



**Land Registration Act 2002**  
**Scope of this guide**

This guide deals with the protection of those overriding interests that lose their overriding status in 2013.

It is aimed at solicitors, licensed conveyancers and other legal advisers and you should interpret references to 'you' accordingly. Land Registry staff will also refer to it.

## Overriding interests losing automatic protection in 2013

**Update** – This edition of the guide replaces the March 2007 edition. Amendments have been made as a result of the Land Registration (Amendment) Rules 2008.

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**1 Abbreviations and terms used**

In this guide:

'conveyancer' means a solicitor, a licensed conveyancer within the meaning of s.11(2), Administration of Justice Act 1985, a Fellow of the Institute of Legal Executives, a barrister, a duly certificated notary public, or a registered European lawyer (as defined) (r.217(1), LRR 2003). Where appropriate they include in-house conveyancers as well as those in private practice; 'Fee Order' means the current Land Registration Fee Order; 'LRA 2002' means the Land Registration Act 2002; 'LRA 2002 (TP) (No 2) Order 2003' means the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003; 'LRR 2003' means the Land Registration Rules 2003; 'overriding interests' are unregistered interests that override first registration or registered dispositions as listed in Schedules 1 and 3, LRA 2002. These interests are interests in land that bind the owner or purchaser of the land even though they do not appear in the register.

References to numbered sections and schedules are to those in the LRA

2002 and references to numbered rules are to the LRR 2003, unless otherwise stated.

**2 Introduction**

This guide deals with the protection of those overriding interests that will lose their overriding status at midnight on 12 October 2013<sup>1</sup>.

These interests<sup>2</sup> are:

- a franchise
- a manorial right
- a right to rent that was reserved to the Crown on the granting of any freehold estate (whether or not the right is still vested in the Crown)
- a non-statutory right in respect of an embankment or sea or river wall
- a right to payment in lieu of tithe
- a right in respect of the repair of a church chancel.

Before 13 October 2013, these interests can be protected **without fee**<sup>3</sup>:

- where the title is registered, by a notice in the register, or
- where the title is not yet registered, by caution against first registration.

After 12 October 2013, they can be

similarly protected provided they bind the then registered proprietor<sup>4</sup> but it is probable that **a fee will be payable** under the Fee Order.

An applicant seeking to protect their interest by way of notice or caution against first registration may apply for an official search of the index map to establish whether or not any part of the land searched is registered and, if so, the title numbers concerned and the type of registration that has been disclosed. See Practice Guide 10 – *Official searches of the index map*.

### 3 Interests already protected by entries in the register

As a result of information provided to Land Registry on an application, an entry may already have been made to protect such an interest. Where such an entry is made, the interest will cease to be an overriding interest<sup>5</sup>. In such a case, it will not be necessary to make a further application to protect the interest.

For example, if the following entry appears in the register.

“The land is subject to a rent of 1s 0d reserved to the Crown by a Conveyance thereof dated 17 July 1893 made between (1) The Queen’s Most Excellent Majesty (2) The Board of Trade and (3) The Commissioner of The Piers and Harbour of Clayport.  
NOTE: Copy filed.”

The Crown rent created by the conveyance of 17 July 1893 is therefore already protected and has ceased to be an overriding interest.

Examples of other entries that may appear in the register are:

“The land was formerly copyhold of the Manor of Pinechester. This registration takes effect subject to the reservation of any rights of the lord referred to in the 12th Schedule of the Law of Property Act 1922.”

“The land was formerly copyhold of the Manor of Pinechester and on the enfranchisement thereof there were excepted the mines and minerals and rights referred to in section 48 of the Copyhold Act 1852. Such mines and minerals and rights are not included in this registration.”

“The land was formerly copyhold of the Manor of Pinechester and on the enfranchisement thereof there were

excepted the mines and minerals and rights referred to in section 23 of the Copyhold Act 1894. Such mines and minerals and rights are not included in this registration.”

Our view is that these entries are notices in respect of manorial rights and therefore such rights will have ceased to be overriding interests so that further protection is unnecessary. There may, however, be arguments to support the contrary view. Accordingly applications may be made for a notice in respect of specific manorial rights even though one of these entries already appears in the register. Before 13 October 2013, no fee is payable for such an application.

