

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 1: Preliminary

Section 1: Register of title

22. This section continues the requirement for a register of title to be kept, under the responsibility of the Chief Land Registrar. Rules may govern the information to be kept in the register, and its form.

Section 2: Scope of title registration

23. This section sets out the matters in relation to which the Act makes provision for registration. Section 2(a) is concerned with the unregistered estates which are capable of being registered. These are dealt with in Part 2, Chapter 1 of the Act. Section 2(b) is concerned with legal interests created by a disposition of land the title to which is registered. These are addressed in Part 3 of the Act.

Part 2: First Registration of Title

Chapter 1: First registration

Voluntary registration

Section 3: When title may be registered

24. This section makes provision for the voluntary first registration of title. *Subsection (1)* specifies the legal estates that may be registered. These are:
- a freehold or leasehold estate in land;
 - a rentcharge;
 - a franchise (a grant from the Crown such as the right to hold a market or fair, or to take tolls; this provision enables franchises to be protected by registration, rather than by means of a notice or caution); and
 - a *profit à prendre* in gross (these are rights with an independent existence such as the right to hunt or shoot game; these also have previously only been able to be protected by an entry against the title of the relevant land, if that land is registered, and will now be able to be registered in their own right, since these rights are often sold and leased and can be very valuable).
25. *Subsection (2)* continues the existing law, stipulating who is entitled to apply to be registered as the first registered proprietor. The first entitlement belongs to the legal owners of the land. The second group comprises people who are entitled to have the legal estate vested in them but where, for example, the title is currently vested in a nominee on their behalf. *Subsection (6)* provides that a person may not apply to be

registered if he or she is a person who has contracted to buy land. That is because the contract will be completed by a conveyance, and that conveyance will be subject to compulsory registration under section 4 (fees for voluntary first registration are likely to be lower than those for compulsory first registration).

26. *Subsection (3)* changes the existing law. Currently, only leases with more than 21 years to run may be registered voluntarily. This is reduced to more than seven years, in furtherance of the objective that all title to land in England and Wales should be registered. *Subsection (4)* provides that leases with seven years or less to run may, however, be registered if the right to possession is discontinuous. Such leases are not very common, but are sometimes used for time-share arrangements. *Subsection (7)* makes provision for a situation in which a person holds land under one lease, but has been granted another to take effect on or shortly after the first expires. If, taken together, the terms exceed seven years, the lease will be registrable.
27. *Subsection (5)* provides that a mortgage term created by demise or sub-demise is not registrable when there is a subsisting right of redemption.

Compulsory registration

Section 4: When title must be registered

28. *Section 4* sets out the events that trigger the compulsory first registration of title. These were updated and extended by the Land Registration Act 1997, and the Act therefore largely replicates the existing position. First, compulsory registration is triggered by specified types of transfer of a qualifying estate, which is defined as either a legal freehold estate, or a legal lease with more than seven years to run. The transfers are those made:
 - i) for valuable or other consideration (which under *subsection (6)* includes estates which have a negative value);
 - ii) by way of gift (which *subsection (7)* provides will include transfers for the purposes of constituting a trust under which the settlor does not retain the whole of the beneficial interest, or transfers for the purpose of uniting the legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest);
 - iii) under a court order; and
 - iv) by means of an assent (including a vesting assent).
29. Under *subsection (3)*, transfers do not include transfers by operation of law (where, for example, an owner's property vests in personal representatives on death). Under *subsection (4)* compulsory registration will not apply to transfers involving:
 - i) the assignment of a mortgage term (where there is a mortgage by demise or sub-demise, and the mortgagee assigns the mortgage by transferring the mortgage term); or
 - ii) where a lease is assigned or surrendered to the owner of the immediate reversion where the term is to merge in that reversion (because the estate transferred disappears).
30. Registration will be compulsory where section 171A of the Housing Act 1985 applies (i.e. where a person ceases to be a secure tenant because his or her landlord disposes of an interest in a house to a private sector landlord (*subsection (1)(b)*, replicating the current law)). Compulsory registration will also apply to the grant of leases out of freehold land or a leasehold, with more than seven years to run, where the lease is granted for valuable or other consideration, by way of a gift, or under a court order, apart from the exceptions in the section.

31. Compulsory registration will also apply where a lease is granted to take effect more than three months after it is granted. This provision is new, and is designed to avoid a conveyancing trap that such reversionary leases may create. At present, a lease granted for 21 years or less, which has not yet taken effect cannot be registered or protected by the entry of a notice in the register against the landlord's title but takes effect as an overriding interest. A buyer of land so affected may not be able to discover the existence of the lease, because the tenant will not be in possession.
32. Grants of a lease out of an unregistered legal estate under the right to buy provisions of Part 5 of the Housing Act 1985 will also be subject to compulsory registration (replicating the present law). Compulsory registration will also apply to the creation of a protected first legal mortgage (i.e. one which on creation ranks in priority ahead of other mortgages affecting the mortgaged estate) out of a legal freehold estate, or a lease with more than seven years to run.

Section 5: Power to extend section 4

33. This section enables the Lord Chancellor to add new events to those that trigger compulsory registration, by statutory instrument to be laid before Parliament. There is a similar power under the present law, although the new one is exercisable only after consultation. To be added, events must relate to unregistered estates specified in the section, which correspond to those listed as capable of registration with their own titles under section 3. Under *subsection (3)*, the power may not be exercised to require the compulsory registration of an estate granted to a mortgagee, because no benefit would be derived from requiring a charge over land to be registered, if the title to the estate affected remained unregistered.

Section 6: Duty to apply for registration of title

34. This section imposes a duty on the responsible estate owner to apply for registration within the period for registration if the registration requirement applies. Where registration is triggered by the creation of a protected legal mortgage (under section 4 (1) (g)), the mortgagor must apply for the registration of the estate charged by the mortgage. As now, there is a power by rules to make provision to enable the mortgagee to require the estate charged by the mortgage to be registered, whether or not the mortgagor consents. In other cases it is the transferee or grantee who must apply. The period for registration is two months beginning with the date on which the relevant event occurs (*subsection (4)*), but *subsection (5)* enables the registrar, on application by an interested person, to specify a longer period for registration if there is a good reason for doing so.

Section 7: Effect of non-compliance with section 6

35. The effect of not complying with the requirement of registration is:
 - i) where the event is a transfer, the transfer becomes void and the transferor hold the legal estate on a bare trust for the transferee (*subsection (4)* avoids the possibility which arises under *subsection (1)* of converting an unregistered fee simple into a determinable fee, which is not a legal estate); and
 - ii) where the event is the grant of a lease or the creation of a protected mortgage, the grant or creation is void and takes effect instead as a contract made for valuable consideration to grant or create the lease or mortgage concerned.
36. If a transaction has become void under these provisions and the registrar then makes an order extending the period in which an application for registration can be made, it is treated as having never become void.

Section 8: Liability for making good void transfers etc

37. If it is necessary to repeat a transaction because it became void under the provisions in Section 7, the person who is responsible for the registration is liable to the disponor or mortgagee for all the proper costs of and incidental to the repeated disposition. He or she is also liable to indemnify the disponor or mortgagee in respect of any other liability reasonably incurred because of the failure to register.

Classes of Title

Section 9: Titles to freehold estates

38. Where a person applies to be registered as proprietor of a freehold estate, he or she may (as now) be registered with an absolute, qualified or possessory title. A person may be registered with absolute title if the registrar considers that the title is such as a willing buyer could properly be advised to accept. Defective titles may still be registered as absolute if the registrar considers that the defect will not cause the holding under the title to be disturbed. Almost all freehold titles are, in practice, absolute. A person may, however, be registered only with qualified title, if the registrar considers that the applicant's title can only be established for a limited period, or subject to certain reservations. Qualified title is extremely rare but it might be appropriate, where, for example, the transfer to the applicant had been in breach of trust. Possessory title is only appropriate where the applicant is either in actual possession or in receipt of the rent and profits from the land, and there is no other class of title which may be registered. In practice, land is registered with a possessory title where the basis of the application is adverse possession, or where the applicant's title cannot be proved (usually because the title deeds have been lost or destroyed).

Section 10: Titles to leasehold estates

39. A person applying to be registered as proprietor of a leasehold estate may be registered (in substance, as now), as proprietor with an absolute, good leasehold, qualified or possessory title. Absolute title may be given if the registrar considers that the title is such as a willing buyer could be properly advised to accept, and approves that the lessor had good title to grant the lease. It is, therefore, only appropriate where the superior title is either registered with absolute title, or, if unregistered, has been deduced to the registrar's satisfaction. Again, even defective titles can be registered as absolute, if the registrar considers that the defect will not cause the holding under it to be challenged. A good leasehold title is such that a willing buyer could properly be advised to accept. It will be appropriate where the superior title is neither registered nor deduced. It can be given in the case of a defective title, if the defect will not cause the holding to be challenged. Qualified title may be registered if either the applicant's title or the lessor's title to the reversion can only be established for a limited period, or is subject to reservations. The circumstances for registration of a possessory title are the same as with freehold.

Effect of first registration

Section 11: Freehold estates

40. **Section 11** sets out the effect of first registration as the proprietor of a freehold estate. **Subsections (2) to (5)** prescribe the effect of registration of a freehold with absolute title. Where a person is first registered as proprietor of a freehold estate, **subsection (3)** provides that the legal estate is vested in him or her together with all interests subsisting for the benefit of the estate. The legal estate will therefore vest in the first registered proprietor together with such interests as (for example) the benefit of any easement and *profit à prendre* that is appurtenant to the estate.

41. *Subsection (4)* provides that on first registration with absolute title, the estate is vested in the proprietor subject only to the following interests affecting the estate at the time of registration :
- i) Interests which are the subject of an entry in the register in relation to the estate. As this provision only applies to first registration under the Act, the interests which may be subject to an entry in the register will be registered charges, notices and restrictions.
 - ii) Unregistered interests which fall within any of the paragraphs of Schedule 1 (that is, those that override first registration).
 - iii) Interests acquired under the Limitation Act 1980 of which the proprietor has notice. This provision is new and is designed to meet the following situation. A takes adverse possession of unregistered land belonging to B. After 12 years' adverse possession, B's title is extinguished and A becomes owner of the land. A then abandons the land and B resumes possession of it. Before B has been back in possession of the land for 12 years he sells it to C. B sells as paper owner in accordance with the title deeds, but A is in fact the true owner. The sale triggers compulsory registration and C applies to be first registered proprietor. Subject to the transitional provisions contained in Schedule 12 paragraph 7, the rights of a squatter will not under the Act take priority on first registration or on a registered disposition without the need for registration, as they presently do. By virtue of section 11(4)(c), C will take free of A's rights unless, at the time of registration, he had notice of them. If C is registered as proprietor even though he has notice of A's rights, A will be able to seek alteration of the register. C is bound by her rights and so alteration of the register will not involve rectification. As the register is inaccurate it may be altered to give effect to her rights by registering her as proprietor in place of C, as provided in Schedule 4, paragraphs 2 and 5.
42. *Subsection (5)* deals with the situation where the first registered proprietor is not entitled to the estate solely for his or her own benefit. The effect of subsection (5) is that where the first registered proprietor holds the land on trust, the estate will be vested in him or her subject to the rights of the beneficiaries under that trust.
43. *Subsections (6) and (7)* prescribe the effects of registration with qualified or with possessory title.

Section 12: Leasehold estates

44. **Section 12** makes provision for the effect of first registration of a person as the proprietor of a leasehold estate. *Subsections (2), (3), (4) and (5)* prescribe the effect of registration of a lease with absolute title. In most respects, the registration of a leaseholder with absolute title has the same effect as registration of a freeholder with absolute title. The only difference is that where a leasehold estate is registered with absolute title, it is vested in the leaseholder subject to implied and express covenants, obligations and liabilities incident to the estate as provided by subsection (4). Thus the first registered proprietor of a lease will take subject to such proprietary interests as restrictive covenants relating to the premises leased.
45. *Subsections (6) to (8)* prescribe the effects of the registration of a lease with good leasehold title, qualified title and possessory title respectively.

Dependent estates

Section 13: Appurtenant rights and charges

46. **Section 13** empowers the Lord Chancellor to make rules in relation to the registration of dependent legal estates. First, rules may make provision for the entry in the register of a registered proprietor as the proprietor of an unregistered legal estate which subsists

for the benefit of a registered estate. Rules made under this provision are meant to cover the situation where, on or subsequent to first registration, a registered proprietor has, or is granted, the benefit of a legal estate, such as an easement or a *profit à prendre*, over unregistered land. Rules will enable the benefit of such an estate to be entered in the register.

47. Secondly, rules may make provision for the registration of a person as the proprietor of an unregistered legal estate which is a charge on a registered estate. Rules under this provision are intended to cover the situations where:
- i) On first registration, the land is already subject to a legal mortgage.
 - ii) Subsequent to first registration, a charge is created that does not have to be registered to have effect at law, as in relation to certain local land charges (cf section 55 below).

In such circumstances, rules may enable the registration of the mortgagee as the proprietor of a registered charge.

Supplementary

Section 14: Rules about first registration

48. **Section 14** confers a power to make rules in relation to various matters concerning first registration.

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.

Part 3 : Dispositions of Registered Land

Powers of disposition

54. One way in which a title to land may be defective is that owners can have limited powers, and may purport to make a disposition beyond them. The current legislation does not clearly establish that a person can rely upon the register to say whether there are any limitations on the powers of a registered proprietor, and safely act in reliance upon it. This section of the Act corrects that.

Section 23: Owner's powers

55. This section states the unlimited powers of an owner. It makes one change to the current law. Under the existing law, there is a presumption that a registered charge takes effect as a charge by way of legal mortgage, unless there is clear provision to the contrary, or it is made or takes effect as a mortgage by demise or sub-demise. Mortgages by demise or sub-demise are now in practice obsolete, because of the advantages of a charge (that enables freeholds and leaseholds to be made the subject of a single charge rather than separate demises or sub-demises; the grant of a charge of a lease is not thought to amount to a breach of the common-form covenant against subletting without the landlord's consent; and the form of legal charge is short and simple). *Subsection (1) (a)* therefore abolishes them, with prospective effect.

Section 24: Right to exercise owner's powers

56. Owner's powers can be exercised both by the registered proprietor, or someone entitled so to be registered, such as the personal representatives of an owner who has died.

Section 25: Mode of exercise

57. *Subsection (1)* enables the Lord Chancellor to prescribe the form and content of any registrable disposition of a registered estate or charge. This subsection would cover, for example, prescribing the form of a transfer. It is wider than the powers in the Land Registration Act 1925 in that it would be possible for the Lord Chancellor to prescribe the form of any registered charge. *Subsection (2)* provides that the Lord Chancellor may make rules as to form and content covering any kind of disposition (i.e. not just registrable dispositions) which depends for its effect on registration.

