

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Common parts

73. Sections 25-30 cover the same ground for the common parts as the previous section did for the individual units. The common parts may include conduits for the delivery of services and are, in effect, any part of the development not delineated in the commonhold community statement and the plans as units.

Section 25: Definition

74. Section 25 defines common parts as all those parts of the commonhold land which are not, for the time being, defined in the commonhold community statement as units. In effect, they will include hallways, stairwells, lift shafts, landscaping, gardens etc, though the status of a particular type of land in any particular commonhold development will be defined in the commonhold community statement for that development. Subsection (2) introduces the concept of the limited use area. This will remain part of the common parts but may be limited to the use of a single unit-holder, for instance in the case of a balcony the only access to which is through the unit in question, or to a group of unit-holders, for instance the use by them of a garden associated with a particular group of units they occupy. This is expected to be a useful concept when dealing, for instance, with parking spaces, as opposed to garages, where the commonhold association may wish to take responsibility for maintenance but to allocate particular spaces to particular unit-holders. Subsection (3) provides that the commonhold community statement may make special provisions which affect only limited use areas and also which make different provisions for different such areas.

Section 26: Use and maintenance

75. Section 26 requires that the commonhold community statement must make provision for the regulation of the use of the common parts, in effect to set out the rules and regulations for corporate living in the development, and must also provide for the association to insure, repair and maintain the common parts.

Section 27: Transactions

76. Section 27 provides that the commonhold community statement must not restrict the right of the commonhold association to transfer its interest in any part of the common parts, i.e. to sell part of the common parts, or to create any interest over any part of the common parts, such as a right of way.

Section 28: Charges: general prohibition

77. **Section 28** imposes, subject to section 29, the general prohibition on charging of common parts. **Subsections (2) and (3)** provide for the extinguishing both of charges in existence when the commonhold association comes into being, so far as they apply to the common parts and of charges on any part of common parts which are added at a later stage.

Section 29: New legal mortgages

78. **Section 29** provides the exception to the general rule in section 28 allowing a commonhold association to borrow on the security of common parts providing it obtains, in advance, a unanimous resolution of members.

Section 30: Additions to common parts

79. **Section 30** makes the necessary provision to achieve the registration of the commonhold association as the owner of common parts when new land is added to them. This is achieved on the submission of an amended commonhold community statement by the commonhold association under section 33, the Registrar registering the interest without the need for a separate application.