

Consultation Questions

Consultation Question 1.

- 1.1 We provisionally propose that the RTM should be exercisable in respect of leasehold houses as well as flats. Do consultees agree?

Paragraph 2.10

Consultation Question 2.

- 1.2 Do consultees think leasehold houses qualifying for the RTM would increase the number of RTMs? Do consultees think this would be used by leaseholders of houses to acquire single-building RTMs, or only to join multi-building RTMs on estates?

Paragraph 2.11

Consultation Question 3.

- 1.3 We provisionally propose that leaseholders of houses should follow the same process as leaseholders of flats in order to acquire the RTM. Do consultees agree?

Paragraph 2.17

Consultation Question 4.

- 1.4 We provisionally propose to adopt the same approach as in our proposals relating to enfranchisement, so that the RTM will be exercisable over “residential units”. Do consultees agree it should be a consistent approach? If not, how can we justify different terminology and what should it be?

Paragraph 2.37

Consultation Question 5.

- 1.5 Our provisional view is that the different underlying considerations for enfranchisement and for the RTM justify a divergent approach to the qualifying criteria for premises. Do consultees agree?

Paragraph 2.95

Consultation Question 6.

- 1.6 We provisionally propose that there should be a broader definition of “building” for the purposes of the RTM qualifying criteria for premises. Do consultees agree?

Paragraph 2.96

Consultation Question 7.

- 1.7 Instead of introducing a broader definition of “building”, would consultees prefer to retain the existing requirements for a self-contained building or part of a building, with an additional judicial discretion to allow the RTM to be acquired where the qualifying criteria are not met?

Paragraph 2.97

Consultation Question 8.

- 1.8 Do consultees have experience of failing to acquire the RTM because of the current definition of “building”?

Paragraph 2.98

Consultation Question 9.

1.9 We provisionally propose that one qualifying tenant should be able to claim the RTM over:

- (1) buildings which contain no other residential premises; and
- (2) buildings in which there are no other qualifying tenants.

Do consultees agree?

Paragraph 2.108

Consultation Question 10.

1.10 We provisionally propose that the requirement for at least two-thirds of the flats in the premises to be held by qualifying tenants should be reduced to 50%. Do consultees agree?

Paragraph 2.115

Consultation Question 11.

1.11 We provisionally propose that the current rule requiring the participation of both qualifying tenants in a two-unit building should be retained, because of the particular risk of dispute and deadlock in the RTM context. Do consultees agree?

Paragraph 2.125

Consultation Question 12.

1.12 We provisionally propose that the exemption for buildings containing more than 25% non-residential premises should be removed, so that the RTM could be acquired in respect of such buildings. Do consultees agree?

Paragraph 2.148

Consultation Question 13.

1.13 We provisionally propose that the RTM company should be required to instruct professional managing agents, satisfying applicable regulatory standards, for any buildings containing commercial premises which represent more than 25% of the total internal floor area. Do consultees agree?

Paragraph 2.149

Consultation Question 14.

1.14 Do consultees have experience of being unable to acquire the RTM because of the exemption for buildings containing more than 25% non-residential premises?

Paragraph 2.150

Consultation Question 15.

1.15 We provisionally propose that shared ownership leaseholders with long leases should be qualifying tenants for the purposes of RTM, regardless of whether they have staircased to 100%. Do consultees agree?

Paragraph 3.25

Consultation Question 16.

1.16 We provisionally propose that the law should be changed to allow leaseholders to qualify for the RTM in premises with a resident freeholder. Do consultees agree?

Paragraph 3.53

Consultation Question 17.

1.17 Do consultees have experience of leaseholders being prevented from exercising the RTM by the resident landlord exemption?

Paragraph 3.54

Consultation Question 18.

1.18 Do consultees consider that our provisional proposal to allow leaseholders to qualify for the RTM on premises with a resident freeholder is likely to deter home owners from converting part of their property into a leasehold flat or flats?

Paragraph 3.55

Consultation Question 19.

1.19 Do consultees consider that an RTM company should be able to acquire the RTM over the whole building where the freehold of the building is in split ownership?

Paragraph 3.61

Consultation Question 20.

1.20 If the law was changed to allow the RTM over a building in split freehold ownership, do consultees agree that the tribunal should have the power to reconcile any conflicting covenants in the leases with the different freeholders?

Paragraph 3.62

Consultation Question 21.

1.21 Do consultees have experience of the RTM in relation to a building owned by different freeholders?

Paragraph 3.63

Consultation Question 22.

1.22 We provisionally propose that National Trust properties should be excluded from the RTM. Do consultees agree?

Paragraph 3.73

Consultation Question 23.

1.23 We provisionally propose that the existing exclusion for leases which allow any non-residential use should be replaced with an exclusion for leases which prohibit residential use. Do consultees agree? If not, is there any justification for having a different position in the RTM than in enfranchisement?

