

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

**2005 No. 1982**

**LAND CHARGES (AMENDMENT) RULES 2005**

**2005 No. 1981**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Land Registration (Amendment) (No 2) Rules 2005 (the Rules) amend the Land Registration Rules 2003 (the Principal Rules).

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

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

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

- 3.1 None.

4. **Legislative Background**

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

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

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

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

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

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

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

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

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

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

## **5. Extent**

5.1 These instruments apply to England and Wales.

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

6.1 Not applicable

## **7. Policy background**

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

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

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

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

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

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

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

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

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can answer any queries regarding the instrument.

# **Regulatory Impact Assessment**

## **Land Registration (Amendment) (No 2) Rules 2005**

## **Land Charges (Amendment) Rules 2005**

The Land Registration (Amendment) (No 2) Rules prescribe part of the form and content of certain leases (prescribed clauses leases). The rules provide for the register entries that must be made in respect of leases required to be completed by registration. They also allow for an application for a standard form of restriction to be made in a lease where the prescribed clauses are used. Part 1 of this document deals with prescribed clauses leases.

The rules also substitute a new Form AP1 and make amendments relating to the Civil Partnership Act 2004. The Land Charges (Amendment) Rules 2005 amend the Land Charges Rules 1974 to take account of the Family Law Act 1996 and the Civil Partnership Act 2004. Part 2 of this document deals with these changes.

This Regulatory Impact Assessment (RIA) has been prepared in accordance with paragraph 1.5 of *Better Policy Making: A Guide to Regulatory Impact Assessment*.

## **Part 1**

### **PRESCRIBED CLAUSES LEASES**

#### **1. Introduction**

This part of the RIA considers the relative costs and benefits of presentation of prescribed information in registrable leases. By registrable lease we mean a lease of physical land which is required to be completed by registration (usually, a lease for more than seven years), out of a registered estate in land or following an event triggering first registration (for example, a conveyance on sale of unregistered land followed by the grant of a lease by the purchaser for a term of ten years).

While this change could affect anyone, the main stakeholders will be the legal and property profession, who are the parties most involved in drafting lease documents.

#### **2. Purpose and intended effect**

Each year we, Land Registry, receive over 200,000 applications to register new leases. This figure has increased as a direct result of changes to the registration provisions introduced by the Land Registration Act 2002, which reduced the term of leases capable of registration from in excess of 21 years to in excess of 7 years with effect on and after 13 October 2003. The average daily intake of applications for the registration of new leases granted out of registered titles (which form the bulk of the work relevant to this part of the RIA) in January 2003 was 582. By January 2005, this figure had risen to 880 (an increase of 51%).

The Land Registry's 10 Year Strategic Plan (updated in March 2005) contains the strategic objective of creating a comprehensive land register for England and Wales. One of the strategic milestones identified as an enabler for this objective was to research the number of existing leases between three and seven years with a view to making their registration compulsory, in order to minimise the number of "overriding" interests not recorded and increase the transparency of the leasing market.

Leases are usually very long and our staff spend considerable time reading through the lease in order to find the information necessary to place in the register. This requirement to read through the lease can result in errors where important information is missed.

### **3. Consultation**

#### **3.1 Background to consultation**

Under the Land Registration Rules 2003, there is no prescribed form for leases granted out of registered land as there is for transfers. Practitioners have freedom to draw up lease documents as they see fit.

We proposed a more structured lease document (form L1) as part of the 2002 consultation paper on what became the Land Registration Rules 2003. We received 108 responses to that consultation out of which 49 respondents commented on the suggested standard form of lease. Over 55% of those responding did not want the form of the lease prescribed in its entirety. They suggested that we consider the prescribing in the lease or application form of only the information necessary for land registration purposes. As a result of the concerns expressed, the proposed form L1 was withdrawn and Land Registry undertook to bring forward fresh proposals.

#### **3.2 Objectives of revised consultation**

In September 2004, we published a consultation paper entitled *Presentation of prescribed information in registrable leases*, the contents of which took into account the replies received to the previous consultation.

Having considered the responses to the 2002 consultation, we did not seek the imposition of a full form of standard lease in our 2004 consultation. Rather, we sought opinions on two alternative methods of providing certain prescribed information in leases. The two methods suggested were:

- Using new form L1 to be incorporated at the beginning of relevant leases submitted for registration. Form L1 would be in tabular format, incorporating tick boxes specifying:
  - items that normally appear on the front sheet to a lease;
  - information that would be of use to other government departments; and
  - matters requiring entry in the register.
- Prescribing certain clauses for inclusion at the start of a registrable lease. These clauses would comprise text only, but would require the same information as form L1.

A key element of the proposals was that information contained in either form L1 or the prescribed clauses would take precedence over the remainder of the lease for the purposes of registration.