### 4 Entry of notices in the register

An application for entry of a notice may be for either:

- a unilateral notice, or
- an agreed notice.

There are different procedures for entering unilateral notices and agreed notices and for cancelling the entries once made. The forms of the entries in the register are also different. However, all types of notice have the effect of protecting the priority of the interest to which they relate. For further information see Practice Guide 19 – *Notices, restrictions and the protection of third party interests in the register*.

#### 4.1 The nature and effect of notices

A notice is an entry made in the register in respect of the burden of an interest affecting a registered estate or charge.

The effect of a notice is very limited. The entry of a notice does not guarantee that the interest that it protects is valid or even that it exists<sup>6</sup>. A notice will only ensure that the priority of the interest protected will not be automatically postponed on the registration of a subsequent registrable disposition for valuable consideration, if the interest is valid. The person with the benefit of the interest should be aware that once the interest has been noted, overriding status is lost and cannot be regained even if the notice is cancelled<sup>7</sup>.

Once entered in the register, any notice other than a unilateral notice will only be cancelled if the registrar is satisfied that the interest protected

1 S.117, LRA 2002 and r.2, LRA 2002 (TP) (No 2) Order 2003.

2 See Law Com No. 271 *Land Registration for the Twenty-first Century - A Conveyancing Revolution* at paragraph 8.8 where it states:

“There are five miscellaneous overriding interests, whose shared characteristics have been described above at paragraph 8.35. All are relics from past times and are of an unusual character. Most of them can no longer be created. Those who have the benefit of such rights ought to be aware of them. These characteristics make them obvious and sensible candidates to be phased out. If such rights are to bind those who acquire registered land, they should be protected on the register.” The paragraph only refers to five overriding interests because at paragraph 8.75 the report says: “In a recent decision, the Court of Appeal has held that chancel repair liability contravenes the European Convention on Human Rights and is, therefore, unenforceable. It is therefore unnecessary for us to say any more about this.” Since the report was written the Court of Appeal decision has been overturned – see section 4.6.3.6 *A right in respect of the repair of a church chancel*.

3 S.117, LRA 2002 and, in respect of chancel repair liability, the Fee Order.

4 See section 6.2 *The land was registered before 13 October 2013*.

5 S.29(3), LRA 2002.

6 S.32 LRA 2002.

7 S.29(3), LRA 2002.

has come to an end, or that the interest claimed is otherwise invalid. A person applying for an agreed notice to be cancelled must produce evidence to satisfy the registrar that this is the case.

#### **4.2 The duty to act reasonably**

A person must not lodge an application for a notice without reasonable cause. If they do, they owe a duty to anyone who suffers damage, and the person adversely affected may bring an action for damages<sup>8</sup>.

#### **4.3 Unilateral notices**

A unilateral notice may be entered without the consent of the relevant proprietor. The applicant is not required to satisfy the registrar that their claim is valid and does not need to support their claim to the interest with any evidence. The registrar will however check that the interest claimed is of a type that may be protected by unilateral notice.

The relevant proprietor is not notified of the application until after the entry has been made so they will not usually be able to object to the application. However, they will always be notified after the application has been completed. They can then apply at any time to cancel the notice and, by doing so, require the person claiming the benefit of the protected interest to prove the validity of their claim.

There are two elements to any unilateral notice entry appearing in the register. The first part gives brief details of the interest protected and identifies that the entry is a unilateral notice; the second part gives the name and address of the person identified by the applicant as the beneficiary of the notice. This information is necessary as it is the beneficiary who will be served with notice and required to prove the validity of the interest if the relevant proprietor applies to cancel the notice.

An example of a unilateral notice entry would be:

“(22 January 2004) UNILATERAL NOTICE in respect of a liability to contribute to the maintenance and repair of the embankments of the river Hythe adjoining the land in this title and arising by virtue of the custom of the Township of

Hythehampton.

(22 January 2004) BENEFICIARY: James Dean Perry of The Manor House, Upper Hythe, Cornshire XX1 3AB.”