Section 26: Protection of disponees

58. The effect of section 26 is that a donee is entitled to proceed, in the absence of such an entry, on the basis that there are no limitations on the owner's powers and the donee's title cannot be called into question. Under *subsection (3)*, however, the disposition will not be rendered lawful. Donors who have acted beyond their powers can, therefore, be called to account, and a donee may not escape liability if privy to the donor's conduct.
59. For example, where the disposition is in fact unlawful, the consequences of that unlawfulness can be pursued so long as these do not call into question the validity of the donee's title. The example may be given of trustees of land, A and B, who had limited powers of disposition, but who failed to enter a restriction in the register to reflect this fact. If they transferred the land to a buyer, C, in circumstances that were prohibited by the trust, they would commit a breach of trust. Furthermore, although C's title could not be impeached, the protection given by the section does not extend to any independent forms of liability to which she might be subject. Thus if C knew of the trustees' breach of trust when the transfer was made, she might be personally accountable in equity for the knowing receipt of trust property transferred in breach of trust.
60. Although cautions against dealings with the land are being abolished, cautions entered in the register under the existing legislation will continue in force under the transition arrangements in Schedule 12, and may be a means by which an underlying limitation on the proprietor's powers is reflected in the register.

Registrable dispositions

Section 27: Dispositions required to be registered

61. This section sets out those dispositions of registered land that must be completed by registration if they are to operate at law. There are similar, but not identical provisions in the current legislation (in particular, sections 18 and 21 of the 1925 Act). Registrable dispositions, when registered, confer a legal estate, and are therefore given special priority provided for in sections 28 to 30. In principle, all dispositions that create or transfer a legal estate by express grant should be subject to some form of registration, whether with their own titles or by the entry of some form of notice on the title which is subject to them. The section therefore provides that any transfer of, or the grant or reservation of any legal estate out of, registered land, is a registrable disposition. This includes dispositions by operation of law, but with some limited exceptions.
62. *Subsection (2)(a)* provides that transfers of a registered estate, i.e. a legal estate which has registered title and is not a registered charge, must be entered on a register. There are three exceptions. The first is where a sole individual proprietor dies, where title to the estate vests by operation of law in the executors, if there are any, or in the Public Trustee until such time as there is a grant of administration. Personal representatives can apply to alter the register to bring it up to date by registering the applicant as proprietor. Secondly, when a sole individual proprietor becomes bankrupt, his or her estate will vest without any conveyance or transfer in the trustee for bankruptcy immediately on appointment (or in the Official Receiver in default of any such appointment), who can then apply to be registered. Thirdly, when a company is dissolved, its property

is deemed to be *bona vacantia* and therefore vests in the Crown (or Royal Duchies). These exceptions are inevitable, and apply also to the transfer of registered charges (*subsection (3)*).

63. An explanation of the categories of lease which are registrable under *subsection (2)(b)* is to be found in paragraphs 30 to 32. An explanation of the two categories of lease granted out of the registered estate that are not registrable (a lease of less than seven years or less, or a London Transport Public/Private Partnership Lease) is to be found in paragraphs 26 and 145.
64. Lease out of franchises and manors are made registrable under *subsection (2)(c)*. They are both incorporeal rights of such a nature that the existence of a lease of them may not be apparent unless the lease affected is registered. The registration requirements vary. Where the term of the lease is for more than seven years, the grantee or successor in title must be entered in the register as the proprietor of the lease, and a notice in respect of the lease must also be entered (Schedule 2, paragraph 4). If the term is seven years or less a notice in respect of the lease must be entered in the register. (Schedule 2, paragraph 5).
65. *Subsection (2)(d)* relates to easements and *profits à prendre*, whether in gross or appurtenant to an estate. There are two exceptions. The Commons Registration Act 1965 prohibits the registration under the 1925 Act of rights of common that are registrable under the 1965 Act. This prohibition will continue under the Act. Secondly, an easement, right or privilege granted under the operation of section 62 of the 1925 Act (a so called ‘word-saving provision’ that is taken to import certain words into a conveyance unless its effect is excluded) is not regarded as an express grant for these purposes, so as to require registration. Under *subsection (2)(e)*, both:
- i) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
 - ii) a right of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose to a legal rentcharge;
- are made registrable dispositions (these being the interests provided for in section 1(2)(b) and (e) of the Law of Property Act 1925).
66. Most grants of a legal charge are registrable dispositions. *Subsection (5)(c)* exempts local land charges. A local land charge operates at law without the need for registration. Nor does the priority of a local land charge need to be protected by registration. But a local land charge which secures the payment of money cannot be realised unless it is a registered charge. Section 55 provides that a charge over registered land which is a local land charge may only be realised if the title to the charge is registered.

It should be noted that one of the effects of the introduction of electronic conveyancing as provided for in Part 8 will be that dispositions will be simultaneously executed, communicated electronically to the registrar, and registered and section 93 contains powers for that to be made compulsory. The general principle set out in *subsection (1)* of this section is likely, in time, to be superseded.

Effect of dispositions on priority

67. [Sections 28 to 30](#) provide a clear statutory statement of the principles that determine the priority of interests in registered land. The essence of the present law is that the priority of interests in registered land is normally determined by the date of their creation, regardless of whether or not they are protected in the register. This has been laid down in relation to minor interests on the basis that such interests are equitable, and the rules that determine the priority of competing minor interests are therefore the traditional rules relating to competing equitable interests. The general maxim is that ‘where the equities are equal, the first in time prevails’. That maxim is not always easy to apply, because of uncertainty as to when the equities are not equal, namely in cases of negligence or gross carelessness. As an exception to the general principle, registered dispositions

are given special effect or priority when made for valuable consideration: any interests not protected in the register are subordinated to a registered disposition, unless the unregistered interests override.

68. Under the proposals on electronic conveyancing, it will not be possible to create or transfer many interests in registered land expressly except by simultaneously registering them or protecting them by a notice in the register. In time, therefore, the register will become conclusive as to the priority of such interests, because the date of their creation and their registration will be the same. The provisions of these sections will therefore, over time, also become obsolete.

Section 28: Basic rule

69. This section provides that the priority of an interest affecting a registered estate or charge is not affected by a disposition (whether or not the interest or disposition is registered). The priority of any interest in registered land is therefore determined by the date of creation. Unlike the current rule, this is an absolute one, subject only to the exceptions provided for by the Act.

Section 29: Effect of registered dispositions: estates

Section 30: Effect of registered dispositions: charges

70. **Section 29** preserves the principal exception to the basic rule to be found in the current law. If a registrable disposition of either a registered estate or a registered charge is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate or charge immediately before the disposition whose priority is not protected at the time of registration. The disponee in the later disposition will take the estate free of the unprotected interest (which may not be destroyed, and may remain valid against interests other than that of the disponee under the registered disposition).
71. The principle applies only to dispositions made for valuable consideration. As under the current law, that will not include a nominal consideration in money, where the general rule of priority applies.
72. Under the current law, valuable consideration does include a transfer of land in consideration of marriage. The Law Commission and the Land Registry recommend that this should not continue on the grounds that it is an anachronism. Such a transfer is normally a wedding gift, and there is no reason for treating it differently from gifts in general. The section therefore amends the current law by leaving out this exception.

Section 31: Inland Revenue charges

73. **Section 31** provides that the effect of a disposition of a registered estate or charge on an Inland Revenue charge under section 237 of the Inheritance Tax Act 1984 is to be determined in accordance with the relevant provisions of the Act, and not under sections 28 to 30 of the Act.

Part 4: Notices and Restrictions

74. **Part 4** of the Act contains provisions on notices and restrictions. It is concerned primarily with the protection of third party rights over or in relation to a registered estate or charge. At present, a person may lodge a caution against dealings with a registered estate or charge in respect of interests which under the Act can be protected by a notice and other types of interest. A caution does not confer priority; only the right to receive notice of dealings with the affected registered estate or charge and to raise objections. Under the Act it will no longer be possible to lodge such a caution but existing cautions will remain in the register by virtue of the transitional provisions contained in paragraphs 1 and 2(3) of Schedule 12.

Notices

Section 32: Nature and effect

75. This section explains that a notice is an entry, made in the register, in respect of the burden of a third party's interest. The entry is to be made against the registered estate or registered charge that is said to be burdened. As under the Land Registration Act 1925, if the interest is not valid (for example, if parties had entered into an agreement that was not a valid contract) the entry of a notice will not validate it.

Section 33: Excluded interests

76. **Section 33** provides that there are five kinds of interest which cannot be the subject of a notice. The five categories set out in this section cover:

- Interests under either a trust of land or a settlement – any interest under any form of trust is excluded because the purpose of a notice is to protect an interest in registered land by binding any person who acquires the land. An interest under a trust will not bind, say, a buyer of land if the buyer pays the purchase money to the trustees and there are at least two of them or a trust corporation. (A restriction is a proper form of entry to ensure that this occurs.)
- A lease granted for three years or less – at present, subject to certain statutory exceptions, a lease granted for 21 years or less cannot be a registered estate and a notice cannot be entered in respect of such a lease but it is protected as an overriding interest, even though not mentioned in the register. Under the Act, again subject to statutory exceptions, a lease granted for seven years (rather than for 21 years as at present) or less cannot be a registered estate, but will override first registration and registered dispositions, even though not mentioned in the register. As explained in paragraph 192, section 118 gives the Lord Chancellor power to reduce the qualifying time for the registration of leases, and this section anticipates a reduction by providing that notices cannot be entered for leases of 3 years or less (the likely minimum qualifying period).
- Restrictive covenants made between a lessor and lessee, so far as relating to the property leased. Such covenants are normally apparent from the lease, so it is unnecessary for them to be noted in the register. At present the exception includes a restrictive covenant over land not comprised in the lease, such as adjacent property owned by the landlord. This means no notice can be entered in respect of a restrictive covenant that relates to land that is not comprised in the lease, such as other adjacent property owned by the landlord. The Act removes the difficulties created by the current law.
- An interest capable of being registered under the Commons Registration Act 1965.
- An interest in any coal or coal mine, the rights attached to any such interest or the rights of any person under section 38, 49, or 51 of the Coal Industry Act 1994. This exception is as at present. Under the Act these interests override first registration and registered dispositions, even though not mentioned in the register, as provided for in paragraph 7 of Schedule 1, and paragraph 7 of Schedule 3.

Section 34: Entry on application

77. This section provides that a person claiming to have the benefit of an interest capable of being the subject of a notice may, subject to rules, apply to the registrar for entry of an agreed or a unilateral notice in respect of the interest. The section sets out the circumstances in which the registrar may approve an application for an agreed notice. The first two are cases where the relevant registered proprietor consents to entry of the notice. The third would, for example, cover where the applicant could establish to the registrar's satisfaction that the registered proprietor had granted him or her an easement.

Section 35: Unilateral notices

78. Under this section, when the registrar enters a unilateral notice, which may be entered without the proprietor's consent, in the register he must give notice to the affected proprietor and to such other persons as may be prescribed. Rules may provide, for example, that notice be served on the liquidator of a company which was the registered proprietor. *Subsection (2)* provides that a unilateral notice must indicate that it is such a notice, and identify the beneficiary. It is unlikely that anything else will appear in the register. At present, cautions are often entered in preference to notices where transactions are of a commercially sensitive character, because the entry of a caution in the register gives no indication as to the matter that lies behind it. The subsection, however, makes it possible to achieve the same commercial confidentiality by means of a unilateral notice.

Section 36: Cancellation of unilateral notices

79. Unilateral notices may be entered without the registered proprietor's consent. This section therefore provides that an affected proprietor or person entitled to be registered as proprietor of the affected estate or charge may apply for cancellation of a unilateral notice. The beneficiary of the notice will be entitled to object under the general right conferred by the Act to such an application to the registrar. If the matter cannot be disposed of by agreement, it must be referred to the adjudicator.

Section 37: Unregistered interests

80. This section gives the registrar power to enter a notice in respect of an interest that is an interest of the kind mentioned in Schedule 1, provided that it is not excluded by section 33 above. This is part of the strategy of the Act to eliminate, where practicable, overriding interests and ensure that they are entered in the register. The section provides that notice of the making of the entry will be served on such persons as rules may provide.

Section 38: Registrable dispositions

81. In order to register certain registrable dispositions, it is necessary to enter a notice in respect of that interest on the title of the registered estate burdened by it. This includes easements, *profits à prendre* and customary and public rights. This section therefore requires the registrar to enter a notice in respect of an interest under a disposition falling within section 27(2)(b) to (e).

Restrictions

82. Restrictions are retained under the Act, but in altered form. Inhibitions are abolished because they are not needed: they are, in reality, just one form of restriction. The provisions of the Act relating to restrictions will apply to restrictions and inhibitions entered under the Land Registration Act 1925 (Schedule 12, paragraph 2(2)).

Section 40: Nature

83. This section defines the nature of a restriction. Because it is an entry to regulate the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register, no restriction can be entered in respect of dealings with interests the title to which cannot be entered in the register. So, for example, it would not be possible to enter a restriction against the assignment of a lease granted for a term of seven years or less, since the title to such a lease cannot ordinarily be registered.
84. The section gives particular - but non-exhaustive - examples of the form that a restriction might take. Examples of cases where restrictions might be employed using such form are: to reflect a freezing injunction granted over a registered property; where the registered proprietor (typically a corporation or statutory body) has limited powers

of disposition; and where under a registered charge the chargor agrees with the chargee to exclude his or her statutory power of leasing under the Law of Property Act 1925, section 99.

Section 41: Effect

85. This section provides that, subject to an exception, no entry in respect of a disposition to which a restriction applies is to be made in the register otherwise than in accordance with the terms of the restriction. The exception is that upon the application of a person who appears to have a sufficient interest in the restriction, the registrar may order that the restriction be disapplied or modified in relation to a particular disposition or disposition of a specified kind. An example of where it might be appropriate for the registrar to exercise his power is if the restriction requires a consent by a named individual and he or she has disappeared.

Section 42: Power of registrar to enter

86. Under this section the registrar may enter a restriction where it appears to him necessary or desirable to do so for the purposes set out in the section. The following are examples of situations in which such an entry might be made:

- To prevent unlawfulness, say a breach of trust, where the trustees of the land are required to obtain the consent of some person to a disposition.
- To secure that interests under a trust of land or settlement under the Settled Land Act 1925 are overreached – the restriction could be to the effect that the proceeds of any registered disposition must be paid to at least two trustees or a trust corporation.
- To protect a right or claim (which need not be proprietary) in relation to a registered estate or charge: a restriction to protect a claim by a person that he or she has a beneficial interest in the property under a resulting or constructive trust because he or she has contributed to the cost of its acquisition; or a restriction entered in respect of an order appointing a receiver or sequestrator; or a restriction entered in respect of a charging order relating to an interest under a trust.

87. A restriction is simply a means of preventing some entry in the register except to the extent (if any) that it is permitted by the terms of the restriction. It is not intended to confer priority. For these reasons the section provides that the registrar's power to enter a restriction for the purpose of protecting a right or claim in relation to the estate or charge is limited in that no restriction may be entered for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice. This provision does not, however, prevent a notice and restriction being entered in respect of the same interest, provided that each serves its proper function. For example, the priority of a right of pre-emption might be protected by a notice while a restriction might be entered to ensure that the registered proprietor first offers to sell the land to the grantee of the right before he or she contracts to sell it to anybody else.

Section 43: Applications

88. **Section 43** sets out who may apply under section 42 for a restriction. If a person entitled to apply applies for a form of restriction not prescribed by rules then the registrar may only approve the application if it appears to him that the terms of the restriction are reasonable and that the application of the proposed restriction would be straightforward and not place an unreasonable burden on him.

Section 44: Obligatory restrictions

89. An example illustrates an effect of this section - if two registered proprietors were to hold an estate on trust for a number of beneficiaries, a restriction might be entered to ensure that the proceeds of any registered disposition are paid to at least two trustees

or to a trust corporation. If one of the trustees were to die, this would ensure that no disposition could be made until another trustee was appointed.

