

Commonhold key

Question 1

In order to protect freeholders, we provisionally propose that it should only be possible to convert to commonhold if either:

1. the freeholder consents; or
2. the leaseholders satisfy the qualifying criteria for collective enfranchisement, and acquire the freehold as part of the process of converting to commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 2

We provisionally propose that it should be possible to convert to commonhold without the unanimous consent of leaseholders.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 3

We provisionally propose that only leaseholders who are eligible to participate in a collective enfranchisement claim should take a commonhold unit and should be able to participate in a decision to convert to commonhold. Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 4

If non-consenting leaseholders retain their leases following conversion to commonhold (which we call "Option 1"):

- (1) we provisionally propose that it should be possible for conversion to take place with the support of long leaseholders of 50% of the flats in the building. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(2) we provisionally propose that non-consenting leaseholders should be provided with a statutory right to purchase the commonhold interest in their unit at a later date. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(3) we provisionally propose that the right to purchase the commonhold interest should replace non-consenting leaseholders' statutory rights to obtain a lease extension and to participate in a collective enfranchisement. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(4) we invite the views of consultees as to whether a purchaser from a non-consenting leaseholder should be required to purchase the commonhold interest, as well as the leasehold interest.

Please share your views below:

(5) we provisionally propose that the leaseholders should be able to require the freeholder to take new 999-year leases over any flats not let to qualifying tenants and that such leases should automatically be granted over flats let to statutorily protected non-qualifying tenants and shared ownership leaseholders. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(6) we invite the views of consultees as to whether the non-consenting leaseholders' share of the freehold purchase should be capable of being funded:

(please select one or more option)

(a) by the consenting leaseholders, through the commonhold association which holds the commonhold interest;

(b) by the consenting leaseholders, through a company (owned by them) which acquires the commonhold interest;

(c) by a third-party investor, who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease;

(d) by granting a leaseback to the freeholder (who may be compelled to accept the lease), who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease; and/or

(e) by any other means.

Please expand on your answer:

Question 5

If non-consenting leaseholders are to be required to take a commonhold unit following conversion to commonhold (which we call "Option 2"):

(1) we provisionally propose that that qualifying leaseholders of 80% of the flats in the building should be required to support the decision to convert. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(2) we provisionally propose that the leaseholders should be able to require the freeholder to take the commonhold unit of any flats not let to qualifying tenants and that freeholders should automatically become the unit owner in respect of any flats let to statutorily protected non-qualifying tenants and shared ownership leaseholders. Do consultees agree?

Yes/No/Other

Please expand on your answer:

(3) we provisionally propose that it should be possible to place a charge over non-consenting leaseholders' units to recover their share of the initial freehold purchase price upon future sale of their commonhold unit. Do consultees agree?

(4) if consultees do not agree, how should non-consenting leaseholders' share of the purchase price be financed?

Yes/No/Other

Please expand on your answer:

(5) we invite the views of consultees as to who should be able to provide such finance and take the benefit of the charge.

Please share your views below:

(6) we invite the views of consultees as to whether the charge should be set:

(please select one option)

(a) as a fixed amount, representing the non-consenting leaseholder's share of the initial freehold purchase;

(b) as that fixed amount, with interest;

(c) as that fixed amount, adjusted in line with house price inflation;

(d) as a percentage of the final sale price, representing the percentage increase in value of the non-consenting leaseholder's property interest (from leasehold to commonhold) on conversion; or

(e) in some other way.

Please expand on your answer:

(7) we invite the views of consultees as to what priority this charge should have in relation to any pre-existing charges.

Please share your views below:

Question 6

Where a freeholder or non-consenting leaseholder, who has let his or her flat to a non-qualifying tenant on a variable service charge, is required to take a commonhold unit on conversion under Option 2, we invite consultees' views as to whether:

(Please select one or more option)

(1) a cap should be placed on the amount of commonhold costs which are recoverable from the former leaseholder or freeholder, to reflect the costs that are recoverable from the non-qualifying tenant;

(2) the non-qualifying tenant's rights should be altered so that he or she no longer has the right to challenge service charge costs after they have been incurred, but instead has the same rights to challenge commonhold costs as other unit owners; or

(3) any other approach would fairly protect and balance the competing interests of the leaseholder or freeholder, and the non-qualifying tenant.

Please expand on your answer:

Question 7

Under Option 2, we provisionally propose that:

1. those wishing to convert (with less than unanimous consent) should be required to seek the prior authorisation of the First-tier Tribunal (Property Chamber) or Residential Property Tribunal in Wales ("the Tribunal"); and

2. the Tribunal should be required to authorise a conversion to commonhold unless:

(a) the necessary consents have not been obtained;

(b) the terms of the CCS do not adequately protect the interests of non-consenting leaseholders; and/or

(c) the applicants refuse to adopt the Tribunal's proposed revisions to ensure the CCS sufficiently protects the interests of non-consenting leaseholders.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 8

We provisionally propose that on conversion to commonhold, tenancies granted for 21 years or less should continue automatically on conversion and that the consent of such tenants should not be required in order to convert to commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 9

We invite consultees' views as to whether it should be possible for charges to transfer automatically from the leasehold title to the commonhold unit title on conversion to commonhold, without requiring lenders' consent.

Yes, it should be possible for charges to transfer automatically, without requiring lenders' consent.

No, it should not be possible for charges to transfer automatically, without requiring lenders' consent.

Other

Please expand on your answer:

Question 10

We have set out two options for setting the threshold of leaseholder support which should be required to convert to commonhold. The first would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 50% of the flats in the building to consent, provided non-consenting leaseholders are able to retain their leasehold interest on conversion to commonhold (Option 1). The second would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 80% of the flats in the building to consent, on the basis that non-consenting leaseholders are required to take a commonhold unit on conversion (Option 2).

We invite consultees' views as to whether they prefer Option 1 or Option 2.

