

### Land Registration Act 2002

#### Scope of this guide

This guide details Land Registry practice and requirements relating to applications supported by a transfer or deed to update the register to correct a mistake in an earlier deed.

This guide **does not** cover the following applications.

- To correct a mistake in the register.
- To alter the register without a supporting deed.
- For alteration made pursuant to a court order.
- Where there is disagreement over some aspect of the register.

It is aimed at solicitors, licensed conveyancers and other legal advisers and you should interpret references to 'you' accordingly. Land Registry staff will also refer to it.

## Amending deeds that effect dispositions of registered land

### Contact details

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# 1 Abbreviations and terms used

In this guide:

- ‘deed of variation’ refers generically to any deed intended to amend the effect of an original deed, whether to correct a mistake in the original deed or to amend the effect of the original deed otherwise than by way of correction
- ‘LRA 2002’ means the Land Registration Act 2002
- ‘LRR 2003’ means the Land Registration Rules 2003
- ‘original deed’ and similar expressions, such as ‘original transfers’, refer to a deed effecting a registrable disposition of registered land or effecting a disposition of unregistered land where it will be followed by an application for first registration of the land.

## 2 Introduction

Sometimes the parties to a deed effecting a disposition that requires registration under the LRA 2002 (such as a transfer, lease or legal charge), and which has already been completed by execution and delivery, decide that its effect needs to be changed. This may be because they discover a clerical or other mistake in the deed that needs to be corrected. Or they may decide later that what was considered to be a correctly drawn deed does not sufficiently achieve their original intentions. Again, the parties to such a deed or their successors may decide that, though it correctly reflected the parties’ intentions at the time, circumstances have changed so as to bring about a need to vary the effect of the deed.

In the equivalent unregistered conveyancing situations, the parties would expect to prepare what they would term a deed of rectification, in relation to a mistake in an earlier deed, or a deed of variation, in relation to a correctly prepared deed the effect of which needs later to be amended. However, when dealing with registered land, the parties need, where appropriate, to take account of the constraints imposed on the form of dispositions by the LRA 2002 and the LRR 2003. In particular, there are many situations where a deed of rectification or variation in a form appropriate to unregistered conveyancing would be inappropriate in the context of registered titles, so that serious difficulties can arise where an attempt is made to use such forms. It is the purpose of this guide to explain how parties seeking to amend the effect of a deed intended to achieve a registrable disposition should proceed.

## 3 Before the original deed is registered

### 3.1 Mistake discovered before the application is lodged with Land Registry

#### 3.1.1 Amending the original deed

If the need to correct or amend an original deed is discovered after it has been executed, but before any application to register it has been made, the appropriate course is to arrange for the original deed to be altered so as to give effect to the parties’ true intentions before it is lodged for registration. All alterations to the deed must be authenticated by the signatures of all the parties against each amendment made. If a plan to the original deed is amended, then all the parties should re-sign the plan. If a new plan is substituted for an existing plan in the original deed, all the parties should sign the new plan.

#### 3.1.2 Protecting priority

It may, in some cases, be possible for the parties to proceed with lodging the original deed for registration on the basis that the applicant asks for the temporary return of the original deed in order to arrange for its correction or alteration. This would reserve priority for land originally included in the deed but not any additional land added by its subsequent alteration. Priority for such additional land should be protected by an official search.

For example, this may possibly be appropriate in cases where it will not be practicable to complete the process of altering the deed and obtaining the parties' further signatures within the priority period of a protecting official search. However, such cases should be seen as exceptional and will not be possible in any case if the application to register the deed will be substantially defective (whether because of the element of the deed that needs to be varied or otherwise). The following examples illustrate this point.

### **3.1.3 Examples of circumstances where original deed requires amendment**

#### *3.1.3.1 Deed contains incorrect terms*

- *Example 1:* A deed effecting a legal charge over title XY1234 in favour of the Anywhere Building Society has been executed by the registered proprietors as borrowers but the parties now realise that it refers erroneously to the society's 2004 mortgage conditions whereas it should have referred to the society's 2008 mortgage conditions (as set out in the mortgage offer issued to the borrowers). Since the charge creates a valid charge over the title (albeit by reference to the wrong mortgage conditions) it can be lodged for registration and a request made for its temporary return so that it can be suitably amended, the amendment countersigned by the borrowers and re-lodged for the registration to be completed.

#### *3.1.3.2 Transfer of less land than intended*

- *Example 2:* The registered proprietors of titles XY1234 and XY4321 have executed a transfer that was intended to transfer both titles to Z. Unfortunately, due to a mistake in the drafting, the transfer only refers to title XY1234. The mistake has only been spotted after the intended transaction has been completed. It would be possible for Z to apply to register the uncorrected transfer but only in respect of title XY1234, and ask for its temporary return so that the mistake can be corrected, Z cannot apply to register it against title XY4321 (and if they attempt to do so the application will be rejected or cancelled as substantially defective) unless and until the mistake in the transfer has been corrected. This is because the uncorrected transfer does not effect any registrable disposition of title XY4321.