90. Other provisions of the Act also impose a duty on the registrar to enter a notice in respect of bankruptcy petitions (section 86(2)).

Section 45: Notifiable applications

91. The purpose of this section is to protect a registered proprietor against the unjustified entry of a restriction against his or her title. The effect of the section is that where a person makes a notifiable application (as set out in the section) for a restriction the registrar must serve notice on the registered proprietor and such other persons as rules may prescribe.
92. A person receiving notice of an application may object to the application under the general right conferred by the Act to object to an application to the registrar. If the matter cannot be disposed of by agreement, it must be referred to the adjudicator.

Section 46: Power of court to order entry

93. The court is most likely to order the entry of a restriction under the provisions of this section where, under the present law, it would order the entry of an inhibition. Whereas inhibitions prevent the entry of any dealing in the register, however, the entry of a restriction under the Act might be of more limited effect. For example, if the court determined that a person was entitled to a beneficial interest under a resulting or constructive trust, it might also order the entry of a restriction to ensure that there was no disposition of the registered estate without the prior consent of the beneficiary. By contrast, where the court has granted a “freezing injunction” the court might also order a restriction on the making in the register of an entry in respect of any dealing. Such a restriction would have an effect similar to that of an inhibition at present.
94. This section gives the court the power to direct that a restriction ordered by it has overriding effect so that the restriction overrides the priority protection given to an official search or the entry of a notice in respect of an estate contract. Terms and conditions may be imposed if the power is exercised - these might require an undertaking from the applicant that he or she would indemnify any person acting in good faith who has suffered loss as a result of the court’s direction and require the applicant to give security, pay money into court, pay costs, or to withdraw some entry in the register.

Part 5: Charges

Relative priority

Section 48: Registered charges

95. [Section 48](#) sets out how the order of priority of registered charges can be discovered from a registered title. Rules will govern how the register shows that order and how applications can be made to record that a different order has been agreed between several chargees.

Section 49: Tacking and further advances

96. [Section 49](#) deals with the existing legal doctrine of tacking. The effect of this doctrine is that a chargee who has granted more than one mortgage to a borrower may sometimes gain the same priority for a later charge as he has for the earlier one. This section provides that a chargee may make a further advance on the security of an existing charge if in the meantime he has not received notice from another chargee that a subsequent charge has been created. Rules will govern when a notice is treated as having been received. This is a change from the current legislation but reflects how the lending

industry currently works in practice. Additionally, as now, the chargee can obtain the same priority for two charges if the original charge contains an obligation for the further sum to be paid and that fact is recorded on the title register. The section also provides a third and novel method of achieving the same priority for two advances by recording a maximum figure for the total money lent. As long as the sums due to the first chargee do not exceed the figure specified, and have been entered in the register in accordance with rules at the time of the creation of the competing charge, the charges will take the same priority over any subsequent charge. Rules may limit the circumstances in which the third method is available and impose conditions for its use. Unless one of these three methods is used, the first chargee must get the consent of any subsequent chargee to obtain priority for his further charge over any subsequent charge.

Section 50: Overriding statutory charges: duty of notification

97. There are numerous statutory provisions which permit or require the creation of statutory charges. These statutory charges when they arise are often given priority to existing charges by the legislation under which they take effect, and will take priority over further advances made by existing chargees even though details of the statutory charge do not appear in the register. Section 50 imposes a new duty on the registrar to notify such persons as are set out in rules (likely to be chargees whose interests are protected in the register) of statutory charges being entered in the register which have priority to existing registered charges. Previously no notice would have been given to those chargees as the entry of the details of the statutory charge into the register does not change the priority order that existed before the entry was made. The new duty will, for example, enable a chargee to make an informed decision as to whether or not he should make further advances to a chargor on the security of an existing charge where the security had been eroded because of a statutory charge.

Powers as chargee

Section 51: Effect of completion by registration

98. Historically, there are two forms of words that can be used in a charge document to create a registrable charge. Section 51 provides that they both have the same effect and that the chargee has the same rights and remedies for the purpose of the Law of Property Act 1925 once they are registered. Section 25 enables rules to be made which prescribe a single form of charge for the future.

Section 52: Protection of disponees

99. The sole purpose of section 52 is to protect the rights of someone in whose favour a disposition is made by a chargee. It therefore corresponds to section 26. If nothing appears in the register to the contrary, the chargee is taken to have all the powers of disposal of a legal mortgagee under the Law of Property Act 1925 so that the rights and interest given by the disposition cannot be challenged under any circumstances. The section is limited in scope, and does not, for example, prevent any claims being brought against the chargee by the chargor.

Section 53: Powers as sub-chargee

100. A chargee can charge the indebtedness which the registered charge secures by way of sub-charge. This section gives the sub-chargee the same powers over the registered estate as the chargee himself has been given by the original charge, as is currently provided by rule. The section also applies to a registered sub-sub-charge in which case the sub-sub-chargee has not only the powers of the principal chargee in relation to the property subject to the principal charge (i.e. the registered estate), but also the powers of the sub-chargee in relation to the property subject to the sub-charge (i.e. the indebtedness secured by the principal charge). This is a new provision not covered in the current rules.

Realisation of security

Section 54: Proceeds of sale: chargee's duty

101. This provision is new. It deals with the following issue. Where a mortgagee exercises its power of sale the proceeds are held in trust. After satisfying certain payments, any surplus is held on trust for "the person entitled to the mortgaged property" (section 105 of the Law of Property Act 1925). The effect is that a mortgagee will hold the surplus on trust for any subsequent mortgagee of whose mortgage it has notice, actual, constructive or imputed. Where the mortgage relates to unregistered land, the mortgagee should search the Land Charges Register to discover the existence of any subsequent mortgages because registration constitutes actual notice. Under the Land Registration Act 1925 registration does not confer notice. Therefore, under the present law, a chargee should pay any surplus to the chargor unless he has been notified of the existence of a subsequent charge. Section 54 changes the law. As a result of the provision, the chargee will have to consult the register to determine who is entitled to the surplus.

Section 55: Local land charges

102. Local land charges arise under a variety of statutory provisions and usually relate to costs of repairing a property or the amenities in the immediate vicinity of the property, such as roads. Local land charges bind a subsequent owner of registered land even when they are not registered at the Land Registry, although they normally appear on the local land charges register kept by the local authority. Some local land charges are charges on land to secure the payment of money, such as a charge to recover expenses incurred by a local authority because of non-compliance with a repair notice. Section 55 provides that although a local land charge binds the owner, powers to realise the money due cannot be exercised until the charge is registered at the Land Registry. The intention is to ensure that it is clear on the face of the register if someone has powers of disposal over registered land.

Miscellaneous

Section 56: Receipt in case of joint proprietors

103. **Section 56** is concerned with the identity of the persons entitled to give a valid receipt for the money secured by a charge which is registered in the names of one or more proprietors following the death of one or more of the proprietors.

Section 57: Entry of right of consolidation

104. A right of consolidation is the right of a person who has the benefit of two or more mortgages to refuse to allow one mortgage to be repaid unless the other or others are also repaid. This right has to be expressly agreed between the parties. Section 57 provides that rules may govern how a right of consolidation is recorded in the register.

Part 6: Registration: General

Registration as proprietor

Section 58: Conclusiveness

105. A fundamental principle of registered conveyancing has always been that registration vests the legal estate in the registered proprietor. Section 58 provides for the continuation of that principle so that if, for example, a person is registered as proprietor on the strength of a forged transfer, the legal estate would nevertheless vest in the transferee by virtue of registration. *Subsection (2)* is designed to prevent *subsection (1)* overriding the rule in relation to registrable dispositions that a disposition only operates at law when *all* the relevant registration requirements have been met (i.e. entry of the

disponee in the register as proprietor may not always be the only requirement). The legal estate will not vest in the transferee until all of the appropriate requirements for registration set out in Schedule 2 have been met.

Section 59: Dependent estates

106. **Section 59** deals with how entries in the register relating to the ownership of certain estates are to be dealt with. First, if a legal estate, such as an easement or *profit à prendre*, subsists for the benefit of a registered estate, the entry must be made in the register relating to that registered estate. If the registration is of the ownership of a charge, then the entry should be made in relation to the registered estate which is subject to the charge. Lastly, where the registration is of the ownership of a sub-charge, then the entry must be made in relation to the registered charge which is subject to the sub-charge.

Boundaries

Section 60: Boundaries

107. For practical and historical reasons, the current register has been compiled using the “general boundaries rule” which means that although the plans are usually mapped to a feature, the exact line of the boundary is left undetermined, e.g. which side of the boundary the feature lies. Rules permit those with an interest to apply for boundaries to be fixed. Section 60 for the first time incorporates the general boundary principle into statute, and provides for rules to be made in relation to the fixing of boundaries. That may happen in two situations. First, as now, the parties may request it. Secondly, the Act enables rules to be made providing for boundaries to be fixed when that is required, for example on the resolution of a boundary dispute or one over adverse possession. Rules will cover when boundary fixing can occur, how it will be done and what procedures will be used. Rules will also stipulate how the fact that the boundaries are fixed is recorded in the Registry’s records including the register of title.

Section 61: Accretion and diluvion

108. **Section 61** states that the fixing of the position of the boundary shown on land registry plans does not prevent the adding of land by accretion or the removal of land by diluvion. This happens when the natural boundary between land and water changes gradually over time, in particular where land is formed by deposits from the sea (accretion) or washed away by waves (diluvion). In normal circumstances the adjoining landowners’ title would be extended or diminished as a result of the changes. If several landowners have made an agreement that the natural boundary changes will not have that legal effect, for example in relation to the location of a stream, then that agreement will only take effect if it is registered. Rules will govern how that is to be achieved.

Quality of title

Section 62: Power to upgrade title

109. **Section 9** sets out the three grades of title which with freehold title can be registered and section 10 sets out the four grades of title with which leasehold land may be registered. Section 62 empowers the registrar to upgrade to absolute any of the lesser titles when he is satisfied as to the title to that estate or, in the case of good leasehold title, satisfied as to the title to the superior estate. The registrar may also upgrade possessory title to absolute for either leasehold or freehold land if the proprietor is in possession and at least 12 years has elapsed since possessory title was first registered. The length of this period coincides with the length of the period after which most classes of landowner would have lost their right to reclaim the land under the Limitation Acts. There is power in *subsection (9)* for the Lord Chancellor to change that period by order, for use if limitation periods should change. The section lists the persons who have a right to apply

for the upgrading of the title but also provides that if there is a claim outstanding at the time that the power to upgrade would be exercised, which is protected by the fact that a lower grade of title has been awarded, then the registrar cannot exercise his power.

Section 63: Effect of upgrading title

110. **Section 63** spells out the effect of upgrading title, which is merely left to be inferred by the current legislation. A possessory title preserves the rights of any person with a superior estate that might come forward, and a qualified title the rights of any person which are covered by the qualification (see sections 9 and 10). When freehold or leasehold title is upgraded to absolute, the registered proprietor ceases to hold the estate subject to those rights. A similar effect occurs when possessory or qualified leasehold title is upgraded to good leasehold, although this does not affect the rights of the superior owner to allege that the lease was not validly granted. There is another possible effect of upgrading title – some risk that an estate, right or interest may thereby be defeated, and the person who previously had the benefit might, therefore, suffer loss. In such circumstances, there would be entitlement to be indemnified for loss by reason of the rectification of the register (under paragraph 1 of Schedule 8).

Section 64: Use of register to record defects in title

111. **Section 64** deals with a situation not currently catered for under the land registration system, where something happens in the course of the ownership of the property that itself makes the title bad. The most obvious examples are: (1) when a lease is subject to a right of re-entry for breach of covenant and the tenant commits a breach of covenant entitling the landlord to end the lease; and (2) where a freehold title is subject to the payment of a rentcharge (with a right of re-entry if that payment is not made) and the rentcharge is not paid. Section 64 enables the registrar to record in the register the fact that a right to determine a registered estate has arisen. Rules will govern when the registrar is under a duty to make the entry, and how such entries are made and removed.

Alteration of the register

Section 65: Alteration of the register

112. **Section 65** incorporates the provisions contained in Schedule 4.

Information etc

Section 66: Inspection of the registers etc

113. **Section 66** provides that, subject to any exceptions specified in rules, anyone may inspect and make copies of the register of title together with any other document either referred to in the register or kept in relation to an application affecting that register. This extends the current legislation, which excepts leases or charges (or copies of them) from inspection. In addition documents kept by the registrar relating to an application, but not referred to in the register can currently only be inspected at the registrar's discretion. A right to inspect and copy any such document is now established. Anyone may also inspect the register of cautions against first registration. Rules will govern how those rights are exercised, including the requirement to pay fees.

Section 67: Official copies of the registers etc

114. **Section 67** provides that the official copy registers and other documents obtained under the right contained in section 66 are admissible in evidence to the same extent as the original document would be. Rules will specify the form of official copies, how they are applied for and who supplies them, and may impose conditions including the requirement to pay fees. *Subsection (2)* provides that a person who relies on an official copy in which there is a mistake is not liable for loss suffered by another by reason of

that mistake. The person who suffers loss will be entitled to indemnity in accordance with paragraph 1 of Schedule 8.

Section 68: Index

115. **Section 68** provides that the registrar must keep an index which will indicate for any parcel of land in England and Wales, if there are any registered estates relating to that parcel and if there are, the title number or other identifier used for the register(s) relating to that parcel. The index must also show if there is a caution against first registration of unregistered land. Rules may specify how the index, and the information in it, is to be kept and how official searches of that index are to be undertaken. Rules may also specify additional information to be found from the index.

Section 69: Historical information

116. **Section 69** provides that the registrar may on application provide information about the history of a title. Rules will govern how applications are made and processed.

Section 70: Official searches

117. **Section 70** sets out the rule-making powers relating to official searches of both the register and the list of applications received but not yet processed relating to the first registration of title. Rules will govern how applications are made and processed, including the issue of the results of search.

Applications

Section 71: Duty to disclose unregistered interests

118. The 1925 Act made no distinction between those interests which are overriding on first registration and those that were overriding on a disposition of registered land. The Act makes this distinction so that the existing concept of overriding interests is not brought forward into the Act. Schedule 1 lists the interests which are overriding on first registration and are therefore binding on the proprietor even though there is no entry in the register (see sections 11(4) and 12(4)). Schedule 3 lists the interests which are binding on persons who acquire an interest in registered land notwithstanding that there is no entry in the register (see section 29(2)). Section 71 provides that a person applying for first registration of title or to register a dealing with registered land must disclose such details of known interests falling within the appropriate Schedule as are specified in rules.
119. This is a new duty. The objective is to ensure that the applicant for registration discloses any interests which are overriding in nature so that they can be entered in the register. The registrar will only wish to enter in the register such rights as are clear and undisputed. Rules will therefore provide guidance as to when the buyer has to provide information, and in relation to which interests it is required.

