



TRANSFER OF LAND: LAND REGISTRATION

**First Report of a Joint Working Group on the
Implementation of the Law Commission's Third and
Fourth Reports on Land Registration**

*Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
September 1995*

**LAW COMMISSION
LAW COM NO 235**

H M LAND REGISTRY

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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:

The Honourable Mr Justice Brooke, *Chairman*
Professor Andrew Burrows
Miss Diana Faber
Mr Charles Harpum
Mr Stephen Silber QC

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Her Majesty's Land Registry, a separate department of government and now an Executive Agency, maintains the land registers for England and Wales and is responsible for delivering all land registration services under the Land Registration Act 1925.

The Chief Land Registrar and Chief Executive is Mr John Manthorpe CB.
The Solicitor to H M Land Registry is Mr Christopher West.

The terms of this report were agreed on 9 August 1995.

**TRANSFER OF LAND: LAND REGISTRATION
FIRST REPORT OF A JOINT WORKING GROUP ON THE
IMPLEMENTATION OF THE LAW COMMISSION'S THIRD AND
FOURTH REPORTS ON LAND REGISTRATION**

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FIRST REPORT OF A JOINT WORKING GROUP ON THE IMPLEMENTATION OF THE LAW COMMISSION'S THIRD AND FOURTH REPORTS ON LAND REGISTRATION

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

FOREWORD

This Report, and the draft Bill to implement its recommendations, arise from the work of a joint working group consisting of representatives of the Law Commission, the Land Registry and your Department. We understand that it is your intention to implement our recommendations when a suitable opportunity presents itself.

The effect of our recommendations when enacted will be three-fold. First, the circumstances in which a disposition of unregistered land must be completed by registration will be significantly extended, thereby bringing forward the time when all the land in England and Wales is brought on to the register. Secondly, the introduction of a new fee structure will mean that reduced fees may be charged to encourage voluntary registration. The intention is again to expedite the completion of the register. Thirdly, it will make fairer provision for those who suffer loss by reason of some error or omission in the register.

The joint working group continues its work and will be publishing a Second Report as soon as it is completed. That Report will seek views on much more extensive reforms to the land registration system with a view to the complete replacement of the Land Registration Act 1925.

(Signed)

LAW COMMISSION

H M LAND REGISTRY

HENRY BROOKE, *Chairman*
ANDREW BURROWS
DIANA FABER
CHARLES HARPUM
STEPHEN SILBER
MICHAEL SAYERS, *Secretary*

JOHN MANTHORPE, *Chief Land Registrar*
CHRISTOPHER WEST, *Solicitor to H M Land Registry*

9 August 1995

PART I

INTRODUCTION

- 1.1 An informal working group representing the Law Commission, the Land Registry and the Lord Chancellor's Department¹ met on 3 March 1994 and subsequently to consider which parts of the Law Commission's Third and Fourth Reports on Land Registration² could be implemented immediately without further work being undertaken. It is now able to report its findings to the Lord Chancellor.
- 1.2 The working group also agreed to recommend for immediate implementation certain new triggers for the registration of title and proposals for fee concessions to promote voluntary registration. In a Consultation Document, "*Completing the Land Register in England and Wales*",³ the Land Registry put forward a number of possible options for extending registration of title, including some further triggers for registration that might be added to section 123(1) of the Land Registration Act 1925. The results of that consultation were submitted to Ministers in July 1993 and have been accepted by them. It was therefore thought to be appropriate to include them with our recommendations on the Third and Fourth Reports.
- 1.3 The working group agreed to meet again to consider all aspects of the Third and Fourth Reports with a view to reporting to the Lord Chancellor as soon as was practicable. It is considered that there are many issues in the Reports which could be implemented subject to some amendment. A series of criteria have been agreed for carrying forward this work. These reflect the fact that registration is now compulsory in all areas and that by the year 2000, at least 90 per cent of all land titles in England and Wales will be registered.

¹ The members of the joint working group are listed in Appendix C.

² (1987) Law Com No 158; (1988) Law Com No 173.

³ November 1992.

PART II EXTENDING THE TRIGGERS FOR REGISTRATION

2.1 Section 123 of the Land Registration Act 1925¹ is the provision under which particular dispositions of unregistered land induce compulsory registration. Those dispositions comprise:

- (i) conveyances on sale;
- (ii) leases granted for a term exceeding 21 years;²
- (iii) assignments on sale of subsisting leases having more than 21 years left to run;³ and
- (iv) certain leases granted for terms of 21 years or less, to which the "right to buy" legislation applies.⁴

2.2 The mechanism whereby compulsory registration is induced is that the instrument effecting the disposition is rendered void as regards the grant or conveyance of the legal estate after a period of two months (or such extended period as the Registrar may order), unless the grantee has in the meantime applied to be registered as proprietor of the land.

2.3 The Land Registry Consultation Paper (referred to in paragraph 1.2 above) proposed that section 123 could be extended to other dispositions affecting unregistered land. The Paper accepted that extending the trigger mechanisms in this way would not by itself achieve the aim of bringing all unregistered land within the land registration system. It pointed out, however, that it could provide a useful measure of acceleration to this process.

2.4 The particular types of disposition identified in the Consultation Paper as capable of being brought within the section 123 mechanism were:

- (i) assents (including vesting assents);
- (ii) vesting deeds;
- (iii) conveyances by way of gift;
- (iv) conveyances giving effect to an appointment of new trustees;
- (v) conveyances pursuant to a court order;
- (vi) conveyances by beneficial owners to nominees; and

¹ The text of s 123 as amended is set out in Appendix B.

² Section 123(1) as amended by the Land Registration Act 1986, s 2(1).

³ *Ibid.*

⁴ See, for example, Housing Act 1985, s 154(1) and (6); s 171G and Sched 9A, para 2, as inserted by the Housing and Planning Act 1986, s 8(2) and Sched 2.

(vii) first legal mortgages.

2.5 Following the consultation exercise, a briefing paper analysing the responses was submitted to Ministers. As this pointed out in relation to the proposals for additional trigger mechanisms, there was general support for extending the ambit of section 123. The only reservations of substance identified in the briefing paper (reservations held principally by the larger private land owners consulted) related to the proposed extension of section 123 to conveyances which did not accompany a transfer of the beneficial interest in the land (for example, the appointment of new trustees).

2.6 In relation to matters which the briefing paper identified as having received insufficient support to justify further action at present, the paper proposed that the position should be reviewed again in five years' time.

2.7 On the basis of the briefing paper, Ministers have given their approval to the Registry's proposals, including the proposals to extend section 123 (subject to the reservations already mentioned). **Accordingly, we recommend that legislation should now be sought which would allow section 123 to be extended to cover at least:**

- (i) assents (including vesting assents);
- (ii) vesting deeds;
- (iii) conveyances by way of gift (including conveyances for nominal consideration);
- (iv) conveyances pursuant to a court order;⁵ and
- (v) first legal mortgages.

It is implicit in section 123, that if a conveyance of a legal estate becomes void for non-registration and the parties then execute a new conveyance, that that second conveyance should itself require registration. However, this is not stated expressly by the section. **We therefore recommend that, for the avoidance of doubt, section 123 should also be extended to cover:**

- (vi) re-conveyances which are made after any first conveyance has become void for non-registration.

⁵ Conveyances pursuant to a court order are to be distinguished from court orders which directly effect a vesting of the land (*eg* a bankruptcy order). In the former case, failure to register in time under section 123 would render void the conveyance but not the order. In the latter case, if compulsory registration were to apply, failure to register in time would render the court order ineffective. This, as the Consultation Paper pointed out, would be undesirable from a public policy viewpoint (*eg* re-vesting property in a bankrupt would defeat the policy of the insolvency legislation). It is not proposed that such orders should be subject to the requirements of compulsory registration.

