

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 6: Registration of Adverse Possessor

Right to apply for registration

247. *Paragraph 1* provides that a person (the applicant) who has been in adverse possession (as defined in paragraph 11) for the period of ten years (60 years, where paragraph 13 applies) calculated as provided in the paragraph may apply to be registered. The estate in respect of which the application is made need not have been registered throughout the period of adverse possession. Where an application under paragraph 1 is required to be dealt with under paragraph 5, and where the applicant claims that he or she is entitled to be registered as the new proprietor because the third of the conditions in that paragraph is met, paragraph 5(4)(d) provides a partial exception by requiring the land to have been registered more than a year before the application.

Notification of application

248. *Paragraph 2* provides that the registrar must give notice of the application to specified persons, being those whose interests may be affected by the application.

Treatment of application

249. *Paragraph 3* provides that a recipient of a notice under paragraph 2 may, by notice to the registrar, require the application to be dealt with under paragraph 5. If the recipient does this then he or she is objecting to the application.
250. *Paragraph 4* provides that if there is no such requirement then the applicant must be entered in the register as the new proprietor – paragraph 9 deals with the effect of such registration (and of registrations under paragraph 7).
251. At present, where a squatter has been in adverse possession for the required period the registered proprietor holds the registered estate on trust for the squatter. When an application for registration is successful, in the case of a squatter in respect of a registered freehold, he or she is registered as proprietor of a new freehold title and the existing freehold title is closed insofar as it relates to the land squatted upon. In the case of a registered leasehold the squatter is registered as proprietor of that leasehold.
252. Under paragraphs 4 and 7, in all cases the applicant will be registered as proprietor of the existing registered estate.
253. The present provision (Land Registration Act 1925, section 75) that the registered proprietor holds on trust for a squatter is not carried forward to the Act because the circumstances where a squatter will be entitled (under paragraph 5) to be registered as proprietor are limited and such a right will be protected against third parties provided that the squatter is in actual occupation of the land in question. His or her proprietary rights will then have overriding status.

254. *Paragraph 5* provides that if the applicant can show that one or more of three conditions applies, the applicant is entitled to be registered as the new proprietor of the estate. If a recipient who has objected disputes that a condition applies, then if the objection is not disposed of by agreement the matter will have to be referred to the adjudicator under the general provision as to objections.
255. The first condition set out in paragraph 5 is intended to provide statutory recognition for the equitable principles of proprietary estoppel. Examples might be:
- Where the applicant/squatter has built on the registered proprietor's land in the mistaken belief that he or she was the owner of it and the proprietor has knowingly acquiesced in his or her mistake. The squatter eventually discovers the true facts and applies to be registered after ten years.
 - Where neighbours have entered into an informal sale agreement for valuable consideration by which one agrees to sell the land to the other. The "buyer" pays the purchase price, takes possession of the land and treats it as his own. No steps are taken to perfect his or her title. There is no binding contract because the agreement does not comply with the formal requirements for such a contract. The "buyer" discovers that he or she has no title to the land. If he or she has been in possession of it for ten years he or she can apply to be registered as proprietor.

In each of these cases, an equity arises by estoppel, to which the legislation should be able to give effect by registering the squatter as owner of the registered estate in place of the existing proprietor.

256. Examples of the second condition (some other right to the land) might be:
- The squatter is entitled to the land under the will or intestacy of the deceased proprietor.
 - The squatter contracted to buy the land and paid the purchase price, but the legal estate was never transferred to him or her. In a case of this kind the squatter-buyer is a beneficiary under a bare trust, and, as such, can be in adverse possession.
257. The third condition (reasonable mistake as to the boundary) would cover cases such as:
- Where the boundaries as they appear on the ground and as they are according to the register do not coincide, for example, because when the estate was laid out the dividing fences or walls were erected in the wrong place and not in accordance with the plan lodged at the Land Registry.
 - Where the registered proprietor leads the squatter to believe that he or she is the owner of certain land on the boundary when in fact it belongs to the registered proprietor. If there has been detrimental reliance, then the first condition (estoppel) might also apply.
258. One of the requirements of the third condition is that estate to which the land relates was registered more than one year prior to the date of the application. This requirement is imposed because title to *unregistered* land can normally be acquired after twelve years' adverse possession while under the third condition title to *registered* land may be acquired after ten years' adverse possession. There might be a case where the squatter had been in adverse possession of unregistered land for more than ten but less than twelve years, the title was then registered and the other requirements of the third condition are met. The squatter would not have barred the title of the landowner prior to registration of the title but if this provision was not made he or she would be entitled to apply to be registered as proprietor as soon as the owner was registered. In other words, the owner would have no opportunity to evict the squatter.
259. Where an application does not rely upon the third condition there is no minimum period during which the estate must have been registered – all that is required is that the estate is registered when the application is made (paragraph 1(4)).

