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**Explanatory Memorandum  
To the Land Registration Rule Committee  
Commonhold (Land Registration) Rules**

**A. General Background**

**Terms used**

1. In this Explanatory Memorandum the following terms have the meaning indicated –

“the Act”	the Commonhold and Leasehold Reform Act 2002
“Consultation Paper”	the consultation paper on the Commonhold (Land Registration) Rules 2003, published in September 2002, a copy of which has been issued to each member
“Consultation Report”	an Analysis of the Responses to the Consultation Paper, a copy of which has been issued to each Member
“the CLRR”	the draft Commonhold (Land Registration) Rules
“rule”	a draft rule in the CLRR, unless the context shows otherwise
“the LRA”	the Land Registration Act 2002
“the LRR”	-the Land Registration Rules 2003
“Regulation”	a regulation in the Commonhold Regulations, drafted by the Department for Constitutional Affairs (the “DCA”)

**Brief background to the Act**

2. The introduction of the Act is a manifesto commitment on the part of the Government. A draft Bill was introduced into the House of Lords in July 2001. It received Royal Assent on 1 May 2002.
3. The Act is divided into two parts. Part 1 deals with commonhold, and Part 2 deals with Leasehold Reform. The rules concern only Part 1 of the Act.

4. Part 1 introduces a new way of owning a property with communal facilities. Under the Act it will be possible for owners of units in a commonhold development to own the freehold interest in their unit and also be members of a commonhold association which will own and be responsible for managing the common parts of the development. A commonhold development will only be possible on land which is a registered freehold title.
5. Section 65 of the Act enables rules to be made about the procedure to be followed for the registration of freehold estates in commonhold land and the documents which should accompany such applications.
6. The Government has said that it proposes to bring Part 1 of the Act into force ~~by the end of March 2004~~ on the 23 August 2004 but no commencement order has yet been made.

### Papers for Meeting

7. Members should already hold copies of:

- The LRA and LRR,
- the Act,
- the Explanatory Notes to the Act,
- the Consultation Paper,
- the Consultation Report.

Copies of these documents will be available at the meeting.

8. Copies of the following documents accompany this memorandum –

- ~~The Act,~~
- ~~The Explanatory Notes to the Act,~~
- ~~The Consultation Paper,~~
- ~~The Consultation Report~~
- the draft Commonhold (Land Registration) Rules
- Forms CM1, CM2, CM3, CM4, CM5, CM6, SR1, COV, COE, CON 1 and CON 2 contained in Schedule 1 to the CLRR
- Commonhold restriction in forms CA and CB contained in Schedule 2 to the CLRR
- ~~A set of the current~~ draft Commonhold Regulations dated ~~9 October 2003~~ 21 April 2004
- A draft Commonhold Community Statement ~~dated 8 October 2003~~
- A draft Memorandum and Articles of Association.
- ~~DCA Policy Position Paper dated 20 October 2003.~~

The DCA have advised us that they expect the Minister to make the regulations in substantially the form of the draft regulations dated 21 April with the exception of details of the procedure for resolving unit-holder v. unit-holder disputes which is to be included in the Commonhold Community Statement. If there are any further changes, they are expected to be cosmetic and of no direct relevance to land registration matters. Details of any changes will be provided in the meeting on 30 April.

9. Members may wish to bring their copy of these documents and of this Memorandum with them to the Meeting.
10. The Rules differ from the draft rules ~~included in the Consultation Paper~~, discussed at the Meeting on 14 November. The amendments which were made to the rules following that meeting (and which were enclosed with the Explanatory Memorandum of 22 December) are shown in blue. The amendments which have been made to the rules since December are shown in red. These Aamendments will be mentioned in this Memorandum. A version of the rules incorporating all these amendments is also enclosed.

## **B. Comments on the Rules**

### **General comments**

11. If you would like to discuss any of the comments in this Memorandum in advance of the Meeting, please contact-

Sally Cater (direct line – 01792 355038, and e-mail address – [Sally.Cater@landregistry.gsi.gov.uk](mailto:Sally.Cater@landregistry.gsi.gov.uk))

12. We can, of course, clarify and expand upon any points raised at the meeting on ~~14 November~~. ~~It is suggested that a brief presentation is given at the start of the meeting to introduce commonhold and to provide an insight in to the way the Land Registry propose to process applications under the Act.~~
13. Throughout the CLRR and this Memorandum, the Chief Land Registrar has been referred to as the “Registrar” in accordance with the definition contained in section 67(1) of the Act.

