

**COMMONHOLD: NON STATUTORY GUIDANCE ON
THE COMMONHOLD REGULATIONS 2004**

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Disclaimer

This Guidance Note is non-statutory. It does not form part of the Regulations and has no legal effect. It provides guidance on the main features contained in the Regulations. It does not attempt to provide a comprehensive explanation of every provision.

The Department cannot undertake to provide specific advice on individual circumstances. Anyone needing such advice should consider taking independent expert advice.

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Introduction

Content and scope

1. This note provides guidance on the content of the Commonhold Regulations 2004 (the Regulations). It aims to assist the reader to a clear understanding of what the Regulations say and how they relate to the provisions of the Commonhold and Leasehold Reform Act 2002 (the Act), which sets out the legal framework for commonhold.
2. The guidance has been designed as a commentary on the legal provisions and should be read alongside the Act and the Regulations. It is not intended to be a fully comprehensive description of either the law on commonhold or the Regulations. Where a regulation does not seem to require any further explanation, none is given.
3. Where necessary, reference is made to the relevant provisions of the Commonhold (Land Registration) Rules 2004, which set out the procedure for registration of commonhold land and for applications relating to it. However, this note is not intended to provide detailed guidance on those rules. Further information and guidance can be found on Land Registry's website at www.landregistry.gov.uk

Background

4. The Act received Royal Assent on 1 May 2002. Part 1 of the Act, which makes provision for the creation of commonhold land in England and Wales, comes into force on 27 September 2004¹.

¹ Commonhold and Leasehold Reform Act 2002 (Commencement Order No 4) 2004

What is commonhold?

5. Commonhold is a new form of land ownership available in England and Wales. It is an alternative to long leasehold ownership of flats and other interdependent properties. Commonhold combines freehold ownership of a single property (a unit) in a larger development with membership of a limited company that owns and manages the common parts of the development.
6. It is likely that commonhold will be most commonly adopted for residential flats but it is equally suitable for houses and for mixed use and commercial developments.
7. Commonhold is similar in concept to condominium title in the USA, strata title in Australia, unit titles in New Zealand and similar arrangements in Europe and South Africa.
8. A commonhold will consist of units and common parts. The units will be individual freehold properties, such as flats, offices, shops or houses. The owners of the freehold units will be known as unit-holders. The common parts are parts of the development that do not form part of a unit and could include shared facilities such as the roof, stairs and landings, car park or other grounds.
9. The common parts will be owned and managed by a limited company, known as the commonhold association (CA), whose membership will be restricted to unit-holders within the commonhold. This means that unit-holders will have two different interests in the commonhold: a direct interest in the unit they own and an interest in the membership of the CA which owns the common parts.
10. The CA will be required to manage the commonhold in accordance with the terms of its commonhold community statement (CCS). This document defines the extent of the properties in the commonhold and the rights affecting them. It also sets out the rights and duties of the association, the unit-holders and their tenants, and outlines the procedures for resolving any disputes.

11. As with other companies incorporated under the Companies Acts, the CA will be registered at Companies House and will have a memorandum and articles of association setting out the rules of the company.
12. These documents, together with the CCS, will in addition be registered and open to inspection at Land Registry. The Regulations prescribe the form and much of the content of these documents. Significant parts of the documentation will be standardised. It will, however, be possible to add local rules relevant to the circumstances of the individual commonhold.

What are the benefits of commonhold?

13. In England and Wales, long term ownership of interdependent properties is usually on a long leasehold basis. This is because the burden of positive covenants, such a promise to pay rent or to keep property in good repair, cannot be transferred with freehold land when it is sold. Where properties are interdependent, for example, in blocks of flats, they depend for their stability and protection, on the proper maintenance and repair of the other individual flats and the common parts. Currently, only leasehold tenure provides a satisfactory arrangement for the enforcement of these positive obligations. Commonhold overcomes such difficulties.
14. The other principal benefits of commonhold are that:
 - It avoids the problem that exists with leases where their value reduces as the term runs down;
 - There is no landlord – instead, the CA (of which only unit-holders are members) owns the common parts and manages the commonhold;
 - The commonhold documentation (the CCS and the Memorandum and Articles of Association) is substantially standardised. Leases are individually drafted, which can lead to defects and problems of enforceability.
 - There is only one set of documentation for each commonhold. By contrast, separate leases need to be prepared for each individual leasehold property.

- Uniformity of appearance and content of commonhold documents is intended to make the rights and duties of those involved more accessible and to make property management and giving advice easier.

15. The Regulations aim to provide a system of property ownership and management that strikes the right balance between the individual unit-holder and the commonhold community. It is also intended that the documentation is sufficiently flexible to accommodate the needs and wishes of individual commonhold communities at the same time as preserving the advantages of uniformity across England and Wales.

Further information

16. As noted above, this guidance should be read in conjunction with the Act and the Regulations. The Commonhold and Leasehold Reform Act 2002 can be viewed on the website of Her Majesty's Stationery Office at www.hmso.gov.uk, where the Regulations will also be published in due course. The Regulations, together with the supporting Regulatory Impact Assessment, Explanatory Memorandum to the House of Lords Committee on the Merits of Statutory Instruments and this guidance are available on the Department's website at www.dca.gov.uk.

17. The Regulations have been prepared on the basis of consultation with stakeholders and experts. Copies of the consultation paper 'Commonhold Proposals for Commonhold Regulations' (October 2002) and 'Commonhold Analysis of the responses to an LCD consultation paper Proposals for Commonhold Regulations' (August 2003) are also available at www.dca.gov.uk.

18. As noted above, the Commonhold (Land Registration) Rules 2004, together with further information and guidance on the registration procedure, can be found at www.landregistry.gov.uk.

19. The Leasehold Advisory Service is being funded by the Department to provide general advice about the law of commonhold land so far as it relates to

residential matters. The Leasehold Advisory Service (LEASE) can be contacted at:

Leasehold Advisory Service, 70-74 City Road, London, EC1Y 2BJ;

Tel: 0845 345 1993

E-mail: info@lease-advice.org

www.lease-advice.org

20. The dispute procedures contained within the model CCS encourage the use of other forms of dispute resolution, such as mediation, arbitration and conciliation. The Legal Services Commission has published a booklet entitled "Alternatives to Court" (LSC 023), which provides information and guidance about alternative dispute resolution and lists a number of organisations that provide these services. The leaflet is available online at www.legalservices.gov.uk.

Structure of this document

21. This introduction gives a general overview of commonhold and forms the background to the guidance. The remainder of the guidance provides commentary on the various parts of the Regulations in the following order:

- The main body of the Regulations;
- The company documentation of the CA, which consists of the:
 - model form of Memorandum of Association - Schedule 1 to the Regulations
 - model form of Articles of Association - Schedule 2 to the Regulations;and
- The model form of CCS - Schedule 3 to the Regulations.

Schedule 4 contains the prescribed forms. This guidance does not discuss the content of Schedule 4 in detail, but explains the purpose and use of key forms in discussing the relevant parts of the CCS.

Terms used

22. The following common terms and abbreviations are used throughout this guidance:

- The Act – means the Commonhold and Leasehold Reform Act 2002, of which Part 1 makes provision for commonhold. References to a numbered section in lower case (for example, section 21) means a section of the Commonhold and Leasehold Reform Act 2002. Reference to a numbered section in capitals (for example, SECTION 4.8) is a reference to a section of the model CCS;
- Articles of Association – means the model articles of association at Schedule 2 to the Regulations;
- CA – means commonhold association;
- CCS – means commonhold community statement;
- Common parts – means every part of the commonhold which is not for the time being a commonhold unit in accordance with the CCS (section 25(1));
- Commonhold (Land Registration) Rules – means the Commonhold (Land Registration) Rules 2004;
- He/his – this guidance refers to the masculine throughout but should be read as including the feminine and corporate persons.
- Memorandum and Memorandum of Association – means the model memorandum of association at Schedule 1 to the Regulations;
- The Regulations – means the Commonhold Regulations 2004. A reference to a numbered regulation (for example, regulation 3) is a reference to that regulation in the Commonhold Regulations 2004;
- Unit – means a commonhold unit as specified in the CCS;
- Unit-holder – means a person who is entitled to be registered as the proprietor of the freehold estate in the commonhold unit (whether or not he is so registered) (section 12).