#### *3.1.3.3 Transfer plan shows land outside transferor's title*

- *Example 3:* The land in title XY1234 (registered proprietor A) adjoins the land in title XY98765 (registered proprietor B). A and B have agreed to adjust the boundary between them by each of them executing a transfer of part of some land in their title adjacent to the boundary in exchange for a transfer of part of some land in the other's title, also adjacent to the boundary. Unfortunately, due to a mistake at the time that the transfers were engrossed for execution, the transfer plans became switched, so that the executed transfer of part that refers to title XY1234 contains a plan showing part of the land in title XY98765 edged red, and vice versa. No application can be made to register either transfer (until they are both formally amended or replaced) because both are substantially defective, as purporting to transfer land of which the transferor is not the registered proprietor.

### **3.1.4 Written request for return of original deed**

In the exceptional case where an application is lodged that includes a deed that needs to be corrected or amended (and the deed is not substantially defective), the applicant should lodge both the original deed and a certified copy of it, together with a covering letter that:

- contains a clear request for the temporary return of the original deed
- explains why the return of the deed is required, and
- explains why it was impractical to deal with the correction or amendment of the deed prior to lodgement.

In such cases Land Registry will return the deed with a requisition for it to be amended, the amendment(s) counter-signed by the relevant parties and re-lodged within the normal time-scale for requisitions to be complied with. Non-compliance with the requisition within the period allowed (including

any extension of time that may be agreed) will result in cancellation in the normal way.

## 4 While the original deed is in the course of registration

It may be that the need for the correction or amendment of an original deed is not discovered until after the application to register it has been lodged at Land Registry. The different circumstances in which this can arise are discussed in sections 4.1, 4.2 and 4.3.

### 4.1 Defective deed – application is rejected

Details of the cases where Land Registry will generally reject an application are covered by Practice Guide 49 – *Return and rejection of applications for registration*. An example of a case in which the policy might be applied where the defect is a mistake in a deed that requires correction would be an application to register a deed of grant that contains the grant of a right of way “over the land coloured brown on the plan” but where there is no brown colouring on the plan. In such cases the applicant will need to arrange for the deed to be appropriately corrected, the amendment countersigned by the relevant parties and a fresh application lodged for registration of the deed once this has been done.

### 4.2 Defective deed – requisition raised

Details of the cases where Land Registry may raise a requisition are covered by Practice Guide 50 – *Requisition and cancellation procedures*. An example of a case of this kind involving a defect in a deed lodged for registration would be where a blank space has been left in an otherwise completed deed where it is clear that the space was intended to be completed in manuscript with appropriate detail before execution of the deed. In such cases the applicant will need to comply with any requisition before expiry of the cancellation date specified in the requisition (or any agreed extension) by arranging for the deed to be appropriately completed or amended, the completion or amendment countersigned by the relevant parties and the deed re-lodged with Land Registry.

### 4.3 Defective deed – applicant requests return

In cases where there is no reason for Land Registry to query the original deed, the applicant/parties may nevertheless discover that it requires correction or alteration for their own purposes. For example, the plan to a transfer of part on a developing estate may include a particular house plot and a particular garage, with the plan showing the correct plot and garage according to the property description in the deed, but there may have been confusion that has resulted in the wrong garage being associated with the particular house plot in the transfer. As a result the transfer may be registrable without difficulty, but the resulting registration will not reflect the parties’ intentions. In such cases, the applicant will need to contact Land Registry as soon as the need for the deed to be amended from the parties’ point of view comes to light. Otherwise, if the application is completed, the possibility of applying for temporary return of the deed for correction purposes will no longer exist. But, provided the temporary return of the deed is requested before completion of the application, Land Registry will be able to comply with the request, by returning the original deed with a requisition for its amendment, countersignature and return, provided the intended variation is compatible with keeping the application on the day list. However, this will not always be possible. For example, a developer may have mistakenly transferred the wrong plot on a development to a particular transferee. The transfer may be entirely registrable, but if the transferee is occupying a different plot and the transfer does not give effect to the prior agreement for sale, then the only option will be to withdraw the application to register the transfer altogether and arrange for a fresh transfer of the correct plot to the transferee. This is because the transfer has not disposed of the correct plot, so that no application is possible **against that plot unless and until the transfer is corrected**.

