



Commonhold Team
Law Commission
1st Floor Tower
52 Queen's Anne Gate
London, SW1H 9AG

8 March 2019

BY EMAIL ONLY

Dear Sirs

LEASE response to 'Reinvigorating commonhold: the alternative to leasehold ownership'.

We welcome the opportunity to enclose our formal response to 'Reinvigorating commonhold: the alternative to leasehold ownership'. We wish to highlight our standpoint is that of an organisation which prioritises the interests of residential leaseholders and to ensure those are adequately promoted and protected as the reform programme is taken forward.

The response is lengthy, and so to assist the reader we briefly summarise our views in paragraphs 1 to 14 below:

1. When should commonhold be possible? (Questions 1-10)

We agree that the practice should change from requiring consent to conversion being obtained from everyone with a significant interest in the property. Of the two alternative ways in which a building might be converted to commonhold explored by the consultation paper we favour the option whereby these leaseholders who do not consent could be given a commonhold interest.

2. What is the procedure for converting to commonhold? (Questions 11-15)

We agree to the stream-lining of the procedure for converting to commonhold and that any consents given in support of the conversion should not automatically lapse after twelve months. Moreover we agree that (in addition to the freeholder) it should be possible for leaseholders pursuing a claim for collective enfranchisement to apply to HM Land Registry to create a new commonhold.

3. Mixed and multi-block developments (Questions 16-24)

We agree to the introduction of "sections" within commonhold based on company law principles of class-voting so allowing the different interests within commonhold to be separated out.

4. New commonhold developments and development rights (Questions 25-29)

We agree that statutory development rights should apply automatically so as to avoid the need to reserve express rights in the Commonhold Community Statement.

5. The commonhold association: its functions and structures (Questions 30-34)

We are sympathetic to the idea of a commonhold administrator being appointed to ensure that the association is not put in early liquidation.

6. The commonhold community statement (Questions 35-41)

We agree that it should be possible for the Commonhold Community Statement to impose restrictions on the short-term letting of units and consider that in relation to the private rented sector this should be confined to lettings made for less than six months.

7. Management and maintenance issues (Questions 42-55)

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

8. Financing the commonhold (Questions 56-61)

We agree that it should be compulsory for a commonhold association to have some form of reserve fund. Moreover we agree that it should be possible to allocate to individual units within a commonhold different percentages that it must contribute towards different heads of cost.

9. Responding to emergencies (Questions 62-64)

We agree that a commonhold association should be able to grant a floating charge and there should be express provision in the Commonhold Community Statement enabling them to do so.

10. The ban on residential leases – possible exceptions (Questions 65-72)

We agree that an exception to this ban should be made for shared ownership leases containing the prescribed fundamental clauses and that in new commonhold developments the model shared ownership lease should require the shared ownership leaseholder to comply with all terms of the Commonhold Community Statement.

11. Resolving disputes and the protection of minority interests within commonhold (Questions 73-82)

In contrast to the provisional proposal of the Commission we consider that referral to an ombudsman should be a mandatory part of commonhold's dispute resolution procedure.

12. Enforcement (Questions 83-86)

We agree that, before taking action to enforce a charge over a commonhold unit, the commonhold association should be required to follow a pre-action protocol

13. Voluntary termination of commonholds (Questions 87-92)

We agree that voluntary termination of a commonhold should be possible with either unanimous support or the support of eighty per cent of the available votes plus the approval of the court.

14. The impact and application of commonhold reform in England and Wales (Questions 93-107)

We agree with the sentiments in the consultation paper that its provisional proposals for reform will have made a substantial impact if they result in commonhold being adopted more widely.

The full response is enclosed with this letter.

We hope that our comments prove helpful, but if you have any questions please feel free to contact me.

Yours faithfully



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Encl.

Chapter 3

<p>Q.1</p> <p>In order to protect freeholders, we provisionally propose that it should only be possible to convert to commonhold if either:</p> <p>(1) the freeholder consents; or</p> <p>(2) the leaseholders satisfy the qualifying criteria for collective enfranchisement, and acquire the freehold as part of the process of converting to commonhold.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.2</p> <p>We provisionally propose that it should be possible to convert to commonhold without the unanimous consent of leaseholders.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.3</p> <p>We provisionally propose that only leaseholders who are eligible to participate in a collective enfranchisement claim should take a commonhold unit and should be able to participate in a decision to convert to commonhold.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>

Q.4

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

- (1) We provisionally propose that it should be possible for conversion to take place with the support of long leaseholders of 50% of the flats in the building. Do consultees agree?
- (2) We provisionally propose that non-consenting leaseholders should be provided with a statutory right to purchase the commonhold interest in their unit at a later date. Do consultees agree?
- (3) We provisionally propose that the right to purchase the commonhold interest should replace non-consenting leaseholders' statutory rights to obtain a lease extension and to participate in a collective enfranchisement. Do consultees agree?
- (4) We invite the views of consultees as to whether a purchaser from a nonconsenting leaseholder should be required to purchase the commonhold interest, as well as the leasehold interest.
- (5) We provisionally propose that the leaseholders should be able to require the freeholder to take new 999-year leases over any flats not let to qualifying tenants and that such leases should automatically be granted over flats let to statutorily protected non-qualifying tenants and shared ownership

We agree with this provisional proposal.

We agree with this provisional proposal.

We agree with this provisional proposal.

This is consistent with the retention of leasehold interests by non-consenting leaseholders following conversion being a temporary measure and phasing out the existence of leasehold interests in a building or on an estate.

We agree with this provisional proposal.

<p>leaseholders. Do consultees agree?</p> <p>(6) We invite the views of consultees as to whether the non-consenting leaseholders' share of the freehold purchase should be capable of being funded:</p> <p>(a) by the consenting leaseholders, through the commonhold association which holds the commonhold interest;</p> <p>(b) by the consenting leaseholders, through a company (owned by them) which acquires the commonhold interest;</p> <p>(c) by a third-party investor, who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease;</p> <p>(d) by granting a leaseback to the freeholder (who may be compelled to accept the lease), who acquires a long lease of the commonhold unit superior to the non-consenting leaseholder's lease; and/or</p> <p>(e) by any other means.</p>	<p>We consider that ultimately it is down to the preference of those embarking on the conversion process as to how they choose to fund the non-consenting leaseholders' share of the freehold purchase.</p>
<p>Q.5</p> <p>If non-consenting leaseholders are to be required to take a commonhold unit following conversion to commonhold (which we call "Option 2"):</p> <p>(1) We provisionally propose that that qualifying</p>	<p>We agree with this provisional proposal.</p>

leaseholders of 80% of the flats in the building should be required to support the decision to convert. Do consultees agree?

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

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

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

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

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

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

We agree with this provisional proposal.

We agree with this provisional proposal.

We are not in a position to provide this information.

We consider the charge should be set as a percentage of the final sale price, representing the percentage increase in value of the non-consenting leaseholder's property interest (from leasehold to commonhold) on conversion.

<p>purchase;</p> <p>(b) as that fixed amount, with interest;</p> <p>(c) as that fixed amount, adjusted in line with house price inflation;</p> <p>(d) as a percentage of the final sale price, representing the percentage increase in value of the non-consenting leaseholder's property interest (from leasehold to commonhold) on conversion; or</p> <p>(e) in some other way.</p> <p>(7) We invite the views of consultees as to what priority this charge should have in relation to any pre-existing charges.</p>	<p>We do not object if the charge has priority over any existing lender although it is important that lending institutions are comfortable with this.</p>
<p>Q.6</p> <p>Where a freeholder or non-consenting leaseholder, who has let his or her flat to a non-qualifying tenant on a variable service charge, is required to take a commonhold unit on conversion under Option 2, we invite consultees' views as to whether:</p> <p>(1) a cap should be placed on the amount of commonhold costs which are recoverable from the former leaseholder or freeholder, to reflect the costs that are recoverable from the non-qualifying tenant;</p> <p>(2) the non-qualifying tenant's rights should be altered so that</p>	<p>Looking at paragraph 3.119 of the consultation paper perhaps (2) should be the favoured approach and the tenant should be given a right to make representations about the commonhold charges in the same way as other Unit owners.</p>

he or she no longer has the right to challenge service charge costs after they have been incurred, but instead has the same rights to challenge commonhold costs as other unit owners; or

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

Q.7

Under Option 2, we provisionally propose that:

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

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

(a) the necessary consents have not been obtained;

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

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

Do consultees agree?

We agree with this provisional proposal.