We also recognised in the consultation paper that a third option would be to make no changes to the current system (see 4.1 *Do nothing*).

The objectives of the second consultation (and of the proposals put forward therein) were:

- To develop and gain acceptance by practitioners of either:
  - a lease front sheet; or
  - prescribed clauses at the front of registrable leases.
- To make the new form or clauses compulsory for new registrable leases from a date to be determined.
- To streamline processing of lease applications and help eliminate errors by presenting our staff with the information required to complete registration in a standard format at the front of lease documents.
- To make leases more readily understandable.

### **3.3 Distribution of consultation document**

Paper copies of the consultation document were issued to:

- all our credit account holders, including:
  - conveyancers;
  - lenders;
  - financial institutions;
  - surveyors;
  - estate agents;
  - insurers; and
  - private individuals;
- groups and individuals who had involvement in our previous consultation exercises in relation to:
  - Commonhold, and
  - Electronic Conveyancing;
- a list of consultees provided by the Department for Constitutional Affairs with an interest in land and property transactions; and
- a list of consultees provided by the Law Society, which included:
  - local and national groups and committees; and
  - their own list of special interest bodies.

In addition, copies were sent to the following bodies:

- Council of Mortgage Lenders;
- Council for Licensed Conveyancers;
- British Property Federation;
- Leasehold Advisory Service;
- Department for Constitutional Affairs;
- Office of the Deputy Prime Minister;
- HM Treasury;
- Cabinet Office;
- National Assembly for Wales;
- Valuation Office;
- Inland Revenue;
- HM Customs and Excise;
- Department for Environment Food and Rural Affairs;

- Individual members of the Ministerial Committee on Domestic Affairs;
- British Retail Consortium;
- CoreNet Global;
- Property Litigation Association; and
- Society of Property Researchers.

The consultation paper was also made available to customers via our website and to Land Registry staff via our intranet site.

Articles were published in the professional and legal press giving notice of and details regarding the consultation, and all methods of obtaining a copy of the document or making submissions.

We used external visits and presentations to inform a broad base of customers about the consultation.

In total, over 17,000 copies of the consultation document were issued.

### **3.4 Responses to consultation**

We received 201 responses to consultation from Land Registry customers and other interested parties and a further 47 responses from our own staff. The prescribed clauses received strong support as being easier to draft and avoiding inconsistencies in formatting with the rest of the lease. This option has the support of representative bodies, such as the Law Society of England and Wales. Dispensing with the need for separate Land Registry application forms to allow the entry of a standard form of restriction contained in the lease was also popular.

Several respondents felt that there would be problems incorporating the prescribed clauses into documents they prepared, particularly in their more complex forms of precedent lease. Having regard to the proposal that the prescribed information would take precedence over that contained in the remainder of the lease, consultation responses also raised concerns that conveyancers might be liable for inconsistencies between the prescribed clauses and the remainder of the lease.

A full report on the consultation process has been prepared and will be published separately.

### **3.5 Additional co-operation**

Following consideration of the responses to consultation, and before placing our revised final proposals before the Land Registration Rule Committee, we informed the following bodies and individuals of the revised proposals and invited them to comment:

- Law Society of England and Wales;
- Valuation Office Agency;
- Department for Environment Food and Rural Affairs;
- Department for Constitutional Affairs; and
- Office of the Deputy Prime Minister.



## **4. Options and risks**

During the development of a standard form of lease, we identified and rejected the following possible alternatives:

### **4.1 Do nothing**

Whilst doing nothing is a possibility in the short term, inaction will cease to be a viable alternative when e-conveyancing is introduced from 2007. (E-conveyancing will require systems to extract the information in dispositions that is capable of entry in the register and submit it to Land Registry in a standard format.) Moreover, doing nothing would clearly not address the problems we currently experience in registering such leases.

### **4.2 Voluntary front end to lease form**

Because a lease can currently be in any form, there is nothing to stop it having a particular front end. For example, such a layout is part of the optional Law Society Business Lease (see Para VII.11 *Law Society's Conveyancing Handbook, edition 10*). Introducing a purely voluntary option would carry a risk that it would not be used. Ultimately, it may not have resolved the problems that we seek to address.

### **4.3 Mandatory lease form**

We proposed a lease document (form L1) as part of the consultation on what became the Land Registration Rules 2003. We encountered considerable opposition to this proposal, both in replies to consultation and in articles in the property press. The risks identified then included:

- increased costs in delay and redrafting existing precedents used by firms;
- placing restrictions on the freedom of landlords and tenants to arrange their affairs;
- difficulties for firms in compliance; and
- concerns regarding the validity of leases not drawn up in the mandatory format.

Further details of the comments made at that time are available in Chapter 1 of the *Report on Responses to Land Registration Rules 2003 – A Land Registry Consultation*, which is available on our website at [www.landregistry.gov.uk/assets/library/documents/lrr\\_con\\_fr.pdf](http://www.landregistry.gov.uk/assets/library/documents/lrr_con_fr.pdf).

