

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### *Schedule 12: Transition*

##### **Adverse possession**

321. It is necessary to make transitional provisions to accommodate the very substantial changes to the law relating to adverse possession and registered land that the Act will make, and to ensure that vested rights are preserved.
322. Where, immediately prior to the coming into force of the Act, a squatter has been in adverse possession for the requisite period, the registered proprietor will hold the registered estate on a bare trust for the squatter under section 75 of the 1925 Act. Such a squatter will have become entitled to be registered as proprietor of an estate under section 75. The Act adopts a double strategy. It preserves the rights of those who are entitled to be registered prior to its coming into force, but it also abolishes the trust in their favour.
323. The trust is abolished by the repeal without replication of section 75 of the 1925 Act. Instead, the Act confers, by *paragraph 18(1)*, on a squatter who is a beneficiary under a trust under section 75 immediately before it comes into force an entitlement to be registered. That entitlement will be a proprietary right. As such, as long as the squatter is in actual occupation the priority of his right will be protected in relation to registered dispositions. It will also constitute a defence to any proceedings for possession (*paragraph 18(2)*). If a squatter does establish this defence in such proceedings, the court must order the registrar to register him or her as proprietor of the estate to which his entitlement relates (*paragraph 18(3)*).
324. Although the right to be registered will be an overriding interest if the squatter is in actual occupation, a squatter's rights will, for a period of three years beginning on the day on which Schedule 6 (registration of adverse possessor) comes into force, be protected even if he or she is not in actual occupation where:
- in respect of first registration, the squatter has acquired a right under the Limitation Act 1980 before the coming into force of Schedule 1 (*Schedule 12, paragraph 7*).
  - in respect of a registered disposition, the squatter was immediately before the coming into force of section 97 entitled to be registered as the proprietor of an estate under section 75 (*Schedule 12, paragraph 11*).
325. As with rentcharges generally (see paragraph 14 of Schedule 6) transitional provisions for rentcharges held on trust under section 75 may be the subject of rules (*paragraph 18(5)*).