



# Contents

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Chris Baker

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## KEY

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**Notes** are displayed in separate boxes at the end of each chapter. Their position in the text is indicated by numbering (eg **1, 2, 3**).

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# COMMONHOLD

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## Chris Baker of Davies Arnold Cooper

Chris has experience in a wide variety of commercial, retail and residential property transactions, in particular development projects.

Prior to coming to the UK Chris practised law in Australia for a number of years. He regularly advises on complex development agreements and overage arrangements.

Chris has recently been heavily involved with the advising of commercial and residential developers and investors in relation to the introduction of commonhold and has lectured and written numerous articles and papers on the topic.

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## The Land

In order for land to be registered as commonhold, it must be registered freehold land with title absolute, and not be one of the types referred to in [Limitations of application](#).

The land must also be specified in the memorandum of association of the relevant commonhold association as the land in relation to which the association is to exercise functions.<sup>40</sup>

An application for registration as commonhold land may be made in relation to multiple sites,<sup>41</sup> and the sites do not have to be contiguous.<sup>42</sup>

The existence of leases of the land does not preclude the registration of the land as commonhold land although in most cases the consent of the leaseholder is required.<sup>43</sup> The issue of consents is covered in more detail at [Consents required](#).

## The Methods

There are two methods of creating a commonhold - registration with unit-holders and registration without unit holders (see [Types of registration](#)). The stages involved depend upon whether the commonhold is created as a new development or out of an established development. The key difference is a transitional period which applies between registration of the land as commonhold land and the rights and obligations in the CCS taking effect.

## The Steps

The key steps in creation of a commonhold (either as a new development or out of an established development) are:

- creation of the Commonhold Association;
- the application for registration of the land as commonhold land; and
- registration of the land as commonhold land.

# Creating a Commonhold

## Creating a Commonhold Association

No special procedures apply to the creation of a Commonhold Association. It is formed in the same manner as any company limited by guarantee.

The constitution of the Commonhold Association consists of the memorandum and articles of association. The form of these must comply with the requirements of the Act and regulations made under the Act. [Commonhold Documentation](#) details the requirements relating to the form of the memorandum and articles of association.

The Commonhold Association must have a unique name and the name must end with 'Commonhold Association Limited' or the Welsh equivalent.<sup>44</sup> Companies which are not Commonhold Associations are precluded from having a name which ends in 'Commonhold Association Limited' or the Welsh equivalent. <sup>45</sup>

In addition to payment of the registration fee,<sup>49</sup> in order to incorporate the company the following documents must be provided to Companies House:<sup>50</sup>

- A statutory declaration that the requirements of the Companies Act 1985 have been complied with regard to registration;<sup>51</sup>
- The memorandum and articles of association; and
- A completed Form 10 <sup>52</sup> - this sets out the details of the first directors and secretary and the registered office of the Commonhold Association.

The subscribers' names and addresses must be specified on the memorandum and articles. The subscribers must also sign the memorandum and articles and their signatures must be witnessed.

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### PRACTICE POINT

#### Creating a Commonhold Association - Pre-incorporation checklist

- Identify the registered office. The Commonhold Association must have a registered office in either England or Wales although it seems possible to have a registered office in Scotland if the company is incorporated in Scotland - although commonhold does not apply to land in Scotland.
- Who are to be the subscribers? The subscribers will become the first members<sup>46</sup> and must be entered in the particular of members within 14 days of the date of incorporation.<sup>47</sup>
- What land is to fall within the scope of the commonhold? The memorandum of association must specify the land in respect of which the association is to exercise functions.<sup>48</sup> The land specified should incorporate any land which may be brought into the commonhold under phased development, through the exercise of development rights.
- Identify the initial directors and company secretary. There must be at least two directors and a company secretary. Ideally the initial directors should be associated with the Commonhold Association.
- Ensure that the memorandum of association and articles of association are in accordance with the requirements of the Act - see [Commonhold Documentation](#)

#### Applying for registration at the Land Registry

##### Form of Application

Once the Commonhold Association is incorporated, the next step is to apply to the Land Registry for registration of the land as commonhold land.

