

PROPERTY LAW BULLETIN

OCTOBER 2003

INTRODUCTION

A new regime for stamp duty on leases applies to transactions completed on or after 1st December 2003. There is a new zero rate band threshold of £60,000 rent (at its net present value) for residential leases and £150,000 for non-residential leases. It is estimated that this will keep over 90% of all new residential leases and 60% of all new commercial leases out of the charge. Another important new regime, at least for housing practitioners, is the pre-action protocol in housing disrepair cases, which comes into force on 8th December 2003. Both of these are dealt with in more detail in the Other Developments section in the second half of the bulletin.

So far as case law is concerned, the House of Lords have confirmed that the county court is not required to carry out a balancing exercise under article 8(2) of sch.2 to the Human Rights Act 1998 whenever possession proceedings are brought (see *Harrow London Borough Council v Qazi*, summarised below). In *Bakewell Management Ltd v Brandwood & ors* the Court of Appeal held that an easement cannot arise from reliance on an unlawful act, even where the act has been carried out for the required period. *Shalson v Keepers and Governors of the Free Grammar School of John Lyon* has finally reached the House of Lords, where their Lordships held that Mr Shalson was entitled to a reduction in the open market value for the improvements he had carried out.

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CASE LAW UPDATE

ADVERSE POSSESSION

Defendant could raise public law issues in possession proceedings and was not limited to judicial review

Rhondda Cynon Taff County Borough Council v Watkins (2003) EWCA Civ 129; (2003) 1 WLR 1864

In July 1956 the council confirmed a compulsory purchase order to purchase the land concerned in order to provide public open space. They took possession of the land in March 1966 but the following day the defendant repossessed it and thereafter remained in occupation. In 1968 a reference was made to the Lands Tribunal, who finally assessed

compensation in 1977 at £15,000. In 1987 the council lodged that sum in the High Court. The council vested the land in itself by deed in 1988 and issued possession proceedings in January 2000. The defendant argued that he had established possessory title by way of adverse possession. His defence was struck out on the basis that even if the defendant had a case, a compulsory purchase order was a public law act that had to be challenged by way of judicial review. The Court of Appeal found that his defence should not have been struck out: he was entitled to suggest that the council's intention to acquire the land as public open space had been abandoned. Although public law issues in a claim had to be raised by way of judicial review, they might be raised as a defence at any time.

DEFECTIVE PREMISES ACT 1972

Fresh claim arises at date of remedial works

Alderson & anor v Beetham Organization Ltd (2003) EWCA Civ 408; (2003) 1 WLR 1686

In May 1994 the defendants completed the conversion of a property into flats. The two claimants each purchased a basement flat. Both flats suffered from damp and in May and September 1995 the defendants carried out remedial work. This work was done properly but failed to resolve the problem. In January 2001 the defendants issued proceedings under s.1 Defective Premises Act 1972. The judge held that where remedial work was ineffective but was carried out properly, the six year limitation period ran from the date of the original conversion and so the claim was statute barred. The claimants succeeded on appeal. The Court of Appeal held that where a developer did further work to rectify a defect caused by his failure to adopt workmanlike practices or use proper materials, but the further work did not rectify the original defect, there was a fresh cause of action for breach of the duty to provide a dwelling fit for habitation. The claim was brought in time.

EASEMENTS

Easement cannot arise from reliance on unlawful acts

Bakewell Management Ltd v Brandwood & ors (2003) EWCA Civ 23; (2003) 1 WLR 1429 CA

In 1927 the owner of common land allowed public access to it for air and exercise. For many years thereafter the owners of adjoining properties openly gained access to their homes by driving vehicles from the public highway along tracks or roads over the common. In doing so without the consent of the landowner they were committing offences under s.193(4) Law of Property Act 1925. In 1986 the common was sold and the new owners sought a declaration that their neighbours were not allowed to cross the common with motor vehicles. The neighbours claimed that a right of way had arisen. The Court of Appeal agreed with the judge at first instance that an easement of way could not be acquired in reliance on conduct that was prohibited by statute. Accordingly the defendants had no rights to vehicular access over the common.

HOUSING

Right of appeal to county court against refusal of temporary accommodation to be decided on substantive judicial review principles

Francis v Kensington and Chelsea Royal London Borough Council (2003) EWCA Civ 443; (2003) 2 All ER 1052

With effect from 30th September 2002, s.204A was introduced into the Housing Act 1996. This section provides a statutory right of appeal to the county court against a local authority's refusal to provide a homeless person with temporary accommodation under s.204(4). S.204(4) confers a discretionary power to provide temporary accommodation during the period between a decision made against a person on an internal review (s.202) and the hearing by the county court of an appeal against the s.202 decision under s.204.

