The Law Commission

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PROPERTY LAW

LAND REGISTRATION

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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.

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LAND REGISTRATION

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THE LAW COMMISSION

Item IX of the First Programme

REPORT ON LAND REGISTRATION

To the Right Honourable the Lord Hailsham of Saint Marylebone, C.H., Lord High Chancellor of Great Britain

PART 1

INTRODUCTION

Background

1.1 Between 1970 and 1976 we published four working papers,[1] in which we discussed particular aspects of land registration which seemed in need of reform. We did this under Item IX of our First Programme which was extended, at our request, in 1966[2] so that we could examine the law relating to the transfer of registered as well as unregistered land.

1.2 Following preliminary consultation, we identified a number of problems the solution of which would help to improve, simplify and modernise the system of land transfer. These topics were canvassed in the working papers and included the question whether the register should be open to public inspection, the problems associated with the identification of land and its boundaries, the registration of title to leases, the protection and priority of interests known as "minor interests", rectification of the register and the connected topic of indemnity, and the interests known as "overriding interests" which bind purchasers despite the fact that they are not recorded on the register. We received many valuable comments on these topics, for which we are most grateful. A list of the commentators is set out in Appendix 4.

1.3 Since 1976, when we published the last of our working papers on this subject, our progress has been slow because we have given priority to more pressing matters. We have also had to consider the effect of various judicial decisions on the topics with which we have been concerned, and in the light of these decisions to rethink matters of policy. Perhaps the most important of these decisions was that of the House of Lords in *Williams & Glyn's Bank Ltd.* v. *Boland,*[3] a case which was concerned with overriding interests and the protection of the rights of joint beneficial owners of land. You asked us to consider the consequences of that decision, which has important implications for conveyancing under both the registered and unregistered systems. We decided to prepare a separate report on these implications and this report was published in August 1982.[4]

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[1] No. 32 (1970), No. 37 (1971), No. 45 (1972) and No. 67 (1976).
[2] See our *First Annual Report* 1965–1966 (1966), Law Com. No. 4, para. 70.
[3] [1981] A. C. 487.
[4] *The Implications of Williams & Glyn's Bank Ltd.* v. *Boland,* (1982) Law Com. No. 115, Cmnd. 8636.

1.4 After publication of our report on the *Boland* case we were able to resume work on the remaining matters dealt with in our working papers. Having completed work on some of these matters we have decided to submit our report on them.[5]

1.5 It seems to us unnecessary for the purposes of this short report on self-contained topics to provide any exposition of the land registration system as a whole. This has been well done in several textbooks[6] and we do not propose to cover the same ground. It may however be helpful, as part of our account of the background, to indicate certain features of the system which are relevant to our limited purposes:—

(1) The system of land registration is a statutory one governed by the Land Registration Acts 1925 to 1971[7] and subordinate legislation,[8] and administered by the Chief Land Registrar (who is appointed by the Lord Chancellor) and by his staff in the Land Registry and District Land Registries.

(2) The system was primarily designed to simplify the process of land transfer rather than to alter the substantive law relating to land, though some aspects of the substantive law are affected by the system.

(3) The foundation of the system is the registration of title to freehold and long leasehold estates, the legal title being established by an official register rather than by the assemblage of deeds and documents upon which unregistered titles are based. Since it is titles to land, and not the land itself, which are registered, it follows that estates in the same piece of land are registered separately and that some such titles may happen to be registered and others not. For example, the registered freehold of Blackacre may be subject to an unregistered lease, or the unregistered freehold of Blackacre may be subject to an unregistered lease and a registered underlease.

(4) The registration of a title is invariably carried out by reference to a plan based on the Ordnance Survey Map, so that all registered titles are readily identifiable on the map.

(5) In addition to the registration of title to freehold and leasehold estates the 1925 Act provides for the registration of legal mortgages or charges upon such estates, so that title to these mortgages and charges is established by the register. The many other rights and interests in land such as restrictive covenants, easements and various kinds of financial burden are not susceptible of substantive registration: they are however capable of protection by entry on the registers of the titles which they affect, and a limited class of interests (known as "overriding interests") is protected even though they are not entered on the register.

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[5]Our decision follows the policy outlined in para. 2.55 of our *Seventeenth Annual Report 1981—1982 (1983),* Law Com. No. 119, except that we have deferred completion of work on Inspection of the Register in order to obtain fresh material and undertake fresh consultation on certain aspects of the subject.

[6]See e.g. Ruoff & Roper *The Law and Practice of Registered Conveyancing* 4th ed. (1979), Ruoff and West, *Concise Land Registration Practice* 3rd ed. (1982) and Hayton, *Registered Land* 3rd ed. (1981).

[7]Land Registration Act 1925 (the principal Act), Land Registration Act 1936, Land Registration Act 1966 and Part I of the Land Registration and Land Charges Act 1971.

[8]This subordinate legislation is of great practical importance. The principal rules are the Land Registration Rules 1925 (S.R. & O. 1925/1093) and these and other rules and orders regulate such matters as the procedure on applications, searches, fees, forms and various administrative matters.

(6) The register is backed by a kind of "state guarantee", through the use of powers of rectification and indemnity. If there is some error or omission in the register the register may be rectified, though the possibility of rectifying a registered title against the proprietor when he is in possession is restricted. If an error or omission, or its rectification, results in loss, indemnity for that loss is payable out of public funds. For example where a registered title is found to contain more land than the vendor had to convey, if the registered proprietor is not in possession it may be rectified by the removal of the land from the title and the proprietor indemnified, and if the registered proprietor is in possession the rightful owner of the land registered in error may be indemnified.

(7) Although the Land Registration Acts extend to England and Wales the registration of title to land is compulsory only in particular areas designated under the Acts as areas of compulsory registration and only on occasions of sale or lease. The existing compulsory areas comprise over 70% of the population of England and Wales, and successive Governments have favoured the policy of extending these areas.

Contents of the Report

1.6 The topics dealt with in this report are the following:—

Identity and Boundaries (Part II)
Conversion of Title (Part III)
Treatment of Leases (Part IV)
Minor Interests Index (Part V)

In Part II we deal with the identification of land and its boundaries, and in particular with the question whether under the registered system boundaries should continue to be left relatively imprecise. In Part III we propose simplification of the machinery by which the quality of titles under the registered system can be improved. In Part IV we propose improvements in the law whereby various kinds of lease are registered or otherwise protected under the registered system. In Part V we clear up a small anomaly affecting the priority of dealings with certain minor interests. Our report includes draft clauses, which are set out in Appendix 1.

1.7 Shortly before completing this report we learnt that the Housing and Building Control Bill, which was lost on the dissolution of Parliament in May 1983, had been reintroduced. Since this Bill affects the law relating to the registrability of leases, we have outlined the main effects of the relevant provisions at the end of Part IV of this report, and indicated what consequences these provisions seem to have for our recommendations.

Abbreviations

1.8 In this report we use the term "the Act" to mean the Land Registration Act 1925 and "the Rules" or "L.R.R." to refer to the Land Registration Rules 1925.[9] Unless the context shows otherwise, plain references to sections and to rules (e.g. "section 1", "rule 1", etc.) are to be read accordingly. Our frequent references to "Ruoff & Roper" are references to the Fourth Edition (1979) of Ruoff & Roper on *The Law and Practice of Registered Conveyancing*.

[9] S.R. & O. 1925/1093.

PART II

IDENTITY AND BOUNDARIES

2.1 In this Part of the Report we are concerned with the manner in which the physical extent of land is recorded in registered conveyancing. We first discuss the distinction between the identity of land and the boundaries of land. We then review the relevant law and practice under the registered system. We go on to examine certain criticisms of the system. We conclude against recommending any substantial changes.[1]

Introduction

2.2 It is important at the outset to distinguish two related concepts, the *identity* of land and its *boundaries*. A conveyance of "No. 116 High Road, Barchester", or "all that field in the parish of Dale containing 1·23 acres or thereabouts recently in the occupation of Josiah Smith" may be sufficient to *identify* the property, that is to relate the words used to an identifiable plot of land; but it may be insufficient to indicate the exact *boundaries* and thus to provide the answer to such questions as whether the strip of land along which the owner of No. 116 High Road, Barchester wishes to drive his car is wide enough for the purpose. Indeed, sometimes it will not even be possible to identify the land from the description in the conveyance. There may, for example, be no existing "No. 116" in High Road, Barchester; and there may be no evidence as to which land Josiah Smith occupied in the parish of Dale.

2.3 Conveyancers in England and Wales have always accepted the need to identify the land conveyed. They have been less ambitious in seeking to define precise boundaries. The principal reason for this is that the boundaries of land in different ownerships have rarely been settled on the ground, either by agreement or by judicial or other determination. Land cannot be precisely described if it has not been precisely defined on the ground.

2.4 In some countries boundaries are often marked out on the ground as a result of some process of adjudication. In others, particularly in the Commonwealth, the problem is simplified by the fact that the title to most land commences with relatively recent grants from the Crown or the Government, in which the boundaries of all the land in a particular area are accurately and clearly defined. In this country a conveyancer operating under the unregistered system, who wishes to be precise about boundaries, is faced with the almost impossible task of defining in a document something which has not been determined on the ground.[2] Solicitors acting for vendors, mortgagors and lessors have for that reason generally advised that the deeds can only describe the land in qualified terms. The other party has little option but to accept this qualification. In successive dispositions areas and dimensions will often be

[1]Identity and boundaries were discussed in Working Paper No. 45, paras. 1–57. The preliminary view there expressed was that no substantial reform of the law was needed (para. 57).

[2]There are of course cases (as, for example, where a building has been subdivided) in which adequate *identification* presupposes precision in fixing the boundaries: see *Scarfe* v. *Adams* [1981] 1 All E.R. 843.

stated to be of a particular number of acres or feet "or thereabouts"; and plans are frequently expressed to be "for the purposes of identification only."[3] Absolute precision is thus avoided, primarily in order to protect the grantor; for if the description in a conveyance is such that, as a matter of construction, it extends to land to which the grantor has no title he is normally liable in damages for breach of the statutory covenants for title.[4]

The present law and practice

Description of registered land

2.5 Provision for the description of registered land is made by section 76 of the Act, which is in the following terms:—

"Registered land may be described:—

(a) by means of a verbal description and a filed plan or general map, based on the ordnance map; or

(b) by reference to a deed or other document, a copy or extract whereof is filed at the registry, containing a sufficient description, and a plan or map thereof; or

(c) otherwise as the applicant for registration may desire, and the registrar, or, if the applicant prefers, the court, may approve,

regard being had to ready identification of parcels, correct descriptions of boundaries, and, so far as may be, uniformity of practice; but the boundaries of all freehold land and all requisite details in relation to the same, shall whenever practicable, be entered on the register or filed plan, or general map, and the filed plan, if any, or general map shall be used for assisting the identification of the land."

2.6 In practice paragraph (a) of section 76 is invariably adopted: a verbal description, which refers to a filed plan[5] on which the boundaries of the registered land are shown in red, is entered in the register.

2.7 The basis of all registered descriptions of land is the Ordnance Survey map.[6] Under rule 20(iii) an applicant for first registration is obliged to furnish sufficient particulars by plan or otherwise to enable the land to be fully

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[3]This expression, however, does not preclude the use of a plan to assist in construing an imprecise description of the land in the conveyance: *Wigginton & Milner Ltd.* v. *Winster Engineering Ltd.* [1978] 1 W.L.R. 1462; *Spall* v. *Owen* (1982) 44 P. & C.R. 36. Under condition 13 of The Law Society's General Conditions of Sale (1980 ed.) and condition 13 of the National Conditions of Sale (20th ed.) the vendor is not required to define exact boundaries, fences, ditches, hedges or walls.

[4]Law of Property Act 1925, s. 76. There is also the possibility of liability in tort for negligence: see *Jackson* v. *Bishop and Walter Thomas Properties* (1979) unreported, Court of Appeal Decision 179/481 and Farrand [1982] Conv. 324.

[5]A "filed plan" is an individual plan, based on the Ordnance Survey map, prepared for an individual title. The extent of the registered property is edged with red on the plan, the original of which is filed in the appropriate District Land Registry. A copy of the filed plan is bound up in each land or charge certificate.

[6]L.R.R. 1925, r. 272. The relevance of the Ordnance Survey to land registration is fully discussed in the Report of the Ordnance Survey Review Committee (1979), H.M.S.O. The Committee, under the Chairmanship of Sir David Serpell, K.C.B., C.M.G., O.B.E. was appointed to "consider and make recommendations about the longer term policies and activities of the Ordnance Survey and ways of financing them."

identified on the Ordnance Survey map[7] or the Land Registry General Map.[8] In practice, however, the Registry often experiences difficulty in identifying the land conveyed.[9] The most frequent defects are that the plan is so inaccurate that it cannot be reconciled with the situation on the ground, or that the plan, though accurate in portraying the extent of the property, does not enable its position in relation to surrounding properties to be ascertained.[10]

2.8 In these cases the Registry will make further enquiries. If the extent of the land to be registered is not clear, the Registry may arrange for the site to be inspected by its own officials or those of the Ordnance Survey.[11] If the description or plan appears inadequate, the applicant may be asked to identify the land showing a red edging on an extract of the Ordnance Survey map, which is then required to be signed by himself and the vendor.

2.9 Sometimes it is apparent that the filed plan of a title cannot be prepared without a revision of the Ordnance Survey map. In compulsory areas[12] these revisions are done without charge to the applicant. Sometimes they call for consequential revision, with the agreement of the registered proprietors of adjoining titles, of the filed plans of those titles to take account of settled alterations in boundaries. It is also open to the Land Registry to establish the position after serving notice on adjoining owners.

2.10 This flexibility of approach enables most mapping problems to be solved at the stage of first registration. The important feature of the approach is that potential problems can be overcome without undue expense. The Registry is well placed to promote informal settlements, for example by the preparation of new filed plans where adjoining registered owners are concerned.[13] The methods outlined above often enable applicants to avoid the expense and delay of deeds of rectification or similar formalities.

2.11 The present procedures, and the skill of the Land Registry in applying them, help to ensure that clear and reliable plans are available to identify registered land, even in cases where the plan on the conveyance accepted by the purchaser was vague or inaccurate.[14] As a result, the standard of plans used in

[7]The map is normally to the scale of 1/1250: see *R.* v. *Secretary of State for the Environment, Ex parte Norwich City Council* [1982] Q.B. 808, 834, *per* Kerr L. J. For the view that a larger scale (e.g. 1/500) should be used, see Barrett, "Surveys and Plans in the Sale of Land" [1981] Conv. 257, 267.

[8]The "General Map" is a series of maps specially prepared for the Land Registry (L.R.R. 1925, r. 273) and covering fully developed areas. Its main use today is as an index. Formerly extracts from the general map were used as certificate plans, but it has recently been found more advantageous to use filed plans for this purpose: see Ruoff & Roper, pp. 46–47.

[9]It has been said that more than one in eight of the plans brought into the Registry are seriously defective: Ruoff and West, *Concise Land Registration Practice* 3rd ed. (1982), p. 23; see also Ruoff & Roper, p. 43, n. 2. See *Scarfe* v. *Adams* [1981] 1 All E.R. 843 for a recent example of the disastrous effect of a defective plan.

[10]See Ruoff, "Mainly about Maps and Pitfalls in Plans" (1965) 62 Law Society's Gazette 337.

[11]It is sometimes suggested that the procedure on first registration would be more effective if a survey were made by the Land Registry or the Ordnance Survey in every case, but the huge volume of applications precludes this; for example, over 420,000 first registration applications were received in the year 1982–1983 (Annual Report of the Chief Land Registrar 1982–1983, para. 4).

[12]See para. 1.5 above.

[13]See Ruoff and West, *Concise Land Registration Practice* 3rd ed. (1982), p. 23.

[14]Ruoff & Roper, p. 43.

the registered system is superior to the standard in unregistered conveyancing. Yet this is not to say that all problems disappear. In particular, the filed plan may not throw light on boundary problems. Before referring to the relevant rules concerning the boundaries of registered land,[15] however, we shall mention two further features of the Land Registry's mapping work: the "public index map" which is based upon provisions in the Rules, and the "estate layout plan" procedure which has been established by administrative arrangements to meet the particular needs of estate development.

Public index map

2.12 Under rule 8 the Land Registry is required to keep index maps which show the position and extent of every registered estate. These maps, known collectively as "the public index map", are open to public inspection, and a search enables the applicant to ascertain whether title to particular land is registered and if so under what title number. A search of the map may also help a purchaser of land, title to which is to be registered, to avoid certain common problems. In Working Paper No. 45 we said:—

> "50. The form of search described in the previous paragraph may be helpful to a purchaser in avoiding some of the difficulties that may arise when, after completion, he applies for his name to be put on the register. This is because it will tend to expose two species of defect to which a plan attached to the draft contract (that is to say, a plan which is likely to be used as the basis for that on the conveyance or lease which will be submitted in due course with the application for registration) may be subject.
>
> 51. First, although the plan may be perfectly satisfactory in the sense that it enables the land to be readily identified on the map in the Registry, it may be defective in that it portrays more land than the vendor has to sell. The plan may have been copied exactly from some earlier deed and may fail to reflect the fact that part of the land has been sold off in the meantime, or that a neighbour has obtained title by adverse possession to a portion of it. If an intending purchaser thinks he is buying unregistered land, but a search of the Index map reveals that part of the land has been registered, he will know at once that something is wrong.
>
> 52. Secondly, the draft contract plan may not enable the Registry to reconcile with the Ordnance Map the unregistered land portrayed. An intending purchaser attempting to obtain a search with the aid of such a plan will be told by the Registry that it cannot be done; and the purchaser can then take the matter up with his vendor.
>
> 53. If, in addition to checking the plan on the site, the appropriate search were always made before contract, we feel sure that some of the difficulties which now arise over identity would be obviated and expense saved."

That remains our view.

Estate Development

2.13 The second feature of the Registry's work which we should mention is the "estate layout plan" procedure[16] designed for use in connection with the

[15]See paras. 2.17 and 2.18 below.

[16]A full description of this procedure is contained in Practice Leaflet No. 7 "Development of Registered Building Estates" published by H.M. Land Registry. (It should be noted that even outside compulsory areas title to a building estate may still be registered voluntarily: see Land Registration Act 1966 and Practice Leaflet No. 12. Many such estates are so registered.)

development of new building sites, the title to which is registered. Whilst there is no compulsion on developers in compulsory areas to use this procedure, they choose to do so in the great majority of cases.[17]

2.14 The first step in the procedure is for the developer's solicitor to submit an estate layout plan for the approval of the appropriate district land registry. The plan has to be drawn to a suitable scale[18] and has to show the extent of the land being developed, together with the precise extent of each plot to be sold identified by a plot number. This provides an early opportunity to clear up any discrepancies which may exist between the proposed layout and the registered extent of the developer's land. Once the estate layout plan has been approved, each plot number becomes an authoritative reference for the developer, the purchaser and the Land Registry, and defines the extent and location of the plot within the developer's title without the need for a separate plan.

