

The Law Commission

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PROPERTY LAW

SECOND REPORT ON LAND REGISTRATION: INSPECTION OF THE REGISTER

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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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SECOND REPORT ON LAND REGISTRATION

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THE LAW COMMISSION

Item IX of the First Programme

SECOND REPORT ON LAND REGISTRATION: INSPECTION OF THE REGISTER

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

Introduction

1. This is our Second Report on the subject of land registration. The First Report¹ published on 26 October 1983 dealt with the topics of Identity and Boundaries, Conversion of Title, Leases and Minor Interests Index. A Third Report concerning Overriding Interests, Rectification and Indemnity and a Fourth Report relating to Protection and Priority of Minor Interests are being finalised.² This present Report is about the extent to which the Register of Title should be open to public inspection.

2. In due course, the four Reports should be considered together, although this present Report contains recommendations which could be adopted independently and a draft Bill is annexed. In particular, the First Report includes an introductory outline of the system of land registration and of the Law Commission's involvement which need not be repeated.³

Background

3. In a Working Paper⁴ published on 3 September 1970, the Law Commission put forward for comment and criticism two limited proposals for reform: *Proposal A*, names and addresses of proprietors to be available, or *Proposal B*, office copies of entries, excluding financial information, to be generally available. The response was small and indecisive: of the persons or bodies commenting, ten favoured Proposal A, thirteen favoured Proposal B, seven preferred no reform and four preferred an entirely open Register.

4. In 1973, the issue of opening the Register of Title to public inspection was generally supported in the House of Lords in debates on an amendment to the Land Registry Bill requiring an open Register. The amendment was withdrawn on assurances being given that the Law Commission was considering the issue.⁵

¹ Law Com. No. 125.

² The intention is that they should be published before the end of 1985.

³ *Op. cit.*, paras. 1.1-1.5.

⁴ No. 32.

⁵ See *Hansard* (H.L.), 13 December 1973, vol. 347, cols. 1281-2. The Lord Chancellor said:—"I suggest that the Law Commission should be allowed to get on with their work. As I say, I am not opposing this as a principle;..."

5. In 1976, the relevant rules were amended so that, in effect, the most significant financial information (i.e. as to the price paid or mortgage loans) would no longer be entered on the register.⁶

6. In 1983, letters were written to the Law Reform Commissions (or other appropriate bodies) of some eighteen Commonwealth and other countries where the Register of Title is open to the public, enquiring, in effect, whether there were any complaints about this or any proposals for restricting access. The replies received were overwhelmingly in the negative: surprise was frequently indicated at the suggestion that an open system might prove other than satisfactory.

7. In 1984, the Law Commission undertook fresh consultations on the question of whether the whole or part of the Register should be open to public inspection, and whether generally or only for particular purposes. This consultation, which was not directed primarily towards lawyers or other professional persons and was conducted with the advice of the Central Office of Information, involved the publication with attendant media publicity of a pamphlet in non-technical language and its distribution through public libraries and the branches of one of the large building societies.⁷ Nearly fifty thousand copies of the pamphlet were distributed, and approximately four hundred responses were received.⁸ Of these, the great majority favoured an entirely open Register of Title (ratio roughly 6:1). A possible inference also from this exercise is that people generally are not concerned one way or another whether the Register of Title remains closed or becomes open. In connection with this consultation, the National Association of Citizens' Advice Bureaux and a number of local bureaux wrote in support of an open register on the basis of their experience with specific inquiries.

8. In 1985, following wide consultation during 1984, including interested and responsible persons and societies, the Government's Conveyancing Committee⁹ concluded that there were positive advantages which could be identified for conveyancers if the Register of Title were to be open to public

⁶ Land Registration Rules 1976 (S.I. 1976/1332), rr. 2 and 3 amended r. 247 of the 1925 Rules (S.R. & O. 1925/1093) with effect from 1 November 1976 so that "the price paid or value declared" should only be entered "if the proprietor so requests" (instead of "whenever practicable"); the subrule whereby the original amount of charges should be entered on the register "where practicable" was revoked. Other financial information was not excluded. In particular, for a leasehold title, the short particulars of the lease or underlease under which the land is held are entered in the Property Register and will include the amount of the rent and any premium paid: see r. 5(1) of the L.R.R. 1925 under which the entry of such particulars depends, in effect upon the registered proprietor so desiring. Further where a document is in the custody of the Registrar, and referred to in the register, financial information might be discoverable by inspection of it: see r. 287 of the 1925 Rules and cp. s. 112 of the Land Registration Act 1925.

⁷ Copy pamphlet in Annex II.

⁸ Special thanks are offered to Sir Wilfrid Bourne, K.C.B., Q.C., for his time and thought spent considering and analysing these responses.

⁹ The Committee was established with the following terms of reference:—

"1. To consider what tests or other evidence of competence are needed for non-solicitor conveyancers in order to provide the public with a satisfactory assurance of adequate skill; how any such tests might be administered; and what other requirements should be placed on non-solicitor conveyancers to ensure adequate consumer protection.

2. To consider the scope for simplifying conveyancing practice and procedure, and any other matters concerning the simplification of house purchase which may be referred to the Committee."

inspection and strongly recommended that consideration should be given to this improvement.¹⁰

Content of Report

9. The rule that only the registered proprietor and persons authorised by him had access to the Register of Title appeared in the original Land Registry Act 1862.¹¹ It was reproduced in similar terms and subject to specific exception

Written Answer given by the Solicitor-General, Sir Patrick Mayhew, Q.C., in the House of Commons, 17 February 1984 (*Hansard* (H.C.), vol. 54, cols. 347-8), relating only to England and Wales.

The Committee was originally chaired by the late Professor Harry Street, C.B.E. and subsequently by Professor Julian Farrand (independently of the Law Commission). The other members of the committee and the bodies nominating them were as follows:—

Margaret Anstey	The Law Society
Bradley Brown	Society for Computers and Law
Iain Cheyne	British Bankers' Association
Michael Clark	Royal Institution of Chartered Surveyors
Maureen Freeman	National Association of Estate Agents
Llewellyn George	Pembrokeshire Law Society
Ivor Hussey	National Institute of Conveyancing Agents
Ronald Laing	National Consumer Council
Lucien Raven-Hill	Institute of Legal Executives
John Spalding	Building Societies Association
Roger Taylor	Association of Metropolitan Authorities
David Tench	Consumers' Association
Ronald Tweed	Association of District Councils
Barry West	British Insurance Association

¹⁰ Second Report (1985), para. 4.49 (see below, para. 18(v)).

¹¹ Sections 15 and 137; as to the development of so-called "secret conveyancing" in the sixteenth century for unregistered titles as a means of tax evasion, see e.g. A. W. B. Simpson, *An Introduction to the History of the Land Law* (1961), pp. 172-179; as to the present position with registered titles, the following paragraphs from R. Rowton Simpson's *Land Law and Registration* (1976), pp. 49-51, are informative and instructive:—

"18 Secrecy of the English system

18.1 There is a puzzling feature of the English system which requires special mention. Overseas visitors to HM Land Registry are surprised to find that the land register is secret, or 'private' (which is the less pointed word preferred by those who defend the practice). This feature will also astonish those who have read how, after the Statute of Enrolments 1535 had failed in its purpose, repeated attempts were made, for more than three hundred years, to restore publicity to land dealing. They would scarcely expect to find that secrecy was actually a feature of the measure which, at long last, was enacted to cure the evil of 'secret conveyancing' (as it was unequivocally called at the time).

18.2 Indeed, the celebrated 1857 Report itself began by pointing out that 'in the earlier periods of our history publicity was considered essential in almost all dealings with landed property', and it went on to explain how by the Statutes of Uses and Enrolments 'the Legislature sought to abolish that secret transfer of land which had begun to prevail by means of private confidences, enforced by the jurisdiction of the Courts of Equity', but the provisions of these statutes were 'soon evaded by a subtle construction and contrivance; and instead of giving publicity and notoriety to equitable transfers, the Statute of Uses was so interpreted as to make even legal conveyances, what they never were before, secret'.* The Report then referred to the repeated but unsuccessful efforts to establish 'public registration' which had been 'constantly recommended by the ablest lawyers and statesmen', and 'upwards of twenty bills have within the course of the last twenty years been brought into Parliament for the purpose of establishing systems of registration'.¹

[* Lord Westbury, Lord Chancellor in 1862, in introducing the Land Transfer Bill into Parliament did not mince his words: 'It was supposed that the Statute [of Uses] would annihilate the evil. I am sorry to say that the object which Parliament had in view was defeated here, as in many other cases, by what I may be permitted to call the pedantic and narrow-minded interpretation of the Judges of the land. You will find that in English law nothing has been more fertile of results to be regretted than the attachment of our lawyers to the mediaeval logic—the pedantries and puerile metaphysical disquisitions which distinguished what was called the learning of the time' (CLXV *Hansard* (1862) 354).]

[1 *Registration of Title Commission Report* (1857) 2 and 3. This is what the Report actually said, but presumably it really meant 'last two hundred years'.]

18.3 However, in examining the objections to a register of deeds ('or, as it has been termed of late years a Register of Assurances') the Commissioners considered (as the fourth objection out of seven) 'the fear of unnecessary and uncalled-for disclosures. No man likes to make his private

in the Land Transfer Act 1875¹² and the Land Registration Act 1925.¹³ In this Report, we shall describe the Register of Title before dealing in detail with this

affairs public; and one man has no right to pry into the affairs of another, except for some object, in which the latter has given him an interest.' They called this objection 'striking' and concluded: 'Nor do we think that there is any inconsistency in attributing weight to this objection, and at the same time regarding as an evil the disuse or loss of that system of public transfer of land which in a previous part of this report we have adverted to as having prevailed in the earlier periods of our history.'² This was a statement of remarkable ambivalence, and some further amplification might have been expected.

[2 Ibid 13 para. XX.]

18.4 The Commissioners, however, did not go on to say that this objection would justify the loss of publicity which had been roundly condemned ever since the grotesque subterfuge of 'lease and release'³ had enabled those who profited from secrecy to defeat the clearly expressed intention of the legislature to restore publicity to land dealing. In fact, the question of publicity was not again referred to in the Report, not even in the detailed recommendations; but one of the Commissioners, in a memorandum setting out 'a concise Summary of Report', clearly held no such view, for he said, 'Though I do not agree that a "mere dread of disclosures" ought to constitute a valid objection to a general registry of assurances, I am, for other reasons, entirely averse to any such registry, even in the modified form of the "Subordinate Registry" suggested in various passages of the Report.'