<p>Q. 8</p> <p>We provisionally propose that on conversion to commonhold, tenancies granted for 21 years or less should continue automatically on conversion and that the consent of such tenants should not be required in order to convert to commonhold.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.9</p> <p>We invite consultees' views as to whether it should be possible for charges to transfer automatically from the leasehold title to the commonhold unit title on conversion to commonhold, without requiring lenders' consent.</p>	<p>We consider that charges should be able to transfer automatically from the leasehold title to the commonhold unit on conversion without requiring lenders' consent.</p>
<p>Q.10</p> <p>We have set out two options for setting the threshold of leaseholder support which should be required to convert to commonhold. The first would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 50% of the flats in the building to consent, provided non-consenting leaseholders are able to retain their leasehold interest on conversion to commonhold (Option 1). The second would be to require leaseholders (who are qualifying tenants under enfranchisement legislation) owning at least 80% of the flats in the building to consent, on the basis that non-consenting leaseholders are required to take a commonhold unit on conversion (Option 2).</p>	<p>We consider that the aim should be that there should be no leases in a commonhold. In the circumstances of the two options presented that would mean that our choice would be Option 2 although in its final proposals and recommendations the Commission should consider a reduction in the threshold in these circumstances.</p>

<p>We invite consultees' views as to whether they prefer Option 1 or Option 2.</p> <p>We invite consultees' views as to any other options for setting the threshold of leaseholder support for conversion, other than Options 1 and 2, which strike an appropriate balance between the interests of those wishing to convert and nonconsenting leaseholders, and provide a mechanism for financing the freehold purchase.</p>	
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Chapter 4

<p>Q.11</p> <p>We provisionally propose that, where the freeholder refuses to consent to conversion, the leaseholders will need to follow the collective enfranchisement process to purchase the freehold in order to convert to commonhold.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.12</p> <p>We provisionally propose that, to simplify the procedure for converting to commonhold, any consents given in support of the conversion should not automatically lapse after 12 months.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether leaseholders should be</p>	<p>We agree with this provisional proposal.</p> <p>We do not consider that leaseholders should be able to withdraw their</p>

<p>able to withdraw their individual consent to conversion after the Claim Notice has been served, or whether leaseholders should be required to make a collective decision no longer to proceed with the conversion.</p>	<p>individual consent to conversion after the Claim Notice has been served and instead leaseholders should be required to make a collective decision no longer to proceed with the conversion. We concur with paragraph 4.41 of the consultation paper that circumstances in which the leaseholders may reach such a decision could be set out in a participation agreement entered into before a claim is made and as a starting point we recommend modelling any such agreement upon the precedent contained in the LEASE guidance booklet entitled “Participation Agreements”.</p>
<p>Q.13</p> <p>We provisionally propose that (in addition to the freeholder) it should be possible for leaseholders who are in the process of acquiring the freehold by collective enfranchisement, to apply to HM Land Registry to create a new Commonhold.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, where a lender has consented to a conversion to commonhold on the condition that it will be granted new security over the commonhold unit after conversion, a deed of substituted security provided to HM Land Registry will act as sufficient evidence that this condition has been fulfilled.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal...</p> <p>We agree with this provisional proposal.</p>
<p>Q.14</p> <p>Where the freehold of the building is owned by the leaseholders collectively through a freehold management company (a “FMC”), we provisionally propose that the common parts of the building</p>	<p>We agree with this provisional proposal particularly as a FMC may be a company limited by share capital and the commonhold association has to be one limited by guarantee and as company law currently</p>

<p>should be transferred to a new commonhold association as part of the process of conversion to commonhold (rather than the FMC changing its articles to become a commonhold association, where this is possible).</p> <p>Do consultees agree?</p>	<p>stands it is not possible for a company limited by shares to become a company limited by guarantee.</p>
<p>Q.15</p> <p>We invite consultees' views as to whether, taking into account our provisional proposals set out in questions 11 to 14, the conversion procedure would operate satisfactorily.</p> <p>We invite consultees' view on what changes could be made to simplify the procedure and make it more cost-effective.</p>	<p>We hope the conversion procedure would operate satisfactorily.</p>

Chapter 5

<p>Q.16</p> <p>We provisionally propose that any new management structure needs to meet the following objectives:</p> <p>(1) Provide the ability to separate out the management of a variety of different interests within the same development, in particular by:</p> <p>(a) differentiating voting rights, so that those affected by a decision are entitled to participate in making that decision, and no one else is able to do so; and</p>	<p>We agree with the provisional proposal. The complexities of mixed-use and multi block developments require a carefully crafted management structure which protects consumers. In addition we would advocate measures to ensure that charges can be challenged appropriately where management functions are not wholly controlled by residential commonhold unit owners.</p> <p>Also a redress scheme needs to be accessible to address management issues-presumably any property managers involved with the scheme will be required to be registered with the current</p>
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<p>(b) allowing shared costs to be allocated in different ways to ensure that only those benefitting from a service pay for it.</p> <p>(2) Provide a framework which can be used to regulate the relationship between more than one building where there are shared areas, such as shared car parks or gardens.</p> <p>(3) Strike an appropriate balance between standardisation and flexibility.</p> <p>(4) Facilitate consumer protection to ensure that abuses that have arisen in the residential leasehold context cannot be transposed into commonhold.</p> <p>Do consultees agree?</p> <p>Are there any other objectives which should be added to the list above?</p>	<p>compulsory redress schemes. We note the announcement in January 2019 by Government of a Housing Complaints Resolution Service as a new single point of access to redress that housing consumers can use and perhaps such a service should embrace commonhold developments.</p>
<p>Q.17</p> <p>We provisionally propose that commonholds with sections (which are not individual corporate bodies) should be introduced as a management structure to make commonhold workable for more complex developments.</p> <p>Do consultees agree?</p> <p>If consultees do not agree, do consultees prefer either the flying <i>commonhold</i> model or layered commonhold model?</p>	<p>We agree with the provisional proposal.</p>

<p>If so, how do consultees suggest addressing the issues with these models?</p> <p>Are consultees aware of any other options we should be considering?</p>	
<p>Q.18</p> <p>We provisionally propose that it should be optional, rather than mandatory, for a section committee to be set up for each section in a commonhold.</p> <p>Do consultees agree?</p> <p>If consultees disagree, which powers do consultees think should be given compulsorily to those committees?</p>	<p>We agree with the provisional proposal.</p>
<p>Q.19</p> <p>We invite consultees' views as to whether delegation to section committees should be collateral or exclusive; whether this should vary for different powers; or whether it should be for each commonhold to decide.</p>	<p>Each commonhold should be able to decide for themselves whether in respect of delegation of power this should either be on the collateral or exclusive basis.</p>
<p>Q.20</p> <p>We invite consultees' views as to whether:</p> <p>(1) directors should be able to revoke or alter the powers delegated to a section committee as they wish;</p> <p>(2) section committees affected by an alteration of delegated</p>	<p>(1) No. It should be determined at the outset which powers are delegated otherwise the directors will end up with powers akin to a freeholder and the unit holders will be no better off under commonhold in terms of management control.</p> <p>(2) Not necessary if the powers cannot be revoked or altered.</p>

<p>powers should be given the ability to apply to the Tribunal; or</p> <p>(3) the directors should have to apply to the Tribunal in order to alter or revoke a delegation.</p>	<p>(3) Possibly an alternative to (1) making it much more difficult for control to be centralised.</p>
<p>Q.21</p> <p>We provisionally propose that a new section should be able to be created by: (1) the developer, at the outset; and (2) the commonhold association at a later date.</p> <p>Do consultees agree?</p> <p>If the commonhold association is allowed to create sections after it has been set up, we provisionally propose that this decision should be approved by special resolution, with the additional requirement that at least 75% of the total votes held by the unit owners who would be part of the new section must have been cast in favour of creating the section.</p> <p>Do consultees agree?</p> <p>We provisionally propose that unit owners affected by the introduction of a new section should be given the option of applying to the Tribunal.</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposals.</p> <p>We agree with the provisional proposal.</p> <p>We agree with the provisional proposal.</p>
<p>Q.22</p> <p>We provisionally propose that qualifying criteria for sections should be introduced, so that sections can only be created to</p>	<p>We agree with the provisional proposal.</p>

<p>give separate classes of vote to:</p> <p>(1) residential and non-residential units;</p> <p>(2) non-residential units, which use their units for significantly different purposes;</p> <p>(3) different types of residential units (such as flats and terraced houses);</p> <p>(4) separate blocks in the same development; and</p> <p>(5) other premises falling within the commonhold which, in the interests of practicality and fairness, should form a separate section.</p> <p>Do consultees agree?</p> <p>Are there any other criteria which consultees feel should be added to the list?</p>	
<p>Q.23</p> <p>We provisionally propose that it should be possible for sections to consist of a single unit.</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposal.</p>
<p>Q.24</p> <p>We provisionally propose that to combine two or more sections, a special resolution of the commonhold association</p>	<p>We agree with the provisional proposal.</p>

<p>should be required. Additionally, 75% of the votes cast by the unit owners in the sections that are to be combined must have been in favour.</p> <p>Do consultees agree?</p> <p>We provisionally propose that unit owners affected by sections being combined should be given the right to apply to the Tribunal as an additional protection.</p> <p>Do consultees agree?</p> <p>We provisionally propose that there should be no criteria which must be met before two or more sections in a commonhold can be combined.</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposal.</p> <p>We disagree with the provisional proposal in part. Any combination should be workable and ensure Unit owners are not prejudiced.</p>
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Chapter 6

<p>Q.25</p> <p>We invite consultees' views as to whether statutory development rights should apply automatically so as to avoid the need to reserve express rights in the CCS.</p> <p>We invite consultees' views as to whether such statutory rights should be drawn widely to include all matters which are likely to</p>	<p>We do not object to development rights that are statutory applying automatically rather than being reserved as express rights in the CCS.</p> <p>Given the above, wider and flexible drafting would seem to be necessary to meet the needs of developers and encourage</p>
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<p>apply in commonhold developments, including (but not limited to) the right to add land, to make consequential variations to commonhold contributions and voting rights, and rights of access.</p>	<p>commonhold developments</p>
<p>Q.26</p> <p>We provisionally propose that there should be no specific statutory provisions for the appointment of developers' directors. Instead, a developer's ability to appoint directors should depend on the number of units it retains.</p> <p>Do consultees agree?</p> <p>We provisionally propose that developers should be able to exercise all voting rights associated with the units of which they are the registered owners.</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposal.</p> <p>We agree with the provisional proposal.</p>
<p>Q.27</p> <p>Currently, the Commonhold Regulations place certain restrictions on a developer's exercise of development rights: (1) the developer must not exercise rights in a way which would interfere unreasonably with unit owners' enjoyment of their units or their ability to exercise rights granted by the CCS;</p> <p>(2) the developer may not remove land from the commonhold which forms part of a unit unless the owner of that unit provides written consent;</p>	<p>We do not consider it necessary to impose further restrictions given that the developer needs to be encouraged to take up Commonhold.</p>

