

**EXPLANATORY MEMORANDUM TO**  
**THE LAND REGISTRATION ACT 2002 (AMENDMENT) ORDER 2008**

**2008 No. 2872**

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 This Order adds two new events to those that presently trigger the compulsory first registration of title to land under section 4 of the Land Registration Act 2002 ("the Act"). It also makes a consequential amendment to section 7 in relation to one of these new triggers.

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

3.1 This is the first occasion when the Lord Chancellor has exercised his power under section 5(1)(a) of the Act to amend section 4.

4. **Legislative Context**

4.1 Under the Act, the Chief Land Registrar continues to keep a register of the title to (that is, ownership of) land in England and Wales. Not all this land is yet registered.

4.2 Section 4 of the Act lists the events that trigger compulsory first registration of title to land. The Lord Chancellor, after consultation, may add new events to those currently listed in section 4 by making an order under section 5(1)(a) amending that section, and may make such consequential amendments under section 5(1)(b) as he thinks appropriate of any provision of the Act. This is the first occasion when the Lord Chancellor has exercised his powers under section 5(1).

4.3 Under section 6, the owner of a freehold estate in land or of a leasehold estate which has more than seven years to run must apply for first registration of their title within two months of the transfer, grant or legal charge which has triggered compulsory registration, although the registrar has a discretion under section 6(5) to make an order extending that period.

4.4 Section 7 provides that if the application for first registration is not made within two months (or such longer period as the registrar may have allowed by an order under section 6(5)), the transfer, grant or charge of the legal estate becomes void. In the case of a transfer, the legal estate reverts to the transferor who then holds it on a bare trust for the transferee.

## 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

## 6. European Convention on Human Rights

6.1 Michael Wills MP, Minister of State, Ministry of Justice, has made the following statement regarding Human Rights:

In my view the provisions of the Land Registration Act 2002 (Amendment) Order 2008 are compatible with the Convention rights.

## 7. Policy background

- *What is being done and why*

7.1 This Order introduces two new events, to be known as the “new trustee trigger” and the “partition trigger”, that will trigger compulsory first registration of title under the Act. The new trustee trigger is in two parts. The first limb (in new paragraph (aa)(i) of section 4(1) of the Act), applies when land vests in a new trustee by deed. This may be the deed that appoints the new trustee, if it contains an express vesting declaration, or one that is implied into it by section 40(1) of the Trustee Act 1925, or a conveyance or assignment by deed to the new trustee following their appointment. This limb also applies when land vests in a new trustee under section 83(2) of the Charities Act 1993 under a memorandum evidencing their appointment by resolution, if executed as a deed. The second limb (in new paragraph (aa)(ii) of section 4(1)) applies when the High Court or a county court makes an order under section 44 of the Trustee Act 1925 vesting land in a new trustee. The partition trigger applies when land held on trust is partitioned between the beneficiaries of the trust.

7.2 It also amends section 7(2) by providing, in relation to the new trustee trigger, for what happens if the application for first registration is not made in time: the legal estate reverts to the person(s) in whom it was vested immediately before the transfer. (An existing provision (section 7(2)(a)), whereby the legal estate reverts to the transferor on bare trust for the transferee, will apply to the partition trigger.)

7.3 The Order is being made so that Land Registry can increase progress towards the creation of a comprehensive land register for England and Wales, which is one of its strategic objectives. The “comprehensive land register” will include the majority of freehold land forming the surface of England and Wales. Currently 67 percent of the land in England and Wales is registered and there are approximately 22 million registered titles, of which over 17 million are freehold.

7.4 Land Registry considers the best way to make progress towards a comprehensive land register at this time is to add the new trustee trigger and the partition trigger to the current triggers, whilst continuing its policy of encouraging and facilitating voluntary first registration of title under section 3.

7.5 The joint Law Commission and Land Registry Consultation Document *Land Registration for the Twenty-first Century: A Conveyancing Revolution (Law Com 271)*, which contained the draft Bill for the Act, stated: “We consider that, in principle, the

remaining unregistered land should be phased out as quickly as possible and that all land in England and Wales should be registered ... [T]he continuation of two parallel systems of conveyancing, registered and unregistered has absolutely nothing to commend it.” It went on to explain, at paragraphs 2.10 to 2.12, why the Bill did not introduce compulsory registration of all remaining unregistered land in England and Wales. It recommended, at paragraph 2.13, that ways in which all remaining unregistered land might be brought onto the register be re-examined five years after the Land Registration Act 2002 came into force (on 13 October 2003). Ministers adopted this recommendation in the parliamentary debates on the Bill<sup>1</sup>.

