



# The Law Commission

(LAW COM. No. 184)

**PROPERTY LAW  
TITLE ON DEATH**

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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# TITLE ON DEATH

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## TITLE ON DEATH

### Summary

In this report the Law Commission makes recommendations relating to some problems of dealing with land following the death of the owner. The Commission recommends that land charges created or arising before a land-owner's death may, after his death, be registered in his name; that the concurrence of all personal representatives should be required to make a contract for the disposition of real estate, and to contract and to convey interests arising under a trust for sale of land; that a deceased's estate should vest in the Public Trustee where there is no executor who is entitled to obtain a grant of probate; and that additional ways to serve notices affecting land should be available following the death of the owner. The report contains a draft Bill to give effect to the recommendations.

# THE LAW COMMISSION

## Item IX of the First Programme

### PROPERTY LAW

#### TITLE ON DEATH

*To the Right Honourable the Lord Mackay of Clashfern,  
Lord High Chancellor of Great Britain*

### PART I

#### INTRODUCTION

1.1 In this report, we make a number of recommendations for reform to tackle specific practical problems which arise in dealing with the land of owners who have died.

#### Background

1.2 In our Nineteenth Annual Report<sup>1</sup> we identified a number of aspects of dealing with land following the death of the land-owner, which had given rise to problems. They included the differences between the powers of administrators and executors, the chain of representation,<sup>2</sup> and the need for written assents. We concluded that "a general re-examination of the topic appears called for". The problem of the need for a formal written assent by personal representatives to make a mere change in the capacity in which they hold land was subsequently referred to in the Second Report of the Conveyancing Committee.<sup>3</sup> We therefore decided, as part of our general programme of modernising and simplifying land transfer, to carry out a review of this area of the law and in December 1987 we published our Working Paper.<sup>4</sup> We are extremely grateful to Professor Alan Prichard, LL.B., of the University of Nottingham, for his work in its preparation.

1.3 The Working Paper made a comprehensive examination of the problems of dealing with land following the death of the land-owner. However, it is obvious from the responses we received that some of the problems arise in the broader context of the administration of all the assets in a deceased's estate, and are not confined to dealings with land. We have therefore concluded that reform of the powers of personal representatives<sup>5</sup> and the chain of representation, should await a fuller review of the general law of administration of estates.

1.4 The Working Paper proceeded to highlight many potential conveyancing difficulties arising from a land-owner's death, as well as a number of recognised practical problems. On consultation, we sought, in particular, the views of practitioners, to discover the true extent of the difficulties experienced in practice. We are grateful to those who commented on the Working Paper; a list of their names appears in Appendix B to this report.

1.5 One of the clearest points to emerge from the consultation was that in many areas the problems are more theoretical than real. Many of the points raised in the Working

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<sup>1</sup> Nineteenth Annual Report (1983-1984) Law Com. No. 140, para. 2.39.

<sup>2</sup> By which the executors of the last surviving executor become executors of the original deceased: Administration of Estates Act 1925, s.7.

<sup>3</sup> "Conveyancing Simplifications", (1985), H.M.S.O. See para. 7.16.

<sup>4</sup> Transfer of Land: Title on Death, (1987) Working Paper No. 105.

<sup>5</sup> e.g., the power of a personal representative to mortgage property to provide the purchase price with which to acquire the property for the deceased's estate—see para. 4.7 of the Working Paper.

Paper cause substantially less difficulty in practice than we had initially suspected might be the case. Nowhere is this more obvious than in relation to the need for written assents.<sup>6</sup> This had been identified in 1966 by The Law Society as a serious problem,<sup>7</sup> because it had previously been assumed that where a personal representative merely changed the capacity in which he held land (e.g., from personal representative to trustee, or from personal representative to beneficial owner) no written assent under section 36(4) of the Administration of Estates Act 1925 was required. In *Re King's Will Trusts*<sup>8</sup> it was held that a written assent by a personal representative in his own favour is required in such circumstances. So long as there is an unbroken chain of executorships, the failure to assent by a past executor does not cause undue difficulty. The present executor will be able to complete the necessary assent. If, however, the chain of representation has been broken, the person to whom the beneficial interest in the land has passed, and who wishes, for example, to sell the property, will have to take out a grant of administration *de bonis non*<sup>9</sup> and make the necessary assent, before being able to show a good title to the land. The longer the lapse of time since the death of the personal representative who failed to assent in his own favour, the more difficult the process of taking out the grant of administration becomes.

1.6 We sought to discover on consultation whether, nearly twenty-five years on, the decision in *Re King* creates practical difficulties. The responses indicated that the profession has come to terms with the requirement that an assent, even for a mere change in capacity, must be in writing. The General Council of the Bar told us that "the rule... is now so well understood and established in practice that its advantages in certainty outweigh the occasional practical difficulties". The Law Society and the Institute of Legal Executives agreed that, because of the spread of land registration and the Land Registry's willingness to accept titles for first registration despite a lack of strict compliance with the decision in *Re King*, the problems caused at the time are diminishing. There was little support for the suggestions put forward in the Working Paper for either implying or deeming an assent under certain conditions.<sup>10</sup> Those who responded emphasised the need for documented evidence of a change of capacity for the protection of purchasers, and we firmly support the general principle of requiring writing to document dealings with interests in land.<sup>11</sup> The Law Society, who favoured the proposal for a deemed assent in certain circumstances, doubted however "whether it is worth bringing in an untried statutory provision to deal with what is left of the *Re King* problem". In the absence of evidence of widespread problems resulting from the decision in *Re King*, and in the light of the views expressed on consultation, we do not consider that legislation would now be justified. Accordingly we make no recommendations for changing the requirement for a written assent where a personal representative changes the capacity in which he holds land.

1.7 One of the other main topics discussed in the Working Paper concerned the problems that can arise where one party to a contract for the sale of land dies after exchange of contracts but before completion.<sup>12</sup> One of the suggestions put forward was that a conveyancer could be given statutory authority to complete the transaction. The general principle is that the deceased's property vests in his personal representatives, who have full powers to deal with the estate. The Treasury Solicitor opposed the idea of a conveyancer being able to complete the transaction on behalf of the deceased, on the ground that confusion would be likely to occur if someone other than the personal representatives also had authority to deal with the property. In any event, where, for

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<sup>6</sup> Administration of Estates Act 1925, s.36. An assent by personal representatives vests the legal estate in the beneficiary in whose favour it is made. It must be in writing, signed by the personal representative, and must name the person in whose favour it is given. For a detailed explanation, see paras. 4.13-4.27 of the Working Paper.

<sup>7</sup> First Memorandum on Conveyancing Reform, (February 1966), para. 59. It was further considered in The Law Society's Second Memorandum on Conveyancing Reform, (November 1966), paras. 6-13.

<sup>8</sup> [1964] Ch. 542.

<sup>9</sup> A grant to enable the administration of a deceased's estate to be completed.

<sup>10</sup> (1987) Working Paper No. 105, para. 4.23.

<sup>11</sup> Cp. our recommendation that contracts for the sale of land should be in writing (Report on Transfer of Land: Formalities for Contracts for Sale etc. of Land, (1987) Law Com. No. 164), implemented by the Law of Property (Miscellaneous Provisions) Act 1989, s.2. The Act received the Royal Assent on 27 July 1989.

<sup>12</sup> Paras. 2.23-2.35. The recommendation in paras. 2.11 and 3.5 of our Report on Deeds and Escrows, (1987) Law Com. No. 163, implemented by the Law of Property (Miscellaneous Provisions) Act 1989, s.1(5), allows a conveyancer to deliver a deed on behalf of his client in a conveyancing transaction. This solves the problems caused by the retrospective operation of escrows. It does not, however, alter the fact that a conveyancer has no authority to deliver a deed on behalf of a client who has died.

example, it is the purchaser who has died, a prospective mortgagee cannot be expected to provide the purchase price, when, in all probability, the amount of the proposed mortgage loan had been based on the earning capacity of the deceased. Furthermore, from the responses we received on consultation, the death of a land-owner between contract and completion does not appear to be an area of major concern. On balance, therefore, we are of the opinion that it should continue to be for the personal representatives to decide what action to take, bearing in mind the interests of the deceased's estate as a whole, and, where necessary, to apply for an expedited grant of representation to enable the conveyancing transaction to be completed.

### **Scope of our recommendations**

1.8 For the reasons explained above, we have limited our proposals to reforms which we believe would be of practical assistance to those required to deal with the consequences of the death of a land-owner, without affecting the wider considerations of the general law of the administration of estates.

