

LAND REGISTRY LEGISLATION: A CONSULTATION

August 2023

CENTRAL REGISTRY
ISLE OF MAN 



Isle of Man
Government

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Introduction

The Central Registry seeks views on proposals for changes to legislation relating to land registration.

This consultation proposes a number of changes to the law on Land Registration focussing on possessory title, triggers for registration and dispute resolution. In addition, the consultation considers some further updates to the Land Registration Act 1982.

The additional changes are in relation to timescales for submission of applications and updating legislation in relation to types of co-ownership of property.

It is also proposed that minor amendments are made to the powers of the Land Registry to rectify errors.

About the consultation

Consultees are asked a number of questions. If you would like to respond to any or all of these questions please send a submission by email or post or to:

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Email: land@gov.im

Confidentiality

The information you send may be published in full or in a summary of responses.

When submitting your comments please indicate whether you are responding on behalf of an organisation (and if so which organisations) or on your own behalf.

Please let us know whether we can publish your comments in full (including your name or the name of your organisation you are representing), anonymously, or not at all (noting that if you select this option your response will only be part of a larger summary response document).

All information in responses, including personal information may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). An automatic confidentiality disclaimer generated by your IF system will not, of itself, be regarded as binding.

All responses submitted will be held within the Isle of Man Government's consultation hub and will be treated in accordance with the privacy policy.

Section 1: Background

The Land Registry is part of the Isle of Man Central Registry. It aims to create and maintain an accurate and up-to-date record of interests in land and property, including details of ownership.

The historic system of examining deeds recorded in the Deeds Registry under the Registration of Deeds Act 1961 in order to deduce the title or ownership of land is being replaced by a modern system requiring the registration of title to the land on a separate electronic title register created and maintained under the Land Registration Act 1982 (as amended) and the Land Registry Rules 2000 as amended by the Land Registry (Amendment) Rules 2002.

Prior to 2002 all land on the Island was unregistered and property information was held in the Deeds Registry. Land registration was phased in across the Isle of Man as successive parishes were designated as areas subject to compulsory registration:

- 1 May 2002: Andreas, Ballaugh, Bride and Jurby
- 1 May 2003: German, Lezayre, Maughold, Michael and Patrick
- 1 September 2005: The whole of the Island except for Braddan and Onchan
- 1 December 2009: Braddan and Onchan

Registration of title to a freehold or leasehold estate in land is compulsory on a conveyance on sale, the grant of a lease for more than 21 years or the assignment of a lease where there is more than 21 years left to run. Alternatively, title may be voluntarily registered at any time. All applications for first registration must include a certificate of title completed by an Advocate practising on the Island.

Registration benefits:

The benefits of land registration include:

- Registration of title gives finality and certainty by providing an up-to-date official record of land ownership
- Ease of accessibility to up-to-date official records of ownership and other registerable interests of land
- Proof of ownership can be readily and speedily obtained, unlike searches of unregistered land where you may need to know the name of the owner
- Registered titles are guaranteed because, subject to normal insurance principles, indemnity is paid should any person suffer loss through any error in, or omission from, the title register. No such guarantee exists for unregistered property
- Each title includes an extract from the survey map called a Filed Plan showing the extent of the land comprised in the registered title, although the boundaries are not conclusive unless a formal application has been made to do so. These plans are based on digital surveys of the Island. In unregistered conveyancing, there is no requirement for any deed to include a plan.
- Dispositions of registered titles are effected by means of prescribed forms which are available to the public. In unregistered conveyancing, there are no prescribed form.

Tynwald Constitution and Legal Affairs and Justice Committee

In 2021 Tynwald Constitution and Legal Affairs and Justice Committee (the Committee) undertook and subsequently prepared a report into Adverse Possession. The initial focus of the Committee's inquiry was to review a Petition for redress of Mr Cleator from 2019. The Committee considered adverse possession as its main focus but also addressed land registration in general.