# Creating a Commonhold

The Land Registry application (in form CM1 **53**) must be accompanied by:

- A certified copy of the certificate of incorporation of the Commonhold Association, and any altered certificate of incorporation; **54**
- The prescribed consents, order dispensing with required consents or evidence of deemed consent (see [Consents required to Dispensing with consent](#)); **55**
- Two certified copies of the CCS with plans (see [Requirements relating to documents to be provided](#)); **56**
- A certified copy of the memorandum and articles of association of the Commonhold Association; **57**
- A certificate **58** from the directors of the Commonhold Association that:
  - the memorandum and articles of association comply with regulations made under paragraph 2(1) of Schedule 3 of the Act; **59**
  - the CCS satisfies the requirements of Part 1 of the Act;
  - the application is not in respect of land which may not be commonhold land; **60** and
  - the Commonhold Association has not traded and has not incurred any liability which has not been discharged.

The requirement for this certificate will generally mean that the directors and secretary at the time of registration will have to be persons actively involved with the commonhold, as nominee directors involved simply for the purpose of incorporating the commonhold association are unlikely to give such a certificate.

- Unless the Registrar otherwise directs, a statutory declaration by the applicant (see [Requirements relating to documents to be provided](#)) **61**
- Where the application is an application with unit-holders a

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# Creating a Commonhold

statement that section 9 is to apply (see [Registration under Section 9](#)). This statement must be in Form COV.62

The Section 9 statement states the names of the proposed unit-holders, their address for service, the unit number of each unit and the postal address of each unit if available.

If the freehold is not already registered a form FR1 will also be required.

It is not possible to designate the CCS or memorandum and articles of association as exempt information documents.

## Requirements relating to documents to be provided

### The Commonhold Community Statement

The requirements relating to the form of the Commonhold Community Statement are outlined in [Commonhold Documentation](#).

The Commonhold Community Statement must be accompanied by plans which identify the commonhold units. These plans must meet the Land Registry's technical requirements.<sup>64</sup>

The requirements for the plans are as follows:

- The plans must be on paper no larger than A0 size.
- The plans must clearly show the scale and orientation and be drawn to the scale quoted thereon. The preferred scale is 1/500 although 1/1250 may be satisfactory if details of the layout including individual plot boundaries can be shown clearly. However, where the boundaries are intricate or complex, such as a boundary within a building, a larger scale may be necessary.
- Plans marked 'for identification only' or 'not scale from this drawing' or any similar phrase are not acceptable. Plans which bear a statement of disclaimer intended to comply with the Property Misdescriptions Act 1991 are similarly not acceptable.
- The plans must be based on an accurate survey, plotted to the chosen scale. The accuracy must be within the plottable limits of the scale, i.e. distances scaled from the plan between well

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defined points of detail should be accurate to within 0.3mm at map scale plus one part in one thousand of the distance measured.

- The plans must show the boundaries of the commonhold land in relation to the boundaries of the registered freehold title and the boundaries of the commonhold units in relation to the boundaries of the commonhold land.
- The plans must define the extents of the commonhold units using a colour and number reference.
- The plans must define the extent of the commonhold land using a colour reference distinct from the colour used to define the commonhold units.
- The plans must show any access drives and pathways which form unit boundaries.
- If two or more floors of a block of units are co-extensive and the layout and extents of the units are identical, it will usually suffice if a plan of a single floor is supplied. The plan must show the number distinguishing each unit and state the floor level of each unit.
- The CCS may contain additional plans to those that define the extent of the commonhold and units. The CCS must make clear which plan defines the extent of the commonhold and units and which are for another purpose.

The Registrar may reject an application for registration if the plans are insufficiently clear or accurate.<sup>65</sup>

Currently the Land Registry offers a service to have plans approved prior to formal registration. The whole CCS must be lodged but only the plans will be approved. No fee is currently charged for this service. If the plans are approved the Land Registry will supply a letter, which should be submitted with the application to register in order to expedite approval of the application.