The Regulations Explained

Part I - General

Regulation 1 – Citation, commencement and interpretation

23. The Regulations come into force on 27 September 2004.

Regulation 2 – Joint unit-holders

24. This regulation is made under section 13. Like section 13, where there are joint unit-holders, it defines whether a reference to a unit-holder in the provisions specified is to the joint unit-holders together or to them together and individually. In a more traditional terminology, whether the reference to joint unit-holders in an obligation is joint or joint and several.

25. The references to joint unit-holders together are generally restricted to those cases where the right or obligation in question can only be enjoyed or performed by the joint unit-holders indivisibly. Therefore, in most cases, provisions will apply to the joint unit-holders together and individually. The aim is that the right or duty should be as simple as possible to fulfil and the person with the benefit of the right or duty in question should have the best choice of means of enforcing or performing it.

26. Regulation 2(1) specifies the circumstances, in addition to those mentioned in section 13(2), where a reference to a unit-holder, if there are joint unit-holders, is a reference to them both together.

27. Regulation 2(1) accordingly provides that:

- notice to Land Registry of an amendment to the CCS which redefines the extent of a unit over which there is a registered charge, is to be given jointly by all the unit-holders (regulation 10(2));
- developers must not interfere with the enjoyment of the freehold estate in a unit by all the unit-holders jointly (regulation 18(2)(a));
- developers must not remove any land from a unit without the joint consent of all the unit-holders (regulation 18(3)); and
- certain amendments of the CCS which require the consent of a unit-holder will require the consent of all the unit-holders jointly (paragraphs 4.8.5 to 4.8.9 of the model CCS).

28. By contrast, regulation 2(2) specifies when, in addition to the circumstances mentioned in section 13(3), a reference to a unit-holder includes a reference to joint unit-holders together and each joint unit-holder individually.

29. Regulation 2(2) accordingly provides that references to unit-holders will include joint unit-holders together and each joint unit-holder individually in relation to:

- prohibitions on the grant of a lease (regulation 11(1));
- interference from a developer with the exercise by a unit-holder of rights under the CCS (regulation 18(2)(b));
- the giving of a notice of a transfer of a unit – this may be given by one only of the unit-holders (Articles of Association article 4(d));
- the right to inspect the records of the CA (Articles of Association article 75); and
- all of the provisions of the model CCS except those that require the consent of both unit-holders in relation to certain amendments of the CCS (all paragraphs of the model CCS except paragraphs 4.8.5 to 4.8.9).

30. Regulation 2(3) and (4) amends section 13(2) and (3). Section 13(2) lists those sections in which a reference to unit-holders means the joint unit-holders together. Section 13(3) lists those sections in which a reference to unit-holders includes the joint unit-holders together and each joint unit-holder individually.

31. The amendments to the Act made by regulation 2(3) and (4) have the effect that references to unit-holders in the sections listed below will include joint unit-holders together and each joint unit-holder individually. These sections, which had been listed in the Act in section 13(2) are now, by virtue of the Regulations, included in section 13(3):

- 14(3) (obligations in relation to insurance, repair and maintenance of a unit);
- 15(3) (obligation on the new unit-holder to notify the CA on transfer of a unit)
- 19(2) (where regulations may require a tenant to make payments to a unit-holder or to the CA which would otherwise be due from a unit-holder or another tenant);
- 19(3) (recovery of unpaid sums from a unit-holder);
- 38(1) (obligation on a unit-holder to make payments to meet expenses of the CA); and
- 39(2) (obligation on a unit-holder to make payments into a reserve fund).

Part II - Registration

Regulation 3 – Consents required prior to the creation of a commonhold additional to those required by section 3(1)(a) to (c)

32. The creation of a commonhold will affect the rights of certain persons with interests in the land to be registered as commonhold. Not least, section 7(3)(d) provides that at the end of the transitional period, when a commonhold created without unit-holders gets its first unit-holder other than the developer, all leases will be extinguished. Section 9(3)(f) makes similar provision where registration is with unit-holders that have already been identified.

33. Section 3(1) sets out the classes of persons whose consent is required to make an application to register a freehold estate as commonhold land:

- registered freeholders;
- registered leaseholders with leases over 21 years; and
- registered chargees.

34. Section 3(1)(d) permits regulations to extend the class of persons whose consent is required. These are prescribed by regulation 3(1):

- any unregistered freeholder;
- any unregistered leaseholder with a lease over 21 years;
- any chargee of unregistered land included in the application; and
- any person who holds a lease of 21 years or less unless he is entitled to the grant of a lease on specified terms following the extinguishment of his present lease (regulation 3(2)).

35. The replacement lease referred to in regulation 3(2) is, in effect, a 'compensatory lease'. The consent of a person entitled to a compensatory lease, whether pursuant to an option or agreement, will not be required. The reason for this is that the interest of that person in the property before the commonhold comes into existence will be replaced by an equivalent interest after the commonhold comes into existence.

36. This compensatory lease may only be for the unexpired residue of the previous lease (regulation 3(2)(iv)), but anomalously, in the case of leases of a residential unit, the term of a compensatory lease is subject to a maximum of 21 rather than 7 years (regulation 11(2)). Otherwise, a compensatory lease must be of the same premises, on the same terms as the extinguished lease and at the same rent, including rent review (regulation 3(2)(a)(i) to (iii)). It must also take effect immediately after the extinguishment of the prior lease (regulation 3(2)(a)(v)).
37. The right to the compensatory lease must be protected on the land charges register or the land register (regulation 3(2)(b)). This ensures that any successor in title to the applicant for registration of the commonhold will be bound by the right to the compensatory lease. The requirement is necessary because the extinguishment of the leases under section 7(3)(d) may be some time after the registration of the commonhold.
38. The Commonhold (Land Registration) Rules require the applicant to make a statutory declaration in support of his application to the effect that all necessary consents have been obtained (rule 6(2) and (4)).

Regulation 4 – Details of consent

39. This regulation provides more detail regarding the form and effect of a consent under section 3. The basic rule is that a consent may be subject to such conditions as the parties agree (regulation 4(3)). Consent may be used in relation to successive applications where a prior application is withdrawn, rejected or cancelled (regulation 4(6)). This cannot, however, extend the life of the consent, which is 12 months from the date that it is given (regulation 4(4)). This may be shortened by agreement and in any case the consent may be withdrawn before the application is submitted (regulation 4(7)). Regulation 4(5)(a) deems that a person applying for registration of the commonhold has given consent to the application. In effect, the express consent of the applicant is not required, even though he is in the class of persons who are required to

consent under section 3(1). Successors in title to those who have given consent will also be deemed to have given consent (regulation 4(5)(b)).

40. A consent will not be automatically limited to a particular set of commonhold documents. If a person wishes to limit his consent to a particular application, this can be done by giving consent subject to a condition. For instance, a condition might specify that there should be no material change to the proposed CCS between the date of giving consent and the date on which the application is submitted.

41. It will be the responsibility of the parties affected to ensure that conditions have been satisfied. However, under the Commonhold (Land Registration) Rules, in addition to confirming that any necessary consents have been obtained, the statutory declaration which accompanies the application must confirm that, where a consent is subject to conditions, those conditions have been fully satisfied (rule 6(4)(c)). The form of the consent is specified in regulation 4(1). See also the Commonhold (Land Registration) Rules at rules 7 and 14(3)(b).

Regulation 5 – Dispensing with a requirement for consent

42. Section 3(2)(f) envisages that Regulations may be made to dispense with the requirement for consent. Regulation 5 gives the court power to dispense with consent where a person whose consent is required cannot be identified or traced, or has not responded. In each case, those seeking the consent must have used all reasonable efforts to identify, trace or get a response from the person in question.