Paragraph 3.83

Consultation Question 24.

1.24 Do consultees have experience of leaseholders being prevented from exercising the RTM by the exclusion for leases which allow any non-residential use?

Paragraph 3.84

Consultation Question 25.

1.25 We provisionally propose that qualifying tenants of a single building on an estate should retain the existing right to claim the RTM over that single building. Do consultees agree?

Paragraph 4.13

Consultation Question 26.

1.26 We provisionally propose that the law should allow for a single RTM company to acquire the RTM over two or more buildings situated on the same estate in a single RTM claim. Do consultees agree?

Paragraph 4.49

Consultation Question 27.

1.27 Do consultees think it would be cheaper for leaseholders on an estate to carry out a multi-building RTM rather than multiple single-building RTMs (both in terms of acquisition costs and ongoing costs)?

Paragraph 4.50

Consultation Question 28.

1.28 We provisionally propose that the RTM should be capable of being exercised over multiple buildings by a single RTM company in a single RTM claim if either:

- (1) the buildings to be managed by the single RTM company share some appurtenant property; or
- (2) the qualifying tenants in each building contribute to a common service charge (whether or not other, separate service charges are payable).

Do consultees agree?

Paragraph 4.57

Consultation Question 29.

1.29 We provisionally propose that the qualifying criteria and participation requirement should have to be satisfied by each individual building included in the claim for a multi-building RTM, rather than as a whole across all of the buildings included in the claim. Do consultees agree?

Paragraph 4.70

Consultation Question 30.

1.30 We do not consider that there should be an automatic right for qualifying tenants of premises not originally included in an RTM claim to later join an existing multi-building RTM arrangement. Do consultees agree?

Paragraph 4.77

Consultation Question 31.

1.31 We provisionally propose that qualifying tenants of buildings should be able to “break away” from existing multi-building RTM arrangements and exercise the RTM in their own right. Do consultees agree?

Paragraph 4.87

Consultation Question 32.

1.32 We provisionally propose that the restriction on successive claims should apply to break-away claims, so that the qualifying tenants of the building(s) wishing to break away have to wait for a minimum period following the multi-building RTM acquisition before making the break-away claim. Do consultees agree?

Paragraph 4.88

Consultation Question 33.

1.33 We do not consider that members of a multi-building RTM company should have different voting rights to members of a single-building RTM company, because of the likely associated complexity and cost. Do consultees agree?

Paragraph 4.94

Consultation Question 34.

1.34 We provisionally propose that there be a presumption that the management functions relating to appurtenant property which does not belong exclusively to, or is not usually enjoyed exclusively with, the building(s) over which the RTM is being acquired should not transfer to the RTM company. Do consultees agree?

Paragraph 4.116

Consultation Question 35.

1.35 We provisionally propose that RTM companies should continue to be companies limited by guarantee. Do consultees agree?

Paragraph 5.16

Consultation Question 36.

1.36 We provisionally propose that, if our proposals on prescribed articles for nominee purchasers are adopted, it should not be permitted to use RTM companies as nominee purchasers in collective freehold acquisitions, as it is easier to set up a new company for this purpose. Do consultees agree?

Paragraph 5.24

Consultation Question 37.

1.37 We provisionally propose that the limit on the number of RTM companies that can exist in relation to a set of premises should be removed and replaced by a rule that once one RTM company serves a claim notice in relation to a set of premises, no other RTM company can do so until:

- (1) the RTM claim is withdrawn or rejected by the tribunal; or
- (2) the RTM, having been acquired, ceases.

Do consultees agree?

Paragraph 5.39

Consultation Question 38.

1.38 Do consultees have experience of landlords setting up RTM companies in an attempt to prevent leaseholders from acquiring the RTM?

Paragraph 5.40

Consultation Question 39.

1.39 Do consultees have experience of third parties such as managing agents setting up RTM companies in an attempt to gain some benefit?

Paragraph 5.41

Consultation Question 40.

1.40 We invite consultees' views on whether any requirements of company law should be relaxed for RTM companies.

Paragraph 5.85

Consultation Question 41.

1.41 We provisionally propose that the prescribed articles of association should be amended to require RTM company directors to hold a general meeting once a year. Do consultees agree?

Paragraph 5.111

Consultation Question 42.

1.42 We provisionally propose that training for RTM company directors should be encouraged and well-publicised, but not mandatory. Do consultees agree?

Paragraph 5.126

Consultation Question 43.

1.43 We provisionally propose that the Government should ensure that training resources for prospective RTM directors are provided free of charge. Do consultees agree?

Paragraph 5.130

Consultation Question 44.

1.44 In your experience, do most RTM companies appoint managing agents?

Paragraph 5.151

Consultation Question 45.