#### **4.4 Applying for a unilateral notice**

##### **4.4.1 Application form**

An application for a unilateral notice must be made in form UN1.

##### **4.4.2 Details of the nature of the applicant's claim**

Details of the nature of the interest claimed must be set out in the relevant panel of form UN1. This information may be given either:

- as a statement by the beneficiary or someone authorised by them, or
- as a certificate given by a conveyancer.

The applicant is not required to lodge any other document in support of their claim. However, if they do so, the registrar will retain the document or a copy of it and refer to it in the notice entry. This would mean that the document would be available for public inspection. Any such document, even if it is an original, will be stored electronically and will then be destroyed<sup>9</sup>. If the applicant lodges an original document and wants it returned, a certified copy must also be lodged and a request made at the time of the application for the return of the original document.

##### **4.4.3 Identifying the beneficiary of the notice**

An application for a unilateral notice must identify who is to be named in the entry as the beneficiary of the notice and must provide up to three addresses for service to be entered in the register.

The addresses given may be postal, DX or electronic addresses although one must be a postal address, though not necessarily an address in the UK<sup>10</sup>. Any cancellation notice in respect of the unilateral notice will be sent to the beneficiary at the address(es) for service in the register. Where appropriate, one address given may be ‘care of’ the beneficiary’s conveyancer to ensure that a cancellation notice is not inadvertently overlooked when received.

##### **4.4.4 Registration of a new or additional beneficiary of a unilateral notice**

<sup>8</sup> S.77, LRA 2002.

<sup>9</sup> R.203(6), LRR 2003.

<sup>10</sup> Rr.198-9, LRR 2003 provide further information about addresses for service and when service shall be regarded as having taken place.

In order that the register may be kept up to date, someone who is or has become entitled to the benefit of an interest that is protected by a unilateral notice may apply to be entered as the beneficiary of that notice.

The application must be made in form UN3 and must be accompanied by the fixed fee prescribed under the Fee Order – see Practice Guide 19 – *Notices, restrictions and the protection of third party interests in the register.*

#### **4.5 Agreed notices**

An agreed notice can only be entered in the register either:

- by, or with the consent of, the relevant proprietor (or someone entitled to be registered as such), or
- if the applicant can satisfy the registrar that the interest claimed is valid.

We are not obliged to serve notice on the relevant proprietor before approving an application for an agreed notice made without the proprietor's cooperation. In most cases we will determine the application on the basis of the evidence lodged without involving the proprietor. However, if the application is one based on evidence rather than proprietor cooperation, we will always notify the proprietor that the entry has been made when we complete the application.

Agreed notice entries must give details of the interest that they protect. Often this is achieved by referring to a document that describes, or that created, the interest. An extract from the document may be set out in the register or the document itself may be scanned and stored electronically and made available for inspection. Once the document has been scanned it will be destroyed even if it is the original unless a certified copy has also been lodged and a request for the return of the original document has been made at the time of making the application. An example of an agreed notice entry would be:

“(22 January 2002) A Conveyance dated 17 July 1893 made between (1) The Queen's Most Excellent Majesty (2) The Board of Trade and (3) The Commissioner of The Piers

and Harbour of Clayport reserves a rent of 1s 0d to the Crown.

NOTE: Copy filed.”

#### **4.6 Applying for an agreed notice**

##### **4.6.1 Application form**

An application for an agreed notice must be made in form AN1.

##### **4.6.2 Applications based on evidence rather than consent**

In practice most applications of this type are likely to be made without the consent of the registered proprietor. Where the consent is available see section 4.6.4 *Applications made with the cooperation of the relevant proprietor.*

Where the application is not made with consent, it must be accompanied by sufficient evidence to satisfy the registrar of the validity of the applicant's claim<sup>11</sup>.

The evidence required to satisfy the registrar of the validity of the claim will of course vary on a case-by-case basis. Examples of the type of evidence that may satisfy the registrar of the validity of a claim are set out in section 4.6.3 *Evidence of the applicant's claim.*

##### **4.6.3 Evidence of the applicant's claim**

###### **4.6.3.1 A franchise**

A franchise requires a grant from the Crown in the form of a Charter or Letters Patent. It may also be claimed by prescription (which presupposes use since before 1189 or a later grant that has been lost).

