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THE LAW COMMISSION

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NO: 32

First Programme Item IX

TRANSFER OF LAND

LAND REGISTRATION (FIRST PAPER)

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The Law Commission will be grateful for comments before 1 February 1971. All correspondence should be addressed to:-

A.J. Tuck,
Law Commission,
Conquest House,
37-38 John Street,
Theobald's Road,
London, WC1N 2BQ

(Tel: 01-242 0861, Ex: 32)

THE LAW COMMISSION

FIRST PROGRAMME: ITEM IX: TRANSFER OF LAND

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LAND REGISTRATION (FIRST PAPER)

PART A. INTRODUCTION

Preliminary Consultation

1. As a first step in our examination of the law relating to the transfer of registered land, we decided to find out how the system is regarded by those who are directly or indirectly concerned with it and to invite suggestions for its improvement. We therefore sent out preliminary questionnaires to the legal profession and others. Those whom we consulted in this way included the Chartered Land Societies, the nationalised industries, banks, the British Insurance Association, the Building Societies Association, the Confederation of British Industry, the National Chamber of Trade and organisations representing local authorities, owners of land and property, and farmers. Views and suggestions have also been obtained in regard to certain matters from the Chief Land Registrar.

2. Having collected much useful information from those who replied to our questionnaires and having considered the subject ourselves, we have now formulated provisional proposals on which we wish to obtain views. We, therefore, propose to publish for comment and criticism a series of Working Papers discussing a number of problems which seem to arise in this field and giving the tentative views of the Commission on some of them. This introduction is intended as a general introduction to the series.

3. In order to keep this and subsequent papers to a manageable length, and to make them comprehensible to the non-technical reader, we have found it necessary to omit some matters of detail where their omission does not appear to affect the argument. It

will, however, be assumed that the reader has a basic knowledge of the land law and of the workings of the land registration system. We do not, therefore, propose to describe the system in detail, but when dealing with specific topics reference will, where appropriate, be made to the existing law and practice as it affects that topic. Nevertheless, it seems necessary at the outset to explain in very general terms what land registration as it applies in England and Wales means, particularly as the expression "land registration" is, in this context, something of a misnomer. We think it is also necessary to explain what the register is, what it contains and who may inspect it.

The nature of the system

4. Despite the title Land Registration Act, the system here is not, in fact, one of registration of land but one of registration of titles. In relation to any particular site there is only one piece of land but there may be many interests in it.[1] In addition to the freehold interest, the land may be subject to leases, easements, profits, mortgages and charges, restrictive covenants and other matters which constitute interests in the land. Under our registration system the principal interests that are capable of registration under separate and distinct titles are freeholds and certain leaseholds. The system is based on the registration of legal estates in land whether freehold or leasehold. Certain other interests in land can also be registered, such as legal rentcharges.[2] We will refer to these interests as "registrable interests" and to the process of registration of an interest under a separate and distinct title as "substantive registration". It is the title to the land and not the land itself that is registered. For this purpose "land" includes buildings or parts of buildings.[3] The result is that the title to even a part of a building (e.g. a flat or a cellar) may be separately registered. The proprietor

1. In this Paper, references to "interests" in land include, where appropriate, references to "estates" in land.

2. Application may also be made for registration of manors, advowsons, and mines and minerals severed from the land.

3. Land Registration Act 1925, s.3(viii).

of a registered title is issued with a land certificate which, among other things, certifies that "the land described" in the certificate is registered at H.M. Land Registry.[4]

Registration of title: its history and objectives

5. Registration of title was first introduced in England and Wales by the Land Registry Act 1862 following the recommendations of a Royal Commission which reported in 1857.[5] The result was total failure for a variety of reasons. The most important was probably that a title could only be registered if it was impeccable both as to matters of title and as to the identity of the land comprised in it, the Registrar having little or no discretion in the matter.[6] These and other defects were remedied in later legislation and the system as we now know it was established by the Land Transfer Acts of 1875 and 1897. As part of the 1925 property legislation those Acts were consolidated and amended by the Land Registration Act 1925 which, with the amending Acts of 1936 and 1966, contains the present statutory provisions on the subject. In this and subsequent papers the Land Registration Act 1925 is referred to as "the Act" and, unless another Act is mentioned, references to section numbers are to sections in the 1925 Act. The law and practice of land registration are also governed by rules made under section 144 which have the same force as if enacted in the Act. The Land Registration Rules 1925 (referred to in this Paper as "the Rules") are the principal set of rules and these have been followed by others made in 1956, 1964, 1967 and 1969.

6. Important factors which must be borne in mind in any consideration of our land registration system are the purposes for which it was conceived and the objectives of those upon whose recommendation it was set up. Those purposes and

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4. Bound up in the certificate is an official copy of the entries in the register of the title and of the official title plan.

5. Report on the Registration of Title with reference to the Sale and Transfer of Land. (1857).

6. For a detailed analysis of the reasons for the failure of the system introduced by the 1862 Act see the Report of the Royal Commission appointed to consider the matter. (Report on the operation of the Land Transfer Act (1870)).

objectives were summed up by a former Chief Land Registrar as follows:-[7]

> "They[8] decided, and the wisdom of their decision has never been challenged, that the Act introducing registration of title should be confined to making changes in the machinery of conveyancing merely. The alternative of introducing substantive changes applicable to registered land only, so that the substantive law affecting registered land would differ from that affecting unregistered land, was rejected. They adopted the root principle that the register should be a substitute for title deeds and nothing more than a substitute; that the register should reveal what was revealed in the title deeds, but that nothing not shown in the deeds should be shown by the register."

Registration of land

7. It has sometimes been suggested that the existing system of registration of titles should be replaced by a system of registration of land. Registration of land in that context would, we envisage, involve some procedure under which everything thought to be relevant to a piece of land and the buildings on it from a conveyancing point of view would be recorded in a single register. Such a suggestion, involving as it does a radical change in the existing law and practice, would clearly need very careful study. The Government are committed to extending the system in its present form to the whole of England and Wales as soon as possible and the Registry has organised its resources accordingly. We do not, therefore, think that the present is an appropriate time to introduce fundamental changes which could only serve to delay the spread of compulsory registration. When compulsory registration of title has been in force throughout the country for some time and the majority of registrable titles are registered - which will inevitably be a long time ahead - consideration could be given to the possibility of a change to registration of land. There is nothing in the existing procedures which, so far as we can see, would prevent such a change at some future time.

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7. Sir John Stewart-Wallace. Principles of Land Registration (1937) p.33.

8. The members of the 1857 Royal Commission.

Deeds registration distinguished

8. Registration of titles must be distinguished from registration of deeds. That is a system under which conveyancing is carried out in the traditional way but particulars of the most important dealings, such as conveyances and mortgages, are recorded in a registry. Registration of deeds formerly applied in Middlesex and Yorkshire and still applies in Scotland and Northern Ireland. It was finally abolished in Middlesex by the Middlesex Deeds Act 1940. The Law of Property Act 1969 provides for the closure, by stages, of the Yorkshire Deeds Registries as and when compulsory registration of title is extended to land within their jurisdiction.[9]

The Contents of the Register

9. The register kept by the Land Registry consists of a collection of separate registers (of which there are more than three million) each relating to the title to a particular registrable interest subsisting in a particular piece of land. Each of the separate registers is itself divided into three parts: the Property Register, the Proprietorship Register and the Charges Register.[10] Subject to limited exceptions, which are referred to in paragraph 75 below, the only persons who may inspect any part of the register and filed documents referred to on the register are the proprietors of the land or any charge or incumbrance on the land and persons whom they or the court may authorise.[11]

10. The Property Register contains a verbal description of the land and a description by reference to a plan. A plan is required in all cases. The Property Register 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

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9. The closure of a Yorkshire Deeds Registry may take place sooner if, at the request of the County Council, the Lord Chancellor so directs. (Law of Property Act 1969, s.16(3)).

10. The term "register" is used in the Act in several senses. It is used to denote the whole register and also the separate register of each title. In addition the subdivisions of the registers of each title are called registers. (We deal with this later in Part E below).

11. s.112.

particulars of the lease are shown including its date, term, the rent payable under it and the amount of any premium paid. The lease itself remains an essential document of title. Where the title relates to a rentcharge, the Property Register will contain particulars of the document under which it was created, the amount of the rent and the dates on which it is payable, and the property on which it is charged.

11. In the Proprietorship Register are included the name and address of the registered proprietor, the date of registration and the price or value. 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.

12. The other part of the register - the Charges Register - contains, in general, particulars of mortgages and financial charges, liens, notices of leases and entries relating to other matters adversely affecting the land, such as restrictive covenants, adverse easements and rentcharges.

Substantive registration distinguished from noting on the register

13. In the preceding paragraphs, we have referred to the interests which are capable of substantive registration and the form and the contents of the register in which they are recorded. Some registrable interests, however, such as leases and rentcharges, in addition to being registrable in their own right, need to be brought to the attention of those who are concerned with the titles to the interests out of which they were created. This is normally achieved by the subordinate interest being noted in the register of the title to the superior interest. Thus, a lease will be noted in the Charges Register of the freehold or superior leasehold title in cases where such title is itself registered.

Interests not capable of substantive registration

14. Interests which are not themselves capable of substantive registration are treated for land registration purposes in a number of different ways. Such interests include:-

(a) Mortgages and Charges

Mortgages and legal charges of registered land are in this respect treated as being in a category by themselves. They are not "registrable interests" in the sense in which we have used that expression above, since they are not capable of substantive registration as separate and distinct titles. Nevertheless, an entry showing the charge and the name of its proprietor has to be made in the register of the title to the land which it affects and the charge is then said to be "registered".[12] The proprietor of the charge is issued with a charge certificate (with the original charge annexed) as evidence of the fact that his charge has been registered and of his title to that charge. While the charge is subsisting the land certificate is retained in the Registry.

(b) Overriding Interests[13]

These are interests which bind the land (and even a purchaser for value who has no notice of them) without having to be mentioned on the Register.[14] Included in this category of interest are the rights of occupiers, rights acquired or in the course of acquisition under the Limitation Acts, certain easements and

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12. s.26.

13. Overriding interests will be considered in a later paper in this series.

14. An overriding interest ceases to be such if it is entered on the register. (See s.3(xvi)).

profits, local land charges and certain leases granted for terms of 21 years or less.