2.15 Under this procedure, by quoting the relevant plot number a purchaser can be supplied with an official statement[19] containing all the information he needs regarding the developer's filed plan. This will include confirmation that the land which he is buying is within the developer's registered title. Through the use of the procedure the Land Registry's operations are speeded up because there are no longer interruptions in the flow of the registration work caused by having to withdraw for copying purposes what is, in most cases, a large and complicated title plan. Again, the purchaser can apply for an official search of the register just before completion by referring to the plot number without a separate plan. Although the eventual instrument of transfer of the plot will need to contain a plan when it is lodged for registration, the preparation of the plan should provide no problem if it agrees with the previously approved estate layout. Moreover, in many cases, a standard form of transfer will have been accepted by the Land Registry for the development of the estate, so that the purchaser will know that no questions will arise as to the grant of any necessary appurtenant rights.

2.16 The efficient operation of this procedure depends upon good communications between the Land Registry and the participating developers and their solicitors. If developers depart from the approved layout plan, for example in the siting of houses or roads, difficulties can be caused if the changes are not notified to the Land Registry in good time. Unfortunately, it is often found on survey[20] that fences have not been erected in accordance with the approved layout. Nevertheless, as soon as the Registry becomes aware of departures from the layout, it can take steps to have the situation rectified so as to avoid trouble for subsequent purchasers. Proper liaison between developers, solicitors, builders and fencing contractors is extremely important and we are sure that the Chief Land Registrar will continue to do all that he can to improve standards in this regard.

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[17]If voluntary registration of a building estate in a non-compulsory area is applied for, the applicant is *obliged* to use the estate layout plan procedure: see Practice Leaflet No. 12.

[18]The scale most commonly used is 1/500 and is preferred by the Registry, but a recognised smaller scale down to 1/1250 is normally acceptable.

[19]An application has to be made in Form 101 for an official inspection of the filed plan—see Land Registration (Official Searches) Rules 1981 (S.I. 1981/1135), r. 10.

[20]The Land Registry arranges for surveys to be made from time to time during development to obtain up-to-date information which will show deviations from the approved layout.

Boundaries

2.17 It has long been an accepted principle that the boundaries indicated by the register are *general boundaries* only. This is known as the "general boundaries rule" and is now expressed in rule 278, which is in the following terms:—

> "278.—(1) Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan or General Map shall be deemed to indicate the general boundaries only.
>
> (2) In such cases the exact line of the boundary will be left undetermined—as, for instance, whether it includes a hedge or wall and ditch, or runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it; or whether or not the land registered includes the whole or any portion of an adjoining road or stream.
>
> (3) When a general boundary only is desired to be entered in the register, notice to the owners of the adjoining lands need not be given.
>
> (4) This rule shall apply notwithstanding that a part or the whole of a ditch, wall, fence, road, stream or other boundary is expressly included in or excluded from the title or that it forms the whole of the land comprised in the title."

The effect of this rule is that no guarantee is given by the Land Registry that the legal boundary is the centre of a fence, hedge or ditch or on one side of it or the other; and if the boundary is a road or stream, there will usually be no guidance as to whether the title includes the whole or any part of that road or stream.[21]

2.18 A procedure does however remain whereby applications may be made for the boundaries of registered land to be fixed; if they are so fixed the filed plan is then "deemed to define accurately the fixed boundaries".[22] This procedure is rarely used: of some 8·3 million titles now registered[23] only about 20 are registered with fixed boundaries, and since 1970 only four applications to fix boundaries have been made, of which only one was pursued to completion.

Criticisms of the present law and practice[24]

2.19 We have encountered few criticisms of either the law or the practice regarding the *identification* of land in registered conveyancing. It is true that defective plans or the absence of plans in unregistered conveyancing often pose considerable problems of identification when land comes to be registered, but the registered system seems to us well designed to resolve these problems and to ensure that they do not recur.

[21]However, if title is shown to the soil of a road or the bed of a river, this may be included in the registration; and if the deeds contain a declaration as to the ownership of a boundary feature, such as a wall or fence, this will normally be recorded on the register. See also para. 7 of Appendix 3 below.

[22]L.R.R. 1925 r. 277; see also r. 278(1).

[23]Annual Report of the Chief Land Registrar 1982–1983, para. 10.

[24]In addition to the criticisms mentioned in the following paragraphs we deal in Appendix 3 below with certain specific criticisms relating to Land Registry mapping practice. These are:—(i) that Ordnance Survey numbers and acreages are not shown; (ii) that "T" marks are not invariably shown on filed plans; and (iii) that information about the ownership of boundaries is often lost on first registration.

2.20 It cannot be said, however, that *boundary* problems can be resolved with the same facility. Boundary disputes are both a source and a product of ill-feeling between neighbours; and we have no doubt that the vagueness with which boundaries have traditionally been defined is an important contributory factor to these disputes. In this context, it is interesting to contrast the attitudes of the Victorian era with those of today. In 1870 the Royal Commission on the Operation of the Land Transfer Act[25] had this to say:—

> ". . .the attorney or land agent, seeing with his own eyes and communicating directly with the person in possession, is in the vast majority of cases satisfied that his employer is getting the thing he contracted to have, and the history of which is narrated in the abstract of title. If there is any border land over which the precise boundary line is obscure, it is usually something of very trifling value, and the purchaser is content to take the property as his vendor had it, and to let all questions of boundary lie dormant."

In recent years a less complacent view has been expressed. In 1979 the Royal Commission on Legal Services said:—

> "Whether a title is registered or unregistered, one of the most fruitful sources of dispute and litigation relates to boundaries."[26]

and in his Fifth Annual Report[27] the Lay Observer appointed under the Solicitors Act 1974 commented in these terms:—

> "As a layman, I have been surprised by the frequency of these disputes and I have been appalled by the extreme bitterness which they so often generate. In a significant proportion of these cases the legal costs borne by the parties in dispute are out of all proportion to the value of the property concerned; indeed not infrequently the amount of land in dispute is measured in inches rather than feet, certainly less than the width of a line on a large scale plan."

2.21 The fact that most conveyancing is now concerned with small plots in densely populated urban areas rather than with the broader acres to which the 1870 Commission were directing their main attention helps to explain this difference of attitude. The importance of precisely recorded dimensions is greater than it used to be. The question therefore arises whether, in modern conditions, the general boundaries rule[28] remains satisfactory in its operation.

Merits of the General Boundaries Rule

2.22 It may be helpful first to put the rule in its historical context.[29] In this country it has not been the traditional practice for the boundaries of land in different ownerships to be settled on the ground. In 1862, when land registration was first introduced into English law, it was enacted[30] that the exact

[25]C.20, para. 45. This was the Act which was later entitled the Land Registry Act 1862 (see Short Titles Act 1896).
[26]Report (Cmnd. 7648), Annex 21.1, para. 10.
[27]1979 (1980) H.C. 507, para. 19.
[28]See para. 2.17 above.
[29]A more detailed historical account is given in paras. 14–20 of Working Paper No. 45.
[30]Land Registry Act 1862, ss. 7, 10. See n. 25 above.

boundaries of registered property be shown. This necessarily involved a detailed survey. Moreover, it was impossible to fix the boundaries of the plot to be registered without ascertaining the boundaries (and thus also investigating the title) of all adjoining land. The cumbersome and expensive process of identifying and establishing boundaries in this way contributed in large measure to the failure of the 1862 Act.[31] The 1870 Royal Commission[32] concluded that it was undesirable to force people, as a condition of registration, to have their boundaries defined:—

> "It is clearly very onerous to the registering owner. And it seems very vexatious to others, that they should be compelled to watch a legal process and perhaps to adjust an undefined boundary, because one of their neighbours wants to register his title."[33]

2.23 Following the recommendation of the Commission,[34] the requirement that all registered boundaries be fixed was removed by the Land Transfer Act 1875,[35] and the substance of the general boundaries rule now incorporated in rule 278 was first given expression in 1898.[36]

2.24 The 1870 Commission gave the fact that the precise fixing of boundaries was rarely of any utility as one of its reasons for abandoning insistence on fixed boundaries.[37] We doubt whether this reason is quite as convincing as it was. It seems to us that the basic problem is that in England and Wales the principle that boundaries are not precisely defined has for centuries been fundamental to the conveyancing process. It follows that the compulsory fixing of boundaries would necessarily involve provoking disputes. The Lay Observer has put the point in this way:—

> "It seems to me that any attempt to introduce a more precise system of recording land holdings would be very likely to stimulate a large spate of the very disputes which the changes were designed to prevent. Landowners who are at present quite content with the apparent boundaries of their properties might well, if asked to agree a more precise delineation, question whether their apparent boundaries were right and engage in litigation if they thought they were wrong."[38]

A further difficulty is that precise information concerning boundaries is not usually available at the time of registration, and in many cases adjoining titles are derived from different sources so that there is inconsistency between the respective deed plans.

2.25 If boundaries are to be fixed, notice clearly has to be served on all neighbouring owners and their titles have to be investigated. The fixing of boundaries, not only on all first registrations but also on many dealings with registered land, would involve an enormous amount of work for the Registry,

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[31]Between 1862 and 1875 there were 650 registrations: see (1983) 127 S.J.3.
[32]See para. 2.20 above.
[33]Report (C.20), para. 80
[34]*Ibid.*, para. 95 IX.
[35]Section 83(5).
[36]Land Transfer Rules 1898 (S.R. & O. 1898/575), r. 213 made under the Land Transfer Act 1897.
[37]Report (C.20), para. 45. See para. 2.20 above.
[38]Fifth Annual Report 1979 (1980) H.C. 507, para. 19.

but without commensurate return because the existence of the general boundaries rule means that land can be brought onto the Register without costly surveys or any elaborate investigative procedure. The rule also facilitates the work of mapping in the Registry; a return to a system of registration with precise and accurate boundaries would seriously hamper the work of bringing new land onto the Register. We regard that as being far too high a price to pay for the somewhat nebulous benefits to be derived from a reversion to the system of fixed boundaries. There are clear advantages in getting land onto the Register as soon as possible, not only to facilitate and simplify conveyancing, but also to secure the real advantages of superior identification which the registered system provides.

2.26 We have seen that there still remains a procedure for fixing boundaries, but that it is rarely used.[39] Would this procedure be of greater use if it were simplified? In paragraphs 30–34 of Working Paper No. 45 we examined the procedure in some detail. We provisionally concluded, at paragraphs 35–6:—

> "Although the procedure for fixing boundaries may seem to be over-elaborate and expensive, we cannot see how it could, in practice, be simplified without putting the rights of third parties in jeopardy. It seems to us essential that adjoining owners and occupiers should be notified. Tracing them and trying to obtain their agreement are likely to be time-consuming and troublesome factors—all the more so if, as is possible, they do not wish to co-operate. . .
>
> Our provisional conclusion is that the existing procedure for fixing boundaries to be employed at the request and expense of an applicant should be retained. It is the same conclusion as that reached by the Scott Committee who stated that they thought the procedure (embodied in a set of rules almost identical to those now in force) was 'convenient and sufficient, and should be retained'[40]."

2.27 We have received no evidence which would justify a departure from this provisional view. The best chance of achieving progress is by improvements in conveyancing practice. If (as is common in modern estate developments) there is a properly surveyed development plan, the likelihood of boundary disputes arising is much reduced provided actual development accords with that depicted on the transfer plan.[41] Wherever a holding of land is split into smaller parcels it is desirable that a professional survey be undertaken and that a proper plan be provided. We are sure that this would avoid many boundary disputes.

Conclusion

2.28 We recommend that the general boundaries rule should be retained. We consider that the likelihood of boundary disputes can best be reduced by improvements in conveyancing practice.

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[39]See para. 2.8 above.

[40]Fourth Report of the Acquisition and Valuation of Land Committee on the Transfer of Land in England and Wales (1919) Cmd. 424, Recommendation No. 23, p. 18.

[41]The possibility of a claim in negligence against a vendor (see n. 4 above) may help to encourage the production of properly surveyed plans.

PART III

CONVERSION OF TITLE

Introduction

3.1 The Act provides not merely for the registration of freehold and certain leasehold[1] titles but also for every title to be given an appropriate class or grade, according to its quality. The Act also provides for the conversion (or up-grading) of one class of title to a better class. In this Part we briefly describe the classes of title, and we discuss the question whether the system of classes should be retained. We then consider and criticise the statutory provisions for the conversion of title. Finally, we make recommendations designed to simplify the system and clarify the law. The comparative tables set out at paragraph 3.18 below summarise the principal effects of the law relating to conversion as it is and as we propose it should be.

3.2 In our Working Paper No. 32 the topic of conversion of titles arose in the context of our discussion of leases, and our comments (in paragraphs 58 and 59) were confined to one aspect of the topic. However the provisions of the Act (which are contained in section 77 set out in Appendix 2 below) relating to the conversion of leaseholds are intermingled with those relating to the conversion of freeholds, and we decided to look at these provisions as a whole. We found the provisions to be so ill-arranged and difficult that we resolved to recommend that they should be replaced by a simpler and more logical statement.

Classes of title

3.3 The Act provides for four classes of title: absolute, good leasehold, possessory and qualified, with the result that a registered title may fall into one of seven categories:—

absolute freehold
possessory freehold
qualified freehold
absolute leasehold
good leasehold
possessory leasehold
qualified leasehold.

Generally the effect of registration by reference to a class of title is to define the extent to which the title may be relied upon by a purchaser for value, and correspondingly the extent to which it has the backing of the state guarantee of title[2] provided by the Act: plainly a purchaser who knows that the title is subject to a possible adverse claim cannot complain if such a claim is made and cannot expect to be indemnified for his loss if the claim is successful.

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[1]See Part IV below.
[2]See para. 1.5 above.

3.4 The particular effects of registration in one or other of the seven categories of title listed above are stated in sections 5–7 and 9–12, which are set out in Appendix 2 below. For present purposes a short sketch of these provisions is sufficient:—

(1) Classes of freehold title
An *absolute freehold title*[3] is subject only to whatever entries on the register and whatever overriding interests[4] affect that title. A *possessory freehold title*[5] differs from an absolute freehold title only in that it is also subject to the possibility of some other third party claim. A *qualified freehold title*[6] differs from an absolute freehold title only in that it is subject to some specific and identifiable defect which is recorded on the register.

(2) Classes of leasehold title
An *absolute leasehold title*[7] is subject only to whatever entries on the register and whatever overriding interests affect that title or a superior title, and to the provisions of the lease itself. A *good leasehold title*[8] differs from an absolute leasehold title primarily in that it is subject to the possibility that the lessor's title to grant the lease is defective. A *possessory leasehold title*[9] differs from an absolute leasehold title only in that it is subject to the possibility of some other third party claim. A *qualified leasehold title*[10] differs from an absolute leasehold title only in that it or the superior title is subject to some specific and identifiable defect which is recorded on the register.

The decision in each case as to the class of title to be granted is a matter for the Registrar, acting on appropriate evidence and in accordance with the requirements of the Rules.[11]

Should the classes of title be retained?

3.5 The categorisation of inferior titles dates back to 1870 when a Royal Commission advocated a system not only in which the Registrar would have a discretion to accept titles which were technically imperfect but also in which 'inferior' types of title, limited in their effect, could be granted in particular circumstances.[12] The existence of inferior titles in the registered system reflects the different degrees of indefeasibility of title in English land law generally. For example, a title which is in the process of being acquired by adverse possession will not be as secure as a title which has been granted by the true owner.

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[3]Section 5.
[4]I.e. one of the interests (specified in s. 70(1)) not entered on the register but subject to which registered dispositions take effect. See para. 4.18 below.
[5]Section 6.
[6]Section 7.
[7]Section 9.
[8]Section 10.
[9]Section 11.
[10]Section 12.
[11]See sections 4 and 8, and rules 19–47.
[12]Report of the Royal Commissioners appointed to inquire into the Operation of the Land Transfer Act (1870) C.20, paras. 75–78.

3.6 *Possessory title.* It can be argued that the need for the possessory class of title no longer exists. First, its original justification was apparently to offer the opportunity of registration without the need to produce a full title for examination, possibly to encourage applications at a time when registration was neither popular nor compulsory. It was rightly thought that the requirement under the Land Registry Act 1862 to deduce a technically perfect title going back at least 60 years (the period then required at common law) was a great deterrent to applicants for registration. These considerations, it can be argued, no longer apply. Secondly, possessory titles now form only a small proportion of all titles registered, and the Chief Land Registrar has wide powers to accept titles which are technically less than perfect and to grant absolute titles if he regards the case as one where the holding will not be disturbed.[13] Since this is the case, it can be argued, all titles which fail to meet this standard should be rejected.

3.7 Against these arguments has to be set the long-term benefit of bringing land onto the register even in those cases where it is not immediately possible to grant absolute title. Imperfect titles include those where all or some of the deeds have been lost, those founded on adverse possession and also cases where the title is obviously technically defective but highly unlikely to be impugned. As these defects can make a title substantially unmarketable while unregistered, the facility afforded by the grant of a possessory title which may later be converted into absolute or good leasehold is one of value and importance. The importance of getting land onto the register and the assistance which registration with possessory title gives to imperfect titles convinces us that this class of title should continue to be available.

3.8 *Good leasehold title.* The Registrar is clearly in no position to grant and guarantee absolute title to a lease if he has not seen the reversionary title or titles and has therefore been unable to satisfy himself that the lease was validly granted and to ascertain the covenants and other burdens which affect the reversionary title and by which the lessee may be bound.[14] Where the reversion is registered with absolute title the Registrar can obtain this information by reference to the register itself, and on satisfying himself as to the validity of the grant and the nature of the covenants, etc., he can register the lease with absolute title. He may also be able to do this where although the reversionary title is unregistered the lessee is able to produce it. But he cannot do it where the reversionary title is unregistered and the lessee cannot produce it: such cases do arise, because in the absence of the lessor's agreement the lessee has no right to call for the lessor's title[15] and because even if he cannot ask for it he is bound by any registered covenants which affect it.[16] In these cases the grant of an absolute title would plainly not be justified. On the other hand the grant of a possessory title would overstate the degree of risk to the lease, for it would imply the possibility of third party claims wholly unconnected with the uncertainty regarding the lessor's title. In our view therefore the grant of good leasehold titles should continue, for this class of title rightly reflects the degree of weakness attributable to a leasehold title when the reversionary title cannot be inspected.