Regulation 6 – Statement under section 9(1)(b): registration with unit-holders

43. This regulation prescribes the details required in the statement submitted to Land Registry under section 9(1)(b) where an application is made to convert a leasehold development to commonhold. This regulation supplements rule 5(2) of the Commonhold (Land Registration) Rules.

Regulation 7 – Multiple site commonholds

44. Section 57 is headed 'multiple site commonholds' and specifies that a commonhold may include two or more parcels of land, whether or not they are contiguous. Section 57(3) provides that Regulations may make provision about applications for registration of a commonhold where the land is in separate ownership.
45. Regulation 7 provides that, where an application is made by two or more persons, each of whom owns the title to only part of the land which is to form the commonhold, the CCS cannot position a unit so that it straddles a boundary between land owned by different persons. Each unit must therefore be defined to lie completely within only one of the underlying titles.

Part III – Commonhold Unit

Regulation 8 – Requirements of a plan defining the extent of a commonhold unit

46. Section 11(3)(a) requires the CCS to define the extent of each unit by reference to a plan that complies with prescribed requirements. Regulation 8 prescribes that the plan must delineate the boundaries of the units with any adjoining land. Further requirements relating to plans are contained in Land Registry guidance.

Regulation 9 – Definition of a commonhold unit

47. This regulation is fundamental to the working of commonhold. It prescribes the way in which a CCS must define the extent of a unit. It ensures that, where a unit or part of a unit is part of a larger interdependent structure, for instance in a block of flats, the structure and exterior of the building will be excluded from the definition of the unit (regulation 9(1)(b)). As a result, the structure and exterior will be part of the common parts and will be owned by the CA, which will have responsibility for their repair, maintenance and insurance. This will ensure that there is a satisfactory legal base for the management of the property of which the unit forms part.

48. Regulation 15(7) provides that, where the structure and exterior must be excluded from a unit under regulation 9(1)(b), the CCS is treated as including a duty on the CA to insure the whole building, of which the unit or part of a unit forms part.

49. Where units or parts of units are not part of a larger structure, they can be repaired, maintained and insured separately. In these cases, the structure and exterior may form part of the unit (regulation 9(1)(a)).

50. The definitions used in regulation 9(2) closely follow section 72, which performs a similar function in Part 2 of the Act (in relation to the right to manage a

leasehold development). Structure and exterior are not exhaustively defined but will include the services to the unit, other than those within and exclusively serving it.

Regulation 10 – Requirement to notify Registrar

51. Section 24(4) provides that, where an amendment to the CCS reduces the extent of a unit which is subject to a charge, perhaps following a transfer of part of the unit to another, the charge is extinguished to that extent. Section 24(5) deals similarly with the converse situation.

52. Regulation 10(2) specifies that a unit-holder must give notice of any such amendment of the CCS to Land Registry, which must then alter the register accordingly (regulation 10(3)). This notification is additional to the consents to the change in size of the unit already required from the unit-holder and any chargee (sections 23(1) and 24(2)) and the requirement to register an amended CCS with Land Registry in order that any amendment is to take effect (section 33(3)).

53. The giving of this notice, in a form prescribed by the Commonhold (Land Registration) Rules, will therefore form just part of the required procedure for the effective amendment of the CCS in such cases, as otherwise the proper extent of the charge could not be recorded on the register (rule (31)).

Regulation 11 – Leasing of a residential commonhold unit

54. This regulation imposes conditions on the granting of a lease in a residential unit pursuant to section 17. A unit is residential if provision is made in the CCS that requires it only to be used for residential purposes or for residential and other incidental purposes (section 17(5)).

55. Regulations 11(1)(a) and (b) specify that a lease in a residential unit cannot be granted for a premium or for a term longer than 7 years. 'Premium' is not given any special definition. Whether a payment in advance of rent or a commutation

of rent for a lump sum payment would be a premium for the grant of a lease will be for the courts to decide and will depend on the facts of each case.

56. The 7 year limit is subject to an exception in regulation 11(2). This takes into account the provision in regulation 3(2) for compensatory leases, which may be granted up to a maximum of 21 years on the registration of a commonhold. However, the exception here is not tied to the holders of leases of 21 years or less. This means that the tenants who hold longer leases that will be extinguished at the end of the transitional period (or on registration of a section 9 conversion) will be able to take a lease for 21 years as part of the arrangements for the giving of their consent under section 3 to the creation of the commonhold.
57. Regulations 11(1)(c), (d) and (e) prevent the circumvention of the 7 year limit in regulation 11(1)(b) by prohibiting the use of options or agreements which would have the effect of renewing or extending the term beyond 7 years. There are similar restrictions in place in respect of compensatory leases (regulation 11(2)(f)).
58. Regulation 11(1)(f) prohibits any lease of a unit from requiring the tenant to pay monies to the CA that are the responsibility of the unit-holder under the CCS. This relates primarily to the commonhold assessment. By preventing delegation of this responsibility to a tenant, the regulation helps to ensure that the principal financial interest in the well being of the commonhold as a whole remains with the unit-holder. This is expected to encourage participation in the affairs of the commonhold community.

Part IV – Commonhold Association

Regulation 12 – The name of the commonhold association

59. Every CA will be a company limited by guarantee under the Companies Acts. Regulation 12(1) states that the name of a CA must end with ‘commonhold association limited’ or its Welsh equivalent. Recognised abbreviations are permitted (regulation 12(3)). Regulation 12(2) ensures that a company which is not a CA may not end its name with those words or their abbreviations.

Regulation 13 – Memorandum of Association

60. Every company incorporated under the Companies Acts must have a memorandum of association (Companies Act 1985, section 1(1)). Regulation 13(1) prescribes the model form of Memorandum of Association to be used by a CA. A short form has been adopted. It is based upon the form set out in Table C of the Companies (Tables A to F) Regulations 1985 (SI 1985/805). However, unlike the provisions of Table C, which may be altered, clauses 1 to 5 of the model Memorandum are mandatory. They will have effect whether or not they are included in the printed form (regulation 13(2)). Additions to the model Memorandum are permitted, but for ease of identification can only be added after the prescribed clauses (regulation 13(4)). Any additional provisions are likely to be subsidiary objects or powers. The model Memorandum is set out in Schedule 1 to the Regulations and discussed further at paragraphs 87 to 90 below

Regulation 14 – Articles of Association

61. Regulation 14(1) prescribes the model form of Articles of Association to be used by a CA. The model Articles of Association are set out in Schedule 2 to the Regulations. They are based on Table C of the Companies (Tables A to F) Regulations 1985 (SI 1985/805). Unlike Table C, the vast majority of the provisions are mandatory. In this respect, the Articles of Association are similar

to those recently introduced for right to manage companies (The RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120)), for use by tenants who take over the management of a property from their landlord under Part 2 of the Act. The mandatory provisions will have effect whether or not they are adopted by the CA (regulation 14(2)).

62. Although most of the provisions are mandatory, certain minor changes are permitted by regulation 14(4) and (5). These relate to periods of notice for general meetings and adjourned meetings (articles 7 and 18) or for registration of a proxy (article 36), periods of absence leading to disqualification of a director (article 48(f)) and the quorum for general meetings (article 13). In each case, the figures specified in the model Articles of Association specify the absolute minimum requirements. These periods or proportions may be increased above the figure given in the model, but never decreased below it.
63. Additions to the Articles of Association may be made by a CA but they must be clearly identified by a heading which includes the words 'additional provision specific to this commonhold association' (regulation 14(6)).
64. Regulation 14(7) provides that, where provision is included for the appointment of alternate directors, those directors do not count towards the maximum number permitted. It will be for the CA to decide if alternate directors, who stand-in in the absence of a director, should be permitted.
65. Regulation 14(8) and (9) automatically amends the Articles of Association where the CCS gives the developer the right to appoint and remove directors. The effect is that the developer may appoint up to two directors during the transitional period and remove those he has appointed. After the end of the transitional period, whilst he remains the unit-holder of more than one quarter of the units, the developer may appoint up to one quarter of the directors and remove those so appointed. Developer's directors are most likely to be appointed where the commonhold is newly built.

