

Registrable interests

The categories of registrable interests are contained in LCA 1972, s. 2. A summary of these can be seen in Table 2.5.

Table 2.5 The categories of registrable interests

Category	Definition	Summary
Class A	'rent or other annuity or principal money ... which is a charge on land ... created pursuant to the application of some person under ... an Act of Parliament'	These are charges on land in respect of certain statutory payments made—for example, by landlords to tenants in relation to improvements.
Class B	'a charge on land (not being a local land charge) ... created otherwise than pursuant to the application of any person'	These are charges created automatically by statute to ensure the repayment of costs or expenses—for example, the costs of legal aid should land be recovered or preserved by the case.

Category	Definition	Summary
Class C	<ul style="list-style-type: none"> (i) puisne mortgage, (ii) limited owner's charge, (iii) a general equitable charge, (iv) an estate contract' 	<p>This is an important category of charges. A puisne (pronounced 'puny') mortgage is one that is not protected by deposit of title deeds. The usual way for a first legal mortgage of unregistered land to be protected is for the mortgagee (lender) to take physical possession of the documents proving title to the land. This will prevent the land being sold without the mortgagee's consent. A second or subsequent mortgagee (legal or equitable) cannot have the title deeds, however, because the first mortgagee already has them. Therefore, he or she can enter a charge on the land charges register to protect their interest in the land.</p> <p>A limited owner's charge is a charge to protect the repayment of money spent on the land by someone who has only a limited interest in it—for example, money spent by someone who has only a life interest under a settlement.</p> <p>The general equitable charge is a sort of 'sweeping up' category, defined by reference to all of the things it is not—see Land Charges Act 1972, s. 2(4)(iii). It</p>

Category	Definition	Summary
		<p>includes, for example, a charge on land that a vendor (seller) of the land has in respect of unpaid purchase money.</p> <p>An estate contract is defined as '<i>a contract by an estate owner ... to convey or create a legal estate, including a contract conferring ... a valid option to purchase, a right of pre-emption or any other like rights</i>' under Land Charges Act 1972, s. 2(4)(iv). An option to purchase is a right that is granted to another person to buy the estate in land within a certain period of time. If the right is exercised, the estate owner is obliged to sell. A right of pre-emption is a right of 'first refusal': if the estate owner decides to sell, he or she must offer the land to the holder of the right of pre-emption first.</p>

Category	Definition	Summary
Class D	<p>(i) an Inland Revenue charge,</p> <p>(ii) a restrictive covenant,</p> <p>(iii) an equitable easement'</p>	<p>An Inland Revenue charge is a charge on land registered by the Inland Revenue in relation to unpaid Inheritance Tax.</p> <p>A restrictive covenant is an agreement contained in a deed that a landowner will refrain from doing something on his or her land (see Chapter 13). Such covenants may be enforceable between subsequent landowners, as well as between the persons who actually entered into the agreement—hence they are registrable as land charges.</p> <p>An easement is a right for the benefit of one piece of land over another piece of land—for example, a right of way (see Chapter 12). If such a right is equitable (rather than legal), it must be registered as a land charge.</p>
Class E	<p>An annuity created before 1 January 1926 and not registered in the register of annuities</p>	<p>These are old annuities and increasingly unlikely to be encountered.</p>

Category	Definition	Summary
Class F	A charge affecting land by virtue of the Family Law Act 1996, Pt IV	This is a charge in respect of a spouse's (or civil partner's) statutory right to occupy a matrimonial (or partnership) home of which he or she is not the owner.

Cross Reference

- For more on mortgages, see Chapter 14.
- For more on settlements, see Chapter 11, 11.6.1.
- For more on restrictive covenants, see Chapter 13, 13.5.
- For more on easements, see Chapter 12.

This is a very long list of interests and you do not need, at this stage, to understand what they all mean. The important thing to note is that most of these interests are the kind that are likely to have been granted in return for money or money's worth—they are commercial interests rather than 'family' interests.

So, for example, Class C land charges include estate contracts, which would include a contract to buy the land, either immediately or in the future (an option contract). Class D land charges include equitable easements, which would include rights of way and other rights over neighbouring land. The reason why these sorts of interest can be considered commercial is that they would usually be granted for money, or would increase the price that someone would pay for their land. It is therefore important that they are not destroyed when the land is sold.

