

2004 No.

COMMONHOLD, ENGLAND AND WALES

THE COMMONHOLD (LAND REGISTRATION) RULES 2004

Made - - - - - 2004

Laid before Parliament 2004

Coming into force in accordance with rule 1

The Lord Chancellor, with the advice and assistance of the Rule Committee appointed in pursuance of section 127 of the Land Registration Act 2002(a), in exercise of the powers conferred upon him by section 65 of the Commonhold and Leasehold Reform Act 2002(b) hereby makes the following rules:

General

Citation and commencement

1. These rules may be cited as the Commonhold (Land Registration) Rules 2004 and shall come into force on the day that section 2 of the Act comes into force.

Interpretation

2.—(1) In these rules—

“the Act” means Part 1 of the Commonhold and Leasehold Reform Act 2002,

“commonhold entries” means the entries referred to in paragraphs (a) to (c) of rule 28(1) and

“main rules” means the Land Registration Rules 2003.

(2) In these rules except where otherwise stated, a form referred to by letters or numbers means the form so designated in Schedule 1 to these rules.

Land registration rules

3.—(1) Land registration rules within the meaning of the Land Registration Act 2002 have effect in relation to anything done by virtue of or for the purposes of the Act as they have effect in relation to anything done by virtue of or for the purposes of the Land Registration Act 2002 subject to paragraphs (2) and (3).

(2) Rules 3(3)(a), 3(4)(a), 126, 127 and 214 of the main rules shall not apply to any application made under the Act.

(3) In its application to the Act—

(a) 2002 c.9.
(b) 2002 c. 15.

- (a) subject to paragraph (2), rule 3 of the main rules (individual registers and more than one registered estate, division and amalgamation) shall apply as if the words “and are vested in the same proprietor” in paragraph (1) and the words “and are vested in the same proprietor” in paragraph (4) were omitted,
- (b) rule 54 of the main rules (outline applications) shall apply as if paragraph (6) of that rule referred to the forms in Schedule 1 to these rules,
- (c) rules 136 to 138 of the main rules (exempt information documents) shall apply as if a commonhold community statement and a memorandum and articles of association of a commonhold association were excluded from the definition of a “relevant document” in rule 136(7),
- (d) for the purposes of rule 208 of the main rules (Welsh language forms) the forms in Schedule 1 to these rules shall be treated as if they were scheduled forms within the meaning of the main rules,
- (e) rules 210 and 211 of the main rules (documents in a Schedule 1 form and electronically produced forms) shall apply to the forms in Schedule 1 to these rules as they apply to the forms in Schedule 1 to the main rules, and
- (f) Parts 3 and 4 of Schedule 6 to the main rules (information to be included in the results of certain official searches) shall apply as if the words “relevant pending application” included any application made under the Act.

Applications

Lodging a copy document

4.—(1) This rule applies to—

- (a) the commonhold association’s certificate of incorporation,
- (b) any altered certificate of incorporation,
- (c) the memorandum and articles of association of the commonhold association,
- (d) any altered memorandum or articles of association of the commonhold association,
- (e) a commonhold community statement,
- (f) any amended commonhold community statement,
- (g) an order of the court under the Act, and
- (h) a termination statement.

(2) Where the Act or these rules requires an application to be accompanied by a document referred to in paragraph (1), a certified copy of that document may be submitted in place of the original.

(3) Where the original document is lodged a certified copy must accompany it.

Application for registration

5.—(1) An application to register a freehold estate in land as a freehold estate in commonhold land must be made in Form CM1 accompanied, where appropriate, by the statement required by section 9(1)(b) of the Act.

(2) The statement required by section 9(1)(b) of the Act shall be in Form COV.

(3) Unless the Registrar otherwise directs, the application must be accompanied by a statutory declaration made by the applicant that complies with rule 6.

Statutory declaration

6.—(1) The statutory declaration referred to in rule 5(3) must comply with paragraphs (2) to (6).

(2) The declaration must list the consents, or orders of court dispensing with consent, that have been obtained under or by virtue of section 3 of the Act.

(3) Where there is a restriction entered in any individual register affected by the application, the declaration must confirm that either the restriction does not protect an interest in respect of which the consent of the holder is required or, if it does that the appropriate consent has been obtained.

(4) The declaration must confirm that—

- (a) no other consents are required under or by virtue of section 3 of the Act,
- (b) no consent has lapsed or been withdrawn, and
- (c) if a consent is subject to conditions, all conditions have been fully satisfied.

