



Commencement of the *2002 Commonhold and Leasehold Reform Act*

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This paper will not be updated.

The *Commonhold and Leasehold Reform Act 2002* received Royal Assent on 1 May 2002; its provisions were phased in. This note sets out the dates on which the Act's various provisions were brought into force and the action being taken to repeal or implement the outstanding provisions.

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A. Leasehold provisions

Guidance on the rights and responsibilities of leaseholders can be found in the Communities and Local Government (CLG) booklet, [Residential Long Leaseholders – a guide to your rights and responsibilities](#).

Those provisions which are aimed at making it easier for leaseholders of flats and houses to buy their freeholds or extend their leases (specifically sections 114-120, 125, 127-147, 160-162) have been in force since 26 July 2002.¹

On 9 June 2003 Tony McNulty outlined when the Government intended to implement some of the remaining leasehold provisions:

The Parliamentary Under-Secretary of State, Office of the Deputy Prime Minister (Mr. Tony McNulty): The leasehold provisions of this Act are being phased in over a period of time. A first commencement order on 26 July last year brought in most of the changes to the rules for enfranchisement and lease renewal for flats and houses.

We are now in the process of implementing the remaining leasehold provisions in two more stages. By the end of September 2003 we expect to bring the main package into force: the provisions relating to the new right to manage, the requirement to use a right to enfranchise company in collective enfranchisement cases, the new requirements for consulting leaseholders about major works and the widening of the Leasehold Valuation Tribunal jurisdiction.²

The 2nd Commencement Order and associated Regulations were made on 4 August 2003 and came into force on 30 September 2003.³ This Order introduced various provisions including:

- a new right for long leaseholders of flats to collectively manage their building (RTM) subject to complying with certain qualifying rules (sections 71 to 113).
- changes to the definition of service charges and rights to challenge these charges (sections 150 and 155);
- changes to the provisions relating to requests for insurance information from the landlord (section 157);
- the right to challenge other charges under leases and charges in relation to estate management schemes (sections 158 and 159);
- the application of various landlord and tenant provisions to Crown land (section 172);
- extension of the jurisdiction of leasehold valuation tribunals and consolidation of the provisions relating to their procedure (sections 163 and 173 to 176); and

¹ *(The Commonhold and Leasehold Reform Act 2002 (Commencement No.1, Savings and Transitional Provisions) Order 2002*

² HC Deb 9 June 2003 39WS

³ *The Commonhold and Leasehold Reform Act 2002 (Commencement No2 and Savings) (England) Order 2003/1986*

- consequential amendments and repeals made by the 2002 Act in other Acts.

The 2nd Commencement Order also brought into force section 151 of the Act which provided for new consultation requirements in relation to service charges. This provision came into force on 31 October 2003.

The following Regulations, required to implement various sections of the Act, were also laid before Parliament and are now in force:

- *The Service Charges (Consultation Requirement) (England) Regulations 2003/1987*
- *The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003/1988*
- *The Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (England) Regulations 2003/1989*
- *The Leasehold (Enfranchisement and Extension) (Amendment) (England) Regulations 2003/1990*

A 5th Commencement Order under the 2002 Act was made on 16 November 2004. *The Commonhold and Leasehold Reform Act 2002 (Commencement No.5 and Saving and Transitional Provision) (England) Order 2004* (SI 2004/3056) brought the following leasehold provisions of the Act into force on 28 February 2005:

- preventing landlords from insisting that leaseholders of houses use a particular insurance company to insure their house (section 164);
- requiring landlords to demand ground rents in a specific manner before they are able to take any action or impose any penalties for late payment (section 166);
- preventing landlords from forfeiting leases as a result of trivial debts that consist of ground rent, service charges, administration charges (or a combination of them) where the debt does not exceed £350, unless any part of the sum has been outstanding for more than 3 years (section 167);
- requiring landlords to satisfy a leasehold valuation tribunal, court or arbitral tribunal that a disputed breach of a covenant or clause in the lease has occurred before they are able to take any forfeiture action (sections 168 & 170);
- fixing the valuation date for collective enfranchisement of flats at the date the initial notice is served (section 126);
- consequential amendments and repeals made by the 2002 Act in other Acts.

Other Regulations needed to implement various remaining sections of the Act were made on 22nd and 23rd November 2004:

- *The Leasehold Houses (Notice of Insurance Cover) (England) Regulations 2004* (SI 2004/3097)
- *The Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004* (SI 2004/3086)
- *The Landlord and Tenant (Notice of Rent) (England) Regulations 2004* (SI 2004/3096)

- *The Leasehold Valuation Tribunal (Procedure) (Amendment) (England) Regulations 2004 (SI2004/3098)*

The 6th Commencement Order (*The Commonhold and Leasehold Reform Act 2002 (Commencement No.6 and Transitional Provisions) (England) Order 2007 SI 2007/1256*) and associated Regulations were laid before Parliament on 24 April 2007 and came into force on 1 October 2007. These provisions:

- Require landlords to send a summary of a tenant's rights and obligations relating to service charges to tenants each time a demand for payment is made (section 153).
- Require landlords to use particular information for the summary of a tenant's rights and obligations relating to administration charges that must be sent when demanding payment of an administration charge (Schedule 11.4(2)).

These summaries have to contain the information set out in the *Service Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1257)* and the *Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)*.⁴

Three provisions in the 2002 Act have not been implemented. The reasons why and the action being taken is explained below.

Right to Enfranchise – sections 121-124 of the Act contain powers to introduce regulations that would require collective enfranchisement to be exercised through a RTE company with membership being open to all qualifying leaseholders. These sections were not implemented as the Government said there was “further detailed work to be done to find an effective and workable means of achieving the policy objectives”. The non-implementation of the sections has not prevented leaseholders wishing to enfranchise from doing so under existing legislation.