(c) Minor Interests

These are, broadly speaking, all interests in registered land other than registrable interests, mortgages and legal charges and overriding interests. They fall into two classes. The first comprises those interests which will be overreached on a sale and will not bind a purchaser. This class includes the interests of beneficiaries under a trust which, under the general law, do not bind the land itself but only the proceeds of sale.[15] The other class comprises minor interests which will bind a purchaser if they are protected by an appropriate entry on the register, e.g., contracts and options to purchase land and also restrictive covenants.[16] There is also another class of minor interests consisting of all those rights and interests (except overriding interests) which are capable of being registered or protected on the register but which have not been so registered or protected. Thus all authorised dispositions made by the registered proprietor are included in this class until the necessary steps have been taken to give effect to them on the register. Until the disposition is registered the legal estate remains in the registered proprietor.

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15. In relation to unregistered land, this class of minor interest corresponds to some extent with those interests that are "behind the curtain" and thus capable of being overreached on a sale.

16. This class of minor interest roughly corresponds with interests which, if they affect unregistered land, require registration as land charges under s.10 of the Land Charges Act 1925.

General opinion of the system

15. As a means of registering titles, the existing system, by and large, seems to work well. That view is confirmed by the overwhelming majority of our correspondents. The following passage from a letter from one of them puts a view with which, it is thought, few who have had much experience would disagree:-

> "We would say that the registration system as it now exists is soundly conceived. That does not mean that it works perfectly in all circumstances, nor does it necessarily mean that it is the best system that could be devised today if one were making a fresh start. If there are broad and general defects in the system - or features that appear as defects - they are often not so much inherent in the registration system as defects (if it is correct so to describe them) carried over into the system from the substantive law. Moreover, features that are made to appear as defects of the system are sometimes given that appearance only through the making of exaggerated claims for the system itself."

16. Some of our correspondents have taken us to task for dealing at all with the subject of land registration before dealing with the substantive land law and have accused us of "putting the cart before the horse" in so doing. Our enquiries have, however, shown that there are areas in which reform of the law relating to land registration appears to be needed and it would be wrong, we think, to hold up consideration of these, pending some other and necessarily more protracted investigation of the land law generally. In this and subsequent papers we therefore discuss various aspects of the law applicable to registered land and suggest certain reforms which we think could usefully be made now. These are put forward on the assumption that both the existing system of land registration and the land law remain substantially in their present form.

Topics to be discussed

17. The topics discussed in this series of papers do not fall into any logical order. The important thing in our view is to preserve the balance between the papers and to make them as digestible as we can. We shall, therefore, deal with the topics

in the order which seems most convenient to the reader, and we start by considering what titles should be capable of registration.

18. No problems arise in this context in relation to freeholds. The owner of the fee simple in land is, as nearly as English law permits, the owner of that land and his title is necessarily the most "ample"[17] of the registrable interests in the land registration system. In relation to leaseholds, however, a number of problems arise and in the next part of this Paper, Part B, we deal with registrability of leases. Since the existing law and practice on that topic are both complex and, in some respects, confusing, we have thought it convenient to prepare some tables, showing on one side the present law and on the other the effect of our tentative proposals as to its reform. Reference to these tables which will be found immediately after paragraph 49 may be of assistance in amplifying what is said in the text of Part B.

19. In Part C we consider certain other questions in relation to leasehold interests. Part D covers a different question, the extent to which the register should be open to public inspection. In Part E we draw attention to the possible confusion which can be caused by the use of the expression "register" in the Act and Rules in more than one sense.

20. At the end of each part we set out the provisional conclusions upon which we would like to obtain comments. A combined summary is set out in Part F of the Paper at pages 56 to 61.

PART B. THE REGISTRABILITY OF LEASES

21. Almost all of our correspondents thought that the manner in which the registrability of leases and the protection of the rights of tenants are treated under the Act is unsatisfactory and that changes in the law were probably desirable. We agree with that view and consider that this is a field in which the law could and should be simplified. We propose to discuss the

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17. See Megarry and Wade. The Law of Real Property, 3rd ed., p.68.

registrability of leases and the protection of the rights of tenants under three heads:-

I The substantive registration of leasehold titles

II The noting of leases on the register of the superior title

III Leases and the rights of tenants as over-riding interests

I THE SUBSTANTIVE REGISTRATION OF LEASEHOLD TITLES

22. By substantive registration, in this context, we mean the registration of the title to a lease as a separate title with a distinctive title number. As a matter of law substantive registration of a leasehold title does not, of itself, bring the fact that the lease has been granted or registered on to the register of the reversionary title. That is achieved by a different process, namely, noting the lease on the register of the superior title. On an application to register a new lease where the superior title is registered, the Registry will automatically note the lease on the register of that title.[18]

THE EXISTING LAW AND PRACTICE

(i) Where the reversionary title is registered when the lease is granted. (Compulsory or non-compulsory areas)

23. The grant of a lease of registered land, whether or not the land is in a compulsory area, is for the purposes of the Act, a disposition of registered land and it must, if the lease is granted for a term of more than 21 years, be registered or, to use the wording of the Act, be completed by registration.[19]

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18. r.46.

19. s.19(2) (freeholds). s.22(2) (leaseholds).

(ii) Where the reversionary title is unregistered when the lease is granted

(a) In a compulsory area

(1) A lease granted for a term of 40 or more years must be registered as also must a lease when it is assigned on sale at a time when it has not less than 40 years to run.[20]

(2) A lease granted for a term of more than 21 but less than 40 years may be registered, as also may a lease when it is assigned on sale at a time when it has less than 40 but more than 21 years to run.[21]

(b) In a non-compulsory area

Where the reversionary title is unregistered no application will usually be entertained to register a lease of any kind.[22]

(iii) Leasehold interests which may not be registered

24. An agreement for a lease is not capable of substantive registration,[23] nor is a lease which contains an absolute prohibition against alienation inter vivos.[24] Under the Act, a lease which has 21 or less years unexpired is incapable of registration[25] as also is one which was granted for a term of

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20. s.123.

21. s.8(1)(a).

22. This has been the position since the coming into force of the Land Registration Act 1966. (s.1(2)). An example of a case where voluntary registration of title in a non-compulsory area will still be entertained is where the deeds were destroyed by enemy action during the Second World War.

23. ss. 2(1) and 8(1)(b). (See also para. 37 below).

24. s.8(2).

25. s.8(1)(a).

21 years or less.[26] The Registrar will, however, in certain circumstances, allow the registration of a lease originally granted for more than 21 years notwithstanding that, at the relevant time, it has only 21 years or less to run.[27]

SUGGESTIONS FOR REFORM

General Considerations

25. As has already been pointed out,[28] the English land registration system is concerned with the machinery of conveyancing. It is therefore designed primarily to facilitate and simplify the transfer of interests in land and dealings in them, in particular by rendering unnecessary the repeated investigation of the title to the same interest in the same piece of land. Accordingly, the benefits of the system conferred by substantive registration are not so great in relation to leases as they are in relation to freeholds.

For example:-

(i) A lease has a limited life, whereas a freehold interest lasts for ever. The shorter the term the shorter is the time in which dealings can take place.

(ii) The terms of a lease may be such as to lessen the chances of its being assigned or charged or of sub-tenancies being granted out of it. Leases frequently contain provisions which restrict or inhibit to a greater or lesser extent assignment, charging, underletting or changing the user.

(iii) Registration of the reversionary title does not simplify the text of a lease granted out of that title. The contents of the

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26. s.19(2). s.22(2).

27. See Curtis and Ruoff. Registered Conveyancing. 2nd ed. pp. 534 and 535.

28. In para. 6 above.

lease will be substantially the same whether the reversionary title is registered or not.

26. Thus the advantages of substantive registration of leaseholds may vary on account of a number of factors. Nevertheless the Act, with one exception, explained below, deals with the registrability of leases solely by reference to the length of the term originally granted or, in the case of an assignment, unexpired at the relevant time. Our provisional view is that this principle is the only practicable one although we realise that its application may result in the registration of a certain number of leases which, by reason of their provisions, are unlikely to be dealt with.

Inalienable leases

27. The one exception to the general rule is a lease which contains an absolute prohibition against alienation inter vivos. Leases of this kind, particularly for terms exceeding 21 years,[29] must be rare.[30] They cannot be registered[31] presumably because they are unlikely to be alienated. Nevertheless since a lease containing such a prohibition can lawfully be alienated if the landlord waives the prohibition it has been suggested that the exception is anomalous and should be done away with. Moreover, if a recommendation of the Jenkins Committee on Leaseholds were to be implemented, an absolute prohibition against alienation would cease to be effective, since it would be construed as if it were a covenant against assignment without the landlord's consent which could not be unreasonably withheld.[32] We suggest,

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29. If the term does not exceed 21 years and the lease is granted at a rent without a fine, it will constitute an overriding interest. s.70(1)(k).

30. They are sometimes used in the letting of specially constructed property which can only effectively be used by a particular tenant. (e.g., an electricity transformer chamber constructed for use by an Electricity Board).

31. s.8(2).

32. See the Final Report of the Leasehold Committee under the Chairmanship of Lord Justice Jenkins (1950 Cmd. 7982 paras. 309 to 311) and the Law Commission's Working Paper No.25 on covenants restricting dispositions, parting with possession, change of user and alterations, where the topic is discussed further. (pp. 12 to 33).

therefore, in the interests of simplifying this branch of the law, that this exception might be abolished.

The dividing line

28. Next we have considered whether the dividing line between those leases which are capable of registration and those which are not should continue to be drawn between terms of more than 21 years and those of 21 years or less: and we emphasise that we are here dealing only with substantive registration of a leasehold title. The question whether short leases should be noted on the register of the superior title is a different one, on which we have received a number of comments, and we deal with it in the next section in this part of the Paper. One of the main purposes of substantive registration is to facilitate transfers of the registered title or other dealings in which title has to be deduced. The pattern of lettings, in relation to all types of property, may well have changed since 1925 but we have no evidence of any substantial increase in dealings in short leases such as would justify a reduction in the figure of 21 years as the point above which a lease may become registrable.

29. Moreover we doubt whether any clear picture will be discernible in the near future. Legislation and economic factors have combined to create a period of transition in the leasehold system of which the long-term effects have yet to emerge. In the circumstances we think it best to leave the law as it is on this point; but if others hold different views we hope that they will put them forward.

Compulsory first registration of leases

30. As explained in paragraph 23 above, if the lessee or assignee is to acquire the legal estate, the lease has to be registered for the first time and a new leasehold title opened where a lease is granted or an assignment made in the following circumstances:-

(i) where the land is in an area of compulsory registration and the lease is granted for a term of not less than 40 years or is

assigned on sale when not less than 40 years are unexpired: (section 123);

(ii) where the reversionary title is registered (whether or not the land is in an area of compulsory registration) and the lease is granted for a term exceeding 21 years (sections 19 and 22).

