 88— in subsection (2)(b), the words “constituted for the purposes of that Part of that Act”, and subsections (3) to (5) and (7).
	In section 91— in subsection (1), the words from the beginning to “this section; and”, subsections (3) to (8), subsection (10), and in subsection (11), the words from “and the reference” to the end.
	In section 93(2)(b)— the words “become a participating tenant for the purposes of Chapter 1 or has”,

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	the words “section 13 or (as the case may be)”, the words “entitlement or”, and the words “(i) or”.
	In section 94— in subsections (3) and (4), the words “which is at a low rent or for a particularly long term”, in subsection (10), the words from “and references in this subsection” to the end, and in subsection (12), the words “which is at a low rent or for a particularly long term” and the words “, 8 and 8A”.
	In section 99(5)(a)— the words “13 or”, and the words “by each of the tenants, or (as the case may be)”.
	In section 101(1), the definition of “rent assessment committee”.
	In Schedule 3— in the heading before paragraph 7, the words “ <i>against participating tenant</i> ”, paragraphs 8 and 9, and in paragraph 10(1), in paragraph (a), the words from “and references” to the end and, in paragraph (b), the words “(whether by persons who are qualifying tenants or not)”.
	In Schedule 5, paragraph 5(2)(a), (b) and (c).
	In Schedule 6, in paragraph 1(1), the definition of “the valuation date”.
	In Schedule 13, in paragraph 1, the definition of “the valuation date”.
Housing Act 1996 (c. 52)	Section 82. Section 83(1) and (3). Section 86(4) and (5). Section 105(3). Sections 111 and 112. Section 119. In Schedule 6, in Part 4, paragraphs 7 and 8. In Schedule 9, paragraphs 2(3) and (7), 3, 4 and 5(2) and (3).

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	In Schedule 10— paragraph 4, and in paragraph 18(2), paragraph (b) and the word “and” before it.
Housing Grants, Construction and Regeneration Act 1996 (c. 53)	In Schedule 1, paragraph 12.
Commonhold and Leasehold Reform Act 2002 (c. 15)	Section 104.

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