

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

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Exercising the right

Section 95: Introductory

171. *Section 95* states that sections 96 to 103 apply while the RTM company is responsible for the management of the premises.

Section 96: Management functions under leases

172. *Section 96* sets out the functions, duties and responsibilities taken on by the RTM company by virtue of acquiring the right to manage.
173. *Subsections (2) to (4)* provide that where a landlord, or a third party, is obliged to carry out any of the management functions under any lease of the premises, those functions become functions of the company.
174. *Subsections (5) and (6)* define the management functions to be taken on by the company. They include matters for which the company is to be responsible and matters for which the company is not to be responsible. In particular, the company is not to be responsible for the management of any unit which is not held by a qualifying tenant (e.g. a commercial unit or a flat of a renting tenant). The company will, however, be responsible to all parties for the management of the common parts and the fabric of the building. The company is also not to be entitled to take any forfeiture action.
175. *Subsection (7)* provides a power to further specify by order what is or is not to be a management function of the RTM company.

Section 97: Management functions: supplementary

176. *Section 97* makes further provision in respect of the management functions of the RTM company.
177. *Subsection (1)* provides that any obligation owed by the company to any tenant by virtue of taking on the management functions is also an obligation to any landlord.
178. *Subsections (2) and (3)* provide that any landlord of any part of the premises, any third party to a lease or anyone appointed manager under the 1987 Act is not entitled to carry out any of the management functions taken on by the RTM company without the company's agreement. That does not, however, prevent any party insuring the premises at his own expense.
179. *Subsections (4) and (5)* provide that any function or obligation owed by a tenant to a landlord or to a third party under a lease will instead be owed to the RTM company if it relates to any of the management functions taken on by the company. (For example,

where a tenant is obliged under a lease to meet the management costs incurred by the landlord, he or she will instead be required to meet the costs incurred by the RTM company.) This does not, however, prevent the tenant still having to pay any management costs incurred prior to the company taking on the management functions.

Section 98: Functions relating to approvals

180. *Section 98* specifies the procedure to be followed under the right to manage where an approval (including a consent or a licence) is required under a lease.
181. *Subsections (2) and (3)* provide that where a tenant is required to seek approval under a lease, the functions of the landlord, or of a third party, in granting approvals become functions of the company. This only applies to residential long leases.
182. *Subsection (4)* provides that the company must not grant approval without having given 30 days' written notice to the landlord in respect of approvals for specified matters, and 14 days' written notice in all other cases.
183. *Subsection (5)* provides for regulations to specify other matters for which the landlord is to be given longer than 14 days' notice, and what period should apply.
184. *Subsection (6)* provides that any obligation placed on a tenant under a lease to obtain the approval of a landlord or a third party for any matter will instead be an obligation to obtain the approval of the RTM company.

Section 99: Approvals: supplementary

185. *Section 99* specifies the procedures which apply where a landlord objects to the granting of an approval under section 96.
186. *Subsection (1)* provides that where the landlord objects to the granting of approval within the period allowed, the company may not grant approval except in accordance with the agreement of the landlord or in accordance with a determination of (or on an appeal from) a LVT.
187. *Subsections (2) and (3)* provides that a landlord may not object to the granting of an approval (including an objection which has effect if the tenant fails to comply with a condition imposed by the landlord) unless he would have been able to do so were he the person responsible for granting the approval. That would include the landlord being bound not to unreasonably object to the granting of the approval in circumstances where he would be bound not to unreasonably withhold consent under section 19 of the Landlord and Tenant Act 1927 (such as, for example, in dealing with a request for consent for the assignment of the lease). (The RTM company is also bound not to unreasonably withhold such consents by virtue of paragraph 1 of Schedule 7.)
188. *Subsection (4)* provides that a landlord who objects to the granting of an approval under section 98 must give notice of that objection to both the RTM company and the tenant seeking the approval.
189. *Subsection (5)* provides that application made be made to a LVT for its adjudication on the matter by either the landlord, the company, or the tenant who applied for the approval.

Section 100: Enforcement of tenant covenants

190. *Section 100* provides that a RTM company may take action to enforce any obligation entered into by any tenant of the premises under a lease. The company may exercise any power granted under a lease to enter the premises to check compliance with the terms of that lease, but may not exercise any powers of re-entry or forfeiture.

Section 101: Tenant covenants: monitoring and reporting

191. *Section 101* sets out the responsibilities of the RTM company in respect of the covenants of the tenants under their leases. The company is required to monitor tenants' compliance with the terms of their leases, and to report to the landlord any breaches of those terms which are not put right within three months of the breach coming to the attention of the company (unless the landlord has asked not to be so notified or reasonable compensation has been paid in respect of the failure).

Section 102: Statutory functions

192. *Section 102* introduces Schedule 7, which makes consequential amendments to existing statutory rights and duties to make them applicable where the RTM company has acquired the right to manage. Details are set out in the notes on Schedule 7 below. Regulations may specify how any other statutory requirements should apply where the right to manage has been exercised.

Section 103: Landlord contributions to service charges

193. *Section 103* places landlords under an obligation to meet any shortfall in the costs recovered by the RTM company caused by the proportions payable by tenants under their leases failing to add up to 100 per cent of the total. Where that obligation applies, a landlord of a unit which is not held on a long lease is required to pay his proportion of the shortfall. Where there are two or more units, the proportion to be paid by an individual landlord is calculated by reference to the proportion of the total internal floor area of such units which relates to units for which he is the landlord. Where a unit is not subject to a lease, the payment must be made by the freeholder.