[13]Section 13: see Ruoff & Roper, p. 78.
[14]See *White* v. *Bijou Mansions Ltd.* [1937] 1 Ch. 610.
[15]Law of Property Act 1925, s. 44. The section does not however prevent an underlessee from calling for the title to the lease from which his interest is immediately derived.
[16]*White* v. *Bijou Mansions Ltd.* [1937] 1 Ch. 610.

3.9 *Qualified title.* Qualified titles are extremely rare; we understand that a typical case for a grant in this class is where a breach of trust (for example, a sale by a trustee to himself) has occurred making the title voidable. There seem to us to be some advantages in providing for the grant of a title even though it is plainly defective, for it is always possible that the defect will be removed.[17] Despite the rarity of this class of title, therefore, we see no advantage to be gained in abolishing it.

3.10 The system of registered land is intended to improve the machinery for the transfer of land and not to alter the principles of land law. It is still possible for titles to exist which are technically not perfect. In our view the registered system should continue to reflect this, and the classes of title should be preserved.

Conversion of inferior titles

3.11 The facility of "conversion", by which an inferior title is converted to a better title, was inherent in the system of registration as conceived by the 1870 Royal Commission,[18] and it later came to be recognised, particularly by the Royal Commission on the Land Transfer Acts[19] that effective procedures for improving the quality of inferior titles ought to be provided. The latter Commission took evidence from the then Chief Land Registrar concerning the difficulties caused to lessees by their inability to call for the lessor's title.[20] They concluded that there were substantial risks to lessees of losing their title where the lessor had no power, or limited power, to make a valid grant, and they recommended that there should be provisions for good leasehold titles to "ripen" into absolute titles after the lapse of time. The Royal Commission on the Land Transfer Acts and the Acquisition and Valuation of Land Committee[21] also made recommendations for the conversion of possessory titles.

3.12 The recommendations mentioned in paragraph 3.11 above are substantially embodied in section 77, which (together with rules 48 and 49) is set out at Appendix 2 below. Section 77 provides for two kinds of conversion: first, where title of lesser quality than absolute is registered and subsequently it becomes possible to prove title or to remove a defect, and secondly where lapse of time is thought sufficient to allow the Registrar to take the risk of conversion without being satisfied as to title. The detailed provisions are difficult to unravel, but they can be roughly summarised[22] as follows:—

(i) *Good leasehold title* may be converted to absolute title—
   (a) on a transfer for value, if the Registrar is satisfied as to the title, whether or not the transferee consents (s. 77(2));

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[17]See also the arguments at para. 3.7 above in relation to possessory titles.
[18]See para. 3.5 and n. 12 above. "The Registrar might accept title not clearly good, but capable of becoming so by lapse of time, or the happening of certain events." ((1870) C.20, para. 78. See also para. 75.)
[19]See especially the Second and Final Report (1911) Cd. 5483, paras. 61–63. These Acts were the Land Transfer Acts 1875 and 1897.
[20]See para. 3.8 above.
[21]See Fourth Report of the Acquisition and Valuation of Land Committee on the Transfer of Land in England and Wales (1919) Cmd. 424, Recommendation No. 4, p. 14.
[22]See also the comparative tables at para. 3.18 below.

(b) on any occasion, if registered for ten years or more, at the request of the proprietor in possession (s. 77(4)).

(ii) *Possessory title* may be converted to absolute or good leasehold title—

(a) if registered before 1926, on any occasion if the Registrar is satisfied as to title, whether or not the proprietor consents (s. 77(1));

(b) on a transfer for value, if the Registrar is satisfied on documentary evidence, whether or not the transferee consents (s. 77(2), (3)(a));

(c) on any occasion, if registered for fifteen years or more (freehold) or ten years or more (leasehold), and the proprietor is in possession (s. 77(3)(b)). In these cases conversion cannot be refused, but in the case of possessory leasehold conversion will only be to good leasehold title.

(iii) *Qualified title* may be converted to absolute or good leasehold title on a transfer for value, if the Registrar is satisfied as to the title on documentary evidence, whether or not the transferee consents (s. 77(2), (3)(a)).

Criticisms of the law relating to conversion of title (Land Registration Act 1925, s. 77)

3.13 The most substantial criticism of section 77 relates to subsection (4), which may be taken to imply that good leasehold title can be converted to absolute title without production of the reversionary title. Two particular practical difficulties arise, to which we have referred at paragraph 3.8 above. First, if the Registrar cannot see the lessor's title he has no means of discovering whether the lessor had power to grant the lease. Secondly, if any reversionary title is not registered, the Registrar will not necessarily know of restrictive covenants and other burdens which affect it and which may also affect the leasehold. We took the view in Working Paper No. 32[23] that this was unsatisfactory, and we understand that the Land Registry agree. Indeed it has become the practice of the Registry to insist on the lodging of evidence[24] as to the reversionary title when an application for conversion of a leasehold title is made.

3.14 Another criticism concerns the length of the periods in sections 77(3)(b) and section 77(4), after which a possessory or good leasehold title can be converted into good leasehold or (as the case may be) absolute title without documentary evidence. There does not seem to be any logical explanation for the choice of 15 years for freehold property and 10 years for leasehold,[25] or any particular reason for retaining them. It seems to us somewhat paradoxical that whilst a squatter on registered land may apply for an absolute title after the lapse of the standard limitation period of 12 years,[26] a registered proprietor with a possessory freehold title may have to wait 15 years before converting his title to an absolute one. On the other hand the 10-year period for leaseholds seems to us to be rather short, at least for cases in which the title to be converted was not itself granted on the basis of a substantial period of undisputed possession.

[23]Paras. 58 and 59.

[24]In particular, details of all incumbrances affecting the reversion are called for, together with evidence that at the date of the grant of the lease the lessor was not debarred from exercising his leasing powers, e.g. by the terms of a mortgage.

[25]These periods were suggested by the Royal Commission on the Land Transfer Acts and endorsed by the Acquisition and Valuation of Land Committee: see (1911) Cd. 5483, paras. 61–63 and (1919) Cmd. 424, Recommendations Nos. 4–6, pp. 14, 15.

[26]Limitation Act 1980, s. 15: Land Registration Act 1925, s. 75.

3.15 More general criticisms of section 77 are that it is lacking in clarity, that it includes several procedural provisions which would more appropriately be dealt with by rules, and that the provisions in subsections (1) and (3)(b) regarding possessory titles granted over 50 years ago are now in practice obsolete. We do not accept that any statutory provision need be so difficult to read and to grasp as a coherent whole.

Recommendations for reform

3.16 In place of the existing provisions of section 77(1) to (4) we propose a simple scheme, the general principle of which is that if the Registrar is satisfied as to an inferior title it should be capable of conversion. The only qualifications we propose are first, that a leasehold title should not be convertible to absolute unless the Registrar is also satisfied as to the reversionary title, and secondly, that possessory titles should remain capable of ripening into absolute or good leasehold titles after a period of years.

3.17 Our detailed recommendations are as follows:—

(1) *Any inferior freehold title should be convertible to absolute title at any time if the Registrar is satisfied as to the title.*

(2) *Any inferior leasehold title should be convertible to absolute title at any time if the Registrar is satisfied both as to the leasehold title and as to any reversionary title; and the provisions of section 77(4) for the conversion of good leasehold (after lapse of time) without evidence as to title should be removed.*

In providing that where the Registrar is satisfied as to the relevant title conversion may take place at any time, these recommendations will remove the distinction drawn in section 77(1) and (2) between pre-1926 cases (where conversion may take place at any time) and subsequent cases (where it is to take place only on a transfer for value). We realise that the present requirement in section 77(2) of there being a transfer on sale may mean that before the application for registration there has been an investigation of the title by a solicitor on which the Registrar can rely. If however the title has to be deduced to the Registrar in order to convert we do not see why conversion should not be made capable of taking place at any time, though we accept that it may be more convenient for conversion applications to be handled at the same time as application is made for registration of a transfer. It does seem inherently more likely however that *before* a purchaser buys land registered with a possessory title he will want the proprietor to convert at his own expense, if he can.

We do not think that recommendation (2) above will cause hardship because, as we have noticed,[27] it is already the practice of the Registry to ask for evidence of matters affecting the reversionary title. We found much support for this proposal from those we consulted and we believe that it will not merely ensure that the register shows all matters properly affecting the title, thus reducing the risk of indemnity claims, but will also ease the Registry's task in relation to these applications.

(3) *A single period of 12 years*[28] *should be substituted for the periods of 15 and 10 years in section 77(3)(b) after which possessory freehold and leasehold titles may be converted without documentary evidence to absolute and good leasehold titles respectively.*

[27]See para. 3.13 above.

[28]Equivalent to the standard limitation period barring actions for the recovery of land. See Limitation Act 1980, s. 15.

We do not think that the distinctions made by section 77(3)(b) between the periods for freehold and leasehold conversions and between those periods and the standard limitation period have any remaining significance or advantage.

(4) *Section 77 should be redrafted to give effect to the recommendations at (1) to (3) above and otherwise to clarify and modernise the existing provisions.*

3.18 The following tables illustrate the effects of our proposals in comparison with the present law.

Conversion of inferior titles—a general guide

The present law

Nature of conversion	Requirements	Provision of the Act	Occasion
Good leasehold → Absolute Possessory / Qualified } Good leasehold or Absolute	Registrar to be satisfied as to title	77(2)	Transfer for value
Possessory freehold → Absolute	Title registered for 15 years or more	77(3)	Any occasion (on application)
Possessory leasehold → Good leasehold	Title registered for 10 years or more		
Good leasehold → Absolute	Title registered for 10 years or more	77(4)	Any occasion (on application)

The new scheme

Nature of conversion	Requirements	Occasion
Possessory freehold / Qualified freehold } Absolute	Registrar to be satisfied as to title	On transfer for value or (on application) any occasion
Good leasehold / Possessory leasehold / Qualified leasehold } Absolute	Registrar to be satisfied (i) as to title (ii) as to reversionary title	
Possessory freehold → Absolute Possessory leasehold → Good leasehold	Title registered for 12 years or more	

PART IV

THE TREATMENT OF LEASES

4.1 The treatment of leases[1] in the Act is unnecessarily complicated. We begin this Part of the Report with an outline of the main problems requiring solutions, followed by a statement and analysis of the relevant law. We then consider the case for reform. Finally, we make recommendations designed to modernise and simplify the system. The comparative tables set out at paragraph 4.40 below summarise the principal effects of the law as it is and the law as we propose it should be.

Introduction—an outline of the problems

4.2 The problems with which we are concerned fall into two groups. The first group relates to the substantive registration of leases, that is to say the registration of title to leases not yet registered.[2] The second group relates to the protection of leases against purchasers of the freehold or leasehold reversion.

4.3 These problems have nothing to do with the classes of title or the conversion of title discussed in Part III above. Nor do they concern what may be termed "equitable leases", that is to say agreements for leases[3] and interests which are for fixed terms but which, through lack of formality or for some other reason, are not clothed with the legal estate.[4] These equitable interests fall within the statutory category of minor interests[5] under the Act.

Problems relating to the registrability of leases

4.4 Which leases are registrable? The question has no easy answer. The registrability of freeholds gives rise to no special difficulties. The registrability of leaseholds, however, is more complex. In order to qualify for registration the lease must be for more than 21 years and must not be inalienable.[6] If it is a lease granted out of a registered reversion (sometimes known as a "dispositionary lease"[7]) it *must* be registered. If however it is a lease granted out of an unregistered reversion (which we may call a "non-dispositionary lease") its registrability is subject to a combination of restrictions according to the length of the lease itself, the length of the unexpired term, whether or not the land is in a compulsory area[8] and whether or not it is a long lease of a council flat or the like. In some cases it must be registered, in others it must not be registered, and

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[1]In this part of the report the term "lease" includes sub-lease and excludes leases which are equitable interests (see para. 4.3 below).

[2]A lease, when registered, is registered with an individual title. Thus a leasehold title may be registered although the freehold (or superior leasehold) has not been registered, and where the freehold (or superior leasehold) has been registered the lease constitutes a separate title from that to the reversion.

[3]See para. 4.38 below.

[4]See Megarry and Wade, *The Law of Real Property* 4th ed. (1975), pp. 623–629.

[5]Section 3(xv); see also sections 101–109. The protection and priority of minor interests, which we dealt with in our Working Paper No. 67, is a topic outside the scope of this report.

[6]For the meaning of "inalienable" in this context, see n. 19 below.

[7]See for instance the Chief Land Registrar's Annual Report 1982–1983, para. 7, and Ruoff & Roper, pp. 447–450.

[8]See para. 4.10 below.

in yet others registration is optional. Although the majority of the legal complications in the registrability of leases only affect non-dispositionary leases, the fact that the rules relating to these leases and the rules relating to dispositionary leases are different is itself a complicating factor. We shall expound these complications in two ways, first in our statement and analysis of the law at paragraphs 4.7 to 4.15 below and secondly by means of the diagram at paragraph 4.16 which is designed for ready reference on questions of registrability.

4.5 The problems relating to the registrability of leases are of two kinds. The first kind of problem concerns the merits of the existing restrictions on the registration of leases. The second concerns the complications created by the multiplicity of these restrictions. We shall consider whether and by what means these restrictions and complications should be reduced.

Problems relating to the protection of leases

4.6 Where a lease is registered, the legal estate is vested in the registered proprietor.[9] The registration of the lease, however, does not protect it against a *bona fide* purchaser for value (including a mortgagee) of the reversion if the reversion itself is registered, for purchasers of registered freehold and leasehold estates take free from every lease affecting the purchaser's title, unless the lease is protected by notice on that title or is an "overriding interest".[10] Most leases are in practice protected without the lessee having to take any steps for that purpose. There is however an anomalous class of leases which do not obtain this automatic protection. We shall consider whether such protection can be conferred on this class without prejudice to purchasers.

Registration of leases

The statutory provisions

4.7 The main statutory provisions relating to the registration of leases are sections 8, 19(2), 22(2), 48 and 123 of the Act, section 1(2) of the Land Registration Act 1966 and section 20(1) of the Housing Act 1980. These provisions are reproduced in Appendix 2.

4.8 Taken together these provisions may be regarded as a sort of code prescribing the circumstances in which the registration of leases takes place. The code is, however, a complex one, the complexity resulting not only from the interaction of sections of the 1925 Act, but also from the fact that these sections are overlaid by separate provisions, in the Land Registration Act 1966 and the Housing Act 1980, the one restricting and the other extending registration in non-compulsory areas.

4.9 We have indicated above[11] that most of the complications affect leases granted out of unregistered titles ("non-dispositionary leases"). Since the complications to some extent result from the distinction between compulsory and non-compulsory areas, we shall now give a brief account of this distinction.

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[9]Section 69(1).
[10]See para. 4.18 below.
[11]Para. 4.4.

The distinction between compulsory and non-compulsory areas

4.10 Under section 120 Orders in Council may declare areas[12] in which registration of title is to be "compulsory on sale". Under section 123 the effect of such an Order is that in these areas registration is compulsory not only on the sale of a freehold but also on the grant or assignment of certain leases.[13] In addition, the Act makes provision[14] for voluntary applications (whether or not on sale, grant or assignment) for the registration of title to a registrable estate in any area; but the Land Registration Act 1966[15] provides that in non-compulsory areas applications for the registration of non-dispositionary leases can only be entertained in classes of cases specified by the Registrar;[16] and the effect of sections 19(2) and 22(2)[15] of the Act and section 20[15] of the Housing Act 1980 is that on grant the registration of certain leases is compulsory in *all* areas. We may summarise these provisions in this way: in *compulsory areas* registration of a registrable estate is compulsory on sale, etc. and may be obtained by voluntary application at any time, and in *non-compulsory areas* registration of a registrable estate in some cases is compulsory on sale and in specified cases may be obtained by voluntary application at any time. The terms "compulsory area" and "non-compulsory area", therefore, do not in fact reflect a simple distinction between areas where registration is compulsory and areas where it is not.

4.11 The effect of the statutory provisions mentioned in paragraph 4.7 above is to establish three categories of lease: leases which cannot be registered, leases which must be registered, and leases the registration of which is optional. We shall now examine how these categories are made up, with reference to the relevant enactments, the effect of which is illustrated by the diagram at paragraph 4.16 below.

[12]For these areas see the Registration of Title Order 1977 (S.I. 1977/828).

[13]For the nature of these leases see para. 4.14 below.

[14]Sections 4 and 8.

[15]Reproduced in Appendix 2 below.

[16]The cases where the Registrar will accept applications for voluntary registration, which are set out in detail in Practice Leaflet No. 12, published by H.M. Land Registry, are as follows:—

1. Where all or some of the title deeds have been destroyed by enemy action, by natural disaster (such as flooding) or by fire or have been destroyed or lost as a result of theft or other criminal act.
2. In all other cases of loss or destruction of title deeds, whether total or partial, provided that the loss or destruction occurred whilst the title deeds were in the custody of (or in the post from) a solicitor, building society or clearing bank.
3. In respect of developing building estates comprising 20 or more houses or house plots or purpose-built flats or maisonette developments of a comparable size, or industrial and commercial developments of 20 plots or more, provided that a certificate is furnished in Land Registry Form C168 or in such form as may from time to time be promulgated.
4. By local authorities and development corporations in respect of building land, provided that a statement is furnished:
   either (a) that the authority will sell the freehold of new dwellings, built or to be built on the land sought to be registered, to individual purchasers, or will grant leases for 90 years or more of those dwellings;
   or (b) that the authority will sell the land to developers who will thereafter sell or lease individual houses for like purposes.
5. By proprietors of registered leasehold titles for the first registration of the title to their immediate reversion where merger is to take place.

The suspension of voluntary registration in non-compulsory areas is primarily designed to enable the resources of the Land Registry and the Ordnance Survey to be concentrated on implementing the planned extension of compulsory registration. For an account of the background to the 1966 Act and the practice under it, see Ruoff & Roper, pp. 182–184.

Leases which cannot be registered

4.12 Four [17] kinds of lease cannot be registered:—

(i) *Leases granted for 21 years or less.*[18]

(ii) *Inalienable leases.*[19]

(iii) *Leases granted out of unregistered titles and having 21 years or less to run.*[20]

(iv) *Most leases granted out of unregistered titles in non-compulsory areas.*[21]

The classes of lease listed in sub-paragraphs (i)–(iv) above are overlapping: for example, an inalienable lease granted for 21 years out of an unregistered title in a non-compulsory area falls within all four classes.

