

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### Part 7: Special Cases

##### The Crown

##### *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.