

**Bills Committee on
Land Registration (Amendment) Bill 2000**

**Administration's response to the Submissions made by
the Law Society dated 12 April 2001**

- (1) The Administration have considered the written submissions made by the Law Society dated 12 April 2001 (Submission) and would respond as follows.

- (2) **Copy "stopped deeds"**
 - (a) (i) The Law Society is of the view that the Land Registry ought to be given the express power to make copy of each and every document being withheld from registration and to make available such document for public inspection (para.2.6 of the Submission).

 - (ii) The Administration remains of the view that copies of instruments withheld from registration, i.e. stopped deeds, should not be available for public search and inspection. Statistics for March 2001 showed that the stopped deed rate is 4.8% (2608 instruments) of the total number of deeds (54329 instruments) lodged for registration. Recent survey revealed that 58% of the stopped deeds are returned by the lodging party within 1 month after stoppage, 83% returned within 2 months while 91% returned within 3 months. This statistics indicate that in the majority cases the stopped deeds will be returned after the correction of errors.

 - (iii) After the duly amended instruments are returned, the registration will be proceeded with and copies of the registered document would be available for search in the normal way. To require the Land Registry to keep copies of all stopped deeds in order to facilitate search for the remaining small percentage of outstanding stopped deeds is not an efficient use of resources. The copies of those stopped deeds which are returned and duly registered would serve no further purpose. On the other hand, the owner or his legal representative could easily approach the person who submitted the documents for copies of the documents.

- (b) (i) The Law Society indicated that the current Land Registry practice of not keeping copies of stopped deeds leaves open a loophole for a holding document to be lodged for registration and priority gained by reference to its date even though its contents may be changed extensively at a much later time (para.2.1 of the Submission).
- (ii) The Administration would point out that as soon as an instrument is received for registration, the essential particulars of the instrument are recorded in the Memorial Day Book and the Deeds Pending Section of the relevant land register. These particulars include : the date of instrument, the nature of instrument, the premises affected, the consideration, the name of the lodging parties. Thereafter, the instrument is scrutinized and checked against the Land Registry record. When an instrument is stopped, the reasons for stoppages are entered onto a scrutineer's note, a copy of which is kept by the Land Registry. The party who lodged the instrument would then collect the stopped deed. The instrument may then be amended in order to rectify the mistakes which were made. However, the stopped deed which is returned for registration should substantially be the same instrument as the one originally lodged, amended to rectify the mistakes made. The Land Registry would check the gum label which was affixed to the instrument at the time of lodgement to ensure that the re-lodged instrument is not a fresh document. The Land Registry would also check to ensure that the amendments suggested have been dealt with. As such, substantial changes to the stopped deed can be easily discovered when it is returned to the Land Registry.
- (c) (i) The Law Society also argues that the purpose of the Land Registration Ordinance as stated in the front page of the Ordinance supports the view that stopped deeds are "records" to be kept and made available for public search (para.2.2 of the Submission).
- (ii) The Administration does not agree that such implication could be drawn. The Land Registration Ordinance provides for the establishment and maintenance of a public register for the registration of instruments which may affect land. In Section 5 of the Land Registration Ordinance, priority of the instruments is only

accorded to instruments which are “duly registered”. Records of pending instruments, including stopped deeds and the Memorial Day Book, where registration has not been completed are kept in temporary form only. Such pending deeds cannot be taken as Land Registry records since they are subject to withdrawal for amendments or even cancellation of the registration application. There is nothing in the Ordinance or in the purpose of the Ordinance as stated in the front page to indicate that “stopped deeds” are records which are to be made available for search.

- (d) (i) In para.2.4 of the Submission, the Law Society is of the view that the Land Registry refusal and/or inability to supply stopped deeds accounts for the huge number of “deeds pending registration”. It also throws doubt on whether the Court has the power to vacate a stopped deed.
- (ii) The Administration disagrees that the refusal or inability to supply owners of affected properties of copies of the stopped deed accounts for the huge number of “deeds pending registration”. The Administration takes the view that the reason for the stopped deeds being outstanding is mainly due to the inaction or belated response from the lodging party.
- (iii) As regards whether the Court has the power to vacate a stopped deed, the Administration would point out that in any proceedings for vacation of the entry of a stopped deed from the land register, the parties to the stopped deed would be joined as the party to the proceedings. The Court has the power to compel the party to the proceedings to produce a copy of the stopped deed. In the event that the parties to the stopped deed cannot be found, the Administration is of the view that it is within the inherent powers of the Court to give a Court Order for vacation of the entry if the Court is satisfied that such an Order should be given.