'Family interests', on the other hand, are those types of interest that one would not expect to continue in relation to the land once it has been sold to someone else. For example, the family home may be subject to equitable interests in favour of family members who have paid for its purchase. These interests can be satisfied by a share of the purchase money once the house is sold; they do not need to continue to bind the land in the hands of a purchaser and therefore are not registrable under the LCA 1972.

Effect of registration

If the interest is one that can be registered under the LCA 1972, registration is both necessary and sufficient. The owner of the equitable interest must register it and, if that is done, the interest will be protected because registration is deemed to constitute actual notice to the purchaser of the legal estate under LPA 1925, s. 198(1).

Statute

Law of Property Act 1925, s. 198(1)

The registration of any instrument or matter in any register kept under the Land Charges Act 1972 or any local land charges register shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and for so long as the registration continues in force.

Because the effect of registration is to constitute actual notice, once an equitable interest is registered under the LCA 1972, it will be binding upon any subsequent owner of the land.

Consequences of failure to register

We have already stated that registration is both necessary and sufficient: if you *can* register the interest, then you *must* do so. The inevitable consequence of this is that, if you do not register it, your interest may well be lost if the land is sold to a new owner. Under LCA 1972, s. 4, if a registrable interest is not registered (see Table 2.6), it will be void (which means it will have no effect) as against:

Table 2.6 Those unaffected by an unregistered land charge

'a purchaser of the land charged with it, or of any interest in such land'	classes A, B, C(i) (ii) (iii), and F.
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'a purchaser for money or money's worth of the legal estate in the land charged'	classes C(iv) and D
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Note that both of these apply to a purchaser. Someone who receives land as a gift or inheritance, for example, will be bound by all prior equitable interests, registered or not.

The legislation is clear in rejecting any 'conscience' element in registration, for fear of bringing back constructive notice by the back door. Even actual notice on the part of the purchaser is not sufficient to protect an unregistered interest.

Case Close-Up

Midland Bank v. Green [1981] AC 513

A family farm was originally owned by Walter Green. He granted an option to purchase the farm, which was unregistered land, to his son, Geoffrey.

This option was an estate contract and therefore should have been registered as a Class C(iv) land charge—but Geoffrey failed to register it.

Walter fell out with Geoffrey and, intending to defeat the option, sold the land to his wife (Geoffrey's mother, Evelyn) for £500. The farm was worth £40,000 at that time.

The question arose whether this sale was valid to defeat the unregistered option. There was no doubt that the sale was a breach of contract by Walter. Equally, there was no doubt that Evelyn knew of the option. Under what is now the LCA 1972, s. 4(6), however, an unregistered estate contract is void against 'a purchaser for money or money's worth of the legal estate in the land charged'.

Two main arguments were put forward for Geoffrey:

1. that the word 'purchaser' should be interpreted as meaning purchaser 'in good faith';

2. that 'money or money's worth' should be interpreted to exclude nominal or inadequate consideration.

Lord Wilberforce (who gave the only substantive judgment) rejected both of these arguments, saying:

The case is plain: the Act is clear and definite. Intended as it was to provide a simple and understandable system for the protection of title to land, it should not be read down or glossed: to do so would destroy the usefulness of the Act. Any temptation to remould the Act to meet the facts of the present case, on the supposition that it is a hard one and that justice requires it, is, for me at least, removed by the consideration that the Act itself provides a simple and effective protection for persons in Geoffrey's position—viz.—by registration.

It can be seen from this case that the House of Lords applied the LCA 1972 strictly, refusing to alter its plain meaning so as to bring it more into line with the equitable doctrine of notice. It is worth noting that Geoffrey was not left without remedy: he was awarded damages against his solicitors for negligence and against his father for breach of contract. Neither of these remedies, however, entitled him to enforce the option against his mother.

Problems with registration of land charges

Registrable equitable interests in unregistered land must be 'registered against the name of the estate owner whose estate is intended to be affected' under the LCA 1972, s. 3(1).

Because the land itself is not registered, the only possible way for equitable interests to be registered is against the name of the estate owner. This means that a purchaser has to search the register for entries made against that name.

