

**EXPLANATORY MEMORANDUM TO THE
LAND REGISTRATION (AMENDMENT) RULES 2005**

2005 No. 1766

LAND REGISTRATION (PROPER OFFICE) (AMENDMENT) ORDER 2005

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1. This explanatory memorandum has been prepared by Her Majesty's Land Registry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Land Registration (Amendment) Rules 2005 (the Rules) amend the Land Registration Rules 2003 (the Principal Rules).

- 2.2 The amendments change some existing standard forms of restriction and add four new ones; they allow official copies of individual registers to be requested, in particular circumstances, without using the Form generally required; they allow additional applicants to apply to inspect, copy or obtain official copies of documents that are not generally available as of right under the Land Registration Act 2002 (the Act) and the Principal Rules; and they amend the definition of "conveyancer" to include notaries public.

- 2.3 The Land Registration (Proper Office) (Amendment) Order 2005 (the Order) amends the Land Registration (Proper Office) Order 2003 (the Principal Order) to amend the definition of "conveyancer" to include notaries public.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Background**

- 4.1 The Act provides for the continuance of a register of title kept by the Chief Land Registrar and makes other provision about land registration. It contains specific and general powers (the latter in section 126 and Schedule 10) to make rules for the purposes of carrying the Act into effect. The Principal Rules and the Rules were made under these specific and general powers.

- 4.2 A restriction is an entry in the register of title regulating the circumstances in which a disposition may be registered. Part 4 of the Act makes provision concerning restrictions. Rule 91 of, and Schedule 4 to, the Principal Rules prescribe the standard forms of restriction.

4.3 Section 66(1) of the Act provides that any person may inspect and make copies of the register of title, any document kept by the registrar which is referred to in the register of title, and any other document kept by the registrar which relates to an application to him. Section 66(2) provides that this right is subject to rules, which may make provision for exceptions; Part 13 of the Principal Rules makes such provision, but also allows for particular applicants to be able to inspect and make copies of these excepted documents. Section 67 deals with official copies of the register of title and documents and allows for rules to make provision for the issuing of official copies; Part 13 of the Principal Rules allows for those applicants who can inspect and make copies of the excepted documents also to be able to obtain official copies of them.

4.4 Rule 140 of the Principal Rules allows the applicants referred to in the previous paragraph to apply for a search of the Index of Proprietors' Names. This is a computerised database containing the names of the proprietors of registered estates and charges, together with the relevant title numbers.

4.5 The Principal Rules permit a conveyancer to do certain things which a non-conveyancer cannot do. In particular, they allow for conveyancers to make applications or lodge objections on behalf of their clients (see, for example, rule 19(1)) and to provide certificates as to facts which would otherwise have to be proved by other evidence (see, for example, rule 86(2)). The term "conveyancer" is defined in rule 217 of the Principal Rules to mean a solicitor, licensed conveyancer or fellow of the Institute of Legal Executives.

4.6 The Principal Order designates particular Land Registry offices for the receipt of particular applications. It does not apply to applications delivered in accordance with arrangements made between the registrar and the applicant's conveyancer. The term "conveyancer" is defined in the same way as it is defined in rule 217 of the Principal Rules.

5. Extent

5.1 Both instruments apply to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The addition of four new standard forms of restriction is to take account of requests for restrictions in these terms being commonly made. The fee for entry of a standard form of restriction is less than the fee for an application for entry of a non-standard form of restriction. Other benefits of a restriction being a standard form of restriction are that the applicant does not need to satisfy the Chief Land Registrar that the terms are reasonable and he may apply for it in prescribed forms of transfer and certain charges, rather than in the separate form (Form RX1) usually required, and, in certain cases, may apply for it electronically.

7.2 The Rules allow for additional applicants to be able to inspect, copy or obtain official copies of documents not generally available as of right. This is to make express provision for the work of the National Criminal Intelligence Service and the National Crime Squad. It is also to take fuller account of the Proceeds of Crime Act 2002 and to include holders of offices created by the Commissioners for Revenue and Customs Act 2005, or persons authorised by them.

