

EXPLANATORY MEMORANDUM TO

**THE LAND REGISTRATION (AMENDMENT) RULES 2011
2011 No. 1410**

AND

**THE LAND REGISTRATION (PROPER OFFICE) (AMENDMENT) ORDER 2011
2011 No. 1411**

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

2. Purpose of the instruments

2.1 The Land Registration (Amendment) Rules 2011 amend the Land Registration Rules 2003 (the Principal Rules).

2.2 The Land Registration (Proper Office) (Amendment) Order 2011 amends the Land Registration (Proper Office) Order 2010 (the Proper Office Order).

2.3 The amendments change the definitions of "conveyancer" in the Principal Rules and the Proper Office Order so that they are consistent with the provisions of the Legal Services Act 2007, which prescribes who can carry on certain legal activities, including legal services related to land registration.

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

None.

4. Legislative Context

4.1 Under the Land Registration Act 2002, the Chief Land Registrar (the 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 (also known as mortgages). A registered owner of land or of a charge has certain powers of disposition under the Act; some of these 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.

4.2 The Principal Rules make detailed provision for land registration, including who may make applications and give certificates to the registrar as to matters in support of applications. The Land Registration Act 2002 provides that the Lord Chancellor may by order designate a particular office of the Land Registry as the proper office for the receipt of applications or a specified description of application. The Principal Rules and the Proper Office Order are made under the Act.

4.3 These instruments have been made to ensure that the Principal Rules and the Proper Office Order are consistent with the terms of the Legal Services Act 2007 (the Legal Services Act). The Legal Services Act makes provision for the regulation of persons and bodies who carry on certain legal activities – “reserved legal activities”. It sets out who is entitled to carry out reserved legal activities and the penalties for those who carry out, or pretend to be entitled to carry out, these activities where they are not entitled.

4.4 In addition, Part 5 of the Legal Services Act will allow for the establishment of licensed bodies (also known as alternative business structures) to offer reserved legal activities. It is expected that the first alternative business structures will be established in October 2011. Alternative business structures will enable lawyers and non-lawyers to work together to deliver legal and other services.

4.5 An instrument has also been drafted to amend the Land Registration (Network Access) Rules 2008, similarly aligning them with the Legal Services Act. The Land Registration (Network Access) Rules 2008 include the categories of person who are entitled to have access to the Land Registry’s electronic network for making land registration applications. The instrument is subject to the affirmative parliamentary procedure, so has a separate explanatory memorandum.

5. Territorial Extent and Application

These instruments apply to England and Wales.

6. European Convention on Human Rights

As the Land Registration (Amendment) Rules 2011 are subject to the negative resolution procedure and the Land Registration (Proper Office) (Amendment) Order 2011 is laid before Parliament after being made, and neither amend primary legislation, no statement is required.

7. Policy background

7.1 Under the Legal Services Act only an “authorised person” is allowed to carry on a reserved legal activity. “Person” includes a body of persons, corporate or unincorporated. Reserved legal activities include “reserved instrument activities”, two categories of which specifically refer to preparing documents for the purposes of, and making applications under, the Land Registration Act 2002 (the relevant reserved instrument activities).

7.2 The word “conveyancer” is used extensively in the Principal Rules, mainly in relation to certificates being given, or applications being made, to the registrar, by a conveyancer. It is, therefore, important that the definition of “conveyancer” in the Principal Rules reflects the classes of person and body that can carry on the relevant reserved instrument activities under the Legal Services Act, including new licensed bodies.

7.3 The word “conveyancer” is used in the Proper Office Order in relation to arrangements that the registrar may make for the delivery of applications to the Land Registry. The definition of conveyancer in the Proper Office Order needs to be consistent both with the Legal Services Act and the Principal Rules.

7.4 The current definition of “conveyancer” in the Principal Rules and the Proper Office Order no longer reflects the classes of person and body who can and will be able to carry on the relevant reserved instrument activities under the Legal Services Act. The revised definition seeks to ensure that all legal service providers who are authorised to carry on the relevant reserved instrument activities under the Legal Services Act will be treated as conveyancers under the Principal Rules and the Proper Office Order.

7.5 The definition adopted is inclusive, not exclusive. A person or body will still come within the definition of “conveyancer” if they are authorised to carry on other reserved legal activities, so long as the authorisation includes the relevant reserved instrument activities.

