

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 2: First Registration of Title

Chapter 1: First registration

Voluntary registration

Section 3: When title may be registered

24. This section makes provision for the voluntary first registration of title. *Subsection (1)* specifies the legal estates that may be registered. These are:
- a freehold or leasehold estate in land;
 - a rentcharge;
 - a franchise (a grant from the Crown such as the right to hold a market or fair, or to take tolls; this provision enables franchises to be protected by registration, rather than by means of a notice or caution); and
 - a *profit à prendre* in gross (these are rights with an independent existence such as the right to hunt or shoot game; these also have previously only been able to be protected by an entry against the title of the relevant land, if that land is registered, and will now be able to be registered in their own right, since these rights are often sold and leased and can be very valuable).
25. *Subsection (2)* continues the existing law, stipulating who is entitled to apply to be registered as the first registered proprietor. The first entitlement belongs to the legal owners of the land. The second group comprises people who are entitled to have the legal estate vested in them but where, for example, the title is currently vested in a nominee on their behalf. *Subsection (6)* provides that a person may not apply to be registered if he or she is a person who has contracted to buy land. That is because the contract will be completed by a conveyance, and that conveyance will be subject to compulsory registration under section 4 (fees for voluntary first registration are likely to be lower than those for compulsory first registration).
26. *Subsection (3)* changes the existing law. Currently, only leases with more than 21 years to run may be registered voluntarily. This is reduced to more than seven years, in furtherance of the objective that all title to land in England and Wales should be registered. *Subsection (4)* provides that leases with seven years or less to run may, however, be registered if the right to possession is discontinuous. Such leases are not very common, but are sometimes used for time-share arrangements. *Subsection (7)* makes provision for a situation in which a person holds land under one lease, but has been granted another to take effect on or shortly after the first expires. If, taken together, the terms exceed seven years, the lease will be registrable.

27. *Subsection (5)* provides that a mortgage term created by demise or sub-demise is not registrable when there is a subsisting right of redemption.

Compulsory registration

Section 4: When title must be registered

28. *Section 4* sets out the events that trigger the compulsory first registration of title. These were updated and extended by the Land Registration Act 1997, and the Act therefore largely replicates the existing position. First, compulsory registration is triggered by specified types of transfer of a qualifying estate, which is defined as either a legal freehold estate, or a legal lease with more than seven years to run. The transfers are those made:
- i) for valuable or other consideration (which under *subsection (6)* includes estates which have a negative value);
 - ii) by way of gift (which *subsection (7)* provides will include transfers for the purposes of constituting a trust under which the settlor does not retain the whole of the beneficial interest, or transfers for the purpose of uniting the legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest);
 - iii) under a court order; and
 - iv) by means of an assent (including a vesting assent).
29. Under *subsection (3)*, transfers do not include transfers by operation of law (where, for example, an owner's property vests in personal representatives on death). Under *subsection (4)* compulsory registration will not apply to transfers involving:
- i) the assignment of a mortgage term (where there is a mortgage by demise or sub-demise, and the mortgagee assigns the mortgage by transferring the mortgage term); or
 - ii) where a lease is assigned or surrendered to the owner of the immediate reversion where the term is to merge in that reversion (because the estate transferred disappears).
30. Registration will be compulsory where section 171A of the Housing Act 1985 applies (i.e. where a person ceases to be a secure tenant because his or her landlord disposes of an interest in a house to a private sector landlord (*subsection (1)(b)*, replicating the current law)). Compulsory registration will also apply to the grant of leases out of freehold land or a leasehold, with more than seven years to run, where the lease is granted for valuable or other consideration, by way of a gift, or under a court order, apart from the exceptions in the section.
31. Compulsory registration will also apply where a lease is granted to take effect more than three months after it is granted. This provision is new, and is designed to avoid a conveyancing trap that such reversionary leases may create. At present, a lease granted for 21 years or less, which has not yet taken effect cannot be registered or protected by the entry of a notice in the register against the landlord's title but takes effect as an overriding interest. A buyer of land so affected may not be able to discover the existence of the lease, because the tenant will not be in possession.
32. Grants of a lease out of an unregistered legal estate under the right to buy provisions of Part 5 of the Housing Act 1985 will also be subject to compulsory registration (replicating the present law). Compulsory registration will also apply to the creation of a protected first legal mortgage (i.e. one which on creation ranks in priority ahead of other mortgages affecting the mortgaged estate) out of a legal freehold estate, or a lease with more than seven years to run.