18.5 It is regrettable that the secrecy question was not canvassed more completely in the Report since, whatever the arguments, the Land Registry Act 1862⁴ actually contained the provision that no person other than the owners of estates and interests should be permitted to inspect the registers, and to this day 'any person registered as proprietor of any land or charge, and any person authorised by any such proprietor, or by an order of the court, or by general rule, *but no other person*, may inspect and make copies of and extracts from any register or document in the custody of the registrar relating to such land or charge'.¹

[3 See para. 9.5 above.]

[4 S.15.]

[1 Land Registration Act 1925 s.112 (our italics).]

18.6 The matter has recently been under examination by the Law Commission (which keeps English law under constant review). In their first *Working Paper on Land Registration*, they said: 'Perhaps the most controversial topic in regard to land registration is the extent to which the register of any particular title should be open, if at all, to inspection by the general public', and they pointed out that 'in almost every other country in the world registers of title or of land are fully open to public inspection. Lawyers in these countries find it hard to understand why we retain a private register in this country since the advantages of an open one are to them so obvious.'² The Commission then noted that in Scotland a deeds register (the Register of Sasines) had been open to public inspection since early in the seventeenth century, and that both the Reid³ and the Henry⁴ Committee on Registration of Title to Land in Scotland had thought that, if registration of title were introduced in Scotland, the register should be open to public inspection. They also noted that in Northern Ireland the register of title has always been open to unrestricted public access, and a majority of the Lowry Committee on Registration of Title to Land in Northern Ireland considered that the register should remain fully public when compulsory registration was extended.⁵ The position is similar in the Irish Republic.

18.7 However, HM Land Registry issues through the Stationery Office a pamphlet which categorically states that there is no publicity in the register of title and it is absolutely private. For this reason, and because 'it is in the light of this statement that the extension of the compulsory areas has taken place and in addition many proprietors have applied voluntarily for registration', the Commissioners considered that many persons whose titles have already been registered might feel aggrieved if, by retrospective legislation, their titles were rendered open to full public inspection, and that this would not be acceptable. Accordingly the Commissioners were 'not inclined to support such an innovation at present',⁶ and they clearly felt that there was no need for them to state the case for secrecy and argue it in the light of world experience and practice.

[2 *Law Commission Working Paper on Land Registration* No. 32 (1971) 43.]

[3 *Reid Committee Report* (1963) para. 64(1).]

[4 *Henry Committee Report* (1969) 20.]

[5 *Lowry Committee Report* (1967) para. 138.]

[6 *Law Commission Working Paper on Land Registration* No. 32 (1971) 44.]

18.8 England and Wales are the one exception out of all those jurisdictions—fifty in the United States alone—which use English land law and have derived their conveyancing practice from English origins but have nevertheless established publicity in dealings. The foregoing will at least show how the vital principle of publicity came to be surrendered—after over three hundred years of struggle—though it still does not explain why the English must be different from the Scots and Irish in this regard."²

¹² Section 104.

¹³ Section 112.

so-called “secrecy” rule. Then the arguments for and against an open register will be considered before our recommendation is reached.

Register of Title

10. Section 1(1) of the 1925 Act requires the Chief Land Registrar to continue to keep a Register of Title to freehold land and leasehold land; section 1(2) provides that the register need not be kept in documentary form.¹⁴ Although the term “Register of Title” is not defined in the Act, rules under the Act may regulate the mode in which the register is to be made and kept¹⁵ and rule 2 provides that the register is to consist of three Parts, called the Property Register, the Proprietorship Register and the Charges Register, and that the title to each property is to bear a distinguishing number. The term “Register of Title” is used in a variety of senses, for example as meaning the entire official record of all registered land or as meaning the register (or a part of that register) of a particular title. In this section of the Report, the use of the term is not restricted to any one particular meaning, and an attempt is made to ensure that in each particular context the meaning is clear.

11. The contents of the three Parts of each Register of Title are prescribed by rules 3 to 7. The Property Register contains a verbal description of the land and a description by reference to a plan, which is required in all cases. It also contains such notes as have to be entered relating to mines and minerals, easements and other appurtenant rights. If the title is leasehold, brief particulars of the lease are to be shown. The Proprietorship Register contains the name and address of the registered proprietor and the date of registration, but since 1976 the price paid is entered only if requested.¹⁶ The nature of the title (that is whether it is absolute, good leasehold, possessory or qualified) is shown, as also are matters which may affect the right of the proprietor to deal with the land, such as cautions, restrictions and inhibitions.¹⁷ The Charges Register contains particulars (but not the amount) of mortgages and financial charges, liens, notices of leases and entries relating to other matters adversely affecting the land, such as restrictive covenants, easements, rent charges and matrimonial homes.¹⁸

12. In addition to the register, the Registry is required to keep index maps¹⁹ and an index of proprietors’ names.²⁰ The index maps, known collectively as “the public index map”, must show the position and extent of every registered

¹⁴ Section 1 was substituted by s. 66(1) of the Administration of Justice Act 1982; the provision in s. 1(2) that the register need not be kept in documentary form (although the original section did not expressly require this), heralds the advent of a computerised register, and corresponding provisions for inspecting and copying a computerised register are made by s. 113(A) inserted by s. 66(2) of the 1982 Act.

¹⁵ L.R.A. 1925, s. 144(1)(i).

¹⁶ See above para. 5 and n. 6.

¹⁷ Particular reference may be made to L.R.R. 1925, r. 180 as to entry of a Bankruptcy Inhibition; see also r. 179 for the form of a Creditor’s Notice in respect of a petition in bankruptcy.

¹⁸ Cp. below paras. 16(vii) and 17(vii).

¹⁹ Rule 8.

²⁰ Rule 9.

estate. The index of proprietors' names must show, by reference to the title number, the name of every registered proprietor (other than certain corporate or joint proprietors).²¹

Present Rule

13. The principal enactment concerning secrecy is section 112 of the Land Registration Act 1925²² which is as follows:—

“Inspection of register and other documents at Land Registry
112—(1) Subject—

- (a) to section 112A below;
- (b) to the provisions of this Act as to furnishing information to Government departments and local authorities; and
- (c) to such exceptions as may be prescribed,

any person registered as proprietor of any land or charge, and any person authorised—

- (i) by any such proprietor; or
- (ii) by an order made under subsection (2) or (3) or this section; or
- (iii) by general rule,

but no other person, shall have a right, on payment of a fee and in accordance with the prescribed procedure, to inspect and make copies of the whole or any part of any register or document in the custody of the registrar relating to such land or charge.

(2) The High Court may by order authorise—

- (a) the inspection of a register or document in the custody of the registrar and relating to land or a charge; and
- (b) the making of copies of the whole or any part of such register or document,

if—

- (i) it appears to the court that the register or any such document may contain information which is relevant to proceedings pending in the court (including proceedings for the enforcement of a judgment or order of the High Court or any other court); or
- (ii) it appears to the court, on an application made for that purpose, that such an order ought to be made for any other reason.

(3) A county court may by order authorise—

- (a) the inspection of a register or document in the custody of the registrar and relating to land or a charge; and
- (b) the making of copies of the whole or any part of any such register or document,

²¹ These are proprietors of charges who are building societies, local authorities or Government departments and corporate or joint proprietors of land or charges registered before 1 May 1972: see Land Registration Rules 1976 (S.I. 1976/1332).

²² As substituted by para. (b) of Sched. 5 to the Administration of Justice Act 1982.

if it appears to the court that the register or any such document may contain information which is relevant to proceedings pending in the court (including proceedings for the enforcement of a judgment or order of the court or of any other court).”

The broad effect of this section is that apart from certain specific exceptions, the register of a title can only be inspected by the registered proprietor or an authorised person. The words “no other person” in subsection (1) assert the secrecy rule, but the section also indicates circumstances in which it is inapplicable. It is not entirely clear why a distinction is made between *exceptions* in subsection (1)(a) to (c) on the one hand and *authorised persons* in subsection (1)(i) to (iii) on the other, for the “exceptions” consist of persons who are in some sense authorised to inspect, and “authorised persons”, at least where they are not authorised by the registered proprietor, are exceptions to the rule. In the treatment of this matter in this Report, a slightly different distinction is drawn between those who have an automatic right to inspection and those who may acquire a right of inspection through the exercise of some authority or discretion.

14. Before the various ways in which the secrecy rule is relaxed are considered, attention should be paid to certain other features of section 112 and the relevant rules. *First*, the section confers not merely a right of inspection, but a right to make copies of the register and documents relating to the land or charge in question. The references to the right of inspection should be taken, in appropriate contexts, here to include references to the right to make copies. *Secondly*, the right of inspection and the right to make copies are in effect not merely rights to make a personal inspection and to make personal copies, but rights to require the Registry to make an inspection (i.e. an official search) and to provide office copies and to indemnify the applicant against any loss resulting from error in an official search or an office copy.²³ *Thirdly*, the section is not comprehensive in its scope, for it makes no specific reference to various other provisions conferring rights of inspection, in particular sections 59(3), 61(10) and 112B. *Fourthly*, although the section seems to indicate that exceptions may be prescribed, and persons authorised by rules under the Act, it seems improbable that any substantial relaxation of the secrecy rule would be regarded as an appropriate use of the rule-making power.²⁴ In addition, it

²³ These consequences follow from the provision in s. 112 that the right of inspection is exercisable “on payment of a fee and in accordance with the prescribed procedure.” The prescribed procedure includes procedures for official searches and for office copies (r. 296); and ss. 83(3) and 113 make specific provision for a right of indemnity for loss from errors in official searches and offices copies respectively. Fee Orders are to be made by the Lord Chancellor, with the advice and assistance of the Rule Committee and the concurrence of the Treasury, under L.R.A. 1925 s. 145; by virtue of L.R.A. 1936 s. 7 in making such orders regard must be had *inter alia* “to any indemnities theretofore paid, and to the contingency that indemnities may therefore become payable”. Under the Land Registration Fee Order 1985 (S.I. 1985/359) a fixed fee of £5 is payable for the following relevant services: official search of the index of proprietors’ names (per name); personal search of the register or any part thereof other than by the registered proprietor; inspection of any document not referred to on the register (para. 5(1) and Sched. 5 Part II); that Order also provides that no fee is payable in respect of the following relevant services: supplying an office copy of the register or of the title plan or of any document referred to on the register as being filed; a search of the register (except a personal search made by a person other than the registered proprietor); an official inspection of a filed plan; a search of the index map (para. 6(2) and Sched. 6 Part II).

²⁴ Support for this view may be found in the enactment of s. 112B (see Matrimonial Homes and Property Act 1981, s.4(4)) which gives effect to the recommendation in para. 2.31 of our Third Report on Family Property (1978), Law Com. No. 86, for a limited right of inspection by mortgagees. We had suggested (n. 40) that this recommendation should be carried out by rules.

should be noted that the right to inspect or copy documents is restricted to “any document in the custody of the Registrar *and referred to in the register*”.²⁵

15. The statutory relaxations of the secrecy rule are now examined, dealing first with automatic rights of inspection, and secondly with rights of inspection which result from some authority or permission.

I. *Inspection as of right*

- (a) Under section 110(1), a purchaser (other than a lessee or chargee) of registered land is entitled to the vendor’s authority to inspect the register of his title. In this context, “purchaser” clearly means a purchaser who has contracted to buy, not merely a potential purchaser.
- (b) Under section 112A(1), inspection of the register is permitted on application by the Director of Public Prosecutions, a Chief Officer of Police or an Official Receiver where it is certified that the particular register to be searched is believed to contain information which will assist in the investigation of a criminal offence which has, or is reasonably suspected to have been, committed, or in the recovery of the proceeds of a crime.²⁶
- (c) Under section 59(3), a person interested under a writ or order for enforcing a judgment against registered land or a registered charge has a right to inspect the register and make copies of it and of any filed documents which relate to the land or charge. It will be noticed that this provision does not entitle a judgment creditor to inspect the register unless he has obtained a writ or order for enforcing the judgment, and that writ or order is against registered land or a registered charge. In other circumstances, judgment creditors (unless authorised by the registered proprietor) can only inspect the register under the authority of a court order.
- (d) Under section 61(10), the Official Receiver or trustee in bankruptcy is entitled to inspect the register so far as it relates to any proprietor against whom a receiving order has been made.
- (e) Rule 288(1) is as follows: “The Property Register and the filed plan of any title may be inspected by any person interested in the land or in any adjoining land or in a charge or incumbrance thereon”. This provision does not authorise inspection of the Proprietorship Register or Charges Register from which it would be possible to discover the name of the proprietor, details of any charges and possibly (i.e. pre-1977 registrations) the price paid for the land. Furthermore, a person seeking to inspect under this provision has to satisfy the Registrar that he is “interested” in the land in question, and he will be required to specify and give satisfactory evidence of his interest, a term which presumably is to be construed as referring only to recognised and existing proprietary interests.

²⁵ L.R.R. 1925, r. 287; inspection of other documents is in the discretion of the Registrar: r. 290(1).

²⁶ This section was inserted by s. 25 of the Administration of Justice Act 1977. Note that the Insolvency Bill (1985) proposes the insertion of a new section, s. 112AA, conferring additional powers of inspection.

- (f) Section 112B gives certain mortgagees a right to requisition an official search for the purpose of discovering whether a spouse's statutory rights of occupation under the Matrimonial Homes Act 1983²⁷ are protected on the register. This right, which we recommended in our Third Report on Family Property, is complementary to the mortgagee's duty, in an action enforcing a security taken on a dwelling-house, to serve notice of the action on any person whose rights are protected under the 1983 Act.²⁸
- (g) Under rule 12(1), the public index map which shows the extent of all registered land by reference to title numbers is open to public inspection. Although this map is not strictly speaking a part of the Register of Title, the right to inspect it can reasonably be regarded as an exception to the secrecy rule, since that rule, as enacted by section 112, covers documents in the custody of the Chief Land Registrar.
- (h) Rule 9²⁹ enables a search in the index of proprietors' names to be requisitioned by anyone who satisfies the Registrar that he is "interested generally (for instance, as trustee in bankruptcy or personal representative)" in the property of the person against whose name he wishes the search to be made.
- (i) Under the Housing Act 1980, s. 24(5), where a landlord's title is registered, the Secretary of State for the Environment may, for the purposes of executing a vesting order in connection with the right to buy conferred on certain tenants by Part I of that Act, authorise any person, on payment of the appropriate fee, to inspect and copy any register or document in the custody of the Chief Land Registrar relating to the dwelling-house in question.³⁰

II. *Inspection by authority or permission*

- (a) Section 112 makes specific provision for inspection of the register under the authority of the High Court or a county court. The High Court and the county court may authorise inspection where the information in the Register appears relevant to proceedings (including enforcement proceedings) pending in the court. In addition, the High Court may authorise inspection where "for any other reason" it appears that an order for this purpose ought to be made. There has been no reported case concerning this general jurisdiction.
- (b) Under section 129, the Chief Land Registrar has a discretion to furnish Government departments and local authorities on their request "such particulars and information as they are . . . by law entitled to require owners of property to furnish to them direct".³¹

²⁷ Section 2(8).

²⁸ See (1978) Law Com. No. 86, para. 2.31.

²⁹ As substituted in 1976.

³⁰ See also s. 24B(3) of the 1980 Act (added by the Housing and Building Control Act 1984) whereby landlords directed *not* to include covenants in conveyances may for specified purposes authorise inspection of the register and copying of documents relating to the dwelling-house.

³¹ There are numerous enactments which empower Government departments and local authorities to obtain information for the performance of their statutory functions, and this information may include the names and addresses of registered proprietors and the nature of their interests. For example, the Inland Revenue have powers to obtain information to the purpose of collecting capital transfer tax (Capital Transfer Tax Act 1984, s. 219); and the Secretary of State

(c) Rule 288(2) is as follows:

“(2) Other entries in the register and documents referred to therein, and the statutory declaration in support of a caution, may be inspected by any person interested, on giving three days’ notice to the proprietor or on satisfying the Registrar that, by reason of the death of a sole proprietor, or for any other sufficient reason, he cannot obtain the requisite authority for or consent to such inspection, and that such inspection is reasonable and proper.”

Although these words suggest that the applicant should apply to the proprietor, in practice he has to apply to the Chief Land Registrar and satisfy him by documentary or other evidence that he is interested in the land.³² Inspection will then only be allowed if the registered proprietor does not object, but if he does (whether or not his objection is reasonable) that is, in practice, the end of the matter, even though the proprietor’s right of veto is not stated in the rule.

Open Register Arguments

16. We have become aware, through the consultations and other matters referred to in paragraphs 3 to 8 above, of various arguments in favour of preserving the present secrecy rule. The principal points put may be listed as follows:—

- (i) Registration of title has hitherto been undertaken in reliance upon a principle of confidentiality so that a change to openness would constitute a breach of faith.
- (ii) Where the State requires information to be furnished under compulsion, such information should not be published unless there is a clear need to do so. Such a need does not here exist.
- (iii) An open register would enable outsiders not only to find out who owned land but, for example, whether the land was mortgaged, what rent was payable under any lease, etc. In many instances it could do no harm to the landowner if such information was known to outsiders. In some instances, however, it might be annoying for the landowner for the information to be known. The outsider might, for example, be interested in ascertaining the identity of the landowner so that he could be included as a recipient of unsolicited commercial mail. But the outsider’s interest might be less friendly: he might wish to ascertain details of the owner’s personal life or affairs for publication in a gossip column or in some more positively harmful manner. He might even be

and local authorities have specific powers to obtain information in relation to planning functions (Town and Country Planning Act 1971, s. 284 as amended by Town and Country Planning (Amendment) Act 1977, s. 3). In addition, under s. 16 of the Local Government (Miscellaneous Provisions) Act 1976 local authorities are given wide powers to obtain information as to interests in land where the authority considers it ought to have the information for carrying out any statutory function such as the right to take action in respect of premises which are unfit for human habitation or over-crowded, or in order to improve accommodation in housing action areas (see respectively Part II of the Housing Act 1957, Part IV of the Housing Act 1957, and Part IV of the Housing Act 1974). It has long been accepted that where authorities have functions of this kind they should also have power to obtain the necessary information. Such a power was often included in the relevant statute (see e.g. Housing Act 1957, s. 170 repealed by Local Government (Miscellaneous Provisions) Act 1976), but the generality of s. 16 has made this largely unnecessary.

³² See Ruoff and Roper, *Registered Conveyancing*, 4th ed., (1979), pp. 670–671.

a terrorist anxious to ascertain details of who owns land in order to further his aim of murder or arson. The potential harm to individual persons is not outweighed by some theoretical public "right to know".

- (iv) In unregistered conveyancing title deeds are private and the position where title happens to be registered should not be different.
- (v) An open register might have the effect of encouraging nominee registrations concealing beneficial ownership. Nominee registrations would partially defeat the purpose of an open register and would also be undesirable in as much as they might reduce the information available to those who at present have access to the register and who have a proper interest in ascertaining beneficial ownership.
- (vi) Partial openness, for example, restricted to disclosure of the names and addresses of registered proprietors, would give the public all that it has a legitimate interest in knowing. The amount of information of a personal nature which should be publicly available should be restricted to the absolute minimum and this could be done by not making the Register of Charges open. Alternatively, access should be dependent upon reasonable cause being shown.
- (vii) It would be undesirable if third parties could learn of a registration of rights under the Matrimonial Homes Act 1983 before the registered proprietor did. It is apparently still the Chief Land Registrar's practice not to give the proprietor notice of the application for registration.³³

17. Arguments derived through consultation in opposition to these points as listed are as follows:—

- (i) Registration of title has been, and will be, undertaken not in reliance on any principle of confidentiality or secrecy rule, but partly because of its other advantages (e.g. curing defective documentation) and generally because it was, and will be, compulsory (i.e. by virtue of Land Registration Act 1925, s. 123).³⁴
- (ii) There appears to be no basis for a restriction on publication as asserted to be found in existing general law or policy: indeed it is directly contradicted in relation to the other registers referred to in para. 18(ii) below. As to the need for publication, see para. 18(iv) and (v) below.
- (iii) Invasion of privacy was the main point made by the comparatively few opponents of an open Register of Title, and it was clear from their letters that it aroused strong feelings. However, it should be

³³ Ruoff and Roper, *Registered Conveyancing*, *ibid.* p. 747, explain this as follows:—

"It may perhaps be added that the Chief Land Registrar will not serve a notice of a wife's application on the registered proprietor of the land because he will wish to avoid exacerbating what may already be a delicate matrimonial situation or doing anything that might provoke a bullying or fraudulent husband into obtaining cancellation of the entry."

A footnote adds: "The courts have criticised this practice in two particular instances," and reference is made to the cases cited in n. 41 below.

³⁴ Thus in the Written Answer referred to in n. 9 the Solicitor-General proceeded:

"Furthermore we intend to speed up the extension of land registration. Additional manpower is to be made available to the Land Registry so that compulsory registration will cover areas containing 85 per cent of the population—as opposed to 73 per cent at present—by 1987. This is the first extension of compulsory registration (except for former council houses) since 1978.