### **Rule 1 – Citation and commencement**

14. This rule provides that the proposed rules will be cited as the Commonhold (Land Registration) Rules 200~~3~~<sup>4</sup> when they come into force. As no application to register a freehold estate in land as a freehold estate in commonhold land under section 2 of the Act can be made before these rules come into force, it is proposed that the rules come into force on the day that section 2 comes into force.

### **Rule 2 – Interpretation**

15. This rule defines certain words used in the rules. ~~All references to specific regulations in the rules have been removed. The definition of “regulation” has therefore been removed from this rule.~~

### **Rule 3 – Land registration rules**

16. Section 65 (2)(c) of the Act provides that rules made under that section “may provide for land registration rules to have effect in relation to anything done by virtue of or for the purposes of this Part as they have effect in relation to anything done by virtue of or for the purposes of” the Land Registration Act.

17. This rule applies the LRR, subject to those which are disapplied in Rule 3(2) and those which are modified in Rule 3(3).

18. The rule disapplies the following LRR:

- Rule 3(3)(a) of the LRR which permits the registrar to open an individual register for part of the registered estate in a registered title and retain the existing register for the remainder on the application of the proprietor of the registered estate and of any registered charge over it.

This sub-paragraph has been disapplied because the Land Registry need to control the division of commonhold land into its component titles in order to comply with the Act, the Rules and the Commonhold Regulations - without being constrained by applications made.

- Rule 3(4)(a) of the LRR which permits the registrar to amalgamate two or more registered titles, or add an estate which is being registered for the first time to an existing registered title, if the estates are of the same kind and are vested in the same proprietor on the application of the proprietor of the registered estate and of any registered charge over it.

This sub-paragraph has been disapplied for the same reason that Rule 3(3)(a) of the LRR has been disapplied.

- Rule 126 of the LRR which provides for alteration of the register by the court in the circumstances prescribed.

This rule has been disapplied because section 6 of the Act establishes a separate regime for altering the register. ~~to which Rule 11 of the CLRR applies. The only other provision which directly confers power on the court is section 40, which is again covered by Rule 11 of the CLRR.~~

- Rule 127 of the LRR which prescribes the form and method of service of an order for the alteration of the register within the meaning of the LRA and LRR. This rule has been disapplied as a consequence of Rule 126 of the LRR being disapplied. The requirements as to the form and method of service of a court order have, however, been replicated in Rule 124 of the CLRR.

- Rule 214 of the LRR which permits certified or official copies of documents to be lodged in the place of original documents in prescribed circumstances.

This rule has been disapplied because, pursuant to the power in section 65(4)(a) of the Act, Rule 4 of the CLRR prescribes when copies of specified documents may be lodged in the place of the original documents.

19. The rule modifies the following LRR:

- Rule 3 of the LRR which prescribes that more than one registered estate may be included in an individual register, and provides for the division and amalgamation of registers.  
An application for a multiple site commonhold [section 57 of the Act] can be made jointly by two or more persons subject to the condition prescribed by Regulation 78 being satisfied, i.e. that a unit cannot straddle two titles. The modification of this rule enables two separate areas of land owned by two different proprietors to be registered under one title number during the transitional period which may be necessary in relation to the common parts.
- Rule 54 of the LRR which prescribes that the registrar must cancel an outline application if the relevant application form prescribed by the LRR is not lodged before the expiry of the reserved period.  
This rule has been modified to include reference to application forms prescribed by the CLRR.
- Rules 136 to 138 of the LRR which prescribe the procedure by which an application is made to the registrar to designate a document an exempt information document.  
This rule has been modified because the main commonhold documents – the commonhold community statement and the memorandum and articles of association of the commonhold association – must always be publicly available. These documents have therefore been removed from the definition of a “relevant document” in Rule 136(7) of the LRR.
- Rule 208 of the LRR which permits the use of Welsh language forms.  
This rule has been modified to permit Welsh language versions of the forms in Schedule 1 to the CLRR.
- Rules 210 and 211 of the LRR which prescribe the requirements for the preparation of forms in Schedule 1 to the LRR and for electronically produced forms.  
These rules have been modified so that these requirements also apply to the forms in Schedule 1 to the CLRR.
- Schedule 6, Parts 3 and 4 of the LRR which prescribe the information to be included in the result of an official search of a register of title and in relation to a pending application for first registration.  
These rules have been modified so that notice of the entry on the day list of an application under the Act is also revealed on the search result.

