Commonhold White Paper

The proposed new commonhold model for homeownership in England and Wales

March 2025

CP 1270

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Presented to Parliament by the Secretary of State for Housing, Communities and Local Government by Command of His Majesty

March 2025

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Ministerial Foreword

For far too many leaseholders, the reality of home ownership has fallen woefully short of the dream – their lives marked by an intermittent, if not constant, struggle with punitive and escalating ground rents; unjustified permissions and administration fees; unreasonable or extortionate charges; and onerous conditions imposed with little or no consultation. This is not what home ownership should entail.

We remain steadfast in our commitment to providing leaseholders with greater rights, powers and protections over their homes. Alongside the extensive programme of detailed secondary legislation that we are bringing forward to implement the remaining provisions of the Leasehold and Freehold Reform Act 2024, we will further reform the existing leasehold system by legislating to tackle unregulated and unaffordable ground rents; removing the disproportionate and draconian threat of forfeiture; acting to protect leaseholders from abuse and poor service at the hands of unscrupulous managing agents; and enacting remaining Law Commission recommendations on enfranchisement and the Right to Manage.

However, while we are working to provide leaseholders subject to unfair and unreasonable practices with relief as quickly as possible, we will not lose sight of the wider set of reforms necessary to honour our manifesto commitment to finally bring the feudal leasehold system to an end.

The government is determined to ensure that commonhold becomes the default tenure and the publication of this White Paper is a crucial step in realising that objective. Commonhold is a modern homeownership structure that is used widely around the world. It is not merely an alternative to leasehold ownership, but a radical improvement on it.

At the heart of the commonhold model is a simple principle: the people who should own buildings, and who should exercise control over their management, shared facilities and related costs, are not third-party landlords but the people who live in flats within them and have a direct stake in their upkeep.

In enabling flats to be owned on a freehold basis, commonhold ensures that the interests of homeowners are preserved in perpetuity rather than their value depreciating over time as it does under leasehold, and it transfers decision making powers to homeowners so they have a greater say over how their home is managed and the bills they pay, as well as flexibility to respond to the changing needs of their building and its residents.

Unlike many other countries across the world that moved away from leasehold ownership structures long ago, flats here continue to be owned, almost universally, on a leasehold basis. That is partly the result of the natural inclination to stick with the familiar, but also because there was more money to be made by selling leasehold flats through the significant additional income to be generated from leasehold homeowners. Yet the shortcomings of this form of homeownership are obvious and the case for decisive change is overwhelming.

Commonhold was introduced in England and Wales in 2004 through the Commonhold and Leasehold Reform Act 2002, but for a variety of reasons it failed to establish itself and is now out of date. Having learnt the lessons of that false dawn, it is now time to finish the job. Commonhold-type models are used all over the world. The autonomy and control that it provides for are taken for granted in many other countries. It can and does work and this government is determined, through both new commonhold developments and conversions to commonhold, to see it take root.

As this White Paper makes clear, we intend to reinvigorate commonhold through the introduction of a comprehensive new legal framework based on the vast majority of the recommendations made by the Law Commission in their 2020 report. This new legal framework will be supplemented by a ban on the sale of new leasehold flats, so that commonhold becomes the default tenure.

We will consult later this year on the best approach to banning new leasehold flats so it can work effectively alongside a robust ban on leasehold houses and we will seek input from industry and consumers on other fundamental points such as potential exemptions for legitimate use and how to minimise disruption to housing supply.

I know my ministerial colleagues in Wales share our desire to deliver these bold reforms and so we will continue to work jointly with the Welsh Government to ensure they apply across England and Wales.

I pay tribute to Professor Nick Hopkins and his team at the Law Commission for their exhaustive 2020 report and the recommendations they made with a view to ensuring that commonhold is not just a workable alternative to residential leasehold ownership, but the preferred alternative.

I also thank the numerous stakeholders, consumer representatives, industry groups and legal experts who engaged with the Law Commission in its work and have continued to share their insights and expertise with government.

I look forward to working with everyone who has an interest in a successful reinvigoration of commonhold as we move towards publication of our draft Leasehold and Commonhold Reform Bill later this year.

Matthew Pennycook MP

MINISTER OF STATE FOR HOUSING AND PLANNING

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Glossary of key terms

Articles of Association	The rules which govern how the commonhold association operates, for example, how directors of the association are appointed.
Code of practice	A set of agreed standards that people who do a particular job should follow.
Common parts	Any areas of the building which do not form part of a unit (or flat). Generally, this includes communal areas shared between unit owners (such as gardens, halls and staircases), structural parts of the building, such as the external walls and the roof, and any pipes, cables and other installations not situated within a unit, nor which serve only that unit.
Commonhold	A form of freehold property ownership created in England and Wales, to enable individual properties within a building or larger development to be owned on a freehold basis.
Commonhold and Leasehold Reform Act 2002	The original legislation introducing commonhold for England and Wales.
Contribution to shared costs	Sums that unit owners are required to pay towards the day-to-day running costs of the commonhold, for instance paying for services provided and any ad hoc repairs required throughout the year.
Commonhold association	A company limited by guarantee which all unit owners and members of. It manages the commonhold and owns the common parts.
Commonhold Community Statement (CCS)	A standardised document which acts as the commonhold's "rule book". It sets out the rights and obligations of unit owners and the commonhold association.
Commonhold Unit Information Certificate (CUIC)	A certificate provided to prospective buyers setting out information on any arrears to contributions to shared costs attached to a commonhold unit.
Conversion	The process by which leaseholders may replace their existing leasehold structure with commonhold.

Conveyancer	A lawyer acting on the sale, purchase or mortgage of a property.
Developer	A person or company buying land and/or building new (or converting existing) properties such as homes or offices.
Draft Leasehold and Commonhold Reform Bill	Forthcoming draft legislation which will include reforms to the commonhold legal framework.
Enfranchisement	The process by which residential leaseholders who own a long lease can extend their lease or buy their freehold, either individually or collectively with other leaseholders in the building(s).
Freehold	A form of property ownership which lasts forever.
Home purchase plan	A financial arrangement with a bank or other lender whereby an individual can purchase their home in a manner which conforms with religious norms governing prohibition of interest payments.
Leasehold	A form of property ownership which is time-limited, where control of the property is shared with, and limited by, the landlord.
Landlord	An individual or company who holds an interest in property out of which a lease has been granted.
Leasehold and Freehold Reform Act 2024	Legislation which makes changes to existing laws relating to leasehold and freehold properties and prohibits the sale of new leasehold houses.
Lender	A bank or other financial organisation that lends money to buyers of homes and other property.
Local rule	A specific provision in the Commonhold Community Statement relating to only a particular commonhold building.

Managing agent	An individual or company appointed to run and manage a building and services on behalf of a landlord, residents management company, or commonhold association.
Mixed use development	Developments with a mix of commercial (such as shops or offices) and residential uses (such as for homeownership or rent).
Reserve study	An inspection of the common parts to advise the commonhold association and its directors whether or not current reserve fund arrangements are adequate.
Reserve fund	A pool of money which is set aside to cover the costs of future, one-off or major works needed in the commonhold, such as replacement of a lift or roof.
Right to Manage	The statutory right for leaseholders of flats to collectively take over their landlord's management functions, without also buying the freehold of the building.
Share of freehold	A share in a landlord company whose only members are leaseholders. This may be created by a developer when first selling flats or later by leaseholders when they buy the freehold such as at collective enfranchisement.
Shared ownership	An arrangement under which a leaseholder purchases a "share" of a house or flat and, as a requirement of their lease, pays rent to the landlord on the unowned equity. The lease permits the leaseholder to acquire additional shares in the property over time, usually up to 100%, thereby allowing the leaseholder full ownership of the property.
Unit owner	The freehold owner of an individual commonhold unit. Note: Unit owners are referred to in the 2002 Act as "unit holders", but like the Law Commission we have adopted the term "unit owner".
Voting	Unit owners may vote on various decisions relating to the commonhold, such as adding a local rule or agreeing the annual budget. Some voting matters will require 50% support from members (known as an ordinary resolution) whilst some require 75% support (known as a special resolution).

1. Introduction

1.1 The purpose of this document: who should read it and why?

1.1.1. Commonhold provides full freehold homeownership for flats and other interdependent buildings. It has been specifically designed for homeownership in shared blocks and provides for the effective management and upkeep of buildings without a third-party landlord. Commonhold type structures are successfully used all around the world. By contrast, in England and Wales, leasehold has long been the only option to own a home in a flatted development. As such, in this country, despite known flaws and increasing dissatisfaction in leasehold there is little understanding of alternatives to leasehold generally and of commonhold specifically.

1.1.2. The notion that leasehold is the only way to own a home in a shared block is wrong. Commonhold provides a preferable alternative to leasehold for consumers, as well as offering advantages for other parts of the housing market such as developers, lenders and conveyancers.

1.1.3. Commonhold has been around in this country for over two decades, but to date, limitations in its legal design have meant that commonhold has not been a workable alternative for mainstream use as it is in other countries. The Law Commission have undertaken a thorough review and consultation with industry and consumers and have provided a large number of recommendations to government to make the necessary changes to update commonhold law.

1.1.4. The government made a clear commitment in its manifesto, reaffirmed in the Kings Speech and a recent written statement[1] that it will reinvigorate commonhold by reforming the legal framework to make it both a preferred and workable alternative to leasehold. This updated legal framework will be published in draft legislation later this year. In many ways commonhold is a simpler model than leasehold for the consumer, with standardised rules and procedures, yet like leasehold, the underpinning law and changes to it can be complex. This is why we will provide a draft Bill for pre legislative scrutiny to help get the details right. The draft legislation will then be followed by a Leasehold and Commonhold Reform Bill.

1.1.5. This paper sets out our plans for a comprehensive new legal framework for commonhold. We will also take decisive first steps to making commonhold the default tenure. To that end, we will consult later this year on the best approach to banning new leasehold flats. As part of the forthcoming consultation, we will seek input from industry and consumers on key points such as the need for any

[1] Leasehold and Commonhold Reform, Statement made on 21 November 2024 by Matthew Pennycook MP Minister of State for Housing and Planning, Statement UIN HCWS244, Written statements - Written questions, answers and statements - UK Parliament (https://questions-statements.parliament.uk/written-statements/detail/2024-11-21/hcws244)

limited exemptions, where leasehold may still be justified or where it may remain preferable to the reformed commonhold model. We will also seek views on what transitional arrangements may be required to mitigate any disruption to new housing supply as we deliver on our ambition for 1.5 million new homes.

1.1.6. As an important staging post, this document sets out in broad terms how we intend to reform that legal framework and make commonhold fit for purpose. While final details will be included in the draft Bill, we are publishing this prior to this draft legislation because we want consumers and industry to understand how the commonhold model will evolve and what the new commonhold model will look like. This will be important to move the conversation on, as understandably, current knowledge of commonhold in England and Wales is limited and also based on the existing model with known legal flaws, for which the Law Commission have proposed remedies for, and we will legislate to resolve. We hope that this document will provide a greater understanding of:

a) How commonhold will operate in future,
b) Show how we are updating the model to account for the known issues with the current commonhold law, and
c) Illustrate how these changes will benefit consumers and different parts of industry.

1.1.7. We believe that these reforms will make freehold ownership within a commonhold a tenure which can, and should, be the default for shared residential flats and mixed-use blocks going forward.

1.1.8. While the reformed commonhold model will provide a viable and preferable alternative to leasehold for residential blocks of flats, international evidence shows that commonhold type models also have potentially wider uses. The reformed commonhold model may also be suitable for wider settings such as commercial blocks, or retail and industrial parks and shopping centres, where it will enable separate units to be sold freehold with clear rules and procedures to manage the communal amenities or spaces. These uses are not the focus of this paper.

1.1.9. This document seeks to help consumers and the property industry to gain a better understanding of commonhold. In particular, it should provide assurance that known flaws will be addressed. We hope it will provide key information to enable industry bodies to start thinking about how to familiarise and prepare to support the widespread use of commonhold at scale as it becomes the default tenure for new supply. The lead in time for new development means that all relevant parts of the housing market should start to consider the implications of a switch from use of leasehold to reformed commonhold now. This document should also be read alongside our forthcoming consultation on banning new leasehold flats.

1.2 Homeownership models for flats

1.2.1 Leasehold and commonhold are two distinct models of property ownership for flats, with many fundamental differences in the rights and responsibilities of owners. Most people are familiar with leasehold as it is used for almost all flats sold in England and Wales. Commonhold is far less well known, even though similar models are used for apartment developments in North America, Australia, New Zealand, Scotland and across Europe and in much of the rest of the world.

1.3 What is leasehold?

1.3.1 Leasehold is a form of property ownership where a person buys the right to occupy land or a property for a set period, often 99 or 999 years. This right can be bought and sold on the open market but when the lease comes to an end, ownership reverts back to the landlord. A leaseholder does not actually own their property outright. Instead, they pay ground rent (where applicable) to the landlord, who is usually a third party, and who owns the land and may have authority over certain property decisions. Leasehold can propagate a sense of 'them and us' with respect to management of the block, with leaseholders feeling that decisions about their property are done to them.

1.3.2 The lease is a legally binding contract between the leaseholder and their landlord who may be the freeholder (landowner), outlining the terms, rights, and obligations of each party over the period of the lease. It will detail the financial obligations of the leaseholder, such as ground rent (under older leases), service charges, and any additional fees for property maintenance and management.

1.3.3 The lease also establishes rules regarding the use of the property, such as restrictions on alterations, subletting, and other uses of the building. It provides the landlord with certain rights, such as the authority to enforce these rules and the right to reclaim the property if the leaseholder breaches the terms. For the leaseholder, the lease provides the right to occupy and use the property within the agreed conditions.

1.3.4 The lease thus serves as the fundamental document governing the leaseholder's tenure and the relationship with the landlord, setting out their respective rights and responsibilities over the property and land. Each leaseholder within a block will have a lease, and usually (but not always) there is a requirement for these to be on the same terms.

1.3.5 There can also be variation in a block over the length of leases depending on the original period granted, and whether a leaseholder has paid to extend it. Moreover, the terms of leases vary very significantly so what may be true for one block of flats may not be the case for another.

1.3.6 Amending leases can be expensive and time consuming, requiring the involvement and agreement of lawyers representing both sides, or an application to the Tribunal where agreement cannot be reached. This means that it can be very difficult to make fundamental changes to account for matters not previously envisaged in the lease and hard to accommodate the changing needs of the

building and its owners over time. For example, making and seeking financial contributions through the service charge for improvements to a building such as installing energy efficiency measures may require each individual lease to be amended for such a change to be made.

1.4 What is commonhold?

1.4.1 Commonhold ownership is a form of freehold ownership where individual property owners each own their unit outright, with no expiring term. Like leasehold, these units could be flats, a shop, or an office unit. Together, they share ownership of the communal areas through a ‘commonhold association’, which is a company that they are all members of and jointly control. Commonhold is specifically designed to be owned, managed and looked after without the involvement of a third party, so there is no landlord.

1.4.2 When a developer registers a new development as commonhold, the communal parts are registered in the name of a commonhold association set up for that purpose. The units are individually registered and initially held by the developer, who can sell them (or rent them out). This setup provides greater control for unit owners, avoids ground rent, and allows owners more freedom to make decisions about their property, though they still share responsibility for communal upkeep. Commonhold can therefore promote a sense of ‘us and ourselves’ as once all the units are sold, there is no external third-party owner.

1.4.3 In commonhold ownership, there is no lease. The Commonhold Community Statement (CCS) is the critical legal document that defines the rights, responsibilities, and rules for all unit owners within a commonhold. It is essentially the governing framework for the commonhold association, outlining how the shared areas, structures and facilities will be managed, maintained, and funded, as well as setting out the obligations of all unit owners.

1.4.4 It also establishes a system for decision-making within the community. Each owner in a commonhold automatically becomes a member of the commonhold association, and the CCS details their voting rights and how they can participate in decisions that affect the entire property.

1.4.5 The CCS also helps to prevent disputes by clearly defining acceptable standards and the processes for handling issues within the community. In short, the CCS serves as the foundational document for organising the communal and individual responsibilities within a commonhold property, providing transparency and stability for all owners involved.

1.4.6 Critically, there is only one CCS which applies equally to every unit owner within a block and the majority of that CCS is specified in law. This means that the rules governing the operation of a commonhold will be broadly similar wherever that block is located, making it simpler for homeowners (and their conveyancers when buying and selling commonholds) to understand the obligations when moving from one flat to another, and allowing for standard guidance to be provided to all commonhold unit owners. In addition, commonholds can

supplement the CCS with their own ‘local rules’ which apply only to that block or development and represent the preferences of that particular set of owners.

1.4.7 These local rules are created under the framework of the CCS and are intended to maintain order, ensure safety, and promote harmony among property owners. They are subject to a vote, which all unit owners have the opportunity to participate in, before coming into operation and a further vote would need to take place in order to amend or remove a local rule.

1.4.8 Local rules can cover a range of topics, such as whether unit owners will be allowed to keep pets or determining how the shared spaces are to be used to ensure fair and respectful use. Local rules can typically be amended by the commonhold association, allowing the community to adapt them over time to meet the changing needs of residents. These rules aim to create a balanced living environment by setting expectations that help prevent conflicts among unit owners.

1.4.9 As there is an agreed single set of rules which apply equally to each unit within a block or development, it can be much easier and cheaper to make changes to the building (providing a majority of owners agree). This means that upgrading a building to make it more energy efficient can be done more easily and more cheaply in a commonhold than an equivalent leasehold block.

1.4.10 In short, commonhold is a purpose-built, democratic framework for shared living, designed to simplify ownership and eliminate the complexities and perceived unfairness often associated with leasehold arrangements. The removal of a third-party landlord means that interests are more likely to be aligned. We believe once the new commonhold framework is in place (as detailed in the remainder of this White Paper), that it should become the default tenure for new flats and replace the use of leasehold.

Table 1. Comparison of flat ownership models

	Leasehold with third party landlord	Leasehold following Right to Manage	Leasehold, share of freehold	Commonhold
Ownership lasts forever	No	No	Yes – may need to grant new lease	Yes
Control over your home	Low limited by landlord	Medium	Medium	High
Third party landlord	Yes	Yes	No	No
Rules	Set by individual leases			Set by CCS – common to all units
Ground Rent	Yes, according to individual leases			No
Paying for shared facilities	Service charge regulated by lease and governed by leasehold law			Commonhold contributions governed by CCS and commonhold law

1.5 Commonhold's advantages over 'share of freehold'

1.5.1 Some stakeholders and commentators have suggested that mandating 'share of freehold' would provide the same benefits as commonhold without requiring as big a change as a shift to the use of commonhold. This is wrong. The Law Commission disagrees with this position, as does the government.

1.5.2 A share of freehold does provide some positive benefits for homeowners as it allows them to own their flats without a third-party landlord. For some existing leaseholders, especially those exercising their rights to collectively enfranchise, this represents a significant benefit as it allows them to take over the management of the building and remove a third-party landlord. However, it may not solve the problems of leasehold, but rather present them in a different form.

1.5.3 In a share of freehold, the absence of a third-party landlord should mean the interests of the owners are more closely aligned and provided with more control. Yet many of the disadvantages of leasehold will remain, as owners will continue to occupy their flats under the terms of a lease and be bound by leasehold legislation, as well as failing to realise the full benefits of commonhold.

1.5.4 Moreover, as so much of leasehold legislation is designed to protect leaseholders where there is an external landlord, owners managing their own building can easily fall foul of aspects of leasehold legislation which continues to apply to them.