The report suggested that the current legislative framework required reform. The Committee's original report and the response from the Council of Ministers can be viewed via the links below

<https://www.tynwald.org.im/spfile?file=/business/pp/Reports/2021-PP-0106.pdf>

<https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/20182021/2021-GD-0052.pdf>

Tynwald agreed a number of recommendations. These were as follows:

"Recommendation 1

The Manx legislation regarding the operation of the Limitation Act 1984 to registered land should be amended by changes to the Land Registration Act 1982. The Department for Enterprise will consult via the Land Registry on the implementation of such a reform. This will include a system under which the same or similar application, notification and response procedures as contained in the Land Registration Act 2002 (of Westminster) is implemented in respect of adverse possession claims over registered land.

Recommendation 2

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

Recommendation 3

That a central and collaborative online platform be developed which is capable of capturing and granting public access to a wide range of information in relation to land, including about local planning applications or developments which might affect the land's value or use.

Recommendation 4

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- *Conveyances not on sale (including appointment of new trustees);*
- *Gifts on Marriage;*
- *Assents;*
- *First Charge;*
- *Freehold on registration of lease;*
- *Lower minimum lease term;*
- *Receipt of Agricultural Payments.*

Recommendation 5

Council adopts a target for the registration of the Government estate by 2030. Pending a report to be delivered in February 2022 Council defers consideration of issuing a statutory direction to departments to register their land with the Land Registry.

Recommendation 6

That a reduction of the fee for voluntary registration of land be considered.

Recommendation 7

That an inquisitorial process by the Registrar be formalised in procedure to decide disputed cases of land ownership in the first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

Proposed approach.

This consultation is concerned with recommendations 1, 4 and 7, which concern potential changes to primary legislation. Recommendations 2, 3, 5 and 6 have been or are being dealt with separately.

In relation to the other recommendations, a brief overview of the progress is as follows:-

Recommendation 2:- The application process has been reviewed and the Land Registry is working towards implementation of online forms to further improve the process. Currently applications are being processed to a high level of efficiency with most applications dealt with within a number of days. There are only a very small number of applications older than 2 months. Statistics are now publicly available on the Land Registry website.

Recommendation 3:- The Land Registry is progressing with the recommendation. The amount of information currently available online has already increased to include historical maps, aerial photography and current applications. We are looking to expand this further to include areas such as utilities infrastructure and adoption status of roads and paths.

Recommendation 5:- Treasury is progressing with this recommendation looking at the finances and resources required to meet this target.

Recommendation 6:- This recommendation was considered during the recent review of Land Registry fees and it was decided to keep the current £75.00 fee as this was not considered to be a disincentive to voluntary registration.

Subject to this consultation, the Central Registry proposes that the changes set out in recommendations 1, 4 and 7 be included in a Bill to be introduced to Tynwald later in 2024. This consultation seeks view on those changes.

The proposals are set out in more detail in the following sections.

In line with Recommendation 1, Section 2 sets out in more detail the situation relating to establishing Possessory Title relating to Registered Land, identifies the approach in other jurisdictions, and seeks comments on the Committee's proposals.

In line with Recommendation 4, Section 3 seeks views on potential extending of statutory triggers which would require land to undergo compulsory First Registration.

In line with Recommendation 7, Section 4 seeks views on the potential wider changes to the powers of the Registrar to hold hearings and resolve disputes.

Section 5 seeks views on general updates to Land Registry Legislation in the following areas:-

- Amendment to the required timescale for submission of first registration applications
- Implementation of a requirement for deeds relating to registered land to be submitted within a similar timescale as first registration applications
- Addition of legislation to clarify the method of changing the type of joint ownership of property from joint tenancy to tenancy in common and vice versa
- Amendment to the Land Registry powers in relation to rectification of the Land Register.

Section 6 provides links to further reading and background to this consultation, as well as links to the Land Registration Act 1982 and Land Registry Rules.

Section 2: Changes to the law relating to establishing Possessory Title relating to registered land.

