

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 4: Notices and Restrictions

Restrictions

Section 42: Power of registrar to enter

86. Under this section the registrar may enter a restriction where it appears to him necessary or desirable to do so for the purposes set out in the section. The following are examples of situations in which such an entry might be made:
- To prevent unlawfulness, say a breach of trust, where the trustees of the land are required to obtain the consent of some person to a disposition.
 - To secure that interests under a trust of land or settlement under the Settled Land Act 1925 are overreached – the restriction could be to the effect that the proceeds of any registered disposition must be paid to at least two trustees or a trust corporation.
 - To protect a right or claim (which need not be proprietary) in relation to a registered estate or charge: a restriction to protect a claim by a person that he or she has a beneficial interest in the property under a resulting or constructive trust because he or she has contributed to the cost of its acquisition; or a restriction entered in respect of an order appointing a receiver or sequestrator; or a restriction entered in respect of a charging order relating to an interest under a trust.
87. A restriction is simply a means of preventing some entry in the register except to the extent (if any) that it is permitted by the terms of the restriction. It is not intended to confer priority. For these reasons the section provides that the registrar's power to enter a restriction for the purpose of protecting a right or claim in relation to the estate or charge is limited in that no restriction may be entered for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice. This provision does not, however, prevent a notice and restriction being entered in respect of the same interest, provided that each serves its proper function. For example, the priority of a right of pre-emption might be protected by a notice while a restriction might be entered to ensure that the registered proprietor first offers to sell the land to the grantee of the right before he or she contracts to sell it to anybody else.