7.6 The revised definition also allows for a person or organisation, such as a bank, building society, local authority, construction company or charity, which employs in-house conveyancers to undertake conveyancing and land registration activities, to be treated as conveyancers. It includes an exemption for a person who carries on conveyancing and land registration activities in the course of their duty as a public officer. This is consistent with the Legal Services Act.

7.7 The revised definition of conveyancer in the Principal Rules also specifies when the signature of a conveyancer who is an individual is required, rather than a signature on behalf of a body.

7.8 The Land Registry does not intend to consolidate the Principal Rules or the Proper Office Order at this time because of the limited nature of the amendments. Informal consolidated texts of both statutory instruments incorporating the amendments will be available to the public free of charge on the Land Registry website when this instrument comes into force (anticipated to be in October 2011)—
<http://www.landregistry.gov.uk/>.

8. Consultation outcome

8.1 The consultation “Land Registration and the Legal Services Act 2007” ran for 12 weeks from 6 December 2010 to 28 February 2011. The Land Registry directly informed and invited comment from 83 stakeholders, including regulatory and representative bodies, government departments, and individuals. In addition, all Land Registry customers and the general public were invited to participate, by means of a message posted on the Land Registry website and the electronic services log-in page.

8.2 The Land Registry received 15 responses to the consultation. Those who responded were generally in favour. Nine of the fifteen respondents expressed general

approval of the proposals, four respondents expressed partial support but had reservations on specific points, and two respondents did not comment generally on the proposals, but raised specific points.

8.3 A detailed analysis of the consultation outcome is contained in the “Report on Consultation – Land Registration and the Legal Services Act 2007”, published on the Land Registry website: <http://www1.landregistry.gov.uk/consultations>. The objections made by four respondents were on the proposal to exclude Fellows of the Institute of Legal Executives from the definition of conveyancer. A full explanation of the reasons and justification for doing so is contained in the Report on Consultation, and was given to a representative from the Institute of Legal Executives at a meeting, in May 2011, to discuss the Institute’s concerns.

9. Guidance

The Land Registry publishes an extensive set of Practice Guides for legal practitioners. These are freely available on the Land Registry website. Any relevant practice guides will be updated in good time before the changes made by the rules and order come into force. For those using electronic services, the Land Registry Portal Guidance Notes will be updated. The Land Registry will inform customers about the legislative changes through the “Latest news” section of its website and through *Landnet*, the Land Registry’s magazine for practitioners. The Land Registry plans to issue a press notice once the instruments have been laid. The report on the consultation is available on its website. A further press notice will be issued just before the instruments come into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal, as the changes to the Principal Rules and the Proper Office Order are designed to reflect what is provided by the Legal Services Act.

10.2 The impact on the public sector is minimal. The rules and order include the exemption for persons carrying out their duties as a public officer, reflecting an exemption in the Legal Services Act.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business but does not impose any additional burden on them over and above that already contained in the Legal Services Act.

11.2 The Legal Services Act applies to all legal service providers whatever their size, and these instruments are intended to align the Principal Rules and the Proper Office Order with the provisions of that Act. Therefore, it is not possible to make any

exemptions to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring & review

12.1 The success criteria for these instruments are to maintain high standards of land registration applications under the more flexible market conditions provided by the Legal Services Act, and to ensure that the integrity of the land register has been protected, while providing consistency with the Act.

12.2 A review will be carried out in 2015. More detail is included in Annex 1 of the Impact Assessment.

13. Contact

Joy Bailey at the Land Registry, tel: 0300 006 7738 or email: joy.bailey@landregistry.gsi.gov.uk can answer any queries regarding the instruments.

Will the policy be reviewed? It be reviewed. If applicable, set review date: /	
What is the basis for this review? . If applicable, set sunset clause date: /	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	
Title: Land Registration and the Legal Services Act 2007 Lead department or agency: HM Land Registry Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: LANDREG002
	Date: 01/06/2011
	Stage: Final
	Source of intervention:
	Type of measure:
	Contact for enquiries: Ian Watson – 0191 301 3630

Summary: Intervention and Options

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

Implementation of Part 5 of the Legal Services Act 2007 (LSA 2007) allows the development of business structures wishing to combine legal and non-legal services. This is relevant for a broad range of Land Registry functions. In order to be consistent with the existence of these new business structures, the Land Registration Rules 2003 (LRR 2003), Land Registration (Network Access) Rules 2008 (LR(NA)R 2008) and Land Registration (Proper Office) Order 2010 (LR(PO)O 2010) need to be amended, as do practices in relation to conveyancers' certificates (both paper and electronic forms), and fraud procedures.