This has led to two problems, as follows:

1. The owner of the equitable interest may not know the full name of the estate owner, or may be mistaken about it. He or she may therefore register against the wrong name.
2. The purchaser of unregistered land may not know all of the possible names against which to search, because documents of title dating from as early as 1925 may have been lost in the meantime. Therefore the purchaser may not search against a relevant name.

An example of the first problem—the incorrect name—is shown in the case of *Oak Co-operative Building Society v. Blackburn*.

Case Close-Up

Oak Co-operative Building Society v. Blackburn [1968] Ch 730

The estate owner in this case was Francis David Blackburn. He agreed to sell the house to a Mrs Caines, who moved in. The house was not legally transferred to her and so the agreement to buy the house was an estate contract, which was required to be registered as a Class C(iv) land charge. This was eventually done, against the name of *Frank* David Blackburn, a name by which Mr Blackburn was known in the neighbourhood.

Subsequently, Mr Blackburn mortgaged the property to the claimant building society. They made a search of the land charges register against the name Francis *Davis* Blackburn and did not find the registration of the estate contract. The question to be decided by the Court of Appeal was whether the building society was bound by the estate contract.

It was held that it was. The Court held that registration against a version of the estate owner's true name was effective against a purchaser who did not search at all, or who searched (as here) against an incorrect name. It would not, however, be effective against a

purchaser who searched against the full, correct name (see *Diligent Finance Co. Ltd v. Alleyne* (1972) 23 P & CR 346).

In this case, the Court seems to have taken a practical view and to have tried to get the legislation to work as well as possible. Any system based on names, however, is going to give rise to these sorts of difficulty.

Cross Reference

For more on transfers of unregistered land, see Chapter 3, 3.3.

The second problem is one that is caused by the age of the system of registration of land charges. It has now been in place for over ninety years, during which time land may have changed hands many times. The main proof of title for unregistered land is the collection of **title deeds**—conveyances and other documents showing how land came into the possession of the present owner.

Definition: title deeds

the documentary evidence that shows how land came to its present owner

These documents must go back at least fifteen years. Often, there will be documents going back further than this—but not always. There may be names against which land charges have been validly registered in the past, but against which the purchaser does not know to search.

Example

Bleak House, which is unregistered land, was conveyed to Anna in 1925. Since then, the transfers have been as follows.

- 1932 Anna transferred it to Ben.

- 1946 Ben transferred it to Chris, who granted an equitable right of way (easement) over Bleak House in favour of the house next door, Windy Corner. This equitable easement has been correctly registered against Chris's full name.
- 1958 Chris transferred Bleak House to Edie.
- 1965 Edie transferred Bleak House to Fatima.
- 1973 Fatima transferred the house to Gopal.
- 1989 Hari inherited the property from Gopal.

In 2021, Hari contracted to sell Bleak House to Ines. The land is still unregistered. To prove good title, Hari must produce a conveyance (transfer) going back at least fifteen years. This means that he must show how he inherited the property, and the conveyance to Gopal in 1973. These will give Ines the names of Fatima, Gopal, and Hari, and she can search against these names in the land charges register. But there is no guarantee that the conveyances from 1946 or 1958 will have been kept, so Ines may not be able to search against Chris's name. Therefore she will not discover the right of way, but will still be treated as if she had actual knowledge of it under LPA 1925, s. 198(1).

This problem has been addressed by statute, in the Law of Property Act 1969, which introduced a scheme of compensation to deal with undiscoverable land charges that are not within the actual knowledge of the purchaser.

Statute

Law of Property Act 1969, s. 25 [Compensation in certain cases for loss due to undisclosed land charges]

(1) Where a purchaser of any estate or interest in land under a disposition to which this section applies has suffered loss by reason that the estate or interest is affected by a registered land charge, then if—

- a. the date of completion was after the commencement of this Act; and
- b. on that date the purchaser had no actual knowledge of the charge; and
- c. the charge was registered against the name of an owner of an estate in the land who was not as owner of any such estate a party to any transaction, or concerned in any event, comprised in the relevant title;
- d. the purchaser shall be entitled to compensation for the loss.

The purchaser remains bound, therefore, by the equitable interests that were correctly registered, but which they could not discover, but unless the purchaser actually knew about those interests at the time of purchase, compensation will be paid. It is a partial solution, although not as good a solution as ensuring that all registered interests can be discovered.

Both of these problems are examples of the intended temporary nature of registration of land charges when compared to the permanent system of registration of title.