



# Commonhold and Leasehold Reform Act 2002

## 2002 CHAPTER 15

### PART 1

#### COMMONHOLD

##### *Operation of commonhold*

#### **37 Enforcement and compensation**

- (1) Regulations may make provision (including provision conferring jurisdiction on a court) about the exercise or enforcement of a right or duty imposed or conferred by or by virtue of—
  - (a) a commonhold community statement;
  - (b) the [<sup>F1</sup>articles] of a commonhold association;
  - (c) a provision made by or by virtue of this Part.
- (2) The regulations may, in particular, make provision—
  - (a) requiring compensation to be paid where a right is exercised in specified cases or circumstances;
  - (b) requiring compensation to be paid where a duty is not complied with;
  - (c) enabling recovery of costs where work is carried out for the purpose of enforcing a right or duty;
  - (d) enabling recovery of costs where work is carried out in consequence of the failure to perform a duty;
  - (e) permitting a unit-holder to enforce a duty imposed on another unit-holder, on a commonhold association or on a tenant;
  - (f) permitting a commonhold association to enforce a duty imposed on a unit-holder or a tenant;
  - (g) permitting a tenant to enforce a duty imposed on another tenant, a unit-holder or a commonhold association;

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- (h) permitting the enforcement of terms or conditions to which a right is subject;
  - (i) requiring the use of a specified form of arbitration, mediation or conciliation procedure before legal proceedings may be brought.
- (3) Provision about compensation made by virtue of this section shall include—
- (a) provision (which may include provision conferring jurisdiction on a court) for determining the amount of compensation;
  - (b) provision for the payment of interest in the case of late payment.
- (4) Regulations under this section shall be subject to any provision included in a commonhold community statement in accordance with regulations made by virtue of section 32(5)(b).

#### Textual Amendments

- F1** Words in s. 37(1)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), **Sch. 1 para. 194(9)** (with art. 10)

## 38 Commonhold assessment

- (1) A commonhold community statement must make provision—
- (a) requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the expenses of the association,
  - (b) enabling the directors of the commonhold association to make estimates from time to time of income required to be raised from unit-holders in addition to the annual estimate,
  - (c) specifying the percentage of any estimate made under paragraph (a) or (b) which is to be allocated to each unit,
  - (d) requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to his unit, and
  - (e) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.
- (2) For the purpose of subsection (1)(c)—
- (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
  - (b) a commonhold community statement may specify 0 per cent. in relation to a unit.
- [<sup>F2</sup>(3) In subsection (1)(a) “expenses of the association” does not include building safety expenses of the association (within the meaning of section 38A).]

#### Textual Amendments

- F2** [S. 38\(3\)](#) inserted (28.4.2022 for specified purposes, 6.4.2023 in so far as not already in force) by [Building Safety Act 2022 \(c. 30\)](#), **ss. 114(7), 170(2)** (with s. 164); [S.I. 2023/362](#), reg. 3(1)(z11)

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### [<sup>F3</sup>38A Building safety assessment

- (1) A commonhold community statement for a higher-risk commonhold must make provision—
  - (a) requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the building safety expenses of the association,
  - (b) enabling the directors of the commonhold association to make estimates from time to time of income required to be raised from unit-holders in addition to the annual estimate,
  - (c) specifying the percentage of any estimate made under paragraph (a) or (b) which is to be allocated to each unit,
  - (d) requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to their unit, and
  - (e) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.
- (2) For the purpose of subsection (1)(c)—
  - (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
  - (b) a commonhold community statement may specify 0 per cent in relation to a unit.

- (3) In this section—

“building safety expenses of the association” means the expenses incurred by the commonhold association or special measures manager for the higher-risk building in connection with taking measures that the association or manager is required or permitted to take under Part 4 of the Building Safety Act 2022, or regulations made under that Part of that Act;

“special measures manager” means a person appointed under paragraph 4 of Schedule 7 to the Building Safety Act 2022.]

#### Textual Amendments

- F3** S. 38A inserted (28.4.2022 for specified purposes, 6.4.2023 in so far as not already in force) by Building Safety Act 2022 (c. 30), ss. 114(8), 170(2) (with s. 164); S.I. 2023/362, reg. 3(1)(z11)

### 39 Reserve fund

- (1) Regulations under section 32 may, in particular, require a commonhold community statement to make provision—
  - (a) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of common parts;
  - (b) requiring the directors of the commonhold association to establish and maintain one or more funds to finance the repair and maintenance of commonhold units.
- (2) Where a commonhold community statement provides for the establishment and maintenance of a fund in accordance with subsection (1) it must also make provision—

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- (a) requiring or enabling the directors of the commonhold association to set a levy from time to time,
  - (b) specifying the percentage of any levy set under paragraph (a) which is to be allocated to each unit,
  - (c) requiring each unit-holder to make payments in respect of the percentage of any levy set under paragraph (a) which is allocated to his unit, and
  - (d) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.
- (3) For the purpose of subsection (2)(b)—
- (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
  - (b) a commonhold community statement may specify 0 per cent. in relation to a unit.
- (4) The assets of a fund established and maintained by virtue of this section shall not be used for the purpose of enforcement of any debt except a judgment debt referable to a reserve fund activity.
- (5) For the purpose of subsection (4)—
- (a) “reserve fund activity” means an activity which in accordance with the commonhold community statement can or may be financed from a fund established and maintained by virtue of this section,
  - (b) assets are used for the purpose of enforcement of a debt if, in particular, they are taken in execution or are made the subject of a charging order under section 1 of the Charging Orders Act 1979 (c. 53), and
  - (c) the reference to a judgment debt includes a reference to any interest payable on a judgment debt.