Section 5: Power to extend section 4

33. This section enables the Lord Chancellor to add new events to those that trigger compulsory registration, by statutory instrument to be laid before Parliament. There is a similar power under the present law, although the new one is exercisable only after consultation. To be added, events must relate to unregistered estates specified in the section, which correspond to those listed as capable of registration with their own titles under section 3. Under *subsection (3)*, the power may not be exercised to require the compulsory registration of an estate granted to a mortgagee, because no benefit would be derived from requiring a charge over land to be registered, if the title to the estate affected remained unregistered.

Section 6: Duty to apply for registration of title

34. This section imposes a duty on the responsible estate owner to apply for registration within the period for registration if the registration requirement applies. Where registration is triggered by the creation of a protected legal mortgage (under section 4 (1) (g)), the mortgagor must apply for the registration of the estate charged by the mortgage. As now, there is a power by rules to make provision to enable the mortgagee to require the estate charged by the mortgage to be registered, whether or not the mortgagor consents. In other cases it is the transferee or grantee who must apply. The period for registration is two months beginning with the date on which the relevant event occurs (*subsection (4)*), but *subsection (5)* enables the registrar, on application by an interested person, to specify a longer period for registration if there is a good reason for doing so.

Section 7: Effect of non-compliance with section 6

35. The effect of not complying with the requirement of registration is:
- i) where the event is a transfer, the transfer becomes void and the transferor holds the legal estate on a bare trust for the transferee (*subsection (4)*) avoids the possibility which arises under *subsection (1)* of converting an unregistered fee simple into a determinable fee, which is not a legal estate); and
 - ii) where the event is the grant of a lease or the creation of a protected mortgage, the grant or creation is void and takes effect instead as a contract made for valuable consideration to grant or create the lease or mortgage concerned.
36. If a transaction has become void under these provisions and the registrar then makes an order extending the period in which an application for registration can be made, it is treated as having never become void.

Section 8: Liability for making good void transfers etc

37. If it is necessary to repeat a transaction because it became void under the provisions in Section 7, the person who is responsible for the registration is liable to the disponent or mortgagee for all the proper costs of and incidental to the repeated disposition. He or she is also liable to indemnify the disponent or mortgagee in respect of any other liability reasonably incurred because of the failure to register.

Classes of Title

Section 9: Titles to freehold estates

38. Where a person applies to be registered as proprietor of a freehold estate, he or she may (as now) be registered with an absolute, qualified or possessory title. A person may be registered with absolute title if the registrar considers that the title is such as a willing buyer could properly be advised to accept. Defective titles may still be registered as absolute if the registrar considers that the defect will not cause the holding under the title to be disturbed. Almost all freehold titles are, in practice, absolute. A person

may, however, be registered only with qualified title, if the registrar considers that the applicant's title can only be established for a limited period, or subject to certain reservations. Qualified title is extremely rare but it might be appropriate, where, for example, the transfer to the applicant had been in breach of trust. Possessory title is only appropriate where the applicant is either in actual possession or in receipt of the rent and profits from the land, and there is no other class of title which may be registered. In practice, land is registered with a possessory title where the basis of the application is adverse possession, or where the applicant's title cannot be proved (usually because the title deeds have been lost or destroyed).