Option 1

Option 2

Other (see below)

Please expand on your answer:

Question 11

We provisionally propose that, where the freeholder refuses to consent to conversion, the leaseholders will need to follow the collective enfranchisement process to purchase the freehold in order to convert to commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 12

We provisionally propose that, to simplify the procedure for converting to commonhold, any consents given in support of the conversion should not automatically lapse after 12 months.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether leaseholders should be able to withdraw their individual consent to conversion after the Claim Notice has been served, or whether leaseholders should be required to make a collective decision no longer to proceed with the conversion.

Leaseholders should be able to withdraw their individual consent to conversion after the Claim Notice has been served

Leaseholders should be required to make a collective decision no longer to proceed with the conversion.

Other

Please expand on your answer:

Question 13

We provisionally propose that (in addition to the freeholder) it should be possible for leaseholders who are in the process of acquiring the freehold by collective enfranchisement, to apply to HM Land Registry to create a new commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, where a lender has consented to a conversion to commonhold on the condition that it will be granted new security over the commonhold unit after conversion, a deed of substituted security provided to HM Land Registry will act as sufficient evidence that this condition has been fulfilled.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 14

Where the freehold of the building is owned by the leaseholders collectively through a freehold management company (a “FMC”), we provisionally propose that the common parts of the building should be transferred to a new commonhold association as part of the process of conversion to commonhold (rather than the FMC changing its articles to become a commonhold association, where this is possible).

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 15

We invite consultees’ views as to whether, taking into account our provisional proposals set out in questions 11 to 14, the conversion procedure would operate satisfactorily.

We invite consultees’ view on what changes could be made to simplify the procedure and make it more cost-effective.

Please share your views below:

Question 16

We provisionally propose that any new management structure needs to meet the following objectives:

1. Provide the ability to separate out the management of a variety of different interests within the same development, in particular by:

(a) differentiating voting rights, so that those affected by a decision are entitled to participate in making that decision, and no one else is able to do so; and

(b) allowing shared costs to be allocated in different ways to ensure that only those benefitting from a service pay for it.

2. Provide a framework which can be used to regulate the relationship between more than one building where there are shared areas, such as shared car parks or gardens.
3. Strike an appropriate balance between standardisation and flexibility.
4. Facilitate consumer protection to ensure that abuses that have arisen in the residential leasehold context cannot be transposed into commonhold.

Do consultees agree?

Are there any other objectives which should be added to the list above?

Yes/No/Other

Please expand on your answer:

Question 17

We provisionally propose that commonholds with sections (which are not individual corporate bodies) should be introduced as a management structure to make commonhold workable for more complex developments.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

If consultees do not agree, do consultees prefer either the flying commonhold model or layered commonhold model? If so, how do consultees suggest addressing the issues with these models?

Flying commonholds

Layered commonholds

Other

Please expand on your answer:

Are consultees aware of any other options we should be considering?

Question 18

We provisionally propose that it should be optional, rather than mandatory, for a section committee to be set up for each section in a commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

If consultees disagree, which powers do consultees think should be given compulsorily to those committees?

Question 19

We invite consultees' views as to whether delegation to section committees should be collateral or exclusive; whether this should vary for different powers; or whether it should be for each commonhold to decide.

Collateral

Exclusive

This should vary for different powers

It should be for each commonhold to decide.

Please expand on your answer:

Question 20

We invite consultees' views as to whether:

(1) directors should be able to revoke or alter the powers delegated to a section committee as they wish;

(2) section committees affected by an alteration of delegated powers should be given the ability to apply to the Tribunal; or

(3) the directors should have to apply to the Tribunal in order to alter or revoke a delegation.

Please expand on your answer:

Question 21

We provisionally propose that a new section should be able to be created by:

1. the developer, at the outset; and
2. the commonhold association at a later date.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

If the commonhold association is allowed to create sections after it has been set up, we provisionally propose that this decision should be approved by special resolution, with the

additional requirement that at least 75% of the total votes held by the unit owners who would be part of the new section must have been cast in favour of creating the section.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that unit owners affected by the introduction of a new section should be given the option of applying to the Tribunal.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 22

We provisionally propose that qualifying criteria for sections should be introduced, so that sections can only be created to give separate classes of vote to:

1. residential and non-residential units;
2. non-residential units, which use their units for significantly different purposes;
3. different types of residential units (such as flats and terraced houses);
4. separate blocks in the same development; and
5. other premises falling within the commonhold which, in the interests of practicality and fairness, should form a separate section.

Do consultees agree? Are there any other criteria which consultees feel should be added to the list?

Yes/No/Other

Please expand on your answer:

Question 23

We provisionally propose that it should be possible for sections to consist of a single unit.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 24

We provisionally propose that to combine two or more sections, a special resolution of the commonhold association should be required. Additionally, 75% of the votes cast by the unit owners in the sections that are to be combined must have been in favour.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that unit owners affected by sections being combined should be given the right to apply to the Tribunal as an additional protection.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that there should be no criteria which must be met before two or more sections in a commonhold can be combined.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 25

We invite consultees' views as to whether statutory development rights should apply automatically so as to avoid the need to reserve express rights in the CCS.

Statutory development rights should apply automatically

Statutory development rights should not apply automatically

Other

Please expand on your answer:

We invite consultees' views as to whether such statutory rights should be drawn widely to include all matters which are likely to apply in commonhold developments, including (but not limited to) the right to add land, to make consequential variations to commonhold contributions and voting rights, and rights of access.

Please share your views below:

Question 26

We provisionally propose that there should be no specific statutory provisions for the appointment of developers' directors. Instead, a developer's ability to appoint directors should depend on the number of units it retains.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that developers should be able to exercise all voting rights associated with the units of which they are the registered owners.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 27

Currently, the Commonhold Regulations place certain restrictions on a developer's exercise of development rights:

1. the developer must not exercise rights in a way which would interfere unreasonably with unit owners' enjoyment of their units or their ability to exercise rights granted by the CCS;
2. the developer may not remove land from the commonhold which forms part of a unit unless the owner of that unit provides written consent;
3. any damage caused to the commonhold land by the developer should be remedied as soon as reasonably practicable; and
4. the developer may not exercise development rights if the works for which the right was granted have been completed (excluding the developer's right to market units).

