

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

### **Administration's Response to the written submission made by the Law Society dated 15 May 2001**

(1) The Administration has considered the written submission made by the Law Society dated 15 May 2001 (Second Submission) and wishes to respond as follows.

(2) **Copy “stopped deeds”**

(a) The Administration reiterates that the majority of stopped deeds are returned quickly and duly amended. Registration of the returned deeds is done expeditiously. The registered documents are available for search and copying in the normal way. The scenario described in paragraphs 2.2 and 2.3 of the Second Submission refers only to exceptional cases where the lodging party refuses to provide copies. No concrete examples of concern have been provided by the Law Society. If the Land Registry is required to keep copies of all stopped deeds to meet such an exceptional demand, clearly additional costs (including time delays to copy the documents) will follow, which will be borne by all other users whose deeds have been stopped. Such costs are unnecessary because the primary responsibility for the provision of copies of the documents remains with the lodging parties.

(b) In paragraph 2.4 of the Second Submission, the Law Society pointed out that a Governmental Authority would normally refuse to supply a copy of the stopped deed in question. The Administration is unaware of such an occurrence. Instruments lodged by Government Departments are rarely stopped as the instruments and memorials are usually in order. On rare occasions when the instruments are stopped, the Government Departments will duly amend and return the documents to the Land Registry for registration as soon as possible.

- (c) In paragraph 2.5 of the Second Submission, the Law Society indicated that justice should not be sacrificed for cost savings. The Administration wishes to point out that the primary responsibility for the provision of copies of the documents rests with the lodging party who prepared the document. If “justice” is to be sacrificed, it is not because of cost savings, but rather, the refusal of the lodging party to provide the copies on request.
- (d) As regards paragraph 2.6 of the Second Submission, the Administration wishes to make reference again to paragraph 2(b)(ii) of its earlier Response dated 26 April 2001 that the Land Registry will check the document returned to ensure that the re-lodged instrument is not a fresh document.
- (e) As regards paragraph 2.7 of the Second Submission, the Administration takes the view that reference to Principle 3 of the Schedule 1 of the Personal Data (Privacy) Ordinance is not relevant to a consideration of the purpose of the Land Registration Ordinance. One must look at the Land Registration Ordinance itself to consider the purpose of the Ordinance and the reference to Section 5 of the Land Registration Ordinance is relevant and appropriate.
- (f) As regards paragraph 2.8 of the Second Submission, the Administration wishes to reassure the members of the legal profession that the Land Registry will always endeavour to ensure a proper and fair administration of the Land Registration Ordinance.
- (g) As regards paragraph 2.9 of the Second Submission, the Administration reiterates that the responsibility for the provision of copies of the stopped deeds rests primarily with the lodging party who prepared the documents.
- (h) The Administration considers that the issue of provision of copies of stopped deeds falls outside the context of the Land

Registration (Amendment) Bill 2000. The concerns of the Law Society in this respect will be discussed separately between the Land Registry and the Law Society.

(3) **Certified Copy Instruments**

Noted

(4) **Removal of Stopped Deeds**

- (a) The Administration reiterates that the persons who, in the opinion of the Land Registry, may be affected by the proposed removal will be given notice as presently proposed in the Land Registration (Amendment) Bill. The proposed inclusion of the category “mortgagee” will necessitate the inclusion of another category -“chargee” as Section 44 of the Conveyancing and Property Ordinance, Cap.219, requires that the mortgage of a legal estate may be effected only by a legal charge. The category of “chargee” has very wide coverage. It will include those chargees who are mortgagees of the legal estate, a chargee of a charging order issued by the court, a chargee of a building order (who would be the Building Authority) or the chargee of a charge for non-payment of management expenses. Whether or not notice of the proposed removal should be given to all of these chargees depends on the circumstances of the individual case. If such a chargee/mortgagee may be affected by the proposed removal, they will be given notice under the present provisions of the Bill. The Administration does not recommend inclusion of “mortgagee (and chargee)” as an additional category of persons to be given notice of the removal of the stopped deeds in each and every case.

(b) **Application to Court**

The Administration is of the view that no misunderstanding will be created. The jurisdiction of the Court of Appeal is already contained in the High Court Ordinance, Cap.4. Section 13(4)

of the High Court Ordinance provides that the Court of Appeal has all the authority and jurisdiction of the court or tribunal from which the appeal was brought. The Court of Appeal has all the powers of the “Court” as referred to in proposed Regulation 15A(3) in exercising its appellate jurisdiction.

(c) Priority of documents

(i) In Stroud’s Judicial Dictionary of Words and Phrases, sixth Edition, Volume One, Sweet & Maxwell, the following was said of a “disposition”–

“The terms “disposition” and “devolution” must have been intended to comprehend and exhaust every conceivable mode by which property can pass, whether by act of parties or by act of the law.”

(ii) According to this definition, a contract can be one of the means of effecting a disposition of an estate or interest in land.

(iii) The Law Society has made reference to the Conveyancing and Property Ordinance, Cap.219, in support of the argument that a contract is different from a disposition. The Administration does not agree with the Law Society on the interpretation. Section 3(1) of the Conveyancing and Property Ordinance in providing for “contract for sale or other disposition” indicates that “sale” is one kind of disposition. Section 3(2) of the Conveyancing and Property Ordinance refers to “contracts or other dispositions”. This clearly envisages that contracts are one kind of disposition.

(iv) The Administration remains of the view that it is not appropriate to insert “or any contract therefor” in proposed Regulation 15A(5).