

The Law Commission

(LAW COM. No. 173)

PROPERTY LAW FOURTH REPORT ON LAND REGISTRATION

*Laid before Parliament by the Lord High Chancellor pursuant to section 3(2)
of the Law Commissions Act 1965*

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

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PROPERTY LAW
FOURTH REPORT ON LAND REGISTRATION
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THE LAW COMMISSION

Item IX of the First Programme

FOURTH REPORT ON LAND REGISTRATION

*To the Right Honourable the Lord Mackay of Clashfern,
Lord High Chancellor of Great Britain*

PART I

INTRODUCTION

1.1 In November 1987, you said that “the final results of the Law Commission’s work [on land registration] are eagerly awaited”.¹ We are now pleased to be able to submit our fourth, and for the time being final, report on the subject of land registration. Our first report² made recommendations relating to the identity and boundaries of registered land, conversion of title, the treatment of leases and the abolition of the minor interests index. The Bill attached to that report was enacted as the Land Registration Act 1986. Our second report³ recommended that the register of land should no longer be secret. The Bill attached to that report was enacted as the Land Registration Act 1988. Our third report⁴ was published in 1987 and in it we recommended changes to the law relating to overriding interests, rectification and indemnity and minor interests.

1.2 There was no Bill attached to the Third Report. We had decided that the Land Registration Acts 1925–1986, as you have said, “merited thorough re-examination”⁵ and we decided that the clauses to implement the recommendations of the third report should be drafted as part of that exercise. The purpose of this report is thus to present a Land Registration Bill which incorporates the recommendations of the third report and is a modern, and we hope simpler, version of the 1925 Act. Our report is therefore a short one and is confined to explaining our reasons for and approach to the revision of the 1925 Act and to summarising the recommendations of the Third Report.

1.3 Because this report is rather different from our usual reports, we have not published a consultation paper in the usual way. However, we have not worked in isolation. Substantial assistance in the way of constructive comments and detailed discussions has been received from H.M. Land Registry. This exercise in redrafting has benefited greatly from the store of registry experience, not least in identifying those provisions which are, and those which are not, of practical utility. We are most grateful to the Chief Land Registrar and his staff for all the time and effort they have managed to spare over a considerable period in helping us with this project. Nevertheless, the responsibility for this report remains with the Commission; any errors or omissions in the Bill are ours alone. In particular, acceptance on the part of the Chief Land Registrar of the clauses designed to implement the recommendations of our Third Report should not be assumed. We would also like to record our gratitude to Roger Smith of Magdalen College, Oxford, who subjected earlier drafts of the Bill to careful scrutiny. His observations were characteristically learned and penetrating; we have taken all of them into account and adopted many of them.

¹ *Hansard*, (H.L.), 25 November 1987, vol. 490, col. 691.

² Land Registration (1983), Law Com. No. 125.

³ Second Report on Land Registration: Inspection of the Register (1985), Law Com. No. 148.

⁴ Third Report on Land Registration: A. Overriding Interests B. Rectification and Indemnity C. Minor Interests (1987), Law Com. No. 158.

⁵ *Hansard*, (H.L.), 25 November 1987, vol. 490, col. 691.

PART II

THE LAND REGISTRATION ACT 1925

2.1 The Land Registration Act has been the subject of much criticism. It is “of exceptionally low quality”, “burdened with much more difficulty and technicality than seems necessary”, “complicated and obscure”.⁶ It can put “difficulties and pitfalls in the way of comparatively simple transactions which would not have arisen with unregistered land”.⁷ It is “badly drafted with much confusing nomenclature” and “it has become apparent that the flabby legislation needs to be knocked into radically fitter form”.⁸

2.2 It may well be asked why, if the legislation is so defective, it has not given rise to more litigation. One answer to that is that the Land Registry has coped well with the defects in the legislation and has made the system work despite it rather than because of it. Another answer is that registration of title essentially supplies conveyancing machinery and conveyancing is essentially non-contentious business: each side wishes to avoid litigation if practically possible. However a defective statute cannot be regarded as a satisfactory foundation for a modern system of conveyancing. Once compulsory registration of title is extended to cover the whole of England and Wales,⁹ it becomes likely that more problems will arise. The trend towards increasing home-ownership coupled with a greater frequency of sales of land will compound the problems.

Revising the Act

2.3 The Land Registration Act 1925 has 148 sections, and the Land Registration Rules, which have the same force as the Act,¹⁰ a further 325 rules. The Act has been amended numerous times, most recently by the Land Registration Act 1988. Mere consolidation, though useful, would not result in a statute that answered the criticisms above. In addition, it seemed right to us to look at the Act and Rules as a whole and see which provisions are really appropriate to primary legislation, and which are best left to the Rules. We have therefore undertaken what is for us a new task but one which seems peculiarly within our remit, to produce a Bill which does not (except in so far as it contains clauses relating to the Third Report) make substantial alterations to the present law, but which is a simplification and modernisation of it.

2.4 We have approached this task by asking parliamentary counsel to examine the present Act and the Rules and to produce a simpler, more modern version. This he has done and it has proved possible to produce a much shorter statute of some 72 clauses. This reduction in length has not been the result of making the clauses longer. Rather we have found that the existing Act tends to make specific and very detailed provision for matters that can be dealt with quite shortly. A few examples will illustrate this point. The registration provisions relating to settled land and trusts are to be found at sections 86–95 of the Act. In the Bill only one clause, clause 47, is thought to be necessary. Except for the matters dealt with there, land subject to a settlement or trust requires no other special provision. Similarly the provisions for registered dispositions have been reduced from seven¹¹ to three¹² and those for unregistered dealings from nine¹³ to three.¹⁴ In addition, a substantial measure of statute law revision has been undertaken: various provisions in the present legislation appearing no longer to be of any practical utility have not been reproduced.

2.5 We have endeavoured to put the clauses in the Bill in an order that should make

⁶ All from R. Megarry and H.W. Wade, *The Law of Real Property*, 5th ed., (1985), p. 196.

⁷ *Re White Rose Cottage* [1965] Ch. 940, 952 per Harman L.J.

⁸ D. Hayton, *Registered Land*, 3rd ed., (1981), p. 3.

⁹ Scotland has a separate system.

¹⁰ Land Registration Act 1925, s.144(2).

¹¹ Land Registration Act 1925, ss.18–24.

¹² Bill, clauses 15–17.

¹³ Land Registration Act 1925, ss.101–109.

¹⁴ Bill, clauses 30–32.

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sense to those who use the system. Thus the types of interest that can be registered and the priorities between them are set out early in the Bill and followed by the clauses dealing with how the different interests are to be registered.

2.6 The tables of Derivations and Destinations provide a useful guide to how the Bill relates to the Act. The explanatory notes for each clause indicate in more detail how and why that particular clause has been drafted. In the remainder of this report we explain how the Bill would implement the Third Report.

PART III

THE THIRD REPORT ON LAND REGISTRATION

3.1 The Third Report made recommendations concerning three separate but inter-related matters:

- (i) overriding interests,
- (ii) rectification and indemnity, and
- (iii) minor interests.

It would be inappropriate to repeat here the arguments of that report, but instead we summarise the main recommendations and explain which clauses in the Bill are derived from them.

Overriding interests

3.2 The Third Report recommended that there should continue to be overriding interests, that is, interests which bind a transferee despite not being protected on the register, but that there should only be five categories of such interests:

- (1) legal easements and profits à prendre;
- (2) rights acquired by adverse possession;
- (3) leases for twenty-one years or less;
- (4) rights of persons in actual occupation of the land;
- (5) customary rights

Clause 7 of the Bill derives from this recommendation.

3.3 Of particular interest is the treatment of the rights of those in actual occupation.¹⁵ A person entitled to receive rents and profits is no longer to have an overriding interest. Further, the rights of those in actual occupation are no longer qualified by the provision "save where enquiry is made and the rights are not disclosed". However, the Bill is not a charter for the unscrupulous. Failure to disclose rights when asked, or even, in some circumstances, merely standing by, will estop a person from asserting those rights and all overriding interests are expressly made subject to estoppel.¹⁶

3.4 Another longstanding problem has been the date at which the overriding interest must exist in order to be binding on a transferee. The 1925 Act does not make it clear whether the relevant date is completion or registration of the transferee's title.¹⁷ The Third Report recommended that the relevant date should be completion of the disposition. In the case of *Lloyds Bank v. Rosset*,¹⁸ the Court of Appeal decided that the date of completion is the relevant date under the 1925 Act, and the Bill puts the matter beyond doubt.¹⁹

3.5 The Bill sets out a class of rights which are binding regardless of registration.²⁰ These rights are capable of binding all registered titles, need not exist until the date of registration and are not subject to the provision relating to fraud or estoppel. We recommended that there should be an important distinction between overriding interests and such general burdens where claims to indemnity are concerned. Whereas the unwitting acquisition of land subject to an overriding interest may give rise to a claim for indemnity, the acquisition of land subject to a general burden will not.

¹⁵ Clause 7(2)(d).

¹⁶ Clause 9(7).

¹⁷ See *Emmet on Title* (19th ed.), para. 5.197.

¹⁸ Times Law Reports, 23 May 1988.

¹⁹ Clause 9(5)(a).

²⁰ Referred to as "general burdens" in the Third Report on Land Registration (Law Com. No. 158, para. 2.15). See clause 5(3).

Rectification and indemnity

3.6 The Report's recommendations on rectification and indemnity were summarised thus:²¹

- (1) Where the register does not reflect, whether through error or omission, the title to the land according to the rules of land law which prevail apart from registration of title then, if it is just to do so, the register may be rectified on application either to the registrar or the court.
- (2) For these purposes the rules of land law include land registration procedural requirements and the requirement to protect on the register or as a land charge (where relevant) where failure to protect leads to the defeat of the right.
- (3) Any such rectification may affect estates and interests already registered or protected or any existing overriding interest.
- (4) However, there is to be no rectification against a registered proprietor who has taken the care of a prudent purchaser and who is a bona fide purchaser in actual occupation of the land unless the rectification is in favour of a trustee in bankruptcy.
- (5) Where the register is rectified, any person suffering loss by reason of or despite such rectification should, subject as follows, be entitled to be indemnified in full.
- (6) Where an error or omission has occurred in the register, but the register is *not* rectified, any person suffering loss by reason of such error or omission should, subject as follows, be entitled to be indemnified in full.
- (7) Where an overriding interest is asserted against a registered proprietor or chargee, then he may apply for indemnity alone but, as a condition precedent to payment, there may be rectification of the register.
- (8) There should still be provisions for indemnity in respect of an error in an official search or loss of documents or inaccuracy of an office copy.
- (9) No indemnity should be payable where there is rectification in respect of fraud, mines or minerals, or legal costs incurred without consent.
- (10) Any indemnity payable should be reduced by such amount as may be just and equitable in respect of any lack of proper care by the applicant.
- (11) The limitations on the recovery of indemnity dealt with in paragraphs 3.30 and 3.31 should be repealed and amended as there recommended.

Part VIII of the Bill is derived from these recommendations.

Minor Interests

3.7 The Report recommended that there should continue to be a broad category of interests (neither overriding nor registrable) capable of protection on the register by an appropriate entry.²² In the Bill such interests are referred to as minor interests if they have not been protected by an entry on the register, and as protected interests once there has been such an entry.²³ The Report recommended,²⁴ and the Bill so provides,²⁵ that interests should continue to be capable of protection by notice, caution, inhibition, or restriction. However, it should be noted that, by virtue of clause 9 of the Bill, the method of protection does not affect the priority of the protected interests. Minor interests are to take priority as between each other in accordance with their date of creation. Protected interests have priority according to their date of entry on the register, but keep their earlier priority date (the date of creation) if they have already acquired priority over another interest because of it. There is a major exception to this last point, which is that if a purchaser (meaning a purchaser in good faith for valuable consideration of any interest in the land)²⁶ acquires a registered, overriding or protected

²¹ Para. 3.34.

²² Paras. 4.4–4.13.

²³ Clause 7(1).

²⁴ Paras. 4.20–4.61.

²⁵ Clauses 33–38.

²⁶ Clause 70(1).

interest, that purchaser will defeat a minor interest (that is, one not protected on the register), even if that minor interest was created earlier.

3.8 The remainder of our recommendations on minor interests were summarised thus:²⁷

- “(iii) Entry of a notice should be available to protect an interest in a registered charge as well as to protect an interest in land.
- (iv) The machinery for protection should distinguish between rights and interests which are acknowledged by the registered proprietor and those which are not.
- (v) Generally the notice should be used for acknowledged rights and interests and the caution for unacknowledged rights and interests.
- (vi) In accordance with this, whenever entry of a notice is requested, the land or charge certificate should be produced or, if either of these is already on deposit, the written consent of the registered proprietor of the land or charge to the entry.
- (vii) A minor interest holder should have the right to require production of the land or charge certificate where the minor interest has been created by agreement under the hand or seal of the registered proprietor of the land or charge.
- (viii) It should be possible to apply to change the name and address of a person in whose favour a caution is lodged without the need to withdraw and relodge the caution itself.
- (ix) The only exception to the paragraph (v) policy is the protection of charging orders which should continue to be by notice only subject to paragraph (xiii) below.
- (x) The inhibition should not be abolished as it is a useful procedural device; section 57 should be amended to allow the inhibition to be resorted to by those seeking Mareva or other injunctions extending to land.
- (xi) The restriction should be the only entry used to protect the interest of a beneficiary under a trust of land, be it a trust for sale, settled land or other trust. To this end the Registrar should have power to enter a restriction of his own motion wherever it is apprehended that a registered proprietor holds the land on trust for sale.
- (xii) Equally for mortgages of an interest under a trust, the restriction should be the only method of protection.
- (xiii) Consistently with the preceding paragraphs, a charging order obtained against the beneficial interest under a trust of a debtor in any registered land should be capable of protection by restriction only.
- (xiv) It should not be necessary to require production of the land or charge certificate on the entry of a restriction.
- (xv) The restriction should continue to be available for a particular interest or claim which the parties expressly agree should be protected by restriction.
- (xvi) The existing methods of creating charges of registered land should all continue.
- (xvii) Protection of a charge by substantive registration should be extended to include equitable mortgages created by deed, not being mortgages of an equitable interest.
- (xviii) The notice of deposit should no longer be available as a method of protection.
- (xix) Except for the “negative pledge clause”, which should be capable of protection by restriction only, floating charges should not be capable of protection on the register until they have crystallised. Once crystallised they are no different from any other equitable charge.

²⁷ Third Report on Land Registration (Law Com. No. 158), para. 4.117.

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- (xxi) Any revision in the chronological order of priorities by agreement should be the subject of an entry in the register.
- (xxii) There should be no change to the occasions when production of certificates to the Land Registry is required for dispositions, except that registration of a lease at a rent without a fine should also entail production.
- (xxiii) Otherwise the certificate need not be produced on the entry of a caution, a notice of a charging order or a restriction (whether applied for by the beneficiary or entered of his own motion by the Registrar) to protect a beneficial interest. Nor need it be produced where protection of a second charge by notice is desired and the certificate is with the first chargee whose compliance cannot be obtained.
- (xxiv) Where a notice is applied for but the application is technically defective, protection by caution should be obtainable without loss of priority."

PART IV

CONCLUSION

4.1 In conclusion, although the subject matter of this Bill and report may appear abstruse and technical, it is in fact of fundamental importance to the many thousands of people who engage in property transactions every year. We believe that the Bill attached to this report would, if implemented, be a valuable contribution to the simplification and modernisation of this important area of law.

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
BRIAN DAVENPORT
JULIAN FARRAND
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
30 September 1988

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APPENDIX

Land Registration Bill

TABLE OF DERIVATIONS

Note: The following abbreviations are used in this Table:-

1925	=Land Registration Act 1925 (c.21)
1925 (R)	=Land Registration Rules 1925 (S.R. & O. 1925 No. 1093)
1936	=Land Registration Act 1936 (c.26)
1946	=Statutory Instruments Act 1946 (c.36)
1956	=Administration of Justice Act 1956 (c.46)
1966	=Land Registration Act 1966 (c.39)
1971	=Land Registration and Land Charges Act 1971 (c.54)
1985	=Housing Act 1985 (c.68)
1986	=Land Registration Act 1986 (c.26)
1988	=Land Registration Act 1988 (c.3)
L158	=Third Report on Land Registration: Law Com. No. 158

Clause of Bill	Derivation
1 (1)	1925 s.126(1).
(2)	1925 s.126(7).
2 (1)	1925 s.132(1); [Drafting.]
(2)	[Drafting.]
(3)-(5)	1925 s.132(1).
3 (1)	1956 s.53.
(2)	1925 s.126(1); 1925 s.132(1).
(3)	1925 s.126(5).
(4)	1925 s.126(3)(4); 1925 s.132(1).
4 (1)	1925 s.126(5).
(2)	1925 s.126(5); [Drafting.]
(3)	1925 s.126(6).
(4)	1946 s.1(2).
(5)	[Drafting.]
5 (1)	1925 s.59; [Drafting.]
(2)	1925 s.59.
(3)	L158 para. 2.107.
6 (1)	1925 s.2(1).
(2)	L158 para. 4.117 (xvii)
(3)(4)	[Drafting.]
(5)	1925 s.3 (iv).
(6)	1925 s.95.
(7)	[Drafting.]
7 (1)	[Drafting;] 1925 s.3 (xv) (xvi).
(2)	L158 para. 2.105.
8 (1)	1925 s.1.
(2)	1925 (R) r.2; 1925 (R) r.3; 1925 (R) r.5(1).
(3)	1925 (R) r.16; 1925 (R) r.199; [Drafting;] 1925 (R) r.3; 1925 (R) r.5(1)

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Clause of Bill	Derivation
(4)	[Drafting.]
9 (1)	[Drafting.]
(2)	[Drafting.]
(3)(4)	1925 s.20(4); 1925 s.23(5); L158 para. 4.117 (ii) (xx).
(5)(6)	[Drafting.]
(7)	L158 para. 2.75.
10 (1)	1925 s.4; 1925 s.8(1).
(2)	1925 s.8(1); 1925 s.154(6).
(3)	[Drafting.]
11 (1)	1925 s.4; 1925 s.8(1); [Drafting.]
(2)	1925 s.4; 1925 s.8(1).
(3)	1925 s.13.
(4)	1925 s.7(1); 1925 s.12(1).
(5)	1925 s.4; 1925 s.8(1).
12 (1) (2)	1925 s.5; 1925 s.9.
(3)	1925 s.10.
(4) (5)	1925 s.6; 1925 s.7(2); 1925 s.11; 1925 s.12(2).
13 (1)(2)	1925 s.123(1); 1985 s.154(6).
(3)	1925 s.120(1).
(4)	1925 s.123(2).
(5)	[Drafting.]
(6)	1925 s.123(3).
(7)	1925 s.124.
14 (1)-(3)	1925 s.53.
(4)	1925 s.56(4).
(5)(6)	1925 s.56(2)(3).
(7)	[Drafting.]
15 (1)(2)	1925 s.18(1); 1925 s.21(1); 1925 s.25(1).
(3)	1925 s.18(2).
(4)	1925 s.21(2).
16 (1)(2)	1925 s.19(1)(2); 1925 s.22(1)(2).
(3)	1925 s.19(2); 1925 s.22(1)(2).
17 (1)-(3)	1925 s.20(1); 1925 s.23(1).
(4)	1925 s.23(2).
(5)(6)	1925 s.20(2)(3); 1925 s.23(3)(4).
18 (1)	1925 s.27(1).
(2)	1925 s.34(1).
(3)	1925 s.32.
(4)-(6)	1925 s.34(2)-(4).
(7)	[Drafting.]

