



Ministry
of Justice

Manorial Rights

Government response to the
House of Commons Justice Committee's
Fifth Report of Session 2014-15

July 2015



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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

July 2015



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Introduction

1. We are grateful to the Justice Committee for its detailed consideration of the issues surrounding the existence and exercise of manorial rights.
2. Manorial rights are the rights of the copyholders and the freeholders that were preserved on the enfranchisement of copyhold tenure into freehold tenure as part of the land law reforms of 1925. The most important of these rights are thought to be the rights that relate to mines and minerals, the holding of markets and fairs and sporting rights. The substantive content of the rights is determined by the local custom of the relevant manor. The extent to which they can be exercised and their value will also vary from place to place, but until they lost their status as overriding interests in registered land in 2013 they do not appear to have caused property owners any significant problems. Manorial rights for these purposes do not include title to the lordship of a manor as such or the ownership of land by virtue of a manorial title.
3. The Government recognises the anxiety that the registration of manorial rights under the process established by the Land Registration Act 2002 has caused to some property owners. Registration has made patent the existence of claims to manorial rights over land that had sometimes been obscure or even unknown.
4. The Government appreciates the concerns expressed by some of the witnesses to the Committee that the registration of a right of which they were previously unaware against their property may reduce its value or hinder its sale. The Government is not aware that the problems feared as a result of the requirement of registration have actually materialised in practice. In this light, the Government considers that committing resources to extensive research or a fundamental review of manorial rights as recommended by the Committee would at this time be disproportionate.
5. Nonetheless, in response to the concerns of home owners and others affected, the Government will keep the issue of manorial rights under review and, if significant problems arise in practice, will give further consideration to the need for reform in the context of discussions on a future Law Commission programme. In the meantime, the Law Commission will consider the Committee's recommendations on unilateral notices and look at what statistical evidence is available as part of its current land registration project. The Commission expect to publish a consultation paper in spring 2016 and to complete the project in late 2017.
6. The Committee's recommendations fall into two main areas, namely proposals in relation to the operation of the current system for registering these rights under the Land Registration Act 2002 and related statistical information (Chapter 2), and proposals in relation to the need for research and broader reform of the law on manorial rights (Chapter 3 and 4). This response deals with each area in turn by setting out the Committee's recommendations and then responding to each of them in turn.

Response to recommendations in Chapter 2 of the Committee's report

Recommendations

We recommend that the Land Registry should carry out the necessary work to assess accurately the number of manorial rights claims now registered against titles in England and Wales following changes in the 2002 Act. With an eye to any future review or changes to the law relating to manorial rights, it would also seem beneficial for the Land Registry or Ministry to collate statistics on the extent to which manorial rights are challenged and the success rates of such challenges, including the incidence of claims being decided by the Courts or Tribunal.

We recommend that the following should be considered as proposals for change to the existing process:

- Ending the use of unilateral notices as a mechanism to place manorial rights claims on the register, and providing for the use of agreed notices as the only mechanism by which manorial rights may be registered. Such changes would ensure that claimants are required to provide suitable supporting evidence before an entry on the register is made.**
- Changing where current and future claims to manorial rights sit on the register and, in particular, moving those currently placed on the charges register to elsewhere on the register.**
- Measures to strengthen the ability of the Land Registry to provide legal advice to either party, or tailored advice about individual notices.**
- Reinstating the ability of the Land Registry to adjudicate in some cases where disputes over manorial rights claims arise, although resolution through the Land Tribunal or Courts may on some occasions still be necessary.**

Government response

- 7. The Law Commission has confirmed that it will consider the recommendations in respect of ending the use of unilateral notices in manorial rights applications and of changing where manorial rights claims appear in the register. This will be carried out within the Commission's Land Registration Project as part of a wider review of the protection of third party interests. In support of that work the Land Registry will look at what statistical evidence is available.**
- 8. Currently the Land Registry does not provide legal advice. If it were to do so, this would inevitably lead to conflict of interest issues. The Government believes it is important that the Land Registry remains impartial.**

9. The judicial functions of the Land Registry were transferred to what is now the First-tier Tribunal in 2003. This followed a review by the Law Commission which concluded that there could be a perception that a senior lawyer in the Land Registry is not sufficiently independent since some cases may involve the decisions of officials of the Land Registry. The Commission recommended that, as a matter of principle, it was desirable to create a completely independent office for adjudication. The Government believes that this still holds good and so the present arrangements should continue.

10. In the response to the recommendations in chapters 3 and 4, we explain our view in relation to the Committee's recommendation as to research proposed by the Committee. For similar reasons we do not believe that applying resources to obtaining the information proposed by the Committee in relation to the challenge of manorial rights would currently represent a worthwhile use of public money. We note that the removal of a notice from the register of title does not of itself show that there has been a successful challenge.