66. Following registration without unit-holders under section 7, all the units will be registered in the name of the developer until the transitional period ends on the sale of the first unit. After the end of the transitional period, the developer will continue to be registered as proprietor of any unsold units and, as a unit-holder, will be allocated the votes attached to those units (article 28(b)).
67. Key provisions of the Articles of Association are considered in more detail at paragraphs 93 to 98 below.

Regulation 15 – Commonhold Community Statement

68. Regulation 15(1) prescribes the model form of CCS to be used by a CA. The model CCS is set out in Schedule 3 to the Regulations. Regulation 15(2) provides that all of the provisions in the model must be included in each CCS. If any of the provisions in the model have not been adopted in a CCS, they will still have effect, as they will be treated as included.
69. The model document is structured so that, when an individual CCS is being drafted, the name of the commonhold must be added to the front page and signature page and the relevant information particular to the commonhold will be added to the annexes (regulation 15(3)). Regulation 15(4) prescribes the manner in which the CCS must be signed, both on registration of the commonhold under section 2 and on registration of an amended CCS under section 33. The remainder of the provisions in the model will be adopted by individual commonholds without amendment. This is intended to assist in preserving the uniformity of appearance of documents between commonholds and to simplify the process of preparing them. Regulation 15(5) refers to those parts of the annexes that only need to be completed in specified circumstances. Regulation 15(6) makes reference to the prescribed rate of interest and deems that the rate will be 0%, unless the CCS specifies otherwise in paragraph 1 of Annex 4.
70. As with the Memorandum and Articles of Association, additional material may be added, provided that it is appropriately positioned and identified. Provisions may be added at the end of a Part or Section or may be added to an annex

(regulation 15(8)). In each case, they must be clearly identified with a heading to distinguish them from mandatory provisions (regulation 15(11)(b) and (12)(a)). Further definitions may also be added to paragraph 1.4.5 of the model CCS (regulation 15(8) and (9)).

71. Special provision is made in relation to the inclusion of developer's rights (regulation 15(10)). Such rights must be clearly labelled and added in a final annex to the CCS (regulation 15(10)(a)). Regulation 15(10)(c) enables the directors of the CA to remove surrendered development rights from the CCS without going through the usual procedures for the amendment of the CCS. See also section 58(6), regulation 18 and the Commonhold (Land Registration) Rules at rule 24.

72. The content of the model CCS is discussed in detail at paragraphs 99 to 183 below.

Regulation 16 – Forms

73. This regulation states that the forms contained in Schedule 4 to the Regulations, or forms to the same effect must be used in accordance with the requirements of the model CCS.

Part V – Operation of a Commonhold

Regulation 17 – Enforcement

74. Regulation 17 confers jurisdiction on the court for the enforcement of rights and duties in the CCS, the Regulations and Part 1 of the Act. The court means the High Court or a county court (section 66(1)).

Regulation 18 – Development rights

75. Section 58(2) allows a CCS to confer rights on a developer (defined by section 58(1) as a person applying for registration of a commonhold) to enable him to carry out the development of the commonhold. These rights may carry on for the benefit of the developer's successors (section 59). The scope of the subject matter of these rights is set out in Schedule 4 to the Act and includes the completion of works, marketing of units, addition and removal of land, amendment of the CCS and appointment and removal of directors.

76. Regulation 18 restricts and regulates the exercise of the development rights by the developer. It balances consumer protection with adequate flexibility for the developer. If, in practice, developers abuse their market position to reserve and exercise unacceptably wide rights then consumers (and their lenders) will be unlikely to buy into commonhold until the building works are complete. This will be to the detriment of the developers. As with leasehold developments, buyers on partially-completed developments will have to make sure that they have adequate protection against the on-going development works and the possibility that the developer may seek to change the plans for the development as a whole. As with leasehold developments, it will be the purchase documentation for each property that must provide the necessary particulars.

77. Regulation 18(2) provides that the developer must not exercise development rights in such a way as to interfere unreasonably with the enjoyment by a unit-

holder of his freehold property or the exercise by the unit-holder or any tenant of their rights under the CCS. The extent of the latter restriction will clearly depend upon the terms of the CCS.

78. Regulation 18(3) prohibits the removal of land transferred to a unit-holder from the commonhold without the prior consent of the unit-holder.
79. Regulation 18(4) requires damage caused to a unit in the course of the development works to be made good as soon as reasonably practicable. The developer is, however, able to take account of the works still to be carried out and the inconvenience that the damage has caused in determining when the damage should be made good.
80. Regulation 18(5) provides that, once works have been completed by the developer, he may no longer exercise the rights that were conferred in the CCS for that purpose. Nor may the developer, although still a unit-holder, exercise development rights in relation to transactions in units or to promote such transactions, when the developer has ceased to carry out such activity for the whole or the relevant part of the commonhold development.
81. Regulation 18(6) provides that references to the developer include persons acting on his authority, such as contractors and agents.

Part VI – Termination

Regulation 19 – Termination

82. In the case of an agreement by 80 per cent of the members for a voluntary solvent winding up, the liquidator must apply to the court for an order to determine the terms and conditions of the termination application and the terms of the termination statement (section 45(2)).
83. A termination application is made by the CA to Land Registry when the CA wishes the land over which it exercises its functions to cease to be commonhold land. Any such application must be accompanied by a termination statement, which will specify the CA's proposals for transfer of the land once it acquires the freehold estate in the units under section 49(3). It will also specify how the assets of the CA will be distributed (sections 43 to 49).
84. Section 45(2) requires Regulations to prescribe the time limit for this application. Regulation 19 provides that an application must be made to the court within 3 months of the liquidator being appointed.

Schedules 1 and 2 - Model Memorandum and Articles of Association

85. Every CA will be a private company incorporated under the Companies Acts and limited by guarantee. This means that there are no shares in the company.

86. Every company incorporated under the Companies Acts is required to have a memorandum of association setting out its objects and articles of association setting out the rules governing the relationship of the members and the company, including its directors. Both the model Memorandum and Articles of Association of a CA will be in the form set out in Schedules 1 and 2 respectively to the Regulations. Additional material may be added to both in accordance with the Regulations (regulations 13(4) and 14(6)). Certain parts of some of the Articles of Association may be amended, but the overwhelming majority of the articles set out in the model will be mandatory. Both documents are very similar to those provided for general use in Table C by the Companies (Tables A to F) Regulations 1985 (SI 1985/805) for companies limited by guarantee and for right to manage companies under Part 2 of the Act (The RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120)).

Schedule 1 - Memorandum of Association

87. The Memorandum of Association is in short form and follows the style set out in Table C, which sets out the memorandum for use by companies limited by guarantee without a share capital. Separate numbered paragraphs within the Memorandum are referred to as clauses.
88. Clauses 1 to 5 are mandatory. Any additions, other than the details required to be added, such as the name of the commonhold and the CA and the address of the registered office, are likely to be subsidiary powers and objects, which frequently run to several pages, without significantly adding to the scope of the principal objects clause. Where additional clauses are added, they must be preceded by a heading which identifies the added clause as a provision specific to the commonhold association in question (regulation 13(4)). For example, a heading might read 'Subsidiary objects – additional provision specific to this commonhold association'
89. In the case of a CA, the principal objects clause is set out in clause 3 of the model. This provides for the CA to exercise the functions of a CA in relation to a specific commonhold and to do all things as are incidental or conducive to the attainment of that object.
90. Clauses 4 and 5 specify that the guarantee given by the members is limited to £1.00 each.

Schedule 2 - Articles of Association

91. The model Articles of Association also follow Table C. Separate numbered paragraphs within the document are referred to as articles. Where the provisions of the model Articles of Association depart most significantly from the articles of Table C, they are considered in more detail below. Although the majority of the articles in the model Articles of Association are mandatory, the Regulations do permit some alterations and additions to be made (regulation 14(4), (5) and (6)).