The LRR 2003<sup>12</sup> distinguish between:

- an **'affecting franchise'** – “a franchise that relates to a defined area of land and is an adverse right affecting, or capable of affecting, the title to an estate or charge”, and
- a **'relating franchise'** – “a franchise that is not an affecting franchise”.

A franchise may be registered. For further information see Practice Guide 18 – *Franchises.*

Most franchises are considered to be relating franchises and are not overriding interests because they do not affect land. They cannot, therefore, be the subject of an application for a notice.

There is strong authority for the view that a market franchise will be

11 R.81(1), LRR 2003.

12 R.217(1), LRR 2003.

a relating franchise. Even if the market franchise relates to an area that can still be defined, it does not appear to give the franchise-holder the right to enter the land without the landowner's consent, and so does not confer property rights adversely affecting the title to any estate or charge.

To establish the validity of the applicant's claim to an affecting franchise for the purpose of an agreed notice it will normally be necessary to supply a certified copy (together with a certified translation if the copy document is in Latin) of the Charter or Letters Patent. We will accept as a certified copy:

- a transcript
- a photocopy
- a photograph (provided it is readable)
- a certified copy of the relevant entry in the Charter Rolls or Patents Rolls supplied by the National Archives<sup>13</sup>, or
- a copy extract of a published calendar of Charter and Patent Rolls (provided the abstract supplies sufficient detail).

We will also need to be satisfied that the franchise has been vested in the applicant for the agreed notice and we may also require evidence by way of statutory declaration or statement of truth that it remains actively exercised, and this last requirement will be regarded as an essential requirement where the franchise is claimed by prescription.

#### 4.6.3.2 Manorial rights

'Manorial rights' has a precise meaning. Such rights are narrower than the appurtenances deemed to be included in the conveyance of a Manor by virtue of the Law of Property Act 1925 section 62(3) (or the Conveyancing Act 1881 section 6(3)). The rights in question were listed in some detail in paragraphs 5 and 6 of Schedule 12 to the Law of Property Act 1922. Although this list of rights relates to the effect of enfranchisement under the Law of Property Act 1922 it may nevertheless be taken to be "a comprehensive statement of these rights"<sup>14</sup>. They are:

*"(5) An enfranchisement by virtue of this Act of any land (including any mines and minerals hereinafter mentioned) shall not affect any right*

*of the lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries, whether in or under the enfranchised land or not, or any right of entry, right of way and search, or other easement or privilege of the lord or tenant in, on, through, over, or under any land, or any powers which in respect of property in the soil might but for the enfranchisement have been exercised for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl. Provided that the owner of the enfranchised land shall, notwithstanding any reservation of mines or minerals in this Act (but without prejudice to the rights to any mines or minerals, or the right to work or carry away the same), have full power to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land.*

*(6) An enfranchisement by virtue of this Act shall not affect any liability subsisting at the commencement of this Act (whether arising by virtue of a court leet regulation or otherwise) for the construction maintenance cleansing or repair of any dykes, ditches, canals, sea or river walls, piles, bridges, levels, ways and other works required for the protection or general benefit of any land within a manor or for abating nuisances therein; and any person interested in enforcing the liability may apply to the court to ascertain or apportion the liability and to charge the same upon or against the land or any interest therein; and the court may make such order as it thinks fit; and the charge when made by the order shall be deemed to be a land charge within the meaning of the Land Charges Registration and Searches Act, 1883 (as amended by any subsequent enactment), and may be registered accordingly; and, in addition, the jurisdiction of any court leet, customary or other court, in reference to the matter is hereby transferred to the court."*

13 Formerly the Public Records Office.

14 See Law Com 271 at para 8.41.

To establish the validity of their claim for the purposes of an agreed notice the applicant will normally need to produce:

- evidence that the land in question was previously copyhold of the manor in question (this will usually be provided by producing a copy of the deed of enfranchisement or compensation agreement)
- evidence that it was the custom of the manor in question that the lord had the rights claimed, for example by evidence from the court rolls
- evidence that the rights in question survived enfranchisement (this will usually be provided by producing a copy of the deed of enfranchisement or compensation agreement)
- evidence of the applicant's title to the particular manorial rights claimed (this will usually consist of an abstract or epitome of title showing the applicant's title to the lordship of the manor and that the rights have not been severed from the lordship).