## 5 Where the original deed has been registered

### 5.1 General principles

Deeds that effect registrable dispositions, such as transfers, leases and legal charges of registered titles, must be completed by registration if the relevant legal estate or interest is to become vested in the person in whose favour the deed takes effect. Until application is made to register the disposition and the application is completed so that the relevant entries are made in the register, the deed confers at best an equitable interest in the land. However, once the register has been changed to give legal effect to a registrable disposition, it is the register that is the definitive record of the existence of the relevant registered estates, charges and legal interests that subsist, and the identity of the persons in whom, as registered proprietors, the estates and charges are vested. The deeds by which the dispositions give rise to changes in the register are then spent and become no more than historic evidence of the basis upon which the register has been changed. It follows that, if a further disposition of the land in a registered title is needed, this needs to be achieved by means of a further registrable deed. This principle applies as much to the case where a further disposition is needed to correct a mistake in an original deed that has already been registered as it does to further independent transactions.

In addition, s.25, LRA 2002 provides that:

*“A registrable disposition of a registered estate or charge only has effect if it complies with such requirements as to form and content as rules may provide.”*

For the purpose of this guide, the importance of this provision is that, if a registrable disposition is required in order to achieve the correction or amendment of an original deed that has already been registered, then that further registrable disposition must comply with any applicable requirements of the LRR 2003 relating to the form and content of the disposition. See further sections 5.2 *Transfers – incorrect extent transferred* and 5.3 *Transfers – correct extent transferred but other provisions in the transfer require amendment* as to the consequences of this in relation to original transfers that need to be corrected or amended and sections 5.4 *Leases – incorrect extent or term demised* and 5.5 *Leases – correct extent and term demised but other provisions require amendment* as to the consequences in relation to original leases that need to be corrected or amended.

### 5.2 Transfers – incorrect extent transferred

The parties to a transfer may, following its registration, decide that:

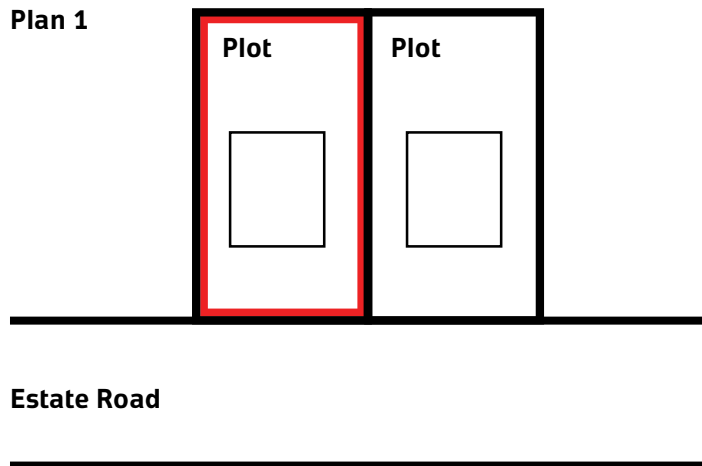
- it included land that it should not have included
- it failed to include land that it should have included
- it did both (eg where, on a transfer of part, the boundary between the land transferred and the retained land should have been shown in a different alignment).

#### **5.2.1 Use of prescribed forms and examples of circumstances requiring amendment to the original deed**

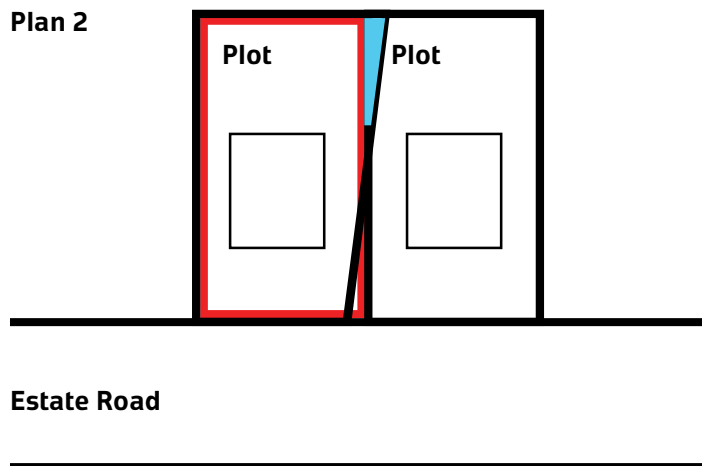
If, as a consequence, the parties decide that the effect of the registration of the transfer should be corrected or amended by arranging for land that is currently vested in one of them to be vested in the other and/or vice versa, then the correction or amendment must be effected by one or more transfers in the prescribed form. This will be a transfer in form TR1, if one or more whole titles is/are affected, or in form TP1, if part of the land in a title is affected (whether or not one or more whole titles is/are also affected). This is because a transfer in the prescribed form, followed by the registration of that transfer, is the only authorised means of arranging for land that is vested in a particular registered proprietor to become vested in another person. Use of any other form of deed (such as the forms of deed of rectification or deed of variation that might be appropriate in dealing with unregistered land) will not be acceptable for registration and will be of no effect under s.25, LRA 2002.

