

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### **Part 3 : Dispositions of Registered Land**

##### **Powers of disposition**

##### *Section 26: Protection of disponees*

58. The effect of section 26 is that a donee is entitled to proceed, in the absence of such an entry, on the basis that there are no limitations on the owner's powers and the donee's title cannot be called into question. Under *subsection (3)*, however, the disposition will not be rendered lawful. Donors who have acted beyond their powers can, therefore, be called to account, and a donee may not escape liability if privy to the donor's conduct.
59. For example, where the disposition is in fact unlawful, the consequences of that unlawfulness can be pursued so long as these do not call into question the validity of the donee's title. The example may be given of trustees of land, A and B, who had limited powers of disposition, but who failed to enter a restriction in the register to reflect this fact. If they transferred the land to a buyer, C, in circumstances that were prohibited by the trust, they would commit a breach of trust. Furthermore, although C's title could not be impeached, the protection given by the section does not extend to any independent forms of liability to which she might be subject. Thus if C knew of the trustees' breach of trust when the transfer was made, she might be personally accountable in equity for the knowing receipt of trust property transferred in breach of trust.
60. Although cautions against dealings with the land are being abolished, cautions entered in the register under the existing legislation will continue in force under the transition arrangements in Schedule 12, and may be a means by which an underlying limitation on the proprietor's powers is reflected in the register.