1.45 Should it ever be mandatory for RTM companies to use a managing agent which meets the regulatory standards expected to be set by the Ministry of Housing, Communities and Local Government?

Paragraph 5.152

Consultation Question 46.

1.46 If consultees think it should be mandatory for RTM companies to use a managing agent meeting the regulatory standards expected to be set by the Ministry of Housing, Communities and Local Government, are any (or all) of the following the appropriate circumstances in which it should be mandatory:

- (1) Where more than 25% of the internal floorspace of the premises is commercial property?
- (2) Where the premises have more than a certain number of units?
- (3) Where the premises have special characteristics such as:
 - (a) being a listed building; or
 - (b) having a specialised use, such as retirement property?

Paragraph 5.153

Consultation Question 47.

1.47 If consultees think that use of a managing agent should be mandatory in premises with more than a certain number of units, would 10 units be an appropriate threshold? If not, what would be an appropriate threshold?

Paragraph 5.154

Consultation Question 48.

1.48 Are there any other circumstances in which consultees think it should be mandatory to use a managing agent which meets the regulatory standards set by the Ministry of Housing, Communities and Local Government?

Paragraph 5.155

Consultation Question 49.

1.49 We provisionally propose that RTM companies should be able to recover their management costs (including administration costs) from leaseholders as if the lease made express provision for them to be recovered as part of the service charge. Do consultees agree?

Paragraph 5.165

Consultation Question 50.

1.50 Do consultees think that there would be a reduction in litigation if RTM companies were permitted to recover their management costs (including administration costs) through the service charge? If possible, please provide an estimate of the percentage of cases in which this might make a difference.

Paragraph 5.166

Consultation Question 51.

1.51 We provisionally propose that the requirement to serve notices inviting participation should be abolished. Do consultees agree?

Paragraph 6.26

Consultation Question 52.

1.52 Do consultees think the acquisition process would be shorter and/or cheaper if notices inviting participation were abolished? If possible, please estimate how much time and/or money the average RTM company might save.

Paragraph 6.27

Consultation Question 53.

1.53 We provisionally propose that the prescribed notes accompanying the claim notice should include a statement that qualifying tenants are entitled to join the RTM company at any time. Do consultees agree?

Paragraph 6.28

Consultation Question 54.

1.54 In our enfranchisement consultation paper we provisionally proposed to replace the current deemed withdrawal provisions for a claim notice. If this proposal applied in the RTM context, landlords who have served a counter-notice and leaseholders would have a new right to apply to the tribunal for an order striking out the claim where the RTM company has not initiated the next step in the process.

We provisionally propose that the same right should be introduced in the RTM context. Do consultees agree? This would replace the rule that the RTM company is deemed to have withdrawn its claim if it does not apply to the tribunal after receiving a negative counter-notice. If consultees think the position should be different from that in enfranchisement, please give reasons.

Paragraph 6.49

Consultation Question 55.

1.55 We provisionally propose that landlords should be required to state all possible objections in the counter-notice and should not generally be permitted to raise new arguments at a later stage. Do consultees agree?

Paragraph 6.61

Consultation Question 56.

1.56 We provisionally propose that, where a counter-notice has not been served, the RTM company should be able to apply to the tribunal to determine:

- (1) that the RTM company was on the relevant date entitled to acquire the RTM;
- (2) the acquisition date on which the RTM was or will be acquired; and/or
- (3) the transfer of management functions in respect of non-exclusive appurtenant property.

Do consultees agree?

Paragraph 6.77

Consultation Question 57.

1.57 We provisionally propose that, where no counter-notice is served and an RTM company applies to the tribunal for a determination as to its acquisition of the RTM and/or the transfer of management functions in respect of non-exclusive appurtenant property, then:

- (1) the landlord should have to apply to the tribunal for permission to participate in the proceedings; and
- (2) the tribunal should be able to make the permission conditional on such terms as it thinks fit.

Do consultees agree?

Paragraph 6.78

Consultation Question 58.

1.58 Do consultees think that giving RTM companies the right to apply to the tribunal to determine their entitlement to acquire the RTM when no counter-notice has been served is likely to prevent future litigation over the validity of the RTM? If possible, please provide an estimate of the percentage of cases in which this might make a difference.

Paragraph 6.79

Consultation Question 59.

1.59 We provisionally propose that the tribunal should be given a power to waive defects or allow amendments in the claim notice and make any other directions it considers appropriate. Do consultees agree?

Paragraph 6.96

Consultation Question 60.

1.60 We provisionally propose that the tribunal should be given a power to waive defects or allow amendments in the counter-notice and make any other directions it considers appropriate, provided that amendments are not permitted unless the landlord has made a genuine mistake or other exceptional criteria are met. Do consultees agree?

Paragraph 6.97

Consultation Question 61.