From comments which we have received it is clear that these provisions cause some confusion in practice.

31. First, it is said to be something of a trap that the grant of certain leases should require registration to make them effective in a non-compulsory area. We sympathise with those who find this confusing, but we do not think that the law can be altered in this respect. It is an important principle of land registration that once a title to land has been registered a disposition of that land must be completed by registration; and to make an exception to this rule in the case of a registered title in a non-compulsory area would, we think, only lead to equal confusion. Nor would that remove what we understand to be the present source of difficulty, because it would still be necessary for the lease to be noted on the reversionary title in order to protect the lessee's interest and complete the record of the superior title. The need to note the lease in this way in a non-compulsory area is presumably just as much a trap as the need to register it in its own right. Fortunately, with the extension of the compulsory areas this is a diminishing problem and will, in the course of time, disappear.

32. Confusion is also caused by the differing periods of 21 and 40 years which, according to the circumstances, determine the registrability of a lease (particularly as in one case the decisive factor is that the term "exceeds" 21 years and in the other that the term is "not less than" 40). A further complication is that although, when the reversionary title is unregistered and the land is in a compulsory area, it is the 40 year period which determines whether a lease must be registered when it is granted or assigned, registration is optional at any time if more than 21 years are unexpired.[33]

33. s.8.

33. It seems to us that it would be a useful simplification in this branch of the law if some of these distinctions could be abolished. We suggest that section 123 should be amended so as to provide for compulsory first registration of any lease granted in a compulsory area for a term exceeding 21 years or assigned on sale when the term unexpired exceeds 21 years. Thus the dividing line between registrable and unregistrable leases would be drawn immediately after 21 years for all purposes and any reference to 40 years would be removed.

Failure to register

34. It is apparent that in some cases a lease may require registration because of the provisions of section 123 and also those of sections 19 or 22. The grant of a lease out of registered land in a compulsory area for a term of 40 years or more is both a disposition of registered land under sections 19 or 22 and an event which in itself requires first registration of title under section 123, and there is an overlap between the two statutory provisions. This overlap is no doubt inevitable, but it is unfortunate that the consequences of failure to comply with the requirements of those provisions are not the same. Under sections 19 and 22, registration of a lease granted out of registered land does not have to be completed within any specified time, but until it is registered the legal estate is deemed to remain in the lessor. Under section 123, on the other hand, if the grantee or assignee does not apply for registration within 2 months, the transaction becomes void so far as regards the grant of the legal estate. Some criticism has been directed at the provisions of section 123 in this respect, but since they relate to freeholds as well as to leaseholds, we do not propose to discuss them at this stage. They will be considered generally in a later paper.

Long leases assigned towards the end of the term

35. There are many leases now in existence originally granted for terms exceeding 21 years which are unregistered because, for one reason or another, registration was not obligatory at the time they were granted. A suggestion was made that such leases

should require registration on an assignment on sale if at the time of the assignment the land was in a compulsory area, notwithstanding that 21 years or less of the lease were then outstanding.[34] This suggestion is no doubt prompted by the fact that long leases can be and are dealt with even when a comparatively few years of the term remain unexpired. Whilst that is true, we think that the implementation of this suggestion would result in unnecessary work and expense for assignees of this type of lease - and for the Registry - especially when assignment took place in the last year or so of the term. Once compulsory registration extends to the whole country, all new leases granted for more than 21 years will be registered at the outset if our proposals in paragraph 33 are implemented. Unregistered leases originally granted for terms of more than 21years would then gradually disappear with the passage of time.

36. In paragraph 24 above, we have referred to the fact that the Registrar will allow the registration, in certain circumstances, of leases originally granted for more than 21 years but which at the relevant time have 21 years or less unexpired. Whilst we do not suggest that such leases should be registrable as a matter of right, it seems desirable that the Registrar should have a discretion to permit registration where he thinks it appropriate. We think, therefore, that such a discretion should be expressly conferred by statute.

Agreements for leases

37. It has been suggested to us that agreements for leases should be capable of substantive registration, presumably on the ground that an agreement for a lease can be, and sometimes is, transferred. Such an agreement is an equitable interest in land and the suggestion that it should be registrable would involve a major departure from one of the principles upon which our registration system is based. That principle is that only legal estates are capable of substantive registration

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34. This suggestion was made on the assumption that any lease granted for a term exceeding 21 years would be compulsorily registrable if either it was granted out of a registered reversion or the land was situated in a compulsory area.

and we would be reluctant to recommend any change on the lines suggested unless the case for doing so were very strong. At present, we are not persuaded that it is. We doubt whether, in fact, agreements for leases are transferred in sufficient numbers to warrant their registration. Moreover, we also doubt whether registration of all agreements for leases would be feasible or desirable on purely practical grounds. Many agreements for leases are informal, as where they are made either deliberately, or accidentally, in correspondence. To subject all such agreements to compulsory registration would, we suggest, be quite impracticable. Where the agreement for a lease is formal, it will often be a document having a limited life, being usually, if its terms are carried out, followed by a formal lease. Where the formal lease is subject to compulsory registration, as will increasingly be the case, registration of the prior agreement will result in two substantive registrations having to be made in relation to the same transaction. We suggest that the expense and work involved in double registration would be unlikely to be regarded as an acceptable price for any benefit arising from the registration of the agreement. The interest of the prospective lessee may always be protected by "notice" against the prospective lessor's title if the prospective lessor deposits his land certificate at the Registry or, failing that, by a caution. We would, however, like to obtain views on the whole question of subjecting agreements for leases to compulsory registration.

II THE NOTING OF LEASES ON THE REGISTER OF THE SUPERIOR TITLE

III LEASES AND THE RIGHTS OF TENANTS AS OVERRIDING INTERESTS

38. We propose to deal with these topics together since they both concern the protection of the rights of a tenant whose lease is not substantively registered.

THE EXISTING LAW AND PRACTICE

39. A lease of registered land "for any term or interest not exceeding 21 years, granted at a rent without taking a fine" (i.e., a premium) is an overriding interest,[35] that is to say it is an interest or liability which is not entered on the register, but subject to which registered dispositions are to take effect. The tenant under such a lease does not therefore have to take any steps, under the Act or Rules, to ensure that his rights are protected.

40. Where the lease is not an overriding interest, the tenant should, if the reversionary title is registered, protect his rights under the lease by having it noted against the register of the superior title.[36] Where the lease is one which requires substantive registration, the Registry will, on the application to register the lease, automatically enter notice of it against the superior title if that title is itself registered and if the land certificate is produced.

41. The rights of every person in actual occupation of the land are also overriding interests "save where enquiry is made of such person and the rights are not disclosed".[37] Thus it may be that the rights of a person in occupation under a lease or agreement for a lease which should have been registered or noted on the register of the superior title are (unless the rights are not disclosed by him on enquiry) protected, even if the necessary formalities have not been carried out.[38]

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35. s.70(1)(k). The term "lease", in this context does not include an agreement for a lease. City Permanent Building Society v. Miller [1952] Ch. 840.

36. s.48.

37. s.70(1)(g).

38. The position of a person in occupation of registered land under an interest which should have been registered or noted on the register will be discussed when we deal with overriding interests in a later paper. Our tentative view, however, is that, as a general rule, an interest that is capable of substantive registration or protection under some provision of the Act, but which is not registered or protected in the appropriate manner, should not constitute an overriding interest.

SUGGESTIONS FOR REFORM

42. Ideally, particulars of all leases and tenancies to which a title is subject, would be recorded on the register of that title. There are, however, a number of factors which seem to make this undesirable or impracticable.

Short or periodic tenancies

43. Many tenancies are informal or for short or periodic terms. It would be unduly optimistic to expect the register invariably to be kept up-to-date with accurate information concerning such tenancies. Leases may be varied or terminated by notice, forfeited, or formally or informally surrendered. It seems unlikely that in all such events notice would be given to the Registry to vary or remove the entry of the lease. For this reason alone, we think that it would be preferable not to attempt to record such tenancies on the register. If the information on the register is not reliable and up-to-date it could well be misleading and any expense involved in putting it there will have been incurred unnecessarily.

44. Further, where property is let for a short term, particularly for residential purposes, the tenant is often not legally represented. In such a case, we think that it would be unrealistic to assume that the tenant would protect his rights by complying with any formalities, however simple. Accordingly, we suggest that all short leases or tenancies must inevitably be overriding interests and that the tenant should not have to make any application under the Act or Rules to protect his interests.

45. The question which then arises is what length of term should constitute a "short" lease or tenancy for this purpose. The Act, at present, draws a dividing line between terms of more than 21 years and those of 21 years or less and it seems to us that this is reasonable. To draw the line in this way has the added advantage that leases will then, for the purposes of registrability (taking into account our other proposals), be divided into only two categories - those which are registrable and those which are overriding interests.

Leases at a premium

46. If the existing dividing line between registrable and unregistrable leases remains drawn as in paragraph 45, it still leaves under the existing law a category of lease which is neither an overriding interest nor a registrable interest. This category consists of leases granted for 21 years or less at a premium. They cannot be registered as the term does not exceed 21 years and they do not qualify as overriding interests because they have not been granted "at a rent without taking a fine" (i.e., a premium). A tenant under a lease of this type,[39] notwithstanding that his lease presumably had a capital value because a premium was paid, is thus unprotected against a purchaser of the reversion unless either the lease is coupled with occupation or the tenant has taken the appropriate steps to have the lease noted on his landlord's title. Since a lease granted for the same term but not at a premium is protected as an overriding interest this exception from protection, as overriding interests, of leases granted at a premium seems anomalous. We suggest, therefore, that it might be removed and that the words "granted at a rent without taking a fine" should be deleted from section 70(1)(k). The result of this suggestion is that all leases granted for 21 years or less would be overriding interests.

Agreements for lease and rights of tenants in occupation

47. In this Paper, we have not discussed the position of persons having an interest in registered land under an agreement for lease where the lease, when granted, would itself constitute an overriding interest. Nor have we considered the protection, as an overriding interest, of the rights of a tenant in occupation or in receipt of the rents and profits of registered land. These topics will be considered in a later paper when we deal generally with the question of overriding interests.

Tables of Comparison

48. Immediately following the next paragraph, we append tables showing our proposals compared with the existing law -

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39. We imagine that leases for terms of 21 years or less at a premium are likely to be fairly uncommon at the present time.

(a) on the grant of a lease and

(b) on an assignment.

49. Provisional conclusions as to the registrability of leases

(i) Registrability of leases should continue to be determined in principle by a time factor, namely, the length of the term originally granted or the period unexpired at the relevant time. (Paragraph 26).

(ii) The dividing line between those leases which are capable of registration and those which are not should continue to be drawn between terms of more than 21 years and those of 21 years or less. (Paragraphs 28 and 29).

(iii) The present exception which prevents any inalienable lease from being registered should be abolished. (Paragraph 27).

(iv) In section 123(1) of the Act reference to "not less than 40 years" should be amended to read "more than 21 years". (Paragraph 33).

(v) It would not be desirable to introduce a new provision that leases originally granted for more than 21 years should be capable of first registration on assignment when less than 21 years remained unexpired. (Paragraph 35).

(vi) The Registrar should, however, have a discretion, conferred by statute, to register leases granted for more than 21 years when 21 years or less remained unexpired, where he thinks it appropriate. (Paragraph 36).

(vii) An agreement for a lease should not be capable of substantive registration. (Paragraph 37).

(viii) All leases or tenancies granted for terms of 21 years or less should be overriding interests. (Paragraph 45).

(ix) The distinction in section 70(1)(k) of the Act between leases at a premium and those not at a premium, should be abolished. (Paragraph 46).

The effect which these conclusions would have in practice on the registration of leases is shown in the tables of comparison which follow this paragraph. The principal result would be that leases would fall into two classes: registrable leases (those granted for more than 21 years) and overriding interests (those granted for 21 years or less).

GRANT OF A LEASE OR UNDERLEASE

A

REVERSIONARY TITLE REGISTERED (Compulsory and non-compulsory Areas)					
PRESENT LAW			PROPOSED LAW		
TYPE OF LEASE GRANTED	STATUS OF LEASE	ACTION REQUIRED OF LESSEE	TYPE OF LEASE GRANTED	STATUS OF LEASE	ACTION REQUIRED OF LESSEE
21 years or less at a rent without a premium	Overriding interest. Unregistrable	None	21 years or less	Overriding interest. Unregistrable	None
Any other lease for 21 years or less	Unregistrable	Noting against superior title			
More than 21 years	Registrable	Completion by registration and noting against superior title	More than 21 years	Registrable	Completion by registration and noting against superior title
More than 21 years but containing an absolute prohibition against alienation inter vivos	Unregistrable	Noting against superior title			

B

REVERSIONARY TITLE UNREGISTERED								
PRESENT LAW					PROPOSED LAW				
TYPE OF LEASE GRANTED	COMPULSORY AREAS		NON-COMPULSORY AREAS		TYPE OF LEASE GRANTED	COMPULSORY AREAS		NON-COMPULSORY AREAS	
	STATUS OF LEASE	ACTION REQUIRED OF LESSEE	STATUS OF LEASE	ACTION REQUIRED OF LESSEE		STATUS OF LEASE	ACTION REQUIRED OF LESSEE	STATUS OF LEASE	ACTION REQUIRED OF LESSEE
21 years or less	Unregistrable	None	Unregistrable	None	21 years or less	Unregistrable	None	Unregistrable	None
More than 21 but not more than 40 years	Registrable	Registration optional	Unregistrable	None					
40 or more years	Registrable	Registration within 2 months	Unregistrable	None	More than 21 years	Registrable	Registration compulsory	Unregistrable	None
More than 21 years but containing an absolute prohibition against alienation inter vivos	Unregistrable	None	Unregistrable	None					

ASSIGNMENT ON SALE OF AN UNREGISTERED LEASE OR UNDERLEASE

PROVISIONS AS TO REGISTRATION*

PRESENT LAW			PROPOSED LAW		
NUMBER OF YEARS TO RUN FROM DATE OF ASSIGNMENT	COMPULSORY AREAS	NON-COMPULSORY AREAS	NUMBER OF YEARS TO RUN FROM DATE OF ASSIGNMENT	COMPULSORY AREAS	NON-COMPULSORY AREAS
40 or more	Lease must be registered. If superior title is registered (and lease not already noted on it) noting against superior title is also necessary.	Lease registrable only in exceptional circumstances (s.1(2) L.R.A. 1966)	More than 21	Lease must be registered. If superior title is registered (and lease not already noted on it) noting against superior title is also necessary.	Lease registrable only in exceptional circumstances
More than 21 but less than 40	Lease may be registered. If superior title is registered (and lease not already noted on it) noting against superior title is desirable.	ditto			
21 or less	Lease not registrable/	Lease not registrable	21 or less	Lease not registrable/	Lease not registrable

* Except where indicated the position is the same whether or not the reversionary title is registered.

/ But see paragraph 36.

PART C. MISCELLANEOUS POINTS ON LEASEHOLDS

Topics to be discussed in Part C

In this part of this Paper we deal with the following topics:-

I Absolute leasehold titles

II Implied covenants on the transfer of a registered lease

III Production to the Registry of the certificate of the lessor's title

I ABSOLUTE LEASEHOLD TITLES

Generally

50. So far as leasehold land is concerned, the titles now most commonly registered are absolute and good leasehold. An absolute title to leasehold land, in effect, guarantees that the lease was validly granted whereas a good leasehold title does not. Nevertheless whichever kind of leasehold title is granted, the proprietor is deemed to be affected with notice of all the restrictive covenants notice of which is entered on the register of the reversionary title or titles.[40] Notice of these is always entered on the lessee's title where the title is absolute. Since an absolute title has the advantage mentioned above and also shows all the restrictive covenants which affect it, whereas other leasehold titles may not do so, prospective mortgagees are increasingly insisting that, if an advance is to be made, lessees should be registered with an absolute rather than a good leasehold title. This is especially the case where new or recently granted leases are offered as a security for an advance.

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40. s.50(2). See White v. Bijou Mansions Ltd. [1937] Ch. 610 at p.620 affirmed [1938] Ch. 351 (C.A.).

Information as to superior titles

51. As the law now stands, a lessee may not be able to obtain the necessary information about the superior titles to enable him to apply for an absolute title to his leasehold interest. This will depend partly on the state of the market at the time when the negotiations for the lease take place, since generally a lessee is not, apart from an agreement expressly providing for it, entitled to information about the superior titles. In many cases, he has no option but to apply for a good leasehold title. Nevertheless, when his application is examined it may be clear to the Registrar, where all the superior titles are registered, that an absolute title could safely be granted. The Chief Land Registrar has, at present, no power in such circumstances to grant an absolute title unless the application is re-made on the basis that an absolute title is asked for. To obviate this it has been suggested that the Registrar should be empowered in suitable cases to grant an absolute title where a good leasehold title has been applied for, whether the applicant consents or not. A similar power already exists where an application is made for a possessory title to freehold land.[41] In such a case, if the Registrar "is satisfied as to the title to the freehold estate, he may register it as absolute, whether the applicant consents to such registration or not".

52. At one time, following the decision in White v. Bijou Mansions Ltd.,[42] it was the policy of the Registry to induce solicitors to apply for absolute leasehold titles wherever the estate out of which the lease was granted was registered with absolute title. Thus restrictive covenants affecting the freehold title of which the lessee may have been unaware were brought on to the title to the leasehold. Many solicitors who had been thus induced to apply for absolute leasehold title complained that these restrictive covenants were set out in the register of the leasehold title. As a result, this policy was abandoned. The fact remains, however, that whether or not

41. s.4 proviso (iii).

42. [1937] Ch. 610 affirmed [1938] Ch. 351 (C.A.).

these covenants are set out in the leasehold register, the lessee and those deriving title under him are deemed to be affected with notice of the restrictions for the reasons mentioned in paragraph 50 above. In principle, we consider that where such matters are known to the Land Registry, they should, in the interests of completeness and accuracy, be shown on the leasehold title and we think that the Chief Land Registrar should have power, whether the applicant consents or not, to grant an absolute title to a leasehold if he is satisfied as to the reversionary title.

The Roxburgh Committee's recommendation

53. The possibility of restrictive covenants affecting the freehold title, but hitherto undisclosed to the lessee, being shown in the register of an absolute leasehold title, exists in any case where the lessee was unable to investigate the superior titles before the lease was registered. Lessees are in that position because a prospective lessee or assignee of a lease of registered land, if he does not contract to be furnished with the landlord's title or the superior title, has no right to inspect the register of those titles.[43] This problem was discussed in the Report of the Roxburgh Committee on Land Charges,[44] and it was there recommended that a prospective lessee or assignee of a lease of registered land should be given a statutory right to inspect the charges register of the freehold and any superior leasehold title.

54. In principle, we agree with this recommendation of the Roxburgh Committee. Not only would it enable a prospective lessee or assignee of a lease of registered land to ascertain whether any restrictive covenants or other "land charges"[45] affected the freehold title, but it would also enable him to discover whether any reversionary title was affected by a charge

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43. In the case of unregistered land, the position is similar. (See Law of Property Act 1925. ss. 44 and 198).

44. (1956) Cmd. 9825, para. 42.

45. By "land charges" in this context, we refer to those matters which, in the case of unregistered land, are registrable in the register of land charges at Kidbrooke.

and, if so, whether this curtailed a mortgagor's powers of leasing.[46]

55. It seems to us that in implementing this recommendation certain problems would have to be overcome. Negotiations for the grant or assignment of a lease do not always follow a formal pattern and "a prospective lessee or assignee of a lease" may not be as easy to identify as a "purchaser" of freehold land.[47] To avoid the possibility of any unauthorised person having access to the register it would be necessary to specify with some care the stage at which a person engaged in such negotiations became entitled to exercise the statutory right of inspection.

Section 110(1) of the Act

56. Another suggestion which has been put forward to overcome the problem of lessees being affected with notice of restrictive covenants and other "land charges"[45] affecting the superior titles of which they are unaware is that the provisions of section 110(1) of the Act should be extended so as to be applicable as between lessors and lessees. Section 110 applies at present only as between vendors and purchasers and for the purposes of the section "purchasers" do not include lessees or chargees. Subsection (1) of the section obliges a vendor, notwithstanding any stipulation to the contrary, to furnish the purchaser with an authority to inspect the register of his title and, if required, with a copy of the subsisting entries and of any filed plans and copies or abstract of documents noted on the register. If the subsection were to be extended to lessees it would provide a complete solution to the problem in the majority of cases i.e. where the lease was a headlease and the freehold title was registered as absolute. Where the lease was not a headlease it would only provide a partial solution because the lessor would not be able to give the

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46. This recommendation would not, however, enable him to discover the provisions of any covenants in a superior lease. These would be discoverable if he were able to stipulate for the inspection of any such lease.

