

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Miscellaneous

Section 57: Multiple site commonholds

111. *Section 57* provides for the possibility of a commonhold association being made up of two or more areas of land which need not be contiguous. However, for that to apply the memorandum and articles of association of the commonhold association must specify that the association is to exercise commonhold functions over that land and a single commonhold community statement must apply to all the land in question. The section also makes provision for applications to register commonhold land coming from two or more people each of whom owns the freehold estate in part of the land to be registered, and gives a regulation making power to facilitate that.

Section 58: Development rights

112. This section and the next are designed to reserve to the developer certain rights to do things which will enable him both to develop and market the units in the development and to develop the common parts, and to react reasonably to commercial pressures.
113. *Section 58(1)* defines a developer as one who makes an application under section 2, and development business as set out in Schedule 4. Broadly, this relates to execution or completion of works, marketing and variation of the extent of the commonhold land. *Subsection (2)* permits the commonhold community statement to contain provisions to facilitate or permit the developer to do development business, and *subsection (3)* provides that those provisions may include a requirement that a unit-holder or the association co-operate with the developer for the appropriate purposes, but that the rights conferred on the developer may be constrained by terms and conditions set down in the commonhold community statement and that there may be provisions about breach of such a term or condition. *Subsection (4)* provides that any provisions for this purpose made under subsection (2) shall be subject to regulations under section 32, and in the case of development business under paragraph 7 of Schedule 4 which relates to the appointment and removal of directors, subject to the memorandum and articles of association of the commonhold association. *Subsection (5)* provides that the rights conferred under subsection (2) may be regulated or restricted by regulations. *Subsection (6)* provides that, should the developer have been granted rights under subsection (2) but subsequently surrenders them, he shall send a notice to the Registrar, who will note the register and inform the commonhold association and the rights will cease to apply from the date of registration.

Section 59: Development rights: succession

114. *Section 59(1) and (2)* provide that, where a developer transfers all or part of his rights in commonhold land to another person during a transitional period (see section 8) his successor in title shall be treated as the developer in relation to the land so transferred once the transfer has taken effect. *Subsection (3)* provides that if such a transfer takes place after the end of a transitional period, or where such a period has not applied, the successor in title shall be treated as the developer only if the transfer specifies that the development rights are part of the rights transferred and again, only after the transfer has taken effect. *Subsection (4)* provides that, other than during a transitional period, no one may have the status of developer and thus development rights unless he is or has at some time been registered owner of two or more units and is still owner of at least one.

Section 60: Compulsory Purchase

115. *Section 60* makes special provisions for dealing with compulsory purchase of units or common parts, or of parts of units or common parts. *Subsection (1)* makes it clear that any land subject to compulsory purchase ceases to be commonhold land, unless (*subsection (2)*) the Registrar is satisfied that the compulsory purchaser wishes it to remain as commonhold land. *Subsection (3)* disappplies the provision of section 21(2) (c), which would otherwise forbid a unit-holder from transferring only part of his unit, thus allowing compulsory purchase of a part-unit where necessary. *Subsection (4)* gives power to make regulations governing transfer of all or part of any commonhold land to a compulsory purchaser, and *subsection (5)* lists a number of matters which such regulations might cover. These matters include a provision at *subsection (5)(f)* which would allow the regulations to disapply or apply with modifications any legislation relating to compulsory purchase as it relates to commonhold land. *Subsection (6)* makes provision to deal with land which remains after compulsory purchase of part only of a commonhold development.

Section 61: Matrimonial rights

116. *Section 61* provides that, where the term ‘tenant’ is used in Part 1 of the Act, it applies to anyone who has matrimonial home rights under the Family Law Act 1996. This says, at section 30(2), that a spouse who is not entitled to a property right in the matrimonial home has ‘(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33; (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.

Section 62: Advice

117. This section makes provision granting the Lord Chancellor, in respect of commonhold law, a power analogous to the powers to provide financial assistance to advice providers given to the Secretary of State by the Housing Act 1996 in respect of leasehold. The Lord Chancellor will also have the power to make like provision in Wales as Part 1 of the Act is not devolved business. *Subsections (1) and (2)* specify that an individual who provides general advice about a residential matter of commonhold law may receive remuneration from the Lord Chancellor on such terms as he judges suitable.