Mr Francis applied for accommodation on 26th July 2002 and was immediately given temporary accommodation pursuant to s.188. On 13th August 2002 the authority wrote to him to notify him of its decision under s.184 that he did not have a s.189 priority need for accommodation. It agreed to provide him with temporary accommodation for 12 weeks. On 4th September 2002 Mr Francis applied for a s.202 review. On 1st November 2002, following the review, the authority confirmed its view that Mr Francis was not in priority need. However he remained in temporary accommodation. On 25th November 2002 Mr Francis appealed, under s.204, the review decision. His temporary accommodation was terminated on 11th February 2003. His solicitor wrote to ask for an extension until the appeal was heard and this was refused by a letter dated 14th February 2003. The refusal appeared to be based primarily on Mr Francis' drug use and his ability to find accommodation in the past.

On 14th February 2003 Mr Francis appealed, under s.204A, against the refusal of temporary accommodation. S.204A(4) provides that on considering whether to confirm or quash the authority's decision the court shall apply the principles applied by the High Court on an application for judicial review. It was argued for Mr Francis that the test to be applied should be akin to that on an application for interim relief rather than that used for a substantive judicial review. The Court of Appeal disagreed, holding that the county court's power of intervention was limited to that ordinarily applicable to a substantive judicial review application. There was to be no consideration of the merits of the decision, but only a determination as to whether the authority had properly directed itself. It was only once the county court had decided that the authority had not properly directed itself that it had power to quash the decision and to consider whether it should order the authority to provide temporary accommodation. The approach taken in *R v Brighton & Hove Council ex p Nacion* (1999) 31 HLR 1095 should be applied.

Disappearance of home is emergency within s.189(1)(d) Housing Act 1996

Higgs v Brighton & Hove City Council (2003) EWCA Civ 895; (2003) 3 All ER 753

The appellant lived in a caravan on council land. He had no lawful right to locate the caravan on that land. When he was out for a walk with his dogs the caravan disappeared without trace. He applied to the council as homeless and argued that the disappearance of the caravan was "*an emergency such as flood, fire or other disaster*" within s.189(1)(d) Housing Act 1996 and so he had a priority need for accommodation. The Court of Appeal accepted that the loss of Mr Higgs' home was an emergency akin to those expressly referred to in s.189(1)(d). They distinguished *R v Bristol City Council, ex p Bradic* (1995) 3 FCR 189, where it was held that a tenant's illegal eviction did not constitute an emergency within the relevant provision. However they also found that Mr Higgs had been homeless prior to the disappearance of the caravan. Under s.175 HA 1996 a person is homeless if their home is a moveable structure and there is no place where they are entitled or permitted both to place it and to reside in it. This was Mr Higgs' situation. He was not therefore homeless as a result of the emergency and so was not in priority need.

Authority has wide discretion as to whether to extend time to allow late application for review under s.202(3) Housing Act 1996

R (on the application of C) v Lewisham London Borough Council (2003) EWCA Civ 927; (2003) 3 All ER 1277

The Court of Appeal considered the authority's discretion under s.202(3) Housing Act 1996 to extend the time limit for a review of a decision on homelessness. In the first instance the time limit is 21 days. There was no statutory checklist of factors to be taken into account. However the purpose of the scheme was to lay down procedures and time limits enabling orderly management by the authority of its supply of housing but also allowing it to extend the time for review where the claim was deserving enough to override the failure to act in time. However delay did not always have to be balanced against prospects of success. The authority could, if it thought it reasonable, grant an extension without forming a provisional view of the merits of the case. Given the wide ambit of the discretion the authority could not be challenged for refusing an extension of time in the present case. Further an authority was not bound to entertain a succession of applications for review or for extensions of time but it could do so in the exercise of an extra-statutory discretion. Exercise of such a discretion would be even more difficult to challenge by way of judicial review than a decision under s.202(3).