92. Where articles are added to the mandatory provisions, they must be identified by using the immediately preceding numeral, together with a capital letter (regulation 14(6)). For instance, if 2 articles were to be added between articles 15 and 16, they would be identified as articles 15A and 15B. Additional articles must also be preceded by a heading which identifies the added article as a provision specific to the commonhold association in question (regulation 14(6)). An example might be 'Quorum for general meetings for passing unanimous resolutions – additional provision specific to this commonhold association'.

Membership (article 2)

93. The Articles of Association define the entitlement to membership of the CA. Article 2 follows the requirements of part 2 of Schedule 3 to the Act. Subscribers cease to be members as soon as the first unit is sold. The developer ceases to be a member once all the units are sold. Joint members are not permitted under the Act. When there are joint unit-holders, only one may be a member. Article 2(d) sets out how the member will be identified in these cases.

Quorum (article 13)

94. The model Articles of Association set the quorum for a meeting at 20% of the members or 2, whichever is greater (article 13). This is a more demanding

requirement than that found in Table C, which specifies that two members entitled to vote should be present. The Regulations permit the members of the CA to raise the quorum above this level, but not to lower it below 20% and 2 respectively (regulation 14(4)(c)). It is possible for different levels to be set for different circumstances (regulation 14(4)(c)). For instance, it might be considered appropriate for the quorum to be higher for a meeting which is considering important matters within the commonhold, perhaps where unanimous resolutions are being proposed.

Votes of members (article 28)

95. The Articles of Association provide that the number of votes allocated to a member on a poll will be as provided for in the CCS (article 28 and paragraph 3.4.1 of the model CCS).

Remuneration of directors (article 54)

96. In residential commonholds it is likely that some of the directors will also be members of the CA. Article 54, which deals with remuneration of directors, provides that a non-member director can be remunerated on approval by an ordinary resolution of the members. A special resolution is required for the approval of remuneration for a member director.

Inspection and copying of books and records (articles 73 and 75)

97. Article 73 deals with a right to inspect documents and extends to an inspection of the registers of the CA. The right is subject to an exception for confidential material, the disclosure of which would be contrary to the interests of the CA or a member.

98. Article 75 permits inspection of the CCS, the Memorandum of Association and the Articles of Association by unit-holders and tenants.

Schedule 3 - Model Commonhold Community Statement

General

99. The model CCS must be read in conjunction with regulation 15.

Structure

100. The model CCS is separated into Parts and Annexes. The main body of the document is divided into Parts, which are in turn divided into Sections (indicated by numbered headings), and then paragraphs. The Parts are followed by the Annexes, which are divided into paragraphs. For example:

PART 1: INTRODUCTION

1.1 COMMONHOLD COMMUNITY STATEMENT (this is a Section)

1.1.1 This document... (this is a paragraph)

ANNEX 1: IDENTITY OF THE COMMONHOLD AND THE COMMONHOLD ASSOCIATION

1. Name of the commonhold (this is a paragraph)

101. In this part of the guidance, reference to a numbered section in capitals (for example, SECTION 4.8) means a numbered section within the model CCS.

Format

102. Each CCS must follow the format of the model CCS. The text of the model is mandatory, but additions may be made in accordance with regulation 15. Additional paragraphs must be identified with a heading indicating that they are specific to the commonhold in question and must only be inserted in the permitted places. They can be added to the end of the section, to the end of a part, or in an annex (regulation 15(8)). New annexes may be added. Additions to the prescribed text and to the information contained in the annexes are referred to as local rules.

103. Where additions are made to the CCS, the provisions of paragraph 1.4.2 should be borne in mind. If an added provision includes a reference to a unit-holder, consideration should be given to whether, in the application of that provision to a unit with joint unit-holders, the reference to the unit-holder should mean only the joint unit-holders together or whether it should include the joint unit-holders together and each joint unit-holder individually. In the absence of words to the contrary, any reference to a unit-holder in an added provision will include a reference to the joint unit-holders together and each joint unit-holder individually. Therefore, it will only be necessary to make special provision where the reference to a unit-holder is required to mean only the joint unit-holders together.

Cover

104. The name of the commonhold to which the CCS refers must be inserted on the front page of the CCS.

Table of Contents

105. The table of contents is mandatory. The intention is that it will contain the page references for each of the headings in the CCS, however the page references are not mandatory. The table will help users to find their way around the document. When adding material to the model CCS, care should be taken to ensure that any necessary consequential amendments are made to the table of contents.

Part 1 - Introduction

106. This Part of the model CCS introduces the document, outlines its purpose and explains the layout. There is also a section on interpretation which includes definitions. Definitions of terms may be added. It is open to the CA to italicise or capitalise the defined terms for presentational purposes. Similarly, the typeface used in the model CCS may be changed.
107. Paragraph 1.1.3 makes clear that the rights and duties in the CCS are in addition to rights and duties under the general law. This means, for example, that the usual actions for trespass and nuisance will be available within commonhold, whether or not the CCS imposes an obligation not to trespass or cause a nuisance.
108. Paragraphs 1.1.4 and 1.1.5 summarise the hierarchy established by the Act between the contents of the legislation and the commonhold documentation. From top to bottom, the hierarchy is the Act, Regulations, Memorandum of Association, Articles of Association and lastly the CCS. For example, if a provision in the CCS is inconsistent with the Regulations in some way, that provision will be unenforceable.
109. Paragraphs 1.2.1 and 1.2.2 incorporate the name of the commonhold and the CA into the CCS. The actual details are set out in Annex 1.

Part 2 – The Commonhold

110. This Part defines the extent of the commonhold and the location and extent of the properties within the commonhold by reference to an attached plan or plans. To enable users to check that all the relevant plans are included in a copy of the CCS, the plans are listed in paragraph 1 of Annex 2. Property rights for and over units and the common parts are also defined. The actual details of the properties and the property rights are unique to each commonhold and will be inserted in the tables and boxes in Annex 2.

Part 3 – Commonhold Allocations

111. This Part specifies the proportions of the commonhold assessment and reserve fund levy that are allocated to each unit. It also specifies the number of votes which are allocated to each member of the CA. The details particular to each commonhold will be inserted in the tables in Annex 3. These allocations are fundamental to the running of the commonhold. Special provisions apply to the amendment of these allocations (paragraphs 4.8.12 and 4.8.13).

Part 4 – The Rules of the Commonhold

112. This Part specifies the mandatory rights and duties that are conferred or imposed on the CA, the unit-holders and their tenants. Local rules may be added in permitted places (regulation 15(8)).

Introduction

113. SECTION 4.1 summarises the scope of Part 4.

Financial Matters

114. SECTION 4.2 outlines the duty on unit-holders to contribute to the expenses of the CA and to reserve funds set up to finance the repair and maintenance of the common parts or units (sections 38 and 39).

Commonhold assessment

115. The CA, like a management company in a long leasehold development, has to be able to raise money to meet the expenses of the association. To enable it to do so, the model CCS provides a notice-based procedure. The form of the notices is prescribed in Schedule 4 to the Regulations.

116. The procedure is commenced by a notice from the directors to the members setting out the estimate of income required to meet the expenses of the CA (paragraph 4.2.2). The notice, which must be in Form 1 (Notice of proposed commonhold assessment), specifies the amount which is expected to be payable for the unit in question and details of when the money will have to be paid.

117. Form 1 invites unit-holders to make representations within one month about the CA's proposals for payment (paragraph 4.2.3). The form must detail how the representations can be made, for example, in writing to the secretary at the registered office of the CA, or in person at a general meeting.

118. Once the directors have considered any representations, they will issue a final demand for payment (paragraph 4.2.4). Form 2 (Request for payment of commonhold assessment) must be used. It is for the CA to decide whether payments are to be by lump sums or instalments. These details will be included in Form 2. It may be appropriate to include in this form details of how the payment should be made, for example, if payment is to be made by cheque, to whom the cheque should be payable.
119. This procedure applies to the annual estimate of expenses that the directors are obliged to make and to any occasional estimates that are made at other times, but need not be used in an emergency (paragraph 4.2.5).

