

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### Part 7: Special Cases

##### The Crown

127. The main categories of Crown land are:

- land belonging to Government departments;
- land held by the monarch in right of the Crown (the Crown Estate);
- the Crown's Private Estate;
- the two Royal Duchies of Cornwall and Lancaster; and
- a residual category of land which includes the royal palaces and parks.

The Act addresses the following issues in relation to Crown land:

- registration of title to Crown land that is held by the monarch in demesne;
- escheat of registered land
- representation in relation to Crown and Duchy land; and
- the disapplication of certain requirements relating to Duchy land.

#### *Section 79: Voluntary registration of demesne land*

128. Uniquely, the Crown has dominion over all land as lord paramount. Demesne land is land in which no fee simple subsists and so belongs to the Crown absolutely. Examples of demesne lands of the Crown are most foreshore, land which has escheated to it, and its ancient lands which have never been granted in fee. In the absence of a fee simple, Her Majesty cannot register demesne land, since only estates in land are registrable. This means She is unable to get the benefits of registration, current and under the Act.

129. *Section 79* enables Her Majesty, should She so wish, to register demesne land. She can do this by granting to Herself an estate in fee simple absolute in possession out of the demesne land. An application must then be made for registration of that estate within two months (or such extended period as the registrar may order) or the grant will be invalidated. This ensures that the power to grant a fee simple can only be employed to secure the registration of the title to the land and that a fee simple in the Crown's own favour is not inadvertently created if, for some reason, the grant is made but no registration takes place.

#### *Section 80: Compulsory registration of grants out of demesne land*

130. This section provides for the compulsory registration of the specified grants out of demesne land. The provision is necessary because section 4(1) only applies to certain

dispositions of, and grants out of, existing estates and demesne land is not an estate in land. It has no equivalent in the current legislation because of differences of drafting in specifying the dispositions which are subject to the requirement of compulsory registration in the 1925 Act, and in the Act.

### ***Section 81: Demesne land: cautions against first registration***

131. **Section 81** has the effect of deeming demesne land to be, for the purposes of section 15, held for an estate in fee simple. This enables Her Majesty, and other people with an interest affecting the land, to lodge a caution against first registration in respect of the land. Lodging a caution against first registration is not, however, a substitute for first registration of title, and substantive registration should occur wherever possible. Paragraph 14(1) of Schedule 12 relaxes this rule generally for the first two years after commencement. In the case of the Crown, it is relaxed by paragraph 15(1) for a period of ten years after commencement, since the Crown will need time to register all demesne land. At the end of the ten 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 82: Escheat etc***

132. Escheat occurs where a freehold estate determines, most commonly where the freehold is disclaimed in cases that involve insolvency – for example, where the liquidator of a company disclaims a freehold owned by that company (perhaps because the charges secured on it are greater than its value). Normally, when this happens the Crown or one of the Royal Duchies becomes entitled to the land. The land will remain subject to any charges or other encumbrances created by the previous owner or his predecessors.
133. Some 300 - 500 freehold estates escheat to the Crown every year. When that happens, the title has to be removed from the register because the estate no longer exists. This works against the aim of achieving complete registration. The current law relating to escheat also creates significant problems for the effective management of escheated land by the Crown, if it is to avoid the liabilities attaching to the property and which have led to the escheat. The uncertainties in relation to liability, which affect both unregistered and registered land, go beyond the scope of the current Act. The aim of section 82 is simply to avoid a registered estate having to be removed from the register. It is envisaged that when land escheats, the Treasury Solicitor or the Crown Estate will apply for the entry of a restriction in the register. This is likely to provide that no disposition is to be made of the estate except by order of the court, or by or on the direction of the Crown Estate. When a new fee simple is granted, then upon application it would be registered with a new title number. The old title would then be closed. Any encumbrances to which the former title was subject and which still subsisted in relation to the new estate would be entered in the register of the new title.
134. *Subsection (2)* gives specific guidance as to some of the rules that may be made. This will make it possible to require (for example) that appropriate restrictions are entered in the register when a disclaimer occurs; that the register records the encumbrances to which the determined estate was subject and to which the land therefore remains subject; and ensure that when a new estate is eventually granted the old title is closed and the entries of any encumbrance is carried across.

### ***Section 84: Disapplication of requirements relating to Duchy land***

135. The type of requirement that is being disappplied by this section is that which provides that a transfer of registered land by the Duchy of Cornwall needs to be enrolled in the Duchy office within six months after it is made to be valid and effectual against the Duke of Cornwall.

