

# COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS: PART 1

#### *Qualifying rules*

#### *Section 72: premises to which Chapter applies*

125. *Section 72* provides that the right can be exercised for any detached property or self-contained part property containing two or more flats held by qualifying tenants (as defined by section 75). This can include other property enjoyed by the tenants under the lease, such as garages or gardens, but does not have to. The eligibility of the property is subject to a further requirement that the qualifying tenants hold not less than two-thirds of the flats in the property. These criteria mirror those used for the right of collective enfranchisement under the 1993 Act. Certain properties are specified as not being eligible for the right to manage. These are listed in Schedule 6 – see notes on Schedule 6 below.

#### *Section 73: RTM companies*

126. *Section 73* provides that in order to qualify to exercise the right to manage, a company must be a private company limited by guarantee and must include the acquisition and exercise of the right to manage as one of its objects. However, a company which is also a commonhold association cannot be a RTM company.
127. In order to prevent competing bids for the right to manage being mounted, a company does not qualify if there is already a RTM company for the premises. A RTM company which is used to acquire the freehold of the property by any means (including, but not solely, under the 1993 Act) ceases to enjoy the right to manage upon completion of that acquisition.

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

128. *Section 74* makes provision in respect of the membership and constitution of a RTM company.
129. Any person who is a qualifying tenant of a flat in the premises (as defined in section 75) is entitled to be a member of the RTM company at any time. Any person who is a landlord under a lease of the whole or part of the premises is also entitled to be a member of the company, but only after the time that the company takes over the management of the premises.
130. Regulations will be made about the form and content of the Memorandum and Articles of a RTM company. (These will cover, amongst other matters, the provisions for taking up membership of the company. The regulations will also set out default provisions governing voting rights in the company.) The regulations may over-ride any terms inconsistent with them included in the Memorandum and Articles. They can

*These notes refer to the Commonhold and Leasehold Reform Act 2002 (c.15) which received Royal Assent on 1st May 2002*

also require any compulsory terms to be deemed to be included if the company fails to include them. Certain provisions of the Companies Acts which would otherwise conflict with this provision are disapplied.

***Section 75: Qualifying tenants***

131. *Section 75* specifies which tenants are qualifying tenants for the purposes of acquiring the right to manage. These are effectively any tenant of a flat under a 'long lease' (as defined in sections 76 and 77), subject to the proviso that there can only be one qualifying tenant per flat. Business tenants cannot be qualifying tenants.

***Sections 76 and 77: Long leases***

132. *Section 76 and 77* specify what is a 'long lease' for the purposes of the right to manage. The provisions mirror the relevant existing provisions for the right to collectively enfranchise. A long lease is principally any lease originally granted for a term certain exceeding 21 years, but includes also certain other types of lease regardless of term, including leases of leaseholders whose long leases have expired and who remain as tenants under the provisions of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989. Where the lease is a shared ownership lease, it is only counted as a long lease for the purposes of the right to manage if the leaseholder owns a 100 per cent share of the lease.