

# COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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## EXPLANATORY NOTES

### SUMMARY

#### Part 2 - Leasehold Reform

##### Summary

##### Background

#### *Chapter 5: Other provisions about leases*

34. This Chapter makes a number of changes to provisions relating to leasehold management under the 1985 Act. It extends the definition of 'service charge' for the purposes of the 1985 Act to include any charge which is required to be paid under the terms of the lease to cover the costs of improvements. The effect of this change is that leaseholders' existing rights in relation to service charges under the 1985 Act (e.g. a requirement of reasonableness and the right to challenge reasonableness at a LVT) are extended to cover improvements. It also includes a power further to extend the definition by secondary legislation.
35. This Chapter extends the jurisdiction of LVTs so that they can determine whether or not leaseholders are liable to pay service charges as well as the reasonableness of such charges.
36. This Chapter makes a number of changes to the existing requirements in the 1985 and 1987 Acts covering the accounting and safeguarding of service charge monies. Revised statements of account will make it easier for leaseholders to see where their money has gone. Service charge funds will have to be held in a separate designated trust account for each property or group of service charge payers. Leaseholders will have a new right to withhold payment of further service charges if key requirements are not met.
37. This Chapter introduces a new concept of 'administration charge' covering charges which are required to be paid under leases for approvals, for the provision of information, as a result of a failure to pay rent or other charges on time, or as a result of a breach of a covenant or condition of a lease. It sets out a requirement that administration charges must be reasonable. It enables leaseholders to challenge the liability to pay such charges, or their reasonableness, at a LVT. It also provides that charges levied by landlords under estate management schemes are to be subject to a test of reasonableness to be determined by the LVT.
38. This Chapter replaces the existing section 20 of the 1985 Act (which provides that landlords must consult leaseholders before carrying out works costing more than a prescribed sum which are recoverable through service charges) with a revised section. It requires landlords to consult before entering into agreements for the provision of works or services where the agreement will last for more than 12 months if the amount payable

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

by any tenant through service charges exceeds an amount prescribed by regulations. If they fail to do so, they will be unable to recover any excess above that amount from leaseholders in relation to such a contract. It provides a power to make regulations exempting agreements of a prescribed description or in prescribed circumstances from this requirement. It also requires landlords to consult before carrying out works if the amount payable by any tenant through service charges exceeds an amount prescribed by regulations. If they fail to do so, they will be unable to recover any amount payable by a leaseholder which exceeded the prescribed amount. It provides a power to make regulations specifying detailed consultation requirements. It also provides that a LVT may dispense with any of the requirements, if the tribunal is satisfied that the landlord acted reasonably. The landlord may also apply to a LVT for a dispensation of the requirement to consult before the works are carried out.

39. This Chapter extends the right to apply to a LVT for the appointment of a new manager under Part 2 of the 1987 Act to leaseholders where the lease provides that management is carried out by a third party rather than the landlord. It also restricts the scope of the exemption for resident landlords.
40. This Chapter extends and clarifies the grounds on which applications may be made to vary a lease under Part 4 of the 1987 Act. It also transfers jurisdiction for handling such applications from the county courts to LVTs.
41. This Chapter provides new rights for leaseholders of houses who are required to insure their property through an insurer nominated or approved by the landlord.
42. This Chapter introduces a new requirement that ground rent is not payable unless it has been demanded by giving the tenant a prescribed notice, and prevents the application of any provisions of a lease relating to late or non-payment (e.g. additional charges) if the rent is paid within 30 days of the demand being issued. It also introduces additional restrictions on the commencement of forfeiture proceedings for breaches of covenants or conditions of a lease. It modifies section 81 of the Housing Act 1996 to prohibit the commencement of forfeiture proceedings, including the issue of a notice under section 146 of the Law of Property Act 1925, in respect of non-payment of service charges or administration charges unless the charge has been agreed or admitted by the tenant, or a court or LVT has determined that it is reasonable and due. It also prohibits the commencement of forfeiture proceedings for other breaches unless a court or LVT has determined that a breach has occurred. There is also a new provision which would prohibit forfeiture proceedings unless the amount outstanding exceeded a prescribed sum or the amount, or any part of it, had been outstanding for more than a prescribed period. There is a power to prescribe the content of a notice which must accompany service and administration charge demands. Furthermore, there is a new power to prescribe additional or different requirements which must be met before the right of re-entry or forfeiture may be exercised.