1.5.5 The benefits of share of freehold are also not always equally distributed to all in the building, and the landlord-leaseholder relationship can be substantively replicated following a collective enfranchisement. Only those leaseholders who took part in the enfranchisement process will own a share of the freehold, and this can leave a significant proportion not holding a share of the freehold. Their rights will not change, and therefore they will have essentially traded one unaccountable landlord with another. Even if they wish to purchase a share of the freehold from those who participated in the enfranchisement process at a later date, they have no automatic right to do so.

1.6 Commonhold's key benefits: democracy and flexibility

1.6.1 The two key advantages of commonhold over a share of freehold arrangement are its inbuilt democracy and its inherent flexibility. Commonhold has been specifically designed to manage a building without a landlord. That is not the case with share of the freehold.

1.6.2 A share of freehold removes a third-party landlord yet retains the fundamentals of a landlord and leaseholder relationship. While the interests of owners should be more closely aligned, this may not always be the case or could change over time. Within a share of freehold, those leaseholders who have enfranchised will be a member of that landlord company and can be appointed as directors (in a share of freehold for a new build where there has been no enfranchisement, this would most likely apply to all owners). This will most often confer rights to take part in an annual general meeting and to put themselves forward to be a director

or elect others to take on the role. From there onwards, directors may choose voluntarily to involve fellow owners in the key decisions affecting the building (e.g. how it is run, appointment of a managing agent, annual budget setting or undertaking of major works). In other cases, they may only involve fellow owners to the extent that they fulfil statutory leasehold requirements such as running a section 20 'major works' consultation[2].

1.6.3 We have spoken to many leaseholders to whom collective enfranchisement and share of freehold has brought them the security and control that they wanted. But for others they have said that it has simply replaced one unaccountable decision maker for another, and they feel no better off. For many people seeking simply to own and enjoy their homes and get on with their lives, leasehold can feel an adequate or satisfactory tenure. That is, until something goes wrong, and they discover how little control they really have. While a step in the right direction, the same can be true of a share of freehold.

1.6.4 Democratic decision-making is at the heart of commonhold. Within a commonhold, each unit owner is automatically a member of a 'commonhold association' which confers upon them all, the opportunity to exercise voting rights and participate, should they wish, much more fully in the running and management of the building. Law Commission recommendations that we have accepted make clear that all owners, for example, should have the opportunity to vote on approving the annual budget for the year ahead. By contrast, under the leasehold model that share of freehold retains, the collectively owned landlord company may present their homeowners with a service charge bill to pay after the money has been decided on and already spent. Leaseholders do, of course, have the right to challenge their service charges after the fact, which commonhold unit owners do not, but the latter will enjoy the opportunity to take part in the budget setting in the first place.

1.6.5 Service charges are arguably the most frequently contested feature of leasehold disputes (accounting for 1 in 3 of all enquiries for help from the Leasehold Advisory Service[3]). Therefore, the ability to have a say on how charges are set or contest them before the associated expenditure has been incurred and been charged, puts commonhold at a significant advantage compared to leasehold in terms of minimising disputes over bills and removing the risk of unexpectedly high bills.

1.6.6 Commonhold's second trump card is its flexibility and ability to accommodate change and be future proofed. On day-to-day matters, we have heard examples of directors in enfranchised blocks having to use their own credit cards to tide the building over when faced with surprise bills for the whole building because the rigid lease terms only allowed them to seek service charge payments at set

[2] In the Written Ministerial Statement of 20 November 2024, government committed to consulting on new reforms to the section 20 'major works' procedure for leaseholders, Written statements - Written questions, answers and statements - UK Parliament (https://questions-statements.parliament.uk/written-statements/detail/2024-11-21/hcws244)

[3] LEASE, The Leasehold Advisory Service, www.lease-advice.org

times of the year. Commonhold provides much more flexibility to support the day to day, medium and long-term running of a building.

1.6.7 In commonhold it is much easier for unit owners to amend the Commonhold Community Statement's (CCS) local rules. For many issues, unit owners can agree to vary certain rules about how their building is run with anything over 50% support (note: for very significant changes, such as the termination of a commonhold, the Law Commission has proposed, and we agree to, a higher threshold). In contrast, varying the terms of all leases in a building is extremely difficult, and that problem is still applicable to share of freeholds. Generally, even minor variations need the support of at least 75% of the leaseholders in the building, require an application to the First-tier Tribunal (Property Chamber) or Leasehold Valuation Tribunal ("the Tribunal"), and can be blocked if 10% of the leaseholders oppose the variation.

1.6.8 Given that some of the terms of the CCS and articles of association are prescribed by law, the government can also respond relatively easily to changing needs by amending these terms through secondary legislation. For example, in future, Government could introduce terms to facilitate greater consumer protection in commonhold, such as, improved fire safety measures (or other health and safety measures) or encourage energy efficiency initiatives. To provide the same upgrades in leasehold or share of freehold is much more complex and would likely require primary legislation. Those who have campaigned for change for many years know only too well, much needed change can sometimes take place far too slowly, and all the more so where primary legislation is required.

1.6.9 For existing leaseholders, the value of enfranchisement and a move to a share of freehold arrangement should not be underestimated. Many existing leaseholders may decide that this works for them. But in future, our reforms will make it easier to convert an existing leasehold building to commonhold. To do this, enfranchisement is also the first crucial step. We believe that the benefits of taking the next step to commonhold rather than stopping at a share of freehold will become compelling as the market matures, but as it is their home, it should be their choice.

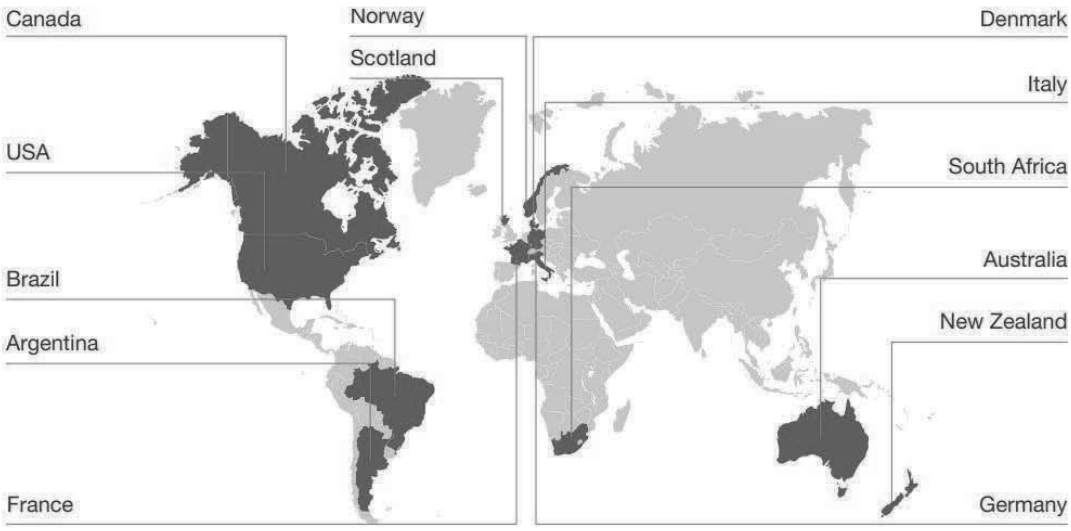
1.6.10 For new build flats however, we can see few reasons why in future they should not be provided as commonhold from the outset. The reformed commonhold model described in this white paper offers a wide range of benefits for homeowners, and advantages over leasehold. We therefore think it must become the default tenure for new flatted developments, in the same way that forms of commonhold are in many advanced economies outside of England and Wales.

1.7 International experience

1.7.1 While legal systems differ, many countries outside of England and Wales have frameworks similar to commonhold which enable the freehold ownership of flats. As the Law Commission highlighted as part of their review, forms of commonhold are the norm in many other parts of the world as the primary model of ownership

for flats, as illustrated in the figure below. Where these models are in place, residential long leasehold often plays little to no role at all.

Figure 1: Examples of use of commonhold type models around the world



Source: Law Commission (2018), Reinvigorating Commonhold: The Alternative to Leasehold Ownership, Summary of Consultation Paper

1.7.2 No form of homeownership is perfect, nor immune from disputes, especially in flatted developments with the close proximity of neighbours and shared responsibility for upkeep and associated costs. But these frameworks have been successfully introduced and have achieved widespread use.

1.7.3 The high demand for housing following the Second World War in many countries was a catalyst for developers turning to the building of flats to seek to satisfy that demand. Countries such as Australia and the USA first introduced legislation in the 1950s and early 1960s to provide commonhold type ownership for flats. “Strata title” is the Australian equivalent of commonhold. It was developed in New South Wales and was one of the first forms of such homeownership to be introduced in the world. Since then, strata title (or an equivalent system) has been adopted in other Australian states and across the globe, from New Zealand, to Singapore, to Canada. “Condominium” ownership is the North American equivalent to commonhold and is found across many parts of the USA and also in parts of Canada. Across parts of Europe forms of commonhold are known as “Condominio negli edifice” in Italy, “Copropriété” in France or “Wohnungseigentumgesetz” (or “WEG” for short) in Germany.

1.7.4 In some countries, limited use of leasehold can sometimes be found for historic or specialist purposes. Australia for example, does not have a long history of use of leasehold like we do here, but at the same time it is not prohibited. Instead, its use is more associated with temporary housing and is not typically seen as a form of home “ownership”.

1.7.5 As such, these commonhold type models internationally have for many countries been the default for flatted development for well over fifty years. This includes use in buildings from small simple blocks of flats or flats in converted houses to complex large buildings with a mixture of residential and commercial units as found in major cities across the world.

1.7.6 These countries have a head start and many years of experience upon which we can draw. The Law Commission for example, have recommended that use of reserve funds should be mandatory for commonhold here. Evidence presented to them noted how reserve funds became mandatory for condominium developments in the United States in the 1990s and that this had proved to be invaluable in supporting the upkeep of buildings and mitigating the risks of large or surprise bills falling on homeowners.

1.7.7 For other issues, the evidence is mixed, and further consideration is required in an England and Wales context. For example, to provide the support necessary to homeowners, particularly for larger or more complex buildings, different Australian states take a different approach to the use of professional managing agents. In the state of Victoria, use of managing agents is required for certain larger buildings but in Western Australia for example, use of managing agents is optional at the discretion of the building owners.

1.7.8 The UK Government has committed to the greater regulation of managing agents in England. As a minimum this should include mandatory professional qualifications which set a new basic standard that managing agents will be required to meet. A consultation on managing agent regulation will follow later this year. We will also seek views on whether there are circumstances or types of buildings where a professional managing agent should by law be required to be employed. In a commonhold context any such requirement would still allow the individual unit owners control over the appointment and replacement of agents.

1.7.9 Property law is complex. It must also evolve over time to effectively support the changing needs of buildings and the people that live in them. Many countries around the world that have introduced forms of commonhold have later introduced revisions and refinements. Leasehold law in this country is no exception. There have been multiple Acts of Parliament updating and reforming leasehold legislation over the last hundred years dating back to the 1925 Law of Property Act and beyond.

1.7.10 Many of the reforms recommended by the Law Commission for commonhold reflect changing circumstances since the original 2002 legislation for England and Wales (the Commonhold and Leasehold Reform Act 2002 and regulations which followed in 2004), such as greater prevalence of mixed-use developments, of use of shared ownership housing, as well as learning from best practice found elsewhere to replicate here.

1.7.11 We have taken confidence from the fact that commonhold-like models work in other countries and do not believe that there is anything unique about property in England and Wales which would prevent it taking off here once the model has

been revised and updated. We have looked at the way similar approaches operate in other jurisdictions, and they demonstrate that commonhold-type models work and offer a significant improvement on leasehold as a means of homeownership for flats.

1.7.12 The government believes that default adoption of commonhold for new flats is both possible and desirable and the reforms outlined in the White Paper will provide the first step towards that aim.

1.8 Commonhold in practice

1.8.1 Commonhold is a simple democratic model, where a community of homeowners (and which for a mixed-use site may also include commercial owners), come together to collectively decide how to run their building.

1.8.2 How a particular building is managed in practice will be determined by the preferences of its owners. We believe this gets to the heart of what it means to be a homeowner, something which people have worked hard to achieve and often represents the most significant purchase of their lives. They will be able to choose who runs the building on a day-to-day basis, set the budget over the coming year and effectively plan for longer term repairs or maintenance mitigating the risk of an unexpectedly high repair bill. Crucially, having an opportunity for a say over the bills that they have to pay. They will also rightly have the freedom to make changes to the management and rules of the commonhold as their preferences evolve or as needs require.

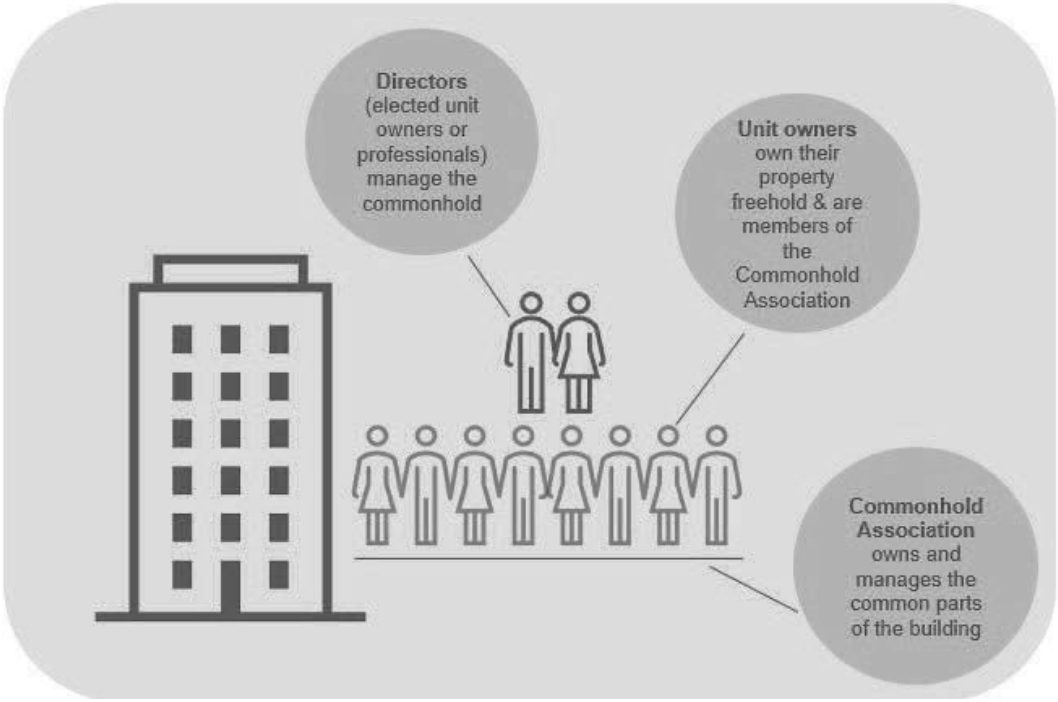
1.9 Day-to-day management of a commonhold building

1.9.1 The commonhold association (which is made up of all the unit owners) owns and manages the common parts of the building and is required to seek input from all unit owners how they should go about this. The commonhold association is set up as a limited company and registered at Companies House. The commonhold association provides both the governance and management of the building, unless it decides it wishes to buy-in external help, such as a managing agent to do so. But, unlike in a traditional leasehold model with a third-party landlord, where a managing agent is employed, they will be accountable to the unit owners directly.

1.9.2 Note: In England, the commonhold association will also be the Principal Accountable Person under the Building Safety Act 2022 and be legally responsible for ensuring that fire and structural safety is being properly managed in the building.[4] Roles and responsibilities for the Welsh Building Safety occupation phase regime will be set out in upcoming legislation, which will include a role for the commonhold association.

[4] The Building Safety Act, The Building Safety Act - GOV.UK (https://www.gov.uk/guidance/the-building-safety-act)

Figure 2. The Commonhold Association



1.9.3 We have heard concerns that people could be put off from living in a block without a third-party landlord, where homeowners are responsible for the management of the building themselves, which could require more time and effort from homeowners, who may also lack the skills to run a block themselves. We do not believe this will be the case and that the advantages of having greater control over their homes will exceed the associated responsibilities that come with it. We are also committed to work with consumer groups and industry, including the Leasehold Advisory Service, to support the smooth implementation of the reformed commonhold model so that homeowners have the information and support they need.

1.9.4 For the vast majority of unit owners, they will have the opportunity to participate in the running of the block, but not an obligation to do so. And many people may only choose to participate in so far as approving an annual budget, but crucially, they have greater opportunity to get more involved if they wish to, and especially if they have a problem or concern with how the building is run or maintained. As found in a share of freehold and resident management companies, a small number of homeowners will be required to be a director of the commonhold association. Through adopting the Law Commission's recommendations, we will also put in place a system to facilitate the appointment of professional directors for the governance of the building if no unit owner wanted to take on this role.

1.9.5 It is right that homeowner-led management of shared buildings represents a change to what most people are used to when compared to the traditional leasehold model with a landlord. As discussed earlier, these types of arrangements are commonplace in countries outside of England and Wales. Furthermore, homeowner led management is already a feature of housing here.

While our reforms will make management more accessible and easier to exercise, homeowners do already take control of their buildings through the right to manage or through collective enfranchisement. Following the Leasehold Reform (Ground Rent) Act 2022, which prohibits the charging of ground rents in most new build leasehold properties, more flats are already being provided without a third-party landlord in the first place. Commonhold has the advantage of being designed specifically for management of a building without a third-party landlord.

1.9.6 In addition, commonhold unit owners will not be alone. Many existing leasehold buildings, with or without a third-party landlord, already employ professional managing agents to help manage their buildings, and we would expect the same to be true in commonhold. In particular, we would anticipate at the outset that almost all new commonhold developments and especially larger or more complex buildings, will be established with a managing agent to help run the site on their behalf (though of course, unit owners may choose to replace a managing agent or make their own appointment), as is the case for new leasehold buildings provided without a landlord now. For high-risk buildings in England (above 18m or at least 7 storeys high), the commonhold association might decide to bring in specialist managing agents with fire safety expertise.

1.9.7 Crucially, any contractor they decide to employ will work directly for the owners and be answerable to them. As such, there should be alignment between the parties working to manage the building and the people who own the units within that building and pay for the services provided. In the event that a contractor is providing a poor or uncompetitive service, then the commonhold association can decide to terminate their contract and hire an alternative provider instead.

Case study: appointing a managing agent

The final flat in a commonhold block is sold. The directors of the commonhold association convene a meeting to discuss how the block should be run now that the developer has left. All unit owners are members of the commonhold association and so are invited to participate. They meet and quickly conclude that they do not want to take over from the managing agents and manage the building themselves. However, the association agrees to discuss the performance of the current managing agent (which was put in place by the developer), and a motion is put forward to replace the current managing agent with a different agent who may better suit their needs. A vote takes place and the motion is passed. The commonhold association agree to enter into negotiations with an alternative managing agent to take over the management of the building for the next 24 months.

These negotiations conclude successfully and having served notice on the sitting agent, they arrange a handover between the current and the new managing agent.

1.9.8 At the point of moving into a new commonhold, a budget will already have been established by the developer, and each commonhold unit owner will be allocated in the CCS a contribution to the total budget for the year.

1.9.9 Each year thereafter, there is an annual general meeting for unit owners meeting at which (amongst other things) unit owners are given the opportunity to vote on

the budget prepared by the directors for the next year. Owners may also decide at the annual meeting whether to set up any additional reserve funds to help them manage future planned expenditure. This should allow unit owners to budget across a number of years, avoiding large one-off bills that can occur in leasehold.