Summary of current position

Currently in order to establish possessory title to land it must be established that the applicant has possessed the land for a period of at least 21 years; it does not matter whether the land is registered or unregistered. Possessory title means that in essence there is no legal title to the land but that the occupier of the land is able to establish that they have been in possession of the land in order to establish title.

There have not been any applications for possessory title made in relation to Registered Land on the Isle of Man. Land Registration on the Isle of Man was phased in between May 2002 and December 2009. Consequently, there has been extremely limited opportunity that Registered Land could have been dispossessed for 21 years.

Summary of recommendations

The Council of Ministers stated:-

"The Manx legislation regarding the operation of the Limitation Act 1984 to registered land should be amended by changes to the Land Registration Act 1982. The Department for Enterprise will consult via the Land Registry on the implementation of such a reform. This will include a system under which the same or similar application, notification and response procedures as contained in the Land Registration Act 2002 (of Westminster) is implemented in respect of adverse possession claims over registered land."

Isle of Man Legal Position

Section 16 of the Limitation Act states:-

16 Time limit for actions to recover land

- 1) *No action shall be brought by any person to recover any land after the expiration of 21 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.*
- 2) *Schedule 1 contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned.*

Section 48 of the Land Registration Act 1984 states:-

48 Acquisition of title by possession

- 1) *Subject to the provisions of this section, the Limitation Act 1984 shall apply to registered land as it applies to unregistered land.*
- 2) *Where there has been a defeasance of an estate in any registered land in consequence of any of the provisions of the said Act and —*

- a. *a person claims to have acquired a right by possession to be registered as owner of an estate in that land; or*
- b. *the personal representatives of a deceased person claim that the deceased or such representatives in right of the estate of the deceased had acquired such a right, the person so claiming or, as the case may be, the personal representatives may apply to the Registrar, in such manner as may be prescribed, for registration of the title to that estate.*

3) *Without prejudice to section 6(2), the Registrar may, and shall if requested to do so by the applicant or by any other person who has lodged an objection to the application, refer the application for decision to the Land Commissioner.*

Comparison with other jurisdictions

England and Wales

The relevant limitation period in England and Wales is 12 years.

The Land Registration Act 2002 in England and Wales has created a new regime that applies only to registered land. This new regime is set out in Schedule 6 to the 2002 Act. It makes it more likely that a registered owner will be able to prevent an application for adverse possession of their land being completed. The following paragraphs provide a brief overview of the new regime;

- adverse possession of registered land for 12 years of itself will no longer affect the registered proprietor's title
- after 10 years' adverse possession, the squatter will be entitled to apply to be registered as proprietor in place of the registered proprietor of the land
- on such an application being made the registered proprietor (and certain other persons interested in the land) will be notified and given the opportunity to oppose the application
- if the application is opposed, it will be rejected unless either:
 - it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the squatter and the squatter ought in the circumstances to be registered as proprietor
 - the squatter is for some other reason entitled to be registered as proprietor
 - the squatter has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that they are the owner of it, the exact line of the boundary with this adjacent land has not been determined and the estate to which the application relates was registered more than a year prior to the date of the application.

These are statutory exemptions.

- in the event that the application is rejected but the squatter remains in adverse possession for a further 2 years, they will then be able, subject to certain exceptions, to reapply to be registered as proprietor and this time will be so registered whether or not anyone opposes the application

Notably it is much more difficult to establish possession of registered land in England and Wales compared to unregistered land but not impossible. In addition, the time limit needed is less at 10 years compared to 12 years for unregistered land in England and Wales.

Scotland

Scotland does not have the same legal basis for establishing possession and does not have a possessory title class. An applicant in Scotland must first file a deed evidencing their possession of the land. The starting point can however be a conveyance from someone who is not the legal owner of the land.

In Scotland for unregistered land a deed claiming possession must first be filed and on the basis of this deed a provisional title can be granted. This can then be upgraded after a period of ten years to an absolute title.

In relation to registered land possession cannot be claimed. The recourse for a squatter is to claim compensation from the Registers of Scotland.

Northern Ireland

Possessory Title can be claimed in much the same way as in England and Wales pursuant to the Limitation Order (NI) 1989, after possession for the prescribed time period which is 12 years in most cases; with the ability to then upgrade the title after 15 years as well. There is no difference in the process whether the land is registered or not.

The system which applies to unregistered land is much like the English Land Charges system. Summaries of essential features of deeds and other conveyancing documents are lodged in the Registry of Deeds in Belfast, which can be searched against, and such registration governs priorities.

The proposed amendments to Isle of Man Legislation are as follows:-

- (1) Adverse possession of Registered Land for 21 years will no longer immediately affect the registered proprietor's title and instead the squatter will only be entitled to apply to be registered as proprietor in place of the registered proprietor of the land.
- (2) On such an application being made the registered proprietor (and potentially other persons interested in the land) will be notified and given the opportunity to oppose the application
- (3) If the application is opposed it will be rejected unless there are either extraordinary circumstances or ordered by the Registrar or Land Commissioner. The potential process once an application is opposed is discussed further below.
- (4) In addition to notification under point (2) there may also be a requirement that there is public advertisement of the application.

Questions

The Central Registry welcomes any comments on the recommendations that: the Land Registration Act 1982 be amended to introduce the same application, notification and response procedures as contained in the Land Registration Act 2002 of England and Wales in respect of adverse possession claims over registered land

In particular, it would welcome comments on the following:

- 1) Do you agree with the overall intention of the amendments to make it more difficult to obtain possessory title to registered land?**

Yes/No

Do you have any further comments?

- 2) Do you agree that the period of possession required to establish adverse possession should remain at 21 years?**

Yes/No

Do you have any further comments?

- 3) Do you think that any element of public advertisement of possessory title applications is necessary? This would provide further protection to a registered proprietor particularly in a situation where they have not kept their service address up to date. The cost of advertisement would be paid by the applicant for possessory title.**

Yes/No

Do you have any further comments?

- 4) When there is a contested application should there be statutory exceptions as in the English legislation, or would it be satisfactory that either the Registrar or Land Commissioner could have the power to make a decision to award possessory title in exceptional circumstances?**

Legislative statutory exemptions (tick box)

Power for the Registrar or Land Commissioner to decide (tick box)

Do you have any further comments?

Section 3: Extension of the Triggers for compulsory first registration

Summary of current position

Registration of title to a freehold or leasehold estate in land is compulsory on a conveyance on sale (this is interpreted as a conveyance with any monetary consideration), the grant of a lease for more than 21 years or the assignment of a lease where there is more than 21 years left to run. Alternatively, title may be voluntarily registered at any time. All applications for first registration must include a certificate of title completed by an Advocate practising on the Island.

The Central Registry estimates that in 2022, there were over 100 gifts, assents and conveyances not on sale recorded in the Deeds Registry that did not trigger compulsory First Registration. In addition there were 404 charges and conditional bond and securities recorded in the Deed Registry related to re-mortgages or new mortgages of existing unregistered properties and these did not trigger compulsory First Registration.

Summary of recommendation

The report states:

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- *Conveyances not on sale (including appointment of new trustees);*
- *Gifts on Marriage;*
- *Assents;*
- *First Charge;*
- *Freehold on registration of lease;*
- *Lower minimum lease term;*
- *Receipt of Agricultural Payments.*

The Council of Ministers response agreed with this recommendation

The current triggers for first registration of property are a sale of freehold property (this is interpreted as a conveyance with any monetary consideration), grant of a lease of more than 21 years or assignment of a lease of more than 21 years. Currently in 2023 there have been 376 first registration applications, there were 1059 in 2022, 1037 in 2021 and 873 in 2020. The yearly number is fairly consistent but will likely decrease in the next few years as certain classes of property are not currently subject to compulsory first registration.

Last year it is estimated that there were over 100 gifts, assents and conveyances not on sale recorded in deeds and not triggering first registration and in addition a reasonable percentage of the 404 charges and conditional bond and securities recorded in deeds related to remortgages or new mortgages of existing unregistered properties and would not trigger first registration.