(5) Where the application involves the extinguishment under section 22 of the Act of a charge that is the subject of an entry in the register the declaration must—

- (a) identify the charge to be extinguished
- (b) identify the title of the owner of the charge,
- (c) give the name and address of the owner of the charge, and
- (d) confirm that the consent of the owner of the charge has been obtained.

(6) The Registrar must accept the statutory declaration as conclusive evidence that no additional consents are required under or by virtue of section 3 of the Act and must cancel any entry in the register relating to an interest that has been identified in the statutory declaration to be extinguished.

Form of consent

7. The form of consent required under or by virtue of sections 3 and 41 of the Act is Form CON 1.

Rejection or cancellation of application

8. In addition to the Registrar's powers contained in rule 16 of the main rules, the Registrar may reject an application on delivery or he may cancel it at any time thereafter if plans submitted with it (whether as part of the commonhold community statement or otherwise) are insufficiently clear or accurate.

Title to interests

9.—(1) Where a consent required under or by virtue of section 3 of the Act has been lodged relating to an interest which is unregistered or is the subject of only a notice, caution or restriction in the register, the applicant must also lodge sufficient evidence to satisfy the Registrar that the person whose consent has been lodged is the person who was entitled to that interest at the time the consent was given.

(2) For the purposes of paragraph (1), the Registrar may accept as sufficient evidence of entitlement a conveyancer's certificate that he is satisfied that the person whose consent has been lodged in relation to that interest is the person who was entitled to it at the time the consent was given and that he holds evidence of this.

Service of notice - extinguished leases

10.—(1) Subject to paragraph (3), where, as the result of an application under section 2 of the Act, a lease the title to which is registered is extinguished under section 9(3)(f) of the Act, the Registrar must give notice of the closure of the leasehold title to the following—

- (a) the registered proprietor of the leasehold title,
- (b) the registered proprietor of any charge affecting the leasehold title, and

- (c) the person entitled to the benefit of a notice, a restriction or a caution against dealings entered in the register of the leasehold title.

(2) Subject to paragraph (3), where, as the result of an application under section 2 of the Act, an unregistered lease which is noted in the register of the freehold title is extinguished under section 9(3)(f) of the Act, the Registrar must give notice of the completion of the application to the holder of the leasehold estate that has been extinguished.

(3) The Registrar is not obliged to give notice to a person referred to in paragraph (1) or (2) or in both if—

- (a) that person consented under section 3 of the Act to the application, or
- (b) that person's name and his address for service under rule 198 of the main rules are not set out in the relevant individual register.

Service of notice at end of transitional period - extinguished leases

11.—(1) Subject to paragraph (3), where a lease the title to which is registered is extinguished under section 7(3)(d) of the Act and rule 29 (2) applies, the Registrar must give notice of the closure of the leasehold title to the following—

- (a) the registered proprietor of the leasehold title,
- (b) the registered proprietor of any charge affecting the leasehold title, and
- (c) the person entitled to the benefit of a notice, a restriction or a caution against dealings entered in the register of the leasehold title.

(2) Subject to paragraph (3), where an unregistered lease which is noted in the register of the freehold title is extinguished under section 7(3)(d) and rule 29(2) applies, the Registrar must give notice of the completion of the application to the holder of the leasehold estate that has been extinguished.

(3) The Registrar is not obliged to give notice to a person referred to in paragraph (1) if—

- (a) that person consented under section 3 of the Act to the application, or
- (b) that person's name and his address for service under rule 198 of the main rules are not set out in the relevant individual register.

Court order

12.— An application to give effect in the register to an order of the court under the Act, other than a succession order, must be made in Form AP1 of the main rules.

Registration of an amended commonhold community statement

13.—(1) An application to register an amended commonhold community statement must be made in Form CM3.

(2) The application must be accompanied by a new version of the commonhold community statement incorporating the amendments.

(3) On completion of the application, the Registrar must enter a note of the amended commonhold community statement in the register of the title to the common parts in a manner that distinguishes it from previous versions of the commonhold community statement.

Cessation of commonhold during the transitional period

14.—(1) An application for the freehold estate in land to cease to be registered as a freehold estate in commonhold land during the transitional period must be made in Form CM2.

(2) When satisfied that the application is in order, the Registrar must cancel to the necessary extent the commonhold entries made in the register under rule 28(1)(a) to (c).