#### **Rule 4 – Lodging a copy document**

20. Section 65 (4)(a) of the Act states that rules may “permit or require a copy of a document to be submitted in place of or in addition to the original.”
21. It will not be possible to lodge the original (or any altered) memorandum and articles of association or the original (or any altered) certificate of incorporation as these original documents will be retained by the Registrar of Companies. There can be no justification for treating the commonhold community statement, **an order of the court**

~~the succession order (which must be lodged with an application to register a successor commonhold association)~~ or a termination statement any differently. This rule therefore prescribes that the lodging of a certified copy of any of these documents satisfies the requirements of the Act.

22. An original document may be damaged as part of the scanning process and it may not then be possible to return it if requested. Rule 4(3) therefore provides that if an original document is lodged, it must always be accompanied by a certified copy.

### **Rule 5 - Application for registration**

23. This rule prescribes Form CM1 which can be found in Schedule 1 to the CLRR. An application to register an estate in land as a freehold estate in commonhold land under section 2 of the Act must be made on this form.

24. A number of changes have been made to this form as a result of consultation. In particular, the Lord Chancellor's Department (now the DCA) stated that, under the Act, the statement by the applicant requesting (as opposed to certifying) that section 9 of the Act should apply to an application for registration with unit-holders should include the list of commonhold units giving in relation to each one the prescribed details of the proposed initial unit-holder or joint unit-holders. The form therefore now makes provision for the statement required by section 9 (Form COV), which includes the list of units and unit-holders, to be attached when the application is for registration with unit-holders. This requirement is reflected in the wording of Rule 5(1) of the CLRR which states that "where appropriate" Form CM1 must be accompanied by the requirement by section 9(1)(b) in Form COV.

25. Section 3(1)(d) of the Act states that an application under section 2 cannot be made without the consent of "any other class of person which may be prescribed." Regulation 3 (which has been drafted following consultation) currently prescribes that the following classes of person must consent to the registration of a freehold estate in land as a freehold estate in commonhold land:

- ~~— the estate owner of any leasehold estate in the whole or part of the land granted for a term of more than 21 years which is not registered~~
- ~~— the person entitled to the benefit of a charge over the whole or part of the land which is not registered~~
- ~~— the person entitled to the benefit of an interest that is the subject of an entry in the register of title to land or under the Land Charges Act 1971 that will be extinguished by virtue of Section 2 (5) of the Act.~~
- the estate owner of any unregistered freehold estate in the whole or part of the land
- the estate owner of any unregistered leasehold estate in the whole or part of the land granted for a term of more than 21 years

- the owner of any mortgage, charge or lien securing money over the whole or part of any unregistered land included in the application
- the holder of a lease granted for a term of not more than 21 years which will be extinguished by virtue of section 7(3)(d) or 9(3)(f), save where he is entitled to the grant of a “compensatory lease” on the same terms.

26. The Registrar is unable, and therefore cannot be expected to check, that the required consents have been obtained from people whose interests have not been protected by registration. This rule has therefore been amended to prescribe that an application under section 2 of the Act must be accompanied by a statutory declaration made by the applicant that complies with the following rule.

~~27. However, the DCA’s policy regarding the effect of section 21 (4) and (5) has still not been settled—please see the comments in their Policy Position Paper regarding Regulation 3. It may be that the third category above will not be included in the regulation. When the policy has been settled, this rule, and the following one, will be finalised.~~

#### **Rule 6 - Statutory declaration**

~~28.~~27. This rule prescribes that the statutory declaration referred to in Rule 5 must:

- list the consents that have been obtained under or by virtue of section 3 of the Act (or court orders dispensing with the need for consent in the circumstances prescribed by Regulation 5),
- confirm that a restriction on the register does not protect an interest in respect of which the consent of the holder is required, or if it does protect such an interest, that the appropriate consent has been obtained. Land Registry will not then have to investigate whether or not this is the case,
- confirm that no other consents are required,
- confirm that no consent has lapsed or been withdrawn,
- confirm that if a consent is subject to conditions, all conditions have been fully satisfied.
- ~~confirm that a restriction on the register does not protect a charge or a lease granted for more than 21 years, or if it does protect a charge or such a lease, that the appropriate consent has been obtained. The Land Registry will not then have to investigate whether or not this is the case.~~

~~29. Section 21 of the Act precludes the creation of an interest in part only of a commonhold unit apart from a term of years absolute which satisfies prescribed conditions or the transfer of part of a unit where the commonhold association consents in writing.~~

~~30. Where land becomes commonhold land or is added to a commonhold unit and immediately before this event there is an interest which could not have been created by reason of this section, the interest shall be extinguished. However, as stated above, how this section will be implemented in practice has not yet been settled.~~

~~31. Section 22 precludes the creation of a charge over part of a unit, and similarly, where land becomes commonhold land or is added to a unit, the charge is extinguished.~~

~~32. Where the application involves the extinguishment under sections 21 or 22 of the Act of an interest that is the subject of an entry on the register, the statutory declaration must also:~~

- ~~— identify the extinguished right,~~
- ~~— identify the titles affected (whether registered or unregistered)~~
- ~~— give the name and address of each person having an interest in the titles affected (other than beneficiaries under a trust of land),~~
- ~~— confirm that the consents of all those persons referred to in paragraph (c) have been obtained, and~~
- ~~— confirm that the applicant is not aware of any other persons whose consents are needed.~~

28. Section 21 of the Act precludes the creation of an interest in part only of a commonhold unit apart from a term of years absolute which satisfies prescribed conditions or the transfer of part of a unit where the commonhold association consents in writing.

29. Under section 21(4) and (5), where land becomes commonhold land or is added to a commonhold unit and immediately before this event there is an interest which could not have been created by reason of this section, the interest shall be extinguished.

30. The DCA have decided not to implement section 21(4) and (5) and therefore this rule has been amended to remove any reference to the extinguishment of an interest under section 21.

31. Section 22 precludes the creation of a charge over part of a unit, and similarly, where land becomes commonhold land or is added to a unit, the charge is extinguished.

32. Where the application involves the extinguishment under section 22 of a charge that is the subject of an entry on the register, the statutory declaration must also:

- identify the charge to be extinguished
- identify the title of the owner of the charge,
- give the name and address of the owner of the charge, and
- confirm that the consent of the owner of the charge has been obtained.

~~33.~~The rule then prescribes that, in the absence of an objection to the application, the Registrar must accept the statutory declaration as conclusive evidence that no additional consents are required. ~~He will also cancel any entry that has been identified in the statutory declaration as extinguished and give notice to the people identified in the statutory declaration. As stated above, this proposed practice cannot be confirmed until the DCA's policy is settled.~~ He will also cancel any entry that has been identified in the statutory declaration as extinguished.

### **Rule 7 - Form of consent**

~~34.~~28. This rule prescribes the form of the consent (Form CON 1) which must be submitted with the application for registration under sections 2 and 41 to satisfy the requirements of section 3.

~~35.~~29. Although section 3(2)(a) allows regulations to prescribe the form of consent, there is also power in section 65(3)(a) to do so, and it is considered advisable for the form to be prescribed as part of the registration process.

### **Rule 8 – Rejection or cancellation of application**

~~36.~~30. This rule is made pursuant to the power contained in section 65(3)(b) and (c) of the Act and prescribes that an application can be cancelled if the plans submitted with it ~~do not comply with Regulation 9 or~~ are insufficiently clear or accurate.

~~37.~~31. Although there is power under Rule 16 of the LRR to cancel or reject applications, section 65(3)(c) of the Act also contains this power as regards plans submitted with the application. As the correct completion of the plans in the commonhold community statement is crucial to the registration process it is considered advisable for the CLRR to contain a specific provision.

### **Rule 9- Title to interests**

~~38.~~32. When an interest is substantively registered, the interest holder's address for service will be entered on the register and thus easily identified. It will be a straightforward process to check that the consent in this case has been lodged by the person who currently has the benefit of that interest.