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Clause of Bill	Derivation
19	1925 s.30.
20	1925 s.31(1)(3).
21	1925 s.33(1)(2).
22	1925 s.35(1)
23	1925 s.36; 1925 (R) rr.163-166.
24 (1)(2)	1925 s.41(1).
(3)-(5)	1925 s.41(2)-(4)
25	1925 s.42.
26 (1)(2)	1925 s.43.
(3)	1925 s.45.
27 (1)	1925 s.38(1).
(2)	1925 (R) r.76.
(3)	1925 s.38(2).
28	1925 s.37(1)(2); [Drafting.]
29	1925 s.47.
30 (1)(2)	1925 s.101(1)(2).
(3)	1925 s.101(5).
(4)	L158 para. 4.117 (vii).
31 (1)-(3)	1925 s.103(1).
(4)	1925 s.103(2).
32 (1)	1925 s.106(1).
(2)	1925 s.106(3)(4).
33 (1)(2)	L158 para. 4.117 (iv) (v).
(3)	L158 para. 4.117 (ix).
(4)	1925 s.52(2); 1925 s.56(2).
(5)	L158 para. 4.117 (xi)-(xiii); L158 para. 4.117 (xix).
34 (1)	[Drafting.]
(2)-(4)	1925 s.55.
(5)	1925 (R) r.220(3).
(6)	1925 s.56(4).
(7)	L158 para. 4.117 (viii).
(8)	1925 s.56(3).
(9)	[Drafting.]
35 (1)-(3)	1925 s.58(1)(5).
(4)	1925 s.58(2).
(5)	1925 s.58(4).
(6)	1925 s.58(1).
36 (1)(2)	1925 s.57(1)(2).
(3)	1925 s.57(4).
37 (1)(2)	1925 s.61(1).
(3)-(5)	1925 s.61(3)-(5).
(6)(7)	1925 s.61(6).
(8)(9)	1925 s.61(8)(9).
(10)	1925 s.61(1)(3).
38	1925 s.46.
39 (1)(2)	1925 s.63(1).
(3)	1925 s.65.
(4)-(6)	1925 s.63(2)-(4).
40 (1)-(3)	1925 s.64(1)-(3).
(4)(5)	1925 s.64(4).
41	1925 s.66.
42	1925 s.67.
43	1925 s.77; 1986 s.1.
44 (1)	1925 s.82(1); L158 para. 3.18.

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Clause of Bill	Derivation
(2)	1925 s.82(2); L158 paras. 3.8, 3.9.
(3)(4)	1925 s.82(3); L158 para. 3.18.
(5)(6)	1925 s.82(5)(6).
45 (1)(2)	1925 s.77(6); 1925 s.83(1)-(3); 1925 s.113; L158 paras. 2.14, 3.34(7).
(3)	1925 s.83(4).
(4)	1925 s.61(7).
(5)-(6)	1925 s.83(5); L158 para. 3.27.
(7)	1925 s.83(5); [Drafting.]
(8)	1971 s.2(4).
(9)	1971 s.2(1).
(10)	1971 s.2(3).
(11)	1925 s.83(9)(10).
(12)(13)	1925 s.83(11)(12); L158 para. 3.18; [Drafting.]
46	
47 (1)	1925 s.74.
(2)	1925 s.94(1).
(3)	1925 s.86(1)(3).
48	1925 s.60.
49	1925 s.96.
50 (1)(2)	1925 s.75(1).
(3)(4)	1925 s.75(2)(3).
(5)	1925 s.75(5).
51	1925 s.98.
52 (1)(2)	1925 s.99(1).
(3)-(5)	1925 s.99(2)-(4).
53	1925 s.111(5).
54	1971 s.4; [Drafting.]
55 (1)	[Drafting.]
(2)(3)	1925 s.110(1)(2).
(4)-(6)	1925 s.110(4)-(6).
(7)	[Drafting.]
56	1988 s.1; [Drafting.]
57	1925 s.113.
58	1925 s.113A.
59 (1)	1925 s.79(1).
(2)(3)	1925 s.79(2).
(4)	1925 s.79(3).
60 (1)	1925 s.115.
(2)	1925 s.117.
61 (1)	1925 s.116(1).
(2)	1925 s.117.
62	1925 s.119.
63 (1)-(3)	1925 s.128(1).
(4)	1925 s.128(2).
(5)	1925 s.128(3).
(6)	[Drafting.]
64	1925 s.127.
65	1925 (R) rr.298, 299.
66	1925 s.131.
67	1925 s.138.

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Clause of Bill	Derivation
68 (1)	1925 s.144(1).
(2)	1925 s.144(3); 1946 s.1(2).
69 (1)	1925 s.145(1).
(2)	1925 s.145(2)(3).
(3)	1936 s.7.
(4)	1946 s.1(2).
70	1925 s.3 (passim).
71	[Consequential amendments etc.]
72	[Short title etc.]
Sch. 1 para. 1	1925 s.76; 1925 (R) r.279.
para. 2	1925 (R) rr.276, 277.
para. 3	1925 (R) r.278.
Sch. 2 para. 1	1925 s.13.
para. 2	1925 s.14.
para. 3	1925 s.15.
para. 4	1925 s.16.
para. 5	1925 s.17.
para. 6	1985 s.154(5).
Sch. 3 para. 1	1925 s.24(1).
para. 2	1925 s.24(2).
para. 3	1925 s.28(1).
para. 4	1925 s.28(2).
Sch. 4	[Consequential amendments.]
Sch. 5	[Transitional provisions and savings.]
Sch. 6	[Repeals.]

Land Registration

Land Registration Bill

TABLE OF DESTINATIONS

Existing Provision	Subject Matter	Provision of Bill	Remarks
LAND REGISTRATION ACT 1925 (c.21)			
s.1	Registers to be continued.	8(1)	
s.2(1) (2)	What estates may be registered	6(1) —	Not reproduced.
3(iv) (xv)(xvi)	Interpretation.	6(5) 7(1)	
3 (passim)		70	
s.4	Application for registration of freehold land.	10(1); 11(1)(2)(5)	
s.5	Effect of first registration with absolute title.	12(1)(2)	
s.6	Effect of first registration with possessory title.	12(4)(5)	
s.7(1) (2)	Qualified title.	11(4) 12(4)(5)	
s.8(1) (2)(3)	Application for registration of leasehold land.	10(1)(2); 11(1)(2)(5) —	Otherwise not reproduced. Not reproduced.
s.9	Effect of first registration with absolute title.	12(1)(2)	
s.10	Effect of first registration with good leasehold title.	12(3)	
s.11	Effect of first registration with possessory title.	12(4)(5)	
s.12(1) (2)	Qualified title.	11(4) 12(4)(5)	
s.13	Regulation of examination of title by registrar.	11(3); Sch. 2 para. 1	
s.14	Evidence required before registration.	Sch. 2 para. 2	
s.15	Production of deeds.	Sch. 2 para. 3	
s.16	Deeds to be marked with notice of first registration.	Sch. 2 para. 4	

Land Registration

Existing Provision	Subject Matter	Provision of Bill	Remarks
s.17	Costs of application for registration.	Sch. 2 para. 5	Otherwise not reproduced.
s.18(1)	Powers of disposition of registered freeholds.	15(1)(2)	
(2)		15(3)	Otherwise not reproduced.
(3)–(5)		—	Not reproduced.
s.19(1)	Registration of disposition of freeholds.	16(1)(2)	
(2)		16(3)	
(3)		—	Not reproduced.
s.20(1)	Effect of registration of dispositions of freeholds.	17(1)(3)	
(2)(3)		17(5)(6)	
(4)		9(3)(4)	Otherwise not reproduced.
s.21(1)	Powers of disposition of registered leaseholds.	15(1)(2)	Otherwise not reproduced.
(2)		15(4)	
(3)–(5)		—	Not reproduced.
s.22(1)(2)	Registration of disposition of leaseholds.	16(1)(2)(3)	Otherwise not reproduced.
(3)		—	Not reproduced.
s.23(1)	Effect of registration of dispositions of leaseholds.	17(1)–(3)	
(2)		17(4)	
(3)(4)		17(5)(6)	
(5)		9(13)	Otherwise not reproduced.
s.24(1)	Implied covenants on dispositions of leaseholds.	Sch. 3 para. 1	
(2)		Sch. 3 para. 2	
s.25(1)	Proprietor's power to create charges.	15(1)(2)	
(2)(3)		—	Not reproduced.
s.26(1)	Registration of charges.	18(5)(6)	
(2)(3)		—	Not reproduced.
s.27(1)	Terms of years in or granted by charges.	18(1)	
(2)–(4)		—	Otherwise not reproduced.
s.28(1)	Implied covenants in charges.	Sch. 3 para. 3	
(2)		Sch. 3 para. 4	

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Existing Provision	Subject Matter	Provision of Bill	Remarks
s.29	Priorities of registered charges.	Sch. 3 para. 4	
s.30(1)	Protection of charges for securing further advances.	19	
(2)		—	Not reproduced.
s.31(1)(3)	Alteration of charges.	20	
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s.32	Provisions when charge registered in names of joint proprietors.	18(3)	
s.33(1)	Transfer of charges.	21	
(2)		—	Not reproduced.
(3)–(5)		—	Not reproduced.
s.34(1)	Powers of proprietor of charge.	18(2)	
(2)–(4)		18(4)–(6)	Other not reproduced.
(5)(6)		—	Not reproduced.
s.35(1)	Discharge of charges.	22	
(2)		—	Not reproduced.
s.36	Rules as to subcharges.	23	Otherwise not reproduced.
s.37(1)(2)	Powers of persons entitled to be registered.	28	
(3)		—	Not reproduced.
s.38(1)	Certain provisions of LPA to apply.	27(1)	
(2)		27(3)	
s.39	Deeds off register, how far void.	—	Not reproduced.
s.40	Creation and discharge of restrictive covenants.	—	Not reproduced.
s.41(1)	Transmissions of landlord charges on death of proprietor.	24(1)(2)	
(2)–(4)		24(3)–(5)	
s.42	Transmissions on bankruptcy of proprietor.	25	
s.43	Effect of transmissions.	26(1)(2)	
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s.46	Determination or variation of leases, incumbrances etc.	38	

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s.55	Effect of cautions against dealings.	34(2)-(4)	Otherwise not reproduced.
s.56(1)	General provisions about cautions.	65	Otherwise not reproduced.
(2)		14(5), 33(4)	
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s.57(1)(2)	Power for court or registrar to inhibit registered dealings.	36(1)(2)	
(3)		65(2)	
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s.58(1)(5)	Power to place restrictions on register.	35(1)-(3), (6).	
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(3)		—	Not reproduced.
s.59	Writs, orders, deeds of arrangement, pending actions etc.	5(1)(2)	Otherwise not reproduced.
s.60	Notice of incumbrances registered under Companies Act.	48	Otherwise not reproduced.
s.61 (1)-(6)	Protection of creditors prior to registration of trustee in bankruptcy.	37(1)-(7), (10)	
(7)		45(4)	
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(10)		—	Not reproduced.
s.62	Rules to be made as to certain details.	—	Not reproduced.
s.63(1)	Issue of land and charge certificates.	39(1)(2)	
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s.67	Issue of new certificates.	42	
s.68	Certificates as evidence.	57	Otherwise not reproduced.
s.69	Effect of registration of legal estate.	—	Not reproduced.
s.70	Liability of registered land to overriding interests.	7	Otherwise not reproduced.
s.71	Dispositions by virtue of overriding interest.	—	Not reproduced.
s.72	Appurtenances.	5(3)	Otherwise not reproduced.
s.73	Inland Revenue charge for inheritance tax.	9(3)	Otherwise not reproduced.
s.74	Notice of trust not to affect registered dealing.	47(1)	
s.75(1) (2)(3) (4) (5)	Acquisition of title by possession.	50(1)(2) 50(3)(4) — 50(5)	Repealed.
s.76	Description of registered land	Sch. 1 para. 1	
s.77	Conversion of title.	43	
s.78	Provisions as to undivided shares in land.	Sch. 5 para. 4	
s.79(1) (2) (3) (4)	Addresses for service and notice.	59(1) 59(2)(3) 59(4) —	Not reproduced.
s.80	Bona vacantia and forfeiture.	—	Not reproduced.
s.81	Power to remove land from register.	—	Not reproduced.
s.82(1) (2) (3) (4) (5)(6)	Rectification of register.	44(1) 44(2) 44(3)(4) — 44(5)(6)	Not reproduced.
s.83(1)–(3) (4) (5) (6) (7) (8) (9)(10) (11) (12)	Right to indemnity in certain cases.	45(1)(2) 45(3) 45(5)(6)(7) — — 45(10) 45(11) 45(12) 45(13)	Not reproduced. Repealed.

Land Registration

Existing Provision	Subject Matter	Provision of Bill	Remarks
s.84	Application of indemnity in case of settled land.	—	Not reproduced.
s.85	Insurance fund for providing indemnity.	—	Repealed.
s.86(1)(3) (2)(4)(5)	Registration of settled land.	47(3) —	Not reproduced.
ss.87-93	Various special cases.	—	Not reproduced.
s.94(1) (2)(3)	Land held on trust for sale.	47(2) —	Otherwise not reproduced. Not reproduced.
s.95	Restriction on number of trustees.	6(6)	
s.96	Crown and Duchy land.	49	
s.97	Foreshore.	—	Not reproduced.
s.98	Land subject to charitable trusts.	51	
s.99(1) (2)-(4)	Land belonging to benefices.	52(1)(2) 52(3)-(5)	
s.100	Small holdings.	—	Not reproduced.
s.101(1)(2) (3)(4) (5) (6)	Dispositions off register creating minor interests.	30(1)(2) — 30(3) —	Not reproduced. Not reproduced.
s.102(1) (2)(3)	Priorities between minor interests.	— —	Not reproduced. Repealed.
s.103(1) (2)	Obligation to give effect on register to certain minor interests.	31(1)-(3) 31(4)	
s.104	Protection of certain leases.	—	Not reproduced.
s.105	As to minor interests in mortgage debts.	—	Not reproduced.
s.106(1)(2) (3)(4)	Creation and protection of mortgages.	32(1) 32(2)	
s.107	Power to bind successors and enforce contracts.	—	Not reproduced.
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Land Registration

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(5)		53	Not reproduced.
(6)		—	
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s.113A	Inspection etc.: supplementary.	58	
s.114	Fraudulent dispositions, how far void.	—	Not reproduced.
s.115	Penalty for suppression of deeds and evidence.	60(1)	
s.116(1)	Penalty for certain fraudulent acts.	61(1)	Not reproduced.
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s.117	Punishment of misdemeanors.	60(2); 61(2)	
s.118	Penalty for unqualified person drawing instruments.	—	Repealed.
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s.120	Power to make orders rendering registration compulsory.	13(3)	Otherwise not reproduced.
ss.121–122	Provisions as to such orders.	—	Repealed.
s.123(1)	Effect of Act where registration compulsory.	13(1)(2)	
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s.124	Compulsory provisions bind the Crown.	12(7)	
s.125	Special provisions as to orders affecting Yorkshire.	—	Repealed.
s.126(1)	Her Majesty's Land Registry.	1(1); 3(2)	Repealed.
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(3)(4)		3(4)	
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s.129	Interchange of information.	—	Not reproduced.
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s.133	Powers of district registrar etc.	—	Not reproduced.
s.134	Application of general orders to districts.	—	Not reproduced.
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s.140	Cases stated by registrar.	65	Otherwise not reproduced.
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s.142	Power for court to bind persons under a disability.	—	Not reproduced.
s.143	Appeals.	65; 67	Not otherwise reproduced.
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(4)		—	Repealed.
(5)		—	Not reproduced.
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s.2(1)	Determination of questions as to right to or amount of indemnity.	45(9)	
(2)		45(10)	
(3)		45(10)	
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(5)		45(9)	
(6)		—	Not reproduced.
s.3	Right to indemnity excluded only by fraud or lack of proper care.	45(5)(6)	
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s.12	Meaning of "Her Majesty's Land Registry".	—	Not reproduced.
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(3)		13(1)	
(4)		7(2)	
(5)		—	Not reproduced.
s.3	Inalienable leases: registration to be allowed.	7; 8	Otherwise not reproduced.
s.4(1)	Gratuitous leases and leases paid at a premium.	7(2)	
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s.5(1)	Abolition of minor interests index.	Sch.3 para. 7	
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(5)		—	Not reproduced.

Land Registration

Existing Provision	Subject Matter	Provision of Bill	Remarks
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s.1	Amendments of 1925 Act and other Acts.	56	Not reproduced.
s.2	Repeals.	—	Not reproduced.

Land Registration Bill

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DRAFT

OF A

B I L L

INTITLED

An Act to make new provision with respect to the registration of title to interests in land; and for connected purposes. A.D. 1988

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5

PART I

THE LAND REGISTRY

1.—(1) There shall continue to be a registry known as Her Majesty's Land Registry, the business of which shall be conducted by or under the direction of a registrar appointed by the Lord Chancellor and known as the Chief Land Registrar.

The Land
Registry.

10

(2) The Land Registry shall continue to have a seal and any document purporting to be sealed with it shall, without any further or other proof, be admissible in evidence.

EXPLANATORY NOTES

Clause 1

This clause is derived from s. 126(1) and (7) of the Land Registration Act 1925 without substantive change.

Land Registration

District
Registries.

2.—(1) There shall continue to be regional offices of the Land Registry known as district registries.

(2) District registries shall bear such names and be at such places as the Lord Chancellor, with the consent of the Treasury, may by order specify. 5

(3) Each district registry shall be the proper office for the delivery of applications which relate (in whole or in part) to interests in land in that registry's district, that is to say, the district which comprises the administrative areas specified in relation to the registry by an order under this section. 10

(4) An order under this section may—

(a) create or dissolve a district registry;

(b) allocate a district to a district registry so created;

(c) alter the district of any existing district registry; and

(d) make such transitional provision as appears to the Lord 15
Chancellor necessary or expedient.

(5) The power to make an order under this section shall be exercisable by statutory instrument.

EXPLANATORY NOTES

Clause 2

This clause derives from s. 132(1) of the Land Registration Act 1925, and sets out, in a different form, the existing powers of the Registry. Some of the more detailed provisions have been removed leaving broader outline provisions. Sub-sections (2)-(4) of s. 132 have not been reproduced.