Section 10: Titles to leasehold estates

39. A person applying to be registered as proprietor of a leasehold estate may be registered (in substance, as now), as proprietor with an absolute, good leasehold, qualified or possessory title. Absolute title may be given if the registrar considers that the title is such as a willing buyer could be properly advised to accept, and approves that the lessor had good title to grant the lease. It is, therefore, only appropriate where the superior title is either registered with absolute title, or, if unregistered, has been deduced to the registrar's satisfaction. Again, even defective titles can be registered as absolute, if the registrar considers that the defect will not cause the holding under it to be challenged. A good leasehold title is such that a willing buyer could properly be advised to accept. It will be appropriate where the superior title is neither registered nor deduced. It can be given in the case of a defective title, if the defect will not cause the holding to be challenged. Qualified title may be registered if either the applicant's title or the lessor's title to the reversion can only be established for a limited period, or is subject to reservations. The circumstances for registration of a possessory title are the same as with freehold.

Effect of first registration

Section 11: Freehold estates

40. **Section 11** sets out the effect of first registration as the proprietor of a freehold estate. *Subsections (2) to (5)* prescribe the effect of registration of a freehold with absolute title. Where a person is first registered as proprietor of a freehold estate, *subsection (3)* provides that the legal estate is vested in him or her together with all interests subsisting for the benefit of the estate. The legal estate will therefore vest in the first registered proprietor together with such interests as (for example) the benefit of any easement and *profit à prendre* that is appurtenant to the estate.
41. *Subsection (4)* provides that on first registration with absolute title, the estate is vested in the proprietor subject only to the following interests affecting the estate at the time of registration :
- i) Interests which are the subject of an entry in the register in relation to the estate. As this provision only applies to first registration under the Act, the interests which may be subject to an entry in the register will be registered charges, notices and restrictions.
 - ii) Unregistered interests which fall within any of the paragraphs of Schedule 1 (that is, those that override first registration).
 - iii) Interests acquired under the Limitation Act 1980 of which the proprietor has notice. This provision is new and is designed to meet the following situation. A takes adverse possession of unregistered land belonging to B. After 12 years' adverse possession, B's title is extinguished and A becomes owner of the land. A then abandons the land and B resumes possession of it. Before B has been back in possession of the land for 12 years he sells it to C. B sells as paper owner in accordance with the title deeds, but A is in fact the true owner. The sale triggers compulsory registration and C applies to be first registered proprietor. Subject to

the transitional provisions contained in Schedule 12 paragraph 7, the rights of a squatter will not under the Act take priority on first registration or on a registered disposition without the need for registration, as they presently do. By virtue of section 11(4)(c), C will take free of A's rights unless, at the time of registration, he had notice of them. If C is registered as proprietor even though he has notice of A's rights, A will be able to seek alteration of the register. C is bound by her rights and so alteration of the register will not involve rectification. As the register is inaccurate it may be altered to give effect to her rights by registering her as proprietor in place of C, as provided in Schedule 4, paragraphs 2 and 5.

- 42. *Subsection (5)* deals with the situation where the first registered proprietor is not entitled to the estate solely for his or her own benefit. The effect of subsection (5) is that where the first registered proprietor holds the land on trust, the estate will be vested in him or her subject to the rights of the beneficiaries under that trust.
- 43. *Subsections (6) and (7)* prescribe the effects of registration with qualified or with possessory title.

Section 12: Leasehold estates

- 44. *Section 12* makes provision for the effect of first registration of a person as the proprietor of a leasehold estate. *Subsections (2), (3), (4) and (5)* prescribe the effect of registration of a lease with absolute title. In most respects, the registration of a leaseholder with absolute title has the same effect as registration of a freeholder with absolute title. The only difference is that where a leasehold estate is registered with absolute title, it is vested in the leaseholder subject to implied and express covenants, obligations and liabilities incident to the estate as provided by subsection (4). Thus the first registered proprietor of a lease will take subject to such proprietary interests as restrictive covenants relating to the premises leased.
- 45. *Subsections (6) to (8)* prescribe the effects of the registration of a lease with good leasehold title, qualified title and possessory title respectively.

