

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 9: Adverse Possession

156. At present, in broad terms, where a squatter has been in adverse possession of land for the required period (the basic period is twelve years, the period within which actions for the recovery of land must be commenced), the proprietor of the land holds the land on trust for the squatter who may apply to be registered as proprietor of a new estate, where the registered land is freehold, or as proprietor of the registered estate where that estate is leasehold.
157. The Act provides a new scheme for adverse possession in relation to a registered estate in land. The essence of the scheme is that:
- Adverse possession of itself, for however long, will not bar the owner's title to a registered estate in land or a registered rentcharge.
 - A squatter will be entitled to apply to be registered as proprietor after ten years' adverse possession and the registered proprietor, any registered chargee, and certain other persons interested in the land will be notified of the application.
 - If the application is not opposed by any of those notified, the squatter will be registered as proprietor of the land.
 - If any of those notified oppose the application it will be rejected, unless the adverse possessor can bring him or herself within one or more of three conditions.
 - If the squatter's application for registration is refused but the squatter remains in adverse possession for a further two years, he or she will be entitled to apply once again to be registered and will this time be registered as proprietor whether or not the registered proprietor objects.
 - Where the registered proprietor brings proceedings to recover possession from a squatter, the Act allows the squatter to establish certain limited defences which are consistent with the three conditions mentioned above.

Section 96: Disapplication of periods of limitation

158. **Section 96** provides that, in relation to a registered estate in land or a registered rentcharge, no period of limitation runs in relation to:
- actions for the recovery of land except in favour of a chargee, or
 - actions for redemption
- and so the title to such an estate or rentcharge cannot be extinguished. The exception in favour of chargees means that section 15 of the Limitation Act 1980 will continue to apply to an action by a chargee for possession or foreclosure, to enforce its security. As regards actions for redemption, at present, once a mortgagee has been in possession

for twelve years, the mortgagor loses his or her right to redeem the mortgage and his or her title is extinguished. This will no longer be the case.

Section 97: Registration of adverse possessor

159. Even though no period of limitation runs in relation to a registered estate in land or a registered rentcharge, it will still be possible for a person in adverse possession to be registered in place of the proprietor of a registered estate or rentcharge. This section introduces Schedule 6 which makes provision for such registration.

Section 98: Defences

160. Under this section a squatter can defend an action for possession of the land if the day before the action was brought he or she was entitled: to apply under paragraph 1 of Schedule 6 and the third condition (reasonable mistake as to boundary) would have been satisfied (*subsection (1)*); or to apply under paragraph 6 of that Schedule (*subsection (3)*). If a court holds that the defence applies then it must order the registrar to register the squatter as proprietor of the affected estate (*subsection (5)*).

161. Because the defences under this section are additional to any other defences a squatter may have (*subsection (6)*), if he or she has some independent right to possession of the land, such as an equity arising in his or her favour by proprietary estoppel, he or she can rely upon it.

162. Under *subsection (2) or (4)*, where a proprietor or chargee has obtained a judgment for possession of land against a squatter and:

- when the proceedings in which the judgment was given were commenced, the squatter was entitled to apply for registration, under paragraph 1 of Schedule 6 (ten years adverse possession); or
- two years after the judgment, the squatter is entitled to re-apply for registration under paragraph 6 of Schedule 6 (two years adverse possession since rejection of his or her paragraph 1 application);

then the judgment ceases to be enforceable against the squatter two years after the judgment (rather than, as is usual, six years). If in either of these cases the proprietor or chargee were to bring fresh proceedings the squatter would have a defence and the court would be required to order the registrar to register the squatter as proprietor of the land, under *subsection (5)*.

163. *Subsection (7)* enables rules to be made about the recovery of rentcharges. The Limitation Act 1980 bars the rights of an owner of a rentcharge where no rent is paid for 12 years (when the charge is extinguished), or where the rent is paid to a third party for 12 years (when the rentcharge can still be enforced, but the previous owner's title is extinguished and the third party becomes entitled instead). Rules under the subsection will be able to preserve the position of someone who has received rent whilst in adverse possession.