4.13 Sub-paragraphs (iii) and (iv) above call for special comment. As regards sub-paragraph (iii), where a lease is granted out of an unregistered reversionary title it is clear from section 8(1)(a) that if it has only 21 years or less to run it cannot be registered. Where a lease is granted out of a registered reversionary title, however, the position is less obvious, for whilst section 8(1) excludes from registration leases with 21 years or less unexpired, section 19(2) (which deals with dispositions by registered proprietors) seems to confine the exclusion to leases *granted* for 21 years or less. We do not think that section 8(1) applies to leases (or other dispositions) by registered proprietors,[22] though in practice, in the case of applications for the registration of leases granted out of registered reversionary titles, where only 21 years or less are unexpired regard is had to the legislative policy of restricting the registration of short leases and these applications are not necessarily granted without question. As regards sub-paragraph (iv) above, an application for the registration of a lease granted out of an unregistered title in a non-compulsory area (other than a long lease granted under Part I of the Housing Act 1980[23]) is always a case of voluntary registration, so that registration of these leases may be precluded by the 1966 Act.[24] On the other hand leases for more than 21 years granted out of registered titles, and long leases granted under Part I of the Housing Act 1980 *must* be registered,[25] and the 1966 Act restrictions do not apply[26] to them even if the land is in a non-compulsory area.

[17]There is strictly, a fifth case, a lease by way of mortgage where there is a subsisting right of redemption (s. 8(1)), but this is relevant to the law of mortgages rather than to the law of leases.

[18]Sections 8(1), 19(2)(a) and 22(2)(a). See however the Housing and Building Control Bill, noted at para. 4.41 below.

[19]"Leasehold land held under a lease containing an absolute prohibition against all dealings therewith inter vivos shall not be registered . . .": s. 8(2). We understand that the Registry treats an unqualified covenant against assignment and sub-letting as a sufficient prohibition for this purpose. Whether or not s. 8(2) was directed only at leases granted out of unregistered titles, it has traditionally been treated as prohibiting registration of all inalienable leases.

[20]Section 8(1). See however the Housing and Building Control Bill, noted at para. 4.41 below.

[21]See para. 4.10 above.

[22]In support of our view it may be said that s. 8(1) uses the language of unregistered conveyancing and that paragraph (a) of the subsection contemplates the existence of legal leasehold estates, which in the case of registered land are not created until registration under s. 19(2), and that s. 19(2) as the more specific provision must be taken to prevail over s. 8(1) where the two conflict. See Key and Elphinstone's *Precedents in Conveyancing* 15th ed. (1954) Vol. 3, p. 115 and Hayton, *Registered Land* 3rd ed. (1981), p. 44. Cf. Ruoff & Roper, p. 449.

[23]Reproduced in Appendix 2. See also para. 4.14 below.

[24]See para. 4.10 above.

[25]See para. 4.14 below.

[26]The 1966 Act itself makes this clear, for it applies to applications under s. 8 of the 1925 Act but not to applications under s. 19 or 22. See Appendix 2 below.

Leases which must be registered

4.14 In four cases leases (other than inalienable leases[27]) *must* be registered:—

(i) on grant, a lease for more than 21 years granted out of a registered title;[28]

(ii) on grant in a *compulsory area,* a lease for 40 years or more granted out of an unregistered title;[29]

(iii) on assignment in a *compulsory area,* a lease with 40 years or more unexpired.[30]

(iv) on grant in a *non-compulsory area,* a long lease granted under Part I of the Housing Act 1980.[31]

In saying that in these cases leases *must* be registered we mean that registration is necessary if the lessee is to secure the legal estate.[32]

Leases the registration of which is optional

4.15 Although at first sight section 8(1)[33] appears to permit the registration of all leases with more than 21 years to run, this option is effectively cut down by other provisions, of which some prohibit registration altogether[34] and others make it mandatory.[35] As a result, the registration of a lease is optional in only two cases:—

(i) in *compulsory areas,* where the lease (not being an inalienable lease) was granted out of an unregistered title[36] and has more than 21 years to run;[37]

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[27]See para. 4.12 above.

[28]Sections 19(2) and 22(2). The provisions of the 1966 Act regarding the suspension of voluntary registration clearly do not apply (see n. 26 above).

[29]Section 123(1). The subsection seems inapplicable to the grant of leases out of *registered* reversions, which are covered by ss. 19(2) and 22(2) (see sub-para. (i) above). The precise effect of this provision has been a matter of academic controversy; see e.g. (1968) 32 Conv. (N.S.), pp. 391–411; Barnsley and Smith, *Barnsley's Conveyancing Law and Practice* 2nd ed. (1982), pp. 449–450; Farrand, *Contract and Conveyancing* 3rd ed. (1980), pp. 139–140; Ruoff & Roper, pp. 176–7.

[30]Section 123(1).

[31]Housing Act 1980, s. 20. These are leases of flats, for terms of 125 years or more, granted to secure tenants by local authorities and other authorities (see Housing Act 1980, Part I and Schedules 1–3). Under section 20 of the 1980 Act, these leases are compulsorily registrable on grant whether or not the reversionary title is registered and whether or not the flat is in a compulsory area. If granted in compulsory areas or out of registered titles these leases would, of course, have to be registered under the existing law (see sub-paras. (i) and (ii) of this para.). The novel effect of section 20 is to make the leases compulsorily registrable *in non-compulsory areas.* See also the Housing and Building Control Bill, noted at para. 4.41 below.

[32]See ss. 19(2) and 22(2) for the grant of leases out of registered reversions and s. 123(1) for the grant of leases out of unregistered reversions, and assignments of leases. Under ss. 19(2) and 22(2) the lessee does not obtain a legal estate until registration. Under s. 123(1) the lessee obtains the legal estate on the grant or assignment but the grant or assignment becomes void as to the legal estate if application for registration is not made within two months or, in special circumstances, an extended period.

[33]Reproduced in Appendix 2 below.

[34]See para. 4.12 above.

[35]See para. 4.14 above.

[36]The subsequent registration of the reversionary title makes no difference: the test is whether it was unregistered when the grant was made.

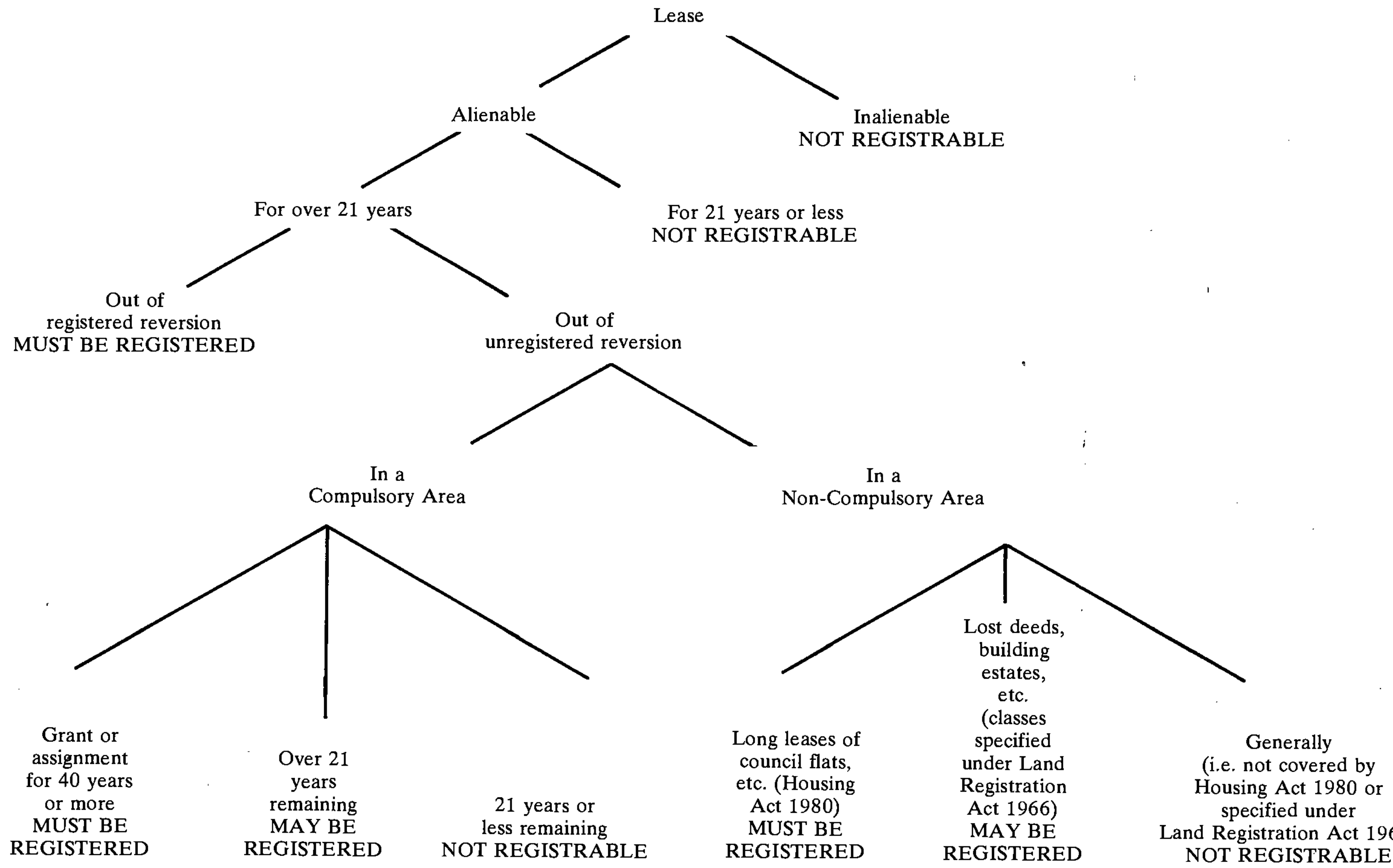
[37]This is the combined effect of ss. 8(1), 19(2) and 123(1) (see Appendix 2 below). If when the lease was granted or last assigned the area was compulsory and there were 40 years or more to run the lease was of course compulsorily registrable (see para. 4.14 above). See also the Housing and Building Control Bill, noted at para. 4.41 below.

(ii) in *non-compulsory areas,* where the lease (not being an inalienable lease) was granted out of an unregistered title,[36] has more than 21 years to run, and—
   (a) is in a class specified by the Registrar under the Land Registration Act 1966, and
   (b) is not a long lease granted under Part I of the Housing Act 1980.[38]

Registration of leases at a glance

4.16 The following diagram, which is based upon our statement and analysis of the relevant law at paragraphs 4.7 to 4.15 above, is designed to show at a glance the way in which the registrability of leases described above is dealt with in the present law.

[38]This is the combined effect of ss. 8(1) and 19(2) of the Land Registration Act 1925, s. 1(2) of the Land Registration Act 1966 and s. 20 of the Housing Act 1980 (see Appendix 2 below). See also the Housing and Building Control Bill, noted at para. 4.41 below.



Lease
Alienable
Inalienable
NOT REGISTRABLE
For over 21 years
For 21 years or less
NOT REGISTRABLE
Out of
registered reversion
MUST BE REGISTERED
Out of
unregistered reversion
In a
Compulsory Area
In a
Non-Compulsory Area
Grant or
assignment
for 40 years
or more
MUST BE
REGISTERED
Over 21
years
remaining
MAY BE
REGISTERED
21 years or
less remaining
NOT REGISTRABLE
Long leases of
council flats,
etc. (Housing
Act 1980)
MUST BE
REGISTERED
Lost deeds,
building
estates,
etc.
(classes
specified
under Land
Registration
Act 1966)
MAY BE
REGISTERED
Generally
(i.e. not covered by
Housing Act 1980 or
specified under
Land Registration Act 196
NOT REGISTRABLE

Protection of leases

The statutory provisions

4.17 Every lease, whether registered or not, needs protection against dealings with the lessor's title if that is registered, because the purchaser of a registered estate takes free of any lease affecting the title to that estate unless the lease is an *overriding interest* or is *noted on the register of title.*[39]

(a) *Protection "off the register" as an overriding interest*

4.18 Many leases are protected simply by their status as an *overriding interest,* that is to say one of the interests (specified in section 70(1)) not entered on the register but subject to which registered dispositions take effect.[40] For present purposes there are two relevant categories of overriding interest:—

(i) a lease for any term or interest not exceeding 21 years, granted at a rent without taking a premium.[41]

(ii) the rights of every person in actual occupation of the land or in receipt of the rents and profits, save where enquiry is made of such person and the rights are not disclosed.[42]

Although by definition an overriding interest is a matter which is "not entered on the register", some matters which are overriding interests *may* be entered on the register,[43] whereupon they cease to be overriding interests.

(b) *Protection "on the register" by notice*

4.19 There are three main situations in which a lease may be protected by notice on a registered reversionary title:—

(i) on first registration of the reversionary title;

(ii) on first registration of the lease;

(iii) where protection by notice is applied for.

In the first two cases registration of the notice is virtually automatic. In the first case, when applying for first registration of the reversionary title the applicant is required to disclose existing incumbrances[44] (which include leases), and these are entered on the register[45] by the Registrar. In the second case the Act[46]

[39]See para. 4.6 above. If the lease were defeated through a failure to note it on the register the lessee would have the financial backing of the "state guarantee" (see para. 1.5 above).

[40]Section 3 (xvi) (definition). Sections 5(b), 9(c), 20(1)(b) and 23(c) provide that, unless the contrary is expressed on the register, registrations and registered dispositions of freehold and leashold land are subject to overriding interests. See also s. 70(1).

[41]Section 70(1)(k). The term "lease" in this context does not include an agreement for a lease: *City Permanent Building Society* v. *Miller* [1952] Ch. 840. The word "premium" is used here as the modern equivalent of the word "fine" in the section.

[42]Section 70(1)(g). For a recent examination of this provision in a different context, see our report on *The Implications of Williams & Glyn's Bank Ltd.* v. *Boland,* (1982) Law Com. No. 115, para. 12. This category is certainly wide enough to include the rights of those occupying under an agreement for a lease. We propose to discuss the provision in a later report: see para. 4.38 below.

[43]See s. 70(3) and n. 45 below.

[44]See Ruoff & Roper, p. 201.

[45]Rule 40. Although overriding interests are not 'incumbrances' within the Act (see s. 70(1)), in some cases they must be entered on the register (see r. 41), and in the particular case of leases which are overriding interests the Registrar has a discretion (see s. 70(3) and r. 197). The Registrar is not required to enter notice of rights or interests which appear to him trivial or obvious or the entry of which is likely to cause confusion or inconvenience (r. 199).

[46]Sections 19(2) and 22(2).

requires the lease to be completed by registration and "notice thereof shall also be noted on the register".[47] The third case is governed by section 48, which enables any lessee of a lease which is not an overriding interest[48] to apply to register notice of that lease. These applications may be necessary for the lessee's protection in those cases where the lease is neither an overriding interest nor registrable, such as a lease granted for a term of 21 years wholly or in part for a premium,[49] or an inalienable lease granted for a term exceeding 21 years.[49]

The case for reform

4.20 There seem to us to be three main principles which should be applied in assessing the treatment of leases in the registered system and in considering proposals for reform. First, the *primary purpose of registration is to facilitate dealings with the registered title.* It follows from this principle that in considering which leases should be registrable the primary question is whether the lease is likely to be transferred. It also follows that the registration of leases is not to be recommended in cases where the process of registration would impose such a burden upon the parties or upon the Registry as would tend to create complications or delay in conveyancing. The second principle is that *leases should be adequately protected against dealings with a superior registered title.* The third principle is that *the law ought to be as clear and as simple as possible.*

Facilitation of dealings

4.21 In our view the present law does facilitate dealings with leases, particularly by ensuring that long leases granted out of registered titles must be registered; and this process will be accelerated by the growth in the number of registered reversionary titles and by the intended extension of compulsory areas. Nevertheless, for reasons we shall state, we do not think that the existing restrictions on registrations are wholly justifiable, and we shall make recommendations for relaxing them to some extent.

Protection of leases

4.22 We think that the existing machinery[50] for the protection of leases is reasonably effective. However we should like to reduce the occasions on which a lessee must take positive steps to protect his lease by applying for a notice to be entered on the register, and we shall make certain recommendations to that end.

Simplification of the law

4.23 It is unfortunately all too apparent that the law relating to leases in the registered system is far from clear or simple. In particular, whether or not a lease is registrable depends upon several separate factors,[51] and the interaction between the relevant provisions of the 1925 Act and between those provisions and provisions in the 1966 Act and the Housing Act 1980 is difficult to grasp.

[47]For the procedure, which involves the consent of the proprietor of the superior title or an order of the court, see r. 46 and s. 48 and r. 186. See Appendix 2 below.

[48]I.e. an overriding interest under s. 70(1)(k), the first category mentioned in para. 4.18 above. An application to register notice is not precluded by reason of the existence of an overriding interest under s. 70(1)(g), the second category in para. 4.18. See n. 45 above.

[49]See paras. 4.12 and 4.18 above.

[50]See paras. 4.17–4.19 above.

[51]See para. 4.4 above.

Our recommendations on registration and protection should help to simplify matters, though their limited scope precludes the possibility of a full-scale restatement of the law.

Recommendations for reform

4.24 We now consider what changes in the law need to be made, first with regard to the registrability of leases and secondly with regard to their protection.

Registrability of leases

4.25 The two questions which need to be answered under this head are "Which leases should be registrable?" and "Which registrable leases should be *compulsorily* registrable?"

(i) *Which leases should be registrable?*

4.26 (a) *Should all leases be registrable?* A simple answer to the question "Which leases should be registrable?" is that all leases should be registrable. This solution however, despite its apparent simplicity, is open to several substantial objections. First, a large number of short leases, particularly periodical tenancies, are never transferred and their registration would serve no useful purpose in facilitating dealings. Secondly, the register would have to be kept up to date with accurate information concerning short tenancies; once a short lease was registered every subsequent dealing would also have to be recorded, and an application would be required to close the title[52] on the termination of the lease, which may occur not only by effluxion of time but also by notice, forfeiture, or formal or informal surrender. Considerable extra work would thus be generated to very little purpose. Thirdly, where property is let for a short term, particularly for residential purposes, the tenant often has no legal adviser. It would be unrealistic to assume that every tenant or even the great majority of tenants would protect their rights, however simple the procedure; and the consequence of failure to register would often be that the tenant would not have a legal estate,[53] and his interest would be liable to destruction on a dealing by his landlord. Finally, registration would involve tenants in additional expense by way of land registry fees. We do not think that the speculative benefits of registering short leases are adequate to justify such expenditure. These objections seem to us conclusive against any proposal for the universal registration of leases.

4.27 (b) *Should some leases for 21 years or less be registrable?* In terms of registrability the most crucial distinction drawn in the 1925 Act is between leases granted for more than 21 years (which are potentially[54] registrable) and leases granted for 21 years or less (which are not registrable). In our Working Paper No. 32[55] we expressed the view that the principle of dealing with the registrability of leases by reference to the length of the term is the only

[52]And to remove the corresponding note on the reversionary title, if that is registered.

