

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

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

##### **Effect of dispositions on priority**

67. **Sections 28 to 30** provide a clear statutory statement of the principles that determine the priority of interests in registered land. The essence of the present law is that the priority of interests in registered land is normally determined by the date of their creation, regardless of whether or not they are protected in the register. This has been laid down in relation to minor interests on the basis that such interests are equitable, and the rules that determine the priority of competing minor interests are therefore the traditional rules relating to competing equitable interests. The general maxim is that ‘where the equities are equal, the first in time prevails’. That maxim is not always easy to apply, because of uncertainty as to when the equities are not equal, namely in cases of negligence or gross carelessness. As an exception to the general principle, registered dispositions are given special effect or priority when made for valuable consideration: any interests not protected in the register are subordinated to a registered disposition, unless the unregistered interests override.
68. Under the proposals on electronic conveyancing, it will not be possible to create or transfer many interests in registered land expressly except by simultaneously registering them or protecting them by a notice in the register. In time, therefore, the register will become conclusive as to the priority of such interests, because the date of their creation and their registration will be the same. The provisions of these sections will therefore, over time, also become obsolete.

##### ***Section 28: Basic rule***

69. This section provides that the priority of an interest affecting a registered estate or charge is not affected by a disposition (whether or not the interest or disposition is registered). The priority of any interest in registered land is therefore determined by the date of creation. Unlike the current rule, this is an absolute one, subject only to the exceptions provided for by the Act.

##### ***Section 29: Effect of registered dispositions: estates***

##### ***Section 30: Effect of registered dispositions: charges***

70. **Section 29** preserves the principal exception to the basic rule to be found in the current law. If a registrable disposition of either a registered estate or a registered charge is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate or charge immediately before the disposition whose priority is not protected at the time of registration. The disponee in the later disposition will take the estate free of

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

the unprotected interest (which may not be destroyed, and may remain valid against interests other than that of the disponee under the registered disposition).

71. The principle applies only to dispositions made for valuable consideration. As under the current law, that will not include a nominal consideration in money, where the general rule of priority applies.
72. Under the current law, valuable consideration does include a transfer of land in consideration of marriage. The Law Commission and the Land Registry recommend that this should not continue on the grounds that it is an anachronism. Such a transfer is normally a wedding gift, and there is no reason for treating it differently from gifts in general. The section therefore amends the current law by leaving out this exception.

***Section 31: Inland Revenue charges***

73. **Section 31** provides that the effect of a disposition of a registered estate or charge on an Inland Revenue charge under section 237 of the Inheritance Tax Act 1984 is to be determined in accordance with the relevant provisions of the Act, and not under sections 28 to 30 of the Act.