- 2.8 **We further recommend that there should be a power, exercisable by statutory instrument, to add to the categories of disposition to which the section applies.** The underlying understanding would be that the power would be used only if a later consultation exercise showed that views had changed and that there was substantial support for adding further to the trigger mechanisms. It would be desirable to have the machinery for doing this already in place, without the need for further primary legislation.⁶
- 2.9 Although section 123 states that a conveyance or grant which is not registered within two months is void as regards the grant or conveyance of a legal estate, it does not specify in any further detail what effect the transaction has. The cases suggest that in such circumstances—
- (i) where there is a conveyance of the freehold (or an assignment of a lease), the transferor holds the legal estate on a bare trust for the transferee;⁷ and
 - (ii) where there is a grant of a lease, it takes effect instead as a contract to grant a lease.⁸

With the extension of triggers to new situations (such as the execution of a first legal mortgage), there may be uncertainty as to effects of non-registration within the two month period. **We therefore recommend that there should be an express provision to deal with the effect of failure to register within two months of the disposition. Although such a transaction would be void as regards the transfer or grant of a legal estate or the creation of a legal right over land, it would take effect nonetheless in equity.**

⁶ We note that in its Fourth Report, the Law Commission proposed just such a general power: draft Bill, cl 13(5).

⁷ *Pinekerry Ltd v Needs (Kenneth) (Contractors) Ltd* (1992) 64 P & CR 245.

⁸ cf *Skipton Building Society v Clayton* (1993) 66 P & CR 223.

PART III FEE CONCESSIONS TO PROMOTE VOLUNTARY REGISTRATION

3.1 The briefing paper to Ministers already referred to also recommended that:

the promotion of voluntary registration of extensive land holdings should be encouraged by amending section 145 of the Land Registration Act 1925 to provide a legislative mechanism for providing for concessions to achieve this end.

3.2 Section 145¹ gives to the Lord Chancellor, with the advice and assistance of the Land Registration Rule Committee, and with the concurrence of the Treasury, power to make orders with respect to "the amount of fees payable under [the] Act" regard being had:

- (a) In the case of the registration of an estate in land or of any transfer of an estate in land on the occasion of a sale, to the value of the estate as determined by the amount of purchase money; and
- (b) In the case of the registration of an estate in land, or of any transfer of an estate in land not upon a sale, to the value of the estate, to be ascertained in such manner as may be prescribed; and
- (c) In the case of registration of a charge or of any transfer of a charge, to the amount of such charge.

3.3 Subject to the matters to which regard must be had for the purpose of valuation, this appears to be a wide power to prescribe fees. It does not in terms prevent different fees being prescribed for voluntary applications for first registration on the one hand, and applications following a disposition to which section 123 of the Act applies, on the other. However, to use section 145 in this way would be to put the provision to a novel use. We therefore consider that a suitable amendment to section 145 would be desirable in order to avoid any doubts there may be, and also to indicate clear approval of the policy that voluntary first registration is to be encouraged in a practical way through deliberate fee concessions.

3.4 There is already in section 145(3) a limited provision which authorises specially reduced fees in relation to the registration of title to land to be:

used as a street, or for street widening or improvements, or when acquired by a Government Department, a local authority, or other statutory body for permanent objects not involving a resale or other disposition.

¹ The text of s 145 as amended is set out in Appendix B.

3.5 In practice, Fees Orders have not relied upon section 145(3) so as to provide the kinds of concession which the wording envisages for many years. **We therefore recommend that section 145(3) should be replaced with a general enabling power by which specially reduced fees may be authorised in such circumstances as may be specified from time to time in the Fees Orders.**²

² A provision of this character was proposed in the Fourth Report: draft Bill, cl 69(2).

PART IV INDEMNITY

- 4.1 We agree that certain of the proposals contained in the Law Commission's Third and Fourth Reports on Land Registration to amend the indemnity provisions in section 83 of the Land Registration Act 1925¹ are capable of immediate implementation. The indemnity provisions are amongst the most important in the Act, and the proposed amendments would—
- (i) significantly improve their working; and
 - (ii) ensure that where loss is suffered as a result of some error or omission in the register, those who suffered loss were properly compensated.
- 4.2 We agree that there should be provision for the payment of indemnity where a party seeks and obtains rectification of the register but still suffers loss.² It was not appreciated in 1925 that such a situation might occur, but it did in *Freer v Unwins Ltd.*³ It was certainly the intention of those who drafted the Land Registration Act 1925 that in all cases in which loss was suffered as a result of an error or omission in the register, indemnity should be payable.
- 4.3 **We therefore recommend that a person who suffers loss as a result of an error on or omission in the register, should be entitled to an indemnity, whether or not the register is subsequently rectified.**
- 4.4 At present, no indemnity is payable to an applicant who has caused or substantially contributed to the loss that he has suffered by fraud or lack of proper care.⁴ **We recommend the retention of the rule that no indemnity should be payable in cases of fraud or where the loss was caused in its entirety by the applicant's negligence.**⁵ However, the absence of any principle of contributory negligence is anomalous and can work great hardship.⁶ We note that the principle has been applied to indemnity claims in Scotland for fifteen years.⁷
- 4.5 **We therefore recommend that where any loss incurred by a claimant was suffered partly as a result of his own lack of proper care, any indemnity**

¹ The text of s 83 as amended is set out in Appendix B.

² Third Report, para 3.28; Fourth Report, draft Bill, cl 45(1)(b).

³ [1976] Ch 288.

⁴ Land Registration Act 1925, s 83(5)(a) (as amended by the Land Registration and Land Charges Act 1971, s 3(1)).

⁵ Fourth Report, draft Bill, cl 45(5).

⁶ Third Report, para 3.27.

⁷ Land Registration (Scotland) Act 1979, s 13(4).

payable to him should be reduced to such extent as is just and equitable having regard to his share in the responsibility for that loss.

4.6 At present, in any case in which rectification is not ordered, indemnity is assessed by reference to the value of the land at the time when the error or omission which caused the loss occurred.⁸ Formerly this limitation was the cause of some injustice,⁹ and in the Third Report it was recommended that it should be abolished.¹⁰ If this were implemented, it would mean that indemnity would be assessed on the basis of the value of the land at the time at which the decision not to rectify was made. However, the Land Registry considered that although this would take into account the effects of inflation or deflation, it would not provide an accurate measure of indemnity in all cases. Thus it might be the case that since the error or omission occurred, the value of the land had either increased due to construction work, or decreased because a building was destroyed by fire. It is now the practice of the Registry when settling by agreement claims for indemnity, to include appropriate interest on the sum assessed under section 83(6). This is because if the claimant were to apply to the High Court for indemnity under section 2(1) of the Land Registration and Land Charges Act 1971, the Court would have power to award interest under section 35A of the Supreme Court Act 1981, and the Registry is bound to take account of this in negotiating settlements. This payment of interest does of course compensate for any inflationary increase in the value of land.

4.7 **We therefore recommend that there should be no change to the present law.**

4.8 At present, where a claim to indemnity arises in consequence of the registration of an estate in land with an absolute or good leasehold title, it is in most cases time-barred six years after registration.¹¹ This rule, which has caused hardship in cases where the claimant was unaware of the error or omission,¹² was criticised in the Third Report.¹³ We consider that time should not run until the claimant knows, or ought to have known, of his claim to indemnity.¹⁴

4.9 **We therefore recommend that the cause of action in relation to indemnity shall, for the purposes of the Limitation Act 1980, be deemed to arise when the claimant knows, or but for his own default might know, of the existence of his claim.**

⁸ Land Registration Act 1925, s 83(6)(a).

⁹ See *Epps v Esso Petroleum Co Ltd* [1973] 1 WLR 1071, 1081, 1082.

¹⁰ Paras 3.31 and 3.32.

¹¹ Land Registration Act 1925, s 83(11).

¹² See *Epps v Esso Petroleum Co Ltd*, above, p 1082.

¹³ Para 3.31.

¹⁴ This is a simplified version of the proposal in the Third Report.

4.10 In the Third Report, the Law Commission recommended that the rights of recourse conferred on the Registry, and presently found in section 83(9) and (10) of the Land Registration Act 1925, should be both clarified and strengthened.¹⁵ As those proposals were formulated, they make provision for the Registry to be subrogated to the rights of any party who obtains indemnity. We consider that these proposals do not go far enough and that the Registry should also be given power to enforce any claim that the party who obtains rectification might have had if rectification had not taken place, such as to sue a solicitor for negligence.