~~39.~~33. When the interest is unregistered, or is protected by a notice, caution or restriction, it will not be possible to obtain confirmation from the register that the consent has been lodged by the person who currently has the benefit of the interest.

~~40.~~34. This rule therefore prescribes that where a consent has been lodged in relation to an interest which is unregistered, or is protected by a notice, caution or restriction, the applicant must also lodge sufficient evidence to satisfy the Registrar that the consent has been lodged by the person who currently has the benefit of the interest.

~~41.~~35. Sufficient evidence is prescribed as a conveyancer's certificate that he is satisfied that the person whose consent has been lodged in relation to the lease or charge is the person who is entitled to it at the time of the application and that he holds evidence of this.

## **Rule 10 - Service of notice - extinguished leases**

- ~~42.36.~~ Where a lease is extinguished under section 9(3)(f), and the person with the benefit of the lease or any charge on it has not consented to the original application, this rule prescribes that a notice will be served by the Registrar on the lessee or chargee informing them that the leasehold title has been closed.
- ~~43.37.~~ When the lessee or chargee has consented to the application because he is covered by section 3(1) (a) to (c) or the regulations made under section 3(1)(d), it is not considered necessary to serve notice on him as he would have been aware of the application and could have refused to give his consent.
- ~~44.38.~~ This rule therefore only covers those interest holders whose interest will be extinguished and who may not be aware of the application. It also provides that the Registrar is not obliged to serve notice on anyone whose name and address for service are not set out in the register.

## **39. Rule 11 – Service of notice at end of transitional period - extinguished leases**

Rule 10 of the CLRR prescribes that the Registrar must serve notice of the closure of the leasehold title when a lease is extinguished under section 9(3)(f). This rule replicates the action to be taken by the Registrar when a lease is extinguished under section 7(3)(d).

### **~~Form and service of court order~~**

~~45. As stated above (paragraph 18) certain sections of the Act (sections 6 and 40) provide for the court to make an order which will require the Registrar to take some action.~~

~~46. This rule provides that, when an order is made by the court, it must state the title number and be served on the Registrar with an application for the Registrar to give effect to the court order. The Registrar will then give effect in the register to the terms of the court order.~~

## **Rule 12 – Court order**

~~40. As stated above (paragraph 18) certain sections of the Act (sections 6 and 40) provide for the court to make an order which will require the Registrar to take some action.~~

~~This rule provides that, when an order is made by the court, an application must be made in Form AP1 for the Registrar to give effect to the court order.~~

### **~~Service of notice at end of transitional period – extinguished leases~~**

~~47.41. Rule 12 of the CLRR prescribes that the Registrar must serve notice of the closure of the leasehold title when a lease is extinguished under section 9(3)(f). This rule replicates the action to be taken by the Registrar when a lease is extinguished under section 7(3)(d) – see Rule 10 of the CLRR.~~

## **Rule 13 - Registration of an amended commonhold community statement**

~~48.42.~~ The purpose of this rule is to prescribe a form (CM3) to accompany an application to register an amended commonhold community statement and the documents which must accompany such application.

**~~Rule 14—Transfer by a developer during the transitional period~~**

~~49.~~The DCA's Policy Paper states in the paragraph which deals with Regulation 8 that provision will be made in this regulation that the transfer by a developer of part of his land to another developer during the transitional period will not necessarily trigger the end of the transitional period. Transitional period is defined in section 8 of the Act. See also Rule 32.

~~50.~~The Registrar needs to know whether a particular transfer triggers the end of the transitional period or not as, if so, he must then register the commonhold association as proprietor of the common parts [section 7(3)(b)].

~~51.~~This rule therefore prescribes that when a developer transfers land during the transitional period, it must be made clear in the transfer deed, by the inclusion of the prescribed statement, whether:

- ~~—the transfer triggers the end of the transitional period, or~~
- ~~—whether the transfer comes within the circumstances envisaged by the DCA in the paragraph in their Policy Position Paper which deals with Regulation 8.~~

**~~Rule 145— Cessation of commonhold during the transitional period~~**

~~52.43.~~ This rule provides that an application to the Registrar for the land to cease to be registered as commonhold land during the transitional period under section 8(4) of the Act must be made in Form CM2.

~~53.44.~~ The provisions regarding consent in section 3 also apply to applications under section 8(4). The rule therefore prescribes that the application in Form CM2 must be accompanied the necessary consents in Form CON 2 and a statutory declaration which satisfies rule 6.