#### **40 Rectification of documents**

- (1) A unit-holder may apply to the court for a declaration that—
- (a) the [<sup>F4</sup>articles of association] of the relevant commonhold association do not comply with regulations under paragraph 2(1) of Schedule 3;
  - (b) the relevant commonhold community statement does not comply with a requirement imposed by or by virtue of this Part.
- (2) On granting a declaration under this section the court may make any order which appears to it to be appropriate.
- (3) An order under subsection (2) may, in particular—
- (a) require a director or other specified officer of a commonhold association to take steps to alter or amend a document;
  - (b) require a director or other specified officer of a commonhold association to take specified steps;
  - (c) make an award of compensation (whether or not contingent upon the occurrence or non-occurrence of a specified event) to be paid by the commonhold association to a specified person;
  - (d) make provision for land to cease to be commonhold land.
- (4) An application under subsection (1) must be made—

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- (a) within the period of three months beginning with the day on which the applicant became a unit-holder,
- (b) within three months of the commencement of the alleged failure to comply, or
- (c) with the permission of the court.

#### Textual Amendments

- F4** Words in s. 40(1)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), [Sch. 1 para. 194\(10\)](#) (with [art. 10](#))

## 41 Enlargement

- (1) This section applies to an application under section 2 if the commonhold association for the purposes of the application already exercises functions in relation to commonhold land.
- (2) In this section—
  - (a) the application is referred to as an “application to add land”, and
  - (b) the land to which the application relates is referred to as the “added land”.
- (3) An application to add land may not be made unless it is approved by a resolution of the commonhold association.
- (4) A resolution for the purposes of subsection (3) must be passed—
  - (a) before the application to add land is made, and
  - (b) unanimously.
- (5) Section 2(2) shall not apply to an application to add land; but the application must be accompanied by—
  - (a) the documents specified in paragraph 6 of Schedule 1,
  - (b) an application under section 33 for the registration of an amended commonhold community statement which makes provision for the existing commonhold and the added land, and
  - (c) a certificate given by the directors of the commonhold association that the application to add land satisfies Schedule 2 and subsection (3).
- (6) Where sections 7 and 9 have effect following an application to add land—
  - (a) the references to “the commonhold land” in sections 7(2)(a) and (3)(d) and 9(3)(f) shall be treated as references to the added land, and
  - (b) the references in sections 7(2)(b) and (3)(c) and 9(3)(e) to the rights and duties conferred and imposed by the commonhold community statement shall be treated as a reference to rights and duties only in so far as they affect the added land.
- (7) In the case of an application to add land where the whole of the added land is to form part of the common parts of a commonhold—
  - (a) section 7 shall not apply,
  - (b) on registration the commonhold association shall be entitled to be registered (if it is not already) as the proprietor of the freehold estate in the added land,

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- (c) the Registrar shall make any registration required by paragraph (b) (without an application being made), and
- (d) the rights and duties conferred and imposed by the commonhold community statement shall, in so far as they affect the added land, come into force on registration.

## 42 Ombudsman

- (1) Regulations may provide that a commonhold association shall be a member of an approved ombudsman scheme.
- (2) An “approved ombudsman scheme” is a scheme which is approved by the [<sup>F5</sup>Secretary of State] and which—
  - (a) provides for the appointment of one or more persons as ombudsman,
  - (b) provides for a person to be appointed as ombudsman only if the [<sup>F5</sup>Secretary of State] approves the appointment in advance,
  - (c) enables a unit-holder to refer to the ombudsman a dispute between the unit-holder and a commonhold association which is a member of the scheme,
  - (d) enables a commonhold association which is a member of the scheme to refer to the ombudsman a dispute between the association and a unit-holder,
  - (e) requires the ombudsman to investigate and determine a dispute referred to him,
  - (f) requires a commonhold association which is a member of the scheme to cooperate with the ombudsman in investigating or determining a dispute, and
  - (g) requires a commonhold association which is a member of the scheme to comply with any decision of the ombudsman (including any decision requiring the payment of money).
- (3) In addition to the matters specified in subsection (2) an approved ombudsman scheme—
  - (a) may contain other provision, and
  - (b) shall contain such provision, or provision of such a kind, as may be prescribed.
- (4) If a commonhold association fails to comply with regulations under subsection (1) a unit-holder may apply to the High Court for an order requiring the directors of the commonhold association to ensure that the association complies with the regulations.
- (5) A reference in this section to a unit-holder includes a reference to a tenant of a unit.

### Textual Amendments

- F5** Words in s. 42(2) substituted (11.4.2018) by [The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions \(Commonhold Land\) Order 2018 \(S.I. 2018/378\)](#), art. 1(2), [Sch. para. 10\(a\)](#) (with art. 14)

**Changes to legislation:**

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