

Insights

COMMONHOLD 2.0: COMMERCIAL TAKEAWAYS FROM THE GOVERNMENT'S WHITE PAPER

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SUMMARY

The UK Government's Commonhold White Paper, published on 3 March 2025, commits to making commonhold the default tenure for flats in England and Wales. A reboot of the commonhold legal framework originally introduced in 2002, this new regime (which we refer to as Commonhold 2.0 in this insight) draws on 182 proposals in the Law Commission's 2020 report. In this insight we discuss the key commercial takeaways.

Key changes include revising the Commonhold Community Statement (CCS), a lower bar to conversion, better governance, financial health, and democratic processes, introducing financial flexibilities for reserve funds, and dispute resolution mechanisms. The reforms cover leaseholders' rights if they do not want to join in with a commonhold conversion and signpost a preferred model to support transitioning to commonhold.

WHAT IS COMMONHOLD 2.0?

Commonhold 2.0 is a form of freehold ownership where individual property owners each own their unit outright, with no expiring term. Each unit holder is also a member of the Commonhold Association (CA). The CA is run by a group of directors (who must follow the CA's Articles of Association) who could be unit holders or, if preferred, professional directors.

HOW DOES IT DIFFER FROM 1.0 AND IS IT ONLY RELEVANT TO FLATS?

Whilst full details of Commonhold 2.0 are awaited, the structure in Commonhold 1.0 was that a site was registered as commonhold land (with a permitted cooling off period). The trigger to start the commonhold scheme running was the first application for registration of a unit by a purchaser. This automatically triggered registration of the CA as proprietor of the common parts of the freehold estate and brought the rights and duties created by the Commonhold Community Statement (CCS)

into operation. Noting the Section approach and the concept of non-consenting leaseholders within a scheme introduced by Commonhold 2.0 (discussed below) this is likely to change.

There are no leases to govern the unit holders, but instead a standardised CCS and, in some cases, local rules.

The government hopes that the proposed reforms will make Commonhold 2.0 the default tenure for unit holders of flats and commercial units in mixed-use blocks.

KEY TERMINOLOGY FOR COMMONHOLD 2.0

ARTICLES OF ASSOCIATION

The rules which govern how the CA operates. In Commonhold 1.0 these rules are in a prescribed form.

COMMUNITY ASSOCIATION (CA)

A company limited by guarantee. All unit holders are members. The CA manages the commonhold and owns the common parts.

COMMONHOLD COMMUNITY STATEMENT

A standardised document which acts as the commonhold's "rule book". It sets out the rights and obligations of unit holders and the CA.

LOCAL RULES

Any rules that are specific to Sections.

SECTIONS

Crucial for mixed use developments to 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.

WHAT DOES THIS MEAN FOR NEW RESIDENTIAL SCHEMES THAT HAVE BEEN BUILT OR ARE IN THE PROCESS OF BEING BUILT?

The ban on new leasehold flats will not come into force until the government is confident that a viable alternative, through Commonhold 2.0, is in place. They will explore the ban, along with any "limited" exceptions and the transition plans in the consultation due later this year. Where some of the flats in a new development have already been sold on a leasehold basis, even if that is on a pre-let basis and nobody has taken occupation, any conversion process is likely to be very complicated, and the White Paper acknowledges the need to work through the policy in detail to get it right.

WHAT ABOUT THE IMPACT ON ESTABLISHED LEASEHOLD SCHEMES?

Commonhold conversion will not be compulsory, though clearly the government strongly supports the concept, having included it in its election manifesto. To encourage more conversions, a significant change has been mooted for Commonhold 2.0 – a reduction in the minimum consent threshold required for conversion from 100% to 50%. Meanwhile, there are various reasons why a leaseholder might choose not to consent to the conversion, (the White Paper terms these people “non-consenting leaseholders”) perhaps the biggest barrier being cost – as leaseholders have to buy out their existing leases.

WHAT HAPPENS WHERE THERE IS 50-99% SUPPORT FOR THE CONVERSION TO COMMONHOLD?

Where there are 50%+ consenting leaseholders but also a group of non-consenting leaseholders the White Paper favours, with adjustments, Option 1 proposed by the Law Commission. This envisages the freehold passing to the CA whilst the previous freeholder is granted an overriding 999 year lease of the non-consenting leaseholders’ units. Neither the previous freeholder nor the leaseholders would be allowed to participate in the decision making through the CA. This would certainly make for a complicated management scenario – the practical details of which are not set out in the White Paper.