### **4.4 Amending existing application forms**

We also considered the possibility of including the required information in existing statutory form of application AP1. However, to do so would run the risk of complicating and substantially lengthening the standard form of application AP1 for only a small fraction (3%) of the applications it is used for. In addition, we considered the creation of a new statutory form of application form specifically for use in the registration of leases. The risks identified for this option included the possibility that the form would be too lengthy and complicated to make its use viable for the vast majority of users and our staff, and would potentially confuse customers used to making their applications using only one standard form.

Moreover, since Land Registry would rely on the content of the form to make entries in the register, errors in completion of an application form by the customer might result in mistakes in the register, for which Land Registry could be liable to indemnify customers.

### **4.5 Mandatory front end to lease form**

#### 4.5.1 Content of mandatory front end

As mentioned in 3 *Consultation*, Land Registry did not seek to implement a full form of standard lease. Rather, we offered two alternative ways of extracting a standard list of useful information (prescribed information) from the main body of the lease and presenting it at the front of the document as an integral part of the lease.

The two alternatives were:

- a form L1, which extracted prescribed information and placed it in a format which would be familiar to customers using Land Registry statutory application forms; and
- a set of prescribed clauses, which would require completion of the same information, but not prescribe the tabular format of form L1.

#### 4.5.2 Risks

The risks associated with both alternatives are:

- an increase in time spent preparing lease documents by the property profession; and
- possible calls on their indemnity insurance for any errors for which they may be responsible (where there is an omission or conflict between the prescribed information and the remainder of the lease).

Having considered replies to consultation, we are taking forward a revised version of prescribed clauses offered in the consultation document (see 11 *Summary and recommendation*).

#### 4.5.3 Summary of consultation responses on the alternative lease formats

The points raised in replies to consultation regarding the preferable format of presenting the prescribed information are summarised below.

##### 4.5.3.1 Form L1

- Because of the obvious differences in layout between form L1 and the body of a lease, it was felt that form L1 ran the risk of appearing to be an addition to the document, rather than an integral part of it.
- Several respondents raised IT problems associated with incorporating a document laid out in the style of form L1 into existing precedent leases held on their own systems. These included:
  - matters of general style and formatting, which may result in the L1 and remainder of the lease being prepared as separate documents;
  - technical and formatting difficulties with the use of tick boxes;
  - possible errors arising from attempts to automatically cross reference to other parts of the lease from within a separate tabulated document; and
  - the requirement to use continuation sheets where word-processed versions of the form (allowing expansion of individual boxes) were not used.

##### 4.5.3.2 Prescribed clauses

- Because the prescribed clauses consisted of text only, the prescribed information would more obviously be an integral part of the lease.
- No tabular format is mandated for prescribed clauses, which will reduce difficulties in adding the prescribed information to existing electronically held precedent documents.
- The free format layout of prescribed clauses was felt to allow more flexibility in omitting information whose inclusion was optional.

## **5 Costs and benefits**

### **5.1 Do nothing**

#### 5.1.1 Costs

The cost to Land Registry in completing the applications and extracting the information from the lease required for registration would remain unchanged. However, there would be a one-off cost of £80,000 associated with the development, issue and evaluation of the consultation proposals. The cost to customers associated with the preparation and submission of registrable leases would remain unchanged.

#### 5.1.2 Benefits

There are no benefits in maintaining the current system and to do so would not resolve the problems we experience in dealing with registrable leases. However, it may be argued that there are no disbenefits to practitioners in the cost of compliance compared to one of the other options.

### **5.2 Voluntary front end to lease form**

#### 5.2.1 Costs

Costs for customers in adopting a voluntary front end to lease form are difficult to quantify, but there would be a compliance cost in providing additional and differently formatted information to Land Registry in the event that they chose to adopt this approach.

Land Registry compliance costs would be the updating of internal and external practice material and costs associated with training staff and customers. We estimate a total one-off cost in the region of £310,000 to be made up of developing practice, publicity and training.

#### 5.2.2 Benefits

A voluntary front end to lease form would have limited benefit to Land Registry. We would be able to use the information in the voluntary front end to lease form to locate information in the body of the lease. However, because there would be no compulsion to use it, we could not be confident in relying on its contents. Accordingly, the benefits arising from a mandatory front end to lease form listed in 5.5.2 *Benefits* would not arise. In particular:

- The proposed mandatory front end to lease brings with it consequences arising from non-compliance, allowing us to be more confident in relying on the information therein. A voluntary front end to lease form could not give similar confidence.
- An applicant may have adopted part only of a voluntary front end for use in their document.

- Not all leases that would include the prescribed information under a mandatory scheme would be submitted in this format under a voluntary scheme.