We invite consultees' views as to whether any further restrictions should be introduced on the use of development rights: in particular, whether a time limit should be imposed on the exercise of these rights (and if so, what this time limit should be).

Please share your views below:

Question 28

We provisionally propose that "anti-avoidance" provisions should be introduced to ensure that the developer does not attempt to secure a greater degree of control by:

1. taking powers of attorney from the purchasers (or seeking to control votes in any other way); or
2. attempting to control how unit owners vote by inserting terms in the purchase contracts.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 29

We invite consultees' views as to what advantages there are (if any) of the transitional period in the registration procedure for new commonhold developments.

Please share your views below:

Question 30

We invite consultees' views as to whether any requirements of company law (such as to make an annual confirmation statement, and to file accounts) should be relaxed for commonhold associations.

Please share your views below:

Question 31

We invite consultees' views as to whether there are particular difficulties in applying CVAs to commonhold associations.

Please share your views below:

We invite consultees' views as to whether the CVA procedure needs any adaptations to make it more relevant and effective in dealing with commonhold associations in financial difficulties.

Please share your views below:

Question 32

We provisionally propose that it should not be possible for creditors directly to petition for a commonhold association to be wound-up, and a liquidator appointed. Instead, a petition could lead to the court appointing a commonhold administrator, who would carry out the necessary duties.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that a commonhold administrator should then be able to petition for the association to be wound-up only if the commonhold association is irretrievably insolvent.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 33

We provisionally propose that the law should be clarified to ensure that there is a presumption that, on the insolvency of a commonhold association, a successor association should usually be appointed.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether there are circumstances in which it would not be appropriate for the court to appoint a successor association and, if so what these circumstances are.

Please share your views below:

We provisionally propose that the court should have discretion as to whether to impose conditions for a successor association to be appointed.

Do consultees agree?

Yes/No/Other

We invite consultees' views as to:

1. what conditions might be imposed; and
2. if the court's discretion is to be structured, what factors the court should take into account.

Please share your views below:

Question 34

We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to reduce the level of indebtedness of the association.

Do consultees agree

Yes/No/Other

Please expand on your answer

We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to make up for the shortfall in contributions from members who are bankrupt or from whom it is impossible to recover their contributions.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 35

We provisionally propose that it should be possible for the CCS to impose restrictions on the short-term letting of units.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to how to ensure that any restriction on short-term letting does not prevent units being rented in the private or social rented sector. In particular:

1. in relation to the private rented sector, we invite views on whether any restriction imposed by a CCS should be confined to lettings made for less than six-months, or for any other specified period;
2. in relation to the social rented sector, we invite views on whether any restriction imposed by a CCS should not be able to apply to particular landlords, such as registered providers of social housing and housing associations, or whether there are other ways of ensuring that such lettings cannot be prohibited in the CCS.

Please share your views below:

Question 36

We provisionally propose that event fees should be prohibited within commonhold, except for any specific circumstances expressly permitted by statute.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether an exception to the proposed prohibition on event fees should be made for specialist retirement properties within commonhold.

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether there are any other circumstances (apart from specialist retirement properties) in which event fees should be permitted within commonhold.

Please share your views below:

Question 37

We invite consultees' views as to whether any further restrictions should be put in place to limit which local rules may be added to the CCS.

Please share your views below:

Question 38

We provisionally propose that a higher threshold for amending the CCS should be introduced, which may apply to some or all local rules.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to:

(1) what voting threshold should be required to amend local rules;

Please share your views below:

(2) when there should be a right to apply to the Tribunal in relation to amendments of the CCS;

Please share your views below:

(3) whether the threshold should be the same for amending all local rules, or whether rules should be differentiated. If consultees are of the view that rules should be differentiated, we invite views as to how the threshold for introducing a rule in an area on which the CCS is currently silent should be determined.

Please share your views below

Question 39

We provisionally propose that the mandatory provisions of the CCS should be contained in the regulations, but not be reproduced in the CCS.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

If so, we invite consultees' views as to whether the directors of the commonhold association should be under a duty to provide copies of the most up-to-date standard provisions contained in the regulations, along with a copy of the CCS, to any new purchasers, and should provide copies of the updated standard provisions to all unit owners as and when changes are made.

Yes, the directors of the commonhold association should be under such a duty

No, the directors of the commonhold association should not be under such a duty

Please expand on your answer:

Question 40

Should our provisional proposals to introduce sections be implemented, we provisionally propose that it should be possible to add schedules to the CCS, where the rights and obligations applying to a specific section can be collated.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 41

We invite consultees' views as to whether there are any new terms, other than those we have asked about in this Consultation Paper, which should be added to the prescribed terms of the CCS (that is, rules which should apply to every commonhold, rather than local rules which can optionally be adopted by individual commonholds).

Please share your views below:

Question 42

We provisionally propose that the procedure for the election of directors of a commonhold should be simplified, so that the prescribed articles of association provide that directors should be elected at a general meeting, and also may be co-opted by the existing directors.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 43

We provisionally propose that, if a commonhold association cannot find members able and willing to serve as directors, and is also unwilling to appoint professional directors, any member of the association should be able to apply to a court or tribunal for professional directors to be appointed, who would then be paid by the association.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, if members should be able to make such an application, then someone with a mortgage or other charge over a unit should also be able to do so.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, if it should be possible for an application to appoint directors to be made, it should be heard by the First-tier Tribunal (Property Chamber) (in Wales, the Residential Property Tribunal).

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 44

We invite consultees' views as to whether a problem is likely to arise whereby a single investor, or a group of investors, who own a majority of units, run a block in their own interests in order to "squeeze out" other owners.