1.9.10 The democratic nature of commonhold means that there are other decisions unit owners might be asked to vote on during the year, such as the election of a new director or the creation of a new local rule for the building. Unit owner involvement is likely to vary over time, with an initial flurry of decision-making as new unit owners take the opportunity to make any changes to local rules or management they wish to see once they have assumed control from the developer, but thereafter it could be as frequent or infrequent as those running the block wish, and unit owners are only likely to participate in decisions to the extent they wish to have a say.

1.10 Mitigating and resolving disputes

1.10.1 A concern sometimes expressed when people think about living in a commonhold is the perception of a need to always get on with their neighbours. This is an unrealistic bar to set for any form of communal living and as with leasehold, we fully expect disagreements to arise from time to time. What's different about commonhold are the inherent ways in which the model has been designed to reduce both the likelihood and impact of disagreements.

1.10.2 Firstly, unlike leasehold, there is a clear and standardised rulebook, the CCS, which will set out how the block should be run, and this will be supplemented with any local rules a commonhold decides to implement. In addition, without a third-party landlord, the interests of all owners in the block should be more aligned from the outset, meaning fewer disputes in the first place.

1.10.3 Secondly, commonhold has alternative dispute resolution at its core. This means there are structures and processes built in and designed to allow parties to reach agreement without recourse to the courts. Thirdly, there is the concept of minority protection which will apply within a commonhold to ensure that in certain, limited circumstances, the Tribunal will be able to consider whether a minority owner has been unfairly impacted by a decision of the commonhold association. The commonhold association will also take this right into account when it is agreeing any rules.

1.10.4 Finally, if a dispute cannot be resolved through alternative dispute resolution, then unit owners will still be able to seek formal resolution by escalating their concerns to the Tribunal, who will be well-placed to adjudicate in such disputes. In commonhold, the greater alignment of interests, opportunity to meaningfully shape decisions and their associated costs, coupled with processes intended to avoid disputes from escalating should in comparison to leasehold minimise the use of courts and tribunals. But they rightly remain available as a backstop where appropriate.

1.11 The commonhold journey to date

1.11.1 In England and Wales, the legal framework for use of commonhold was established in the Commonhold and Leasehold Reform Act 2002. Since then, commonhold has failed to take off, with fewer than 20 developments being built comprising fewer than 200 commonhold units. There are a variety of reasons for this.

1.11.2 The first is that the original 2002 legislation was not fit for purpose and has held commonhold back. A combination of limitations and flaws in the law has made commonhold less flexible compared to leasehold and therefore, harder to use in the same number and variety of settings, in particular for mixed-use and large sites. For instance, the failure to accommodate shared ownership, or for use on mixed-sites and to protect commercial owners from residential owners' decisions, and vice versa, has made it unviable for many developments. In addition, as the Law Commission has since found, many other aspects of the original legislation were also considered inflexible and posed potential problems for developers and future unit owners alike.

1.11.3 Alongside the legal obstacles to the greater use of commonhold have been limited incentives to adopt the tenure for industry. As use of commonhold has remained voluntary, the long-established leasehold tenure has been in direct competition with commonhold. Leasehold has been the default tenure to date for flats and is well understood by industry, if not necessarily always by the consumers that have bought it. This has provided leasehold with the advantage of being the incumbent. The playing field has been further tilted in favour of leasehold in terms of the secondary income streams that leasehold can generate, which commonhold cannot. A recent example is ground rents. Successive governments must also acknowledge that they have done little to nurture or encourage the uptake of commonhold, such as failing to meaningfully or proactively promote its use through its own housing supply programmes.

1.11.4 The previous UK Government in 2017 asked the Law Commission to review the commonhold model in order to reinvigorate the tenure. The Law Commission's commonhold review formed part of the Commission's 13th Programme of Law Reform, examining residential leasehold and commonhold, which also included projects looking at reforms to the right to manage and leasehold enfranchisement.[5,6]

1.11.5 The Law Commission published its commonhold call for evidence in February 2018 and a consultation in December 2018, which tested a number of initial proposals, and which received over 500 responses. [7, 8, 9] In July 2020, the Commission produced their final report to the UK and Welsh Governments,

[5] Law Commission, see: https://www.lawcom.gov.uk/project/right-to-manage/
[6] Law Commission, see: https://www.lawcom.gov.uk/project/leasehold-enfranchisement/
[7] Law Commission (2018) "Commonhold: A call for evidence", see: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/02/Commonhold-Call-For-Evidence.pdf
[8] Law Commission (2019) "Reinvigorating commonhold: the alternative to leasehold ownership. Consultation Paper", see: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/12/181207-Commonhold-CP-WEB-VERSION.pdf
[9] Law Commission, see: https://www.lawcom.gov.uk/residential-leasehold-redacted-responses/

Reinvigorating commonhold: the alternative to leasehold ownership.[10] Their report made 121 recommendations for the reform of commonhold, with 102 of these recommendations related to new supply and 19 related to the conversion of existing leasehold properties to commonhold.

1.11.6 We are delighted to be able to respond to the Law Commission's 2020 report here in this White Paper. We would like to thank the Law Commission for their extensive and thorough work on commonhold. Their recommendations provide the structure and depth to update and improve the legal framework and make it workable in a full range of modern housing developments. We would also like to thank the industry and legal experts as well as consumer bodies we have engaged with since publication to examine the detail of the Commission's proposals.

1.11.7 In the second half of this year, we will publish a draft Bill which will set out how the commonhold framework will be amended in light of the Law Commission's recommendations. We intend to implement the vast majority of the changes which the Law Commission suggested for new supply. Annex 1 sets out the position for each of the recommendations and the sections below set out how the proposed new commonhold model is intended to work in advance of the draft Bill.

[10] Law Commission (2020) Reinvigorating commonhold: the alternative to leasehold ownership https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/07/Commonhold-Report-final-N14.pdf

2. Description of new reforms

2.1 Building new commonholds

2.1.1 Enabling commonhold to work for all types of developments

Current challenges: The current commonhold laws can work well for small or simpler developments. To work for a broader range of developments, more flexibility is needed around: how decisions are made, how buildings are managed, how charges are distributed between unit owners, on restrictions on how units can be used, and what rights developers have during the completion of a site. Without these changes, commonhold will continue to be less attractive for developers, lenders and consumers. These current flaws are most prohibitive for larger or mixed-use developments (e.g. flats and shops).

Proposed solutions: The government will introduce new flexibilities to commonhold, allowing commonholds to include separate sections and separate heads of costs, so only those with access to certain services or buildings have a say in their management and pay for charges associated with them. The government will provide developers with more flexible rights about how to build and sell a commonhold, balanced with new rights for consumers. The government will also permit certain leases that are currently prohibited today, including shared ownership and home purchase plans - opening up commonhold to a much wider range of consumers.

2.1.1.1 When constructing a new block of flats, a developer will consider both how the development will work physically – such as how it will be divided up between individual units and communal aspects of the building (e.g. communal gardens, hallways) – and also how immediately and in the longer-term, the block will be managed (e.g. who has access to what services, and what do individual units pay towards the total costs).

2.1.1.2 The model of commonhold available today can work well for establishing simple blocks, providing those constructing a new building, or converting an existing one, with a straightforward blueprint for blocks of flats or estates where all owners on the site have similar types of properties and interests. For example:

a) Now, and under the revised legislation, developers are able to set certain terms, as they would with leases, according to how they wish to see the commonhold work while they complete the construction and sale of the site (known as ‘development rights’), as well as put in place a framework for the long-term management of the block.

b) They can also allocate different shares of running costs to different units, in accordance with the particulars of each property, such as its access a parking space.

c) They can also allocate different uses to a unit. Critically, commonhold is not and will not be just a residential product. Commercial property can

also operate within commonhold, with owners of commercial units having much the same rights as owners of residential flats. Business leases can be granted, for commercial units on a development blending flats and shops, for example, or flats and light industrial units. Developers may retain such units as an investment or sell them to investors once they have been let.

2.1.1.3 We intend to retain and strengthen these features. Yet, we know the way buildings are designed and managed today are not always simple, especially where they bring together many different owners within a building or an estate who may use their units for different purposes. We will, therefore, introduce wider reforms to ensure commonhold works for even the most complex sites.

2.1.1.4 Complexity can come in many forms during the design, construction and management of new buildings, such as:

a) **Where the interests of unit owners differ:** for example, a block of flats with a shop on the bottom floor and a car park only for shop customers. The current commonhold laws would mean that residential unit owners, as well as the commercial unit owner, are all able to vote on decisions about the car park and potentially be required to contribute towards its costs. Such an arrangement can make commonhold unattractive for both sides: a shop owner may worry that over time, homeowners may attempt to restrict the activities of the shop such as parking or loading hours. On the other hand, homeowners could find themselves footing the bill for a renovation of a car park which they cannot use and derive no benefit from. These rigidities of the current system risk being unattractive and unfair for buyers and businesses.

b) **Where there is more than one interest in a unit**: larger developments will often include affordable housing, and some of these units will involve ownership of the unit being held by more than one party. Typically, where this is the case, it requires the grant of a long lease, but commonhold laws today prohibit long residential leases, and therefore shared ownership, and certain types of lending (specifically home purchase plans, a type of Islamic finance product) cannot be offered in commonhold. These rigidities make commonhold unattractive both to developers of bigger sites, and to certain groups of buyers.

c) **Where not all of the development is finished and sold at the same time:** Small, self-contained blocks of flats will tend to be completed and sold at the same time, but developments involving multiple blocks will tend to be completed and sold in phases. This means that developers will need to retain access to parts of the development they've already completed and be able to adapt aspects of management as sites move towards completion. Developers can do this in commonhold today, but rigidities in the current laws make commonholds less flexible than other types of building, and therefore less attractive.

2.1.1.5 The Law Commission recommended a number of major changes to fix these problems, so that greater flexibility can be built into how commonholds are designed by developers, to better reflect the needs of today's housing market. We therefore, intend to make the following changes to the commonhold model: introducing 'sections', providing for separate heads of costs, and allowing certain permitted leases including shared ownership.

2.1.2 Introducing 'sections' to support mixed-use development

2.1.2.1 In line with the Law Commission's recommendations, we will introduce 'sections' into the commonhold framework. Under this new system, a building or estate can be divided into different sections to separate out the management of different areas or groups of units within a commonhold. Where used, sections will allow only the unit owners within a particular section to vote on matters solely affecting that section, and only those who benefit from a particular service or upgrade to be responsible for paying towards it. For example, in a mixed-use block, a floor of retail or office units that does not use the same facilities as the flats above them can be a separate section from the flats. Alternatively, two blocks on the same site might form a single commonhold, collectively deciding on shared areas, but with sections created for each block on account of their different uses or access to services. These are just two approaches to how developers could deploy sections, but the purpose of these reforms is to give developers the flexibility to design commonhold sites - and decision-making within them – to account for the full spectrum of how different parts of buildings, and different buildings on a larger site, can fit together,

2.1.2.2 As envisaged by the Law Commission, there will be clear rules about when a section can be created, combined or dissolved, and also safeguards, so that sections are only created where there is a good reason to separate out the rights and obligations of different types of unit and not solely on the basis of differences in the identity of unit owners or tenure.

2.1.2.3 In most circumstances, we expect the establishment of sections will be done by developers at the outset, during the planning and construction phases of the commonhold. However, there will also be the scope for commonhold associations to create them at a later date (noting that the voting threshold will be deliberately high). Where unit owners believe that a section has been created improperly or unfairly, they will be able to challenge this at the Tribunal.

2.1.2.4 To help consumers understand the function of a section on any given site, there will be annexes to the CCS setting out any specific rules for specific sections, so that unit owners are clear on which rules apply to them and which do not.

2.1.3 Providing for separate heads of costs

2.1.3.1 In addition to allowing the compartmentalising of decision-making according to the different uses within a building, we will also provide for much more flexibility in budgeting to account for the provision of a greater variety of services available on site, and for differentiated access to them.

2.1.3.2 In adopting the Law Commission's recommended approach, the new commonhold model will allow developers and commonhold associations to allocate certain costs, and decision-making over those costs, according to who has use of certain services. So, if one homeowner has access to a parking space, a gym, or a roof terrace, or a group of retail units uses a loading bay, they would be responsible for paying for its upkeep and those whose units do not have access will not be expected to contribute.

2.1.3.3 This will bring the commonhold system into line with the leasehold system, where schedules are be used to achieve the same end, and an equivalent system is needed in commonhold for developers to have confidence that the model can work on complex multi-building, multi-tenure developments.

2.1.3.4 We will also support the provision of a new Code of Practice on how costs should be apportioned in commonhold, aimed at providing consumers with transparency and clarity. This will help developers to get allocations right at the outset, reducing the number of future disputes, and assisting commonhold associations in resolving any disputes quickly.[11]

2.1.3.5 Where there have been errors in how costs have been apportioned, we will also introduce mechanisms to allow commonholds, and unit owners, to correct errors in how costs have been apportioned.

Case study: separate heads of cost

A developer is building a commonhold for the first time, which is made up of a block of ten flats with a private gym, and a five town houses. The owners of the flats have exclusive access to the gym and lifts to access it, but all properties on the development will enjoy access to the shared communal garden.

The developer is familiar with the disputes that can arise when all residents are asked to pay for facilities that only some people in the development have access to, and so wants only those benefitting from the gym and the lifts to contribute to the budget.

Using the new commonhold heads of cost regime, the developer establishes an equal allocation to every unit on the site to cover the costs of the communal garden, but sets up a separate heads of cost to pay for the ongoing lift contract and the gym, allocating 10% of the costs to each flat in the CCS. When all of the units are sold, only the owners of the flats will be able to make decisions on the costs relating to the lifts and gym.

Because the developer knows that lifts can be expensive to replace in future, to protect the flat owners from the shock of a major one-off bill to replace the lift, the developer also creates a designated reserve fund so that all of the flat owners contribute to a savings fund to provide for its replacement.

[11] The Code of Practice will be used to guide the allocation of reasonably proportionate financial contributions in residential, mixed-use and purely commercial commonholds. It would require approval by the Secretary of State and Welsh Government, and once in place could be relied upon by the Tribunal when dealing with cases requiring them to determine whether allocations are proportionate.

2.1.4 Allowing certain permitted leases including shared ownership

2.1.4.1 We welcome the Law Commission's recommended changes which, in the case of shared ownership and home purchase plans, will make an exception to the existing ban on owners of residential units granting leases of over seven years, and allow those arrangements to operate in commonhold for the first time.

2.1.4.2 This is a major, and important change. Government funding and planning policies have long supported shared ownership properties, and the inability for developers and registered providers to deliver new shared ownership homes in a commonhold setting puts commonhold at a significant commercial disadvantage.

2.1.4.3 The opening up of commonhold to several key homeownership products (shared ownership and home purchase plans) will also serve to expand the appeal of commonhold to a more diverse pool of buyers, and thus making commonhold more attractive to developers too.

2.1.4.4 Shared owners and those buying with a home purchase plan will continue to be leaseholders (with the provider owning the freehold of the commonhold unit) but will benefit from a wide range of commonhold rights not available to them in leasehold blocks.

2.1.4.5 In common with other unit owners in the building, shared owners will take part in decisions on the management and costs of running their building and benefit from the rights and protections of the commonhold system (which will for example, supersede their right to challenge costs under leasehold law).

2.1.4.6 In most cases, the rights of shared ownership leaseholders, or a leaseholder of a unit bought with a home purchase plan, will be exclusive, that is to say that their provider will not have a say in how they are able to vote on a particular budget, leadership election, or other issue. However, in recognition of the ongoing financial interest of the provider (e.g. a housing association, or home purchase plan lender) on certain key decisions that would materially affect their security, a limited number of voting powers will be shared between the homeowner and the provider. For instance, where a vote is being held to sell the whole commonhold block, this will be a joint decision.

2.1.4.7 Additionally, for shared ownership properties, these leaseholders in England will benefit from rules requiring the provider (usually a housing association) to pay certain repair costs if they arise during the first ten years of the shared ownership lease, known as the Initial Repair Period.[12] This change to shared ownership was introduced after the Law Commission completed their review, and therefore we are opting to update their recommendations to account for this. Our view is that while providers will have a temporary role in contributing to the costs of the commonhold, they should also have a say on decisions relating to repairs, but

[12] The Initial Repair Period applies only to shared ownership properties delivered with the new model lease, provided through the Affordable Homes Programme 2021- 2026 or Section 106 agreements from 1 April 2021.

only during this initial ten-year window. Providers will be free to delegate these decisions to the homeowner as they see fit.[13]

2.1.4.8 As well enjoying largely the same rights as other homeowners in a commonhold, shared owners and those who buy a commonhold flat through a home purchase plan will be expected to comply with the commonhold rule book.

2.1.4.9 Once either a shared owner or home purchase plan leaseholder has paid for the full equity of their home, they will acquire the freehold title of their flat, and their rights and obligations will mirror those of any other unit owner. This means decisions that would be taken jointly between themselves and the provider, such as whether to sell the commonhold block to a developer, will be exclusively taken by the homeowner.[14]

2.1.4.10 Finally, in addition to exempting shared ownership and home purchase plans from the general prohibition on long residential leases, we believe there is a case too for exempting equity release financial products. While this was not a proposal included in the Law Commission's report, the Government consider that equity release is an important consumer product that allows people to withdraw money from the value of their home to increase their retirement incomes, pay off their mortgage or pay for one-off events. As certain equity products rely on a lease, we will permit such products so that commonhold homeowners are able to enjoy the same choices as other homeowners.

2.1.5 Greater flexibilities around development rights

2.1.5.1 Some new developments, especially larger ones, are built over a number of phases. This can be important to manage the financing and construction of a development, with further investment and building activity deployed once initial phases of the site are finished and sold.

2.1.5.2 As noted above, in both commonhold and leasehold, during the construction phases, developers can reserve certain development rights to give them the flexibility to finish the site. We understand that the current model of 'development rights' is more restrictive in commonhold than for other types of development and this makes the tenure less desirable to developers.

2.1.5.3 We want to give developers the full suite of tools they need to build commonhold on phased sites, while enhancing protections for consumers on incomplete developments, and so we will adopt the Law Commission's proposals to expand

[13] The previous government consulted on how the Initial Repair Period should be accounted for in commonhold decision-making, proposing that the provider of the shared ownership unit is able to vote on matters relating to repairs during the 10 year IRP window, but with the option also to delegate voting rights to the homeowner should it wish to. This proposal was widely supported. Reforming the leasehold and commonhold systems in England and Wales: summary of responses and government response - GOV.UK

[14] It is important to note that here we are setting out how new shared ownership units will operate in newly built commonhold blocks. We are still considering how shared ownership will operate in existing buildings which have been converted into a commonhold.

‘development rights’ from the current restricted list, and allow developers the flexibility to determine which development rights they need in the CCS.

2.1.5.4 In future, developers will be able to reserve any rights they deem necessary for the completion and sale of units on the site. New flexibility for developers will come hand and glove with new safeguards to protect consumers from abuse, including a right to apply to the Tribunal where there is concern that development rights are not being exercised in appropriate ways. We will also protect existing homeowners by requiring any changes to existing rights set out in the rulebook (the CCS) to have unanimous agreement.

2.1.5.5 In addition to new flexibilities for developers, we will also clarify the procedure for the handover of the site from the developer to the unit owners. While the developer holds over 50% of the association’s votes, they will have a majority sufficient to appoint their preferred director, but as more units are sold, and unit owners control 50% or more of the votes, they will be in a position to appoint new directors if they wish to.