What are the policy objectives and the intended effects?

The enactment of the LSA 2007 means that the definitions within two sets of land registration rules and an order need to be updated. The revised rules and order will ensure that only those legal practices authorised or licensed under the LSA 2007 to prepare transfers and charges for the purpose of the Land Registration Act 2002 (LRA 2002), and make applications to Land Registry (referred to in this document and in the draft rules as "relevant reserved instrument activities"), can potentially enter into a full network access agreement (NAA), or come within the revised definition of "conveyancer" (for the purpose of the LRR 2003 and LR(PO)O 2010). This will mean that the legislation under which Land Registry operates is consistent with the LSA 2007 and ensure that Alternative Business Structures (ABS) are, for this purpose, placed on an equal footing with more traditional legal practices, such as firms of solicitors.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing

Option 1: update land registration definitions to be consistent with the LSA 2007 to ensure that authorised persons under the LSA 2007 who are entitled to carry on relevant reserved instrument activities, or persons who employ a or have a manager who is so authorised:

- come within the definition of "conveyancer" in the LRR 2003; and
- come within the definition of "conveyancer" in the LR(PO)O 2010; and
- are potentially entitled to enter into an NAA, as provided by the LR(NA)R 2008.

As in the LSA 2007, an exception is made for a public officer carrying on those activities in the LRR 2003 and the LR(PO)O 2010.

Option 1 is the preferred option, as doing nothing would mean that the legislation under which Land Registry operates would not be consistent with the LSA 2007.

Sign-off For final proposal 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

..... McNally Date: 2 June 2011

Summary: Analysis and Evidence

Policy Option 1

Description: Update definitions in land registration secondary legislation to be consistent with the LSA 2007

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

Fellows of the Institute of Legal Executives are removed from the definition of conveyancer in the LRR 2003, but no costs are anticipated as they must already work under the supervision of authorised persons. Land Registry will face some minor one-off implementation costs. Some legal service providers will no longer fall within the definition of conveyancer if they cease to be authorised under LSA 2007 to provide legal services relating to land registration. Current legal service providers may be adversely affected if the proposal results in greater competition between providers of legal services relating to land registration once ABS are included in the definition of conveyancers

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

The proposals will avoid the potential costs to Land Registry customers outlined in the base case by ensuring only persons authorised to prepare and make applications relating to land registration are able to do so. Land Registry customers may further benefit if the new definition of 'conveyancer' leads to better quality conveyancing practices compared to current levels. Ensuring ABS firms fall within the definition should also lead to increased competition in the conveyancing market, which may provide efficiency benefits for society, and direct benefits for Land Registry customers in the form of lower prices and / or increased choice.

Key assumptions/sensitivities/risks

Discount rate (%)

Assumed that Part 5 of the LSA 2007 will be implemented in October 2011, bringing ABS into the legal services market.

Assumed that some ABS firms will enter the conveyancing market and compete with existing legal service providers.

Assumed that the new definitions adopted (as set out in LSA 2007) would prevent some legal service providers from providing legal services relating to land registration if they cease to be authorised under LSA 2007 to provide services relating to land registration. This may lead to an increase in the quality of conveyancing practices.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?											
From what date will the policy be implemented?						Expected date Oct 2011					
Which organisation(s) will enforce the policy?						Land Registry					
What is the annual change in enforcement cost (£m)?						N/A					
Does enforcement comply with Hampton principles?											
Does implementation go beyond minimum EU requirements?											
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)						Traded: N/Q			Non-traded: N/Q		
Does the proposal have an impact on competition?											
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?						Costs:			Benefits:		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)				Micro Nil	< 20 Nil	Small Nil	Medium Nil	Large Nil			
Are any of these organisations exempt?											