In a case where it is proposed to make an application for registration of mines and minerals see Practice Guide 65 – *Registration of mines and minerals*.

#### 4.6.3.3 A Crown rent

A Crown rent includes, but may not be limited to:

- the rent payable to the Crown for freehold land in a manor of ancient demesne, or
- the rent reserved to the Crown under the grant of a freehold estate, whether or not that estate was situated in a manor of ancient demesne.

The applicant will normally need to lodge a copy of the grant under which the Crown rent arises and, where the applicant is not the Crown, evidence of the devolution of the Crown rent to the applicant and confirmation that the Crown rent is still payable.

#### 4.6.3.4 A non-statutory right in respect of an embankment or sea or river wall

A non-statutory right in respect of an embankment or sea or river wall relates to a proprietary (as opposed to contractual) liability that has arisen by grant, a covenant supported by a rentcharge,

prescription, custom or tenure. Where the liability has arisen by grant or by a covenant supported by a rentcharge, the applicant will normally need to produce a copy of the deed under which the right arises and evidence of the devolution of the right to the applicant.

Where the right has arisen through prescription or custom, the applicant will normally need to produce a statutory declaration or statement of truth dealing with how the right arose and how the benefit of it passed to the applicant.

Liability arising by reason of tenure is expected to be very rare because it appears that strictly no such liability could arise by way of a grant after 1189 other than a grant from the Crown. Where the applicant has evidence of such a grant it should be lodged in addition to evidence showing how the benefit of the right is vested in the applicant. It is thought to be more likely however that a copy of the grant will not be available in such cases and the existence of a tenurial liability will be sought to be established by showing (by way of statutory declaration or statement of truth) that successive owners of the land in question had maintained the embankment, sea or river wall for many years.

#### 4.6.3.5 A right to payment in lieu of tithe

It appears that the only payments in lieu of tithe that still exist are those made payable out of or charged on land by any Act of Parliament other than one of the Tithe Acts. These payments are often called 'corn rents' but it should be noted that not all payments called 'corn rents' are made in lieu of tithe.

The applicant will normally need to produce evidence as to the statutory provision on which the payment is based, evidence of the devolution of the right to the payment and confirmation that the payment is still payable.

#### 4.6.3.6 A right in respect of the repair of a church chancel

Chancel repair liability is the liability of the owner of land to pay for the repair of the chancel of a parish church<sup>15</sup>. In England the parochial church council, and, in Wales, the

15 See *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37.

Representative Body of the Church in Wales, have the right to collect the money. There may be liability where land was formerly attached to a rectory. Such former rectorial land is not necessarily close to a church building. Owners affected include private persons, ecclesiastical corporations, universities and colleges and other corporate bodies. These owners are known as lay-rectors.

There have been arguments that chancel repair liability is not an interest in land that can be protected by notice. Land Registry currently operates on the basis that it does constitute such an interest. But we will serve notice on the proprietor before making an entry of an agreed notice.

The applicant will normally need to produce a statutory declaration or statement of truth detailing how the liability arose and how the benefit of the right to enforce it has devolved to the applicant. Where the liability or the benefit to it has been the subject of a deed, a copy of the deed should be produced if it is available to the applicant.

*4.6.4 Applications made with the cooperation of the relevant proprietor*  
Unless the applicant can satisfy the registrar of the validity of the interest claimed, the application must be made by or with the consent of the relevant proprietor, or by or with the consent of someone who is entitled to apply to be registered as the relevant proprietor.