<p>(3) any damage caused to the commonhold land by the developer should be remedied as soon as reasonably practicable; and</p> <p>(4) the developer may not exercise development rights if the works for which the right was granted have been completed (excluding the developer's right to market units).</p> <p>We invite consultees' views as to whether any further restrictions should be introduced on the use of development rights: in particular, whether a time limit should be imposed on the exercise of these rights (and if so, what this time limit should be).</p>	<p>In relation to time limits, market forces and planning law should dictate any time limits. There seems little need to add additional regulations in this regard.</p>
<p>Q.28</p> <p>We provisionally propose that "anti-avoidance" provisions should be introduced to ensure that the developer does not attempt to secure a greater degree of control by:</p> <p>(1) taking powers of attorney from the purchasers (or seeking to control votes in any other way); or</p> <p>(2) attempting to control how unit owners vote by inserting terms in the purchase contracts.</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposal.</p>
<p>Q.29</p> <p>We invite consultees' views as to what advantages there are (if any) of the transitional period in the registration procedure for</p>	<p>The transitional period allows for changes to the CCS and Articles before units have been sold which may be beneficial if the design</p>

new commonhold developments.	or plans have changed since the commonhold was first registered.
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Chapter 7

<p>Q.30</p> <p>We invite consultees' views as to whether any requirements of company law (such as to make an annual confirmation statement, and to file accounts) should be relaxed for commonhold associations.</p>	<p>The Commission's proposals should take into account the fact that we are dealing with non-professionals and the law should reflect this fact so we have no objection to company law requirements for the making of an annual confirmation statement and filing of accounts being relaxed for commonhold associations.</p>
<p>Q.31</p> <p>We invite consultees' views as to whether there are particular difficulties in applying CVAs to commonhold associations.</p> <p>We invite consultees' views as to whether the CVA procedure needs any adaptations to make it more relevant and effective in dealing with commonhold associations in financial difficulties.</p>	<p>We submit that one difficulty with applying CVAs to commonhold associations would be lack of professional expertise on the part of directors either inexperience or insufficient knowledge to assess when the company would be in such financial difficulty as to trigger a CVA.</p> <p>LEASE does not have enough the depth of expertise required to advice on any such adaptations.</p>

<p>Q.32</p> <p>We provisionally propose that it should not be possible for creditors directly to petition for a commonhold association to be wound-up, and a liquidator appointed. Instead, a petition could lead to the court appointing a commonhold administrator, who would carry out the necessary duties.</p> <p>Do consultees agree?</p> <p>We provisionally propose that a commonhold administrator should then be able to petition for the association to be wound-up only if the commonhold association is irretrievably insolvent.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal basically the concept of a commonhold administrator to be appointed to ensure that the association is not put in early liquidation.</p> <p>We agree with this provisional proposal.</p>
<p>Q.33</p> <p>We provisionally propose that the law should be clarified to ensure that there is a presumption that, on the insolvency of a commonhold association, a successor association should usually be appointed.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether there are circumstances in which it would not be appropriate for the court to appoint a successor association and, if so, what these circumstances are.</p> <p>We provisionally propose that the court should have</p>	<p>We agree with this provisional proposal.</p> <p>The circumstances that the court should take into account in not appointing a successor association would be instances of fraud or deliberate attempt to wind up an existing association to avoid existing liabilities on the part of the association.</p> <p>We agree with this provisional proposal.</p>

<p>discretion as to whether to impose conditions for a successor association to be appointed.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to:</p> <p>(1) what conditions might be imposed; and</p> <p>(2) if the court's discretion to be structured, what factors the court should take into account.</p>	<p>(1) The court may impose reporting conditions on the new association; prohibit certain directors from being appointed; require certain financial measures to be put in place so there is financial protection in future.</p> <p>(2) The factors the court should take into account when imposing such conditions should be: the reasons as to why the company went insolvent (e.g. in a case of mismanagement or deliberate insolvency prohibit the responsible parties from any management); the financial circumstances of the unit holders and whether any financial measures could practically be put into effect.</p>
<p>Q.34</p> <p>We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to reduce the level of indebtedness of the association.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, if a liquidator is appointed to wind up a commonhold association, he or she should not be able to demand further contributions from the unit owners to make up for the shortfall in contributions from members who are bankrupt or from whom it is impossible to recover their contributions.</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>

Do consultees agree?

Chapter 8

Q.35

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

Do consultees agree?

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

(1) in relation to the private rented sector, we invite views on whether any restriction imposed by a CCS should be confined to lettings made for less than six-months, or for any other specified period;

(2) in relation to the social rented sector, we invite views on whether any restriction imposed by a CCS should not be able to apply to particular landlords, such as registered providers of social housing and housing

We agree with this provisional proposal. Short term letting of flats in buildings containing interdependent units can create friction between owners and occupiers. This has been particularly an issue with holiday lets and short term lettings arranged through on-line marketplaces such as Airbnb. We are mindful of the situation where the development is for dedicated build-to-rent. This is a market that is growing so any proposals to impose restrictions should bear this in mind.

(1) As an assured shorthold tenancy is, normally, for a minimum of 6 months, this would seem an appropriate length to stipulate. Accordingly the CCS restriction should be confined to lettings of less than 6 months. We refer to our comments above regarding the build-to-rent sector and raise for the Commission's consideration whether any restriction imposed by a CCS should bear in mind development intent.

(2) We agree that, in relation to the social rented sector, any restriction imposed by a CCS should not be able to apply to particular landlords, such as registered providers of social housing and housing associations.

<p>associations, or whether there are other ways of ensuring that such lettings cannot be prohibited in the CCS.</p>	
<p>Q.36</p> <p>We provisionally propose that event fees should be prohibited within commonhold, except for any specific circumstances expressly permitted by statute. Do consultees agree?</p> <p>We invite consultees' views as to whether an exception to the proposed prohibition on event fees should be made for specialist retirement properties within commonhold.</p> <p>We invite consultees' views as to whether there are any other circumstances (apart from specialist retirement properties) in which event fees should be permitted within Commonhold.</p>	<p>We agree with this provisional proposal. We note the comments in the consultation paper that these fees being applied towards a deferred sinking/reserve fund are unlikely to be necessary in light of its proposals for Unit owners annually to contribute to mandatory reserve funds.</p> <p>We do not consider there are any circumstances which would permit an exception to the proposed prohibition on event fees within commonhold being made for specialist retirement properties or any other circumstances</p>
<p>Q.37</p> <p>We invite consultees' views as to whether any further restrictions should be put in place to limit which local rules may be added to the CCS.</p>	<p>Our view is that ultimately it all depends on any rule having been passed according to the process of the CCS and that so long as that rule does not breach the wider law it is up to the CCS and its members which local rules may be in place.</p>
<p>Q.38</p> <p>We provisionally propose that a higher threshold for amending the CCS should be introduced, which may apply to some or all local rules. Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>

<p>We invite consultees' views as to:</p> <p>(1) what voting threshold should be required to amend local rules;</p> <p>(2) when there should be a right to apply to the Tribunal in relation to amendments of the CCS; and</p> <p>(3) whether the threshold should be the same for amending all local rules, or whether rules should be differentiated. If consultees are of the view that rules should be differentiated, we invite views as to how the threshold for introducing a rule in an area on which the CCS is currently silent should be determined.</p>	<p>(1) We would suggest that a written special resolution be required to amend or make additions to local rules. This would ensure that at least 75% of all the votes in the commonhold are in favour to achieve this, rather than just those at the meeting and refer to the percentage requirements in s37 of the Landlord and Tenant Act 1987.</p> <p>(2) There could be a right for a Unit owner to challenge the reasonableness of a change in the local rules. A Unit holder could be required to show that the amendment would have significant impact upon them, either financially or otherwise.</p> <p>(3) We consider that it would overcomplicate the process to have different thresholds for different types of rules and there is more clarity if the threshold is the same for amending all local rules.</p>
<p>Q.39</p> <p>We provisionally propose that the mandatory provisions of the CCS should be contained in the regulations, but not be reproduced in the CCS.</p> <p>Do consultees agree?</p> <p>If so, we invite consultees' views as to whether the directors of the commonhold association should be under</p>	<p>We agree with this provisional proposal.</p> <p>Yes, this should be required, rather than just referring Unit owners to the regulations.</p>