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance		11
Economic impacts		
Competition Competition Assessment Impact Test guidance		11
Small firms Small Firms Impact Test guidance		11
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance		11
Wider environmental issues Wider Environmental Issues Impact Test guidance		11
Social impacts		
Health and well-being Health and Well-being Impact Test guidance		11
Human rights Human Rights Impact Test guidance		11
Justice system Justice Impact Test guidance		11
Rural proofing Rural Proofing Impact Test guidance		11
Sustainable development Sustainable Development Impact Test guidance		11

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	LRR 2003
2	LR(NA)R 2008
3	LR(PO)O 2010
4	Land Registration Act 2002
5	ABS Consultation - IA
6	LSA 2007

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

- 1.1 The LSA 2007 makes provision for the regulation of persons and bodies who carry on certain legal activities. The Act also lists and defines what activities constitute reserved legal activities. This list includes preparing transfers and charges for the purpose of the LRA 2002, and making applications to Land Registry (referred to in this document and in the draft rules as “relevant reserved instrument activities”). The means of regulating the legal professions and controlling the work they can do is now contained in the Act. In addition, Part 5 of the LSA 2007 allows for the establishment of ABS. If the Government endorses the Legal Services Board’s (LSB) existing proposals then the first ABS will be established in October 2011.
- 1.2 The LSA 2007 revoked section 22 of the Solicitors Act 1974, which formerly controlled the classes of person who could carry on certain conveyancing activities and make applications to Land Registry. The relevant provisions are now in the LSA 2007 which defines these classes of person as “authorised persons”. Under the LSA 2007 authorised persons (which includes bodies) may be limited to carrying on only certain reserved legal activities and not others, for instance, not all authorised persons may be authorised or licensed to carry on relevant reserved instrument activities.
- 1.3 We propose amendments to land registration secondary legislation (specifically the LR(NA)R 2008, the LRR 2003, and the LR(PO)O 2010 to:
 - ensure that only those who are authorised or licensed to carry on relevant reserved instrument activities, or who employ authorised persons, are included in the definition of conveyancer for the purpose of the LRR 2003 and the LR(PO)O 2010, and are potentially entitled to an NAA;
 - include in the definition of “conveyancer” in the LRR 2003 and LR(PO)O 2010 a person performing the relevant reserved instrument activities in the course of their duty as a public officer; and
 - allow for the existence of ABS

Land Registration Rules 2003

- 1.4 The proposed changes would amend the definition of “conveyancer” in the LRR 2003 as explained in 1.3 above. The LRR 2003 were made under the LRA 2002, to provide, broadly, for the keeping of registers relating to land in England and Wales and for making applications to the registrar.
- 1.5 Section 22 of the Solicitors’ Act 1974 placed limitations on the classes of person who could prepare instruments of transfer or charge, and make applications for the purposes of the LRA 2002. Section 22 was repealed by the LSA 2007.
- 1.6 The word “conveyancer” is used extensively throughout the LRR 2003, mainly in relation to certificates being given, or applications being made, by a conveyancer to the Land Registry. In rule 217 of the 2003 rules the definition of “conveyancer” means:
 - (a) a solicitor,
 - (b) a licensed conveyancer within the meaning of section 11(2) of the Administration of Justice Act 1985,
 - (c) a fellow of the Institute of Legal Executives,
 - (d) a barrister,
 - (e) a duly certificated notary public, or
 - (f) a registered European lawyer within the meaning of the European Communities(Lawyer’s Practice) Regulations 2000 who by virtue of regulations 6 and 12 of those Regulations is entitled to prepare for remuneration an instrument creating or transferring an interest in land in England and Wales.
- 1.7 Under the rules as they exist, it might be possible for a person who is not an authorised person under the LSA 2007 to be a conveyancer for the purposes of the LRR 2003. The LSA 2007 allows for “authorised persons” to be authorised or licensed to carry on only certain reserved legal activities and not others. It is necessary to ensure that only those who are authorised or licensed by the LSA 2007 to carry on the

relevant reserved instrument activities come within the definition of conveyancer for the purpose of the LRR 2003.

1. 8 The proposed changes would amend the definition of “conveyancer” in the LRR 2003 as explained in 1.3 above. In addition the amendment will specify when a conveyancer giving a certificate must be an individual.
1. 9 The new definition of ‘conveyancer’ will also put right the anomaly in the existing rules by removing reference to a Fellow of the Institute of Legal Executives from the definition. This brings LRR 2003 into line with LSA 2007 and does not affect what members of the Institute of Legal Executives can do in legal practice as it reflects the regulatory position.

