

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Claim to acquire right

Section 78: Notice inviting participation

133. *Section 78* requires a RTM company to serve a notice on all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right. This is known as ‘the notice of invitation to participate’ and must be served before notice claiming the right to manage can be served on the landlord (see section 79). The notice of invitation to participate will have to comply with minimum requirements set out in the Act and any further ones specified in regulations. The notice will have to be either accompanied by a copy of the Memorandum and Articles of Association for the RTM company or include a statement explaining where these documents can be inspected and from where copies can be obtained. Any inaccuracies in the particulars of the notice will not invalidate the notice.

Section 79: Notice of claim to acquire right

134. *Section 79* specifies the procedures to be followed in acquiring the right to manage.
135. *Subsection (1)* provides that a RTM company claims acquisition of the right by giving notice of that claim. This is known as the ‘claim notice’.
136. *Subsection (2)* provides that the claim notice may not be given unless at least fourteen days have passed following the service of any notice of invitation to participate.
137. *Subsections (3), (4) and (5)* provide that a claim notice may only be given if the correct number of qualifying tenants are members of the company. Ordinarily, the notice will be given by qualifying tenants who hold at least half of the flats in the premises. However, where there are only two qualifying tenants in the block, both must be members of the company at the time that the claim notice is served.
138. *Subsections (6) and (7)* provide that the claim notice must be served on anyone, other than a tenant, who is party to a lease of any part of the property and who can be traced at the time the claim notice is to be given. (That would include any landlord and any third party appointed manager under a lease). A claim notice must also be served upon anyone appointed manager of the premises under Part 2 of the 1987 Act. Where no party can be found to serve a claim notice upon, an application will need to be made to a LVT to exercise the right (see section 85).
139. *Subsection (8)* provides that a copy of the claim notice must be given to each qualifying tenant. This will allow those who have already become members to be aware that the company is proceeding to exercise the right, and will allow those who are not members to consider whether to do so in the light of the company proceeding.

140. *Subsection (9)* provides that, where a manager has been appointed under the 1987 Act, a copy of the claim notice must be given to the court or LVT which made the appointment. This will allow arrangements to be put in hand for the handover of management responsibility.

Section 80: Contents of claim notice

141. *Section 80* makes provision in respect of minimum requirements to be contained in the claim notice. These are designed to ensure that the company demonstrates that it qualifies to acquire the right to manage. The company must specify a date, which must be at least a month after the date of the claim notice, by which recipients of that notice are invited to give a counter-notice (see section 84). The company must also specify a date, which must be at least three months after the last day for giving a counter-notice, on which it intends to take over the management of the premises. There is a power to specify further requirements for the notice by secondary legislation.

Section 81: Claim notice: supplementary

142. *Section 81* makes supplementary provisions in respect of the claim notice. It provides that a claim notice is not to be considered invalid merely because of any inaccuracy in the details or form of the notice. (That does not in itself prevent the landlord being able to dispute entitlement to the right to manage - if, for example, the notice incorrectly states that a property is eligible for the right, the landlord would be able to mount a challenge on the basis that the property is not eligible.)
143. Specific provision is made for circumstances where any member of the company at the time that the claim notice is served is not a qualifying tenant for the purposes of the right to manage. Where that occurs, the claim notice would continue to be valid provided that the correct number of qualifying tenants were members of the company at the time the notice was served. (As set out in section 79, that would be qualifying tenants who held at least half of the flats in the premises or, where there are only two qualifying tenants in the block, both of those tenants.)
144. There may only be one claim notice served for an individual block at any given time. Where a notice is served, it is therefore not possible to serve a further notice while the first one remains in force. A claim notice could cease to be in force because, for example, the company withdraws it or because it is determined that the company is not entitled to take over the management of the premises.