Dependent estates

Section 13: Appurtenant rights and charges

- 46. *Section 13* empowers the Lord Chancellor to make rules in relation to the registration of dependent legal estates. First, rules may make provision for the entry in the register of a registered proprietor as the proprietor of an unregistered legal estate which subsists for the benefit of a registered estate. Rules made under this provision are meant to cover the situation where, on or subsequent to first registration, a registered proprietor has, or is granted, the benefit of a legal estate, such as an easement or a *profit à prendre*, over unregistered land. Rules will enable the benefit of such an estate to be entered in the register.
- 47. Secondly, rules may make provision for the registration of a person as the proprietor of an unregistered legal estate which is a charge on a registered estate. Rules under this provision are intended to cover the situations where:
 - i) On first registration, the land is already subject to a legal mortgage.
 - ii) Subsequent to first registration, a charge is created that does not have to be registered to have effect at law, as in relation to certain local land charges (cf section 55 below).

In such circumstances, rules may enable the registration of the mortgagee as the proprietor of a registered charge.

Supplementary

Section 14: Rules about first registration

48. Section 14 confers a power to make rules in relation to various matters concerning first registration.

Chapter 2: Cautions against first registration

49. Cautions against first registration provide a means by which a person with an interest in *unregistered* land can be informed of an application for first registration of the title to an estate in that land. Under the present law, persons having or claiming to have an interest in unregistered land of a kind that entitles them to object to a disposition being made without their consent, may apply to lodge a caution with the registrar. In practice, in relation to the circumstances when the applicant's consent is required, this provision has been interpreted by the registrar to enable almost any person interested in the unregistered land to apply to lodge such a caution. Once a caution against first registration has been entered, no registration of the estate affected will be made until notice has been served on the cautioner and an opportunity given to appear before the registrar and oppose the application for first registration. There is no mechanism for "warning off" cautions against first registration. The cautioner will only be required to defend his or her caution when an application for first registration is made. Cautions against first registration are recorded on the index map and may be discovered by an official search of that map.

Section 15: Right to lodge

50. Section 15 confers a right on any person who owns or who has an interest in a qualifying estate to lodge a caution. A qualifying estate is a legal estate which relates to land to which the caution relates, and is one of the four registrable estates i.e. an estate in land, a rentcharge, a franchise or a *profit à prendre* in gross. *Subsection (3)* provides that the owner of a freehold estate, or of a leasehold estate with a term of more than seven years, cannot lodge a caution in respect of that estate. This is a new provision. The reason for it is that cautions against first registration are not intended to provide a substitute for first registration. The goal of total registration requires that a person with an unregistered legal estate that is registrable should register it. This prohibition will, however, not apply for two years after the provisions are brought into force. Under the transitional arrangements in paragraph 14 of Schedule 12, the new provision will have effect two years after the rest of the section is brought into force. At the end of the two year period, subsisting cautions against first registration lodged by the landowner will cease to have effect unless an application has been made for first registration.

Section 16: Effect

51. A caution only gives the right to be notified of an application for first registration, so enabling an objection to be made. It has no effect on the validity or priority of any interest that the cautioner may have in the legal estate to which the caution relates. Where the cautioner objects, the matter must be referred to the adjudicator, unless the registrar is satisfied that the objection is groundless, or the matter can be determined by agreement. *Subsection (4)* enables an agent for the applicant for first registration to give notice, and for this notice to be treated as having been given by the registrar. This enables a solicitor or licensed conveyancer acting for an applicant to give notice at the time the application is made, and so help to expedite the process. Those entitled to give such a notice will be prescribed by rules.

Section 18: Cancellation

52. This section provides a procedure for the cancellation of cautions against first registration. Only the owner of the relevant estate, or such people as are prescribed by

*These notes refer to the Land Registration Act 2002
(c.9) which received Royal Assent on 26 February 2002*

rules, can apply for cancellation. Owners who have consented to the lodging of a caution against first registration are generally prohibited by *subsection (2)* from applying for it to be cancelled. Rules will, however, be able to specify circumstances in which owners should be entitled to apply (where, for example, the interest protected by the caution had terminated).

Section 19: Cautions register

53. This section requires the registrar for the first time to keep a register of cautions against first registration. Details of cautions against first registration are currently kept on a 'caution title'. The rules about the information to be kept in the register, and its form and arrangement, will enable it to be translated into electronic form, in due course.