
STATUTORY INSTRUMENTS

2003 No. 1953

**The Land Registration Act 2002
(Transitional Provisions) Order 2003**

Cautions

Cautions against first registration

14.—(1) In relation to a caution against first registration lodged for registration before commencement, Part 5 of the 2003 Rules applies with the modifications set out in paragraph (2).

(2) The modifications referred to in paragraph (1) are—

- (a) paragraphs (2) to (5) of rule 41 do not apply,
- (b) in rule 51(1) of the 2003 Rules, the omission of the word “cautioner’s”.

Cautions against conversion

15.—(1) This article applies where, immediately before commencement, there is an entry in respect of a caution lodged under rule 215(2) of the 1925 Rules in the register of any title.

(2) In the event of an application to upgrade the title under any of subsections (1) to (5) of section 62 of the Act, the registrar shall, before determining the application, give notice of it to the person named in the entry referred to in paragraph (1).

(3) Where the person to whom notice is given, or any person deriving title under that person, responds to the notice by claiming any estate, right or interest in the land in the title, then, to the extent that the estate, right or interest subsists and is otherwise enforceable against the land, the claim is to be treated for the purpose of section 62(6) of the Act as one for an estate right or interest whose enforceability is preserved by virtue of the existing entry about the class of title.

Mortgage cautions

16.—(1) Subject to this article, mortgage cautions and sub-mortgage cautions entered in the register shall continue to have the same effect after commencement as they had immediately before commencement.

(2) Subject to paragraphs (3) and (4), the registrar must cancel a mortgage caution or a sub-mortgage caution where—

- (a) the cautioner, or some other person who can satisfy the registrar that he is entitled to the benefit of the protected mortgage or protected sub-mortgage, makes an application to withdraw it in Form WCT in Schedule 1 to the 2003 Rules, or
- (b) evidence is produced that satisfies the registrar, that the protected mortgage or protected sub-mortgage has been discharged, or
- (c) an application is made to register the protected mortgage, and any protected sub-mortgage, under section 27 of the Act and the registrar approves the application.

(3) Where there is a sub-mortgage caution entered in the register and application is made to cancel the relevant mortgage caution under sub-paragraph (a) or (b) of paragraph (2), the registrar must give notice of the application to the sub-mortgage cautioner.

(4) An application to register a protected mortgage under section 27(2)(f) of the Act must comply with the 2003 Rules and be accompanied by—

- (a) the original deed creating the protected mortgage, and
- (b) where title to the protected mortgage is vested in someone other than the cautioner, the documents proving devolution of title to the applicant.

(5) When registering a protected mortgage, the registrar must make an entry showing that it has priority in relation to other entries in the register from the date that the mortgage caution was entered in the register.

(6) Where application is made to register a disposition of the registered estate or registered charge affected by a mortgage caution or sub-mortgage caution, the registrar must—

- (a) give notice of the application to the cautioner,
- (b) retain the mortgage caution or sub-mortgage caution in the register unless it is to be cancelled in accordance with paragraph (2).

(7) In this article—

“cautioner” means the person named in a mortgage caution or sub-mortgage caution,

“mortgage caution” means a caution entered in the register in a specially prescribed form under section 106 of the 1925 Act as originally enacted⁽¹⁾,

“protected mortgage” means the mortgage that is protected by a mortgage caution,

“protected sub-mortgage” means the sub-mortgage that is protected by a sub-mortgage caution,

“sub-mortgage caution” means a sub-mortgage caution to which rule 228 of the 1925 Rules applied before commencement.

Modification of paragraph 2(3) of Schedule 12 to the Act

17. Paragraph 2(3) of Schedule 12 to the Act shall have the effect as if there were inserted at the end “, but with the substitution for the words in section 55(1) from “prescribed” to “served” of the words “period prescribed under paragraph 2(4) of Schedule 12 to the Land Registration Act 2002”.”

Non-standard restrictions in approved instruments

18.—(1) This article applies where a person applies in an approved instrument to enter a restriction in the register and the registrar considers that there is a standard form of restriction which is to like or similar effect to the restriction applied for (or would be but for the fact that it does not purport to restrict the entry of a notice).

(2) Where this article applies—

- (a) the registrar must enter in the register the standard form of restriction referred to in paragraph (1) instead of the restriction applied for,
- (b) the application is to be treated as though it was an application for entry in the register of a standard form of restriction, and
- (c) rule 92(1) of the 2003 rules does not apply to the application.

(3) In this article—

(1) Section 106 of the Land Registration Act 1925 was substituted by a new provision from 29 August 1977 by section 26(1) of the Administration of Justice Act 1977 (1977 c. 38).

“approved instrument” means a charge, or transfer—

- (a) which contains the application for the restriction applied for (whether in the body of the instrument or, in the case of a charge, in an incorporated document within the meaning of rule 139 of the 1925 Rules),
- (b) the form of which (including the application for the restriction) has been approved by the registrar before commencement as capable of being accepted for registration, and
- (c) in relation to which the approval referred to in sub-paragraph (b) has not been withdrawn, and

“standard form of restriction” means one referred to in rule 91 of the 2003 Rules.