7.3 Applicants applying under rule 140 of the Principal Rules for a search to be made in the Index of Proprietors' Names will often also want official copies of all registers identified in the results of that search. The Rules amend rule 140 to allow the request for these official copies to be made without using the Form OC1 generally required (and which, in fact, cannot be properly completed when lodged in these circumstances).

7.4 The definition of the term "conveyancer" in the Principal Rules and in the Principal Order does not include a notary public. The Notaries Society and individual notaries have raised this omission with Her Majesty's Land Registry and with the Department for Constitutional Affairs. Notaries are permitted to carry out conveyancing work for reward by the Solicitors Act 1974 (see section 22). The Rules and the Order amend the definition to include a notary public.

7.5 Bodies (or their representatives) who might be affected by the changes to standard forms of restriction, and those who might be affected by the additions to those entitled to inspect, copy or obtain official copies of documents not generally available as of right, have been consulted about the changes and additions. The Notaries Society have been consulted about the change to the definition of "conveyancer". Further details can be found in the Regulatory Impact Assessment.

7.6 The matters addressed by the Rules have given rise to some correspondence. However, the Rules are not considered to be of major political or legal importance.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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can answer any queries regarding the instrument.

Regulatory Impact Assessment

The Land Registration (Amendment) Rules 2005

The Land Registration (Proper Office) (Amendment) Order 2005

Introduction

The Land Registration (Amendment) Rules 2005 (the Rules) make amendments to the Land Registration Rules 2003 (the Principal Rules), which apply in England and Wales. Changes are required to allow for wider operation of rule 140 of the Principal Rules. The opportunity has been taken to make other amendments to the Principal Rules which will assist customers and Her Majesty's Land Registry in advance of a wider review of the Principal Rules.

A consequential amendment has been made to the Land Registration (Proper Office) Order 2003.

Objective

Rule 140 of the Principal Rules relates to applications in connection with court proceedings, insolvency and tax liability. It allows certain persons (qualifying applicants) access to information outside the general right of inspection under the land registration legislation, allows the Index of Proprietors' Names (IOPN) to be searched by qualifying applicants and excludes certain application forms and other documents from the general right of inspection under the land registration legislation.

The rules add as qualifying applicants additional persons who can apply for production orders, or who are receivers or administrators, under the Proceeds of Crime Act 2002 and the staff of the National Criminal Intelligence Service and the National Crime Squad. They make provision for the Commissioners for Revenue and Customs Act 2005. They also allow for a qualifying applicant simultaneously to request a search in the IOPN and request official copies of all registers identified in the results of that search.

The rules make modifications to some of the standard forms of restriction in Schedule 4 to the Principal Rules. These allow for the completion of a standard form of restriction to refer to only part of a registered estate and for certain standard forms of restriction to apply only until a calendar date specified in the restriction. The Legal Services Commission is added to the list of persons regarded as having a sufficient interest to apply for a specified restriction in certain circumstances. The rules also add some additional standard forms of restriction to give more flexibility to applicants.

The rules also add notaries public to the definition of a "conveyancer" in the Principal Rules. The Land Registration (Proper Office) Order 2003 which uses the same definition of conveyancer has been amended to reflect the change to the Principal Rules.

Risk Assessment

The risk assessment is heavily weighed in favour of implementing the changes to rule 140. If the changes are not implemented, investigating and prosecuting authorities and others with a legitimate need for information may not be able to obtain that information as of right without a court order, nor may they be able to restrict disclosure of their applications being made.

The additional restrictions all fulfil the requirements of section 42 of the Land Registration Act 2002 (the Act) which allows the registrar to enter a restriction in the register if it appears to him that it is necessary or desirable to do so for specific purposes such as preventing invalidity or unlawfulness in relation to dispositions of a registered estate.

The outcome is likely to be a small increase in the number of registered titles against which a restriction is entered and a small increase in the number of restrictions appearing against an individual title. The overall outcome is to provide some safeguard for one of the reasons mentioned above with minimal adverse effect in securing compliance.

Options

Option 1 – Do nothing

This leaves investigating authorities and others with a legitimate need for information possibly unable to obtain that information as of right without a court order, and unable to restrict the disclosure of their applications.

Those with a legitimate interest in a registered estate are required to bear additional costs in applying for a non-standard form of restriction compared to a standard form of restriction. They also have less flexibility in the method of applying for such a restriction.

Option 2 – Delay changes until after a wider review of the rules and consultation on all proposals

The effects under option 1 continue for some time to come.

Option 3 – Introduce the changes at the earliest opportunity

This is the preferred option. It addresses the problems which have been identified. It is not considered that these rules require wider consultation and they assist customers and Land Registry.

Policy Costs

There will be a small reduction in fee income to Land Registry as a result of changing some non-standard forms of restriction to standard forms of restriction. Also standard forms of restriction are generally processed by lower grade staff and may be applied for in prescribed forms of transfer and certain charges, rather than in the separate form (Form RX1) usually required and, in certain cases, may be applied for electronically, thereby reducing processing and storage costs.

Compliance costs

The costs of compliance with the additional restrictions is minimal – three of the restrictions require a certificate as to written notice having been given or as to a conveyancer being satisfied as to due execution of a document by a disponent and the fourth requires a consent from the Housing Corporation or the National Assembly of Wales, as appropriate.

It is considered that these requirements are proportionate to the protection of legitimate interests

Implementation costs

There will be some one-off costs associated with publicising and assimilating the changes. These will be relatively small for both customers and Land Registry.

Net costs will be negligible and in some cases there will be a cost benefit. This will be the case for example where a firm regularly applies for a non-standard form of restriction which will now be available as a standard form of restriction at a lower cost. Non-standard forms of restriction currently cost £80 per title to register. Standard forms of restriction cost £40 for the first three titles affected with an additional fee of £20 for each additional title affected. No fee is payable for a standard form of restriction when accompanied by certain other applications on which a fee is payable.

For Land Registry there should be a reduction in the volume of correspondence on the desirability of restrictions being added to the list of standard forms of restriction. There should also be reduced processing costs as applications for standard forms of restriction do not have to be considered individually to ensure that they comply with section 42 (power to enter) and section 43(3) of the Act (reasonableness of terms and being straightforward to apply).

Equality Impact

The rules address the effect of the previous definition of conveyancer which excluded those notaries who, as permitted by the Solicitors Act 1974, carry out conveyancing for reward and make land registration applications without being solicitors as well.

The changes to restrictions generally do not favour any one group. In the case of Diocesan Boards of Finance and the Legal Services Commission there are specific restrictions which reflect legislative provisions.

The changes relating to applications under rule 140 also reflect legislative provision as to appropriate persons. There is no change to the principles underlying who is entitled to apply under these provisions.

The changes do not have any different impact on rural areas.

The changes do not have any race equality impact.

Competition Impacts

There are no competition impacts.

Small firms and charities impact test

The cost for any firm is small. There is no disproportionate cost for small businesses or charities. The changes bring certainty that those restrictions which have become standard forms will be acceptable in form to Land Registry.

Review

We intend to carry out a wider review of the Principal Rules which is likely to result in public consultation within the next year. Any issues arising will be considered at that stage.

Consultation

We have not conducted a formal consultation. The changes are those which it is considered assist customers and Land Registry as evidenced by correspondence since the implementation of the Land Registration Act. We have corresponded with the Notaries Society about the proposals to amend the definition of a conveyancer and they have welcomed them. The Housing Corporation and The National Assembly for Wales as the bodies overseeing grant aid to Registered Social Landlords in England and Wales respectively have also approved the proposals so far as they specifically affect them. The Legal Services Commission and the Church Commissioners have accepted the wording of restrictions specifically affecting their interests. The appropriate representatives with an interest in applications under rule 140 of the Principal Rules have been consulted and their comments taken into account in the proposed changes.

Summary

Introducing the proposed changes offers tangible benefits within a short timescale without imposing any significant burdens.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....*Cathy Ashton*.....

Date 30th June 2005

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