

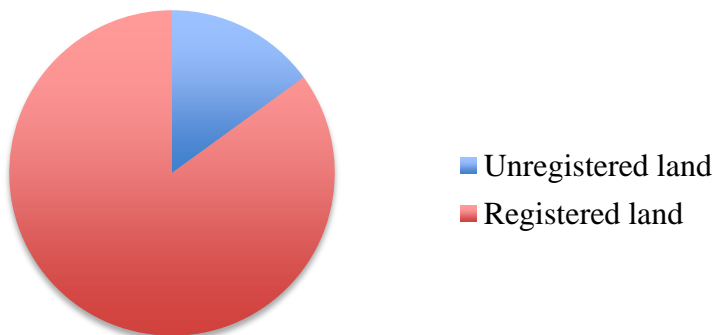


Activity 3: What is the Law of Adverse Possession in England and Wales? The law after October 2003

The law of adverse possession underwent a partial but major change in October 2003, when the Land Registration Act 2002 came into force. To understand the change, we need to consider what land registration is all about.

If you ever hear people talk about buying a house, they will probably mention the Land Registry (formally known as HM Land Registry). The Land Registry is an organisation that registers who owns particular plots of land in a public register, rather like the register of cars held by the DVLA. The register's purpose is to provide a definitive – and very useful – public record of who owns any given plot of land. So, for example, if you want to buy 21 Greenhill Road, Cambridge from Anna Smith, you can check with the Land Registry that Anna Smith is indeed the owner of that property before going ahead with your purchase. Being certain who owns land is hugely important for the property market, and therefore the economy, because it gives purchasers confidence to go ahead with their purchase.

So far, only 85% of the land mass in England and Wales has been registered; the remaining 15% is known as “unregistered land”.



Where land is *unregistered*, it is far more difficult to be sure who owns that plot. For example, you might be thinking of buying an unregistered house from A. You ask A for proof that he owns the property, and he produces a document (called a deed) proving he bought it from party X two years ago. Is the deed proof that A owns the land? Not necessarily, because A is only the owner if X really was the owner before him. And X is only the owner if he can prove that the person from whom he bought the land was himself the owner. As you can probably see, pinning down with certainty who owns unregistered land is fraught with difficulty.

Why is this discussion relevant to the law of adverse possession? Well, if you cast your mind back to Activity 1 and the associated video, you will remember that one of the strongest justifications for our law of adverse possession is that it can help us work out who is the owner of a particular piece of land. For example, if Emma has been adversely possessing land for 12 years, we can be in no doubt that she (and no-one else) is the owner. The certainty created here by the law adverse possession is of huge benefit where the relevant land is *unregistered* because otherwise we might be uncertain as to who is the true owner of the relevant land. However, where the relevant land is *registered*, we already know who the owner is (we just look at the register); therefore, we do not need rules on adverse



possession to provide certainty as to ownership. This means that there seem to be fewer justifications for giving squatters rights where the land is registered, as opposed to unregistered.

For this reason, when Parliament enacted the Land Registration Act 2002, it decided to make it *more difficult* for squatters to become the owners of land, where the land is registered. It made no changes to the law for land that remains unregistered.

An abridged version of the law relating to adverse possession of registered land, contained in Schedule 6 to the Land Registration Act 2002, is set out here. Read through it, and try to answer the questions that follow.

LAND REGISTRATION ACT 2002

SCHEDULE 6: Registration of adverse possessor (*selected parts of the statutory provision*)

Right to apply for registration

- 1 (1) A person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application. [...]

Notification of application

- 2 (1) The registrar must give notice of an application under paragraph 1 to—
 - (a) the proprietor of the estate to which the application relates [...]

Treatment of application

- 3 (1) A person given notice under paragraph 2 may require that the application to which the notice relates be dealt with under paragraph 5.
- 4 If an application under paragraph 1 is not required to be dealt with under paragraph 5, the applicant is entitled to be entered in the register as the new proprietor of the estate.
- 5 (1) If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met.
 - (2) The first condition is [...]
 - (3) The second condition is [...]
 - (4) The third condition is that—
 - (a) the land to which the application relates is adjacent to land belonging to the applicant,
 - (b) [...]
 - (c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and
 - (d) [...]