4.11 **We therefore recommend that the Registry's rights of recourse should be extended so that it—**

(i) **is subrogated to the rights of any person to whom indemnity is paid; and**

(ii) **is given a statutory right to enforce any cause of action which a party who obtains rectification of the register might otherwise have had.**

4.12 At present, no indemnity is payable on account of costs incurred in taking or defending any legal proceedings without the consent of the registrar.¹⁶ In the Third Report, it was suggested that no change was needed in the law.¹⁷ However, in the draft Bill contained in the Fourth Report, the scope of the section was widened so that costs and expenses incurred for the purposes of negotiation with a person other than the registrar would also require the consent of the registrar.¹⁸ This accords with the principle that an insurer should not be expected to settle a claim for costs incurred without his prior consent.

4.13 **We therefore recommend that no indemnity should be payable on account of costs and expenses incurred without the prior consent of the registrar.**

¹⁵ Third Report, para 3.33; Fourth Report, draft Bill, cl 45(11).

¹⁶ Land Registration Act 1925, s 83(5)(c).

¹⁷ Para 3.26.

¹⁸ Clause 45(7)(c).

PART V

SUMMARY OF RECOMMENDATIONS

5.1 In this Part, we summarise our recommendations. In so doing, we refer to the relevant clauses of the draft Bill which are intended to implement them.¹

Extending the triggers for registration

5.2 **Recommendation 1:** Section 123 of the Land Registration Act 1925 should be extended so that the following dispositions of unregistered land become subject to the requirement of compulsory registration:

- (i) assents (including vesting assents);
- (ii) vesting deeds;
- (iii) conveyances by way of gift (including conveyances for nominal consideration);
- (iv) conveyances made pursuant to an order of any court.²

5.3 Clause 1 of the draft Bill substitutes a new section 123 of the Land Registration Act 1925. Subsections (1) and (6) of the new section 123 give effect to this recommendation.

5.4 **Recommendation 2:** section 123 of the Land Registration Act 1925 should be extended so that where a first legal mortgage is executed of a freehold or of a term of years which has more than 21 years to run, and that mortgage is supported by a deposit of documents of title, the requirement of compulsory registration will apply to the title of that freehold or leasehold estate. Both the underlying estate and the charge over it will have to be registered.³

5.5 The new section 123(2), substituted by clause 1 of the draft Bill, implements this recommendation.

5.6 **Recommendation 3:** to place beyond doubt what is thought to be the law already, section 123 should be extended to cover re-conveyances which are made after any first conveyance has become void for non-registration.⁴

5.7 Clause 1 of the draft Bill introduces a new section 123A of the Land Registration Act 1925. Section 123A(7) implements this recommendation.

5.8 **Recommendation 4:** there should be a power, exercisable by statutory instrument, to add to the categories of disposition to which the requirement of compulsory

¹ The draft Bill with explanatory notes is set out in Appendix A.

² See above, para 2.7.

³ *Ibid.*

⁴ *Ibid.*

registration applies.⁵ This will enable further categories of disposition to be added at future dates without the need for primary legislation, should this be considered appropriate after public consultation.

- 5.9 Subsections (4) and (5) of the new section 123 give effect to this recommendation.
- 5.10 **Recommendation 5:** there should be an express provision to deal with the effect of failure to register within two months of the disposition. Although such a transaction would become void as regards the transfer or grant of a legal estate or the creation of a legal right over land, it would take effect nonetheless in equity.⁶
- 5.11 Subsections (2)—(6) and (8)—(9) of the new section 123A give effect to this recommendation.

Fee concessions

- 5.12 **Recommendation 6:** section 145(3) of the Land Registration Act 1925 should be replaced with a general enabling power by which specially reduced fees may be authorised in such circumstances as may be specified from time to time in the Fees Orders.⁷
- 5.13 Clause 3 of the draft Bill substitutes a new section 145(3) and introduces a new subsection 145(3A) which are intended to implement this recommendation.

Indemnity

- 5.14 **Recommendation 7:** a person who suffers loss as a result of an error on or omission in the register, should be entitled to an indemnity, whether or not the register is subsequently rectified.⁸
- 5.15 Clause 2 of the draft Bill contains amendments to section 83 of the Land Registration Act 1925. Clause 2(2) substitutes a new section 83(1) which implements this recommendation.
- 5.16 **Recommendation 8:** the rule that no indemnity should be payable in cases of fraud or where the loss was caused in its entirety by the applicant's negligence should be retained.⁹
- 5.17 Clause 2(3) of the draft Bill substitutes a new section 83(5) of the Land Registration Act 1925. Section 83(5)(a) gives effect to this recommendation.

⁵ See above, para 2.8.

⁶ See above, para 2.9.

⁷ See above, para 3.5.

⁸ See above, para 4.3.

⁹ See above, para 4.4.

- 5.18 **Recommendation 9:** where any loss incurred by a claimant was suffered partly as a result of his own lack of proper care, any indemnity payable to him should be reduced to such extent as is just and equitable having regard to his share in the responsibility for that loss.¹⁰
- 5.19 Effect is given to this recommendation by sections 83(5A) and 83(5B) of the Land Registration Act 1925 which are added by clause 2(3) of the draft Bill.
- 5.20 **Recommendation 10:** the cause of action in relation to indemnity shall, for the purposes of the Limitation Act 1980, be deemed to arise when the claimant knows, or but for his own default might know, of the existence of his claim.¹¹
- 5.21 The effect of this recommendation is achieved by clause 2(6) and the repeal of the proviso to section 83(11) of the Land Registration Act 1925 by clause 4(2) and Schedule 3 of the draft Bill.
- 5.22 **Recommendation 11:** the Land Registry's rights of recourse should be extended so that it—
- (i) is subrogated to the rights of any person to whom indemnity is paid; and
 - (ii) is given a statutory right to enforce any cause of action which a party who obtains rectification of the register might otherwise have had.¹²
- 5.23 Sections 83(9) and 83(10) of the Land Registration Act 1925 are replaced by clause 2(5) of the draft Bill to implement these proposals.
- 5.24 **Recommendation 12:** no indemnity should be payable on account of costs and expenses incurred by a claimant without the prior consent of the registrar.¹³
- 5.25 Effect is given to this recommendation by section 83(5)(c) of the Land Registration Act 1925, substituted by clause 2(3) of the draft Bill.

Minor and consequential amendments

- 5.26 The draft Bill contains a number of minor and consequential amendments. In particular, now that the whole of England and Wales is subject to compulsory registration of title, the opportunity has been taken to delete any references in any legislation to areas of compulsory registration.¹⁴

¹⁰ See above, para 4.5.

¹¹ See above, para 4.9.

¹² See above, para 4.11.

¹³ See above, para 4.13.

¹⁴ The Statute Law (Repeals) Bill 1995 will, if enacted, repeal the Land Registration Act 1966 and the Land Registration and Land Charges Act 1971, s 2(6).

APPENDIX A

Draft Land Registration Bill

ARRANGEMENT OF CLAUSES

Registration

- Clause
1. Compulsory first registration.

Indemnity

2. Indemnity for errors or omissions in the register.

Fees

3. Registration fees.

Supplementary

4. Consequential amendments and repeals.
5. Short title, commencement and extent.

SCHEDULES:

Schedule 1—Section 83, as amended.

Schedule 2—Minor and consequential amendments.

Schedule 3—Repeals.

Part I—Repeals coming into force on appointed day.

Part II—Repeals coming into force two months after
Royal Assent.

DRAFT

OF A

B I L L

INTITULED

An Act to amend the Land Registration Act 1925.

A.D. 1995.

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

Registration

1. The following sections shall be substituted for section 123 of the Land Registration Act 1925—

Compulsory first registration.

10 "Compulsory registration: dispositions to which requirement to register applies.

123.—(1) The requirement of compulsory registration applies in relation to the following dispositions of unregistered land—

1925 c. 21.

15

- (a) any qualifying conveyance of the freehold estate;
- (b) any qualifying grant of a term of years absolute of more than 21 years from the date of the grant;
- (c) any qualifying assignment of a term of years absolute which on the date of the assignment has more than 21 years to run; and
- (d) any disposition effected by an assent (including a vesting assent) or by a vesting deed which is a disposition of—

20

- (i) the freehold estate, or
- (ii) a term of years absolute which on the date of the disposition has more than 21 years to run.