Land Registration

3.—(1) A person shall not be qualified to be appointed Chief Land Officers.
Registrar unless he is either a barrister or solicitor of no less than ten
years' standing.

5 (2) The Chief Land Registrar shall be assisted by such officers and
staff as the Lord Chancellor, with the approval of the Treasury as to
numbers, may appoint.

(3) The Chief Land Registrar may assign duties and official styles
to other officers and staff of the Land Registry.

10 (4) The Chief Land Registrar and the other officers and staff of
the Land Registry shall be paid (out of money provided by Parlia-
ment) such salaries or remuneration as the Treasury may from time to
time direct.

4.—(1) Subject to the provisions of this section—

15 (a) anything authorised or required by this Act to be done by or
in relation to the registrar; or

(b) anything authorised or required by any other Act to be done
by or in relation to the registrar within the meaning of this
Act,

shall be done by or in relation to the Chief Land Registrar.

20 (2) The Chief Land Registrar may determine the acts of the
registrar which may be done by particular officers or by officers of a
particular description.

25 (3) The Lord Chancellor may by regulations make provision as to
the conduct of business during any vacancy in the office of Chief
Land Registrar.

(4) The power to make regulations under this section shall be
exercisable by statutory instrument, and a statutory instrument
containing any such regulations shall be laid before Parliament after
being made.

30 (5) Any reference in this Act to the registrar and any reference in
any other Act to the registrar within the meaning of this Act shall be
construed in accordance with this section.

Conduct of
business.

EXPLANATORY NOTES

Clause 3

Clause 3 combines s. 132(1) and s. 126(1), (3), (4) and (5) of the Land Registration Act 1925 without substantive change. Subsection (1) derives from s. 53 of the Administration of Justice Act 1956.

Clause 4

Clause 4 combines s. 126(5) and (6) of the Land Registration Act 1925 to simplify the administrative sections of the Act, without substantive change.

PART II

REGISTRATION: INTRODUCTORY

5.—(1) Subject to the provisions of this section, in this Act, unless
the context otherwise requires, "interest" means any estate, charge,
5 interest, right or claim in or over land or in or over the proceeds of
the sale of land, but does not include a general burden. Interests to
which Act
applies.

(2) References in this Act to an interest adversely affecting a
registered estate include references to any pending action, writ, order
or deed or arrangement that, if the estate were unregistered, could be
10 registered under the Land Charges Act 1972 . 1972 c.61.

(3) In this Act "general burden" means any of the following—

- (a) a local land charge;
- (b) a public right;
- (c) a franchise;
- 15 (d) a right or claim to enforce a liability to carry out chancel
repairs;
- (e) a right or title conferred on the Coal Commission by Part I of
the Coal Act 1938 and now vested in British Coal; 1938 c.52.
- 20 (f) a statutory tenancy under the Rent (Agriculture) Act 1976 or
the Rent Act 1977 ; 1976 c.80.
1977 c.42.
- (g) a charge under section 55 of the Agricultural Holdings Act
1986 . 1986 c.5

EXPLANATORY NOTES

Clause 5

Subsections (1) and (2)

1. These subsections provide definitions of "interest" and "interest adversely affecting a registered estate". Subsection (2) derives from s. 59 of the Land Registration Act 1925.

Subsection (3)

2. This implements the proposal in the Third Report on Land Registration (Law Com. No. 158, para. 2.107) that there should be a class of rights known as "general burdens", which are binding on all registered interests but discovery of which does not give rise to a claim for indemnity (see clause 45).

Registrable interests.

6.—(1) Subject to subsections (2) to (4) below, estates capable of subsisting as legal estates under section 1(1) of the Law of Property Act 1925, that is to say—

(a) estates in fee simple absolute in possession (in this Act referred to as “freehold estates”); and 5

(b) estates for terms of years absolute (in this Act referred to as “leasehold estates”),

are the only estates in land of which a person may be registered as proprietor.

(2) Where a charge, other than a floating charge, made by deed or 10 having effect as if so made charges a registered interest, a person may be entered on the register of title to that interest as proprietor of that charge; and a person may be so registered notwithstanding—

(a) that, if the interest were unregistered, the charge would take 15 effect in equity only; or

(b) that the charge is a local charge.

(3) Where any interests capable of subsisting as legal estates under section 1(2) and (4) of the Law of Property Act 1925 subsist for the benefit of a registered interest, the proprietor may be entered on the register of title as proprietor of those interests. 20

(4) A person may be registered as proprietor of a rentcharge, manor or other incorporeal hereditament; and the provisions of this Act shall apply in relation to such hereditaments as they apply in relation to legal estates in land with such modifications as may be prescribed.

(5) A minor may not be registered as a proprietor. 25

(6) Except in the case of trustees within section 34(3) of the Trustee Act 1925 (charitable trusts etc.), the number of proprietors of any registered interest may not exceed four and, when more than four persons are named as such proprietors in a registered disposition, the first four so named shall be the proprietors. 30

(7) In this Act, “registered interest” means an estate, charge or other interest of which a person is registered as proprietor and cognate expressions shall be construed accordingly.

EXPLANATORY NOTES

Clause 6

Clause 6(1) defines registrable interests, and derives from s. 2(1) of the Land Registration Act 1925, subsection 2(2) not being reproduced. Clause 6(2) implements the Commission's recommendation in the Third Report on Land Registration (Law Com. No. 158) to allow equitable mortgages created by deed (as distinct from mortgages of an equitable interest) to be protected by registration of a charge on the Register. (See Third Report, para. 4.117(xvii).) Clause 6(5) derives from s. 3(iv) of the Land Registration Act 1925, and clause 6(6) from s. 95 of the same Act.

7.—(1) In this Act-

Other interests.

“minor interest” means any interest which is not a registered interest, a protected interest or an overriding interest;

5 “overriding interest” means any interest falling within subsection (2) below which is not a registered interest or a protected interest;

“protected interest” means any interest which is protected by the entry on the register of a notice, caution, restriction or inhibition.

10 (2) An interest falls within this subsection if it is-

(a) a legal easement or profit;

15 (b) a lease granted, otherwise than in pursuance of Part V of the Housing Act 1985, for a continuous term not exceeding 21 years and taking effect in possession or within one month of the grant or a right conferred by, and having reference to the subject matter of, such a lease;

1985 c.68.

(c) a right acquired under the Limitation Act 1980;

1980 c.58.

(d) a right of any person who is in actual occupation of, or of any part of, the land in which the right subsists; or

20 (e) a customary right.

EXPLANATORY NOTES

Clause 7

Subsection (1) defines certain interests and partially reproduces s. 3(xv) and (xvi) of the Land Registration Act 1925. It should be noted that "minor interest" applies only to interests not on the register, contrary to the present usage.

Subsection (2) implements the recommendation in the Third Report on Land Registration (Law Com. No. 158, para. 2.105) that the number of overriding interests be reduced from twelve to five heads. The proviso as to non-disclosure of occupiers' rights is replaced by a general provision at clause 9(7).

Registers of title.

8.—(1) The registrar shall continue to keep, whether in documentary form or otherwise, registers of title to freehold and leasehold estates in land.

(2) Each register of a title shall bear the title's distinguishing number and shall contain— 5

- (a) a description of the estate comprised in the title, and of the land to which it relates, with a reference to any filed plan;
- (b) any entries relating to—
 - (i) the ownership of mines and minerals;
 - (ii) exemptions from any overriding interests; and 10
 - (iii) interests subsisting for the benefit of the registered estate;
- (c) in the case of a leasehold estate, a reference to the lease and to the lessor's title (if registered) and such particulars of the lease as the registrar may determine; 15
- (d) a statement of the nature of the title, namely whether it is absolute, good leasehold, qualified or possessory;
- (e) the name and address of the proprietor of the registered estate;
- (f) charges subsisting at the date of the first registration and subsequent charges; 20
- (g) such dispositions of registered charges as are capable of registration;
- (h) any notices, cautions, restrictions and inhibitions;
- (i) any other entries relating to interests adversely affecting the registered estate, including entries relating to such interests 25 appearing on the title on first registration.

(3) Notwithstanding anything in this Act, the registrar—

- (a) may make in a register of title such entries as he may consider expedient, including entries not affecting the proprietor's title; 30
- (b) shall not be required to enter on a register any interest which appears to him of a trivial or obvious character or the entry of which is likely to cause confusion or inconvenience; and
- (c) may remove from a register any entry of an interest which he is satisfied has determined or been discharged or for any 35 other reason no longer adversely affects or subsists for the benefit of the registered estate.

(4) Schedule 1 to this Act (which relates to the manner in which land is to be described on a register) shall have effect.

Priorities.

9—(1) Subject to subsections (2) and (3) below, to any rules 40 relating to official searches, to any other Act and to any entry on the register to the contrary, as between any two interests to which this section applies, that is to say, registered interests, protected interests, overriding interests and minor interests, that which has the earlier protection date shall have priority over the other. 45

(2) Where an interest to which this section applies that has priority over some other interest becomes an interest of a different descrip-

EXPLANATORY NOTES

Clause 8

Clause 8 retains section 1 of the Land Registration Act 1925 and incorporates rules 2, 3, 5(1), 16 and 199 of the Land Registration Rules 1925 as to the form and composition of the registers of title.

Clause 9

1. This clause sets out the rules by which the priority between competing interests are to be determined.

Subsection (1)

2. This sets out the fundamental rule, which is that priority is governed by the "protection date" (see subsection (5)) of the interest. It is important to note that this general rule gives way to the next two subsections.

Land Registration

tion, it shall not lose that priority by reason of the later protection date.

(3) A registered, protected or overriding interest acquired by a purchaser shall have priority over a minor interest even though the
5 minor interest has an earlier protection date, and for this purpose "purchaser", where the minor interest is an Inland Revenue charge under the Inheritance Tax Act 1984, has the same meaning as in that Act. 1984 c.51.

(4) If any question arises under subsection (3) above as to whether
10 any person who acquired a registered, protected or overriding interest did so in good faith, it shall be for the owner of the minor interest to show that the person did not; and it shall not be sufficient for this purpose for the owner of the minor interest to show that the person concerned was aware of that interest.

15 (5) In this section "protection date" means—

(a) in relation to a registered interest, the date of its registration in the name of the proprietor or, where that resulted from a registered disposition and the other interest is an overriding interest, the date of that disposition;

20 (b) in relation to a protected interest, the date of the entry on the register of the notice, caution, restriction or inhibition which affords it protection;

(c) in relation to an overriding interest, the date on which it became or last became such an interest;

25 (d) in relation to a minor interest, the date of its creation.

(6) For the avoidance of doubt, it is hereby declared that, as between any two interests to which this section applies, priority shall be determined in accordance with the provisions of this section—

30 (a) regardless of whether the interests are (or either of them is) legal or equitable; and

(b) regardless of notice (express, implied or constructive).

(7) Nothing in this section shall be taken to prevent the application of any rule of law relating to fraud or estoppel.

EXPLANATORY NOTES

Subsection (2)

3. The purpose of this is best explained by an example. If there are two minor interests, not protected on the register, the earlier (A) will have priority over the later (B), see subsections (1) and (5). If A then becomes a protected interest, its protection date as a **protected interest** is later than B's as a minor interest. The effect of this subsection is to ensure that A retains the protection date it already had as a minor interest when B was created.

Subsection (3)

4. This gives additional priority to purchasers. "Purchaser" is defined in clause 70(1) to mean a purchaser in good faith for valuable consideration. If there are two minor interests, A and B, then if A arose first, it has priority over B. If B then becomes a protected interest, and if it is an interest acquired by a purchaser, B will acquire priority over A. This implements the recommendations at para. 4.117(ii) and (xx) of the Third Report on Land Registration (Law Com. No. 158).

Subsection (4)

5. This clarifies the meaning of "good faith".

Subsection (5)

6. This sets out the protection dates for the different classes of interest.

Subsection (6)

7. This is intended to prevent the introduction of unregistered land concepts into the determination of priorities in registered land.

Subsection (7)

8. This implements the recommendation at para. 2.75 of the Third Report, and thereby removes the need to have a specific proviso as to non-disclosure of occupiers' rights in clause 7(2)(d).

PART III

FIRST REGISTRATION

Application for
first registration.

10.—(1) Subject to subsection (2) below, any person who—

(a) owns a freehold or leasehold estate in any land (whether as a beneficial owner or otherwise); or 5

(b) otherwise than as a person who has merely contracted to buy, is entitled to require a freehold or leasehold estate in any land to be vested in him,

may apply to the registrar for the registration of himself, or a nominee of his, as the first proprietor of that estate. 10

(2) A person shall not be registered as the first proprietor of a leasehold estate unless the lease under which it is held was granted out of an unregistered estate and is either—

(a) a lease for a term of which more than 21 years are unexpired; or 15

(b) a lease to the grant or assignment of which section 13(1) below applies.

(3) Schedule 2 to this Act (which relates to the procedure on registration and other related matters) shall have effect.

EXPLANATORY NOTES

Clause 10

Clause 10 combines the freehold and leasehold provisions in s. 4 and s. 8(1) of the Land Registration Act 1925 as to applications for first registration. The sections are contained in clause 10(1) of the Bill, in simplified form, without substantive change. Subsection (2) derives from s. 8(1A) of the Land Registration Act 1925 and s. 154(6) of the Housing Act 1985, and the reference to Schedule 2 incorporates Rules 276-279 (inclusive) of the Land Registration Rules 1925. Subsections (2) and (3) of s. 8 of the Land Registration Act 1925 are not reproduced.

Land Registration

11.—(1) The first proprietor of a freehold or a leasehold estate in any land shall be registered with one of the following titles— Classes of title

- (a) an absolute title;
 - (b) a qualified title;
 - 5 (c) a possessory title; and
 - (d) in the case of a leasehold estate, a good leasehold title.
- (2) The registrar shall not—
- (a) enter an absolute title to a freehold estate unless and until he approves the title shown to that estate;
 - 10 (b) enter an absolute title to a leasehold estate unless he approves the title shown to that estate, the freehold estate and any intermediate leasehold estates; or
 - (c) enter a good leasehold title to a leasehold estate unless and until he approves the title shown to that estate.
- 15 (3) Where it appears to the registrar that the title to a freehold or leasehold estate is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve the title.
- (4) Where, in the case of a title to a freehold or leasehold estate which appears to the registrar to be open to objection, he does not
- 20 approve the title under subsection (3) above, he may, by an entry made in the register, except from the effect of registration any interest—
- (a) arising under a specified instrument; or
 - (b) otherwise particularly described in the register;
- 25 and a title entered subject to such an excepted interest shall be called a qualified title.
- (5) The registrar may enter a possessory title to a freehold or leasehold estate on the applicant giving such evidence of title as may be prescribed.

EXPLANATORY NOTES

Clause 11

Clause 11 combines the freehold and leasehold provisions as to classes of title derived from sections 4 and 8(1) of the Land Registration Act 1925, without substantive change. Clause 11 also incorporates sections 13, 7(1) and 12(1) of the Land Registration Act 1925.

Effect of first registration.

12.—(1) The registration of any person as the first proprietor with an absolute title of a freehold or leasehold estate in any land shall be deemed to vest that estate in that person together with all interests subsisting for the benefit of the estate.

(2) An estate deemed to be so vested shall be subject to— 5

(a) any protected interests;

(b) any overriding interests;

(c) any minor interests having priority to it by virtue of section 9 above;

(d) any general burdens; 10

(e) any rights in the course of acquisition under the Limitation Act 1980 ; and

(f) in the case of a leasehold estate, all implied or express covenants, obligations and liabilities incident to the estate, but otherwise shall be free from all interests whatever, including 15 interests of Her Majesty.

(3) The registration of any person as the first proprietor with a good leasehold title of a leasehold estate—

(a) shall not affect or prejudice the enforcement of any relevant interest; but 20

(b) subject to that, shall have the same effect as if an absolute title had been entered.

(4) The registration of any person as the first proprietor with a qualified or possessory title of a freehold or leasehold estate—

(a) shall not affect or prejudice the enforcement of any relevant 25 interest; but

(b) subject to that, shall have the same effect as if there had been entered in the case of a freehold estate an absolute title and in the case of a leasehold estate a good leasehold title.

(5) In this section, “relevant interest” means— 30

(a) in the case of a good leasehold title, any interest affecting or in derogation of the title of the lessor;

(b) in the case of a qualified title, any interest expressed on the register to be excepted from the effect of registration;

(c) in the case of a possessory title, any interest adverse to or in 35 derogation of the title of the first proprietor and subsisting or capable of arising at the time of registration.

1980 c.58

EXPLANATORY NOTES

Clause 12

Clause 12 combines the freehold and leasehold provisions as to the effect of first registration and derives from s. 5 and s. 9 of the Land Registration Act 1925. The excepted items have been redrafted in an abridged form. Subsection 12(3) reproduces s. 10 of the Land Registration Act 1925, with no substantive changes, while subsections 12(4) and (5) derive from sections 6, 7(2), 11 and 12(2) of the Land Registration Act 1925 and set out the effect of registration with different types of title.

Land Registration

13.—(1) In any of the following events—

First registration
compulsory on
sale etc..

- (a) the conveyance on sale of an unregistered freehold estate;
- (b) the conveyance of an unregistered freehold estate in pursuance of such a right as is mentioned in paragraph 2(1) or 8(1) of Part V to the Housing Act 1985 (right to freehold);
- (c) the assignment on sale of an unregistered lease having more than 21 years to run from the date of the assignment;
- (d) the grant out of an unregistered estate of a lease for a term of more than 21 years from the date of the lease;
- (e) the grant out of an unregistered estate of a lease in pursuance of Part V of the Housing Act 1985 (right to buy),

1985 c.68.

the title to any legal estate disposed of shall revert to the grantor unless, before the expiration of two months from the date of that event, the person who is entitled to that estate applies to the registrar for the registration of himself, or a nominee of his, as the first proprietor of that estate.

(2) On the application of any interested person, the registrar may make an order extending the said period of two months.

(3) Nothing in this section shall render compulsory the registration of the title to—

- (a) an incorporeal hereditament;
- (b) mines and minerals apart from the surface; or
- (c) corporeal hereditaments which are part of a manor and included in the sale of the manor as such.

(4) General rules may provide for applying the provisions of this Act to any dealings which take place between—

- (a) the date of any such event as is mentioned in subsection (1) above; and
- (b) the date of the application for first registration,

as if the dealings had taken place after the date of the registration, and for the registration to be effected as of the date of the application.

(5) General rules may provide that subsection (1) above shall have effect as if the events there mentioned included such other events as may be specified in the rules.

(6) In this section—

“assignment on sale” includes an assignment by way of exchange, whether equality money is paid or not, but does not include an assignment or surrender to the owner of the immediate reversion, where the term of the lease is to merge in that reversion;

“conveyance on sale” includes a conveyance by way of exchange, whether equality money is paid or not.

(7) This section binds the Crown.