We expect that computerisation will release manpower within the Land Registry and allow the programme of compulsory registration to be completed within 10 years."

remembered that there is no general right to privacy recognised by English law, and that no such right was recommended by the Younger Committee.³⁵ It was urged that a closed register inhibits the discovery and dissemination of accurate information about a matter of public interest, the ownership of land. As the National Consumer Council commented:—

“It may be argued that this would be an invasion of privacy. We disagree. The citizen has a strong interest in being able to conduct his family life in private. This does not extend to secrecy over the ownership of land. The ownership, use and occupation of land have several ‘public’ implications. The denial of public access to the Land Registry is a symptom of the obsession with unnecessary secrecy which pervades British society. Practice in England and Wales should correspond to that in Scotland and elsewhere in the world. The Land Registry should be open to public inspection.”³⁶

For the point that the ownership of land may very well be of legitimate private as well as public interest to others, see further paragraph 18 (iv) and (v) below. Even without showing any such justifying interest, a reasonable answer to the question: why should anyone be entitled to know what property someone owns? might be much the same as that given to an equivalent question: why should a cat be able to look at a king?—because it does the king no harm and could benefit the cat. Commercial exploitation by advertisers should be recognised as a fact of modern life whilst inspection of the register by gossip columnists, or terrorists, seems an unlikely way for them to obtain otherwise available information and one which can in any case be avoided if wished by means of nominee registrations.

- (iv) There has never been any accepted policy or principle requiring that unregistered title deeds be private. On the contrary, the Middlesex and Yorkshire Deeds Registries were, and are, public. Equally the Land Charges Registry (unlike the Charges Register where title is registered) has always been searchable against the name of an estate owner without his authority. Further, the registered position is already substantially different in other respects because of the extensive exceptions to the secrecy rule and, in any event, the unregistered position will become largely obsolete and irrelevant in the foreseeable future with the continuing spread of compulsory registration of title.³⁷
- (v) As to nominees, it has always been fundamental that registration of title is only concerned with the legal estate and was not designed to reveal beneficial ownership.³⁸ Every registered proprietor, whether or not a nominee or other trustee, enjoys full powers of disposition unless

³⁵ Report on Privacy (1972), Cmnd. 5012.

³⁶ Although some details of a personal nature may, in fact, be disclosed on the register, presumably the National Consumer Council considered that here disclosure in the public interest should prevail.

³⁷ See Solicitor-General's statement, n. 34; also Registration of Title Order 1984 (S.I. 1984/1693) extending the system to cover areas containing 79.4 per cent of the population of England and Wales.

³⁸ See L.R.A. 1925, s. 74; also ss. 4(1) and 8(1) which expressly permit the registration of nominees.

a restriction is entered.³⁹ Further the trust concept itself, like the vesting of property in companies, has become such a basic feature of the English legal system that its use should not be lightly categorised as undesirable. On the contrary, nominee or company registrations should be encouraged in this context as an equivalent device to ex-directory telephone numbers. In addition, it should be appreciated that the object of an open register would not merely be to enable discovery of the name of a landowner, but also the extent, benefit and burdens of the property and title to the legal estate.

- (vi) Any partial or discretionary opening of the register would appear impracticable, as involving unacceptable administration and resource implications for H.M. Land Registry.⁴⁰ "Personal" information is to be found in *all three* Parts of the register. Therefore to exclude this type of information would require too many "expert man hours" to be considered feasible. Besides, any charge of a property necessarily affects the very *ownership* of the legal estate, and to exclude the Charges Register from public access would be to exclude not only references to mortgages but also vital information relating to leases, restrictive covenants, etc. In other words, any alteration of the present position short of a completely open register would appear to be more trouble than it is worth.
- (vii) The Chief Land Registrar's practice of refraining from notifying the registered proprietor of a Matrimonial Homes Act registration has

³⁹ L.R.A. 1925, ss. 18, 21 and 58.

⁴⁰ Cp. Chief Land Registrar's response quoted by the Conveyancing Committee in their Second Report (1985), paras. 4.47 and 4.48 as follows:—

"4.47 We asked the Chief Land Registrar whether he saw any disadvantages in having an 'open' register, assuming that appropriate search fees would be chargeable for anyone wishing to inspect. He responded as follows:

'It is thought that initially the registry might be somewhat embarrassed by numerous enquiries from busy-bodies and others having no true interest in obtaining this information but, thereafter, it is thought that the level of enquiries would settle down to proportions which would cause the Registry little difficulty; the additional resources required would be unlikely to be high. Additional fees for searches would be of no particular help to the Registry in the event of the work proving to be higher than envisaged. It cannot be emphasised too strongly either in this context or generally that the Registry's difficulties at the present time, do not centre on the question of the level of finance available but on the fact that its manpower resources are strictly limited by the Government's policy to restrict civil service numbers.'

4.48 Some of those who objected to an 'open' register on grounds of privacy suggested in their representations to us that a partially open register might be feasible, and so we sought the Chief Land Registrar's views on this option. We asked whether there would be any practical objections to (i) a register 'open' except as to entries on the charges register or (ii) a register 'open' unless the proprietor expressly notified a desire that it should be private or (iii) a register 'open' without special authority to all practising solicitors or other persons (such as licensed conveyancers) lawfully undertaking conveyancing. His response was as follows:

'(i) Subject to the point [made in the previous answer: see para. 4.47] the answer is 'no', so far as the Registry is concerned.

(ii) Any discretionary element introduced to the opening of the Register would raise manpower and administrative problems for the Registry.

(iii) Again difficulty could be caused because the Registry would then be concerned to find out whether the applicant practitioner was entitled to proceed without special authority.'

These answers seem persuasive. Quite apart from any practical difficulties with any such partial proposal, an 'open' register which yet did not reveal the benefits and burdens of restrictive covenants, rights of way and other easements in relation to adjoining properties, could not notably simplify conveyancing."

been judicially condemned.⁴¹ In any case, without notification, the proprietor spouse must at present often learn of the registration from third parties, namely potential purchasers or chargees, at an inconvenient time.

⁴¹ See *per* Orr L.J. in *Watts v. Waller* [1973] Q.B. 153 at pp. 175-176:—

“I should add, however, that we were informed in the course of the hearing that it is not required by the relevant rules that a charge registered either under the Land Charges Act 1925 or the Land Registration Act 1925 should be notified to the owner of the hereditament in question. To give such a notice in all cases would no doubt be a very heavy burden on the registries concerned, and there may well be good reasons why, outside the ambit of the Matrimonial Homes Act 1967, notice is not required. But in the context of that Act it seems to me unfortunate that no notice should be given to the owner of the house, who may reasonably wish to raise a loan on the security of the house or to sell the house and find himself impeded by a registered charge of which he had no knowledge. It seems to me that in these circumstances it might well be desirable, whatever may be the circumstances as to registration of other charges, to require that registration of a charge under the Matrimonial Homes Act 1967 should be notified to the spouse who owns the house so that he or she may in all cases be made aware of the restriction thereby imposed on the title, and can in an appropriate case take immediate action to obtain an order under section 1(2) terminating the rights of the other spouse and so clear the title.”

Also *per* Megarry J. in *Wroth v. Tyler* [1974] Ch. 30 at p. 39:—

“In *Watts v. Waller* [1973] Q.B. 153 the Court of Appeal was critical of the absence of any provision requiring notification to the landowner if rights under the Act of 1967 are registered under the Land Charges Act 1925 or the Land Registration Act 1925. I do not know whether the attention of that court was drawn not merely to the absence of any statutory requirement of notification to the landowner, but also to the positive practice of the Land Registry to the contrary. In Ruoff & Roper on *The Law and Practice of Registered Conveyancing*, 3rd ed. (1972), p. 784, it is said: ‘... in no circumstances will a notice of a wife’s application be served on the registered proprietor of the land.’ A practice which warns a mortgagee of the registration of a charge over which his mortgage takes priority, but leaves unwarned the landowner, who may proceed to act to his detriment in ignorance of his wife’s application, is a practice which seems to me (and I speak temperately) to deserve further consideration.”

The Commission has favoured the practice of the Registrar in the following terms:—

“2.86 There is, however, a positive reason for not notifying the husband of the registration of his wife’s rights. Just because such registration is not common form, but is usually resorted to only when the relationship between the spouses is not as it should be, registration is liable to be interpreted as a hostile act, and a wife (anxious to preserve, and indeed improve, the marriage) may well not wish to tell her husband that she has registered. Notification by the Land Registry may, in these circumstances, be worse in so far as it suggests that the wife has acted in a manner not merely hostile but underhand. Fears for the marriage itself should not be permitted to inhibit the wife from protecting her interests and we are satisfied that the “family” considerations (which will be a factor in most cases) outweigh any advantage there may sometimes be, from the conveyancing point of view, in automatically notifying the husband of Class F entries. We accordingly endorse the present practice of not giving such notice. It is only fair to add that these considerations may not have been present to the mind of the Court of Appeal in *Watts v. Waller*, where the marriage had already broken down to the extent that the parties were living apart.”

(Third Report on Family Property (1978), Law Com. No. 86). However, the Commission has also observed:—

“79. *Registration as a source of friction*. The argument about friction was put by Ormrod L.J. in *Boland* as follows:

“... the registration of Class F land charges or caution is an essentially ‘hostile’ type of proceeding which is not well suited to couples who are living together on reasonably good terms”. [[1979] Ch. 312, 339.]

In our Third Report on Family Property we accepted the substance of this argument, both in relation to the Matrimonial Homes Act 1967 and in relation to our own proposals for registration in the Matrimonial Homes (Co-ownership) Bill. We remain of the view that registration can be seen as a hostile step, though we think it is possible to exaggerate this effect. In the majority of cases registration is probably resorted to in the course of a matrimonial dispute, when the wife has a special need to protect her own position: at that stage ‘hostilities’ have begun, and the husband is unlikely to be surprised to discover that the wife has registered a charge. In any event, hostility is not peculiar to registration: even more hostile than registration is the act of thwarting a transaction by the last-minute assertion of an overriding interest, and *Boland* has provided ample opportunity for such acts.”

(Report on the Implications of *Williams & Glyn’s Bank Ltd. v. Boland* (1982), Law Com. No. 115).