Please share your views below:

If it is felt that problems are likely to arise, then we invite consultees' views as to the following:

1. whether the concept of "persistent failure to comply with the CCS in some material respect", offers a satisfactory basis upon which a court or tribunal could intervene on an application by a unit owner;
2. whether such applications should be made to the court or the Tribunal;
3. whether, the court or Tribunal should have the power to appoint directors, and to make the supplementary orders set out in paragraph 9.48 above, should they be required;
4. whether it would be necessary for the court or tribunal to exercise continuing supervision over the directors who were appointed; and
5. whether other solutions could be used to address the difficulty.

Please share your views below:

Question 45

We invite consultees' views as to whether their experience with other leaseholder-controlled companies (Freehold Management Companies, Residents' Management

Companies and right to manage companies) leads them to believe that provisions for proxy voting may be abused, and, if so, in what way or ways.

Please share your views below:

We further invite consultees' views as to whether any such abuses could be prevented or mitigated by:

(Please select one or more option)

(1) a restriction on the number of proxy votes that any individual might hold

(2) some other device (please specify).

Please expand on your answer:

Question 46

We provisionally propose that legislation should deem that the commonhold association has an insurable interest in the parts of the building which are owned by the unit owners.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that legislation should require the commonhold association to reinstate or rebuild (as appropriate) the whole of a horizontally-divided building – including the parts owned by the unit owners – in order to satisfy the indemnity principle within insurance law.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether any other legal difficulties would arise in arranging buildings insurance for commonholds which have not been addressed in these proposals.

Please share your views below:

Question 47

We provisionally propose that the CCS should be amended so as to require that either a copy of the buildings policy and schedule, or sufficient details of it, should be supplied to all unit owners on or before they acquire a unit, and whenever the terms of the policy change.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that the commonhold association should confirm to unit owners and their mortgage lenders that the insurance is in existence on an annual basis, and when reasonably required at other times.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 48

We invite consultees' views as to whether public liability insurance (that is, insurance against liability as an occupier and also as a property owner) is likely to be generally available for commonhold associations.

Please share your views below:

If it is generally available, we provisionally propose that details of minimum cover, permissible exclusions and excesses, and so on, should be prescribed in regulations to be made by the Secretary of State.

Do consultees agree?

Yes/No/Other

Question 49

We provisionally propose that the commonhold community statement should contain an express power for the commonhold association to take out directors' and officers' insurance.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 50

We provisionally propose that the provisions in the prescribed commonhold community statement requiring the repair of the common parts should be extended to require also "renewals"; that is, the replacement of "like with like" if something should be beyond economic repair.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that the installation of adequate thermal insulation should be deemed to be a repair.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that it should be possible for the repairing obligations required by the CCS to be supplemented by a local rule requiring a higher standard of repair, if appropriate.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, with horizontally-divided buildings (so including all flats), matters relating to the internal repair of units should be left to local rules.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that with vertically-divided buildings (that is, all houses, whether detached, semi-detached or terraced) all matters relating to repair (whether internal or external) of the units should be left to local rules.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 51

We invite consultees' views as to whether rights of entry are best left to local rules, or whether rights of entry should be prescribed.

Local rules

Prescribed

Other

Please expand on your answer:

If rights of entry are prescribed, we invite consultees' views as to whether it is necessary to make a distinction between different types of buildings.

If it is necessary to distinguish between different types of building, we invite consultees' views as to:

1. whether the distinction should be between those that are horizontally-divided, and those that are vertically-divided; and
2. if some other distinction is more appropriate, what that should be.

Please share your views below:

We invite consultees' views as to what, in each case, the appropriate rights of entry would be.

Please share your views below:

Question 52

We provisionally propose that the commonhold community statement should be amended to provide that alterations to the common parts which are incidental to internal alterations made by a unit owner to his or her own unit should not require the consent of the members by an ordinary resolution.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that the giving of consent to such proposals should be delegated to the directors.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We would invite consultees' views on:

1. whether "minor alterations to the common parts" should be defined as we have outlined at paragraph 9.137 (see below); or
2. whether some other criterion could be adopted to distinguish minor alterations from those which should continue to require the consent of an ordinary resolution by the members.

(1) defined as outline at paragraph 9.137

(2) some other criterion

Please expand on your answer:

Question 53

We invite consultees' views as to whether existing long-term contracts have been a problem which leaseholders have encountered.

If they have, then we further invite leaseholders to let us have examples.

Yes/No/Other

Please expand on your answer:

Question 54

We provisionally propose that commonhold associations should be given the right, within a set period from the date when the unit owners take effective control of the commonhold association, to cancel contracts which were entered into by the association before that date. (It would be necessary to define these terms so as to exclude the scenario where the units were "sold" to associates of the developer).

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that a "long-term contract" should be defined as a contract which must run for more than 12 months.

Do consultees agree? If not, what longer or shorter period would be appropriate?

Yes/No/Other

Please expand on your answer:

We provisionally propose that a commonhold association should have to exercise this right within six months from the commonhold coming under the effective control of the unit owners (being actual "arms-length" purchasers of the units).

Do consultees agree? If not, what longer or shorter period would be appropriate?

Yes/No/Other

Please expand on your answer:

Question 55

We invite consultees' views as to the difficulties that can arise when the long-term contract includes the hire of equipment which remains the property of the contractor and which they have reserved the right to remove if the contract should be terminated. We would appreciate any examples of contracts involving the hire of equipment, or of long-term contracts generally, that consultees are able to provide.

Please share your views below:

Question 56

We provisionally propose that the proposed contributions to shared costs should require the approval of the members of the commonhold association. This approval would generally be given by a resolution passed in a general meeting, though it could be passed by the written procedure.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that this approval should be given by an ordinary resolution (over 50% majority), rather than by a special resolution (at least 75% majority).

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to the suggestion that if the proposed level of contributions failed to secure approval, the level of contributions required in the previous financial year should continue to apply.