<p>a duty to provide copies of the most up-to-date standard provisions contained in the regulations, along with a copy of the CCS, to any new purchasers, and should provide copies of the updated standard provisions to all unit owners as and when changes are made.</p>	
<p>Q.40</p> <p>Should our provisional proposals to introduce sections be implemented, we provisionally propose that it should be possible to add schedules to the CCS, where the rights and obligations applying to a specific section can be collated.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal. Residential Unit owners would only have to refer to their particular schedule and the same would apply for owners of commercial premises.</p>
<p>Q.41</p> <p>We invite consultees' views as to whether there are any new terms, other than those we have asked about in this Consultation Paper, which should be added to the prescribed terms of the CCS (that is, rules which should apply to every commonhold, rather than local rules which can optionally be adopted by individual commonholds).</p>	<p>A new term we consider could be added to the CCS prescribed terms is an obligation on the Commonhold Association to provide information to the Unit owner's solicitor on sale relating to matters such as commonhold assessments made in the past few years.</p>

Chapter 9

<p>Q.42</p> <p>We provisionally propose that the procedure for the election of directors of a commonhold should be simplified, so that the prescribed articles of association provide that directors should be elected at a general meeting, and also may be co-opted by the existing directors.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.43</p> <p>We provisionally propose that, if a commonhold association cannot find members able and willing to serve as directors, and is also unwilling to appoint professional directors, any member of the association should be able to apply to a court or tribunal for professional directors to be appointed, who would then be paid by the association.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, if members should be able to make such an application, then someone with a mortgage or other charge over a unit should also be able to do so.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, if it should be possible for an application to appoint directors to be made, it should be heard by the First-tier Tribunal (Property Chamber) (in Wales, the</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>

<p>Residential Property Tribunal).</p> <p>Do consultees agree?</p>	
<p>Q. 44</p> <p>We invite consultees' views as to whether a problem is likely to arise whereby a single investor, or a group of investors, who own a majority of units, run a block in their own interests in order to "squeeze out" other owners.</p> <p>If it is felt that problems are likely to arise, then we invite consultees' views as to the following:</p> <ol style="list-style-type: none"> 1) whether the concept of "persistent failure to comply with the CCS in some material respect", offers a satisfactory basis upon which a court or tribunal could intervene on an application by a unit owner; 2) whether such applications should be made to the court or the Tribunal; 3) whether, the court or Tribunal should have the power to appoint directors, and to make the supplementary orders set out in paragraph 9.48 should they be required; 4) whether it would be necessary for the court or tribunal to exercise continuing supervision over the directors who were appointed; and 5) whether other solutions could be used to address the difficulty. 	<p>We consider such a problem is likely to arise where there is majority ownership by a single investor, or a group of investors, owning a majority of units.</p> <ol style="list-style-type: none"> (1) We submit that "persistent failure to comply with the CCS in some material respect" offers a satisfactory basis upon which a court or tribunal could intervene; (2) Such applications should be made to the Tribunal; (3) The Tribunal should have the power to appoint the directors and to make the supplementary orders set out in paragraph 9.48 should they be required. (4) The Tribunal should have supervisory powers especially in the context of minority support for the appointment. (5) We submit that any solutions under Company law would not be suitable. Therefore the process envisaged in the consultation paper (similar to the process for appointment of a manager) seems to us more appropriate in dealing with the above issues.

<p>Q.45</p> <p>We seek consultees' views on whether their experience with other leaseholder controlled companies (Freehold Management Companies, Residents' Management Companies and right to manage companies) leads them to believe that provisions for proxy voting may be abused, and, if so, in what way or ways.</p> <p>We further seek consultees' views on whether any such abuses could be prevented or mitigated by:</p> <ol style="list-style-type: none"> 1) a restriction on the number of proxy votes that any individual might hold; or 2) some other device (please specify). 	<p>Based on our experience, abuse of proxy voting is more likely to happen with buy -to-let properties. Flat owners may not be aware of the management issues and may be more likely to lean on management advice and consequently to accept proxy voting. This way, errant management can influence the tactical way such votes are to be cast.</p> <p>We consider that any such abuses could be prevented or mitigated by a restriction on the number of proxy votes that any individual might hold.</p>
<p>Q.46</p> <p>We provisionally propose that legislation should deem that the commonhold association has an insurable interest in the parts of the building which are owned by the unit owners.</p> <p>Do consultees agree?</p> <p>We provisionally propose that legislation should require the commonhold association to reinstate or rebuild (as appropriate) the whole of a horizontally-divided building including the parts owned by the unit owners – in order to satisfy the indemnity principle within insurance law.</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>

<p>Do consultees agree?</p> <p>We invite consultees' views as to whether any other legal difficulties would arise in arranging buildings insurance for commonholds which have not been addressed by these proposals.</p>	<p>There may be issues concerning party walls such as with a street of terraces and party wall insurance issues may arise.</p>
<p>Q.47</p> <p>We provisionally propose that the CCS should be amended so as to require that either a copy of the buildings policy and schedule, or sufficient details of it, should be supplied to all unit owners on or before they acquire a unit, and whenever the terms of the policy change.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the commonhold association should confirm to unit owners and their mortgage lenders that the insurance is in existence on an annual basis, and when reasonably required at other times.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal and there should be a right for the Unit owner to raise a claim unilaterally with the insurer in the event an insurable risk arises.</p> <p>We agree with this provisional proposal.</p>
<p>Q.48</p> <p>We invite consultees' views as to whether public liability insurance (that is, insurance against liability as an occupier and also as a property owner) is likely to be generally available for commonhold associations.</p> <p>If it is generally available, we provisionally propose that details</p>	<p>We do not have any information to form a view.</p> <p>We agree with this provisional proposal.</p>

<p>of minimum cover, permissible exclusions and excesses, and so on, should be prescribed in regulations to be made by the Secretary of State.</p> <p>Do consultees agree?</p>	
<p>Q.49</p> <p>We provisionally propose that the commonhold community statement should contain an express power for the commonhold association to take out directors' and officers' insurance.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal. Such provision may act as an incentive for the Unit owners to take up directorships.</p>
<p>Q.50</p> <p>We provisionally propose that the provisions in the prescribed commonhold community statement requiring the repair of the common parts should be extended to require also "renewals"; that is, the replacement of "like with like" if something should be beyond economic repair.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the installation of adequate thermal insulation should be deemed to be a repair.</p> <p>Do consultees agree?</p> <p>We provisionally propose that it should be possible for the repairing obligations required by the CCS to be supplemented</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>Whilst we do not disagree in principle with this provisional proposal the Commission should consider whether it should be</p>

<p>by a local rule requiring a higher standard of repair, if appropriate.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, with horizontally-divided buildings (so including all flats), matters relating to the internal repair of units should be left to local rules.</p> <p>Do consultees agree?</p> <p>We provisionally propose that with vertically-divided buildings (that is, all houses, whether detached, semi-detached or terraced) all matters relating to repair (whether internal or external) of the units should be left to local rules.</p> <p>Do consultees agree?</p>	<p>possible for the repairing obligations required by the CCS to be supplemented by a local rule requiring a lower standard of repair if the developer has set the bar too high initially in the CCS. Presumably they could lower it once the developer has left the site.</p> <p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal which has similarities to Estate Management Schemes which begs the questions whether there may be a role for the Tribunal.</p>
<p>Q. 51</p> <p>We invite consultees' views as to whether rights of entry are best left to local rules, or whether rights of entry should be prescribed.</p> <p>If rights of entry are prescribed, we invite consultees' views as to whether it is necessary to make a distinction between different types of buildings.</p> <p>If it is necessary to distinguish between different types of building, we invite consultees' views as to:</p>	<p>We submit that the rights of entry should be prescribed and should not be left to be drafted on an ad hoc basis.</p> <p>We submit that it is necessary to make a distinction depending on the types of buildings.</p> <p>We submit that the distinction to be adopted should be between those horizontally-divided and vertically-divided.</p>

<p>1) whether the distinction should be between those that are horizontally-divided, and those that are vertically-divided; and</p> <p>2) if some other distinction is more appropriate, what that should be.</p> <p>We invite consultees' views as to what, in each case, the appropriate rights of entry would be.</p>	<p>The appropriate rights should be;</p> <ol style="list-style-type: none"> 1) the right to entry, on reasonable notice, to repair the building or adjoining premises; 2) to lay down, maintain and repair all services; 3) to view and examine the condition of the building; and 4) making good any damage that affects the building or the common parts.
<p>Q.52</p> <p>We provisionally propose that the commonhold community statement should be amended to provide that alterations to the common parts which are incidental to internal alterations made by a unit owner to his or her own unit should not require the consent of the members by an ordinary resolution.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the giving of consent to such proposals should be delegated to the directors.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether:</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree that "minor alterations to the common parts" should be defined as the consultation paper outlines at paragraph 9.137</p>

<p>1) “minor alterations to the common parts” should be defined as we have outlined at paragraph 9.137 above; or</p> <p>2) some other criterion could be adopted to distinguish minor alterations from those which should continue to require the consent of an ordinary resolution by the members.</p>	
<p>Q.53</p> <p>We invite consultees’ views as to whether existing long-term contracts have been a problem which leaseholders have encountered.</p> <p>If they have, then we further invite leaseholders to let us have examples.</p>	<p>A common instance where existing long-term contracts have presented an issue for leaseholders is whether they are qualifying long-term agreements attracting the consultation provisions of Section 20 of the Landlord and Tenant Act 1985. This issue was considered by the Court of Appeal in the context of the terms of a management agreement in the case of <i>Corvan (Properties) Limited v. Maha Abdel-Mahmoud</i>, where it was found that such an agreement appointing an agent for twelve months which “will continue” until either party terminated on notice was an agreement for a term of more than twelve months and therefore a qualifying long term agreement.</p>
<p>Q.54</p> <p>We provisionally propose that commonhold associations should be given the right, within a set period from the date when the unit owners take effective control of the commonhold association, to cancel contracts which were entered into by the association before that date. (It would be necessary to define these terms so as to exclude the scenario where the units were “sold” to associates of the developer).</p> <p>Do consultees agree?</p>	<p>We are aware of concern that this will result in electric entry phone systems being torn out by the supplier. These contracts typically say that ownership of the system remains vested in the supplier for what is effectively the duration of the contract to supply and maintain.</p>

<p>We provisionally propose that a “long-term contract” should be defined as a contract which must run for more than 12 months.</p> <p>Do consultees agree? If not, what longer or shorter period would be appropriate?</p> <p>We provisionally propose that a commonhold association should have to exercise this right within six months from the commonhold coming under the effective control of the unit owners (being actual “arms-length” purchasers of the units).</p> <p>Do consultees agree? If not, what longer or shorter period would be appropriate?</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>
<p>Q.55</p> <p>We invite consultees’ views as to the difficulties that can arise when the long-term contract includes the hire of equipment which remains the property of the contractor and which they have reserved the right to remove if the contract should be terminated. We would appreciate any examples of contracts involving the hire of equipment, or of long-term contracts generally, that consultees are able to provide.</p>	<p>Such events could cause disruption in provision of certain services to the building and could potentially have costs consequences if needed to be replaced. An example is the provision of internet and cable services; and another is the removal of mobile phone masts from the roof.</p>

Chapter 10

<p>Q.56 We provisionally propose that the proposed contributions to</p>	<p>There is perhaps a danger to the Commonhold that a general</p>
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shared costs should require the approval of the members of the commonhold association. This approval would generally be given by a resolution passed in a general meeting, though it could be passed by the written procedure.

Do consultees agree?

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

Do consultees agree?

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

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

meeting is not quorate and remains so due to the indifference of members. The Commission should therefore consider in formulating its final proposals and recommendations whether general increases be a matter for directors but increases above a certain percentage go to a general meeting for approval. In the United States, state laws might regulate assessment amounts and increases in dues. Some states limit assessments to a certain amount per year, or require the previous approval of some or all of the members (homeowners) before the Homeowners Association ("the HOA") can raise dues more than a certain percentage. For instance in Arizona the HOA cannot increase dues by more than twenty per cent per year without the vote of a majority of members of the HOA.

We agree with this provisional proposal.

We refer to our suggestion above regarding general increases and those above a certain percentage.

A further vote should then be taken. If a resolution still does not pass, the Directors may consider their position and invite other members to become directors.

Q.57

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

Do consultees agree?

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

Do consultees agree?

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

Do consultees agree?

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

Do consultees agree?

We note that the cap is to apply to expenditure on improvements to the fabric of the common parts and that the figure for a cap that is to be index-linked would be imposed in the original CCS (or as subsequently included or varies). Whilst we agree in principle to the provisional proposal we consider the Commission should recommend clarity in the CCS as to what such improvements to the fabric of the common parts would be. There can be a fine line between what is an improvement and what is a repair.

We refer to our response to Consultation Question 56. The Commission should consider general increases being a matter for directors but increases above a certain percentage going to a general meeting for approval

We refer to our comments on general increases being a matter for directors but increases above a certain percentage going to a general meeting for approval.

This provisional proposal begs the question of what if the expenditure is greater than originally anticipated. In any event for such a provisional proposal to be workable and to command acceptance by stakeholders would surely depend on there being full disclosure of the proposed expenditure.

Q.58.

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

Do consultees agree?

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

Do consultees agree?

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

Do consultees agree?

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

We agree with this provisional proposal and would draw to the Commission's attention the requirement under British Columbia's Strata Property Act and regulations for strata corporations with five or more strata lots to obtain depreciation reports meeting certain legal requirements- <https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/operating-a-strata/repairs-and-maintenance/depreciation-reports/depreciation-report-requirements>

We agree with this provisional proposal.

We would draw the Commission's attention to the Strata Property Regulations of British Columbia whereby the Contingency Reserve Fund is required to have a minimum level of funding equivalent to twenty five per cent of the annual operating fund. The Commission should consider whether a minimum annual contribution towards the annual reserve fund should be specified in order to achieve this sort of result- <https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/operating-a-strata/finances-and-insurance/the-contingency-reserve-fund-crf#contributions>

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

Do consultees agree?

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

Do consultees agree?

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

Do consultees agree?

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

Do consultees agree?

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

We agree with this provisional proposal.

We agree with this provisional proposal.

We agree with this provisional proposal.

We agree with this provisional proposal.

We agree with this provisional proposal.

<p>Do consultees agree?</p> <p>We invite consultees' views as to whether the directors (or the members in a general meeting) should be able to "borrow" from a reserve fund in order to meet a shortfall in meeting other expenditure, and, if so, what safeguards, if any, would be appropriate.</p> <p>We provisionally propose that the proposed annual contributions to the reserve fund or funds should be approved by the members in the same way as the contributions to current expenditure, and, if possible, at the same time. Do consultees agree?</p>	<p>We have concerns about this. There is a risk in allowing this in that the reserve fund might be used where members have failed to make their contributions to the shared costs. The incentive to pursue payment from members may be lost. Also it is questionable whether directors would be prepared to borrow from the reserve fund on the basis that they have responsibility to repay what has been borrowed.</p> <p>We refer to our earlier comments that the Commission should consider in formulating its final proposals and recommendations whether general increases be a matter for directors but increases above a certain percentage go to a general meeting for approval</p>
<p>Q.59</p> <p>We provisionally propose that it should be possible to allocate to individual units within a commonhold different percentages that it must contribute towards different "heads" of cost.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether each commonhold should have total flexibility in how different costs are allocated, or whether there should be any limitations on their ability to do so.</p>	<p>We agree with this provisional proposal, this would be similar to that presently used in leases but with more flexibility.</p> <p>When converting to commonhold the owners will have agreed the division of expenditure, so total flexibility is fine. When a developer is setting up a commonhold building there is a risk of unfair allocation, for example if the developer is retaining flats, therefore some limitation may be required here.</p>

Q.60.

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

Do consultees agree?

We invite consultees' views as to whether: (1) it is likely to be fair and workable to consider any proposed variations to contributions to shared costs, and the reserve funds, on the basis that the originally allocated percentage was fair; and (2) safeguards need apply only if the allocated percentage is altered.

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

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

We agree with this provisional proposal.

Perhaps a member should have a right to challenge at Tribunal the original contribution laid down by the developer on a new commonhold on the same basis that they can challenge a change in their contribution. There would need to be limited criteria to seek a variation and in this regard we refer the Commission to Part IV of the Landlord and Tenant Act 1987 which operates on the basis of needing to satisfy limited criteria for variation.

Internal floor area is a common basis of division in leases at present and seems the most satisfactory way of allocating contributions in residential commonholds.

Matters such as insurance may have to be charged to different heads of expenditure between the residential parts and commercial parts, as the insurance requirements of the latter may well differ. Otherwise, we can see no obvious alternative to the use of internal floor area as the basis for allocating contributions between residential and commercial.

Q 61

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

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

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

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

Do consultees agree?

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

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

We agree with this provisional proposal.

Yes, as outlined in the consultation paper. There may be difficulties in achieving a retention in every transaction to cover this eventuality.

We agree with this provisional proposal.

We agree with this provisional proposal.

Yes, we can foresee these causing issues, if there is no sanction or convenient remedy for not complying.

A longer period could be given for producing the CUIC, for example, one month. If not provided within this time limit, there could be a limit placed on the maximum amount payable, for example £500. The new owner could then make retention of this

<p>We invite consultees' views as to whether a Commonhold Unit Information Certificate should be conclusive once issued; or whether it should be possible for it to be amended if an error is spotted after it has been issued.</p> <p>We further invite consultees' views on what problems would arise in practice if a Commonhold Unit Information Certificate could be amended; and on how these might be addressed.</p>	<p>amount pending actual figures being given, if actual figures are not provided by completion date.</p> <p>There should be an ability to amend if error discovered after issue.</p> <p>This may create uncertainty for the buyer if CUIC could be amended right up to completion. Perhaps the CUIC could be limited to one amendment only and not later than one month, or possibly longer, after the issue of the CUIC.</p>
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Chapter 11

<p>Q.62</p> <p>We invite consultees' views as to whether the need for unit owners to obtain the consent of their mortgage lender to support the commonhold association granting a fixed or floating charge is likely to be a significant difficulty in raising emergency funding.</p> <p>If consultees consider that there might be difficulties, we invite views on what measures could be put in place to alleviate these difficulties, including whether the Tribunal should be able to override a mortgage lender's refusal to give consent.</p>	<p>We are not in an informed position to advise on the attitude of lenders to giving consent to the commonhold association granting a fixed or floating charge. Nevertheless, allowing the Tribunal to override a mortgage lender's refusal to give consent may be a step too far. We fear that such a step makes lenders more wary of lending on commonhold.</p>
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<p>Q.63</p> <p>We provisionally propose that express provision should be made for a commonhold association to grant a floating charge.</p> <p>Do consultees agree?</p> <p>We provisionally propose that a charge over the common parts or a floating charge should only be able to be granted when either: (1) The unit owners unanimously consent to the charge: or (2) 80% of the unit owners consent to the charge, and approval is obtained from the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal Wales.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>
<p>Q.64</p> <p>We provisionally propose that it should be possible for a commonhold association (having obtained the requisite consent) to grant a charge over part of the common parts. Where such a charge is granted, the part of the common parts so charged may be registered with a separate title number.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>