HUMAN RIGHTS

Article 8 no defence to possession claim; county court does not have to consider article 8(2)

Harrow London Borough Council v Qazi (2003) UKHL 43; (2003) 3 WLR 792

In 1992 the claimant let a house to the defendant and his wife on a joint tenancy. In 1999 the wife left and gave notice to quit. The defendant applied for a sole tenancy but was refused. He was asked to vacate the house but did not do so. He then remarried and remained in the house with his new wife and family. In possession proceedings brought by the claimant the defendant relied on article 8 to sch. 2 Human Rights Act 1998 (respect for home etc). An order for possession was made. This was reversed by the Court of Appeal, who remitted the case to the county court for reconsideration of s.8(2) (justification of interference).

On appeal by the housing authority the House of Lords held that in guaranteeing a right to respect for a person's home, article 8 protected an aspect of his right to privacy from arbitrary interference by public authorities. However it did not secure either proprietary or contractual rights to possession, or a right to be provided with a home. The house was the defendant's home for the purposes of article 8(1) but article 8 did not provide a defence to the claim for possession. Once service of the notice to quit had terminated the joint tenancy, the public authority had an unqualified right to recover possession with a view to making the premises available for letting to others on its housing list. Strasbourg jurisprudence had shown that contractual and proprietary rights to possession could not be defeated by a defence based on Article 8. It followed that the county court was not required to consider whether any interference was permitted by article 8.2.

LEASES

Improvement reversing works that had depressed the value of the property is an improvement within the 1967 Act

Shalson v Keepers and Governors of the Free Grammar School of John Lyon (2003) 3 All ER 975

The House of Lords have reversed the decision of the Court of Appeal in this case, which was noted in full in the October 2002 bulletin. The school owned a freehold residential property which had been let in 1843 as a single house. In 1947 a lease was granted under which the lessee converted the property into five flats. In 1991 Mr Shalson acquired the lease and converted the property back into a single house. He then argued that the conversion was an improvement within s.9(1A)(d) Leasehold Reform Act 1967 and consequently that it was an expense that went to the diminution of the price to be paid for the freehold. (The 1967 Act gives to a qualifying tenant a statutory right to buy the freehold of the house of which he is the leaseholder.) The Court of Appeal disagreed, holding that an improvement reversing works done by a predecessor in title or by the current tenant which had depressed the value of the property was not an improvement within the 1967 Act.

The House of Lords held that "improvements" meant additions or alterations to the house which were not mere repairs or renewals. In considering whether an improvement had added to the value of the house, the comparison was between the value of the house as it stood and what its value would have been if the improvement had not been made. Each improvement had to be considered separately. If it had added nothing to the value it would be disregarded. The conversion and the subsequent re-conversion were both improvements. The 1947 improvements made no difference to the value of the house as at the valuation date because they had ceased to exist. However if the re-conversion had not taken place, the 1947 improvements would still have existed and the house would have been worth less. To the extent that it was worth more, the tenant was entitled to a reduction in the open market value.

NUISANCE

Where roof over more than one premises needs repair, cost should be shared as is fair, just and reasonable between parties

Abbahall v Smea (2002) EWCA Civ 1831; (2003) 1 WLR 1472 CA

An occupier of property is under a duty to do what is reasonable in the circumstances to prevent or minimise a known risk of damage or injury to his neighbours or their property. In determining how the burden of the cost is to be met as between owners of different flats in the property, the court should strive for a result which is fair, just and reasonable. In the case of a flying freehold where the roof served to protect more than one premises, the owners should share the burden of paying for its repair on a broad basis, having regard to the space which each owned. It was not reasonable to reduce the financial liability of one party based on their financial resources. Since the claimant and defendant derived equal benefit from the roof they should contribute equally to the cost.

OCCUPIERS' LIABILITY

No duty owed under OLA 1957 to warn against obvious dangers

Tomlinson v Congleton Borough Council & anor (2002) EWCA Civ 309; (2003) UKHL 47; (2003) 3 All ER 1122

This case was noted in full in the May 2003 bulletin, where the Court of Appeal had allowed the claimant's claim in part with a two-thirds reduction for contributory negligence. The claimant dived into a lake in a disused quarry which was owned and occupied by the first defendant and managed by the second. He hit his head on the bottom of the lake and suffered severe spinal injuries. There were prominent warning signs and rangers were employed to give oral warnings against swimming and to hand out safety leaflets. The defendant was aware that the warnings had had little effect in preventing swimmers and that there had been several accidents. Landscaping work to

prevent access to the lake had not been done because of a shortage of money. The Court of Appeal found that a duty was owed under the Occupiers' Liability Act 1984.