25

(2) The requirement of compulsory registration also applies in relation to any disposition by the estate owner of unregistered land which is a legal mortgage of—

30

- (a) the freehold estate, or
- (b) a term of years absolute which on the date of the mortgage has more than 21 years to run,

where, on its creation, the mortgage takes effect as a

EXPLANATORY NOTES

Clause 1

1. This clause implements the recommendations in paragraphs 2.7 to 2.9 of the Report. It substitutes two new sections for section 123 of the Land Registration Act 1925 (*Effect of Act in areas where registration is compulsory*). The new sections—
 - (i) extend the range of dispositions to which the requirement of compulsory registration of title applies;
 - (ii) make provision for the extension of compulsory registration in future; and
 - (iii) clarify the effect of a failure to register within the specified time limit.

In addition, although the principles which underlie section 123 remain unchanged, the opportunity has been taken to clarify and modernise its language. The wording of the new section 123 takes account of the fact that the whole of England and Wales is now subject to the requirement of compulsory registration.

Section 123(1)

2. This subsection implements the recommendation in paragraph 2.7(i) - (iv) of the Report. It specifies those dispositions of unregistered land that are subject to the requirement of compulsory registration. 'Qualifying' conveyance, assignment and grant of a term of years are defined in section 123(6). 'Vesting assents' and 'vesting deeds' have the same meaning as in the Settled Land Act 1925 (Land Registration Act 1925, s 3(xxvi)). 'Land' is defined in Land Registration Act 1925, s 3(viii) but is qualified by section 123(3) below. 'Registered Land' is defined in Land Registration Act 1925, s 3(xxiv).

Section 123(2)

3. This subsection implements the recommendation in paragraph 2.7(v) of the Report. Where the estate owner of either an unregistered freehold or of an unregistered leasehold which has more than 21 years to run executes a first legal mortgage over that property which is to be protected by a deposit of documents of title, he must register the freehold or leasehold that is subject to the charge: see note 9 below. 'Legal mortgage' is defined in Land Registration Act 1925, s 3(i). 'Estate owner' is defined in Land Registration Act 1925, s 3(iv). The requirement of compulsory registration does not apply to mortgages created by persons with power to mortgage but who are not the owners of the legal estate (see, *eg* Settled Land Act 1925, s 24).

mortgage to be protected by the deposit of documents relating to that estate or term of years, and ranks in priority ahead of all other mortgages (if any) then affecting that estate or term of years.

(3) Without prejudice to the power to make an order under subsection (4) below, nothing in this section or section 123A of this Act has the effect of requiring the registration of title to— 5

- (a) an incorporeal hereditament;
- (b) mines and minerals apart from the surface; or 10
- (c) corporeal hereditaments which are part of a manor and included in the sale of a manor as such.

(4) The Lord Chancellor may by order—

- (a) amend this section so as to add to the dispositions in relation to which the requirement of compulsory registration applies any such disposition of, or otherwise affecting, a legal estate in unregistered land as is specified in the order; and 15
- (b) make such consequential amendments of any provision of, or having effect under, any Act as he thinks appropriate. 20

(5) Any order under subsection (4) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 25

(6) For the purposes of this section—

- (a) a conveyance, grant or assignment is a “qualifying” conveyance, grant or assignment if it is made—
 - (i) for valuable or other consideration, 30
 - (ii) by way of gift, or
 - (iii) in pursuance of an order of any court; and
- (b) “assignment” does not include an assignment or surrender of a lease to the owner of the immediate reversion where the term is to merge in that reversion. 35

Compulsory registration: effect of requirement to register.

123A.—(1) This section applies to any disposition which, by virtue of any provision of section 123 of this Act, is one in relation to which the requirement of compulsory registration applies. 40

(2) Where any such disposition is effected, then—

- (a) if it is a disposition falling within section 123(1), the person who under the disposition is entitled to the legal estate transferred or created by it, or 45
- (b) if it is a disposition falling within section 123(2), the estate owner of the legal estate charged by the mortgage, or

EXPLANATORY NOTES

Section 123(3)

4. Subject to the power of amendment conferred by section 123(4), which may be used to vary paragraphs (a) - (c), this subsection replicates the effect of the proviso to section 120(1) of the Land Registration Act 1925. Section 120 is repealed by Schedule 3 of this Bill.

Sections 123(4) and (5)

5. These subsections implement the recommendation in paragraph 2.8 of the Report and empower the Lord Chancellor to extend by Statutory Instrument the categories of disposition which are subject to the requirement of compulsory registration. Dispositions 'affecting' unregistered land could include second mortgages of the legal estate.

Section 123(6)

6. It is explained in footnote 4 to paragraph 2.7 of the Report that conveyances made pursuant to an order of the court (which are subject to the requirement of compulsory registration) are to be distinguished from those court orders, such as bankruptcy orders, which automatically bring about the vesting of property (and are not subject to compulsory registration). For these purposes, 'any court' means any court having jurisdiction. It does not have the narrower meaning given to 'the Court' in section 3(ii) of the Land Registration Act 1925.
7. Paragraph (b) removes the requirement, presently found in section 123(3), that where an interest under a lease is surrendered to the immediate reversioner, that transfer is subject to compulsory registration, unless there is an express declaration of merger. The obsolete reference to enfranchisement or extinguishment of manorial incidents has been omitted.

Section 123A

8. Section 123A replaces those parts of section 123 which define the requirement of registration and the consequences of failing to comply with it. It seeks to clarify and set out in statutory form what is believed to be the present law and applies it to any disposition which is subject to the requirement of compulsory registration.

Section 123A(2)

9. This subsection imposes an obligation to apply for registration on-
- (i) the grantee or transferee; or
 - (ii) in the case of a mortgage, the mortgagor; or
 - (iii) in either case, their respective successors in title.

The provision for the registration of a nominee accords with sections 4 and 8(1) of the Land Registration Act 1925 (*Applications for registration of freehold and leasehold land*).

(c) (in either case) that person's successor in title or assign,

5 must before the end of the applicable period apply to the registrar to be registered (or alternatively, where he is not a person in a fiduciary position, to have any nominee registered) as the first proprietor of that estate.

(3) In this section "the applicable period" means in the first instance the period of two months beginning with the date of the disposition, but—

10 (a) the registrar may, if satisfied on the application of any interested person that there is good reason for doing so, make an order extending or further extending that period; and

15 (b) if he does so, "the applicable period" means that period as for the time being extended under this subsection.

(4) Pending compliance with subsection (2) above the disposition shall operate to transfer or grant a legal estate, or (as the case may be) create a legal mortgage, in accordance with its terms.

(5) If subsection (2) above is not complied with, the disposition shall at the end of the applicable period become void as regards any such transfer, grant or creation of a legal estate; and—

25 (a) if it is a disposition purporting to transfer a legal estate, the title to that estate shall thereupon revert to the transferor who shall hold that estate on a bare trust for the transferee;

30 (b) if it is a disposition purporting to grant a legal estate or create a legal mortgage, the disposition shall thereupon take effect as if it were a contract to grant or create that estate or mortgage made for valuable consideration (whether or not it was so made or satisfies any of the formal requirements of such a contract).

(6) If an order extending the applicable period under subsection (3) above is made at a time when the disposition has become void in accordance with subsection (5) above, then as from the making of the order—

40 (a) subsection (5) shall cease to apply the disposition, and

(b) subsection (4) above shall apply to it instead, and similarly in the case of any further order so made.

45 (7) If any disposition is subsequently effected by way of replacement for a disposition which has become void in accordance with subsection (5) above, the requirement of compulsory registration shall apply in relation to it under section 123 in the same way as it applied in relation

EXPLANATORY NOTES

Section 123A(3)

10. This subsection replaces and simplifies the proviso to section 123(1). The initial period of two months from the date on which the disposition took place can at any time be extended by the registrar if he is satisfied that there is a good reason to do so.

Section 123A(4)

11. A freehold which is subject to a right of reverter is not a fee simple absolute for the purposes of section 1(1)(a) of the Law of Property Act 1925. It takes effect in equity only as a determinable fee. Section 123A(5)(a) creates a possibility of reverter in the event of a failure to register within the applicable period. Therefore, in the absence of special provision, the conveyance of a freehold estate would probably pass only the equitable title: see, *eg* D G Barnsley, "Compulsory registration of title - the effect of failure to register" (1968) 32 Conv (NS) 391 and compare *Re Rowhook Mission Hall* [1985] Ch 62, 73, 74. To avoid this difficulty, section 123A(4) provides that, notwithstanding the provision for reverter, a conveyance of a freehold estate subject to the requirement of compulsory registration passes a legal estate.