18. Arguments seeking to refute the points put against an open Register of Title can be and were, on consultation, supplemented by a number of positive points justifying a change from the present secrecy rule as follows:—

- (i) Virtually all other countries with land registers or Registers of Title (including, of obvious relevance, Scotland and Northern Ireland) have no similar restrictions on public access. This fact, although in itself hardly conclusive, must at least raise some doubt as to whether there is any genuine need, unique to England and Wales, for a secrecy rule.
- (ii) Even in England and Wales, numerous other registers exist which have not been made subject to any similar secrecy rule, even though they relate to such similarly personal and financial or property matters as fair rents, restricted contracts, planning applications, company shares, electoral roll, rates, common land, charities, probate and letters of administration, wills, births, deaths and marriages.⁴²
- (iii) The ownership, as well as the user, of land, a finite resource, carries social responsibilities and is a matter of legitimate public interest: compare the public register of disused local authority land.⁴³ In this connection, commentators observed that an open register would be of assistance to persons engaged in historical research or the study of planning and estate management or concerned to ensure the preservation of footpaths or ancient buildings as well as to promote desirable developments and to oppose undesirable developments.
- (iv) Landownership is also frequently of legitimate private interest, for example, for tenants to identify immediate and superior landlords,⁴⁴

⁴² See, respectively, Rent Act 1977, ss. 66 and 79; Town and Country Planning Act 1971, s. 34; Companies Act 1948, s. 113; Representation of the People Act 1949, s. 7; General Rate Act 1967, s. 108; Commons Registration Act 1965, s. 3(2); Charities Act 1960, s. 4(7); Supreme Court Act 1981, s. 124 (also see ss. 111, 125 and 126 and Non-Contentious Probate Rules 1954 (S.I. 1954/796), r. 58); Birth and Deaths Registration Act 1953, ss. 30–33; and Marriage Act 1949, ss. 63–65. As to cars, the Road Vehicles (Registration and Licensing) Regulations 1971 (S.I. 1971/450), reg. 15(1) provides as follows:—

“(1) The Secretary of State, upon being requested to do so by a local authority for any purpose connected with the investigation of an offence, or by or on behalf of a chief officer of police, shall supply to that person free of charge such particulars contained in the register as may be requested of any vehicle registered with the Secretary of State, and upon being requested to do so by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for his request, shall supply to that person on payment of [£2] the name and address of the owner of any vehicle registered with the Secretary of State together with a copy of the particulars shown in the last licence issued in respect of the vehicle.”

Authority from the proprietor of the car is not required.

⁴³ Local Government, Planning and Land Act 1980, ss. 95 and 96.

⁴⁴ There are provisions in the Housing Act 1974 (ss. 121 and 122) designed to allow certain residential tenants to obtain disclosure of their landlords' identity. These provisions do not wholly overcome the difficulties, for they only apply to the immediate landlord, and although they may encourage the disclosure of names and addresses they cannot effectively be invoked in all cases unless the name and address are known to some agent of the landlord in the first place. Moreover the obligations of disclosure are backed by criminal sanctions, which seem to some an unnecessarily heavy-handed means of enforcement in this field. In the particular case of leasehold enfranchisement, where the tenant needs to notify the landlord of his intention to acquire the freehold, we understand that the Registrar will serve notice of the tenant's application in accordance with r. 288(2); but, as we have seen (para. 15 II(c)), actual inspection of the register in such a case will only be allowed if the registered proprietor does not object.

There is another problem affecting lessees, including underlessees and transferees of leases. Since a lessee has no right to inspect the register corresponding to that of a purchaser under s. 110, he may be unable to discover whether the lessor is entitled to grant the lease or whether there are covenants

for developers to negotiate the purchase of pockets of derelict land in cities or the release of restrictive covenants or easements, for neighbours or local authorities to obtain access to abate nuisances or to repair property, for auditors or others tracing assets and for anyone seeking to check creditworthiness or to avoid or investigate fraud. It would appear equally legitimate for persons wishing to indulge in "outdoor activities" (e.g. mountaineering, canoeing, orienteering, wild life watching, archaeology, etc.) to be able to discover whom to ask for permission to enter upon the land so as to avoid any risk of trespassing.

- (v) An open Register of Title could contribute significantly to the simplification of house transfer. As to this, the Government's Conveyancing Committee, in its recently published Report⁴⁵ identified the following aspects:—

- “(a) The extra formality of having to obtain the registered proprietor's written authority to inspect would be obviated;
- (b) the vendor's title could be verified much earlier in the conveyancing process; it would obviate some frustration on the part of potential purchasers to know they were negotiating with the registered proprietor; also, for example, a vendor's solicitor would not be delayed by the need to obtain information from mortgagees in order to prepare the contract;⁴⁶
- (c) purchasers of leasehold properties would be able, as of right, to discover whether a particular property was affected by any incumbrances or covenants on superior titles;
- (d) the development of a computerised register of title will to some extent be inhibited by the existing privacy rule; an 'open' register would eventually enable direct inspection via remote terminals in a conveyancer's office or by a potential purchaser at home;

or other incumbrances affecting the freehold title (or, as the case may be, some superior leasehold title), by which he will be bound (see *White v. Bijou Mansions Ltd.* [1937] Ch. 610 affirmed [1938] Ch. 351). A lessee, underlessee or transferee of a lease takes a registered lease subject to the "incumbrances and other entries... appearing on the register...": s. 20(1)(a) (lessees), s. 23(1)(b) (underlessees and transferees). These incumbrances include restrictive covenants of which notice is entered on the register: s. 50(2). Cp. Law of Property Act 1925, s. 44. under which lessees, underlessees and assignees cannot call for the title to a superior leasehold reversion. The section does not however prevent underlessees from exercising their common law right to call for the title to the lease from which their interest is immediately derived. Accordingly, if the lessor is himself a leaseholder and is registered with title absolute, that title is guaranteed and the register of that title will show the covenants and incumbrances affecting the superior title, so that an underlessee, in exercise of his right to see the title to the lease, will also be able to see the incumbrances and covenants affecting any superior title. Therefore, this problem seems to arise (a) in the case of a lease out of the freehold, where the freeholder does not agree to authorise inspection of the register of the freehold title, and (b), in the case of underlessees, where the freeholder does not agree and the lease out of which the underlease is granted is not registered with title absolute.

⁴⁵ See n. 10.

⁴⁶ Delay for this reason appears strictly unnecessary at present since such a solicitor can already inspect the register and obtain office copies with the authority of the vendor (assuming him to be the registered proprietor) under s.112(1) of the L.R.A. 1925, and to facilitate this, where the client himself lacks the requisite details, appropriate searches could be made in the index of proprietors' names and the public index map under rr. 9, 12 and 286 of the L.R.A. 1925 (as amended in 1976).

- (e) a fully 'open' register would enable a purchaser to inspect the titles to adjoining properties, not only as to the proprietors' names but also as to the filed plan for the general boundaries and particularly as to the burden of restrictive covenants, the route of rights of way, and so on."
- (vi) The Chief Land Registrar stated that it seemed to him that an open register would be helpful to H.M. Land Registry in three ways:—
- “1. In cases where it is desirable that parties should be brought together, e.g., for the purpose of resolving a dispute, at present this is sometimes difficult and it is on occasions such as this that it can be necessary to put the parties in touch with one another by giving the name of the firm of solicitors to whom the certificate was last sent. I should emphasise that the proprietor will never be named by the Registry in such circumstances without authorisation.
 2. The discretionary provision of sections 112, 112A and 129 in practice take up quite a lot of time and involve senior staff. Clearly, if the register was generally open, these provisions could be swept away.
 3. An open register would be helpful in relation to computerisation, particularly when ultimately we move to the provision of on-line facilities. If the register were to remain closed, key numbers or other devices would have to be provided.”

Conclusion and Recommendation

19. In 1905, that distinguished lawyer, A. V. Dicey, K.C., drew attention⁴⁷ to the surprising fact that, notwithstanding an immense amount of legislative activity in the nineteenth century, the fundamentals of the land law remained essentially unchanged from what they had been in 1800 and, indeed, from what they had been in Blackstone's time. One of five fundamentals he listed was the principle of secret or private conveyancing of land; the other four were primogeniture, the rule against perpetuities, strict settlements, and freedom of testamentary disposition.⁴⁸ In the years since Dicey wrote, each of the other

⁴⁷ 21 L.Q.R. 221.

⁴⁸ The opening paragraphs of Dicey's article appear of relevance and interest:—

“THE PARADOX OF THE LAND LAW.

To the student of legal history the development of the English land law from 1830 to 1900 presents this paradox: incessant modifications or reforms of the law, which extend over seventy years, and have certainly not yet come to an end, have left unchanged, in a sense almost untouched, the fundamentals of the law with regard to land. The broad facts of the case are patent.¹

The constant alterations of the law are attested, were evidence needed, by more than a hundred enactments passed from 1830 onwards with regard to the tenure, the disposition, the devolution, and generally the dealing with land.² The Fines and Recoveries Act, 1833, the Dower Act, 1833, the Inheritance Act, 1833, the Real Property Limitation Act, 1833, the Real Property Act, 1845, the Conveyancing Acts, begun in 1845 and culminating in the Conveyancing Acts, 1882 to 1892, the Vendor and Purchasers Act, 1874, the Settled Estates Acts, 1856–1877, the Settled Land Acts, 1882–1890, the Land Transfer Acts, 1875–1897, the whole series of Copyhold Acts, the unrepealed portions of which are consolidated and re-enacted by the Copyhold Act, 1894, the Prescription Act, 1832, the Real Property Limitation Acts, 1837 and 1874, the Inclosure Act, 1845, the Metropolitan Commons Act, 1866, the Commons Act, 1876, the different enactments which have been intended to provide for the registration of land, are mere samples of a whole mass of legislation which has modified and has been intended to reform the land law. From the immense amount of this legislative action it is natural to suppose that something like a revolution in the whole system of

four “fundamentals” has either vanished or been radically reformed. The question considered in this Report is whether any sound reason exists why the only “fundamental” which remains intact—secret conveyancing—should still remain so in the context of a modern system of registration of title.

20. We are persuaded not only that there is no sound reason for retaining the secrecy rule, but that significant benefits (particularly for the simplification of conveyancing: see para. 18(v) above) and no substantial disadvantages would flow from a wholly open Register of Title. We were especially influenced by the experience of other countries with open registers (see para. 18(i) above) as well as by the acceptance in England and Wales of other public registers: this enabled us to discount much of the minority speculation as to undesirable consequences. Accordingly, opening the Register of Title would appear to us, as to the great majority of those who gave us their views, to represent a welcome modernisation of the law. It would also be consistent with the principle that “In an open society there should be freedom of information and publication.”⁴⁹ That principle is not, in our opinion, here contradicted by any other prevailing principle.

land tenure has been effected. Nor can one doubt that if Eldon or his contemporaries could be brought again to life, their first impression would be that the triumph of liberalism, of Benthamism, or, as they would express it, Jacobinism, was complete, and that the old English land law as they knew it was a thing of the past.

[1 See Pollock, *Land Laws*, 3rd ed, ch. vii; Sweet, *English Law of Real Property*, *Edinburgh Juridical Review*, xiii, 1901, p. 285; Williams, *Real Property* (19th ed.), and Jenks, *Modern Land Law*.]

[2 See Jenks, pp. xv-xviii.]

We all now know that this impression would be erroneous. In truth, explain the matter as you will, the fundamentals of the land law remain unchanged. They were in 1900, they are still today, what they were in 1800, or indeed what they were in the time of Blackstone. They may be designated by the terms Primogeniture, the Rules against Perpetuities, Strict Settlements, the Private Conveyance of Land, and Freedom of Testamentary Disposition. Primogeniture still ensures, as it has done for centuries, that when the owner of real property dies intestate his eldest son (or a descendant as representing him) takes the whole of it to the exclusion of the younger children, whilst daughters share equally in the absence of sons. The Rule against Perpetuities excludes the possibility of a real entail. But Strict Settlements, though their effects have been modified, are still in existence, and by establishing what has been well termed artificial primogeniture serve as an admirable substitute for a true entail and keep together primarily the land, and now, if not always the land, yet the property which represents such land. Private conveyances of land, that is conveyances arising simply from the private acts of the party or parties thereto, are still not only possible, but usual. Every endeavour to introduce a system of land registration, under which the transfer of land shall be at once easy, certain, and notorious, has either broken down, or at any rate has hitherto not modified the habits of English landowners. Land is still sold or charged by private conveyances or contracts, which may be unknown to every one but the persons immediately concerned. Freedom of testamentary disposition, the right of every man to determine at his own choice what shall be the succession to his own property after his death, has become a part not only of the law, but, so to speak, of the social morality of England. Combine together all these fundamentals of the English land law, and you soon perceive that it is a system admirably suited for an aristocratic and a plutocratic society. It is natural to a country which has inherited the traditions and ideas of feudalism, and combined with them the sentiments and habits natural to merchants and men of business. The paradox then of the modern English land law may thus be summed up: the constitution of England has, whilst preserving monarchical forms, become a democracy, but the land law of England remains the land law appropriate to an aristocratic state. This is in itself a phenomenon to excite attention. It must seem an absolutely incomprehensible fact to the many persons who tacitly assume that the advance of democracy necessarily tends towards the equal division of property, and especially of landed property.”

⁴⁹ Cp. *per* Lately J. in *Re a Baby*, *The Times*, 15 January 1985.

21. Accordingly, *we recommend* that the register of title to freehold land and leasehold land kept at Her Majesty's Land Registry should become public.⁵⁰ In substance this means that statutory provision should be made so that the right to inspect and make copies of the whole or any part of any register or of any document in the custody of the registrar and referred to in the register at present enjoyed by registered proprietors and persons authorised by them would be extended to any person.⁵¹

(signed) RALPH GIBSON, *Chairman*
TREVOR M. ALDRIDGE
BRIAN DAVENPORT
JULIAN FARRAND
BRENDA HOGGETT

J. G. H. Gasson, *Secretary*
27 February 1985

⁵⁰ Cp. L.R.A. 1925, s. 1 and Land Registration (Scotland) Act 1979, s. 1(1).

⁵¹ Cp. L.R.A. 1925, s. 112 and L.R.R. 1925, r. 287; rules as to procedure and orders as to fees may be made respectively under ss. 144 and 145 of the 1925 Act (as amended by s. 7 of the 1936 L.R.A.); see also n. 23 above. To facilitate the substantive recommendation it should be provided that any person may search the index of proprietors' names, i.e. amendment will be required of r. 9(2) of the L.R.R. 1925 as substituted by r. 2(1) of the 1976 Rules; cp. r. 286, as to searches of the Index Map and Parcels Index, which does not need amendment.

ANNEX I

DRAFT

OF A

BILL

TO

Amend section 112 of the Land Registration Act 1925, and for connected purposes.

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

1.—(1) For sections 112 to 112B of the Land Registration Act 1925 (which give restricted rights of inspection etc.) there shall be substituted—

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

- (a) entries on the register, and
- (b) documents referred to in the register which are in the custody of the registrar.

(2) Documents in the custody of the registrar but not referred to in the register may be inspected, and copies of and extracts from them may be made,—

- (a) as of right, in such cases as may be prescribed, and
- (b) at the discretion of the registrar, in any other case,

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

Open register.
1925 c.21.

EXPLANATORY NOTES

Clause 1

This clause implements the recommendation in paragraph 21 of the Report that the register of title kept at Her Majesty's Land Registry and documents referred to in it should be open to public inspection.

Subsection (1)

1. This subsection replaces sections 112 to 112B of the Land Registration Act 1925 with a new section 112.

2. Subsection (1) of the new section 112 confers a general right to inspect entries on the register and documents referred to in the register which are in the custody of the registrar.

3. Subsection (2) of that section deals with inspection of documents which, though in the custody of the registrar, are not referred to in the register. The documents covered by this subsection include copies held at the Land Registry of original leases or other documents referred to in the register but not in the registrar's custody. Paragraph (a) enables rules to be made prescribing cases in which persons will have the right to inspect such documents. Paragraph (b) gives to the registrar a discretion to permit inspection of such documents in any other case.

4. A person inspecting an entry on the register or document, whether as of right or at the discretion of the registrar, may make copies of or extracts from the entry or documents. Inspection is in all cases subject to any conditions to be prescribed by rules and to payment of any fee payable.

5. The effect of subsection (1) of the present section 112, set out in paragraph 13 of the Report, is to restrict the rights of inspection (subject to exceptions specified in the Act or to rules) to registered proprietors and persons authorised by them. The documents they may inspect are limited by rule 287 of the Land Registration Rules 1925 to documents referred to in the register. The present power to make rules authorising inspection in other cases of the register and documents in the custody of the registrar is made unnecessary, so far as it relates to the register and documents referred to in it, by subsection (1) of the new section 112 and is replaced, so far as it relates to other documents in the custody of the registrar, by the power in the new subsection (2)(a).

6. The remaining provisions being replaced by the new section 112 provide for special cases in which the register or documents in the custody of the registrar may be inspected. Sections 112(2) and (3), 112A and 112B are discussed in paragraphs 13 to 15 of the Report. Section 112AA is proposed to be inserted in the 1925 Act by clause 193 of the Insolvency Bill.¹ The new section would enable an official receiver, the liquidator or administrator of a company or the trustee of a bankrupt's estate to inspect the register or documents in the custody of the registrar relating to a specified person or property where there is reason to believe that the register or document may

¹ At the date of this Report, the Bill had completed its passage through the House of Lords and was being considered by the House of Commons.

Land Registration

- (2) The following enactments shall cease to have effect—
- (a) section 59(3) of the Land Registration Act 1925 (inspection of register and lodging of cautions by judgment creditor);
 - (b) section 61(10) of that Act (inspection of register and lodging of cautions on insolvency of registered proprietor);

EXPLANATORY NOTES

Clause 1 (*continued*)

contain information which would assist the person making the search in carrying out his functions.

7. Section 112B and, so far as they relate to the inspection of the register or documents referred to in it, sections 112(2) and (3), 112A and 112AA, are made unnecessary by the new section 112(1).

Provision may be made by rules under the new section 112(2) to replace sections 112(2) and (3), 112A and 112AA so far as they relate to other documents in the custody of the registrar.

Subsection (2)

8. Subsection (2) provides that various provisions of the 1925 Act and section 24(5) of the Housing Act 1980 shall cease to have effect.

- (a) Section 59(3) of the 1925 Act (described in paragraph 15.I(c) of the Report) confers a special right of inspection on a person interested under a writ or order for enforcing a judgment against registered land or a registered charge. It also gives to such a person a right to lodge a caution against dealings with the land. The provision is now unnecessary. The particular right to inspect the register is no longer needed because the new section 112(1) confers a general right. In so far as the provision gives the right to lodge a caution against dealings it is duplicated by section 54 (and section 59(1)) of the 1925 Act.
- (b) Section 61(10) of the 1925 Act (described in paragraph 15.I(d) of the report) confers a special right of inspection on the official receiver or a trustee in bankruptcy. It also gives a creditor, the official receiver or trustee in bankruptcy the right to lodge a caution against any such proprietor in respect of any minor interest affecting the registered land. The provision is unnecessary for the same reasons as section 59(3).

Land Registration

- (c) in section 144(1)(ix) of that Act (power to make rules as to conduct of official searches against cautions etc.), the words from “against cautions” to the end;
- (d) section 24(5) of the Housing Act 1980 (inspection of register, and obtaining office copies, in connection with the right to buy).

1980 c.51.

EXPLANATORY NOTES

Clause 1 (*continued*)

- (c) Section 144(1)(ix) of the 1925 Act enables rules to be made for “the conduct of official searches against cautions, inhibitions, and such matters of a like nature as may be prescribed, and for enabling the proprietor or any person authorised by him to apply for such searches by telegraph or telephone, and for the replies being returned in like manner to him or to such other person as he may direct”.

The power to make rules as to the conduct of searches by telegraph or telephone is restricted to searches by the proprietor or any person authorised by him. The removal of this restriction is necessary because the new section 112(1) confers a general power to inspect the register. The effect of the omission of the words from “against cautions” to the end is to generalise the provision.

- (d) Section 24(5) of the Housing Act 1980 gives to the Secretary of State the right to obtain an office copy of any document required by him for the purpose of executing a vesting order under that section with respect to the dwelling-house and gives any person authorised by the Secretary of State the right to inspect the register or any document which is in the custody of the registrar and relates to the dwelling-house. So far as this provision confers a right to inspect the register or documents in the custody of the registrar and referred to in the register, it is subsumed by the general right conferred by the new section 112(1) of the 1925 Act. Rule 296 of the Land Registration Rules 1925 gives a person the right to obtain an office copy of any entry in the register or of any document in the Registry which he is entitled to inspect.

Provision may be made by rules under the new section 112(2)(a) to replace section 24(5) so far as it relates to documents which are in the custody of the registrar but are not referred to in the register.

Land Registration

Repeals.

2. The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

EXPLANATORY NOTES

Clause 2

This clause repeals the existing legislation specified in the Schedule.

Land Registration

Short title,
commencement
and extent.

3.—(1) This Act may be cited as the Land Registration Act 1985.

(2) This Act shall come into force on [].

(3) This Act, except the repeal in Schedule 2 to the Public Records Act 1958, does not extend to Scotland or Northern Ireland.

1958 c.51.

EXPLANATORY NOTES

Clause 3

1. This clause provides for the short title, commencement and extent of the Act.

2. The Land Registration Act 1925 and, with the exception of the Public Records Act 1958, the enactments repealed extend to England and Wales only. The Public Records Act 1958 extends to Scotland and Northern Ireland. Subsection (3) therefore provides that the repeal in the Public Records Act shall extend to Scotland and Northern Ireland, but that otherwise the Act shall extend to England and Wales only.

Land Registration

Section 2.

THE SCHEDULE
REPEALS

Chapter	Short title	Extent of repeal
15 & 16 Geo. 5 c.21.	The Land Registration Act 1925.	Section 59(3). Section 61(10). In section 110(1), the words "with an authority to inspect the register and". In section 113, the words "and plans". In section 113A(2), the words "and plans". In section 144(1)(ix), the words from "against cautions" to the end.

EXPLANATORY NOTES

The Schedule

The Schedule specifies the enactments repealed by clause 2. The reasons for the repeals are as follows:

The Land Registration Act 1925

1. The repeal of section 59(3) of the Land Registration Act 1925 is consequential on clause-1(2)(a).

2. The repeal of section 61(10) of the 1925 Act is consequential on clause 1(2)(b).

3. Section 110(1) of the 1925 Act provides that a vendor must furnish the purchaser "with an authority to inspect the register". This enables the purchaser to inspect the register under section 112(1) of the 1925 Act. As a purchaser will now be able to inspect the register under the general right conferred by the new section 112(1), it will no longer be necessary for him to be authorised to inspect by his vendor. The words repealed are therefore no longer appropriate.

4. The new section 112 inserted in the 1925 Act by clause 1 makes provision for the inspection and making of copies of and extracts from documents. The section, following the existing sections 112, 112A and 112AA which it replaces, does not refer expressly to plans. This is because the expression "documents" is apt to cover plans as well as written instruments. But sections 113 and 113A(2) of the 1925 Act refer to "documents and plans". The repeal of the words "and plans" in both sections removes this inconsistency which, if left, would suggest that "documents" do not include plans.

5. The repeal of the words in section 144(1)(ix) is consequential on clause 1(2)(c).

Land Registration

Chapter	Short Title	Extent of repeal
1958 c.51.	The Public Records Act 1958.	In Schedule 2, the entry relating to section 112 of the Land Registration Act 1925.
1977 c.38.	The Administration of Justice Act 1977.	Section 25.
1980 c.51.	The Housing Act 1980.	Section 24(5). In section 24B(3), the words from "and for the purposes" to the end.

EXPLANATORY NOTES

The Schedule (*continued*)

The Public Records Act 1958

6. Subject to certain safeguards, documents in the Public Records Office must, by section 5(3) of the Public Records Act 1958, be made available for public inspection. This is expressed to be subject to the enactments set out in Schedule 2 to the Act which are in section 5(3) described as being enactments “which prohibit the disclosure of certain information obtained from the public except for certain limited purposes”.

The reference in Schedule 2 to section 112 of the Land Registration Act 1925 is repealed because the new version of section 112 will no longer contain anything capable of being construed as a prohibition on disclosure.

The Administration of Justice Act 1977

7. Section 25 of the Administration of Justice Act 1977 inserted section 112A into the 1925 Act and amended section 112 of that Act. The repeal of section 25 is consequential on clause 1(1).

The Housing Act 1980

8. The repeal of section 24(5) of the Housing Act 1980 is consequential on clause 1(2)(d).

9. Section 24B(3) of that Act enables any person authorised by the landlord of a dwelling-house to inspect the register or documents in the custody of the registrar relating to the dwelling-house for the purpose of enabling the landlord to comply with the requirements of that provision. The need to provide this particular right is removed by the new section 112(1) of the 1925 Act which confers a general right. The words in section 24B(3) giving the right are accordingly repealed.

Land Registration

Chapter	Short title	Extent of repeal
1981 c.24.	The Matrimonial Homes and Property Act 1981.	Section 4(4).
1982 c.53.	The Administration of Justice Act 1982.	In Schedule 5, paragraph (b).
1983 c.19.	The Matrimonial Homes Act 1983.	In Schedule 2, in the entry relating to the Land Registration Act 1925, the words "and 112B" and the words "in each case".
1985 c.	The Insolvency Act 1985.	Section 193. In Schedule 7, paragraph 4(3)(d), (5) and (6).

EXPLANATORY NOTES

The Schedule (*continued*)

The Matrimonial Homes and Property Act 1981

10. Section 4(4) of the Matrimonial Homes and Property Act 1981 inserted section 112B into the 1925 Act. The repeal of section 4(4) is consequential on clause 1(1).

The Administration of Justice Act 1982

11. Paragraph (b) of Schedule 5 to the Administration of Justice Act 1982 substituted a new section for section 112 of the 1925 Act. This provision is repealed in consequence of clause 1(1).

The Matrimonial Homes Act 1983

12. Schedule 2 to the Matrimonial Homes Act 1983 amended section 112B of the 1925 Act. The words repealed are unnecessary in consequence of clause 1(1).

The Insolvency Bill

13. Section 193 of the Insolvency Bill proposes to insert a new section 112AA in the 1925 Act and paragraph 4(5) and (6) of Schedule 7 to the Bill proposes to amend sections 112 and 112A(1) of the 1925 Act. The repeal of these provisions is consequential on clause 1(1).

14. Paragraph 4(3)(d) of Schedule 7 to the Bill proposes to amend section 61(10) of the 1925 Act. The repeal of this provision is consequential on clause 1(2)(b).

Should only part of the register be open to public inspection?



For:

1 Some form of partial opening could achieve a balance between the interest of the public in obtaining information about land ownership and the interest of proprietors in having their private affairs kept confidential.

Against:

- 1 As for the question about being wholly open.
- 2 Administrative problems; for example, excluding financial information might be difficult in practice to achieve, and make additional demands on the Registry's resources.

Should the register be opened only for particular purposes?

It is already, but these purposes may be extended to include some of the following:

- 1 Potential purchasers.
- 2 Those wishing to sue the owner or serve notice on him.
- 3 Tenants wishing to identify the landlord.
- 4 Purchasers of leaseholds wishing to discover covenants, charges etc., affecting a superior title.

The Law Commission welcomes your views on these proposals especially if you think they may cause problems. Remember, it may be difficult for the Land Registry to tell who is a litigant, or a tenant, or an intending purchaser and give them special access to the register.

TELL US YOUR VIEWS



We invite your views on the content of this leaflet. Brief answers to the following questions would be appreciated:

- 1 Should the register be wholly open?
- 2 Should it be partly open?
- 3 Should it be further opened for particular purposes, and if so, what purposes?

The Law Commission would be grateful for responses by the end of October 1984. All correspondence should be addressed to:

Mr. M.J.R. Wear
Law Commission
Conquest House
37/38 John Street
Theobalds Road
London WC1N 2BQ

WHO OWNS THAT HOUSE?

A question about titles to land





The ownership of land affects the lives of millions of people. Titles of land ownership are for the most part registered and at present the register on which the titles are kept is closed to public inspection.

The Law Commission would like to know whether the general public would like to see it open to inspection.

This leaflet sets out the background to land registration in England and Wales and poses a few questions you might like to answer.

If, for example, you have recently moved into a new area, would you like to know who owns the other houses in the street? Or the flats in the block? Or, for that matter, the freehold of the whole block of flats? Maybe you'd like to find out who owns the derelict property or under-used land in your neighbourhood? Or farmland, perhaps with footpaths across? Ought private land developers to have a right to find out about land ownership? Would you like to be able to find out about whether a property is mortgaged and in whose favour? More to the point would you mind others knowing about your circumstances of ownership?

Just a few of the sorts of questions that arise when considering opening the registration of titles to the public.

The Law Commission was set up by Act of Parliament in 1965 for the purpose of reviewing the law, its simplification and reform where necessary.



It's a record of title to land and is kept by HM Land Registry in the form of a giant card index—one card for each title. Each card is given a reference, known as a Title Number, and is in three parts as follows:

The property register containing a description of the land and a title plan;

The proprietorship register containing the proprietor's name and address. It will not usually show the price paid, that is if the land has changed hands since 1977; and

The charges register with particulars of the charges, covenants and other burdens on the land.

The Land Registry also keeps the *Public Index Map* which shows, by Title Numbers, what land in England and Wales is registered, and the *Index of Proprietors' Names* which shows the Title Numbers against the names indexed.

The register does not yet include all land in the country, although the Government has recently announced speeded-up extensions so as to cover all land within ten years. At present, registration extends to areas in which over 70 per cent of the population lives, so most of the urban areas are covered. And these properties (not only houses but any land or buildings) are registered every time they change hands for value. Outside these areas there are quite a few registered titles but most properties are still unregistered. You can obtain more details of the areas covered by registration from HM Land Registry, Lincoln's Inn Fields, London WC2A 3PH.

How it works now

The Register of Title is only open to inspection by the following people:

- the present owner
- anyone who has a mortgage registered against the property
- anyone authorised by either of the above (for example, a purchaser)
- anyone authorised by the court
- specified officials in connection with criminal, bankruptcy or other legal proceedings
- central and local authorities for statutory purposes if authorised by the Registrar
- certain others with specific interests over the land

At present the *Public Index Map* is open to public inspection and the *Index of Proprietors' Names* is open to inspection by trustees in bankruptcy, personal representatives and certain others.

What are the possible changes?

The Registry could be made entirely open to public inspection, or partly open, or it could be opened for particular purposes as well as those listed above. Such inspection would not necessarily be free of charge.

For each of these possibilities people have arguments for and against:



For:

- 1 Almost all other countries in the world that have registration systems have entirely open and unrestricted access. Also, ownership of land in Scotland, whether registered or not, has always been a public matter.
- 2 It is in the public interest that the details of land ownership should be open to inspection, so as to help redevelopment and avoid fraud.
- 3 A public register could simplify and cheapen conveyancing by enabling immediate investigation of a vendor's ownership and also of neighbouring properties to check boundaries, rights of way and other matters affecting title.

Against:

- 1 Ownership of land is a private matter and the public doesn't have a legitimate interest or need to know about other people's affairs.
- 2 Because the registry does not contain details of trusts affecting the land, the real owner might not be identified and titles could be put in the names of nominees masking the identity of the true owner.
- 3 Openness would create discrimination between registered proprietors and proprietors of unregistered lands whose title deeds are private.