On the council's appeal, the House of Lords first considered the extent of the duty owed to a lawful visitor under s.2(2) Occupiers' Liability Act 1957. It held that the question of what amounted to "*such care as in all the circumstances of the case is reasonable*" depended not only on the likelihood of injury and its potential seriousness but also on the social value of the activity which gave rise to the risk and the cost of preventative measures. It would be very rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake on the land. The law does not require him to impose conditions prohibiting risky activities. It would be unjust if the harmless recreation of responsible people were prohibited in order to comply with what was thought to be a legal duty to safeguard irresponsible visitors against risks that were perfectly obvious. The fact that irresponsible people took no notice of warnings did not mean that a duty arose to take other steps to protect them. Even if swimming had not been prohibited, and the defendants had owed a duty under s.2(2) OLA 1957, that duty would not have required them to have taken any steps to prevent the claimant from diving or warning him against dangers that were perfectly obvious. It followed that no duty was owed under the 1984 Act. The appeal was allowed.

In brief

Covenants

Dano Ltd v Earl Cadogan & ors (2nd June 2003) TLR CA

A restrictive covenant was expressed to benefit adjoining properties so long as that property or any part thereof formed part of the Cadogan Settled Estate in Chelsea. The Court of Appeal held that the covenant ceased to have effect in 1961 when the settlement under the Settled Land Act 1925 was terminated and the property was resettled for the benefit of or vested in members of the Cadogan family.

Land charges

Pound v Ashford Borough Council (6th June 2003) TLR Ch Div Laddie J

Section 10(1) Local Land Charges Act 1975 provides that a purchaser of land affected by a local land charge is entitled to compensation for any loss suffered as a consequence of the failure of an official search to show the existence of the charge. This section makes all local land charges enforceable, even those not registered, but gives the purchaser a right to compensation only when a charge is enforced against him.

Housing

Regina (M) v Islington London Borough Council & anor (12th June 2003) TLR QBD

It will seldom be lawful for local authorities to provide accommodation on an indefinite basis to people unlawfully in the UK with dependent children, particularly when there is no reason to believe that removal directions will be issued in the near future.

Regina (Mani) v Lambeth London Borough Council (23rd July 2003) TLR CA

A local authority has a duty, under s.21 National Assistance Act 1948, to provide residential accommodation for a destitute asylum seeker who had a disability which gave

rise to a need for care and attention. The need did not have to be for care and attention which could only be provided through accommodation.

Regina (B) v Southwark London Borough Council (30th July 2003) TLR QBD

An imprisoned young offender who had been permitted early release to join a tagging scheme should be considered homeless so that he would be able to go into local authority housing. Prison was not a right to occupy a cell.

Hackney London Borough Council v Side by Side (Kids) Ltd (5th August 2003) TLR QBD

S.89 Housing Act 1980 provides that an order for possession can be postponed only for up to six weeks and then only in cases of exceptional hardship. This restriction applies in the same way to orders made in the High Court as it does to those made in the county court.

Knight v Vale Royal Borough Council (4th September 2003) TLR CA

The occupation by a tenant of accommodation let on a six-month assured shorthold tenancy was capable of constituting settled accommodation for the purposes of breaking a chain of causation from past intentional homelessness. However the question always remained one of fact and degree for the local authority in the particular circumstances.

Secretary of State for Works and Pensions v Miah (5th September 2003) TLR CA

Two houses in the same street both owned by the applicant, father of 12 children, which together were used and required to house his family, were the dwelling occupied as his home for the purposes of the Job Seeker's Allowance Regulations 1996/207.

Human Rights

Hatton & Ors v UK (Application No 36022/97) (10th July 2003) TLR EctHR

The noise from night flights to and from Heathrow Airport did not breach the Article 8 rights of those living nearby. A fair balance had been struck between the competing interests of individuals affected by the night noise and the community as a whole.

Stretch v UK (3rd July 2003) TLR ECtHR

The applicant had been wrongly deprived of the benefit of a renewal option for a further 21 years on a 22-year lease granted to him by a local authority. This constituted a disproportionate interference with the peaceful enjoyment of his possessions in violation of article 1 to Protocol 1 to the European Convention on Human Rights. The Court awarded E31,000 for pecuniary loss, E5,000 for non-pecuniary loss, and E45,000 for costs and expenses.