Section 123A(5)

12. This subsection implements the recommendation in paragraph 2.9 of the Report and is intended to clarify the effect of a failure to register a transaction subject to compulsory registration within the applicable period.
13. The formal requirements mentioned in paragraph (b) are likely to be those imposed by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (which lays down the formal requirements applicable to a contract for the sale or other disposition of an interest in land). 'Valuable consideration' is defined in section 3(xxxi) of the Land Registration Act 1925.

Section 123A(6)

14. This subsection makes express provision for the situation where a conveyance becomes void for non-registration within the applicable period, but where the applicable period is then extended following application to the registrar. The transfer of the legal estate becomes valid once again pending registration. This is thought to be the situation under the present law, but there is no explicit provision to that effect.

Section 123A(7)

15. This subsection implements the recommendation in paragraph 2.7(vi) of the Report. It makes compulsory the registration of any re-conveyance that is made after the first conveyance has become void for non-registration.

to the void disposition, and the provisions of this section shall have effect accordingly.

(8) Except to the extent to which the parties to any such replacement disposition agree otherwise, the transferee or grantee (as the case may be) shall— 5

- (a) bear all the proper costs of and incidental to that disposition, and
- (b) indemnify the transferor or grantor (as the case may be) in respect of any other liability reasonably incurred by him in consequence of 10 the failure to comply with subsection (2) above.

(9) Where any such replacement disposition is a mortgage falling within section 123(2) of this Act, subsection (8) above shall apply as if the reference to the grantee were a reference to the mortgagor and the 15 reference to the grantor were a reference to the mortgagee.

(10) Rules under this Act may make provision—

- (a) applying the provisions of this Act to any dealings which take place between—
 - (i) the date of any disposition to which this 20 section applies, and
 - (ii) 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 25 effective as of the date of the application;
- (b) enabling the mortgagee under any mortgage falling within section 123(2) of this Act to require the legal estate charged by the mortgage to be registered whether or not the mortgagor 30 consents."

Indemnity

Indemnity for errors or omissions in the register.

1925 c. 21.

2.—(1) Section 83 of the Land Registration Act 1925 (right to indemnity) shall be amended as follows.

(2) The following subsection shall be substituted for subsection (1)— 35

- “(1) Where the register is rectified under this Act, then, subject to the provisions of this Act—
- (a) any person suffering loss by reason of the rectification shall be entitled to be indemnified; and
 - (b) if, notwithstanding the rectification, the person in whose 40 favour the register is rectified suffers loss by reason of an error or omission in the register in respect of which it is so rectified, he also shall be entitled to be indemnified.”

(3) The following subsections shall be substituted for subsection (5)—

- “(5) No indemnity shall be payable under this Act— 45
- (a) on account of any loss suffered by a claimant wholly or partly as a result of his own fraud or wholly as a result of his own lack of proper care;

EXPLANATORY NOTES

Sections 123A(8) and (9)

16. These subsections make consequential provisions as to responsibility for costs and other liabilities.

Section 123A(10)

17. The rule-making power in paragraph (a) of this subsection is derived from section 123(2) of the Land Registration Act 1925. For the rules which have been made under the present provision, see rules 73 and 42 of the Land Registration Rules 1925.
18. Paragraph (b) is a consequential provision to protect the interests of mortgagees under mortgages to which the requirement of compulsory registration of title applies. The paragraph enables rules to be made which will allow the mortgagee to apply for the registration of the mortgagor as proprietor of the legal estate which is charged by the mortgage.

Clause 2

Subsections (1) and (7)

1. This clause amends section 83 of the Land Registration Act 1925 (*Right to indemnity in certain cases*). The amended section is set out in Schedule 1.

Subsection (2)

2. Paragraph (a) re-enacts section 83(1) of the Land Registration Act 1925. Paragraph (b) implements paragraph 4.3 of the Report.

Subsection (3)

3. This subsection substitutes three new subsections in place of the existing section 83(5) of the Land Registration Act 1925.
4. The new section 83(5)(a) implements recommendations in paragraph 4.4 of the Report. Where the claimant's loss has been wholly caused by his lack of proper care, he is precluded from claiming indemnity. In other cases, where the loss is caused only in part by his lack of proper care, a principle of contributory negligence applicable to claims for indemnity is introduced by section 83(5A): see note 8 below.
5. The new section 83(5)(a) also puts beyond doubt what is thought to be the present law, namely that where loss is caused in whole or in part by fraud, no claim to indemnity will lie.

(b) on account of 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

5 (c) on account of any costs or expenses (of whatever nature) incurred without the consent of the registrar, unless—

(i) by reason of urgency it was not practicable to apply for the registrar's consent before they were incurred, and

10 (ii) the registrar subsequently approves them for the purposes of this paragraph.

(5A) Where any loss suffered by a claimant is suffered partly as a 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 to his share in the responsibility for the loss.

15 (5B) For the purposes of subsections (5)(a) and (5A) above, any fraud or lack of proper care on the part of a person from whom the claimant derives title (otherwise than under a disposition for valuable consideration which is registered or protected on the register) shall be treated as if it were fraud or lack of proper care on the part of the claimant (and the reference in subsection (5A) to the claimant's share in the responsibility for the loss shall be construed accordingly)."

25 (4) In subsection (8), for "amended" there shall be substituted "restricted".

(5) The following subsections shall be substituted for subsections (9) and (10)—

"(9) Where indemnity is paid to a claimant in respect of any loss, the registrar, on behalf of the Crown, shall be entitled—

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

(b) for the purpose of recovering the amount paid, to enforce—

35 (i) any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid, and

(ii) where the register has been rectified, any right of action (of whatever nature and however arising) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified.

40 (10) Subsection (9) above does not prejudice any other rights of recovery which by virtue of any enactment are exercisable by the registrar where he has made a payment of indemnity."

45 (6) In subsection (11) (limitation of liability to pay indemnity) the proviso (which contains exceptions to the general rule that the limitation period starts to run when the claimant knows, or but for his default might have known, of the existence of his claim) shall cease to have effect.

EXPLANATORY NOTES

6. Section 83(5)(b) re-enacts without change the indemnity provisions relating to mines and minerals (Land Registration Act 1925, s 83(5)(b)).
7. Section 83(5)(c) implements the recommendation in paragraph 4.13 of the Report with provision for retrospective approval in cases of urgency.
8. Section 83(5A) implements the recommendation in paragraph 4.5 of the Report that a principle of contributory negligence should be introduced in relation to indemnity claims.
9. Section 83(5B) preserves the present position whereby the acts and omissions of persons through whom the claimant derives title, other than under a disposition for valuable consideration which is registered or protected on the register, can exclude or limit the claimant's right to indemnity (see Land Registration Act 1925, s 83(5)(a)).

Subsection (4)

10. 'Restricted' describes more accurately the effect of section 2(2) of the Land Registration and Land Charges Act 1971.

Subsection (5)

11. This subsection implements the recommendation in paragraph 4.11 of the Report. The new section 83(9)(a) restates the present section 83(9) of the Land Registration Act 1925. Section 83(9)(b)(i) confirms that the Crown's right of recourse extends to all the rights of the person indemnified in relation to the matter in respect of which the indemnity has been paid. Section 83(9)(b)(ii) extends the right of recourse to all the rights of the person in whose favour the register has been rectified, whether or not any indemnity has been paid to that person.
12. The new section 83(10) preserves the Crown's rights of recourse under other legislation (*eg* Housing Act 1985, s 154(5); s 171G; Sched 9A, para 9(2); s 547; Sched 20, para 17(2); Housing Act 1988, s 81(9)(c); s 108; Sched 12, para 2(3); and s 133(8)(c)).

Subsection (6)

13. This subsection implements the recommendation in paragraph 4.9 of the Report so that the limitation period for all claims to indemnity runs from the time when the claimant knew, or but for his own default might have known, of the existence of the claim. This rule is of course subject to such special rules as apply to limitation periods generally, as for example, where the claimant is under a disability or holds an interest in reversion or remainder (see Limitation Act 1980, ss 28(1) and 15(2)).