EXPLANATORY NOTES

Clause 13

Clause 13 clarifies the events giving rise to first registration and the effect of failure to register. It derives from s. 123(1)-(3) of the Land Registration Act 1925. This clause also includes s. 120(1) of that Act in a simplified form, s. 120 not being otherwise reproduced.

Cautions against registration.

14.—(1) Any person having or claiming an interest in any land may lodge with the registrar a caution under this section.

(2) A caution under this section—

(a) shall be to the effect that the cautioner is entitled to notice, in the prescribed form and served in the prescribed manner, of any application that may be made for the registration of any person as first proprietor of a freehold or leasehold estate in the land to be affected by the caution; and 5

(b) shall be supported by an affidavit or declaration in the prescribed form. 10

(3) Where a caution under this section has been lodged in respect of any land, the registrar shall not, except with the consent of the cautioner, cancel the caution or register any person as the first proprietor of a freehold or leasehold estate in the land until—

(a) notice has been served on the cautioner to appear and oppose 15 the cancellation or registration, if he thinks fit; and

(b) the prescribed time has elapsed since the date of the service of the notice or the cautioner has entered an appearance, whichever may first occur.

(4) The personal representative of a deceased cautioner may consent 20 or object to registration in the same manner as the cautioner.

(5) A caution under this section shall not prejudice the claim or title of any person and shall have no effect whatever except as provided by this section.

(6) If any person lodges a caution under this section without 25 reasonable cause, he shall be liable to make to any person who sustains damage by the lodging of the caution such compensation as may be just.

(7) If any person entitled to object to the cancellation of the caution or the registration of any person does so without reasonable 30 cause, he shall be liable to make to any person who sustains loss by the cancellation or registration being delayed such compensation as may be just.

EXPLANATORY NOTES

Clause 14

Clause 14 virtually reproduces s. 53 of the Land Registration Act 1925, without substantive change. Sections 56(2), (3) and (4) of the Land Registration Act 1925 are reproduced in subsections (4), (5) and (6).

PART IV

REGISTERED DISPOSITIONS

Registered dispositions

15.—(1) The proprietor of a registered estate in any land may, in
5 the prescribed manner and subject to any entry on the register to the
contrary— Powers of
disposition.

- (a) transfer, or grant a lease out of, the registered estate;
- (b) by deed charge the registered estate for securing money or
money's worth;
- 10 (c) grant any other registrable interest adversely affecting the
registered estate; or
- (d) transfer, or grant a lease out of, the registered estate subject to
a reservation of any registrable interest adversely affecting
that estate or, as the case may be, the leasehold estate so
15 created.

(2) The powers conferred by subsection (1) above may be exercised
as respects the whole of the land or any part of the land.

(3) Where an interest adversely affecting a registered estate is
reserved for the benefit of another estate, the reservation shall operate
20 to create the interest for the benefit of that other estate.

(4) A transfer of a registered leasehold estate may be made subject
to a rent legally apportioned in the prescribed manner or to a rent not
so apportioned; and Part I of Schedule 3 to this Act shall have effect
as to the covenants to be implied on such a transfer.

EXPLANATORY NOTES

Clause 15

Clause 15 combines the provisions as to the powers of disposition of the registered proprietor in sections 18(1) and (2) and 21(1) and (2) of the Land Registration Act 1925, simplifying them and expressing them in more general terms. Sections 18(3)-(5) are not reproduced. Subsection (1)(b) reproduces the effect of section 25(1) in abbreviated form. Section 25 is not otherwise reproduced. Subsection (4) adds a reference to covenants in Schedule 3.

Land Registration

Registration of
dispositions.

16.—(1) In the case of a registered estate in any land (“the relevant estate”), any such disposition as is mentioned in section 15(1) above, whether affecting the whole of the land or any part of the land, shall be completed by—

(a) the registration of the transferee or grantee as the proprietor of the interest disposed of; and 5

(b) an entry relating to the disposition on the register of the transferor’s or grantor’s title;

and until the disposition is so completed, the legal title to the interest disposed of shall remain in the transferor or grantor. 10

(2) Paragraph (a) of subsection (1) above does not apply where the disposition is the grant of an interest for the benefit of an unregistered estate; and paragraph (b) of that subsection does not apply where the disposition is the transfer of the relevant estate in the whole of the land or where the disposition is a charge. 15

(3) Nothing in subsection (1) above shall—

(a) authorise the registration of a lease granted for a term not exceeding 21 years otherwise than in pursuance of Part V of the Housing Act 1985 , or require the entry of a notice of such a lease; or 20

(b) render necessary the registration of an interest which is not an estate except as appurtenant to a registered estate, or the entry of notice of such an interest except as against a registered estate;

but a lease within paragraph (a) above shall on being granted, take effect as if it were a disposition registered under subsection (1) above. 25

1985 c.68.

EXPLANATORY NOTES

Clause 16

Clause 16 combines the freehold and leasehold provisions as to registrations of dispositions, reproducing the content of s. 19(1) and (2) and s. 22(1) and (2) of the Land Registration Act 1925, without substantive change. By virtue of clause 70(1), "disposition" includes a charge.

Land Registration

17.—(1) This section applies where in the case of a registered estate in any land (“the relevant estate”) there has been made any such disposition as is mentioned in section 15(1)(a), (b) or (c) above, whether affecting the whole of the land or any part of the land.

Effect of registration of dispositions.

5 (2) Where the relevant estate is registered with an absolute title, the registration of the disposition shall vest the interest disposed of in the transferee or grantee together with (in the case of an estate)—

(a) all interests subsisting or created for the benefit of the estate; and

10 (b) subject to any entry to the contrary on the register, the interests which would have been transferred or granted if the estate of the transferor or grantor had not been registered.

(3) An interest so vested shall be subject to—

(a) any protected interests;

15 (b) any overriding interests;

(c) any minor interests having priority to it by virtue of section 9 above;

(d) any general burdens;

20 (e) any rights in the course of acquisition under the Limitation Act 1980 ; and

1980 c.58

(f) in the case of a leasehold estate, all implied or express covenants, obligations and liabilities incident to the estate, but otherwise shall be free from all interests whatever, including interests of Her Majesty.

25 (4) Where the relevant estate is registered with a good leasehold title, the registration of the disposition—

(a) shall not affect or prejudice the enforcement of any relevant interest; but

30 (b) subject to that, shall have the same effect as if the relevant estate were registered with an absolute title.

(5) Where the relevant estate is registered with a qualified or possessory title, the registration of the disposition—

(a) shall not affect or prejudice the enforcement of any relevant interest; but

35 (b) subject to that, shall have the same effect as if the relevant estate were registered with—

(i) an absolute title, where it is freehold; and

(ii) a good leasehold title, where it is leasehold.

(6) In this section “relevant interest” means—

40 (a) in the case of a good leasehold title, any interest affecting or in derogation of the title of the lessor;

(b) in the case of a qualified title, any interest expressed on the register to be excepted from the effect of registration;

45 (c) in the case of a possessory title, any interest adverse to or in derogation of the title of the transferor or grantor and subsisting or capable of arising at the time of first registration.

EXPLANATORY NOTES

Clause 17

Clause 17 integrates the freehold and leasehold provisions now contained within s. 20(1), (2) and (3) and s. 23(1), (2), (3) and (4) of the Land Registration Act 1925 as to the effect of registration of dispositions.

Registered charges.

18.—(1) A registered charge shall, whether or not it would otherwise do so, take effect as a charge by way of legal mortgage; and this subsection applies to a registered charge notwithstanding that, if the estate charged had not been registered, the charge would have effect in equity only. 5

(2) Subject to any entry on the register to the contrary, the proprietor of a registered charge shall have all the powers conferred by law on the owner of a charge by way of legal mortgage.

(3) Subject to any entry on the register to the contrary, where there are two or more proprietors of a registered charge, the proprietors, the survivor or survivors of them or the personal representatives of the last survivor shall have power to give valid receipts as if the mortgage money belonged to them on a joint account. 10

1980 c.58.

(4) Subject to any entry on the register to the contrary and to the rights of any persons appearing on the register to be entitled to charges of superior or equal priority, the proprietor of a registered charge may, after he has entered into possession and has acquired a title under the Limitation Act 1980, execute a declaration in the prescribed form that the right of redemption is barred. 15

(5) On the execution of a declaration under subsection (4) above or the making of an order for foreclosure— 20

(a) the proprietor of the charge or, in the case of an order for foreclosure, such other person as may be named in the order for the purpose shall be entitled to be registered as the proprietor of the charged estate; and 25

(b) where that person is so registered, the charge and any inferior charges or other entries not binding on the proprietor of the charge shall be cancelled.

(6) In the case of a transfer on a sale in pursuance of an order of a court or under a power of sale— 30

(a) the transfer shall be completed by the registration of the transferee as the proprietor of the estate transferred; and

(b) as respects that estate, the charge and any inferior charges or other entries not binding on the proprietor of the charge shall be cancelled. 35

(7) Part II of Schedule 3 to this Act shall have effect as to the covenants to be implied on the registration of a charge.

EXPLANATORY NOTES

Clause 18

Clause 18 reproduces sections 27(1), 32 and 34(1)-(4) of the Land Registration Act 1925 as to the effects of registered charges, without substantive change.

Land Registration

19.—(1) Where a registered charge contains provision for securing further advances—

Protection of registered charge for securing further advances

- 5 (a) the registrar shall, before making any entry on the register which would prejudicially affect the priority of any further advance under the charge, give to the proprietor of the charge at his registered address notice, by registered post or the recorded delivery service, of the intended entry; and
- 10 (b) the proprietor of the charge shall not be affected by the entry in respect of any further advance made on or before the date when the notice ought to have been received in due course by post.

15 (2) Where the proprietor of a registered charge is under an obligation to make a further advance and the obligation is noted on the register, a subsequent registered charge shall take effect subject to any further advance made in pursuance of the obligation.

20.—(1) Subject to subsection (2) below, the proprietor of a registered charge may in the prescribed manner alter the terms of the charge.

Alteration of registered charges.

(2) An alteration under this section shall require the consent of—

- 20 (a) the proprietor of the registered estate which is subject to the charge; and
- (b) the proprietors of any registered charges of inferior priority which are affected by the alteration.

25 (3) An alteration under this section shall be completed by the entry of its particulars on the register.

21.—(1) The proprietor of a registered charge may in the prescribed manner transfer the charge to another person.

Transfer of registered charges.

30 (2) A transfer under this section shall be completed by the registration of the transferee as the proprietor of the charge; and until the transferee is so registered, the transferor shall remain the proprietor of the charge.

22.—(1) The registrar shall—

- (a) on the application of the proprietor of any registered charge; or
- 35 (b) on proof in the prescribed manner of the discharge of any such charge,

Discharge of registered charges.

40 enter on the register in the prescribed manner, whether by cancellation or variation of the original entry or otherwise, the discharge of the charge to such extent as the circumstances of the case may require.

(2) On the entry on the register of the discharge of a registered charge (whether in whole or in part), the charge shall cease accordingly.

EXPLANATORY NOTES

Clause 19

Clause 19 reproduces s. 30 of the Land Registration Act 1925 without substantive change.

Clause 20

Clause 20 derives from s. 31(1) and (3) of the Land Registration Act 1925 without substantive alteration. Section 31(2) has not been reproduced.

Clause 21

Clause 21 derives from s. 33(1) and (2) of the Land Registration Act 1925, without substantive change.

Clause 22

Clause 22 derives from s. 35 of the 1925 Act without substantive change.

Land Registration

23.—(1) The proprietor of a registered charge may charge the mortgage debt for securing money or money's worth in the same manner as the proprietor of a registered estate can charge that estate; and such charges are in this Act referred to as sub-charges.

5 (2) Priority between sub-charges on the same charge shall be determined in accordance with the provisions of section 9 above.

(3) A sub-charge shall be completed, and may be altered, transferred or discharged, in the same manner as a charge.

(4) Subject to any entry on the register to the contrary—

10 (a) a sub-charge shall, as against the person creating it, imply the same covenants and, as against that person and all persons over whose interests it confers power, confer the same powers and have the same effect as a charge; and

15 (b) the proprietor of a sub-charge shall have the same powers of disposition, in relation to the registered estate, as if he had been registered as the proprietor of the principal charge.

Transmissions of registered interests

24.—(1) On the death of the sole proprietor, or of the survivor of two or more joint proprietors, of any registered interest, his personal representative shall be entitled to be registered as proprietor in his place.

(2) A special or additional personal representative appointed by the court as respects a registered interest shall, on production of the order to the registrar, be registered as proprietor either solely or jointly with any other personal representative, as the case may require.

(3) Pending an application for the appointment of a special or additional personal representative, a caution against dealings may be entered under section 33 below on the application of any person intending to apply to the court for the appointment.

30 (4) Subject to the provisions of this section, provision may be made by general rules for the manner in which effect is to be given on the register to transmissions on death.

35 (5) An assent to the vesting of a registered interest, whether by a personal representative or a special personal representative, shall be in the prescribed form; and the production of such an assent in that form shall authorise the registrar to register the person named in the assent as the proprietor of the interest.

EXPLANATORY NOTES

Clause 23

Clause 23 brings into the Bill the provisions as to subcharges presently contained in the Rules (see s. 36 of the Land Registration Act 1925 and LRR 163-166). It sets out the power to create a sub-charge, the question of priorities, and the need for registration.

Clause 24

Clause 24 reproduces sections 41(1) to (4) inclusive of the Land Registration Act 1925, as to transmissions of registered estates and charges on death, without substantive change.

Land Registration

25.—(1) On the bankruptcy of the proprietor of any registered interest, his trustee shall, on production of the prescribed evidence that the interest is comprised in the bankrupt's estate, be entitled to be registered as proprietor in his place.

Transmissions
on bankruptcy.

5 (2) Where a trustee in bankruptcy disclaims a registered interest under section 315 of the Insolvency Act 1986 and an order is made by the court vesting the interest in any person—

1986 c.45.

(a) the order shall direct the alteration of the register in favour of the person in whom the interest is so vested; and

10 (b) the registrar shall, on being served with the order, without notice to the bankrupt or any other person and without requiring production of the land certificate, alter the register accordingly.

15 26.—(1) Any person registered under section 24 or 25 above in the place of a deceased or bankrupt proprietor shall hold the interest in respect of which he is registered—

Effect and proof
of transmissions.

(a) upon the trusts and for the purposes which are applicable by law; and

20 (b) subject to any minor interests subject to which the deceased or bankrupt held it.

(2) Subject to subsection (1) above, any person so registered shall in all respects, and in particular as respects any registered dealings with the interest, be in the same position as if he had taken the interest under a transfer for valuable consideration.

25 (3) The fact that any person has become entitled to any registered interest in consequence of the death or bankruptcy of the proprietor shall be proved in the prescribed manner.

EXPLANATORY NOTES

Clause 25

Clause 25 reproduces s. 42 of the Land Registration Act 1925 without substantive change. The clause also incorporates the provisions of the Insolvency Act 1986 as to transmissions on bankruptcy.

Clause 26

Clause 26 combines and reproduces sections 43 and 45 of the Land Registration Act 1925 without substantive change.

Land Registration

Supplemental

27.—(1) Sections 51 to 75 of the Law of Property Act 1925 shall apply, so far as applicable, to dispositions within section 15(1) above.

Application of certain provisions of Law of Property Act 1925.

5 (2) For the purpose of attracting the covenants implied by section 76 of the said Act of 1925, a person may, in a disposition within section 15(1) above, be expressed to transfer, grant or charge—

1925 c.20.

- (a) as beneficial owner;
- (b) as settlor;
- (c) as trustee;
- 10 (d) as mortgagee;
- (e) as personal representative; or
- (f) under an order of the court;

and an instrument of transfer or charge, and any instrument affecting a registered interest, may be expressed accordingly.

15 (3) General rules may prescribe the effect of any implied covenants which are so attracted; but no reference to covenants implied by the said section 76 shall be entered on the register.

28.—(1) A person who is entitled to be registered as the proprietor of an interest, whether the right to be so registered—

Powers of persons entitled to be registered.

- 20 (a) has been conferred by a disposition or charge under this Act;
- (b) has devolved by reason of the death or bankruptcy of the proprietor; or
- (c) has arisen in any other way,

25 may, in the prescribed manner and subject to the prescribed conditions, dispose of the interest before he is himself registered as proprietor.

(2) A disposition so made shall have the same effect as if the person making it were registered as proprietor.

29.—(1) The registrar shall give effect on the register—

- 30 (a) to any vesting order or vesting declaration (express or implied) made on the appointment or discharge of a trustee or otherwise; and
- (b) to any disposition made in the name and on behalf of the proprietor of a registered interest by a person authorised to
- 35 make it.

Vesting instruments and dispositions in name of proprietor.

(2) The registrar shall also give effect on the register in the prescribed manner to any vesting instrument which may be made in pursuance of a statutory power.

EXPLANATORY NOTES

Clause 27

Clause 27 combines and simplifies s. 38(1) and (2) of the Land Registration Act 1925, and Rule 76 of the Land Registration Rules 1925, as to the applicable provisions of the Law of Property Act 1925.

Clause 28

Clause 28 reproduces s. 37(1) and (2) of the Land Registration Act 1925 as to powers of persons entitled to be registered, without substantive change.

Clause 29

Clause 29, as to dispositions and vesting instruments in the name of the proprietor, derives from s. 47 of the Land Registration Act 1925 without substantive change.

PART V

UNREGISTERED DISPOSITIONS

Creation of certain interests by dispositions off register.

30.—(1) The proprietor of a registered interest, or any other person who has sufficient right or power over such an interest, may dispose of it as if it were unregistered, but subject to the provisions of this section. 5

(2) All interests disposed of under this section shall, so long as they are not overriding or protected interests, take effect as minor interests.

(3) Where the proprietor of a registered estate which is settled land 10 disposes of his beneficial interest in possession in favour of a purchaser, the purchaser may exercise all such rights and remedies as he would have been entitled to exercise if—

(a) the minor interest so disposed of or created had been a legal estate; and 15

(b) the reversion on any leases or tenancies derived out of the legal estate had been vested in him.

(4) Where a minor interest is created under this section by a deed or other instrument, then, unless the land or charge certificate is deposited at the registry, the proprietor shall either- 20

(a) at his own expense produce or procure the production of the certificate to the registrar for an entry protecting that interest to be entered on the register; or

(b) where the certificate has been lost or destroyed, pay the costs of the proceedings to enable the registrar to proceed without it. 25

Obligation to give effect to certain minor interests.

31.—(1) This section applies where there is disposed of a minor interest which affects a registered interest and which would, if registered, be capable of taking effect as a legal estate or charge by way of legal mortgage. 30

(2) Where the proprietor would, if the interest were unregistered, be bound to give effect to the disposition by conveying or creating a legal estate, the proprietor shall, subject to proper provision being made for the payment of costs, be bound to give effect to the disposition under and in the manner required by Part IV of this Act. 35

(3) Where-

(a) subsection (2) above does not apply;

(b) the proprietor is unable or refuses to make the requisite disposition or cannot be found; or

(c) for any other reason the requisite disposition cannot be 40 obtained within a reasonable time,

the registrar shall, in the prescribed manner, give effect to the transaction as if it had been effected by a disposition within section 15(1) above.

