

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

# **COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

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## **EXPLANATORY NOTES**

### **SUMMARY**

#### **Part 1 - Commonhold**

#### **Background**

#### **Problem**

4. In England and Wales, there are two ways to own land, freehold and leasehold. Each has its advantages and disadvantages in particular circumstances. Freehold comes closer to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract, or lease.
5. A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another. There are two types of covenant: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it. However, both positive and restrictive covenants apply to leasehold property.
6. The problems with covenants are accentuated in the case of blocks of flats, where each flat will often depend on its neighbour for support and shelter, and the very stability of the building depends on the proper maintenance and repair both of the individual flats and the common parts. This means that, where it is desired to set up a scheme to allow for ownership of interdependent properties and for the management of the common parts and facilities, the scheme must, today, be based on leasehold ownership. There is no satisfactory scheme at present which would allow for freehold ownership in such circumstances.
7. As long term residential leasehold has become more and more widely criticised, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold.