

# Land law

Law



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In the light of this statement, critically consider the structure and major provisions of the Land Registration Act 2002. How far and by what means does the new legislation seek to achieve the aims stated above? This essay will discuss the major provisions of the Land Registration Act 2002 and its economic effects. This essay will also look at the history of registration in order to demonstrate its relevance. The concept of registration of property is not something that has come about in recent years; the idea began at the time of William the Conqueror in 1066.

Once in England, William declared all land to be his and this view has remained ever since, whoever rules the country owns the land. The law was used as currency, in the way that it was given to a chosen few, for example, the Church and Lords in return for prayers and knights respectively, but ultimately it belongs to the Crown. The development of land law from this point relates to the doctrine of tenures and a 'slice of time'<sup>2</sup> in the land. It was therefore of benefit to know who was living on the land so that a form of rent could be collected from them. Registration aided this.

The system of tenure is no longer in use but the concept of a 'slice of time' from the Sovereign still applies. Registration principally means that a national body records the title in the land. This means that potential investigators in the land can obtain all relevant information regarding a property gaining 'a full picture as possible.' The Registry then has a responsibility to any person who buys the land to inform them of interests in the land by other parties. 'In matters relating to the title of land, certainty is of prime importance' as stated by Lord Justice Fox<sup>3</sup>.

Land has to be recorded through the Land Registry in order to maintain a catalogue of all purchasers and sellers of the land in England and Wales. There will obviously be a difference to preceding legislation in this area as the way society lives is different from that of the Victorian period. Whether Registration is preparing for a new beginning is debatable it could be simply seen as an extension of the current law. The Land Registration Act 1925 was brought into organised system, which was considered 'archival work and form filling' this will in the twenty-first century be in need of serious updating.

With Registration applications being more 'quickly, cheaply and informally'<sup>4</sup> completed it suggests progression from the old system. Although the new legislation plans to bring in new provisions it does aim to reiterate a few areas, which are already implemented. The Land Registration Act 2002, which came into force October 13th of this year, aims to 'reform the statute law relating to land registration'<sup>5</sup> and a number of other issues. It is a conclusion to six years of drafting which resulted in two Law Commission reports in the hope that it was.

Linda Chamberlain believes the 'fundamental objective of the Act is'<sup>6</sup> as the Law Commission stated, <sup>7</sup>'the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land online and with the absolute minimum of additional enquires and inspections' Primarily the Act aims to define the area that registry has an interest in. these include a description of the land; information on the proprietor; any details that affect the land; and any charges on the register such as mortgages.

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S1 (1) Land Registration Act states: 'there will continue to be a register of title kept by the register'. The list is by no means exclusive. The legislation does mention a number of issues in its preliminary part. In the Land Registration Act 2002 there are implications for interests in the land; first registrations, dispositions of previously registered land, protection of third party right, public access, special provisions, electronic conveyancing, adverse possession, the conduct of the Registry and the appointment of a new position whose job is to settling disputes between individual parties.

To have an interest in land does not mean that an individual has to own it but simply have some kind of link to it. There are three types of interests in land under the old system: registerable, minor and overriding. Both registerable and minor entered on the register with the approach of the new Act but overriding interests do not. This would sometimes in the past leave the purchaser in the position where they have an overriding interest in the land but no actual knowledge of it, until they were informed.

The new Act changes this by protecting buyers and the Register will provide a 'mirror' so as to be 'a complete and accurate'<sup>8</sup> representation of the true situation surrounding the property. Overriding interests are also limited by altering the circumstances where they apply; it is suggested that eventually they will be removed from the land law. The Land Registration Act seeks to make first registration more important. It allows for the actual registration to be voluntary but strongly hinted at. Compulsory registration, it is felt, would cost too much and take too much time.

The Act lays out the obligations that a first time buyer has to divulge if information is known about the property. Failure to comply with this request results in action being taken by the Land Registry. The Registry can with this information ensure that any property in question starts with all the interests declared in it from the beginning and so the owner is aware. This makes any sale or lease on the land clear and straightforward in the future. In regard to leases, which are over seven years, they are now meant to be declared and registered with an individual title.

Prior to this, only those leases over twenty-one years were subject to this. This is to portray the decline in the length of leases in England and Wales. Owners of land used for franchises and profits-a-prendre are able to protect their interests and register them. This was not possible before under the old legislation. The Land Registration Act appears to offer more protection to the rights of third parties by defining their position. This relates to public access and disclosure of information in these circumstances.

This is the exact opposite of the decision reached in *Celsteel v Alton House*<sup>9</sup> It dissolves the inhibitions and cautions principle and relies on permits. This will allow or restraint activities on any piece of land, this is without the permission of the landowner. The Land Registry then informs the owner of the permit on their land and they are given the right to contest it. The two main areas of movement relate to the move on adverse possession and electronic conveyancing. Adverse possession confirms the cliché of 'possession is nine-tenths of the law'.

If someone who does not technically own the land takes possession by occupation for a certain number of years they will obtain more rights to property than the actual owner. A squatter's rights are improved under the new legislation. The number of years that qualify for registering their interests in the land is lowered and it moves from twelve to ten. The onus for registration lies with the squatter and any action depends on whether he wishes to obtain title to the land. The actual owner will be notified and then the result is dependent on the actions owner.

The owner has two options, either to ignore the notice or attempt to evict the squatter within two years. The squatter's 'rights will be vulnerable'<sup>10</sup> if they are not in residence when pursuing a claim. As Malcolm Worrell suggests the civil actions taken by squatters and owners will increase as already 'overburdened' court system with civil cases. The biggest step from the Land Registration in 1925 is the inclusion of technological advances in the 2002 act. The main aim of electronic conveyancing is to bring the Land Registration up to date with modern technology.

As stated before, one of the oldest fields of law and perhaps the most significant to the largest number of individuals. There is some argument, therefore, in suggesting that this Act implements anything truly new. The proposals include 'online view of list of registered land owners, access to Land Registry files controlled by way of password'. Although this piece of legislation does not go further than simply suggesting the area of electronic conveyancing will, on preceding legislation become a reality and there is scope for it.

This step will 'involve new methods of working'<sup>11</sup>, which aim to reduce the huge amounts of paperwork ensuring 'simplicity'. The particular 'importance of the mirror principle to registered e-conveyancing underpins all the substantive amendments,' as stated by Bogusz, then goes on to suggest that the Act does not 'appear to provided a clear and comprehensive framework'<sup>12</sup> for the correct function of this new idea. The move towards electronic conveyancing and making it compulsory will depend on the majority of future owners who have access to the Internet.

The Act goes on to state: 'To the extent that an obligation not owned under a network access agreement conflicts with an obligation owed under such an agreement by the person granted access, the obligation not under the agreement discharged'<sup>13</sup> Steve Kelway, Land Registrar and General Counsel to the E-Conveyancing Task Force implies that up to '80% of transactions'<sup>14</sup> will apply in this area. With the impersonal nature of land law this offers scope for fraud, particularly by third parties with an interest in the land.

The new Act favours the landowner 'at the expense of the squatter'. The security of title for a registered proprietor is increased as it has made it more difficult for the squatter to acquire title by 'adverse possession' without the owner biding time to gain back his possession. To conclude, it has been suggested throughout this essay that the Land Registration Act 2002 has moved to advance land registration to relate more appropriately with current issues of land law.

The most significant change is with the Land Registry preparing to embrace technological advances since 1925, with the inclusion of e-conveyancing. It

could be said that the entire registration process could one day be carried out online. The need for solicitors in this area would be greatly reduced, thus leading to support the initial statement that the Land Registration Act 2002 has the ability to be economic. As for certainty and simplicity, time will tell as the proposed ideas for the ease of use of the Act come in to play this winter.