Chapter 12

<p>Q.65</p> <p>We provisionally propose making an exception to the prohibition on residential leases over seven years, and leases granted at a premium, for shared ownership leases which contain the fundamental clauses prescribed by Homes England in England or the Welsh Government in Wales</p> <p>Do consultees agree?</p>	<p>We agree with the provisional proposal.</p>
<p>Q.66</p> <p>We provisionally propose that in new commonhold developments, the model shared ownership lease should require the shared ownership leaseholder to comply with all terms of the CCS.</p> <p>Do consultees agree?</p> <p>We provisionally propose that shared ownership leaseholders in new commonhold developments should be able to exercise all the votes of the commonhold association in place of the shared ownership provider, apart from a decision to terminate, which should be exercised jointly with the provider.</p> <p>Do consultees agree?</p> <p>We provisionally propose that shared ownership leaseholders in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service</p>	<p>We agree with the provisional proposals. That would be essential to the smooth operation of the Commonhold Building</p> <p>We agree with the provisional proposals. The decision to terminate is more controversial. It may be better to qualify this depending on the relative stakes. So once the Shared Owner acquires 50% or more, they have the right to make this decision themselves.</p> <p>We agree with the provisional proposal and perhaps the Commission would consider whether there should be a specified dispute resolution process if the registered provider</p>

<p>charge costs or to be consulted on works and contracts exceeding a certain amount.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, in new commonhold developments, on purchasing 100% of the value of the commonhold unit, the shared ownership leaseholder should be transferred the commonhold title of the unit and should become a member of the commonhold association.</p> <p>Do consultees agree?</p>	<p>and the shared ownership leaseholder cannot agree; for example, arbitration paid for by the registered provider.</p> <p>We agree with this provisional proposal.</p>
<p>Q.67</p> <p>We provisionally propose that in a building which has converted to commonhold, the shared ownership provider should have voting rights in the commonhold association. Delegation of voting rights to the shared owner will be possible on a voluntary basis, but not mandatory.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, in a building which has converted to commonhold, the staircasing provisions of any existing shared ownership leases should continue to operate in the same way. On staircasing to 100%, the shared owner will therefore remain a leaseholder.</p> <p>Do consultees agree?</p> <p>We provisionally propose that after having staircased to 100%</p>	<p>We disagree; this ought to depend on the relative stakes of provider and shared owner.</p> <p>We disagree, we suggest that on staircasing to 100% the Shared Ownership leaseholder should automatically acquire the Commonhold title not retain the leasehold nor should they need to actively exercise the right. The lease should merge into the freehold title of the unit.</p>

<p>of the value of the leasehold flat, the shared ownership leaseholder should have a statutory right to purchase the commonhold unit and become a member of the commonhold association.</p> <p>Do consultees agree?</p>	<p>Currently the shared owner of a house can automatically acquire the freehold on 100% staircasing. We see no reason why commonhold shared owners should not have same right.</p>
<p>Q.68</p> <p>We invite consultees' views as to whether an exception to the ban on residential leases over seven years is needed to accommodate better community land trusts and co-operatives within the commonhold model.</p>	<p>If the ban on residential leases over seven years does not prevent community land trusts and co-operatives from owning commonhold units and affordably renting these to tenants then we agree with the provisional view in the consultation paper that it is unnecessary to create an exception to the ban.</p>
<p>Q.69</p> <p>Aside from shared ownership leases, community land trusts and housing cooperatives, are consultees aware of any other forms of affordable housing which it is not possible, or would be difficult, to accommodate in the current commonhold system?</p>	<p>We are not aware of any other forms of such affordable housing.</p>
<p>Q.70</p> <p>We provisionally propose that an exception to the prohibition on residential leases of over seven years or granted at a premium should be made for lease-based home purchase plans regulated by the Financial Conduct Authority.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>

<p>Q.71</p> <p>We provisionally propose that customers of lease-based home purchase plans in new commonhold developments should not have the same statutory rights as other leaseholders to challenge service charge costs or to be consulted on works and contracts exceeding a certain amount.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal. We would suggest to the Commission that the difference between commonhold Unit owners and other leaseholders should be set out explicitly in plain English in all sales materials provided by the Developer.</p>
<p>Q. 72</p> <p>We ask consultees for their views and experience of how the relationship between a bank and a customer who is purchasing property through a lease-based home purchase plan is, or can be, preserved following a collective enfranchisement.</p>	<p>We consider that this question is best addressed by a professional with experience of the needs and concerns of the banking sector and how to protect them.</p>

Chapter 13

<p>Q.73</p> <p>We provisionally propose that the commonhold association should not be able to prevent a unit owner or tenant from pursuing direct legal action against another unit owner or tenant. Instead, the association should have the right to notify the unit owner or tenant that it reasonably considers the claim to be frivolous, vexatious or trivial or that the matter complained of is not a breach of the CCS.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
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<p>Q.74</p> <p>We provisionally propose that a failure to use the forms which accompany the commonhold dispute resolution procedure, or forms to the same effect, should not automatically prevent a claim from progressing.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal,</p>
<p>Q.75</p> <p>We provisionally propose that referral to an ombudsman should not be a mandatory part of commonhold's dispute resolution procedure. Instead, it could be used on an optional basis, instead of, or alongside, other forms of alternative dispute resolution.</p> <p>Do consultees agree?</p> <p>We provisionally propose that membership of an approved ombudsman scheme should no longer be a requirement for commonhold associations, and that, instead, commonhold associations should be able to decide whether or not to become a member of an ombudsman scheme.</p> <p>Do consultees agree?</p>	<p>We disagree with this provisional proposal and consider that referral to an ombudsman should be a mandatory part of commonhold's dispute resolution procedure. There may be instances where a Commonhold Association acts in bad faith and does not apply good dispute resolution practice. If specific Alternative Dispute Resolution is not laid down in the CCS the default position should be a reference to an ombudsman.</p> <p>We have concerns about this provisional proposal and consider that there is some case for dispute resolution within the CCS otherwise the default position is membership of a scheme. In this regard we refer to Alternative Dispute Resolution in British Columbia- https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/resolving-disputes-within-the-strata#hearing</p> <p>With regards to dispute resolution generally there may be scope for a special limitation period and we cite the position in British Columbia.</p>

<p>Q.76</p> <p>We provisionally propose that, where the dispute resolution procedure has not been followed, any court or tribunal, which subsequently considers the dispute, should have full discretion to disregard the non-compliance, or to order the parties to take any steps it considers appropriate, in accordance with its general case management powers.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.77</p> <p>We invite consultees' views as to whether the current commonhold dispute resolution procedure should be transferred to a pre-action protocol.</p>	<p>We consider that commonhold disputes should be dealt with by the Tribunal, rather than the court, and accordingly it may be preferable to keep the commonhold dispute resolution procedure within the CCS rather than as a separate pre-action protocol.</p>
<p>Q.78</p> <p>We provisionally propose that the jurisdiction of the First-tier Tribunal (Property Chamber) in England and the Residential Property Tribunal Wales should be extended to cover disputes arising within a commonhold. Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q.79</p> <p>We invite consultees' views as to whether the prescribed CCS should include a provision that, where a unit owner or tenant breaches the rules of the CCS, the unit owner, or tenant, should be required to indemnify the other unit owners and the commonhold association for any losses they reasonably incur</p>	<p>We consider it should be left to Unit owners to decide if such a provision should be included in the CCS rather than it being a prescribed part of the CCS.</p>

as a result of the breach.

Q.80

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

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

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

We agree with this provisional proposal.

One possible circumstance in which it would be appropriate to provide a unit owner (or owners) with a right to challenge a decision taken by the commonhold association is where the appropriate procedure has not been followed for raising charges.

Q81

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

- (1) Whether or not the unit owner(s) making the application voted against the decision complained of, or had a good reason for not doing so.
- (2) Whether the decision complained of needs to have a particular impact on the unit owner (or owners) and if so, what degree of impact.
- (3) The reason behind the decision taken by the commonhold association, for example, whether the decision is in the best interests of the commonhold and/or is proportionate to the impact on the unit owner in question.

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

(1) This could be a consideration but not a deciding factor.

(2) We consider the Unit owner would have to show an impact on them to be able to mount a challenge and this should be a significant impact whether financially, or otherwise.

(3) Both should be taken into account and should be considered in the context of whether they are sufficient to override the significant impact on the leaseholder.

On whether the same factors would be relevant in all of the circumstances set out in Consultation Question 80 we comment as follows:

(1) question 80 (1) : in the case of the "cap" on enhanced services , would suggest that the onus should be on the Commonhold Association to show why this should be exceeded .The above factors would not be as relevant .