Where the applicant (or the person giving his consent) is entitled to be registered as proprietor, evidence of that entitlement must be lodged. Three common examples where someone may be entitled to be registered as proprietor are where:

- they have recently taken a transfer of the estate or charge but have not yet become registered as proprietor. For example, where form AN1 is lodged at the same time as the application for registration
- the sole relevant proprietor has died and is the personal representative
- they are the trustee in bankruptcy of the relevant proprietor and the estate or charge forms part of the bankrupt's estate.

Where there are joint proprietors or there are persons who, jointly, are entitled to be registered as the relevant proprietor, all must consent or join in as applicants.

Any consent lodged with the application may be given in panel 15 of form AN1 or it may be lodged separately.

#### **4.7 Variation of a noted interest**

Where an interest that has been noted in the register is varied, the priority of the interest, as varied, should be protected in the register – see Practice Guide 19 – *Notices, restrictions and the protection of third party interests in the register* for more information.

#### **4.8 Cancelling and removing notices from the register**

*4.8.1 Cancellation of a unilateral notice*  
‘Cancellation’ of a unilateral notice is the term used<sup>16</sup> to describe the procedure whereby the beneficiary of the notice is required to prove the validity of the interest claimed. If they cannot do this, the notice is cancelled.

Only the relevant proprietor (or someone entitled to be registered as the relevant proprietor) may apply to cancel a unilateral notice but they may do so at any time without giving reasons for doing so.

If the application is made by someone entitled to be registered as the relevant proprietor, the applicant must also provide evidence of his entitlement. The registrar will accept a conveyancer's certificate to confirm the applicant's entitlement.

An application to cancel a unilateral notice must be made in form UN4<sup>17</sup>. There is no fee for making the application.

When an application to cancel a unilateral notice is received the registrar will serve notice of the application on the beneficiary, who then has a set period of 15 business days in which to object to the application. If the beneficiary does not object to the application within that period, or any extension to it, the notice is cancelled.

If the beneficiary does object, they will need to set out the grounds for their objection since we will first consider whether the objection has any chance of success. If it cannot

<sup>16</sup> S.36, LRA 2002.

<sup>17</sup> S.36, LRA 2002 and r.86, LRR 2003.

succeed, it will be cancelled<sup>18</sup>. To succeed the beneficiary will have to provide details of the law or facts which entitle them to the notice.

Once we have established that an objection is not groundless we will give details to the applicant. Any dispute about whether the notice should be cancelled that cannot be resolved by agreement will be referred to the Adjudicator to HM Land Registry. See Practice Guide 37 – *Objections and disputes – A guide to Land Registry practice and procedures* and Practice Guide 38 – *Costs* for more information.

#### *4.8.2 Removing a unilateral notice*

An application to remove a unilateral notice must be made by the registered beneficiary, by their personal representative or trustee in bankruptcy or by a conveyancer on behalf of the applicant.

The application must be made in form UN2<sup>19</sup>. No fee is payable for an application to remove a unilateral notice.

#### *4.8.3 Cancellation of an agreed notice*

An application to cancel an agreed notice must be made in form CN1<sup>20</sup> and must be accompanied by appropriate evidence to satisfy the registrar that the protected interest has come to an end. There is no fee for making the application.

Neither the LRA 2002 nor the LRR 2003 restrict who may apply for cancellation, but the registrar may only approve the application if satisfied that the interest protected has come to an end. If the interest protected by the notice has only come to an end in part, the registrar must make an appropriate entry.

## **5 Caution against first registration**

Where the legal estate affected by the overriding interest is unregistered, the person with the benefit of that interest may make an application to register a caution against first registration. For further information about cautions against first registration generally see Practice Guide 3 – *Cautions against first registration*.

In the case of an affecting franchise it is possible to register a caution against first registration of that franchise and against registration of any estate in land that it affects.

Although it is possible to register a caution against first registration of a relating franchise (rather than against the land to which it relates), such a caution will not provide protection on an application for first registration of the land to which it relates, as it does not affect<sup>21</sup> that land.

### **5.1 The nature and effect of cautions against first registration**

The effect of a caution against first registration is very limited. It entitles the cautioner to be given notice by the registrar when there is any application for first registration affecting the land comprised in the caution against first registration<sup>22</sup> or when the owner of the legal estate to which the caution relates applies to cancel the caution<sup>23</sup>.

