

Topic 2 - How to make, amend and remove by-laws

General by-laws

From time to time a body corporate may wish to make new by-laws, or amend or remove existing by-laws. As we have already seen, the by-laws for a community titles scheme appear in Schedule C of the CMS for the scheme. Accordingly, any changes to the by-laws would require an amendment to Schedule C. In order to do this the body corporate must consent to a new CMS being lodged for registration in a Land Registry Office.

What type of resolution is required?

Provided the change to the CMS is limited to a difference in the by-laws (other than a difference in an exclusive use by-law (see following)), the body corporate would need to pass a special resolution to consent to the recording of a new CMS (A s62).

What's next?

Section 54 of the BCCM Act provides that the existing CMS can not be amended. Instead, a new CMS must be recorded to replace the current version. The section also provides that in giving its consent, the body corporate does not need to have the new CMS before it. Section 55 of the Act then provides that any motion to change the CMS may only be submitted by the committee, a lot owner or the body corporate manager (provided the regulation module applying to the scheme authorises the body corporate manager to submit the motion).

What this means in practical terms, is that each proposed change to the CMS would be presented as a separate motion at the general meeting. Any motion to adopt a new by-law, or amend or repeal an existing by-law, must be passed by special resolution (other than exclusive use, see below). The body corporate, by passing all or some of the motions relating to by-laws, has in effect given its consent to the recording of a new CMS (A s62). The committee or the body corporate manager (if authorised to do so under the body corporate manager's engagement) must prepare the new CMS incorporating the change. The new CMS can then be lodged for registration in a Land Registry Office (A s63).

Time limit for lodging new CMS

The body corporate must lodge a request to record a new CMS within 3 months after the body corporate consents to lodging the new CMS (A s65).

Exclusive use by-laws

Unlike the "general by-laws" which require a special resolution, an exclusive use by-law requires, among other things, a resolution without dissent to pass (A s62). See Topic 3.

When do by-laws take effect?

A by-law comes into force on the day the Registrar of Titles records the community management statement containing the by-law or a later date stated in the by-law (A s179).