## **Statutory declaration**

There is no prescribed form for the statutory declaration that is required to be produced, but the Commonhold (Land Registration)

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Rules 2004 set out certain requirements for such a declaration. The requirements are:

- it must list the consent or orders of court dispensing with consent that have been obtained (see [Consents required](#)); **66**
- where there is a restriction on the register to any part of the property, then it must confirm that either 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;**67**
- it must confirm that no other consents are required under or by virtue of section 3 of the Act, that no consent has lapsed or been withdrawn, and that if a consent is subject to conditions, all the conditions have been satisfied; **68** and
- where the application extinguishes a charge, the declaration must identify the charge, identify the owner of the charge, give the name and address of the chargee and confirm that the consent of the owner of the charge has been obtained.**69**

A precedent statutory declaration is included in the Precedent section.

### Consents Required

The Act provides that an application for registration be accompanied by the consent of:

- (a) The registered proprietor of the freehold of the land;**70**

### PRACTICE POINT

#### Consent of the Freeholder

Although the Act requires the consent of registered proprietor of the freehold of the property, the Regulations deems such consent to be given by the person making the application for registration.**71** In practice therefore no consent will be required as the freeholder will consent by being the applicant.

# Creating a Commonhold

- (b) The registered proprietor of a leasehold estate granted for a term of more than 21 years;**72**
- (c) The registered proprietor of a charge over the whole or any part of the land; **73** and
- (d) Any other prescribed class of persons.**74**

The Regulations prescribe that consent must be obtained from:

- (a) The estate owner of any unregistered freehold interest in the whole or part of the land; **75**
- (b) The estate owner of an unregistered lease of the whole or part of the property granted for a term of more than 21 years; **76**
- (c) The owner of any mortgage, charge or lien for securing money or money's worth over the whole or part of any unregistered land in the application; **77**
- (d) The holder of a lease granted **80** for a term of not more than 21 years which will be extinguished by section 7(3)(d) or 9(3)(f) . The relevant tenant need not be in possession.

## PRACTICE POINT

### Consent of Mortgagees / Chargees

Consent will be required from the holder of a charge over any unregistered freehold or leasehold land which is capable of registration.

This will consist of charges over an unregistered freehold **78** and charges over leases with at least 7 years to run.**79**

In the case of unregistered freehold, this should be fairly straightforward to ascertain as the freeholder applicant should be aware of whether the freehold is subject to a charge. Land charge searches will reveal this in any event. In the case of unregistered leases appropriate enquiries should be made of the tenant.

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However, consent is not required from such a tenant if the applicant gives the tenant a replacement lease:

- of the same premises;
- on the same terms (save as to the extent necessary to comply with the Act and regulations);
- at the same rent and containing the same provisions for rent review;
- for a term equivalent to the unexpired term of the extinguished lease; and
- to take effect immediately after the lease is extinguished.<sup>81</sup>

It is also necessary to protect this entitlement by a notice in the land register/land charges register before the registration application is made.<sup>82</sup> This is to ensure that successors in title are bound.

Consent is not required from the holders of easements or rent charges as these interests will continue to bind the land on registration as commonhold land.<sup>83</sup> Similarly other entries such as cautions and notices will be carried forward unless discharged cancelled or withdrawn.<sup>84</sup>

## PRACTICE POINT

### Dealing with tenants

Regulation 3(2) ensures that the holders of leases of less than 21 years cannot prevent the conversion of a property into a commonhold, but protects their position by ensuring that they are granted a replacement lease. It is of course open for the parties to negotiate an alternative arrangement, such as the tenant purchasing a unit in the scheme in lieu of taking a replacement lease.

### Stamp Duty Land Tax Issues

A tenant of a lease which is extinguished by virtue of the tenant being granted a replacement lease may as the law stands suffer adverse Stamp Duty Land Tax consequences.

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Under paragraph 16 of Schedule 17A of the Finance Act 2003, relief against Stamp Duty Land Tax is available in circumstances where a lease is granted in consideration of the surrender of another lease where the new lease is of substantially the same premises.

