

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,

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.

Registrable dispositions

Section 27: Dispositions required to be registered

61. This section sets out those dispositions of registered land that must be completed by registration if they are to operate at law. There are similar, but not identical provisions in the current legislation (in particular, sections 18 and 21 of the 1925 Act). Registrable dispositions, when registered, confer a legal estate, and are therefore given special priority provided for in sections 28 to 30. In principle, all dispositions that create or transfer a legal estate by express grant should be subject to some form of registration, whether with their own titles or by the entry of some form of notice on the title which is subject to them. The section therefore provides that any transfer of, or the grant or reservation of any legal estate out of, registered land, is a registrable disposition. This includes dispositions by operation of law, but with some limited exceptions.
62. *Subsection (2)(a)* provides that transfers of a registered estate, i.e. a legal estate which has registered title and is not a registered charge, must be entered on a register. There are three exceptions. The first is where a sole individual proprietor dies, where title to the estate vests by operation of law in the executors, if there are any, or in the Public Trustee until such time as there is a grant of administration. Personal representatives can apply to alter the register to bring it up to date by registering the applicant as proprietor. Secondly, when a sole individual proprietor becomes bankrupt, his or her estate will vest without any conveyance or transfer in the trustee for bankruptcy immediately on appointment (or in the Official Receiver in default of any such appointment), who can then apply to be registered. Thirdly, when a company is dissolved, its property is deemed to be *bona vacantia* and therefore vests in the Crown (or Royal Duchies). These exceptions are inevitable, and apply also to the transfer of registered charges (*subsection (3)*).
63. An explanation of the categories of lease which are registrable under *subsection (2)(b)* is to be found in paragraphs 30 to 32. An explanation of the two categories of lease granted out of the registered estate that are not registrable (a lease of less than seven years or less, or a London Transport Public/Private Partnership Lease) is to be found in paragraphs 26 and 145.
64. Lease out of franchises and manors are made registrable under *subsection (2)(c)*. They are both incorporeal rights of such a nature that the existence of a lease of them may not be apparent unless the lease affected is registered. The registration requirements vary. Where the term of the lease is for more than seven years, the grantee or successor in title must be entered in the register as the proprietor of the lease, and a notice in respect of the

lease must also be entered (Schedule 2, paragraph 4). If the term is seven years or less a notice in respect of the lease must be entered in the register. (Schedule 2, paragraph 5).

65. *Subsection (2)(d)* relates to easements and *profits à prendre*, whether in gross or appurtenant to an estate. There are two exceptions. The Commons Registration Act 1965 prohibits the registration under the 1925 Act of rights of common that are registrable under the 1965 Act. This prohibition will continue under the Act. Secondly, an easement, right or privilege granted under the operation of section 62 of the 1925 Act (a so called 'word-saving provision' that is taken to import certain words into a conveyance unless its effect is excluded) is not regarded as an express grant for these purposes, so as to require registration. Under *subsection (2)(e)*, both:

- i) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
- ii) a right of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose to a legal rentcharge;

are made registrable dispositions (these being the interests provided for in section 1(2)(b) and (e) of the Law of Property Act 1925).

66. Most grants of a legal charge are registrable dispositions. *Subsection (5)(c)* exempts local land charges. A local land charge operates at law without the need for registration. Nor does the priority of a local land charge need to be protected by registration. But a local land charge which secures the payment of money cannot be realised unless it is a registered charge. Section 55 provides that a charge over registered land which is a local land charge may only be realised if the title to the charge is registered.

It should be noted that one of the effects of the introduction of electronic conveyancing as provided for in Part 8 will be that dispositions will be simultaneously executed, communicated electronically to the registrar, and registered and section 93 contains powers for that to be made compulsory. The general principle set out in *subsection (1)* of this section is likely, in time, to be superseded.

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

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

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 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.