Land Registration (Network Access) Rules 2008

1. 10 Under section 92 of the LRA 2002, the registrar may provide or arrange the provision of a Land Registry network. The network is to be used for such purposes as the registrar thinks fit in relation to registration or the carrying out of transactions which involve registration, and are capable of being effected electronically.
1. 11 A person who is not a member of Land Registry may only have access to the Land Registry network under authority conferred by an NAA (paragraph 1(1) of Schedule 5 to the LRA 2002).
1. 12 Schedule 1 to the LR(NA)R 2008 (introduced by rule 4 of those rules) sets out the criteria which the applicant must meet to be entitled to enter into an NAA.
1. 13 Under the LR(NA)R 2008 the following entities may be entitled to an NAA:
 - a qualified person;
 - a partnership or limited liability partnership where at least one member is a qualified person;
 - a person (including a body corporate) who employs, has amongst his staff or its officers at least one qualified person who will make or supervise the making of applications to Land Registry; or
 - a government department.
1. 14 A “qualified person” means a solicitor, barrister, licensed conveyancer, notary public or a registered European lawyer (as defined at 1.6(f) above).
1. 15 Under the rules as they exist, it might be possible for a person who is not an authorised person under the LSA 2007 to claim to be entitled to an NAA.
1. 16 The LSA 2007 allows for “authorised persons” to be authorised or licensed to carry on only certain reserved legal activities and not others. It is necessary to ensure that only those legal practices that are authorised or licensed to prepare transfers and charges for the purpose of the LRA, and make applications to Land Registry, can qualify for an NAA.
1. 17 A qualified person may only apply for an NAA if it can meet certain further criteria. If the applicant (and any “connected person” - as defined in paragraph 9(1)(a) of Schedule 1 to the LR(NA)R 2008, for instance a partnership in which the applicant was a partner at the time) has been subject to intervention or disciplinary proceedings in the previous 3 years, it must satisfy the registrar that it is likely to comply with the terms of the NAA. In addition, intervention in the practice is a ground for termination of an NAA. In this respect the LR(NA)R 2008 will not work in relation to an ABS because intervention or disciplinary proceedings by a licensing authority, or any new regulatory body, are not covered by the rules (because they did not exist when those rules were made). It is, therefore, possible that in the future an authorised person, including an ABS, may be regulated in such matters by a body not currently referred to in the LR(NA)R 2008.
1. 18 Amendment to the LR(NA)R 2008 is, therefore, necessary for two reasons. First to ensure that all authorised persons’ who are authorised to carry on the relevant reserved instrument activities under the LSA 2007, or those who employ such a person, are potentially entitled to a NAA, and secondly to adjust other criteria for the existence of ABS.

Land Registration (Proper Office) Order 2010

1. 19 The LR(PO)O 2010 is made under section 100(3) of the LRA 2002. It designates particular offices of Land Registry as the proper office for the receipt of any application to the registrar. The Order does not apply to an application delivered:
 - in accordance with a written arrangement as to delivery made between the registrar and the applicant (or the applicant's conveyancer), or
 - under the provisions of a notice made by the registrar under Schedule 2 to the LRR 2003.
1. 20 Amendment to the LR(PO)O 2010 is necessary because the definition of "conveyancer" will no longer reflect fully the classes of persons and bodies who may carry on the relevant reserved instrument activities under the LSA 2007. The proposed changes would amend the definition of "conveyancer" in the LR(PO)O 2010 to be similar to the revised definition proposed for the LRR 2003, as described above, but excluding the clause that specifies when the signature of an individual is required.

Economic rationale

1. 21 The conventional economic approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society)."
1. 22 In this case, intervention would be justified primarily on institutional and efficiency grounds. In part, the proposal seeks to amend land registration secondary legislation to ensure consistency with an antecedent piece of legislation (LSA 2007). Failure to do this would result in potential costs to Land Registry and its customers, and to an inconsistent and inefficient regulatory system.
1. 23 The proposal is also required in order to enable ABS to undertake functions relating to Land Registry. Allowing ABS should provide productive efficiency gains for the economy if ABS are more efficient than incumbent firms. If ABS results in greater competition over the provision of conveyancing services, the proposal could also generate allocative efficiency benefits.