2.1.5.6 Reflecting on the previous examples in this section that highlight the limitations of the current law, it is clear how the new framework's increased flexibility will benefit developers and consumers in practice. In the future:

a) Sections will enable owners to tailor their access and responsibility towards the costs of particular services or areas.
b) Allowing certain leases of residential units will make it easier for developers to offer commonhold ownership more widely, enabling more individuals to buy in without restrictions on financing methods.
c) Making staged development and sales easier will grant developers the same freedoms they enjoy with other tenures, making commonhold commercially more attractive.

2.2 Living in a commonhold

2.2.1 Increasing flexibility and safeguards for unit owners

Current challenges: The threshold for changing a local rule is low at 50% making it too easy for these rules to be changed and there is some confusion about what can and cannot be covered in local rules. The process for appointing directors is also unclear particularly when no-one wishes to volunteer. We will also make the rules around reserve funds clearer so that commonholds are better prepared for the costs of repairs and maintenance.

Proposed solutions: We will raise the threshold for changing local rules to 75% and extend the concept of minority protection to decisions about setting local rules. We will make it clear that local rules cannot be used to set an event fee outside of a retirement setting but can be used to prevent short term holiday lets. We will set a clear process for appointing directors including what to do if no-one comes forward to volunteer. We will make public liability insurance compulsory. We will require commonholds to set up a reserve fund, allow them to borrow from and re-designate reserves if the Tribunal agrees and also make sure funds set up for a specific purpose are protected from creditors.

2.2.1.1 Living in a commonhold creates a democratic environment where decisions are made collectively, and individual owners can have their say to influence the outcome of these decisions. The opportunities to participate in making decisions are also accompanied by responsibilities for both unit owners and directors to materially and financially maintain the commonhold and adhere to rules agreed collectively by unit owners.

2.2.1.2 All commonholds rely on a standardised ‘rule book’ known as the Commonhold Community Statement (CCS), which governs the rights and responsibilities of the commonhold association and the unit owners. The Law Commission’s recommendations will enhance the experience of living in a commonhold by refining the CCS, introducing more robust processes for preserving a commonhold’s financial health.

2.2.2 Safeguards for local rule changes

2.2.2.1 The CCS performs a similar function to a lease, setting out ‘prescribed rules’ which unit owners must adhere to, and which are standardised for all commonholds, rather than differing from development to development, as can often be the case with leases. The CCS is also more advantageous in that there is increased flexibility for commonhold unit owners to collectively decide to add or change certain rules – known as ‘local rules’ – to suit the needs of their individual commonhold (provided these changes do not contradict the CCS).

2.2.2.2 Changes to local rules require a certain percentage of unit owners within the commonhold to agree before any change to a rule, or a new rule can be formally added to the CCS. Currently, only 50% of unit owners attending the vote need be in favour for a local rule to be amended. This low threshold has the potential to create dissatisfaction within the commonhold, since it becomes too simple to

change or add a local rule, especially in cases where a significant number of unit owners are opposed to it. Introducing the Law Commission's proposals would see this rise to 75%. We believe this higher threshold strikes an appropriate balance between allowing commonholds to keep the flexibility to introduce rules that work for them but preventing rules from being changed too easily. We believe this higher threshold will send a signal to individual unit holders that it is possible to change the rules but there is a need to take others with you to make that change happen.

2.2.2.3 The Law Commission also reviewed whether event fees should be permitted within commonhold. Event fees, also known as 'deferred management' or 'exit' fees are most commonly used in leasehold retirement properties, where a fee becomes payable when certain conditions are met, for example resale or sub-letting. The Law Commission ultimately concluded that while event fees can serve a purpose for retirement properties, there is no substantial benefit for them to be used for commonhold. We agree, and therefore we will prevent new commonholds from establishing event fees, unless the commonhold is a dedicated retirement development. Government will work with the sector to determine the criteria for this exception.

2.2.3 Empowering unit owners around short term lets

2.2.3.1 Very short-term lettings such as holiday lets can provide a useful option for owners to generate income from a unit which is not occupied. They can also become a source of friction in shared blocks as they can cause nuisance, security concerns and increased wear and tear of the common parts of building. Short term lets will be permitted in commonholds, but to help to manage any potential difficulties they may cause and give unit owners flexibility, commonhold associations will have the right to use local rules to restrict certain short term uses, such as holiday lets and other short-term letting arrangements. Whilst temporary or emergency accommodation are also forms of short-term letting, we recognise the legitimate necessity for these types of accommodation to remain available, and therefore no restriction will apply to these.

Case study: introducing a new local rule

Unit owner A has recently moved into Horseferry Buildings and is concerned about the number of people coming in and out of the property two doors along from her flat. Although the visitors have been generally quiet and well behaved, there was one incident where some plasterwork was damaged by a large suitcase. Unit owner A speaks to both of her neighbours, unit owners B and C who confirm that they also experiencing some disruption and they think the flat is being used for short holiday lets. They agree to raise this at the next commonhold association meeting.

The issue is discussed at the next general meeting, where Unit owner D (the owner of the flat) apologies for the disruption, agrees to pay for the repair of the corridor and remind visitors of the need to be considerate. Owner D says that she is letting the flat over some weekends and when she is away on holiday. The commonhold association discuss the possibility of amending local rules to ban very short term lets but are conscious of the impact this could have on owner D. They agree to monitor the situation and keep the issue of amending the rules under review.

2.2.4 New protections when local rules change

2.2.4.1 Changes to the local rules in the CCS can affect individual unit owners disproportionately. For example, if unit owners collectively voted to implement a local rule banning holiday lets, a unit owner who owned a property which they let out may be very unhappy. So, where a minority are affected by a change on which they have been outvoted they will be able to go to the Tribunal. This could also be used to protect individual owners from being singled out, for instance, if the majority tried to introduce a rule preventing unit owners from owning pets and only one unit owner currently had a pet.

2.2.5 Improving the transparency of the CCS and local rules

2.2.5.1 A number of other Law Commission proposals relating to the CCS will improve the clarity of how the CCS works for all involved parties, including conveyancers, property agents and potential purchasers. This includes setting out the local rules so they are held separately from the standard CCS, which reduces the administrative burden for commonholds and streamlines the buying and selling process by allowing everyone unfamiliar with commonhold to easily identify what are local rules and what are the standard rules which apply to all commonholds.

2.2.5.2 Where the CCS contains local rules, commonhold association directors will be obliged to keep this document up to date and circulate it to all unit owners following changes. We also want to make it clear that the CCS will apply to tenants, licensees and other occupiers of the commonhold, removing any existing ambiguity which may occur in blocks with permanent and temporary residents.

2.2.6 Improved processes for appointing and replacing directors

2.2.6.1 Involvement in decision-making and voting is an important part of commonhold's democratic ethos. To help facilitate smooth decision-making and general oversight of the commonhold association, all commonholds are required to have at least two directors unless directed by a court (we are continuing to consider whether this is appropriate for very small blocks comprising four units or less). These can be either unit owners (who may or may not live in the commonhold) or for more complex blocks the owners may choose to employ a professional director or directors to assist in the running of a site. Standard duties for directors will include agreeing the annual budget, keeping the commonhold in good financial health, and insuring, maintaining and repairing the building.

2.2.6.2 The current processes for appointing directors are complex, and in cases where owners don't volunteer to be directors, there is no clear process on how they should be appointed. We will follow the Law Commission's proposals to remedy this by setting out a clear process for commonhold associations to follow to appoint directors, and by setting up a mechanism to allow interested parties, such as lenders and unit owners, to apply to the Tribunal to appoint directors in the exceptional cases where the commonhold owners have not appointed these themselves.

2.2.6.3 The important functions that directors have in sustaining the commonhold's day-to-day running and financial wellbeing means there need to be processes to ensure appropriate individuals are elected to fulfil these duties. We will adopt the Law Commission's recommendations to introduce an annual election for directors and also give commonholds the ability to replace existing directors in cases of mismanagement. We also agree with the Law Commission that a developer's ability to appoint a director should be commensurate with the number of votes it controls at the point the commonhold is being established. We will include measures to make sure that developers cannot require unit owners to delegate their vote to them.

2.2.6.4 As part of their duties to maintain the building, we will require the commonhold association to take out public liability insurance and buildings insurance (which is required under current legislation) and optionally directors' liability insurance. The Law Commission identified that public liability insurance should be compulsory to help protect the commonhold association against insolvency in the event it becomes liable for a catastrophic loss.

2.2.6.5 Unit owners will also be able to request copies of the insurance policies from the commonhold association, allowing them to scrutinise the insurance cover and costs if necessary. To keep buildings in a good state of repair, commonhold associations will also be required to make replacement to common parts where repair is not possible.

2.2.7 Setting clear standards of repair and making minor alterations

2.2.7.1 Among the key advantages of the commonhold model in England and Wales and the improvements we are making to it are that there are clear responsibilities, rules and procedures for ensuring that buildings are maintained. The responsibility to keep the commonhold well maintained does not solely fall on the commonhold association and its directors. The existing CCS already places a duty on unit owners to maintain their properties but the Law Commission worried that this might in some cases be unduly onerous as there was no limit placed on the standard of maintenance required. The Law Commission suggested that unit owners should be required to maintain services provided by pipes and cables and generally adhere to a standard or repair and maintenance that will not adversely affect their neighbours.

2.2.7.2 Following our reforms, it will be possible for unit owners to vote on the standard of repair required through setting their own local rule, which as with all local rules, could be amended or removed at a later point to reflect the experience and wishes of unit owners.

2.2.7.3 This will make it easier for unit owners to make minor alterations in cases where the alteration interacts with a common part of the building. For example, the installation of an extractor fan from a unit owner's bathroom through an external wall which forms part of the common parts. Under the existing law, this would require agreement from other unit owners via a vote, which is an onerous process for a minor alteration. Instead, under the Law Commission's

recommendation, unit owners wishing to make such small alterations can instead take this to directors directly for their approval.

2.2.8 Greater democracy in agreeing the commonhold budget

2.2.8.1 While directors are responsible for handling the overall finances of a commonhold association, it is the unit owners themselves who collectively have the opportunity to make decisions on the budget and are required to make their contributions towards covering the commonhold's expenses. This includes insurance, repairs and maintenance.

2.2.8.2 Under the current commonhold legislation, directors are required to consult unit owners on such expenses but can choose to discount their views. This could potentially lead to some unit owners paying towards services or facilities which they may not have the benefit of.

2.2.8.3 The Law Commission's recommendations address these issues, putting unit owner participation, cost transparency and fairness at the forefront of making budgeting and financial decisions. A commonhold's budget will be subject to a yearly vote, requiring a majority of unit owners to support a proposed budget before it can be passed, setting a balance between giving unit owners involvement in the process, whilst not setting an unreasonably high bar for getting a budget approved. In cases where a budget fails to pass, the previous year's budget will roll over, providing a backstop in scenarios where there is no majority agreement to the budget and ensuring the commonhold can still continue to financially operate.

Case study: agreeing the commonhold budget

The directors of a commonhold block have convened a meeting of commonhold association members to discuss and set the annual budget. Having engaged with members in the preparation of the budget, the directors present the planned budget to members at the annual general meeting, setting out the various contributions they will need to make for repairs, maintenance and insurance of the commonhold over the next year.

One of the unit owners points out that the costs anticipated to maintain the commonhold's small garden area have risen significantly above inflation, compared to the costs earmarked for gardening in the previous year's budget. Upon raising this, they receive support from other members who agree that this cost is a concern. The directors explain that this is due to the contractor responsible for carrying out maintenance on the garden area increasing their pricing. The directors put the budget to a vote of members, however less than the required 50% of unit owners vote in favour of passing it, concerned about the potential garden maintenance cost and ask that further quotes are sought from other contractors. The directors agree to seek additional quotes and, and propose the association reconvene next week once he has had chance to revise the budget.

At the next meeting, the directors present an amended budget which includes a quote from a different garden maintenance contractor, which more closely matches the costs

of the previous year. The unit owners are more comfortable with the revised costing and the budget is passed unanimously.

2.2.9 Mandating reserve funds to mitigate large or surprise costs

2.2.9.1 The final piece of keeping a building in good financial and material health is preparing for potential future expenditure. Facing significant costs for major works procedures is often unwelcome to owners and residents, and while the Government will consult on new reforms to the section 20 process in leasehold, in the reformed commonhold model this can be achieved by setting up one or multiple reserve funds.

2.2.9.2 A 'reserve fund' is a fund set up and paid into over time to meet future costs, for example a lift replacement that may be needed in 10 years. This practice is beneficial to unit owners in multiple ways. It helps to protect against significant one-off bills for expensive work, instead allowing unit owners to make more manageable contributions over a prolonged period. It also means those using the building or common parts are required to contribute to their upkeep over the longer term. This also means that major but routine repair and replacement activity can be planned in advance and take place when needed, reducing the risk of critical infrastructure such as lifts breaking down and then being out of service for long periods of time.

2.2.9.3 A general reserve fund could be set up to cover broad general costs that the commonhold association assesses that it will need to pay for in the coming years, allowing owners to accumulate funds over time. It could also be used to offset unexpected works, for example if a flood damages the site resulting in areas of the building requiring repair, directors could use the fund to fully or partially finance this, reducing the need for owners to be suddenly required to raise significant funds in a short period of time. This facilitates proper financial planning and allows unit owners to better predict and allow for future running costs, reducing the stress and anxiety that leaseholders face when confronted by a large and unexpected bill.

2.2.9.4 Commonholds today can choose to set up a reserve fund, and this is something directors should consider, but there is no compulsion to have one. There is also a lack of detail in the existing law about how they should be held and used. We will adopt the Law Commission's recommendations to rectify this, setting out that a reserve fund is mandatory for all commonholds, but not prescribing how much unit owners should pay into it, meaning they will still be able to collectively decide how much they want to contribute by means of a vote.

2.2.10 New flexibility on borrowing from or redesignating a reserve fund

2.2.10.1 Commonholds will also be able to set up specific reserve funds for particular needs, for example two separate funds could be set up, one for the upkeep of the roof, and another for costs associated with a communal boiler. This will allow commonholds to prepare and budget for future expenditure on multiple different aspects. It will also be possible to borrow from or redesignate reserve funds for

another purpose, for example in cases where more urgent work arises, funds can be funnelled to pay for that instead, subject to an approval process by unit owners and the Tribunal.

Case study: setting up a reserve fund

The unit owners of a commonhold block have been faced with lift door issues for a number of weeks and raise their concerns with their managing agent. The managing agent and commonhold association agree to appoint a lift company to repair the doors and make an assessment of the overall condition of the communal lifts. The lift company are able to repair the lift doors by replacing the sensors but in their report they note that the lift cables will need replacing in the next couple of years and estimate that the whole lift system will need to be replaced in around 10 - 12 years. The commonhold association review this report at their next meeting and agree to set up a dedicated lift reserve fund. They agree that each unit will contribute its allotted share toward a total reserve fund which is estimated at £5,000 a year. The commonhold association are confident this will give sufficient funds to cover the eventual cost of the repair and replacement work.

2.2.11 Protecting reserve funds

2.2.11.1 Changes will also be introduced to specify that reserve funds must be held on statutory trust. This means that reserve funds can only be used by the commonhold association to comply with its obligations in relation to the CCS, such as repairing the common parts, mitigating the prospect of directors potentially mismanaging reserve funds or using them for alternative purposes. In addition, holding reserve funds on statutory trust will help to protect them from enforcement action by creditors. Creditors will only be able to claim from the reserve fund where the claim for the debt owed specifically relates to the purpose of that fund.

2.2.12 Helping to keep costs manageable for unit owners

2.2.12.1 One of the things that homeowners fear most is being faced with large and unexpected bills. A commonhold, like any other type of building, could occasionally face the need for emergency works resulting in unexpected costs, and they have been provided with the tools to help them respond. However, unit owners will also have measures which help to keep costs predictable in future. For costs relating to alterations, improvements or enhanced services, unit owners can choose to set an index-linked threshold on the amount of expenditure that could be incurred annually. This can help to prevent excessive costs being charged for superficial improvements or services which are beyond what they expected to pay for. Unit owners will also have the ability to challenge any expenditure above their set threshold. To make sure that restrictions can flex with changing preferences of owners, and wider market prices, unit owners will be able to vary or remove these caps through a vote.

2.3 Fixing things when they go wrong

2.3.01 Commonholds, like any shared living arrangements, will face challenges from time to time. For example, the commonhold association might need to make urgent repairs to fix a latent defect, there may be a unit owner who persistently fails to pay their contribution towards shared costs, or a disagreement may arise between unit owners and the commonhold association.

2.3.02 When things go wrong, it is important that commonholds have the tools to respond effectively. At the same time, we also need to make sure that the rights and interests of individual unit owners are protected. To help with this, we will introduce changes proposed by the Law Commission below to ensure commonholds are more resilient, and unit owners better protected.

Current challenges: The tools which are available to a commonhold association when faced with an emergency are limited and in particular, they can face difficulties in quickly raising money.

Proposed solutions: We will bring in measures which will allow commonhold associations to get a loan secured either against the common parts or against future commonhold contributions. We will also ensure there are adequate protections in place so that the action taken is aligned to the interests of owners.

2.3.1 New flexibilities for responding to emergencies

2.3.1.1 Sometimes, a commonhold might face unexpected costs, like urgent repairs or damage from a storm. In these cases, the commonhold may need extra money, which could come from their insurance, borrowing and/or earlier intended use of, or withdrawal from, reserve funds, or asking unit owners to contribute. But there may be situations where these options aren't available or enough to cover the costs.

2.3.1.2 To help commonholds handle emergencies more effectively, we are introducing new ways for them to raise money. In the future, commonhold associations will be able to:

a. **Take out a loan (fixed charge)** – This would allow them to borrow money by using some or all of the building, as collateral.
b. **Take out a loan (floating charge)** – This would allow them to borrow money against future payments made by unit owners (called Commonhold Contributions)

2.3.1.3 We will also make it clearer how commonholds can, as a last resort, sell parts of their building if necessary, by clarifying the level of unit owner support required to take this option forward. This will mean that commonhold associations can make better use of this existing flexibility.

2.3.1.4 We understand that these measures are important for the good management of the commonhold, but they must be handled carefully to protect the interests of individual unit owners and their lenders. That's why there will be strict approval

processes in place with a high voting threshold of unanimous consent from all unit owners to a charge or sale. Where unanimous agreement is not possible, the commonhold association will still need a minimum of 80% support, plus the approval of the Tribunal. The Tribunal will also always be required to step in to decide if these emergency measures are appropriate when there are mortgages secured on units. As part of these proceedings, unit owners, lenders and other stakeholders will have the chance to voice their support or concerns.

2.3.1.5 Additionally, we will provide guidance to commonhold associations and directors to help them consider how these decisions, particularly selling parts of the building, could affect the value of individual units and whether some owners might be more impacted than others.

Case study: Needing to make emergency repairs

Bob is one of the two directors responsible for managing a two-storey retirement village in the north-west of England which over a weekend suffers storm damage to its roof. There is consequential water damage to all of the electrics and much of the top floor, caused by rain coming through the hole in the roof. Bob is reassured that the damage to the roof is covered by insurance, but knows that the secondary water damage will not be covered.

A professional assessment shows that the damage is considerable and the residents, who are mostly retired, can't afford to pay for the repairs. Bob and the other director, Maya agree they should take out a loan against their fitness centre to finance the essential repairs and which can be repaid (with interest at a reasonable rate) over an agreed period. They call a meeting of the commonhold association who unanimously agree the loan. No one has a mortgage, so there's no need to go to the Tribunal for approval. With the loan secured, Bob is able to arrange for the repairs to be made.