Emergency commonhold assessment

120. In an emergency, it is not necessary for the CA to provide an initial notice or to consider representations. Only a demand for payment is required (paragraph 4.2.5). In recognition of the different situations which may arise, 'emergency' is not defined. Form 3 (Request for payment of emergency commonhold assessment) must be used. It requires the CA to explain the reasons for the emergency demand.

Commonhold assessment – amount

121. There is no overriding statutory requirement that only a reasonable sum should ever be requested. This is because the members of the CA are all commonholders. There is no landlord with a separate interest.

Reserve fund

122. The commonhold assessment is intended to enable the CA to meet its expenses. The directors may also set up one or more reserve funds to finance the repair and maintenance of the common parts or the units. They may do so at their own initiative, at the request of the members, or in response to a study carried out under paragraphs 4.2.6 and 4.2.7.

123. Under paragraph 4.2.6 the directors of the CA are under a duty to consider whether to commission a reserve study during the first year in which the commonhold is registered. Paragraph 4.2.7 provides that the directors must commission a reserve study at least once in every 10 years. The reserve study involves an inspection of the common parts and is intended to provide the information necessary for the directors to consider whether or not it is appropriate to set up a reserve fund.
124. The procedure for raising a reserve fund levy is similar to that for the commonhold assessment (paragraphs 4.1.12 to 4.2.14). Forms 4 (Notice of proposed reserve fund levy) and 5 (Request for payment of reserve fund levy) must be used.

Late payment

125. If a unit-holder fails to pay a commonhold assessment or reserve fund levy by the date on which it is due, interest will be payable under paragraph 4.2.16 at the rate specified by the CA (Annex 4, paragraph 1). Failure to specify a rate of interest in the CCS will mean that no interest is payable (regulation 15(6)).

Diversion of rent

126. Where a unit-holder fails to pay the commonhold assessment or reserve fund levy, the model CCS permits the CA to recover the arrears from any tenant of the unit-holder via a diversion of rent (paragraphs 4.2.17 to 4.2.25). For example, if a unit-holder owns two units (1 and 2) in a commonhold and he fails to pay the commonhold assessment for unit 1, the CA can recover these arrears from a tenant of unit 1 or 2.
127. In exercising the right to divert rent, the CA must first seek to divert rent from the head tenant. The CA may only work its way down through a chain to sub-tenants in the event that the tenant higher in the chain also fails to pay. Additionally, the CA may only seek to recover from a sub-tenant the arrears

- that his own landlord has failed to pay (paragraph 4.2.28). Forms 6 (Notice to tenant of diversion of rent) and 7 (Notice to sub-tenant of diversion of rent) must be used.
128. The following example shows how the diversion of rent provisions could be used. A unit-holder owns a unit in which a tenancy and sub-tenancy have been granted. In respect of that unit there is a tenant T and sub-tenant ST. The unit-holder fails to pay the commonhold assessment allocated to his unit (£1000). As a result of non-payment by the unit-holder, the CA has the right to demand that T diverts all or part of his rent to the CA (instead of to the unit-holder) and continues to do so until the outstanding amount of £1000 has been paid. If T fails to pay that sum to the CA, then the CA has the right to demand that ST diverts all or part of his rent to the CA (instead of to T) until the outstanding sum due from T has been recovered. ST will then pay his rent to the CA until the £1000 has been paid in full. Where he does so, he will not be required to pay the equivalent sum in rent to T. Similarly, T will no longer be required to pay that amount to the unit-holder and will no longer be liable to the CA under the diversion of rent provisions. Ultimately, the loss will fall back to the unit-holder.
129. To provide protection for intermediate landlords from loss of income as a result of a diversion, paragraphs 4.2.39 and 4.2.40 give the party suffering the loss a right to claim back any loss from the unit-holder. This is expected to be used in cases where there is a delay in the ability for the tenant to recover his loss from the unit-holder in the form of non-payment of rent under paragraph 4.2.34(c), perhaps where the tenant is due to receive rental income from a sub-tenant earlier than his rent is due to be paid to the unit-holder.
130. Diversion of rent will only be readily practicable if the CA knows the amount of rent that is payable under a tenancy in a unit. Paragraph 4.2.41 gives the CA the right to require details of the rent payable. Form 8 (Notice requiring further details about a tenancy) must be used.

Use

131. SECTION 4.3 provides for the definition of the permitted use of the units and common parts. The details must be specified in paragraph 2 and 3 of Annex 4. Restrictions on the use of the common parts may be specified. Some parts of the common parts may be designated as limited use areas (paragraph 4 of Annex 4). The use of these areas may be restricted by reference to use, user, or both (section 25(2)).

Insurance

132. SECTION 4.4 outlines the insurance provisions of the common parts and the units. These provisions must be read in conjunction with regulation 9.
133. The Act states that a CCS must make provision requiring the CA to insure the common parts (section 26(b)). The insurance must cover the full rebuilding and reinstatement cost. The insured risks will include fire but are otherwise to be specified in paragraph 5 of Annex 4 (paragraph 4.4.1). The Act also requires any proceeds of insurance to be used for the purpose of rebuilding or reinstating (section 69(2)(a)). This is repeated by paragraph 4.4.2, which imposes a duty on the CA to the same effect. Individual commonholds may choose to insert additional requirements.
134. A unit-holder may inspect the insurance policy taken out by the CA in respect of the insurance of the common parts and must be provided with a copy of the policy on the payment of the CA's reasonable charges (paragraphs 4.4.4 and 4.4.5).
135. The Act also requires that a CCS must make provision for the insurance of the units and permits the duty to insure to be placed on the CA or the unit-holders (section 14(2) and (3)). The actual arrangements for the commonhold in question will be specified in paragraph 6 of Annex 4 (paragraph 4.4.6).

136. Despite this apparent flexibility, where a unit or part of a unit forms less than the whole of a self-contained building or self-contained part of a building, the CA must insure the whole building, including the units (regulation 15(7)). Where a unit or a part unit is the whole of a self-contained building or self-contained part of a building, the insurance of the unit may be maintained by the CA or the unit-holder.
137. Where the CA does become responsible for the insurance of the units, it might be considered appropriate to add provisions to the CCS which are equivalent to paragraphs 4.4.4 and 4.4.5. These provisions could permit the unit-holder to inspect or obtain a copy of the insurance policy taken out by the CA in respect of the units.

Repair and maintenance

138. SECTION 4.5 outlines the repair and maintenance provisions of the common parts and the units. The Act requires that the CA must repair and maintain the common parts (section 26(c)). Maintenance is defined by the Act to include decoration and putting into sound condition (section 69(2)(b)). The Act also requires that a CCS imposes duties in respect of the repair and maintenance of each unit (section 14(2)). These duties will be specified by each individual commonhold in paragraph 7 of Annex 4 (paragraph 4.5.2).
139. Where a unit or part of a unit forms less than the whole of a self-contained building or self-contained part of a building, the structure and exterior of the building will form part of the common parts (regulation 9(1)(b)). The CA must repair and maintain the common parts, but the question of whether the CA must repair and maintain the units is left to each individual CCS.

Alteration of the common parts

140. SECTION 4.6 provides that alterations to the common parts must be authorised by a prior resolution of the members.

Dealings with the land

141. SECTION 4.7 relates to transfers and leasing.

Transfer

142. The Act provides that a CCS may not prevent or restrict the transfer of a freehold estate in a unit (section 15(2)) or the transfer of any part of the common parts (section 27(1)(a)). Transfer of part of a unit is only permissible with the consent of the CA. This consent must be given by special resolution (sections 21(2)(c), 21(8) and 20(4)).

143. Under section 16, any right or duty in the CCS will affect a new unit-holder as it affected the former unit-holder and the former unit-holder cannot incur a liability or acquire a right under the CCS once the transfer has taken effect (section 16(2) and (3)(b)).