Section 72: Priority protection

120. Official searches undertaken in accordance with rules made under section 70 are normally priority searches undertaken by persons acquiring an interest for value. The system of priority searching means that any entry made on a register during the priority period of a search will be postponed to a subsequent application to register the instrument effecting the purchase. Section 72(2) makes new express provision for the protection of priorities, and confirms that an application is protected if there is a priority period in existence under a search and the application is made before the priority period has come to an end. To ensure the mechanics of the system operate correctly, *subsection (3)* states that the general principle will not apply if the entry is itself made as a result of a earlier protected application and relates to a protected application whose priority search was undertaken earlier in time. Additionally, a court

order made under section 46(3) specifying the priority of an entry relating to that court order may take precedence over the effect of this section. The registrar is entitled to defer dealing with an application if it appears to him that a protected application might be made, as this would affect the priority of the applications he is to process. Rules may be made concerning the detailed operation of the priority searching system, including the order of competing priority periods. Rules may either provide for priority periods in connection with official searches or with the noting in the register of a contract for a registered disposition of a registered estate or charge. The noting of a contract is not often undertaken at present but will become necessary once contracts to make a disposition of a registered estate or charge take effect only on registration. This section enables the registrar at that stage to use either the existing official searching system or to base the priority period on the registration of the contract itself.

Section 73: Objections

121. **Section 73** provides that, subject to two qualifications, anyone may object to an application made to the registrar. The two exceptions are (1) when the application is to cancel a caution against first registration only the cautioner or such other persons as rules may provide may object (section 18 deals with how such an application is made) and (2) when the application is to cancel a unilateral notice only the beneficiary of the notice or such other persons as rules may provide may object (section 36 deals with how such an application is made). Unless the registrar is satisfied that the objection is groundless, he must give notice of the objection to the applicant and may not complete the application whilst that objection still exists. The right to object is subject to rules. If it is not possible to dispose of the objection by agreement the registrar must refer the matter to the adjudicator for determination in accordance with Part 11 and Schedule 9. Rules will govern the making of references to the adjudicator under this section.

Section 74: Effective date of registration

122. **Section 74** provides that any entry made in the register has effect from the time of the making of the application for first registration, and for the registration of registrable dispositions. Rules made under section 14 will make provision for the making of applications for first registration and how dealings with registered land are undertaken are subject to rules made under section 27.

Proceedings before the registrar

Section 75: Production of documents

123. Although unresolved contested applications must be referred to the adjudicator, there will be many instances of proceedings before the registrar, such as the examination of the title deeds supporting a first registration application. Section 75 enables the registrar, subject to rules, to require a person to produce a document for the purposes of those proceedings. Such a requirement, as now, is to be enforceable as if it were a court order. This section includes a right to appeal to the county court in respect of the registrar's requirement.

Section 76: Costs

124. **Section 76** enables the registrar, subject to rules, to make an order for costs in respect of proceedings before him. This largely reproduces the power to award costs under the existing legislation. Such a requirement, as now, is to be enforceable as if it were a court order. This section includes a right to appeal to the county court.

Miscellaneous

Section 77: Duty to Act reasonably

125. Section 56(3) of the 1925 Act makes anyone who lodges a caution without reasonable cause liable to any person who has suffered damage thereby. Section 77 considerably develops this, by providing that a person must not exercise the right to apply for an entry to be added to the register of someone else's title, or for the entry of a notice or object to someone else's application unreasonably and if they do so, they owe a duty to anyone who suffers damage. The existence of this duty entitles the person adversely affected to bring an action for damages.

Section 78: Notice of trust not to affect registrar

126. **Section 78** ensures that the registrar can carry on his job without worrying about possibly being implicated in a breach of trust.

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 disapplied 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 donee 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.

Part 8: Electronic Conveyancing

Section 91: Electronic dispositions: formalities

146. **Section 91** lays down a uniform requirement for making an electronic document, whether that document does the work of a formal deed, such as a transfer or a charge, which must be witnessed, or of unwitnessed signed writing, such as a contract. The use of electronic documents is new and forms a necessary step towards the introduction of a full electronic conveyancing system. The section can be applied to any document in electronic form which effects the disposition of a registered estate or charge, is a disposition of an interest which is noted in the register; or triggers first registration of title of unregistered land. The actual scope of its application from time to time is to be governed by rules.
147. In addition, for the section to apply, the electronic document must meet several conditions designed to reflect the way in which the paper system works at present. First, the electronic document must record the time and date when it takes effect to fix the time at which it operates. Paper documents take effect on "delivery", the formal transfer of a deed by act or by word to the grantee (or a third party). The mechanisms

both for executing and for handing over electronic documents can be different. It is therefore necessary to ensure that the document makes specific provision for the time and date when it takes effect, to replace the concept of delivery. Secondly, the electronic document must bear the electronic signature of each person who must authenticate it. In this context, electronic signature does not necessarily mean a “signature” in the ordinarily accepted sense. It is the means by which an electronic document can be authenticated as that of the party making it. There are already several ways in which authentication could be achieved, but they are likely to change and develop with general electronic business and commerce. It is therefore important that the legislation does not seek to specify a particular method or methods. Thirdly, each of the signatures must be certified. Certification is the mechanism by which an electronic signature is authenticated. The current certification methods are also likely to change and develop. Additionally, rules may provide for other requirements to be met to take advantage of further developments in this field which might aid the security of transactions.

148. The section does not disapply the formal statutory or common law requirements relating to deeds and documents but deems compliance with them. When the section applies, the electronic document is therefore to be treated as being in writing, having been executed by each individual or corporation who has attached an electronic signature to it, and, where appropriate, as a deed. The section also includes a further deeming provision. It operates in relation to the various statutory provisions, such as section 53(1)(a) of the Law of Property Act 1925, that require a disposition by an agent Acting by or on behalf of his or her principal to be authorised in writing. In relation to the execution of electronic documents by agents the provision has the effect that where a document covered by the section is authenticated by an individual as agent, it is to be regarded as having been authenticated by him or her under the *written* (as opposed to the oral) authority of his or her principal. It will, therefore, not be possible to raise any question as to whether the agent did in fact have *written* (as opposed to oral) authority to make the authentication. It is likely that solicitors and licensed conveyancers will wish to review their procedures for taking instructions from their clients to ensure that electronic signatures are properly authorised, as a matter of proper professional practice. At common law, authorisation to execute a deed must be given by deed. This is not the case in relation to an electronic document covered by this section as the document is not a deed, merely treated as if it were.
149. In a paper-based system, documents have to be executed by the parties and then exchanged and delivered. Where there is a disposition, they must therefore travel from disponent to disponent, and then to the Land Registry for registration. This ‘registration gap’ has created scope for a number of problems. Electronic conveyancing enables the gap to be eliminated: electronic documents can be executed at the specified time and date, and simultaneous and automatic changes made to the entry in the register. *Subsection (7)* deals with the assignment of an interest protected by means of a notice. Whether such disposition can be made electronically depends on rules under *subsection (1)*. If it can, *subsection (7)* enables notice of the assignment to be given electronically as well. This is relevant for the purposes of section 136(1) of the Law of Property Act 1925, which requires notice to be in writing.
150. *Subsection (8)* disapplies section 75 of the Law of Property Act 1925 which provides that a person may at their own cost have the conveyance to them attested by a person appointed by them. The arrangements in the Act for the execution of electronic documents will make this provision otiose. Lastly, *subsection (9)* deals with electronic documents executed without a seal on behalf of a company. There are a number of ways in which companies can validly execute documents. Section 36A(6) of the Companies Act 1985 provides a presumption of due execution to protect purchasers. *Subsection (9)* makes it clear that the protection afforded by that section will apply to a document which has been electronically authenticated on behalf of the company.

Section 92: Land registry network

151. **Section 92** enables the registrar to establish an electronic communications network, either himself or through a third party, which will be used as he sees fit in connection with registration, and with the carrying out of transactions which involve registration and are capable of being effected electronically. Electronic conveyancing is likely to involve a significant change in the practices of both the Land Registry and of conveyancers. The ways in which it will operate in detail will, therefore, need to be worked out with them, after extensive consultation. These ways are likely to change as the range of conveyancing transactions carried out electronically increases, and as electronic commerce in general expands. The main elements are, however, likely to be that:
- conveyancers will, as now, prepare draft documents but in electronic form;
 - those drafts will be shown to the Land Registry, as well as to the parties to the transaction during preparation, to enable errors and discrepancies to be identified at the earliest possible stage;
 - once the drafts are approved and a date and time for execution set, the documents will be executed and simultaneous amendments made to the entry in the register, directly by the responsible conveyancer;
 - the Land Registry will also have to make sure that do-it-yourself conveyancers would not be excluded from electronic conveyancing.
152. **Schedule 5** establishes a framework for the creation and use of the network.

Section 93: Power to require simultaneous registration

153. Initially, paper and electronic conveyancing systems will operate side by side. If electronic conveyancing is to maximise the savings and benefits for the user, however, it must become the only system. For example, if just one link in a conveyancing chain is conducted in the conventional paper-based manner, the advantages of electronic chain management are likely to be lost. Section 93 contains the power to require transactions which involve registration to be done electronically at the contract and completion stages. Specified transactions involving registered land would have no effect unless effected by a document in electronic form, and simultaneously registered (which could be done automatically by the system). The section contains a power to prescribe which dispositions of registered estates and charges are caught by the requirement. It also contains power to prescribe which dispositions of interests the subject of notices in the register are caught by the requirement (at present the transfer of noted interests are not recorded in the register, see also paragraph 149 noting section 91(7)). The Lord Chancellor is under a duty to consult before making these rules. The section specifically provides that a document varying the priority order of registered charges is included within the dispositions of registered charges covered by the section. The registration requirements for a registrable disposition will be the requirements set out in Schedule 2. For all other documents, including, contracts and dispositions relating to the transfer of noted interests, the requirements may be specified in rules. Once a transaction is caught by this section, section 27(1) is no longer relevant and is disapplied.

Section 94: Electronic Settlement

154. **Section 94** empowers the registrar to take such steps as he thinks fit to secure the provision of an electronic settlement system in relation to transactions involving registration.

Section 95: Supplementary

155. Because different considerations apply to the storage of electronic documentation from those applied to paper documents. Section 95 provides that rules may make provision

about how that documentation is stored. Rules may also deal with the communication of electronic documents to the registrar.

Part 9: Adverse Possession

156. At present, in broad terms, where a squatter has been in adverse possession of land for the required period (the basic period is twelve years, the period within which actions for the recovery of land must be commenced), the proprietor of the land holds the land on trust for the squatter who may apply to be registered as proprietor of a new estate, where the registered land is freehold, or as proprietor of the registered estate where that estate is leasehold.
157. The Act provides a new scheme for adverse possession in relation to a registered estate in land. The essence of the scheme is that:
- Adverse possession of itself, for however long, will not bar the owner's title to a registered estate in land or a registered rentcharge.
 - A squatter will be entitled to apply to be registered as proprietor after ten years' adverse possession and the registered proprietor, any registered chargee, and certain other persons interested in the land will be notified of the application.
 - If the application is not opposed by any of those notified, the squatter will be registered as proprietor of the land.
 - If any of those notified oppose the application it will be rejected, unless the adverse possessor can bring him or herself within one or more of three conditions.
 - If the squatter's application for registration is refused but the squatter remains in adverse possession for a further two years, he or she will be entitled to apply once again to be registered and will this time be registered as proprietor whether or not the registered proprietor objects.
 - Where the registered proprietor brings proceedings to recover possession from a squatter, the Act allows the squatter to establish certain limited defences which are consistent with the three conditions mentioned above.

Section 96: Disapplication of periods of limitation

158. **Section 96** provides that, in relation to a registered estate in land or a registered rentcharge, no period of limitation runs in relation to:
- actions for the recovery of land except in favour of a chargee, or
 - actions for redemption
- and so the title to such an estate or rentcharge cannot be extinguished. The exception in favour of chargees means that section 15 of the Limitation Act 1980 will continue to apply to an action by a chargee for possession or foreclosure, to enforce its security. As regards actions for redemption, at present, once a mortgagee has been in possession for twelve years, the mortgagor loses his or her right to redeem the mortgage and his or her title is extinguished. This will no longer be the case.

Section 97: Registration of adverse possessor

159. Even though no period of limitation runs in relation to a registered estate in land or a registered rentcharge, it will still be possible for a person in adverse possession to be registered in place of the proprietor of a registered estate or rentcharge. This section introduces Schedule 6 which makes provision for such registration.

Section 98: Defences

160. Under this section a squatter can defend an action for possession of the land if the day before the action was brought he or she was entitled: to apply under paragraph 1 of Schedule 6 and the third condition (reasonable mistake as to boundary) would have been satisfied (*subsection (1)*); or to apply under paragraph 6 of that Schedule (*subsection (3)*). If a court holds that the defence applies then it must order the registrar to register the squatter as proprietor of the affected estate (*subsection (5)*).
161. Because the defences under this section are additional to any other defences a squatter may have (*subsection (6)*), if he or she has some independent right to possession of the land, such as an equity arising in his or her favour by proprietary estoppel, he or she can rely upon it.
162. Under *subsection (2) or (4)*, where a proprietor or chargee has obtained a judgment for possession of land against a squatter and:
- when the proceedings in which the judgment was given were commenced, the squatter was entitled to apply for registration, under paragraph 1 of Schedule 6 (ten years adverse possession); or
 - two years after the judgment, the squatter is entitled to re-apply for registration under paragraph 6 of Schedule 6 (two years adverse possession since rejection of his or her paragraph 1 application);
- then the judgment ceases to be enforceable against the squatter two years after the judgment (rather than, as is usual, six years). If in either of these cases the proprietor or chargee were to bring fresh proceedings the squatter would have a defence and the court would be required to order the registrar to register the squatter as proprietor of the land, under *subsection (5)*.
163. *Subsection (7)* enables rules to be made about the recovery of rentcharges. The Limitation Act 1980 bars the rights of an owner of a rentcharge where no rent is paid for 12 years (when the charge is extinguished), or where the rent is paid to a third party for 12 years (when the rentcharge can still be enforced, but the previous owner's title is extinguished and the third party becomes entitled instead). Rules under the subsection will be able to preserve the position of someone who has received rent whilst in adverse possession.

Part 10: Land Registry

Administration

Sections 99, 100 and 101: The land registry; Conduct of business; and Annual report

164. Except as to judicial matters (dealt with under Part 11), the administrative structure and business of the Land Registry are not changed in any very material respect by the provisions of the Act. Section 99 provides for the continuation of the Registry with the Chief Land Registrar, appointed by the Lord Chancellor, at its head. As now, the registrar is supported by staff who may be authorised to carry out any of his functions. The Lord Chancellor can, as now, make regulations to cover the situation when a vacancy arises in the office of Chief Land Registrar and can make an order specifying which office deals with particular applications. A district registries order may specify the office to be used either on the basis of the geographical location of the land affected, as now, or on the basis of application type, enabling special expertise to be built up, or applications relating to a single, very large development to be handled more effectively. The registrar may prepare and issue forms and directions to facilitate the land registration process, a power which he has exercised from time to time under the current system. The registrar must also produce an annual report on the business of the Land Registry to the Lord Chancellor. That report must be published and laid before Parliament. Section 99 incorporates the provisions in Schedule 7.

Fees and indemnities

Section 102: Fee orders

165. Replicating the existing system, section 102 provides that the Lord Chancellor may prescribe fees for dealing with the Land Registry but that the order must be made with the advice and assistance of the Rule Committee (see section 127(2)) and with the consent of the Treasury. The fee order will not however deal with fees for the new consultancy and advisory services (see section 105) nor with the provision of information by the registrar to a person who has the function of providing historical information about registered titles under section 69(3). The fee order, as under the current system, may stipulate how the fees should be paid.

