

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 12: Transition

Existing entries in the register

303. The Act will replace cautions against dealings, inhibitions, existing notices and restrictions with notices and restrictions. The transitional provisions ensure that such existing entries have a continuing effect.
304. So, under *paragraph 2*, existing notices under the Land Registration Act 1925 are to have the same effect as notices under the Act. Similarly, restrictions and inhibitions are to have the same effect as restrictions under the Act.
305. *Sections 55* (effect of cautions against dealings) and *56* (general provisions as to cautions) of the Land Registration Act 1925 will continue to have effect in relation to cautions against dealings, so that, (depending on any rules made under *paragraph 2(4)*) the present system of “warning-off” a caution could continue.
306. The entries referred to in *paragraph 3* are notices of deposit or notices of intended deposit of the land or charge certificate entered in the register prior to 3 April 1995 which operate as a caution under section 54 of the 1925 Act.

Existing cautions against first registration

307. *Paragraph 4* provides that section 56(3) of the 1925 Act shall still apply to cautions against dealings. Under section 56(3) any person who lodges a caution without reasonable cause is liable to pay such compensation as may be just to any person who may sustain damage from such lodging.

Pending applications

308. *Paragraph 5* provides that the 1925 Act will continue to apply to an application for a notice, registration, inhibition or caution against dealings which is pending immediately before the 1925 Act is repealed.
309. *Paragraph 6* provides that subsections (1) and (2) of section 53 of the 1925 Act shall continue to apply to applications for cautions against first registration which are pending when those subsections are repealed. The subsections deal with who may apply and the evidence to be lodged.

Former overriding interests

310. *Paragraph 7* is discussed below under *Adverse possession*.
311. At present, the unregistered interest of both a person in actual occupation and also one in receipt of rents and profits is protected as an overriding interest, unless enquiry of that person is made and the rights are not disclosed (section 70(1)(g) of the 1925 Act). The

Act confines protection of this class of interest to those in actual occupation. [Paragraph 8](#), however, provides that an interest which, immediately before the coming into force of Schedule 3, was an overriding interest under section 70(1)(g) of the 1925 Act by virtue of a person's receipt of rents and profits is to be an unregistered interest that overrides registered dispositions under Schedule 3, but it will cease subsequently to be such an interest if that person ceases to be in receipt of rents and profits.

- 312. Under *paragraph 9*, where an easement or *profit à prendre* is an overriding interest at the time when the Act comes into force, but would not be under the provisions of paragraph 3 of Schedule 3, its priority will be protected without the need for registration. So, those who have the benefit of such rights are not at risk of losing them.
- 313. Under [paragraph 10](#), for three years after the Act is brought into force *any* legal easement or *profit à prendre* that is not registered will have protected priority. Apart from those easements and *profits* that fall within paragraph 9, that overriding status will cease three years after the date on which the Act is brought into force. There will, therefore, be a period of three years' grace before the new arrangements take effect, except in relation to equitable easements and *profits*. Any equitable easements and *profits* created after the Act is brought into force will need to be protected by registration.
- 314. [Paragraph 11](#) is discussed below under *Adverse possession*.
- 315. Under section 70(1)(k) of the 1925 Act leases granted for a term not exceeding 21 years are overriding interests. The effect of [paragraph 12](#) will be that where before the coming into force of Schedules 1 and 3 a lease was an overriding interest under section 70(1)(k) it will be taken to be a lease within paragraph 1 of the appropriate Schedule and so continue to override first registration or a registered disposition.
- 316. Similarly, where a local land charge whose status as such was preserved by the Local Land Charges Act 1975 is presently protected under section 70(1)(i) it will, by virtue of [paragraph 13](#), be protected under paragraph 6 of Schedule 1 or Schedule 3

Cautions against first registration

- 317. [Paragraph 14](#) modifies section 15 (right to lodge) so that for a two-year period beginning on the day that section 15 comes into force a person claiming to own a freehold estate in land or leasehold estate in land having more than seven years to run may lodge a caution against first registration.
- 318. [Paragraph 15](#) has the effect that Her Majesty may lodge a caution against first registration in respect of Her demesne land for a ten year period (or such longer period as rules may provided) beginning on the day that section 15 comes into force.
- 319. [Paragraph 16](#) has the effect that the Act will apply to cautions against first registration lodged under section 53 of the 1925 Act as if they had been lodged under section 15 of the Act.

Applications under [section 34](#) or [43](#) by cautioners

- 320. [Paragraph 17](#) provides that a cautioner in respect of a caution against dealings under the 1925 Act may only apply for a notice or restriction if at the same time he or she applies to withdraw the caution.

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\(5\)](#)).

Indemnities

326. Under [paragraph 19](#) the provisions in Schedule 8 (Indemnities) applies not only to claims arising after the Act comes into force but to those made before then but not by then settled by agreement or finally determined.
327. Prior to the coming into force of the Land Registration Act 1997 on 27 April 1997 the registrar's consent to incurring costs only applied to costs incurred in taking or defending any proceedings (other than an application to the court for indemnity). The 1997 Act introduced the wider requirement of consent for costs and expenses of whatever nature but preserved the pre-27 April 1997 position in relation to proceedings, negotiations or other matters begun before 27 April 1997. The effect of [paragraph 19\(2\)](#) is to preserve this position.

Implied indemnity covenants on transfers of pre-1996 leases

328. In relation to leases granted prior to 1996, a tenant who assigns a lease remains liable to the landlord on the covenants in that lease for its entire duration notwithstanding any assignment by him or her of that lease. Such "first tenant liability" has been abolished for leases granted after 1995 by the Landlord and Tenant (Covenants) Act 1995. However, leases granted prior to 1996 will continue in existence for many years. As regards such leases, section 24(1)(b) and (2) of the Land Registration Act 1925 made provision for implied indemnity covenants on the part of the transferee in favour of the transferor, and, in relation to a transfer of part, an implied indemnity covenant on the part of the transferor in favour of the transferee. Section 24(1)(b) and (2) of the Land Registration Act 1925 were repealed prospectively by the Landlord and Tenant

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

(Covenants) Act 1995, but only in respect of “new tenancies” - in essence those granted after the Act was brought into force.

329. *Paragraph 20* replicates in more comprehensible form the effect of section 24(1)(b) and (2) in relation to the assignment of leases which are not “new tenancies” for the purposes of the 1995 Act.