(7) Section 83, as amended by this section and with the omission of repealed provisions, is set out in Schedule 1 to this Act.

Fees

- Registration fees.
1925 c. 21.
3. The following subsections shall be substituted for subsection (3) of section 145 of the Land Registration Act 1925 (registration fees)— 5
- “(3) Notwithstanding the provisions of subsection (1)(a) to (c) above, an order under this section may provide for reduced fees to be charged on the first registration of title to freehold or leasehold land in cases where such registration is not effected on an application made in pursuance of section 123A(2) of this Act. 10
- (3A) An order under this section may make different provision for different cases, and may in particular provide that no fees are payable in certain cases.”

Supplementary

- Consequential amendments and repeals.
- 4.—(1) The enactments specified in Schedule 2 are amended in 15 accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 3 are repealed to the extent specified.
- Short title, commencement and extent.
- 5.—(1) This Act may be cited as the Land Registration Act 1995. 20
- (2) The following provisions, namely—
- (a) section 1,
- (b) Schedule 2 and section 4(1), and
- (c) Part I of Schedule 3 and section 4(2) so far as relating thereto, 25
- come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument; and different days may be so appointed for different purposes.
- (3) Otherwise this Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (4) The provisions substituted by section 1 apply only in relation to 30 dispositions made after the commencement of those provisions.
- (5) The amendments made by section 2 apply in relation to any claim for indemnity made before the commencement of that section which has not been settled by agreement or finally determined by that time, as well as in relation to claims for indemnity made thereafter; but the new 35 subsection (5)(c) inserted by subsection (3) of that section applies only to costs and expenses incurred in respect of proceedings, negotiations or other matters begun after the commencement of that section.
- (6) An order under subsection (2) above may contain such transitional provisions and savings as the Lord Chancellor considers appropriate in 40 connection with the order.
- (7) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 3

1. This clause implements the recommendation in paragraph 3.5 of the Report.

Clause 5

Subsections (2) and (6)

1. Subsection (2) enables different commencement dates to be applied to the new triggers for compulsory registration and for amendments to or repeals of other statutory provisions which are consequential on the introduction of those triggers. Subsection (6) empowers the Lord Chancellor to include transitional provisions in any commencement order if he considers it to be appropriate.

Subsection (3)

2. The new provisions for indemnity (clause 2) and the new fee order making power (clause 3) will come into force two months after the Act is passed.

Subsection (4)

3. This subsection makes it clear that the provisions on the new triggers for registration operate prospectively.

Subsection (5)

4. Subject to the one exception there mentioned, the amendments to the indemnity provisions in section 83 of the Land Registration Act 1925 will apply not only to claims made after clause 2 of the Bill comes into force, but also to those that were pending but had not been settled or finally determined.

SCHEDULES

SCHEDULE 1

Section 2.

SECTION 83, AS AMENDED

5 Right to
indemnity in
certain cases.

83.—(1) Where the register is rectified under this Act, then, subject to the provisions of this Act—

- 10 (a) any person suffering loss by reason of the rectification shall be entitled to be indemnified; and
- (b) if, notwithstanding the rectification, the person in whose favour the register is rectified suffers loss by reason of an error or omission in the register in respect of which it is so rectified, he also shall be entitled to be indemnified.

15 (2) 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, shall, subject to the provisions of this Act, be entitled to be indemnified.

20 (3) Where any person suffers loss by reason of the loss or destruction of any document lodged at the registry for inspection or safe custody or by reason of an error in any official search, he shall be entitled to be indemnified under this Act.

25 (4) Subject as hereinafter provided, a proprietor of any registered land or charge claiming in good faith under a forged disposition shall, where the register is rectified, be deemed to have suffered loss by reason of such rectification and shall be entitled to be indemnified under this Act.

(5) No indemnity shall be payable under this Act—

- 30 (a) on account of any loss suffered by a claimant wholly or partly as a result of his own fraud or wholly as a result of his own lack of proper care;
- 35 (b) on account of 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
- (c) on account of any costs or expenses (of whatever nature) incurred without the consent of the registrar, unless—
- 40 (i) by reason of urgency it was not practicable to apply for the registrar's consent before they were incurred, and
- (ii) the registrar subsequently approves them for the purposes of this paragraph.

45 (5A) Where any loss suffered by a claimant is suffered partly as a 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 to his share in the responsibility for the loss.

50 (5B) For the purposes of subsections (5)(a) and (5A) above, any fraud or lack of proper care on the part of a

EXPLANATORY NOTES

First Schedule

This schedule sets out the text of section 83 of the Land Registration Act 1925 as amended by clause 2 of the Bill.

SCH. 1

person from whom the claimant derives title (otherwise than under a disposition for valuable consideration which is registered or protected on the register) shall be treated as if it were fraud or lack of proper care on the part of the claimant (and the reference in subsection (5A) to the claimant's share in the responsibility for the loss shall be construed accordingly). 5

(6) Where an indemnity is paid in respect of the loss of an estate or interest in or charge on land the amount so paid shall not exceed— 10

- (a) Where the register is not rectified, the value of the estate, interest or charge at the time when the error or omission which caused the loss was made;
- (b) Where the register is rectified, the value (if there had been no rectification) of the estate, interest or charge, immediately before the time of rectification. 15

1971 c. 54.

(8) Subject to subsection (5)(c) of this section, as restricted by section 2(2) of the Land Registration and Land Charges Act 1971—

- (a) an indemnity under any provision of this Act shall include such amount, if any, as may be reasonable in respect of any costs or expenses properly incurred by the applicant in relation to the matter; and 20
- (b) an applicant for an indemnity under any such provision shall be entitled to an indemnity thereunder of such amount, if any, as may be reasonable in respect of any such costs or expenses, notwithstanding that no other indemnity money is payable thereunder. 25

(9) Where indemnity is paid to a claimant in respect of any loss, the registrar, on behalf of the Crown, shall be entitled— 30

- (a) to recover the amount paid from any person who caused or substantially contributed to the loss by his fraud; or 35
- (b) for the purpose of recovering the amount paid, to enforce—
 - (i) any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid, and 40
 - (ii) where the register has been rectified, any right of action (of whatever nature and however arising) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified. 45

(10) Subsection (9) above does not prejudice any other rights of recovery which by virtue of any enactment are exercisable by the registrar where he has made a payment of indemnity. 50

1980 c. 58.

(11) A liability to pay indemnity under this Act shall be deemed a simple contract debt; and for the purposes of the Limitation Act 1980, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might have known, of the existence of his claim. 55

EXPLANATORY NOTES

(12) This section applies to the Crown in like manner as it applies to a private person.

SCH. 1

SCHEDULE 2

Section 4(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

5 LAND REGISTRATION ACT 1925 (C. 21)

1.—(1) In section 8 (application for registration of leasehold land) for subsection (1A) substitute—

10 “(1A) An application for registration in respect of leasehold land held under a lease in relation to the grant or assignment of which section 123A of this Act applies may be made within the applicable period within the meaning of section 123A, notwithstanding that by the date of the application the unexpired term of the lease is not more than twenty-one years.”

(2) In section 69(3) (effect of registration on the legal estate), for “land in a compulsory area after the commencement of this Act” substitute “any land”.

(3) In section 81(1) (power to remove land from the register)—

(a) for the words from the beginning to “in every case where” substitute “Where”; and

20 (b) for “the land (including an undivided share)” substitute “the undivided share”.

LAND REGISTRATION AND LAND CHARGES ACT 1971 (C. 54)

2. In section 4 (souvenir land), in subsection (1)(d), for the words from “section 123” onwards substitute “sections 123 and 123A of that Act (compulsory registration);”.

25 LAND CHARGES ACT 1972 (C. 61)

3. In section 14(3) (exclusion of matters affecting registered land or created by instruments necessitating registration of land), for the words from “section 123” to “is compulsory)” substitute “section 123A of the Land Registration Act 1925 (compulsory registration: effect of requirement to register)”.

30 HOUSING ACT 1985 (C. 68)

4.—(1) In section 154 (registration of title), for subsection (1) substitute—

35 “(1) Where on the grant of a lease in pursuance of this Part the landlord’s title to the dwelling-house is not registered, section 123A of the Land Registration Act 1925 (compulsory registration: effect of requirement to register) shall apply in relation to the grant of the lease whether or not it is granted for a term of more than 21 years.”