7.6 The Order is the outcome of a review by Land Registry of possible ways of introducing a programme of compulsory registration of remaining unregistered land in England and Wales and the addition of further events as potential triggers for compulsory registration under section 4 of the Act.

7.7 In its review, Land Registry identified a possible staged programme of compulsory registration. However, compulsory registration without trigger events would require primary legislation and this would be unlikely to be enacted in the short to medium term. Land Registry has not, therefore recommended the compulsion route to the Lord Chancellor at this time, although it remains a possibility in the longer term.

7.8 Also as part of this review, Land Registry considered a number of events not already listed in section 4(1) as potential new triggers. Most of these were rejected as potential triggers either because there would be no suitable sanction that could be introduced if the owner did not apply for first registration in time, or because they would require primary legislation being “events” that would not relate to the legal estate as required by sections 5(1)(a) and 5(2). Only, the new trustee trigger and the partition trigger were considered to be suitable events within sections 5(1)(a) and 5(2).

- ***Consolidation***

7.9 As the Order amends primary legislation the question of consolidation does not arise. However, Land Registry has published on its website an informal consolidated version of sections 4 and 7 of the Act which shows the changes that will be made by the Order: [www.landregistry.gov.uk](http://www.landregistry.gov.uk), and follow the appropriate links from “Consultations” on the right-hand side of the webpage.

## **8. Consultation outcome**

8.1 On 19 November 2007 Land Registry, on behalf of the Lord Chancellor, published a consultation paper seeking views on the proposals to introduce the new trustee trigger and the partition trigger. The consultation ran for 15 weeks and closed on 29 February 2008. It was published in paper form and on Land Registry’s website, and it was publicised in *Landnet* (Land Registry’s magazine for practitioners) and in a press release issued immediately before the consultation. Each of its 16,000 credit account customers were individually invited to participate, and information about the consultation was also automatically included in results of official searches of the register, Land Charges searches and automated acknowledgements of applications. Also, because

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<sup>1</sup> At the Committee Stage in the House of Lords on 17 July 2001 (Hansard (HL), vol 629 cols 191 and 192) and in the debate in the House of Commons Standing Committee D (Third Sitting) on 13 December 2001 (Hansard (HC), cols 65 and 66).

section 5(4) provides that the Lord Chancellor must, before making an order adding to the events in section 4 which trigger compulsory first registration, consult such persons as he considers appropriate, Land Registry sent copies of the consultation paper to 61 key stakeholders, being a wide range of Government Departments, regulatory bodies and representative bodies.

8.2 Land Registry received a total of 80 replies to the consultation document. The overall response was favourable. Land Registry's report on the consultation, with details of its response to the issues raised is available on Land Registry's website: [www.landregistry.gov.uk](http://www.landregistry.gov.uk), and follow the appropriate links from "Consultations" on the right-hand side of the webpage.

8.3 Approximately 75 per cent of respondents made no comment on, or agreed with, the first limb of the proposed new trustee trigger. Although the Charity Commission in its response supported both limbs of the new trustee trigger, concerns were raised both by the Commission and others, on behalf of small unincorporated charities in particular, about the cost of applying for first registration. As a result, Land Registry considered whether to introduce an exemption for small charities, but decided not to, because of the difficulty in formulating a reliable exemption and also because most charity trustees can avoid the trigger by other means, such as by applying to the Charity Commission for an order vesting their land in the official custodian for charities. (The Charity Commission does not charge for vesting orders and the official custodian does not charge for his services.)

8.4 In respect of the second limb of the new trustee trigger, nearly 83 per cent either did not comment or supported the proposal. Again concerns were raised about the additional expense of applying for first registration and also about the possibility that the requirement for registration might be overlooked. Land Registry considers that the costs of applying for first registration would not significantly increase the overall costs of an application for a vesting order by the court. The new triggers will be widely publicised and because it is anticipated that solicitors will normally be involved in such an application registration is unlikely to be overlooked, and even if it were, the registrar would be likely to exercise the discretion to extend the period for registration.