[53]See para. 4.14 above. If made registrable, these leases, if granted out of a registered reversion, would have to be registered: see ss. 19(2) and 22(2).

[54]See paras. 4.14 and 4.15 above. Once an area becomes a compulsory area these leases are registrable whether or not granted out of registered reversions.

[55]Para. 26.

practicable one, though we accepted that the application of this principle might result in the registration of some leases which, by reason of their provisions, were unlikely to be dealt with. Nothing said on consultation has caused us to change this view.

4.28 If the length of the term is accepted as the criterion for registrability, the question remains: what length should make a lease registrable, or potentially registrable? A provision for registering leases granted for more than 21 years was one of the recommendations in the Report[56] of the Royal Commission on the Operation of the Land Transfer Act.[57] That Commission appeared to think that a lease for a lesser period would not have that quality akin to absolute ownership[56] which would qualify it for registration. It has been suggested that in present conditions it would be more appropriate to set the "cut-off" point for registration at seven years, having regard to the prevalence of short leases (particularly in the commercial field) and the fact that they can acquire considerable value during their life.[58] However, as we have indicated,[59] the *primary* consideration in determining registrability is not the value of the interest but the likelihood of its being transferred. Any single test is bound to be inadequate in some cases: there may, for instance, be short leases (particularly in areas of commercial development) which are not only valuable, but also highly marketable; on the other hand, the residential tenancy eligible for protection under the Rent Act may well be extremely valuable to the tenant, and surviving members of the tenant's family, but not marketable at all.

4.29 We conclude that it is impossible to lay down any universally correct period, bearing in mind that the likelihood of transfer will vary from case to case. It is true that *on average* some classes of property are more likely to be transferred within a given period from the grant of a lease than others. But the dividing line has to be drawn somewhere, and the majority of those we consulted thought that the present line is the right one. A shortening of the period would bring into registration a very large number of leases (including leases granted for exactly 21 years) which at present cannot be registered, and any proposal that would, by increasing applications for registration and the consequential expenditure, add to the burdens on tenants and on the Land Registry, must be looked at critically.[60] The proposals we make for the registration of leases will add considerably to the number of potentially registrable interests; and in view of the uncertainty as to the overall benefit to tenants and as to the expansion of the Registry's resources, we have decided not to recommend any change in the rule that leases granted for 21 years or less are not registrable.

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[56](1870) C. 20, para 70, ". . .the leaseholder has not a mere money interest like a mortgagee; he has a substantive interest in the land, and being usually in possession, the arrangements of his life, his comfort and feelings are more bound up with the land than those of the freehold reversioner. . . .the majority of us think that leases, if beneficial and originally exceeding the term of 21 years, should be considered as absolute ownerships entitled to registration."

[57]This was the Act which was later entitled the Land Registry Act 1862 (see Short Titles Act 1896).

[58]This however may to some extent be discounted by the existence of a rent review clause. The merits of 14 or 10 years as the cut-off point have also been argued: see Hayton, *Registered Land* 3rd ed. (1981), pp. 46–48.

[59]See para. 4.20 above.

[60]See also para. 4.26 above.

4.30 (c) *Should "inalienable" leases be registrable?* The usual justification for excluding "inalienable"[61] leases from registration is that they are unlikely to be transferred: "When it is considered that the chief purpose of registered conveyancing is to simplify dealings with land, it is obvious that this purpose has no application to the case of an inalienable estate and therefore, that little is achieved by registration of the title. . .".[62] We are unconvinced by this argument, for an inalienable lease may in fact be alienated if the landlord waives the prohibition. This may well be not uncommon, since the prohibition may have been inserted into the lease simply to give the landlord control over the identity of tenants. In such a case the landlord will waive the prohibition if he is prepared to accept the proposed assignee as a tenant. In Working Paper No. 32 we suggested[63] that in the interests of simplifying the law the exclusion of inalienable leases from registration should be abolished. This was strongly supported on consultation. We believe it probable that the great majority of inalienable leases are short leases, which will not be registrable anyway. We accordingly *recommend* that the specific prohibition[64] against the registration of inalienable leases should be removed, so that leases should in future cease to be non-registrable merely on the ground that they are inalienable.

4.31 (d) *Should more leases in non-compulsory areas be registrable?* The present law also makes a distinction in non-compulsory areas between leases granted out of registered titles ("dispositionary leases" as we have referred to them[65]) and leases granted out of unregistered titles ("non-dispositionary leases"[65]): whereas every dispositionary lease granted for more than 21 years must be completed by registration,[66] in non-compulsory areas most non-dispositionary leases, as a result of the Land Registration Act 1966,[67] are not registrable at all. This distinction is a transitional one: the 1966 Act is an essentially administrative measure, designed to concentrate the Registry's limited resources on work arising in the compulsory areas. With the extension of the compulsory areas, this Act will diminish in importance. Given that the Registry's workload has to be contained, it is clearly right that work which is strictly speaking inessential should be the first to suffer. We therefore have no criticism to make of the 1966 Act and we have no proposals to change it.

(ii) *Which registrable leases should be compulsorily registrable?*

4.32 Having considered which leases should be registrable we now deal with the further question which registrable leases should *have to be* registered. We have seen that under the present law[68] a lease must be registered:—

(a) if granted out of a registered reversion for a term of more than 21 years;
(b) if granted out of an unregistered reversion in a compulsory area for a term of 40 years or more or assigned in such an area with 40 years or more unexpired;
(c) if it is a long lease of a flat granted under Part I of the Housing Act 1980.

[61]See para. 4.12 and n. 19 above.
[62]Ruoff & Roper, p. 452–453.
[63]Para. 27.
[64]See n. 19 above.
[65]See para. 4.4 above.
[66]See paras. 4.4 and 4.14 above.
[67]See para. 4.12 above.
[68]See para. 4.14 above.

The 21-year period and the 40-year period differentiate not only between the obligatory registration of leases of registered land and leases of unregistered land, but also between the compulsory and voluntary registration of leases of unregistered land. For example, a 28-year lease of registered land is required to be registered, and a 28-year lease of unregistered land is not; and a 50-year lease of unregistered land is compulsorily registrable in a compulsory area, whilst a 35-year lease of unregistered land is only voluntarily registrable if registrable at all.[69]

4.33 We know of no good reason why leases granted for more than 21 years out of registered reversions and leases granted under Part I of the Housing Act 1980 should not continue to require registration. However, consultation confirmed our preliminary view[70] that confusion is caused by the differing periods of 21 and 40 years which according to circumstances, determine whether or not a lease must be registered. Further confusion is caused by the fact that whereas in the one case the decisive factor is that the term "exceeds" 21 years, in the other it is that the term is "not less than" 40 years.

4.34 In our view, if 21 years is the right dividing line between the registrable and the unregistrable, no useful purpose is served by having a different period for the compulsory registration of certain leases.[71] We accordingly *recommend* that the period of more than 21 years applicable to the registration of leases of registered land[72] should be substituted for the period of 40 years or more applicable to the compulsory registration of leases of unregistered land. The change brought about by this recommendation will be that a lease in a compulsory area will have to be registered (a) where it is granted for more than 21 years out of an unregistered title or (b) where it is assigned having more than 21 years to run.

4.35 The change which we propose will have the advantage of expediting the process of bringing on to the register all substantial interests in areas of compulsory registration. It will also considerably simplify the law, for it will establish a single period of *more than 21 years* by reference to which the registrability of the great majority[73] of leases will be determined. We think the change recommended should apply to new leases granted on or after an appointed day, and, in the case of existing unregistered leases, to the first assignment on sale on or after the appointed day. Under our proposals there would be an immediate increase in registrations, but it is to be remembered that increasingly in the course of time the reversionary title will be a registered one:

[69]In the case of land in a non-compulsory area the option is at present severely restricted under the Land Registration Act 1966—see para. 4.10 above.

[70]See Working Paper No. 32, para. 32

[71]The 40-year period in section 123(1) (see paras. 4.7 and 4.14 above) was originally laid down by rule 59 of the Land Transfer Rules 1898 (S. R. & O. 1898/575) made under the Land Transfer Act 1897 which introduced compulsory registration. There does not seem to be any recorded reason for choosing 40 years as the appropriate period, but it may be significant that this was at that time the statutory period for deducing title under an open contract: see *Interim Report on Root of Title to Freehold Land* (1967), Law Com. No. 9, paras. 15–21. Possibly the choice of the period represented some sort of compromise in the controversy—long since dead and buried—as to the merits of the compulsory registration system. Whatever the original reason for selecting the 40-year period it now seems to be a mere anachromism.

[72]See para. 4.14 above.

[73]The special exceptions created by the Land Registration Act 1966 and the Housing Act 1980 (see paras. 4.10 and 4.13 above) will remain.

in such a case any lease for more than 21 years is already compulsorily registrable. Accordingly, there will be a gradual reduction in the number of cases to which our proposal can apply.

Protection of leases

4.36 Although the machinery by which leases are protected against dealings with a superior title[74] is in our view reasonably effective, there is one anomaly which we think should be eliminated. It concerns leases which are gratuitous (i.e. not granted at a rent) or granted at a premium.

4.37 *Leases granted gratuitously or at a premium.* Given that the main dividing line between registrable and non-registrable leases is drawn at 21 years,[75] there are two categories of lease which are neither registrable (or potentially registrable[76]) nor overriding interests. These are leases granted for a term of 21 years or less which are gratuitous or were granted at a premium. They cannot be registered, because the term does not exceed 21 years. They do not fall within the class of leases which are overriding interests ("leases for any term or interest not exceeding twenty-one years granted at a rent without taking a fine"[77]), because they are not granted at a rent without taking a fine. It is true that if the tenant is in actual occupation his right may be protected as an overriding interest under section 70(1)(g);[78] but the lease itself is not so protected. It follows that a lease of either kind, notwithstanding that it has a capital value, may be unprotected against a purchaser of the registered reversion unless the tenant has taken the appropriate steps to have the lease noted on his landlord's title.[79] Possibly these exceptions were originally thought justifiable on the ground that a low rent or no rent at all was particularly prejudicial to a purchaser of a reversion and ought to be brought to his attention by notice on the register. If this was the reason, we do not find it convincing: the purchaser always has to enquire about the existence of short leases, because he will be bound by any short lease at a rack-rent, and it is no more difficult for him to discover a lease granted on other terms. We therefore *recommend* that the exceptions covered by the words "granted at a rent without taking a fine" should be abolished.[80] The result will be that every lease for a term of 21 years or less will be adequately protected on a dealing with the registered reversion without the tenant having to take positive steps to that end. The removal of the exceptions will also dispose of a particular problem which arises from time to time,[81] namely whether, if the consideration for the grant of a lease included the payment of a lump sum, that sum is to be regarded as a "fine" (that is to say a premium) or as rent in advance, or some other payment.

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[74]See paras. 4.17 to 4.19 above.
[75]See para. 4.12 above.
[76]Many leases granted for more than 21 years in non-compulsory areas are at present not registrable, as a result of directions given under the Land Registration Act 1966 (see para. 4.10 above).
[77]Section 70(1)(k).
[78]See para. 4.18 above. If in receipt of the rents and profits (from a sub-tenant) the tenant may also be protected: ibid.
[79]See para. 4.19 above.
[80]We received no opposition to this suggestion in our Working Paper No. 32, para. 46.
[81]As in *City Permanent Building Society* v. *Miller* [1952] Ch. 840.

4.38 *Other aspects of leases as overriding interests.* It has been suggested to us that agreements for leases should become overriding interests, and also that a lessee should have to be in occupation if his lease is to be an overriding interest. These suggestions would involve amendment to section 70(1)(k). However they also have a considerable bearing upon section 70(1)(g), under which a lessee can be protected as the holder of an overriding interest if he is in actual occupation of the land.[82] The protection of occupiers' rights is not confined to lessees, and we propose to discuss this topic, and to deal with the two suggestions just mentioned, under the general heading of overriding interests in a subsequent report.

4.39 **Summary of recommendations**

1. Leases should cease to be rendered non-registrable by reason of a prohibition against their assignment (para. 4.30).

2. In compulsory areas all leases granted for more than 21 years out of unregistered titles should be compulsorily registrable on grant, and existing leases with more than 21 years unexpired at the date of assignment should be compulsorily registrable on assignment (para. 4.34).

3. The present exclusion of gratuitous leases, and of leases granted at a premium, from the category of overriding interests in section 70(1)(k) should be removed (para. 4.37).

4.40 The following tables illustrate the effects of our proposals in comparison with the present law.

[82]See para. 4.18 above.

REGISTRATION OF LEASES

Tables Illustrating the Present Law by comparison with our proposals

Lease Granted out of Registered Reversion

<table>
<tr><th colspan="3">PRESENT LAW</th><th colspan="3">OUR PROPOSALS</th></tr>
<tr><th>Length of lease</th><th>Registrable/ non-registrable</th><th>Action by lessee</th><th>Length of lease</th><th>Registrable/ non-registrable</th><th>Action by lessee</th></tr>
<tr><td>21 Years or less at a rent without a premium</td><td>Non-registrable (overriding interest)</td><td>None</td><td rowspan="2">21 years or less</td><td rowspan="2">Non-registrable (overriding interest)</td><td rowspan="2">None</td></tr>
<tr><td>Any other lease for 21 years or less</td><td>Non-registrable</td><td>Apply to note lease against reversionary title</td></tr>
<tr><td>Over 21 years but containing an absolute prohibition against assignment or sub-letting</td><td>Non-registrable</td><td>Apply to note lease against reversionary title</td><td rowspan="2">Over 21 years</td><td rowspan="2">Registrable</td><td rowspan="2">Must register lease</td></tr>
<tr><td>Any other lease for over 21 years</td><td>Registrable</td><td>Must register lease</td></tr>
</table>

LEASE GRANTED OUT OF UNREGISTERED REVERSION

(1) Compulsory areas

PRESENT LAW			OUR PROPOSALS		
Length of lease	Registrable/ non-registrable	Action by lessee	Length of lease	Registrable/ non-registrable	Action by lessee
21 years or less	Non-registrable	None	21 years or less	Non-registrable	None
Over 21 years but containing an absolute prohibition against assignment or sub-letting	Non-registrable	None	Over 21 years	Registrable	Must register (within 2 months of grant (or assignment) or extended period)
Any other lease for over 21 years but under 40 years	Registrable	May register at any time if over 21 years remain			
Any other lease granted (or assigned) for 40 years or more	Registrable	Must register (within 2 months of grant (or assignment) or extended period)			

Lease Granted out of Unregistered Reversion

(2) Non-Compulsory Areas

PRESENT LAW			OUR PROPOSALS
Length of lease	Registrable/ non-registrable	Action by lessee	
Over 21 years if in class specified by Chief Land Registrar	Registrable	May register at any time if over 21 years remain	No change
Lease of flat for 125 years or more granted by local authority or other body under Part I of Housing Act 1980	Registrable	Must register (within 2 months of grant or extended period)	No change
Any other lease	Non-registrable	None	No change

Housing and Building Control Bill[83]

4.41 Clause 1 of this Bill extends the "right to buy" from local authority and other public sector landlords to certain cases where the landlord does not own the freehold. In these cases a sub-tenant of a dwelling-house or flat can acquire a lease the length of which depends upon circumstances specified in the Bill.

4.42 For the purposes of this report the Bill has three significant features. First, like the Housing Act 1980, it provides for a new category of leases of unregistered land which are to be compulsorily registrable in non-compulsory areas. Secondly, it would create a breach of the rule that leases of unregistered land are compulsorily registrable only if they are granted (or assigned) for at least 40 years. Thirdly, it would create a minor breach of the general rule that a lease cannot be registered if it is granted for 21 years or less: a lease created under the Bill would have to be registered *if at the time notice was given to acquire it* the landlord's term was a term of at least 21 years. It follows that at the time of the grant the lease might be a lease for 21 years or less. Nevertheless, under the Bill it would be compulsorily registrable.

4.43 Enactment of the Bill will extend the registration system at the cost of slight additional complication of the law relating to the registrability of leases. We see no reason, however, to alter our recommendations as a result, though some consequential amendment of our draft clauses is likely to be required.

[83]See para. 1.7 above.

PART V

THE MINOR INTERESTS INDEX

5.1 In this Part of the Report we consider the peculiar system, based on the so-called "Minor Interests Index", by which the priorities of dealings with certain[1] equitable interests in registered land are regulated. We first outline the system and its background. We then consider objections that the system is both illogical and unnecessary. Finally, we recommend that the system should be discontinued and that the priority of dealings in these cases should be regulated by the simpler rules applicable where the relevant interests are interests in unregistered land or in money or other personal property.

Introduction

5.2 Broadly speaking, "minor interests" in registered land correspond to equitable interests in unregistered land: they are amongst those interests which do not form part of the registered or legal title. For the purposes of this Part of the Report it is unnecessary to be more precise than this, for minor interests certainly include the interests of beneficiaries under trusts,[2] and it is only these interests—and indeed only certain categories of these interests—with which the Minor Interests Index is concerned.[1] The general point that trust interests of themselves have no place on the register of title is given statutory expression in section 74 of the Land Registration Act 1925, which includes a provision that references to trusts shall, so far as possible, be excluded from the register.

5.3 The statutory foundation of the Minor Interests Index is section 102(2), which is as follows:—

> "Priorities as regards dealings effected after the commencement of this Act between assignees and incumbrancers of life interests, remainders, reversions and executory interests[3] shall be regulated by the order of the priority cautions or inhibitions lodged (in a specially prescribed form[4]) against the proprietor of the registered estate affected, but, save as aforesaid, priorities as between persons interested in minor interests shall not be affected by the lodgment of cautions or inhibitions."

Although from the words 'lodged against the proprietor of the registered estate' it might be supposed that these special cautions and inhibitions are to be entered on the register of title, such a procedure would be contrary to the principle enshrined in section 74[5] because these entries relate only to equitable interests under trusts (or to interests derived from such interests). In giving effect to section 102(2), therefore, it was necessary to provide for these matters to be recorded off the register. The relevant provisions are contained in rule 11, which is as follows:—

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[1]The protection and priority of minor interests *on* the register which we dealt with in our Working Paper No. 67 is a separate topic outside the scope of this report.

[2]See Land Registration Act 1925, s. 3(xv), a definition of minor interests which expressly includes trust interests.

[3]Remainders, reversions and executory interests are different types of future interest under trusts. For an analysis, see Megarry and Wade, *The Law of Real Property* 4th ed. (1975), Ch. 5.