1.9 Our recommendations relate to the following matters:

- (a) the registration of land charges in an estate owner's name after his death. The rules at the moment preclude satisfactory registration, with the result that the rights of the person entitled to a land charge may be capriciously prejudiced by the estate owner's death;
- (b) the necessity for personal representatives to concur in contracts for the sale of land in contracts for the sale of, and conveyance of, interests arising under a trust for sale. At present, not all personal representatives need concur in what will often be an important decision in the administration of an estate. Not only does this seem inappropriate, but it is also anomalous because all personal representatives have to join in any conveyance implementing such a contract;
- (c) the vesting of the estate of a deceased who dies testate, but without an executor who is competent or willing to prove the will, and the identity of the person in whom those estates, and intestate estates, vest. There is a useful technical reform to be made to the present rule that intestate estates vest in the President of the Family Division of the High Court until there is a grant of representation, but the practical importance of this reform is in connection with the final topic with which we deal;
- (d) the service of notices on deceased owners of land. Rights and liabilities in relation to land are frequently regulated or triggered by the service of notices. Difficulties arise when they cannot be properly served for one of two reasons: first, the person serving the notice does not know the intended recipient has died; or, secondly, although he knows of the death, he does not know, and cannot find out, whether there are any personal representatives or who they are. It seems unjust that these circumstances should preclude the service of any notice. We have however devised a procedure that will not unreasonably prejudice the deceased's estate.

### **Structure of this report**

1.10 In Part II of this report we give a detailed account of our recommendations. In respect of each recommendation we summarise the present law before going on to explain our proposal for reform. Those recommendations are summarised in Part III. A draft Bill to give effect to the recommendations, together with explanatory notes, appears in Appendix A.

## PART II

### OUR RECOMMENDATIONS

2.1 In this Part of the report, we give a detailed account of our proposals. The four specific topics are all matters which were identified on consultation as practical problems, and which can be resolved without affecting the wider considerations of the general law of the administration of estates.

#### I. Registration of land charges affecting unregistered land

##### (a) *The present law*

2.2 One of the problems identified in the Working Paper concerned the registration of land charges affecting unregistered land.<sup>1</sup> The difficulty arises when an estate owner creates a land charge, but dies before the person entitled to register it under the Land Charges Act 1972 has done so.<sup>2</sup> The Act requires the charge to be registered<sup>3</sup> "in the name of the estate owner whose estate is intended to be affected".<sup>4</sup> It is the name of the estate owner at the date of registration, not at the date of creation of the land charge, which is relevant for registration purposes. On death, the estate of the deceased vests either in his executors, or, if he died intestate, in, at present,<sup>5</sup> the President of the Family Division of the High Court. Since therefore the deceased ceases to be the estate owner, registration can no longer validly be made against his name. Instead it should either be against the names of his executors, if any, or the administrators to whom a grant of administration has been issued, or, before the grant of letters of administration, the President of the Family Division.<sup>6</sup>

2.3 This poses considerable problems for the person seeking to register the land charge. If he is unaware of the death of the estate owner, he will simply apply to register against the estate owner's name. The Land Registry<sup>7</sup> may also be unaware of the death, so the registration will be against the deceased's name, since there is no way of distinguishing such applications from the face of the document. However, the registration is probably not valid to give the applicant the protection he reasonably expects and believes he has obtained. The applicant for registration may on the other hand know of the estate owner's death without knowing on whom the title to the land has devolved. Some applications are then made in the name of "A.B. (deceased)". Where it is apparent that the application for registration is against the name of an estate owner who has died since the land charge was created, the current practice of the Land Charges Department is to draw attention to the fact that it is at least doubtful whether a registration against the name of a deceased person is effective.<sup>8</sup> The applicant is then invited to consider whether he wishes to proceed with the application in its existing form or to apply for registration against the names of the personal representatives, or where there is none, the President of the Family Division. This may well demand knowledge which he does not have, and may have no means of acquiring.

2.4 The applicant for registration who knows of the estate owner's death and wishes to register in proper form must discover whether or not there are personal

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<sup>1</sup> Paras. 2.45-2.46. To the extent that land charges affect registered land and can be protected under the Land Registration Act 1925, the Land Charges Act 1972 does not apply to them: 1972 Act, s.14(1).

<sup>2</sup> The situation may occur in this way: A. sells part of his land to B., granting B. a right of way over the remainder for B.'s lifetime. The right of way is registrable as an equitable easement (Land Charges Act 1972, s.2, class D(iii)), and B. should make an application to register it against A. However, A. dies before B. applies to register.

<sup>3</sup> The register of land charges is in effect a register of unverified claims to land charges, stating the nature of the charge and identifying the land affected, arranged alphabetically under the estate owners' names.

<sup>4</sup> Land Charges Act 1972, s.3(1).

<sup>5</sup> Later in this report we recommend that intestate estates should vest in the Public Trustee in place of the President of the Family Division: see para. 2.23 below.

<sup>6</sup> Since the President of the Family Division is not a corporation sole, it would seem that registration would have to be against the name of the holder for the time being of the office, not merely the office itself. There have, however, been registrations against the President, using his title.

<sup>7</sup> Registration under the Land Charges Act 1972 is undertaken by the Land Charges Department of H.M. Land Registry, and is entirely separate from their registration of title work.

<sup>8</sup> This probably understates the ineffectiveness of any purported registration.



representatives, and if so, their full names. If the deceased left a will appointing executors, his land will vest in them immediately on death, before the grant of probate.<sup>9</sup> However, until probate is granted there is no way in which he can guarantee to discover the executors' identities. If the deceased died intestate, he will not have administrators until a grant of representation has been made. Grants of probate and letters of administration are publicly recorded,<sup>10</sup> but until there is a record of a grant, there is no way to be sure whether or not the deceased left a will or whom he appointed as executors. If he died intestate, his estate vests in the President of the Family Division until administration is granted,<sup>11</sup> and registration against his name in the meantime is appropriate.

2.5 These difficulties impede satisfactory dealings with land in two ways. Primarily, a person entitled to a land charge may be deprived of the benefit of it for want of registration. This is either because he does not know that the estate owner has died, with the result that his registration was ineffective, or because he does know of the death but cannot obtain sufficient further details to register against the deceased's successors. In addition, problems are presented for a prospective purchaser making an official search of the register.<sup>12</sup> Unless he can be sure against what names registrations could validly have been made, he cannot know whether he has made a search which will reveal any entries.

(b) *Proposal for reform*

2.6 In view of these difficulties, which apply equally to the registration of pending land actions, writs and orders affecting land and orders appointing a receiver or sequestrator of land,<sup>13</sup> we put forward the suggestion in the Working Paper<sup>14</sup> that registration of a charge, which comes into existence during a deceased's lifetime, should continue to be made against the name of the deceased. We asked whether or not there should be any time limit for such registrations, suggesting that twelve months might be a suitable period, and sought views on our proposals.

2.7 Despite the absence of any reported litigation, The Law Society agreed that the registration of land charges against an estate owner who had died was a practical problem. They, along with the others who considered this point in their responses to the Working Paper, agreed with our suggestion that it should be possible effectively to register against the name of an estate owner who has died. The Land Registry responded, "In our view the only sensible and practical solution is to validate the practice of registering against a deceased estate owner and we cannot see any good reason for imposing a time limit. ". Although opinion was divided on whether there should be any time limit, we now incline to the view that there should be none. Any chosen period could only be arbitrary, and we agree with the Land Registry that "the spur to prompt registration is the same in this particular circumstance as in general: failure to register will result in a purchaser taking free from the right". Registration will only be of practical benefit if it is made before the land is acquired by a purchaser.<sup>15</sup> Accordingly, we recommend that registration of a land charge, a pending land action, a writ or order affecting land and an order appointing a receiver or sequestrator of land, under the Land Charges Act 1972, in the name of an estate owner who has died should be effective notwithstanding his death.

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<sup>9</sup> Administration of Estates Act 1925, s.1(1).

<sup>10</sup> The records are at first kept at the registry at which the grant was made and are then recorded centrally, normally, we understand, about fourteen days later.

<sup>11</sup> Administration of Estates Act 1925, s.9. Our recommendation extends the circumstances in which property would so vest: see paras. 2.24–2.25 below.

<sup>12</sup> Under section 10 of the Land Charges Act 1972. The requisition for a search must specify the name against which it is to be made.

