

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 2: First Registration of Title

Chapter 1: First registration

Compulsory registration

Section 4: When title must be registered

28. *Section 4* sets out the events that trigger the compulsory first registration of title. These were updated and extended by the Land Registration Act 1997, and the Act therefore largely replicates the existing position. First, compulsory registration is triggered by specified types of transfer of a qualifying estate, which is defined as either a legal freehold estate, or a legal lease with more than seven years to run. The transfers are those made:
- i) for valuable or other consideration (which under *subsection (6)* includes estates which have a negative value);
 - ii) by way of gift (which *subsection (7)* provides will include transfers for the purposes of constituting a trust under which the settlor does not retain the whole of the beneficial interest, or transfers for the purpose of uniting the legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest);
 - iii) under a court order; and
 - iv) by means of an assent (including a vesting assent).
29. Under *subsection (3)*, transfers do not include transfers by operation of law (where, for example, an owner's property vests in personal representatives on death). Under *subsection (4)* compulsory registration will not apply to transfers involving:
- i) the assignment of a mortgage term (where there is a mortgage by demise or sub-demise, and the mortgagee assigns the mortgage by transferring the mortgage term); or
 - ii) where a lease is assigned or surrendered to the owner of the immediate reversion where the term is to merge in that reversion (because the estate transferred disappears).
30. Registration will be compulsory where section 171A of the Housing Act 1985 applies (i.e. where a person ceases to be a secure tenant because his or her landlord disposes of an interest in a house to a private sector landlord (*subsection (1)(b)*, replicating the current law)). Compulsory registration will also apply to the grant of leases out of freehold land or a leasehold, with more than seven years to run, where the lease is

*These notes refer to the Land Registration Act 2002
(c.9) which received Royal Assent on 26 February 2002*

granted for valuable or other consideration, by way of a gift, or under a court order, apart from the exceptions in the section.

31. Compulsory registration will also apply where a lease is granted to take effect more than three months after it is granted. This provision is new, and is designed to avoid a conveyancing trap that such reversionary leases may create. At present, a lease granted for 21 years or less, which has not yet taken effect cannot be registered or protected by the entry of a notice in the register against the landlord's title but takes effect as an overriding interest. A buyer of land so affected may not be able to discover the existence of the lease, because the tenant will not be in possession.
32. Grants of a lease out of an unregistered legal estate under the right to buy provisions of Part 5 of the Housing Act 1985 will also be subject to compulsory registration (replicating the present law). Compulsory registration will also apply to the creation of a protected first legal mortgage (i.e. one which on creation ranks in priority ahead of other mortgages affecting the mortgaged estate) out of a legal freehold estate, or a lease with more than seven years to run.