(4) On every registration under this section the land certificate and 45 any charge certificate which may be affected shall be produced to the registrar unless he otherwise orders.

EXPLANATORY NOTES

Clause 30

Clause 30 covers dealings off the register and derives from s. 101(1), (2) and (5) of the Land Registration Act 1925. It also implements the recommendation of the Third Report (Law Com. No. 158) at paragraph 4.117 (vii) that

"a minor interest holder should have the right to require production of the land or charge certificate where the minor interest has been created by agreement under the hand or seal of the registered proprietor of the land or charge."

Clause 31

Clause 31 covers the registered proprietor's obligation to give effect to certain minor interests and reproduces s. 103(1) and (2) without substantive change.

Creation and protection of charges.

32.—(1) Subject to any entry on the register to the contrary, the proprietor of a registered interest in any land may, by deed or otherwise, charge the interest as to the whole or any part of the land in any manner which would be permissible if the interest were unregistered and, subject to the provisions of this section, to the like effect. 5

(2) A charge shall, so long as it is not a registered charge or a protected or overriding interest, take effect as a minor interest.

PART VI

PROTECTION OF INTERESTS 10

Notices and cautions against dispositions.

33.—(1) A person claiming to be entitled to an interest adversely affecting any registered interest may, subject to the following provisions of this section, make an application to the registrar in the prescribed form for the protection of that interest by the entry on the register of a notice or caution. 15

(2) Subject to subsection (3) below, an application for the entry of a notice shall not be entertained unless it is made with the consent, evidenced in the prescribed manner, of the proprietor of the relevant registered interest, that is to say, the registered interest which, assuming the interest sought to be protected to have validity, would be adversely affected by that interest. 20

1979 c.53.

(3) Subsection (2) above does not apply to an application for the entry of a notice relating to a charging order within the meaning of the Charging Orders Act 1979 ; and no caution may be entered in respect of such an order. 25

(4) The entry of a notice or caution does not operate to confer any validity on the interest protected by the notice or caution.

(5) In this section "interest" does not include—

- (a) any protected interest;
- (b) any floating charge; 30
- (c) any overriding interest falling within paragraph (b) of section 7(2) above;
- (d) in relation to a registered interest which is held on trust (whether the trust is a trust for sale, a bare trust or an implied, resulting or constructive trust), any interest which is capable of being overreached by the trustees; or 35
- (e) in relation to a registered interest which is settled land, any interest which is capable of being overreached by the tenant for life or statutory owner.

EXPLANATORY NOTES

Clause 32

Clause 32 covers creation and protection of charges and derives from s. 106(1) and (3) of the Land Registration Act 1925 without substantive change.

Clause 33

1. This clause contains the provisions relating to registration of notices and cautions against dispositions.

Subsections (1) and (2)

2. The Commission recommended (Third Report, para. 4.117(iv) and (v)) that there should be one system for protecting rights acknowledged by the proprietor (the notice) and one for protecting unacknowledged claims (the caution). It should be noted that using either gives the "protected interest" (see clause 7(1)) the same priority (see clause 9).

Subsection (3)

3. This implements the recommendation at para. 4.117(ix) of the Third Report, that, contrary to the general rule, charging orders under the Charging Orders Act 1979 can only be protected by notice.

Subsection (4)

4. This derives from s. 52(2) and s. 56(2) of the Land Registration Act 1925.

Subsection (5)

5. This sets out those interests which cannot be protected by notice or caution. Paragraphs (b), (d) and (e) implement para. 4.117(xix) and (xi)-(xiii) of the Third Report. These interests are to be protected by restriction, see clause 35.

Effect of
cautions against
dispositions.

34.—(1) This section applies where a caution under section 33 above has been entered in respect of any registered interest.

(2) Subject to subsection (3) below, the registrar may, on an application by the cautioner or by the proprietor of the registered interest, cancel the caution. 5

(3) The registrar shall not, except with the consent of the cautioner, cancel the caution, or register any disposition by the proprietor of the registered interest, until—

(a) notice has been served on the cautioner to show cause for opposing the cancellation of the caution or the registration, if 10 he thinks fit; and

(b) the cautioner has failed within the prescribed period or any extension of that period allowed by the registrar to make a submission to the registrar intended to show cause.

(4) Where the prescribed period is extended by the registrar or the 15 cautioner makes such a submission, the registrar may require the cautioner to give sufficient security for any compensation which he may become liable to make under subsection (9) below.

(5) Where the cautioner makes such a submission, the registrar, after hearing such persons and serving such notices (if any) as he 20 considers necessary, shall make such order in the matter as he considers just.

(6) If the cautioner dies, his personal representative may consent or object to the cancellation of the caution or the registration of a 25 disposition in the same manner as if he were the cautioner.

(7) If the interest protected by the caution is transferred, the registrar shall, on the application of the transferee, so amend the entry as to secure that the transferee may consent or object to the cancellation of the caution or the registration of a disposition in the 30 same manner as if he were the cautioner.

(8) If the application for the entry of the caution was made without reasonable cause, the person by whom the application was made shall be liable to make to any person who suffers loss by reason of the entry of the caution such compensation as may be just.

(9) If any person entitled to object to the cancellation of the 35 caution or the registration of a disposition does so without reasonable cause, he shall be liable to make to any person who suffers loss by reason of the cancellation or registration being delayed such compensation as may be just.

EXPLANATORY NOTES

Clause 34

This clause incorporates rule 220(3) of the Land Registration Rules 1925 into the body of the Bill and amalgamates it with s. 55 and s. 56(3) and (4) of the Land Registration Act 1925.

Subsection (7) implements the Law Commission recommendation in the Third Report on Land Registration, at paragraph 4.117(viii), that the name and address of a cautioner can be altered without the cautioner being required to withdraw and relodge the caution.

Land Registration

35.—(1) Subsections (2) to (4) below apply where, as respects any registered interest, any person (“the applicant”) requires restrictions to be placed on any disposition of the interest. Restrictions.

5 (2) Subject to subsection (3) below, the applicant may apply to the registrar to make an entry on the register that, except in such circumstances as may be required by him and approved by the registrar, no disposition to which the application relates shall be effected.

(3) The application shall not be entertained unless either—

- 10 (a) the interest sought to be protected falls within paragraph (b), (d) or (e) of section 33(5) above; or
(b) the application is made with the consent, evidenced in the prescribed manner, of the proprietor of the relevant registered interest.

15 (4) The registrar shall, if satisfied of the applicant’s right to require the entry of the restriction, enter the restriction on the register, and no disposition to which the restriction relates shall be effected except in conformity with it.

(5) Any restrictions, other than those declared to be obligatory by general rules—

- 20 (a) may be withdrawn or modified at the instance of all persons for the time being appearing to the registrar to be interested in the restrictions; and
(b) shall be liable to be set aside by an order of the court.

25 (6) No restriction under this section shall extend or apply to dispositions of, or dealings with, minor interests.

EXPLANATORY NOTES

Clause 35

Clause 35 reproduces s. 58(1), (2), (4) and (5) as to the provisions on restrictions, without substantive change.

Land Registration

Inhibitions.

36.—(1) On an application made in the prescribed form in relation to any registered interest by any person, the court or the registrar may, after directing such inquiries to be made and notices to be given and hearing such persons as the court or the registrar thinks expedient, order the making of, or make, an entry (in this Act referred to as an “inhibition”) on the register inhibiting- 5

- (a) for a specified time;
- (b) until the occurrence of a specified event; or
- (c) generally until further order or entry on the register, the registration of any disposition of the registered interest. 10

(2) The court or the registrar may-

- (a) make or refuse to make any such order or entry as is mentioned in subsection (1) above;
- (b) annex to any such order or entry any terms or conditions the court or the registrar may think fit; 15
- (c) discharge any such order or cancel any such entry, with or without costs; and
- (d) generally act in such manner as the justice of the case requires.

(3) The court or the registrar may, instead of making any such order or entry as is mentioned in subsection (1) above, order to be entered, or enter, a notice or restriction on the register. 20

EXPLANATORY NOTES

Clause 36

Clause 36 reproduces s. 57(1), (2) and (4) of the Land Registration Act 1925 as to inhibitions, without substantive change.

Land Registration

37.—(1) The registrar shall as soon as practicable after registration of a bankruptcy petition as a pending action under the Land Charges Act 1972, enter a notice (in this Act referred to as a “creditors’ notice”) on any register which appears to be affected.

Protection of
creditors’
interests.

1972 c.61.

5 (2) A creditors’ notice—

(a) shall protect the rights of all creditors of the bankrupt; and

10 (b) unless cancelled by the registrar in the prescribed manner, shall remain in force until a bankruptcy inhibition is registered or the trustee in bankruptcy is registered as proprietor of the interest.

(3) The registrar shall as soon as practicable after registration of a bankruptcy order under the said Act of 1972, enter an inhibition (in this Act referred to as a “bankruptcy inhibition”) on any register which appears to be affected.

15 (4) As from the entry of a bankruptcy inhibition, no disposition affecting the registered interest, other than the registration of the trustee in bankruptcy, shall be entered on the register until the inhibition is cancelled as to the interest so far as relating to the whole or part of the land; but this subsection is without prejudice to dispo-
20 sitions of, or in right of, interests or charges having priority over the registered interest.

(5) Where the proprietor of any registered interest is adjudged bankrupt, the interest, if belonging to him beneficially and whether acquired before or after the date of the adjudication, shall vest in the
25 trustee in bankruptcy in accordance with the provisions of Part IX of the Insolvency Act 1986 .

1986 c.45.

(6) Where there is a disposition to a purchaser for money or money’s worth, of a registered interest, then, notwithstanding that the person making the disposition is adjudged bankrupt, the title of his
30 trustee in bankruptcy shall as from the date of the disposition, be void as against the purchaser unless at that date either a creditors’ notice or a bankruptcy inhibition has been registered.

(7) Nothing in subsection (6) above shall impose on a purchaser a liability to make any search under the Land Charges Act 1972 .

35 (8) If neither a creditors’ notice nor a bankruptcy inhibition is registered against a bankrupt proprietor, nothing in this section shall prejudicially affect the disposition of a registered interest acquired by the bankrupt after adjudication.

40 (9) Where a bankruptcy inhibition is wholly or partially cancelled otherwise than by reason of the registration of the trustee in bankruptcy, any registered interest vested in the trustee in bankruptcy, so far as relating to land to which the vacation extends, shall be divested and shall vest in the proprietor in whom it would have been vested if there had been no adjudication.

45 (10) No fee shall be charged for the registration of a creditors’ notice or bankruptcy inhibition.

EXPLANATORY NOTES

Clause 37

Clause 37 covers protection of creditors' interests and reproduces s. 61(1), (3)-(6) and (8)-(9) of the Land Registration Act 1925, without substantive change.

Land Registration

Variation or
determination of
interests.

38.—(1) On proof, to the satisfaction of the registrar, of the variation or determination, in whole or in part, of any lease or other interest which is—

(a) a registered interest; or

(b) an interest protected by the entry of a notice, restriction or 5
inhibition,

the registrar shall give effect to the variation or determination on the register in the prescribed manner.

(2) In this section “determination” includes surrender and 10
discharge.

EXPLANATORY NOTES

Clause 38

This clause reproduces s. 46 of the Land Registration Act 1925, without substantive change.

PART VII

LAND AND CHARGE CERTIFICATES

- 39.—(1) The registrar shall prepare in the prescribed form—
- 5 (a) on the first registration of a freehold or leasehold estate in land, a land certificate; and
- (b) on the registration of a charge, a charge certificate,
- which (in either case) shall incorporate particulars of the entries on the register.
- (2) Subject to subsection (3) below, a land or charge certificate
- 10 shall be either delivered to the proprietor or deposited in the registry, as the proprietor may prefer.
- (3) Where a charge is registered, the land certificate shall be deposited in the registry until the charge is discharged.
- (4) Where a land or charge certificate is deposited in the registry,
- 15 the particulars of the register incorporated in the certificate shall from time to time be compared and, where necessary, brought into conformity with the register.
- (5) Where a land or charge certificate is deposited in the registry, the proprietor may, subject to subsection (4) above—
- 20 (a) at any time apply for the delivery of the certificate to himself or to such person as he may direct; and
- (b) at any time again deposit the certificate in the registry.
- (6) The preparation, issue, endorsement or deposit in the registry of a land or charge certificate shall be effected without cost to the
- 25 proprietor.

Issue of certificates.

- 40.—(1) Where a land or charge certificate is not deposited in the registry, it shall be produced to the registrar—
- (a) on every entry in the register of a disposition of the registered estate or charge to which the certificate relates; and
- 30 (b) subject to such exceptions as may be prescribed, in every case where under this Act or otherwise a notice is entered on the register which adversely affects that estate or charge.
- (2) Particulars of every such disposition shall be entered on the land or charge certificate.
- 35 (3) On the completion of the registration of a transferee or grantee as the proprietor of any registered estate or charge, the registrar shall, subject to section 39 above, prepare and deliver in prescribed form to the transferee or grantee a land certificate or charge certificate, as the case may require.
- 40 (4) Where a transfer of a registered estate is made by the proprietor of a registered charge in the exercise of any power vested in him—
- (a) the transfer may be registered; and
- (b) a new land certificate may be issued to the purchaser,
- 45 without production of the former land certificate; but the charge certificate must be produced in accordance with this section.

Certificates to be produced and noted on dispositions.

EXPLANATORY NOTES

Clause 39

Clause 39 reproduces s. 63(1)-(4) and s. 65 of the Land Registration Act 1925 as to the issue of certificates, without substantive change.

Clause 40

Clause 40 covers production and noting of certificates on dealings and reproduces s. 64(1)-(4) of the Land Registration Act 1925, without substantive change.

PART VII

(5) The provisions of subsection (4) above shall be extended in the prescribed manner to the following cases affecting a registered estate, namely—

1980 c.58.

- (a) an order for foreclosure absolute;
- (b) the proprietor of a charge or a mortgagee obtaining a title 5 under the Limitation Act 1980 ;
- (c) title being acquired under a title paramount, including a title acquired in pursuance of a vesting or other order of the court or other competent authority.

Creation of liens by deposit of certificates.

41.—(1) The proprietor of any registered estate or charge may 10 create a lien on the estate or charge by the deposit of the land or charge certificate.

(2) A lien so created shall, subject to section 9 above, be equivalent to a lien created, in the case of an unregistered estate, by whichever 15 of the following is applicable, namely—

- (a) the deposit of the documents of title by an owner entitled for his own benefit to that estate;
- (b) the deposit of the mortgage deed by a mortgagee beneficially entitled to a mortgage of that estate.

Issue of new certificates.

42.—(1) The registrar may, where a land or charge certificate is 20 produced to him, issue a new land or charge certificate in place of the one so produced.

(2) The registrar may issue a new land or charge certificate in place of one—

- (a) lost or destroyed; 25
- (b) in the possession of a person out of the jurisdiction of the High Court; or
- (c) the production of which cannot be obtained without undue delay or expense,

on such terms as to indemnities, advertisement, notice or delay as may 30 be prescribed.

EXPLANATORY NOTES

Clause 41

Clause 41 reproduces s. 66 of the Land Registration Act 1925 as to the creation of liens by deposit of certificates, without substantive change.

Clause 42

Clause 42 reproduces s. 67 of the Land Registration Act 1925 as to the issue of new certificates, without substantive change.

PART VIII

CONVERSION, RECTIFICATION AND INDEMNITY

Conversion of
inferior titles.

43.—(1) Where a leasehold estate in land is registered with a good leasehold title, or may be registered with such a title under subsection 5 (2) or (3) below, the registrar may, and on application by the proprietor shall if he is satisfied as to title to the freehold and the title to any intermediate leasehold estate, enter the title to the leasehold estate as absolute.

(2) Where a freehold or leasehold estate in land is registered with a 10 qualified title, the registrar may, and on application by the proprietor shall if satisfied as to the title, enter the title in the case of a freehold estate as absolute and in the case of a leasehold estate as good leasehold.

(3) Where a freehold or leasehold estate in land is registered with a 15 possessory title the registrar may, and on application by the proprietor shall—

(a) if satisfied as to the title; or

(b) if the estate has been so registered for at least twelve years 20 and the registrar is satisfied that the proprietor is in possession of the land,

enter the title in the case of a freehold estate as absolute and in the case of a leasehold estate as good leasehold.

(4) If any claim adverse to the title of the proprietor has been 25 made, an entry shall not be made on a register under this section unless and until the claim has been disposed of.

(5) No fee shall be charged for the making of an entry on a register under this section at the instance of the registrar or on an application by the proprietor made in connection with a transfer for valuable consideration of the estate in land to which the application relates.

EXPLANATORY NOTES

Clause 43

Clause 43 combines s. 77 of the Land Registration Act 1925 and s. 1 of the Land Registration Act 1986 as to conversion of inferior titles.

Land Registration

Rectification of register.

44.—(1) Where it appears to the court or the registrar—

(a) that there is an error on or omission from a register; and

(b) that—

(i) the error or omission relates to an overriding interest;

or

(ii) rectification of the register would be just in all the circumstances,

rectification of the register shall, subject to subsection (3) below, be ordered by the court or, as the case may require, effected at the instance of the registrar.

(2) A register may be rectified under this section, notwithstanding that the rectification may affect any registered, protected, overriding or minor interest; and an entry giving effect to a rectification under this section shall have effect, or be deemed to have had effect, from such date as may be specified in the entry.

(3) Subject to subsection (4) below, a register shall not be rectified so as to affect the title of the proprietor of the registered estate if the proprietor—

(a) was a purchaser; and

(b) is in actual occupation of the land.

(4) Subsection (3) above shall not apply where—

(a) the proprietor caused or substantially contributed to the error or omission by fraud or lack of proper care;

(b) the rectification gives effect to an overriding interest;

(c) the rectification gives effect to a relevant interest within the meaning of section 12 or 17 above; or

(d) the rectification is in favour of a trustee in bankruptcy.

(5) The registrar shall give effect to any order made by the court under this section on being served with the order or an office copy of it.

(6) On every rectification under this section, the land certificate and any charge certificate affected shall be produced to the registrar unless he otherwise orders.

EXPLANATORY NOTES

Clause 44

Clause 44 contains the powers of rectification of the register. It reproduces s. 82(1)-(3) and (5)-(6) of the Land Registration Act 1925, and implements the Law Commission's recommendations in the Third Report on Land Registration, Law Com. No. 158, that the power to rectify should be "as full and ample...as is needed to achieve justice" (para. 3.8).

Subsection (1) states that rectification is available where it relates to an overriding interest or where it would be just in all the circumstances. The requirement of justice is not applied in relation to overriding interests because to refuse to rectify in respect of one would not affect the existence of the interest which would continue to bind the land.