On 12 May 2009 the Minister, Iain Wright, announced the publication of a consultation paper which proposes the non-implementation and repeal of sections 121-124 of the 2002 Act.⁵ The Minister said:

The 2002 Act sought through the RTE provisions to prevent what was at that time acknowledged to be a fairly limited problem: Qualifying leaseholders being deliberately excluded when fellow leaseholders exercised statutory rights to purchase the freehold of the building containing their flats (called collective enfranchisement). However, it has become clear that implementation of the provisions would introduce a considerable amount of additional burdens, complexity and cost into the process.

The Government's view is that this would be to the overall detriment of leaseholders in general who are benefiting from the changes that have been made by the 2002 Act and earlier legislation to remove unreasonable barriers to enfranchisement.

⁴ CLG press release 2007/0085, 27 April 2007

⁵ CLG, [Right to Enfranchise \(RTE\) provisions – consultation](#), 12 May 2009

Leaseholders will in due course also benefit from the introduction of regulations on accounting for leaseholders monies which will complete the programme of reform introduced under the 2002 Act.

The consultation runs until 3 August 2009 and the Government would welcome responses to their proposals up until that date. Copies of the paper, "A consultation paper on the right to enfranchise (RTE) provisions", have been placed in the Library of the House.⁶

A [summary of responses](#) to this consultation exercise was published in March 2010. The majority of participants agreed that the reforms should not be implemented in their current form. In the light of these responses, the Government has said it does not intend to bring the 2002 amendments into force.⁷

Designated client account provisions – these provisions would have required landlords to hold service charges in a particular manner.

Regular statement of account - provisions to require landlords to provide a regular (yearly) statement of account together with other relevant information.

On 29 July 2005 the ODPM announced that it would not be possible to introduce some of the new accounting measures without imposing considerable extra costs on social landlords and their leaseholders. Subsequently the ODPM announced that section 152 (requirement for annual statements of account) would not be commenced pending further consultation which might include new primary legislation. It was accepted that the provision, as originally drafted, was not fully workable.

On 25 July 2007 Communities and Local Government (CLG, which took over responsibility for housing matters from the ODPM in 2006) published a consultation paper, *Commonhold and Leasehold Reform Act 2002: A Consultation Paper on Regular Statements of Account and Designated Client Accounts*, which set out proposals for the implementation of sections 152 (regular statements of account etc.) and 156 (designated client accounts) of the 2002 Act. These proposals were drawn up "to ensure that the new measures do not impose disproportionate costs on landlords and their leaseholders."⁸ Consultation closed on 4 October 2007 and a [summary of responses](#) was published in January 2008.

Amendments were made to the *2008 Housing and Regeneration Act* as it proceeded through Parliament to enable the implementation of statements of account and designated client accounts (section 303 and Schedule 12). This section and schedule (which amend the Landlord and Tenant Acts of 1985 and 1987) were brought into force on 1 December 2008 by *The Housing and Regeneration Act 2008 (Commencement No. 2 and Transitional, Saving and Transitory Provisions) Order 2008* (SI 2008/3068). At the time of writing the Secretary of State in England and Welsh Minister in Wales had yet to issue regulations to implement the new provisions.

⁶ HC Deb 12 May 2009 cc44-5WS

⁷ CLG, [The Right to Enfranchise \(RTE\) provisions – consultation: summary of responses](#), March 2010

⁸ CLG Press Release, "Leaseholders to know how their service charges are being spent," 25 July 2007

B. Commonhold provisions

The 3rd and 4th Commencement Orders were made on 8 September 2003 and 14 July 2004 respectively. They brought the commonhold provisions of Part I of the 2002 Act into force from 27 September 2004:

The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. David Lammy): On the 14 July I made the Commonhold and Leasehold Reform Act 2002 (Commencement No 4) Order 2004. The order will bring into force on 27 September 2004 the whole of the remainder of Part 1 of the Commonhold and Leasehold Reform Act 2002 except for section 21(4) and (5).

I have today also laid before each House the Commonhold Regulations 2004 and the Commonhold (Land Registration) Rules 2004 with, in each case, an explanatory memorandum, which includes a regulatory impact assessment.

The effect of these instruments is that as from 27 September commonhold will be available in England and Wales as a new way of owning interdependent freehold properties, such as blocks of flats. It combines the security of freehold ownership with a robust standard legal framework for the management of common facilities. It will be an alternative to long leasehold ownership and will be equally available for residential and commercial property.

The implementation of commonhold fulfils a manifesto commitment made in 2001 and will increase housing choice.

To accompany the Commonhold Regulations my Department has published non-statutory guidance. I have placed copies in the Libraries of both Houses. It is intended that Land Registry Practice Guide in connection with the Commonhold (Land Registration) Rules will be published in the near future following the making of a fee order for commonhold applications. Copies of the Regulations and the non-statutory guidance will be available on my Department's website and copies of the rules will be available on Land Registry's website.⁹

More information on commonhold can be found on the [website](#) of the Department of Constitutional Affairs.

Provision has been made in the *2008 Housing and Regeneration Act* to widen the existing power in section 62 of the *2002 Commonhold and Leasehold Reform Act* for the Lord Chancellor to provide financial assistance for the giving of advice in respect of the law relating to commonhold land so far as it relates to residential matters. It will be possible to give financial assistance for providing information and training and for running an alternative dispute resolution service.

⁹ HC Deb 16 July 2004 c76WS