Comparison of Other Jurisdictions

Trigger/ Jurisdiction	Isle of Man	England & wales	Scotland	Northern Ireland
Conveyance on sale	Y	Y	Y	Y
Grant of a lease or the assignment of a lease	Y 21 years	Y 7 years	Y 21 years	Y 21 years
Conveyances not on sale (including appointment of new trustees);	N	Y	Y	N
Gifts on Marriage;	N	Y	Y	N
Assents;	N	Y	Y	N
First Charge;	N	N	Y	N
Freehold on registration of lease;	N	N	Y	N
Receipt of Agricultural Payments.	N	N	N	N

England and Wales

Registration is compulsory on a transfer of an unregistered freehold estate in land or a leasehold estate with more than 7 years to run:

- for valuable or other consideration (section 4(1)(a)(i) of the Land Registration Act 2002) including a transfer of property with a negative value under section 4(6) of the Land Registration Act 2002
- by way of gift (section 4(1)(a)(i) of the Land Registration Act 2002) including for the purposes of constituting a trust under which the settlor does not retain the whole of the beneficial interest, or uniting the bare legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole beneficial interest (see section 4(7) of the Land Registration Act 2002)
- in pursuance of an order of any court (section 4(1)(a)(i) of the Land Registration Act 2002)
- by means of an assent (section 4(1)(a)(ii) of the Land Registration Act 2002) including a vesting assent as defined in section 4(9) of the Land Registration Act 2002 (settled land act definition of vesting assent)
- giving effect to a partition of land subject to a trust of land (section 4(1)(a)(iii) of the Land Registration Act 2002)
- by a deed that appoints, or by virtue of section 334 of the Charities Act 2011 has effect as if it appointed, a new trustee or is made in consequence of the appointment of a new trustee (section 4(1)(aa)(i) of the Land Registration Act 2002)
- by a vesting order under section 44 of the Trustee Act 1925 that is consequential on the appointment of a new trustee (section 4(1)(aa)(ii) of the Land Registration Act 2002), or
- in circumstances where section 171A of the Housing Act 1985 applies (section 4(1)(b) of the Land Registration Act 2002) (disposal by landlord that leads to a person no longer being a secure tenant)

Scotland

Initially registration was compulsory only for transfers for value but in 2014 this was widened to all transfers. Also mortgages and re-mortgages now trigger registration and in addition "Keeper induced

registration” has been introduced to allow titles to be moved from the Sasine register to the land register by the Registry.

The policy in Scotland is for a large part of Scotland to be registered by 2024.

Northern Ireland

Where there has been a sale of an unregistered property (whether by conveyance, assignment, lease or fee farm grant), the title must be registered in Land Registry unless it falls within the exceptions listed below. The application for registration should be made by the purchaser's solicitor.

When is registration not compulsory?

The following transactions are not subject to compulsory first registration:

- transactions where no money consideration is paid (for example, gifts, Assents)
- mortgages and charging orders
- leases for under 21 years
- exchanges or partitions of land, provided there is no monetary consideration
- dealings with incorporeal hereditaments held in gross
- surrenders of leases

Questions

The Central Registry welcomes any comments on the recommendations that there is an extension of the Triggers for compulsory first registration be extended. In particular, it would welcome comments on the following:

- 1) Do you agree that it is advisable to widen triggers for first registration in order to increase the amount of land on the Isle of Man that is registered?**

Yes/No

Do you have any comments

- 2) The Land Registry suggests that initially conveyances not on sale including exchanges (including appointment of new trustees), Gifts on Marriage, Assents and a First Charges would be added. Adding these transactions could increase first registrations by approximately 20% per annum.**

Do you agree that it is reasonable to add these additional triggers to registration in order to increase the amount of land registered on the Island?

Yes/No

Do you have any comments?