Response to recommendations in Chapters 3 and 4 of the Committee's report

Recommendations

We recommend that the Ministry and/or the Land Registry instigate research to assess the prevalence of exercise of manorial rights in England and Wales, and the impact and value of that use. (Para 43)

We recommend that the Law Commission conduct a project assessing whether the law related to manorial rights should be changed, including the question of whether all or some categories should be abolished, and how legislation could appropriately address compensation and human rights issues in such an event. It may be that such a project can be carried out as part of the Law Commission's 13th Programme of Law Reform, particularly given projects related to feudal law have been planned in recent programmes but not delivered due to competing priorities. However, given the 13th programme is unlikely to be determined until 2017, we recommend that the Government refer a specific project to the Law Commission outside of the law reform programme, as is in its gift. (Para 58)

We also recommend that such a review should be preceded by some consideration of and work by the Government on the financial implications and provisions for compensation which would be associated with abolition of all, or certain types of, manorial rights, as the Law Commission has itself suggested. (Para 59)

Government Response

11. As indicated in the written evidence submitted to the Committee by the Ministry of Justice and in oral evidence provided by the Minister of State, Lord Faulks QC, the Government believes that although manorial rights have a distinct historical root they are in essence no different from other property rights created by other means in or over land, such as easements or covenants. The principal arguments for preservation of these rights are that in some cases they may be valuable; they have existed legitimately for centuries without causing practical problems; and abolition would appear arbitrary.
12. We recognise that in many cases the registration of manorial rights under the process established by the Land Registration Act 2002 has taken landowners by surprise and has caused understandable anxiety. However, the legal position of the current owners of land subject to manorial rights has not been changed. In addition, on the evidence available it is unclear that there are any real problems being caused by the existence of these rights to the owners of the land subject to them, or that when properly explained this is hampering the effective operation of the conveyancing system or impeding the sale and re-mortgage of property.
13. The benefit of registration has been to make the register more complete and thereby to provide prospective purchasers and others with better information about the rights affecting the property in question. This removes the problem of subjection to the rights being discovered after the purchase is complete, and

enables every buyer to make an informed decision about the effect of manorial rights. We anticipate that following the surge in registration of notices prior to the deadline in October 2013 for registration as an overriding interest, further registrations will in future be limited in number.

14. As the Committee recognises, the nature of manorial rights itself may also minimise the likelihood that their exercise will cause real problems to landowners. For example, in relation to mines and minerals the landowner's permission is generally needed if the person owning the rights wants to extract them, and planning permission and other relevant regulatory permissions would also have to be obtained. In the absence of local custom the result is that the owner of the rights and the landowner can each prevent the other from exploiting the minerals. Similarly, rights to markets and fairs confer an exclusive right to hold markets and fairs within the manor but do not generally permit the holding of a market on an individual property. In addition, sporting rights will often be rendered unexercisable in practice because of changes to the nature and use of the land in question, particularly in what are now urban environments.
15. However, even if they are not unilaterally exercisable, manorial rights do represent a right in property, and as such in many cases will be of value to the owner of the rights. It is therefore very likely that abolition would amount to a deprivation of property and would engage the right to the free enjoyment of possessions under the Human Rights Act 1998 and Article 1 of Protocol 1 to the European Convention on Human Rights. It is therefore likely that compensation would have to be paid to persons deprived of their rights. Even though certain manorial rights may have little or no value, extinguishing defined types of rights (for example, sporting rights within urban areas) would run the risk of including rights that were still valuable (for example, some fishing rights); while providing a procedure for extinguishment on the merits of each individual case could be relatively costly to administer.
16. Devising a compensation scheme to accompany abolition would also be far from straightforward, as the amount of compensation would largely depend on the value of the rights abolished to the person deprived of them, and hence would vary from case to case. A range of other issues would also have to be decided, including by whom the compensation should be payable (for example the landowner or the State); who should be responsible for determining the relevant amount; how the administrative costs of this process should be apportioned; what should happen if the person responsible for paying the compensation was unable to afford the amount awarded; and what penalties might be appropriate if he or she unreasonably refused to pay.
17. While a compensation scheme was devised under the Law of Property Act 1922 for the extinguishment of "manorial incidents", these were in the main merely ancillary to the relationship of lord and tenant and involved only very small sums of money, whereas manorial rights can potentially be valuable free-standing rights in land. This would add to the complexity of reaching a fair determination of what compensation was appropriate.
18. For these reasons, and in particular in the absence of clear evidence that significant practical difficulties are being caused by the existence of manorial rights, the Government does not consider that referral of a specific project to the Law Commission outside its normal programme of law reform or the commitment

of resources to the necessary preliminary work on the financial implications of abolition is currently justified. For similar reasons we do not believe that applying resources to undertaking the research proposed by the Committee in relation to the exercise of manorial rights would currently represent a worthwhile use of public money.

19. The Government will, however, keep the issue under review and will give further consideration to the need for reform in the context of discussions on a future Law Commission programme in the event of significant problems arising in practice. Should such circumstances arise, the Committee's inquiry and the evidence presented to it will provide valuable information to inform our thinking.

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