<sup>13</sup> Under the Land Charges Act 1972, ss.5(1)(a) and 6(1)(a) and (b) respectively. Under section 7, deeds of arrangement affecting land are registrable in the name of the debtor, not the estate owner, so the difficulties identified above in relation to sections 3,5(1)(a) and 6(1)(a) and (b) do not arise. Similarly, petitions in bankruptcy and bankruptcy orders are registrable in the name of the debtor and bankrupt respectively: Land Charges Act 1972, s.16(2); Insolvency Rules 1986 (S.I. 1986/1925), rr.6.13, 6.34, 6.43, 6.46 and forms 6.14 and 6.26.

<sup>14</sup> Para. 2.46.

<sup>15</sup> Land Charges Act 1972, ss.4, 5(7), 6(4). In the case of an estate contract and a land charge of class D, a purchaser for money or money's worth. An unregistered pending land action binds a purchaser with express notice of it.

2.8 We should emphasise that where a charge comes into existence during the deceased's lifetime, the effect of our proposal is that the only valid method of registration is to be against the name of the deceased estate owner. This means that registration against the names of the personal representatives or against the President of the Family Division will no longer be necessary or effective.<sup>16</sup>

2.9 We recommend that our proposal should only affect applications for registration made after the proposed legislation has been brought into force. The validity of earlier registrations must be judged by reference to the law as it then stood. To do otherwise, by retrospectively validating existing registrations entered against the name of deceased estate owners, might unfairly prejudice the position of those searching the land charges register. A fresh registration, after the new provisions take effect, would always be possible.

## II. Contracts for the sale of land and contracts for sale and conveyances of interests arising under a trust for sale

2.10 Our second recommendation concerns two related matters; first, the ability of personal representatives to contract to sell land forming part of the deceased's estate, and secondly, the need for the concurrence of all personal representatives to contract to sell or convey interests arising under a trust for sale.

### (i) Contracts for the sale of land

#### (a) *The present law*

2.11 Whilst it is clear that where there are two or more personal representatives, all of them, except any executors who do not prove the will, must concur in a conveyance of real estate,<sup>17</sup> this requirement does not appear to apply in relation to a contract for sale.<sup>18</sup> One representative acting alone can make a legally binding contract to sell the land, even though he does not have the authority of the other representatives to act on their behalf. If he does not have their authority, and does not allege that he has, it would appear that the contract will bind the estate,<sup>19</sup> and the purchaser will be able to apply to the court for an order for specific performance. However, the result is different if, as in *Fountain Forestry Ltd. v. Edwards*, the personal representative acting alone wrongly alleges that he has the authority of the other representatives to act on their behalf. The contract which he purports to make on behalf of all the representatives is not enforceable, and therefore does not bind the estate.<sup>20</sup> The purchaser will have an action for breach of warranty of authority against the representative who claimed to have authority to act for the others,<sup>21</sup> but the estate is not bound, so the purchaser will have no right to seek specific performance.

#### (b) *Proposals for reform*

2.12 We consider that the present position is unsatisfactory. The fundamental decision in administering the estate is the agreement to sell, rather than the subsequent implementation of the contract, and it is therefore in that first step that the personal representatives should be unanimous. To allow the original decision to be taken by only one of the representatives prevents the others from exercising the responsibilities of

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<sup>16</sup> Of course, land charges created or arising after the deceased's death should be registered against the names of the personal representatives.

<sup>17</sup> Unless there is an order of the court: Administration of Estates Act 1925, s.2(2). Where there are special personal representatives in respect of trust estate or settled land, they can dispose of the property vested in them without the concurrence of the general personal representatives, and vice versa: see Supreme Court of Judicature (Consolidation) Act 1925, s.155 and Administration of Estates Act 1925, s.24.

<sup>18</sup> *Fountain Forestry Ltd. v. Edwards* [1975] Ch. 1. One executor, acting without the concurrence of his co-executors, can bind the estate: *Herbert v. Pigott* (1834) 2 Cr. & M. 384; *Smith v. Everett* (1859) 29 L.J. Ch. 236. It has been accepted that the same rule applies to administrators. However, as freehold land did not vest in personal representatives before 1898 (Land Transfer Act 1897, s.2(2)), it has merely been assumed that the rule extends to contracts to sell such property.

<sup>19</sup> This will be so even if the other representatives do not subsequently ratify the contract.

<sup>20</sup> *Sneesby v. Thorne* (1855) 7 De G.M. & G. 399; "... a contract purporting to be made by two executors jointly cannot be enforced as if it were a contract by one executor severally when it transpires that the other executor did not contract.": *Fountain Forestry Ltd. v. Edwards* [1975] Ch. 1, 15 per Brightman, J.

<sup>21</sup> *Collen v. Wright* (1857) 8 E. & B. 647.

their office and deprives the beneficiaries of the advantages of having the estate administered in accordance with the combined judgment of all the personal representatives. We are supported in the view that all the representatives should be required to concur by those who considered this point on consultation: The Law Society, the Institute of Legal Executives and the Holborn Law Society.

2.13 We therefore recommend that the concurrence of all personal representatives (other than an executor who has not proved the will, whether or not power was reserved to him to prove) or an order of the court should be required to make a contract to convey real estate<sup>22</sup> comprised in a deceased's estate in respect of which such concurrence is, at present, required for the conveyance. The rule requiring all personal representatives to join in the conveyance will continue to apply, and will relate to those who are representatives when the conveyance is executed.<sup>23</sup>

2.14 We recommend that our proposal for requiring the concurrence of all personal representatives to contract to convey an interest in land should apply to contracts made after the proposed legislation comes into force.

## **(ii) Contracts for sale and conveyances of interests arising under a trust for sale**

### **(a) *The present law***

2.15 The extent of section 2(2) of the Administration of Estates Act 1925, referred to above,<sup>24</sup> which requires the concurrence of all personal representatives to conveyances of real estate, is also a matter of concern. "Real estate" is defined to exclude "money to arise under a trust for sale of land".<sup>25</sup> Nowadays, with an increasing proportion of people holding property as joint owners, whose beneficial interests arise under a trust for sale,<sup>26</sup> it seems anomalous not to afford to them the safeguard of the requirement of concurrence of all representatives. Many joint owners of real property do not appreciate the subtlety of the conveyancing device adopted by the Law of Property Act 1925, which places their beneficial ownership "behind the curtain" and treats it as merely an interest in the proceeds of sale of the legal estate. For an individual, his half share in his matrimonial home may well be his most substantial asset. Similarly, property owned by a partnership will be held on trust for sale. It is appropriate that those interests should be governed by the same rules as those applicable to wholly owned property.

### **(b) *Proposals for reform***

2.16 For these reasons, we recommend that the requirement in section 2(2) of the Administration of Estates Act 1925 of concurrence by personal representatives to conveyances should extend to interests arising under a trust for sale of land.<sup>27</sup> Again, we are supported in this view by The Law Society, the Institute of Legal Executives and the Holborn Law Society.

2.17 It follows from our earlier proposal<sup>28</sup> for extending the requirement of concurrence to include contracts as well as conveyances, that if the meaning of real estate is extended for this purpose to include interests arising under a trust for sale, the requirement for concurrence of all personal representatives will equally apply to contracts to convey such interests.

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<sup>22</sup> Such a contract must be in writing: Law of Property (Miscellaneous Provisions) Act 1989, s.2. There should therefore be no difficulty in ascertaining whether this requirement has been complied with.

<sup>23</sup> In rare cases, the number of personal representatives will increase between contract and conveyance, where an executor to whom power to prove was reserved on the original grant of probate subsequently proves the will.

<sup>24</sup> Para. 2.11.

<sup>25</sup> Administration of Estates Act 1925, s.3(1)(ii).

<sup>26</sup> Law of Property Act 1925, s.36.

<sup>27</sup> The Law Commission has proposed that trusts for sale should be replaced by a new form of trusts of land, not carrying an obligation to sell: Report on Trusts of Land (1989) Law Com. No. 181. The recommendation in this paragraph would apply equally to conveyances of interests arising under those new-style trusts.

<sup>28</sup> Para. 2.13 above.

2.18 We do not propose to alter the present rule that a sole personal representative can give a valid receipt for the proceeds of sale of land subject to a trust for sale.<sup>29</sup> A property owner is free to appoint only one executor, and if he does, that executor alone will continue to have power to convey the property.

2.19 We recommend that the requirement of concurrence of personal representatives in relation to interests arising under a trust for sale should apply to contracts made, and conveyances executed, after the proposed legislation comes into force.