144. The model CCS provides that, where a unit has been transferred, the new unit-holder may become liable to the CA for the debts of any former unit-holder in respect of the unit transferred (paragraph 4.7.3). In practice, this will ensure that any debts will generally be cleared prior to a sale. A new unit-holder paying these monies will be subrogated to the rights of the CA against the former unit-holder (paragraph 4.7.7). A further protection for the new unit-holder is that his liability for the debts of the former unit-holder may be capped by a commonhold unit information certificate (paragraphs 4.7.1 and 4.7.2). This is a prescribed form (Form 9 - Commonhold unit information certificate). If a certificate is provided, the CA cannot recover from the new unit-holder more than the amount stated as owing in respect of that particular unit for the period up to the date of the certificate (paragraph 4.7.4). The quantification of any monies owing for the period between the date of the certificate and the completion of the transaction must be dealt with as part of the conveyancing process as in leasehold transactions.

145. The members of the CA are drawn from the unit-holders. A person is entitled to be a member of the CA when he becomes entitled to be registered as proprietor of a unit at Land Registry. Paragraphs 4.7.8 and 4.7.9 provide for notice of a change of ownership to be given to the CA following transfer and vesting by operation of law (for example, on bankruptcy or death). Forms 10 (Notice of transfer of a commonhold unit), 11 (Notice of transfer of part of a commonhold unit) and 12 (Notice of vesting of a commonhold unit by operation of law) must be used. Such notification will enable the CA to keep its records up to date. Paragraph 4.9.3 requires unit-holders and tenants to ensure that they have given the CA at least one postal address for correspondence.

Leasing

146. Paragraph 4.7.11 replicates the effect of regulation 11, which imposes restrictions on leasing of a residential unit. A residential unit is one whose permitted use under the CCS is for residential or for residential and incidental purposes only (section (17(5))). This will be defined in paragraph 2 of Annex 4.

147. Certain provisions contained in the model CCS impose obligations on tenants. Paragraph 4.7.12 therefore provides that, before granting a tenancy in a unit, a prospective landlord of a unit (whether a unit-holder or tenant) must give a copy of the CCS and any relevant plans to the prospective tenant. The prospective landlord is not obliged to send all of the plans attached to the CCS because they may be voluminous and, in the circumstances, may not be relevant. In addition, the prospective landlord must inform the prospective tenant that certain paragraphs of the CCS will impose duties on him if he takes the tenancy. Form 13 (Notice to a prospective tenant) must be used. Where the landlord fails to give these documents to the tenant and as a result the tenant incurs a liability of which he was unaware, the tenant will be entitled to an indemnity from the landlord (paragraphs 4.7.13 and 4.7.14). There are similar provisions in relation to an

- assignment of a lease (paragraphs 4.7.16 to 4.7.18). In this case, Form 15 (Notice to a prospective assignee) must be used.
148. As the CA may have rights against a tenant, paragraphs 4.7.15 and 4.7.19 provide for notice of the grant or assignment of a lease to be given to the CA. Forms 14 (Notice of grant of a tenancy in a commonhold unit) and 16 (Notice of assignment of a tenancy in a commonhold unit).
149. Finally, as the interests of the CA are to be protected by the CCS, paragraph 4.7.20 entitles the CA to an indemnity from the unit-holder where a tenant of the unit has failed to comply with a duty to which the unit-holder was also subject.

Amendment of the commonhold community statement

150. SECTION 4.8 outlines how an amendment to the CCS may be approved and given effect. The relevant provisions of the Act are repeated. The provisions of the CCS relating to amendment must also be read in conjunction with the relevant provisions in the Commonhold (Land Registration) Rules (rules 13 and 15 to 18). No amendment of the CCS will have effect until the amended statement is registered at Land Registry (paragraph 4.8.16 and section 33(3)).
151. The procedure for amendment varies according to the type of provision being amended. The mandatory provisions required by the Regulations and set out in the model CCS cannot be amended by the CA. Local rules can, in general, be amended by a simple majority of the members voting at a general meeting. The format of the prescribed part of the annexes cannot be amended (paragraph 4.8.4).
152. Certain provisions of the model CCS protect fundamental rights of the unit-holders and members, so more stringent conditions must be met. They are as follows:

- a change to any right for or over a unit requires the consent of the unit-holder and any chargee (paragraph 4.8.5);
 - a change which removes a unit-holder from the list of authorised users for limited use areas requires the consent of the unit-holder and any chargee (paragraph 4.8.6);
 - a change in the permitted use of a unit requires a special resolution, together with the consent of the unit-holder (paragraph 4.8.7);
 - a change which redefines the extent of the a unit requires the consent of the unit-holder and any chargee (paragraph 4.8.8);
 - a change which results in land which forms part of a unit being added to the common parts requires the consent of the unit-holder and any chargee of the unit (paragraph 4.8.9);
 - a change which redefines the boundaries of the commonhold requires a special resolution, together with any consents required under the Act (paragraph 4.8.10);
 - a change in the allocation of commonhold assessment or reserve fund levies or in the number of votes allocated to a member requires a special resolution, but is also subject to the right of the unit-holder not to have these figures altered so as to allocate a significantly disproportionate allocation to him, or any other unit-holder (paragraphs 4.8.11 to 4.8.13).
153. Where an amendment is administrative, for example, to delete a term which is inconsistent with the Regulations, no resolution of the members is required (paragraph 4.8.14). See also paragraph 1.1.5.

Notices

154. SECTION 4.9 specifies the methods by which any notices given under the CCS may be served and when they will be deemed to have been served. Each unit-holder and tenant must provide a postal address in the UK for correspondence and may provide two additional addresses, which may be postal or electronic. The CA will give notice to each of these addresses (paragraph 4.9.6).

Commonhold registers and documents

155. SECTION 4.10 imposes a duty on the CA to maintain a register of unit-holders and tenants. It also places a duty on the CA to retain copies of the CCS, Memorandum and Articles of Association. In addition, it permits a unit-holder or tenant to inspect these documents and obtain copies, subject to the conditions stated.

Dispute resolution

156. SECTION 4.11 outlines the dispute resolution process. It contains three distinct procedures. First, there is a procedure to be followed by a unit-holder or tenant wishing to enforce a duty against the CA. Secondly, there is a procedure to be followed by the CA wishing to enforce a duty against a unit-holder or tenant. Thirdly, there is a procedure to be followed by a unit-holder or tenant wishing to enforce a duty against another unit-holder or tenant. The objective of all three procedures is to encourage the settlement of disputes within the commonhold without recourse to litigation and the courts.

157. The procedures apply only to the enforcement of rights and duties under the CCS or a provision made by or by virtue of the Act (paragraph 4.11.1). The procedures do not apply to disputes under the general law. In addition, the procedures need not be used where a person is seeking to enforce a right or duty in an emergency or when seeking to enforce a duty to pay money (paragraphs 4.11.3, 4.11.11 and 4.11.18).

158. The procedures are notice-based and encourage the parties to consider the use of other forms of dispute resolution procedure, such as mediation, arbitration and conciliation. Standard forms are prescribed to simplify administration (Forms 17 to 24). It might be helpful for a CA to familiarise itself with local providers of alternative dispute resolution services for use in the event of a dispute. See 'Further Information' at paragraph 20 above for more details.

159. The procedures anticipate the possibility that a CA may be required by Regulations to be a member of an approved ombudsman scheme under section 42. An approved ombudsman scheme is one approved by the Lord Chancellor. No scheme has yet been approved.

Procedure for enforcement by unit-holder or tenant against the commonhold association

160. Where unit-holders or tenants wish to enforce a right or duty against the CA, the procedure set out in paragraphs 4.11.4 to 4.11.9 must be used (paragraph 4.11.2). The exception to this is where a dispute relates to a duty to pay money or where a right or duty is being enforced in an emergency. In these cases, the use of the procedure is optional (paragraph 4.11.3).

161. The first stage in the procedure is for the unit-holder or tenant to consider whether the dispute might be resolved by negotiation or by using mediation, conciliation or some other form of dispute resolution procedure (paragraph 4.11.4). It will clearly be difficult to demonstrate that a person did not consider these options, and to that extent the provision is largely directive in character. Having considered the options, the unit-holder or tenant may serve a complaint notice on the CA giving details of the complaint (paragraph 4.11.5). Form 17 (Complaint notice against commonhold association) must be used.

