

EXPLANATORY MEMORANDUM TO
THE LAND REGISTRATION (AMENDMENT) RULES 2018
2018 No. 70

1. Introduction

- 1.1 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 instrument

- 2.1 The Land Registration (Amendment) Rules 2018 ("the amendment rules") further amend the Land Registration Rules 2003 (S.I. 2003/1417) ("the principal rules") to allow HM Land Registry to offer customers digital alternatives to paper conveyancing and land registration. The amendment rules also update the principal rules to allow HM Land Registry to continue to modernise and simplify its services through digital transformation. They revoke the Land Registration (Electronic Conveyancing) Rules 2008 (S.I. 2008/1750) (other than amendments they make to the principal rules) and the Land Registration (Proper Office) Order 2013 (S.I. 2013/1627), and make consequential amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Land Registration Act 2002 ("the 2002 Act") makes provision for the Chief Land Registrar to keep a register of title to legal estates in land, in particular freeholds, leases having more than seven years to run, and mortgages. Other interests in land can also be referred to in the register, subject to the provisions of the 2002 Act and the principal rules. The principal rules make detailed provision for keeping the register and for making applications to change the register or create new entries in it.
- 4.2 The Law of Property Act 1925 provides the basic framework for land law and conveyancing in England and Wales, around which the 2002 Act applies or varies those provisions for registered land and the first registration of land. It provides (at section 52) that conveyances of land or interests in it will be void as to the legal estate unless they are made by a deed. A deed is a paper document that is signed and witnessed.
- 4.3 HM Land Registry was given the power (by Part 8 of, and Schedule 2 to, the 2002 Act) to introduce electronic conveyancing, by means of electronic documents with electronic signatures. The Act, at section 91, requires that Rules are made under it to

specify which conveyancing transactions can be carried out electronically, and be regarded as deeds.

- 4.4 The Land Registration (Electronic Conveyancing) Rules 2008 were made, specifying limited types of mortgages as transactions that can be carried out electronically.
- 4.5 The Land Registration (Proper Office) Order 2013 was made under section 100(3) of the 2002 Act. That Order directed that applications must be delivered to certain offices of HM Land Registry on a geographic basis, where the paper records were held. Due to digital processes, it is now superfluous.
- 4.6 The amendment rules are “land registration rules” for the purpose of section 132(1) of the 2002 Act. They amend the principal rules, and revoke the Land Registration (Proper Office) Order 2013 and the Land Registration (Electronic Conveyancing) Rules 2008 (other than the provisions in Part 1 of Schedule 2 to those rules, which amend the principal rules).
- 4.7 In accordance with section 127 of the 2002 Act, the Secretary of State has received the advice and assistance of the Rule Committee in making the amendment rules.

5. Extent and Territorial Application

- 5.1 This instrument applies to England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The overall objective of the amendments to the principal rules is to allow HM Land Registry to offer customers more options in the use of its services, and bring those rules into alignment with its digital strategy. To do that, a number of amendments have been made.
- 7.2 Under the Law of Property Act 1925 conveyances and legal mortgages of land must be carried out by a paper deed. Electronic documents with electronic signatures will be regarded as deeds only if rules are made under section 91 of the 2002 Act specifying which kind of conveyancing transactions can be carried out electronically. Currently the Land Registration (Electronic Conveyancing) Rules 2008 specify only limited types of mortgage that can be completed electronically. Only a small number of electronic mortgages were created under those rules. Those rules will be revoked, except for amendments they have made to the principal rules.
- 7.3 There is an increasing demand for electronic services, to enable conveyancing and registration to be carried out entirely online. The objective is to make more flexible rules to provide for the introduction of new electronic conveyancing and registration services. HM Land Registry is building a new digital mortgage service and will build other digital services in the future. The principal rules will specify that all transactions of registered land that have to be registered can be carried out using electronic documents with electronic signatures, once the registrar is satisfied that adequate

arrangements are in place, and publishes a notice to that effect. This allows for the incremental introduction of new digital conveyancing and registration services, without rule changes for each new service.