Rectification is not available against a registered proprietor who has been a prudent purchaser and is a bona fide purchaser in actual occupation of the land, unless rectification is in favour of a trustee in bankruptcy, para. 3.34(4). For the definition of purchaser, see clause 70(1). This is a narrower provision than that found in s. 82(3) of the Land Registration Act 1925, and reflects the recommendation at para. 3.15 of the Third Report.

45.—(1) Subject to the provisions of this Act, any person who suffers loss by reason of—

Right to indemnity.

- (a) any register being rectified under this Part;
- 5 (b) any error on or omission from a register (whether subsequently rectified or not);
- (c) any interest being or having been an overriding interest;
- (d) any entry made on a register under section 43 above;
- (e) any error in or omission from an office copy of or extract from a register or filed document or plan;
- 10 (f) any error in or omission from any of the following which is referred to in a register, namely, a filed abstract or copy of or extract from a document;
- (g) any error in an official certificate of search; or
- 15 (h) any document lodged at the registry for inspection or safe custody being lost or destroyed,

shall be entitled to be indemnified.

(2) Where indemnity is paid in respect of a claim under subsection (1)(c) above, the registrar shall make such entries under section 8 above relating to the interest concerned as he may consider expedient.

20 (3) Where a register is rectified so as to defeat the title of the proprietor of a registered interest whose title derived from a forged disposition, the proprietor of the interest shall be deemed to have suffered loss by reason of the rectification.

(4) Where the estate or assets of a bankrupt proprietor suffer loss 25 by reason of—

- (a) the omission of the registrar to register a creditors' notice or bankruptcy inhibition; or
- (b) the execution or registration of a disposition after a bankruptcy petition or bankruptcy order is registered under 30 the Land Charges Act 1972 and before the registration of the creditors' notice or bankruptcy inhibition,

1972 c.61.

the trustee in bankruptcy shall be entitled to be indemnified.

(5) Where any loss suffered by a claimant was suffered wholly or partly as a result of his own fraud or wholly as a result of his own 35 lack of proper care, no indemnity shall be payable to him in respect of that loss.

(6) Where any loss suffered by a claimant was suffered partly as the result of his own lack of proper care, any indemnity payable to him shall be reduced to such extent as is just and equitable having regard 40 to his share in the responsibility for that loss.

(7) No indemnity shall be payable on account of—

- (a) any rectification to give effect to, or any error or omission relating to, a relevant interest within the meaning of section 12 or 17 above;
- 45 (b) any mines or minerals or the existence of any right to work or get mines or minerals, unless it is noted on the register that the mines or minerals are included in the title; or

EXPLANATORY NOTES

Clause 45

Clause 45 expands the provisions as to indemnity to incorporate the recommendation of the Third Report that indemnity be extended to cover overriding interests. This proposal was made at paragraphs 2.14, 3.34(7) and 3.27, and it appears in the Bill at subsection (1)(c). This clause also reproduces sections 30(2), 77(6), 83(1)-(5) and (9)-(12), and 61(7) of the Land Registration Act 1925 and it also incorporates section 2(1), (3) and (4) of the Land Registration and Land Charges Act 1971.

Land Registration

(c) costs or expenses incurred without the consent of the registrar for the purpose of negotiating with, taking legal proceedings against or defending legal proceedings brought by a person other than the registrar.

(8) Subject to subsection (7)(c) above- 5

(a) an indemnity under this section shall include such amount (if any) as may be reasonable in respect of any costs or expenses properly incurred by the claimant in relation to the matter; and

(b) a claimant for an indemnity under this section shall be entitled 10 to an indemnity of such amount (if any) as may be reasonable in respect of any such costs or expenses, notwithstanding that no other indemnity is payable.

(9) If any question arises—

(a) as to whether a person is entitled to an indemnity; or 15

(b) as to the amount of an indemnity to which a person is entitled, that person may apply to the court to have that question determined; but nothing in this subsection shall be taken to preclude the registrar from settling by agreement any claim to an indemnity.

(10) On an application under subsection (9) above, the court shall 20 not order the applicant, even if unsuccessful, to pay any costs except his own unless it considers that the application was unreasonable.

(11) Indemnities shall be paid by the registrar out of money provided by Parliament; and where an indemnity is so paid to a claimant in respect of any loss, the registrar, on behalf of the Crown, 25 shall be entitled-

(a) to recover the amount paid from any person who caused or substantially contributed to the loss by his fraud; and

(b) to enforce any express or implied covenant, or any right of action, which the claimant would have been entitled to 30 enforce in relation to the loss.

1980 c.58.

(12) For the purposes of the Limitation Act 1980 —

(a) the cause of action in relation to a claim for loss suffered by reason of rectification shall be deemed to arise on the recti- 35 fication;

(b) the cause of action in relation to any other claim for indemnity shall be deemed to arise when the claimant knows, or but for his own default might know, of the existence of his claim.

(13) This section binds the Crown. 40

Supplementary provisions.

46.—(1) The following provisions shall have effect for the purposes of this Part.

(2) There is an error on or omission from a register if the title to a registered interest as shown by the register does not correspond to the title which would subsist to that interest if the registered estate had not been registered. 5

(3) Without limiting the cases in which there is a lack of proper care on the part of any person in relation to an error on or omission from a register, there is such a lack if the error or omission was—

(a) within his knowledge; or 10

(b) would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him.

(4) Without limiting the cases in which there is a lack of proper care on the part of any person in relation to a loss suffered by him, 15 there is such a lack if the possibility of his suffering the loss was—

(a) within his knowledge; or

(b) would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him. 20

PART IX

APPLICATION OF ACT TO PARTICULAR CASES

Trusts and settled land.

47.—(1) Subject to the provisions of this section, neither the registrar nor any person dealing with a registered interest shall be affected by any notice (express, implied or constructive) of a trust; 25 and references to trusts shall so far as possible be excluded from registers of title.

(2) Where a registered estate is subject to a trust for sale, the estate shall be registered in the names of the trustees for sale.

(3) A registered estate which is or becomes settled land shall be 30 registered in the name of the tenant for life or statutory owner.

Companies' charges

48.—(1) Neither the registrar nor any person dealing with a registered interest shall be concerned with any charge registered under Part XII Chapter I of the Companies Act 1985 unless it is also registered or protected under this Act. 35

(2) No indemnity shall be payable under this Act by reason of any person acquiring an interest under a registered disposition from a company free from any such charge.

EXPLANATORY NOTES

Clause 46

Clause 46 implements the Law Commission's recommendation in the Third Report on Land Registration at paragraph 3.18 as to the supplementary provisions for rectification.

Clause 47

Clause 47 covers the application of the Bill to trusts and settled land and reproduces sections 74, 94(1) and 86(1) and (3) of the Land Registration Act 1925, without substantive change.

Clause 48

Clause 48 derives from s. 60 of the Land Registration Act 1925, without substantive change.

49.—(1) With respect to a Crown or Duchy interest, the appropriate authority—

Crown or Duchy land.

(a) may represent the owner of the interest for all purposes of this Act;

5 (b) shall be entitled to receive such notices as that owner is entitled to receive under this Act; and

(c) may make such applications and do such other acts as that owner is entitled to make or do under this Act.

(2) In this section—

10 “the appropriate authority” means—

(a) in relation to an interest belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

15 (b) in relation to any other interest belonging to Her Majesty in right of the Crown, the government department having the management of that interest;

(c) in relation to an interest of the Duchy of Lancaster, the Chancellor of that Duchy;

20 (d) in relation to an interest belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;

25 (e) in relation to an interest belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, that department;

“Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;

30 “Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

EXPLANATORY NOTES

Clause 49

This reproduces s. 96 of the Land Registration Act 1925 as to the application of the Bill to the Crown or Duchy land. There are no substantive changes.

Land Registration

Land acquired
by adverse
possession.

1980 c.58.

50.—(1) Subject to subsection (2) below, the Limitation Act 1980 shall apply to registered estates in the same manner and to the same extent as it applies to unregistered estates.

(2) A registered estate which, if it were unregistered, would be extinguished under the said Act of 1980—

(a) shall not be so extinguished; but

(b) shall be deemed to be held by the proprietor for the time being in trust for the person who by virtue of that Act has acquired title against any proprietor, but without prejudice to any estate or interest which is not, or, if it were unregistered, would not be, so extinguished.

(3) Any person claiming to have acquired title under the said Act of 1980 to a registered estate may have an overriding interest within section 7 above but may apply to be registered as proprietor of that estate.

(4) On an application under subsection (3) above, the registrar shall, if satisfied as to the applicant's title, enter the applicant as proprietor with an absolute, good leasehold, qualified or possessory title, as the case may require, but without prejudice to any estate or interest which—

(a) is a protected interest; and

(b) may not have been extinguished under the said Act of 1980, and the registration shall, subject as mentioned above, have effect as the registration of a first proprietor.

(5) General rules may apply the provisions of this section, subject to any necessary modifications, to cases where an interest subsisting for the benefit of a registered estate in any land has been acquired by prescription.

Land subject to
charitable trusts.

51. Where an application is made to register an estate or charge which—

(a) is subject to charitable trusts; and

(b) is vested in the official custodian for charities, that custodian shall, notwithstanding that the powers of disposition are vested in the managing trustees or committee, be registered as proprietor of the estate.

EXPLANATORY NOTES

Clause 50

Clause 50 covers land acquired by adverse possession and reproduces s. 75(1)-(3) and (5) of the Land Registration Act 1925, without substantive change.

Clause 51

Clause 51 reproduces s. 98 of the Land Registration Act 1925 as to land subject to charitable trusts, without substantive change.

Land belonging to benefices.

52.—(1) Where the incumbent of a benefice and his successors in title are the registered proprietors of an estate—

(a) no disposition of the estate shall be registered unless a certificate in the prescribed form has been obtained from the Church Commissioners; and

(b) no lien shall be created by the deposit of the land certificate; and an inhibition shall be placed on the register accordingly.

(2) It shall be the duty of the Church Commissioners to grant such a certificate as is mentioned in subsection (1) above in each case in which the facts admit of the grant.

(3) Where, on the registration of the incumbent of a benefice and his successors in title as proprietors of an estate, it is certified by the Church Commissioners or otherwise appears that the estate—

(a) was originally purchased by Queen Anne's Bounty or the Commissioners; or

(b) was, by or with the consent or concurrence of the Bounty or the Commissioners, otherwise appropriated or annexed to the benefice for its augmentation,

the registrar shall enter a note to that effect on the register.

(4) Where the incumbent of a benefice is entitled to indemnity under this Act, the money shall be paid to the Church Commissioners and shall be appropriated by them to the benefice.

(5) In this section "benefice" includes any rectory with cure of souls, vicarage, perpetual curacy, donative, endowed public chapel or parochial chapelry and any chapelry or district belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel.

Land belonging to persons suffering from mental disorder.

53.—(1) Where a proprietor of any registered interest is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983, of managing or administering his property and affairs, his receiver or (if no receiver is acting for him) any person authorised in that behalf under—

(a) an order of the authority having jurisdiction under Part VII of that Act;

(b) an order of the court;

(c) an order made under any statutory power; or

(d) an instrument executed under the Enduring Powers of Attorney Act 1986 and registered with the Court of Protection,

may exercise all the powers which under this Act the proprietor could have exercised if free from disability; and any powers exercised in pursuance of this subsection shall be exercised in the name and on behalf of the proprietor.

(2) A copy of every such order shall be filed at the registry and may be referred to on the register.

EXPLANATORY NOTES

Clause 52

Clause 52 reproduces s. 99(1)-(4) of the Land Registration Act 1925 as regards land belonging to benefices. There are no substantive changes.

Clause 53

Clause 53 reproduces s. 111(5) of the Land Registration Act 1925 as to land belonging to persons suffering mental disorder. There are no substantive changes.

Small plots of land.

54.—(1) The Lord Chancellor, with the advice and assistance of the Rule Committee, may by rules make provision—

- (a) for enabling the registrar, in such circumstances and subject to such conditions as may be specified in the rules, to designate any area of land as land subject to a small plots scheme if the registrar is satisfied that the land comprised in that area consists wholly or mainly of land which has been or is proposed to be disposed of in small plots or of which part has been, and the remainder is proposed to be, so disposed of; 5
- (b) with respect to the cancellation of designations and the extension or reduction of the area to which any designation relates; 10
- (c) for authorising or requiring the registrar not to accept applications under this Act relating to estates in designated land or cautions or other documents relating to such estates; 15
- (d) for excepting estates in designated land from the operation of section 13 above;
- (e) for securing that transactions relating to estates in designated land which are registered take effect as if the estates in question were not registered; 20
- (f) generally for modifying or excluding in relation to estates in designated land the operation of any provision contained in this Act or in general rules. 25

(2) Rules under this section— 25

- (a) may contain such consequential, incidental, supplemental or transitional provision as appears to the Lord Chancellor necessary or expedient; and
- (b) may make different provision for designated land in general and designated land so far as it consists or does not consist of small plots, and for other different circumstances. 30

(3) The power to make rules under this section shall be exercisable by statutory instrument, and a statutory instrument containing any such rules shall be laid before Parliament after being made.

(4) In this section— 35

“designation” means a designation by the registrar, made in pursuance of rules under this section made by virtue of subsection (1)(a) above, of an area of land as subject to a small plots scheme;

“designated land” means land situated in an area in respect of which a designation is for the time being in force;

“small plot” means any piece of land which is of inconsiderable size and little or no practical utility.

EXPLANATORY NOTES

Clause 54

Clause 54 relates to the treatment of small plots of land, and derives from s. 4 of the Land Registration and Land Charges Act 1971. At the suggestion of H.M. Land Registry, the new clause, while otherwise substantially similar to the earlier provision, does not contain the restrictive requirement that the land be souvenir land.

PART X
MISCELLANEOUS

Vendor and purchaser

55.—(1) This section applies on a contract for the sale or other disposition of a registered interest to a purchaser. Vendor and purchaser.

(2) Notwithstanding any stipulation to the contrary, the vendor shall, if required, at his own expense furnish the purchaser with—

- (a) an office copy of the subsisting entries on the register and an office copy of the filed plan; and
- 10 (b) office copies or abstracts of any filed documents which are noted on the register so far as they affect the estate, except charges or interests which are to be discharged or overreached at or before completion.

(3) Subject to any stipulation to the contrary, the vendor shall, if 15 required, at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) in respect of—

- (a) any interests subsisting for the benefit of the registered interest as to which the register is not conclusive;
- (b) any protected or overriding interests;
- 20 (c) any general burdens; and
- (d) any relevant interests within the meaning of section 12 or 17 above,

as the purchaser would have been entitled to if the interest had not been registered.

25 (4) Where the register refers to a filed abstract or copy of or extract from a deed or other document the abstract, copy or extract shall as between the vendor and purchaser be assumed to be correct and to contain all material portions of the original.

(5) Where the vendor is not himself registered as proprietor of the 30 interest sold or disposed of, then, subject to any stipulation to the contrary, the vendor shall at his own expense either—

- (a) procure the registration of himself as proprietor of the interest; or
- 35 (b) procure a disposition from the proprietor of the interest to the purchaser,

as the purchaser may require.

(6) Unless the land or charge certificate is deposited at the registry, the vendor shall either—

- 40 (a) deliver the certificate to the purchaser on completion of the purchase; or
- (b) where only a derivative estate is created or only a part of the land is dealt with, at his own expense produce or procure the production of the certificate to the registrar for the completion of the purchaser's registration; or
- 45 (c) pay the costs of the proceedings to enable the registrar to issue a new certificate under clause 42(2) above.

EXPLANATORY NOTES

Clause 55

Clause 55 derives from s. 110(1)-(6) of the Land Registration Act 1925, without substantive change.

PART X

(7) In this section—

“disposition” means a disposition which is capable of being registered under Part IV of this Act;

“vendor” means any person who has entered into a contract to make a disposition.

5

Inspection of register etc.

Inspection of register.

56.—(1) Any person may, subject to such conditions as may be prescribed and on payment of any fee payable, inspect and make copies of and extracts from—

(a) any entries on a register; and

10

(b) documents referred to in the register which are in the custody of the registrar (other than leases or charges or copies of leases or charges).

(2) Documents in the custody of the registrar relating to any land or charge but not falling within subsection (1)(b) of this section may be inspected, and copies of and extracts from them may be made—

(a) as of right, in such cases as may be prescribed; and

(b) at the discretion of the registrar, in any other case,

but subject in all cases to such conditions as may be prescribed and on payment of any fee payable.

20

(3) References in this section to documents include references to things kept otherwise than in documentary form.

Office copies to be evidence.

57.—(1) Any office copy of—

(a) a register or document filed in the registry; or

(b) an extract from a register or from such a document,

25

shall, without any further or other proof of the original, be admissible in evidence to the same extent as the original would be admissible.

(2) No solicitor, trustee, personal representative or other person in a fiduciary position shall be liable in respect of any loss occasioned by relying on any such copy or extract.

30

(3) In subsection (2) above the reference to a solicitor shall be construed as including a reference to a licensed conveyancer or a recognised body.

Inspection: supplementary provisions.

58.—(1) Any duty under this Act to make a thing available for inspection is a duty to make it available for inspection in visible and legible form.

35

(2) Any reference in this Act to a copy of or extract from a register or of or from a document filed in the registry includes a reference to the reproduction of anything which is kept by the registrar under this Act otherwise than in documentary form.

40

EXPLANATORY NOTES

Clause 56

Clause 56 covers inspection of the registers and derives from the Land Registration Act 1988, s. 1.

Clause 57

Clause 57 derives from s. 113 of the Land Registration Act 1925 and makes it clear that an office copy is admissible in evidence without further proof.

Clause 58

Clause 58 reproduces s. 113A of the Land Registration Act 1925 (as added by the Administration of Justice Act 1982, s. 66(2)) without change.

Land Registration

Addresses for service etc.

59.—(1) Every person whose name is entered on a register, whether as proprietor of the registered estate or a registered charge, as a cautioner, as a person entitled to receive any notice or in any other capacity, shall furnish to the registrar a place of address in the United Kingdom.

Addresses for service etc.

(2) Every notice required by this Act to be given to any person shall be either served personally or sent, by registered post or the recorded delivery service, in a letter which is directed to that person at the address furnished to the registrar.

(3) A letter sent by post as mentioned in subsection (2) above shall, unless it is returned, be deemed to have been received by the person to whom it was addressed within such period, not less than seven days exclusive of the day of posting, as may be prescribed.

(4) The Post Office shall give directions for the immediate return to the proper district registry of any letters which—

(a) are marked outside—

(i) “Her Majesty’s Land Registry”; or

(ii) with a reference to a district registry; and

(b) are addressed to persons who cannot be found;

and on the return of any letter containing a notice under this Act, the registrar shall act in the matter requiring the notice to be given in such manner as may be prescribed.

EXPLANATORY NOTES

Clause 59

Clause 59 reproduces s. 79(1)-(4) of the Land Registration Act 1925 as to addresses for service, without substantive change.