Please share your views below:

We invite consultees' alternative proposals to address the issue of what should happen if the directors' proposed level of commonhold contributions fail to obtain approval.

Please share your views below:

Question 57

We provisionally propose that it should be possible for the CCS to include, as a local rule, an index-linked "cap" on the amount of expenditure which could be incurred on the cost of improvements.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that it should be possible for the CCS to include, as a local rule, an index-linked "cap" on the amount of expenditure which could be incurred annually on the cost of "enhanced services", as described in paragraph 10.40(1).

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that if a CCS contained such a “cap”, then it could be removed only with the unanimous consent of the unit owners, or with the support of 80% of the available votes, and the approval of the Tribunal.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that any application by a unit owner to challenge proposed expenditure should be made before it was incurred, and expenditure should not be open to challenge later.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 58

We provisionally propose that it should be compulsory for a commonhold association to have some form of reserve fund.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that the scheme for the financing of the commonhold should continue to distinguish between contributions for shared (current) expenditure, and contributions to the reserve fund or funds.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that no minimum annual contribution towards the reserve fund should be specified.

Do consultees agree?

We invite consultees who do not agree to suggest how a requirement for minimum contributions might operate.

Yes/No/Other

Please expand on your answer:

We provisionally propose that the directors of commonhold associations should be able to set up such designated reserve funds as they see fit.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that it should also be possible for the members of a commonhold association to require, by ordinary resolution, that a designated reserve fund or funds should be set up.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that designated reserve funds should be protected from enforcement action by creditors, unless their claim relates to the specific purpose for which the designated reserve fund was set up.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that designated reserve funds should continue to receive equivalent protection if the commonhold association should be subject to insolvency proceedings.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that it should be possible to change the designation of a designated reserve fund only by a resolution supported by 80% of the members, and with the approval of the Tribunal.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether the directors (or the members in a general meeting) should be able to "borrow" from a reserve fund in order to meet a shortfall in meeting other expenditure, and, if so, what safeguards, if any, would be appropriate.

Please share your views below:

We provisionally propose that the proposed annual contributions to the reserve fund or funds should be approved by the members in the same way as the contributions to current expenditure, and, if possible, at the same time.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 59

We provisionally propose that it should be possible to allocate to individual units within a commonhold different percentages that it must contribute towards different "heads" of cost.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether each commonhold should have total flexibility in how different costs are allocated, or whether there should be any limitations on their ability to do so.

each commonhold should have total flexibility

there should be limitations

Please expand on your answer:

Question 60

We provisionally propose to retain the possibility of varying the percentage of expenditure allocated to each unit, by amending the CCS by special resolution. Such amendments would remain subject to a unit owner's right not to have a significantly disproportionate amount of the contributions to shared costs, or the reserve funds, allocated to his or her unit.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether:

1. it is likely to be fair and workable to consider any proposed variations to contributions to shared costs, and the reserve funds, on the basis that the originally allocated percentage was fair; and
2. safeguards need apply only if the allocated percentage is altered.

Please share your views below:

We invite consultees' views as to whether internal floor area would offer a satisfactory default basis on which to allocate financial contributions in purely residential commonholds.

Please share your views below:

We invite consultees' views as to whether internal floor area would offer a satisfactory default basis on which to allocate financial contributions in commonholds which include (a) commercial and residential units and (b) commercial units of different kinds. If not, we invite views on alternative methods.

Please share your views below:

Question 61

We provisionally propose that the current scheme for the issue of a Commonhold Unit Information Certificate ("CUIC") on the sale of a unit should in its essentials be retained.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether the possibility of further contributions (emergency contributions, or contributions to the reserve fund or funds) falling due after the issue of a CUIC is likely to present practical problems to conveyancers.

Please share your views below:

We provisionally propose that, once a CUIC has been issued, an incoming unit owner should not be liable for further contributions which fall due, unless the commonhold association or its agent has notified the current owner's conveyancers of the further liabilities.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that the maximum fee for a commonhold association to issue a CUIC should be set by regulation, and kept under review.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We invite consultees' views as to whether the lack of any sanction or convenient remedy for the failure on the part of the commonhold association to issue a Commonhold Unit Information Certificate within the prescribed 14-day period is likely to cause problems in practice.

We further invite consultees' views on how best this may be resolved.

Please share your views below:

We invite consultees' views as to whether a Commonhold Unit Information Certificate should be conclusive once issued; or whether it should be possible for it to be amended if an error is spotted after it has been issued.

We further invite consultees' views on what problems would arise in practice if a Commonhold Unit Information Certificate could be amended; and on how these might be addressed.

CUIC should be amendable

CUIC should be conclusive

Please expand on your answer:

Question 62

We invite consultees' views as to whether the need for unit owners to obtain the consent of their mortgage lender to support the commonhold association granting a fixed or floating charge is likely to be a significant difficulty in raising emergency funding.

If consultees consider that there might be difficulties, we invite views on what measures could be put in place to alleviate these difficulties, including whether the Tribunal should be able to override a mortgage lender's refusal to give consent.