- 3) The Committee noted that triggering the first registration of the Freehold of a building (such as a block of flats) when a lease was granted or assigned would also be desirable. There are**

practical difficulties in this respect as in most cases the owner of the freehold is a different entity. In this respect, it is suggested that one solution is a form of Land Registry induced registration to create a provisional freehold title which can then be upgraded voluntarily by the Landlord.

Do you think this would be desirable?

Yes/No

Do you have any comments?

- 4) As an alternative to the proposal in question 3, it is proposed that an additional fee is charged when processing an application to register a lease or assignment out of an unregistered leasehold title. This would provide an incentive for the applicant to request that the freehold title is registered. In addition the registration of the freehold could be designated as a trigger event although not compulsory which would remove the need for the advertising requirement of voluntary registration. Do you think this would be desirable?**

Yes/No

Do you have any comments?

- 5) Do you think it would be advisable to reduce the length of lease triggering first registration to leases shorter than 7 years to follow the law in England & Wales? This would generally affect commercial property more than residential.**

Yes/No

Do you have any comments?

- 6) Do you think it is desirable to trigger registration of farmland on receipt of Agricultural Payments? This would place the obligation on farmland owners to register any land which subsidies are claimed on.**

Yes/No

Do you have any comments?

- 7) Should this obligation proposed in question 6 also apply in the situation where a tenant farmer is receiving Agricultural Payments?**

Yes/No

Do you have any comments?

Section 4: The Registrar's inquisitorial process

The Select Committee suggested that:-

"That an inquisitorial process by the Land Registrar be formalised in procedure to decide disputed cases of land ownership in the first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute"

Currently the inquisitorial powers the Land Registry has are quite wide ranging and do not just deal with disputed cases of land ownership. The powers the Land Registry has when there is disputed ownership are limited by statute. In particular, the power to rectify registered titles, deal with contested possession applications and also when there is an objection to a first registration application is limited.

The current powers and methods for resolving disputes are generally as follows:-

With a contested matter the Land Registry has the power to request further information, arrange a hearing and make a decision. There is no guidance in relation to the conduct of hearings.

Any aggrieved party has the opportunity to appeal any Land Registry decision to the Land Commissioner, a Deemster sitting in court.

In addition the Land Registry has the power to reference a matter to the Land Commissioner where there is a question of fact or law.

We suggest that there should be more clarity in the role of the Registrar and powers to hold hearings to attempt to resolve land registration disputes.

Questions

The Central Registry welcomes any comments on the recommendations that: That an inquisitorial process by the Registrar be formalised in procedure to decide disputed cases of land ownership in the first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

In particular, it would welcome comments on the following:

- 1) Do you think it would be advisable to formalise the Land Registry's role in relation to disputes?

Yes/No

Do you have any comments?

- 2) How do you think disputes should be handled in the first instance by the Land Registry?

Yes/No

Do you have any comments?

- 3) Do you think that it would be beneficial for the Land Registry to be able to offer a preliminary opinion in relation to a land registration dispute and if so how would this be addressed without compromising a formal hearing at a later date?

Yes/No

Do you have any comments?

- 4) Should parties be able to claim costs in Land Registry proceedings generally? This question does not apply when a matter is decided by the Land Commissioner.

Yes/No

Do you have any comments?

- 5) Should costs in Land Registry disputes be limited?

Yes/No

Do you have any comments?

Section 5 Updates to the Land Registration Act 1982

Changes to Co-Ownership status

Currently in the Isle of Man there is no legislative provision to allow what is known as a severance of a Joint Tenancy. There are 2 types of Co-Ownership in Isle of Man property law, joint tenancy and tenancy in common and these are reflected on the register. The main differences between the types of ownership are in relation to survivorship and ownership shares. On the death of a joint tenant their share in the property will revert automatically to the surviving tenant or tenants. On the death of a tenant in common their share in the property will pass either pursuant to their will or intestacy rules. Also joint tenants are joint owners of the property and as such do not own a specific share whereas tenants in common will own a specific share.

