

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

BACKGROUND

Origins of the Act

3. In 1996, the Law Commission and HM Land Registry began a joint programme to update and reform the statute law relating to land registration. Their initial proposals were published in *Land Registration for the Twenty-First Century: A Consultative Document* in September 1998. Revised recommendations, amended in the light of the consultation response, were published in *Land Registration for the Twenty-First Century: A Conveyancing Revolution* on 10 July. The Act implements most of those recommendations. The joint report contains a detailed discussion of the policy behind the recommendations, and full explanatory notes on each clause of the draft Bill contained in the report.

Title to land

4. The Crown is the only absolute owner of land in England and Wales: all others hold an estate in land. Estates, which derive from feudal terms of tenure, originally took many forms but were reduced by the Law of Property Act 1925 to two, an estate in fee simple absolute in possession, generally known as “freehold”; and an estate for a term of years absolute generally known as “leasehold”. Apart from an estate, land may have the benefit of or be subject to other interests, which are rights and obligations relating to the land, belonging to the owner or to a third party.

Unregistered conveyancing

5. Before the introduction of registration, there was only one way to establish the seller’s right to sell a property. Purchasers had to satisfy themselves from the title deeds, searches and inspection of the land that the seller had power to sell the land, and that it was subject to no undisclosed obligations. That remains the case with properties which have not yet been registered (perhaps around one-fifth of freehold titles).

Registered conveyancing

6. In registered conveyancing, there is a single statement of title as it stands at any given time, guaranteed by the State. If any person suffers a loss as a result of some omission or mistake in the register of title, they are entitled to be indemnified for that loss.
7. Land registration was first introduced to England and Wales by legislation of 1862 and 1875. Those Acts provided only for voluntary registration of title, and few titles were registered until the Land Transfer Act 1897 made registration of title compulsory in dealings with land in the County of London. Under the Land Registration Act 1925 compulsory registration was gradually extended to cover the rest of the country. Since 1 December 1990, the whole of England and Wales has been subject to compulsory registration. This requires registration of a conveyance of a freehold estate, a grant of a lease of more than 21 years, and an assignment of leasehold land with more than 21 years to run. If the disposition is not registered within the required time, it becomes void

as regards the transfer or creation of a legal estate or mortgage. The legal estate reverts to the person transferring it (who then, however, holds it on a trust for the intended recipient).

8. Under this system freehold titles are registered with three degrees of quality, and leasehold with four. A purchaser may also be bound by two kinds of interest on the land: an overriding interest, which does not appear in the register (e.g. leases for 21 years or less and rights of access across the land), and minor interests which only bind if they are protected by some entry in the register (e.g. a contract for sale or a restrictive covenant).

The current legislation

9. The principal legislation was provided by the Land Registration Act 1925, as amended by Land Registration Acts in 1936, 1986, 1988, and 1997, and by the Land Registration and Land Charges Act 1971. That legislation provides an improved machinery of conveyancing, rather than changing the underlying law, which applies to both unregistered and registered conveyancing. Its principles and definitions have sometimes been found obscure and confusing, and its language not easy for even professional users.

The objectives of the Act

10. The joint project undertaken by the Law Commission and the Land Registry therefore faced a complex, and in many respects, out-dated piece of legislation. As work proceeded an additional factor had to be considered. The Land Registry has now automated many of its functions, which can now be accessed on line. It became clear during the Commission's work that there was wide support within the property industry and from many legal practitioners for the introduction of a system of dealing with land electronically. The Law Commission and Land Registry therefore recommend that the new legislation should aim to create the necessary legal framework in which all registered conveyancing can be conducted electronically. The Act establishes such a system. The Law Commission and the Land Registry recommend a fundamental objective. To enable an effective system of electronic dealing with land, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land on line, with the absolute minimum of additional inquiries and inspections.

Electronic conveyancing

11. The Act creates a framework in which it will be possible to transfer and create interests in registered land by electronic means. It does so by enabling the formal documents to be executed electronically; and providing for a secure electronic communications network. Because it is envisaged that the execution of those documents and their registration will be simultaneous, and the process of registration will be initiated by conveyancers, permitting access to the network is to be controlled by the Land Registry, which will also exercise control over the changes which can be made to the register. The Land Registry will be obliged to make arrangements for access to the network by those who wish to undertake their own conveyancing. Establishment of the system will require new ways of working by the Registry, and by conveyancing practitioners. It will, therefore, best be introduced in stages, starting with the simplest transactions and progressing to the more complex. The Act therefore provides for the Lord Chancellor to regulate by rules transactions that can be carried out electronically.
12. Some of the benefits of electronic conveyancing can only be maximised if it is used universally. The Act, therefore gives the Lord Chancellor power to make the use of electronic means for conveyancing compulsory, subject to appropriate consultation. The use of this power will become feasible only when electronic conveyancing has become much the most usual way of effecting transactions.

Associated changes

13. The Act contains a range of other provisions which increase the extent to which the register gives a complete and accurate reflection of the state of title. The number of dispositions that must be registered is extended, in particular by reducing the length of registrable leases from more than 21 to more than seven years, with a power to reduce it further. With very limited exceptions, express dispositions of registered land will also have to be appropriately protected in the register.
14. One important aspect of the current legislation changed by the Act is that of “overriding interests”. Under the Land Registration Act 1925, these include all the incumbrances, interests, rights and powers which are not entered on the register, but override registered dispositions under the Act. Such interests create a number of problems, since people can find that they have bought estates which are subject to adverse interests which are not clear from the register, and can be quite difficult to determine. In the Act, the categories of interests which are not registrable appear in two distinct lists, one relevant to first registration of title, the other to dealings with registered land. In each list they will be reduced in scope. The ambit of particular categories will be narrowed, some categories will be abolished altogether, and others will be phased out after ten years.
15. In favour of those dealing with them, owners of registered land will be presumed to have unrestricted powers of disposition in the absence of any entry in the register. The rules as to the competing priority of interests in registered land are clarified. Charge certificates will be abolished, and land certificates will have a less important role.
16. The Act reduces to two the methods of protecting the interests of third parties over registered land. *Notices* may be used to protect encumbrances on land that are intended to bind third parties (such as easements or restrictive covenants). *Restrictions* regulate the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register. Either can be sought without the consent of the registered proprietor who must be notified and who will be able to apply for cancellation of the notice, or object to an application for a restriction. People who apply for either must act reasonably.
17. One of the objectives of the Law Commission and Land Registry’s report is that registration alone should confer title. The Act introduces a new scheme for protecting the interests of registered proprietors against the acquisition of title by persons in adverse possession, or “squatters”. A squatter will be able to apply to be registered as proprietor after ten years’ adverse possession. The registered proprietor will, however, be notified of that application and will, in most cases, be able to object to it. Where the proprietor does object, the application will be rejected unless the squatter can meet one of three limited exceptions. The proprietor will then have to take steps to evict the squatter, or otherwise regularise the position within two years. Squatters still in adverse possession after two years will be entitled to be registered as proprietor.
18. Where the Crown is the direct owner of its land (known as demesne land), it does not hold an estate. It is therefore not open to it to register this land (since only estates are registrable). The Act provides a procedure for the voluntary registration of demesne land. It also modernises procedures for returning to economic use land which has reverted to Crown ownership (usually in the course of insolvency proceedings).
19. The Act also revises the arrangements for the handling of business within the Land Registry. A new system of independent adjudication of disputes arising out of disputed applications to the registrar will be set up. The Act includes provision enabling the Registry to provide consultancy and advisory services.
20. The Act also restates the law in modern and simple language.