The paragraph provides that in calculating the net present value of the new lease any rent payable under the new lease for any period falling within the overlap period is reduced by the rent which would have been payable for that period under the old lease.

However, this relief is only available where the old lease was subject to Stamp Duty Land Tax. If the old lease was subject to Stamp Duty then the Inland Revenue takes the view that all rent payable under the new lease is to be included,<sup>85</sup> for the purpose of calculating the Stamp Duty Land Tax

## Consents - Deregistration

The registered proprietor may apply to deregister the property as a commonhold (ie. convert it back to ordinary freehold) during the transitional period.<sup>86</sup> The same consents as are required to register the land as commonhold land are required to deregister the land as commonhold.<sup>87</sup>

## Consent - other relevant issues

Consent to registration of land as commonhold land is required to be provided in a prescribed form. Form CON1 <sup>88</sup> is to be used for the initial registration (under section 2 of the Act). Form CON2 <sup>89</sup> is to be used for an application during the transitional period for deregistration as a commonhold.

Subject to any condition imposing a shorter period, consents will lapse if no application is made within 12 months of the giving of consent.<sup>90</sup> Consent (or deemed consent, as the case may be) is binding on successors in title <sup>91</sup> and is deemed to be given by any person deriving title from a person who has given consent.<sup>92</sup>

Consent may be withdrawn at any time before the date on which an application has been submitted to the Registrar.<sup>93</sup> The Act however does not prohibit a person covenanting by contract not to revoke consent.

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Consent may also be given subject to conditions.<sup>94</sup> Conditions may be appropriate where for example a tenant is prepared to give consent subject to the landlord or acquiring developer (as the case may be) entering into an agreement to acquire a unit in a converted or new built scheme or perhaps more commonly conditional on payment of an agreed sum for surrender of the lease.

## PRACTICE POINT

### Consents - Time Limit

It might be appropriate in an option agreement for example to include a provision requiring the owner of the property to consent to the registration of the land as commonhold land, and not to revoke that consent for a specified period. Of course, the statutory longstop date of 12 months will apply. Where the option period is longer than 12 months it would be appropriate to require consent to be given on exercise of the option.

Where consent is conditional, the statutory declaration accompanying the application to register the land as commonhold land must make it clear that all conditions have been fully satisfied.<sup>95</sup>

Consents can be used for a subsequent registration application (eg. if the original application is withdrawn, rejected or cancelled) but this is subject to the consents otherwise remaining valid. For example, the consents will lapse after 12 months (or any shorter period if applicable) if the subsequent application is not made within that period.<sup>96</sup>

### Dispensing with consent

One issue which was of considerable interest to those looking to convert existing buildings into commonhold schemes was the extent to which there would be scope to dispense with consent. Some had suggested that the need for consent should be able to be dispensed with if a person whose consent was required were unreasonably withholding consent; thereby meaning that someone could not unreasonably 'ransom' the conversion of a building into a

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### NOTES

40 CLRA s.1(1)(b)

41 CLRA s.57(1)

42 ibid

43 CLRA s.2(1)(b)

44 Regulation 12(1) The Welsh equivalent 'Cymedeithas Cydradd-Ddaliad Cyfyn-geidig' may be used if the registered office is situated in Wales

45 Regulation 12(2)

46 CLRA 2002, Schedule 3, para 5

47 Article 4(a) of the model articles of association

48 CLRA s.34(1)

49 currently £20 (£80 for same day service)

50 in accordance with the requirements of Section 10 of the Companies Act 1985

51 The statutory declaration may be given by a solicitor incorporating the company, a director or secretary named in the application - Companies Act 1985 s.12

52 [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

53 [www.landregistry.gov.uk](http://www.landregistry.gov.uk)