8.5 The consultation version of the draft Order included a third limb of the new trustee trigger, where land vests in a new trustee of a trade union or of an unincorporated employers' association by an instrument in writing rather than by deed, where section 13 of the Trade Union and Labour Relations (Consolidation) Act 1992 applies. Approximately 80 per cent of respondents either did not comment or agreed with this proposal. However, the TUC did not support it and there is real possibility the requirement for registration might be overlooked where the appointment is not by deed and where solicitors were unlikely to be involved. The third limb has been removed from the Order.

8.6 87 per cent of respondents either did not comment on or else supported the proposal for the partition trigger. The work and costs involved in applying for first registration were also raised, together with the possibility that the requirement for registration might be overlooked. However, solicitors normally investigate the trustees' title and prepare the deed of partition giving rise to costs in any event.

## **9. Guidance**

9.1 Land Registry will issue a Press Release when the Order is laid, and information about the new triggers will be added to its website at that time. Relevant Practice Guides will be updated and an article will be published in *Landnet*.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is possibly significant. This is because charities and voluntary bodies will often have trustees, as will small businesses where there is land held on trust (which would normally be the case with a partnership), and where there are trustees there is clearly the possibility of the new trustee trigger operating.

10.2 The impact on the public sector is likely to be negligible, as it is unlikely that either of the new triggers will be relevant in this context.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that Land Registry has contacted a selection of professional bodies and trade associations at the suggestion of the Small Business Service as part of the consultation process. However, Land Registry received no comments about the impact of the proposed new triggers on small businesses.

11.3 The new triggers have the same impact on affected small businesses as they do on those voluntary bodies and charities which are affected. Initially there will be costs on first registration including Land Registry fees and conveyancers' charges. It is considered these costs are proportionate to the benefits that registration of title can provide, such as an underpinning by the State of the registered owner's title, simplified conveyancing and greater protection against adverse possession than applies to unregistered land. Therefore no particular action has been taken to minimise the requirement for registration under the Order in relation to small businesses.

## **12. Monitoring & review**

12.1 As stated in the Impact Assessment "Effect of the triggers", the intended outcome of the Order is to make a significant contribution towards achieving the comprehensive register, by bringing nearly one million additional hectares of land onto the register, in a managed way, by 2013. Land Registry, through its Register Development Group continually monitors progress towards the comprehensive land register. If at any point it became apparent that Land Registry was not going to achieve this outcome, the matter would be reviewed.

### **13. Contact**

Susan Rabas at Her Majesty's Land Registry, Tunbridge Wells Office, Forest Court, Forest Road, Tunbridge Wells TN2 5AQ Tel: 01892 774463 or email: [sue.rabas@landregistry.gsi.gov.uk](mailto:sue.rabas@landregistry.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HM Land Registry</b>	<b>Title:</b> <b>Impact Assessment of Comprehensive Land Register Triggers</b>	
<b>Stage: Post Consultation</b>	<b>Version: 8.7</b>	<b>Date: 30 October 2008</b>
<b>Related Publications:</b> <b>Consultation Document and Consultation Report</b>		

**Available to view or download at:** [www.landregistry.gov.uk](http://www.landregistry.gov.uk) and follow the appropriate links from "Consultations" on the right-hand side of the webpage

**Contact for enquiries:** Elaine Ball

**Telephone:** 01752 636148

### What is the problem under consideration? Why is government intervention necessary?

The need to bring the benefits of registered land to the maximum number of property transactions and supporting the introduction of e-conveyancing require a comprehensive land register. Existing triggers for compulsory registration coupled with voluntary registrations will not achieve this in the foreseeable future. Intervention is necessary to increase progress towards a comprehensive land register over a reasonable timescale and in a managed way.

### What are the policy objectives and the intended effects?

To increase the coverage of registered land. The intended effect will be to double the amount of new land added to the register over the first 5 years following introduction. If this is the effect the new triggers would add over 7% to the area of land registered by April 2014.