Land Registration

Offences and civil remedies

Suppression of
deeds and
evidence.

60.—(1) If any person, in the course of any proceedings under this Act before the registrar or the court, with the intent—

- (a) to conceal the title or claim of any person; or
- (b) to substantiate a false claim,

5

suppresses, attempts to suppress or is party to the suppression of any document or fact, he shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

EXPLANATORY NOTES

Clause 60

Clause 60 reproduces s. 115 and s. 117 of the Land Registration Act 1925 as to the suppression of deeds and evidence and the penalties for these misdemeanors. There are no substantive changes.

Land Registration

61.—(1) If any person fraudulently procures, attempts fraudulently to procure or is party to the fraudulent procurement of any entry on, erasure from or alteration of a register or a land or charge certificate, he shall be guilty of an offence. Fraudulent acts.

5 (2) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine;

10 (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

EXPLANATORY NOTES

Clause 61

Clause 61 reproduces s. 116(1) and s. 117 of the Land Registration Act 1925 as to fraudulent acts and the penalty for this offence. There are no substantive changes, save that s. 116(2) is not reproduced.

Civil remedies
and discovery.

62.—(1) No proceeding or conviction for an offence under this Act affects any remedy to which any person may be entitled, whether at law or in equity.

(2) Nothing in this Act entitles any person to refuse to make a complete discovery, or to answer any question or interrogatory, in any civil proceedings; but no disclosure made or answer given in any such proceedings by any person shall be admissible in evidence against that person, or the husband or wife of that person, in any criminal proceedings under this Act. 5

EXPLANATORY NOTES

Clause 62

Clause 62 reproduces section 119 of the Land Registration Act 1925 as to civil remedies and discovery. There are no substantive changes.

63.—(1) The registrar, or any officer of the Land Registry authorised by him in writing, may administer an oath or take a statutory declaration for any of the purposes of this Act.

Summoning of witnesses.

5 (2) Subject to subsection (3) below, the registrar may for any of the purposes of this Act—

(a) by a summons under the seal of the Land Registry, require the attendance of any person;

10 (b) by such a summons, require any person who has the custody of any land or charge certificate or any map, survey or other document to produce the certificate, map, survey or other document for his inspection;

(c) examine on oath any person appearing before him; and

(d) allow every person summoned by him the reasonable charges of the attendance or the production of the documents.

15 (3) No person shall be required by any summons to attend or to produce any documents unless the reasonable charges of the attendance or the production of the documents are paid or tendered to him.

20 (4) Any charges allowed by the registrar under this section shall be deemed to be charges incurred in or about proceedings for registration and may be dealt with accordingly.

(5) If any person without reasonable excuse refuses or neglects—

25 (a) to attend, or to produce any certificate, map, survey or other document, as required by such a summons as is mentioned in subsection (2) above; or

(b) to answer on oath or otherwise such questions as may be lawfully put to him by the registrar under the powers of this Act, he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

30 (6) In this section, “document” includes any information kept otherwise than in documentary form.

EXPLANATORY NOTES

Clause 63

Clause 63 reproduces s. 128 of the Land Registration Act 1925 as to the registrar's powers to summon witnesses. There are no substantive changes.

Land Registration

Powers etc. of registrar

Forms and directions 64. The registrar may cause to be published such forms and directions as he thinks fit for facilitating any of the purposes of this Act.

Hearings by registrar and appeals 65.—(1) If any question, doubt, dispute, difficulty, objection or complaint arises concerning any disposition, application, registration or register or anything authorised or required by this Act, the registrar may— 5

(a) hear and determine the matter and make such order as he thinks fit; or 10

(b) at any stage, refer the matter to the court.

(2) Any person aggrieved by a determination or order of the registrar under subsection (1) may appeal to the court in the prescribed manner.

Indemnity for officers. 66.—(1) Neither the registrar nor any person acting— 15

(a) under the authority of the registrar; or

(b) under any order or general rule made under this Act,

shall be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of the powers conferred by this Act, or of any order or general rule made under this Act. 20

(2) Subsection (1) above shall not apply in relation to an application under section 45 above or any legal proceedings arising out of such an application.

The court and its powers 25

The court. 67.—(1) Any jurisdiction conferred on the High Court by this Act may also be exercised, to such extent as may be prescribed, by county courts.

(2) Subject to the Supreme Court Act 1981, all matters within the jurisdiction of the High Court under this Act shall be assigned to the Chancery Division of that Court. 30

(3) Where a county court has jurisdiction under this Act, it shall have all the powers of the High Court for the purposes of that jurisdiction.

(4) The Lord Chancellor may assign any duties of the High Court under this Act to any particular judge or judges of that Court. 35

EXPLANATORY NOTES

Clause 64

This clause derives from s. 127 of the Land Registration Act 1925.

Clause 65

This clause derives from the Land Registration Rules 1925, rr. 298 and 299. It also replaces certain specific references in the Land Registration Act 1925 to hearings, for example, s. 56(1).

Clause 66

Clause 66 reproduces the provisions of s. 131 of the Land Registration Act 1925 as to indemnity for officers of the registry, without substantive change.

Clause 67

Clause 67 reproduces s. 138 as to the powers of the court. There are no substantive changes.

PART XI
SUPPLEMENTAL

- General rules. 68.—(1) The Lord Chancellor, with the advice and assistance of the Rule Committee, may make general rules for the purpose of giving effect to this Act. 5
- (2) The power to make general rules shall be exercisable by statutory instrument, and a statutory instrument containing any such rules shall be laid before Parliament after being made.
- Fee orders. 69.—(1) The Lord Chancellor, with the advice and assistance of the Rule Committee and with the consent of the Treasury, may make 10 orders with respect to the amount of fees payable under this Act, regard being had to the following matters, namely—
- (a) in the case of the registration of an estate in land, or the transfer of an estate in land, on the occasion of a sale, the value of the estate as determined by the amount of the 15 purchase money;
 - (b) in the case of the registration of an estate in land, or the transfer of an estate in land, otherwise than on the occasion of a sale, the value of the estate as ascertained in such manner as may be prescribed by the order; 20
 - (c) in the case of the registration of a charge or the transfer of a charge, the amount of the charge.
- (2) Orders under this section may make different provision for different cases or classes of case and may, in particular, provide that no fees shall be payable in certain cases or classes of case. 25
- (3) The powers conferred by this section shall be so exercised as to produce—
- (a) amounts sufficient to discharge the salaries and other expenses incidental to the operation of this Act (including such sums as, in the opinion of the Treasury, approximately represent 30 the accruing liability attributable to the operation of this Act in respect of pensions, allowances and gratuities payable by virtue of schemes made under section 1 of the Superannuation Act 1972); and
 - (b) such further amounts as, in the opinion of the Lord Chancellor 35 and the Treasury, are reasonable, regard being had to the indemnities which have been paid, or may become payable, under this Act.
- (4) The power to make orders under this section shall be exercisable by statutory instrument. 40
- 1972 c.11.

EXPLANATORY NOTES

Clause 68

This derives from s. 144(1) of the Land Registration Act 1925 and gives a general power to make rules. The detailed provisions in s. 144(1) are not retained.

Clause 69

This derives from s. 145 of the Land Registration Act 1925, and s. 7 of the Land Registration Act 1936.

Land Registration

- Interpretation. 70.—(1) In this Act, unless the context otherwise requires—
- “charge” means any mortgage, charge or lien for securing money or money’s worth;
- 1925 c.20. “charge by way of legal mortgage” means a charge under which, by virtue of the Law of Property Act 1925, the mortgagee is to be treated as an estate owner in like manner as if a mortgage term by demise or subdemise were vested in him; 5
- “the court” means the High Court or, where the county court has jurisdiction by virtue of general rules, the county court;
- “disposition” includes a mortgage, charge, lease, assent, disclaimer, release, surrender, grant, dealing, contract and every other conveyance of any interest whether by transfer or creation; and “dispose of” has a corresponding meaning; 10
- “filed” means filed at the registry;
- “general rules” means rules made under section 68 above; 15
- “instrument” does not include a statute unless the statute creates a settlement;
- “land” includes buildings and other structures, land covered with water and mines and minerals, whether or not held with the surface; 20
- “lease” includes an underlease or tenancy;
- 1985 c.61 “licensed conveyancer” has the same meaning as in Part II of the Administration of Justice Act 1985 ;
- “mines and minerals” includes any strata or seam of minerals or substances in or under any land, and powers of working and getting any such minerals or substances; 25
- “official certificate of search” means an official certificate of search issued in accordance with general rules;
- “possession” includes receipt of rents and profits or the right to receive any rents and profits; 30
- “prescribed” means prescribed by general rules;
- “profit” means profit a prendre;
- “proprietor” means the proprietor for the time being of a registered interest;
- “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who in good faith and for valuable consideration acquires any interest in land; 35
- “the register” means—
- (a) in relation to a registered estate, the register of the title to that estate; and 40
- (b) in relation to any other interest, the register of the title to the registered estate which is adversely affected by that interest or for the benefit of which that interest subsists;
- “registered disposition” means a disposition within section 15(1) above which is completed by the registration of the transferee or grantee as the proprietor of the interest transferred or created; 45

EXPLANATORY NOTES

Clause 70

This is the interpretation clause. Parts of it derive from s. 3 of the Land Registration Act 1925.

Land Registration

“the Rule Committee” means the following body of persons, namely—

- (a) a judge of the Chancery Division of the High Court nominated by the Lord Chancellor;
 - 5 (b) the Chief Land Registrar;
 - (c) a person nominated by the Minister of Agriculture, Fisheries and Food;
 - (d) a person nominated by the General Council of the Bar; and
 - 10 (e) a person nominated by the Council of the Law Society;
- “settled land”, “settlement”, “tenant for life”, “statutory owner”, “trust corporation”, “vesting order” and “vesting instrument” have the same meanings as in the Settled Land Act 1925 ; 1925 c.18
- “term of years” and “term of years absolute” have the same meanings as in the Law of Property Act 1925 ; 1925 c.20.
- “trust for sale”, in relation to an estate in land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale;
- 20 “trustees for sale” means the persons (including a personal representative) holding an estate in land on trust for sale;
- “valuable consideration” includes marriage, but does not include a nominal consideration in money;
- “will” includes codicil.
- 25 (2) For the purposes of this Act the expressions listed in the first column below are respectively defined or fall to be construed in accordance with the provisions of this Act listed in the second column in relation to those expressions.

<i>Expression</i>	<i>Provision</i>
30 bankruptcy inhibition	section 37(3)
creditors' notice	section 37(1)
freehold estate	section 6(1)(a)
general burden	section 5(3)
inhibition	section 36
35 interest	section 5
leasehold estate	section 6(1)(b)
minor interest	section 7(1)
overriding interest	section 7(1)
protected interest	section 7(1)
40 registered interest	section 6(7)
registrar	section 4

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71.—(1) The enactments mentioned in Schedule 4 to this Act shall have effect with the amendments there specified (being amendments consequential on the provisions of this Act).

Consequential amendments, transitional provisions, savings and repeals.

(2) The transitional provisions and savings contained in Schedule 5 to this Act shall have effect, but those provisions and savings are without prejudice to sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

1978 c.30.

(3) The enactments mentioned in Schedule 6 to this Act are repealed to the extent set out in the third column of that Schedule.

10 72.—(1) This Act may be cited as the Land Registration Act 1989.

Short title, commencement and extent.

(2) This Act shall come into force on 1st January 1990.

(3) This Act extends to England and Wales only.

SCHEDULES

SCHEDULE 1

Section 8(4).

DESCRIPTION OF LAND ON REGISTERS

General

- 5 1.—(1) Land in which a registered interest subsists shall be described, whether in documentary form or otherwise—
- (a) by means of a verbal description and a filed plan (based on the ordnance survey map);
 - (b) by reference to a copy of or an extract from a filed document
 - 10 (c) in such other manner as the applicant for registration may desire and the registrar may approve,
- regard being had to ready identification of parcels, correct descriptions of boundaries and, so far as may be, uniformity of practice.
- 15 (2) The boundaries and all requisite details shall, where expedient, be entered on the register or a filed plan.
- (3) Where there are no physical boundaries or boundary marks, the fullest available particulars shall be added to any filed plan.

Fixed boundaries

- 20 2.—(1) Where it is proposed that the precise position of a boundary shall be entered on the register or indicated on a filed plan, notice of the proposal shall be given to owners and occupiers of the adjoining land.
- (2) A notice under sub-paragraph (1) above shall be accompanied
- 25 by such a plan or tracing, or such an extract from the proposed verbal description of the land, as may be necessary to show clearly the fixed boundary proposed to be registered.
- (3) Any doubt or dispute arising from such a proposal as is mentioned in sub-paragraph (1) above shall be dealt with in the
- 30 manner prescribed.
- (4) Where a boundary has been fixed under this paragraph—
- (a) such particulars as may be necessary shall be added to any filed plan; and
 - (b) a note of the fixing of the boundary shall be made in the
 - 35 property section of the register.
- (5) Where any particulars are added to a filed plan under sub-paragraph (1)(a) above, the plan shall be deemed to define the boundary accurately.

Land Registration

SCH. 1

General boundaries

3.—(1) Except in the case of a boundary which has been fixed under paragraph 2 above—

(a) a filed plan shall be deemed to indicate general boundaries only; and

5

(b) the exact line of those boundaries shall be left undetermined.

(2) Where it is proposed that the position of a general boundary shall be entered on the register, notice of the proposal need not be given to the owners and occupiers of the adjoining land.

(3) This paragraph shall apply notwithstanding that the whole or 10 any part of a ditch, wall, fence, stream, or other boundary is expressly included in or excluded from, or forms the whole of, the land in respect of which the registered interest subsists.

SCHEDULE 2

PROCEDURE ON REGISTRATION ETC.

Examination of title by registrar

1.—(1) The examination by the registrar of any title under this Act
5 shall be conducted in the prescribed manner.

(2) Notice of the examination shall be given where prescribed and sufficient opportunity shall be afforded to any persons desirous of objecting to the title to state their objections to the registrar.

Evidence required before registration

10 2.—(1) Before the completion of the registration of any interest in land in respect of which an examination of the title is required, the applicant for registration and his solicitor shall each, if required by the registrar, make an affidavit or declaration that to the best of his knowledge and belief—

- 15 (a) all deeds, wills and other instruments comprising the title;
(b) all charges and other interests affecting the title; and
(c) all facts material to the title,

have been disclosed in the course of the investigation of title made by the registrar.

20 (2) The registrar may require any person making an affidavit or declaration in pursuance of this paragraph to state in his affidavit or declaration what means he has had of becoming acquainted with the matters referred to in sub-paragraph (1) above; and if the registrar is
25 of opinion that any further or other evidence is necessary or desirable, he may refuse to complete the registration until such further or other evidence is produced.

(3) Before the registration of any person who has not previously acquired the interest intended to be registered, the registrar must be satisfied that any ad valorem stamp duty which, if that person had
30 acquired the interest, would have been payable in respect of the instrument vesting the interest in him has been discharged.

(4) In sub-paragraph (1) above the reference to the applicant's solicitor shall be construed as including a reference to any licensed conveyancer who is acting for the applicant.

35 *Production of deeds*

3.—(1) This paragraph applies where—

- (a) an application is made to the registrar for the registration of any interest;
40 (b) any person has in his possession or custody any deed, instrument or evidence which relate to or affect the title and to the production of which the applicant or any trustee for him is entitled.

(2) The registrar may require the person concerned to show cause, within a time limited, why he should not produce the deed,
45 instrument or evidence to the registrar, or otherwise, as the registrar

SCH. 2 may think fit.

(3) Unless cause is shown to the satisfaction of the registrar within the time so limited, the registrar may order the deed, instrument and evidence to be produced at the expense of the applicant, at such time and place, in such manner and on such terms as the registrar thinks 5 fit.

(4) If any person fails to comply with any order of the registrar under this paragraph—

(a) the registrar may certify the failure to the court; and

(b) the order may be enforced by the court in the same manner in 10 all respects as if it were an order of the court.

Deeds to be marked with evidence of inspection

4.—(1) A person shall not be registered as proprietor of an estate in any land until, if required by the registrar, he has produced to the registrar such documents of title as will, in the opinion of the 15 registrar, when stamped or otherwise marked, give notice of the fact of registration to any purchaser or other person dealing with the land.

(2) Where any documents of title are so produced, the registrar shall, if he things fit, stamp or otherwise mark them accordingly.

(3) In the case of registration with a possessory title, the registrar 20 may act on such reasonable evidence as may be prescribed as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstances.

Costs of application for registration

5.—(1) All costs, charges and expenses that are incurred by any 25 parties in or about any proceedings for registration shall unless the parties otherwise agree, be taxed by the taxing officer of the court as between solicitor and client.

(2) The persons by whom and the proportions in which such costs, charges and expenses are to be paid shall be in the discretion of the 30 registrar, and shall be determined according to orders of the registrar, regard being had to the following provision, namely, that any applicant is liable prima facie to pay all costs, charges and expenses incurred by or in consequence of his application, except—

(a) in a case where parties object whose rights are sufficiently 35 secured without their appearance; and

(b) where any costs, charges or expenses are incurred unneces- sarily or improperly.

(3) If any person fails to comply with any order of the registrar under this paragraph— 40

(a) the registrar may certify the failure to the court; and

(b) the order may be enforced by the court in the same manner in all respects as if it were an order of the court.

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6.-The provisions of this Schedule have effect subject to subsection (5) of section 154 of the Housing Act 1985 (which requires the registrar to accept a certificate of title under subsection (2) of that section as sufficient evidence of the facts stated in it). 1985 c.68.

**SCHEDULE 3
IMPLIED COVENANTS**

Sections 15(4)
and 18(7)

PART I

TRANSFERS OF LEASEHOLD ESTATES

5 1.—(1) This paragraph applies on the transfer of a registered leasehold estate in any land.

(2) Subject to any entry on the register to the contrary, there shall be implied, on the part of the transferor, a covenant with the transferee that, notwithstanding anything done, omitted or knowingly
10 suffered by the transferor, the rent, covenants and conditions reserved by and contained in the registered lease and on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date of the transfer.

(3) Subject to any entry on the register to the contrary, there shall
15 also be implied, on the part of the transferee, a covenant with the transferor that during the residue of the term the transferee and the persons deriving title under him—

(a) will pay, perform and observe the rent, covenants and conditions reserved by and contained in the registered lease
20 and on the part of the lessee to be paid, performed and observed; and

(b) will keep the transferor and the persons deriving title under him indemnified against all actions, expenses and claims on account of any non-payment of the said rent or any part of
25 it or breach of the said covenants or conditions or any of them.

2.—(1) This paragraph applies on the transfer of a registered leasehold estate in part only of the land comprised the estate.

(2) The covenant implied on the part of the transferee by paragraph
30 1(3) above shall be limited to the payment of any apportioned rent and the performance and observance by the lessee of the covenants and conditions contained in the registered lease so far only as they affect the part of the land to which the transfer relates.