Please share your views below:

Question 63

We provisionally propose that express provision should be made for a commonhold association to grant a floating charge.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that a charge over the common parts or a floating charge should only be able to be granted when either:

1. The unit owners unanimously consent to the charge: or
2. 80% of the unit owners consent to the charge, and approval is obtained from the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal Wales.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 64

We provisionally propose that it should be possible for a commonhold association (having obtained the requisite consent) to grant a charge over part of the common parts. Where such a charge is granted, the part of the common parts so charged may be registered with a separate title number.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 65

We provisionally propose making an exception to the prohibition on residential leases over seven years, and leases granted at a premium, for shared ownership leases which contain the fundamental clauses prescribed by Homes England in England or the Welsh Government in Wales.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 66

We provisionally propose that in new commonhold developments, the model shared ownership lease should require the shared ownership leaseholder to comply with all terms of the CCS.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that shared ownership leaseholders in new commonhold developments should be able to exercise all the votes of the commonhold association in place of the shared ownership provider, apart from a decision to terminate, which should be exercised jointly with the provider.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that shared ownership leaseholders in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service charge costs or to be consulted on works and contracts exceeding a certain amount.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, in new commonhold developments, on purchasing 100% of the value of the commonhold unit, the shared ownership leaseholder should be transferred the commonhold title of the unit and should become a member of the commonhold association.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 67

We provisionally propose that in a building which has converted to commonhold, the shared ownership provider should have voting rights in the commonhold association. Delegation of voting rights to the shared owner will be possible on a voluntary basis, but not mandatory.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that, in a building which has converted to commonhold, the staircasing provisions of any existing shared ownership leases should continue to operate in the same way. On staircasing to 100%, the shared owner will therefore remain a leaseholder.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that after having staircased to 100% of the value of the leasehold flat, the shared ownership leaseholder should have a statutory right to purchase the commonhold unit and become a member of the commonhold association.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 68

We invite consultees' views as to whether an exception to the ban on residential leases over seven years is needed to accommodate better community land trusts and co-operatives within the commonhold model.

Yes, an exception is needed

No, an exception is not needed

Other

Please expand on your answer:

Question 69

Aside from shared ownership leases, community land trusts and housing co-operatives, are consultees aware of any other forms of affordable housing which it is not possible, or would be difficult, to accommodate in the current commonhold system?

Please share your views below:

Question 70

We provisionally propose that an exception to the prohibition on residential leases of over seven years or granted at a premium should be made for lease-based home purchase plans regulated by the Financial Conduct Authority.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 71

We provisionally propose that customers of lease-based home purchase plans in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service charge costs or to be consulted on works and contracts exceeding a certain amount.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 72

We ask consultees for their views and experience of how the relationship between a bank and a customer who is purchasing property through a lease-based home purchase plan is, or can be, preserved following a collective enfranchisement.

Please share your views below:

Question 73

We provisionally propose that the commonhold association should not be able to prevent a unit owner or tenant from pursuing direct legal action against another unit owner or tenant. Instead, the association should have the right to notify the unit owner or tenant that it reasonably considers the claim to be frivolous, vexatious or trivial or that the matter complained of is not a breach of the CCS.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 74

We provisionally propose that a failure to use the forms which accompany the commonhold dispute resolution procedure, or forms to the same effect, should not automatically prevent a claim from progressing.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 75

We provisionally propose that referral to an ombudsman should not be a mandatory part of commonhold's dispute resolution procedure. Instead, it could be used on an optional basis, instead of, or alongside, other forms of alternative dispute resolution.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

We provisionally propose that membership of an approved ombudsman scheme should no longer be a requirement for commonhold associations, and that, instead, commonhold associations should be able to decide whether or not to become a member of an ombudsman scheme.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 76

We provisionally propose that, where the dispute resolution procedure has not been followed, any court or tribunal, which subsequently considers the dispute, should have full discretion to disregard the non-compliance, or to order the parties to take any steps it considers appropriate, in accordance with its general case management powers.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 77

We invite consultees' views as to whether the current commonhold dispute resolution procedure should be transferred to a pre-action protocol.

Yes, the procedure should be transferred to a pre-action protocol.

No, the procedure should not be transferred to a pre-action protocol.

Other

Please expand on your answer:

Question 78

We provisionally propose that the jurisdiction of the First-tier Tribunal (Property Chamber) in England and the Residential Property Tribunal Wales should be extended to cover disputes arising within a commonhold.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 79

We invite consultees' views as to whether the prescribed CCS should include a provision that, where a unit owner or tenant breaches the rules of the CCS, the unit owner, or tenant, should be required to indemnify the other unit owners and the commonhold association for any losses they reasonably incur as a result of the breach.

Yes, the CCS should include such a provision

No, the CCS should not include such a provision

Other

Please expand on your answer:

Question 80

Elsewhere in this Consultation Paper we provisionally propose that it should be possible for a unit owner (or owners) to apply to the First-tier Tribunal (Property Chamber) in England or the Residential Property Tribunal Wales to challenge a decision of the commonhold association in the following circumstances:

1. Where the commonhold association approves a budget, which will result in costs above a threshold (set in the CCS) being incurred on works or enhanced services;
2. Where the minority are outvoted on a decision to vary the local rules of the CCS;
3. If the directors of the association delegate powers to a committee which has been set up to represent a section of the commonhold, and the unit owners in the section wish to prevent the directors revoking or amending these powers;
4. Where the unit owner, or owners, are opposed to the introduction of a new section or the combination of two or more sections.

We invite consultees' views as to whether there are any other circumstances in which it would be appropriate to provide a unit owner (or owners) with a right to challenge a decision taken by the commonhold association.

Please share your views below:

Question 81

We invite consultees' views as to the extent to which the following factors should be taken into account by the First-tier Tribunal (Property Chamber) and the Residential Property Tribunal Wales when deciding whether or not to grant a remedy to a unit owner who challenges a decision taken by the commonhold association:

1. Whether or not the unit owner(s) making the application voted against the decision complained of, or had a good reason for not doing so.
2. Whether the decision complained of needs to have a particular impact on the unit owner (or owners) and if so, what degree of impact.

3. The reason behind the decision taken by the commonhold association, for example, whether the decision is in the best interests of the commonhold and/or is proportionate to the impact on the unit owner in question.

We also invite consultees' views on whether the same factors would be relevant in all of the circumstances set out in Consultation Question 80 where a unit owner may have the right to apply to the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales).

Please share your views below:

Question 82

We provisionally propose that on an application by a unit owner challenging a decision of the commonhold association, the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) should be able to allow the decision to stand or annul the decision. If the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) allows the decision to stand, we propose that the Tribunal should be able to attach conditions to its decision.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 83

We invite consultees' views as to whether the commonhold association should be provided with enhanced powers to address non-financial breaches of the CCS.

