

THE LAW COMMISSION: RESIDENTIAL LEASEHOLD LAW REFORM

TERMS OF REFERENCE

The project was announced in the Law Commission's *Thirteenth Programme of Law Reform* and in Government's response to its consultation *Tackling unfair practices in the leasehold market*.

The project will be a wide-ranging review of residential leasehold law, focussing in the first instance on reform to:

1. enfranchisement; and
2. commonhold.

The Law Commission and Government have also agreed that the project will include consideration of reform to the right to manage. The Terms of Reference for that aspect of the project will be published shortly.

In relation to enfranchisement and commonhold reform, Government has identified the following policy objectives for the Law Commission's recommended reforms:

Generally

- to promote transparency and fairness in the residential leasehold sector;
- to provide a better deal for leaseholders as consumers;

Enfranchisement

- to simplify enfranchisement legislation;
- to consider the case to improve access to enfranchisement and, where this is not possible, reforms that may be needed to better protect leaseholders, including the ability for leaseholders of houses to enfranchise on similar terms to leaseholders of flats;
- to examine the options to reduce the premium (price) payable by existing and future leaseholders to enfranchise, whilst ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests;
- to make enfranchisement easier, quicker and more cost effective (by reducing the legal and other associated costs), particularly for leaseholders, including by introducing a clear prescribed methodology for calculating the premium (price), and by reducing or removing the requirements for leaseholders (i) to have owned their lease for two years before enfranchising, and (ii) to pay their landlord's costs of enfranchisement;
- to ensure that shared ownership leaseholders have the right to extend the lease of their house or flat, but not the right to acquire the freehold of their house or participate in a collective enfranchisement of their block of flats prior to having "staircased" their lease to 100%; and

- to bring forward proposals for leasehold flat owners, and house owners, but prioritising solutions for existing leaseholders of houses;

Commonhold

- to re-invigorate commonhold as a workable alternative to leasehold, for both existing and new homes.

(1) ENFRANCHISEMENT

Enfranchisement covers the statutory right of leaseholders to:

- purchase the freehold of their house;
- participate, with other leaseholders, in the collective purchase of the freehold of a group of flats; and
- extend the lease of their house or flat.

The project will consider the following issues:

1. *Qualifying criteria.* The Commission will review the qualifying criteria that must be satisfied to exercise the right to enfranchise, namely:
 - a. the premises that qualify for enfranchisement;
 - b. the leaseholders who can exercise the rights, including the two-year ownership requirement, and the proportion of tenants required to participate in a collective enfranchisement claim;
 - c. the landlords to whom the enfranchisement legislation applies; and
 - d. the leases to which the enfranchisement legislation applies.
2. *Valuation.* The Commission will seek to produce options for a simpler, clearer and consistent valuation methodology. The review will include consideration of:
 - a. the existing valuation assumptions;
 - b. the extent to which the ground rent (including any rent review clause) should feature in the valuation;
 - c. the role of yield and deferment rates and whether they could be standardised;
 - d. the role of marriage value, hope value, and relativity, and the extent to which they should feature in the valuation;
 - e. whether to retain different valuation bases (as currently exist for enfranchisement of houses, depending on historic rateable values);
 - f. the valuation of the interest of any intermediate leaseholders.

3. *Procedure.* The Commission will consider reforms to make it easier, quicker and more cost effective to enfranchise. The review will include consideration of:
 - a. introducing a simplified enfranchisement procedure which is, so far as possible, consistent across all enfranchisement claims;
 - b. the form, content, effect, service, and assignment of notices by leaseholders and landlords in the enfranchisement process;
 - c. how to reduce or remove the requirement for leaseholders to be responsible for landlords' costs of responding to enfranchisement claims;
 - d. the nature and role of the nominee purchaser in collective enfranchisement claims;
 - e. giving effect to the right to enfranchise, including the conveyancing procedure, the terms of the transfer of the freehold or extended lease, leasebacks to the landlord, and the role of third party funders (in a collective enfranchisement claim).
 - f. the forum for, and facilitation of, the resolution of disputes and enforcement of the statutory rights;
 - g. problems that arise where there are missing, incapacitated, recalcitrant, or insolvent landlords; and
 - h. the termination or suspension of an enfranchisement claim, and its effect.

(2) COMMONHOLD

Commonhold is a form of ownership of land which is designed to enable the freehold ownership of flats. There are various legal issues within the current commonhold legislation which affect market confidence and workability. The Commission will review those issues to enable commonhold to succeed.

The following legal issues will be considered:

1. *Creation of commonhold (including conversion).* The Commission will consider whether the procedure for creating and registering commonhold could be simplified and how it could be made easier for leaseholders to convert. In particular, the Commission will review whether, and if so how, it might be possible to convert to commonhold without the consent of:
 - a. the freeholder; and
 - b. all of the leaseholders.
2. *Improving flexibility.* The Commission will consider reforms to make the commonhold model more sophisticated and flexible to meet the needs of communities and developers, including:

- a. the creation of “layered” or “sub-commonholds” to deal with different parts of a commonhold scheme, especially in mixed-use developments; and
 - b. allowing different costs to be shared between unit-holders in ways that will better reflect actual use of amenities and services.
3. *Corporate structure.* The Commission will consider whether the commonhold association, which owns and manages the common parts of the commonhold, should remain a company limited by guarantee or whether there might be a more appropriate corporate structure.
4. *Shared ownership.* The Commission will consider ways of incorporating shared ownership within commonhold.
5. *Developer rights and consumer protection.* Ensuring developers have sufficient power to complete the development whilst affording protection to unit-holders.
6. *Commonhold Community Statement.* The Commission will review the model CCS which sets out the rights and obligations of unit-holders and the commonhold association. In particular, the Commission will seek to ensure the CCS is flexible enough to meet the local needs of a scheme, and consider the circumstances in which it can be varied.
7. *Dispute resolution.* The Commission will consider ways of facilitating the resolution of disputes within commonhold.
8. *Enforcement powers.* The Commission will consider whether the enforcement powers of the commonhold association, for instance to enforce the payment of commonhold costs, are sufficient or whether these powers should be enhanced. The Commission will also consider whether there are sufficient safeguards in place to protect unit-holders from unreasonable demands for costs.
9. *Insolvency.* The Commission will consider whether any mechanisms could usefully be put in place to prevent a commonhold association from becoming insolvent, for instance whether it might be appropriate for an administrator to be appointed. The Commission will also consider the effect of insolvency on a commonhold association and review whether homeowners and lenders are adequately protected.
10. *Voluntary termination.* The Commission will review the procedure for the termination of a commonhold association by unit-holders and consider whether lenders’ security is adequately protected.

The project will commence with the publication of a call for evidence. Other legal problems that emerge from that call for evidence will be included in the project by agreement with Government.

The Commission’s review will complement Government’s own work to remove incentives to use leasehold, and Government’s work to address non-legal issues to re-invigorate commonhold such as education, publicity and supporting developers, lenders and conveyancers. As part of its call for evidence, the Commission will invite consultees’ views on (i) whether, and if so how, commonhold should be incentivised or compelled, and (ii) the non-

legal issues that must be addressed to re-invigorate commonhold, and report on the outcome of that consultation, without making recommendations.

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