Policy objectives

1. 24 As outlined above, enactment of the LSA 2007 means that the definitions within various land registration rules need to be updated. Failure to do so could result in inconsistencies with, and breaches by unauthorised persons making land registration applications for reward on behalf of others of, the LSA 2007, and a greater potential for indemnity payments by Land Registry for mistakes in the register.
1. 25 The revised rules will ensure that only those legal practices which are authorised or licensed to prepare transfers and charges for the purpose of the LRA 2002, and make applications to Land Registry, can qualify for an NAA, or come within the definition of a conveyancer.
1. 26 This will ensure that land registration secondary legislation is consistent with the LSA 2007 and accommodates ABS. It will also help maintain the high quality of applications submitted to Land Registry, and the integrity of the register.

Main Affected Groups

1. 27 The following individuals/sectors are likely to be affected by the proposal:
 - *Government and regulatory bodies:* the proposals will provide consistency between the statutory provisions relating to the regulation of reserved legal activities and land registration. The Institute of Legal Executives (ILEX) and any other new regulator or licensing authority that might emerge in the future, if they can authorise or licence practices to carry on the relevant reserved instrument activities, will be affected. Throughout the development of the proposals Land Registry has been in extensive

consultation with key stakeholders. The stakeholders consulted include the Ministry of Justice, Legal Services Board, Solicitors Regulation Authority and Council of Licensed Conveyancers. ILEX were consulted and responded to the consultation, and after it closed Land Registry lawyers met with a senior representative of ILEX to discuss their concerns.

- *Existing firms undertaking conveyancing and Land Registry applications:* the LSA 2007 will allow ABS to provide conveyancing services and make Land Registry applications, which is likely to result in increased competition for existing firms. The proposals fit in with those provisions. Fellows of ILEX are affected by their removal from the definition of 'conveyancer' in the LRR 2003, but the changes will not put them in any worse position than they currently are under the Legal Services Act. They must already work under the supervision of authorised persons when undertaking conveyancing and land registration activities.
- *Potential ABS firms:* the proposal will make equal provision for ABS to make Land Registry applications.
- *Consumers:* consumers are likely to have access to a wider range of licensed legal service providers as a result of the proposal.

Research for the National Conveyancing Congress 2007 provided the following statistics of what these consumers required.

When choosing a solicitor/conveyancer, what was the most important factor in making your choice?

Price	34.3
Quality of service and value for money	54.6
Recommendation by a friend or family member	11.1

If you were to buy or sell a home in the future, which of the following would you seriously consider as an alternative to using a law firm to do the conveyancing on the transaction?

A specialised volume conveyancer operating through a website	20.0
A bank offering conveyancing services	43.6
A supermarket offering conveyancing services	21.4
An estate agency also offering conveyancing services in-house	55.8
None of these	14.8
Don't know	15.4

2. Cost Benefit Analysis

- 2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these two options. The costs and benefits of Option 1 is compared to the do nothing option (Option 0). Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative. It has not been possible to quantify the impacts referred to in this Impact Assessment as the figures are so small.

Option 0: do nothing

Description

2. 2 The 'do nothing' option is not considered to be a plausible option as affected land registration secondary legislation needs to be amended in line with the LSA 2007 if it is to be consistent with that Act and fully effective. The 'do nothing' option is, therefore, presented as a hypothetical option only.
2. 3 If the do nothing option were pursued, in principle it might be possible for a person who is not a authorised under the LSA 2007 to carry on the relevant reserved instrument activities to meet the definition of a conveyancer contained in the LRR 2003, or to be potentially entitled to an NAA (which would allow them to make certain applications electronically to Land Registry). In addition, the rules and order would not properly cater for ABS.
2. 4 The do nothing option would, therefore, result in an increased likelihood of mistakes being recorded in Land Registry's register of title due to poor conveyancing practices by persons not authorised to carry on relevant reserved instrument activities, and an increase in the possibility of fraudulent applications. In certain circumstances the registrar may rectify, or the court may order the rectification of, the register with the result that the title of a registered proprietor is prejudicially affected. If this should happen, however, the registered proprietor will generally be entitled to an indemnity from the registrar for any consequential loss they may suffer. Should the register not be rectified in these circumstances any person suffering loss may also be entitled to an indemnity. The right to an indemnity is, therefore, an integral part of the state underpinning of title under the LRA 2002. Schedule 8 to the Act sets out the principles by which the amount of any indemnity should be calculated. A risk to an increase in the indemnity fund may result in an increase in Land Registry fees.
2. 5 The 'do nothing' option is expected to generate probable indemnity costs together with Land Registry staff costs in altering mistakes and preparing time consuming requisitions. In accordance with cost benefit analysis methodology, avoiding these potential costs are benefits of option 1.
2. 6 Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV)².