### 5.2.1.1 Transfer plan differs to fenced extent

*Example 4:* A developer D is the registered proprietor of a developing estate and completes the sale of plot 16 on the estate to buyer B by means of a transfer that shows the plot as edged red on the transfer plan (see plan 1 below).



Following registration of the transfer it is discovered that the developer's fencing sub-contractor has erected the fence that separates plot 16 from plot 17 on the ground in a position different to its intended position (see plan 2 below).



The parties agree that, rather than move the fencing (eg because the fence has been positioned to avoid a tree protected by a tree preservation order), they will bring the registration into line with what is on the ground by varying the effect of the original transfer in relation to the land transferred. To achieve this they will need to arrange for D to transfer the blue land on plan 2 to B using form TP1 and for B to transfer the brown land on plan 2 to D using a separate form TP1 (though the forms will no doubt each refer to the other as consideration for the transfer effected by it). In effect B and D will be arranging an exchange of land by mutual transfers in the prescribed form (see further Practice Guide 21 – *Using transfer forms for less straightforward transactions – 3 Exchanges*).

The forms of transfer should be prepared in the usual way and should directly identify the land to be transferred, where necessary by reference to an appropriate plan. Care is needed in determining how best to achieve the desired correction or amendment, particularly where other transactions have taken place that affect the position as, for example, will often be the case on a developing estate.

#### 5.2.1.2 Transfer plan incorrectly delineates land transferred

*Example 5:* The developer in *Example 4* has transferred plots 24, 25, 26 and 27 on the estate, which are properties situated in pairs on either side of a short cul-de-sac off the main estate road. Due to a clerical error, the plan used in the transfers of the plots was an earlier version of the plan of the development that showed the roadway forming the cul-de-sac in a position 1.5 metres closer to plots 24 and 25 and the same distance further from plots 26 and 27. To remedy the mistake, the developer proposes to transfer appropriate 1.5 metre strips of land to the registered proprietors of plots 26 and 27 and obtain transfers of appropriate 1.5 metre strips from the registered proprietors of plots 24 and 25 out of their respective titles (with payment to them of appropriate compensation). However, if the transferees of other plots have been granted rights of way over the estate roads, including the cul-de-sac, defined on their transfer plans by reference to the same incorrect plan, then the land transferred to the registered proprietors of plots 26 and 27 will remain subject to these rights of way unless the parties also enter into appropriate deeds of variation with the registered proprietors of the other plots that benefit from the rights.

#### 5.2.1.3 Effect on easements

It may be that, in the original transfer, the transferor:

- granted easements over retained land for the benefit of the land transferred
- reserved easements over the land transferred for the benefit of retained land
- imposed restrictive covenants on the transferee concerning the use of the land transferred
- included other provisions affecting the owners from time to time of the land transferred or the retained land or both (eg declarations of various kinds and schemes governing the transferee's contribution towards the cost of maintenance of common parts).

In such cases, it will be open to the parties, if they wish, to include such provisions in the adjusting transfer(s) as will result in these original provisions applying as if the original transfer had included the land and only the land that the transferee will hold after the adjusting transfer(s) is/are registered. The following are examples of such clauses (which assume that the expression "Original Transfer" has been suitably defined elsewhere in the transfer):

"The Transferor and the Transferee mutually grant, reserve and release such easements as may be necessary to ensure that the land of which the Transferee will be the registered proprietor immediately after the registration of this transfer [and a contemporaneous transfer by the Transferee to the Transferor of part of the land in title [number]] will have the benefit of and be subject to the same easements as if all that land and only that land had been transferred by the Original Transfer."

"The Transferee covenants with the Transferor [and the Transferor releases the Transferee from the covenants referred to in clause [number] of the Original Transfer] to the extent necessary to ensure that the land of which the Transferee will be the registered proprietor immediately after the registration of this transfer [and a contemporaneous transfer by the Transferee to the Transferor of part of the land in title [number]] and only that land will be subject to the said covenants."

#### 5.2.1.4 Registration requirements

Such transfers will need to be completed by applications for their registration in form AP1, accompanied by the requisite fee in the normal way. In addition, where a transfer or transfers are by way of correction or alteration the applicant may wish to apply for amalgamation with an existing title, so that the ultimate registrations match as closely as possible the position that would have applied if the original transfer had not required correction or alteration.

#### *5.2.1.5 Existing registered charges*

If a title out of which land is to be transferred in this way is subject to a registered charge, then arrangements will also need to be made for the discharge of the charge to the extent that land will be removed from the chargor's title by the correcting/amending transfer. This will generally take the form of form DS3 executed by the chargee where part only of the land in the relevant title is to be transferred. Where the whole of one or more titles is to be transferred, either the discharge will be in form DS1 or it will be achieved by an electronic notification of discharge (END), an e-DS1 or an electronic discharge (ED) where the chargee normally discharges their charges in this manner.

Similarly, if the main title held by the transferee under the original transfer is the subject of a registered charge, it is likely that the proprietor of the charge will seek to have any land transferred to the transferee made subject to the charge as well. This will require either the execution by the transferee of a further legal charge in relation to the further land transferred or the discharge of the existing charge and the execution of a fresh charge covering both the land remaining vested in the transferee under the original transfer and the further land being transferred to the transferee.

#### *5.2.1.6 Compliance with restrictions and other register entries*

The parties will also need to take account of any other entries in the affected registers of title. For example, if a restriction is registered against such a title then the restriction will need to be complied with insofar as it restricts dispositions by way of transfer.

### **5.3 Transfers – correct extent transferred but other provisions in the transfer require amendment**

#### ***5.3.1 Form of instrument***

Where no land needs to be transferred, then the correction or amendment of any other elements of an original transfer that has already been registered may be effected by a deed of variation. There is no prescribed form for this, so the deed may take any form that the parties consider appropriate to achieve the desired correction or amendment.

#### ***5.3.2 Variation of easements***

In relation to the correction or amendment of a provision in the original transfer that grants or reserves easements, the grant or reservation of an easement is a registrable disposition that will need to be completed by registration in order to take effect at law. However, there is no prescribed form for such a disposition so a deed of variation can take the same form as would be used to vary equivalent provisions in a conveyance of unregistered land, provided there are appropriate words of grant (where additional easements need to be granted) or reservation (where additional easements need to be reserved). Insofar as the original transfer includes easements that the parties agree should not have been granted, the correction should take the form of a release of the unwanted easements by the appropriate party or parties. If any of the land benefiting from the easement has been transferred to other persons, then those persons will also need to join in any release for the release to be effective.

#### ***5.3.3 Variation of restrictive covenants***

In relation to the correction or amendment of provisions in the original transfer that impose restrictive covenants, a deed of variation can again take the same form as would be used to vary equivalent provisions in a conveyance of unregistered land. Insofar as the original transfer omitted covenants that should have been included, the deed should include words of covenant by the relevant covenantor in relation to the additional covenant(s) required to achieve the correction or amendment. If covenants were included in the original transfer that should not have been included, then the deed should release the existing covenant(s) to the necessary extent. Otherwise, the deed can simply vary the wording of an existing covenant that has been incorrectly expressed. In either case, if any of the land benefiting from the covenant to be released or varied has been transferred to other persons, then those persons will also need to join in the deed for the release or variation to be effective.

### **5.3.4 Registration requirements**

To take effect at law an application to modify or vary easements must be made against both dominant and servient titles using form AP1. Where either title is unregistered then documentary evidence of title must be produced in the usual way. Otherwise an application to note the variation may be made using form AN1 or UN1.

An application by a person claiming ownership of the benefiting land for the entry of a notice in respect of the modification or variation of a restrictive covenant should be made using form AN1 or UN1. An application by the registered proprietor must be made using form AP1. If application is for cancellation of restrictive covenants then form CN1 should be used. If application for an entry relating to a deed of release (not also creating new covenants) has been made, form AP1 should be used.

If any of the relevant titles is subject to a registered charge, then the consent of the proprietor of the charge will also need to be lodged where the burden of the provision in the original transfer being corrected or amended is increased or changed. Such consent will not be required where the applicant can show that the correction or amendment is purely for the benefit of the title subject to the charge (eg where the only amendment to the original transfer is solely the grant of easements for the benefit of the title).

### **5.4 Leases – incorrect extent or term demised**

As with transfers, the parties to a lease may, following its registration, decide that:

- it included land that it should not have included
- it failed to include land that it should have included
- it did both (eg where the boundary between the demised premises and other land retained by the landlord should have been shown in a different alignment).

However, the registration of the lease will have brought into existence a separate leasehold estate whose extent is defined by the lease as registered. If the parties decide that the lease needs to be corrected or amended by removing land from, or adding land to, the demised premises, they will need to take account of this when preparing the appropriate deed, as discussed in the following paragraphs.

#### **5.4.1 Reducing the demised extent**

A deed that reduces the extent of the land included in a lease will amount to a deed of surrender of the part no longer included in the lease (indeed, it will normally be beneficial to a correct understanding of what is intended if the deed describes itself as such).