2.4 A more effective dispute resolution procedure

Current challenges: Although commonhold already has a bespoke way to handle disputes, which encourages owners to communicate early and resolve problems informally and quickly, this process can sometimes take too long to reach a fair resolution.

Proposed solutions: The government will promote mediation and out of court approaches to resolving disagreements and the Commonhold Association will also be able to offer a view. We will ensure that when cases do need to go through the court system, they will be handled by the Tribunal who, where possible, will overlook minor procedural mistakes.

2.4.1 In a commonhold, all the unit owners share responsibility for making decisions about their building. This means that everyone has the opportunity for a say in how the building is run and the costs involved, and a shared goal of maintaining the building as a home for all unit owners.

2.4.2 While this should reduce disputes, it doesn't eliminate them entirely. It's important to have clear systems in place to resolve issues when they do arise. When disputes occur they may be between a unit owner or owners and the commonhold association or just between unit owners.

2.4.3 Right now, commonhold already has a bespoke way to handle disputes, which encourages owners to communicate early and resolve problems informally and quickly without needing to go to court. However, the Law Commission considered that this process could, nevertheless, sometimes take too long to reach a resolution. We want to make this process clearer, faster, and more effective, so that disputes are handled quickly and moved to the right next step without the cost and time involved in going to court where it is not absolutely necessary.

2.4.4 One way we will improve things is by promoting mediation and other out-of-court methods to resolve disagreements. This should help avoid the need for legal action. We will also keep an eye on the possibility of introducing an ombudsman or regulator for commonhold in the future as the market matures, but in the meantime, we will make membership of and referral to an ombudsman, optional.

2.4.5 We will also do as the Law Commission recommend and remove unnecessary steps that slow down the process, like strict paperwork requirements or rules that mean a commonhold association can prevent residents from making a claim against another. We believe that commonhold associations can play a helpful role in advising residents on the strength of their claim, and they will continue to have the option to do so.

2.4.6 If a dispute does need formal intervention, we believe the Tribunal is the best place for this, based on their expertise in property matters. To keep things running smoothly, the Tribunal will have the discretion to be able to overlook minor procedural mistakes like incorrectly filled-out forms as well as disregard

other non-compliance with the dispute resolution procedure. Equally, the Tribunal will have the power to direct parties to take any steps it thinks appropriate.

2.4.7 If an owner or tenant renting from a unit owner is found to have broken the rules, ultimately the Tribunal can order them to pay other owners for any costs caused by their actions, including their legal costs. This will help make sure that other owners don’t end up out of pocket and will also act as a deterrent against rule-breaking.

2.5 Effective and fair enforcement and recovery of debts

Current challenges: A commonhold association has limited powers when a unit owner doesn't pay their contributions. It has to go through a lengthy and time consuming procedure to recover monies owed.

Proposed solutions: We will implement the Law Commission's recommendations to introduce an expedited order for sale process with appropriate safeguards for unit owners and lenders notified of any debts before they build up too far.

2.5.1 When you live in a commonhold, like any other building with shared spaces, there are ongoing costs that everyone needs to help pay for. These costs can include things like insurance, utilities, repairs, and paying for services such as cleaners. It is important for everyone to pay their share of these costs on time to keep the building well-managed and prevent financial problems for the whole commonhold community.

2.5.2 If a unit owner doesn't pay their share, the commonhold association can run into financial trouble. Without reform, this might force other unit owners to cover the unpaid amounts, which is clearly unfair on them, could risk the proper upkeep of the building and could put the whole building at risk of financial failure. To avoid this, commonhold associations currently have some powers to recover unpaid debts, like charging interest on late payments or requiring tenants to pay their rent directly to the commonhold association. However, these powers are limited and if those basic steps don't work, a commonhold association currently has to go through a complicated, time-consuming process to get a court order to try to recover the debt.

2.5.3 We want commonhold associations to have stronger ways of dealing with unpaid debts. We agree with the Law Commission that in future, commonhold associations should be able to apply to the court for an expedited order to sell a unit if its owner fails to pay their bill to the commonhold association. This will replace the lengthy process of getting a money judgment and further action to enforce it and allow the commonhold association to act more quickly to avoid financial difficulty.

2.5.4 We want to balance the need for commonholds to stay financially resilient with the need to protect unit owners from losing their property unfairly. This new power will come with safeguards to protect unit owners:

- **Pre-conditions:** Before applying for a sale, the commonhold association must follow specific steps, and they can only ask for a sale if the debt is above a certain level. Applying for the sale of a unit should only happen after all other options to resolve the debt have been explored, such as a payment plan. This will allow for a pragmatic and sympathetic approach to debt recovery but it is important that there is a

mechanism which ensures debts can be recovered. We think this strikes the right balance.

- **Court discretion**: The court will consider all the circumstances and only order the sale of a unit where it is reasonable and proportionate.
- **Fair process**: Interest rates on arrears will be capped[15] to avoid excessive charges, and tenants will generally be protected from losing their homes. A receiver will be appointed to make sure the sale is conducted fairly. Once the unit is sold, any remaining money from the sale would go back to the unit owner after any receiver fees, the debt owed to the commonhold association and other interest holders (i.e. mortgage lender) are paid.

2.5.5 We understand that lenders will of course wish to have assurance about protecting their security. Equipping commonhold associations with effective methods to ensure timely payment of commonhold contributions should give lenders confidence to lend on commonholds, knowing that commonhold associations will have the financial means to properly maintain their buildings.

2.5.6 If a unit owner fails to pay their contributions, lenders will naturally worry about the potential impact on their ability to recover the money they lent. Improving upon the current position in leasehold, we agree with the Law Commission that lenders should be notified when a debt reaches a level that triggers the association's right to seek an expedited order for sale. With this knowledge, lenders will be able to take one of two actions to protect their security:

a) Repossess the property according to the mortgage agreement if the unit owner is also in default on mortgage payments.

b) Pay off the debt and add it to the mortgage.

2.5.7 If the lender takes no action and the court orders the sale of the unit, the remaining proceeds of sale will be used to repay any mortgage after the sale fees and commonhold association debt are paid. Lenders will have the option to request control of the sale process, meaning they can manage the fees associated with the sale to leave potentially more money available to repay the mortgage.

[15] A statutory cap on the amount of interest that may be charged by a commonhold association on late payments of commonhold contributions will be linked to the amount of interest payable on judgment debts. Subject to safeguards, a commonhold association will be permitted to charge a higher rate of interest where they have borrowed money with interest to cover the arrears.

2.6 Stronger minority protections

Current challenges: When applied strictly, there are times when democratic decision-making means that a large bloc of interests can outvote a smaller bloc. This can sometimes feel unfair when there is a disproportionate impact on the parties comprising the smaller bloc.

Proposed solutions: We will implement a system of minority protection, which will allow unit owners in the minority on a vote to challenge certain important decisions at the Tribunal. The Tribunal will have the power to annul the decision, add conditions or let it stand.

2.6.1 One of the key benefits of commonhold is that all unit owners have opportunity for a direct say in how their building is managed. This includes voting on things like the annual budget, creating new sections, or deciding whether to change the local rules. Some decisions like setting up a designated reserve fund or electing a specific person as a director only need a simple majority to pass, while others, such as setting a local rule to allow pets in the commonhold, require a larger majority.

2.6.2 We don't want to dilute this collective decision-making. However, we also recognise that sometimes a majority vote could affect a small number of unit owners in a way that feels unfair. Currently, there is not much protection for owners who are outvoted on decisions that impact them. That is why we want to improve protections for minority interests while still supporting the democratic nature of commonhold.

2.6.3 Under the new model, owners will have the right to challenge certain important decisions at the Tribunal if they feel they have been unfairly impacted. We agree with the Law Commission that this right should only apply to the most important votes so as not to disrupt the commonhold association's decision-making process too much. This will be limited to decisions by the commonhold association to:

- Vary the terms of the CCS;
- Create a section (or sections);
- Combine two or more sections; and
- Approve a budget in excess of a cost threshold set in the CCS.

2.6.4 There will be clear rules about when a decision can be challenged. It is important for other unit owners to have certainty in what is a valid decision of the commonhold association. Owners will therefore have a month after the vote to raise concerns, and if they don't act in time, they lose the right to challenge it (although the commonhold association or the Tribunal may grant an extension in exceptional circumstances).

2.6.5 If the decision being contested is approval of the budget and a costs threshold has been exceeded, directors won't be able to charge owners more than previously agreed amounts while the challenge is being resolved.

2.6.6 The Tribunal will be required to look at various factors when deciding whether to allow a challenge, like whether the owner participated in the vote and how they voted. The Tribunal will also consider how much the decision affects the individual owner, especially if the full impact was unclear at the time of the vote. The goal is not to automatically favour one side, but to make decisions that are fair. These factors will help the Tribunal in deciding whether to grant a remedy, as well as clarity for owners and the association when considering making or responding to a claim. The Tribunal will have the ability to annul a decision complained of, let it stand or add conditions to ensure fairness.

2.7 Buying and selling a commonhold

Current challenges: The information to be provided by commonhold associations to buyers who are moving into commonhold property can seem incomplete and it is often not clear whether the financial information is up to date.

Proposed solutions: We will make improvements to the Commonhold Unit Information Certificate (the information which must be provided to buyers) and set a timescale and cost cap for provision of this information.

2.7.1 Improved financial information for home buyers

2.7.1.1 It is important that people who want to buy any home, but also a commonhold, have a good understanding of the financial position of the commonhold and any arrears associated with the flat they want to buy.

2.7.1.2 In addition to wider sales information, currently commonhold buyers are provided with a Commonhold Unit Information Certificate (CUIC) which sets out any arrears due on a property they are looking to buy. Presently the validly and purpose of the information provided can be unclear, and so we will make improvements to the certificate and process for providing it. In future, buyers' conveyancers will be provided with an improved CUIC which sets out the latest financial information including any arrears owed by the unit. This information will be provided at a maximum cost of £50 and this fee will be waived if not provided within 14 days of a request.

2.8 Improving the process for winding up a commonhold

Current challenges: Commonholds can be wound up in two ways: a) involuntarily due to going into insolvency and b) unit owners collectively deciding to wind up and sell the entire site. In the case of a commonhold becoming insolvent, there is currently a lack of detail about how a commonhold association should be wound up and the solutions available for a commonhold to overcome this and continue to operate. The voluntary termination process, although untested, is too basic, lacks safeguards for all parties involved, and could also lead to unfair outcomes for some parties.

Proposed solutions: We will provide involved parties with greater clarity over what happens when a commonhold becomes insolvent, including the courts and their role in determining whether a successor association should be appointed. This should be better for owners and lenders [and a commonhold association's creditors] than the possible outcomes under normal insolvency law where landlords of leasehold properties become insolvent. We will strengthen and expand the voluntary termination process to ensure it accounts for a wider range of factors, including making sure owners get a chance to vote, setting out how valuation should be handled and safeguarding the interests of other parties such as lenders to make sure they have a say.

2.8.01 It is crucial for commonhold associations to maintain their financial stability so that they can continue to operate and serve unit owners and avoid slipping into insolvency. Should the exceptional circumstance occur where a commonhold falls into insolvency, there would be no entity responsible for carrying out maintenance and repairs, or to collect commonhold contributions. Most significantly, unit owners would also lose their rights as the common parts would become ownerless without the presence of a commonhold association. This would likely significantly devalue their property, as they would own a unit on unowned land, and the commonhold association would no longer exist to maintain the site, risking it falling into disrepair and devaluing it further, leaving any unit on the site as potentially unsellable.

2.8.02 Taking forward the Law Commission’s recommendations relating to directors, shared costs, insurance and reserve funds will provide additional protections to commonhold associations to remain financially well-equipped and reduce the risk of insolvency occurring. However, in the event that a commonhold does become insolvent, unit holders will need mechanisms in place to further protect themselves.

2.8.03 In current law, it is possible for the court to appoint a ‘successor association’ in cases where an existing commonhold association goes insolvent. This allows the new association to assume management of the commonhold so it can continue to operate. There is little guidance for the court on how this process should work, so we will adopt the Law Commission’s recommendations to clarify and improve this process. The court will continue to have discretion over the appointment of a successor association, but where insolvency has occurred due to a director’s poor financial management, the court may rule a successor association can be

appointed with the condition that the same director cannot be appointed again. An additional recommendation will provide protection to unit owners in cases where a liquidator is appointed to handle insolvency proceedings.

2.8.1 Improvements to voluntary termination

2.8.1.1 Whilst a commonhold being forced to wind up due to insolvency will always be undesirable and to be avoided, as commonhold becomes a more prominent tenure there will be instances where commonholds decide to voluntarily wind up, a process referred to as ‘voluntary termination’.

2.8.1.2 Voluntary termination is the process of the commonhold association and its unit owners collectively making the decision to close the commonhold association as a company and sell their commonhold site. Typically, this would be an action that does not occur until long into a commonhold’s future, but it is important to have a sufficient mechanism in place to manage this.

2.8.1.3 For example, voluntary termination may occur in cases where a developer makes a lucrative offer for the site and owners decide to sell, or when a commonhold has existed for a significant period of time and is beyond economic repair, for example the cost of refurbishment would outweigh the value of selling the site outright. This is more straightforward than the equivalent scenario in a leasehold block, as owners can take a single collective decision to wind up and sell the site and divide the proceeds between them.

2.8.1.4 The voluntary termination process exists in the current law, but the Law Commission concluded that it lacks depth and may not always provide a fair and balanced outcome for all unit owners, yet it is likely to be one of the most critical and potentially disputed decisions a commonhold ever takes. Whilst Government’s understanding is that no commonholds to date have used the voluntary termination method, refinements are needed to ensure the process is both robust and clear when it is needed in the future.

2.8.1.5 The Law Commission’s recommendations will make the process for voluntarily terminating more thorough, to ensure decisions are made fairly and with support from unit owners. Like with many other aspects of commonhold there will be a requirement to vote on this decision, and in all cases where unanimous consent to terminate is not achieved, the court will have the final say in accepting a resolution to terminate, and can consider a range of factors before coming to a decision. This will balance the interests of all parties, and account for those who may be negatively impacted by a potential termination.

2.8.1.6 In addition, the recommendations add safeguards to account for the interests of other relevant parties, such as mortgage lenders. The commonhold association will be required to notify lenders of their intention to terminate, and during the termination process, lenders will be able to make applications to the court in order to protect their interests.

2.8.1.7 Other recommendations add clarity to how valuation of the site should be determined and how a commonhold can make sure the site is unoccupied when

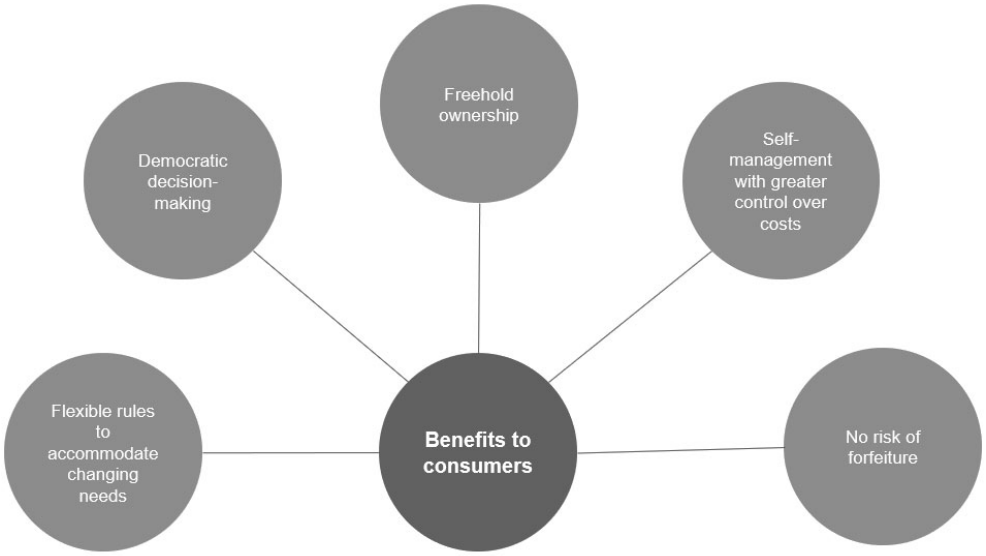
it is sold to a potential purchaser. Finally, sections are also accounted for. A section of a commonhold has the ability to choose to terminate and to be sold off separately from the remainder of the commonhold site, again subject to safeguards and support from unit owners (see earlier text for further detail on sections).

3. What do the new reforms mean for me?

3.01 We know that for commonhold to take off at scale we need three things; we need developers to have the confidence to designate development as commonhold in place of leasehold, we need consumers to have the confidence to buy commonhold and we need lenders to have the confidence to lend on commonholds. Achieving this will create a reinforcing and virtuous circle which will allow commonhold to become the standard tenure for new supply. We believe that this new framework will give each of these parties confidence in commonhold.

3.1 Improvements for consumers

Figure 3. Key benefits of commonhold for consumers



3.1.1 Commonhold means that purchasers of new build flats will **collectively own their freehold from the outset** and be part of a democratic framework which allows them to collectively make decisions. They will be able to **directly shape the way their block operates** including tailoring local rules to help build a community that feels right to them.

3.1.2 Some people who move into a leasehold property say they did not understand what they were buying into. We believe that having a **clear set of well-publicised rules based in law** which applies to all commonholds will mean that people's lived experience is much closer to the one that they imagined before they moved in.

3.1.3 **Costs will be more predictable too**, there will be no need to save for lease extensions or ground rent payments and no unexpected fees to pay when you want to change or alter your property. In addition, unit owners will have participated in discussions about maintenance plans and will have contributed to a suitable reserve fund which means that money should be available for routine repairs. This may mean that commonhold contribution is higher as reserves are

built up but there is then a much smaller risk of large unexpected and unwanted bills.

3.1.4 Not everyone wants to play an active role and that is okay. Unit owners will have opportunity to make decisions and participate in votes but for everything else **they can rely on paid professionals** and those professionals will work for them. We expect that Managing Agents will continue to be used to run all but the smallest commonhold blocks. However, there will no ambiguity about who these agents work for, as there will be no external third party.

3.1.5 We know that there are concerns about having to get along with neighbours but commonhold is based around the concept of **alternative dispute resolution which is designed to allow parties to come to an agreed position** with the Tribunal acting as the ultimate backstop. It should also be clear from this document that consumers will be free to use professionals for some of the engagement between neighbours. Whilst a new commonhold model will not stop disagreements from occurring, it will help to steer the parties to a resolution and often one that does not require direct intervention from a court.

3.1.6 There is also **no forfeiture** procedure in commonhold. In the event of a commonhold unit being sold to cover a unit owner's debts, there is no risk of that unit owner losing any of the wider equity they have built up in their flat. Equally, the order for sale process means that unit owners will not be routinely expected to cover the debts of unit owners who are not paying their bills.

3.2 Improvements for developers

Figure 4. Key benefits of commonhold for developers

3.2.1 For many developers, commonhold will be an evolution of their existing business practices. For those developers that operate in Scotland or have operations in Europe or North America, homeowner-led blocks are the norm not the exception.

3.2.2 Even in England and Wales, we've witnessed increasing numbers of developments where the freeholds are handed over to homeowners (via resident management companies), rather than being sold on to a third party. And yet, the obstacles in the existing legal framework have, prevented their taking the next step from share of freehold arrangements with resident management companies, to adopting commonhold.

3.2.3 The changes we will make to the existing commonhold model will remove those barriers and mean that commonhold is truly fit for purpose as a replacement for new build leasehold.

3.2.4 The introduction of **sections** will open up commonhold to a much greater range of uses, giving developers and investors the confidence that discrete interests, such as commercial spaces, can be managed separately where they feel it appropriate, while still playing a positive role in the collective management of the building or wider development.

