

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

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.

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

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.