54 CLRA Schedule 1 paragraph 1, and Commonhold (Land Registration) Rules rule 4(2)

55 CLRA Schedule 1 paragraph 5, and CLRA s3(2)

56 CLRA Schedule 1 paragraph 1, and Commonhold (Land Registration) Rules rule 4(2)

57 CLRA Schedule 1 paragraph 4, and Commonhold (Land Registration) Rules rule 4(2)118. CLRA s.22

58 CLRA Schedule 1, paragraph 7

59 namely Regulations 13 and 14 - that the memorandum and articles of association are in the same form as set out in Schedules 1 and 2 to the Regulations respectively or a form to the same effect

60 namely the land referred to in the CLRA Schedule 2; see 1.14

61 Commonhold (Land Registration) Rules rule 6(1)

62 [www.landregistry.gov.uk](http://www.landregistry.gov.uk)

63 Rule 3(3)(c) Commonhold (Land Registration) Rules 2004, disapplying rules 136 to 138 of the Land Registration Rules 2003

64 These requirements are set out in section 4.3.1 of the Land Registry Practice Guide No 60, see [www.landreg.gov.uk](http://www.landreg.gov.uk)

- 65 Commonhold (Land Registration) Rules, Rule 8
- 66 Commonhold (Land Registration) Rules 2004, Rule 6(2)
- 67 ibid Rule 6(3)
- 68 ibid Rule 6(4)
- 69 ibid Rule 6(5)
- 70 CLRA section 3(1)(a)
- 71 Regulation 4(5)(a)
- 72 CLRA section 3(1)( b)
- 73 CLRA section 3(1)(c)
- 74 CLRA section 3(1)(d)
- 75 Regulation 3(1)(a) - this is intended to cover the situation where the property is not registered at the time that the application is made - although specific consent is not required in practice as the Regulations deem consent by the applicant in any event
- 76 Regulation 3(1)(b) - in practice these leases are unlikely to occur but may do so where there has not been a trigger for first registration
- 77 Regulation 3(1)(c) - this will extend to leasehold titles
- 78 as opposed to unregistered charges over registered freehold; Land Registration Act 2002 s.4(2)(a)
- 79 Land Registration Act 2002 ss.3(3) and 4(2)(b)
- 80 ie. not an equitable lease
- 81 Regulation 3(2)(a)
- 82 Regulation 3(2)(b)
- 83 Land Registry Practice Guide 60, para 6.1.1
- 84 ibid
- 85 Stamp Duty Land Tax Manual section SDLTM13510a
- 86 see [Registration under Section 9](#)
- 87 CLRA section 8(4)
- 88 [www.landregistry.gov.uk](http://www.landregistry.gov.uk)
- 89 [www.landregistry.gov.uk](http://www.landregistry.gov.uk)
- 90 Regulation 4(4)
- 91 Regulation 4(5)
- 92 Regulation 4(5)(b)
- 93 Regulation 4(7)
- 94 Regulation 4(4)
- 95 Commonhold (Land Registration) Rules, rule 6(4); Practice Guide 60, para 4.5;
- 96 Regulation 4(6)

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## Defining the Common Parts

The common parts of a commonhold scheme consist of those parts of the commonhold land that are not designated as part of a commonhold unit in the CCS. **533** The commonhold units are defined by reference to plans annexed to the CCS and written description in sections 2 and 3 of Annex 2 of the CCS.

Parts of the common parts may be designated as limited used areas in the CCS. **534**

The common parts must include the structure and exterior of a self-contained building which contains more than one unit. **535** In the case of a self-contained building or self-contained part of a building which only contains one commonhold unit or part of one commonhold unit, the CCS may include the structure and exterior as part of the common parts but need not do so. **536** Under the Act the term structure and exterior includes any relevant services within or to the building other than those exclusively serving a commonhold unit. **537** Relevant services are defined as 'services provided by the means of pipes, cables or other fixed installations'. **538**

**Example:** In a block of flats, the common parts will include the structure and exterior of the building. It would include any exterior balconies, which would need to be allocated as limited use areas for the benefit of the appropriate units. The common parts would also include any services which run through any units, to the extent that the services do not exclusively service a particular unit.