On receipt of the notice the cautioner must then, within the prescribed notice period<sup>24</sup>, decide whether to object to the application for first registration. For further information about the practice and procedure relating to objections see Practice Guide 37 – *Objections and disputes – A guide to Land Registry practice and procedures*.

A caution against first registration has no other effect at law and in particular does not confirm the validity of, or confer any priority upon, the interest of the cautioner.

### **5.2 The duty to act reasonably**

A person must not lodge a caution against first registration without reasonable cause. If they do, they owe a duty to anyone who suffers damage, and the person adversely affected may bring an action for damages<sup>25</sup>.

### **5.3 Applying for a caution against first registration**

#### **5.3.1 Application form**

An application for a caution against first registration must be made in form CT1.

18 S.73(6), LRA 2002.

19 R.85, LRR 2003.

20 R.87, LRR 2003.

21 i.e. the owner of the relating franchise is not entitled to an interest affecting a qualifying estate within s.15(1)(b), LRA 2002.

22 S.16, LRA 2002.

23 S.18(3), LRA 2002.

24 See r.197, LRR 2003.

25 S.77, LRA 2002.



### *5.3.2 Extent of land to which the caution relates*

The form CT1 must provide sufficient particulars to enable the extent of the land affected by the caution to be identified on the Ordnance Survey map<sup>26</sup>. In the majority of cases it will be necessary to supply a plan unless a postal description identifies the property. Where a plan is used it must be prepared to a suitable scale and show clearly, by edging or other reference, the precise extent of the land to be subject to the caution. If you do not provide a plan and we cannot otherwise identify the property, we will reject the caution application.

Relating franchises do not affect land but a caution may be lodged in respect of first registration of such a franchise – see section 5 *Caution against first registration*. If in order the caution will be registered in the index of verbal descriptions kept under r.10(1)(b), LRR 2003.

### *5.3.3 Details of the nature of the cautioner's claim*

Details of the nature of the interest the cautioner claims must be set out in panel 10 of form CT1, which is a statement of truth made either by or on behalf of the cautioner or by a conveyancer.

The cautioner is not required to lodge any other document in support of his claim.

## **6 Interests not protected by notice or caution against first registration before 13 October 2013**

Where any of the interests the subject of this guide have not been protected by notice or caution against first registration before 13 October 2013, they do not automatically cease to exist on that date. The position is as set out below.

### ***6.1 The land was registered after 12 October 2013***

Prior to first registration the legal owner of the land will be bound by any such interests because each of them is a legal interest. On first registration they will hold the estate free of such interests unless they are protected by notice at the time of first registration.

### ***6.2 The land was registered before 13 October 2013***

Even if the interest has not been protected by the entry of a notice in the register the land will remain subject to it. But, unless such a notice is entered, a person who acquires the registered estate for valuable consideration by way of a registrable disposition after 12 October 2013 will take free from that interest<sup>27</sup>. Until such a disposition is registered the person having the benefit of the interest may apply to protect it by entry of notice.

<sup>26</sup> R.42, LRR 2003.

<sup>27</sup> S.29, LRA 2002.





# Land Registry advisory policy

We offer advice to our customers through our publications and enquiry services and through the day-to-day handling of applications.

We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes:

- advice in advance of an application, where this is requested
- where an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right
- an approval service for estate layout plans and certain other land registration documents.

There are limits to the advice that we will provide. We will not provide legal advice.

This means that:

- we will not approve the evidence to be produced in support of a registration application before we receive the application
- apart from procedural advice, we will not advise on what action to take
- we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application.

In providing this factual information and procedural advice we will:

- be impartial
- recognise that others may be affected by what we say
- avoid any conflict of interest.

## Information in this guide

The information in this publication is for the purpose of providing general guidance about Land Registry's procedures and policies. It is intended only as a guide and does not cover every situation that may arise. It also does not limit Land Registry's ability to use its discretion when appropriate to do so, within the land registration legislation.

Peter Collis  
Chief Land Registrar

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