### III. Section 9 of the Administration of Estates Act 1925

2.20 Our third recommendation concerns section 9 of the Administration of Estates Act 1925. This section provides that where a person dies intestate his estate vests in the Probate Judge<sup>30</sup> until administration is granted. Our recommendations relate to both the identity of the person in whom property vests under section 9, and the scope of the section.

#### (i) *The person in whom property vests under section 9 of the Administration of Estates Act 1925*

2.21 Since 1970, the property of a deceased who dies intestate has vested, under section 9, in the President of the Family Division of the High Court until an administrator has been appointed.<sup>31</sup> The section provides that the property shall vest "in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary". However, the "ordinary"<sup>32</sup> was always a corporation sole, whose property vested in the holder of the office for the time being. The President of the Family Division, on the other hand, is not a corporation sole, and so property vested in him does not pass with his office.

2.22 Although we know of no practical difficulties that have arisen, and none was identified on consultation, there is potential for real yet unnecessary problems concerning the service of notices on an owner of land between the date of death and the grant of letters of administration. Many notices have to be served on the owner for the time being of land. However, service on the current President might be ineffective if the legal estate were still in his predecessor or in a predecessor's personal representative. Administrative arrangements have been made for service on the President: the current Practice Direction stipulates that notices to quit are to be served "c/o The Treasury Solicitor" at the address specified.<sup>33</sup> This cannot affect the essential validity of service of the notice and does not address the point that some property will no longer be vested in the President for the time being. In the Working Paper,<sup>34</sup> we put forward the suggestion of amending section 9 of the Administration of Estates Act 1925 to provide expressly that property of a deceased shall vest in the holder for the time being of the office of President of the Family Division. On consultation, The Law Society and the Institute of Legal Executives favoured reform along those lines. The Holborn Law Society, however, suggested that it would be better for property to vest in the Treasury Solicitor, for a number of reasons: he is a corporation sole; notices are already sent to him under the Practice Direction; and he is already accustomed to acting as personal representative, for example, in bona vacantia cases.

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<sup>29</sup> Law of Property Act 1925, s.27(2).

<sup>30</sup> i.e., the President of the Family Division of the High Court: Administration of Justice Act 1970, s.1, Sched. 2, para. 5, amending the Administration of Estates Act 1925, s.55(1)(xv).

<sup>31</sup> See n.30 above.

<sup>32</sup> Originally, it was the bishop as "ordinary" (see Statute of Westminster II, 1285, c.19.), but when probate jurisdiction was finally laicised the property devolved on the judge of the Court of Probate (Court of Probate Act 1858, s.19). For the history of the successive offices which have held this role, see para. 2.20 of the Working Paper. At one time, the ordinary had power to administer the personal property of those who died intestate. His right of personal administration was removed by statute (31 Edw. 3, st.1, c.11) and he was compelled to appoint administrators to administer the estate: see *Dyke v. Walford* (1848) 5 Moo. P.C. 434. In general, the vesting of an intestate's estate in the Probate Judge has become purely nominal. "He has no duties whatsoever to perform. No obligations fall upon him": *In re Deans, dec'd.* [1954] 1 W.L.R. 332, 334. However, in a case of necessity the Probate Judge may have power to give directions about the property: *Fred Long & Son Ltd. v. Burgess* [1950] 1 K.B. 115, 119. In addition, the court has power to make a grant of administration to part of the deceased's estate: Supreme Court of Judicature (Consolidation) Act 1925, s.155.

<sup>33</sup> [1985] 1 W.L.R. 310.

<sup>34</sup> Para. 2.20.

2.23 We were attracted to the idea of substituting an existing corporation sole for the President of the Family Division. That solves the problems of succession. The Holborn Law Society had suggested the Treasury Solicitor, but as he represents the Crown in its capacity as the ultimate beneficiary of undisposed assets, we consider it inappropriate that property should vest in him. After consultation with the President of the Family Division, the Official Solicitor and the Public Trustee, we have concluded that the Public Trustee, who is a corporation sole, could most appropriately perform this function. We therefore recommend that for the purpose of property vesting under section 9 of the Administration of Estates Act 1925, the Public Trustee should replace the President of the Family Division. This amendment would apply to the extended scope of section 9 we recommend below,<sup>35</sup> and would apply in respect of a person's estate irrespective of whether they die before or after the commencement of the proposed legislation. Where an estate has, at the date the Bill comes into force, already vested in the President of the Family Division, we recommend that the property should then vest in the Public Trustee instead.

(ii) *The scope of section 9*

2.24 The object of this provision is to ensure that, notwithstanding the death of an owner of land, there is always someone in whom the legal estate is vested. The section specifies that the property of a deceased vests in the Probate Judge in the case of intestacy. This fills the obvious lacuna which would otherwise exist between the date of death and the appointment of administrators by the grant of letters of administration. It has been argued that its provisions extend to cases where there is a will, but under which no executors who are competent or willing to act, have been appointed.<sup>36</sup> This would include situations where, for example, executors, appointed by the will, either pre-decease the testator, survive the testator but die before taking out probate or simply renounce probate. However, we suggested in the Working Paper<sup>37</sup> that its application should be made expressly comprehensive to cover these situations. Those who responded to the Working Paper on this point—the Council of Her Majesty's Circuit Judges, The Law Society and the Institute of Legal Executives—agreed with our suggestion. We therefore recommend that section 9 should be extended to provide expressly that a deceased's estate vests in the Public Trustee<sup>38</sup> in every case where there is no executor who has obtained, or is entitled to obtain, a grant of probate.

2.25 We do not propose to disturb the normal rule that the deceased's property vests in his executor at the date of death, even if the executor subsequently fails to take out probate. So under our proposal, the deceased's estate would not vest in the Public Trustee from the date of death in every case where no executor proves the will. Rather, our recommendation is that section 9 should apply as soon as there is no executor entitled to obtain a grant of probate, providing no grant of representation has previously been taken out. Once a grant of representation has been taken out, the normal rules as to the chain of representation would apply.

2.26 We recommend that the new rule should apply as soon as the proposed legislation comes into effect, in relation both to estates of people dying after that date and to estates of people who have already died. This would mean that the estates of intestates then vested in the Probate Judge, and the estates of those who were testate, but to whose will no probate has been granted and who no longer had executors capable of applying for a grant, would vest in the Public Trustee from the date of commencement of the legislation.

#### IV. Notices

(a) *The present law*

2.27 Our fourth and final recommendation concerns the service of notices affecting land following the death of the land-owner. There are many situations in dealing with

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<sup>35</sup> Para. 2.24.

<sup>36</sup> Wolstenholme and Cherry, *Conveyancing Statutes*, 13th ed., (1972) vol. 5, at pp. 24 and 102. Although the modern meaning of intestacy is that the deceased left no valid will, it originally included cases where he left a will which appointed executors who refused to act: 2 Coke Inst. 397 (c.1630). Accordingly, because section 9 incorporates the old practice, it probably extends to such cases.

<sup>37</sup> Para. 2.19.

<sup>38</sup> We recommend in para. 2.23 above that the Public Trustee should replace the President of the Family Division for the purpose of s.9 of the Administration of Estates Act 1925.

land in which it is necessary for notice to be given to the owner. Examples are: notices to quit land which is let, notices to exercise options to purchase or to extend leases and notices to exercise rights to review a rent. Where a notice is required to be served on the land-owner, a notice addressed to the deceased former owner will not be sufficiently served, since the deceased's property will necessarily have vested in either his personal representatives or, at present, the President of the Family Division of the High Court.<sup>39</sup> In the absence of special statutory or contractual provisions, the notice must then be served in the names of the personal representatives (not simply "to the personal representatives" of the deceased) or, in a case of intestacy, on the President of the Family Division.<sup>40</sup> Problems arise in two circumstances. First, the person wishing to serve the notice may be unaware of the death. Secondly, even if he knows of the death, he may be unable to discover whether there is a will, whether it appoints executors and if so, who they are. In any event, the risk always exists that the will is invalid or has been superseded by a later one. In the absence of a will, he must discover whether letters of administration have been granted. These problems will become critical if the notice has to be served within a strict time-limit. The party wishing to serve the notice may suffer considerable loss by reason of the other's death. It seems to us unjust that the law should not offer a procedure to overcome the consequences of this capricious disruption of the parties' contractual relations.

