

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### **Part 5: Charges**

##### **Relative priority**

##### *Section 48: Registered charges*

95. *Section 48* sets out how the order of priority of registered charges can be discovered from a registered title. Rules will govern how the register shows that order and how applications can be made to record that a different order has been agreed between several chargees.

##### *Section 49: Tacking and further advances*

96. *Section 49* deals with the existing legal doctrine of tacking. The effect of this doctrine is that a chargee who has granted more than one mortgage to a borrower may sometimes gain the same priority for a later charge as he has for the earlier one. This section provides that a chargee may make a further advance on the security of an existing charge if in the meantime he has not received notice from another chargee that a subsequent charge has been created. Rules will govern when a notice is treated as having been received. This is a change from the current legislation but reflects how the lending industry currently works in practice. Additionally, as now, the chargee can obtain the same priority for two charges if the original charge contains an obligation for the further sum to be paid and that fact is recorded on the title register. The section also provides a third and novel method of achieving the same priority for two advances by recording a maximum figure for the total money lent. As long as the sums due to the first chargee do not exceed the figure specified, and have been entered in the register in accordance with rules at the time of the creation of the competing charge, the charges will take the same priority over any subsequent charge. Rules may limit the circumstances in which the third method is available and impose conditions for its use. Unless one of these three methods is used, the first chargee must get the consent of any subsequent chargee to obtain priority for his further charge over any subsequent charge.

##### *Section 50: Overriding statutory charges: duty of notification*

97. There are numerous statutory provisions which permit or require the creation of statutory charges. These statutory charges when they arise are often given priority to existing charges by the legislation under which they take effect, and will take priority over further advances made by existing chargees even though details of the statutory charge do not appear in the register. Section 50 imposes a new duty on the registrar to notify such persons as are set out in rules (likely to be chargees whose interests are protected in the register) of statutory charges being entered in the register which have priority to existing registered charges. Previously no notice would have been given to those chargees as the entry of the details of the statutory charge into the register does not change the priority order that existed before the entry was made. The new duty will,

for example, enable a chargee to make an informed decision as to whether or not he should make further advances to a chargor on the security of an existing charge where the security had been eroded because of a statutory charge.

## **Powers as chargee**

### ***Section 51: Effect of completion by registration***

98. Historically, there are two forms of words that can be used in a charge document to create a registrable charge. Section 51 provides that they both have the same effect and that the chargee has the same rights and remedies for the purpose of the Law of Property Act 1925 once they are registered. Section 25 enables rules to be made which prescribe a single form of charge for the future.

### ***Section 52: Protection of disponees***

99. The sole purpose of section 52 is to protect the rights of someone in whose favour a disposition is made by a chargee. It therefore corresponds to section 26. If nothing appears in the register to the contrary, the chargee is taken to have all the powers of disposal of a legal mortgagee under the Law of Property Act 1925 so that the rights and interest given by the disposition cannot be challenged under any circumstances. The section is limited in scope, and does not, for example, prevent any claims being brought against the chargee by the chargor.

### ***Section 53: Powers as sub-chargee***

100. A chargee can charge the indebtedness which the registered charge secures by way of sub-charge. This section gives the sub-chargee the same powers over the registered estate as the chargee himself has been given by the original charge, as is currently provided by rule. The section also applies to a registered sub-sub-charge in which case the sub-sub-chargee has not only the powers of the principal chargee in relation to the property subject to the principal charge (i.e. the registered estate), but also the powers of the sub-chargee in relation to the property subject to the sub-charge (i.e. the indebtedness secured by the principal charge). This is a new provision not covered in the current rules.

## **Realisation of security**

### ***Section 54: Proceeds of sale: chargee's duty***

101. This provision is new. It deals with the following issue. Where a mortgagee exercises its power of sale the proceeds are held in trust. After satisfying certain payments, any surplus is held on trust for "the person entitled to the mortgaged property" (section 105 of the Law of Property Act 1925). The effect is that a mortgagee will hold the surplus on trust for any subsequent mortgagee of whose mortgage it has notice, actual, constructive or imputed. Where the mortgage relates to unregistered land, the mortgagee should search the Land Charges Register to discover the existence of any subsequent mortgages because registration constitutes actual notice. Under the Land Registration Act 1925 registration does not confer notice. Therefore, under the present law, a chargee should pay any surplus to the chargor unless he has been notified of the existence of a subsequent charge. Section 54 changes the law. As a result of the provision, the chargee will have to consult the register to determine who is entitled to the surplus.

### ***Section 55: Local land charges***

102. Local land charges arise under a variety of statutory provisions and usually relate to costs of repairing a property or the amenities in the immediate vicinity of the property, such as roads. Local land charges bind a subsequent owner of registered land even when they are not registered at the Land Registry, although they normally appear on the local

land charges register kept by the local authority. Some local land charges are charges on land to secure the payment of money, such as a charge to recover expenses incurred by a local authority because of non-compliance with a repair notice. Section 55 provides that although a local land charge binds the owner, powers to realise the money due cannot be exercised until the charge is registered at the Land Registry. The intention is to ensure that it is clear on the face of the register if someone has powers of disposal over registered land.

## **Miscellaneous**

### ***Section 56: Receipt in case of joint proprietors***

103. **Section 56** is concerned with the identity of the persons entitled to give a valid receipt for the money secured by a charge which is registered in the names of one or more proprietors following the death of one or more of the proprietors.

### ***Section 57: Entry of right of consolidation***

104. A right of consolidation is the right of a person who has the benefit of two or more mortgages to refuse to allow one mortgage to be repaid unless the other or others are also repaid. This right has to be expressly agreed between the parties. Section 57 provides that rules may govern how a right of consolidation is recorded in the register.