

insurance

administration charges

rent demands

charges under estate  
management schemes

## **Commonhold And Leasehold Reform Act 2002**

The Commonhold and Leasehold Reform Act received Royal Assent on 1<sup>st</sup> May 2002. The provisions of the Act will be phased in from July.

The Act's main headings can be summarised as follows:

**Part I** - Commonhold

### **Part 2**

Chapter I - Right to manage  
Chapter II - Collective enfranchisement  
Chapter III - Flat claims  
Chapter IV - House claims  
Chapter V - Service charges etc.  
Chapter VI - Leasehold valuation tribunals  
Chapter VII - General

Pemberton Greenish are producing a number of briefing papers on the Act. In this briefing paper we look at the following issues under Chapter V in Part 2

1. insurance
2. administration charges
3. rent demands
4. charges under estate management schemes

## **Insurance otherwise than with the landlord's insurer**

For some years, a tenant of a dwelling<sup>1</sup> has had the right (through an application to the court or the leasehold valuation tribunal) to challenge the landlord's choice of insurer where the tenancy requires the tenant to insure the dwelling with an insurer nominated by the landlord<sup>2</sup>. That right will now be extended to a tenant whose tenancy requires him to insure the dwelling with an insurer approved by the landlord<sup>3</sup>. References to the landlord will become references to the RTM company if the right to manage is exercised in relation to the building in which the dwelling is contained<sup>4</sup>.

The new Act will also extend the tenant's rights as regards insurance where the tenant<sup>5</sup> is required under a long lease<sup>6</sup> to insure the house<sup>7</sup> with an insurer nominated or approved by the landlord<sup>8</sup> ("the landlord's insurer")<sup>9</sup>. The tenant will not be required to effect insurance with the landlord's insurer if the tenant's insurance arrangements fulfil a number of conditions<sup>10</sup>. They are

1. the house is insured under a policy issued by an authorised insurer<sup>11</sup>
2. the policy covers the interests of both the landlord and the tenant
3. the policy covers all the risks which the lease requires be covered by insurance provided by the landlord's insurer
4. the amount of the cover is not less than that which the lease requires to be provided by such insurance, and
5. (a) the tenant has given a "notice of cover" to the landlord before the end of the period of fourteen days beginning with the relevant date<sup>12</sup>, and  
  
(b) if, after the relevant date, he has had a request from a new landlord<sup>13</sup> to do so, he must have given a notice of cover to him within fourteen days of the request having been made

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<sup>1</sup> defined as being any building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard garden outhouses and appurtenances belonging to it or usually enjoyed with it.

<sup>2</sup> paragraph 8 of the schedule to the Landlord and Tenant Act 1985

<sup>3</sup> s. 165 Commonhold and Leasehold Reform Act 2002

<sup>4</sup> paragraph 5 of schedule 7 *ibid*

<sup>5</sup> defined in s.112(3) and (5) *ibid*

<sup>6</sup> as defined in s.76 and s.77 *ibid* – in general terms a lease for an original term in excess of 21 years.

<sup>7</sup> "house" has the same meaning as in the Leasehold Reform Act 1967 and in consequence can extend to a block of flats or mixed use building.

<sup>8</sup> defined in s.112(3) and (5) *ibid*

<sup>9</sup> s. 164(1) *ibid*

<sup>10</sup> s.164(2) *ibid*

<sup>11</sup> defined as being a person who may carry on in the UK the business of effecting or carrying out contracts of insurance of the sort provided under the policy without contravening the prohibition imposed by s.19 of the Financial Services and Markets Act 2002

<sup>12</sup> where the policy has not been renewed this means the day on which it took effect and if it has been renewed it is the day from which it was last renewed

<sup>13</sup> a person is a new landlord on any day if he acquired the interest of the previous landlord under the lease on a disposal made by him during the period of one month ending with that day

A “notice of cover” must be in the prescribed form<sup>14</sup> and may be sent by post<sup>15</sup>. If sent by post, it may be addressed to the landlord at the address he will have given under either s.48<sup>16</sup> or s.47<sup>17</sup> of the Landlord and Tenant Act 1987<sup>18</sup>, unless the landlord has notified the tenant of a different address in England and Wales at which he wishes to be given the notice<sup>19</sup>.