Right to make further application for registration

260. *Paragraph 6* provides that if the applicant's application for registration is refused but the applicant remains in adverse possession for a further two years, he or she is entitled (subject to the three exceptions in paragraph 6(2) and the two restrictions in paragraph 8) to apply once again to be registered. The two year period is to enable the registered proprietor or registered chargee to take reasonable steps either to evict the squatter (or at least to start proceedings to do so) or to regularise the squatter's possession by negotiating a bilateral agreement under which he or she can stay as the proprietor's tenant or licensee.
261. Transitional arrangements will be needed to cover the case of certain squatters who mistakenly believed themselves to be the owner of the land under paragraph 5(4). The provisions of the Act involve a move from a position where there is (generally) a 12 year limitation period to where there is no limitation period as such, but where it is possible for a squatter to be registered as proprietor after 10 years' adverse possession. In most cases, the fact that the squatter might acquire title after only 10 years rather than 12 does not matter. The registered proprietor can stop the squatter from acquiring title by objecting to his or her application for registration.
262. Where a squatter is entitled to be registered because he or she reasonably but mistakenly believed themselves to be the owner of the land under paragraph 5(4), they might find that they were entitled to be registered as proprietor of the land on this basis on the day that the legislation is brought into force, even though they have only been in adverse possession for 10 years and, the day before, the registered proprietor could have successfully initiated possession proceedings against them.
263. This case will be dealt with by timed implementation. The provisions of the Act are to be brought into force by order. It is therefore proposed to bring paragraph 5(4) into force one year after the rest of Schedule 6. This means that registered proprietors will have one year from the coming into force of the rest of the Act to take proceedings against any squatter who might fall within paragraph 5(4) or otherwise regularise his or her position so that he or she is no longer in adverse possession.
264. *Paragraph 7* provides that this time the applicant will be registered as proprietor whether or not the registered proprietor objects.

Restriction on applications

265. *Paragraph 8 Sub-paragraph (1)* is intended to ensure that the protection against adverse possession conferred by the Limitation (Enemies and War Prisoners) Act 1945 continues to apply.
266. Under the Limitation Act 1980, section 28 a person under a disability must be suffering it when adverse possession commences. Under *sub-paragraph (2)* the relevant time will be when the applicant applies to be registered, as that is when the registered proprietor needs to be able to protect his or her position by objecting to the application. The sub-paragraph is wider than section 28 as it protects not only those suffering mental disability but also those who are so physically impaired that they cannot communicate their decision.

Effect of registration

267. Under *paragraph 9*, the applicant will, upon registration, take the land subject to the same estates, rights, and interests that bound the previous proprietor except that (subject to the case mentioned below) he or she will take free of any registered charge which affected the estate immediately before his or her registration.
268. The case referred to above is where an applicant is registered because his or her application was determined by reference to one of the three conditions. In that case, the estate is vested in him or her subject to any registered charge.

Apportionment and discharge of charges

269. *Paragraph 10* applies where an applicant is registered subject to a such a registered charge and the charge affects other property. In such circumstances, the applicant may require the chargee to apportion the amount secured by the charge and is entitled to a discharge of his estate from the charge upon making the payments mentioned in *sub-paragraph (2)*.

Meaning of “adverse possession”

270. Under *paragraph 11* an applicant, X, does not have to show that she has been in adverse possession for the ten year period provided that *sub-paragraph (2)* applies. It would thus suffice if:
- X is the successor in title of an earlier squatter from whom he or she acquired the land, and, taken together, the two periods of adverse possession amount to ten years; or
 - X has been in adverse possession, has herself been dispossessed by a second squatter, Y, and has then recovered the land from Y. In these circumstances, he or she can add Y’s period of adverse possession to his or her own to make up the necessary ten-year period.

Trusts

271. The purpose of *paragraph 12* is that where there are successive interests, adverse possession by a squatter should not prejudice the rights of beneficiaries who are not yet entitled in possession.
272. The operation of *paragraph 12* can best be illustrated by an example:
- Land is held on trust for A for life, thereafter for B for life, thereafter for C absolutely. S, a squatter, goes into adverse possession of the land during A’s lifetime and remains there. For as long as either A or B is alive, S will be unable to apply to be registered as proprietor of the land under paragraph 1. Indeed, it is only ten years after C’s interest has fallen into possession that S can make such an application. This is because S is not regarded as being in adverse possession until C, the remainderman, becomes entitled to the land.

Crown foreshore

273. *Paragraph 13* provides, amongst other things, for a 60 year period (rather than ten years) where an application is made under paragraph 1, and relates to foreshore belonging to Her Majesty or to one of the Royal Duchies. This adapts the longer limitation period provided for the recovery of foreshore in the Limitation Act 1980 to the scheme of the Act.

Rentcharges

274. Under *paragraph 14* rules must be made to apply the provisions of this Schedule to registered rentcharges. Such rules are likely to be technical and of a length more suited for subordinate legislation.