

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### **Part 4: Notices and Restrictions**

##### **Restrictions**

82. Restrictions are retained under the Act, but in altered form. Inhibitions are abolished because they are not needed: they are, in reality, just one form of restriction. The provisions of the Act relating to restrictions will apply to restrictions and inhibitions entered under the Land Registration Act 1925 (Schedule 12, paragraph 2(2)).

##### *Section 40: Nature*

83. This section defines the nature of a restriction. Because it is an entry to regulate the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register, no restriction can be entered in respect of dealings with interests the title to which cannot be entered in the register. So, for example, it would not be possible to enter a restriction against the assignment of a lease granted for a term of seven years or less, since the title to such a lease cannot ordinarily be registered.
84. The section gives particular - but non-exhaustive - examples of the form that a restriction might take. Examples of cases where restrictions might be employed using such form are: to reflect a freezing injunction granted over a registered property; where the registered proprietor (typically a corporation or statutory body) has limited powers of disposition; and where under a registered charge the chargor agrees with the chargee to exclude his or her statutory power of leasing under the Law of Property Act 1925, section 99.

##### *Section 41: Effect*

85. This section provides that, subject to an exception, no entry in respect of a disposition to which a restriction applies is to be made in the register otherwise than in accordance with the terms of the restriction. The exception is that upon the application of a person who appears to have a sufficient interest in the restriction, the registrar may order that the restriction be disapplied or modified in relation to a particular disposition or disposition of a specified kind. An example of where it might be appropriate for the registrar to exercise his power is if the restriction requires a consent by a named individual and he or she has disappeared.

##### *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.

#### ***Section 43: Applications***

88. **Section 43** sets out who may apply under section 42 for a restriction. If a person entitled to apply applies for a form of restriction not prescribed by rules then the registrar may only approve the application if it appears to him that the terms of the restriction are reasonable and that the application of the proposed restriction would be straightforward and not place an unreasonable burden on him.

#### ***Section 44: Obligatory restrictions***

89. An example illustrates an effect of this section - if two registered proprietors were to hold an estate on trust for a number of beneficiaries, a restriction might be entered to ensure that the proceeds of any registered disposition are paid to at least two trustees or to a trust corporation. If one of the trustees were to die, this would ensure that no disposition could be made until another trustee was appointed.
90. Other provisions of the Act also impose a duty on the registrar to enter a notice in respect of bankruptcy petitions (section 86(2)).

#### ***Section 45: Notifiable applications***

91. The purpose of this section is to protect a registered proprietor against the unjustified entry of a restriction against his or her title. The effect of the section is that where a person makes a notifiable application (as set out in the section) for a restriction the registrar must serve notice on the registered proprietor and such other persons as rules may prescribe.
92. A person receiving notice of an application may object to the application under the general right conferred by the Act to object to an application to the registrar. If the matter cannot be disposed of by agreement, it must be referred to the adjudicator.

#### ***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

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

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.