

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 1: Unregistered Interests Which Override First Registration

207. Interests which do not appear in the register, yet bind the person who acquires any interest in registered land, are considered to be an unsatisfactory feature in registered conveyancing. The Act seeks to narrow the circumstances in which such interests arise and reduce the number of categories. In doing this, the Act for the first time separates out those interests that are binding on the proprietor who seeks first registration of title from those interests which bind on a subsequent disposal of registered land, since the considerations to be applied in the two situations are different. When an applicant seeks first registration of title, whether or not he is bound by an existing interest has already been determined under the principles of unregistered conveyancing.
208. Some of the interests are common to both categories. Where that is so, the notes set out below relating to them are not repeated in the notes on Schedule 3.
209. [Sections 11\(4\)](#) and [12\(4\)](#) list the matters that bind a registered proprietor on first registration of title to an estate in land. They include unregistered interests listed in Schedule 1. Although their priority is protected without the need for registration, section 71 enables an obligation to be imposed on applicants to disclose known unregistered interests so that they can be recorded in the register. In addition, under section 90, a new category of interest, which cannot be registered, is created. PPP leases are to be treated as if they had been included in Schedule 1.

Leasehold estates in land

210. [Paragraph 1](#) has the effect that, subject to three exceptions, a leasehold estate granted for a term not exceeding seven years from the date of grant is an unregistered interest which overrides first registration. Under the present system, leases not exceeding 21 years in length are overriding interests. The reduction in the length of leases which have overriding status reflects the reduction in the length of leases which gives rise to first registration of title in their own right. The grant of a lease exceeding seven years in length will under the Act trigger first registration. Section 4 lists the three situations where a lease of shorter duration must be registered in its own right: a right to buy lease; a lease that take effect more than three months after it is made; and certain leases by private sector landlords. These leases will not be capable of overriding first registration, even where they do not exceed seven years.

Interests of persons in Actual occupation

211. The effect of [Paragraph 2](#) is that, subject to one exception, an interest belonging to a person in actual occupation of land overrides first registration. The overriding status of these interests only extends to those parts of the land which the person is actually occupying. This category is considerably narrower in scope than the category existing under the current law, which treats the receipt of rents and profits as occupation of the land. The one exception to the overriding status of occupation rights is an interest

under a settlement under the Settled Land Act 1925. Such interests are now, however, relatively uncommon, and since the Trusts of Land and Appointment of Trustees Act 1996 came into force, no new settlements can be created.

Easements and profits à prendre

212. *Paragraph 3* has the effect that a legal easement or *profit à prendre* overrides first registration. Under the present system, equitable easements over unregistered land also have overriding status even if they have not been protected, as they should be, by registration under the Land Charges Act 1972. The position of those easements was therefore improved on first registration of title and this situation will not continue under the Act.

Customary and public rights

213. *Paragraphs 4 and 5* provide that a customary right or public right will override first registration. Customary rights are rights which have their origins in feudal times and are enjoyed by all or some of the inhabitants of a particular locality. Public rights are rights which are presently exercisable, and are exercisable by anyone, whether he owns land or not, merely by virtue of the general law. These rights are comparatively common and when they come to light on an application for first registration, they are noted in the register. That practice will continue under the Act.

Local land charges

214. *Paragraph 6* has the effect that a local land charge overrides first registration. Local land charges usually relate to the costs of repairing a property or amenities in the immediate vicinity of the property and are governed by the Local Land Charges Act 1975. Under that Act, provision is made for a local authority to register local land charges, for those charges to be binding even if not registered and for compensation to be paid for any loss suffered by a person as a consequence of non-registration. The overriding status of local land charges recognises that they are governed by a parallel regime. However, section 55 provides that a local land charge that secures the payment of money must be registered at the Land Registry before that money can be realised.

Mines and Minerals

215. *Paragraphs 7 to 9* preserves the overriding status of a limited class of mineral rights. They are mineral rights in relation to land, the title to which was registered before 1926. The reason for this exception is that rights to minerals were not recorded prior to 1926. Overriding status is also continued for interests and rights in coal. Coal rights were excepted from registration because of the difficulty in registering them given their extent and complexity. In present or former coal mining areas, coal mining searches are available that are likely to provide detailed information about coal mining activities.

Miscellaneous

216. The five categories of interests set out in *paragraphs 10 to 14* are of ancient origin, and of unusual character so that a buyer would not normally expect to see them. They can be very difficult to discover and can be exceptionally onerous. The overriding status of these rights will be phased out after ten years of this Schedule coming into force. The transitional period will give persons with such interests time to apply free of charge for their interest to be noted in the register. Franchises and manorial rights are the categories of interests most commonly found. Franchises originate in a royal grant, such as a right to hold a fair. Manorial rights are a very specific category of rights granted before 1926 and include a tenant's right of common and a lord's sporting rights. A Crown rent is a right to rent which was reserved to the Crown on the granting of a freehold estate, whether or not the right still belongs to the Crown. The right in respect of an embankment or sea or river wall is a liability falling on a person whose property fronts

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the sea or a river. It can arise in a number of ways, such as on grant or by custom. The only right to payment in lieu of tithes that still exists is a corn rent, although it is the rarest of all the categories listed and not all corn rents fall within it.