(3) There shall also be implied, on the part of the transferor as
35 respects the remaining part of the land, a covenant with the transferee similar to that implied on the part of the transferee.

PART II

REGISTRATION OF CHARGES

3.—(1) This paragraph applies on the registration of a charge on a
40 registered estate in any land.

(2) Subject to any entry on the register to the contrary, there shall be implied, on the part of the person creating the charge, a covenant with the proprietor for the time being of the charge—

(a) to pay the principal sum charged at the appointed time and
45 interest (if any) thereon at the appointed time and at the

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appointed rate; and

- (b) if the principal sum or any part of it is unpaid at the appointed time, to pay interest half-yearly at the appointed rate, as well after as before any judgment is obtained in respect of the charge, on so much of the principal sum as for the time being remains unpaid. 5

4.—(1) This paragraph applies on the registration of a charge on a registered leasehold estate in any land.

(2) Subject to any entry on the register to the contrary, there shall (in addition to the covenant implied by paragraph 3 above) be implied 10 on the part of the person creating the charge, a covenant with the proprietor for the time being of the charge that the person creating the charge or the persons deriving title under him—

(a) will pay, perform and observe the rent, covenants and conditions reserved by and contained in the registered lease 15 and on the part of the lessee to be paid, performed and observed; and

(b) will keep the proprietor of the charge, and the persons deriving title under him, indemnified against all proceedings, expenses and claims on account of any non-payment of the 20 said rent or any part of it or any breach of the said covenants or conditions or any of them.

Section 71(1).

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

The Settled Land Act 1925 (c.18)

1. In section 119(3) of the Settled Land Act 1925, after the word "registered" there shall be inserted the words "estates in" and for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989". 5

The Law of Property Act 1925 (c.20)

2. In sections 84(8), 94(4), 97 and 115(10) of the Law of Property Act 1925, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989". 10

3. In section 85(3) of that Act, for the words "land is registered under the Land Registration Act 1925" there shall be substituted the words "estate in fee simple is registered under the Land Registration Act 1989". 15

4. In section 86(3) of that Act, for the words "land is registered under the Land Registration Act 1925" there shall be substituted the words "term of years absolute is registered under the Land Registration Act 1989".

5. In section 125(2) of that Act, for the words "(not being land or a charge registered under the Land Registration Act 1925)" there shall be substituted the words "(not being registered land or a charge registered under the Land Registration Act 1989)". 20

6. At the end of section 137(1) of that Act there shall be added the following paragraph- 25

"This subsection also applies for the determination of any question of priority which, before the coming into force of the Land Registration Act 1989, would have fallen to be determined in accordance with section 102(2) of the Land Registration Act 1925." 30

7. In section 205(1) of that Act for paragraph (xxii) there shall be substituted the following paragraph-

"(xxii) 'registered land' means land in which there subsists a registered interest (within the meaning of the Land Registration Act 1989); references to land being registered shall be construed accordingly; and 'Land Registrar' means the Chief Land Registrar under that Act;" 35

The Administration of Estates Act 1925 (c.23)

8. In section 43(2) of the Administration of Estates Act 1925, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989". 40

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The Coal Act 1938 (c.52)

9. In section 41 of the Coal Act 1938, for the words from “that are” to “registered land”, in the second place where they occur, there shall be substituted the words “in which there subsists an estate which
5 is a registered interest within the meaning of the Land Registration Act 1989 as if that estate were not such an interest”.

The Requisitioned Land and War Works Act 1945 (c.43)

10.—(1) Section 37 of the Requisitioned Land and War Works Act 1945 shall be amended as follows.

10 (2) In subsection (2), for the words “Land Registration Act 1925” there shall be substituted the words “Land Registration Act 1989”.

(3) In subsection (3), for the words “section sixty-four of the Land Registration Act 1925” there shall be substituted the words “section 40 of the Land Registration Act 1989”.

15 (4) After subsection (5) there shall be inserted the following subsection—

“(6) In this section ‘registered land’ means land in which there subsists a registered interest (within the meaning of the Land Registration Act 1989)”.

20 *The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65)*

11. In section 19(5) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, for the words “Land Registration Act 1925” there shall be substituted the words “Land Registration Act
25 1989”.

The Charities Act 1960 (c.58)

12. In section 27(7) of the Charities Act 1960, for the words “Land Registration Act 1925” there shall be substituted the words “Land Registration Act 1989” and after the words “land charge” there shall
30 be inserted the words “or, as the case may require, interest”.

The Water Resources Act 1963 (c.38)

13. In section 66(6) of the Water Resources Act 1963, for the words “Land Registration Act 1925” there shall be substituted the words “Land Registration Act 1989”.

35 14.—(1) Section 81 of that Act shall be amended as follows.

(2) In subsection (4), for the words “land, other than registered land” there shall be substituted the words “an estate in land, other than a registered interest (within the meaning of the Land Registration Act 1989)”.

40 (3) In subsection (5)—

(a) for the words “land which is registered land” there shall be substituted the words “an estate in land which is a registered

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interest (within the meaning of the Land Registration Act 1989”;

- (b) for the words from “registered under” to “such a land charge” there shall be substituted the words “entered on the register under section 33 of that Act”; and 5
- (c) for the words “so registered” there shall be substituted the words “so entered”.

The Law of Property (Joint Tenants) Act 1964 (c.63)

15. In section 3 of the Law of Property (Joint Tenants) Act 1964, for the words from “land” onwards there shall be substituted the 10 words “registered interest within the meaning of the Land Registration Act 1989”.

The Gas Act 1965 (c.36)

16. In section 12(3) of the Gas Act 1965, for the words “Land Registration Act 1925” there shall be substituted the words “Land 15 Registration Act 1989”.

The Commons Registration Act 1965 (c.64)

17. In sections 1, 4(3), 5(1), 9, 12 and 22(2) of the Commons Registration Act 1965, for the words “Land Registration Acts 1925 and 1936”, wherever they occur, there shall be substituted the words 20 “Land Registration Act 1989”.

The Land Commission Act 1967 (c.1)

18. In section 99(1) of the Land Commission Act 1967, in the definition of “registered land”, for the words “has the meaning assigned to it by section 3 of the Land Registration Act 1925” there 25 shall be substituted the words “ means land in which there subsists a registered interest (within the meaning of the Land Registration Act 1989)”.

The Land Charges Act 1972 (c.61)

19.—(1) Section 14 of the Land Charges Act 1972 shall be amended 30 as follows.

(2) In subsection (1), for the words “registered land, and can be protected under the Land Registration Act 1925” there shall be substituted the words “a registered interest in land, and can be protected under the Land Registration Act 1989”. 35

(3) In subsection (3), for the words “section 123 of the Land Registration Act 1925 (effect of that Act in areas where registration is compulsory)” there shall be substituted the words “section 13 of the Land Registration Act 1989 (first registration under that Act compulsory on sale etc.)”. 40

20. In section 17(1) of that Act for the words “‘registered land’ has the same meaning as in the Land Registration Act 1925” there shall

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be substituted the words "registered interest" has the same meaning as in the Land Registration Act 1989".

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The Consumer Credit Act 1974 (c.39)

21. In section 177(1) and (6) of the Consumer Credit Act 1974, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989".

The Solicitors Act 1974 (c.47)

22. In sections 22(1) and 56(1) of the Solicitors Act 1974, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989".

The Local Land Charges Act 1975 (c.76)

23. In section 10(3) of the Local Land Charges Act 1975, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989".

24. In section 19(3) of that Act, for the words "overriding interest under section 70(1) (i) of the Land Registration Act 1925" there shall be substituted the words "general burden within the meaning of the Land Registration Act 1989".

The Rent Act 1977 (c.42)

25. In section 136 of the Rent Act 1977, for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989".

The Charging Orders Act 1979 (c.53)

26.—(1) The Charging Orders Act 1979 shall be amended as follows.

(2) In section 3(2), for the words "and the Land Registration Act 1925 shall apply in relation to charging orders as they apply" there shall be substituted the words "shall apply in relation to charging orders as it applies".

(3) In subsection (6), for the words "Land Registration Act 1925" there shall be substituted the words "Land Registration Act 1989".

The Limitation Act 1980 (c.58)

27. In sections 17 and 25(3) of the Limitation Act 1980, for the words "section 75 of the Land Registration Act 1925" there shall be substituted the words "section 50 of the Land Registration Act 1989".

The Matrimonial Homes Act 1983 (c.19)

28.—(1) Section 2 of the Matrimonial Homes Act 1983 shall be amended as follows.

(2) In subsection (8), for the words “the Land Registration Act 1925” there shall be substituted the words “the Land Registration Act 1989”. 5

(3) In subsection (11), for the words “subsection (8) above” there shall be substituted the words “section 33 of the Land Registration Act 1989”.

29. In sections 3, 4(1), 5 and 6(2) of that Act, for the words 10 “section 2(8) above”, in each place where they occur, there shall be substituted the words “section 33 of the Land Registration Act 1989”.

30. In section 5(6) of that Act, for the words “section 144 of the Land Registration Act 1925” there shall be substituted the words “section 68 of the Land Registration Act 1989”. 15

31.—(1) Section 8 of that Act shall be amended as follows.

(2) In subsection (2), for the words “mortgagee of land” there shall be substituted the words “mortgagee of an estate or interest in land”.

(3) In subsection (3)—

(a) for the words “mortgagee of land” there shall be substituted 20 the words “mortgagee of an estate or interest in land”;

(b) for the words “unregistered land” there shall be substituted the words “an unregistered estate or interest in land”;

(c) for the words from “registered land” to “1967” there shall be substituted the words “a registered estate or interest in land, 25 a subsisting registration of a notice or caution under section 33 of the Land Registration Act 1988”.

(4) In subsection (5), for the word “land” there shall be substituted the words “estates or interests in land”.

The Inheritance Tax Act 1984 (c.51)

30

32.—(1) Section 238 of the Inheritance Tax Act 1984 shall be amended as follows.

(2) In subsection (1), for paragraph (a) there shall be substituted the following paragraph—

“(a) in the case of an estate in land in England and Wales, the 35 charge was not registered as a land charge or, in the case of a registered estate, was not protected by a notice or caution on the register, or”.

(3) In subsection (3), for the words “registered land” there shall be substituted the words “a registered estate in land”. 40

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The Housing Act 1985 (c.68)

33. In section 37(5) of the Housing Act 1985, for the words "the Land Registration Act 1925" there shall be substituted the words "the Land Registration Act 1989" and for the words "section 58" there shall be substituted the words "section 35".

34. In section 154(5) of that Act, for the words "Land Registration Acts 1925 to 1971" there shall be substituted the words "Land Registration Act 1989".

35. In section 157(7) of that Act, for the words "section 58 of the Land Registration Act 1925" there shall be substituted the words "section 35 of the Land Registration Act 1989".

36. In section 165(6) of that Act, for the words "section 83 of the Land Registration Act 1925" there shall be substituted the words "section 45 of the Land Registration Act 1989".

37. In section 168(5) of that Act, for the words "section 64 of the Land Registration Act 1925" there shall be substituted the words "section 40 of the Land Registration Act 1989".

38. In paragraph 2(2) of Schedule 17 to that Act, for the words "Land Registration Acts 1925 to 1971" there shall be substituted the words "Land Registration Act 1989".

39. In paragraph 17(2) of Schedule 20 to that Act, for the words "Land Registration Acts 1925 to 1971" there shall be substituted the words "Land Registration Act 1989".

The Housing Associations Act 1985 (c.69)

40. In paragraph 3(5) of Schedule 2 to the Housing Associations Act 1985, for the words "Land Registration Act 1925" there shall be substituted the words "the Land Registration Act 1989" and for the words "section 58" there shall be substituted the words "section 35".

SCHEDULE 5

Section 71(2)

TRANSITIONAL PROVISIONS AND SAVINGS

Interests registered under 1925 Act

1. The repeal by this Act of the Land Registration Act shall not, 5 except as otherwise provided in this Act, affect any interest disposed of or acquired, or an entry on the register made, before the commencement of this Act.

Estates registered under 1862 Act

2. Notwithstanding the repeal by this Act of the Land Registry Act 10 1862, any record of title made or certificate of title issued under that Act shall be conclusive evidence of the matters stated in it. 1862 c.53.

Interests (other than undivided shares) registered under 1875 and 1897 Acts

3.—(1) Subject to sub-paragraph (2) below, all interests which— 15 (a) are not legal estates or undivided shares in land; and (b) were entered on a register at the commencement of the Land Registration Act 1925 (“the 1925 Act”), shall be capable of being dealt with under this Act.

(2) On the occasion of the first such dealing with any such interest, 20 the register shall be rectified in such manner as may be provided by general rules made to secure that the entries in the register shall be similar to those which would have been made if the estate affected had been registered after the commencement of the 1925 Act.

Undivided shares registered under 1875 and 1897 Acts

4.—(1) This paragraph applies where, in the case of an estate in 25 land belonging to persons in undivided shares—

(a) the entirety of the estate was registered at the commencement of the 1925 Act; and

(b) the persons entitled to the several undivided shares are still 30 registered as proprietors.

(2) On the occasion of the first dealing affecting the title—

(a) the registrar shall rectify the register by entering as the 35 proprietors of the entirety the persons in whom the legal estate became vested by virtue of the Law of Property Act 1925; and

(b) it shall be the duty of the persons registered as proprietors of the undivided shares to furnish to the registrar such evidence as he may require to enable him to ascertain the persons in whom the legal estate became so vested.

Possessory titles registered before commencement of 1986 Act

5. In the case of an estate in land registered with a possessory title before the commencement of the Land Registration Act 1986 ("the 1986 Act")-

- (a) section 43(3)(b) of this Act applies only where the estate has been so registered for a period of at least twelve years after that commencement; but
- (b) nothing in this Act affects the operation of subsection (3)(b) of section 77 of the 1925 Act as originally enacted in relation to a period of registration beginning before the commencement.

Leasehold dispositions before commencement of 1986 Act

6. Nothing in this Act affects the operation of sections 8, 18(3), 19(2), 21(3), 22(2) and 123(1) of the 1925 Act as originally enacted in relation to any grant, assignment or other dealing with a lease before the commencement of the 1986 Act.

Abolition of Minor Interests Index by 1986 Act

7.—(1) The following provisions have effect for the purposes of the application of the rule in *Dearle v. Hall*, and of sections 137 and 135 of the Law of Property Act 1925, to dealings in respect of which, before the commencement of the 1986 Act a priority caution or inhibition was entered in the Minor Interests Index.

(2) The notice of the making of the entry which was given under the Land Registration Rules 1925 before the commencement of the 1956 Act-

- (a) to the proprietor; or
 - (b) in the case of settled land, to the trustees of the settlement,
- shall be treated for the said purposes as a notice of the dealing to which the entry relates given (at the time it was issued by the registrar) by the person on whose behalf the entry was made to the trustees or other persons appropriate to receive it for the purposes of establishing priority under the rule in *Dearle v. Hall*.

(3) Where a trust corporation has been nominated to receive notices of dealings in accordance with the said section 138, subsection (4) of that section (under which the notice does not affect priority until received by the corporation) does not apply, but the trustees shall if the notice has not already been transmitted to the corporation, deliver it or send it by post to the corporation as soon as practicable after the commencement of this Act.

8.—(1) A person who suffers loss as a result of the operation of section 5 of the 1986 Act (abolition of Minor Interests Index) and paragraph 7 above shall be entitled to be indemnified under section 45 of this Act.

(2) For the purposes of sub-paragraph (1) above, a loss resulting from trustees failing to comply with their duty under subsection (2)(b) of the said section 5 or sub-paragraph (3) of paragraph 6 above shall be treated as a loss resulting from the operation of that section and

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that paragraph; but this is without prejudice to the liability of the trustees for breach of that duty or to the registrar's right of recourse against them under section 45(11) of this Act.

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Priority between existing interests

- 5 9. As between any two interests either or each of which was created before the commencement of this Act, priority shall be determined in accordance with the provisions of the enactments repealed by this Act.

Interpretation

- 10 10. In this Schedule—

“the 1925 Act” means the Land Registration Act 1925 ;

1925 c.21.

“the 1986 Act” means the Land Registration Act 1986 .

1986 c.26.

SCHEDULE 6

REPEALS

Chapter	Short title	Extent of repeal	
25 & 26 Vict. c.53.	The Land Registration Act 1862.	The whole Act.	5
15 & 16 Geo. 5 c.21.	The Land Registration Act 1925.	The whole Act.	
26 Geo 5 & 1 Edw. 8 c.26.	The Land Registration Act 1936.	The whole Act.	10
12 & 13 Geo. 6 c.47.	The Finance Act 1949.	In section 40(4)(a), the words from "but not" to "1925".	
4 & 5 Eliz. 2 c.46.	The Administration of Justice Act 1956.	Section 53.	15
1963 c.33.	The London Government Act 1963.	Section 80.	
1963 c.38.	The Water Resources Act 1963.	Section 81(6).	20
1965 c.36.	The Gas Act 1965.	In section 12(4), the words "and the Land Registration Act 1925".	
		In section 13(6), the words "and the Land Registration Act 1925".	25
1965 c.64.	The Commons Registration Act 1965.	In section 12, paragraph (a).	30
1966 c.39.	The Land Registration Act 1966.	The whole Act.	
1971 c.54.	The Land Registration and Land Charges Act 1971.	The whole Act.	
1974 c.47.	The Solicitors Act 1974.	In section 75, paragraph (b).	35
1975 c.76.	The Local Land Charges Act 1975.	In Schedule 1, the entry relating to the Land Registration Act 1925.	40
1977 c.38.	The Administration of Justice Act 1977.	Sections 24 and 26.	
1979 c.53.	The Charging Orders Act 1979.	Section 3(3). Section 7(4).	45
1980 c.66.	The Highways Act 1980.	Section 251(5).	

Land Registration

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Chapter	Short title	Extent of repeal
5	1981 c.24. The Matrimonial Homes and Property Act 1981.	Section 4.
	1982 c.53. The Administration of Justice Act 1982.	Sections 66 and 67. Schedule 5.
10	1983 c.19. The Matrimonial Homes Act 1983.	In section 2, subsection (8), paragraph (a), and subsection (9). Section 10(3). Section 11. In Schedule 2, the entry relating to the Land Registration Act 1925.
15	1985 c.61. The Administration of Justice Act 1985.	Section 34(1)(b). In Schedule 2, paragraph 37 (b).
20	1985 c.65. The Insolvency Act 1985	In Schedule 8, paragraph 5.
25	1985 c.68. The Housing Act 1985.	Section 36(3). In section 154, subsections (1) and (60). Section 156(3). In Schedule 20, paragraph 17(1).
30	1986 c.26. The Land Registration Act 1986.	The whole Act.
	1986 c.53. The Building Societies Act 1986.	In Schedule 18, paragraph 2.
	1988 c.3. The Land Registration Act 1988	The whole Act.