A “notice of cover” must specify<sup>20</sup>

1. the name of the insurer
2. the risks covered by the policy
3. the amount of the cover, and
4. such further information as may be prescribed<sup>21</sup>

There are a number of points worth noting.

First, this right extends to the tenant of a **house**. The definition used is the same as for the Leasehold Reform Act 1967. This is a wide definition and can encompass a building in mixed use (i.e. a retail shop with residential accommodation above) or a building divided into flats. It might also include a residential hotel.

The house must be held on a long lease i.e. a lease for original term in excess of 21 years. However, this could include a mixed retail/residential building held on a standard 25-year institutional lease.

The right will apply only where the lease requires the tenant to insure; not where the lease places the obligation to insure the house on the landlord. It should be noted however, that, although rejected, an amendment to this effect was put forward in the House of Lords.

It appears that the right will only apply if the insurer is to be nominated or approved by the landlord, not for example if the nomination or approval is to be made by some third party, namely a management company or trustee who is a party to the lease other than as landlord.

The definition of “authorised insurer” is very wide. A landlord who is faced with a tenant seeking to exercise his rights under this section must ensure that there has been full disclosure to the new insurer of the history of the building. A

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<sup>14</sup> regulations will in due course be made by the appropriate national authority

<sup>15</sup> s.164(6) *ibid*

<sup>16</sup> notification of address for service of notices on the landlord

<sup>17</sup> landlord’s name and address to be contained in demands for rent

<sup>18</sup> s.164(8) *ibid*

<sup>19</sup> s.164(9) *ibid*

<sup>20</sup> s.164(5) *ibid*

<sup>21</sup> regulations will in due course be made by the appropriate national authority

tenant may well be able to find cheaper insurer but that insurer may not have been told the full history of previous claims.

The risks that the tenant's policy needs to cover in order to comply with the statute are limited to the risks required under the lease. In old leases, this can be much less than the landlord's nominated or approved policy actually covers. Some very old leases for example require fire cover only.

## **Administration Charges**

The Act introduces provisions to regulate what it calls “administration charges”<sup>22</sup>. These are defined<sup>23</sup> as being an amount<sup>24</sup> payable by the tenant<sup>25</sup> of a dwelling<sup>26</sup> as part of or in addition to the rent which is payable directly or indirectly:-

1. for or in connection with applications for the grant of approvals under the lease.
2. for or in connection with the provision of information or documents by the landlord or a third party to the lease
3. in respect of a failure by the tenant to make a payment by the due date to the landlord or third party
4. in connection with a breach of covenant

A “variable administration charge” is defined<sup>27</sup> as any administration charge which is neither specified in the lease nor calculated in accordance with a formula specified in the lease. In future, a variable administration charge will only be payable to the extent that it is reasonable<sup>28</sup>. Furthermore, any party to a lease of a dwelling may apply to the leasehold valuation tribunal for an order to vary the lease in such manner as is specified in the application on the grounds that either the administration charge itself or the formula in the lease from which it is calculated, is unreasonable<sup>29</sup>.

If the grounds are made out, then the tribunal can make an order:-

1. varying the lease as set out in the application<sup>30</sup>
2. varying the lease as the tribunal thinks fit<sup>31</sup>, or
3. directing the parties to vary the lease either as set out in the application or as the tribunal otherwise thinks fit<sup>32</sup>.

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<sup>22</sup> s.158 and sch.11 Commonhold and Leasehold Reform Act 2002

<sup>23</sup> para.1(1) sch.11 *ibid* – these can be amended by an order made by the appropriate national authority; para.1(4) sch.11 *ibid*

<sup>24</sup> it does not include a rent registered under the Rent Act 1977 unless it is registered as a variable amount under s.71(4) - para.1(2) sch.11 *ibid*

<sup>25</sup> including a statutory tenant – para.6(2) sch.11 *ibid*

<sup>26</sup> defined as being any building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard garden outhouses and appurtenances belonging to it or usually enjoyed with it.

