

EXPLANATORY MEMORANDUM TO
THE LAND REGISTRATION (AMENDMENT) RULES 2009

2009 No. 1996

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. **Purpose of the instrument**

2.1 The Land Registration (Amendment) Rules 2009 (the rules) amend the Land Registration Rules 2003 (the principal rules) consequential on the coming into force of secondary legislation made under the Companies Act 2006 (the 2006 Act). The amendments make provision concerning the registration of charges by overseas companies and provide an additional form of execution by limited liability partnerships (LLPs).

2.2 The rules also change the references to "registered number in England and Wales" to "registered number in the United Kingdom" in forms and prescribed clauses for leases to take account of new arrangements for registering overseas companies.

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

3.1 None.

4. **Legislative Context**

4.1 Under the Land Registration Act 2002 (the 2002 Act), the Chief Land Registrar is under a duty to continue to keep a register of title to legal estates in land (in particular, freeholds and leases having more than seven years to run) and several other types of estate, including charges (in other words, mortgages).

4.2 A registered owner of land or of a charge has certain powers of disposition under the 2002 Act. In the case of an owner of land, these powers include the power to grant a lease or charge. Certain dispositions, such as a transfer, many leases and the grant of a legal charge, must be completed by registration and do not take effect in law until this has been done. Almost all leases that have to be completed by registration must contain certain prescribed clauses.

4.3 The rules are made under the 2002 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

(i) Provision concerning the registration of charges by overseas companies

7.1 The 2006 Act contains provisions relating to the registration of charges created by UK and overseas companies. This registration is with the Registrar of Companies, and is additional to the requirement under the 2002 Act to complete charges by registration in the register of title kept by the Chief Land Registrar.

7.2 For UK companies, the new provisions essentially restate the regime under the Companies Act 1985 and equivalent Northern Ireland legislation. Broadly, most charges created by UK companies over their property must be delivered to the Registrar of Companies for registration within twenty-one days of being created. The effect of non-registration is that the charge is void against the liquidator, administrator or creditors of the company. This regime also applies to LLPs. Land Registry's practice has been to enter a warning note in the register of title when registering a legal charge if evidence of registration by the Registrar of Companies is not produced. The entry of the note is required by rule 111 of the principal rules.

7.3 The 2006 Act contains a power for the Secretary of State to make regulations requiring overseas companies to register particulars with the Registrar of Companies. The Overseas Companies Regulations 2009 will require overseas companies that have an establishment in the UK to register particulars. The 2006 Act contains a further power for the Secretary of State to make regulations requiring overseas companies that have registered particulars also to register with the Registrar of Companies charges affecting their property in the UK. The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 were made under this power. The effect of non-registration will be the same as for UK companies: the charge will be void against a liquidator, administrator and creditors. Both sets of regulations are due to come into force on 1 October 2009.

7.4 The new rule 111A will come into force on the same day. It requires applicants registering a charge created by an overseas company to supply evidence that the charge has been registered under the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009 or to

state that the charge, when created, did not require to be so registered. If this is not done, the Chief Land Registrar is obliged by the rule to enter a note in the register to the effect that no evidence has been lodged either that the charge has been registered under the regulations or that such registration was not required. "Overseas company" is defined in the principal rules in the same way as it is in the 2006 Act: as a company incorporated outside the United Kingdom.

(ii) References to registered numbers

7.5 UK companies are incorporated either in England and Wales, in Scotland or in Northern Ireland, and registered accordingly in Cardiff, Edinburgh or Belfast. Overseas companies are currently registered in each jurisdiction in which they have an establishment, so such a company might have up to three registered numbers – a registered number for each of the three jurisdictions. From 1 October 2009, however, there will be a single UK-wide register for overseas companies with an establishment here. As a result, several of the forms in Schedule 1 to the principal rules will need to be changed. These forms ask, when the application involves an overseas company, for the "Registered number in England and Wales including any prefix". The rules amend the relevant forms to substitute "United Kingdom" for "England and Wales". They make the same amendment to the instructions for prescribed clauses for leases contained in Schedule 1A to the principal rules.

