

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 3: Unregistered Interests Which Override Registered Dispositions

225. The Act separates out those interests which are binding on the first registered proprietor from those interests which bind the person to whom a disposition is made on a subsequent disposal of registered land. The interests binding on first registration are set out in Schedule 1. Some of the interests are common to both categories (see the notes to Schedule 1). The notes below only deal with the extent to which the interests listed in Schedule 3 differ in nature from those that bind on a first registration.

Leasehold estates in land

226. *Paragraph 1* provides that a leasehold estate granted for a term not exceeding seven years from the date of grant overrides registered dispositions, subject to seven exceptions. The first three exceptions are the same as those that apply on first registration. The other four apply in respect of a lease granted by the proprietor of a registered estate or charge where that grant constitutes a registrable disposition required to be completed by registration. They are:

- i) a lease which is granted to take effect in possession more than three months into the future;
- ii) a discontinuous lease (commonly thought of as a time-share where the lease grants exclusive possession for periods which are not consecutive);
- iii) a right to buy lease under Part 5 of the Housing Act 1985; and
- iv) a lease granted by a private sector landlord to a person who was formerly a secured tenant and has a preserved right to buy.

Interests of persons in Actual occupation

227. *Paragraph 2* provides that, an interest belonging to a person in actual occupation of land overrides registered dispositions, subject to four exceptions. The first exception is the same as the exception that applies on first registration. That is, where the interest arises under a settlement under the Settled Land Act 1925. The second exception adopts one of the principles under the current law. If the person with the interest is asked before the disposition occurs and he or she fails to disclose the interest when that could reasonably have been expected, then overriding status is lost. A new exception relates to the rights of a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and which the person acquiring the interest did not know about at that time. To fail the test as formulated in the Act, it is the occupation that has to be obvious not the interest. Lastly, there is excepted from overriding status a leasehold estate granted to take effect in possession more than three months from the date of grant but which has not taken effect in possession at the time of the disposition. This exception will not often apply and will only occur when the lease

in question has not been registered and the person to whom the lease was granted was for some other reason already in occupation.

Easements and profits à prendre

228. *Paragraph 3* provides that the priority of a legal easement or *profit à prendre* is protected without the need for registration, but, unlike the situation on first registration, there are exceptions which give this provision a much more limited scope. Any person who acquires an interest for valuable consideration under a registered disposition will only be bound by an easement or *profit* that is an overriding interest if:

- i) it is registered under the Commons Registration Act 1965;
- ii) he or she actually knows of it;
- iii) it is patent; (in other words, it is obvious on a reasonably careful inspection of the land over which the easement or *profit* is exercisable, so that no seller of land would be obliged to disclose it); or
- iv) it has been exercised within the period of one year before the disposition.