If so, what should these powers be?

Yes, the commonhold association should be provided with enhanced powers.

No, the commonhold association should not be provided with enhanced powers.

Please expand on your answer:

Question 84

We provisionally propose that a statutory cap should be introduced on the rate of interest which may be charged by the commonhold association on late payments of commonhold contributions.

Do consultees agree?

Yes/No/Other

Please expand on your answer:

Question 85

We provisionally propose that a statutory cap should be introduced on the rate of interest which may be charged by the commonhold association on late payments of commonhold contributions.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that if the commonhold association has an automatic statutory charge over commonhold units for the payment of commonhold contributions, this charge should take priority over all other charges (such as a mortgage over the property).

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 86

We provisionally propose that, before taking action to enforce a charge over a commonhold unit, the commonhold association should be required to follow a pre-action protocol. We envisage that the protocol will require the association to provide prescribed information to the defaulting unit owner and make reasonable attempts to agree a repayment plan.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to what steps the association should be required to take as part of this protocol.

Please share your views below

We provisionally propose that where the commonhold association wishes to enforce a charge over a commonhold unit by selling the unit, it should always be necessary for the association to apply to court for an order for sale.

Do consultees agree?

Yes/No/Other

Please expand on your views below

We provisionally propose that the court should only be able to order the sale of a unit where the amount owing to the commonhold association exceeds a certain amount.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to what this amount should be and on what factors the court should take into account when deciding whether to order the sale of a unit.

Please share your views below

We provisionally propose that where the sale of a unit is ordered, the court should appoint a receiver to sell the unit and distribute the proceeds of sale.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that where a receiver is appointed to sell a commonhold unit, the receiver should distribute the proceeds of sale in the following way.

1. The receiver should be paid his or her costs of arranging the sale of the property.
2. The commonhold association should be repaid any outstanding amounts of commonhold contributions, plus any interest and costs awarded by the court.
3. Any other party who has an interest secured against the unit, such as a mortgage lender, should be repaid.
4. Any remaining amount should then be returned to the defaulting unit owner.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that any tenancies granted out of a unit should continue to exist following an order for sale.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 87

We provisionally propose that voluntary termination of a commonhold should be possible with either:

1. unanimous support; or

2. the support of 80% of the available votes plus the approval of the court.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that on an application for voluntary termination the court should have discretion to decide whether to allow the voluntary termination to take place, as well as the terms on which it may do so.

Do consultees agree?

Yes/No/Other

Please expand on your answer

If the court has discretion as to whether to allow voluntary termination, We invite consultees' views as to the following issues:

1. whether it would be useful to include factors to guide the court's discretion;
2. whether the factors mentioned in paragraph 15.52 should be taken into account;
3. whether the court should be directed to consider the amount of support there is for voluntary termination over and above the 80% required; and
4. whether others should also be included.

Please share your views below

We invite consultees' views as to whether increasing the role of the court would sufficiently address the issue of the final terms of the termination statement not being acceptable to those who supported the termination resolution.

Please share your views below

We provisionally propose that an application for voluntary termination should be heard by the court (rather than by the First-tier Tribunal (Property Chamber), or in Wales the Residential Property Tribunal Wales).

Do consultees agree?

Yes/No/Other

Please share your views below

Question 88

We provisionally propose that where a commonhold is divided into sections, any vote on voluntary termination would need to be taken in sections, and whether it was unanimous or received at least 80% support would have to be determined by section.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Where a commonhold is not divided into sections, we provisionally propose that it should be possible for part of the commonhold to be reconstituted following voluntary termination.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that reconstitution should require 100% support of the unit owners in the part to be reconstituted, or at least 80% support and an application to the court.

Do consultees agree?

Yes/No/Other

Please expand on your answer

Question 89

We provisionally propose that if any statute provides that a landlord should be entitled to recover possession of a property if he or she can prove an intention to demolish or reconstruct the building, such a requirement should also be satisfied if it can be proved that the commonhold association has that intention.

Do consultees agree?

Yes/No/Other

Please share your views below

We invite consultees' views as to what further provision, if any, should be made to address the position of tenants on voluntary termination of the commonhold.

Please share your views below

Question 90

We provisionally propose that it should be clarified that mortgage lenders and other secured lenders will retain their secured interest in the commonhold units until the commonhold in its entirety is sold.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that mortgage lenders and other secured lenders should automatically have legal standing to make applications to the court during the termination process with a view to protecting their interests.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that it should be made clear that, if a unit is subject to negative equity, any shortfall should be met personally by the owner of the unit, and should not be covered by other unit owners.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to any other ways in which the interests of mortgage lenders and other secured lenders may require protection on the voluntary termination of a commonhold.

Please share your views below

Question 91

We provisionally propose that the CCS should not be required to specify the share of the proceeds of termination that each unit owner is to receive on termination.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that it should be possible for the unit owners to specify the share of the proceeds of termination that each unit owner is to receive on termination (or some method of ascertaining it) in the CCS.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We provisionally propose that the power to decide an application to disapply a provision in the CCS which determines the distribution of proceeds of sale on termination should lie with the Tribunal.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to whether:

1. guidance should be provided to the court or Tribunal as to how it should exercise its discretion; and
2. if guidance should be provided, what factors the court or Tribunal should take into account.

Please share your views below

We invite consultees' views as to whether:

1. the existing rules of the Insolvency Court would be adequate to deal with valuation issues which arise on the voluntary termination of a commonhold, or need to be supplemented by Commonhold Insolvency Rules;
2. all issues involving the valuation of commonhold units on termination should be referred to the Tribunal (and, if so, whether that would cause any unnecessary delays);
3. if valuation issues are referred to the Tribunal, the Tribunal should be able to appoint a single valuer.

Please share your views below

We provisionally propose that, if a commonhold is substantially destroyed, but remains solvent, for the purposes of the termination statement, the units should be valued on the basis of the best estimate that can be made of their pre-damage value.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to any other issues that might occur in the valuation of units if all or some of them have been partly or entirely destroyed. We also invite any suggested solutions.