~~54.45.~~ When the Registrar is satisfied as to the application, he will cancel the commonhold entries made under paragraphs (1) to (3) of rule ~~30~~ 28 from the titles affected. These titles will then revert to ordinary freehold titles.

**~~Rule 156 – Transfer of part of a commonhold unit~~**

~~55.46.~~ If a unit-holder transfers part of a unit to someone else, this will mean that the commonhold community statement will also have to be amended as the plans in the statement will not reflect the new extent of the unit.

~~56.47.~~ This rule provides that the application to register the transfer of part of the unit must be accompanied by an application to register the amended commonhold community statement, in Form CM3, and the Registrar can cancel the application to

register the transfer of the part of the common parts if it is not accompanied by the application to register the amended commonhold community statement.

#### **Rule 167 – Transfer of part of the common parts**

~~57~~.48. If the commonhold association transfers part of the common parts to someone else, this will mean that the commonhold community statement will also have to be amended as the plans in the statement will not reflect the new extent of the common parts.

~~58~~.49. This rule also provides that the application to register the transfer of part of the common parts must be accompanied by an application to register the amended commonhold community statement, in Form CM3, and the Registrar can cancel the application to register the transfer of the part of the common parts if it is not accompanied by the application to register the amended commonhold community statement.

#### **Rule 178 – Re-definition of the extent of a commonhold unit**

~~59~~.50. This rule is the corresponding rule to Rule 156 (Transfer of part of a commonhold unit). If part of a unit is transferred this must be effected by deed to comply with section 25 of the LRA. If an application was received to register the commonhold community statement which has been amended to reflect this change in layout, but the application to register the transfer was not lodged, this potentially would mean that the commonhold community statement would not reflect the correct registered ownership of the units.

~~60~~.51. This rule therefore provides that the Registrar will cancel the application to register the amended commonhold community statement if it is not accompanied by the application to register the transfer.

#### **Rule 189 – Redefinition of the extent of the common parts**

~~61~~.52. This rule is the corresponding rule to Rule 167 (Transfer of part of the common parts) and has a similar effect to the preceding Rule 178. The Registrar again reserves the right to cancel an application to amend the commonhold community statement following the transfer by the commonhold association of part of the common parts if it is not accompanied by an application to register the transfer.

~~62~~.53. There is, however, one exception. Section 30 permits the addition of land which forms part of a unit to the common parts to be effected only by an amendment of the commonhold community statement – in effect, a statutory vesting. The rule therefore provides that this application to register an amended commonhold community statement does not need to be accompanied by a separate application to register the transfer of the land by deed.

#### **Rule 1920 – Registration of an altered memorandum or articles of association**

~~63.54.~~ The purpose of this rule is to prescribe a form (CM3) to accompany an application to register an altered memorandum or articles of association and the documents which must accompany such application.

#### **Rule ~~2021~~ – Application to add land**

~~64.55.~~ This rule provides that an application to add land to an existing commonhold development under section 41 of the Act must be made in Form CM4. An “application to add land” is defined in section 41(2)(a) of the Act.

~~65.56.~~ As the extent and layout of the development will necessarily change as a result of this application, the commonhold community statement will have to be amended to reflect these changes. The rule therefore provides that an application to add land in Form CM4 must be accompanied by an application to register the amended commonhold community statement in Form CM3.

~~66.57.~~ As consents to this application are also required to be lodged [section 42(5)(a)], a statutory declaration which complies with Rule 6 must also be lodged.

#### **Rule ~~2221~~ – Termination application – voluntary winding up**

~~67.58.~~ The Act provides that a commonhold development can be terminated in a number of ways – voluntary winding up (sections 43-49); winding up by the court where a succession order is made (sections 50-53); winding up by the court where no succession order is made (section 54); and termination by the court (sections 6, 40 and 55).

~~68.59.~~ This rule provides that when a commonhold is voluntarily wound up, a termination application which is “an application to the Registrar that all the land in relation to which a particular commonhold association exercises functions should cease to be commonhold land” [section 46(1)] must be made in Form CM5.