Option 2 where the non-consenting leaseholders are given an equity loan by the government to fund the buy out would lead to synchronisation of rules but would also mean potentially significant upfront costs for a government that will certainly have competing priorities. Both options could also leave government vulnerable to a challenge under Protocol 1 of Article 1 of the Human Rights Act 1998 – the right to “the peaceful enjoyment [of his] possessions”, something of a trend in the courts over recent years.

WHAT IS THE IMPACT OF CONVERSION RIGHTS ON OUR PORTFOLIO OF FREEHOLD MIXED-USED PROPERTIES?

The White Paper doesn’t consider conversion specifically in the context of mixed use as opposed to pure residential assets, although it does consider how a scheme may be sectioned (see below).

Where the commercial tenants in a mixed use scheme were minded not to consent to a conversion (perhaps because of their more sophisticated understanding or experience of the leasehold model) they could feasibly still be outvoted by the residential leaseholders who might well be looking for a different experience and level of involvement in the scheme, each class of tenant almost inevitably having different priorities.

WHAT ARE THE OTHER KNOWN UNKNOWNNS AT THIS STAGE?

VALUE OF THE UNITS

Consumer and lender buy-in for commonhold is unknown. Different valuation principles may be applied to units in a Commonhold 2.0 scheme, especially where there is a mix of leasehold and commonhold.

LAND REGISTRATION DELAYS

Turnaround times for anything but the simplest land registration applications are already lengthy; introducing new, potentially complicated rules, is unlikely to improve processing times. This could slow down transactions further and impact the ability to finance or refinance.

BUILDING SAFETY REGIME

The building safety regime is increasingly nuanced, complicated and onerous, particularly for higher-risk buildings (above 18m or at least seven storeys high with two or more residential units). There would be a very steep learning curve for a CA to understand its duties as a Principal Accountable Person or Accountable Person under the Building Safety Act 2022, even where it engaged sophisticated managing agents. Ultimately this could result in criminal sanctions for the CA.

HOW MUCH FLEXIBILITY WOULD THE NEW REGIME ALLOW?

Commonhold 2.0 is not intended to be restricted to the residential sector. The purpose of the 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. The creation of Sections will be controlled and there will need to be a good reason to separate out the rights and obligations of different types of units.

Commonhold 2.0 corrects flaws in Commonhold 1.0 by introducing Sections which can be used to split up mixed developments. To help grasp this concept, visualise a compartmentalised mixed-use building, split into five where currently the managing agents produce a detailed service charge spreadsheet split by use and unit size. Commonhold 2.0 adds the complexity because only unit holders in a specific Section, say block 1, can vote on issues that affect block 1. Additionally, only those who benefit from a particular service or upgrade are responsible for its cost. The government believes the use of Sections adds clarity to payments and voting but inevitably also places an onus on strong management and organisation. The Commonhold 2.0 White Paper currently proposes five options for Sections:

1. Residential and non-residential units.
2. Different non-residential units, which are used for significantly different purposes.
3. Different types of residential units.
4. Separate buildings in the same development.

5. Other premises based on practicality and fairness and justified by some different in the nature of the units.

Commonhold 2.0 is not just a legal sea change, managing agents will need to understand the tenure and the Section approach and be able to translate this into coherent management arrangements. Careful instructions from developers will be needed to set up and calculate separate heads of cost for Sections. Set up fees are likely to increase because documentation will need to be tailored to Sections.

DOES THE WHITE PAPER ADD ANY MORE INFORMATION ABOUT THE REGULATION ON GROUND RENTS IN EXISTING LEASES AND CHANGES TO MANAGEMENT ARRANGEMENTS?

There is reference, in the ministerial foreword, to a commitment to tackle “unregulated and unaffordable” ground rents as part of the reform of the existing leasehold system, but no further detail in the Paper.

WHAT CAN WE EXPECT NEXT?

We have been told to expect a full consultation this year on banning new leasehold flats (with limited exemptions and transitional arrangements), followed by a Commonhold 2.0 draft Bill in the second half of 2025. However, it remains to be seen how much of a priority this will be, amongst other government commitments.

RELATED PRACTICE AREAS

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