(b) *Proposals for reform*

2.28 In view of the potential difficulties over the service of notices, we tentatively suggested in the Working Paper<sup>41</sup> the enactment of two new rules. The first would have allowed service of a notice addressed to the deceased at his last known address where the server of the notice is unaware of the death. That is, the notice would be served in the same way as if the recipient were still alive, and the fact of his death would not invalidate it. The second would have permitted, where the server is aware of the death, a notice to be served addressed to "the personal representative(s)" of the named deceased to the same address, with a copy sent to the Treasury Solicitor.

2.29 We sought the views of practitioners on the difficulties encountered in practice and the suggested solution. The Law Society's Land Law and Conveyancing Committee were not aware of any difficulties that had been experienced in practice. On the other hand, the Institute of Legal Executives told us that in practice our suggested procedures were frequently already adopted. They said that difficulties do occur, and supported our suggested proposal for legislation to remove any uncertainty. The Holborn Law Society told us that the problem arises most frequently in relation to Case G notices under the Agricultural Holdings Act 1986.<sup>42</sup> They said the usual practice is to serve a notice on everybody who can possibly be involved, and to leave one at the farmhouse. They concluded that the solution proposed in the Working Paper would be suitable.

2.30 We recommend therefore that two new ways to serve notices affecting land should be available. First, where the person serving the notice does not have reason to believe that the person on whom the notice is to be served has died, service should not be insufficient by reason only of the death. Secondly, where the person serving the notice has reason to believe that the person on whom the notice is to be served has died, until a copy of a grant of representation has been filed at the Principal Registry of the Family Division, the notice could be served by delivering or sending by post two copies, each addressed to "the personal representative(s)" of the named deceased. One copy would go to the last known address of the deceased, and the other, in the light of our recommendation above,<sup>43</sup> to the Public Trustee.

2.31 Our reason for providing for service in this manner until a copy of a grant of representation has been filed at the Principal Registry results from the procedure for obtaining a grant of representation. Applications for a grant of probate or administration can be made to the Principal Registry of the Family Division or to any of eleven

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<sup>39</sup> See para. 2.21 above.

<sup>40</sup> Para. 2.22 above; and see *Wirral Borough Council v. Smith* (1982) 43 P. & C.R. 312.

<sup>41</sup> Para. 2.22.

<sup>42</sup> A notice to quit given by reason of the death of the sole (or sole surviving) tenant of an agricultural holding. Case G is one of eight Cases under which the consent of the Agricultural Land Tribunal is not required to the operation of a notice to quit: Agricultural Holdings Act 1986, s.26 and Sch.3.

<sup>43</sup> Para. 2.23.

district probate registries.<sup>44</sup> There are no territorial limitations, and an application can be made at any registry or sub-registry. Indexes of all grants of representation are available for public search at the Principal Registry and district probate registries.<sup>45</sup> The information contained in the indexes does not include the names and addresses of the personal representatives, although it does include the registry at which the grant was made. Details of the personal representatives are contained in the grant of representation, and a copy of every grant issued by a district registry is filed at the Principal Registry.<sup>46</sup> Once filed there therefore, a search can be made to discover the identity of the personal representatives. Having found out their names and addresses, a notice can be served in the normal manner provided by the contract or statute under which it is required to be served.

2.32 We envisage that where a person, having reason to believe that the land-owner has died, wishes to serve a notice, he will first make a search at the Principal Registry to find out whether a copy of a grant of representation has been filed. If no copy of a grant has been filed at the Principal Registry, the server can then serve the notice in the manner outlined at paragraph 2.30 above. We realise that the risk remains that a copy of a grant could be filed immediately after the search has been made but before notices have been served. However, a person wishing to be certain that service of the notice is sufficient under the second of the two new methods of service proposed above, would be able to search the Principal Registry for a copy of a grant of representation immediately after serving the notice, and if necessary could then re-serve notices on the personal representatives named in the grant.<sup>47</sup>

2.33 At present, the practical arrangements for serving notices to quit on the President of the Family Division are set out in a Practice Direction,<sup>48</sup> and we envisage that the address for service of notices on the Public Trustee could be published in a similar manner.

2.34 We recommend that the new methods of service should be available in respect of all notices to which they apply served after the proposed legislation comes into force.

2.35 The proposed new methods of service would not be exclusive, so they would not have to be adopted in every case. Contractual arrangements, for example in a lease, expressly providing a method for the service of notices where the land-owner has died, would continue to be effective even after the adoption of our proposal. Contractual provisions could even exclude the new statutory methods of service, but we would expect that, as with the existing statutory provisions about service,<sup>49</sup> they would normally supplement them.

2.36 The new methods of service would not be available in the following two situations. First, where statute provides that service on the Probate Judge, during the period when the estate of a deceased is vested in him under section 9 of the Administration of Estates Act 1925, would be ineffective, the new procedure, involving service of a notice on the Public Trustee, would not apply. For example, no document which is required to be served under the Consumer Credit Act 1974 can be so served.<sup>50</sup> These statutory provisions are rare, and are made in cases which require special treatment. It would accordingly be inappropriate to bring them within our proposed

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<sup>44</sup> Supreme Court Act 1981, s.105. Applications can also be made to any of eighteen sub-registries, the function of which is to receive applications for grants and transmit them to their parent registries for the issue of the grants. See the District Probate Registries Order 1982: S.I. 1982 No. 379.

<sup>45</sup> Supreme Court Act 1981, s.111. The indexes are prepared on microfiche. We understand the period of time between a grant of representation being made and it being listed on the index is around fourteen days.

<sup>46</sup> Again, we understand the period of time between grant and filing at the Principal Registry is usually around fourteen days.

<sup>47</sup> Application for a standing search for a grant of representation may be made to the Principal Registry. Under this procedure, on payment on the appropriate fee, currently £2, a person who has entered a notice in Form 2 will be sent an office copy of any grant issued within six months in respect of the deceased in whose name the standing search is lodged: Non-Contentious Probate Rules, r.43.

<sup>48</sup> [1985] 1 W.L.R. 310; see para. 2.22 above.

<sup>49</sup> e.g., Law of Property Act 1925, s.196.

<sup>50</sup> Consumer Credit Act 1974, s.176(7).

scheme. Secondly, our recommendations would not apply to any notice or document required or authorised in relation to proceedings before any court. Rules of court normally make all necessary provisions for service,<sup>51</sup> and we consider that provision to cover cases of death is best made within that context.

2.37 In proposing these two new methods of service, we have tried to balance the interests of those who require to be able to serve a notice, but who, because of the death of the land-owner, are unable to do so, and the interest of the deceased's estate. Clearly, enabling notices to be served before any grant of representation has been made may lay the deceased's estate open to risk of prejudice. There might, for example, be only a limited time within which a counter-notice could be served, or a lack of response could bind the estate to revised contractual terms. For this reason, it is important that there should be a reasonable expectation that there will be an opportunity to take any necessary action on behalf of the estate. We consider that any notice served in accordance with our proposal would have a good prospect of coming to the attention of those concerned. That would then give them the opportunity of applying for a prompt, and if necessary, limited grant of representation.<sup>52</sup>

2.38 A further safeguard for the personal representatives and the interests of the deceased's estate lies in the requirement to serve a copy of the notice on the Public Trustee, and we envisage that he would institute a record of notices served, to which personal representatives would be able to refer, on payment of a fee, to obtain details. Once a copy of the grant of representation has been filed at the Principal Registry, the personal representatives would be able to make a final enquiry of the Public Trustee to discover whether any notices affecting the deceased's land have been served on him.

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<sup>51</sup> See, e.g., the Rules of the Supreme Court 1965, Ord. 65.

<sup>52</sup> Either a grant limited to part of the estate only, under s.113 of the Supreme Court Act 1981, or a grant of administration "*ad colligenda bona*" for the purpose of preserving the property.



## PART III

### SUMMARY OF RECOMMENDATIONS

3.1 We summarise below our proposals for reform set out in Part II of this report. We indicate against each proposal the clause in the draft Bill, contained in Appendix A, that gives effect to the recommendation.