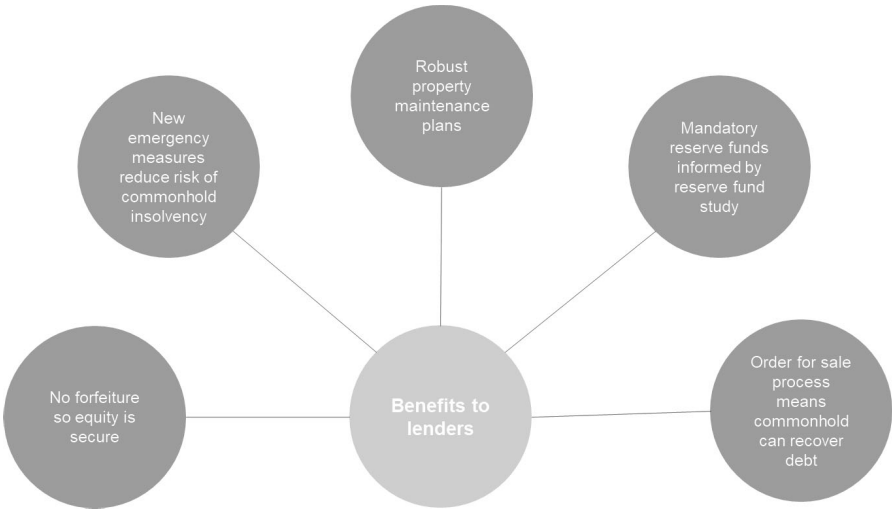
3.2.5 Coupled with **more flexibility over management arrangements**, developers will also be able to tailor the charging structure to more closely align with the discrete interests of the building or the site, via the new regime permitting **separate heads of cost**, so that decision making and financing can be appropriately allocated according to the services or areas individual units have available to them.

3.2.6 Developers will also benefit from the opening up of commonhold to a wider range of potential homebuyers, through the changes that will **allow shared ownership and home purchase plan leases for the first time**. This will improve development viability and put commonhold on a level playing field with leasehold blocks, and making securing planning permission (which may often require shared ownership units as part of affordable housing requirements) more simple to secure.

3.2.7 **Changes to development rights** will also make building a new commonhold easier. Developers will benefit from the flexibilities enjoyed by those building leasehold blocks today, so that developers can include in the commonhold rulebook from the outset any rights that will support their completion and marketing of the site. These changes will be particularly valuable for those building commonhold blocks in phases, where ongoing access to finished and sold parts of the scheme is needed in order to complete the wider development. Developers will also benefit from the simplification of both the registration and director appointment procedures.

3.3 Improvements for lenders

Figure 5. Key benefits of commonhold for lenders



3.3.1 Lenders can have confidence that commonhold units offers them a more secure asset than leaseholds. The Law Commission recognised this and directly addressed lenders concerns when they published their final report by issuing an open letter to lenders.[16]

3.3.2 We know that many lenders are already prepared to provide a mortgage for a commonhold unit. This is already reassuring given the very small size of the existing commonhold market in this country. The message we have heard from lenders is that as more commonholds come onto the market even more lending products will follow. We believe the changes we are making to the commonhold model should further reassure lenders that lending on a commonhold unit presents no more risk than lending on a leasehold flat and should additionally have benefits over and above leasehold for them.

3.3.3 These include reforms to:

a) Ensure fair and effective enforcement of financial breaches of the CCS;

b) Protection of a lender's stake in the building (e.g. a role for lenders as a last resort to step in and apply to the Tribunal to appoint a director or replace a failing one);

c) Ensuring the solvency of the commonhold association (e.g. compulsory public liability insurance and reserve funds as well as enabling unit owners to approve annual budgets to keep costs affordable);

d) New powers to raise funds when responding to emergencies; and

[16] Law Commission, Commonhold Open Letter to Lenders: https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2020/07/Commonhold-open-letter-to-lenders---final-N17.pdf

e) Safeguards around voluntary termination.

3.3.4 Critically for lenders, commonhold does not pose the same risks to its security that leasehold does. There is **no lease** which means that the value of a commonhold unit will not be reduced year on year over the period of a mortgage because the lease is running down. This should provide lenders with increased confidence to lend.

3.3.5 The lack of forfeiture in commonhold is another advantage over leasehold security. A consequence of forfeiture is that the lender loses its security over the leasehold interest when the lease is brought to an end. The same risk does not arise in commonhold, where **a commonhold unit can never be forfeited**.

3.3.6 The **order for sale** process ensures that commonhold associations will have a mechanism for ensuring compliance with the CCS and recovering any unpaid debts from unit owners. Without this, commonhold associations may struggle to bridge any shortfall to carry out maintenance and repairs which could impact a lender's security. New notification requirements and safeguards at various stages of the process will mean that lenders will have more security when lending on a commonhold flat compared to an equivalent leasehold property.

3.3.7 The changes we are making around **reserve funds and financial management** more generally will also mean that commonhold blocks will have robust maintenance plans for their buildings and should be able to access adequate funds when repairs need to be made.

3.3.8 We are also making changes which will give commonholds some additional tools to **respond in an emergency**. This means that there will be much less risk of commonholds becoming insolvent and lenders interest are also protected. Tribunal approval will be needed when a commonhold is looking to use a charge to raise emergency funds, if there is a mortgage secured against any of the units. The lender will be able to set out any objections to this charge before a decision is made. Again, these measures should increase lender confidence when it comes to lending on a commonhold.

3.3.9 If the worst should happen, and a commonhold becomes insolvent, then measures we are putting in place will ensure that a successor association can quickly be put in place reducing the chance of long running financial damage. In the event of a **voluntary termination**, we are ensuring that any mortgages secured against commonhold units are recognised and protected with lenders having an automatic right to make applications to the court as part of the process.

3.3.10 Taken together, we think lenders should have no hesitation in lending on commonholds.

4. Areas we are still working to resolve

4.01 As the chapters above illustrate, the commonhold model set out in the draft Bill will be very different to the model which is in place today. It will be suitable for operation in a much wider range of settings and be a credible replacement for leasehold for new housing. But our work to reform the model is ongoing. In particular, we want to improve the process for converting an existing leasehold property to commonhold; we want to consider whether the commonhold model should apply exactly the same way to all commonholds irrespective of size; and also how and when we should implement a ban on selling new leaseholds.

4.1 An easier way to convert existing leaseholds to commonhold

4.1.01 We need to improve the process for converting from leasehold to commonhold. The current model requires full consent from every party involved – freeholder, leaseholder and every lender. As the process of conversion begins with buying out leases, it can be expensive particularly if remaining lease lengths are short. This sets an extremely high bar for conversion and may mean that if left unchanged, only the smallest and most affluent blocks will be able to convert because only they will be able to secure 100% consent and ensure that all the leaseholders can afford to convert. That is not our intent.

4.1.02 In their 2020 report the Law Commission made 17 recommendations to improve the conversion process so that it is easier, quicker and more cost-effective and crucially enable conversion which does not require unanimous consent.

4.1.03 We agree with the Law Commission, that we want to get to a position where the consent threshold for conversion to commonhold mirrors that for enfranchisement, which is 50%. However, this has implications for those leaseholders within a block who do not wish to or cannot afford to take part in the conversion (known as non-consenting leaseholders) and raises issues around how a block comprised of unit owners, and non-consenting leaseholders can operate effectively.

4.1.04 **The issues we need to tackle to create an effective conversion process:**

- **Non-consenting leaseholders**: The Law Commission's proposed approach to conversion is a 2-stage process in which leaseholders acquire the freehold and then convert. All those who wish to convert will need to buy out their existing leases (acquire) and then once all the necessary leases have been acquired, the conversion to commonhold can take place (convert). This is because they need to control the freehold to be able to convert it to a commonhold. Conversion is voluntary and, because of the need for enfranchisement, it is also expensive and not everyone will have the funds readily available or believe that conversion is in their own personal best interest at the same time. Although the government's recent leasehold reforms will make the cost of acquiring a lease much cheaper, the cost is likely to still be significant Therefore, it is highly likely that in any given block,

at least one or two of the residents will not wish to participate, either because the cost of acquiring their lease is unaffordable at the current time or because it doesn't fit with their current priorities (e.g. they expect to sell their flat soon) or just see no benefit in converting (e.g. if they let out the property and were content with the status quo). This happens already in enfranchising leasehold blocks. These leaseholders are known as non-consenting leaseholders.

- **Conversion changes people's property rights:** All homeowners are protected by Protocol 1 of Article 1 (A1P1) of the Human Rights Act 1998 which states that *'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.'* This becomes an issue in a conversion where there are non-consenting leaseholders. Following the conversion, non-consenting leaseholders and their former freeholders will be subject to different rules and requirements. This change could be seen as an interference in their property rights given that they did not consent to it in the first place. There is a balance to be struck here, as it can be argued that commonhold is a superior tenure to leasehold and therefore, that overriding these rights is in the interests of the leaseholders. However, government must still take care to ensure property rights are taken into consideration for all those parties impacted in a conversion.

4.1.05 Finding a way to balance the rights and needs of these non-consenting leaseholders whilst ensuring a newly established commonhold block can function effectively, is the key to a conversion process that works.

4.1.1 The Law Commission's proposals

4.1.1.1 The Law Commission outlined two models of conversion in their report which they titled Option 1 and Option 2. Both were based upon operating conversion with a lowered consent threshold (from 100% of owners down to 50%, to be consistent with the approach used in enfranchisement and to remove the high bar for agreeing to proceed with a conversion), but which consequently had different implications for any non-consenting leaseholders.

4.1.1.2 **Option 1 (mandatory leasebacks):** Under this approach, those leaseholders who choose not to participate in conversion are allowed to continue living as leaseholders in the expectation that their leases will be phased out over time and replaced with commonhold, with triggers at particular events: through choice, or at point of resale or in place of a lease extension. At the moment of conversion, it leaves the non-consenting leaseholders in the block on their original lease terms. and they would live on these terms alongside the new commonhold unit owners. The commonhold association would own the freehold of the building. The previous freeholder would be required to take a leaseback (i.e. remain the landlord in lieu of compensation, reducing the cost of conversion) and become the head-lessee for these non-consenting properties. They would be granted a 999-year lease and no further lease extensions would be allowed for non-

consenting leaseholders and any ground rent due would continue to be paid to the original freeholder (now an intermediate landlord sitting between the leaseholder and the commonhold association). The former freeholder would also receive an appropriate payment when the lease is purchased as part of the conversion of that flat to commonhold. However, they would not be allowed to participate in decision making in the interim as they are not a unit owner. The non-consenting leaseholder would therefore also be in this position. Depending on the length of unexpired leases, and the behaviour of non-consenting leaseholders, it could take a long time for all leases to be phased out and for the block to be completely owned as a commonhold.

4.1.1.3 **Option 2 (equity loan):** Under this approach, the Law Commission proposed that non-consenting leaseholders would be required to convert and given an upfront equity loan funded by the government to pay for the conversion). The loan would be calculated as a percentage of the value of the property, and this would be the amount required to be paid back to the government when the property is sold. This loan would be offered on a voluntary basis to all leaseholders participating in a conversion. This approach would mean that all homeowners in the building were unit owners from the point of conversion. Option 2 was the Law Commission's preferred approach as it meant that everyone was a unit owner from the outset.

4.1.1.4 Both options meet the test of allowing the consent requirement to be reduced from 100% and make conversion easier but they both have practical drawbacks.

4.1.1.5 Option 1 is likely to leave newly converted blocks containing a mix of unit owners, non-consenting leaseholders and the former freeholder. All of whom are likely have different wants and needs and would be subject to different rules and legislation (leases for non-consenting leaseholders) and the Commonhold Community Statement (for unit owners). This may be very difficult for the commonhold association to manage given that there will be some fundamental differences between leasehold and commonhold. For example, unit owners would have the right to agree a budget before it is set whereas leaseholders could only challenge a service charge once the bill is presented. It is likely that ensuring that the existing lease terms for non-consenting leaseholders are adhered to will significantly constrain the ability of unit owners to introduce and benefit from new rules and requirements, which is one of the main attractions of commonhold. For example, a lease might specify that a building must be painted every 5 years whereas unit owners may wish to repaint only every 8 years.

4.1.1.6 When we talked to expert stakeholders, they were particularly concerned that this approach could make operating the commonhold very difficult. They suggested that the lived experience in a converted commonhold with a mix non-consenting leaseholders and unit owners might prove worse than the leasehold it replaced.

4.1.1.7 Option 2 avoids the issue of residents having different rulebooks by ensuring that no leases remain, so there is no involvement from the former freeholder and all

residents become unit owners. But this is only achieved at significant financial cost.

4.1.1.8 The Law Commission envisaged this funding coming through a loan from central government which would be made available to all those wishing to convert not just those who could not afford it. We do not believe that it would be an appropriate use of taxpayer money given that the benefit accrues to individual homeowners.

4.1.1.9 It is possible that commercial lenders may emerge once commonhold has become a mainstream tenure, but we do not believe that this can be relied upon in the short term. It has been suggested that nascent commonhold associations might one day be able to borrow money to cover the cost of conversion with borrowing secured against the common parts or against future commonhold contributions, but this borrowing facility does not currently exist.

4.1.2 Timing of conversion reforms

4.1.2.1 Several commentators have suggested that it is too early to start work on fixing conversions and that we should wait for the commonhold market to mature. They reason that many existing leaseholders will want to take a 'wait and see' approach to commonhold and will not consider converting until it is a mainstream tenure with clear benefits over leasehold.

4.1.2.2 We also know that there are many leaseholders who are currently very unhappy with the way their leasehold block is managed and would want to take control and enjoy the other benefits of commonhold. They will want to see a better approach to commonhold conversion with a lower consent threshold, however it is likely that even these blocks will contain non-consenting leaseholders and so we need an approach which accounts for this.

4.1.3 A new approach to conversions

4.1.3.1 We believe it is important to take steps now to try and improve the conversion process. We want to make it easier for leaseholders to convert but it is important to do this in a way which avoids undermining the operation of the newly created commonhold. We believe we can build upon the Law Commission's Option 1 and adjust it to ensure that the leases of non-consenting leaseholders are aligned to the new commonhold rules as far as possible.

4.1.3.2 We are considering several different measures, such as whether we should require commonhold associations to explicitly consider the terms of non-consenting leases when drawing up the Commonhold Community Statement (CCS). Also, whether we should modify those parts of the non-consenting leaseholder leases which are most likely to clash with, or inhibit the agreement of, the relevant provisions within the CCS.

4.1.3.3 Proceeding with a new approach is very complicated, and we want to work through the policy in detail and make sure we get it right. We are continuing to develop these proposals and consulting with experts on the best way to achieve our aim of a more accessible route to conversion. It is our intention to set out

further detail on the approved proposals for conversions in the draft Bill alongside the reforms for commonhold and new supply.

4.2 'Micro-commonhold': making commonhold work in blocks of all sizes

4.2.1 We are also looking whether we need to apply commonhold in exactly the same way for all sizes of buildings. We are conscious that some of the requirements may be unduly onerous for 'micro-commonholds' (those made of up of 2 or 3 units where the only shared area is a hallway and a roof) and that some of the requirements could be disapplied or made voluntary (as they are in some other countries with commonhold type models).

4.2.2 We also want to make sure that we get this right for very large buildings, especially those which are taller than 11 meters. It may be that these buildings are subject to some extra rules. Again, we intend to bring forward any proposals as part of our draft legislative package.

4.3 Banning the sale of new leasehold flats

4.3.1 The UK Government has committed to banning the sale of new flats on a leasehold basis to ensure that commonhold becomes the standard tenure. We see having a viable commonhold model as the essential first step towards the development of a ban, so we will not ban the use of leasehold until we are confident that a viable alternative, through reformed commonhold, is in place.

4.3.2 There are a number of ways in which we could proceed with a ban and we want to take the time to make sure we get this right. As part of the consultation, we will consider the case for any limited exemptions, as well as arrangements necessary to ensure a smooth transition and protect the delivery of new, much needed supply. We will be launching a full consultation on a ban later this year.

4.4 Next steps

4.4.1 To ensure that commonhold can become the standard tenure, we intend to:

a) **Publish a draft Bill in the second half of 2025 for pre-legislative scrutiny:** This will include enough detail to enable Parliament to fully understand and test the commonhold model and for property agents and lenders to start to change their business practices to prepare for the delivery of commonhold at scale. Following the conclusion of this scrutiny, we intend to bring forward a Bill to implement the revised commonhold model and bring forward measures to introduce a ban on the use of leasehold for new flats.

b) **Continue to work with industry and consumer groups:** Alongside publication of the draft Bill, we will be reaching out to industry to ensure that developers, lenders and property professionals are continuing to prepare for commonhold to become the standard tenure for new supply.

c) **Promote commonhold:** Once the final Bill is underway, we will start to engage consumers directly so that they will start to become more aware of the term ‘commonhold’ and begin to understand what this might mean ahead of commonhold flats becoming available on sites across the country.

4.4.2 We would also encourage industry and in particular property professionals, to start thinking now about how they will support consumers through the process of buying a new commonhold property. In particular, which processes need to be changed and how they will ensure people in consumer facing roles have sufficient training. We want commonhold to become the standard tenure by the end of this Parliament and so now is the right time to start preparing for this and we want to support industry through this.

Annex 1 - Table of Law Commission Recommendations

No.	Law Commission recommendation	Government response
Making commonhold work in mixed-use and multi-block developments		
18	We recommend 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.	Accept
19	We recommend that it should be possible for sections to be created: (1) at the outset, by the developer; (2) at the outset, on conversion from leasehold to commonhold; or (3) at a later date, by the commonhold association.	Accept
20	We recommend that for a commonhold association to create sections at a point after the commonhold has been set up: (1) the decision should be approved by a special resolution of the commonhold association; and (2) separately, 75% of all the votes held by unit owners who would be part of the new section should be cast in favour of creating the section.	Accept
21	We recommend that unit owners should have a right to apply to the Tribunal under our recommended minority protection provisions.	Accept
22	We recommend that qualifying criteria for sections should be introduced, so that sections can only be created to separate out the interests of:	Accept in principle. Detail to be set out in draft legislation.