### What policy options have been considered? Please justify any preferred option.

- 1.No additional triggers – continue to encourage and support voluntary registration.
- 2.Make it compulsory under the Land Registration Act 2002 (LRA 2002) to register land when vested in a new trustee or partitioned among beneficiaries of a trust. This should result in significant progress towards the objective whilst being manageable for Land Registry to support.
- 3.Compulsory registration without a triggering event – too much land remains unregistered to make this a viable option at present.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Land Registry, Register Development Group will review annually after the successful introduction of the new triggers as part of the the Land Registry's monitoring of geographical coverage.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a)it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

Michael Wills .....Date:6<sup>th</sup> November 2008

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Go ahead as proposed with the two new triggers (RECOMMENDED)**

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	<b>One-off</b> (Transition)	<b>Yrs</b>		
	£ 192,000	1		Land Registry staff costs - £151,000
	£1,616,327	5		Land Registry overheads - £41,000
	<b>Average Annual Cost</b> (excluding one-off)			Client costs (one off) - £1,616,327
		Clients costs (average annual) - £856,800		
£ 856,800	5	Total cost - £12,557,635 less discount rate of 3.5% (deflator)		
		<b>Total Cost (PV)</b>	<b>£ 11,749,118</b>	
Other <b>key non-monetised costs</b> by 'main affected groups'				
First Registration costs and compliance costs				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	<b>One-off</b>	<b>Yrs</b>		
	£	1		
	<b>Average Annual Benefit</b> (excluding one-off)			Total Benefit - £15,000,000 less discount rate of 3.5%
	£3 million	5		
		<b>Total Benefit (PV)</b>	<b>£ 14,019,238</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups'				
See evidence base information Client costs and benefits and Compliance costs page 6 & 7, Adverse Possession page 7.				

### Key Assumptions/Sensitivities/Risks

See evidence base information Option 2 pages 5, 6 & 7.

Price Base Year 2007	Time Period Years 5	<b>Net Benefit Range</b> (NPV) <b>£±£3 million</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ 2,270,120</b>
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	6 April 2009			
Which organisation(s) will enforce the policy?	HM Land Registry			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 90	Small 200	Medium 500	Large 1000
Are any of these organisations exempt?	No	No	N/A	N/A

**Impact on Admin Burdens Baseline** (2005 Prices)

(Increase - Decrease)



Increase of	£ 0	Decrease	£ 0	Net Impact	£ 0
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Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

### Contents

Policy Options

Option 1

Option 2

Option 3

Public Consultation to date

The proposed changes

Specific Impact Tests

### Policy options

There are three options open to Land Registry.

#### Option 1 – Do nothing/Voluntary registration

This avoids any additional burden on landowners to register their land.

If Land Registry continues with the current triggers for compulsory registration this will gradually extend geographic coverage of registered land.

Land Registry would continue to encourage voluntary registration.

Figures for first registration applications received over a 12 month period until 31 March 2006 amount to 304,461 of which 109,708 were voluntary registrations (**36.03%**)

Based on the year 2007/2008 the amount of additional geographical coverage was increased by 550,000 hectares, the amount of additional (or new) land expected to be registered is projected to decline by approximately 30% each year as more land becomes registered.

	Hectares Voluntary	Hectares Compulsory
Year 1	261,500	104,000
Year 2	183,500	72,800
Year 3	128,100	51,000
Year 4	89,700	35,700
Year 5	62,800	25,000
<b>Total</b>	<b>725,150</b>	<b>288,500</b>

However, there are potential costs for the owners of unregistered land, as they are at greater risk of successful claims for adverse possession ('squatter's rights'). (See 'Adverse Possession' on page 7) Currently farmland in England and Wales is worth about £10,125 per hectare and land with planning permission about £3,120,000 (£12,280,000 for inner London) per hectare (*Information obtained from Valuation Office property market website*).

This option means that some land will never come onto the register and the progression to the comprehensive register will be slow. It will be necessary to continue to have two methods of conveyancing (registered and unregistered) running side by side. **For these reasons we do not recommend this option.**

## Option 2 – Go ahead as proposed with the new triggers

### The 'new trustee trigger'

The proposed trigger “Appointment of new trustees” is expected to make a significant impact towards the achievement of the comprehensive land register<sup>2</sup> and increasing total geographic coverage in England and Wales. Trusts of all sizes where land is vested in individual trustees will be affected.

Registration will assist trustees of smaller trusts to ensure that their legal ownership is safely recorded. Trustees and administrators of large estates or property portfolios will benefit from having the information readily available for managing the trust's land holdings and keeping track of the land in the trust's ownership. Sales would be more efficient and would benefit from reduced legal fees and less documentation.

