

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 2: First Registration of Title

Chapter 2: Cautions against first registration

49. Cautions against first registration provide a means by which a person with an interest in *unregistered* land can be informed of an application for first registration of the title to an estate in that land. Under the present law, persons having or claiming to have an interest in unregistered land of a kind that entitles them to object to a disposition being made without their consent, may apply to lodge a caution with the registrar. In practice, in relation to the circumstances when the applicant's consent is required, this provision has been interpreted by the registrar to enable almost any person interested in the unregistered land to apply to lodge such a caution. Once a caution against first registration has been entered, no registration of the estate affected will be made until notice has been served on the cautioner and an opportunity given to appear before the registrar and oppose the application for first registration. There is no mechanism for "warning off" cautions against first registration. The cautioner will only be required to defend his or her caution when an application for first registration is made. Cautions against first registration are recorded on the index map and may be discovered by an official search of that map.

Section 15: Right to lodge

50. **Section 15** confers a right on any person who owns or who has an interest in a qualifying estate to lodge a caution. A qualifying estate is a legal estate which relates to land to which the caution relates, and is one of the four registrable estates i.e. an estate in land, a rentcharge, a franchise or a *profit à prendre* in gross. *Subsection (3)* provides that the owner of a freehold estate, or of a leasehold estate with a term of more than seven years, cannot lodge a caution in respect of that estate. This is a new provision. The reason for it is that cautions against first registration are not intended to provide a substitute for first registration. The goal of total registration requires that a person with an unregistered legal estate that is registrable should register it. This prohibition will, however, not apply for two years after the provisions are brought into force. Under the transitional arrangements in paragraph 14 of Schedule 12, the new provision will have effect two years after the rest of the section is brought into force. At the end of the two year period, subsisting cautions against first registration lodged by the landowner will cease to have effect unless an application has been made for first registration.

Section 16: Effect

51. A caution only gives the right to be notified of an application for first registration, so enabling an objection to be made. It has no effect on the validity or priority of any interest that the cautioner may have in the legal estate to which the caution relates. Where the cautioner objects, the matter must be referred to the adjudicator, unless the registrar is satisfied that the objection is groundless, or the matter can be determined

by agreement. *Subsection (4)* enables an agent for the applicant for first registration to give notice, and for this notice to be treated as having been given by the registrar. This enables a solicitor or licensed conveyancer acting for an applicant to give notice at the time the application is made, and so help to expedite the process. Those entitled to give such a notice will be prescribed by rules.

Section 18: Cancellation

52. This section provides a procedure for the cancellation of cautions against first registration. Only the owner of the relevant estate, or such people as are prescribed by rules, can apply for cancellation. Owners who have consented to the lodging of a caution against first registration are generally prohibited by *subsection (2)* from applying for it to be cancelled. Rules will, however, be able to specify circumstances in which owners should be entitled to apply (where, for example, the interest protected by the caution had terminated).

Section 19: Cautions register

53. This section requires the registrar for the first time to keep a register of cautions against first registration. Details of cautions against first registration are currently kept on a 'caution title'. The rules about the information to be kept in the register, and its form and arrangement, will enable it to be translated into electronic form, in due course.