Section 103: Indemnities

166. **Section 103** incorporates the provisions of Schedule 8. Although the provisions introduced by the Land Registration Act 1997 have been recast in accordance with the style of the Act, the substance of them has not been altered in any significant way.

Miscellaneous

Section 104: General information about land

167. This section gives the registrar power to publish information about land in England and Wales if it appears to him to be information in which there is a legitimate public interest. The registrar already publishes data about changes in property prices on a quarterly basis, and these are widely used. Because all sales of freehold land are required to be registered, the Registry's figures are the most accurate available. The extension of compulsory registration to leases with seven or more years to run will considerably extend the market data available.

Section 105: Consultancy and advisory services

168. **Section 105** gives the registrar power to provide, or to arrange the provision of, such consultancy and advisory services as he sees fit, and enables him to negotiate appropriate fees for those services. This power will enable the registrar to offer consultancy services both within England and Wales and elsewhere. In particular, it is likely that his expertise may be in demand in relation to the development of electronic registration systems in other countries.

Section 106: Incidental powers: companies

169. **Section 106** enables the registrar, if he considers it expedient, to do so in connection with the specified functions to form, or participate in the formation of, or purchase or invest in, a company. The specified functions are providing:
- historical information (section 69(3)(a))
 - the Land Registry Network (section 92(1))
 - an electronic settlements system (section 94)
 - consultancy and advisory services (section 105 (1))
 - education and training in relation to the use of the Land Registry Network (schedule 5 paragraph 10).

Part 11: Adjudication

Section 107: The adjudicator

170. **Section 107** provides for the appointment by the Lord Chancellor of an adjudicator to HM Land Registry. This office is new and its function will be to determine any contested application to the registrar that cannot be disposed of by agreement between the parties. At present this function is performed by the Solicitor to HM Land Registry and those acting under his authority. Notwithstanding that the Solicitor adjudicates only in disputes between parties and not those involving the Registry, issues can still arise in such cases which involve the decisions of officials of the Registry. There could therefore be a perception that he is not sufficiently independent. This section creates a completely independent office for adjudication, and will continue a system of determinations which are cheap, swift and more informal than court hearings. Further provisions about the adjudicator are contained in Schedule 9.

Section 108: Jurisdiction

171. **Section 108** lists the matters within the adjudicator's jurisdiction. They are:
- a) disposing of an objection to an application (see section 73(7));
 - b) dealing with refusal to grant a network access agreement, and disputes over the level of access applied for, or the termination of such an agreement (see paragraph 4 of Schedule 5); and
 - c) making an order for rectification or setting aside of a document which disposes of a registered estate or charge in some way which would be reflected in the register (for example, this is wide enough to cover the grant of a restrictive covenant as well as a sale or mortgage), a contract to make such a disposal of a registered estate or charge, or which effects the transfer of an interest which is the subject of a notice on a register.
172. The category referred to in sub-paragraph (c) above is new to this Act. The registrar has no power to rectify or set aside a document under the present law, which has meant that he has had to refer matters to the High Court which he could otherwise have resolved. The general law applicable to orders of the High Court also applies to orders made by the adjudicator under this section. This means, for example, that rectification relates back to the time when the instrument was executed and after rectification the instrument is to be read as if it had been drawn up in its rectified form.

Section 109: Procedure

173. As at present with proceedings before the Solicitor, hearings before the adjudicator are to be held in public unless the adjudicator is satisfied that the exclusion of the public is just and reasonable. Rules will, as now, govern the practice and procedure to be followed in relation to hearings. The section lists a number of matters which may be covered by the rules.

Section 110: Functions in relation to disputes

174. **Section 110** makes provision for the powers of the adjudicator in relation to the disposal of objections to applications. The adjudicator may, instead of determining the matter himself, direct one of the parties to commence court proceedings by a specified date. These proceedings may be to determine specific issues or the entirety of the matter. This replicates the power given to the Solicitor to HM Land Registry under the present law and is likely to be used: when the application raises an important or difficult point of law; when there are complex disputes whose resolution is better suited to the court process; when other issues between the parties are already before the courts; or to make

use of the wider powers available to the court, for instance, the award of damages for lodging an objection without reasonable cause.

175. Rules will make detailed provision about the procedure for referring the matter to court, the adjournment of proceedings before the registrar whilst the court proceedings are ongoing, and to specify the adjudicator's powers in the matter if the party directed fails to commence proceedings as directed. These rules may empower the adjudicator to dismiss an application in whole or in part if the defaulting party is the applicant. They may also empower the adjudicator to give effect to the application in whole or in part if the defaulting party is the objector. Additional rules may deal with the functions of the adjudicator following a court decision on all or part of the issues in the case. In particular, these additional rules will cover the adjudicator's ability to determine (or give directions about the determination of) applications to which the reference related, and such other present or future applications as the rules provide. Special provision is made in relation to applications for registration of title based on ten years' adverse possession (see paragraph 1 of Schedule 6). If the adjudicator decides that it would be unconscionable because of an equity by estoppel for the adverse possessor to seek to dispossess the registered proprietor, but that the adverse possessor ought not to be registered as registered proprietor, he must decide how to satisfy the entitlement of the adverse possessor and can make any order which the High Court would be empowered to make to resolve the matter.

Sections 111 and 112: Appeals, and Enforcement of orders etc

176. In a similar way to the present system, determinations of disputes can be the subject of an appeal to the High Court and any requirement of the adjudicator is enforceable as a court order.

Part 12: Miscellaneous and General

Miscellaneous

Section 115: Rights of pre-emption

177. A right of pre-emption is a right of first refusal. The grantor undertakes that he or she will not sell the land without first offering it to the grantee. It is similar to but not the same as an option, because the grantee can purchase the property only if the grantor decides that he or she wants to sell.
178. There is uncertainty as to the legal position of rights of pre-emption. The position may be that a right of pre-emption does not confer on the grantee an interest in land but when the grantor chooses to sell the property, the right of pre-emption becomes an equitable interest in land.
179. If this is the legal position then, for example, if A grants B a right of pre-emption over registered land which B immediately protects by entry of notice in the register, and A then mortgages the land to C, it seems likely that C will not be bound by the right of pre-emption because the execution of the mortgage probably does not cause the pre-emption to crystallise into an equitable interest. C could therefore, in exercise of his paramount powers as mortgagee, sell the land free from B's right of pre-emption.
180. This section provides that a right of pre-emption in relation to registered land has effect from the time of creation as an interest capable of binding successors in title (subject to the rules about the effect of dispositions on priority).
181. So, if on or after the coming into force of the Act the facts were as in the above example, the effect of this section would be that B's right of pre-emption would have priority over C's mortgage. If, however, B did not protect his right by notice before C registered his mortgage (and B was not in actual occupation of the affected land), C would not be bound by the right because of the effect of dispositions on priority.

182. If the law relating to rights of pre-emption is as discussed above, then this Act will change the law in its application to registered land so this section provides that it applies to rights of pre-emption created on or after the Act comes into force.

Section 116: Proprietary estoppel and mere equities

183. *Proprietary estoppel* The following is an example of how the doctrine of proprietary estoppel operates:
- The owner of land, A, in some way leads or allows the claimant, B, to believe that he or she has, or can expect, some kind of right or interest over A's land. To A's knowledge, B acts to his or her detriment in reliance on that belief. A then refuses B the anticipated right or interest in circumstances that make that refusal unconscionable. In those circumstances, an "equity" arises in B's favour. This gives B the right to go to court and seek relief. The court has a very wide discretion as to how it will give effect to this equity, but in so doing it will "analyse the minimum equity to do justice" to B. It will not give him or her any greater rights than he or she had expected to receive. The range of remedies that the courts have shown themselves willing to give is very wide. At one extreme, they have ordered A to convey the freehold of the land in issue to B. At the other, they have ordered A to make a monetary payment to B (in some cases secured on A's land).
184. Although the point is not finally settled, the weight of authority favours firmly the view that B's right or "inchoate equity" which arises after he has acted to his detriment but before the court can make an order giving effect to it is a proprietary, and not merely a personal right.
185. To put the matter beyond doubt, this section confirms the proprietary status of an equity arising by estoppel in relation to registered land. This means that it can be protected by entry of notice in the register, or, where the claimant is in actual occupation of the affected land, as an interest whose priority is automatically protected without the need for registration.
186. *Mere equities* A "mere equity" appears to be used to denote a claim to discretionary equitable relief in relation to property, such as a right to set aside a transfer for fraud or undue influence, a right to rectify an instrument for mistake, or a right to seek relief against forfeiture after a landlord has peacefully re-entered.

Section 117: Reduction in unregistered interests with automatic protection

187. The following unregistered interests are amongst those that override first registration and registered dispositions:
- A franchise;
 - A manorial right;
 - A right to rent which was reserved to the Crown on the granting of any freehold estate (whether or not the right is vested in the Crown);
 - A non-statutory right in respect of an embankment or sea or river wall;
 - A right to payment in lieu of tithe.
188. This section provides that at the end of the ten years which it specifies, the above interests will cease to be capable of overriding first registration or a registered disposition. They will not then cease to have effect but a first registered proprietor or a purchaser under a registered disposition will only be bound by them if they are the subject of a notice in the register.
189. Where the relevant land is not registered, the lodging of a caution against first registration will ensure that the owner of the interest is notified of an application for

first registration and so can by objecting ensure that a notice is entered in the register in respect of the interest. Equally, if the land is registered and notice of the interest is entered before the end of the ten year period the owner of that interest will be protected. For these reasons, *subsection (2)* of this section provides that no fee may be charged for lodging a caution against first registration or applying for the entry of a notice in respect of the interest during the ten-year period.

Section 118: Power to reduce the qualifying term

190. Under the Act, subject to certain exceptions, only a legal lease which has more than seven years unexpired at the time of application may be registered with its own title. Under this section the Lord Chancellor may, after consulting such persons as he considers appropriate, by order reduce the length of registrable leases. If this is done then it will be necessary to make consequential amendments (and possibly transitional provisions). Under section 128, such an order will be subject to annulment in pursuance of a resolution by either House of Parliament.

Section 119: Power to deregister manors

191. At present a manor - that is the lordship of the manor - is registrable with its own title. Manors are wholly incorporeal, and impose no burden on the land within the manor. The registration of manors gives rise to many practical difficulties in the Land Registry. The Act therefore changes the law by making it no longer possible to register a manor. This is achieved by omitting manors from the interests in land which may or must be registered. To enable the register to be cleared of manors already registered, this section provides that if a proprietor of a registered manor applies, the registrar may remove the title to the manor from the register.

Section 120: Conclusiveness of filed copies etc

192. This section, amongst other things, provides for the possibility that where an entry in the register relating to the legal estate refers to a document kept by the registrar which is not an original (for example, a document setting out restrictive covenants which purports to be a full copy of the original) the document may not be an accurate copy of the original.

Section 121: Forwarding of applications to registrar of companies

193. Where a company creates a legal charge over its property, that charge will not only be registrable under the Act, but it will also be required to be registered under the Companies Act 1985. Registration in the Companies Register under the Companies Act 1985 fulfils a wholly different function from registration in the register of title. It does not affect the priority of competing charges over a company's property. Its intended purpose is to protect actual or potential creditors by making the liabilities of a company apparent on the face of the register.
194. If rules were made under this section and other provisions of the Act it might, for example, be possible to make a combined application in electronic form to the Land Registry to register the charge in the register and for that application then to be forwarded to Companies House for registration in the Companies Register.

Section 122: Repeal of Land Registry Act 1862

195. The current land registration system began in 1875 under the Land Transfer Act 1875. However, there was an earlier voluntary land registration system set up in 1862, which was abandoned. The registers created under that system were not updated after 1875 but the Land Registry Act 1862 remained on the statute book. This section repeals the 1862 Act but preserves the records created under it as part of the historical information that the registrar is obliged to keep. Those records can be supplied to the public on application, details of which will be covered by rules.

Offences etc.

Section 123: Suppression of information

Section 124: Improper alteration of the registers

196. At present there is an offence concerned with the suppression of documents and facts relating to title in proceedings before the registrar or court and one concerning the fraudulent procurement of changes to the register or to any land or charge certificate. These sections create three new offences, which replace those offences. The penalties for the offences are put in modern form.

Section 125: Privilege against self-incrimination

197. This section replicates the effect of section 119(2) of the Land Registration Act 1925 and its approach is one which has been adopted in a number of statutes such as the Theft Act 1968, section 31 and the Supreme Court Act, section 72.

Land registration rules

Section 126: Miscellaneous and general powers

198. This section gives effect to Schedule 10.

Section 127: Exercise of powers

199. At present, rules made under the Land Registration Act 1925 are made by the Lord Chancellor with the advice and assistance of a Rule Committee. This section provides for a Rule Committee to advise and assist the Lord Chancellor when he is making land registration rules. The membership of the Rule Committee is broadened to include a person nominated by the Council of Mortgage Lenders, and a person nominated by the Council of Licensed Conveyancers and an expert in consumer affairs. The Lord Chancellor may also nominate further persons in the mentioned circumstances. The Rule Committee will no longer include a person chosen by the Minister of Agriculture and Fisheries but instead will include a surveyor nominated by the Royal Institution of Chartered Surveyors. The Lord Chancellor may also nominate further persons in the mentioned circumstances.

Supplementary

Section 128: Rules, regulations and orders

200. This section includes provision that the Lord Chancellor's powers to make subordinate legislation are to be exercised by statutory instrument and lays down the Parliamentary procedure to be used.

Section 129: Crown application

201. The Act binds the Crown.

Section 130: Application to internal waters

202. At present, the land which can be registered under the Land Registration Act 1925 is, in practice, determined by reference to local government administrative areas. This means the counties of England or Wales, Greater London and the Isles of Scilly. Although the seaward limit of a county (or administrative area) is generally the low water mark, there are tidal waters which are within the body of a county, as (for example) where there is an estuary. The county boundary is at the seaward limit of that estuary as determined by the Ordnance Survey. The Act applies, by virtue of *paragraph (a)* of this section, to

land covered by internal waters which are within the administrative area of England or Wales. This reproduces the present position.

203. *Paragraph (b)*, however, extends the scope of the land that may be registered to land covered by internal waters which are adjacent to England or Wales and which are specified for the purpose by order made by the Lord Chancellor. This power to extend registration of title to land under adjacent internal waters would enable the Crown Estate to register submarine land not only within the body of a county, but under waters on the landward side of the baselines, fixed in accordance with Article 4 of the Convention on the Territorial Sea of 1958. These baselines are employed for the purposes of defining the territorial limits of the United Kingdom. Registration of such lands would protect them against encroachments by adverse possessors who might (for example) construct pipelines or other works within internal waters but outside the body of a county.

Section 131: “Proprietor in possession”

204. The effect of the provision is that a proprietor is treated as being in possession of land which is physically in the possession of certain other people, for example, the proprietor’s tenant or mortgagee. Land is also regarded as being in possession of the proprietor if it is in the possession of a person who is entitled to be registered as proprietor. But a squatter’s right to be registered as proprietor does not count for this purpose.