### The 'partition trigger'

It is a fairly uncommon event for land held in trust to be partitioned. In general, partition is only likely where a trust has a limited number of easily identifiable beneficiaries. It is felt that the partition trigger would not lead to either a significant increase in the number of titles requiring registration or to a significant increase in the geographical coverage of registration.

An example of partition might be where land has been owned and farmed by a family partnership but where one partner is allotted a specific part of the land to own outright and farm separately in place of his previous share in the partnership land.

Land may be partitioned and conveyed to a beneficiary in place of either the whole or part of his share in the trust. In cases where the value of the land conveyed exceeds the value of the beneficiary's share and a balancing payment is made, the conveyance would trigger registration already under the current legislation.

A deed is needed to give effect to the partitioning of land which would, in most cases, be prepared by a professional conveyancer. The conveyancer would then investigate the trust's title before preparing the deed of partition and it would then be lodged for registration.

The benefits of introducing the partition trigger alone would not justify the need to consult and implement the necessary legislation. It is therefore appropriate to introduce this trigger at the same time as introducing the recommended new trustee trigger.

### Effect of the triggers

66% of land is currently registered. The remaining 34% of unregistered land amounts to approximately 5.2 million hectares, 3.5 million hectares of which are estimated to be owned by landed estates. Based on an analysis of intakes over a 5 year period from 2001 statistics show that 52.5% of landed estates are held in trust, and 60% of them will appoint a new trustee within 5 years. On the assumption that the estates registered would be a cross section of sizes this will equate 1.1 million hectares of land that is likely to be compulsorily registered in the first 5 years from landed estates alone. Although some of these might have voluntarily registered during that period in any event the assessment excludes land held in trust other than by landed estates. We anticipate that this land will compensate for land that would have been voluntarily registered so that the figures quoted represent genuinely additional land. This would make a significant contribution towards achieving the comprehensive register, by bringing nearly a million hectares onto the register within 5 years that would not have been otherwise. For a comparison the counties of Devon and Cornwall combined amount to 1.027 million hectares.

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<sup>2</sup> Definition: The Comprehensive Land Register will include the majority of freehold land forming the surface of England and Wales.

The register need not include leasehold land although we would expect to register those leasehold interests where the leasehold title (as opposed to the freehold title) is the valuable interest. The register need not include the seabed and the foreshore; land where the owner cannot be identified; and roads, rivers, and other physical features where ownership is not determined by registration. Finally, rentcharges and certain rights that cannot be registered, such as the right to fish or hold a market, also need not be included in the Comprehensive Land Register

	Without Trigger Million ha reg'd	Percent	With Trigger Million ha reg'd <sup>3</sup>	Percent
August 2008	10.17	66.00%	10.17	66.00%
August 2009	10.54	68.40%	10.76	69.82%
August 2010	10.80	70.08%	11.24	72.93%
August 2011	10.98	71.25%	11.64	75.54%
August 2012	11.11	72.10%	11.99	77.81%
August 2013	11.30	72.68%	12.30	79.82%

The trigger will allow Land Registry to approach the comprehensive register more quickly, but in a managed way.

**For these reasons this is the recommended option.**

### Option 3 – Compulsory registration without a trigger event

Compulsion is considered to be a long-term possibility that is likely to be essential if full geographical coverage of the register is ever to be achieved.

As with Option 2 initial costs will be solicitor and registration costs. Once land is registered, there is no need for repeated lengthy and costly examination of the title deeds on sales and other dealings with the land. As a result the work involved in any dealing with the land after registration is simpler meaning the legal costs involved are reduced accordingly.

The changes would go some way to reducing the administrative burden on customers.

However, compulsion is not desirable because too much land remains unregistered to make this a viable option at the present time; the new triggers combined with our existing triggers and our continued policy of encouraging and facilitating voluntary first registrations will help us achieve our longer-term strategic objective to create a comprehensive register for England and Wales. **For these reasons we do not recommend this option at the present time.**

### Public consultation to date

The extension of triggers for compulsory registration of title was the subject of consultation with Land Registry stakeholders in the past. In relation to the former triggers under the Land Registration Act 1925, Land Registry published a consultation document in 1992 called '*Completing the Land Register in England and Wales*'. Analysis of the responses to that consultation led to the Law Commission report '*First Report of a Joint Working Group on the Implementation of the Law Commission's Third and Fourth Reports on Land Registration*' (1995) *Law Com No 235* which prefaced the Draft Land Registration Bill 1997 and resulted in the introduction of transfers pursuant to a court order as a new trigger under the Land Registration Act 1997.