The legislative difficulty is that there is no provision in Isle of Man Legislation to direct the process for changing from Joint Tenants to Tenants in Common and vice versa. This has become contentious recently as there have been a number of applications to change tenancies from Joint Tenant to Tenant in Common pursuant to matrimonial break ups. The Land Registry proposes an amendment to the Land Registration Act to mirror the provision in the England and Wales Law of Property Act 1925 section 36 which states:-

36 Joint tenancies.

(1)Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held in trust, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2)No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held in trust.

(3)Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

The relevant clause is highlighted yellow.

The Land Registry proposes that a provision is included that allows a joint tenancy to be severed in this way by serving notice on the other party and that once this has been done the Register can be amended to reflect this.

Do you agree with the proposed amendment?

Yes/No

Do you have any further comments?

Changes to timescales for First Registration and also requirement to register deeds in relation to registered land.

Currently there is a provision in the Land Registration Act 1982 section 23 and Schedule 2 that non registration of a first registration application within 3 months results in the deed inducing registration becoming void.

There is a fall back process the Registrar can accept applications out of time if there was an accident or other sufficient cause.

The Registry proposes amending the period to one month. This will ensure the Register is as up to date as possible and reduces risk of fraud.

Do you agree that this is a reasonable proposal?

Yes/No

Do you have any further comments?

Timescales for registration of transactions in the Land Registry

In addition the Registry proposes instituting a similar provision that deeds in relation to registered land must be submitted for registration within a fixed period either 3 or 1 months.

The reason for this is that currently there is no obligation to register transactions relating to registered land. Clearly it is in a buyer's interest to register the purchase of a property as soon as possible as this provides proof of ownership of the property and protects against fraud. Currently applications to register transfers of registered land are presented to the Land Registry on average approximately 50 days after the completion date of the transaction. Some applications have been presented months or even years after the date of the transaction.

Do you agree that this is a reasonable proposal?

Yes/No

Do you have any further comments?

Changes to the powers of rectification for the Land Registry

The current powers of rectification are contained in section 65 of the Land Registration Act 1982 which states:-

(2) Where an incorrect entry in, or omission from the register is of a formal or trivial nature, the Registrar may, after making such enquiries (if any) and serving such notices (if any) as he considers necessary, rectify the register.

(2A) The Registrar may in his discretion, after making such enquiries (if any), serving such notices (if any) and obtaining such consents (if any) as he considers necessary, amend any mistake in, or omission from, any document presented to the Land Registry, if in his opinion the mistake or omission is of a clerical nature.

(2B) The Registrar may, after making such enquiries (if any) and serving such notices (if any) as he considers necessary, order the rectification of the register where all persons interested

(a) consent to the rectification, or

(b) do not, within such time as may be prescribed after being served with notice of the Registrar's intention to order the rectification, notify the Registrar in writing that they object to the proposed rectification.

The effect of this section is that rectification of an error in the Register is only possible by the Land Registry if all interested persons consent to the rectification or do not object once given notice. There is an alternative method which requires referral of the matter to the Land Commissioner which involves entering a court process with associated timescales and potential costs implications.

The Land Registry accepts that the intention of this section is to protect the integrity of the Register and registered owners titles but considers that it would be more appropriate to allow rectification without consent if there is a clear error. Any interested party would still have the opportunity to appeal the Land Registry decision to the Land Commissioner.

Do you agree that the Land Registry should have the power to rectify a clear and obvious error on the Register without the consent of all interested parties?

Yes/No

Do you have any further comments?

Section 6: Relevant documents

Select Committee Report

<https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/20182021/2021-GD-0010.pdf>

Council of Ministers Response to Select Committee Report

<https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/20182021/2021-GD-0052.pdf>

Land Registration Act 1982 (as amended)

https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1982/1982-0007/LandRegistrationAct1982_9.pdf

Land Registry Rules 2000 and Land Registry (Amendment) Rules 2002

<https://www.tynwald.org.im/spfile?file=/links/tls/SD/2000/2000-SD-0588.PDF>

<https://www.tynwald.org.im/spfile?file=/links/tls/SD/2002/2002-SD-0112.PDF>