(3) Unless the Registrar otherwise directs, the application must be accompanied by—

- (a) a statutory declaration made by the applicant that complies with rule 6 to the extent necessary, and
- (b) all necessary consents in Form CON 2.

Transfer of part of a commonhold unit

15.—(1) An application to register a transfer of the freehold estate in part only of a commonhold unit must be accompanied by an application in Form CM3 to register the commonhold community statement that has been amended in relation to the transfer.

(2) The Registrar may reject on delivery the application to register the transfer, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement.

Transfer of part of the common parts

16.—(1) An application to register a transfer of the freehold estate in part of the common parts must be accompanied by an application in Form CM3 to register the commonhold community statement that has been amended in relation to the transfer.

(2) The Registrar may reject on delivery the application to register the transfer, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement.

Alteration of the extent of a commonhold unit

17.—(1) An application to register an amended commonhold community statement in Form CM3 which would have the effect of altering the extent of a commonhold unit (other than by removing the whole of the unit) must be accompanied by an application to register any relevant transfer.

(2) Where there is a relevant transfer, the Registrar may reject on delivery the application to register the amended commonhold community statement, or he may cancel it at any time thereafter, if paragraph (1) is not complied with.

Alteration of the extent of the common parts

18.—(1) An application to register an amended commonhold community statement in Form CM3 which would have the effect of altering the extent of the common parts (unless section 30(4) of the Act applies) must be accompanied by an application to register any relevant transfer.

(2) Where there is a relevant transfer, the Registrar may reject on delivery the application to register the amended commonhold community statement, or he may cancel it at any time thereafter, if paragraph (1) is not complied with.

Registration of an altered memorandum or articles of association

19.—(1) An application to register an altered memorandum or articles of association must be made in Form CM3.

(2) The application must be accompanied by a new version of the memorandum or articles of association of the commonhold association incorporating the amendments.

(3) On completion of the application, the Registrar must enter a note of the altered memorandum or articles of association in the register of the title to the common parts in a manner that distinguishes them from previous versions of the memorandum or articles of association of the commonhold association.

Application to add land

20.—(1) An application to add land within the meaning of section 41 of the Act must be made in Form CM4.

(2) Such an application must be accompanied by an application to register the amended commonhold community statement in Form CM3.

(3) The Registrar may reject on delivery the application to add land, or he may cancel it at any time thereafter, if it is not accompanied by an application to register the amended commonhold community statement.

(4) Unless the Registrar otherwise directs the application must be accompanied by a statutory declaration by the applicant that complies with rule 6 to the extent necessary.

Termination application following a voluntary winding up

21.—(1) A termination application must be—

- (a) made in Form CM5, and
- (b) accompanied by the order, appointment by the Secretary of State or resolution under which the liquidator was appointed and such other evidence as the Registrar may require.

(2) Where a termination application is made and the liquidator notifies the Registrar that he is content with the termination statement, or sends to the Registrar a copy of the court's determination of the terms of the termination statement, the Registrar must—

- (a) enter the commonhold association as proprietor of the commonhold units, and
- (b) cancel the commonhold entries on every registered title affected.

Application to terminate a commonhold registration following the winding-up of a commonhold association by the court

22.—(1) An application to terminate a commonhold registration where the court has made a winding-up order in respect of a commonhold association and has not made a succession order must be made in Form CM5.

(2) When the Registrar has received notification under section 54(2)(c) to (f) of the Act, and is otherwise satisfied that the application is in order, he may cancel the commonhold entries on the registered titles affected.

Registration of a successor commonhold association

23.—(1) Where a succession order is made, an application must be made to the Registrar to register the successor commonhold association in Form CM6.

(2) Unless the Registrar otherwise directs, the application must be accompanied by—

- (a) the succession order,
- (b) the memorandum and articles of association of the successor commonhold association, and
- (c) the winding up order.

(3) When satisfied that the application is in order, the Registrar must—

- (a) cancel the note of the memorandum and articles of association of the insolvent commonhold association in the property register of the registered title to the common parts,
- (b) enter a note of the memorandum and articles of association of the successor commonhold association in the property register of the registered title to the common parts, and
- (c) give effect to the terms of the succession order in the individual registers of the registered titles affected.

(4) Where a succession order includes provisions falling within section 52(4) of the Act, the successor commonhold association must make an application to give effect in the register to those provisions so far as necessary.

