

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 4: Alteration of the Register

229. The provisions of this Schedule bear no relation to the existing provisions in the Land Registration Act 1925. They have been recast to reflect the present practice in relation to rectification and amendment of the register.

Introductory

Paragraph 1 sets out a narrower definition of “rectification” than under the current law. Rectification is limited to the situation where a mistake is to be corrected, and where the correction also prejudicially affects the title of the registered proprietor. Rectification is just one particular form of alteration. When rectification under this definition occurs, the proprietor may be entitled to indemnity as he or she will have been prejudicially affected by the amendment made.

Alteration pursuant to a court order

230. *Paragraph 2* enables the court to order the alteration of the register in three situations:
- (i) first, to correct a mistake;
 - (ii) secondly, to bring the register up to date; (if, for example, a court decided that a claimant in proceedings had established his or her entitlement to an easement by prescription over a parcel of registered land, it could order that the benefit and burden of the easement be recorded in the registers of the affected titles); and
 - (iii) thirdly, to give effect to any estate, right or interest excepted from the effect of registration.
231. Where land is registered with good leasehold, possessory or qualified title, rights are excepted from the effect of registration (for details of the different classes of title see sections 9 and 10). It is these rights that may be the subject of court proceedings which ultimately give rise to an alteration in the register. When the court order is served on the registrar, it places him under a duty to give effect to it in the register of title. Rules may specify the circumstances in which the court is under a duty to order the alteration of the register in situations where the alteration does not prejudicially affect the title of the registered proprietor, i.e. when rectification is not involved. Rules will also make provision about the form of court orders and their service.
232. *Paragraph 3* relates to rectification cases only. The paragraph reproduces the existing principle that the register should not be rectified against a registered proprietor who is in possession of the land without his consent, unless either he or she has by fraud or lack of proper care caused or substantially contributed to the mistake in the register, or there is some other reason why it would be unjust not to make the alteration. The court is also obliged to make an order which it has power to make, unless there are exceptional circumstances which justify it in not making the order. *Sub-paragraph (4)*

widens the meaning of “a registered estate in land” for the purpose of this paragraph to make it clear that it includes any registered estate which exists for the benefit of the proprietor’s estate in land, such as an easement.

Alteration otherwise than pursuant to a court order

233. *Paragraph 5* gives the registrar power to alter the register without the need for the matter to be considered by a court. The registrar may alter the register for the same purposes as the court can under paragraph 2 and additionally, he can remove a superfluous entry. The ability to remove superfluous entries is likely to be important with the advent of electronic conveyancing to enable conveyancers to make changes to the register without the inconvenience of dealing with entries which are no longer current. Rules may specify the circumstances in which the registrar is under a duty to alter the register in situations where the alteration does not prejudicially affect the title of the registered proprietor, i.e. when rectification is not involved. Rules may deal with how the register is to be altered, about applications for alteration (including imposing a requirement for an application to be made) and the procedure to be adopted in making alterations (including whether or not an application is required).
234. *Paragraph 6* relates only to rectification cases, that is where the alteration to the register prejudicially affects the title of the registered proprietor. The same principles applied to court proceedings for rectification apply to proceedings before the registrar. Rectification can only be ordered by the registrar against a proprietor of land in possession in the limited cases explained in the notes to paragraph 2. The meaning of “a registered estate in land” is the same and the registrar is placed under a duty to make an order for rectification, where he has power to do so, unless exceptional circumstances exist. If there is an objection to an application to rectify the register, however, the registrar is under a duty to refer the matter to the adjudicator for determination (see section 73(7)). Any contested application for rectification will therefore be resolved by the adjudicator.

Rectification and derivative interests

235. *Paragraph 8* makes it clear that the register may be altered so as to change permanently the priority of any interest affecting the registered estate or charge.

Costs in non-rectification cases

236. *Paragraph 9* gives the registrar power to pay such costs as he sees fit in cases where the register is altered by him, whether that alteration occurs through his own initiative or as a result of a court order served on him. The registrar can pay those costs if he consented to the costs being incurred in advance or one of two other situations have arisen. The first is that he has given retrospective consent to those costs. The second is when those costs were incurred urgently and it was not reasonably practical for his consent to be sought.