(2) Where—

40 (a) after the coming into force of sub-paragraph (1) there is a conveyance falling within section 154(1)(b) as originally enacted (conveyance of freehold in pursuance of right mentioned in paragraph 2(1) or 8(1) of Schedule 8 to the Act in respect of shared ownership lease), and

(b) the landlord’s title is not registered, section 123A of the Land Registration Act 1925 (compulsory registration: effect of requirement to register) shall apply in relation to the conveyance
45 (whether or not it would so apply apart from this sub-paragraph).

EXPLANATORY NOTES

Second Schedule

Paragraph 1—Land Registration Act 1925

1. *Sub-paragraph (1)* - Section 8(1A) was inserted by section 2(2) of the Land Registration Act 1986. It prevents any conflict between sections 8(1) and 123 of the 1925 Act where a lease with more than 21 years to run at the date of its grant or assignment has 21 years or less to run at the time of the application for its registration. Where a lease is registrable irrespective of the length of its term (*eg* under Housing Act 1985, s 154(1)) the conflict does not arise. The opportunity has been taken to simplify and clarify section 8(1A).

Housing Act 1985

2. *Paragraph 4(1)* - Section 154 provides for registration of title following the exercise of the right to buy under Part V of the Housing Act 1985 whether or not the dwelling-house was in an area of compulsory registration of title and, in the case of leasehold property, irrespective of the length of the lease. The concept of areas of compulsory registration is now redundant (see clause 1 note 1 above) so that all freehold conveyances and leases granted for more than 21 years are registrable in any event. The new subsection (1) preserves the requirement that leases granted for 21 years or less are subject to compulsory registration.
3. *Paragraph 4(2)* - The shared ownership lease scheme (Housing Act 1985, ss 143 - 151; and Sched 8) has been repealed for the future and replaced by the rent to mortgage scheme (Leasehold Reform, Housing and Urban Development Act 1993, ss 108 - 120; 187(2); and Sched 22). The amendment ensures that where the shared ownership lease scheme still applies, the conveyance of the freehold (Housing Act 1985, Sched 8, para 2) will be registrable.

SCH. 2

5.—(1) Paragraph 2 of Schedule 9A (land registration etc. where right to buy preserved) shall be amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) Where on a qualifying disposal which takes the form of the grant or assignment of a lease the disponor’s title to the dwelling-house is not registered, section 123A of the Land Registration Act 1925 (compulsory registration: effect of requirement to register) shall apply in relation to the disposal whether or not— 5

(a) (in the case of the grant of a lease) the lease is granted for a term of more than 21 years; or 10

(b) (in the case of an assignment) the lease is a lease for a term of which more than 21 years are unexpired.”

(2) In sub-paragraph (2), for “In such a case” substitute “Where on a qualifying disposal the disponor’s title to the dwelling-house is not registered.”

CHARITIES ACT 1993 (C. 10)

15

6.—(1) In section 37(7)(b) (supplementary provisions relating to dispositions), for “to which section 123(1)” substitute “in relation to which section 123A”.

(2) After subsection (1) of section 39 (supplementary provisions relating to mortgaging) insert— 20

“(1A) Where any such mortgage will be one falling within section 123(2) of the Land Registration Act 1925—

(a) the statement required by subsection (1) above shall be in such form as may be prescribed; and

(b) if the charity is not an exempt charity, the mortgage shall also contain a statement, in such form as may be prescribed, that the restrictions on disposition imposed by section 36 above apply to the land (subject to subsection (9) of that section). 25

(1B) Where—

(a) an application is duly made for registration of a person’s title to land in connection with such a mortgage as is mentioned in subsection (1A) above, and 30

(b) the mortgage contains statements complying with subsections (1) and (1A) above, and

(c) the charity is not an exempt charity, 35

the registrar shall enter in the register, in respect of the land, a restriction in such form as may be prescribed; and section 37(9) above shall apply in relation to any such restriction as it applies in relation to one entered in pursuance of section 37(8).”

(3) In section 39(6), for the words from ““prescribed”” onwards substitute— 40

“and subsections (1) to (1B) above shall be construed as one with the Land Registration Act 1925.”

AGRICULTURE ACT 1993 (C. 37)

7.—(1) For paragraph 53(3) of Schedule 2 (provisions relating to carrying out of approved scheme of reorganisation) substitute— 45

“(3) The Chief Land Registrar may, if satisfied on the application of any interested person that there is good reason for doing so, make an

EXPLANATORY NOTES

4. *Paragraph 5(2)* - Where a person ceases to be a secure tenant because of a disposal of the dwelling-house by the landlord, the tenant's right to buy may be preserved (Housing Act 1985, ss 171A - 171G). In such cases, if the landlord's title is unregistered, section 123 of the Land Registration Act 1925 applies to the disposal irrespective of the location of the property or the length of the lease granted or assigned (Housing Act 1985, Sched 9A, para 2(1)). The amendment removes the unnecessary references to location and disposals which would be registrable in any event: cf note 2 above.

Charities Act 1993

5. *Paragraph 6* - By section 37 of the Charities Act 1993, most dispositions of land by or in favour of a charity are required to contain certain particulars. To ensure that the requirements of the section are met where the disposition is one which will be registered, provision is made—
- (i) so that the mortgage must include the relevant information in specified form; and
 - (ii) as to when, and in what form, a restriction must be entered upon or withdrawn from the register.

This amendment ensures that the requirements of section 37 will apply to the new triggers for first registration (see clause 1 note 2 above) as they do to the existing triggers. Mortgages are excluded from section 37 (Charities Act 1993, s 37(11)(a)(i)) and specific provision is made for them in section 39.

6. *Paragraph 6(2)* - Section 39 of the Charities Act 1993 lays down certain particulars that have to be stated in a mortgage by a charity. This amendment is intended to ensure that the same consequences follow where a mortgage is one that triggers the compulsory registration of the estate mortgaged (under the new section 123(2)) as occur where registration is required in relation to some other disposition. The new subsections to section 39 provide that—
- (i) the mortgage is to contain in the prescribed form the information listed in section 39(1) of the Charities Act 1993;
 - (ii) the mortgage (if not made by an exempt charity) contains a statement that the restrictions on disposition laid down in section 36 of the Charities Act 1993 apply to the land; and
 - (iii) a restriction of the type that is required under section 37 of the Charities Act 1993 shall be entered in respect of the freehold or leasehold which is subject to the mortgage and which must be registered.

Agriculture Act 1993

7. *Paragraph 7* - Sections 11 and 35 of the Agriculture Act 1993 provide for the transfer under approved schemes of the assets and liabilities of certain agricultural produce boards to their

order extending or further extending the period mentioned in sub-paragraph (2); and if he does so at a time when that sub-paragraph has operated to negative the transfer effected by section 11 above, it shall be taken not to have so operated."

5 (2) In paragraph 53(4) of Schedule 2—

(a) for "section 123(2)" substitute "section 123A(10)(a)"; and

(b) for "section 123" substitute "section 123A".

(3) For paragraph 14(3) of Schedule 4 (provisions relating to carrying out of approved transfer scheme) substitute—

10 " (3) The Chief Land Registrar may, if satisfied on the application of any interested person that there is good reason for doing so, make an order extending or further extending the period mentioned in sub-paragraph (2); and if he does so at a time when that sub-paragraph has operated to negative the transfer effected by section 35 above, it shall be
15 taken not to have so operated."

(4) In paragraph 14(4) of Schedule 4—

(a) for "section 123(2)" substitute "section 123A(10)(a)"; and

(b) for "section 123" substitute "section 123A".

SCHEDULE 3

Section 4(2).

REPEALS

PART I

REPEALS COMING INTO FORCE ON APPOINTED DAY

20

Chapter	Short title	Extent of repeal
25 1925 c. 21.	Land Registration Act 1925.	Section 120.
1963 c. 33.	London Government Act 1963.	Section 80.
1965 c. 64.	Commons Registration Act 1965.	Section 12(a).
30 1985 c. 68.	Housing Act 1985.	In Schedule 20, paragraph 17(1).
1986 c. 26.	Land Registration Act 1986.	Section 2(1) to (3) and (5).
35 1988 c. 50.	Housing Act 1988.	Section 81(9)(a). Section 133(8)(a). In Schedule 12, in paragraph 2(2), paragraph (a) and the "(b)" immediately following it, and the "(b)" in paragraph 2(3).
40 1989 c. 42.	Local Government and Housing Act 1989.	Section 173(8)(a).

