

Land Registry Proposals to amend the Practical Guide 62: Easements (PG62)

**A response by
The Chartered Institute of Legal Executives**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes 4883 Conveyancers registered on our database.
- 1.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.4. In addition to our own research, we have engaged with our forum of Conveyancers who we refer to as our Conveyancing Reference Group.

2. Summary

- 2..1. The changes, proposed by the Land registry, concern the practice and procedures involved in the transferring of part and leases in cases where the land already has easements in place which affect other land belonging to the provider.
- 2..2. The changes seek to provide new procedures and as a result, further clarity to the process of preventing future easements from being acquired, and establishing whether the existing easements should continue to be implemented.

3. Summary of Proposal

- 3.1. The proposed changes provide guidance for the procedures that those involved in conveyancing should follow.
- 3.2. This includes establishing a clause in transfer which prevents the placing of new easements following the transfer. The clause is as follows;
 - 3.2.1. *“The operation of [section 62 of the Law of Property Act 1925] [and]{or} [the rule in Wheeldon v Burrows] is excluded”*
- 3.3. The inclusion of this clause in a transfer will lead to an entry being made in the Property Register setting out the terms of the transfer and clause. If however the land is transferred as a lease, then no registration is required.

- 3.4. In addition to the above clause, the proposal includes the choice of two further clauses to be included in the transfer that defines whether the existing easements will continue to be applied or not. These clauses are as follows;
 - 3.4.1. *“The property is transferred without the benefit of any existing easements.”*
 - 3.4.2. *“The property is transferred with the benefit of only those existing easements which are expressly referred to in in this transfer.”*
- 3.5. If neither of these clauses is included in the transfer, and it is not clear whether existing easements will continue to be upheld, and it seems that the owner of the land (transferee) would derive some benefit from the easement, the relevant entry will be carried forward to the transferee’s title, but the following note will be added.
 - 3.5.1. *“NOTE: The legal easements are included in this registration only in so far as they are not excluded by the effect of the transfer dated ... referred to ...”*
- 3.6. Paragraph 10 (PG62) as it stands suggests that in cases where the dominant and servient land is registered, an investigation would take place into the existence of easements on the transfer of the dominant land, and if it were to exist, a notice would be served to the intended recipient of the land to let them know, just in case consent was given by the recipient but was not lodged.
- 3.7. If the servient land is unregistered however, the benefit of the easement will be registered with the dominant land.
- 3.8. This new amendment combines the two cases, in which the creation of new easements is prohibited, and the currently existing easements are removed / accepted.
- 3.9. The amendment allows those involved to first establish that new easements cannot be established using the clause above
- 3.10. It then goes on to clarify whether an existing easement is accepted, or not accepted by the recipient of the land, by providing two further clauses to explicitly define either of the two options.

4. Comments

- 4.1. We welcome the proposed changes that make the subject much easier to understand and follow. The clauses make it easier for those involved in easement and conveyancing to interpret whether future easements can be established, and whether currently existing easements on the land are to be upheld in cases where land is being transferred.
- 4.2. CILEx sought views from members of our Conveyancing Specialist Reference Group. Whilst numbers of those who provided feedback on this particular exercise were low, those who did agreed that the change is helpful and that the information in the attachment is easy to understand.

- 4.3. We do have recommendations however regarding the structure of the proposed changes.
- 4.4. As it stands, PG62 is broken down into distinct chapters with paragraphs/sections signified by 1.1, 1.2 etc.
- 4.5. The proposed amendments however do not use this same structure, which would be welcome to distinguish between the clauses that should be used (of which there are three, one to prohibit future easements, one to accept the easements already on the land, and one to disregard the easements already on the land).
- 4.6. This will be particularly important when legal representatives involved in these cases have to refer to a particular clause.
- 4.7. We would therefore welcome a restructure to ensure that referencing these amendments is easier. This could take the form of the structure similarly used throughout PG62 (10.1, 10.2 etc.)

For further details

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require any
further
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