(3) Certified Copy Instruments

- (a) The Law Society suggests that the category of instrument –

“Other instruments such as letters, notices if the original is not

recoverable e.g. due to loss or because it is a notice/letter that is despatched to another party” which appeared in the 1991 agreed list but was not included in the proposed list for inclusion in the subsidiary legislation should be included (para.3 of the Submission).

- (b) In para.3.3 of the Submission, the Law Society referred to the practice of re-registration of documents. The Administration would point out that the subject of re-registration is outside the scope of the Land Registration (Amendment) Bill and is not relevant for consideration.
- (c) The Administration is of the view that the category of “Other instrument ... etc” will be too wide for inclusion in the legislative list. However in view of the Submission, the Administration will recommend the inclusion of the more common types of certified copy documents which fall within this category and which have been accepted in the past, for example, Letter of Rescission of an Agreement for Sale and Purchase. Committee Stage Amendments will be proposed accordingly.

(4) Removal of stopped deeds

(a) Persons affected (Regulation 15(7)(a))

- (i) The Law Society recommends that an additional category of “all persons having an interest in the land and premises affected by the instrument” (para.4.2.2 of the Submission). This category of persons has very wide coverage. For instance, it may include a tenant of the premises.
- (ii) Whether or not “all persons having an interest in the land and premises affected by the instrument” need to be given notice should depend on the particular facts of the case. One could envisage circumstances where the notice need not be given to the tenant. As the power to be exercised is that of removal of the entry, the persons to be given notice should include only those who may be affected by the removal as presently proposed in the Land Registration (Amendment) Bill.

- (iii) The Administration however accepts that the current owner would be interested to know of the proposed removal (see the last sentence in para.2.4 of the Submission). The Administration will propose Committee Stage Amendments to include the current owner of the property as one of the category of persons who will be given the notice.

(b) Application to Court (Regulation 15A(1) and 15A(6))

- (i) The Law Society suggests that “Court” in Regulation 15A(6) is re-defined because of the difficulties they had perceived (para.4.3 of the Submission).
- (ii) The Administration is of the view that nothing in the present wording of Regulation 15A precludes the option of appeal to a higher Court from a decision of the District Court or the Court of First Instance. Ultimately, of course, an appeal may be made all the way to the Court of Final Appeal if the relevant criteria are met. The “ split” between the District Court and the Court of First Instance has been done to ensure that appeals in relation to lower – valued properties are brought in the District Court. This should cut down the appellant’s costs.
- (iii) The Administration does not recommend any change to the present definition of “Court” in Regulation 15A(6) in the Land Registration (Amendment) Bill.

(c) Priority of documents (Regulation 15A(5))

- (i) The Law Society proposed to include the words “or any contract therefor” immediately after the word “disposition” in Regulation 15A(5) (para.4.4.1 of the Submission).
- (ii) The Administration is of the view that a contract is the most common means of effecting a disposition of an estate or interest in land. In this context, a contract is not something separate from the disposition but is a part of it. This is clear in Section 3(2) of the Conveyancing

and Property Ordinance (Cap.219) where it states “contracts or other dispositions”. The Administration does not recommend adoption of the proposed amendment.

- (iii) The Law Society proposes to delete the existing Regulation 15A(5)(a) and substitute therefor –

“made in favour of a bona fide purchaser or mortgagee and for valuable consideration; and” (para.4.4.2 of the Submission)

- (iv) The Administration accepts the suggestion and will propose Committee Stage Amendments accordingly.

(5) **Summary**

- (a) Copy “Stopped Deeds”

The Administration does not consider that copies of the stopped deeds should be made available for public search (see para.2 of the Response).

- (b) “Other Instruments”

The Administration agrees to include the more common types of certified copy documents which have been accepted in the past in the statutory list (see para.3(c) of the Response).

- (c) Removal of Stopped deeds

- (i) The Administration does not recommend inclusion of the category “all persons having an interest in the land and premises affected by the instrument” in Regulation 15(7)(a) as proposed but agrees to include the current owner as one of the categories of person who will be given notice of the proposed removal (see para.4(a) of the Response).

- (ii) The Administration does not propose to change the definition of “Court” in Regulation 15A(6)(see para.4(b) of the Response).

- (iii) The Administration does not recommend to insert the words “or any contract therefor” immediately after the word “disposition” in Regulation 15A(5) (see para.4(c)(ii) of the Response).
- (iv) The Administration agrees to substitute the phrase “made in favour of a bona fide purchaser or mortgagee and for valuable consideration, and” in Regulation 15A(5)(a) (see para.4(c)(iv) of the Response).