

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 4: Notices and Restrictions

Notices

Section 32: Nature and effect

75. This section explains that a notice is an entry, made in the register, in respect of the burden of a third party's interest. The entry is to be made against the registered estate or registered charge that is said to be burdened. As under the Land Registration Act 1925, if the interest is not valid (for example, if parties had entered into an agreement that was not a valid contract) the entry of a notice will not validate it.

Section 33: Excluded interests

76. *Section 33* provides that there are five kinds of interest which cannot be the subject of a notice. The five categories set out in this section cover:
- Interests under either a trust of land or a settlement – any interest under any form of trust is excluded because the purpose of a notice is to protect an interest in registered land by binding any person who acquires the land. An interest under a trust will not bind, say, a buyer of land if the buyer pays the purchase money to the trustees and there are at least two of them or a trust corporation. (A restriction is a proper form of entry to ensure that this occurs.)
 - A lease granted for three years or less – at present, subject to certain statutory exceptions, a lease granted for 21 years or less cannot be a registered estate and a notice cannot be entered in respect of such a lease but it is protected as an overriding interest, even though not mentioned in the register. Under the Act, again subject to statutory exceptions, a lease granted for seven years (rather than for 21 years as at present) or less cannot be a registered estate, but will override first registration and registered dispositions, even though not mentioned in the register. As explained in paragraph 192, section 118 gives the Lord Chancellor power to reduce the qualifying time for the registration of leases, and this section anticipates a reduction by providing that notices cannot be entered for leases of 3 years or less (the likely minimum qualifying period).
 - Restrictive covenants made between a lessor and lessee, so far as relating to the property leased. Such covenants are normally apparent from the lease, so it is unnecessary for them to be noted in the register. At present the exception includes a restrictive covenant over land not comprised in the lease, such as adjacent property owned by the landlord. This means no notice can be entered in respect of a restrictive covenant that relates to land that is not comprised in the lease, such as other adjacent property owned by the landlord. The Act removes the difficulties created by the current law.

- An interest capable of being registered under the Commons Registration Act 1965.
- An interest in any coal or coal mine, the rights attached to any such interest or the rights of any person under section 38, 49, or 51 of the Coal Industry Act 1994. This exception is as at present. Under the Act these interests override first registration and registered dispositions, even though not mentioned in the register, as provided for in paragraph 7 of Schedule 1, and paragraph 7 of Schedule 3.

Section 34: Entry on application

77. This section provides that a person claiming to have the benefit of an interest capable of being the subject of a notice may, subject to rules, apply to the registrar for entry of an agreed or a unilateral notice in respect of the interest. The section sets out the circumstances in which the registrar may approve an application for an agreed notice. The first two are cases where the relevant registered proprietor consents to entry of the notice. The third would, for example, cover where the applicant could establish to the registrar's satisfaction that the registered proprietor had granted him or her an easement.

Section 35: Unilateral notices

78. Under this section, when the registrar enters a unilateral notice, which may be entered without the proprietor's consent, in the register he must give notice to the affected proprietor and to such other persons as may be prescribed. Rules may provide, for example, that notice be served on the liquidator of a company which was the registered proprietor. *Subsection (2)* provides that a unilateral notice must indicate that it is such a notice, and identify the beneficiary. It is unlikely that anything else will appear in the register. At present, cautions are often entered in preference to notices where transactions are of a commercially sensitive character, because the entry of a caution in the register gives no indication as to the matter that lies behind it. The subsection, however, makes it possible to achieve the same commercial confidentiality by means of a unilateral notice.

Section 36: Cancellation of unilateral notices

79. Unilateral notices may be entered without the registered proprietor's consent. This section therefore provides that an affected proprietor or person entitled to be registered as proprietor of the affected estate or charge may apply for cancellation of a unilateral notice. The beneficiary of the notice will be entitled to object under the general right conferred by the Act to such an application to the registrar. If the matter cannot be disposed of by agreement, it must be referred to the adjudicator.

Section 37: Unregistered interests

80. This section gives the registrar power to enter a notice in respect of an interest that is an interest of the kind mentioned in Schedule 1, provided that it is not excluded by section 33 above. This is part of the strategy of the Act to eliminate, where practicable, overriding interests and ensure that they are entered in the register. The section provides that notice of the making of the entry will be served on such persons as rules may provide.

Section 38: Registrable dispositions

81. In order to register certain registrable dispositions, it is necessary to enter a notice in respect of that interest on the title of the registered estate burdened by it. This includes easements, *profits à prendre* and customary and public rights. This section therefore requires the registrar to enter a notice in respect of an interest under a disposition falling within section 27(2)(b) to (e).