Option 1: Update definitions in land registration secondary legislation to be consistent with the LSA 2007

Description

2. 7 Land registration secondary legislation (specifically the criteria relating to persons who are entitled to an NAA under the LR(NA)R 2008 (Schedule 1), the LRR 2003 (rule 217), and the LR(PO)O 2010 (article 2(2))) would be updated to provide:
 - that only those who are authorised to carry on the relevant reserved instrument activities (relating to conveyancing and land registration) or who employ an authorised person, are included in the definition of conveyancer for the purpose of the LRR 2003, the LR(PO) O 2010, and are potentially entitled to an NAA (in accordance with the LR(NA)R 2008);
 - in the case of the LRR 2003 and LR(PO)O 2010 that the definition of "conveyancer" includes a person performing the relevant reserved instrument activities in the course of their duty as a public officer; and
 - that the rules and order allow for the existence of ABS.

Costs

Land Registry

2. 8 Land Registry is likely to face some minor one-off implementation costs as a result of the proposal. Specifically, there are likely to be implementation costs in the preparation of the three amending statutory instruments (to amend the LR(PO)O 2010, LR(NA)R 2008 and LRR 2003) and Land Registry staff costs in

² The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

drafting those statutory instruments and preparing consequential internal and external practice material amendments. A Rule Committee meeting is also likely to require relatively small expenses.

Land Registry customers

2. 9 The proposal would have no direct costs to existing Land Registry customers as the amendments merely ensure that a wider group may apply for NAAs and make applications to Land Registry. Conveyancing will need to be completed regardless of who the customer is and standard fees are payable in accordance with the current Land Registration Fee Order.

Existing firms undertaking Land Registry functions

2. 10 Tightening the definition of conveyancer to be consistent with LSA 2007 may result in some existing providers no longer being able to provide conveyancing services if they cease to be authorised under the LSA 2007 to provide services relating to land registration. The proposal would therefore impose costs on these providers – either due to loss of income, or due to the fact they may face transition costs if they choose to change their business structure to remain authorised to provide these services.
2. 11 Further, the proposal will enable ABS which enter the conveyancing market to be treated as conveyancers and be potentially entitled to a NAA on an equal footing with other legal service providers. This is likely to result in increased competition, which may result in a reduction in income for existing providers.

Benefits

2. 12 The main benefit of the proposal would be to avoid the requisition and indemnity costs outlined in the base case. This would primarily benefit the Land Registry and its customers.

ABS

2. 13 Making provision for ABS within land registration secondary legislation ensures a level playing field for all providers of legal services.

Land Registry customers

2. 14 Society/customers may benefit from maintaining the quality of conveyancing/land registration related legal services as a result of opening the market to ABS, if customers may not have to apply as frequently for amendments to the register of title due to conveyancing errors.
2. 15 ABS entering the conveyancing market may lead to increased competition. Putting them on an equal footing with other conveyancers under land registration secondary legislation would further benefit Land Registry customers if the increased competition leads to lower prices and/or a wider range of choice.
2. 16 Conveyancing Services Market (University of Bremen, Centre for European Law and Politics, Dec 2007) discusses, at page 179, the effect of the introduction of Licensed Conveyancers and states that it found that deregulation led to a reduction of fees for the customer.

http://ec.europa.eu/competition/sectors/professional_services/studies/csm_study_complete.pdf

Net Impact

2. 17 It has not been possible to quantify the impacts detailed above. However, based on analysis of the available information this option is expected to generate a positive net present value compared to the base case. Further, this Option is expected to provide net benefits in addition to avoiding the costs outlined under the 'do nothing' option. Making the amendments to the land registration secondary legislation as outlined above is therefore the preferred option.