Final provisions

Section 133: Minor and consequential amendments

205. This section gives effect to Schedule 11, which makes minor and consequential amendments to existing enactments.

Section 134: Transition

206. This section empowers the Lord Chancellor by order to make transitional provisions and gives effect to Schedule 12.

Schedule 1: Unregistered Interests Which Override First Registration

207. Interests which do not appear in the register, yet bind the person who acquires any interest in registered land, are considered to be an unsatisfactory feature in registered conveyancing. The Act seeks to narrow the circumstances in which such interests arise and reduce the number of categories. In doing this, the Act for the first time separates out those interests that are binding on the proprietor who seeks first registration of title from those interests which bind on a subsequent disposal of registered land, since the considerations to be applied in the two situations are different. When an applicant seeks first registration of title, whether or not he is bound by an existing interest has already been determined under the principles of unregistered conveyancing.
208. Some of the interests are common to both categories. Where that is so, the notes set out below relating to them are not repeated in the notes on Schedule 3.
209. **Sections 11(4) and 12(4)** list the matters that bind a registered proprietor on first registration of title to an estate in land. They include unregistered interests listed in Schedule 1. Although their priority is protected without the need for registration, section 71 enables an obligation to be imposed on applicants to disclose known unregistered interests so that they can be recorded in the register. In addition, under section 90, a new category of interest, which cannot be registered, is created. PPP leases are to be treated as if they had been included in Schedule 1.

Leasehold estates in land

210. *Paragraph 1* has the effect that, subject to three exceptions, a leasehold estate granted for a term not exceeding seven years from the date of grant is an unregistered interest which overrides first registration. Under the present system, leases not exceeding 21 years in length are overriding interests. The reduction in the length of leases which have overriding status reflects the reduction in the length of leases which gives rise to first registration of title in their own right. The grant of a lease exceeding seven years in length will under the Act trigger first registration. Section 4 lists the three situations where a lease of shorter duration must be registered in its own right: a right to buy lease; a lease that take effect more than three months after it is made; and certain leases by private sector landlords. These leases will not be capable of overriding first registration, even where they do not exceed seven years.

Interests of persons in Actual occupation

211. The effect of *Paragraph 2* is that, subject to one exception, an interest belonging to a person in actual occupation of land overrides first registration. The overriding status of these interests only extends to those parts of the land which the person is actually occupying. This category is considerably narrower in scope than the category existing under the current law, which treats the receipt of rents and profits as occupation of the land. The one exception to the overriding status of occupation rights is an interest under a settlement under the Settled Land Act 1925. Such interests are now, however, relatively uncommon, and since the Trusts of Land and Appointment of Trustees Act 1996 came into force, no new settlements can be created.

Easements and profits à prendre

212. *Paragraph 3* has the effect that a legal easement or *profit à prendre* overrides first registration. Under the present system, equitable easements over unregistered land also have overriding status even if they have not been protected, as they should be, by registration under the Land Charges Act 1972. The position of those easements was therefore improved on first registration of title and this situation will not continue under the Act.

Customary and public rights

213. *Paragraphs 4 and 5* provide that a customary right or public right will override first registration. Customary rights are rights which have their origins in feudal times and are enjoyed by all or some of the inhabitants of a particular locality. Public rights are rights which are presently exercisable, and are exercisable by anyone, whether he owns land or not, merely by virtue of the general law. These rights are comparatively common and when they come to light on an application for first registration, they are noted in the register. That practice will continue under the Act.

Local land charges

214. *Paragraph 6* has the effect that a local land charge overrides first registration. Local land charges usually relate to the costs of repairing a property or amenities in the immediate vicinity of the property and are governed by the Local Land Charges Act 1975. Under that Act, provision is made for a local authority to register local land charges, for those charges to be binding even if not registered and for compensation to be paid for any loss suffered by a person as a consequence of non-registration. The overriding status of local land charges recognises that they are governed by a parallel regime. However, section 55 provides that a local land charge that secures the payment of money must be registered at the Land Registry before that money can be realised.

Mines and Minerals

215. *Paragraphs 7 to 9* preserves the overriding status of a limited class of mineral rights. They are mineral rights in relation to land, the title to which was registered before 1926. The reason for this exception is that rights to minerals were not recorded prior to 1926. Overriding status is also continued for interests and rights in coal. Coal rights were excepted from registration because of the difficulty in registering them given their extent and complexity. In present or former coal mining areas, coal mining searches are available that are likely to provide detailed information about coal mining activities.

Miscellaneous

216. The five categories of interests set out in *paragraphs 10 to 14* are of ancient origin, and of unusual character so that a buyer would not normally expect to see them. They can be very difficult to discover and can be exceptionally onerous. The overriding status of these rights will be phased out after ten years of this Schedule coming into force. The transitional period will give persons with such interests time to apply free of charge for their interest to be noted in the register. Franchises and manorial rights are the categories of interests most commonly found. Franchises originate in a royal grant, such as a right to hold a fair. Manorial rights are a very specific category of rights granted before 1926 and include a tenant's right of common and a lord's sporting rights. A Crown rent is a right to rent which was reserved to the Crown on the granting of a freehold estate, whether or not the right still belongs to the Crown. The right in respect of an embankment or sea or river wall is a liability falling on a person whose property fronts the sea or a river. It can arise in a number of ways, such as on grant or by custom. The only right to payment in lieu of tithes that still exists is a corn rent, although it is the rarest of all the categories listed and not all corn rents fall within it.

Schedule 2: Registrable Dispositions: Registration Requirements

Part 1: Registered Estates

Introductory

217. *Paragraph 1* explains that this Part of the Schedule sets out the registration requirements for those dispositions of registered estates required to be completed by registration under section 27(2). Until these requirements are met, legal title does not pass. These disposition requirements also apply to dispositions by operation of law apart from those that occur on the death or bankruptcy of an individual, the dissolution of a company or the creation of a legal charge which is a local land charge (section 27(5)). The requirements as set out are in accordance with the Land Registry's current procedures for recording dispositions.

Transfer

218. *Paragraph 2* provides that on a transfer of the whole of the registered estate, the transferee (or any person who has acquired the estate from him) must be entered in the register as proprietor. There are no other registration requirements as details of the new owner simply replace those of the old. Where the transfer is of part only, a new section of the register is created for the part transferred which shows the transferee or his successor as proprietor. In addition, an entry must be recorded in the register relating to the original proprietor's estate to show that part of the land has been removed. Rules will cover the way in which this is recorded.

Lease of estate in land

219. *Paragraph 3* provides that when a lease is granted by the owner of a registered estate in land, the person to whom the lease was granted (or any person who has acquired the estate from him) must be shown in the register as proprietor. In addition, a notice

is inserted in the register of the landlord's title to show that the land is now subject to the newly created lease. Leases of more than seven years, (and certain other leases as specified in section 27), will be registered in their own right rather than just recorded in the register relating to the landlord's title.

Lease of franchise or manor

220. *Paragraph 4* applies when a lease of more than seven years is granted out of a franchise or a manor and *paragraph 5* to any shorter lease of such property. For a lease of more than seven years, the register must show the person to whom the lease was granted (or any person who has acquired the estate from him) as proprietor of the lease. In addition, and whatever the length of the lease, the register relating to the landlord's estate must contain a notice that the registered estate is now subject to the lease.

Creation of independently registrable legal interest

221. *Paragraph 6* relates to the creation of a rentcharge or *profit à prendre* which is for seven years or more and so therefore capable of registration in its own right. The title to the benefit of the interest must be entered in the register. In addition, the register relating to the landlord's estate must contain a notice that the registered estate is now subject to the interest.

Creation of other legal interest

222. *Paragraph 7* specifies the registration requirements for those dispositions falling within section 27 (2) (d) or (e) which are not dealt with by paragraph 4, 5 or 6. In any of these cases, a notice must be entered in the register relating to the registered estate out of which it was granted which shows that the registered estate is now subject to that interest. If the interest also benefits another registered estate, then it should be recorded in the register relating to that other estate, showing the proprietor as proprietor of that interest. For example if a right of way is granted by a deed of grant over land to a neighbouring landowner, the easement will be noted in the register as being something that burdens that land. Additionally, the register relating to the adjoining title will be amended to show that the owner of that land has the benefit of the right of way contained in the deed of grant. Power is given to the Lord Chancellor to amend the registration requirements applying to a right of entry contained in a lease. At present the benefit of a right of way contained in a lease is not recorded in the landlord's title. The purpose of this power is to enable the current practice to continue for now, whilst leaving open the possibility that the practice might be changed in future.

Creation of legal charge

223. *Paragraph 8* relates to a newly created charge over a registered estate or a registered rentcharge. The charge must be recorded in the register relating to the registered estate and show the chargee (typically the lender) as proprietor of that charge.

Part 2: Registered Charges

Introductory; Transfer; and Creation of a sub-charge

224. This Part of the Schedule sets out the registration requirements for those dispositions of registered charges required to be completed by registration under section 27 (3). The requirements reflect the way in which transfers of charges and the creation of sub-charges are currently recorded. Under *paragraph 10*, if the benefit of a registered charge is transferred then the transferee, or any person who acquired the benefit from him, must be entered in the register as proprietor of the charge. In practice this means that the entries relating to the charge are altered by the insertion of the new owner's details. Under *paragraph 11*, if a sub-charge is created, then the person who acquired the benefit of the sub-charge (or any person who has acquired the benefit of the sub-charge from

him) must be entered in the register as proprietor of the sub-charge. This in practice results in an additional entry. The details of the original chargee remain in the register.

Schedule 3: Unregistered Interests Which Override Registered Dispositions

225. The Act separates out those interests which are binding on the first registered proprietor from those interests which bind the person to whom a disposition is made on a subsequent disposal of registered land. The interests binding on first registration are set out in Schedule 1. Some of the interests are common to both categories (see the notes to Schedule 1). The notes below only deal with the extent to which the interests listed in Schedule 3 differ in nature from those that bind on a first registration.

Leasehold estates in land

226. *Paragraph 1* provides that a leasehold estate granted for a term not exceeding seven years from the date of grant overrides registered dispositions, subject to seven exceptions. The first three exceptions are the same as those that apply on first registration. The other four apply in respect of a lease granted by the proprietor of a registered estate or charge where that grant constitutes a registrable disposition required to be completed by registration. They are:

- i) a lease which is granted to take effect in possession more than three months into the future;
- ii) a discontinuous lease (commonly thought of as a time-share where the lease grants exclusive possession for periods which are not consecutive);
- iii) a right to buy lease under Part 5 of the Housing Act 1985; and
- iv) a lease granted by a private sector landlord to a person who was formerly a secured tenant and has a preserved right to buy.

Interests of persons in Actual occupation

227. *Paragraph 2* provides that, an interest belonging to a person in actual occupation of land overrides registered dispositions, subject to four exceptions. The first exception is the same as the exception that applies on first registration. That is, where the interest arises under a settlement under the Settled Land Act 1925. The second exception adopts one of the principles under the current law. If the person with the interest is asked before the disposition occurs and he or she fails to disclose the interest when that could reasonably have been expected, then overriding status is lost. A new exception relates to the rights of a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and which the person acquiring the interest did not know about at that time. To fail the test as formulated in the Act, it is the occupation that has to be obvious not the interest. Lastly, there is excepted from overriding status a leasehold estate granted to take effect in possession more than three months from the date of grant but which has not taken effect in possession at the time of the disposition. This exception will not often apply and will only occur when the lease in question has not been registered and the person to whom the lease was granted was for some other reason already in occupation.

Easements and profits à prendre

228. *Paragraph 3* provides that the priority of a legal easement or *profit à prendre* is protected without the need for registration, but, unlike the situation on first registration, there are exceptions which give this provision a much more limited scope. Any person who acquires an interest for valuable consideration under a registered disposition will only be bound by an easement or *profit* that is an overriding interest if:

- i) it is registered under the Commons Registration Act 1965;

- ii) he or she actually knows of it;
- iii) it is patent; (in other words, it is obvious on a reasonably careful inspection of the land over which the easement or *profit* is exercisable, so that no seller of land would be obliged to disclose it); or
- iv) it has been exercised within the period of one year before the disposition.

Schedule 4: Alteration of the Register

229. The provisions of this Schedule bear no relation to the existing provisions in the Land Registration Act 1925. They have been recast to reflect the present practice in relation to rectification and amendment of the register.

Introductory

Paragraph 1 sets out a narrower definition of “rectification” than under the current law. Rectification is limited to the situation where a mistake is to be corrected, and where the correction also prejudicially affects the title of the registered proprietor. Rectification is just one particular form of alteration. When rectification under this definition occurs, the proprietor may be entitled to indemnity as he or she will have been prejudicially affected by the amendment made.

Alteration pursuant to a court order

230. *Paragraph 2* enables the court to order the alteration of the register in three situations:
- (i) first, to correct a mistake;
 - (ii) secondly, to bring the register up to date; (if, for example, a court decided that a claimant in proceedings had established his or her entitlement to an easement by prescription over a parcel of registered land, it could order that the benefit and burden of the easement be recorded in the registers of the affected titles); and
 - (iii) thirdly, to give effect to any estate, right or interest excepted from the effect of registration.
231. Where land is registered with good leasehold, possessory or qualified title, rights are excepted from the effect of registration (for details of the different classes of title see sections 9 and 10). It is these rights that may be the subject of court proceedings which ultimately give rise to an alteration in the register. When the court order is served on the registrar, it places him under a duty to give effect to it in the register of title. Rules may specify the circumstances in which the court is under a duty to order the alteration of the register in situations where the alteration does not prejudicially affect the title of the registered proprietor, i.e. when rectification is not involved. Rules will also make provision about the form of court orders and their service.
232. *Paragraph 3* relates to rectification cases only. The paragraph reproduces the existing principle that the register should not be rectified against a registered proprietor who is in possession of the land without his consent, unless either he or she has by fraud or lack of proper care caused or substantially contributed to the mistake in the register, or there is some other reason why it would be unjust not to make the alteration. The court is also obliged to make an order which it has power to make, unless there are exceptional circumstances which justify it in not making the order. *Sub-paragraph (4)* widens the meaning of “a registered estate in land” for the purpose of this paragraph to make it clear that it includes any registered estate which exists for the benefit of the proprietor’s estate in land, such as an easement.

Alteration otherwise than pursuant to a court order

233. *Paragraph 5* gives the registrar power to alter the register without the need for the matter to be considered by a court. The registrar may alter the register for the same purposes as the court can under paragraph 2 and additionally, he can remove a superfluous entry. The ability to remove superfluous entries is likely to be important with the advent of electronic conveyancing to enable conveyancers to make changes to the register without the inconvenience of dealing with entries which are no longer current. Rules may specify the circumstances in which the registrar is under a duty to alter the register in situations where the alteration does not prejudicially affect the title of the registered proprietor, i.e. when rectification is not involved. Rules may deal with how the register is to be altered, about applications for alteration (including imposing a requirement for an application to be made) and the procedure to be adopted in making alterations (including whether or not an application is required).
234. *Paragraph 6* relates only to rectification cases, that is where the alteration to the register prejudicially affects the title of the registered proprietor. The same principles applied to court proceedings for rectification apply to proceedings before the registrar. Rectification can only be ordered by the registrar against a proprietor of land in possession in the limited cases explained in the notes to paragraph 2. The meaning of “a registered estate in land” is the same and the registrar is placed under a duty to make an order for rectification, where he has power to do so, unless exceptional circumstances exist. If there is an objection to an application to rectify the register, however, the registrar is under a duty to refer the matter to the adjudicator for determination (see section 73(7)). Any contested application for rectification will therefore be resolved by the adjudicator.