Please share your views below

Question 92

We provisionally propose that if the process of voluntary termination should begin, but it should subsequently turn out that the commonhold is in fact insolvent, the same protections should be given to the assets of the individual unit owners as would have applied if the process had begun as an involuntary insolvency.

Do consultees agree?

Yes/No/Other

Please expand on your answer

We invite consultees' views as to whether the value of the individual units should be preserved for the unit owners if the commonhold is substantially destroyed; and, if so, how this can be achieved.

Please share your views below

Question 93

We invite consultees' views as to whether, and how, any aspects of our provisional proposals to reform the law of commonhold will affect the position of existing owners of commonhold units, either positively or negatively.

Please share your views below:

Question 94

What advantages do you think commonhold could offer over leasehold?

Please share your views below:

Question 95

We ask consultees to provide us with information about the time spent in reading through and considering the terms of leases of residential flats:

1. when acting for a prospective purchaser;
2. when acting for a prospective purchaser and mortgage lender;
3. when acting for a mortgage lender on a re-mortgage;
4. when some dispute arises within a leasehold block of flats as to responsibility for repairs and maintenance, calculation of the service charge, and similar disputes.

In each case we also invite consultees to give us some idea of the cost that would thereby be incurred to the client.

Please share your views below:

We further invite their views as to whether time is likely to be saved in reading through and considering the terms of the parts of the CCS which may be varied.

Please share your views below:

We invite consultees to share with us their experience of commonhold-type arrangements in other countries. Is there scope for savings of time to be made? If so, what would be the estimated time saved on a typical transaction?

Please share your views below:

Question 96

We ask consultees to provide us with information about the prevalence of, and costs incurred in, disputes caused by the terms of one or more residential leases being inconsistent with the terms of another lease (or other leases) within a building or development. We further invite their views as to whether our provisional proposals for commonhold will reduce the scope for costs to be incurred in interpreting a commonhold community statement.

Please share your views below:

Question 97

We ask consultees to provide us with information about the sort of difficulties that can arise owing to the difficulty in varying and updating the terms of leases:

1. if the leases are varied as a conveyancing transaction which does not give rise to a dispute; and
2. if the leases are varied as a result of an application to the Tribunal (whether the application was made because it was contested, or because it was the most convenient way of implementing the variation).

If you have figures – whether they relate to the costs incurred, or the amount of time spent – then please let us have them.

Please share your views below:

We further invite consultees' views as to whether our proposals regarding the amendment of local rules by resolution of the commonhold association will reduce the costs which are incurred, when compared with the costs incurred under (1) or (2) above.

Please share your views below:

Question 98

We invite consultees to provide us with information about costs generated by service charge disputes. We further invite their views as to whether, and by how much, our provisional proposals for commonhold will reduce the incidence of disputes and the costs that will be incurred in equivalent disputes over contributions to shared costs.

Please share your views below:

Question 99

We invite consultees to provide us with information about costs generated when forfeiture proceedings need to be used to enforce payment of service charges. We further invite their views as to whether our provisional proposals for commonhold will reduce the costs that will be incurred if a commonhold association needs to seek an order for sale.

Please share your views below:

Question 100

We invite consultees' views as to:

1. whether cases before tribunals are likely to prove more or less expensive than similar cases before courts; and
2. whether (apart from service charge disputes, which we have already addressed in Consultation Question 98) there appears to be more or less scope for disputes within commonholds which result in litigation, when compared with leasehold developments.

Please share your views below:

Question 101

We are provisionally proposing several new grounds upon which it would be possible for someone to make an application to the Tribunal. We invite consultees' views as to:

1. what they consider that the likely impact of these will be on the number of applications made to the Tribunals; and
2. whether any particular proposals are likely to result in a large number of new applications being made.

Please share your views below:

Question 102

We invite the views of consultees as to how any other aspects of our provisional proposals for reform of commonhold will affect the position of future owners of commonhold units, either positively or negatively.

Please share your views below:

Question 103

We ask consultees to provide us with any information that they may have of:

1. examples of planning agreements which are practicable under leasehold but which would not appear to be feasible under our reinvigorated model of commonhold; and
2. services within leasehold developments which are being provided at the residents' expense, but which, if the development had been set up on a commonhold basis, would have been provided, if at all, at public expense.

Please share your views below:

Question 104

We ask consultees to provide us with any evidence they have of management difficulties which may arise where a leaseholder-controlled company is the landlord of (or responsible for the management of) commercial units; and whether this has affected their rental or capital value.

Please share your views below:

Question 105

Which of the following statements best reflects your views on the provisional proposals in this Consultation Paper?

If these proposals are adopted, then developers will be willing to use commonhold for a substantial number of developments.

Even if these proposals are adopted, developers will not be willing to use commonhold unless Government introduces financial incentives for them to do so, either directly by offering financial incentives for the developers, or indirectly, by offering incentives for purchasers of commonhold units.

Even if these proposals are adopted, and financial incentives are given, developers will not use commonhold for developments unless they are prohibited from selling flats on a leasehold basis and they are thus forced to use commonhold.

Please expand on your answer:

Question 106

We invite consultees' views as to:

1. what issues prevent the uptake of commonhold; and
2. what could or should be done to promote the adoption of commonhold.

Please share your views below:

We invite consultees' views as to the extent to which the suggestions for the invigoration of commonhold set out in paragraph 16.47 above, and any other suggestions that they may make, are likely to result in commonhold being used instead of leasehold.

Please share your views below:

Question 107

We invite consultees' views as to whether a reformed commonhold regime should treat particular issues differently in England and in Wales. Consultees are welcome to share their views as to this point here, or in response to questions which we ask throughout the Consultation Paper about particular issues.

Please share your views below:

If you have any further comments on issues raised in our Consultation Paper, please share them with us.