Where a deed of variation of a lease provides for part of the premises demised by an original lease to be treated as no longer subject to the lease then, whether or not the deed describes itself as a deed of surrender, it will need to be treated as such for registration purposes. In particular:

- the surrender will not take effect at law until the deed has been registered and the existing leasehold title closed as to the part of the land included in the surrender
- if the tenant's leasehold title is subject to a registered charge, the proprietor of the charge will need to discharge the charge as to the part of the land in the title being surrendered, using form D53
- if the tenant's leasehold title is subject to a restriction against dispositions of the land then the restriction will need to be complied with.

See Practice Guide 26 – *Leases – determination – 5 Determination – on surrender by deed* for further information regarding the registration of deeds of surrender.

#### **5.4.2 Increasing the demised extent**

A leasehold estate, once created, cannot be extended to land that was not included in the demise at the time of its creation. As a result, a deed that purports to add land to the premises demised by a lease that has already been registered is deemed to take effect as a surrender by operation of law of the existing lease (so that the existing leasehold estate is brought to an end) and as the grant of a new lease of both the land comprised in the original lease and the land that is being added to the demised premises (so that a new leasehold estate is created – when the deed is registered). Further details are set out in Practice Guide 28 – *Extension of leases*.

Where the parties to a lease wish to vary it so as to include additional land in the demised premises, then it is open to them to achieve this in the following ways.

#### **5.4.3 New lease of additional land**

Leave the existing lease undisturbed by granting a fresh lease of the additional premises only, to include such terms as the parties consider appropriate for the purpose of applying the terms of the original lease to the additional land, as if it had been included in the original lease. See section 5.4.6 *Prescribed clauses* as to the form of such a lease. An application to register the new lease will need to be lodged with Land Registry in the usual way, provided it is for a term that exceeds seven years from the date of the lease (if it is not, then the lease cannot be registered but an application to note the lease against the landlord's title may be possible). In addition, if a charge is registered against the existing leasehold title, the parties may wish to arrange for the charge to be effectively extended to the additional leasehold title that will result by arranging for the tenant to execute a fresh legal charge in appropriate terms in relation to the additional land, or by arranging for the existing charge to be discharged and a fresh legal charge executed by the tenant in relation to both the existing leasehold title and the new lease.

#### **5.4.4 Deed of variation deemed as surrender and re-grant**

Effect a deed of variation that, as already discussed, will take effect in law as a surrender by operation of law of the original lease and the grant of a new lease over the combined extended premises. See section 5.4.6 *Prescribed clauses* as to the form of such a deed. This will need to be followed with applications in form AP1 to close the existing leasehold title on surrender by the tenant and, provided the term of the new lease created by the deed exceeds seven years from the date of the deed, to register the new lease created by the deed. If the term of the new lease does not exceed seven years from the date of the deed, the deed will only be capable of substantive registration in relation to the surrender of the existing lease, although an application to note the new lease against the landlord's title may be possible. Where the existing leasehold title is subject to a registered charge, the application to register the deed will need to be accompanied by a discharge in form DS1 (or by way of END or ED if the lender normally discharges charges in this way). At the same time, if it is desired to arrange for the lender's security to be transferred to the new lease, the tenant will need to execute a fresh charge in favour of the lender over the lease granted by the deed. If the landlord's title is subject to a registered charge, then the written consent of the proprietor of the charge will also need to accompany any application to register the new lease created by the deed.

#### **5.4.5 Deed of surrender and new lease of combined extent**

Effect an express surrender of the existing lease and a separate new lease of the combined extended premises. See section 5.4.6 *Prescribed clauses* as to the form of the new lease. Applications in form AP1 will then be needed to register the deed of surrender and, provided the term of the new lease exceeds seven years from the date of the deed, to register the new lease in the normal way. If the term of the new lease does not exceed seven years from the date of its execution, it will not be capable of substantive registration, although an application to note it against the landlord's registered title may be possible. Where the existing leasehold title is subject to a registered charge, the application to register the surrender will need to be accompanied by a discharge in form DS1 (or by way of END or ED if the lender normally discharges charges in this way). At the same time, if it is desired to arrange for the lender's security to be transferred to the new lease, the tenant will need to execute a fresh charge in favour of the lender

over the new lease. If the landlord's title is subject to a registered charge, then the written consent of the proprietor of the charge will also need to accompany any application to register the new lease.

#### **5.4.6 Prescribed clauses**

Where a lease is granted for a term of more than seven years from the date of the grant out of a registered title, or in circumstances where the land is unregistered but the landlord is under an obligation to apply for first registration of their title, it must be drawn as a prescribed clauses lease. This applies not only to new a lease that is expressly drawn as such but also to a deed of variation of a lease that takes effect in law as the surrender of an existing lease and the grant of a new lease. Accordingly, in any of the cases referred to in sections 5.4.3 to 5.4.5, where a new lease is created that is for a term of more than seven years from the date of the lease or deed of variation (as the case may be) it must be prepared in a form that includes at the beginning the clauses prescribed by r.58A and Sch.1A, LRR 2003. As to prescribed clauses leases, see Practice Guide 64 – *Prescribed clauses leases*.