3.2 Our recommendations are:

- (1) Registration of a land charge, a pending land action, a writ or order affecting land and an order appointing a receiver or sequestrator of land, under the Land Charges Act 1972, in the name of an estate owner who has died should be effective notwithstanding his death.  
[Para. 2.7; clause 1]
- (2) This recommendation should only affect applications for registration made after the proposed legislation comes into force.  
[Para. 2.9; clause 1]
- (3) The concurrence of all personal representatives (other than an executor who has not proved the will, whether or not power was reserved to him to prove) or an order of the court should be required to make a contract to convey real estate comprised in a deceased's estate in respect of which such concurrence is, at present, required for a conveyance.  
[Para. 2.13; clause 2]
- (4) This recommendation should apply to contracts made after the proposed legislation comes into force.  
[Para. 2.14; clause 2]
- (5) The requirement in section 2(2) of the Administration of Estates Act 1925 of concurrence by personal representatives to conveyances (applied to contracts, see (3) above) should extend to interests arising under a trust for sale of land.  
[Paras. 2.16–2.17; clause 2]
- (6) This recommendation should apply to contracts made, and conveyances executed, after the proposed legislation comes into force.  
[Para. 2.19; clause 2]
- (7) For the purpose of property vesting under section 9 of the Administration of Estates Act 1925, the Public Trustee should replace the President of the Family Division of the High Court.  
[Para. 2.23; clause 3]
- (8) This recommendation should apply in respect of a person's estate irrespective of whether they die before or after the commencement of the proposed legislation.  
[Para. 2.23; clause 3]
- (9) Section 9 of the Administration of Estates Act 1925 should be extended to provide expressly that a deceased's estate vests in the Public Trustee in every case where there is no executor who has obtained, or is entitled to obtain, a grant of probate.  
[Para. 2.24; clause 3]
- (10) This recommendation should apply as soon as the proposed legislation comes into effect, in relation both to estates of people dying after that date and to estates of people who have already died.  
[Para. 2.26; clause 3]
- (11) Two new ways to serve notices affecting land should be available. First, where the person serving the notice does not have reason to believe that the person on whom the notice is to be served has died, service should not be insufficient by reason only of the death. Secondly, where the person serving the notice has reason to believe that the person on whom the notice is to be served has died, until a copy of a grant of representation has been filed at the Principal Registry of the Family Division, the notice could be served by delivering or sending by post two copies, each addressed to "the personal representative(s)" of the

named deceased, one to the last known address of the deceased, and the other to the Public Trustee.

[Para. 2.30; clause 4]

- (12) The two new methods of service should be available in respect of all notices to which they apply served after the proposed legislation comes into force.

[Para. 2.34; clause 4]

*(Signed)* ROY BELDAM, *Chairman*  
TREVOR M. ALDRIDGE  
RICHARD BUXTON  
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*  
29 June 1989

APPENDIX A

**Procedure on Death (Miscellaneous  
Provisions) Bill**

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**ARRANGEMENT OF CLAUSES**

**Clause**

1. Land charges; registration after death.
2. Concurrence of personal representatives in administration of estates.
3. Vesting of estate between death and grant of administration.
4. Service of notice affecting land following death of intended recipient.
5. Notices affecting land; service on the Public Trustee.
6. Amendments and repeals.
7. Short title, commencement and extent.

**SCHEDULES:**

- Schedule 1 — Minor and Consequential Amendments.  
Schedule 2 — Repeals.

DRAFT

OF A

# B I L L

TO

A Bill to make provision as to registration of land charges in a person's name after his death; to extend the requirements as to concurrence of personal representatives in administration of estates; to amend section 9 of the Administration of Estates Act 1925; to make provision as to notices affecting land served on a person after his death; and for connected purposes. A.D. 1989.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) The Land Charges Act 1972 shall be amended as follows.

Land charges;  
registration after  
death.  
1972 c.61

(2) In section 3 (registration of land charges) after subsection (1) there shall be inserted—

“(1A) Where a person has died and a land charge created before his death would otherwise have been registered in his name under subsection (1) above, the land charge shall be registered in his name notwithstanding his death.”

(3) In section 5 (register of pending actions) after subsection (4) there shall be inserted—

“(4A) Where a person has died and an entry in the register pursuant to this section in respect of a pending land action would otherwise have been made in his name under subsection (4) above, the entry shall be made in his name notwithstanding his death.”

(4) In section 6 (register of writs and orders affecting land) after subsection (2) there shall be inserted—

“(2A) Where a person has died and an entry in the register pursuant to this section in respect of any such writ or order as is mentioned in subsection (1)(a) or (b) above would otherwise have been made in his name under subsection (2) above, the entry shall be made in his name notwithstanding his death.”

## EXPLANATORY NOTES

### Clause 1

1. This clause provides for the registration of land charges, pending land actions, writs and orders affecting land and orders appointing a receiver or sequestrator of land, in the appropriate register under the Land Charges Act 1972, in the name of a person after his death. This implements the recommendation in paragraph 2.7 of the Report. This clause does not affect the registration of other matters under the Land Charges Act 1972, for example, petitions in bankruptcy and bankruptcy orders.

#### *Subsection (2)*

2. This subsection inserts a new subsection (1A) into section 3 of the Land Charges Act 1972. The effect of the new subsection is to enable a land charge created during an estate owner's lifetime to be registered in the register of land charges against that person's name, even though he has died and consequently has ceased to be the estate owner. In relation to land charges created before the deceased's death, this will be the only valid method of registration. Registrations made after the Bill has been brought into force against the names of the deceased's personal representatives or against the President of the Family Division (or, under our recommendation in paragraph 2.23 of the Report, the Public Trustee) will not be effective in respect of land charges created during the deceased's lifetime.

#### *Subsection (3)*

3. This subsection inserts a new subsection (4A) into section 5 of the Land Charges Act 1972. The new subsection provides for the registration of a pending land action under section 5(1)(a) of the 1972 Act, in the name of an estate owner after his death. It does not affect the registration of petitions in bankruptcy. They are registrable in the name of the debtor, and are covered by the Insolvency Act 1986 and rules made under that Act (Insolvency Rules 1986, S.I. 1986/1925).

#### *Subsection (4)*

4. This subsection inserts a new subsection (2A) into section 6 of the Land Charges Act 1972. The new subsection provides for the registration of a writ or order affecting land, and an order appointing a receiver or sequestrator of land, under section 6(1)(a) and (b) respectively of the 1972 Act, in the name of an estate owner who has died. It does not affect the registration of bankruptcy orders, which are registrable in the name of the bankrupt, and are covered by the insolvency legislation referred to in paragraph 3.

#### *Subsection (5)*

5. The new rules will apply to all relevant applications for registration made after the Bill comes into force.

*Procedure on Death (Miscellaneous Provisions)*

1972 c.61 (5) The amendments made by this section do not apply where an application for registration under the Land Charges Act 1972 was made before the commencement of this section, but without prejudice to a person's right to make a new application after commencement.

Concurrence of personal representatives in administration of estates. 2.—(1) The Administration of Estates Act 1925 shall be amended as follows.  
(2) Section 2(2) (which is superseded by section 35A inserted by subsection (4) below) shall cease to have effect.

1925 c.23 (3) In section 24(1) (power for special personal representatives to dispose of settled land), for "without the concurrence" there shall be substituted "or enter into a contract for its disposition without the concurrence".

(4) After section 35 there shall be inserted—

"Concurrence of personal representatives to contract and conveyance. 35A.—(1) In this section "interest in land" means—  
(a) real estate devolving under Part I of this Act;  
(b) an interest of a deceased person under a trust for sale of land.

(2) Where as respects an interest in land there are two or more personal representatives—

(a) any contract for the conveyance of the interest, and

(b) any conveyance of the interest,

shall not, save as otherwise provided as respects trust estates including settled land, be made without the concurrence therein of all such representatives or an order of the court.

(3) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any such contract or conveyance as is mentioned in subsection (2)(a) or (b) above may be made by the proving executor or executors for the time being, without an order of the court, and shall be as effectual as if all the persons named as executors had concurred therein."

(5) The amendments made by this section apply to any contract for a conveyance or any conveyance which is made after the commencement of this section.

Vesting of estate between death and grant of administration. 3.—(1) For section 9 of the Administration of Estates Act 1925 (vesting of estate of intestate between death and grant of administration) there shall be substituted—

## EXPLANATORY NOTES

### Clause 2

1. This clause implements the recommendations in paragraphs 2.13 and 2.16 of the Report, that the concurrence of all the personal representatives should be required for contracts to convey real estate comprised in a deceased's estate and for conveyances of, and contracts to convey, interests arising under a trust for sale of land. Consent can be dispensed with by order of the court.

#### *Subsection (3)*

2. This subsection amends section 24(1) of the Administration of Estates Act 1925 which provides that where there are special personal representatives in respect of settled land, they may dispose of the settled land without the concurrence of the general personal representatives, and vice versa. This subsection extends the exception to contracts for the disposition of settled land, which would otherwise, under subsection (4) of the clause, require the concurrence of all the personal representatives.