<sup>27</sup> para.1(3) sch.11 *ibid*

<sup>28</sup> para.2 sch.11 *ibid*

<sup>29</sup> para.3(1) sch.11 *ibid*

<sup>30</sup> para.3(3)(a) sch.11 *ibid*

<sup>31</sup> para.3(3)(b) sch.11 *ibid*

<sup>32</sup> para.3(4) sch.11 *ibid*

The tribunal can order that a memorandum of its order be endorsed on the relevant documents<sup>33</sup>. The Act also states that any variation of the lease is binding, not only on the parties to the lease at the time, but also on other persons (including any predecessors in title) whether or not they were party to the proceedings<sup>34</sup>.

A demand for payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants in relation to administration charges.<sup>35</sup> If this is not done, then the tenant is entitled not to pay the administration charge<sup>36</sup> and any provisions of the lease relating to late or non-payment of the administration charge does not then take effect<sup>37</sup>.

An application can be made to the leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to:-

1. the person by whom it is payable
2. the person to whom it is payable
3. the amount which is payable
4. the date at or by which it is payable, and
5. the manner in which it is payable<sup>38</sup>.

This applies whether or not any payment has been made<sup>39</sup> and the jurisdiction of the tribunal is in addition to any jurisdiction of the court<sup>40</sup>. However, no application for a determination can be made in respect of a matter which<sup>41</sup>:-

1. has been agreed or admitted by the tenant. Payment of the disputed sum will not in itself amount to an agreement or admission<sup>42</sup>
2. has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement<sup>43</sup> to which the tenant is a party
3. has been the subject of determination by the court, or

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<sup>33</sup> para.3(5) sch.11 *ibid*

<sup>34</sup> para.3(6) sch.11 *ibid*

<sup>35</sup> para.4(1) sch.11 *ibid*; the appropriate national authority can prescribe the form and content of such summaries

<sup>36</sup> para.4(3) sch.11 *ibid*

<sup>37</sup> para.4(4) sch.11 *ibid*

<sup>38</sup> para.5(1) sch.11 *ibid*

<sup>39</sup> para.5(2) sch.11 *ibid*

<sup>40</sup> para.5(3) sch.11 *ibid*

<sup>41</sup> para.5(4) sch.11 *ibid*

<sup>42</sup> para.5(5) sch.11 *ibid*

<sup>43</sup> this means an arbitration agreement (defined in s.6 of the Arbitration Act 1996 as "an agreement to submit to arbitration present or future disputes .....") made after a dispute about the matter has arisen.

4. has been the subject of a determination by an arbitral tribunal<sup>44</sup> pursuant to a post-dispute arbitration agreement.

Any agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject matter of an application to the tribunal for a determination as to payment<sup>45</sup>.

There are consequential amendments made to the Landlord and Tenant Act 1987<sup>46</sup> to incorporate administration charges:-

Section 24 – appointment of a manager by the leasehold valuation tribunal

Section 46 – interpretation of provisions concerning information to be furnished to tenants

Section 47 – landlord's name and address to be contained in demands for rent etc.

Section 48 - notification by landlord of address for service of notices

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<sup>44</sup> See s.15 Arbitration Act 1996

<sup>45</sup> para.5(6) sch.11 *ibid*

<sup>46</sup> part 2 sch.11 *ibid*



### **Requirement to notify long leaseholders that rent is due**

In future, a tenant<sup>47</sup> under a long lease<sup>48</sup> of a dwelling<sup>49</sup> will not be liable to make a payment of rent<sup>50</sup> under the lease unless the landlord has given him a notice relating to the payment. Furthermore, the date on which the tenant is liable to make the payment will be the date that is specified in the notice<sup>51</sup>.

The notice will be required to specify<sup>52</sup>:-

1. the amount of the payment
2. the date on which the tenant is liable to make it, and
3. if different from that date, the date on which he would have been liable to make it in accordance with the lease

together with such further information as may be prescribed<sup>53</sup>. The notice will be in a prescribed form<sup>54</sup> and may be sent by post<sup>55</sup>. If sent by post, it must be addressed to the tenant at the dwelling, unless the tenant has notified the landlord that he wants the notice sent to another address in England and Wales<sup>56</sup>.

The date on which the tenant is liable to make the payment of rent must not be:-

1. either less than 30 days or more than 60 days after the date on which the notice is given, or
2. before the date on which he would have been liable to make it in accordance with the lease<sup>57</sup>.

If the date on which the tenant is liable to make payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent will have effect accordingly<sup>58</sup>.