Landlord and Tenant Act 1954

Ivorygrove Ltd v Global Grange Ltd (26th June 2003) TLR Ch Div

A landlord can oppose an application for a new tenancy of business premises on the ground that it intends to demolish or reconstruct the premises or carry out a substantial

work of construction on the holding even though the intended work does not in fact involve the structure of the building.

Leasehold enfranchisement

Raymere Ltd v Belle Vue Gardens Ltd (14th August 2003) TLR CA

A leaseholder of the registered title served an initial notice to exercise his right to acquire the freehold reversion. It was held that he only needed to produce an office copy bearing his name as the leaseholder issued by the Land Registry to comply with s.20 Leasehold Reform, Housing and Urban Development Act 1993. His failure to produce an updated office copy to confirm his title was not a failure to deduce title which would constitute a deemed withdrawal of the initial notice.

Mortgages

Newport Farms Ltd & ors v Damesh Holdings Ltd & ors (15th July 2003)
TLR PC

A mortgage lender exercising a power of sale of land must take sufficient care to obtain the best price reasonably obtainable. However the steps to be taken depended on the circumstances of the case and did not necessarily require taking a series of defined steps or conforming to a set of invariable rules.

Procedure

C.A. Webber (Transport) Ltd v Railtrack plc (5th August 2003) TLR CA

Where a landlord served a notice under s.25 Landlord and Tenant Act 1954 by sending it through the post by recorded delivery to the addressee at his place of abode it was irrebuttably deemed to have been served. Service was deemed to have been made when the notice was put in the post and not on the date of actual receipt.

Rent

In re Byford, deceased (13th June 2003) TLR Ch Div

A court will order payment of an occupation rent not only where the co-owner in occupation has ousted the other, but also in any other case in which it is necessary in order to do broad justice or equity as between co-owners.

Smith v Muscat (12th August 2003) TLR CA

A tenant who was sued by his landlord for arrears of rent assigned by the previous landlord could set off damages for disrepair which had accrued under the previous landlord against the claim. The debt, a chose in action, vested in the current landlord as assignee subject to all equities which were available to the tenant against the assignor.

OTHER DEVELOPMENTS

CHANGES TO STAMP DUTY ON LEASES

The 2003 Budget confirms the details of the modernised regime for stamp duty announced in the 2002 Budget. The revised regime will apply to transactions completed on or after 1st December 2003.

At present stamp duty on leases is calculated by reference to lease length and the average annual rent, with four different rates applying: 1%, 2%, 12%, and 24%. This approach does not properly reflect the value of the lease over time, and creates distortions, particularly around the points where rates change. Under the proposals, the new charge will follow modern commercial practice in valuing the rent payable over the term of the lease at its discounted net present value (NPV). There will be a single rate of 1% of the NPV of rental payments, where the NPV exceeds the zero rate band threshold of £60,000 (for residential property) or £150,000 (for non-residential property). Premiums will continue to be taxed as now at the same rates as freehold transfers. The new regime will discount future rents at 3.5 per cent per annum as recommended in the Treasury's Green Book. This approach keeps over 90% of all new residential leases and 60% of all new commercial leases out of the charge.

From 1st December 2003, VAT will be excluded from treatment as consideration for a new lease provided the landlord has not opted to charge VAT by the time the lease is granted. Under the current regime, lease duty is calculated on the assumption that VAT is charged on rent, unless the lease specifically prohibits the charging of VAT.

From 10 April, stamp duty will no longer have to be paid on certain non-residential property transactions in disadvantaged areas.

Registered Social Landlords and their tenants will no longer have to pay stamp duty on tenancy agreements entered into pursuant to contracts with housing authorities to house the homeless. The measure will apply retrospectively to tenancy agreements entered into on or after 1st January 2000.

More information is available on the Inland Revenue website at:
<http://www.inlandrevenue.gov.uk/budget2003/pn05.htm>

PRE-ACTION PROTOCOL FOR HOUSING DISREPAIR

Commencement and purpose

This new pre-action protocol comes into force on 8th December 2003. It is part of the 33rd update of the Civil Procedure Rules which was published in September 2003 and can be found on the internet at http://www.lcd.gov.uk/civil/procrules_fin/index.htm. As with the other protocols, the housing disrepair protocol is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties can attempt to achieve an early and appropriate resolution, avoiding the need for litigation. Before using the protocol, tenants should ensure that the landlord is aware of the disrepair. They should also consider whether other options for having repairs carried out and/or obtaining compensation are more appropriate. A number of alternative options are set out in the protocol itself.