**Law Commission report 271 'Land Registration for the Twenty-first century' (2001)**, commented in paragraph 3.15 that the dual system was "absurd" and should be brought to an end as soon "as is reasonably practicable". Furthermore, it recommended (paragraph 2.13) a review five years after the LRA 2002 came into force to re-examine the ways unregistered land could be brought onto the register.

On 19 November 2007 Land Registry, on behalf of the Lord Chancellor, published a consultation paper seeking views on proposals to implement the two new triggers.

The consultation period closed on 29 February 2008 and a total of 80 responses were received. The findings from the consultation exercise inform the changes outlined in this document.

### The proposed changes

To make it compulsory under the LRA 2002 to register land when vested in a new trustee ('the new trustee trigger') or partitioned among beneficiaries of a trust ('the partition trigger'). It will involve the making of an order under section 5 of the LRA 2002 to amend section 4 of the LRA 2002 by adding two new triggers:

<sup>3</sup> This includes a third of voluntary applications (non-landed estates) and 252,000 hectares per year from landed estates

1. Where land vests in a new trustee by:

(a) a deed that appoints, or under s.83 of the Charities Act 1993 has effect as if it appointed, a new trustee, or is made in consequence of the appointment of a new trustee, or

(b) a vesting order of the court made under s.44 of the Trustee Act 1925 that is consequential upon the appointment of a new trustee.

('the new trustee trigger')

2. The partitioning of unregistered land held in trust amongst the beneficiaries of the trust

('the partition trigger')

## Rationale for government intervention

The land register is a valuable and authoritative record of unique and important information about ownership and interests in land. Land registration facilitates conveyancing and provides an underpinning by the State of a registered owner's title. Where land remains unregistered it can be difficult for owners of neighbouring properties to get information when any issues arise, such as rights of entry, easements or covenants. It will not be possible in the foreseeable future to deal fully with unregistered land by way of e-conveyancing. A comprehensive land register, which brings the maximum amount of land within the capability of a system of e-conveyancing, is therefore essential to the success of the current progression towards achieving Land Registry's aim of transforming the property transaction process and to "make property transactions easier for all". Where information about ownership is ever more important the land register in England and Wales needs to be comprehensive. If we are to achieve this within a reasonable timescale, legislation is the only way forward.

## Objective

To make progress in the drive for a comprehensive land register for England and Wales by making it compulsory for most trusts to register their land holdings on the appointment of new trustees or on partition. Making the land register as comprehensive as possible will allow the benefits of e-conveyancing to be maximised and will provide for more titles being underpinned by the State and valuable information on land ownership.

Many large estates are held on trust so that beneficial ownership passes without any change in the trustees holding the legal estate. When new trustees are appointed and acquire the legal estate there is no element of consideration or gift in the acquisition, so compulsory registration is not triggered under the current legislation. The objective of this proposal is to ensure that where any legal estate vests in new trustees in the circumstances specified, compulsory first registration will be triggered.

The partition trigger is unlikely to significantly increase the amount of land that would have to be registered, but it is a logical addition to the new trustee trigger and would clarify the current position, by providing that a transfer of a qualifying estate giving effect to a partition, on whatever terms, is an event which gives rise to compulsory registration.

## Enforcement, sanctions and monitoring

As a result of the latest public consultation which commenced on 19 November 2007, the making of an order under section 5 of the LRA 2002 to implement two new triggers with amendments to sections 4(1) and 7(2).

Monitoring the registration of land will remain in operation to ensure progress towards the comprehensive land register is maintained. Section 7 of the LRA 2002 sets out the effect of non-compliance with section 6 of the LRA. Where the requirement of registration applies application will have to be made within two months of the triggering event (or within such longer period as the registrar may have ordered under section 6(5)). If such an application is not made after the trigger event the transfer will be void: the legal estate reverting to the person in whom it was vested immediately before the transfer.

## Main sectors and groups affected

The categories of trust that are most likely to be affected include:

- Landed estates
- Charities
- Business partnerships
- Unincorporated sports and social clubs
- Certain trade unions and unincorporated employers' associations

The other sectors or groups affected include conveyancers, lenders and their representative bodies.

A wide set of organisations and bodies were consulted, as listed in the Consultation Paper and their replies have been the subject of detailed consideration and are summarised in the Consultation Report.