47. See Eccles v. Bryant and Pollock [1948] Ch. 93; D'Silva v. Lister Houses Ltd. [1970] 2 W.L.R. 563.

lessee any right of inspection of the registers of the superior titles.

57. However, we have not pursued the possible extension of section 110 for the benefit of lessees or the recommendation of the Roxburgh Committee because in Part D of this Paper we put forward another proposal. This would allow wider access to information in the register, which would achieve, broadly, the same results and might make specific provisions of the kind discussed in the preceding paragraph unnecessary.

Conversion to absolute title

58. Where land has been registered with a good leasehold title for at least ten years and the Registrar is satisfied as to possession during that period, he may, under section 77(4) of the Act, at the request of the proprietor and subject to certain conditions convert the title to absolute. Two matters arise in relation to this power of the Registrar which seem to need consideration. First, it is by no means clear why a period of ten years was chosen for the purposes of this provision. It may be that it was thought that ten years undisturbed possession was adequate evidence of the lessor's title to grant the lease. We think, however, this is a questionable proposition. Secondly, there is no express requirement in the Act (or the Rules) that the Registrar must be satisfied as to the superior titles, and, where they are not themselves registered with absolute title, conversion may involve some risk to the indemnity fund. Moreover, unless the superor titles are examined, the Registrar will not know what restrictive covenants or other matters affecting these titles ought to be recorded on the title to the leasehold interest. Although the Registrar's power to convert a title under section 77(4) is discretionary, it is open to doubt whether, as a matter of law, where the other provisions of the subsection and the Rules are complied with, conversion could properly be refused on the ground that the Registrar had not seen the superior title.[48]

48. r.48(1).

59. We suggest therefore that section 77(4) might be amended so as to provide, in effect, that the Registrar may at any time convert a good leasehold title to absolute but only if he is satisfied in regard to the reversionary title or titles.[49]

II IMPLIED COVENANTS ON THE TRANSFER OF A REGISTERED LEASE

60. Under the provisions of sections 76 and 77 of the Law of Property Act 1925 it is possible by the use of statutory words such as "as beneficial owner" to imply in an assignment of a leasehold interest in land lengthy covenants by the assignor as to title, and by the assignee as to the payment of rent and observance of the covenants in the lease. This is so in regard to both unregistered and registered[50] land, but in respect of registered land there are additional provisions contained in section 24 of the Act. The effect of this section is that on a transfer of a leasehold interest in registered land (other than by way of an underlease) certain covenants as to title and as to payment of rent and observance of the covenants in the lease are implied automatically unless the parties provide to the contrary. It is often felt that these covenants implied without the use of any special words in the case of registered land are not so satisfactory as those which can be introduced in the case of either unregistered or registered land by the use of the appropriate formula and, indeed, in some cases they are inappropriate. The form of transfer of leasehold land (Form 32) prescribed by the Rules is silent as to covenants and therefore, if the form is not adapted by the parties, the covenants implied under section 24 will apply. However, the form of transfer prepared and promulgated by the Registry and

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49. He would also have to be satisfied as to the proprietor being in possession.

50. s.38(2) and rr. 76 and 77. As to the difference between covenants for title on the sale of unregistered land and registered land see Hissett and Another v. Reading Roofing Co.Ltd. [1969] 1 W.L.R. 1757 and an article thereon by Professor F.R. Crane in (1970) 34 Conv. (N.S.) at p.128 in which he criticizes rule 77. We shall consider these when we deal with overriding interests in a later paper.

printed and published by H.M. Stationery Office incorporates the statutory wording of "beneficial owner" which, unless varied, will cause the Law of Property Act covenants to apply. Attention is drawn to the differences between the two Acts by the editors of the books of precedents in common use.

61. The present position seems to us to be capable of improvement and we suggest that section 24 of the Act be repealed and that the parties be left, by the use of the statutory wording, to incorporate those provisions of sections 76 and 77 of the Law of Property Act 1925 and of the covenants in the Second Schedule to that Act as may be appropriate to the particular transaction. Rules 76 and 77 provide the necessary machinery. In making this suggestion we have not overlooked the fact that the Law of Property Act covenants may themselves be capable of improvement.

III PRODUCTION TO THE REGISTRY OF THE CERTIFICATE OF THE LESSOR'S TITLE

62. Under section 64 of the Act, a land (or charge) certificate must be produced to the Registrar on every entry in the register of a disposition by the proprietor of the registered land (or charge). It must also be produced where "notice" of a matter adversely affecting the proprietor's title is entered on the register other than a notice of a lease at a rent without taking a fine.[51]

63. As we have explained earlier in this Paper, the grant of a lease of registered land for a term in excess of 21 years is a disposition of registered land. Accordingly it has to be registered[52] and notice of the lease entered on the register of the lessor's title. Before 1965, the practice of the Land Registry was to insist that the certificate of the lessor's title be produced to the Registry (or be placed on deposit at the Registry) on any application for first registration of such

51. The certificate does not have to be produced in the case of the lodging of a caution, inhibition or creditors' notice.

52. Except in the case of the grant of an "inalienable" lease. (See para. 27 above).

a lease. This practice, though approved at first instance, was held by the Court of Appeal in Strand Securities Ltd. v. Caswell[53] to be wrong in law on the ground that the provision[54] upon which the Land Registry founded the practice did not apply to an application for the first registration of a new title.[55]

64. The Strand Securities case concerned a registrable lease at a rack rent. Whether the decision would be equally applicable to a registrable lease at a premium must, therefore be a matter for conjecture. However, it appears to us, as it appeared to the Court of Appeal,[56] that it is desirable that an entry of the lease should be made on the lessor's land certificate. Accordingly, we think that the long established practice of producing the land certificate, so that the Registry can make the appropriate entry in it, should be continued in all instances upon which the registration of a lease of registered land is sought.

65. Our view is that in principle a lessor who has granted a registrable lease of registered land should be under an obligation to produce his certificate to the Registry on the lessee's application to register the title to the lease. It would be essential to ensure that the lessee had adequate protection if the lessor failed or delayed in complying with such obligation. Prompt action by the lessor is necessary in the interests of the lessee, since the priority of an application to register a new lease will depend on the time when the application and the necessary documents are delivered to the Registry[57] and, in particular, whether or not the application is so delivered within the period of priority confered by the official search which it is desirable that the lessee should

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53. [1965] Ch. 958.

54. s.64(1)(a).

55. See, for example, the remarks of Russell L.J. [1965] Ch. 958 at p.986.

56. See [1965] Ch. 958 per Lord Denning at p.978.

57. r.83.

make before completion.[58] The lessee ought not to be prejudiced if the lessor defaults or delays in lodging the certificate.

66. Although, under the existing law, the Chief Land Registrar has power in certain circumstances to compel the production of certificates of title,[59] it would nevertheless be necessary, even if the law were amended as suggested in the preceding paragraph, to ensure that a lessee would not be prejudiced if there were default by his lessor in lodging his certificate. A vendor of part of land in a registered title is under an obligation imposed by section 110(6) to procure that his certificate is lodged at the Registry to meet the purchaser's application to register his transfer. By contrast, section 110(6) does not apply as between a lessor and a lessee and in this respect a lessee is in a less favourable position than a purchaser.

67. It has therefore been suggested that the position of a lessee would be improved if a provision on the lines of the relevant parts of section 110(6) were made applicable as between a lessor and lessee. This suggestion has, in our view, its attractions and from a practical point of view, it would probably provide a satisfactory solution in the rare cases in which a lessor is uncooperative. That the cases of non-cooperation are rare, is no doubt due to the arrangements usually made between the parties that the lessor's land certificate will be deposited at the Registry within a limited number of days. Nevertheless, a lessee might be prejudiced by default or delay on his lessor's part in lodging his certificate, to an extent which could not be adequately compensated by a payment of damages. In any event, an award of damages might not be met, for example, if the lessor were insolvent.

68. We think it is wrong in principle, that there should be any risk, however remote, of a lessee suffering loss because his lessor defaults or delays in lodging his certificate at the

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58. The lessee will only be able to make the search where he has been able to arrange for inspection of the lessor's title.

59. See ss. 64(2) and 128 and r.320. Also s.15.

Registry. It seems to us that rather than to extend section 110(6) in the way suggested, it would be preferable to provide that an application should be deemed to be complete when the lessee has lodged at the Registry the documents under his control and the application is otherwise in order under the Act and Rules. A lessor should therefore be under a clear obligation to lodge his certificate to meet the relevant application within a period of, say, seven days of completion of the disposition, and the enforcement of such liability should be the responsibility of the Chief Land Registrar. It seems to us that it is only by provisions on those lines that a lessee can be properly protected whilst at the same time ensuring that certificates are lodged.

69. Provisional conclusions as to miscellaneous points on leaseholds

I As to Absolute Leasehold Titles

(i) Where the Registrar is satisfied as to the reversionary title, he should have statutory power to grant, with or without the consent of the applicant, an absolute title when a good leasehold title is applied for. (Paragraph 52).

(ii) Prospective lessees and assignees of leases of registered land should, in principle, as recommended by the Roxburgh Committee, have the right to inspect the charges register of the freehold and any superior leasehold title. (Paragraph 54).

(iii) The Roxburgh Committee's recommendation has not been pursued in this Paper nor has the possible extension of section 110(6) of the Act to lessees, because in Part D proposals for allowing wider access to information in the register are put forward which would, broadly, achieve the same results. (Paragraph 57).

(iv) Where the superior titles are not registered as absolute, the Registrar should not be under an obligation to convert a good leasehold title to absolute after registration for ten years and possession for ten years. He should be given a discretion to convert from good to absolute leasehold at any time, but only if he is satisfied as to the reversionary title or titles. (Paragraph 59).

II <u>As to implied covenants on the transfer of a registered lease</u>

Section 24 of the Act (under which certain covenants are, unless the parties otherwise agree, implied on a transfer of a registered leasehold interest) should be repealed. The parties should be left, by the use of the statutory wording, to incorporate into a transfer of a registered leasehold interest, the appropriate covenants which can be implied, under the Law of Property Act 1925, in an assignment of a lease. (Paragraph 61).

III <u>As to production to the Registry of the certificate of the lessor's title</u>

(i) In principle, the law should be amended so as to make it clear that the certificate of the lessor's title must be produced by the lessor to the Registry on any application for the first registration of a lease of registered land. (Paragraph 65).