1.61 Do consultees think that giving the tribunal the power to waive defects or allow amendments in notices would reduce litigation and therefore reduce costs? If possible, please estimate how much money an RTM company might save.

Paragraph 6.98

Consultation Question 62.

1.62 Do consultees consider that there should continue to be a requirement for the claim notice to be signed by or on behalf of the RTM company?

Paragraph 6.104

Consultation Question 63.

1.63 If the requirement for a claim notice to be signed by or on behalf of the RTM company is to be retained, do consultees consider that the claim notice should be signed by either:

- (1) a single officer of the RTM company; or
- (2) a person authorised by an officer of the RTM company to sign the claim notice on behalf of the RTM company?

Paragraph 6.105

Consultation Question 64.

1.64 We provisionally propose that an RTM company should be able to serve the RTM claim notice on the landlord at the following email addresses:

- (1) an address they have specified for the service of RTM notices;
- (2) an address they have specified for the purposes of serving notices (including notices in proceedings); or
- (3) an address included on or at HM Land Registry as one at which the registered proprietor can be served with notices.

Do consultees agree?

Paragraph 6.116

Consultation Question 65.

1.65 We provisionally propose that the law should be clarified to confirm that an RTM company is entitled to serve a copy of the claim notice on a qualifying tenant at an email address they have confirmed to the RTM company as an email address for the service of notices under the RTM provisions. Do consultees agree?

Paragraph 6.118

Consultation Question 66.

1.66 We provisionally propose that a claim notice should be deemed to have been served on the landlord if it is delivered by hand, or sent by post or email (where permitted) to one of the specified addresses in Group A or Group B.

Group A addresses for service include:

- (1) any address (including an email address) that has been provided by the landlord to the leaseholders or RTM company as an address at which an RTM notice may be served; and
- (2) the landlord's current address.

Group B addresses for service include:

- (3) the landlord's last known address;
- (4) the latest address given by the landlord for the purposes of section 47 of the Landlord and Tenant Act 1987;
- (5) the latest address given by the landlord for the purposes of section 48 of the Landlord and Tenant Act 1987; and
- (6) the latest email address given by the landlord for the purposes of serving notices (including notices in proceedings).

Do consultees agree?

Paragraph 6.125

Consultation Question 67.

- 1.67 We provisionally propose that before serving a claim notice, the RTM company should be required to check the landlord's address on or at HM Land Registry. Do consultees agree?
- 1.68 Before service of a claim notice at a Group B address, we provisionally propose that the RTM company should be required to:
- (a) search the Probate Register;
 - (b) search the Insolvency Register; and
 - (c) (in the case of a company landlord) check its status at Companies House.
- 1.69 We also provisionally propose the following:
- (1) if an individual landlord is dead, the designated address for service should be the address of any personal representatives given in any grant of probate (or, if none, the office of the Public Trustee);
 - (2) if an individual landlord is insolvent, the designated address for service should be the address for their trustee in bankruptcy as shown on the Insolvency Service website;
 - (3) if a company landlord is insolvent, the designated address for service should be the address for its administrator, liquidator or receiver as listed at Companies House. If no such person has been appointed, the Official Receiver should be served.

Do consultees agree?

Paragraph 6.136

Consultation Question 68.

- 1.70 Do consultees consider that a claim notice should include a statement of truth confirming that specified checks (if required) have been carried out?

Paragraph 6.139

Consultation Question 69.

1.71 We provisionally propose that if the identity of the landlord is known, but the RTM company does not have an address for them falling within Group A or B, they should carry out the Group B checks above. If this fails to provide an address, an advertisement should be placed in the London Gazette. Do consultees agree?

Paragraph 6.140

Consultation Question 70.

1.72 We provisionally propose, in line with our proposals in the enfranchisement consultation paper, that an RTM company applying to acquire the RTM under the missing landlord procedure should be required to:

- (1) conduct the pre-service checks for using a Group B address for service;
- (2) place an advertisement in the London Gazette inviting the owner of the identified property to contact the RTM company within 28 days; and
- (3) include confirmation that these preliminary checks have been undertaken in the application to the tribunal for a determination that the RTM company is entitled to acquire the RTM.

Do consultees agree that the procedure where there is a missing landlord should be the same for RTM as for enfranchisement claims?

Paragraph 6.147

Consultation Question 71.

1.73 We provisionally propose that an RTM company should be able to specify in the claim notice an alternative address (other than the company's registered office) at which a landlord should serve a counter-notice. This could be:

- (1) an address in England or Wales for service by post or hand delivery; or
- (2) an email address.

Do consultees agree?

Paragraph 6.151

Consultation Question 72.

1.74 We provisionally propose that, in the absence of agreement between the landlord and the RTM company, the minimum period between:

- (1) either
 - (a) the withdrawal of a counter-notice opposing the RTM claim; or
 - (b) the tribunal's final determination that the RTM company is entitled to acquire the RTM; and
- (2) the acquisition date of the RTM,

should be three months. Do consultees agree?