## Client costs and benefits

Initially trusts will incur first registration costs including Land Registry fees and solicitors' charges, when a new trustee is appointed. However, once the land is registered the costs of any subsequent dealings will be reduced, as the repeated, lengthy and costly examination of the title deeds would be unnecessary. Charities whose land is vested in the Official Custodian can avoid these subsequent dealing costs. Registration vests title and produces easy-to-read documents reflecting the contents of the paper title deeds. This simplifies conveyancing, making transactions easier and potentially less costly for all involved. Also the re-mortgage of land is usually cheaper for registered land as a mortgage or re-mortgage of unregistered land, if a first legal mortgage, triggers compulsory first registration and so attracts a full registration fee.

Land registration promotes an active land market and productive land use. It provides security of title and encourages the development of a mortgage market on which a functioning economy depends. The Charity Commission<sup>4</sup> together with The Baptist Union<sup>5</sup> and Lands Trust Association recommends registration for these reasons. Land Trust Association recommends registration, saying it will be cheaper in the future, see page 13 of their Occasional Paper No.10 at <http://www.landtrusts.org.uk/occasionalpaper10.pdf>. Members of regulatory and representative bodies would benefit also from the increased revenue the triggers would generate.

Local Authorities will benefit from ease of identification of landowners for planning purposes and compulsory purchase.

Registration promotes effective asset management, making estate management simpler because title information is kept on Land Registry's database.

Registration provides better protection against claims of adverse possession, making it easy to tackle both short and long-term occupation of land by squatters. Therefore, there are potentially considerable savings for customers in greater protection from squatters acquiring title by adverse possession (**see page 7**). Under the Land Registration Act 2002 ('LRA 2002'), the owner of registered land is better protected against squatters claiming adverse possession of their land than the owner of unregistered land. We estimate potential savings in the region of £3 million pa<sup>6</sup>.

## Charities

41,085 land owning charities have been identified by the Charities Commission<sup>7</sup>. 3,500 are registered in the Official Custodian for Charities. Using percentages of how often charities recruit new trustees<sup>8</sup> and using an approximation of 20,000 cases of unregistered land owning charities the following figures were summarised:

<b>1% change of trustee every 6 months</b>	<b>A</b>
<b>36% change of trustee every year</b>	<b>B</b>
<b>21% change of trustee 2-5 years</b>	<b>C</b>

<sup>4</sup> Report of Official Custodian of Charities 2005/6, page 8

<sup>5</sup> see [http://www.baptist.org.uk/resources/resource\\_downloads/204.pdf](http://www.baptist.org.uk/resources/resource_downloads/204.pdf) Churches Land Registration C21.

<sup>6</sup> Currently the number of first registration applications based on adverse possession of unregistered land for the year 2007/8 is 952 applications worth £11.715 million (this does not include cancelled applications). The figure is based on a quarter of successful applications being prevented.

<sup>7</sup> Source Freedom of Information request for ownership of land by charities from Charity Commission Direct

<sup>8</sup> RS1 – Trustee Recruitment, Selection and Induction – Annex A, B, C & D – Charity Commission for <http://www.charity-commission.gov.uk/publications/annexs.asp>

### Within 5 Years

	First Registration	Dealings
<b>A</b>	200	(9x200) = 1,800
<b>B</b>	7,200	(4x7,200) = 28,800
<b>C</b>	4,200	-
<b>Total</b>	11,600	30,600
	Using approximate first registration costs @£100 (Land Registration Fee Order 2006) this would equal <b>£1,160,000.</b>	Using approximate dealing costs @£40 (Land Registration Fee Order 2006) this would equal <b>£1,224,000.</b>

Together with transaction costs on 42,200 cases @ £100 for preparing the application for registration equal to £4,220,000 bringing a **net total of £6,604,000.** This is based on an average but individual costs will be relevant to the size and complexity of the land being registered and the state and condition of the records.

The transaction (dealings) costs however, would not be applicable if the land prior to the introduction of triggers was vested in the Official Custodian.

