

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 6: Registration: General

Registration as proprietor

Section 58: Conclusiveness

105. A fundamental principle of registered conveyancing has always been that registration vests the legal estate in the registered proprietor. Section 58 provides for the continuation of that principle so that if, for example, a person is registered as proprietor on the strength of a forged transfer, the legal estate would nevertheless vest in the transferee by virtue of registration. *Subsection (2)* is designed to prevent *subsection (1)* overriding the rule in relation to registrable dispositions that a disposition only operates at law when *all* the relevant registration requirements have been met (i.e. entry of the donee in the register as proprietor may not always be the only requirement). The legal estate will not vest in the transferee until all of the appropriate requirements for registration set out in Schedule 2 have been met.

Section 59: Dependent estates

106. *Section 59* deals with how entries in the register relating to the ownership of certain estates are to be dealt with. First, if a legal estate, such as an easement or *profit à prendre*, subsists for the benefit of a registered estate, the entry must be made in the register relating to that registered estate. If the registration is of the ownership of a charge, then the entry should be made in relation to the registered estate which is subject to the charge. Lastly, where the registration is of the ownership of a sub-charge, then the entry must be made in relation to the registered charge which is subject to the sub-charge.

Boundaries

Section 60: Boundaries

107. For practical and historical reasons, the current register has been compiled using the “general boundaries rule” which means that although the plans are usually mapped to a feature, the exact line of the boundary is left undetermined, e.g. which side of the boundary the feature lies. Rules permit those with an interest to apply for boundaries to be fixed. Section 60 for the first time incorporates the general boundary principle into statute, and provides for rules to be made in relation to the fixing of boundaries. That may happen in two situations. First, as now, the parties may request it. Secondly, the Act enables rules to be made providing for boundaries to be fixed when that is required, for example on the resolution of a boundary dispute or one over adverse possession. Rules will cover when boundary fixing can occur, how it will be done and what procedures will be used. Rules will also stipulate how the fact that the boundaries are fixed is recorded in the Registry’s records including the register of title.

Section 61: Accretion and diluvion

108. **Section 61** states that the fixing of the position of the boundary shown on land registry plans does not prevent the adding of land by accretion or the removal of land by diluvion. This happens when the natural boundary between land and water changes gradually over time, in particular where land is formed by deposits from the sea (accretion) or washed away by waves (diluvion). In normal circumstances the adjoining landowners' title would be extended or diminished as a result of the changes. If several landowners have made an agreement that the natural boundary changes will not have that legal effect, for example in relation to the location of a stream, then that agreement will only take effect if it is registered. Rules will govern how that is to be achieved.

Quality of title

Section 62: Power to upgrade title

109. **Section 9** sets out the three grades of title which with freehold title can be registered and section 10 sets out the four grades of title with which leasehold land may be registered. Section 62 empowers the registrar to upgrade to absolute any of the lesser titles when he is satisfied as to the title to that estate or, in the case of good leasehold title, satisfied as to the title to the superior estate. The registrar may also upgrade possessory title to absolute for either leasehold or freehold land if the proprietor is in possession and at least 12 years has elapsed since possessory title was first registered. The length of this period coincides with the length of the period after which most classes of landowner would have lost their right to reclaim the land under the Limitation Acts. There is power in *subsection (9)* for the Lord Chancellor to change that period by order, for use if limitation periods should change. The section lists the persons who have a right to apply for the upgrading of the title but also provides that if there is a claim outstanding at the time that the power to upgrade would be exercised, which is protected by the fact that a lower grade of title has been awarded, then the registrar cannot exercise his power.