Section 82: Right to obtain information

145. *Section 82* provides that the RTM company may require any person to provide it with information reasonably required for the purposes of ascertaining the particulars required to be included in a claim notice (by virtue of section 80 or any regulations made under that section). Any information required by virtue of this right must be provided within 28 days of it being requested.

Section 83: Right of access

146. *Section 83* grants the RTM company and any recipient of a claim notice, or anyone acting on their behalf, a general right of access to any part of the premises if needed in connection with the claim to acquire the right to manage. (For example, access might be required to measure floor area of non-residential parts to ensure that the property is eligible for the right to manage.) The right of access can be exercised at any reasonable time, subject to a requirement to give not less than ten days' notice to the occupier.

Section 84: Counter-notices

147. *Section 84* specifies the procedures governing the serving of counter-notices.

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

148. *Subsection (1)* states that anyone who receives a claim notice may give a notice to the RTM company by the date specified in the claim notice. This is known as a 'counter-notice'.
149. *Subsection (2)* specifies that a counter-notice may only either admit that the RTM company is entitled to acquire the right to manage or state that the company is not entitled to do so. To be effective, a counter-notice to the latter effect must state the grounds on which the company is considered not to comply with the eligibility criteria set out in the Act. The form of counter-notices may be prescribed by regulations.
150. *Subsections (3) and (4)* provide that where a RTM company receives a counter-notice disputing its entitlement to acquire the right to manage, it can apply to a LVT for a determination of its eligibility. Application to the LVT must be made within 2 months of the date of the counter-notice.
151. *Subsection (5)* provides that where a RTM company receives a counter-notice disputing its entitlement to acquire the right to manage, it cannot take over management of the premises unless on an application to a LVT it is finally determined that it is eligible to acquire the right or the parties who disputed the entitlement subsequently agree in writing that the company is entitled.
152. *Subsection (6)* provides that a final determination that a company was not entitled to acquire the right to manage causes the claim notice to cease to have effect.
153. *Subsections (7) and (8)* explain what is meant by a final determination.

Section 85: Landlords etc. not traceable

154. *Section 85* provides that a RTM company may apply to a LVT to acquire the right to manage where no party can be found to serve a claim notice upon. Prior to making such an application, the company must first notify all qualifying tenants of its intention to do so. The LVT may order the company to take further steps to find any of the missing parties, or may make an order providing that the company is entitled to acquire the right to manage. If any of the absent parties is traced prior to the LVT making an order, no further proceedings will be taken regarding the making of the order and the LVT will instead order how the claim should be dealt with.

Section 86: Withdrawal of claim notice

155. *Section 86* makes provision for the withdrawal of a claim notice.

Section 87: Deemed withdrawal

156. *Section 87* sets out the circumstances under which a claim notice is deemed to be withdrawn. This would occur where the RTM company either fails to apply to a LVT following receipt of a counter-notice disputing entitlement to right to manage within the two months allowed, or where such an application is made and subsequently withdrawn. It would also occur where the company is wound up, enters receivership, becomes insolvent or is struck off.

Section 88: Costs: general

157. *Section 88* specifies that any recipient of a claim notice is entitled to recover from the company the reasonable costs incurred in dealing with that notice. Such costs cannot include any costs incurred in proceedings before a LVT unless the tribunal finds that the RTM company is not eligible to acquire the right to manage. Application can be made to a LVT for a ruling on the amount which can be recovered.

Section 89: Costs where claim ceases

158. *Section 89* makes provision for liability for costs where a claim notice ceases to have effect. That could occur, for example, where the notice is withdrawn (under section 86), deemed to be withdrawn (under section 87) or where a LVT determines that a company is not entitled to acquire the right to manage. In such circumstances, both the RTM company and all persons who are or have been members of the company (other than people who have assigned their lease to someone who has then become a member of the company) are liable for the costs incurred up to that point of all parties who received the claim notice. Liability is placed upon the members as well as the company in order to avoid the company being deliberately wound up at this stage as a means of avoiding the payment of costs.