- 7.4 There will be no need to make detailed rules by statutory instrument, saying what must be in the electronic documents, each time a new digital service is introduced. Both conveyancers and HM Land Registry already know the legal requirements for valid conveyancing documents. The requirements for a mortgage, transfer or lease of registered land will not change. What will change is the way of preparing those documents. The content of the documents, and the law behind them, will be fundamentally the same. HM Land Registry will be offering alternative ways of carrying out standard conveyancing transactions.
- 7.5 The Land Registration (Proper Office) Order 2013 was needed to evenly distribute paper applications for registration, when paper records were held at different land registry offices. Now the register is held in electronic form shared across all land registry offices. Most applications are delivered electronically. Those still sent in paper go to a single address for scanning and electronic distribution. The Order is therefore superfluous.
- 7.6 The 2002 Act provides for a breadth of services, but the principal rules limited some services, for example inspection and copying of documents, and historic information. The principal rules were drafted when making a paper copy of part only of a register or document was a time-consuming, manual process. In order to reap the benefits that digital services can bring, the principal rules will allow for copying of parts of the register and documents, and historic information, using online services. Any new service will only become available after the registrar issues a notice.
- 7.7 The principal rules contain detailed provisions about the retention and return of paper documents sent to the registrar with applications. Many of the requirements are now superfluous. Most applications are made electronically with scanned documents. Where paper documents are sent, customers are encouraged to retain the original documents and send certified copies with their applications. The rules concerned are being amended or revoked as appropriate.
- 7.8 One rule in the principal rules allowed for an outline application to be made electronically, to protect the priority of a full application that was to be made by post within the following four days. The protected interest had to be already in existence when the outline application was made. That rule is no longer needed and is revoked. Conveyancers can make a full application immediately online, giving the application full priority protection.
- 7.9 Amendments clarify the definitions of “business day” and “working day” because, with increasing use of digital working, HM Land Registry could be open for business for longer periods than the typical working days as defined in the principal rules. This clarification allows for the simplification of other rules. The amendments also facilitate more rational arrangements for personal visits to land registry offices by customers. Most customer contact is made by telephone, email and electronic platforms. It is not necessary to prescribe that HM Land Registry offices should be open to visitors all day on every business or working day.
- 7.10 Some minor rule amendments will help customers by making applications simpler or registration requirements clearer. For example, for certain types of application for registration, customers are sometimes confused by which of two forms to use. An

amendment will allow for either form to be used. Another application form will no longer be prescribed by the rules, but will become a form promulgated by the registrar as permitted under section 100(4) of the 2002 Act. This will allow for changes to the form when organisations with statutory powers of investigation and enforcement, who need confidential access to land registry information, are changed. For example, the Government may change their names or powers, or create new organisations.

- 7.11 Provisions relating to execution of conveyancing documents by companies are amended to reflect changes made by the Companies Act 2006 and the Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

Consolidation

- 7.12 The Law Commission is currently reviewing the Land Registration Act 2002 in its Twelfth Programme of Law Reform. If changes to the Act are made as a result, there will need to be a review of the principal rules. HM Land Registry is therefore awaiting the outcome of the Law Commission's work before considering consolidating the principal rules. In the meantime, an informal consolidated text is available to the public free on our website—

<https://www.gov.uk/government/publications/land-registration-rules-2003>

8. Consultation outcome

- 8.1 The Government undertook an eight week consultation from 9 February to 5 April 2017: <https://www.gov.uk/government/consultations/proposals-to-amend-the-land-registration-rules-2003>
- 8.2 There were 49 responses, from a mix of representative bodies, conveyancing firms and individuals. The vast majority of the respondents agreed with the proposals. Concerns were expressed by some respondents about fraud in the use of online services, and some were concerned about using GOV.UK Verify for providing identity assurance for those being issued with digital signatures.
- 8.3 Prevention of fraud is one of HM Land Registry's strategic objectives, and it works with other Government agencies to ensure its digital services are protected to the highest standards. The use of Verify would be an additional level of protection to the identity assurance that conveyancers and lenders must already carry out.

9. Guidance

- 9.1 HM Land Registry provides extensive guidance for customers in the form of Practice Guides, which are freely available on its website – <https://www.gov.uk/topic/land-registration/practice-guides>

The guides will be updated to reflect the rule amendments. Publicity for the changes will also be given to customers through its website, direct emails, blogs, and social media. HM Land Registry holds regular meetings with stakeholders through the Land Registry Advisory Council and visits.

10. Impact

- 10.1 The impact on business, charities and voluntary bodies is small. The changes are deregulatory, permissive, and in some cases, trivial and mechanical. Some businesses with their own in-house case management systems will incur costs integrating with HM Land Registry's application programming interfaces, but they will do so only if

there will be benefits for them. Most conveyancing firms will be able to use these services through case management software from market providers. Any new costs to the software providers would be spread among all their customers, and will be incurred only if the providers perceive benefits from the investment. The use of new digital services is not mandatory.

- 10.2 The impact on the public sector is minimal. Public sector bodies carry out relatively few in-house conveyancing activities. Digital conveyancing documents that must be signed by corporate bodies will not be introduced for some time because digital signature solutions and identity assurance solutions for corporate bodies are not yet well developed.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 It is not possible to minimise the impact of the requirements on firms employing up to 20 people. The firms most obviously affected will be conveyancing firms acting on behalf of clients who need to register interests in land. The law relating to land registration must apply equally to all landowners and all those with interests in land. Conveyancing firms are instructed by landowners and those who need to register interests in land. They are free to instruct small or large firms, but there is no obligation to use digital services. Small or large firms can continue to use paper deeds.

12. Monitoring & review

- 12.1 The success criteria for this instrument are the ability for HM Land Registry to deliver new digital products and services to meet customers' changing needs in a flexible and responsive way, and the steady take up of those new products and services.
- 12.2 A review will be carried out in 2023, or sooner if the work of the Law Commission in its Twelfth Programme of Law Reform requires a full review of the principal rules before then.

13. Contact

- 13.1 Joy Bailey at Her Majesty's Land Registry, Telephone: 0300 006 7738 or email: joy.bailey@landregistry.gov.uk, can answer any queries regarding the instrument.