[4]L.R.R. 1925, Form 72.

[5]See para. 5.2 above.

"11.—(1) There shall also be kept an Index to be called the Minor Interests Index in which all priority cautions and inhibitions relating to dealings with minor interests, which do not affect the powers of disposition of the proprietor, shall be entered.

(2) This Index shall be in such form and contain such particulars as the Registrar may from time to time determine. The entries therein shall not form part of the register, nor shall any purchaser be concerned with that Index."

5.4 Rule 229 contains provisions regulating the making and vacation of entries in the Minor Interest Index. When an application for a priority caution or inhibition is made, the caution or inhibition is entered in the Index and the Chief Land Registrar is required to give notice of the application to the registered proprietor of the land in which the affected equitable interest subsists (and, in the case of settled land, to the trustees of the settlement also[6]). Priority however is regulated under section 102(2) by the "order of the priority cautions or inhibitions lodged", i.e. the dates on which the applications for entries in the Index are received. Searches of the Index are authorised by rule 290(2), the effect of which is that the Registrar replies to enquiries and provides copies of entries.

Background

5.5 In assessing the effect of the provisions relating to the Minor Interests Index, it is helpful to see how the priorities of dealings with equitable interests were regulated before and after 1 January 1926, when the 1925 property legislation came into force.

5.6 Before 1926 priorities between competing incumbrances on an equitable interest in land were governed by the general rule which applied to assignments of equitable interests: the first in time normally had priority. A different rule, known as "the rule in *Dearle* v. *Hall*",[7] governed the position as between successive charges of an equitable interest in pure personalty: priority there was determined by the dates on which notice of the dealings was given to the trustees of the fund. Section 137 of the Law of Property Act 1925 extended the rule in *Dearle* v. *Hall* to equitable interests in land. Except where priority is regulated by section 102(2) of the Land Registration Act 1925,[8] therefore, a person taking an assignment or charge of an equitable interest, whether in personalty or in land, now needs to give immediate notice of his interest to the trustee or trustees (or, in the case of settled land, to the trustees of the settlement[9]) in order to preserve his priority over any subsequent dealings. Where notification to the trustees is impossible or impracticable, section 137(4) provides that notice may be endorsed on the trust instrument instead.

[6]Rule 229(1). Where the trust of the land is a trust for sale the legal estate is vested in the trustees for sale, who will therefore be the registered proprietors. In the case of settled land the legal estate is usually vested in the tenant for life (see Settled Land Act 1925, s. 4(2)), so that he rather than the trustees of the settlement will be the registered proprietor.

[7](1828) 3 Russ. 1.

[8]See para. 5.3 above.

[9]Law of Property Act 1925, s. 137(2). See n. 6 above for the distinction between trusts for sale and settled land.

The date of endorsement is then the priority date. It is also possible, under section 138 of the Law of Property Act 1925, for a settlor or testator to nominate in the trust instrument a trust corporation[10] to receive section 137 (and other) notices in place of the trustees and to keep a separate register of section 137 notices. When a trust corporation is so nominated priority is established at the date of receipt of notice by the corporation.[11]

5.7 Although the application of section 137 is not in its terms restricted to unregistered land, it seems reasonably certain, on general principles of construction,[12] that the section does not regulate priorities between dealings with the types of equitable interest in registered land specified in section 102(2) of the Land Registration Act 1925—life interests, remainders, reversions and executory interests.[13] In addition, the provisions of section 138 regarding trust corporations are adapted to registered land by rule 229(5), which provides that the Registrar is to act as the nominated trust corporation and the Index is to take the place of the trust corporation's register.

Criticisms of the Minor Interests Index system

(i) *The system is defective*

5.8 The fact that the Index does not accommodate entries relating to dealings with *all* equitable interests affecting registered land—or even to dealings with all such interests arising under trusts—is a ready source of confusion. We do not know why the provision was limited as it was, or indeed why it was thought necessary to have a special procedure at all. If the rule in *Dearle* v. *Hall* is good enough for unregistered land it is not easy to see why it does not suffice for registered land. It has been suggested[14] that the Index was designed to compensate for the fact that after 1925 certain interests would no longer subsist as legal estates.[15] We find that suggestion difficult to follow, because the benefit of an entry in the Index has no effect with regard to the registered legal title and its effect is no different from that of a notice to trustees of unregistered land. Moreover, the suggestion leaves unexplained the fact that the Index does not record dealings with trust interests resulting from absolute undivided shares[16] in registered land (which were also made incapable of subsisting as legal estates).[17]

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[10]Trust corporations, which include a wide range of public and private institutions, are defined in Law of Property Act 1925, s. 205(xxviii) and Law of Property (Amendment) Act 1926, s. 3.

[11]Law of Property Act 1925, s. 138(3) and (4). Subsection (4) provides that where a trust corporation has been nominated, the trustee must forthwith send the notice to the trust corporation. Until received by the corporation the notice does not affect priority.

[12]In particular, the principle *generalia specialibus non derogant* preserves the particular application of section 102(2) to registered land.

[13]See para. 5.3 above.

[14]Brickdale and Stewart-Wallace, *Land Registration Act 1925* 4th ed. (1939), p. 244.

[15]See Law of Property Act 1925, s. 1.

[16]Beneficial concurrent interests in possession (i.e. co-ownership interests), for example, appear to be outside the section.

[17]Law of Property Act 1925, s. 1(6).

5.9 The wording of section 102(2) has been subjected to certain criticisms;[18] but the principal cause of dissatisfaction with the subsection is that it does not operate satisfactorily in two situations,

(i) where the trust fund in which the equitable interest subsists is a *mixed* fund containing unregistered land or pure personalty (or both) as well as registered land; and

(ii) where the trust fund's registered land has all been sold.

In the first situation, it appears that the beneficiary's mortgagee, whether or not he also applies for an entry in the Minor Interests Index, will need to notify the trustees in accordance with section 137 of the Law of Property Act 1925, in order to fix his priority in relation to the assets other than the registered land. In these circumstances an entry in the Index causes both duplication of effort by the mortgagee and extra work for the Registry. In the second situation, a person proposing to lend money to a reversioner on the security of what has become an interest the priority of future dealings with which is to be governed by section 137 may fall into the trap of not searching the Minor Interests Index for evidence of previous charges whose priority remains to be determined by section 102(2) of the Land Registration Act. There will be nothing to tell him that the Index may be relevant, and although the trustees will have been informed by the Registry of any entry made in the Index at the earlier stage,[19] it seems questionable whether they have any duty to disclose the fact.[20]

(ii) *The index is rarely used*

5.10 During the past twenty years, fewer than 100 entries have been made in the Index, and there have been fewer than 50 searches. We have no means of knowing how many dealings there have been during that period which could have been recorded in the Index, but as assignments and mortgages of reversionary interests (in particular) are not uncommon, it seems certain that many dealings affecting interets in registered land must have gone unrecorded in the Index. Having regard to the inadequacies of the section 102(2) procedure, we are not surprised that it has become virtually obsolete.

5.11 Because the Index is so seldom used, few practitioners were able to give us first-hand information about it; but a number of firms acting for companies and institutions which deal in equitable interests told us that while they accept that priority for certain dealings with interests in registered land could only be obtained by applying for a priority caution or inhibition under section 102(2) it is their practice to serve notice on the trustees of the fund in any event. That would usually be necessary because trust funds generally contain assets other than registered land and a direct *Dearle* v. *Hall* notice to the trustees would always be required in respect of that part of the fund.

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[18]For example, that it does not clearly state (as does Law of Property Act 1925, s. 137) that the specified interests include interests in the proceeds of sale of land held on trust for sale. The Land Registry adopts this broader interpretation. See Ruoff & Roper, pp. 126–127 and Gower, "The present position of the rule in *Dearle* v. *Hall*", (1935) 20 Conv. (O.S.) 153, 158.

[19]Rule 229(1): see para. 5.4 above.

[20]Although trustees have no general duty to answer inquiries relating to dealings with trust interests (*Low* v. *Bouverie* [1891] 3 Ch. 82), they are bound to produce section 137 notices to "any person interested in the equitable interest" (s. 137(8)). However it seems improbable that the Registrar's notice under r. 229(1) can (as we later recommend) be regarded as a notice for the purposes of s. 137.

Recommendations for reform

5.12 The Minor Interests Index has been authoritatively described as "valueless"[21] and as "extraneous to the general purposes of the Land Registration Act",[22] and the Land Registry have told us that they would welcome its replacement by the system laid down in sections 137 and 138 of the Law of Property Act 1925.

(i) *Discontinuance of entries in Minor Interests Index*

5.13 We are satisfied that to require all priorities for dealings with equitable interests in trusts to be regulated by sections 137 and 138, no matter what the trust assets consist of, would not only produce a more logical and economical system, but would accord substantially with present practice. We therefore *recommend* that the requirement to make entries in the Minor Interests Index should be abolished, so that the priorities of all future dealings with equitable interests under trusts of registered land will be governed by the rule in *Dearle* v. *Hall.*

(ii) *Priorities of existing entries.*

5.14 If our recommendation for discontinuing the Minor Interests Index is adopted, it will be necessary to make provision for those dealings which are already protected by entries in the Index. Either of two approaches could be adopted: the Index could remain on foot in respect of existing entries, or it could cease to function altogether, both new and existing priorities being governed by the rule in *Dearle* v. *Hall.* We favour the latter approach, because the co-existence of two different systems would create complex problems for those concerned with establishing and ascertaining priorities. It would also oblige the Land Registry to keep the Index open for searches and cancellations. We see little merit in preserving the Index to that limited extent.

5.15 To adopt the second approach, however, means that provision will have to be made for existing entries to be fitted into the section 137 system. As we have stated,[23] the Chief Land Registrar is required by rule 229(1) to serve notice of all applications for entries in the Index on the registered proprietor and the trustees of any settlement. We *recommend* that that notice[24] should be treated as having established priority under the rule in *Dearle* v. *Hall,* and as the equivalent of an assignee's or mortgagee's notice under section 137.

5.16 This however would not be a complete solution to the problems of how to deal with existing entries in the Index. First, there is the question how to provide for any cases in which there is a discrepancy between the priorities which have been recorded in the Index and the priorities which will, under our proposals, be determined by the order in which the Chief Land Registrar served notice on the trustees. Secondly, there is the question how to provide for any cases in which the settlor or testator has nominated a trust corporation to receive notices in place of the trustees.[25] We consider these two points in turn:—

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[21]Ruoff & Roper, p. 129.
[22]*Ibid.*, p. 125.
[23]See para. 5.4 above.
[24]I.e. in the case of a trust for sale the notice served on the trustees and in the case of settled land the notice served on the trustees of the settlement. See para. 5.6 above.
[25]See para. 5.6 above.

(i) It is conceivable, though in fact unlikely, that the order in which the Chief Land Registrar gave notice does not accurately reflect the order of priority as between two or more interests entered in the Index (as for instance where notices relating to two consecutive dealings were all given on the same day). In that event we think that as a matter of principle anyone who were to suffer loss as a result of the altered priority should be entitled to be indemnified out of public funds, just as he would be if his loss were due to an error in the register.[26] We so *recommend*.

(ii) Where under section 138 of the Law of Property Act 1925 a settlor or testator has nominated a trust corporation to receive notices in place of the trustees, it is the duty of the trustees who receive such notices to forward them to the trust corporation, and until they do so the notice does not establish priority.[27] This duty however does not seem to apply to the notices (relating to entries in the Index) given by the Registrar to the trustees: it is for this reason that we have recommended that the priorities based upon existing entries in the Index should be determined by the date on which the Registrar's notice was given to the trustees and not the date on which it was received by the trust corporation where such a corporation has been nominated. Although we believe that there are few if any cases relevant to our proposals in which a trust corporation has been nominated, we think it right that provision should be made for the Registrar's notice to be forwarded to the corporation in any such case if this has not already been done, so that a person proposing to deal with the equitable interest should be able to discover the existence of any previous dealings in the place where he would expect to discover it, i.e. on the trust corporation's register. If despite this provision the notice were not forwarded to the corporation and someone were to suffer loss as a result we think that in addition to any personal claim he might have against the trustees he ought to have a right to indemnity on the basis indicated in sub-paragraph (i) above,[28] it being a loss which could not have occurred but for the abolition of the Index. We accordingly *recommend* that in any case in which a trust corporation has been nominated under section 138 of the Law of Property Act 1925 to receive notices the trustees should be required, if they have not already done so, to forward the Registrar's notice to the corporation as soon as possible after the commencement of the relevant legislation and that a person suffering loss from the failure to comply with the requirement should be entitled to be indemnified out of public funds.

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[26]See Land Registration Act 1925, s. 83; Land Registration and Land Charges Act 1971, ss. 1–3. In our Working Paper No. 45 we make provisional proposals on the topic of indemnity and the connected topic of rectification of the register, but these are outside the scope of this report.

[27]Law of Property Act 1925, s. 138(4).

[28]In this case, however, unlike the case envisaged in sub-paragraph (i) the amount paid by way of indemnity would be potentially recoverable by the Registrar, who would be entitled to enforce the claimant's rights against the trustees: Land Registration Act 1925, s. 83(10).

PART VI

SUMMARY OF RECOMMENDATIONS

6.1 In this Part of the Report we summarise our recommendations and identify the relevant draft clauses which give effect to them.

Identity and Boundaries

6.2 The general boundaries rule (under which the exact boundaries of registered land are left undetermined) should be retained.

(Paragraph 2.28)

Conversion of Title

6.3 Any inferior freehold title should be convertible to absolute title at any time if the Registrar is satisfied as to the title.

(Paragraph 3.17 and Clause 1)

6.4 Any inferior leasehold title should be convertible to absolute title at any time if the Registrar is satisfied both as to the leasehold title and as to any reversionary title; and the provisions of section 77(4) of the Land Registration Act 1925 for the conversion of good leasehold (after lapse of time) without evidence as to title should be removed.

(Paragraph 3.17 and Clause 1)

6.5 A single period of 12 years should be substituted for the periods of 15 and 10 years after which possessory freehold and leasehold titles may be converted without documentary evidence to absolute and good leasehold titles respectively.

(Paragraph 3.17 and Clause 1)

6.6 Section 77 of the Land Registration Act 1925 should be redrafted to give effect to the above recommendations and otherwise to clarify and modernise the existing provisions.

(Paragraph 3.17 and Clause 1)

Treatment of Leases

6.7 Leases should cease to be rendered non-registrable by reason of a prohibition against their assignment.

(Paragraph 4.30 and Clause 3)

6.8 In compulsory areas all leases granted for more than 21 years out of unregistered titles should be compulsorily registrable on grant, and existing leases with more than 21 years unexpired at the date of assignment should be compulsorily registrable on assignment.

(Paragraph 4.34 and Clause 2)

6.9 The present exclusion of gratuitous leases, and of leases granted at a premium, from the category of overriding interests in section 70(1)(k) of the Land Registration Act 1925 should be removed.

(Paragraph 4.37 and Clause 4)

The Minor Interests Index

6.10 The requirement to make entries in the Minor Interests Index should be abolished, and the priorities regulated by the Index should be governed by the rule in *Dearle* v. *Hall* (enacted in section 137(1) of the Law of Property Act 1925), i.e. the order in which notices of dealings are given to the trustees.

(Paragraph 5.13 and Clause 5)

6.11 The notice of an application for an entry in the Index already served by the Chief Land Registrar on the registered proprietor (or settlement trustees) should be treated as having established priority under the rule in *Dearle* v. *Hall,* and as the equivalent of an assignee's or mortgagee's notice under section 137 of the Law of Property Act 1925; and where a trust corporation has been nominated to receive notices the trustees should be required, if they have not already done so, to forward the Registrar's notice to the corporation as soon as possible after the commencement of the relevant legislation.

(Paragraph 5.15 and Clause 5)

6.12 Anyone who suffers loss as a result of an alteration in priority or otherwise as a result of recommendation 6.10 or 6.11 above, should be entitled to be indemnified out of public funds.

(Paragraph 5.17 and Clause 5).

(signed) RALPH GIBSON, *Chairman*
STEPHEN M. CRETNEY
BRIAN DAVENPORT
STEPHEN EDELL
PETER NORTH

J.G.H. GASSON, *Secretary*
13 *September* 1983

APPENDIX 1

DRAFT CLAUSES

ARRANGEMENT OF DRAFT CLAUSES

Conversion of title

1. Conversion of title.

Leases

2. Extension of compulsory registration to leases for between 21 and 40 years.
3. Inalienable leases: removal of prohibition on registration.
4. Gratuitous leases and leases granted at a premium to be subject to same provisions as other leases.

Minor interests

5. Abolition of Minor Interests Index.

Conversion of title

Conversion of title

1.—(1) For section 77 of the Land Registration Act 1925 (conversion of title) substitute—

"Conversion of title.

77.—(1) Where land is registered with a good leasehold title, or satisfies the conditions for such registration under this section, the registrar may, and on application by the proprietor shall, if he is satisfied as to the title to the freehold and the title to any intermediate leasehold, enter the title as absolute.

(2) Where land is registered with a possessory title, the registrar may, and on application by the proprietor shall—

(*a*) if he is satisfied as to the title, or

(*b*) if the land has been so registered for twelve years and he is satisfied that the proprietor is in possession,

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

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

(4) If any claim adverse to the title of the proprietor has been made, an entry shall not be made on the 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 in the 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 land to which the application relates.

(6) Any person, other than the proprietor, who suffers loss by reason of any entry on the register made by virtue of this section shall be entitled to be indemnified under this Act as if a mistake had been made in the register.".

(2) In the case of land registered with a possessory title before the commencement of this section—

(*a*) subsection (2)(*b*) of section 77 of the Land Registration Act 1925 as substituted by this section applies only where the land has been so registered for a period of 12 years after that commencement, but

(*b*) nothing in this section affects the operation of subsection (3)(*b*) of section 77 of that Act as originally enacted (which provides for conversion of a possessory title after 15 years' registration in the case of freehold land and 10 years' registration in the case of leasehold land) in relation to a period of registration beginning before that commencement.

EXPLANATORY NOTES

References in these notes to "the Act"
are to the Land Registration Act 1925

Clause 1: Conversion of title

1. This clause implements the recommendations in paragraph 3.17 of the Report for replacing the provisions of section 77 of the Act with revised provisions clearly stating the requirements which have to be satisfied in order to convert inferior titles. (For the classes of title, i.e. absolute, good leasehold, possessory and qualified, see paragraphs 3.3 and 3.4 of the Report.)

2. *Subsection (1) of the clause* substitutes a new section 77.

Subsections (1)–(3) of the new section provide for the conversion of the three classes of inferior title, i.e. good leasehold, possessory and qualified. Each subsection provides that conversion may, or on application by the registered proprietor must, take place if the appropriate conditions specified in the subsection are fulfilled.