Where a commonhold consists of a number of stand alone units, then the structure and exterior of those units may constitute common parts but need not do so

Unlike the position in some other jurisdictions there is no requirement for there to be any common parts. In theory therefore a commonhold may consist entirely of commonhold units.

The common parts of the commonhold will be vested in the commonhold association at the end of the transitional period in the case of a registration without unit holders **539** and immediately on registration with unit holders **540**.

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## Managing the Common Parts

### Use

The use of the common parts of a commonhold will be regulated by the terms of the CCS. Most of the rules relating to the use of the common parts for a scheme will be contained in the local rules which will have to be added on a case by case basis.

In addition to the local rules created for the scheme, the model CCS contains the following relevant provisions:

- paragraph 3.23.2: this provides that a unit-holder or tenant must not use the common parts other than in accordance with their permitted use as specified in paragraphs 3 or 4 of Annex 4, or other than in accordance with the rights specified in paragraph 6 of Annex 2;
- paragraph 4.6: this provides that the commonhold association may not make or permit alterations to the common parts unless the alteration is approved by ordinary resolution.

While all unit holders will generally have the right to use the common parts, there may be certain parts which are identified as limited use areas. Use of such areas will be subject to the limitations imposed in paragraph 4 of Annex 4. Examples of limited use areas are contained in the precedent CCS.

### Management

A Commonhold Association has a duty to manage the common parts of its commonhold, namely to repair, maintain the common parts to an appropriate standard and to insure them.

#### (a) Repair Obligation

The Commonhold Association has an obligation to repair and maintain the common parts. **541** This includes decorating them and putting them into sound condition. **542** The CCS also obliges the commonhold association to use the proceeds of any insurance taken out in respect of the common parts for the purpose of rebuilding or reinstating the common parts.

## Common Parts

### (b) Insurance Obligation

The Act requires a CCS to make provision to requiring the commonhold association to insure the common parts **543**. The model CCS requires the Commonhold Association to insure the common parts to their full reinstatement value and reinstatement costs, against loss or damage by fire and the other risks specified in paragraph 5 of Annex 4 **544**.

In order to comply with CML requirements, insurance should be taken out in relation to the following:

Fire, lightning, aircraft, explosion, earthquake, storm, flood, escape of water or oil, riot, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave landslip, collision, accidental damage to underground services, professional fees, demolition and site clearance costs and public liability to anyone else.

The model CCS requires the commonhold association to keep details of the insurance and evidence of payment of the most recent premium at its registered office, or such other place as the directors think fit. **545** The CCS also requires the commonhold association to apply the proceeds of the insurance policy towards rebuilding or reinstating the common parts. **546**

Unit holders are entitled to inspect the insurance policy on giving reasonable notice and upon payment of the commonhold association's reasonable charges may require the commonhold association to provide a copy of the policy. **547**

In addition to insurance relating to the common parts, it may be appropriate to maintain other forms of insurance for the commonhold association, such as insurance for assets owned by the commonhold association, and directors liability insurance.

### Dealing in Common Parts

#### Transfers / Leases / Easements

A Commonhold Association is free to sell or deal with its freehold interest in the common parts **548**. It can grant easements or leases

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# Common Parts

over common parts. Nothing in a CCS may prevent or restrict the transfer by the commonhold association of its freehold estate in the common parts. **549**

Similarly a commonhold association is free to let part or the whole of the common parts and create other interests such as easements.

Importantly, unlike the position in some other jurisdictions, a decision to sell or lease part or all of the common parts will not require unanimity of the commonhold association.

An application to register a transfer of the whole or part of the common parts must be accompanied by an application to register an amended CCS. **550**

## Charges / Mortgages

Charges over common parts are not permitted save for legal mortgages approved by unanimous resolution of the commonhold association prior to the grant of the mortgage. **551** This would not only prohibit the grant of a charge by the commonhold association but also a charge over any part of the common parts which are let.

