

SCHEDULES

SCHEDULE 6

Section 97

REGISTRATION OF ADVERSE POSSESSOR

Right to apply for registration

- 1 (1) A person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application.
- (2) A person may also apply to the registrar to be registered as the proprietor of a registered estate in land if—
 - (a) he has in the period of six months ending on the date of the application ceased to be in adverse possession of the estate because of eviction by the registered proprietor, or a person claiming under the registered proprietor,
 - (b) on the day before his eviction he was entitled to make an application under sub-paragraph (1), and
 - (c) the eviction was not pursuant to a judgment for possession.
- (3) However, a person may not make an application under this paragraph if—
 - (a) he is a defendant in proceedings which involve asserting a right to possession of the land, or
 - (b) judgment for possession of the land has been given against him in the last two years.
- (4) For the purposes of sub-paragraph (1), the estate need not have been registered throughout the period of adverse possession.

Notification of application

- 2 (1) The registrar must give notice of an application under paragraph 1 to—
 - (a) the proprietor of the estate to which the application relates,
 - (b) the proprietor of any registered charge on the estate,
 - (c) where the estate is leasehold, the proprietor of any superior registered estate,
 - (d) any person who is registered in accordance with rules as a person to be notified under this paragraph, and
 - (e) such other persons as rules may provide.
- (2) Notice under this paragraph shall include notice of the effect of paragraph 4.

Treatment of application

- 3 (1) A person given notice under paragraph 2 may require that the application to which the notice relates be dealt with under paragraph 5.

Status: This is the original version (as it was originally enacted).

- (2) The right under this paragraph is exercisable by notice to the registrar given before the end of such period as rules may provide.
- 4 If an application under paragraph 1 is not required to be dealt with under paragraph 5, the applicant is entitled to be entered in the register as the new proprietor of the estate.
- 5 (1) If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met.
- (2) The first condition is that—
- (a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and
 - (b) the circumstances are such that the applicant ought to be registered as the proprietor.
- (3) The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate.
- (4) The third condition is that—
- (a) the land to which the application relates is adjacent to land belonging to the applicant,
 - (b) the exact line of the boundary between the two has not been determined under rules under section 60,
 - (c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and
 - (d) the estate to which the application relates was registered more than one year prior to the date of the application.
- (5) In relation to an application under paragraph 1(2), this paragraph has effect as if the reference in sub-paragraph (4)(c) to the date of the application were to the day before the date of the applicant's eviction.

Right to make further application for registration

- 6 (1) Where a person's application under paragraph 1 is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection.
- (2) However, a person may not make an application under this paragraph if—
- (a) he is a defendant in proceedings which involve asserting a right to possession of the land,
 - (b) judgment for possession of the land has been given against him in the last two years, or
 - (c) he has been evicted from the land pursuant to a judgment for possession.
- 7 If a person makes an application under paragraph 6, he is entitled to be entered in the register as the new proprietor of the estate.

Restriction on applications

- 8 (1) No one may apply under this Schedule to be registered as the proprietor of an estate in land during, or before the end of twelve months after the end of, any period in which the existing registered proprietor is for the purposes of the Limitation (Enemies and War Prisoners) Act 1945 (8 & 9 Geo. 6 c. 16)—
- (a) an enemy, or
 - (b) detained in enemy territory.
- (2) No-one may apply under this Schedule to be registered as the proprietor of an estate in land during any period in which the existing registered proprietor is—
- (a) unable because of mental disability to make decisions about issues of the kind to which such an application would give rise, or
 - (b) unable to communicate such decisions because of mental disability or physical impairment.
- (3) For the purposes of sub-paragraph (2), “mental disability” means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.
- (4) Where it appears to the registrar that sub-paragraph (1) or (2) applies in relation to an estate in land, he may include a note to that effect in the register.

Effect of registration

- 9 (1) Where a person is registered as the proprietor of an estate in land in pursuance of an application under this Schedule, the title by virtue of adverse possession which he had at the time of the application is extinguished.
- (2) Subject to sub-paragraph (3), the registration of a person under this Schedule as the proprietor of an estate in land does not affect the priority of any interest affecting the estate.
- (3) Subject to sub-paragraph (4), where a person is registered under this Schedule as the proprietor of an estate, the estate is vested in him free of any registered charge affecting the estate immediately before his registration.
- (4) Sub-paragraph (3) does not apply where registration as proprietor is in pursuance of an application determined by reference to whether any of the conditions in paragraph 5 applies.

Apportionment and discharge of charges

- 10 (1) Where—
- (a) a registered estate continues to be subject to a charge notwithstanding the registration of a person under this Schedule as the proprietor, and
 - (b) the charge affects property other than the estate,
- the proprietor of the estate may require the chargee to apportion the amount secured by the charge at that time between the estate and the other property on the basis of their respective values.
- (2) The person requiring the apportionment is entitled to a discharge of his estate from the charge on payment of—
- (a) the amount apportioned to the estate, and

Status: This is the original version (as it was originally enacted).

- (b) the costs incurred by the chargee as a result of the apportionment.
- (3) On a discharge under this paragraph, the liability of the chargor to the chargee is reduced by the amount apportioned to the estate.
- (4) Rules may make provision about apportionment under this paragraph, in particular, provision about—
 - (a) procedure,
 - (b) valuation,
 - (c) calculation of costs payable under sub-paragraph (2)(b), and
 - (d) payment of the costs of the chargor.

Meaning of “adverse possession”

- 11 (1) A person is in adverse possession of an estate in land for the purposes of this Schedule if, but for section 96, a period of limitation under section 15 of the Limitation Act 1980 (c. 58) would run in his favour in relation to the estate.
- (2) A person is also to be regarded for those purposes as having been in adverse possession of an estate in land—
- (a) where he is the successor in title to an estate in the land, during any period of adverse possession by a predecessor in title to that estate, or
 - (b) during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own.
- (3) In determining whether for the purposes of this paragraph a period of limitation would run under section 15 of the Limitation Act 1980, there are to be disregarded—
- (a) the commencement of any legal proceedings, and
 - (b) paragraph 6 of Schedule 1 to that Act.

Trusts

- 12 A person is not to be regarded as being in adverse possession of an estate for the purposes of this Schedule at any time when the estate is subject to a trust, unless the interest of each of the beneficiaries in the estate is an interest in possession.

Crown foreshore

- 13 (1) Where—
- (a) a person is in adverse possession of an estate in land,
 - (b) the estate belongs to Her Majesty in right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall, and
 - (c) the land consists of foreshore,
- paragraph 1(1) is to have effect as if the reference to ten years were to sixty years.
- (2) For the purposes of sub-paragraph (1), land is to be treated as foreshore if it has been foreshore at any time in the previous ten years.
- (3) In this paragraph, “foreshore” means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring and neap tides.

Rentcharges

- 14 Rules must make provision to apply the preceding provisions of this Schedule to registered rentcharges, subject to such modifications and exceptions as the rules may provide.

Procedure

- 15 Rules may make provision about the procedure to be followed pursuant to an application under this Schedule.