ANNEX III

STATUTORY PROVISIONS

LAND REGISTRATION ACT 1925, s. 59

(3) A person interested under a writ or order for enforcing a judgment against registered land or a registered charge, may inspect and make copies of and extracts from the register and documents referred to therein which are in the custody of the registrar, so far as the same relate to the registered land or charge, and may, in accordance with this Act, lodge a caution against dealings therewith.

LAND REGISTRATION ACT 1925, s. 61

(10) The official receiver or trustee in bankruptcy may inspect the register so far as it relates to any proprietor against whom a receiving order has been made, and any creditor, on behalf of himself and all other creditors, or the official receiver or trustee in bankruptcy, may lodge a caution against any such proprietor in respect of any minor interest affecting the registered land.

LAND REGISTRATION ACT 1925, s. 110

On a sale or other disposition of registered land to a purchaser other than a lessee or chargee—

(1) The vendor shall, notwithstanding any stipulation to the contrary, at his own expense furnish the purchaser with an authority to inspect the register, and, if required, with a copy of the subsisting entries in the register and of any filed plans and copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land to be dealt with (except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion):

Provided that—

- (a) unless the purchase money exceeds one thousand pounds the costs of the copies and abstracts of the said entries plans and documents shall, in the absence of any stipulation to the contrary, be borne by the purchaser requiring the same;
- (b) nothing in this section shall give a purchaser a right to a copy or abstract of a statement filed at the registry:

LAND REGISTRATION ACT 1925, s. 112A

(1) If—

- (a) the Director of Public Prosecutions, a chief officer of police or an official receiver applies to the registrar for permission to make an inspection under this section in relation to a person specified in the application or to property so specified, and
 - (b) gives the registrar an appropriate certificate,
- the registrar shall permit him to inspect and make copies of and extracts from any register or document kept in the custody of the registrar so far as it relates to the person or property so specified.

(2) In subsection (1) above “appropriate certificate” means a certificate—

(a) that—

- (i) a criminal offence specified in the certificate has been or is reasonably suspected to have been committed, and
- (ii) there is reason to believe that the register may contain information relevant to the investigation of the offence or to the institution of proceedings for it, or

(b) that—

- (i) a person specified in the certificate has been convicted of a criminal offence so specified, and
- (ii) there is reason to believe that the register may contain information relevant to the institution of proceedings for making available for distribution or otherwise for recovering the proceeds of the commission of that offence or any other offence taken into consideration by the court dealing with him for it.

(3) The powers conferred on a chief officer of police by this section may be exercised on behalf of a chief officer of police by any police officer not below the rank of superintendent.

(4) In this section “official receiver” means an official receiver appointed under section 70 of the Bankruptcy Act 1914 or section 233 of the Companies Act 1948.

[Added by the Administration of Justice Act 1977, s. 25(1).]

INSOLVENCY BILL (1985)

After Clause 189

Insert the following new Clause:—

Power to inspect Land Registry etc.

“ . After section 112A of the Land Registration Act 1925 (inspection in connection with criminal proceedings) there shall be inserted the following section—

“Inspection in connection with insolvency.

112AA.—(1) If an official receiver, the liquidator or administrator of a company or the trustee of a bankrupt’s estate—

(a) applies to the registrar for permission to make an inspection under this section in relation to a person specified in the application or to property so specified; and

(b) gives the registrar an appropriate certificate,
the registrar shall permit him to inspect and make copies of and extracts from any register or document kept in the custody of the registrar so far as it relates to the person or property so specified.

(2) In subsection (1) above “appropriate certificate” means a certificate that there is reason to believe that the register may contain information which would be of assistance to the person giving the certificate in the carrying out of his functions as official receiver, as liquidator or administrator of a company or as trustee of a bankrupt’s estate.

(3) In this section—

(a) references to an official receiver are references to an official receiver for the purpose of the Insolvency Act 1985 or the Companies Act 1985 or a person acting as a deputy to such an official receiver; and

(b) references to the trustee of a bankrupt’s estate include references to a permanent or interim trustee in the sequestration of a debtor’s estate in Scotland.”)

LAND REGISTRATION ACT 1925, s. 112B

Where registered land which consists of or includes a dwelling house is subject to a registered charge, or to a mortgage which is protected by a notice or caution in accordance with section 106(3) of this Act, the proprietor of the registered charge, or as the case may be the mortgagee, may requisition an official search of the register to ascertain whether any notice or caution affecting that land has been registered under [section 2(8) of the Matrimonial Homes Act 1983], and a certificate showing the result of that search.

[Added by the Matrimonial Homes and Property Act 1981, s. 4(4); amended by the Matrimonial Homes Act 1983, s. 12, Sched. 2.]

LAND REGISTRATION ACT 1925, s. 129

The Commissioners of Inland Revenue and other Government Departments, and local authorities, may furnish to the registrar on his request such particulars and information in regard to land and charges, and the registrar may in like manner furnish to the Commissioners of Inland Revenue, other Government Departments, and local authorities on their request such particulars and information as they are respectively by law entitled to require owners of property to furnish to them direct.

LAND REGISTRATION ACT 1925, s. 144(1)(i)

(1) Subject to the provisions of this Act, the Lord Chancellor may, with the advice and assistance of a judge of the Chancery Division of the High Court [nominated by the Lord Chancellor], the Chief Land Registrar, and three other persons, one to be chosen by the General Council of the Bar, one by [the Minister of Agriculture, Fisheries and Food], and one by the Council of the Law Society (which body of persons are in this Act referred to as the Rule Committee), make general rules for all or any of the following purposes:—

- (i) For regulating the mode in which the register is to be made and kept;

LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980, s. 95

(1) The Secretary of State may compile and maintain a register, in such form as he may think fit, of land which satisfies the conditions specified in subsection (2) below.

- (2) The conditions mentioned in subsection (1) above are—

- (a) that a freehold or leasehold interest in the land is owned by a body to which this Part of this Act applies or a subsidiary of such a body;
- (b) that it is situated in an area in relation to which this Part of this Act is in operation or is not so situated but adjoins other land which is so situated and in which a freehold or leasehold interest is owned by a body to which this Part of this Act applies or a subsidiary of such a body; and
- (c) that in the opinion of the Secretary of State the land is not being used or not being sufficiently used for the purposes of the performance of the body's functions or of carrying on their undertaking.

(3) The Secretary of State may enter on the register any such land satisfying the conditions specified in subsection (2) above as he may think fit.

(4) The Secretary of State may also enter on the register any Crown land situated in an area in relation to which this Part of this Act is in operation or not so situated but adjoining other Crown land which is so situated.

(5) The information to be included in the register in relation to any land entered on it shall be such as the Secretary of State thinks fit.

(6) In this section "Crown land" means land belonging to a government department or to a body who perform their functions on behalf of the Crown or held on trust for Her Majesty for the purposes of a government department; and in this subsection "government department" includes any Minister of the Crown.

LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980, s. 96

(1) The Secretary of State shall send to a council in respect of whose area a register is maintained under section 95 above—

(a) a copy of that register; and

(b) such amendments to it as he may from time to time consider appropriate.

(2) It shall be the duty of a council to whom amendments to a register are sent under subsection (1)(b) above to incorporate the amendments in their copy of the register.

(3) A copy of a register sent to a council under this section shall be available at the council's principal office for inspection by any member of the public at all reasonable hours.

(4) If any member of the public requires a council to supply him with a copy of any information contained in such a copy of a register, the council shall supply him with a copy of that information on payment of such reasonable charge for making it as the council may determine.

HOUSING ACT 1980, s. 24

(5) Where [the landlord's title to] the dwelling-house with respect to which the right to buy is exercised is registered the Chief Land Registrar shall, if so requested by the Secretary of State, supply him (on payment of the appropriate fee) with an office copy of any document required by the Secretary of State for the purpose of executing a vesting order with respect to the dwelling-house and shall (notwithstanding section 112 of the Land Registration Act 1925) allow any person authorised by the Secretary of State to inspect and make copies of and extracts from any register or document which is in the custody of the Chief Land Registrar and relates to the dwelling-house.

HOUSING ACT 1980, s. 24B

(3) The landlord by whom the conveyance or grant was executed shall within such period as may be specified in the direction—

(a) serve on the person registered as the proprietor of the dwelling-house, and on any person registered as the proprietor of a charge affecting the

dwelling-house, a written notice informing him of the discharge or modification; and

- (b) on behalf of the person registered as the proprietor of the dwelling-house, apply to the Chief Land Registrar (and pay the appropriate fee) for notice of the discharge or modification to be entered in the register;

and for the purposes of enabling the landlord to comply with the requirements of this subsection, the Chief Land Registrar shall (notwithstanding section 112 of the Land Registration Act 1925) allow any person authorised by the landlord to inspect and make copies of and extracts from any register or document which is in the custody of the Chief Land Registrar and relates to the dwelling-house.

[Added by the Housing and Building Control Act 1984, s. 9.]

LAND REGISTRATION RULES 1925 (S.R. & O. 1925 No 1093)

AUTHORITY: Land Registration Act 1925, s. 144

R. 9

(1) There shall also be kept an index of proprietors' names showing in respect of the register of each title the name of the proprietor of the land and of the proprietor of any registered charge, together in each case with the title number:

Provided that it shall not be necessary for there to be entered in the index either:

- (a) the name of any building society, local authority or government department as proprietor of a charge, or
- (b) until such time as the Lord Chancellor shall direct, the name of any corporate or joint proprietor of land or of a charge registered as proprietor prior to 1 May 1972.

(2) Any person may apply in Form 104 for a search to be made in the index in respect of either his own name, or the name of some other person in whose property he is able to satisfy the Registrar that he is interested generally (for instance, as his trustee in bankruptcy or his personal representative).

(3) On receiving any such application the Registrar shall make the search and shall supply the applicant with details of every entry in the index relating to the particulars stated in the application, together with a short description of the property comprised in each title concerned and in the case of the proprietor of a charge, the date of the charge.

(4) In this rule "index" includes any device or combination of devices serving the purpose of an index.

R. 287

Subject to the provisions of Sections 59, 61 and 112 of the Act, any entry in the register, and any document in the custody of the Registrar and referred to in the register, may be inspected by or under the authority of the proprietor of the land or of any charge or incumbrance thereon.

R. 288

(1) The Property Register and the filed plan of any title may be inspected by any person interested in the land or in any adjoining land or in a charge or incumbrance thereon.

(2) Other entries in the register and documents referred to therein, and the statutory declaration in support of a caution, may be inspected by any person interested, on giving three days' notice to the proprietor or on satisfying the Registrar that, by reason of the death of a sole proprietor, or for any other sufficient reason, he cannot obtain the requisite authority for or consent to such inspection, and that such inspection is reasonable and proper.

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