## Additions to Common Parts

There are a number of ways in which additional common parts may be added to the commonhold:

1. the addition of land to the commonhold through the exercise of development rights
2. addition of common parts by conversion of a unit into common parts; and
3. enlargement under section 41 of the Act.

## Enlargement through development rights

A developer may through the exercise of development rights add land to the commonhold. **552** Similarly a developer may remove land. **553** The addition of land will be effected by registration of a new commonhold community statement with a transfer of the relevant land.

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# Common Parts

## Conversion of a unit into common parts

In some cases, a commonhold unit may be converted into part of the common parts. This may be done by way of an amendment to the CCS but the prior written consent of the registered proprietor and any chargee is required. **554** The amendment must specify the land which formed the unit and provide for that land to be added to the common parts. **555**

On registration of the amended CCS the commonhold association will be entitled to be registered as the registered proprietor of the freehold estate in the additional land. **556** The registrar will register the commonhold association as registered proprietor without a further application being made. **557**

## Enlargement under section 41

Enlargement to the commonhold may occur by the addition of units, common parts or both by adding to the commonhold through the adding of land through horizontal enlargement or through by building upwards .

An application for enlargement may not be made unless it is approved by a unanimous resolution of the commonhold association prior to the application to add the land is made. **558**

The application to add land must be accompanied by:

- the consent of any party required under section 3 or an order waiving consent, or evidence of deemed consent, **559**
- an application for registration of an amended CCS, in accordance with section 33 of the Act **560**; and
- a certificate from the directors of the commonhold association that the application to add the land does not relate to the land which may not be registered as commonhold land and that the necessary resolution of the commonhold association was obtained. **561**

Where the land added is to consist only of the common parts, then the application to register the land as commonhold land will not be subject to section 7. Once the application is registered the

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# Common Parts

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### PRACTICE POINT

#### Enlargement

The process of enlargement cannot be used as a means of joining two separate commonholds without the termination procedure applying. The land which is added to the commonhold may not already be registered as commonhold land. Therefore if it is intended that an adjoining commonhold be added to a scheme, then the adjoining commonhold association would have to be wound up before the land could be added to the scheme.

commonhold association will be registered as the proprietor of the freehold estate in the added land and the rights and duties imposed by the CCS insofar as they relate to the added land will commence on registration.

#### Alterations of common parts

A Commonhold Association may not make or permit any alterations to the common parts unless the alteration is approved by ordinary resolution. **562**

There is no provision permitting the amendment of common parts by unit-holders although it would seem possible that a commonhold association could authorise a unit-holder to make amendments provided that such alterations are approved by ordinary resolution of the commonhold association.

Paragraph [ ] of the precedent CCS contains a provision dealing with the alteration of common parts.

- 533 CLRA s.25(1)
- 534 as set out in Section 4 of Annex 4 of the CCS
- 535 Regulation 9(1)(b)
- 536 Regulation 9(1)(a)
- 537 Regulation 9(2)
- 538 Regulation 9(2)
- 539 under CLRA section 7
- 540 under CLRA section 9
- 541 model CCS, paragraph 4.5.1
- 542 ibid
- 543 CLRA s.26(b)
- 544 model CCS, paragraph 4.4.1
- 545 model CCS, paragraph 4.4.3
- 546 model CCS, paragraph 4.4.2
- 547 model CCS, paragraph 4.4.4
- 548 CLRA s.27(1)
- 549 CLRA s.27(1)(a)
- 550 Commonhold (Land Registration) Rules 2004, r 16(1); the application must be in Form CM3
- 551 CLRA s.29
- 552 CLRA, Schedule 4, paragraph 4
- 553 CLRA, Schedule 4, paragraph 5
- 554 CLRA s.30(2)
- 555 CLRA s.30(1)
- 556 CLRA s.30(4)(a)
- 557 CLRA s.30(4)(b)
- 558 CLRA s.41(3) and (4)
- 559 CLRA s.41(5)(a); CLRA Schedule 1 paragraph 6
- 560 CLRA s.41(5)(b)
- 561 CLRA s.41(5)(c)
- 562 CCS Paragraph 4.6.1

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