### **Section 85: *Bona vacantia***

136. Registered estates and charges (and other property) pass to the Crown as *bona vacantia* where there is no other beneficial owner. The most common example is probably where a company has been dissolved and a registered estate or charge belonging to it beneficially has not been disposed of. In such a case the registered estate or charge is not destroyed (unlike when land escheats to the Crown on disclaimer) but vests in the Treasury Solicitor on behalf of Her Majesty or in the Duchies of Cornwall or Lancaster.
137. This section enables the Lord Chancellor to make rules about how the passing of a registered estate or charge as *bona vacantia* is to be dealt with for the purpose of this Act.

### **Pending Actions etc.**

### **Section 86: *Bankruptcy***

138. This section makes special provision for the effect of bankruptcy, to reflect the provisions of the Insolvency Act 1986. It ensures that where an individual is the sole registered proprietor of a registered estate or charge, for his or her own benefit, an entry is made in the register that the estate or charge is subject to a bankruptcy petition presented against that person, or a bankruptcy order made against him or her.
139. At present, when a bankruptcy petition is filed at the court, the relevant court official must apply to register the petition in the register of pending actions kept by the registrar under the Land Charges Act 1972. Where the debtor is the registered proprietor of any land or charge, this can have no direct effect, because registration of a land charge does not affect registered land. This registration serves, however, to trigger a procedure for ensuring that an appropriate entry is made in the register of title. Using the index of the names of registered proprietors, the registrar will attempt to ascertain whether the debtor is the sole registered proprietor of any land or charge in the register. If it appears that the debtor is, the registrar must register a creditors' notice against the title of any land or charge that appears to be affected. This section replicates this procedure.
140. A similar procedure applies when a debtor is adjudicated bankrupt and a bankruptcy order is made against him or her. At present, the registrar is then required to enter a bankruptcy inhibition. Again this section replicates this procedure but because the Act prospectively abolishes inhibitions, the registrar is required to protect a bankruptcy order by the entry of a restriction.
141. *Subsection (5)* provides that in the case of a debtor who has been adjudged bankrupt, a disponee to whom a registrable disposition is made is not subject to the title of the debtor's trustee in bankruptcy, provided that:
- i) the disposition is made for valuable consideration
  - ii) he or she acts in good faith;
  - iii) at the time of the disposition, no notice or restriction was entered in relation to the registered estate or charge; and
  - iv) the person to whom the disposition was made had no notice of the bankruptcy petition or the adjudication.
142. The approach followed is that in the Insolvency Act 1986 which protects a *bona fide* purchaser for value without notice.

### **Section 87: *Pending land Actions, writs, orders and deeds of arrangement***

143. The matters to which section 87 relates are all the things which, in the case of unregistered land, may be registered under sections 5 to 7 of the Land Charges Act 1972, except for bankruptcy petitions and orders (which are dealt with under section 86).

Section 59 of the 1925 Act provides for such matters to be protected by a caution against dealings, a form of entry which is abolished by the Act. Section 49(1)(f) to (k) of the 1925 Act enables certain matters also to be protected by means of a notice. The effect of these matters being treated by the section as interests affecting a registered estate or charge is that, if their priority is not protected, a disponee would take free from them under sections 29 and 30. The fact that none of the matters is capable of falling within paragraph 2 of Schedule 1 or Schedule 3 means that their priority has to be protected by means of an entry in the register, under the Act either a notice or a restriction. The fact that a deed of arrangement and an order appointing a receiver or sequestrator cannot be the subject of a notice means that the only way of protecting such a deed or order is by means of a restriction.

## **Miscellaneous**

### ***Section 89: Settlements***

144. The Land Registration Act 1925 contains detailed provisions about its application to settlements under the Settled Land Act 1925. Settlements are not very common and after 1996 the creation of new settlements under the Settled Land Act 1925 has not been possible, so, in time, settlements will disappear. For these reasons this section provides for rules to make provision for the Act's purposes in relation to the application to registered land of the enactments relating to settlements under the Settled Land Act 1925, rather than setting out the provisions in the Act.

### ***Section 90: PPP leases relating to transport in London***

145. London Transport Public/Private Partnership leases will arise out of the arrangements for the future running of the London underground railway. These leases will include underground railway lines, stations and other installations. At present such leases: would not trigger first registration; would not be registrable dispositions but would take effect as if they were; would be incapable of substantive registration; and their priority would be protected on first registration or on a registered disposition, without being on the register. This section provides that such leases shall have a similar status under the Act.