~~69.60.~~ Section 49 of the Act provides that when the liquidator of the commonhold association notifies the Registrar that he is content with the terms of the termination statement (which specifies the commonhold association’s proposals for the transfer of the land and how its assets will be distributed) or its terms have been determined by the court, the commonhold association becomes entitled to be registered as proprietor of the freehold estate in each unit.

~~70.61.~~ This rule provides that the Registrar will register the commonhold association as proprietor of all the units and cancel all the commonhold entries from the affected titles which will then revert to ordinary freehold titles.

#### **~~Rule 23 – Registration of a successor commonhold association~~**

~~71. When a commonhold association is wound up by the court and a succession order is made, under section 52 of the Act the successor commonhold association is entitled to be registered as the proprietor of the common parts title.~~

~~72. This rule provides that an application to register the successor commonhold association must be made in Form CM6. The Registrar will enter the successor commonhold association as proprietor of the common parts title, and make a note of its memorandum and articles of association in the property register of the common parts title.~~

~~73. If the succession order under section 52 (4) requires the Registrar to take any other action, this rule provides that an application must be made to give effect to the relevant provisions of the Act. The Registrar will then make entries on the register to reflect the terms of the succession order.~~

**Rule 2422 – Application to terminate a commonhold registration following the winding up of a commonhold association by the court.**

~~74.62.~~ Where the commonhold association has been wound up and no succession order has been made, an application must be made to the Registrar in Form CM5.

~~75.63.~~ This rule provides that when the liquidator has notified the Registrar under section 54 of the Act, the commonhold entries will be removed from all the titles affected which will revert to ordinary freehold titles.

**Rule 23 – Registration of a successor commonhold association**

~~64.~~ When a commonhold association is wound up by the court and a succession order is made, under section 52 of the Act the successor commonhold association is entitled to be registered as the proprietor of the common parts title.

~~65.~~ This rule provides that an application to register the successor commonhold association must be made in Form CM6. The Registrar will enter the successor commonhold association as proprietor of the common parts title, and make a note of its memorandum and articles of association in the property register of the common parts title.

~~66.~~ If the succession order under section 52 (4) requires the Registrar to take any other action, this rule provides that an application must be made to give effect to the relevant provisions of the Act. The Registrar will then make entries on the register to reflect the terms of the succession order.

**~~Rule 25 – Rejection or cancellation of an application to register a multiple site commonhold~~**

~~76.~~ Regulation 8 prescribes that, in a multiple site commonhold where there are separate parts of the development owned by different proprietors, an individual unit must not be situated partly on one part site and partly on another (see also paragraph 18).

~~77.~~ This rule prescribes that an application to register a multiple site commonhold will be cancelled if it does not comply with Regulation 8

### **Rule 2624 - Application to register surrender of a development right**

~~78~~.67. Section 58 provides that a commonhold community statement can confer rights on a developer which are “designed to permit him to undertake development business.” Development business is defined in schedule 4 of the Act.

~~79~~.68. The developer can surrender these development rights and this rule provides that he must send a notice to the Registrar surrendering the right or rights in Form SR1. The notice in this form is then entered in the property register of the common parts title.

### **Rule 2625 - Official copies**

~~80~~.69. The proposal is that an official copy of the register and title plan of a common parts title will be issued as one item and on the payment of one fee.

~~81~~.70. This rule therefore provides that an application for an official copy of the register and title plan of a common parts title must be made in Form OC1 by completing panel 9 of that form with the words: “official copy/ies of the register and title plan of the common parts in a commonhold development.”

### **Rule 2826- Searches of the index map**

~~82~~.71. If someone knows the title number of the common parts title in a commonhold development but wants to know all the unit title numbers, this rule provides that he should insert the common parts title number in panel 2 of Form SIM and the search result will then reveal all the unit title numbers. Otherwise he will have to supply a plan.

### **Rule 2927 - Restrictions**

~~83~~.72. This rule prescribes the form of the restriction to be entered in the register of the common parts title (Form CA) and in the register of the unit title (Form CB). These restrictions are in Schedule 2 to the CLRR.

~~84~~.73. Under the Act, the proprietor of the common parts title and the proprietor of the unit title is permitted to do some things, not permitted to do other things at all, and permitted to do other things but only with, e.g. the unanimous approval of the commonhold association. These restrictions provide that, where applicable, an application to register a transaction is accompanied by a certificate which confirms that the appropriate procedure prescribed by the Act and the regulations have been followed.