(ii) If the law were so amended it would be essential to ensure that the lessee was not prejudiced if the lessor failed or delayed in complying with his obligation. (Paragraph 66).

(iii) Accordingly, an application to register a lease should be deemed to be complete when the lessee has lodged at the Registry the documents under his control and the application is otherwise in order under the Act and Rules. (Paragraph 68).

(iv) The lessor should be under a clear obligation to lodge his certificate to meet the lessee's application within a period of, say, seven days of completion of the lease. The enforcement of such obligation should be the responsibility of the Chief Land Registrar. (Paragraph 68).

PART D. INSPECTION OF THE REGISTER

UNDER THE EXISTING LAW

Generally

70. 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. In relation to unregistered land, the contents of a person's title deeds are private and as a general rule he is not obliged to disclose them.[60] Similarly the register of title maintained by H.M. Land Registry is, and always has been, private and, subject to certain limited exceptions stated below, can only be inspected with the authority of the registered proprietor of the land or of a charge on it or an order of the court.[61] A search can be made at the appropriate Land Registry to ascertain by reference to a plan whether the title to any particular piece of land is registered, but not who owns it.

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60. By s.16(1) of the Civil Evidence Act 1968 the rule of law whereby, in any legal proceedings, a party to the proceedings cannot be compelled to produce any deed or other document relating to his title to any land is abrogated except in relation to criminal proceedings.

61. s.112.

71. Although the register of title at the Land Registry is not available for public inspection, once a prospective purchaser has agreed to buy a registered property, the vendor must supply him with an authority to inspect the register and a copy of the entries and documents noted in the register and of the filed plan affecting that property.[62] The matters which a vendor of registered land must supply to his purchaser correspond to the abstract of title which, in order to prove his title, a vendor of unregistered land will supply to a purchaser. Under both systems, the purchaser has the right to examine his vendor's title only after the purchaser has entered into a binding contract to purchase.

Yorkshire Deeds Registries

72. In contrast to the position in the rest of the country, all assurances and wills affecting land in Yorkshire (except the city of York) have, since 1885, been registrable in the deeds registry for the appropriate Riding unless the title to the land is registered at the Land Registry.[63] Part II of the Law of Property Act 1969 provides for the gradual closing of the Yorkshire Deeds Registries. Since 1926 the provisions as to registration in these registries applied to instruments transferring or creating a legal estate or a legal mortgage and to probates and letters of administration. Registration in Yorkshire is effected by lodging a memorial or a full copy of the document and any person may search the register, take copies and obtain certified copies of any document enrolled there. We understand that registration by memorial is the method most frequently used at the present time.[64] The forms

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62. s.110. This provision does not apply in favour of a lessee or chargee.

63. Registration of deeds formerly applied also in Middlesex. It was finally abolished by the Middlesex Deeds Act 1940.

64. s.8 of the Yorkshire Registries Amendment Act 1966 would have abolished registration by memorial and replaced it by registration of a microfilm recording of the entire document. No order bringing the 1966 Act into force was made and that Act was repealed by the Law of Property Act 1969.

of memorial do not require the consideration to be stated and, where a memorial has been lodged, a search of the register will not reveal the price paid for a property or, in the case of a mortgage, the amount of the debt. It is possible that one of the reasons for the use of memorials has been to prevent the price paid for a property becoming common knowledge. So far as is known, there have been no objections to memorials or registered documents being available for public inspection and in fact many persons have praised the system and advocated its continuance.

Information obtainable from other sources

73. In any part of the country it is usually possible through the rate book maintained by local authorities to ascertain the identity of the occupier (but not necessarily the owner) of property that is rated. Particulars of mortgages and financial charges created by a company can be discovered by enquiry at the Companies Registry, while in the case of an individual owner of unregistered land, a search against his name in the Land Charges Registry will reveal the existence of charges other than those protected by a deposit of the title deeds.[65]

Inspection of Index Map and Parcels Index

74. Although, as we have already explained,[66] the register of title is not generally open to public inspection, the public index map and parcels index may be inspected by any person and from this it is possible to ascertain whether or not the title (whether freehold or leasehold) to a particular piece of land is registered and, if so, the title numbers of any title affecting it, but not the name and address of the proprietor.[67] Where the land is leasehold the date of and parties to the lease may be ascertained in this way.[68]

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65. Land Charges Act 1925, s.10(1).

66. In para. 9 above.

67. It is also possible to ascertain whether the title to a rentcharge or to mines and minerals severed from a particular piece of land has been registered.

68. r. 286(4).

Exceptions to the rule that register is private

75. The exceptions to the general rule that no part of the Register may be inspected without authority are as follows:-

(a) 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 any charge or incumbrance on the land.[69]

(b) Entries in other parts of the register and filed documents referred to on the register 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 but that inspection is reasonable and proper.[70]

(c) The Registrar has a discretion to furnish to the Commissioners of Inland Revenue, other Government Departments and local authorities such particulars and information as they can by law require owners of property to furnish to them direct.[71]

(d) A person who is interested under a writ or order for enforcing a judgment against registered land or a registered charge may inspect the register and documents referred to in it so far as they relate to the registered land or charge.[72]

(e) On the application of a judgment creditor, supported by prima facie evidence that the

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69. r. 288(1).
70. r. 288(2).
71. s.129.
72. s.59(3).

judgment debtor is the proprietor of registered land or a registered charge the court may order that the register of the title to the land or charge be produced to the judgment creditor without the authority of the judgment debtor.[73]

(f) 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.[74]

With regard to (a) above there is no definition of "person interested" but in practice -

> "The inspection is not allowed automatically; the interest claimed must be specified in writing and proof of it will be required unless the statement is signed by a solicitor. In the case of a leasehold or sub-leasehold title the lessor is deemed to be a person interested and as such entitled to inspect the property register, and, similarly, it seems that a lessee under a registered lease should be permitted to inspect the property register of the registered reversionary title. Again, a person claiming a right to enforce a restrictive covenant would probably be allowed to inspect the property register. When inspection of the property register is allowed under this provision it is carefully confined to the description of the property alone."[75]

As regards (b) above the provision as to giving three days' notice to the proprietor is in practice treated as allowing inspection only if the proprietor does not object.[76]

Views of those already consulted

76. In paragraph 6 above we have drawn attention to the fact that the legislation introducing registration of title has been

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73. Land Registration Rules 1967, r.3(2). The court in this context includes a county court.

74. s.61(10).

75. Curtis and Ruoff Registered Conveyancing, 2nd ed., p.760.

76. Ibid. p.761.

confined to making changes in the machinery of conveyancing. It may, therefore, be asked why, since unregistered documents of title are private, the position should be any different if the particulars of the title to which they relate are shown in a register. Our enquiries show that there is a substantial body of opinion which considers that it would be wrong, as a matter of principle, to make any change in the existing law in this respect. Others think it would be wrong to make any change so long as some titles are registered and others are not.

77. It is, however, clear from the replies we have received that, although there seems to be no widespread demand for the register in its present form to be opened to public inspection, considerable support exists for some relaxation in the existing rules, particularly in relation to the non-disclosure of the names and addresses of registered proprietors.

78. We are told, particularly by local authority organisations and statutory undertakers, and also by property developers and others who, for some legitimate reason, may wish to communicate with an owner of property, that it would be extremely helpful if the name and address of the registered proprietor could be ascertained from the Registry. Much time and expense would, we understand, be saved if this were made possible. Suggestions for dealing with this particular matter are discussed below in paragraphs 87 and 88.

Disadvantages of privacy of the register[77]

79. Apart from the question of tracing an owner of land, the privacy of the register does, in our opinion, create problems in conveyancing - particularly in relation to leasehold titles. These problems are discussed in paragraphs 50 to 57 above. In particular, we have pointed out that a lessee is deemed to be affected with notice of all the restrictive covenants noted on the register of the reversionary title or titles although he cannot inspect those titles without the authority of the proprietors. This difficulty was one of the reasons which, in

77. Some of the disadvantages of privacy also apply to unregistered land.

another context,[78] led us to recommend that what we have termed "land obligations", which would replace positive and negative covenants as we now know them, should be shown in a separate public part of the register. If that recommendation were adopted the separate part of the register could, however, only contain entries relating to obligations entered into after the new law came into force and would not affect existing restrictive covenants.[79]

80. A wholly private register may also present problems in the future in connection with the adoption of new mechanical and electronic devices. It has indeed already done so. In his report to the Lord Chancellor for the year 1965 the Chief Land Registrar pointed out that it was not possible under the existing law for official searches of the register to be conducted by teleprinter. The Land Registration (Official Searches) Rules 1969[80] now permit solicitors to make a search by telephone or teleprinter, but searches made in that way are not regarded as official searches and have to be followed by applications in the ordinary form together with a written authority of the registered proprietor or his solicitor to inspect the register.

Disclosure of Financial Matters

81. The majority of those who object to the register being available to public inspection do so on the ground that a registered proprietor does not wish certain financial matters, such as prices, rents and details of mortgages, to be disclosed to all and sundry. If it were possible to exclude these financial matters from public scrutiny, we can see no real objection to making the remaining part of the register wholly open to public inspection. That view is shared by a substantial number of those who have written to us.

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78. Law Com. No.11, Proposition 8.

79. See also para. 89 (viii) below, where this matter is further discussed.

80. S.I. 1969 No. 1179.

Registers "open" in other countries

82. In almost every other country in the world registers of titles 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. One advantage suggested to us was that it promoted "a rapid and accurate valuation technique reinforced by indisputable evidence". This in its turn might have an effect on the price paid for a particular property. But the fact that open registers are acceptable to public opinion in those countries does not necessarily mean that they would be acceptable here. In other countries people have grown to accept that registers of titles or of land are open to public inspection whereas in this country people are accustomed to regard conveyancing transactions - particularly the financial aspects - as matters of private concern. Against this background the immediate introduction of a wholly open register would be bound to meet with strong opposition and, as we suggest in paragraph 85 below, it might be regarded as a breach of faith in respect of titles already registered.

Scotland

83. In Scotland a system of registration of deeds has been in force since the early part of the seventeenth century. Deeds are registered in the Register of Sasines and this is open to public inspection. Both the Reid and the Henry Committees on Registration of Title to Land in Scotland[81] thought that, if registration of title were introduced in Scotland, the register should be open to public inspection.