Right to make further application for registration

- 6 (1) Where a person's application under paragraph 1 is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection. [...]
- 7 If a person makes an application under paragraph 6, he is entitled to be entered in the register as the new proprietor of the estate. [...]

You might find it helpful to refer to these additional sources:

- You can read about the background to the legislation here: http://lawcommission.justice.gov.uk/docs/lc271_land_registration_for_the_twenty-first_century.pdf in the Law Commission report which led to the Land Registration Act (look at pp 299-304).
- For a good summary of the operation of the new rules, see this Land Registry Guide: <https://www.gov.uk/government/publications/adverse-possession-of-registered-land/practice-guide-4-adverse-possession-of-registered-land>

Question 1

Examine Schedule 6, and then draw a flow diagram, representing the steps a squatter must take to become the owner of registered land.

Hints to help draw a flow diagram representing Schedule 6 of the Land Registration Act 2002.

The gist of Schedule 6 is as follows:

- It is no longer the case that a squatter will *automatically* acquire ownership rights after being in adverse possession for a long period. Instead, the squatter needs to be *proactive*: he must *apply* to the Land Registry to become the owner of the land, once he has been in adverse possession for at least 10 years (Schedule 6, paragraph 1) (remember that adverse possession requires factual possession and an intention to possess the land).
- At this point, the Land Registry will notify the *current* registered owner about the squatter's application (Schedule 6, paragraph 2).
- The registered owner then has three key options:
 - He could **consent** to the squatter's application, in which case the squatter's application for ownership will succeed, and the squatter will himself be registered as the new owner of the land (for obvious reasons, it is unlikely that the owner will consent!) (Schedule 6, paragraph 4);
 - He could **do nothing** in response to the squatter's request. This would result in the same outcome: the squatter's application for ownership will succeed, and the squatter will be registered as the new owner of the land (Schedule 6, paragraph 4);



- He could serve a **counter-notice**, asking for the squatter's application to be dealt with under paragraph 5 (Schedule 6, paragraph 3).
 - At this point, the squatter will only succeed if one of three conditions is satisfied. The most significant is located in paragraph 5(4), which provides that the squatter will succeed where he has encroached over a boundary between his and his neighbour's land, and where he has 'for at least 10 years' 'reasonably believed that the land belonged to him'.
 - If the squatter fails to satisfy these conditions, his application for ownership will fail at this point. However, if the squatter remains on the land for a *further 2 years*, then he is entitled to reapply for ownership. This time, he will succeed, and there is nothing the current landowner can do to prevent his application being successful (Schedule 6, paragraphs 5 and 6).

Question 2

What are the main differences between the law of adverse possession relating to unregistered land, and that relating to registered land?

Question 3

Apply Schedule 6 to the following facts:

Sam lives in a farmhouse, which borders farmland registered in the name of Pippa, with whom he has frosty relations. In 2002, Sam decided to erect a fence along the boundary line between his and Pippa's land. At the time, Pippa objected to where Sam was planning to place the fence, asserting that it would encroach on her land by two metres. Sam chose not to believe Pippa. He told her to 'shut up' and erected the fence according to his original plan. Sam then created a flower border next to the fence, and has been growing flowers there ever since. Yesterday, Pippa visited Sam, bringing proof that she was correct all along, and that Sam had wrongly fenced in two metres of land that were registered in her name.

Advise Sam and Pippa as to their positions under Schedule 6 of the Land Registration Act 2002.

Question 4

Critically evaluate the law of adverse possession contained within Schedule 6 of the Land Registration Act 2002. Does it strike an appropriate balance between registered owners and squatters?

You might find some useful ideas in this article, by Neil Cobb and Lorna Fox:

<http://dro.dur.ac.uk/4842/1/4842.pdf?DDC117+DDC71+DDD19+DDC108+ddo4ah1+dla4iap>

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