

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Termination: winding-up by the court

103. Sections 50, 51, 52, 53 and 54 deal with winding-up by the court following a petition to declare the commonhold association insolvent by a creditor. Section 51 makes provision for a successor commonhold association to be set up where the court approves, so that those members of the association who have paid all their liabilities to the creditors of the insolvent association may continue to live in a stable commonhold development.

Section 50: Introduction

104. Section 50 specifies that section 51 applies when a petition to wind up a commonhold association is made to the court and defines the terms ‘insolvent commonhold association’ and ‘successor commonhold association’.

Section 51: Succession order

105. Section 51 provides a mechanism for the continuation of a commonhold development in circumstances in which a proportion of the members of an insolvent association have paid the full extent of their liabilities. As it is essential to have a commonhold association in existence to have the benefits of commonhold, it is necessary to find a way to provide for the continuity of the association if there is to be a continuing element of commonhold following a winding-up on the petition of a creditor. Section 51 enables a court to make an order bringing a successor commonhold association into being whilst dealing with a winding up (requiring the court to make the order unless satisfied that this would not be appropriate) and specifies who may make the application for the successor association and the documentation which must accompany the application.

Section 52: Assets and liabilities

106. Section 52 applies where the court winds-up an association following a petition and puts in place a successor association. It provides that the successor association shall be entitled to be registered as the owner of the common parts and that the insolvent association should, at the same time, cease to be the owner.

Section 53: Transfer of responsibility

107. Section 53 makes provision for the transfer of responsibilities from the insolvent association to the successor association from the time of the winding-up order.

Section 54: Termination of commonhold

108. **Section 54** makes provision for termination of a commonhold where the court has made a winding-up order and has not made a succession order, which will result in the requirements of section 1 not being met so that the land must cease to be commonhold land. The liquidator is required to inform the Registrar that this section applies and to give certain other information, and the Registrar is then required to take such action as will result in the land no longer being registered as commonhold land and also to give effect to the liquidator's determinations.