162. The CA has 21 days in which to consider the complaint and to serve a reply notice setting out its proposals (paragraph 4.11.6). Form 18 (Reply to complaint notice against commonhold association) must be used. These proposals need not be for a final disposal of the matter. The CA may simply indicate a proposed course of action. The CA may, for example, need more information or it may need to consult advisers.

163. If the CA fails to reply or if the reply is unsatisfactory, the unit-holder or tenant, if he wishes to take further action, must again consider the use of negotiation or alternative dispute resolution. Following this consideration, if the unit-holder or tenant is still not content he must, if the CA is a member of

an approved ombudsman scheme, refer the dispute to the ombudsman. In this case, legal proceedings may only be brought once the ombudsman has investigated and determined the dispute (paragraphs 4.11.8 and 4.11.9). If the CA is not a member of an approved ombudsman scheme, the unit-holder or tenant may issue legal proceedings (paragraph 4.11.9).

Procedure for enforcement by commonhold association against a unit-holder or tenant

164. The procedure for enforcement by the CA of a right or duty against a unit-holder or tenant is broadly similar (paragraphs 4.11.12 to 4.11.16). Forms 19 (Default notice) and 20 (Reply to default notice) must be used. However, following section 35(3)(a), the CA must, in addition to considering negotiation and alternative dispute resolution procedures, consider whether inaction would be in the best interests of the community (paragraph 4.11.12). Also, in the final stage of the procedure, the CA, having again considered negotiation and other procedures, may choose either to refer the dispute to the ombudsman, if it is a member of an approved scheme, or to issue legal proceedings, if it is in the interests of the commonhold to do so (paragraph 4.11.16).

Procedure for enforcement by unit-holder or tenant against another unit-holder or tenant

165. The procedure for the enforcement of a right or duty by a unit-holder or tenant (the complainant) against another unit-holder or tenant (the alleged defaulter) is slightly different.

166. The first stage in the procedure is again for the complainant to consider whether the dispute might be resolved by negotiation or by using an alternative dispute resolution procedure (paragraph 4.11.19). Having considered the options, the complainant may serve a notice on the CA outlining the details of the complaint against the alleged defaulter (paragraph 4.11.20). Form 21 (Request for action) must be used.

167. The CA has 21 days in which to consider the notice and to serve a reply notice setting out its decision and if it fails to do so, the complainant may enforce the right directly against the alleged defaulter (paragraphs 4.11.24 and 4.11.26). Form 22 (Reply to request for action) must be used.
168. The CA has a number of options. First, it can decide to take action against the alleged defaulter (paragraph 4.11.21(a)). If it decides to do so, it will follow the procedure for enforcement of a right or duty by the CA against a unit-holder or tenant, as outlined at paragraph 164 above.
169. Secondly, it can decide not to take action against the alleged defaulter, if it thinks it is in the interest of maintaining harmony within the commonhold (paragraphs 4.11.21(b) and 4.11.22). In this case, it has two choices: it can either allow the complainant to enforce the right or duty against the alleged defaulter directly, or it can refuse the complainant this right if it reasonably thinks that the complaint does not amount to a breach of a right or duty, or is vexatious, frivolous or trivial (paragraph 4.11.23).
170. If the complainant is allowed to enforce the right or duty directly, then a notice-based procedure between the complainant and the alleged defaulter begins (paragraphs 4.11.27 and 4.11.28). Forms 23 (Complaint notice against unit-holder or tenant) and 24 (Reply to complaint notice against unit-holder or tenant) must be used. If the alleged defaulter fails to reply within 21 days or if the reply is unsatisfactory, the complainant, having again considered the use of negotiation or alternative dispute resolution, may take legal proceedings (paragraphs 4.11.29 and 4.11.30).
171. If the complainant has been refused the right to enforce the right or duty against the alleged defaulter directly, and he believes that the CA was incorrect in reaching its decision, he should use the procedure for enforcement of a right or duty by a unit-holder or tenant against the CA, as outlined at paragraphs 160 to 163 above. However, the CA will in this case only have 7 days instead of 21 days to consider the complaint (paragraph 4.11.25).

Annexes to the Commonhold Community Statement

172. The format of the annexes may not be altered, although additional material may be added to each annex. The number of rows in each box may of course be adjusted, for example, to reflect the number of units.

Annex 1 - Identity of the commonhold and the commonhold association

173. The name of the commonhold and the name and company number of the CA must be set out in Annex 1 in the boxes provided.

Annex 2 - Definition of the properties within the commonhold

174. Annex 2 defines the extent of the commonhold and the properties within it. The table at paragraph 1 requires details of the plans included in the CCS to be identified. Land Registry guidance will assist in identifying the quality of plan required. Land Registry will reject applications containing unacceptable plans.

175. Paragraph 2 provides a description of the commonhold land. This is likely to be brief and related to registered title numbers.

176. Paragraph 3 gives the total number of units in the commonhold. Units are defined by the CCS. It is not necessary for a unit to correspond with a single area of occupation. For example, a unit might be comprised of two flats, or a flat with a detached garage.

177. Paragraphs 4 and 5 define the units. Each unit must have a number and must be delineated on a plan (regulation 8). The second and third columns of the table in paragraph 4 will provide the link to the relevant plan. For example, they might indicate that the unit in question is edged red on plan number 1. The fourth column of the table in paragraph 4 and the box in paragraph 5 might then add the address, location and further details, such as whether the roof void is included in a top floor flat. The amount of detail given

will be determined by those setting up the commonhold. However, the definitions inserted here will be vital as the common parts are defined, under section 25(1), as every part of the commonhold which is not for the time being a unit. As such, any part of the commonhold which is not defined as a unit will be the responsibility of the CA.

178. Paragraph 6 describes the rights, such as those for access or services, that exist for the benefit of each unit over other units and the common parts. Paragraph 7 describes the rights that exist over units for the benefit of the common parts.

Annex 3 - Commonhold allocations

179. Annex 3 contains tables at paragraphs 1 and 2 that specify the allocations of the commonhold assessment and reserve fund levies. These must amount to 100%, but a unit may have a 0% allocation (sections 38(2)(b) and 39(3)(b)). As there may be more than one reserve fund, an additional column is included in the table at paragraph 2 so that each fund may be identified.

180. Paragraph 3 sets out the allocation of votes. These may be varied (paragraph 4.8.11(b)) but the initial allocation will be set out by those who initially set up the commonhold. In a very simple commonhold, where all the units are identical, equal voting rights for every unit may be appropriate. In commonholds where the units vary significantly, a more complex voting structure with different numbers of votes being allocated to each unit could well be appropriate. In a large commonhold, with differing allocations between units, these tables could be lengthy.

Annex 4 - Local rules

181. Annex 4 contains provision for some basic local rules. Paragraph 1 specifies the rate of interest adopted by the CA as the prescribed rate of interest on late payment. Unless a figure is added here, the prescribed rate will be 0% (regulation 15(6)). Paragraph 2 contains a table in which the permitted use of

each unit may be defined. Paragraphs 3, 5, 6 and 7 are all free text boxes in which the CA can define the following: the permitted use of the common parts; the risks in addition to fire against which the common parts are insured; the duties allocated in the CCS in respect of the insurance of the units; and the duties allocated in the CCS in respect of the repair and maintenance of the units. Paragraph 4 provides details of the limited use areas. The limited use areas are a category of the common parts which is restricted to authorised use, users or both (section 25(2)). It will be for each CA to decide what rights are required and for whose benefit they should subsist.

Development rights

182. Any development rights included in the CCS must be set out in a final numbered annex, which is headed 'DEVELOPMENT RIGHTS' (regulation 15(10)(a)).

Signature

183. The final item in the CCS will be the signature of a person authorised to sign it. On the formation of the commonhold, the CCS will be signed on behalf of the applicant for registration under section 2. Subsequently, the developer or the CA will be the persons authorised to sign the CCS following an amendment (regulation 15(3)).