What the protocol covers

A disrepair claim is defined in the protocol as a civil claim arising from the condition of residential premises and may include a related personal injury claim. It does not include disrepair claims which originate as counterclaims or set-offs in other proceedings. The protocol, and the expression "tenant" used within it, cover claims by any person with a disrepair claim including tenants, lessees, and members of the tenant's family.

Early Notification Letter and Letter of Claim by tenant

The protocol begins by the tenant sending an Early Notification Letter if appropriate, followed by a Letter of Claim. An ENL will not be appropriate in all cases. The protocol

suggests that it may be appropriate where a repair is urgent or there is likely to be some delay before enough details are available to make a claim. Otherwise the tenant may simply start with a LOC. These letters should identify the tenant, the property, and the defects, give details of previous notifications, propose an expert and a draft letter of instruction, and disclose such relevant documents as are readily available. The letter should also request disclosure from the landlord of all relevant records or documents. It should include authorisation for release of information. In addition to this, a LOC should include the history of the defects, including attempts to remedy them, the effect of the defects on the tenant (including personal injury claims) and details of any special damages claims. Where there are personal injury claims the personal injury protocol should also be followed except where a GP's letter can be used as expert evidence and separate procedures are not warranted. Specimen ENLs and LOCs are annexed to the protocol.

The landlord's response

The landlord should normally reply within 20 working days of receipt of the first letter from the tenant (whether this is an ENL or a LOC). The landlord's reply should disclose all relevant documents and respond to the tenant's proposals for an expert. In addition, when responding to a LOC, the landlord should state whether liability is admitted, and if so in respect of which defects. He should set out a full schedule of intended works, and make any offer in respect of compensation or costs. Alternatively the landlord can respond on liability within 20 working days of receipt of a joint expert report or joint report following inspection.

If no response is received from the landlord to the ENL within 20 working days the tenant should send a LOC. Failure by the landlord to respond within the time limits or at all to the ENL or the LOC will be a breach of the protocol. If the landlord needs extra time he should make a written request for it to the tenant. Time limits in the protocol may always be varied by agreement.

Practicalities

The protocol sets out detailed proposals for the instruction of experts. The parties are invited to consider whether expert evidence can be dispensed with and with this in mind to obtain photographic and video evidence of their own. The procedures in the protocol do not extend statutory limitation periods. The protocol provides that where a landlord is not an individual a person should be designated to act as a point of contact for the tenant as soon as possible after the landlord receives the first letter from the tenant and/or their solicitor. The appointee's name and contact details should be sent to the tenant and/or their solicitor as soon as possible after the appointment is made.

Effect of protocol on court proceedings

Should a claim proceed to litigation, the court will expect all parties to have complied with the protocol as far as possible. The court has the power to order parties who have unreasonably failed to comply with the protocol to pay costs or be subject to other sanctions. If the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's reasonable costs or out of pocket expenses.

A LOC and a landlord's response are not intended to have the same status as a statement of case in court proceedings. Matters may come to light after the LOC has been sent, or after the landlord has responded, which could mean that the case of one or both parties is presented slightly differently than in the LOC or in the landlord's response. It would be inconsistent with the spirit of the protocol to seek to capitalise on this in the proceedings, provided that there was no intention to mislead. In particular, advantage should not be taken regarding discrepancies relating to the general details of notice given in the ENL.

LAND REGISTRATION ACT: COMMENCEMENT

The Land Registration Act 2002 (Commencement No. 4) Order 2003 SI 2003/1725 brings into force on 13th October 2003 all the provisions of the Land Registration Act 2002 not already in force except for the following:

- s. 98(1), which provides an adverse possessor with a defence to a possession action if he is entitled to apply to be registered as proprietor in circumstances where the condition in para 5(4) of Sch 6 to the Act would have been satisfied; and
- para 5(4) and (5) of Sch 6 to the Act, which relates to applications for registration of an adverse possessor as proprietor of an estate in land that is adjacent to land already belonging to him.

These remaining provisions will come into force on 13th October 2004.

Sources

The following sources have been used in the compilation of this bulletin: The Law Reports (QBD & Ch Div part 8, HL parts 5-8; 2003 2 All ER parts 9 to 12 and 2003 3 All ER parts 1 to 12, covering 22.5.03 to 30.9.03; WLR Parts 20 to 33 covering 30.5.03 to 26.9.03; Times Law Reports 31.5.03 to 15.9.03; recent legislation, Inland Revenue website.

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