(2) Question 80(2): we would suggest that the above factors would

	<p>be relevant.</p> <p>(3) Question 80(3): the onus should be more on the directors of the commonhold association to show why the powers of the committee are being revoked or amended, if challenged at the Tribunal.</p> <p>(4) Question 80(4): we suggest the above factors would be relevant.</p>
<p>Q.82</p> <p>We provisionally propose that on an application by a unit owner challenging a decision of the commonhold association, the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) should be able to allow the decision to stand or annul the decision. If the First-tier Tribunal (Property Chamber) or the Residential Property Tribunal (Wales) allows the decision to stand, we propose that the Tribunal should be able to attach conditions to its decision. Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>

Chapter 14

<p>Q.83</p> <p>We invite consultees' views as to whether the commonhold association should be provided with enhanced powers to address non-financial breaches of the CCS.</p> <p>If so, what should these powers be?</p>	<p>We would suggest to the Commission that such powers, or the exercise of them, could not violate equality laws of England and Wales. For example the burning of incense could not be banned if it is part of a Buddhist worship ritual.</p>
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<p>Q.84</p> <p>We provisionally propose that a statutory cap should be introduced on the rate of interest which may be charged by the commonhold association on late payments of commonhold contributions.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
<p>Q. 85</p> <p>We provisionally propose that a commonhold association should have an automatic statutory charge over commonhold units for the payment of commonhold costs.</p> <p>Do consultees agree?</p> <p>We provisionally propose that if the commonhold association has an automatic statutory charge over commonhold units for the payment of commonhold contributions, this charge should take priority over all other charges (such as a mortgage over the property).</p> <p>Do consultees agree?</p>	<p>We agree to this provisional proposal so long as there are adequate protections in place for defaulting Unit owners and mortgage lenders.</p> <p>Whilst we have no objection in principle to this provisional proposal.it is important that the lending institutions are comfortable with such a suggestion as they are among the key participants in ensuring the success of commonhold.</p>
<p>Q.86</p> <p>We provisionally propose that, before taking action to enforce a charge over a commonhold unit, the commonhold association should be required to follow a pre-action protocol. We envisage that the protocol will require the association to provide prescribed information to the defaulting unit owner and</p>	<p>We agree to this provisional proposal provided the protocol is in plain English.</p>

make reasonable attempts to agree a repayment plan.

Do consultees agree?

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

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

Do consultees agree?

We provisionally propose that the court should only be able to order the sale of a unit where the amount owing to the

Steps:

- 1) Require the association to carry out full disclosure of the relevant documents to enable early settlement of the dispute. The information should disclose the amount in dispute, the time for payment, the relevant CCS section which obliges them to pay and any other rights that the commonhold association has to claim the debt. If the unit holder requests a document, the association should provide this within 30 days or explain as to why this cannot be complied with.
- 2) The CCA board invite the unit holder to its next meeting to discuss the latter's concerns.

We agree with this provisional proposal

We agree with this provisional proposal.

commonhold association exceeds a certain amount.

Do consultees agree?

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

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

Do consultees agree?

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

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

We agree with this provisional proposal.

We agree with this provisional proposal.

<p>Do consultees agree?</p> <p>We provisionally propose that any tenancies granted out of a unit should continue to exist following an order for sale.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p>
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Chapter 15

<p>Q. 87</p> <p>We provisionally propose that voluntary termination of a commonhold should be possible with either::</p> <p>a) unanimous support; or</p> <p>b) the support of 80% of the available votes plus the approval of the court.</p> <p>Do consultees agree?</p> <p>We provisionally propose that on an application for voluntary termination the court should have discretion to decide whether to allow the voluntary termination to take place, as well as the terms on which it may do so.</p> <p>Do consultees agree?</p> <p>If the court has discretion as to whether to allow voluntary termination, We invite consultees' views as to the following</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree that is should be useful to include factors to guide the court's discretion and those mentioned in paragraph 15.52 should</p>
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<p>issues:</p> <ol style="list-style-type: none">1) whether it would be useful to include factors to guide the court's discretion;2) whether the factors mentioned in paragraph 15.52 should be taken into account;3) whether the court should be directed to consider the amount of support there is for voluntary termination over and above the 80% required; and4) whether others should also be included. <p>We invite consultees' views as to whether increasing the role of the court would sufficiently address the issue of the final terms of the termination statement not being acceptable to those who supported the termination resolution.</p> <p>We provisionally propose that an application for voluntary termination should be heard by the court (rather than by the First-tier Tribunal (Property Chamber), or in Wales the Residential Property Tribunal Wales).</p> <p>Do consultees agree?</p>	<p>be taken into account. We do not consider the court should be directed to consider the amount of support there is for voluntary termination over and above the 80 per cent required as that is a high enough threshold in any event and of course more than is needed for a special resolution.</p> <p>We would hope that increasing the role of the court would sufficiently address the issue of the final terms of the termination statement not being acceptable to those who supported the termination resolution.</p> <p>We agree with this provisional proposal.</p>
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<p>Q.88</p> <p>We provisionally propose that where a commonhold is divided into sections, any vote on voluntary termination would need to be taken in sections, and whether it was unanimous or received at least 80% support would have to be determined by section.</p> <p>Do consultees agree?</p> <p>Where a commonhold is not divided into sections, we provisionally propose that it should be possible for part of the commonhold to be reconstituted following voluntary termination.</p> <p>Do consultees agree?</p> <p>We provisionally propose that reconstitution should require 100% support of the unit owners in the part to be reconstituted, or at least 80% support and an application to the court.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>
<p>Q.89</p> <p>We provisionally propose that if any statute provides that a landlord should be entitled to recover possession of a property if he or she can prove an intention to demolish or reconstruct the building, such a requirement should also be satisfied if it can be proved that the commonhold association has that intention.</p>	<p>We agree with this provisional proposal.</p>

<p>Do consultees agree?</p> <p>We invite consultees' views as to what further provision, if any, should be made to address the position of tenants on voluntary termination of the commonhold.</p>	<p>We suggest that the CCS should contain a provision that on voluntary termination of the commonhold any tenancy should be brought to an end. This provision can be mirrored in any tenancy agreement the Unit owners enter into. Sufficient notice would need to be given to the tenant and this provision should be entrenched in the CCS and the tenancy agreement.</p>
<p>Q.90</p> <p>We provisionally propose that it should be clarified that mortgage lenders and other secured lenders will retain their secured interest in the commonhold units until the commonhold in its entirety is sold.</p> <p>Do consultees agree?</p> <p>We provisionally propose that mortgage lenders and other secured lenders should automatically have legal standing to make applications to the court during the termination process with a view to protecting their interests.</p> <p>Do consultees agree?</p> <p>We provisionally propose that it should be made clear that, if a unit is subject to negative equity, any shortfall should be met personally by the owner of the unit, and should not be covered by other unit owners.</p> <p>Do consultees agree?</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p>

<p>We invite consultees' views as to any other ways in which the interests of mortgage lenders and other secured lenders may require protection on the voluntary termination of a commonhold.</p>	<p>We hope the proposals made in this consultation paper are adequate to protect the interests of the mortgage lenders.</p>
<p>Q.91</p> <p>We provisionally propose that the CCS should not be required to specify the share of the proceeds of termination that each unit owner is to receive on termination.</p> <p>Do consultees agree?</p> <p>We provisionally propose that it should be possible for the unit owners to specify the share of the proceeds of termination that each unit owner is to receive on termination (or some method of ascertaining it) in the CCS.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the power to decide an application to disapply a provision in the CCS which determines the distribution of proceeds of sale on termination should lie with the Tribunal.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether:</p> <p>1) guidance should be provided to the court or Tribunal as to how it should exercise its discretion; and</p>	<p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We agree with this provisional proposal.</p> <p>We submit that guidance should be given as to how to exercise discretion</p>

2) if guidance should be provided, what factors the court or Tribunal should take into account.

We invite consultees' views as to whether:

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

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

Do consultees agree?

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

We submit, as regards '(1)' that supplementary Commonhold Insolvency Rules should supplement the existing rules of the Insolvency court to deal with valuation issues. This is necessary because the Insolvency Court usually deals with experienced business entities that have the benefit of professional advisers. Rules may need to be simplified in the context of Commonhold and on (2) and (3) we agree that all issues involving the valuation of commonhold units on termination should be referred to the Tribunal; and that the Tribunal should have the power to appoint a single valuer.

We agree with this provisional proposal.

<p>Q.92</p> <p>We provisionally propose that if the process of voluntary termination should begin, but it should subsequently turn out that the commonhold is in fact insolvent, the same protections should be given to the assets of the individual unit owners as would have applied if the process had begun as an involuntary insolvency.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether the value of the individual units should be preserved for the unit owners if the commonhold is substantially destroyed; and, if so, how this can be achieved.</p>	<p>We agree with this provisional proposal.</p> <p>We agree with the view of attributing to the unit owner the notional value of their units before these were destroyed and this should be the basis for calculating their share.</p>
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Chapter 16.