Application to register surrender of a development right

24.—(1) An application to note the surrender of a right conferred by section 58(2) of the Act in the register must be accompanied by a notice in Form SR1.

(2) When satisfied as to the application, the Registrar must complete it by entering the notice surrendering the right in the property register of the registered title to the common parts.

Official copies

25. An application for official copies of the individual register and title plan of the common parts in relation to a commonhold must be made by inserting the following words in panel 9 of Form OC1 in Schedule 1 of the main rules—

“official copy(ies) of the register and title plan of the common parts in a commonhold development.”

Searches of the index map

26. If a person who applies for a search of the index map requires the title numbers of the units in relation to a commonhold, he must insert the common parts title number followed by the words “common parts” in panel 2 of Form SIM in Schedule 1 of the main rules or supply a plan of the commonhold land showing sufficient detail to enable the land to be clearly identified on the Ordnance Survey map.

The Register

Restrictions

27. To give effect to the terms of the Act the Registrar must—

- (a) enter a restriction in Form CA in Schedule 2 in the individual register of the common parts title, and
- (b) enter a restriction in Form CB in Schedule 2 in the individual register of each unit title.

Completion of application for registration

28.—(1) When satisfied that an application under section 2 of the Act is in order, the Registrar must complete it by entering in the individual register of the affected registered titles—

- (a) a note that the freehold estate is registered as a freehold estate in commonhold land,
- (b) a note of the memorandum and articles of association of the commonhold association and the commonhold community statement,

- (c) where the application is not accompanied by Form COV, a note that the rights and duties conferred and imposed by the commonhold community statement will not come into force until the end of the transitional period, and
- (d) where the application is not accompanied by Form COV, the applicant as proprietor of the registered title to each of the units and as proprietor of the registered title to the common parts.

(2) Where an application to register the freehold estate in land as the freehold estate in commonhold land is accompanied by Form COV, the Registrar must—

- (a) cancel notice of any lease extinguished under section 9(3)(f) of the Act, and
- (b) close the title if the lease is registered.

End of transitional period

29.—(1) This rule applies where an application has been made under section 2 of the Act and was not accompanied by Form COV.

(2) Where the Registrar is aware that the transitional period has come to an end, he must —

- (a) cancel the entries made in the register under rule 28(1)(c),
- (b) cancel notice of any lease extinguished under section 7(3)(d) of the Act, and
- (c) close the title to any such lease where the lease is registered.

Leases of commonhold units

30. When a term of years absolute is created in a commonhold unit and the lease is registered, the Registrar must enter a note in the property register of the leasehold title that it is a lease of a commonhold unit.

Changing size: charged unit

31. On an application to which rule 15 or rule 17 relates and where section 24(1) of the Act applies, on receipt of Form COE, the Registrar must give effect in the register to section 24(4) and (5) of the Act as appropriate.

Charges over common parts

32. Where a charge is extinguished, in whole or in part, under section 28(3) or section 28(4) of the Act, the Registrar must cancel or alter as appropriate any entry of the charge in the register to the extent that it is extinguished.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State,
Department for Constitutional Affairs

SCHEDULE 1

SCHEDULE 1 FORMS

SCHEDULE 2

COMMONHOLD RESTRICTIONS

rule 27

Form CA (Restriction in common parts title)

No charge by the proprietor of the registered estate is to be registered other than a legal mortgage which is accompanied by a certificate by a conveyancer or a director or secretary of the commonhold association that the creation of the mortgage was approved by a resolution complying with section 29(2) of the Commonhold and Leasehold Reform Act 2002.

Form CB (Restriction in unit title)

No disposition by the proprietor of the registered estate (other than a transfer or charge of the whole of the land in the title) is to be registered without a certificate by a conveyancer or a director or secretary of the commonhold association that the disposition is authorised by and made in accordance with the provisions of the Commonhold and Leasehold Reform Act 2002.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules are made under the Commonhold and Leasehold Reform Act 2002 (2002 c.15) (“the Act”).

They provide for applications to the Registrar under the Act, the form of the documentation which must accompany any application and the circumstances in which an application may be cancelled by the Registrar.

Schedule 1 to these rules contains the various forms prescribed by them. Schedule 2 prescribes the wording of the restrictions prescribed by the rules.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Land Registry, 32 Lincoln’s Inn Fields, London, WC2A 3PH.