#### **5.4.7 Extending the term**

Where the parties to a lease wish to vary it so as to extend the original term, then it is open to them to achieve this in the following ways.

#### **5.4.8 Deed of variation**

Because the duration of a leasehold estate is also defined by the lease creating (following registration where the lease is of registered land), a deed of variation that purports to extend the term of an existing lease can also only take effect in law by way of a deemed surrender by operation of law of the existing lease and the grant of a new lease for the extended term. Accordingly, where a deed of variation of a lease provides for the term of an original lease to be extended beyond the term granted by the original lease then, whether or not the deed describes itself as a deed of surrender and re-grant, it will need to be treated as such for registration purposes. The surrender will not take effect at law until the deed has been registered and the existing leasehold title closed as to the part of the land included in the surrender. If the tenant's leasehold title is subject to a registered charge, the proprietor of the charge will need to discharge the charge as to the part of the land in the title being surrendered, using form DS3. If the tenant's leasehold title is subject to a restriction against dispositions of the land then the restriction will need to be complied with.

See Practice Guide 26 – *Leases – determination – 5 Determination – on surrender by deed* for further information regarding the registration of deeds of surrender.

#### **5.4.9 Reversionary lease**

Leave the existing lease undisturbed by granting a further lease of the same premises for a term that begins on expiry of the existing lease and ends at the final date of the extended term. See section 5.4.6 *Prescribed clauses* as to the form of such a lease. An application to register the new lease will need to be lodged with Land Registry in the usual way, provided it is for a term that commences more than three months after the date of the grant and/or the term is for more than seven years from the date of the grant. In addition, if a charge is registered against the existing leasehold title, the parties may wish to arrange for the charge to be effectively extended to the additional leasehold title that will result by arranging for the tenant to execute a fresh legal charge in appropriate terms in relation to the additional lease, or by arranging for the existing charge to be discharged and a fresh legal charge executed by the tenant in relation to both leases.

#### **5.4.10 Deed of surrender and new lease of combined extent**

Effect an express surrender of the existing lease and a separate new lease for the extended term. See section 5.4.6 *Prescribed clauses* as to the form of the new lease. Applications in form AP1 will then be needed to register the deed of surrender and, provided the term of the new lease exceeds seven years from the date of the deed, to register the new lease in the normal way. If the term of the new lease does not exceed seven years from the date of its execution, it will not be capable of substantive registration, although an application to note it against the landlord's registered title may be possible. Where the existing leasehold title is subject to a registered charge,

the application to register the surrender will need to be accompanied by a discharge in form DS1 (or by way of END or ED if the lender normally discharges charges in this way). At the same time, if it is desired to arrange for the lender's security to be transferred to the new lease, the tenant will need to execute a fresh charge in favour of the lender over the new lease. If the landlord's title is subject to a registered charge, then the written consent of the proprietor of the charge will also need to accompany any application to register the new lease.

### **5.5 Leases – correct extent and term demised but other provisions require amendment**

In such cases the correction or amendment of any other elements of an original lease that has already been registered may be effected by a deed of variation.

#### ***5.5.1 Form of instrument***

There is no prescribed form for this, so the deed may take any form that the parties consider appropriate to achieve the desired correction or amendment.

#### ***5.5.2 Registration requirements***

Such a deed will need to be completed by registration against the titles of the landlord and the tenant that are affected by the lease. The application to register the deed should be made using form AP1 accompanied by the requisite fee. If any of the relevant titles is subject to a registered charge, then the consent of the proprietor of the charge will also need to be lodged, though such consent will not be required where the applicant can show that the correction or amendment is purely for the benefit of the title subject to the charge (eg where the variation is solely the grant of an additional easement for the benefit of the title charged).

## **5.6 Charges**

### ***5.6.1 Additional land to be included in charge***

Where a legal charge has already been registered but it is decided that the charge should have included additional registered land that was not referred to in the original deed, then the parties may do one of the following.

- Prepare and execute a further deed creating a legal charge over the additional land in such terms as ensure that the additional land is treated as additional security for the borrowing that is already secured by the original charge. Where this is done the lender will need to apply in the normal way to register the further deed as a legal charge against the title(s) under which the additional land is registered.
- Replace the existing registered charge with a fresh legal charge that charges both the land charged by the original deed and the additional land as security for the borrowing. In that case the lender will need to apply in the normal way to register the fresh deed as a legal charge against all the titles comprised in it and, at the same time, apply to cancel the registration of the original deed as a legal charge using Land Registry form DS1 under cover of an application in form DS2 or AP1.