These provisions will be additional to the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987, under which a tenant is required to be given an address for service on his landlord.

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<sup>47</sup> or tenants where there is more than one of them

<sup>48</sup> as defined in s.76 and s.77 Commonhold and Leasehold Reform Act 2002 – in general terms a lease for an original term in excess of 21 years - s.166(9) *ibid*. However, the expression “long lease of a dwelling” will not include a business tenancy, a tenancy of an agricultural holding or a farm business tenancy - s.166(8) *ibid*.

<sup>49</sup> defined as being any building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard garden outhouses and appurtenances belonging to it or usually enjoyed with it - s.166(9) *ibid*

<sup>50</sup> the expression “rent” will not include a service charge or an administration charge - s.166(7) *ibid*

<sup>51</sup> s.166(1) *ibid*

<sup>52</sup> s.166(2) *ibid*

<sup>53</sup> regulations will in due course be made by the appropriate national authority

<sup>54</sup> *ditto*

<sup>55</sup> s.166(5) *ibid*

<sup>56</sup> s.166(6) *ibid*

<sup>57</sup> s.166(3) *ibid*

<sup>58</sup> s.166(4) *ibid*

## **Charges under Estate Management Schemes**

The Act introduces provisions to regulate payments imposed by estate management schemes<sup>59</sup>. Schemes exist under section 19 of the Leasehold Reform Act 1967, Chapter 4 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 and (in respect of Crown property only) under section 94(6) of the 1993 Act.

The new rules apply to any payment which a person occupying or interested in property, has imposed upon him under the provisions of the scheme<sup>60</sup>. These are called "estate charges".

A "variable estate charge" is defined as any estate charge which is neither specified in the scheme nor calculated in accordance with a formula set out in the scheme. In future, a variable estate charge will only be payable to the extent that it is reasonable<sup>61</sup>. Furthermore, anyone who has an obligation to pay an estate charge may apply to the leasehold valuation tribunal for an order to vary the scheme on the grounds that either the estate charge itself or any formula in the scheme from which it is calculated, is unreasonable<sup>62</sup>. If the grounds are made out, then the tribunal has power to vary the scheme<sup>63</sup> either as requested in the application or in such other way as the tribunal decides<sup>64</sup>.

The jurisdiction of the leasehold valuation tribunal extends to the question of whether an estate charge is payable by a person and, if it is, as to:-

1. the person by whom it is payable
2. the person to whom it is payable
3. the amount which is payable
4. the date at or by which it is payable, and
5. the manner in which it is payable<sup>65</sup>.

This applies whether or not any payment has been made<sup>66</sup> and the jurisdiction of the tribunal is in addition to any jurisdiction of the court<sup>67</sup>. However, no application for a determination can be made in respect of a matter which<sup>68</sup>:-

1. has been agreed or admitted by the person concerned. Payment of the disputed sum will not in itself amount to an agreement or admission<sup>69</sup>

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<sup>59</sup> s.159 Commonhold and Leasehold Reform Act 2002

<sup>60</sup> s.159(1) *ibid*

<sup>61</sup> s.159(2) *ibid*

<sup>62</sup> s.159(3) *ibid*

<sup>63</sup> s.159(4) *ibid*

<sup>64</sup> s.159(5) *ibid*

<sup>65</sup> s.159(6) *ibid*

<sup>66</sup> s.159(7) *ibid*

<sup>67</sup> s.159(8) *ibid*

<sup>68</sup> s.159(9) *ibid*

2. has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement<sup>70</sup> to which that person is a party
3. has been the subject of determination by the court, or
4. has been the subject of a determination by an arbitral tribunal<sup>71</sup> pursuant to a post-dispute arbitration agreement.

Any agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject matter of an application to the tribunal for a determination as to payment<sup>72</sup>.

**Damian Greenish**  
**Pemberton Greenish**  
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<sup>69</sup> s.159(10) *ibid*

<sup>70</sup> this means an arbitration agreement (defined in s.6 of the Arbitration Act 1996 as “an agreement to submit to arbitration present or future disputes .....”) made after a dispute about the matter has arisen.

<sup>71</sup> See s.15 Arbitration Act 1996

<sup>72</sup> s.159(11) Commonhold and Leasehold Reform Act 2002