#### *Subsection (4)*

3. This subsection inserts a new section (35A) into the Administration of Estates Act 1925, replacing and extending the existing section 2(2). The new section extends the requirement of concurrence of all the personal representatives, which at present is required under section 2(2) in respect of conveyances, to contracts to convey an interest in land. The new section 35A, like the existing section 2(2), is subject to any special provisions relating to trust property including settled land. An example of such a provision is section 24 of the Administration of Estates Act 1925, referred to above.

4. The new subsection also extends the requirement of concurrence to interests under a trust for sale. At present, section 2(2) of the Administration of Estates Act 1925 applies to conveyances of "real estate" which is defined, by section 3(1)(ii), to exclude money under a trust for sale of land. Under the new subsection, the requirements of concurrence, in relation to both contracts and conveyances, will apply not only to real estate devolving under Part 1 of the Administration of Estates Act 1925 (i.e. real estate in respect of which the deceased's interest does not cease on his death) but also to interests under a trust for sale of land.

5. Subsection (3) of the inserted section 35A repeats the provision in section 2(2) that it is only the concurrence of the executors who have proved the will that is required.

#### *Subsection (5)*

6. The extended requirements of concurrence under the new section 35A will apply to contracts for a conveyance and conveyances made after the Bill comes into force.

### Clause 3

1. This clause implements the recommendations in paragraphs 2.23 and 2.24 of the Report.

#### *Subsection (1)*

2. This subsection substitutes a new section 9 in the Administration of Estates Act 1925. The existing section 9 provides that where a person dies intestate (adopting the wide historical sense: see footnote 36 in Part II of the Report), his property vests in the Probate Judge until administration is granted. Since 1970, this has been the President of the Family Division (Administration of Estates Act 1970, s.1, Sched.2, para.5). The new section 9 substitutes the Public Trustee as

*Procedure on Death (Miscellaneous Provisions)*

“Vesting of estate in certain circumstances between death and grant of administration.

9.—(1) Where a person dies intestate, his real and personal estate shall vest in the Public Trustee.

(2) Where a testator dies and—

(a) at the time of his death there is no executor with power to obtain probate of the will, or

(b) at any time before probate of the will is granted there ceases to be any executor with power to obtain probate,

the real and personal estate of which the testator disposes by the will shall vest in the Public Trustee with effect from the time specified in paragraph (a) or (b) above in relation to each case.

(3) The vesting by virtue of this section of any estate in the Public Trustee shall not, without more, confer or impose on him any powers, duties, rights, equities, obligations or liabilities in respect of the estate.

(4) Any estate or part of an estate vested in the Public Trustee under subsection (1) or (2) above shall cease to be so vested on the grant of administration in respect of the estate or part in question.”

(2) Any estate or part of an estate of a deceased person vested in the Probate Judge under section 9 of the Administration of Estates Act 1925 immediately before the commencement of this section shall on commencement vest in the Public Trustee.

1925 c.23

(3) Subject to subsection (4) below, the amendment made by subsection (1) above applies in respect of a person’s estate whether the person died before or after the commencement of this section.

(4) Where but for this subsection the vesting under section 9 of the Administration of Estates Act 1925 (as amended by this section) of any estate of a testator would have effect from a time before the commencement of this section, the vesting shall have effect from its commencement, and section 9(2) of that Act shall have effect subject to this.

4.—(1) This section applies to any notice affecting land where a person (the “intended recipient”) has died and, but for his death, the notice would otherwise have been required or authorised to be served on him.

Service of notice affecting land following death of intended recipient.

(2) Unless the person serving a notice to which this section applies has reason to believe that the intended recipient has died, a notice served on the intended recipient which, but for his death, would have been sufficiently served, shall be sufficiently served notwithstanding his death.

(3) In relation to a notice to which this section applies, where—

(a) the person serving the notice has reason to believe that the intended recipient has died, and



## EXPLANATORY NOTES

the person in whom the property of a deceased vests under the section. The reasons for this are explained in paragraphs 2.21 to 2.23 of the Report.

3. The new section 9 expressly sets out the situations in which a deceased's estate is to vest in the Public Trustee. Subsection (1) of the new section 9 specifies the case of intestacy, now meaning where the deceased leaves no valid will. Subsection (2) of the new section 9 deals with the situations where although the deceased left a will, there are either no executors or, before a grant of probate has been taken out, there cease to be any executors who are able to obtain probate of the will. In the former case the deceased's estate vests in the Public Trustee from the date of the testator's death. In the latter case, the deceased's estate vests in the Public Trustee from the moment there ceases to be any executor who is able to obtain probate of the will.

4. Under the existing section 9, the deceased's estate vests in the Probate Judge "in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary". The historical meaning of this phrase is explained in footnote 32 in Part II of the Report. The words no longer carry a meaning that is readily understood. In general, the vesting of the deceased's property in the Probate Judge has become purely nominal, and subsection (3) of the substituted section 9 makes it clear that the Public Trustee does not, by virtue of this section, have any rights or duties in relation to property which vests in him under the section.

5. Subsection (4) of the substituted section 9 makes it clear that any property vested in the Public Trustee under the section ceases to be vested in him as soon as a grant of administration in respect of that property is granted.

### *Subsection (2)*

6. Under this subsection, property vested in the Probate Judge at the time the Bill comes into force will become vested in the Public Trustee instead.

### *Subsections (3) and (4)*

7. Subsection (3) provides that a deceased's property will vest in the Public Trustee under section 9 whether the person died before or after the Bill comes into force. The new section 9 applies to some cases to which the current provision does not. However, in respect of those cases, subsection (4) makes it clear that where the person died before commencement, his property will only vest in the Public Trustee from the date the Bill comes into force.

## Clause 4

1. This clause makes provision for the service of notices affecting land following the death of the person on whom the notice would otherwise have been served. It implements the recommendations in paragraph 2.30 of the Report.

### *Subsection (2)*

2. At present, where a notice has to be served on someone, it cannot be effectively served once that person has died, unless there are special provisions for service, whether statutory or contractual, in the event of death. This subsection deals with cases where the person serving the notice has no reason to believe that the person whom he is intending to serve has died. In those cases the death of the intended recipient does not, of itself, invalidate service.

### *Subsection (3)*

3. This subsection deals with cases where a person wishing to serve a

*Procedure on Death (Miscellaneous Provisions)*

(b) the notice is served before the filing at the Principal Registry of the Family Division of a copy of the grant of probate or administration in respect of the estate of the intended recipient,

the notice shall, subject to any relevant provision, be sufficiently served if it is served in accordance with the provisions of subsection (4) below.

(4) The notice shall be addressed to "The Personal Representatives" of the intended recipient (naming the intended recipient) and—

- (a) a copy shall be left at the proper address of the intended recipient or sent by post to that address; and
- (b) a copy shall be left at an office of the Public Trustee or sent by post to any such office.

(5) In subsection (3) above, "relevant provision" means any provision—

- (a) determining whether a notice to which this section applies is sufficiently served, and
- (b) made, whether before or after the commencement of this section, by or under—
  - (i) any public general or local Act,
  - (ii) any rule of law, or
  - (iii) any agreement in writing which at the date of service of the notice is binding on the person serving the notice and which at that date would, but for the death of the intended recipient, have been binding on him.

1978 c.30

(6) For the purposes of subsection (4) above and of section 7 of the Interpretation Act 1978 (which relates to service of documents by post) in its application to this section, the proper address of the intended recipient shall be his last known place of residence or business in the United Kingdom.

(7) This section does not apply to any notice required or authorised to be served by rules of court for the purposes of proceedings in any court; and in this subsection "court" includes tribunal.

(8) Subject to subsection (9) below, this section binds the Crown.

(9) Nothing in this section shall affect the service of notices by or on Her Majesty in her private capacity; and in this subsection the reference to Her Majesty in her private capacity shall be construed as including a reference to Her Majesty in right of the Duchy of Lancaster and to the Duke of Cornwall.

Notices affecting land; service on the Public Trustee.

5.—(1) The Lord Chancellor may make regulations containing such provision as appears to him to be appropriate in relation to notices delivered to the Public Trustee in pursuance of section 4(4)(b) above.

(2) Regulations under subsection (1) above may include provision that—

- (a) the Public Trustee shall compile and then maintain records of, and extracts of information relating to, notices delivered to him in pursuance of section 4(4)(b) above,

## EXPLANATORY NOTES

notice has reason to believe that the intended recipient has died. Until a copy of a grant of representation in respect of the deceased's estate has been filed at the Principal Registry of the Family Division of the High Court, the notice may be served in accordance with the procedure laid down in subsection (4).