### ***5.6.2 Too much land included in charge***

Where a legal charge has already been registered but it is decided that the charge included registered land that should not have been included, then the parties should apply to cancel the registration of the charge against the land in question. If the land in question comprised the land in the whole of one or more registered titles, then the application should be in form DS2 or form AP1 accompanied by form DS1 executed by the lender. If the land in question includes part only of the land in a registered title, then the application should be in form AP1 accompanied by form DS3, drawn so as to identify the land (usually on a plan) and executed by the lender.

### ***5.6.3 Correct land charged but other terms require correction or amendment***

In relation to a legal charge that has already been registered, the parties may decide that the terms of the charge need to be corrected or amended.

For example, a clerical error may have led to the charge referring to an out-of-date version of an institutional lender's mortgage conditions, so that the terms of the charge should be changed so as to refer to the up-to-date conditions. In such cases the parties may do either of the following.

- Replace the existing registered charge with a fresh legal charge that charges the land comprised in the original deed and incorporates the revised terms that the parties wish to see incorporated in the legal charge. In that case the lender will need to apply in the normal way to register the fresh deed as a legal charge against the titles comprised in it and, at the same time, apply to cancel the registration of the original deed as a legal charge using Land Registry form DS1 under cover of an application in form DS2 or AP1.
- Prepare and execute a deed of variation by which they agree to amend the original deed in terms that give effect to the intended correction or amendment. There is no prescribed form for this, so the deed of variation may take any form that the parties consider appropriate to achieve their intentions.

In the latter case the application to register the deed of variation must be made under cover of an application form AP1. We will retain the original deed, unless the deed is in a form previously approved by us and the lender has requested that original deeds should be returned or, if the deed has not been previously approved, where a certified copy of the deed has been supplied.

Our Commercial Arrangements Section at Land Registry Head Office will continue to approve deeds of variation. Please see Practice Guide 30 – *Approval of mortgage documentation* for further information.

#### **5.6.4 Chargee restrictions and further advances**

It is not possible to apply in a deed of variation for a restriction or for an entry to show that a lender is under an obligation to make further advances. If these entries are required, separate applications must be made in forms RX1 and CH2 respectively.

#### **5.6.5 Execution of deed of variation of charge**

Although the borrower must execute the deed of variation, there is no requirement for the lender to do the same. We will accept that the lender will be bound by the terms of the variation if the deed is either lodged by the lender or a practitioner acting on behalf of the lender.

R.113, LRR 2003 requires that an application to register a deed of variation must be made with the consent of the proprietor of any registered charge (and the proprietor of any sub-charge derived directly or indirectly from such a charge) of equal or inferior priority to the charge being varied, if the other lender is adversely affected by the terms of the variation, unless that proprietor has executed the deed itself or its consent is not required under the terms of its charge or sub-charge.

Our view is that alterations of the following types do not adversely affect a charge (and sub-charge thereof) with equal or inferior priority.

- A reduction in the interest rate.
- A reduction in the capital debt.

However, we consider that any alterations that either:

- increase the interest rate
- increase the capital
- extend the term of the earlier charge
- create an obligation to make further advances, to be such as may adversely affect any charge (and any sub-charge thereof) with equal or inferior priority.

In these circumstances, the proprietor of any charge (and sub-charge) adversely affected must (unless their consent is not required under the terms of their charge or sub-charge) execute the deed; or give their written consent to the registration of the deed of variation. The consents, or a

certificate by a conveyancer that they hold the requisite consents, must be lodged with the deed of variation application.

Alternatively, the proprietor of any such charge (or sub-charge) may supply a letter confirming they do not consider their charge (or sub-charge) to be adversely affected by the terms of the variation and, consequently, feel that they do not need to execute the deed nor lodge a consent. However, in the absence of any evidence we will not raise a requisition. Instead, we will make a non-guaranteed entry in the following form on the register.

*“A Deed dated made between is expressed to alter the terms of the Charge dated referred to above.*

*NOTE: Copy filed”.*





# Land Registry advisory policy

We offer advice to our customers through our publications and enquiry services and through the day-to-day handling of applications.

We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes:

- advice in advance of an application, where this is requested
- where an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right
- an approval service for estate layout plans and certain other land registration documents.

There are limits to the advice that we will provide. We will not provide legal advice.

This means that:

- we will not approve the evidence to be produced in support of a registration application before we receive the application
- apart from procedural advice, we will not advise on what action to take
- we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application.

In providing this factual information and procedural advice we will:

- be impartial
- recognise that others may be affected by what we say
- avoid any conflict of interest.

## Information in this guide

The information in this publication is for the purpose of providing general guidance about Land Registry's procedures and policies. It is intended only as a guide and does not cover every situation that may arise. It also does not limit Land Registry's ability to use its discretion when appropriate to do so, within the land registration legislation.

Peter Collis  
Chief Land Registrar

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