

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 4: Notices and Restrictions

Restrictions

Section 46: Power of court to order entry

93. The court is most likely to order the entry of a restriction under the provisions of this section where, under the present law, it would order the entry of an inhibition. Whereas inhibitions prevent the entry of any dealing in the register, however, the entry of a restriction under the Act might be of more limited effect. For example, if the court determined that a person was entitled to a beneficial interest under a resulting or constructive trust, it might also order the entry of a restriction to ensure that there was no disposition of the registered estate without the prior consent of the beneficiary. By contrast, where the court has granted a “freezing injunction” the court might also order a restriction on the making in the register of an entry in respect of any dealing. Such a restriction would have an effect similar to that of an inhibition at present.
94. This section gives the court the power to direct that a restriction ordered by it has overriding effect so that the restriction overrides the priority protection given to an official search or the entry of a notice in respect of an estate contract. Terms and conditions may be imposed if the power is exercised - these might require an undertaking from the applicant that he or she would indemnify any person acting in good faith who has suffered loss as a result of the court’s direction and require the applicant to give security, pay money into court, pay costs, or to withdraw some entry in the register.