### Landed estates and agricultural land

Based on figures within "Who owns Britain" by Kevin Cahill, which are based on DEFRA's list of agricultural holdings, there are 24,547 land holdings of over 100 hectares. Using percentages of what is already registered, those not held on trust and for those not appointing a trustee for five years, the following figures are summarised:

Holdings over <b>100 ha</b>	24,547
Deduction of 40% for those already registered	14,728
Deduction of 47.5% for those not held on trust	7,732
Deduction of 40% for those not appointing a trustee for 5 years	4639
Using an average of £242 for Land Registration fees (Land Registration Fee Order 2006) – 4639 x £242	£1,122,638

Together with transaction costs on 4639 cases @ £1,000 for preparing the application for registration equal to £4,639,000, bringing a **net total of £5,761,638.** This is based on an average but individual costs will be relevant to the size and complexity of the land being registered and the state and conditions of the records.

### Compliance costs

Inevitably there will be costs to customers in the changes proposed, however these will be more than offset by the overall benefits that registration brings. The main costs will be first registration costs and initially additional costs incurred by conveyancers to explain details of the new triggers to their clients, we estimate that conveyancers would require an additional hour to do this.

### Adverse Possession

There is some public disquiet about the apparent ease with which squatters can acquire title to unregistered land by adverse possession. Registration of title improves security of title by providing registered proprietors with the assurance that they will be notified if their title is subject to an application for adverse possession.

The total number of applications of adverse possession of unregistered land received 2006/2007 has an approximate value of £12 million. The introduction of the triggers on best estimate would appear to have the potential of saving £3million a year.

### Background Information

Currently, an unregistered legal estate only becomes subject to compulsory registration when one of the events listed in section 4(1) of the LRA 2002 occurs. Section 5(1) of the LRA 2002 allows for the addition to the list of events that would trigger the compulsory registration of an estate. Title to land must be registered by the proprietor at Land Registry when it is subject to a 'triggering' event. Triggering events

include most transfers of freehold land and grants or assignments of leases having more than seven years to run, first legal mortgages of such land, and assents following death. Large areas of England and Wales have never been the subject of such an event and currently remain unregistered. As a result two systems of land ownership run side by side, unregistered and registered conveyancing.

## **Impact Tests**

### **Competition Assessment**

Affected markets are as shown at Sectors and groups affected. The competition filter test was completed with a majority 'no' answer, which suggests the proposal will have little or no significant effect on competition.

### **Small Firms Impact Test**

At the suggestion of the Small Business Service we contacted a selection of professional bodies and trade associations including conveyancers, surveyors and land agents and the British Chambers of Commerce as part of the consultation process to assess whether the proposal will have a significant or disproportionate impact on small businesses. No comments were made regarding the impact on small businesses.

The new triggers have the same an impact on affected small businesses as on voluntary bodies and charities which are affected. Initially there will be costs on first registration including Land Registry fees and conveyancers' charges. It is considered these costs are proportionate to the benefits that registration of title can provide, such as an underpinning by the State of the registered owner's title, simplified conveyancing and greater protection against adverse possession than applies to unregistered land. Therefore no particular action has been taken to minimise the requirement for registration under the Order in relation to small businesses.

### **Legal Aid and Administration of Justice Impact Test**

A vesting order under the 'new trustee trigger' becomes void under section 7 of the LRA 2002 where the transferee has not complied with the duty to apply for first registration within 2 months under section 6. In these circumstances the transferee might have to make a further application to the court for a fresh vesting order. Vesting orders may not be made void under section 7, because in most cases the registrar would exercise his discretion under section 6(5) (retrospectively if necessary) to extend the period for registration in such cases.

This is likely to have a minimal impact upon Legal Aid, the Courts and the Judiciary.

### **Sustainable Development, Carbon, Other Environment, and Health Impact Assessments**

Not applicable.

### **Diversity**

We have carried out an equality impact assessment screening and we do not believe that the proposals will affect any sector of society more than another and we do not believe that there are any significant race, gender or age issues involved in these proposals.

### **Human Rights**

It has been the policy of successive Governments to increase the geographic coverage in England and Wales, because of the benefits to society and to customers that land registration brings.

There is an element of compulsion by introducing the new comprehensive land register triggers but this is off set by the benefits of the state underpinning of title and provision for compensation for loss of rights of registered land; greater protection for registered owners and simplified conveyancing at reduced cost; and convenient and cheap access to information as to land ownership.

### **Rural Proofing**

Land Registration is a national system that is equally applicable to rural and urban areas, so no separate issues arise. Although because compulsory registration came to urban area first, unregistered land is more likely to be found in rural areas.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annexe