(iii) Additional form of execution by LLPs

7.6 The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 apply section 44 of the 2006 Act (execution of documents) to LLPs in a modified form so that a document is validly executed by an LLP if it is signed on behalf of the LLP by two members, or by a member in the presence of a witness who attests. These regulations are also to come into force on 1 October 2009. The second method of execution is new and so the rules amend Schedule 9 (Forms of Execution) to the principal rules to make provision for it. They also make a number of minor changes to the Schedule.

Consolidation

7.7 The Land Registry website already contains a consolidated version of the principal rules showing the net effect of amending legislation up to and including the Land Registration (Amendment) Rules 2008. This consolidated version of the principal rules will be updated to take account of the rules, and the updated version will be available on the website from 1 October 2009.

8. Consultation outcome

8.1 The following were specifically consulted: the Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills), British Bankers Association, Building

Societies Association, Companies House, Council of Licensed Conveyancers, Council of Mortgage Lenders, General Council of the Bar, Insolvency Practitioners' Association, Insolvency Service, Institute of Legal Executives, Law Society, Ministry of Justice and Notaries Society. The consultation (which was in letter form) was also published on Land Registry's website and responses could be made online.

8.2 The consultation period ran for three weeks and ended on 12 June 2009. A longer consultation period was not possible. It was not feasible to issue the consultation letter earlier because the form of the secondary companies legislation on which the rules were partially dependant was not sufficiently settled. And this secondary legislation was planned to come into force on 1 October 2009, so the rules needed to come into force at the same time. For this to happen, time had to be allowed, following consultation, for the rules to be considered by the Rule Committee, made by the Minister and, ideally, laid before Parliament before the recess – so on or before 21 July.

8.3 Four responses to the consultation were received, and none disagreed with what was proposed. Further details are given in the report on the responses to the consultation, which is available on Land Registry's website: http://www1.landregistry.gov.uk/assets/library/documents/LRR2009_report_on_responses_to_consultation.html

8.4 Subject to the point made in the following paragraph, the amendments consequential on the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 were not the subject of consultation. Consultation was not considered necessary as the amendments simply added an alternative form of execution for LLPs. Also, these regulations were only published in draft after consultation on the rules had already started.

8.5 The rules are made with the advice and assistance of the Land Registration Rule Committee. The Rule Committee has met and approved them in draft. Consideration of rules by the Rule Committee is a form of consultation because the Committee includes members appointed, respectively, by the Law Society, the Council of Mortgage Lenders, the Council for Licensed Conveyancers, the Royal Institution of Chartered Surveyors, and the Bar Council, and also a person with experience in, and knowledge of, consumer affairs appointed by the Lord Chancellor. (The remaining members are a High Court Judge and the Chief Land Registrar.)

9. Guidance

9.1 Land Registry has a page on its website stating that the rules have been made and are to come into force on 1 October 2009, explaining the nature of the amendments effected by the rules, referring readers to the general OPSI website for copies of the rules and adding that a consolidated version of the principal rules, taking account of the rules, will be available on the website from 1 October 2009.

9.2 The Land Registry Practice Guides affected by the rules will be updated, either by way of new editions or addenda, before 1 October 2009.

9.3 Updated versions of the forms prescribed by the principal rules and affected by the rules will be available on Land Registry's website, and publishers of the forms will be informed of the changes, before 1 October 2009.

10. Impact

10.1 The impact on business, charities and voluntary bodies is insignificant.

10.2 The impact on the public sector is insignificant.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business, as it does to all making applications to Land Registry involving overseas companies or LLPs.

11.2 To minimise the impact of the amendments on conveyancing firms employing up to 20 people, which are the small businesses likely to be most immediately affected, as well as minimising the impact on others, Land Registry is taking the steps outlined in section 9 above. In addition, as long as the application for which a form is used does not relate to an overseas company, the current version of the form can continue to be used even if that form is one of those amended by the rules; and as long as an overseas company is not a party to a prescribed clauses lease, the current version of the prescribed clauses can be used.

12. Monitoring and review

12.1 Land Registry will monitor the working of the amendments (as it continually monitors all its practice), and will take appropriate steps to deal with any difficulties that are identified.

13. Contact

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