Rectification and derivative interests

235. *Paragraph 8* makes it clear that the register may be altered so as to change permanently the priority of any interest affecting the registered estate or charge.

Costs in non-rectification cases

236. *Paragraph 9* gives the registrar power to pay such costs as he sees fit in cases where the register is altered by him, whether that alteration occurs through his own initiative or as a result of a court order served on him. The registrar can pay those costs if he consented to the costs being incurred in advance or one of two other situations have arisen. The first is that he has given retrospective consent to those costs. The second is when those costs were incurred urgently and it was not reasonably practical for his consent to be sought.

Schedule 5: Land Registry Network

Access to network

237. *Paragraph 1* Amendment of entries in the register simultaneously with the execution of conveyancing documents is likely to be a feature of electronic conveyancing. Electronic conveyancers will therefore need to be given appropriately regulated access to the land registry network. Paragraph 1 therefore provides for a person who is not a member of the land registry to have access to the land registry network but only by means of a network access agreement made with the registrar. If, however, an applicant meets the criteria laid down in rules, the registrar must enter into an agreement with him (and paragraph 4 provides for appeals against refusal of access). That agreement may allow him to communicate with other users of the network and with the registrar; and post and retrieve information. It may allow him to input information into the system to make changes to the register or cautions register, and to issue official copy documents and search results. The network may also be used for such other purposes as the registrar sees fit. Rules may regulate how the network access agreements are

used to confer authority to carry out the functions of the registrar. It is envisaged that different levels of access could be given to different categories of users depending on the role they play in the conveyancing process, e.g. different levels of access for estate agents, mortgage lenders or conveyancers. Rules made under this paragraph are subject to greater Parliamentary scrutiny than land registration rules are generally (see section 128) and the Lord Chancellor must also consult before making the rules. Under paragraph 11, the Lord Chancellor must have specific regard to confidentiality of information held on the network, competence of the users and the adequacy of insurance arrangements for potential liabilities.

Terms of access

238. *Paragraph 2* The network access agreement referred to in paragraph 1 will define the nature of the transactions that a particular user may undertake through the network and such other terms as the registrar sees fit, including charging for access. Rules may regulate the terms on which access is authorised under paragraph 2. These rules are subject to greater Parliamentary scrutiny than land registration rules generally and the Lord Chancellor must also consult before making the rules. Rules may require that a user use the system for the transactions for which he is authorised to use it. The rules may also enable network transactions to be monitored (e.g. for chain management) or for such other purpose as has been specified in rules. The rules may specify terms for the regulation of the use of the network.

Termination of access

239. *Paragraph 3* deals with two situations, the termination of the network access agreement by the user and the termination by the registrar. The user can terminate the agreement at any time by notice. Rules may make provision about the termination of the agreement by the registrar covering the grounds of termination, the procedure to be adopted when termination occurs and a system of suspension of termination pending an appeal (the right of appeal is dealt with in paragraph 4). The paragraph indicates that the basis for termination might include failure to comply with the terms of the agreement, failure to meet conditions laid down in rules made under this paragraph or ceasing to meet the qualifying criteria specified in rules made under paragraph 1. The registrar may have contractual remedies against a party to a network access agreement which he can pursue without terminating the agreement itself. He will be also able to provide education and training in the use of the network, to assist in developing standards. Rules made under paragraph 3 are subject to greater Parliamentary scrutiny than land registration rules generally and the Lord Chancellor must also consult before making the rules. In making rules about the termination of network access agreements, the Lord Chancellor must have specific regard to confidentiality of information held on the network, the competence of the users and the adequacy of insurance arrangements for potential liabilities.

Appeals

240. *Paragraph 4* A person who is aggrieved by the registrar's decision in respect of an application for a network access agreement or its termination may appeal to the adjudicator (for the role of the adjudicator see Part 11 and Schedule 9). This would be expected to involve handling disputes as to whether the registrar acted properly when deciding that an applicant did not meet the criteria for the level of access sought or in relation to the termination of an agreement. The adjudicator may substitute his own decision for that of the registrar and give directions to give effect to his determination. There is a further right of appeal on a point of law from the adjudicator's decision (see section 111). Rules will govern how the appeals procedure works.

Network transaction rules

241. *Paragraph 5* The Lord Chancellor may make rules covering the procedure to be followed throughout a transaction being undertaken through the network, including provisions about the supply of information to the registrar relating to unregistered interests, including overriding interests (compare section 71 and see paragraph 6 below). These network transaction rules will be of great practical importance as they will specify how electronic conveyancing is to be conducted.

Overriding nature of network access obligations

242. *Paragraph 6* The network transaction rules made under paragraph 5 are likely to require an authorised conveyancer to provide specified information about a dealing, and, in particular, information about interests whose priority is protected without the need for registration. The rules are likely to require the disclosure of other information that a registered proprietor might not wish to have disclosed, such as the fact that a right to determine a registered estate in land has become exercisable. In addition, where the transaction is part of a chain, the conveyancer might have to disclose information about the transaction itself that the client regards as confidential. In these circumstances, the situation may arise where a conveyancer could be required to act contrary to the client's wishes. Where conflicting obligations do arise, paragraph 6 provides that the obligation under the network access agreement prevails and discharges the other obligation to the extent that they conflict.

Do-it-yourself conveyancing

243. *Paragraph 7* puts the registrar under a duty to provide assistance to enable do-it-yourself conveyancers to conduct their own conveyancing notwithstanding the introduction of a land registry network. That duty will only relate to the procedural and practical aspects of the conveyancing transaction. As now, the registrar will not provide legal advice. It is envisaged that the registrar will carry out the electronic transactions on their directions, and that this service will be available from district registries.

Presumption of authority

244. *Paragraph 8* Under the present law, a conveyancer does not have implied authority to sign a contract for the sale or purchase of an interest in land on behalf of his or her client. This means that currently a conveyancer acting for one party to a conveyancing transaction would be entitled to see the written authority from the other party to his conveyancer to sign on his or her behalf. Paragraph 8 has been included to avoid the need for the exchange of paper-based authorities before contracts can be concluded electronically. Where an authorised network user purports to make a disposition or contract on behalf of a client which has been authenticated by the user as agent and contains a statement that the user is acting with the client's authority, this will be deemed to be the case so far as any other party to the document is concerned. It is likely to be a requirement of rules under paragraph 5 that conveyancers should get authority in the appropriate way. The sanction for failure to do so would be the possibility of the network access agreement being terminated for failure to comply with its terms (it being a condition of such an agreement that those who are granted access comply with the rules for the time being in force under paragraph 5).

Management of network transactions

245. *Paragraph 9* The terms of a network access agreement may, as envisaged by paragraph 2, require the network user to provide monitoring information. In relation to a transaction which is part of a chain, this would probably require the user to provide the registrar with details as soon as they were available of the fact that the transaction that the client was intending to enter into was part of a chain. Thereafter, he or she would need to disclose that a particular conveyancing step had occurred, for example that local

searches had been completed or a mortgage offer received. Paragraph 9 enables the registrar, or the person to whom he had delegated “chain management” responsibilities, to use the monitoring information to manage network transactions. In particular, he may disclose such information to persons authorised to use the network, for example other conveyancers involved in the chain, and authorise further disclosure if he considers it necessary or desirable to do so. The “chain manager” will not have any direct coercive powers but will be able to identify the link in the chain that is causing delay and will then be able to encourage that party to proceed with due despatch.

Supplementary

246. *Paragraph 10* provides that the registrar may provide, or arrange the provision of, education and training in relation to the use of a land registry network.

Schedule 6: Registration of Adverse Possessor

Right to apply for registration

247. *Paragraph 1* provides that a person (the applicant) who has been in adverse possession (as defined in paragraph 11) for the period of ten years (60 years, where paragraph 13 applies) calculated as provided in the paragraph may apply to be registered. The estate in respect of which the application is made need not have been registered throughout the period of adverse possession. Where an application under paragraph 1 is required to be dealt with under paragraph 5, and where the applicant claims that he or she is entitled to be registered as the new proprietor because the third of the conditions in that paragraph is met, paragraph 5(4)(d) provides a partial exception by requiring the land to have been registered more than a year before the application.

Notification of application

248. *Paragraph 2* provides that the registrar must give notice of the application to specified persons, being those whose interests may be affected by the application.

Treatment of application

249. *Paragraph 3* provides that a recipient of a notice under paragraph 2 may, by notice to the registrar, require the application to be dealt with under paragraph 5. If the recipient does this then he or she is objecting to the application.
250. *Paragraph 4* provides that if there is no such requirement then the applicant must be entered in the register as the new proprietor – paragraph 9 deals with the effect of such registration (and of registrations under paragraph 7).
251. At present, where a squatter has been in adverse possession for the required period the registered proprietor holds the registered estate on trust for the squatter. When an application for registration is successful, in the case of a squatter in respect of a registered freehold, he or she is registered as proprietor of a new freehold title and the existing freehold title is closed insofar as it relates to the land squatted upon. In the case of a registered leasehold the squatter is registered as proprietor of that leasehold.
252. Under paragraphs 4 and 7, in all cases the applicant will be registered as proprietor of the existing registered estate.
253. The present provision (Land Registration Act 1925, section 75) that the registered proprietor holds on trust for a squatter is not carried forward to the Act because the circumstances where a squatter will be entitled (under paragraph 5) to be registered as proprietor are limited and such a right will be protected against third parties provided that the squatter is in actual occupation of the land in question. His or her proprietary rights will then have overriding status.
254. *Paragraph 5* provides that if the applicant can show that one or more of three conditions applies, the applicant is entitled to be registered as the new proprietor of the estate. If a

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

recipient who has objected disputes that a condition applies, then if the objection is not disposed of by agreement the matter will have to be referred to the adjudicator under the general provision as to objections.

255. The first condition set out in paragraph 5 is intended to provide statutory recognition for the equitable principles of proprietary estoppel. Examples might be:

- Where the applicant/squatter has built on the registered proprietor's land in the mistaken belief that he or she was the owner of it and the proprietor has knowingly acquiesced in his or her mistake. The squatter eventually discovers the true facts and applies to be registered after ten years.
- Where neighbours have entered into an informal sale agreement for valuable consideration by which one agrees to sell the land to the other. The "buyer" pays the purchase price, takes possession of the land and treats it as his own. No steps are taken to perfect his or her title. There is no binding contract because the agreement does not comply with the formal requirements for such a contract. The "buyer" discovers that he or she has no title to the land. If he or she has been in possession of it for ten years he or she can apply to be registered as proprietor.

In each of these cases, an equity arises by estoppel, to which the legislation should be able to give effect by registering the squatter as owner of the registered estate in place of the existing proprietor.

256. Examples of the second condition (some other right to the land) might be:

- The squatter is entitled to the land under the will or intestacy of the deceased proprietor.
- The squatter contracted to buy the land and paid the purchase price, but the legal estate was never transferred to him or her. In a case of this kind the squatter-buyer is a beneficiary under a bare trust, and, as such, can be in adverse possession.

257. The third condition (reasonable mistake as to the boundary) would cover cases such as:

- Where the boundaries as they appear on the ground and as they are according to the register do not coincide, for example, because when the estate was laid out the dividing fences or walls were erected in the wrong place and not in accordance with the plan lodged at the Land Registry.
- Where the registered proprietor leads the squatter to believe that he or she is the owner of certain land on the boundary when in fact it belongs to the registered proprietor. If there has been detrimental reliance, then the first condition (estoppel) might also apply.

258. One of the requirements of the third condition is that estate to which the land relates was registered more than one year prior to the date of the application. This requirement is imposed because title to *unregistered* land can normally be acquired after twelve years' adverse possession while under the third condition title to *registered* land may be acquired after ten years' adverse possession. There might be a case where the squatter had been in adverse possession of unregistered land for more than ten but less than twelve years, the title was then registered and the other requirements of the third condition are met. The squatter would not have barred the title of the landowner prior to registration of the title but if this provision was not made he or she would be entitled to apply to be registered as proprietor as soon as the owner was registered. In other words, the owner would have no opportunity to evict the squatter.

259. Where an application does not rely upon the third condition there is no minimum period during which the estate must have been registered – all that is required is that the estate is registered when the application is made (paragraph 1(4)).

Right to make further application for registration

260. *Paragraph 6* provides that if the applicant's application for registration is refused but the applicant remains in adverse possession for a further two years, he or she is entitled (subject to the three exceptions in paragraph 6(2) and the two restrictions in paragraph 8) to apply once again to be registered. The two year period is to enable the registered proprietor or registered chargee to take reasonable steps either to evict the squatter (or at least to start proceedings to do so) or to regularise the squatter's possession by negotiating a bilateral agreement under which he or she can stay as the proprietor's tenant or licensee.
261. Transitional arrangements will be needed to cover the case of certain squatters who mistakenly believed themselves to be the owner of the land under paragraph 5(4). The provisions of the Act involve a move from a position where there is (generally) a 12 year limitation period to where there is no limitation period as such, but where it is possible for a squatter to be registered as proprietor after 10 years' adverse possession. In most cases, the fact that the squatter might acquire title after only 10 years rather than 12 does not matter. The registered proprietor can stop the squatter from acquiring title by objecting to his or her application for registration.
262. Where a squatter is entitled to be registered because he or she reasonably but mistakenly believed themselves to be the owner of the land under paragraph 5(4), they might find that they were entitled to be registered as proprietor of the land on this basis on the day that the legislation is brought into force, even though they have only been in adverse possession for 10 years and, the day before, the registered proprietor could have successfully initiated possession proceedings against them.
263. This case will be dealt with by timed implementation. The provisions of the Act are to be brought into force by order. It is therefore proposed to bring paragraph 5(4) into force one year after the rest of Schedule 6. This means that registered proprietors will have one year from the coming into force of the rest of the Act to take proceedings against any squatter who might fall within paragraph 5(4) or otherwise regularise his or her position so that he or she is no longer in adverse possession.
264. *Paragraph 7* provides that this time the applicant will be registered as proprietor whether or not the registered proprietor objects.

Restriction on applications

265. *Paragraph 8 Sub-paragraph (1)* is intended to ensure that the protection against adverse possession conferred by the Limitation (Enemies and War Prisoners) Act 1945 continues to apply.
266. Under the Limitation Act 1980, section 28 a person under a disability must be suffering it when adverse possession commences. Under *sub-paragraph (2)* the relevant time will be when the applicant applies to be registered, as that is when the registered proprietor needs to be able to protect his or her position by objecting to the application. The sub-paragraph is wider than section 28 as it protects not only those suffering mental disability but also those who are so physically impaired that they cannot communicate their decision.

Effect of registration

267. Under *paragraph 9*, the applicant will, upon registration, take the land subject to the same estates, rights, and interests that bound the previous proprietor except that (subject to the case mentioned below) he or she will take free of any registered charge which affected the estate immediately before his or her registration.
268. The case referred to above is where an applicant is registered because his or her application was determined by reference to one of the three conditions. In that case, the estate is vested in him or her subject to any registered charge.

Apportionment and discharge of charges

269. *Paragraph 10* applies where an applicant is registered subject to a such a registered charge and the charge affects other property. In such circumstances, the applicant may require the chargee to apportion the amount secured by the charge and is entitled to a discharge of his estate from the charge upon making the payments mentioned in *sub-paragraph (2)*.