	(1) residential and non-residential units; or (2) different non-residential units, which are used for significantly different purposes; or (3) different types of residential units; or (4) separate buildings in the same development; or (5) other premises falling within the commonhold which, on an application by the developer or commonhold association, and in the interests of practicality and fairness, the Tribunal decides should form a separate section. We recommend that the Tribunal should not be able to decide that a separate section should be set up on the basis of differences in the identity of unit owners or different tenure types. New sections should instead be justified by some difference in the nature of the units. We recommend that any decision of the Tribunal that a section has been set up where none of the criteria have been met will require a change in the structure of the commonhold from that date, but will not render the section void from the outset.	
23	We recommend that it should be possible for sections to consist of a single unit.	Accept
24	We recommend that to combine two or more sections: (1) the decision should be approved by a special resolution of the commonhold association; and (2) separately, each of the sections which will be combined should individually meet the requirement that 75% of all the votes held by all the unit owners in that section must be cast in favour of combining the sections.	Accept

	We recommend that unit owners should have a right to apply to the Tribunal under our recommended minority protection provisions if a decision to combine two or more sections is approved.	
25	We recommend that there should not be any criteria which must be met before two or more sections in a commonhold can be combined.	Accept
26	We recommend that it should be optional for a section to have a section committee.	Accept
27	We recommend that it should be for the directors of a commonhold association to decide whether powers are delegated collaterally or exclusively to a section committee. (1) We recommend that if a delegated power does not state how it has been delegated, it should be presumed to have been delegated collaterally. (2) We recommend that the CCS should provide that, regardless of the wording of a delegated power, the directors retain the ability to exercise that delegated power if it is reasonable to do so. The provision should require the directors to serve a notice on the section committee which identifies the reason(s) why the directors intend to exercise the delegated power, and confirms the directors' intention to exercise the power unless the committee remedies the problem(s) identified by the directors within 14 days. If the directors are seeking to exercise the delegated power because an emergency has arisen, they should be able to step in immediately upon serving notice of their intention. (3) We recommend that guidance should be created which explains the advantages and disadvantages of collateral and exclusive	Accept

	delegation and recommending that collateral delegation be used in most circumstances.	
28	We recommend that the directors of a commonhold association should be able to revoke or alter the powers delegated to a section committee as they wish, subject to the following requirements: (1) the directors should only be able to revoke or alter the delegated powers where reasonable to do so; and (2) the directors should be required to give 14 days' notice to the section committee that they intend to revoke or alter a power delegated to that section committee, unless the directors are seeking to revoke or alter the delegated power in an emergency.	Accept
Improving the flexibility of development rights		
29	We recommend that developers should be able to reserve such rights in the CCS as they consider appropriate for the particular development. However, a developer should only be able to exercise development rights: (1) for a permitted statutory purpose; and (2) in accordance with certain statutory limitations which protect unit owners against unreasonable effects of development rights.	Accept
30	We recommend that a developer should only be able to exercise any development rights reserved in the CCS for a purpose which is the pursuit of the development business of the developer. We recommend that "development business" should be defined as including: (1) the completion of a development; and (2) the marketing and sale of units within a development.	Accept

31	We recommend that the exercise of development rights should be subject to the following limitations: (1) A 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. (2) A developer must not make any of the following changes without first obtaining the written consent of the unit owner affected: (a) changing the boundaries of a unit; (b) removing a unit from the list of authorised users of a limited use area; (c) where a unit owner is the only authorised owner of a limited use area, reducing the extent of that limited use area, or adding in more users; or (d) altering rights over a commonhold unit. (3) Any damage caused to the commonhold land by the developer should be remedied as soon as reasonably practicable.	Accept
32	Unit owners should have the right to apply to the Tribunal where a development right is being exercised: (1) for a purpose which is not the pursuit of the development business of the developer, or (2) in a way which contravenes the limitations set out in Recommendation 31.	Accept
33	We recommend that the development rights reserved in the CCS should not be added to or amended without the unanimous agreement of the developer and the unit owners.	Accept
34	We recommend that there should not be any specific statutory provisions for the appointment of developers' directors. Instead, a developer's ability to appoint	Accept

	directors will depend on the number of votes it owns in the commonhold association.	
35	We recommend that the “without unit owners” registration procedure should be removed and there should be a single process for registering commonholds at HM Land Registry for existing and new developments.	Accept in principle. Detail to be set out in draft legislation.
36	We recommend that “anti-avoidance” provisions should be introduced to ensure that a developer does not attempt to secure a greater degree of control by: (1) taking powers of attorney from the purchasers of commonhold units (or seeking to control votes in any other way); or (2) attempting to control how unit owners vote by inserting terms in the purchase contracts.	Accept
Clarifying local rule making and the Commonhold Community Statement		
37	We recommend that it should be possible for a CCS to impose restrictions on the use or occupation of units and on lettings of less than six months We recommend that it should not be possible for a CCS to restrict the short-term letting of units by certain bodies who are responsible for the provision of temporary or emergency accommodation and that the Secretary of State be given the power to determine whether additional categories of unit owner should benefit from such an exemption in future.	Accept in principle. Detail to be set out in draft legislation.
38	We recommend that event fees should be prohibited within commonhold, subject to an exemption for specialist retirement properties.	Accept
39	We recommend that wherever the model CCS requires an ordinary resolution to approve an amendment to the local rules in a CCS under the current law, this voting	Accept

	majority should be raised to a special resolution.	
40	We recommend that unit owners should have a right to challenge amendments to a CCS in the Tribunal.	Accept
41	We recommend that a commonhold association may only: (1) add additional authorised users to a limited use area that previously had only one authorised user; or (2) reduce the extent of such a limited use area with the express written consent of the sole authorised user and his or her lender.	Accept
42	We recommend that it be clarified that tenants of commonhold units are bound by all rules in Part 4 of the model CCS and by any local rules that are drafted to bind tenants. We recommend that it be further clarified that any amendment to these provisions bind existing tenants of commonhold units. We recommend that local rules that are expressed to bind tenants of commonhold units should not be capable of being added to a CCS if there is already an equivalent prescribed obligation in the model CCS that is not expressed to bind tenants. We recommend that form 13 is updated to better inform prospective tenants that they are subject to the terms of a CCS as it stands, and any subsequent amendments.	Accept
43	We recommend that any provision in the model CCS relating to use should be enforceable against a licensee or other occupier.	Accept

	We recommend that a local rule in a CCS drafted so as to apply to licensees should be enforceable against licensees and other occupiers.	
44	We recommend that the mandatory provisions applicable to all commonholds contained in the Commonhold Regulations should not be reproduced in a CCS. We recommend that the directors of commonhold associations should be under a duty to make updated copies of the mandatory provisions available to unit owners, in print or electronic form, if the Commonhold Regulations are amended. Any unit owner selling his or her unit should provide a copy of the most up-to-date mandatory provisions to prospective purchasers along with a copy of the CCS.	Accept
45	We recommend that it should be possible to add schedules to a CCS to collate the rights and obligations applicable to different sections.	Accept
Extending the scope for use by allowing shared ownership and home purchase plans		
46	We recommend that there should be an exception to the prohibition of residential leases exceeding 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.	Accept in principle. Detail to be set out in draft legislation.
47	We recommend that it should be a term of any model Shared Ownership lease designed or adapted for use in commonhold to require the Shared Ownership leaseholder to comply with all the terms of the CCS.	Accept
48	We recommend that, where Shared Ownership leases are granted in new commonholds or in buildings which have converted to commonhold, Shared	Accept in principle. Detail to be set out in draft legislation.

	Ownership leaseholders should be able to exercise: (1) all the voting rights associated with the unit in place of the Shared Ownership provider (the "Provider"), apart from a decision to terminate the commonhold, which should be exercised jointly with the Provider. If either party is opposed to termination, the vote should be cast negatively; and (2) the minority protection rights available to unit owners, in place of the Provider.	
49	We recommend that the statutory rights associated with leasehold, including the rights to challenge service charge costs and to be consulted on works and contracts exceeding a certain amount, should not apply to service charges in Shared Ownership leases granted in new commonholds or in buildings which have converted to commonhold. The Shared Ownership leaseholder will instead have the same rights to vote on the costs budget and challenge commonhold contributions as unit owners. We recommend that the right to challenge service charge costs should remain in respect of any service charge costs which are incurred by the Provider in excess of the costs demanded by the commonhold association.	Accept
50	We recommend that, if a Shared Ownership lease is granted in a new commonhold or in a building which has converted to commonhold, the Shared Ownership leaseholder should acquire the freehold title of the unit and become a member of the commonhold association on staircasing to 100%.	Accept
51	We recommend that where a Shared Ownership provider (the "Provider") takes a commonhold unit on conversion to commonhold, the Provider may delegate some or all of its voting rights associated	Subject to further consideration.

	with the unit to a Shared Ownership leaseholder of the unit. We recommend that where a Provider's voting rights associated with a unit have been delegated in full to a Shared Ownership leaseholder following conversion to commonhold: (1) the Shared Ownership leaseholder's statutory rights to challenge service charge costs and to be consulted on works and contracts exceeding a certain amount should no longer apply; and (2) the minority protection rights available to unit owners will be available to the Shared Ownership leaseholder, in place of the Provider. We recommend that the voting rights associated with a unit should be considered to be delegated "in full" only if the Shared Ownership leaseholder may exercise all the votes associated with the unit in place of the Provider, apart from a decision to terminate the commonhold, which should be exercised jointly with the Provider. If either party were opposed to termination, the vote should be cast negatively. We recommend that, where a Provider delegates its voting rights associated with a unit in full to a Shared Ownership leaseholder following conversion to commonhold, the Shared Ownership leaseholder's right to challenge service charges should remain in respect of any service charge costs which are incurred by the Provider in excess of the costs demanded by the commonhold association.	
52	We recommend that, where a Shared Ownership lease is granted before a conversion to commonhold, the Shared Ownership leaseholder of a commonhold unit should remain a leaseholder after staircasing to 100%, but the provisions	Subject to further consideration.

	relating to Shared Ownership should fall away. After staircasing to 100%: (1) the Shared Ownership leaseholder should have a statutory right to buy the commonhold title to his or her unit; (2) the Shared Ownership leaseholder's new statutory right to buy the commonhold title to the unit should replace his or her existing enfranchisement rights; and (3) where the Shared Ownership leaseholder wishes to sell his or her interest, the incoming purchaser should be required to buy the commonhold title, rather than the leasehold interest.	
53	We recommend that an exception to the prohibition of residential leases exceeding seven years, and those granted at a premium, should be made for lease-based home purchase plans regulated by the Financial Conduct Authority.	Accept
54	We recommend that where home purchase plan leases are granted in new commonholds or in buildings which have converted to commonhold, home purchase plan customers should be able to exercise: (1) all the voting rights associated with the unit in place of the home purchase plan provider, apart from a decision to terminate the commonhold, which should be exercised jointly with the home purchase plan provider. If either party is opposed to termination, the vote should be cast negatively; and (2) the minority protection rights available to unit owners, in place of the home purchase plan provider.	Accept
55	We recommend that the statutory rights associated with leasehold, including the rights to challenge service charge costs and to be consulted on works and contracts exceeding a certain amount, should not apply to service charges in home purchase plan leases granted in in new commonholds	Accept

	or in buildings which have converted to commonhold. The home purchase plan customer will instead have the same rights to vote on the costs budget and challenge commonhold contributions as unit owners. We recommend that the right to challenge service charge costs should remain in respect of any service charge costs which are incurred by the home purchase plan provider in excess of the costs demanded by the commonhold association.	
56	We recommend that, for home purchase plan leases granted in in new commonholds or in buildings which have converted to commonhold, once the home purchase plan customer has met his or her obligations to the home purchase plan provider, he or she should be transferred the commonhold title of the unit and become a member of the commonhold association.	Accept
56 (2)	We also propose an additional recommendation not included in the Law Commission's report. We recommend that an exception to the prohibition of residential leases exceeding seven years, and those granted at a premium, should be made for certain equity release products that use a lease to operate. We recommend that where equity release leases are granted in new commonholds or in buildings which have converted to commonhold, equity release customers should continue to exercise all the voting rights associated with the unit in place of the provider, apart from a decision to terminate the commonhold, which should be exercised jointly with the provider. If either party is opposed to termination, the vote should be cast negatively. Equity release customers in a commonhold block should continue too to have access to	This is a non-Law Commission recommendation which extends from Recommendation 56 to allow certain equity release products to function in commonhold.

	the minority protection rights available to other unit owners.	
Enhancing rules and procedures to ensure good management and maintenance of buildings		
57	We recommend that the procedure for the election of directors of a commonhold association should be simplified, so that the prescribed articles of association provide that directors should be elected by an ordinary resolution, which should generally be passed at a general meeting, but which might be passed by the written resolution procedure. We further recommend that directors may also be co-opted by the existing directors. We recommend that a commonhold association's board of directors should be subject to an annual election.	Accept
58	We recommend that, if a commonhold association cannot find unit owners able and willing to serve as directors, and is also unwilling to appoint professional directors, it should be possible to make an application to the Tribunal for professional directors to be appointed, who would then be paid by the association. We recommend that the following parties should be entitled to apply for directors to be appointed: (1) unit owners; (2) permitted leaseholders; (3) non-consenting leaseholders, under conversion Option 1; (4) mortgage lenders and other secured lenders; and (5) developers exercising development rights. We recommend that the rights of permitted leaseholders and non-consenting leaseholders under this provision should replace their right to apply for a receiver and	Accept

	manager to be appointed under Part II of the Landlord and Tenant Act 1987. We recommend that anyone who makes an application to the Tribunal under this provision should normally be paid their reasonable costs by the commonhold association.	
59	We recommend that, if there is a persistent failure by the directors of a commonhold association to comply with the CCS in some material respect, the Tribunal or the court should have the power to appoint a director who would replace any existing directors. Upon the appointment of a director, unit owners would be unable to resolve to remove that director, or to elect further directors. We recommend that the following parties should have standing to make an application for the appointment of a director: (1) unit owners; (2) permitted leaseholders; (3) non-consenting leaseholders, under conversion Option 1; (4) mortgage lenders and other secured lenders; and (5) developers exercising development rights. We recommend that applications for the appointment of a director should be made initially to the Tribunal, but that, if the application should require remedies which are beyond the scope of the Tribunal to grant, the Tribunal should have power to transfer the application to the court. We recommend that the director appointed by the court or the Tribunal should remain in place until the court or Tribunal granted an application to remove or replace the	Accept

	appointed director. Anyone who might have applied originally for the appointment of a director, and additionally the appointed director, should have standing to make the relevant application We recommend that the Tribunal or the court should have power to make supplementary orders so as to ensure that the powers of the appointed director cannot be frustrated by the unit owners. We recommend that, if the unit owners passed a special resolution requiring the appointed director to take, or not to take, any specified action, the appointed director should have the power to annul it. We recommend that, if the appointed director annuls a resolution of the commonhold association, a unit owner, or any other party with standing to make an application for the appointment of a director, may apply to the Tribunal to confirm the resolution. The Tribunal should then have the power to let the annulment stand, to confirm the resolution, or to make such other order and on such terms as it sees fit. We recommend that so long as there is a director appointed by the court or the Tribunal, the director should consult with the unit owners before setting the contributions to shared costs and reserve fund(s), but there should be no requirement that the unit owners approve the level of contributions. Instead, if the owners voted to reject the proposed level of contributions, anyone who had voted in favour of the rejection should be entitled to apply to the court or the Tribunal to determine the appropriate level of contributions.	
60	We recommend that, if unit owners impose the obligation to insure the commonhold units on a commonhold association, the association should be obliged to repair,	Accept

	reinstate, or rebuild (as appropriate) the whole of a horizontally divided building – including the parts of the commonhold owned by the unit owners.	
61	We recommend that commonhold associations should supply a copy of the buildings insurance policy and schedule, or sufficient details of it, to all unit owners when they acquire a unit, and whenever the terms of the policy change. We recommend that commonhold associations should be required to confirm to unit owners and their mortgage lenders that the insurance is in existence on demand. We recommend that these obligations may be satisfied either by publishing the relevant documents online or distributing hard copies. However, hard copies must be supplied if a unit owner insists.	Accept
62	We recommend that it should be compulsory for all commonhold associations to take out and maintain public liability insurance. The minimum level of cover, and permissible exclusions and excesses, should be prescribed from time to time by the Secretary of State. Different levels of cover might be prescribed for different sizes and types of commonhold.	Accept
63	We recommend that the CCS should contain an express provision confirming that commonhold associations have the power to take out directors' and officers' insurance.	Accept
64	We recommend that it should be possible for the repairing obligations required by the CCS to be supplemented by a local rule requiring a higher standard of repair.	Accept
65	We recommend that the provision in the CCS requiring the repair of the common parts should be extended to impose an obligation "to renew, and where necessary to replace": that is, the replacement of "like with	Accept

	like” if something should be beyond economic repair. We recommend that these amendments should also apply to unit owners, as far as any obligations to repair are imposed on them by the CCS.	
66	We recommend that matters relating to the internal repair of units in horizontally-divided buildings should be left to local rules. We recommend that the CCS should require, as a minimum, that owners of horizontally-divided units keep all “relevant services” in repair, and that an owner should not allow a unit to fall into such a state of disrepair so as adversely to affect another unit or the common parts.	Accept
67	We recommend that matters relating to the internal and external repair of units in vertically-divided buildings should be left to local rules. We recommend that the CCS should requires, as a minimum, that owners of vertically-divided buildings should not allow a unit to fall into such a state of disrepair so as adversely to affect another unit or the common parts.	Accept
68	We recommend that minor 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 commonhold association by an ordinary resolution. Instead, the granting of consent to such proposals should be delegated to the directors. We recommend that any unit owner should be able to challenge a decision by the directors of a commonhold association under this recommendation before it is acted on, in which case the decision would have to be	Accept

	made by the unit owners by ordinary resolution.	
69	We recommend that commonhold associations should have the right, within six months of the unit owners taking effective control of the association, to give not less than 12 months' notice to contractors of their desire to cancel a long-term contract which had been entered into by the developer, or by the commonhold association when it was under the control of the developer. This statutory right should not affect any rights of cancellation that may arise under the terms of contract. We recommend that the developer should be required to notify unit owners when they have taken effective control of the commonhold association, and must disclose the existence of any long-term contracts to which the commonhold association is a party. We recommend that a contractor should be able to apply for a ruling from the Tribunal that a contract is fair before entering into a long-term contract which involves significant up-front capital expenditure. If the Tribunal rules accordingly, the long-term contract should be exempt from subsequent cancellation when the unit owners take effective control of the commonhold association. For the purposes of this recommendation, a "long-term contract" should be defined as a contract which must run for more than 12 months; and the association should be considered to have come under the effective control of the unit owners when they are able to exercise 75% of the available voting rights, providing that the units have been sold to "arms-length" purchasers of the units.	Accept in principle. Detail to be set out in draft legislation.
Giving unit holders greater control over contributions to shared costs		

70	We recommend that the proposed contributions to shared costs should require the approval of the unit owners as members of the commonhold association by ordinary resolution. We recommend that a commonhold association should be able to dispense with the requirement to approve proposed contributions to shared costs by passing an ordinary resolution to that effect. This resolution could be in general terms, or subject to conditions, and could be of indefinite or finite duration. It could be rescinded at any time by another ordinary resolution. We recommend that improvements to the common parts should require the approval of unit owners by ordinary resolution.	Accept
71	We recommend that, if the directors' proposals as to the level of contributions should fail to secure approval, the level of contributions required in the previous financial year should continue to apply.	Accept
72	We recommend that it should be possible to allocate to individual units within a commonhold different percentages that each unit must contribute towards different heads of cost.	Accept
73	We recommend that the Secretary of State approves a Code of Practice on the allocation of proportionate financial contributions in residential, mixed-use and purely commercial commonholds.	Accept
74	We recommend that unit owners should have the right not to have more than a reasonably proportionate share of the commonhold's expenditure allocated to his or her unit. We recommend that this right should apply to the allocation as a whole and to shares allocated under specific heads of costs.	Accept