Section 63: Effect of upgrading title

110. **Section 63** spells out the effect of upgrading title, which is merely left to be inferred by the current legislation. A possessory title preserves the rights of any person with a superior estate that might come forward, and a qualified title the rights of any person which are covered by the qualification (see sections 9 and 10). When freehold or leasehold title is upgraded to absolute, the registered proprietor ceases to hold the estate subject to those rights. A similar effect occurs when possessory or qualified leasehold title is upgraded to good leasehold, although this does not affect the rights of the superior owner to allege that the lease was not validly granted. There is another possible effect of upgrading title – some risk that an estate, right or interest may thereby be defeated, and the person who previously had the benefit might, therefore, suffer loss. In such circumstances, there would be entitlement to be indemnified for loss by reason of the rectification of the register (under paragraph 1 of Schedule 8).

Section 64: Use of register to record defects in title

111. **Section 64** deals with a situation not currently catered for under the land registration system, where something happens in the course of the ownership of the property that itself makes the title bad. The most obvious examples are: (1) when a lease is subject to a right of re-entry for breach of covenant and the tenant commits a breach of covenant entitling the landlord to end the lease; and (2) where a freehold title is subject to the payment of a rentcharge (with a right of re-entry if that payment is not made) and the rentcharge is not paid. Section 64 enables the registrar to record in the register the fact that a right to determine a registered estate has arisen. Rules will govern when the registrar is under a duty to make the entry, and how such entries are made and removed.

Alteration of the register

Section 65: Alteration of the register

112. **Section 65** incorporates the provisions contained in Schedule 4.

Information etc

Section 66: Inspection of the registers etc

113. **Section 66** provides that, subject to any exceptions specified in rules, anyone may inspect and make copies of the register of title together with any other document either referred to in the register or kept in relation to an application affecting that register. This extends the current legislation, which excepts leases or charges (or copies of them) from inspection. In addition documents kept by the registrar relating to an application, but not referred to in the register can currently only be inspected at the registrar's discretion. A right to inspect and copy any such document is now established. Anyone may also inspect the register of cautions against first registration. Rules will govern how those rights are exercised, including the requirement to pay fees.

Section 67: Official copies of the registers etc

114. **Section 67** provides that the official copy registers and other documents obtained under the right contained in section 66 are admissible in evidence to the same extent as the original document would be. Rules will specify the form of official copies, how they are applied for and who supplies them, and may impose conditions including the requirement to pay fees. *Subsection (2)* provides that a person who relies on an official copy in which there is a mistake is not liable for loss suffered by another by reason of that mistake. The person who suffers loss will be entitled to indemnity in accordance with paragraph 1 of Schedule 8.

Section 68: Index

115. **Section 68** provides that the registrar must keep an index which will indicate for any parcel of land in England and Wales, if there are any registered estates relating to that parcel and if there are, the title number or other identifier used for the register(s) relating to that parcel. The index must also show if there is a caution against first registration of unregistered land. Rules may specify how the index, and the information in it, is to be kept and how official searches of that index are to be undertaken. Rules may also specify additional information to be found from the index.

Section 69: Historical information

116. **Section 69** provides that the registrar may on application provide information about the history of a title. Rules will govern how applications are made and processed.

Section 70: Official searches

117. **Section 70** sets out the rule-making powers relating to official searches of both the register and the list of applications received but not yet processed relating to the first registration of title. Rules will govern how applications are made and processed, including the issue of the results of search.

Applications

Section 71: Duty to disclose unregistered interests

118. The 1925 Act made no distinction between those interests which are overriding on first registration and those that were overriding on a disposition of registered land. The Act makes this distinction so that the existing concept of overriding interests is not

brought forward into the Act. Schedule 1 lists the interests which are overriding on first registration and are therefore binding on the proprietor even though there is no entry in the register (see sections 11(4) and 12(4)). Schedule 3 lists the interests which are binding on persons who acquire an interest in registered land notwithstanding that there is no entry in the register (see section 29(2)). Section 71 provides that a person applying for first registration of title or to register a dealing with registered land must disclose such details of known interests falling within the appropriate Schedule as are specified in rules.

