

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 3 : Dispositions of Registered Land

Powers of disposition

54. One way in which a title to land may be defective is that owners can have limited powers, and may purport to make a disposition beyond them. The current legislation does not clearly establish that a person can rely upon the register to say whether there are any limitations on the powers of a registered proprietor, and safely act in reliance upon it. This section of the Act corrects that.

Section 23: Owner's powers

55. This section states the unlimited powers of an owner. It makes one change to the current law. Under the existing law, there is a presumption that a registered charge takes effect as a charge by way of legal mortgage, unless there is clear provision to the contrary, or it is made or takes effect as a mortgage by demise or sub-demise. Mortgages by demise or sub-demise are now in practice obsolete, because of the advantages of a charge (that enables freeholds and leaseholds to be made the subject of a single charge rather than separate demises or sub-demises; the grant of a charge of a lease is not thought to amount to a breach of the common-form covenant against subletting without the landlord's consent; and the form of legal charge is short and simple). *Subsection (1) (a)* therefore abolishes them, with prospective effect.

Section 24: Right to exercise owner's powers

56. Owner's powers can be exercised both by the registered proprietor, or someone entitled so to be registered, such as the personal representatives of an owner who has died.

Section 25: Mode of exercise

57. *Subsection (1)* enables the Lord Chancellor to prescribe the form and content of any registrable disposition of a registered estate or charge. This subsection would cover, for example, prescribing the form of a transfer. It is wider than the powers in the Land Registration Act 1925 in that it would be possible for the Lord Chancellor to prescribe the form of any registered charge. *Subsection (2)* provides that the Lord Chancellor may make rules as to form and content covering any kind of disposition (i.e. not just registrable dispositions) which depends for its effect on registration.

Section 26: Protection of disponees

58. The effect of section 26 is that a disponee 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 disponee's title cannot be called into question. Under *subsection (3)*, however, the disposition will not be rendered lawful. Disponors who have acted beyond their powers can, therefore,

*These notes refer to the Land Registration Act 2002
(c.9) which received Royal Assent on 26 February 2002*

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.