	We recommend that a unit owner's right not to have more than a reasonably proportionate share of the commonhold's expenditure allocated to his or her unit should apply both to the contributions initially allocated by the CCS, and to any allocations resulting from an amendment to the shares by a special resolution of unit owners. We recommend that a commonhold association should only be able to amend the share of expenditure allocated to a unit to ensure that the share is reasonably proportionate. We recommend that challenges to the share of expenditure allocated to a unit should be heard by the Tribunal. We recommend that, in making its determination as to whether the share of expenditure allocated to a unit is reasonably proportionate, the Tribunal should be required to have regard to: (1) the rights and services enjoyed by the commonhold units; (2) the internal floor space of the commonhold units; (3) any Code of Practice on the allocation of commonhold contributions; (4) the voting rights allocated to the unit; and (5) any other matter the Tribunal considers relevant. We recommend that the Tribunal should be able to substitute its own determination of a reasonably proportionate share, or may refer the matter back to the commonhold association to produce a reasonably proportionate allocation.	
75	We recommend that it should be possible for the CCS to include, as a local rule, index-linked thresholds on the amount of	Accept

	expenditure which could be incurred annually on the costs of: (1) alterations and improvements; and (2) enhanced services. We recommend that the relevant section of the model CCS should clearly indicate, by means of boxes which would have to be completed: (1) whether a costs threshold applies to alterations and improvements, and if so, what the threshold amount is; and (2) whether a costs threshold applies to enhanced services, and if so, what the threshold amount is.	
76	We recommend that if a proposed budget includes expenditure in excess of a costs threshold and the budget is approved by unit owners, any unit owner who objects to a threshold being exceeded should be entitled to refer to the Tribunal the question of whether the expenditure should be allowed. The application should be made under the minority protection provisions. The expenditure in excess of a threshold should not be incurred unless and until the Tribunal has approved it. The remainder of the budget should be treated as approved. We recommend that any application by a unit owner to challenge proposed expenditure in excess of a costs threshold should be made before it is incurred, and expenditure should not be open to challenge later. This principle should not affect any rights enjoyed by a unit owner or the association to challenge a director's actions on the basis that they amounted to a breach of a director's duty.	Accept
77	We recommend that it should be possible to remove or vary a costs threshold only with the unanimous consent of the owners, or with the support of 80% of the available votes, and the approval of the Tribunal.	Accept

78	We recommend that a court order or arrangement which discharges a unit owner's debts should not extinguish any arrears of contributions to the commonhold expenditure in respect of his or her commonhold unit.	Accept
79	We recommend that the Commonhold Unit Information Certificate ("CUIC") should be amended to clarify that the buyer will still be liable for any contributions which fall due after its date of issue, including both (a) any regular contributions and (b) any further contributions which are not known as at the date of its issue.	Accept
80	We recommend that the CUIC should continue to be conclusive once issued, and that it should not be amendable; but that the law should be clarified to ensure that if the buyer requests the issue of a new CUIC, the new CUIC can correct any mistake on the previous one.	Accept
81	We recommend that a maximum fee for a CUIC to be issued should be set by regulations, and kept under review.	Accept
82	We recommend that, if a commonhold association or its agent should fail to issue a CUIC within the prescribed time limit, there should be a continuing obligation to issue it, but that it should not be entitled to charge any fee for providing it (and any fee which has been pre-paid should be refunded).	Accept
Mitigating the risks of large and surprise bills by building up reserves to pay for major works		
83	We recommend that it should be compulsory for all commonhold associations to have a reserve fund.	Accept
84	We recommend that the proposed contributions to the reserve fund or funds should require the approval of the unit owners by ordinary resolution, and, if possible, at the same time the proposed	Accept

	contributions to the shared costs are approved.	
85	We recommend that the directors of commonhold associations should be able to set up such designated reserve funds as they see fit.	Accept
86	We recommend that it should 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.	Accept
87	We recommend that reserve funds should be held on a statutory trust for the purpose for which they have been set up and, if that is no longer capable of fulfilment, then for the commonhold association. We recommend 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. We recommend that designated reserve funds should continue to receive equivalent protection if the commonhold association should be subject to insolvency proceedings. We recommend that general (that is, undesignated) reserve funds should be held on a statutory trust for the commonhold association to comply with its obligations in the CCS in respect of the common parts.	Accept
88	We recommend that it should be possible for a commonhold association to change the designation of an existing designated reserve fund, or to convert a general reserve fund into a designated one, by passing a resolution with the support of 80% of the available votes, and with, in all cases, the approval of the Tribunal.	Accept

	We recommend in determining an application for the redesignation of a reserve fund, the Tribunal should: (1) in cases of less than unanimous support, apply the same test as if the application was made under the minority protection provisions; and (2) in all cases, consider whether the redesignation is pursued to frustrate the claims of creditors or the effects of insolvency proceedings.	
89	We recommend that a commonhold association should be able to make an internal borrowing from a reserve fund, for the credit of either another reserve fund, or for the shared costs of the commonhold, by passing a resolution with the support of 80% of the available votes, and with, in all cases, the approval of the Tribunal. We recommend in determining an application for an internal borrowing from of a reserve fund, the Tribunal should: (1) in cases of less than unanimous support, apply the same test as if the application was made under the minority protection provisions; and (2) in all cases, consider whether the borrowing is pursued to frustrate the claims of creditors or the effects of insolvency proceedings.	Accept
Providing new tools to help respond to emergencies		
90	We recommend that it should be possible for the commonhold association to grant a fixed charge over the whole or part of its common parts, or a floating charge, subject to the following levels of support: (1) the unanimous consent of the unit owners; or	Accept

	(2) 80% of the available votes of the unit owners, and approval is obtained from the Tribunal. We recommend that, in all cases where there are mortgages secured on the units, the grant of the charge should require the approval of the Tribunal. Any unit owner's mortgage lender or other secured lender should have an automatic right to be joined in the proceedings to set out any objections to the charge.	
91	We recommend that there should be no requirement for unit owners or their mortgage lenders to consent to the loss of rights under the CCS on the sale of part of the common parts by a lender in the exercise of its power of sale. We recommend that, on the sale of part of the common parts by a lender in the exercise of its power of sale, there should be no requirement that either the buyer or the commonhold association simultaneously file an amended CCS at HM Land Registry. This would not, however, detract from the requirement for the commonhold association to regularise its position, and file an amended CCS as soon as possible thereafter. We recommend that, if the commonhold association fails to register an amended CCS within a specified period, any unit should be entitled to apply to the Tribunal for all necessary amendments to be made to the existing CCS.	Accept
92	We recommend that it should be possible for the commonhold association to sell part of its common parts, and at the same time to ensure that the rights granted to all units are modified, so that they can no longer be enjoyed over the land, which is sold, provided that:	Accept

	(1) it does so with the unanimous consent of the unit owners; or (2) it does so with the consent of 80% of the available votes of the unit owners, and approval is obtained from the Tribunal. We recommend that, in all cases where there are mortgages secured on the units, the sale should require the approval of the Tribunal. Any unit owner's mortgage lender or other secured lender should have an automatic right to be joined in the proceedings to set out any objections to the sale.	
Improving procedures for dispute resolution		
93	We recommend that a commonhold association should not be able to prevent a unit owner or tenant taking further action in a dispute with another unit owner or tenant. Instead, the commonhold association should have a right, at its discretion, to notify the unit owner, or tenant, that it reasonably considers a claim to be frivolous, vexatious or trivial or that the matter complained of is not a breach of the CCS.	Accept
94	We recommend that: (1) the dispute resolution procedure makes clear that there is an expectation that the forms which accompany the procedure will be used; however (2) a failure to use the forms, or forms to the same effect, should not in itself prevent a claim from progressing.	Accept
95	We recommend that where the dispute resolution procedure has not been followed, in full or in part, any court or Tribunal, which subsequently considers the dispute, should be able to order the parties to take any steps it considers appropriate, or to disregard the non-compliance in accordance with its general case management powers.	Accept

96	We recommend that: (1) referral to an ombudsman should not be a mandatory part of commonhold dispute resolution procedure. Instead, it may be used, on an optional basis, instead of, or alongside, other forms of alternative dispute resolution; and (2) membership of an ombudsman scheme be made optional for commonhold associations.	Accept in principle. Detail to be set out in draft legislation.
97	We recommend that the commonhold dispute resolution procedure should be updated to refer specifically to the Housing Complaints Resolution Service, the Commonhold Regulator and the New Homes Ombudsman scheme as applicable, and once these bodies are established. We recommend that a unit owner and commonhold association, as part of a pre-action protocol, should be expected to engage with these independent bodies in order to provide the certification they need to bring a claim to a court or tribunal and generally to apply their minds consistently to ADR throughout the litigation process.	Accept in principle. Detail to be set out in draft legislation.
98	We recommend that: (1) the Tribunal should have jurisdiction to hear disputes arising between commonhold associations, unit owners or tenants regarding duties arising in the CCS or from the commonhold legislation; and (2) all applications should be made to the Tribunal. Where an injunction, or other order which is not available in the Tribunal is sought, the Tribunal should be able to refer all or part of the dispute to the court. After such a transfer, the court may exercise all the jurisdiction that the Tribunal could have exercised.	Accept
99	We recommend that, if a specialist Housing Court is created which has jurisdiction over commonhold, the commonhold dispute	Reject.

	resolution procedure should be moved from the CCS to a pre-action protocol.	
100	We recommend that the prescribed CCS should include a provision that, where a unit owner or tenant breaches the duties in the CCS, or commonhold legislation, the unit owner or tenant indemnifies the other unit owners, tenants and the commonhold association for losses they reasonably incur as a result of the breach.	Accept in principle. Detail to be set out in draft legislation.
101	We recommend that Government consider creating a commonhold regulator.	Accept in principle. Detail to be set out in draft legislation.
Protecting minority interests within commonhold		
102	We recommend that unit owners should be given a right to apply to the Tribunal to challenge a vote of the commonhold association, if: (1) the commonhold association has approved an amendment to the terms of the CCS; (2) the commonhold association has approved the creation of a section (or sections); (3) the commonhold association has approved the combination of two or more sections; or (4) the commonhold association has approved a budget above a cost threshold for improvements and enhanced services set in the CCS.	Accept
103	We recommend that, on an application for minority protection, the Tribunal should consider the following factors when deciding whether to grant a remedy to the applicant: (1) whether the applicant had voted against the decision being complained of and, if so, whether the applicant voted for or against the decision; (2) the impact and degree of impact of the decision on the applicant;	Accept

	(3) the reason(s) the commonhold association had for voting for the decision being complained of; (4) the terms of the CCS, taken as a whole; and (5) any other relevant factors.	
104	We recommend that it should only be possible for a unit owner (or owners) to bring an application for minority protection within one month of the commonhold association giving notice of the resolution being complained of to unit owners. We recommend that directors of the commonhold association should not be permitted to incur costs above a cost threshold set out in the CCS for a period of one month following the commonhold association's approval of a budget. That is to enable any unit owners opposed to the decision to bring a minority protection claim.	Accept
105	We recommend that the Tribunal should be able either to annul a decision being complained of in a minority protection case or allow that decision to stand. We recommend that the Tribunal should be able to attach conditions to a decision to allow a decision being complained of to stand.	Accept
Enhancing enforcement rights and responsibilities		
106	We recommend that a commonhold association should be able to apply to court for the sale of a defaulting unit owner's unit, in order to recover arrears of commonhold contributions from the proceeds of sale. We recommend that the unit owner's insolvency should not prevent the association from making an application for the sale of the unit.	Accept in principle. Detail to be set out in draft legislation.

	We recommend that a pre-action protocol should be created which sets out the steps with which the parties will be expected to comply (where reasonable and proportionate to do so) before applying to court for the sale of the property. We recommend that the protocol should include the following steps. (1) The commonhold association should notify the defaulting unit owner that it is considering taking legal action to recover the arrears, and should provide the unit owner with a reasonable period of time in which to clear the arrears in order to avoid further action. The notice should set out the level of arrears outstanding and provide evidence that the sums have been correctly demanded by the association. (2) The association should respond to reasonable requests for further information and provide any documents requested. (3) The parties should take reasonable steps to discuss the reasons for the arrears, the unit owner's financial circumstances and proposals for repayment of the arrears. The decision to apply to court for an order for sale should be one of last resort and should not normally be started unless all reasonable attempts to resolve the situation have failed. We recommend that the court should not order the sale of the unit unless it is reasonable and proportionate to do so, and at the time of the commonhold association's application: (1) the outstanding commonhold contributions, plus interest, amount to £1,000 or more; or (2) any amount of commonhold contributions and/or interest has been outstanding for over one year. We recommend that commonhold associations should be required to notify any party with a charge secured over a defaulting	

	unit owner's property (the "chargee") within a reasonable period of time of the commonhold contributions (plus interest) reaching the threshold at which an association would be able to seek an order for sale. An association should provide the chargee with 28 days in which to take steps to protect its security before the association applies to court for the sale of the unit. If an association fails to notify the chargee, and applies to court for the sale of the property, the court may decide to stay the court proceedings for 28 days to provide the chargee with an opportunity to take steps to protect its interest. We recommend that, when deciding whether to make an order for sale, the court should consider all the circumstances of the case, including the factors currently considered by the court on an application to enforce a charging order. In addition to these factors, the court should consider: (1) the commonhold association's and the defaulting unit owner's compliance with the pre-action protocol; (2) the defaulting unit owner's past record in paying commonhold contributions; and (3) the effect of the arrears on the commonhold association (including the association's ability to cover the arrears without needing to make further demands from the unit owners). We recommend that, if the court orders the sale of a commonhold unit, a receiver should normally be appointed to arrange the sale of the unit and distribute the proceeds of sale. We recommend that the chargee should be able to request to take over the conduct of the sale of the unit in place of the receiver. If the chargee's application is successful, it must distribute the proceeds of sale in accordance with the court's order.	

	We recommend that the court should determine the order of distribution of the proceeds of sale when making an order for sale. Unless otherwise directed by the court, the proceeds of sale should normally be applied in the following order. (1) Any receiver appointed by the court should be paid his or her fees, and any costs and disbursements properly incurred in arranging the sale of the property should also be paid. (2) The commonhold association should be repaid any outstanding amounts of commonhold contributions, plus any interest payable on the arrears and any costs awarded by the court. (3) Any chargee should be repaid, such as a mortgage lender. (4) Any remaining amount should then be returned to the defaulting owner. We recommend that, as a general rule, any tenancies granted in respect of a unit should continue automatically on the sale of the unit. However, we recommend that the court should have discretion to order that a tenancy does not bind the purchaser on the sale of the unit in the following three circumstances: (1) where the unit owner has created a tenancy agreement in an attempt to frustrate the sale of his or her commonhold unit; (2) where the tenancy agreement was granted in breach of the terms of the CCS; and/or (3) where the tenant has not complied with the diversion of rent procedure. We recommend that the prescribed notice given to tenants on entering a tenancy agreement should be updated to inform tenants that their tenancy might be at risk on	

	the sale of the commonhold unit in the three circumstances above.	
107	We recommend that there should be a statutory cap on the amount of interest that may be charged by a commonhold association on late payments of commonhold contributions which is linked to the amount of interest payable on judgment debts.	Accept in principle. Detail to be set out in draft legislation.
Better supporting commonholds through insolvency		
108	We recommend that Companies House consider whether, when they are about to strike off a commonhold association for failure to comply with filing requirements, they might send letters of warning to the directors at their private addresses as well as to the registered office of the association.	Accept in principle. Detail to be set out in draft legislation.
109	We recommend 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 beyond those already demanded by the directors. We recommend that a liquidator should have the power to issue demands for any contributions that are required to meet ongoing essential commitments of the commonhold until a successor association is appointed, or the commonhold association is wound up without the creation of a successor association.	Accept
110	We recommend that there should be a rebuttable presumption that, on the insolvency of a commonhold association, the court will make a succession order enabling a successor association to fulfil the role of the insolvent commonhold association. We recommend that the court should retain its broad discretion to impose conditions on the making of a succession order. These conditions could include:	Accept

	(1) requiring the sale of part of the common parts; and/or (2) requiring that named individuals should not be eligible to serve as directors of the successor association for a specified period or periods. We recommend that if a condition as to the sale of part of the common parts should be imposed, the sale by a liquidator should automatically deprive the unit owners of their rights over the land sold, without the need for a unit owner (or a lender with a charge over a unit) to consent to such loss of rights. We recommend that, if a liquidator wishes to sell part of the common parts of a commonhold, he or she should be able to do so without the consent of the owners (or of lenders with a charge over the units) to their loss of rights over the parts which are to be sold, provided that the court consents to the loss of such rights. (This provision would apply whether or not there is an application for a succession order). We recommend that the court's discretion to impose conditions should not extend to making it a condition of the grant of a succession order that either the unit owners or the successor association contribute to the debts for which the insolvent commonhold association was liable. We recommend that mortgage lenders and other secured lenders should automatically have standing to make applications to the court during the insolvency process with a view to protecting their interests	
New rules for voluntary termination		
111	We recommend 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.	Accept

	We recommend that on an application for voluntary termination, the court should make any order which it thinks fit. In determining an application, factors to which the court should have regard include: (1) whether termination was being proposed because rebuilding was not possible, or it would be uneconomic to repair the building, or because an offer to purchase it was financially attractive; (2) exceptional hardship to a unit owner or a member of their family because of serious health problems; (3) the fact that an individual unit had been extensively adapted to take account of a disability; (4) the fact that the termination was supported principally by unit owners who were investor landlords (or who might be associates of the developers) and mainly opposed by unit owners who were owner-occupiers. (5) financial hardship to a unit owner who was objecting. This might include that a unit owner was in negative equity, and would remain liable on their personal covenant; or an owner would have difficulty in obtaining another mortgage; (6) whether suitable alternative accommodation formed part of the package being offered, or would otherwise be available; and (7) the amount of support there is for voluntary termination over and above the 80% required.	
112	We recommend 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.	Accept

	We recommend the creation of a new bespoke form or statement of truth to assist HM Land Registry in confirming that a liquidator has complied with all necessary statutory requirements in conducting a voluntary termination.	
113	We recommend that mortgage lenders and other secured lenders should automatically have standing to make applications to the court during the termination process with a view to protecting their interests.	Accept
114	We recommend that commonhold associations should be required to notify mortgage lenders and other secured lenders on passing a termination resolution. We recommend that mortgage lenders and other secured lenders should have standing to challenge the reasonableness of a liquidator's remuneration at any time during the termination process.	Accept
115	We recommend that if any statute provides that a landlord can recover possession or refuse a lease extension if he or she intends or proposes to demolish or reconstruct the building, such a requirement should also be satisfied if it can be proved that a commonhold association has that intention or makes that proposal.	Accept
116	We recommend that the court should have discretion to order that a tenancy does not bind the purchaser on termination of the commonhold where the tenancy has been created in an attempt to frustrate the termination of the commonhold and sale of the site.	Reject
117	We recommend that applications to disapply a provision in the CCS which determines the distribution of proceeds of sale on termination should be heard by the Tribunal. We recommend that the Tribunal, when determining an application to disapply a	Accept

	provision in the CCS determining the proceeds of sale on termination, should take into account all matters that appear to it to be relevant. Those matters should include: (1) how long ago the advance determination was agreed; (2) what the circumstances were when the advance determination was agreed; and (3) how circumstances have changed since the advance determination was agreed	
118	We recommend that disputes on valuation issues should be referred as a discrete matter to the Tribunal and that the Tribunal should be able to appoint a single valuer to provide expert evidence.	Accept
119	We recommend that if a commonhold is substantially destroyed, but remains solvent, then 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.	Accept
120	We recommend that if the process of voluntary termination should begin, but it subsequently turns out that the commonhold association is in fact insolvent, the same protections should be given to the assets of the individual unit owners and to any applicable reserve funds as would have applied if the process had begun as an involuntary insolvency.	Accept
121	We recommend that where a commonhold is divided into sections, any vote on voluntary termination should be taken in sections, and whether it was unanimous or received at least 80% support should be determined by section. We recommend that it should be possible to terminate part of a commonhold, and the relevant part sold free of the commonhold title entries, subject to the following conditions:	Accept

	(1) a part must comprise one or more entire buildings; (2) a proposed partial termination must be approved unanimously by the remaining unit owners, or 80% of remaining unit owners plus the approval of the court; and (3) a proposed partial termination must be approved unanimously by members of the terminating part, or 80% of members plus the approval of the court. We recommend a change to the commonhold articles of association so that profits may be distributed to members of a commonhold association following termination of part.	

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