Paragraph 7.19

Consultation Question 73.

1.75 We provisionally propose that, where the claim notice does not specify a date for acquisition, this should be determined by the tribunal, following an application by the RTM company or landlord. Do consultees agree?

Paragraph 7.20

Consultation Question 74.

1.76 We provisionally propose that the tribunal should be able to change the acquisition date on an application from an RTM company. Do consultees agree?

Paragraph 7.21

Consultation Question 75.

1.77 Do consultees consider that we should prescribe a form for the information notice? The form would contain information which should always be provided, as well as information which, depending on the circumstances, it may be reasonable to request/provide.

Paragraph 7.58

Consultation Question 76.

- 1.78 Do consultees think that landlords should be exempted from providing information which they cannot reasonably provide without incurring disproportionate expense (whether these costs are to be met by the RTM company or the landlord)?

Paragraph 7.59

Consultation Question 77.

- 1.79 Do consultees think that the provision of information before the RTM company finds out whether it is actually entitled to exercise the RTM is a good idea? If so, which of the two options relating to the timing of the provision of information would you prefer and why? Please also provide any further comments on your preferred option which may improve it.
- 1.80 If possible, when setting out your preferred option for the timing of the provision of information, please set out how you consider the costs should be allocated, and estimate the cost/impact of the different options.

Paragraph 7.87

Consultation Question 78.

- 1.81 Do consultees think that the landlord should have:
- (1) 28 days, with a possible extension in exceptional circumstances; or
 - (2) a fixed period of 60 days,
- in order to provide the information needed by the RTM company in connection with the RTM?

Paragraph 7.95

Consultation Question 79.

1.82 We provisionally propose that the landlord should be under a duty to notify the RTM company of any material changes to the information previously provided and confirm, on the date of acquisition, that there are no material changes that have not been notified. Do consultees agree?

Paragraph 7.106

Consultation Question 80.

1.83 Do consultees think that RTM companies need a copy of every lease to understand their management obligations? Is a copy of each lease provided to or obtained by RTM companies at the moment?

Paragraph 7.118

Consultation Question 81.

1.84 Do consultees consider that the benefits of the RTM company accessing a copy of each lease would outweigh the additional time and cost incurred in preparing these?

Paragraph 7.119

Consultation Question 82.

1.85 We provisionally propose to require the landlord, RTM company and contractor parties to communicate within prescribed periods to clarify how existing contracts will be dealt with prior to the RTM acquisition date. Our proposals would require:

- (1) the landlord to provide copies or details of the management contracts, (including the contract terms, cost and notice period) in response to the information notice or with the counter-notice, depending on the preferred option for provision of information;
- (2) the RTM company to notify the landlord of the contractor parties which it does not wish to, or cannot agree terms with on which to maintain a contractual relationship within one month of the determination date; and
- (3) the landlord to notify the RTM company's preference to the contractor parties within 14 days. The landlord should also confirm that it considers the contract terminated as a matter of law as it will no longer be managing the premises post acquisition.

Do consultees consider that these additional requirements will provide sufficient clarity and certainty for all parties involved in the management of the premises?

Paragraph 7.162

Consultation Question 83.

1.86 We invite consultees to share their experiences of TUPE where the RTM has been acquired. Did the landlord's employees, who were involved in management of the premises, transfer over to the RTM company? If so, in what circumstances? If not, what happened to them once the RTM transferred?

Paragraph 7.180

Consultation Question 84.

1.87 Do consultees have experience in relation to a caretaker or landlord's employee's rights to occupy a flat in the premises? What happened once the RTM was transferred?

Paragraph 7.181

Consultation Question 85.

1.88 Do consultees consider that any amendments could be made to the definition of “management functions”, or more information provided by way of guidance, to improve clarity and certainty?

Paragraph 8.32

Consultation Question 86.

1.89 Are consultees aware of cases where the RTM company and landlord have arranged for certain management functions to remain with, or transfer back to, the landlord? If so:

- (1) What functions, and why?
- (2) Did any disputes arise from the agreement to transfer them back?

Paragraph 8.33

Consultation Question 87.

1.90 Do consultees think that regulated activities, such as the provision of personal care, should be excluded from the definition of “management functions”, so that they do not transfer to the RTM company?

Paragraph 8.46

Consultation Question 88.

1.91 If consultees do not think that regulated activities should be excluded from the definition of “management functions”, do they consider that any changes are needed to the current law, under which the RTM company acquires the obligation to carry out any regulated activities specified in the lease?

Paragraph 8.47

Consultation Question 89.

1.92 Are there any regulated activities other than the provision of care which consultees think RTM companies should not, or might not want to, acquire?

