

**EXPLANATORY MEMORANDUM TO THE  
LAND REGISTRATION (AMENDMENT) (No 2) RULES 2005**

**2005 No. 1982**

**LAND CHARGES (AMENDMENT) RULES 2005**

**2005 No. 1981**

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) (No 2) Rules 2005 (the Rules) amend the Land Registration Rules 2003 (the Principal Rules).

- 2.2 The amendments prescribe the form and content of "prescribed clauses leases", which are, with some exceptions, leases granted on or after 19 June 2006 out of a registered estate in land and required to be completed by registration; they provide for the entries which the registrar must make in respect of interests contained in leases granted on or after 19 June 2006 which are being completed by registration; they allow for an application for a standard form of restriction to be contained in prescribed clauses leases and certain other leases; they substitute a new Form AP1 for the existing one; and they take account of the Civil Partnership Act 2004.

- 2.3 The Land Charges (Amendment) Rules 2005 amend the Land Charges Rules 1974 to take account of the Family Law Act 1996 and the Civil Partnership Act 2004.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 Under the Land Registration Act 2002 ("the Act"), the Chief Land Registrar keeps a register of the ownership of land in England and Wales. More precisely, there is a register of the titles to legal freehold and leasehold estates in land (and several other types of estate). Not all land is yet registered but where it is there will be a registered title for each registered freehold or leasehold estate in land that exists in respect of that land. For each such registered title there is an individual register and  
plan.

- 4.2 A registered owner of land or of a charge has certain powers of disposition. For example, in the case of an owner, those powers include the power to transfer the

registered land, to charge it, to grant a lease out of it or to grant a right of way over it – the transfer, charge, lease and grant are all examples of “dispositions”.

4.3 In the case of certain dispositions (registrable dispositions – defined in section 132 of the Act) they must be completed by registration – they must be the subject of certain types of register entry, as provided by section 27 of, and Schedule 2 to, the Act – if they are to take effect in law. So, for example, if the registered owner of land grants a lease for ten years the tenant will only acquire a legal estate in land when he is registered as owner of the lease.

4.4 Section 27 of the Act provides that the grant of certain leases out of a registered estate in land, including leases for a term of more than seven years, are registrable dispositions. Section 25(1) provides that a registrable disposition only has effect if it complies with such requirements as to form and content as rules may provide.

4.5 A restriction is an entry in the register of title regulating the circumstances in which a disposition may be registered. So, if there is a restriction entered in the register, then a disposition covered by the restriction, generally, cannot be completed by registration unless the restriction is complied with. For example, if the restriction provides that no disposition of the registered estate by the registered proprietor is to be registered without the written consent of X, a lease for ten years by the registered proprietor could not (subject to one exception) be completed by registration without X’s written consent being lodged with the application to register the lease.

4.6 Part 4 of the Act makes provision concerning restrictions and provides that rules may prescribe standard forms of restriction – that is the wording of restrictions (with variables). Rule 91 of, and Schedule 4 to, the Principal Rules prescribe standard forms of restriction. The restriction referred to in 4.5 above is an example of a standard restriction (Form N). Generally, an application for a restriction must be made in Form RX1, but the relevant rule in the Principal Rules (rule 92) allows for several exceptions, when the application can be made in another document, provided that a standard form of restriction is being applied for.

4.7 Rule 13 of the Principal Rules provides that, with limited exceptions, an application made under the Act or the Principal Rules for which no other application form is prescribed must be made in Form AP1.

4.8 The Family Law Act 1996, as currently enacted, grants married people rights of occupation of the matrimonial home; these rights are called “matrimonial home rights”. Section 31 of that Act makes them a charge on the estate or interest of the other spouse in the home, which, if the other spouse’s estate is the legal estate, can, in the case of registered land, be the subject of a notice in the register under section 32 of the Act or, in the case of unregistered land, be registered as a class F land charge (as explained at 4.9 below). The Civil Partnership Act 2004 creates the new concept of a civil partnership, which is a status that can only be entered into by two people of the same sex. The Civil Partnership Act 2004 amends the Family Law Act 1996 to extend matrimonial home rights to civil partners and renames the rights “home rights”.

4.9 Under the Land Charges Act 1972 (the 1972 Act) the Chief Land Registrar maintains five registers and an index recording certain rights (“land charges”) and other matters relating to *unregistered* land and to individual insolvency. Currently, matrimonial home rights are a class F land charge. Broadly, the Act provides that registration protects the land charges and matters as against the purchaser of the affected land. The Land Charges (Amendment) Rules 2005 amend the Land Charges Rules 1974. Both sets of Rules are made under the 1972 Act.

## **5. Extent**

5.1 These instruments apply to England and Wales.

## **6. European Convention on Human Rights**

6.1 Not applicable

## **7. Policy background**

7.1 The consultation paper issued by Land Registry in August 2002 on what became the Principal Rules contained a proposed standard form of lease which would have been required for any lease the granting of which was a registrable disposition. The stated purposes were to facilitate quicker and more accurate registration (Land Registry currently receives around 900 applications every day for the registration of new leases granted out of registered estates) and to prepare for e-conveyancing. In the consultation paper issued by Land Registry in September 2004, *Presentation of prescribed information in registrable leases*, the proposal was changed to a proposal for either a front sheet in a standard format or prescribed clauses at the beginning of the lease. The same information was required by both the front sheet and the prescribed clauses. The consultation and certain of the responses are discussed in the Regulatory Impact Assessment.

7.2 Having taken into account the response to consultation, the Rules adopt the prescribed clauses alternative and ask only for information that is required for registration purposes. The more recent consultation paper proposed a provision to the effect that in the event of any conflict between the information in a prescribed clause and any other part of the lease, the prescribed clause should prevail. This conflict provision proved to be the most contentious of all the proposed prescribed clauses, with strong views expressed both in favour and against. The provision has now been taken out as a prescribed clause in itself; it is applied instead only to the prescribed clause identifying the demised property and is expressed to be “for the purposes of registration”. For a number of reasons, including the greater likelihood of significant inconsistency, this was thought to be the only prescribed clause in which a conflict provision was still necessary.

7.3 The Rules provide that the registrar on completing a lease by registration must make certain entries in the register but that he need not take such action in respect of any interest which has not been set out or referred to in a prescribed clause but should have been.

7.4 The new Form AP1 is intended to address complaints that, since the abolition of land and charge certificates, Land Registry do not issue any documentation to the transferor or lessor on completion of registration of a transfer or lease of part of a registered estate. The new Form AP1 allows applicants to give the name and address of the owner of the transferor or lessor (or any other person), so that notification of completion can be sent to them. The new Form AP1 also distinguishes more clearly between the applicant and the person lodging the application (normally a conveyancer), which should lead to fewer requisitions being required.

7.5 The Rules also amend the Principal Rules and several Land Registry forms to take account of the changes which will be introduced by the Civil Partnership Act 2004.

7.6 The Land Charges (Amendment) Rules 2005 amend the Land Charges Rules 1974 to take account of the Family Law Act 1996 and the Civil Partnership Act 2004 . This includes the prescribing of new forms for applications to register, renew and cancel land charges relating to home rights.

7.7 The proposed introduction of prescribed clauses in leases has attracted a high level of interest amongst conveyancers. However, the provisions concerning prescribed clauses as they now appear in the Rules are not considered to be of major political or legal importance, nor are any of the other provisions in the Rules and Land Charges (Amendment) Rules 2005.

## **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.