

# COMMONHOLD AND LEASEHOLD REFORM ACT 2002

---

## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS: PART 1

#### *Ground rent*

#### *Section 166: Requirement to notify long leaseholders that rent is due*

281. *Section 166* provides that a residential long leaseholder is not liable to pay rent unless the landlord has issued a notice in accordance with the requirements of this section.
282. *Subsection (2)* provides that the notice must specify the amount of the payment, the date on which the leaseholder is liable to pay it and (if different) the date on which it would have been payable under the terms of the lease. It also provides that it should contain such further information as may be prescribed by regulations.
283. *Subsection (3)* provides that the date on which the payment is due must be at least 30 days and not more than 60 days after the day on which the notice is given, and not before the date it would have been due under the terms of the lease.
284. *Subsection (4)* provides that where the due date under the notice is later than that specified in the lease, any provisions in the lease which enable the landlord to impose a charge or take other action for late or non-payment will not apply until after the due date in the notice.
285. *Subsection (5)* provides that the notice must be in the form prescribed by regulations and may be sent by post.
286. *Subsection (6)* provides that a notice sent by post must be sent to the leaseholder at the dwelling in question unless the leaseholder has notified the landlord in writing that it should be sent to another address.
287. *Subsection (7)* provides that rent does not include a service charge or an administration charge within the meaning of this Chapter.
288. *Subsection (8)* provides that the requirements of this section do not apply to a business tenancy or an agricultural tenancy.

#### *Forfeiture of leases of dwellings*

#### *Section 167: Failure to pay small amount for short period*

289. *Section 167* prevents the use of forfeiture for amounts due under the lease which are less than a prescribed sum unless the amount or any part of it has been outstanding for more than a prescribed period. The section applies to rent, service charges and administration charges.

290. Subsection (3) provides that additional charges applied for non-payment of any amount will not be taken into account in considering whether the prescribed sum has been exceeded.

***Section 168: No forfeiture notice before determination of breach***

291. *Section 168* places restrictions on the service of notices under section 146(1) of the Law of Property Act 1925 in respect of breaches of covenants or conditions in a residential long lease. *Subsection (1)* prohibits the serving of a notice unless one of the conditions of *subsection (2)* is satisfied. These are:
- a) that on an application to a LVT it has been finally determined that a breach has occurred;
  - b) the breach has been admitted;
  - c) a court in any proceedings, or arbitral tribunal in proceedings pursuant to a post dispute arbitration agreement, has finally determined that a breach has occurred.
292. *Subsection (3)* provides that a notice cannot be served until 14 days after a final determination has been made under (a) or (c) above.
293. *Subsection (4)* provides that a landlord may apply to a LVT for a determination that a breach of covenant or condition has occurred but *subsection (5)* precludes this where the matter is to be referred to arbitration under a post dispute arbitration agreement (see section 169(5)) or where the matter has already been determined by a court or arbitral tribunal pursuant to such an agreement.

***Section 169: Section 168: supplementary***

294. *Section 169* makes supplementary provisions to section 168.
295. *Subsection (1)* provides that certain agreements providing for determination of questions under a lease in a particular manner are void. *Subsections (2) and (3)* provide that where a decision is appealed against, the matter has finally been determined when the appeal or challenge has been decided and the period for making a further appeal has expired.
296. *Subsection (6)* provides that this section and section 168 apply to leases terminable by re entry on breach of covenant of the type described in section 146(7) of the Law of Property Act 1925. *Subsection (7)* provides that this section does not apply to the service of a notice under section 146(1) of the 1925 Act for non payment of service or administration charges (covered by section 170).

***Section 170: Forfeiture for failure to pay service charge etc***

297. *Section 170* amends section 81 of the Housing Act 1996 (which places restrictions on forfeiture for non-payment of service charges).
298. *Subsection (5)* inserts new subsection (4A) which provides that restrictions on the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925.

***Section 171: Power to prescribe additional or different requirements***

299. *Section 171* provides a power to prescribe additional or alternative requirements to those already in existing legislation before forfeiture can be exercised, in relation to breach of covenant or condition in a long lease of an unmortgaged dwelling.

### ***Section 172: Application to Crown***

300. *Section 172* applies various provisions of the 1985 Act, 1987 Act, 1993 Act and the Housing Act 1996 relating to payment and holding of service charges, appointment of replacement managers, and variation of leases, to the Crown Estate, Duchies of Cornwall and Lancaster and Government departments. It also applies the new provisions on administration charges, ground rent, nominated insurers and forfeiture of leases to those authorities. Tenants of those authorities will therefore be able to exercise or enjoy the benefit of the rights, and those authorities as landlord will be bound by the requirements contained in those provisions.
301. *Subsection (3)* provides that the Crown authorities will not be subject to any criminal prosecution for a failure to comply with any of the provisions, but will be subject to a declaration of unlawful behaviour in the High Court. This is required because the Crown is unable to prosecute itself. *Subsections (4) and (5)* allow the Duchies of Cornwall and Lancaster to make any payments required of them under the provisions applied to it by this section out of either revenue or capital funds.

### ***Chapter 6: Leasehold Valuation Tribunals***

302. This Chapter consolidates and amends existing provisions relating to the jurisdiction and procedures of LVTs. Consolidated provisions are repealed by Schedule 14.

### ***Section 173: Leasehold Valuation Tribunals***

303. *Section 173* provides that a rent assessment committee constituted in accordance with Schedule 10 of the Rent Act 1977 shall carry out any functions conferred on a LVT under any legislative provisions, and that a committee performing such functions shall be known as a LVT.

### ***Section 174: Procedure***

304. *Section 174* gives effect to Schedule 12 which sets out procedures for LVTs. These are described in detail in the notes on Schedule 12 below.

### ***Section 175: Appeals***

305. *Section 175* provides for appeals against LVT decisions. Any party to proceedings before a LVT will be able to appeal to the Lands Tribunal. The existing requirement that the person must have appeared before the LVT is removed. But in all cases permission must be obtained from the LVT in the first instance or, if permission is refused, from the Lands Tribunal. Existing provisions which prohibit an appeal against a LVT decision to the High Court and prevent a LVT from appealing against a Lands Tribunal decision are retained. *Subsections (6) and (7)* provide that, where a case involves an appeal against a decision made by a LVT, the Lands Tribunal cannot make an award of costs against a party to proceedings unless that party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal. The maximum costs will be limited to £500, or such other amount as may be specified in regulations.

### ***Section 176: Consequential amendments***

306. *Section 176* gives effect to Schedule 13 which makes a number of minor and consequential amendments as a result of this Chapter. Details of these changes are set out in the notes on Schedule 13 below.

## **Chapter 7: General**

### **Section 177: Wales**

307. *Section 177* has the effect of ensuring that any powers to make regulations inserted into the 1985 Act, the 1987 Act or the 1993 Act are exercisable by the National Assembly for Wales as they apply in Wales. (The existing powers to make regulations in those Acts are already exercised by the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999.)

### **Section 178: Orders and regulations**

308. *Section 178* provides that any orders or regulations made under Part 2 of this Act may make different provisions for different circumstances. It further provides that regulations under Schedule 12 (procedure regulations for LVTs) may make different provisions for different areas. In England, orders or regulations will be made by statutory instrument subject to annulment by Parliament, except those made under paragraphs 9(3)(b) or 10(3)(b) of Schedule 12 or under sections 167 or 171, (setting a fee for application to a LVT, or a limit for the award of costs by a LVT, exceeding £500) where a draft of the instrument must be laid before and approved by a resolution of each House of Parliament. A separate procedure for making statutory instruments applies for the National Assembly for Wales.