<p>Q. 93</p> <p>We invite consultees' views as to whether, and how, any aspects of our provisional proposals to reform the law of commonhold will affect the position of existing owners of commonhold units, either positively or negatively.</p>	<p>We appreciate that currently commonhold associations are few in number and we have received few enquiries from the owners of commonhold units. In 2008/09 we received grant-in-aid from the then Ministry of Justice for Commonhold work and we can report that in 2007/08 we received 58 enquiries on the subject and the following year 50 enquires. In each year at the top of the subjects of enquiry was "What is Commonhold".</p> <p>We hope that the any proposals coming out of the Law Commission that may find their way into legislation will improve the position and</p>
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	<p>experience of existing owners of commonhold units particularly facilitating future sales through an increased ability to obtain mortgage finance.</p>
<p>Q. 94</p> <p>What advantages do you think commonhold could offer over leasehold?</p>	<p>We agree with the sentiments in the consultation paper that its provisional proposals for reform will have made a much more substantial impact if they result in commonhold being adopted more widely.</p> <p>The existing commonhold legislation addresses the issues of leasehold being a wasting asset and the restrictions in English law on the passing of the burden of a positive covenant from a freehold owner to his or her successor.</p> <p>One of the major advantages of commonhold is the reduction in and standardisation of documents. Instead of a lease per dwelling-and they may differ in provisions and covenants-there is one master document namely the CCS with in the main prescribed requirements although with local rules to cater for individual developments. This should make management easier and ease the process of buying and selling.</p>
<p>Q. 95</p> <p>We ask consultees to provide us with information about the time spent in reading through and considering the terms of leases of residential flats:</p> <p>(1) when acting for a prospective purchaser; (2) when acting for a prospective purchaser and mortgage</p>	<p>We have made enquiries of some of our staff to reference their previous experience in private practice. We thus understand that it would take at least ten hours to complete a property transaction with the majority of time involved in investigating title.</p> <p>In answer to the numbered points raised in this consultation</p>

<p>lender; (3) when acting for a mortgage lender on a re-mortgage; (4) when some dispute arises within a leasehold block of flats as to responsibility for repairs and maintenance, calculation of the service charge, and similar disputes.</p> <p>In each case we also invite consultees to give us some idea of the cost that would thereby be incurred to the client.</p> <p>We further invite their views as to whether time is likely to be saved in reading through and considering the terms of the parts of the CCS which may be varied.</p> <p>We invite consultees to share with us their experience of commonhold-type arrangements in other countries. Is there scope for savings of time to be made? If, what would be the estimated time saved on a typical transaction?</p>	<p>question-</p> <ol style="list-style-type: none"> (1) Less than an hour to read a lease, but with an additional 1-2 hours to consider the terms, whether that be raising enquiries or investigating matters. (2) In this situation, perhaps slightly longer time might be spent on the transaction if there are any unusual/specific requirements of the UK Finance Mortgage Lenders' Handbook for conveyancers or if the Handbook requires further action. (3) See (2) (4) Generally the same, no more than an hour to read the lease and to identify the pertinent clauses. <p>We anticipate time is likely to be saved in reading through and considering the terms of the CCS.</p>
<p>Q 96</p> <p>We ask consultees to provide us with information about the prevalence of, and costs incurred in, disputes caused by the terms of one or more residential leases being inconsistent with the terms of another lease (or other leases) within a building or development. We further invite their views as to whether our provisional proposals for commonhold will reduce the scope for costs to be incurred in interpreting a commonhold community statement.</p>	<p>We have come across leases within a building that contradict each other or make management more difficult. For instance there may be different standards or requirements for external repair/redecoration (cyclical as opposed to "as and when necessary") or some leases providing for advance service charges and/or sinking funds whilst others do not. This can occur for instance with freeholds changing hands and the new freeholder granting leases using their own "pet" terms. Or leases granted many years ago being extended and terms being agreed that result in the provisions being modernised and/or to comply with the requirements of the UK Finance Lenders Handbook.</p>

	<p>We would hope that the Commission’s provisional proposals for commonhold – namely the existence of a single CCS -if translated into legislation will reduce the scope for costs to be incurred in interpreting a CCS.</p>
<p>Q. 97</p> <p>We ask consultees to provide us with information about the sort of difficulties that can arise owing to the difficulty in varying and updating the terms of leases:</p> <p>(1) if the leases are varied as a conveyancing transaction which does not give rise to a dispute; and (2) if the leases are varied as a result of an application to the Tribunal (whether the application was made because it was contested, or because it was the most convenient way of implementing the variation).</p> <p>If you have figures – whether they relate to the costs incurred, or the amount of time spent – then please let us have them.</p> <p>We further invite consultees’ views as to whether our proposals regarding the amendment of local rules by resolution of the commonhold association will reduce the costs which are incurred, when compared with the costs incurred under (1) or (2) above.</p>	<p>As we are not practitioners dealing day-to-day negotiating and/or implementing variations in a lease, we are not in a position to provide figures relating to costs incurred or the amount of time spent. We would hope that if translated into legislation the Commission’s proposals regarding the amendment of local rules by resolution of the commonhold association would reduce any such costs.</p>
<p>Q.98</p> <p>We invite consultees to provide us with information about costs generated by service charge disputes. We further invite their views as to whether, and by how much, our provisional proposals for commonhold will reduce the incidence of disputes and the costs that will be incurred in equivalent</p>	<p>We do have such information about costs generated by service charge disputes. An effective dispute resolution process, and the skill to nip problems in the bud early, is the key to preventing disputes and any consequent legal costs getting out of control. We hope that if translated into legislation the provisional proposals for</p>

<p>disputes over contributions to shared costs.</p>	<p>commonhold will reduce the incidence of disputes and the costs incurred in equivalent disputes over contributions to shared costs.</p>
<p>Q.99 We invite consultees to provide us with information about costs generated when forfeiture proceedings need to be used to enforce payment of service charges. We further invite their views as to whether our provisional proposals for commonhold will reduce the costs that will be incurred if a commonhold association needs to seek an order for sale.</p>	<p>We do not have information about costs generated when forfeiture proceedings need to be used to enforce payment of service charges. We would hope that if translated into legislation the provisional proposals for commonhold will reduce costs that will be incurred if a commonhold association needs to seek an order for sale.</p>
<p>Q.100 We invite consultees' views as to:</p> <ol style="list-style-type: none"> 1) whether cases before tribunals are likely to prove more or less expensive than similar cases before courts; and 2) whether (apart from service charge disputes, which we have already addressed in Consultation Question 98) there appears to be more or less scope for disputes within commonholds which result in litigation, when compared with leasehold developments. 	<p>We consider it is likely that cases before tribunals would prove less expensive than similar cases before courts and that there appears less scope for disputes within commonhold resulting in litigation compared with leasehold developments.</p>
<p>Q. 101 We are provisionally proposing several new grounds upon which it would be possible for someone to make an application to the Tribunal. We invite consultees' views as to:</p> <ol style="list-style-type: none"> (1) what they consider that the likely impact of these will be on the number of applications made to the Tribunals; and (2) whether any particular proposals are likely to result in a large number of new applications being made 	<p>We would hope that any such applications would be few in number and that on most occasions there would be little cause to make one. For instance we would trust it would be a rare occasion that the minority need protection from a decision validly made by the majority such that they would be compelled to apply to the Tribunal for their position to be considered and for an appropriate remedy</p>

<p>Q. 102</p> <p>We invite the views of consultees as to how any other aspects of our provisional proposals for reform of commonhold will affect the position of future owners of commonhold units, either positively or negatively.</p>	<p>Ultimately it depends on how future owners perceive commonhold ownership as a more beneficial choice in the marketplace to leasehold ownership. In the main this is down to marketing and promotion by government and other stakeholders.</p>
<p>Q.103</p> <p>We ask consultees to provide us with any information that they may have of:</p> <p>(1) examples of planning agreements which are practicable under leasehold but which would not appear to be feasible under our reinvigorated model of commonhold; and</p> <p>(2) services within leasehold developments which are being provided at the residents' expense, but which, if the development had been set up on a commonhold basis, would have been provided, if at all, at public expense.</p>	<p>(1) We are not in a position to provide this information and suggest that those practising regularly in the planning field could provide examples of any such planning agreements that may exist.</p> <p>(2) We do not have such information.</p>
<p>Q 104</p> <p>We ask consultees to provide us with any evidence they have of management difficulties which may arise where a leaseholder-controlled company is the landlord of (or responsible for the management of) commercial units; and whether this has affected their rental or capital value</p>	<p>We do not have any such evidence which is more likely to be available from those who are in the business of managing mixed use developments where a leaseholder-controlled company is the landlord of or responsible for the management of commercial units.</p>
<p>Q.105</p> <p>Which of the following statements best reflects your views on the provisional proposals in this Consultation Paper?</p>	<p>Statement (3) best reflects our views on the provisional proposals in the Consultation Paper.</p>

<p>(1) If these proposals are adopted, then developers will be willing to use commonhold for a substantial number of developments.</p> <p>(2) Even if these proposals are adopted, developers will not be willing to use commonhold unless Government introduces financial incentives for them to do so, either directly by offering financial incentives for the developers, or indirectly, by offering incentives for purchasers of commonhold units.</p> <p>(3) Even if these proposals are adopted, and financial incentives are given, developers will not use commonhold for developments unless they are prohibited from selling flats on a leasehold basis and they are thus forced to use commonhold.</p>	
<p>Q. 106</p> <p>We invite consultees' views as to:</p> <p>(1) what issues prevent the uptake of commonhold; and</p> <p>(2) what could or should be done to promote the adoption of commonhold.</p> <p>We invite consultees' views as to the extent to which the suggestions for the invigoration of commonhold set out in paragraph 16.47 above, and any other suggestions that they may make, are likely to result in commonhold being used instead of leasehold?</p>	<p>(1) Ignorance of what commonhold means. Cautiousness in being involved in a system that is still fairly new and untried within the property system of England and Wales. Lending institutions being reluctant to advance funds on commonhold units.</p> <p>(2) All or some of the suggestions set out in Paragraph 16.47 should assist with commonhold eclipsing leasehold.</p>
<p>Q.107</p> <p>We invite consultees' views as to whether a reformed commonhold regime should treat particular issues differently in</p>	<p>The laws of commonhold should ideally be uniform throughout England and Wales.</p>

England and in Wales. Consultees are welcome to share their views as to this point here, or in response to questions which we ask throughout the Consultation Paper about particular issues.