Key assumptions and risks

2. 18 The following assumptions have been made and risks considered:
- Part 5 of the LSA 2007 will be implemented in October 2011, bringing ABS into the legal services market. It is not known how many ABS will be created, but currently solicitors' practices are allowed to have up to 25% of non-solicitors as managers. These practices must become licensed once Part 5 of

the LSA 2007 comes into force, together with any new legal practices which have non-authorised persons as managers or having an interest in them (i.e., holding shares or holding/controlling voting rights).

- Some ABS firms will enter the conveyancing market and compete with existing legal service providers.
- The new definitions adopted (as set out in LSA 2007) would prevent some legal service providers from providing legal services relating to land registration if they cease to be authorised under LSA 2007 to provide services relating to land registration. This may lead to an increase in the quality of conveyancing practices.
- If persons who are not authorised persons, or not authorised in relation to the relevant reserved instrument activities, entitled to an NAA or are treated as a conveyancer under land registration legislation there would be a greater risk of mistakes in the register, which would result in Land Registry having to pay indemnity under the provisions of the LRA 2002.

3. Enforcement and Implementation

2. 19 The preferred option will be implemented when section 71 of the Legal Services Act comes into force, expected to be in October 2011. If that section comes into force before the Land Registration (Network Access) (Amendment) Rules 2011 are made, those rules will come into force on the day after the day they are made.
2. 20 The LR(NA)R 2008 as amended will be enforced by vetting applicants for a network access agreement, and by termination of such agreement if the customer is found to no longer meet the criteria, as provided in those rules. The LRR 2003 as amended will be enforced by means of the registrar's powers to reject an application made to him if it is not in order, as provided by those rules. The LR(PO)O 2010 will be enforced by the registrar declining to enter into an arrangement for the delivery of land registration applications as provided by the Order if the applicant does not fall within the definition of "conveyancer".

4. Specific impact tests

Equality

3. 1 After carrying out an equality impact assessment we do not believe that the proposals to update the land registration secondary legislation will affect any sector of society more than another and we do not believe that there are any significant equality impacts involved in these proposals.

Competition Assessment

3. 2 The proposed updates to the land registration secondary legislation will potentially increase the number of organisations who carry out legal activities relating to land registration and will potentially lead to an increase in competition.

Small Firms Impact Test

3. 3 The Law Society and The Federation of Small Businesses (FSB) have expressed their broad support for the ABS proposals.
3. 4 ABS will allow small legal service providers to pool resources with other firms that provide complementary services.
3. 5 Ministry of Justice officials have consulted the Small Business Service (SBS), who are content with the current approach.
3. 6 The changes to land registration secondary legislation will not adversely affect small firms as they are merely reflecting changes in the regulatory regime brought about by the LSA 2007.

Carbon Assessment

- 3.7 We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this proposal.

Other Environment

- 3.8 We do not anticipate any significant impact on the environment as a consequence of this proposal.

Health Impact Assessment

- 3.9 We do not anticipate any significant impact on human health or the demand for health and social care services in the UK as a consequence of this proposal.

Human Rights

- 3.10 The proposals in this Impact Assessment have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act 1988.

Justice Impact Test

- 3.11 The revised land registration secondary legislation will ensure that only those legal practices that are authorised or licensed under the LSA 2007 to prepare transfers and charges for the purpose of the LRA 2002, and make applications to Land Registry, or that employ such a person, can apply for an NAA, or come within the definition of a conveyancer. There should therefore be no impact on the justice system.

Rural Proofing

- 3.12 Not considered to be a significant problem, as many firms operate at a distance from their clients wherever they are based.

Sustainable Development

- 3.13 We do not anticipate any significant impact on the principles of Sustainable Development as a consequence of this proposal

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>The review will be carried out in April 2015 and will seek to see how effective the policy has been and if it has achieved the policy objectives that it was designed for.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure that high standards of land registration applications have been maintained under the more flexible market conditions provided by the LSA 2007, and that the integrity of the register has been protected, while providing consistency with the LSA 2007.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The review will analyse indemnity payments and corrections logs which will indicate if there have been increases directly related to the amended rules. Management information will indicate which firms and which type of legal practice lodge applications of a high standard or otherwise.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>2010/2011 figures.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Confirmation that indemnity payments and correction figures have not increased as a result of the amended rules.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>The current arrangements that are in place will remain.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>