Paragraph 8.48

Consultation Question 90.

1.93 We provisionally propose that a copy of the current insurance policy, the insurance claims history and a copy of the last reinstatement valuation should be part of the documentation provided by the landlord to the RTM company before acquisition of the RTM. Do consultees agree?

Paragraph 8.73

Consultation Question 91.

1.94 Do consultees think that landlords providing a copy of the current insurance policy, claims history and a copy of the last reinstatement valuation would lower the cost of securing insurance for RTM companies? If possible, please provide an estimate of how much could be saved.

Paragraph 8.74

Consultation Question 92.

1.95 Do consultees think that it should be made explicit in legislation that the RTM company has an insurable interest?

Paragraph 8.86

Consultation Question 93.

- 1.96 We provisionally propose that the RTM company should acquire the duty to reinstate the building, provided that the lease places this duty on the landlord. Do consultees agree?
- 1.97 If not, should there be a solution based on separate insurances obtained by the RTM company and the landlord respectively (“split insurance”)?

Paragraph 8.87

Consultation Question 94.

- 1.98 We provisionally propose that the RTM company should provide the landlord with a copy of any contract of insurance entered into by the RTM company in respect of the premises, within 21 days of a request from the landlord. Do consultees agree?

Paragraph 8.91

Consultation Question 95.

- 1.99 Do consultees have experience of landlords purchasing additional insurance for a premises subject to the RTM because an RTM company failed to secure comprehensive insurance? If so, what was the cost of this additional insurance?

Paragraph 8.96

Consultation Question 96.

- 1.100 We provisionally propose that the landlord should be able to apply to the tribunal for a determination that the RTM company has under-insured. Do consultees agree?

Paragraph 8.97

Consultation Question 97.

1.101 We provisionally propose that, if the tribunal finds that the RTM company has under-insured, the tribunal should be able to:

- (1) direct that legitimate costs of “top up” insurance are recoverable; and/or
- (2) make a direction for the future insurance of the building to be procured by the RTM company.

Do consultees agree?

Paragraph 8.98

Consultation Question 98.

1.102 Do consultees consider that RTM companies should be required to obtain reinstatement valuations periodically?

Paragraph 8.99

Consultation Question 99.

1.103 In consultees’ experience, how much does it cost to obtain a reinstatement valuation?

Paragraph 8.100

Consultation Question 100.

1.104 In consultees’ experience, how common is it for RTM companies to recover accrued service charge arrears from the landlord? What are the consequences for the financial security of the RTM company if arrears are not recovered?

Paragraph 8.113

Consultation Question 101.

1.105 We provisionally propose that the landlord should be required to pay to the RTM company 50% of the estimated uncommitted service charges at the latest on the acquisition date, with the remainder payable within six months of the acquisition date. Do consultees agree?

Paragraph 8.114

Consultation Question 102.

1.106 We provisionally propose that the landlord should be required to use reasonable endeavours to pursue service charge arrears accrued prior to the acquisition date, and to pay any recovered funds to the RTM company. Do consultees agree?

Paragraph 8.122

Consultation Question 103.

1.107 We invite consultees' views on the following points.

- (1) Do consultees consider that there is a practical solution to avoid some of the existing delays and duplication of costs associated with lease consents under the RTM regime?
- (2) If so, do consultees consider:
 - (a) that the RTM company and landlord should be required to appoint joint advisors (chosen by the RTM company), in order to keep down the costs to be met by the leaseholder ("option 3");
 - (b) that the existing process should be sped up, by requiring the leaseholder to seek consent from the RTM company and landlord concurrently, or requiring the RTM company to pass the request to the landlord within a set period of time ("option 4"); or
 - (c) that there is another model which would work better (in which case, please give details)?
- (3) In relation to option 4, do consultees agree that the RTM company and/or landlord should have a limited period within which to respond? How long would be appropriate? We suggest 30 days as an initial position. How could costs be kept down?

Paragraph 9.41

Consultation Question 104.

1.108 What experiences of delays and/or duplication of costs have consultees experienced in relation to lease consents under the RTM regime? If possible, please give an indication of the costs incurred.

Paragraph 9.42

Consultation Question 105.

1.109 Do consultees consider that the law should be clarified to make clear that the RTM company is not entitled to grant retrospective consents or consents in respect of absolute covenants?

Paragraph 9.47

Consultation Question 106.

1.110 We provisionally propose that the law should require the RTM company to include its own name and address for service on service charge demands, but not those of the landlord. Do consultees agree?

Paragraph 9.69

Consultation Question 107.

1.111 We provisionally propose that the tribunal should have exclusive jurisdiction over disputes between the RTM company and landlord arising from the RTM provisions. Do consultees agree?

Paragraph 10.25

Consultation Question 108.