Northern Ireland

84. Registration of title to land operates in Northern Ireland but registration is compulsory only in the case of certain titles. In all other cases registration is voluntary. Although the relevant legislation does not require publicity of the register, the rules have, we understand, always provided for

81. (1963) Cmnd. 2032 (para. 64(1)) and (1969) Cmnd. 4137 (p.20).

unrestricted public access. The Lowry Committee on Registration of Title to Land in Northern Ireland have recommended that compulsory registration under the existing system be extended and a majority considered that the register should remain fully public.[82]

The Land Registry "Prospectus"

85. The Land Registry issues through H.M. Stationery Office a pamphlet entitled "Registration of Title to Land" containing a general explanation as to what registration of title is and how it differs from unregistered conveyancing. The following is an extract from this pamphlet:

"REGISTERS STRICTLY PRIVATE

> There is no publicity in the register of title. It is absolutely private - much more private than the registers of joint stock companies, which can be inspected by anyone on payment of 1s. The registers of title at the district land registries can only be inspected by, or under the authority of the registered proprietor or his solicitor."

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 of their titles. In view of this those whose titles have already been registered might feel aggrieved if, by retrospective legislation, their titles were rendered open to full public inspection.

86. So long, at least, as a large number of titles are still unregistered, we think that to many people a wholly open register, although it would lead to some simplification in conveyancing, would not be acceptable. For this reason and for the reasons mentioned in the preceding paragraph, we are not inclined to support such an innovation at present, but we put forward below proposals to alleviate some of the difficulties.

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82. (1967) Cmnd. 512 (para. 138).

PROPOSALS FOR REFORM

A. PROPOSAL A. Names and addresses of proprietors to be available

87. Two alternative suggestions have been made:-

(i) That the Registry should be bound to forward communications to the proprietor.

(ii) That the name and address of the proprietor should be freely available to the public.

Both of these suggestions, which would probably involve the payment of a small fee, are designed to meet the requirements, referred to in paragraph 78 above, of those who may wish to communicate with the proprietor.

88. Adoption of the first suggestion would involve no breach of principle that the register is private. It has, however, the disadvantage, which we consider to be a fatal one from a practical point of view, that if no reply is received to the communication the sender will have no means of ascertaining how to follow it up. Two methods of dealing with the second suggestion have been proposed, one of which we think is not feasible at the present time because of the disproportionate amount of work it would involve at the Registries but the other method we think has much to commend it. The first method would require the creation of an appendix to the parcels index at each district Registry. The appendix would contain the names and addresses of the registered proprietors and would have to be kept up to date day by day to accord with any changes in those names and addresses. The result would be that the time spent in making official searches of the parcels index and in producing the relevant documents for personal searches would become proportionately greater. The other method would create much less work and its introduction would, we understand, be possible without substantial interference with the other work of the Registry. The proposal is that the applicant should complete a simple form to ascertain the name and address of a registered proprietor of a title and should pay a fee of, say,

£1 for each registered title to reimburse the Registry for the work involved. In response to such an application the Registry would notify to the applicant the required name and address but he would not be able to inspect the register of that title without the authority of the proprietor. It would be necessary for the applicant to quote the title number and, where he did not know this, he could ascertain it by personal inspection of the index map at the district Registry or by bespeaking by post an official search of that map.

B. PROPOSAL B. Office copies of entries, excluding financial information, to be generally available

89. (i) Generally

This proposal is more far-reaching than the suggestions put forward in paragraph 88 above in that access to the public would be given to most of the information shown in the actual register of an individual title. The proposal, which we will refer to as "Proposal B", is that any member of the public would be able to obtain from the Registry, on payment of an appropriate fee, an office copy of the register and filed plan of any freehold or leasehold title. When office copies were supplied to an applicant who did not furnish an authority to inspect the register, certain financial details would be "masked out". Office copies of documents filed at the Registry and referred to on the register[83] would not be available without the proprietor's authority.[84] Certain aspects of the proposal are discussed in greater detail below.

(ii) Information not to be available without the proprietor's authority

We think that the following is the information shown in the register of a freehold or leasehold

83. e.g. Original transfers, copy charges and copy leases.

84. The exceptions mentioned in para. 75 above would still remain.

title which the proprietor might object to being disclosed without his authority:-

(a) the prices and premiums paid,

(b) the amount of any rents payable and receivable,

(c) the amount of any rentcharges to which a property is subject,

(d) the amount secured by any financial charge, and

(e) prices or value specified in any notice on the register e.g. contracts for the sale of a property.[85]

So far as prices and premiums are concerned, it is suggested that, for the future, these should not be shown in the register and that rule 247(1) which requires "the price paid or value declared" to be entered in the register, wherever practicable, should be revoked. We suggest, too, that prices or values need no longer be specified in any notice on the register. In relation to registered charges, although rule 247(2) provides that the original amount of every charge shall, where practicable, be entered on the register, the present practice is for this amount not to be entered. It is suggested, therefore, that this practice should be continued, and that rule 247(2) should be revoked. We do not think that there is any need to make any other alterations, in this respect, to the form of the entries relating to titles registered in the future. In regard to existing titles we understand that it would be possible to "mask out" certain of the particulars shown in the register where an office copy is made and we consider that this should be done in respect

85. See s.49.

of all the matters mentioned in (a) to (e) above where the copy is supplied to a person who does not have the proprietor's authority to inspect the register. For titles registered in the future the matters mentioned in (b) and (c) above should be similarly "masked out" when an office copy is supplied without the proprietor's authority to inspect. The effect of these proposals in relation to both new and old titles would, therefore, be that nobody, without the proprietor's authority, would be able to obtain information as to the matters specified in (a) to (e) above. This would be subject to the existing exceptions mentioned in paragraph 75 above.

(iii) Filed documents

It would not be practicable to "mask out" from an office copy of a filed document financial information in such a way that, in all cases, that information could not be inferred from some other part of a document. For this reason we think that office copies of filed documents should only be obtainable if the proprietor's authority to inspect the register is furnished.

(iv) Rentcharge titles

The title to a rentcharge is subject to substantive registration if the rentcharge is charged on land which is already registered and the rentcharge is perpetual or for a term of years.[86] If, however, it is charged on unregistered land it does not have to be registered but, if the land is in a compulsory registration area, it may be registered if the rentowner wishes. The result is that the rentowner, on an application being made for registration, is entered on the register of a new

86. If it is not registered the rentowner will not get the legal estate.

title as the proprietor of the rentcharge and is issued with a rentcharge certificate, while notice of the rentcharge is entered as an incumbrance against the charged land. So far as the latter entry is concerned we have suggested in paragraph 89 (ii) above that the amount of the rent is one of the matters that should be "masked out" in an office copy of the entries in the register supplied to anybody without the authority of the proprietor to inspect the register. As regards the substantive registration of the rentcharge we see no reason for the register of this to be a document open to public inspection and we suggest that the usual authority of the registered proprietor, should, as at present, be required for its inspection or for the issue of an office copy of the entries in the register.

(v) The position of prospective lessees or assignees

Under Proposal B, prospective lessees or assignees of leases of registered land would be able to ascertain whether or not the land was affected by restrictive covenants and other "land charges".[87] In paragraphs 53 to 56 above, we discussed the recommendation of the Roxburgh Committee that such prospective lessees or assignees should be allowed to inspect the Charges Register of the freehold or any superior leasehold title. We also stated that we agreed, in principle, with that recommendation but had not given it detailed consideration because of our proposals in this part of the Paper. It will be seen that Proposal B would cover precisely the same ground as that covered by the recommendation.

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87. By "land charges" in this context, we refer to those matters which, in the case of unregistered land, are registrable in the register of land charges at Kidbrooke.

(vi) Financial Charges

(a) As anybody would be able to obtain an office copy of the Charges Register, they would be able to ascertain whether a title was subject to a registered charge. The amount secured by the charge would not be ascertainable; only its existence. We are conscious that some proprietors may possibly object even to the existence of a financial charge being disclosed without their permission. It would, no doubt, be possible to "mask out" entries of financial charges from an office copy supplied to an applicant under Proposal B. The existence of a charge would, however, in many cases still be ascertainable by the mere fact that part of the Charges Register had been masked out. We do not think, in fact, that there are any practical means of overcoming this problem short of some rearrangement of the register to put financial information in a part which could only be inspected with the proprietor's authority. We have considered such a rearrangement in some detail but for administrative and other reasons, it would, we understand, not be practicable at the present time. The chief merit in the existence of financial charges being readily ascertainable is that it helps to solve a further problem which may face a lessee or assignee of a lease of registered land. That problem is that such a lessee or assignee cannot, without the authority of the proprietors of all the superior titles, find out whether the land is burdened by any financial charges, the terms of which might restrict the powers of those proprietors to

grant leases. As we have explained in paragraph 51 above, it is frequently not possible for the lessee or assignee to obtain such authority.

(b) Clearly any proposal as to public access to the register would be of greater value if, among other things, it provided a solution to this particular problem of the lessee or assignee who wants to find out whether the lease is being, or was, validly granted. Clearly, Proposal B would help in this respect. In considering this question, two points seem to be worthy of mention. The first is that, as we have already pointed out, it is only the existence and not the amount secured by financial charges that is, in practice, shown in the Charges Register of a title. The second is that in relation to unregistered land a search against the name of the landowner in the register of land charges at Kidbrooke may be made by anybody, and such search should reveal the existence of financial charges which have been created by the landowner affecting the land, other than those secured by a deposit of title deeds. Although the creation of second or subsequent charges which had been registered as land charges should be disclosed by a search for land charges at Kidbrooke, the amount secured by the charges would not appear. A land charges search would not reveal a charge secured by a deposit of title deeds but the existence of a charge not secured by such a deposit would be an indication of a prior charge which was so secured. In the case of companies

registered under the Companies Acts, a land charges search would not reveal floating charges.[88] All charges (including floating charges) created by such companies and which affect registered or unregistered land should, however, be revealed by a search at the Companies Registry and in most cases the amount secured would come to light.

(vii) Personal inspection

Under the existing law a person who has the written authority of the registered proprietor of a particular title or of a charge on it may attend at the appropriate district Land Registry and inspect the whole of the register of that title. It should, therefore, be stressed that although under Proposal B any member of the public would be able to obtain office copies of the register as mentioned in paragraph 89 (i) above the present law would remain whereby he would not be able to make a personal inspection without production of the necessary authority.

(viii) Land Obligations

We have referred in paragraph 79 above to our recommendation in Law Com. No.11 that what we have termed "land obligations" should be shown in a separate part of the land register which anybody would be entitled to inspect. The implementation of Proposal B would render this rearrangement unnecessary and would therefore facilitate the implementation of the recommendations in Law Com. No.11. Land obligations could conveniently be included in the Charges Register of which office copies could be obtained by anybody.