### *Subsection (4)*

4. This subsection sets out a procedure for serving a notice affecting land after the death of the person on whom the notice would otherwise have been served, before a copy of the grant of representation has been filed at the Principal Registry of the Family Division of the High Court. This procedure requires the notice to be addressed to "The Personal Representatives" of the named deceased, and for one copy to be delivered to the deceased's proper address and for another copy to be delivered to the office of the Public Trustee. At present, there is only one office of the Public Trustee, which is in London. In the past, however, there has been a second office, outside London, and this subsection would allow a copy of the notice to be delivered to any office of the Public Trustee existing at the time.

### *Subsection (5)*

5. This subsection makes it clear that the new method of service does not supersede existing arrangements which apply to any given case. These existing arrangements may be the result of the common law, laid down by statute or agreed by contract. Contractual arrangements, for example, in a lease which make provision for the service of notices in the event of a person's death will continue to be effective.

### *Subsection (6)*

6. This subsection defines the "proper address" of the deceased, for the purpose of subsection (4) above, as his last known place of residence or business in the United Kingdom.

### *Subsection (7)*

7. This subsection provides that the new methods of service under this clause will not apply to notices served under rules of court. Where a notice is required to be served in court proceedings, rules of court usually specify the procedure to be adopted.

### *Subsection (8)*

8. This clause will bind the Crown in its public capacity, but not in its private capacity. Thus, where a notice served by the Crown is subsequently relied on by the person on whom it was served, the Crown will be bound by the terms of that notice. For example, if, on the sale of a property, the Crown, as vendor, served a notice to complete on the purchaser, making time of the essence, if subsequently for any reason the Crown was not in a position to complete, the purchaser would be able to rely on the notice.

## **Clause 5**

1. This clause enables rules to be made by statutory instrument relating to the service of notices on the Public Trustee under Clause 4.

### *Subsection (2)*

2. This subsection provides an indication of the scope of the rules: see paragraph 2.38 of the Report.

*Procedure on Death (Miscellaneous Provisions)*

(b) such records and extracts shall be open to inspection at a reasonable place and reasonable time stated by the Public Trustee, and

(c) if any person requests the Public Trustee to supply a copy of any notice or extract of information, the Public Trustee shall supply a copy to the person.

(3) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) The Public Trustee Act 1906 (fees charged by the Public Trustee) shall have effect— 1906 c.55

(a) as if in section 8(5) (payment out of money provided by Parliament of expenses) the reference to carrying the Act into effect included a reference to exercising the functions of the Public Trustee under any regulations made under this section;

(b) as if in section 9(1) (fees in respect of duties), “the duties” of the Public Trustee included the functions of the Public Trustee under any regulations made under this section;

(c) as if in section 9(3) (fees not used as appropriations in aid to be paid into Exchequer) and in section 9(4) (fees to be set to a level to cover expenses) the references to the Public Trustee Act 1906 included any regulations made under this section.

6.—(1) The enactments mentioned in Schedule 1 below shall have effect with the amendments there specified (being minor amendments and amendments consequential upon the provisions of this Act). Amendments and repeals.

(2) The enactments mentioned in Schedule 2 below are repealed to the extent specified in column 3.

7.—(1) This Act may be cited as the Procedure on Death (Miscellaneous Provisions) Act 1989. Short title, commencement and extent.

(2) Subject to subsection (3) below, this Act comes into force at the end of the period of two months beginning with the day on which this Act is passed.

(3) Section 5 above and this section come into force on the day this Act is passed.

(4) This Act extends to England and Wales only.

## EXPLANATORY NOTES

### *Subsection (3)*

3. The effect of this subsection is to make the statutory instruments made under subsection (1) subject to the requirements of laying before Parliament and the conditions of annulment contained in section 5(1) of the Statutory Instruments Act 1946.

### *Subsection (4)*

4. This subsection enables the Public Trustee to charge fees, by extending the provisions of the Public Trustee Act 1906 to include any functions carried out by him pursuant to rules made under subsection (1).

### **Clause 6**

1. This clause provides for the consequential amendments and repeals. The consequential amendments substitute in existing legislation the Public Trustee for the Probate Judge or the President of the Family Division, as appropriate, so that references to the vesting of a deceased's estate under section 9 of the Administration of Estates Act 1925 are consistent with the amendment under clause 3 above.

## SCHEDULES

### SCHEDULE 1

#### MINOR AND CONSEQUENTIAL AMENDMENTS

*Land Commission Act 1967 (c.1)*

1. In Schedule 12 to the Land Commission Act 1967 (effect of death etc. on liability for betterment levy), in paragraph 10(1) (Probate Judge exempt from levy in respect of property vesting by operation of law) for "the Probate Judge" in each place where it occurs there shall be substituted "the Public Trustee".

*Consumer Credit Act 1974 (c.39)*

2. In section 176 of the Consumer Credit Act 1974 (service of documents) for subsection (7) (service not to be effected on Probate Judge) there shall be substituted—

"(7) The following enactments shall not be construed as authorising service on the person indicated of any document which is to be served under this Act—

- (a) section 9 of the Administration of Estates Act 1925 (vesting of estate in Public Trustee in certain circumstances between death and grant of administration) on the Public Trustee;
- (b) section 3 of the Administration of Estates Act (Northern Ireland) 1955 (vesting of the estate of an intestate in the Probate Judge) on the Probate Judge;
- (c) section 4 of the Procedure on Death (Miscellaneous Provisions) Act 1989 (service of notice affecting land in certain circumstances) on the Public Trustee."

*Rent Act 1977 (c.42)*

3. In Part I of Schedule 2 to the Rent Act 1977 (application of exemption from Rent Act protection to dwelling house occupied by resident landlord) in paragraph 1(c)(iii) (effect of vesting of landlord's interest in Probate Judge) for "in the Probate Judge, within the meaning of that Act" there shall be substituted "in the Public Trustee".

*Companies Act 1985 (c.9)*

4. In section 209(1)(h) of the Companies Act 1985 (interests to be disregarded for the purposes of the disclosure of interests in shares) for "the President of the Family Division of the High Court" there shall be substituted "the Public Trustee".

*Procedure on Death (Miscellaneous Provisions)*

*Housing Act 1985 (c.68)*

SCH. 1

5. In section 500 of the Housing Act 1985 (requirement as to occupation of dwelling in respect of which improvement etc. grant received) in subsection (4)(b) (effect of death on occupation requirement) for the words from “(vesting” to “Judge” there shall be substituted “(vesting of estate in certain circumstances between death and grant of administration) in the Public Trustee”.

*Financial Services Act 1986(c.60)*

6. In section 45(1) of the Financial Services Act 1986 (miscellaneous exemptions from regulation of investment business), in paragraph (a) for “the President of the Family Division of the High Court” there shall be substituted “the Public Trustee”.

*Housing Act 1988 (c.50)*

7. In Part III of Schedule 1 to the Housing Act 1988 (application of exemption from assured tenancy to dwelling house occupied by resident landlord) in paragraph 17(1)(c)(ii) (effect of vesting of landlord's interest in Probate Judge) for “the Probate Judge, within the meaning of that Act” there shall be substituted “the Public Trustee”.

**SCHEDULE 2**

**REPEALS**

Chapter	Short title	Extent of repeal
15&16 Geo.5 c.23.	The Administration of Estates Act 1925.	Section 2(2) In section 55(1), paragraph (xv).
1967 c.1.	The Land Com- mission Act 1967.	In Schedule 12, paragraph 10(2).
1970 c.31.	The Administration of Justice Act 1970.	In Schedule 2, paragraph 5.

## APPENDIX B

### Individuals and organisations who responded to Working Paper No. 105.

Association of Corporate Trustees  
British Property Federation  
Cartwright Cunningham Haselgrove & Co., Solicitors  
Council of Her Majesty's Circuit Judges  
Country Landowners Association  
General Council of the Bar  
Sir William Goodhart, Q.C.  
Holborn Law Society  
Institute of Legal Executives  
H.M. Land Registry  
The Law Society  
Mr. W.J. Lee, F.Inst. L.E.  
Mr. S.J. Morton, Solicitor  
A.L. Philips & Co., Solicitors  
Mr. J.D. Saunders  
Stephany & Co., Solicitors  
Mr. M.P. Thompson, University of Leicester  
Mr. R.P. Towns, Solicitor  
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