Subsection (1) of the new section provides for the conversion of good leasehold title (and possessory and qualified titles capable of conversion to good leasehold) to absolute title. The conditions specified for conversion are that the Registrar must be satisfied as to the reversionary title or titles. (Since the title in question is good leasehold or capable of conversion to good leasehold the only question on which the Registrar will not necessarily already be satisfied is that of the reversionary title.)

Subsection (2) of the new section provides for the conversion of possessory freehold title to absolute title and possessory leasehold title to good leasehold title. The conditions specified for conversion are that (a) the Registrar is satisfied as to the title or (b) the land has been registered with a possessory title for at least 12 years and the proprietor is in possession. (In the case of possessory leasehold if the Registrar is also satisfied as to the reversionary title or titles the leasehold could be converted to absolute title under subsection (1).)

Subsection (3) of the new section provides for the conversion of qualified freehold title to absolute title and qualified leasehold title to good leasehold title. The condition specified for conversion is that the Registrar is satisfied as to the title. (In the case of qualified leasehold if the Registrar is also satisfied as to the reversionary title or titles the title could be converted to absolute title under subsection (1) above.)

Subsection (4) of the new section, which reproduces subsection (5) of the existing section, prevents conversion of title where a claim is pending.

Subsection (5) of the new section, which accords with the policy of the existing section, prevents the charging of a Land Registry fee where conversion takes place on the Registrar's initiative or in connection with a transfer of land.

Clause 1 (continued)

Subsection (6) of the new section, which reproduces subsection (6) of the existing section, provides for indemnity to be paid out of public funds to anyone who suffers loss (e.g. by the shutting out of a valid claim) as a result of conversion of title.

3. *Subsection (2) of the clause* contains transitional provisions affecting subsection (2) of the new section 77.

Paragraph (a) provides that for an application for conversion to be made on the basis of 12 years, registration and possession the 12 years must have elapsed since the commencement of the new provisions.

Paragraph (b) provides that where a period of registration has started to run in accordance with the existing subsection (3)(*b*) of section 77 before the commencement of the new provisions then conversion should still be available after the 15 or 10-year period required by that provision.

The effect of these provisions may be illustrated by the following examples, in which it is assumed that the provisions come into force in 1984:—

(i) a possessory freehold title registered in 1980 will be eligible for conversion in 1995 (following the 15-year rule in section 77(3)(b)); but such a title registered in 1983 will be eligible for conversion in 1996 (rather than 1998) as 12 years will have elapsed since 1984.

(ii) a possessory leasehold title registered in 1983 will be eligible for conversion in 1993 (following the 10-year rule in section 77(3)(b)); but such a title registered in 1984 will be eligible for conversion in 1996 (rather than 1994) as 12 years will have elapsed since 1984.

Extension of compulsory registration to leases for between 21 and 40 years.

2.—(1) In section 123(1) of the Land Registration Act 1925 (which as regards leasehold land requires an application for registration to be made upon the grant or assignment of certain leases of land in an area of compulsory registration)—

(a) for "a term of years absolute not being less than forty years from the date of delivery of the grant" substitute "a term of years absolute of more than twenty-one years from the date of delivery of the grant" and

(b) for "having not less than forty years to run from the date of delivery of the assignment" substitute "having more than twenty-one years to run from the date of delivery of the assignment".

(2) In section 8 of the Land Registration Act 1925 (applications for registration of leasehold land), after subsection (1) (which provides that application may be made by an estate owner holding under a lease with more than 21 years unexpired) insert—

"(1A) An application for registration in respect of leasehold land in an area of compulsory registration held under a lease in relation to the grant or assignment of which section 123(1) of this Act applies may be made within the period allowed by that provision, or any authorised extension of that period, notwithstanding that by the date of the application the unexpired term of the lease is no longer more than twenty-one years."

(3) The amendments made by this section apply only in relation to the grant or assignment of a lease after the commencement of this section.

EXPLANATORY NOTES

Clause 2: Extension of compulsory registration to leases for between 21 and 40 years

1. This clause implements the recommendation in paragraph 4.34 of the Report that in compulsory areas all unregistered leases which are granted for a term of 21 years or more or assigned with an unexpired term of 21 years or more should be registered on the grant or assignment.

2. *Subsection (1)* amends section 123 of the Act, which provides for compulsory registration in designated areas in the event of the sale of freehold land and the grant (or assignment) of leases having a term (or unexpired term) of 40 years or more. (Failure to register within two months (or an extended period) results in the transaction becoming void as regards the legal estate.) The registration requirement is extended by *paragraph (a)* of subsection (1) to leases granted for a term of more than 21 years and by *paragraph (b)* to leases having more than 21 years unexpired on assignment.

3. *Subsection (2)* contains a consequential amendment of section 8 of the Act, which section provides only for the registration of leases having more than 21 years to run when registration is applied for. In order to avoid conflict between section 8 and section 123 (as amended by subsection (1) of the clause), subsection (2) provides that an application for registration can still be made, even if *at the date of application* the lease has 21 years or less to run. (A lease granted for 21 years and one day, for example, might otherwise fall outside the terms of section 8 and not be eligible for registration but might yet become void for want of registration under section 123 (as amended).)

4. *Subsection (3)* provides that the above amendments are to take effect only in relation to leases which are granted or assigned after the section comes into force.

Inalienable leases: removal of prohibition on registration.

3.—(1) In section 8 of the Land Registration Act 1925 (applications for registration of leasehold land), in subsection (2) (which prohibits registration if the lease contains an absolute prohibition on alienation and requires that a restriction on alienation be protected by entry on the register or otherwise)—

(*a*) omit the words "Leasehold land held under a lease containing an absolute prohibition against all dealings therewith inter vivos shall not be registered in pursuance of this Act; and",

(*b*) for "a lease containing a restriction on any such dealings" substitute "A lease containing a prohibition or restriction on dealings therewith inter vivos", and

(*c*) for "the restriction" substitute "the prohibition or restriction".

(2) The amendments made by this section apply in relation to leases granted before the commencement of this section subject to an absolute prohibition on any dealings therewith inter vivos—

(*a*) so as to enable an application for registration to be made, and
(*b*) as regards dealings therewith after that commencement,

but not so as to alter the effect of any grant, assignment or other dealing before that commencement.

EXPLANATORY NOTES

Clause 3: Inalienable leases: removal of prohibition on registration

1. This clause implements the recommendation in paragraph 4.30 of the Report that the prohibition on registering inalienable leases, i.e. leases containing an absolute prohibition against dealings, should be removed.

2. *Subsection (1),* which makes a number of amendments in subsection (2) of section 8 of the Act, allows the registration of an inalienable lease. The words which prevent the registration of an inalienable lease are deleted by *paragraph (a).* Such prohibitions are, however, to be protected in the same way as restrictions are at present: the existing provision which prescribes the manner of protection is accordingly amended by paragraphs (*b*) and (*c*) to refer specifically to a prohibition as well as a restriction.

3. *Subsection (2)* provides that the above amendments are to apply to existing inalienable leases (without affecting past transactions) as well as to those created in the future. Thus, subject to other statutory provisions, existing inalienable leases would immediately become eligible for voluntary registration and be compulsorily registrable on future assignments.

Gratuitous leases and leases granted at a premium to be subject to same provisions as other leases.

4.—(1) In section 70(1) of the Land Registration Act 1925 (the list of overriding interests), for paragraph (*k*) (leases for 21 years or less granted at a rent without taking a fine) substitute—

"(*k*) Leases granted for a term not exceeding twenty-one years;".

(2) In sections 18(3) and 21(3) of the Land Registration Act 1925 (powers of disposition of registered freeholds and leaseholds: grant of lease to take effect notwithstanding caution, restriction, etc.) omit the words "at a rent without taking a fine".

(3) In sections 19(2) and 22(2) of the Land Registration Act 1925 (dispositions to be completed by registration), in paragraph (*a*) omit the words "if it is granted at a rent without taking a fine".

(4) The amendment made by subsection (1) applies to a lease granted before the commencement of that subsection otherwise than at a rent and without taking a fine only if the land is subject to the lease immediately before that commencement; the amendments made by subsections (2) and (3) apply only in relation to dispositions after the commencement of the relevant subsection.

EXPLANATORY NOTES

Clause 4: Gratuitous leases and leases granted at a premium to be subject to same provisions as other leases

1. This clause implements the recommendation in paragraph 4.37 of the Report for re-defining the category of leases which are overriding interests, i.e. interests not entered on the register but subject to which registered dispositions take effect. At present the leases which are overriding interests must be granted at a rent and without a "fine", i.e. a premium. As a result of the clause every lease for 21 years or less will be an overriding interest: gratuitous leases and leases granted at a premium will be treated in the same way as other leases.

2. *Subsection (1)* substitutes a new paragraph for paragraph (*k*) of section 70(1) of the Act. Section 70(1) lists the categories of overriding interests to which all registered titles are subject. The existing paragraph (*k*) includes in this list leases granted for 21 years or less, with the qualification that they be "granted at a rent without taking a fine". The new paragraph (*k*) omits this qualification.

3. *Subsections (2) and (3)* make consequential amendments to provisions concerning the registration of dispositions of freehold and leasehold land, to reflect the new category of leases which qualify as overriding interests.

4. *Subsection (4)* contains transitional provisions. The main change made by subsection (1) is to apply, on commencement, to existing leases granted for 21 years or less provided that the land was subject to the lease immediately before commencement. Suppose, for example, that L1 granted a 21-year lease at a premium to T in 1975 and T never protected the lease by notice on the register. If L1 assigns the reversion to L2 after the commencement of the clause L2 will be bound by the lease as an overriding interest because the reversion was subject to the lease immediately before commencement. If however L1 assigned the reversion to L2 before commencement and L2 assigns it to L3 after commencement, L3 will take free of the lease because the reversion was not subject to the lease immediately before commencement.

Abolition of Minor Interests Index.

5.—(1) Section 102(2) of the Land Registration Act 1925 (under which priorities between certain dealings with equitable interests are regulated by the order of lodging of priority cautions and inhibitions) is repealed, and accordingly—

(*a*) the index maintained for the purposes of that subsection and known as the Minor Interests Index shall cease to be kept, and

(*b*) any question of priority which would have fallen to be determined in accordance with that subsection shall be determined in accordance with the rule of law referred to in section 137(1) of the Law of Property Act 1925 (which applies to dealings with equitable interests in land the rule commonly known as the rule in *Dearle* v. *Hall*).

(2) The following provisions have effect for the purposes of the application of the rule in *Dearle* v. *Hall,* and of the provisions of sections 137 and 138 of the Law of Property Act 1925, to dealings in respect of which a priority caution or inhibition was entered in the Minor Interests Index—

(*a*) the notice of the making of the entry which under rule 229(1) of the Land Registration Rules 1925 was given to the proprietor or trustees concerned shall be treated for those purposes as a notice of the dealing to which the entry relates given (at the time it was issued by the Registry) 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*;

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

EXPLANATORY NOTES

Clause 5: Abolition of Minor Interests Index

1. This clause implements the recommendations in paragraphs 5.13, 5.15 and 5.16 of the Report. It provides that the Minor Interests Index, by which the priorities of dealings in certain equitable interests in registered land are determined, is to be discontinued; and that these priorities are in future to be determined in accordance with the rule which applies to unregistered land, i.e. the priority depends upon the order in which notice of the dealing is received by the trustees (or, where a trust corporation has been nominated to receive notices, by the corporation). This rule of priority is commonly known as the "rule in *Dearle* v. *Hall*", and the clause adopts the familiar expression. The clause also enables anyone who suffers loss as a result of its provisions to be indemnified out of public funds.

2. *Subsection (1)* removes the existing requirement that the priorities of certain equitable interests under trusts of registered land are to be determined under the land registration system, with the result that these provisions are in future to be determined in accordance with the ordinary law relating to the priorities of dealings in equitable interests in land. The subsection repeals section 102(2) of the Act, which provides that priorities of dealings with certain equitable interests under trusts of registered land are to be determined by the order in which they are recorded in the Land Registry. (It is in accordance with section 102(2) that rule 11 of the Land Registration Rules 1925 establishes the Minor Interests Index for the purpose of recording these priorities.)

Paragraph (a) of the subsection provides that the Index is to cease to be kept, and *paragraph (b)* provides that priorities which would have been determined in accordance with section 102(2) are in future to be determined in accordance with the rule in *Dearle* v. *Hall* (see above), the effect of which is enacted in section 137(1) of the Law of Property Act 1925.

3. *Subsection (2)* deals with the way in which the application of the rule in *Dearle* v. *Hall* is to affect existing entries in the Minor Interests Index.

Paragraph (a) provides that the notice of an application for an entry in the Minor Interests Index which was (in accordance with land registration rules) issued to the appropriate proprietor or trustees, is to be treated as notice of the dealing for the purpose of establishing priority under the rule in *Dearle* v. *Hall*.

Paragraph (b) provides that where a trust corporation has been nominated to receive notices of dealings the rule that the notice does not establish priority until it is received by the corporation does not apply to notices of entries in the Index issued by the Land Registry (which under the clause are treated as notices for the purpose of the rule in *Dearle* v. *Hall*.) These notices however are to be forwarded by the trustees to the trust corporation (if any) as soon as possible.

(3) A person who suffers loss as a result of the operation of this section is entitled to be indemnified in the same way as a person suffering loss by reason of an error or omission in the register, except that in relation to a claim under this subsection the reference in section 83(6)(*a*) of the Land Registration Act 1925 (restriction on amount of indemnity in certain cases) to the value of the relevant estate, interest or charge at the time when the error or omission was made shall be construed as a reference to its value immediately before the commencement of this section.

(4) For the purposes of subsection (3) a loss resulting from trustees' failing to comply with their duty under subsection (2)(*b*) shall be treated as a loss resulting from the operation of this section; 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 83(10) of the Land Registration Act 1925 (under which the registrar may enforce a right which a person indemnified would have been entitled to enforce in relation to a matter in respect of which an indemnity has been paid).

(5) Consequentially upon the repeal of section 102(2) of the Land Registration Act 1925, the following provisions of that Act are also repealed—

(*a*) in section 54(1), the words from "but this provision" to the end,
(*b*) section 102(3),
(*c*) in section 144(1) (xxiii), the words "and of priority cautions and inhibitions".

Clause 5 (continued)

4. *Subsection (3)* provides that where the operation of the clause causes loss (e.g. where the priority determined by the date of the Registry's notice to the trustees differs from the priority determined by the Index), indemnity is to be paid out of public funds as it would be for loss caused by an error or omission in the register. The indemnity is to be restricted to the value of the estate or interest immediately before the clause comes into operation.

5. *Subsection (4)* provides that loss resulting from trustees' failure to forward notices to a trust corporation as required by subsection (2)(*b*) is to qualify as loss for which indemnity is payable under subsection (3). In such a case the Registrar will be entitled under existing law to enforce against the trustees any claim which the indemnified person would have had against them.

6. *Subsection (5)* effects consequential repeals.

APPENDIX 2

STATUTORY PROVISIONS

Provisions of the Land Registration Act 1925.

Application for registration of freehold land.

4. Where the title to be registered is a title to a freehold estate in land—

(*a*) any estate owner holding an estate in fee simple (including a tenant for life, statutory owner, personal representative, or trustee for sale) whether subject or not to incumbrances; or

(*b*) any other person (not being a mortgagee where there is a subsisting right of redemption or a person who has merely contracted to buy land) who is entitled to require a legal estate in fee simple whether subject or not to incumbrances, to be vested in him;

may apply to the registrar to be registered in respect of such estate, or, in the case of a person not in a fiduciary position, to have registered in his stead any nominee, as proprietor with an absolute title or with a possessory title:

Provided that—

(i) Where an absolute title is required the applicant or his nominee shall not be registered as proprietor until and unless the title is approved by the registrar;

(ii) Where a possessory title is required the applicant or his nominee may be registered as proprietor on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed;

(iii) If, on an application for registration with possessory title, the registrar is satisfied as to the title to the freehold estate, he may register it as absolute, whether the applicant consents to such registration or not, but in that case no higher fee shall be charged than would have been charged for registration with possessory title.

Effect of first registration with absolute title.

5. Where the registered land is a freehold estate, the registration of any person as first proprietor thereof with an absolute title shall vest in the person so registered an estate in fee simple in possession in the land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject to the following rights and interests, that is to say,—

(*a*) Subject to the incumbrances, and other entries, if any, appearing on the register; and

(*b*) Unless the contrary is expressed on the register, subject to such overriding interests, if any, as affect the registered land; and

(*c*) Where the first proprietor is not entitled for his own benefit to the registered land subject, as between himself and the persons entitled to minor interests, to any minor interests of such persons of which he has notice,

but free from all other estates and interests whatsoever, including estates and interests of His Majesty.

6. Where the registered land is a freehold estate, the registration of any person as first proprietor thereof with a possessory title only shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first proprietor, and subsisting or capable of arising at the time of registration of that proprietor; but save as aforesaid, shall have the same effect as registration of a person with an absolute title.

Effect of first registration with possessory title.

7.—(1) Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or only subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest—

(*a*) arising before a specified date, or

(*b*) arising under a specified instrument or otherwise particularly described in the register,

and a title registered subject to such excepted estate, right, or interest shall be called a qualified title.

Qualified title.

(2) Where the registered land is a freehold estate, the registration of a person as first proprietor thereof with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.

8.—(1) Where the title to be registered is a title to a leasehold interest in land—

Application for registration of leasehold land.

(*a*) any estate owner (including a tenant for life, statutory owner, personal representative, or trustee for sale, but not including a mortgagee where there is a subsisting right of redemption), holding under a lease for a term of years absolute of which more than twenty-one are unexpired, whether subject or not to incumbrances, or

(*b*) any other person (not being a mortgagee as aforesaid and not being a person who has merely contracted to buy the leasehold interest) who is entitled to require a legal leasehold estate held under such a lease as aforesaid (whether subject or not to incumbrances) to be vested in him,

may apply to the registrar to be registered in respect of such estate, or in the case of a person not being in a fiduciary position to have registered in his stead any nominee, as proprietor with an absolute title, with a good leasehold title or with a possessory title:

Provided that—

(i) Where an absolute title is required, the applicant or his nominee shall not be registered as proprietor until and unless the title both to the leasehold and to the freehold, and to any intermediate leasehold that may exist, is approved by the registrar;

(ii) Where a good leasehold title is required, the applicant or his nominee shall not be registered as proprietor until and unless the title to the leasehold interest is approved by the registrar;

(iii) Where a possessory title is required, the applicant or his nominee may be registered as proprietor on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed;

(iv) If on an application for registration with a possessory title the registrar is satisfied as to the title to the leasehold interest, he may register it as good leasehold, whether the applicant consents to such registration or not, but in that case no higher fee shall be charged than would have been charged for registration with possessory title.