119. This is a new duty. The objective is to ensure that the applicant for registration discloses any interests which are overriding in nature so that they can be entered in the register. The registrar will only wish to enter in the register such rights as are clear and undisputed. Rules will therefore provide guidance as to when the buyer has to provide information, and in relation to which interests it is required.

Section 72: Priority protection

120. Official searches undertaken in accordance with rules made under section 70 are normally priority searches undertaken by persons acquiring an interest for value. The system of priority searching means that any entry made on a register during the priority period of a search will be postponed to a subsequent application to register the instrument effecting the purchase. Section 72(2) makes new express provision for the protection of priorities, and confirms that an application is protected if there is a priority period in existence under a search and the application is made before the priority period has come to an end. To ensure the mechanics of the system operate correctly, *subsection (3)* states that the general principle will not apply if the entry is itself made as a result of a earlier protected application and relates to a protected application whose priority search was undertaken earlier in time. Additionally, a court order made under section 46(3) specifying the priority of an entry relating to that court order may take precedence over the effect of this section. The registrar is entitled to defer dealing with an application if it appears to him that a protected application might be made, as this would affect the priority of the applications he is to process. Rules may be made concerning the detailed operation of the priority searching system, including the order of competing priority periods. Rules may either provide for priority periods in connection with official searches or with the noting in the register of a contract for a registered disposition of a registered estate or charge. The noting of a contract is not often undertaken at present but will become necessary once contracts to make a disposition of a registered estate or charge take effect only on registration. This section enables the registrar at that stage to use either the existing official searching system or to base the priority period on the registration of the contract itself.

Section 73: Objections

121. [Section 73](#) provides that, subject to two qualifications, anyone may object to an application made to the registrar. The two exceptions are (1) when the application is to cancel a caution against first registration only the cautioner or such other persons as rules may provide may object (section 18 deals with how such an application is made) and (2) when the application is to cancel a unilateral notice only the beneficiary of the notice or such other persons as rules may provide may object (section 36 deals with how such an application is made). Unless the registrar is satisfied that the objection is groundless, he must give notice of the objection to the applicant and may not complete the application whilst that objection still exists. The right to object is subject to rules. If it is not possible to dispose of the objection by agreement the registrar must refer the matter to the adjudicator for determination in accordance with Part 11 and Schedule 9. Rules will govern the making of references to the adjudicator under this section.

Section 74: Effective date of registration

122. **Section 74** provides that any entry made in the register has effect from the time of the making of the application for first registration, and for the registration of registrable dispositions. Rules made under section 14 will make provision for the making of applications for first registration and how dealings with registered land are undertaken are subject to rules made under section 27.

Proceedings before the registrar

Section 75: Production of documents

123. Although unresolved contested applications must be referred to the adjudicator, there will be many instances of proceedings before the registrar, such as the examination of the title deeds supporting a first registration application. Section 75 enables the registrar, subject to rules, to require a person to produce a document for the purposes of those proceedings. Such a requirement, as now, is to be enforceable as if it were a court order. This section includes a right to appeal to the county court in respect of the registrar's requirement.

Section 76: Costs

124. **Section 76** enables the registrar, subject to rules, to make an order for costs in respect of proceedings before him. This largely reproduces the power to award costs under the existing legislation. Such a requirement, as now, is to be enforceable as if it were a court order. This section includes a right to appeal to the county court.

Miscellaneous

Section 77: Duty to Act reasonably

125. Section 56(3) of the 1925 Act makes anyone who lodges a caution without reasonable cause liable to any person who has suffered damage thereby. Section 77 considerably develops this, by providing that a person must not exercise the right to apply for an entry to be added to the register of someone else's title, or for the entry of a notice or object to someone else's application unreasonably and if they do so, they owe a duty to anyone who suffers damage. The existence of this duty entitles the person adversely affected to bring an action for damages.

Section 78: Notice of trust not to affect registrar

126. **Section 78** ensures that the registrar can carry on his job without worrying about possibly being implicated in a breach of trust.