EXPLANATORY NOTES

successors. If the transfer includes unregistered land an application for its registration must be made within six months or the transfer is deemed never to have had effect to transfer the legal estate (Sched 2, para 53(2) and Sched 4, para 14(2)). The paragraphs substituted by paragraphs 7(1) and 7(3) clarify the provisions by which the period for the application may be extended (Sched 2, para 53(3) and Sched 4, para 14(3)).

SCH. 3

PART II

REPEALS COMING INTO FORCE TWO MONTHS AFTER ROYAL ASSENT

Chapter	Short title	Extent of repeal
1925 c. 21.	Land Registration Act 1925.	In section 83, the proviso to subsection (11).
1971 c. 54.	Land Registration and Land Charges Act 1971.	Section 3. In section 15(5), "3".

5

EXPLANATORY NOTES

APPENDIX B

EXTRACTS FROM LAND REGISTRATION ACT 1925

Right to indemnity in certain cases.

83.-(1) Subject to the provisions of this Act to the contrary, any person suffering loss by reason of any rectification of the register under this Act shall be entitled to be indemnified.

(2) 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, shall, subject to the provisions of this Act, be entitled to be indemnified.

(3) Where any person suffers loss by reason of the loss or destruction of any document lodged at the registry for inspection or safe custody or by reason of an error in any official search, he shall be entitled to be indemnified under this Act.

(4) Subject as hereinafter provided, a proprietor of any registered land or charge claiming in good faith under a forged disposition shall, where the register is rectified, be deemed to have suffered loss by reason of such rectification and shall be entitled to be indemnified under this Act.

(5) No indemnity shall be payable under this Act in any of the following cases:-

(a) Where the applicant or a person from whom he derives title (otherwise than under a disposition for valuable consideration which is registered or protected on the register) has caused or substantially contributed to the loss by fraud or lack of proper care;

(b) On account of any mines or minerals or of the existence of any rights to work or get mines or minerals, unless a note is entered on the register that the mines or minerals are included in the registered title;

(c) On account of costs incurred in taking or defending any legal proceedings without the consent of the registrar.

(6) Where an indemnity is paid in respect of the loss of an estate or interest in or charge on land the amount so paid shall not exceed-

(a) Where the register is not rectified, the value of the estate, interest or charge at the time when the error or omission which caused the loss was made;

(b) Where the register is rectified, the value (if there had been no rectification) of the estate, interest or charge, immediately before the time of rectification.

(7) [Repealed]

(8) Subject to subsection (5)(c) of this section, as amended by section 2(2) of the Land Registration and Land Charges Act 1971-

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

(b) an applicant for an indemnity under any such provision shall be entitled to an indemnity thereunder of such amount, if any, as may be reasonable in respect of any such costs or expenses, notwithstanding that no other indemnity money is payable thereunder.

(9) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his fraud.

(10) The registrar shall be entitled to enforce, on behalf of the Crown, any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which indemnity has been paid.

(11) A liability to pay indemnity under this Act shall be deemed a simple contract debt; and for the purposes of the Limitation Act 1980, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might have known, of the existence of his claim:

Provided that, when a claim to indemnity arises in consequence of the registration of an estate in land with an absolute or good leasehold title, the claim shall be enforceable only if made within six years from the date of such registration, except in the following cases:-

- (a) Where at the date of registration the person interested is an infant, the claim by him may be made within six years from the time he attains full age;
- (b) In the case of settled land, or land held on trust for sale, a claim by a person interested in remainder or reversion, may be made within six years from the time when his interest falls into possession;
- (c) Where a claim arises in respect of a restrictive covenant or agreement affecting freehold land which by reason of notice or the registration of a land charge or otherwise was binding on the first proprietor at the time of first registration, the claim shall only be enforceable within six years from the breach of the covenant or agreement;
- (d) Where any person interested is entitled as a proprietor of a charge or as a mortgagee protected by a caution in the specially prescribed form, the claim by him may be made within six years from the last payment in respect of principal or interest.

(12) This section applies to the Crown in like manner as it applies to a private person.

Effect of Act in areas where registration is compulsory.

123.-(1) In any area in which an Order in Council declaring that registration of title to land within that area is to be compulsory on sale is for the time being in force, every conveyance on sale of freehold land and every grant of a term of years absolute of more than twenty-one years from the date of delivery of the grant, and every assignment on sale of leasehold land held for a term of years absolute having more than twenty-one years to run from the date of delivery of the assignment, shall (save as hereinafter provided), on the expiration of two months from the date thereof or of any authorised extension of that period, become void so far as regards the grant or conveyance of the legal estate in the freehold or leasehold land comprised in the conveyance, grant, or assignment, or so much of such land as is situated within the area affected, unless the grantee (that is to say, the person who is entitled to be registered as proprietor of the freehold or leasehold land) or his successor in title or assign has in the meantime applied to be registered as proprietor of such land:

Provided that the registrar, or the court on appeal from the registrar, may, on the application of any persons interested in any particular case in which the registrar or the court

is satisfied that the application for first registration cannot be made within the said period, or can only be made within that period by incurring unreasonable expense, or that the application has not been made within the said period by reason of some accident or other sufficient cause, make an order extending the said period; and if such order be made, then, upon the registration of the grantee or his successor or assign, a note of the order shall be endorsed on the conveyance, grant or assignment:

In the case of land in an area where, at the date of the commencement of this Act, registration of title is already compulsory on sale, this subsection shall apply to every such conveyance, grant, or assignment, executed on or after that date.

(2) Rules under this Act may provide for applying the provisions thereof to dealings with the land which may take place between the date of such conveyance, grant, or assignment and the date of application to register as if such dealings had taken place after the date of first registration, and for registration to be effected as of the date of the application to register.

(3) In this section the expressions "conveyance on sale" and "assignment on sale" mean an instrument made on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under this Act, and include a conveyance or assignment by way of exchange where money is paid for equality of exchange, but do not include an enfranchisement or extinguishment of manorial incidents, whether under the Law of Property Act 1922, or otherwise, or an assignment or surrender of a lease to the owner of the immediate reversion containing a declaration that the term is to merge in such reversion.

Power to make Fee Orders and principles on which fees determined.

145.-(1) The Lord Chancellor may, with the advice and assistance of the Rule Committee and with the concurrence of the Treasury, make orders with respect to the amount of fees payable under this Act, regard being had to the following matters:-

- (a) In the case of the registration of an estate in land or of any transfer of an estate in land on the occasion of a sale, to the value of the estate as determined by the amount of purchase money; and
- (b) In the case of the registration of an estate in land, or of any transfer of an estate in land not upon a sale, to the value of the estate, to be ascertained in such manner as may be prescribed; and
- (c) In the case of registration of a charge or of any transfer of a charge, to the amount of such charge.

(2) Where the personal representatives of a deceased person are registered as proprietors of the registered land on his death, a fee shall not be chargeable for registering any disposition of the land by them unless the disposition is for valuable consideration.

(3) Specially reduced fees may be authorised to be charged on the registration of title to land wholly acquired for the purpose of being used as a street, or for street widening or improvements, or when acquired by a Government Department, a local authority, or other statutory body for permanent objects not involving a resale or other disposition.

(4) [Repealed]

(5) The Lord Chancellor may, with the consent of the Treasury, by order, from time to time provide for the manner in which the money advanced for the acquisition of the site and

the erection of new offices at the registry (so far as not already provided for by the existing sinking fund) shall be repaid, secured, or otherwise provided for; and also for the manner in which accounts of receipts and expenditure as between the several departments of the land registry are to be kept.

APPENDIX C
MEMBERSHIP OF JOINT WORKING GROUP ON THE
IMPLEMENTATION OF THE LAW COMMISSION'S THIRD AND
FOURTH REPORTS ON LAND REGISTRATION

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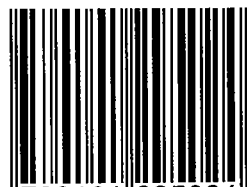
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