(2) Leasehold land held under a lease containing an absolute prohibition against all dealings therewith inter vivos shall not be registered in pursuance of this Act; and leasehold land held under a lease containing a restriction on any such dealings, shall not be registered under this Act unless and until provision is made in the prescribed manner for preventing any dealing therewith in contravention of the restriction by an entry on the register to that effect, or otherwise.

(3) Where on an application to register a mortgage term, wherein no right of redemption is subsisting, it appears that the applicant is entitled in equity to the superior term, if any, out of which it was created, the registrar shall register him as proprietor of the superior term without any entry to the effect that the legal interest in that term is outstanding, and on such registration the superior term shall vest in the proprietor and the mortgage term shall merge therein:

Provided that this subsection shall not apply where the mortgage term does not comprise the whole of the land included in the superior term, unless in that case the rent, if any, payable in respect of the superior term has been apportioned, or the rent is of no money value or no rent is reserved, and unless the covenants, if any, entered into for the benefit of the reversion have been apportioned (either expressly or by implication) as respects the land comprised in the mortgage term.

Effect of first registration with absolute title.

9. Where the registered land is a leasehold interest, the registration under this Act of any person as first proprietor thereof with an absolute title shall be deemed to vest in such person the possession of the leasehold interest described, with all implied or expressed rights, privileges, and appurtenances attached to such interest, subject to the following obligations, rights, and interests, that is to say,—

(*a*) Subject to all implied and express covenants, obligations, and liabilities incident to the registered land; and

(*b*) Subject to the incumbrances and other entries (if any) appearing on the register; and

(*c*) Unless the contrary is expressed on the register, subject to such overriding interests, if any, as affect the registered land; and

(*d*) Where such first proprietor is not entitled for his own benefit to the registered land subject, as between himself and the persons entitled to minor interests, to any minor interests of such persons of which he has notice;

but free from all other estates and interests whatsoever, including estates and interests of His Majesty.

10. Where the registered land is a leasehold interest, the registration of a person as first proprietor thereof with a good leasehold title shall not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease, but, save as aforesaid, shall have the same effect as registration with an absolute title.

Effect of first registration with good leasehold title.

11. Where the registered land is a leasehold interest, the registration of a person as first proprietor thereof with a possessory title shall not affect or prejudice the enforcement of any estate, right, or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall have the same effect as registration with an absolute title.

Effect of first registration with possessory title.

12.—(1) Where on examination it appears to the registrar that the title, either of the lessor to the reversion or of the lessee to the leasehold interest, can be established only for a limited period, or subject to certain reservations, the registrar may, upon the request in writing of the person applying to be registered, by an entry made in the register, except from the effect of registration any estate, right or interest—

Qualified title.

(*a*) arising before a specified date, or

(*b*) arising under a specified instrument, or otherwise particularly described in the register,

and a title registered subject to any such exception shall be called a qualified title.

(2) Where the registered land is a leasehold interest, the registation of a person as first proprietor thereof with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted, but, save as aforesaid, shall have the same effect as registration with a good leasehold title or an absolute title, as the case may be.

19.—(1) The transfer of the registered estate in the land or part thereof shall be completed by the registrar entering on the register the transferee as the proprietor of the estate transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the registered estate; and, where part only of the land is transferred, notice thereof shall also be noted on the register.

Registration of disposition of freeholds.

(2) All interests transferred or created by dispositions by the proprietor, other than a transfer of the registered estate in the land, or part thereof, shall, subject to the provisions relating to mortgages, be completed by registration in the same manner and with the same effect as provided by this Act with respect to transfers of registered estates and notice thereof shall also be noted on the register:

Provided that nothing in this subsection—

(*a*) shall authorise the registration of a lease granted for a term not exceeding twenty-one years, or require the entry of a notice of such a lease if it is granted at a rent without taking a fine; or

(*b*) shall authorise the registration of a mortgage term where there is a subsisting right of redemption; or

(*c*) shall render necessary the registration of any easement, right, or privilege except as appurtenant to registered land, or the entry of notice thereof except as against the registered title of the servient land.

Every such disposition shall, when registered, take effect as a registered disposition, and a lease made by the registered proprietor under the last foregoing section which is not required to be registered or noted on the register shall nevertheless take effect as if it were a registered disposition immediately on being granted.

(3) The general words implied in conveyances under the Law of Property Act, 1925, shall apply, so far as applicable thereto, to dispositions of a registered estate.

Registration of dispositions of leaseholds.

22.—(1) A transfer of the registered estate in the land or part thereof shall be completed by the registrar entering on the register the transferee as proprietor of the estate transferred, but until such entry is made the transferor shall be deemed to remain the proprietor of the registered estate; and where part only of the land is transferred, notice thereof shall also be noted on the register.

(2) All interests transferred or created by dispositions by the registered proprietor other than the transfer of his registered estate in the land or in part thereof shall (subject to the provisions relating to mortgages) be completed by registration in the same manner and with the same effect as provided by this Act with respect to transfers of the registered estate, and notice thereof shall also be noted on the register in accordance with this Act:

Provided that nothing in this subsection—

(*a*) shall authorise the registration of an underlease originally granted for a term not exceeding twenty-one years, or require the entry of a notice of such an underlease if it is granted at a rent without taking a fine; or

(*b*) shall authorise the registration of a mortgage term where there is a subsisting right of redemption, or

(*c*) shall render necessary the registration of any easement, right, or privilege except as appurtenant to registered land, or the entry of notice thereof except as against the registered title of the servient land.

Every such disposition shall, when registered, take effect as a registered disposition, and an underlease made by the registered proprietor which is not required to be registered or noted on the register shall nevertheless take effect as if it were a registered disposition immediately on being granted.

(3) The general words implied in conveyances under the Law of Property Act, 1925, shall apply, so far as applicable thereto, to transfers of a registered leasehold estate.

Registration of notice of lease.

48.—(1) Any lessee or other person entitled to or interested in a lease of registered land, where the term granted is not an overriding interest, may apply to the registrar to register notice of such lease in the prescribed manner, and when so registered, every proprietor and the persons deriving title under him shall be deemed to be affected with notice of such lease, as being an incumbrance on the registered land in respect of which the notice is entered:

Provided that a proprietor of a charge or incumbrance registered or protected on the register prior to the registration of such notice shall not be deemed to be so affected by the notice unless such proprietor is, by reason of the lease having been made under a statutory or other power or by reason of his concurrence or otherwise, bound by the terms of the lease.

(2) In order to register notice of a lease, if the proprietor of the registered land affected does not concur in the registration thereof, the applicant shall obtain an order of the court authorising the registration of notice of the lease, and shall deliver the order to the registrar, accompanied with the original lease or a copy thereof, and thereupon the registrar shall make a note in the register identifying the lease or copy so deposited, and the lease or copy so deposited shall be deemed to be the instrument of which notice is given; but if the proprietor concurs in the notice being registered, notice may be entered in such manner as may be agreed upon:

Provided that, where the lease is binding on the proprietor of the land, neither the concurrence of such proprietor nor an order of the court shall be required.

Conversion of possessory into absolute or good leasehold title.

77.—(1) Where land has been registered with a possessory title before the commencement of this Act, and the registrar is satisfied as to the title, he may register it at any time as absolute or good leasehold, whether the proprietor consents to such registration or not, but, unless the registration is made at the request of the proprietor, without charging any fee therefor.

(2) Where the registrar is satisfied as to the title he may, on a transfer for valuable consideration of land registered with a qualified, good leasehold or possessory title, enter the title of a transferee or grantee as absolute or good leasehold, as the case may require or admit, whether the transferee or grantee consents or not, but in that case no additional fee shall be charged.

(3) The following provisions shall apply with respect to land registered with a qualified or possessory title:—

(*a*) Where the title registered is possessory, the application for the registration of a transfer for valuable consideration shall, subject to any provisions to the contrary which may be prescribed, be accompanied by all the documents of or relating to the title (including contracts, abstracts, counsel's opinions, requisitions and

replies, and other like documents), in the applicant's possession or under his control; and where the title registered is qualified, such application shall be accompanied by such documents, if any, as may relate to the matters excepted from the effect of registration;

(*b*) Where the land has been registered, if freehold land, for fifteen years, or if leasehold land, for ten years, with a possessory title, the registrar shall, if satisfied that the proprietor is in possession, and after giving such notices, if any, as may be prescribed, enter the title of the proprietor of the freehold land as absolute, and the title of the proprietor of the leasehold land as good leasehold, save that if the date of first registration occurred before the first day of January, nineteen hundred and nine, the registrar shall have power to postpone the registration of an absolute or good leasehold title until, after investigation, he is satisfied in regard to the title.

(4) Where the land has been registered with a good leasehold title for at least ten years, the registrar may, subject to the payment of any additional insurance fee and to any advertisements or inquiries which may be prescribed, and if he is satisfied that the proprietor or successive proprietors has or have been in possession during the said period, at the request of the proprietor enter his title as absolute.

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

(6) Any person, other than the proprietor, who suffers loss by reason of any entry on the register made by virtue of this section shall be entitled to be indemnified under this Act as if a mistake had been made in the register.

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 not being less than forty years from the date of the delivery of the grant, and every assignment on sale of leasehold land held for a term of years absolute having not less than forty 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.

Land Registration Rules 1925, rr. 46, 48 and 49.

Notice of lease.

46.—(1) Where a lease, affecting land already registered, is registered in pursuance of these rules, notice of the registration thereof shall be given to the proprietor of the freehold land or of the superior lease out of which the lease is derived, as the case may be.

(2) If no valid objection be made within seven days after service of the notice, or if the proprietor of the freehold or of the superior lease consents in writing (by himself or his solicitor) to the application, the lease shall be noted against the title to the freehold or to the superior lease in the same manner as notices of leases have to be entered under Section 48 of the Act and these rules.

Application for conversion under Subsections (3) (*b*) and (4) of Section 77 of the Act.

48.—(1) An application by the proprietor of the land for conversion under Subsection (3)(*b*) or Subsection (4) of Section 77 of the Act, need not be accompanied by all the documents of or relating to the title as required by Subsection (3)(*a*), but shall be in Form 6 or Form 7 as the case may require.

(2) Before complying with the application, the Registrar—

(*a*) shall serve notice on such persons as he may consider necessary, including notice to owners of neighbouring property, who, he may have reason to think, may be entitled to enforce restrictive conditions affecting the land;

(*b*) may at the applicant's expense (unless an order to the contrary is made by him) insert notice of the application in the "Gazette" and such other newspaper or newspapers (if any) as he may direct;

(*c*) may make such enquiries on the land or elsewhere as he may consider necessary.

Application for conversion otherwise than as above.

49. An application for conversion otherwise than under Subsection (3)(*b*) or Subsection (4) of Section 77 of the Act shall be in Form 8 and shall be accompanied by all the documents of or relating to the title.

Land Registration Act 1966, s.1(2).

Amendments of Land Registration Act 1925

1.—(2) Applications under sections 4 and 8 of the said Act (first registration of title) as respects land outside an area of compulsory registration shall not be entertained except in such classes of cases as the registrar may, by notice published in such way as appears to him appropriate, from time to time specify and in those cases the registrar may require the applicant under either of those sections to show that there are special considerations which make it expedient to grant the application.
In this subsection "area of compulsory registration" means an area as respects which an Order in Council made or having effect under the said section 120 is in force.

Housing Act 1980, s.20(1).

Registration of title

20.—(1) Section 123 of the Land Registration Act 1925 (compulsory registration of title) shall apply in relation to the conveyance of a freehold or grant of a lease in pursuance of this Chapter whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act is for the time being in force.

APPENDIX 3

LAND REGISTRY MAPPING PRACTICE

We deal in this Appendix with three matters of practice which have aroused comment.

I. *Ordnance Survey numbers and area of parcels*

1. It is common for conveyances of unregistered land (particularly in rural areas) to describe land by reference to an Ordnance Survey parcel number (e.g. "all that land in the Parish of Dale containing one and a half acres or thereabouts and numbered 343 and 344 on the O.S. map"). The fact that parcel numbers are seldom shown on filed plans has sometimes been a source of criticism. However parcel numbers, when used to identify parcels in unregistered conveyances, have often simply been carried forward from earlier deeds and for that reason have ceased to be accurate. To be of any value at all the edition of the Ordnance Survey map would need to be specified, and since 1945 a new system of numbering parcels has been devised. Parcels on the map are given a four figure number which is the grid reference to the nearest ten metres of their approximate centres. Further, these numbers only appear on the 1/2500 scale maps which are largely used for mapping titles in areas of little development: they do not appear on the 1/1250 maps used for developed areas. Similarly, areas of parcels (which may be expressed in acres, or acres and hectares) only appear on the 1/2500 scale map. In the case of registered land, the parcel numbers and acreages will usually only appear on the filed plan when it is on the 1/2500 scale; but even here, because it would otherwise be misleading, acreages will be deleted if only part of a parcel appears on the filed plan. Should there be a specific reference to a parcel number in restrictive covenants or the grant of an easement contained in a deed which is being set out in the register, then it is the usual practice to highlight the parcel number on the filed plan and to add an explanatory note referring to it in the register.

2. We do not think that any purpose would be served by suggesting that the Registry should show parcel numbers and acreages on all filed plans. Criticism on this score has come largely from those concerned with the management of farms and large estates, but in these cases the filed plan is likely to show parcel numbers and acreages because it will be mapped on the 1/2500 scale. This information has no direct bearing on the registration of title to land and to show it on all filed plans seems to us to be unnecessary.

II. *Reproduction of 'T' marks on filed plans*

3. In the course of our enquiries regarding the identification and description of registered land we encountered a strong body of opinion that the system would be improved if (without purporting to fix boundaries definitively) the register and filed plan were to give more information about the ownership of boundaries. In particular, it was suggested to us that the Land Registry should reproduce on filed plans any 'T' marks which appear on plans in the deeds.

4. When used to indicate ownership, the convention is that a 'T' mark on one side of a boundary indicates that the owner on that side owns the fence or other boundary feature. Party walls are also sometimes indicated by 'T' marks on both sides of the boundary in question. So far as we know there has been no judicial recognition of these conventions.

5. Where 'T' marks on a plan are used to indicate ownership, the Registry practice depends on whether or not the marks are referred to in the body of the deed whose contents are set out on the register.

(i) If the 'T' marks are expressly referred to in the deed, they will be reproduced on the filed plan.

> "Thus, if there is a declaration that a wall or a party wall marked 'T' is included in a transfer, that declaration will appear on the property register and the 'T' mark will be shown on the filed plan."[1]

(ii) If the 'T' marks are not expressly referred to in the deed, the Registry will usually ignore them unless the applicant makes a specific request for them to be reproduced. In such cases a note is added to the filed plan as follows:—

> "The 'T' marks were reproduced from the plan on a deed dated but are not otherwise referred to in that deed."

6. We consider that the Registry's practice in relation to 'T' marks as evidence of ownership is satisfactory.

III. *Evidence as to ownership of boundaries on first registration*

7. Another source of misunderstanding appears to centre on the treatment accorded on first registration to other information about the ownership of boundaries contained in title deeds. Some of those we consulted said that information contained in deeds was sometimes not carried forward to the register on first registration and was therefore "lost". We have already explained the practice of the Land Registry in relation to 'T' marks. Another source of evidence is sometimes found in declarations as to ownership of boundaries made between vendor and purchaser on the sale of part of the vendor's land. The practice as to these is as follows. Unless a boundary has been fixed the Registry cannot, having regard to the general boundaries rule, *guarantee* the position of a boundary or the ownership of a boundary feature. Where however, a conveyance or transfer contains a declaration by vendor and purchaser as to the ownership of fences or other boundary structures it is the practice of the Registry whenever it can do so to make a "non-guaranteed" entry[2] in the register in respect of the declaration. It is not only on a first registration that advantage can be taken of this practice. Declarations of this kind can be included in transfers of part where appropriate and dealt with by the Registry in the same way. The determination of the ownership of a boundary feature (such as a fence) does not necessarily resolve all questions about the positioning of the boundary line. There may, for example, be footings to a wall

[1] Ruoff & Roper, p. 52.

[2] That is an entry in a form which cannot lead to an indemnity claim.

or overhanging eaves. However, determination of the ownership of the boundary feature may avoid questions as to the exact line of the boundary being pursued, and it seems to us that the present system of making agreements and declarations works well in practice. We believe that in the light of this practice it largely lies in the hands of the parties to ensure that the available evidence as to the ownership of boundary features is crystallised in a declaration in an appropriate conveyance or transfer which can be recorded on the register. If the making of such declarations on the sale of land were to become common form it would be possible to improve the quality of information about the ownership of boundaries appearing on the register. This would meet much of the criticism on this score.

APPENDIX 4

List of persons and organisations who sent comments on one or more of Working Papers Nos. 32, 37, 45 and 67

Professor J. E. Adams
Mr. T. Aldridge
The Association of Local Authority Valuers and Estate Surveyors
The Association of Municipal Corporations
Mr. R. E. Ball (formerly Chief Chancery Master)
The British Institute of International and Comparative Law
The British Insurance Association
The British Property Federation
The British Railways Board
The British Building Societies Association
Mr. T. I. Casswell
The Chancery Bar Association
The Committee of Clearing Bankers
The Country Landowners Association
The County Councils Association
Professor F. R. Crane
The Crown Estate Commissioners
The Devon and Exeter Incorporated Law Society
Mr. J. D. Eccles
Professor J. F. Garner
The General Council of the Bar
Mr. R. L. Harris
Mr. D. J. Hayton
H.M. Land Registry
The Incorporated Society of Valuers and Auctioneers
The Institute of Legal Executives
Professor D. Jackson
Montague Kelvin & Co.
The Lands Tribunal
The Law Society
Mr. G. L. Leigh
Mr. W. A. Leitch, C.B.
The London Boroughs Association
Mr. E. Moeran
The National Association of Property Owners
The National Coal Board
The National Federation of Business and Professional Women's Clubs
Mr. T. Nunns
The Office of the Director of Law Reform, Belfast
Mr. S. D. Robinson
The Royal Institute of Chartered Surveyors
The Rural District Councils Association
The Scottish Law Commission
The Senate of the Inns of Court and the Bar
Sheffield University
Mr. S. Rowton Simpson

Mr. R. J. Smith
The Society of Clerks of Rural District Councils
The Society of Clerks of Urban District Councils
The Society of Town Clerks
The Treasury Solicitor
Mr. M. S. Turpin
University College, London

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