1.112 Do consultees consider the tribunal having exclusive jurisdiction over disputes between the RTM company and landlord over RTM provisions would save time and lower costs?

Paragraph 10.26

Consultation Question 109.

1.113 If consultees do not agree that the tribunal should have exclusive jurisdiction over disputes between the RTM company and the landlord arising from the RTM provisions, over which disputes should the county court retain jurisdiction?

Paragraph 10.27

Consultation Question 110.

1.114 We provisionally propose that enforcement of the requirements in the 2002 Act should be the exclusive preserve of the tribunal. Do consultees agree?

Paragraph 10.31

Consultation Question 111.

1.115 Do consultees agree that the tribunal should not be given exclusive jurisdiction to deal with disputes between the RTM company and a third party?

1.116 Do consultees agree that the tribunal should not be given exclusive jurisdiction to deal with disputes between the RTM company and a leaseholder?

Paragraph 10.34

Consultation Question 112.

1.117 We invite consultees' views as to whether there is any stage of the RTM process or any issue (pre- or post- acquisition of the RTM) in which mediation or arbitration might play a helpful role. If so, please give details.

Paragraph 10.48

Consultation Question 113.

1.118 We invite consultees' views as to whether the RTM company should be required to make any contribution to the landlord's non-litigation costs.

Paragraph 10.76

Consultation Question 114.

1.119 We invite consultees' views as to how any contribution that is to be made by the RTM company to the landlord's non-litigation costs should be calculated. Should the contribution be based on:

- (1) fixed costs;
- (2) capped costs;
- (3) fixed costs subject to a cap on the total costs payable; or
- (4) the landlord's response (the counter-notice) to the claim notice, and/or whether the landlord succeeds in relation to any points raised in his or her counter-notice?

Paragraph 10.101

Consultation Question 115.

1.120 We also invite consultees' views as to whether, if a fixed costs regime were to be adopted:

- (1) such a regime should apply to claim notices; and
- (2) if a fixed costs regime were to apply to claim notices:
 - (a) what additional features might justify the recovery of additional sums; and
 - (b) whether landlords should be able to recover all their reasonably incurred costs in respect of those additional features (subject to assessment), or only further fixed sums.

Paragraph 10.102

Consultation Question 116.

1.121 We provisionally propose that:

- (1) no additional costs should be recoverable where there are intermediate landlords or split freehold titles; and
- (2) the RTM company pays an additional fee owed to third party managers if they incur expense due to the RTM company's claim.

Do consultees agree?

Paragraph 10.103

Consultation Question 117.

1.122 We provisionally propose that where a claim notice fails, is withdrawn, or is struck out, the RTM company should be liable to pay a percentage of the non-litigation costs that would have been payable had the claim been completed.

Do consultees agree?

Paragraph 10.107

Consultation Question 118.

1.123 We provisionally propose that the percentage of the fixed non-litigation costs that should be payable where a claim notice fails, is withdrawn, or is struck out should vary depending on the stage that the claim has reached.

Do consultees agree? If so, what percentages should apply at particular stages of the claim?

Paragraph 10.108

Consultation Question 119.

1.124 We provisionally propose that the litigation process in respect of an RTM claim should not confer a right to costs on either party. Instead, each party should bear their own costs, except where there has been unreasonable behaviour or wasted costs, or where one of the exceptions we refer to above applies. Do consultees agree?

Paragraph 10.117

Consultation Question 120.

1.125 Do consultees think that each party having to bear their own costs of litigation would lead to fewer tribunal cases?

Paragraph 10.118

Consultation Question 121.

1.126 We provisionally propose there be a presumption in favour of an order under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of schedule 11 to the 2002 Act to prevent landlords recovering litigation costs from leaseholders through service charges or administration charges. Do consultees agree?

Paragraph 10.119

Consultation Question 122.

1.127 Do consultees have experience of the RTM ceasing to be exercisable by an RTM company? What caused the termination, and what happened afterwards?

Paragraph 11.42

Consultation Question 123.

1.128 We provisionally propose that when evaluating an application to appoint a manager under Part 2 of the Landlord and Tenant Act 1987, or for management to revert to the landlord, the tribunal should consider whether the RTM company's membership satisfies the RTM participation requirements. Do consultees agree?

Paragraph 11.74

Consultation Question 124.

1.129 We provisionally propose that, on termination of the RTM, the functions of the RTM company should, by default, revert to:

- (1) the party who is responsible for management functions in the ordinary course of events under the leases; or
- (2) if that person no longer exists, the landlord.

Do consultees agree?

Paragraph 11.83

Consultation Question 125.

1.130 We provisionally propose that the default position should not however apply where:

- (1) the tribunal has made an alternative determination or order; or
- (2) the issue has been otherwise agreed between the RTM company and every landlord.

Do consultees agree?

Paragraph 11.84

Consultation Question 126.