Meaning of “adverse possession”

270. Under *paragraph 11* an applicant, X, does not have to show that she has been in adverse possession for the ten year period provided that *sub-paragraph (2)* applies. It would thus suffice if:
- X is the successor in title of an earlier squatter from whom he or she acquired the land, and, taken together, the two periods of adverse possession amount to ten years; or
 - X has been in adverse possession, has herself been dispossessed by a second squatter, Y, and has then recovered the land from Y. In these circumstances, he or she can add Y’s period of adverse possession to his or her own to make up the necessary ten-year period.

Trusts

271. The purpose of *paragraph 12* is that where there are successive interests, adverse possession by a squatter should not prejudice the rights of beneficiaries who are not yet entitled in possession.
272. The operation of *paragraph 12* can best be illustrated by an example:
- Land is held on trust for A for life, thereafter for B for life, thereafter for C absolutely. S, a squatter, goes into adverse possession of the land during A’s lifetime and remains there. For as long as either A or B is alive, S will be unable to apply to be registered as proprietor of the land under paragraph 1. Indeed, it is only ten years after C’s interest has fallen into possession that S can make such an application. This is because S is not regarded as being in adverse possession until C, the remainderman, becomes entitled to the land.

Crown foreshore

273. *Paragraph 13* provides, amongst other things, for a 60 year period (rather than ten years) where an application is made under paragraph 1, and relates to foreshore belonging to Her Majesty or to one of the Royal Duchies. This adapts the longer limitation period provided for the recovery of foreshore in the Limitation Act 1980 to the scheme of the Act.

Rentcharges

274. Under *paragraph 14* rules must be made to apply the provisions of this Schedule to registered rentcharges. Such rules are likely to be technical and of a length more suited for subordinate legislation.

Schedule 7: the Land Registry

Holding of office by Chief Land Registrar, Remuneration etc. of Chief Land Registrar, and Parliamentary disqualification

275. *Paragraphs 1,2 and 7*The Chief Land Registrar will hold the office on the terms determined by the Lord Chancellor, including pay, expenses and allowances, and the provision of a pension. The Chief Land Registrar may resign or be removed from office

if he is unable or unfit to act, but otherwise shall continue in office until the term of his appointment ends. When the appointment ends, he is eligible for reappointment. If there are special circumstances on the termination of the appointment, the Lord Chancellor has power to pay compensation. For the first time, the office of Chief Land Registrar becomes a disqualifying office for the purpose of membership of the House of Commons or the Northern Ireland Assembly.

Staff, and Indemnity for members

276. *Paragraphs 3 and 4* The registrar may choose his staff and appoint them on such terms and conditions as he, with the approval of the Minister for the Civil Service, sees fit. Following the model of the Land Registration Act 1925, the Act protects any member of the land registry from a claim in damages for anything done or omitted to be done in relation to land registration, unless it is shown that they acted in bad faith.

Seal, and Documentary evidence

277. *Paragraphs 5 and 6* Paragraph 5 continues the effect of the existing legislation which allows documents sealed with the Land Registry seal to be admissible in evidence without further proof. Additionally paragraph 6 provides that the forms and directions made by the Chief Land Registrar are admissible in evidence under the Documentary Evidence Act 1868.

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.

Mines and minerals

280. *Paragraph 2* There is one qualification to the right of indemnity set out in paragraph 1. Paragraph 2 provides that no indemnity is payable on account of any mines or minerals, or the existence of any right to work or get mines or minerals, unless it is

noted in the register of title that the registered estate includes mines and minerals. This replicates the existing position, which arose because of the difficulty of establishing on first registration if the mines or minerals were included in a title. Indemnity is only available when there is an entry in the register confirming that the mines and minerals are included. The existence of the entry indicates that the registrar was satisfied after careful investigation that the mines and minerals were not disposed of at an earlier date, or that the lord of the manor's rights to mines and minerals was not preserved in relation to land that was formerly copyhold.

Costs

281. *Paragraphs 3 and 4* Paragraph 3 sets out the general principle that a claimant is entitled to recover by way of indemnity costs or expenses in relation to the matter only if they were reasonably incurred by him or her with the consent of the registrar. An insurer cannot be expected to settle a claim for costs incurred without his prior consent. That principle is not applied in three cases: (1) where the costs or expenses must be incurred urgently and it is not reasonably practicable to apply for consent in advance; (2) where the registrar subsequently consents to costs which have already been incurred; and (3) where the claimant incurs costs of going to court for a determination of their entitlement to indemnity or to determine the amount of indemnity due (in relation to court applications, see paragraph 7(2)). Even if indemnity is not awarded, the registrar can, for the first time, pay costs and expenses incurred with his consent. If his consent was not obtained in advance he may still award costs if those costs and expenses were incurred urgently (so that it was not possible to get his consent) or where the costs and expenses were subsequently approved by him. This new provision enables a person to recover their costs if there appears to have been a mistake by the registrar but after expending money on further investigations, this proves not to be the case.

Claimant's fraud or lack of care

282. *Paragraph 5* replicates the principle of contributory negligence introduced by the Land Registration Act 1997. No indemnity is payable if the loss was suffered as a result wholly or partly of the claimant's own fraud. If however the loss was suffered as a result of the claimant's lack of proper care, then the indemnity payable is reduced to the extent that it is fair having regard to the claimant's share of the responsibility for the loss. Indemnity will not be payable when the claimant's lack of proper care is solely responsible for the loss. Additionally, the paragraph provides that, unless the claimant paid for the interest noted in the register or the registered estate in respect of which the loss was suffered, the claimant will be treated as if the loss caused by the fraud or lack of proper care of a person from whom the claimant has acquired the interest was his own fraudulent act or careless action.

Valuation of estates etc.

283. *Paragraph 6* There is no restriction on the type of loss that is recoverable by a claimant. This means that a claimant can recover any loss flowing from the particular circumstance whether that loss is direct (for example, the value of land lost) or consequential (the loss of a valuable contract). If indemnity is sought for the loss of an estate, interest or charge, however, paragraph 6 puts a maximum value on the figure for that indemnity. This provision replicates the current position, which sets out two different bases for assessing the maximum sum allowed. If indemnity is payable because the claimant has suffered the loss by reason of rectification, the maximum sum is the value of the estate, charge or interest immediately before rectification of the register of title, but as if there were to be no rectification. By contrast, if the claimant has suffered the loss because of a mistake but where the register was not rectified, the maximum sum is the value of the estate, interest or charge at the time when the mistake which caused the loss was made. Where the valuation is taken at the date that the mistake was made, however, it will be possible for interest to be paid from the date of the mistake

(see paragraph 9). The payment of the maximum sum permitted for the direct cost of the interest lost does not prevent the claimant recovering consequential loss.

Determination of indemnity by court

284. *Paragraph 7* sets out the entitlement of a person to apply to the court to determine if indemnity is payable, and if so, how much. There is no need to obtain the registrar's prior consent to the costs of the court action (see *paragraph 3* above).

Time limits

285. *Paragraph 8* A claim for indemnity will be barred by lapse of time. *Paragraph 8* states that for the purposes of the Limitation Act 1980, the liability to pay indemnity is a simple contract debt. The claim will therefore be barred six years after the cause of action arose. The cause of action arises at the time when the claimant knew, or but for his or her own default might have known, of the existence of his or her claim.

Interest

286. *Paragraph 9* makes provision for the payment of interest, which is not found expressly in existing legislation. Rules can be made to deal with the circumstances in which interest is payable, and the period and rates of interest that are to be paid. It is likely that the rules will provide for the payment of interest from the date of a mistake where the maximum sum recovered in respect of the loss of an estate, interest or charge is taken to be its value at the date when the mistake was made (see paragraph 6).

Recovery of indemnity by registrar

287. *Paragraph 10* replicates the current position, which is to enable the registrar in three circumstances to recover from a third party the amount of any indemnity (plus interest) paid to the claimant. The first situation is when that person caused or substantially contributed to the loss by fraud. There is no requirement that the recipient of the indemnity payment could have sued the perpetrator of the fraud, although it is likely that he or she would have been able to do so. Secondly, akin to an insurer's right of subrogation, the registrar may enforce any right of action whatsoever that the claimant would have been entitled to enforce had the indemnity not been paid. Lastly, where the register has been rectified, the registrar may enforce any right of action whatsoever which the persons in whose favour the register was rectified would have been entitled to enforce if the register had not been rectified. The third right of recourse goes beyond the insurer's right of subrogation. These rights are given to the registrar in addition to any other rights and remedies that he has otherwise.

Schedule 9: the Adjudicator

Holding of office, Remuneration, and Parliamentary disqualification

288. *Paragraphs 1, 2 and 9* The adjudicator will hold office on the terms determined by the Lord Chancellor, including pay, expenses and allowances. Pension provision will be dealt with either under the Judicial Pensions and Retirement Act 1993 (JUPRA), or otherwise as the Lord Chancellor determines. The adjudicator will have judicial terms and conditions. He or she may resign or be removed from office on the grounds of incapacity or misbehaviour. The adjudicator will continue in office until the term of the appointment ends. When the appointment ends, he or she is eligible for reappointment. The appointment is subject to the provisions of JUPRA which provide for a compulsory retirement age of 70 years, subject to the possibility of annual extensions until the appointee is 75 years of age. If there are special circumstances on the termination of the appointment, the Lord Chancellor has power to pay compensation. Like the office of Chief Land Registrar, the office of adjudicator becomes an office which disqualifies

from membership of the House of Commons, the Scottish Parliament, the National Assembly for Wales and Northern Ireland Assembly.

Staff and Conduct of business

289. *Paragraphs 3,4 and 5* Like the registrar, the adjudicator is supported by staff who may be authorised to carry out any of his or her functions. The only exception to this is that for tasks that are not administrative, such as presiding over hearings, the member of staff must meet the same requirements of ten years' legal qualification under the Courts and Legal Services Act 1990 as the adjudicator. Like the registrar, the adjudicator may choose staff and appoint them on such terms and conditions as he or she, with the approval of the Minister for the Civil Service, sees fit. The Lord Chancellor can make regulations to cover the situation when a vacancy arises in the office of adjudicator.

Application of Tribunals and Inquiries Act 1992

290. *Paragraph 8* states that the adjudicator is to be under the supervision of the Council on Tribunals. At present, the Solicitor to HM Land Registry is not.

Schedule 10: Miscellaneous and General Powers

291. This Schedule contains specific rule-making powers in respect of: dealings with estates subject to compulsory first registration; title matters between sellers and buyers; implied covenants; land certificates; form, content and service of notices; applications; and statutory statements required under any enactment to be included in an instrument effecting a registrable disposition or a disposition which triggers the requirement of registration. It also contains a residual power to make any other provision which it is expedient to make for the purpose of carrying the Act into effect. This residual power follows in the foot steps of section 144 (1) (xxxi) of the Land Registration Act 1925.

Schedule 11: Minor and Consequential Amendments

Settled Land Act 1925 (c. 18)

292. *Paragraph 1* Section 119(3) makes the Settled Land Act 1925 subject to the Land Registration Act 1925 and is no longer required as a result of the Act.

Law of Property Act 1925 (c. 20)

293. *Paragraph 2* Section 44 of the Law of Property Act 1925 currently provides that under a contract for the grant of a lease, an intending lessee is not entitled to see the leasehold title out of which it is being granted (if any) or the title to the freehold of that land. The amendment to section 44 removes that restriction for contracts to grant leases that will result in first registration of title. Section 87 is amended to make it clear that although a registered proprietor of land can no longer create a mortgage by demise or sub-demise over registered land, the operation of section 87 is unaffected. The amendment has no application to leases granted out of registered land, even if the title to the registered estate out of which the lease is being granted is registered with less than absolute title. Section 94 of the 1925 Act, which relates to tacking and further advances, is amended to make the regime under section 49 of the Act applicable to all charges over registered land and for the scheme under section 94 to apply to all other charges. The other amendments to the Law of Property Act 1925 are consequential.

Inheritance Tax Act 1984 (c. 51)

294. *Paragraph 17* amends section 238(3) of the Inheritance Act 1984. Section 238, amongst other things, provides that a purchaser of registered land (or an interest in it) does not take subject to an Inland Revenue charge (to secure the payment of Inheritance Tax) if at the time of the disposition the charge was not protected by a notice in the register. "The time of the disposition" is defined in subsection (3) and currently means in relation

to registered land, the time of registration of the disposition. This amendment replicates this but additionally deals with dispositions in relation to registered land which are not required to be completed by registration (for example, a lease out of a registered freehold title not exceeding seven years). In such cases the time of the disposition is the time of completion.

Housing Act 1985 (c. 68)

295. *Paragraph 18* amends the Housing Act 1985. Section 37 provides that a conveyance, grant or assignment executed, under section 32, of a house situated in a National Park or in certain other areas shall contain a covenant limiting the freedom of the purchaser to dispose of the house (as therein provided). At present if a disposition of registered land contains such a covenant then the registrar is under a duty if registering the disposition to enter a restriction. The effect of the amendment to section 37(5) is that the registrar will also be under a duty to enter a restriction when he is registering the purchaser's title under a disposition of unregistered land and the instrument effecting the disposition contains the covenant (for example, a conveyance of the unregistered freehold estate to the purchaser).
296. The substitutions of paragraphs 4 and 5(2) of Schedule 9A to the 1985 Act are intended to have the effect of replacing the existing provisions with similar but clearer provisions.
297. *Paragraph 5(3)* will cease to have effect. That provision removes the necessity for the land certificate to be produced under section 64(1) of the Land Registration Act 1925 if a qualifying person applies for entry of a notice or restriction. Section 64(1) is (along with the remainder of the 1925 Act) repealed by Schedule 13 to the Act and the circumstances when land certificates are to be produced to the registrar are left to rules under the Act.
298. The words substituted for paragraph 6(1) will have the equivalent effect under the Act in that if the rights of qualifying persons are not protected by notice in the register they will be liable to lose their priority to a registered disposition under section 29.

Building Societies Act 1986 (c. 53)

299. *Paragraph 19* will amend paragraph 1 of Schedule 2A to the Building Societies Act 1986 to refer to the Act – paragraph 1 will only deal with discharges of mortgages of unregistered land.

Landlord and Tenant Act 1987 (c. 31)

300. *Paragraph 20* will substitute references to the Act for references to the Land Registration Act 1925

Judicial Pensions and Retirement Act 1993(c.8)

301. *Paragraph 28* adds the Adjudicator to HM Land Registry to the list of judicial officers in Schedule 5 to this Act. Its effect is to apply section 26 under which there is a compulsory retirement age of 70 with the possibility of annual extensions up to the age of 75 (see paragraph 1 of Schedule 9).

Law of Property (Miscellaneous Provisions) Act 1994 (c. 36)

302. *Paragraph 31* amends section 6 of the Law of Property (Miscellaneous Provisions) Act 1994. Under section 6 of that Act, a person making a disposition is not liable under the covenants implied by the Act for anything that was within the prior knowledge of the person to whom the disposition was made. A new subsection is added to exclude liability for any information that was entered in the register of title relating to that interest at the time of the disposition, the register of title being open to public inspection.

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 (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.

Schedule 13: Repeals

Land Registration and Land Charges Act 1971

330. This Act has been superseded apart from its provisions for the designation of areas of land as "Souvenir Land" outside the terms of the land registration system. Although one or two areas of souvenir land have been designated, the Land Registry has found a more effective way of dealing with the plots within the land registration system. These provisions are therefore no longer required.