

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS: PART 1

Commonhold association

84. Sections 34, 35 and 36 (and Schedule 3) set out the provisions relating to the commonhold association, which, as has been mentioned, owns and manages the common parts of the commonhold development and is a private company limited by guarantee, its membership consisting exclusively of all the unit-holders in the development.

Section 34: Constitution

85. Section 34(1) makes provision about the type of company as mentioned above, and goes on to say (subsection (1)(a)) that one of the objects of the company must be to carry out the functions proper to a commonhold association in relation to specified commonhold land and (subsection (1)(b)) that the guarantee required of each member shall be £1. Subsection (2) brings Schedule 3 into effect.

Section 35: Duty to manage

86. Section 35(1) places on the commonhold association a duty to manage the development in such a way as to allow unit-holders (or their tenants (subsection (4))) to exercise their rights and to enjoy their occupation of their units. However, subsection (2) also requires the association to use any of its rights and powers granted under section 37 to ensure that any unit-holder or tenant who is in breach of any requirement or duty imposed on him either complies or stops committing the breach. Subsection (3) gives the association discretion not to enforce if that would be more conducive to corporate harmony and requires the association to consider alternative dispute resolution before resorting to the courts.

Section 36: Voting

87. Section 36 relates to any voting provision in Part 1 of the Act which requires unanimity or a specified percentage of votes in favour of a resolution. Subsection (2) requires all members of the association to be given an opportunity to vote on such a resolution in accordance with any relevant provision in the commonhold community statement or the memorandum and articles of association of the commonhold association. Subsection (3) provides that a vote may be cast in person or, if such provision is made in the statement or the memorandum and articles of association, by proxy, by post or in any other way in accordance with the regulations governing the particular commonhold association. Except in relation to section 44 a vote is to be considered unanimous if all those members voting cast a vote in favour of the motion or proposition (subsection (4)).