

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 8: Indemnities

Entitlement

278. *Paragraph 1* sets out eight circumstances in which a person who suffers loss is entitled to be indemnified. Five of the grounds arise from a mistake of some description, either in the content of an official copy, a copy document referred to in the register, an official search, the register (the correction of which would result in that register being rectified) or the cautions register. In this context a mistake includes anything mistakenly omitted or included. The other three grounds relate to the rectification of the register (rectification is a correction which causes loss), the loss of a document lodged at the registry (which could include an electronic document that has been corrupted), or the failure to serve notice of an entry of a statutory charge (see section 50).
279. *Paragraph 1* contains three statements to assist with the interpretation of the listed circumstances. Firstly, until a decision has been made about the correction of a register by rectification, no entitlement to indemnity arises in respect of a mistake in a register. Once a decision is made, however, the right to indemnity arises whether or not the decision was made to rectify the register. It is possible for a person in whose favour rectification is made to suffer loss as the alteration is not retrospective and losses may have occurred before rectification is effected. Secondly, anyone suffering loss because of the upgrading of a class of title (see section 62) will be entitled to indemnity as if there had been a rectification of the register. This ensures that a person who suffered loss because the title was upgraded on application after the passage of twelve years could claim indemnity even though the registrar was not required to be satisfied as to the title before upgrading. Lastly, if the proprietor of a registered estate or a charge acted in good faith but relied on a forged document, then he shall be treated as if he had suffered loss because the register was rectified so as to be entitled to indemnity. Otherwise it could be argued that no loss had been suffered as legal title did not pass to him as a result of the forged document.