### **Rule 3028 - Completion of application for registration**

~~85~~.74. This rule describes what action the Registrar will take in completing an application ~~[for registration without unit holders]~~ for registration under section 2.

### **Rule 31—Completion of application for registration with unit holders**

~~86. This rule prescribes what action the Registrar will take in completing an application for registration with unit holders.~~

~~87.75.~~ Section 9 of the Act is explicit in setting out what happens on completion of an application for registration with unit-holders, so this rule only prescribes the action which the Registrar will take which is not covered by the Act itself, i.e. he will cancel notice of any lease extinguished under section 9(3)(f) and close the title if the lease is registered.

### **Rule ~~32~~ 29 - End of transitional period**

~~88.76.~~ When a person other than the applicant becomes entitled to be registered as the proprietor of the freehold estate in one or more, but not all, of the commonhold units [otherwise than as a result of a transfer under section 59(2)] this signals the end of the transitional period [section 7(3) of the Act.]

~~89.77.~~ This rule prescribes that at the end of the transitional period, the Registrar must

- cancel the entries made in the register under rule ~~30~~ 28(1)(c);
- cancel notice of any lease extinguished under section 7(3)(d); and
- close the title to any such lease where the lease is registered.

### **Rule ~~33~~ 30- Leases of commonhold units**

~~90.78.~~ Leases can be created in a commonhold unit. However, the titles created will not be commonhold titles as a person is the unit-holder of a commonhold unit if he is entitled to be registered as the proprietor of the freehold estate in the unit (section 12). This rule prescribes that the Registrar will enter a note in the property register of the leasehold title stating that the lease is of a commonhold unit. A search of the Index Map will then reveal the title number of the unit and common parts title which will enable the lessee to obtain the necessary information about the property in the commonhold development of which he has a lease.

### **Rule ~~34~~ 31 – Changing size: charged unit**

~~91.79.~~ Section 24 of the Act provides that where the extent of a unit is changed, either by the removal of land from the unit or the addition of land to a unit, and there is a charge over the unit, the charge is extinguished from the land which is removed and extended to the land which is added.

~~92.80.~~ Regulation ~~12~~ 10 requires the unit holder of the unit to which the charge relates to give notice in a form prescribed by the CLRR to the Registrar that Section 24 applies. The prescribed form is Form COE. This rule provides that the Registrar must cancel registration of the charge to the extent that it affects the land removed from the unit, and that the Registrar must alter the register to ensure that the registration of the charge is extended to include the additional land.

### **Rule ~~35~~ 32 – Charges over common parts**

~~93~~81. Section 28 forbids the creation of a charge over the common parts by the commonhold association. Consequently, when the common parts vest in the commonhold association any charge over the land which becomes the common parts is extinguished under section 28 (3) and (4).

85. ~~95~~-This rule provides that when a charge is extinguished in this way, the Registrar must cancel **or alter as appropriate** any entry of the charge on the register to the extent that it is extinguished.

### **Application forms**

86. The only amendments to the forms since the Explanatory Memorandum of 22 December are as follows:

#### **CM1**

An additional panel has been included at the request of the DCA where the applicant is requested to identify whether the property being registered is “wholly residential” “wholly commercial” or “mixed residential and commercial.”

#### **CM5**

The reference to “Directions given under section 168 of the Insolvency Act 1986” has been removed from panel 6 as there was no justification for including this reference and not to include the other matters listed in section 54(2)(c)-(g).

#### **CON1**

Reference to the extinguishment of an interest under section 21(4) and (5) has been removed.

87. Deleted rules

Two rules have been deleted in their entirety:

- Former rule 14 – Transfer by a developer during the transitional period

The DCA, in their Policy Position Paper, stated that they were going to include a regulation which prescribed that a transfer from one developer to another developer pursuant to section 59(2) would not trigger the end of the transitional period. No such regulation has been included, so the corresponding rule has been deleted.

- Former rule 25 – Rejection or cancellation of an application to register a multiple site commonhold

We have decided to rely on LRR 16 (Applications not in order) which permits cancellation or rejection when the application is substantially defective, if an application does not comply with regulation 7, i.e. a unit is situated partly on one part site and partly on another.

DRAFT