1.131 We provisionally propose that, where an agreement between the RTM company and the landlord to terminate the RTM does not have the support of all qualifying tenants, that agreement should have to be approved by the tribunal. The tribunal should approve the agreement if it is satisfied that the leaseholders will be able to enforce performance of the management functions in the leases against the party proposed to be responsible for management. Do consultees agree?

Paragraph 11.92

Consultation Question 127.

1.132 We provisionally propose that, where an RTM company which has been struck off is restored to the Register of Companies relatively quickly, the tribunal should have the ability to declare that the RTM is restored to the RTM company. Do consultees agree?

Paragraph 11.98

Consultation Question 128.

1.133 Do consultees consider that an application to restore the company to the register should have to be made within 30 days of the strike off taking effect? If not, how long?

Paragraph 11.99

Consultation Question 129.

1.134 We provisionally propose that interim management should revert to the landlord or other responsible party under the lease, unless the leaseholders apply to the tribunal for a manager to be appointed on an interim basis. Do consultees agree?

Paragraph 11.100

Consultation Question 130.

1.135 We provisionally propose that the tribunal should have the power to reinstate the RTM even if the RTM has been terminated, if termination has occurred as a result of a clerical or administrative error which does not cause loss or prejudice to any party. Do consultees agree?

Paragraph 11.102

Consultation Question 131.

1.136 We provisionally propose that regulations should set out a non-exhaustive list of the circumstances in which an RTM company ceases to be an RTM company in respect of the premises. Do consultees agree?

Paragraph 11.105

Consultation Question 132.

1.137 We provisionally propose that those grounds on which an RTM company ceases to be an RTM company in respect of the premises should include:

- (1) where the freehold of any premises over which RTM is exercised is transferred to the RTM company;
- (2) where the articles of the company are changed so that they no longer provide that the purpose of the company is to manage the premises in question (subject to the RTM company being able to add/remove premises); and
- (3) where the RTM company is a commonhold association.

Do consultees agree? Do consultees consider that any other circumstances should be included?

Paragraph 11.106

Consultation Question 133.

1.138 We provisionally propose that the appointment of a manager provisions in Part 2 of the Landlord and Tenant Act 1987 should be extended to apply to any premises which are being managed by an RTM company. Do consultees agree?

Paragraph 11.108

Consultation Question 134.

1.139 We provisionally propose that an RTM company should be able to apply to the tribunal at any time, whether it is solvent or not, to give up the RTM, and for an order that a manager is appointed, or that the management functions revert to the landlord or other person who has management functions under the lease. Do consultees agree?

Paragraph 11.116

Consultation Question 135.

1.140 Do consultees think there will be a time and/or financial saving if RTM companies can apply to the tribunal at any time to give up the RTM? How often do consultees think this option would be used?

Paragraph 11.117

Consultation Question 136.

1.141 We provisionally propose that the landlord should be able to object to an RTM company's application to give up the RTM only in exceptional cases. Do consultees agree? What should these be?

Paragraph 11.118

Consultation Question 137.

1.142 We provisionally propose that, while the RTM is continuing, the landlord should have the right to apply to the tribunal either:

- (1) for the management functions to be transferred back to the party under the lease, failing which, the landlord; or
- (2) if the default party is not best placed to manage the premises, for the appointment of a manager;

on the basis that the fault-based grounds for appointment of a manager under the Landlord and Tenant Act 1987 are made out. Do consultees agree?

Paragraph 11.125

Consultation Question 138.

1.143 We provisionally propose that, after the RTM has ceased, the landlord should be able to apply to the tribunal to appoint a manager instead of management reverting to the landlord or other party under the lease. Do consultees agree?

Paragraph 11.126

Consultation Question 139.

1.144 We provisionally propose that the application to appoint a manager instead of management reverting to the landlord or other party under the lease should have to be made within 30 days of the RTM ending. Do consultees agree?

Paragraph 11.127

Consultation Question 140.

1.145 We provisionally propose to clarify that the uncommitted service charges held by a solvent RTM company when the RTM ceases should be transferred to the party who takes over management. Do consultees agree?

Paragraph 11.132

Consultation Question 141.

1.146 We provisionally propose that there should be a statutory assignment from the RTM company to the new manager of the right to collect service charge debts when the RTM ceases. Do consultees agree?

Paragraph 11.137

Consultation Question 142.

1.147 We provisionally propose that the existing four-year restriction on successive RTM companies should be reduced. Do consultees agree?

Paragraph 11.142

Consultation Question 143.

1.148 What period of time do consultees think is appropriate for a restriction on successive RTM companies and why?

Paragraph 11.143

Consultation Question 144.

1.149 Do consultees have experience of cases where the tribunal has disapplied the four- year ban? If so, has there been any negative impact on any of the parties?

Paragraph 11.144