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88. Law of Property Act 1969, s.26.

C. The proposals compared

90. It will be seen from the foregoing that there are two basic proposals for enabling further information to be obtained from the register of a particular title without the authority of the proprietor of the land or a charge on it. The first proposal (Proposal A) would enable the name and address of the proprietor to be ascertained, whereas the second proposal (Proposal B) would enable a copy of the entries of the whole of the title less financial details and filed documents to be obtained. In the latter case the existence of a mortgage could be ascertained, but not the amount secured.

91. It remains to be considered whether, if Proposal A be adopted, Proposal B should also be adopted and vice versa. If it is desired that financial details relating to rentcharges are to remain private (see paragraph 89 (iv) above), but that a member of the public should be able to ascertain, as of right, the name and address of the owner of a rentcharge issuing out of or charged on particular land it will be necessary to institute one of the suggestions contained in Proposal A. Apart from this one case of rentcharges, Proposal B should meet most requirements short of an entirely open register.

D. Public Bodies

92. A suggestion has been made that certain bodies, such as statutory undertakers and those with powers of compulsory purchase, should have the right to inspect all parts of the register. This suggestion is supported by some but not all the bodies whom it would benefit. We would prefer that public bodies should not be in a special position and, in any event, a right of this nature would be unnecessary if Proposal B were to be implemented.

93. It has also been proposed to us that section 129, (which enables the Registrar in his discretion to furnish information to government departments and local authorities)[89] might possibly be amended in two respects; first, by widening its

89. See para. 75 (c) above.

scope generally and, secondly, by making it mandatory. We think, however, that our proposals above should render any such amendment of section 129 largely unnecessary.

94. Provisional conclusions as to the Inspection of the Register

(i) The existing privacy of the register of title presents certain problems in practice. (Paragraphs 78-80).

(ii) A register wholly open to public inspection is not recommended at present. (Paragraph 86).

(iii) In order to solve some of the problems created by a wholly private register two proposals ("Proposal A" and "Proposal B") are put forward. (Paragraphs 87-91).

(iv) Under Proposal A, on application being made by any member of the public, and on payment of a small fee, the Registry would notify to the applicant the name and address of the registered proprietor of any registered title. (Paragraph 88).

(v) Under Proposal B -

(1) Any member of the public would be entitled to obtain from the Registry, on payment of an appropriate fee, an office copy of the register and filed plan of any freehold or leasehold title. (Paragraph 89 (i)). Such copy may not always be complete. (See (4) below).

(2) Personal inspection of the register would, as at present, only be permitted with the authority of the proprietor of the land or any charge on it. (Paragraph 89 (vii)).

(3) Office copies of filed documents would only be supplied if the applicant has the proprietor's authority. (Paragraph 89 (iii)).

(4) Where an office copy is supplied to an applicant who does not have such authority, it is suggested that the following information, if shown on the register, should be "masked out":-

(a) the prices and premiums paid,

(b) the amount of any rents payable and receivable,

(c) the amount of any rentcharge to which the property is subject,

(d) the amount secured by any financial charge, and

(e) the price or value specified in any notice on the register.
(Paragraph 89 (ii)).

(5) Only the existence, but not the amount, of a financial charge would be revealed in an office copy of the entries supplied to an applicant who did not forward the proprietor's authority. Disclosure of the existence of financial charges might be of benefit to prospective lessees or assignees of leases of registered land. (Paragraph 89 (vi)).

(6) The proposal would not apply to rentcharge titles. The proprietor's authority would be required, as at present, for the inspection of a rentcharge title or for the issue of an office copy of the entries in the register. (Paragraph 89 (iv)).

(vi) Public bodies should not be given any special right to inspect the register. (Paragraph 92).

PART E. TERMINOLOGY

95. As has been noted above[90] and has been pointed out in the Report of the Henry Committee on Registration of Title to Land in Scotland[91] the term "register" is used in the English Act and Rules to describe three different things. It is used to denote the whole register kept by the Land Registry as well as the record of each individual title. It is also the name given to the subdivisions of the "registers" of the individual titles (e.g., the Property or the Charges "register"). The confusion which the use of the word "register" in more than one sense can cause is shown by the decision of the Court of Appeal in Strand Securities Ltd. v. Caswell.[92] To avoid any confusion of terminology the Henry Committee suggested that when registration of title is introduced in Scotland the registers of individual titles should be called "Title Sheets" with subdivisions called "Sections". Whether or not any such change might be welcomed here, it could only be introduced, we think, if the register were to be rearranged. As we have mentioned in paragraph 89 (vi)(a) above, any proposal for re-arranging the register is not practicable at the present time.

PART F. COMBINED SUMMARY OF PROVISIONAL CONCLUSIONS

As to the registrability of leases (Part B. Paragraphs 21 to 48)

(i) Registrability of leases should continue to be determined in principle by a time factor, namely, the length of the term originally granted or the period unexpired at the relevant time. (Paragraph 26).

(ii) The dividing line between those leases which are capable of registration and those which are not should continue to be drawn between terms

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90. In note 10 above.

91. (1969) Cmnd. 4137 at p.21.

92. [1965] Ch. 958.

of more than 21 years and those of 21 years or less. (Paragraphs 28 and 29).

(iii) The present exception which prevents any inalienable lease from being registered should be abolished. (Paragraph 27).

(iv) In section 123(1) of the Act reference to "not less than 40 years" should be amended to read "more than 21 years". (Paragraph 33).

(v) It would not be desirable to introduce a new provision that leases originally granted for more than 21 years should be capable of first registration on assignment when less than 21 years remained unexpired. (Paragraph 35).

(vi) The Registrar should, however, have a discretion, conferred by statute, to register leases granted for more than 21 years when 21 years or less remained unexpired, where he thinks it appropriate. (Paragraph 36).

(vii) An agreement for a lease should not be capable of substantive registration. (Paragraph 37).

(viii) All leases or tenancies granted for terms of 21 years or less should be overriding interests. (Paragraph 45).

(ix) The distinction in section 70(1)(k) of the Act between leases at a premium and those not at a premium, should be abolished. (Paragraph 46).

The effect which these conclusions would have in practice on the registration of leases, is shown in the tables of comparison which follow paragraph 49. The principal result would be that leases would fall into two classes: registrable leases (those granted for more than 21 years) and overriding interests (those granted for 21 years or less).

As to miscellaneous points on leaseholds (Part C. Paragraphs 50 to 68

I Absolute Leasehold Titles

(i) Where the Registrar is satisfied as to the reversionary title, he should have statutory power to grant, with or without the consent of the applicant, an absolute title when a good leasehold title is applied for. (Paragraph 52).

(ii) Prospective lessees and assignees of leases of registered land should, in principle, as recommended by the Roxburgh Committee, have the right to inspect the charges register of the freehold and any superior leasehold title. (Paragraph 54).

(iii) The Roxburgh Committee's recommendation has not been pursued in this Paper nor has the possible extension of section 110(6) of the Act to lessees, because in Part D proposals for allowing wider access to information in the register are put forward which would, broadly, achieve the same results. (Paragraph 57).

(iv) Where the superior titles are not registered as absolute, the Registrar should not be under an obligation to convert a good leasehold title to absolute after registration for ten years and possession for ten years. He should be given a discretion to convert from good to absolute leasehold at any time, but only if he is satisfied as to the reversionary title or titles. (Paragraph 59).

II Implied covenants on the transfer of a registered lease

Section 24 of the Act (under which certain covenants are, unless the parties otherwise agree, implied on a transfer of a registered leasehold interest) should be repealed. The parties should be left, by the use of the statutory wording, to incorporate into a transfer of a registered leasehold interest, the appropriate covenants which can be implied, under the Law of Property Act 1925, in an assignment of a lease. (Paragraph 61).

III Production to the Registry of the certificate of the lessor's title

(i) In principle, the law should be amended so as to make it clear that the certificate of the lessor's title must be produced by the lessor to the Registry on any application for the first registration of a lease of registered land. (Paragraph 65).

(ii) If the law were so amended it would be essential to ensure that the lessee was not prejudiced if the lessor failed or delayed in complying with his obligation. (Paragraph 66).

(iii) Accordingly, an application to register a lease should be deemed to be complete when the lessee has lodged at the Registry the documents under his control and the application is otherwise in order under the Act and Rules. (Paragraph 68).

(iv) The lessor should be under a clear obligation to lodge his certificate to meet the lessee's application within a period of, say, seven days of completion of the lease. The enforcement of such obligation should be the responsibility of the Chief Land Registrar. (Paragraph 68).

As to the Inspection of the Register (Part D. Paragraphs 70 to 93)

(i) The existing privacy of the register of title presents certain problems in practice. (Paragraphs 78-80).

(ii) A register wholly open to public inspection is not recommended at present. (Paragraph 86).

(iii) In order to solve some of the problems created by a wholly private register two proposals ("Proposal A" and "Proposal B") are put forward. (Paragraphs 87-91).

(iv) Under Proposal A, on application being made by any member of the public, and on payment of a small fee, the Registry would notify to the applicant the name and address of the registered proprietor of any registered title. (Paragraph 88).

(v) Under Proposal B -

(1) Any member of the public would be entitled to obtain from the Registry, on payment of an appropriate fee, an office copy of the register and filed plan of any freehold or leasehold title. (Paragraph 89 (i)). Such copies may not always be complete. (See (4) below).

(2) Personal inspection of the register would, as at present, only be permitted with the authority of the proprietor of the land or any charge on it. (Paragraph 89 (vii)).

(3) Office copies of filed documents would only be supplied if the applicant has the proprietor's authority. (Paragraph 89 (iii)).

(4) Where an office copy is supplied to an applicant who does not have such authority, it is suggested that the following information, if shown on the register,

should be "masked out":-

(a) the prices and premiums paid,

(b) the amount of any rents payable and receivable,

(c) the amount of any rentcharge to which the property is subject,

(d) the amount secured by any financial charge, and

(e) the price or value specified in any notice on the register.

(Paragraph 89 (ii)).

(5) Only the existence, but not the amount, of a financial charge would be revealed in an office copy of the entries supplied to an applicant who did not forward the proprietor's authority. Disclosure of the existence of financial charges might be of benefit to prospective lessees or assignees of leases of registered land. (Paragraph 89 (vi)).

(6) The proposal would not apply to rentcharge titles. The proprietor's authority would be required, as at present, for the inspection of a rentcharge title or for the issue of an office copy of the entries in the register. (Paragraph 89 (iv)).

(vi) Public bodies should not be given any special right to inspect the register. (Paragraph 92).