### **5.3 Mandatory lease form**

#### 5.3.1 Costs

Option 4.3 *Mandatory lease form* would have involved significant upfront costs for practitioners in reprogramming systems, and redrafting precedents, as well as ongoing costs of the additional time taken to draft leases in the more structured form.

Land Registry compliance costs would be identical to those set out in 5.2.1 *Costs*.

#### 5.3.2 Benefits

A mandatory lease form would have generated benefits to Land Registry in time and cost savings. These are estimated to have been £370,000 per year. Furthermore, the bulk of the points identified in 5.5.2 *Benefits* for a mandatory front end to lease form might be seen to apply to this option.

In the longer term a more structured form of lease may have been of benefit to practitioners, and the existence of the Law Society's Standard Business Lease demonstrates an existing demand. However it was difficult to envisage more complex leases being easily accommodated within a fully prescribed form of lease.

### **5.4 Amending existing application forms**

#### 5.4.1 Costs

Several respondents to consultation suggested the amendment of existing Land Registry statutory forms of application to incorporate the prescribed information.

A discrepancy between the application form and lease (were we to rely on the information in the application form which was inconsistent with the contents of the lease) may have resulted in a claim for indemnity.

Completion costs for customers would increase due to the increased length of the form, and staff training costs associated with the newly requested information.

#### 5.4.2 Benefits

Amending existing application forms would have generated most of the benefits set out in 5.5 *Mandatory front end to lease form*. However, a revised form AP1 may have created confusion on the 97% of applications which would not be using the form for that purpose. We did prepare a draft of a statutory form of application specifically for use in relation to the registration of leases, but its complexity was felt to outweigh any benefits that might be generated from its use.

### **5.5 Mandatory front end to lease form**

#### 5.5.1 Costs

There will be compliance costs to customers in staff training and changes to existing precedent documents. It might also be argued that compliance with this alternative will result

in extra costs associated with the increased amount of information contained in the lease. However, we consider that these extra costs may be at least partly illusory, particularly on newly drafted leases. By way of example, on a new development most of the information on the form or in the prescribed clauses will remain constant. Practitioners already need to have readily available the sort of information to be included on a front end to lease form (e.g. information required to complete parts of Stamp Duty Land Tax form SDLT1 or a report on a proposed purchase, as detailed in Para VII.10 *Law Society's Conveyancing Handbook, edition 10*). Additionally, applicants may either set out those aspects of the lease forming part of the prescribed information within the prescribed clauses or cross-refer to the relevant paragraph, clause, schedule or paragraph of a schedule in the lease that contains the required information. This will allow practitioners to retain much of the content of their existing precedent lease documents.

Discrepancies between the prescribed information and the remainder of the lease may result in claims against practitioners and their insurers. Zurich Insurance state that errors in conveyancing and commercial property transactions amount to 46% of all claims against solicitors, including errors in lease drafting and joint proprietorship declarations.– (Press release 22.3.04 - [http://www.zurich.co.uk/professional/news\\_desk/media\\_centre/press+release/zpclaimsurvey22march04.htm](http://www.zurich.co.uk/professional/news_desk/media_centre/press+release/zpclaimsurvey22march04.htm).)

Land Registry compliance costs would be identical to those set out in 5.2.1 *Costs*.

#### 5.5.2 Benefits

Land Registry anticipates lower costs for dealing with each application (cost per unit), speedier application turnaround and that our staff will make fewer errors, which will benefit customers and help us to meet the Key Performance Indicator targets set by the Secretary of State for Constitutional Affairs and the Treasury.

These increases in productivity listed above will equip us to deal with the anticipated continuing rise in intakes of shorter-term leases. Over the last two years, the intake of registrable leases has risen dramatically (as illustrated by the figures in 2 *The proposals*). It is predicted that this level of intake will be sustained over the next two years.

Land Registry conducted a trial of the procedures to ascertain the possible time savings involved in processing applications. This trial involved several members of staff completing all aspects of the registration of a mix of residential and commercial leasehold applications. The trial compared times taken to complete registration of a lease under existing procedures with the time taken to complete registration of the same lease containing prescribed information. The median time saving was 5½ minutes, representing an annual saving of 18,333 man hours or £360,281. This figure represents an estimate of initial savings only - we would expect it to rise as staff gained greater familiarity with the revised forms and practice.

Accuracy of the register would improve as Land Registry staff would extract information from a consistent and pre-determined document format. The reduction in errors associated with registrable leases will result in additional cost savings. If our current error rate in completing applications of 1.23% is applied to the number of lease applications, we may surmise that over 2,000 errors will arise from such applications. Such errors result in requests from applicants for correction, which must be processed at additional cost. If we can prevent 200 errors by the use of a standard lease format, this would result in savings of about £6,000

per annum. These projected savings are based on the cost associated with the correcting an error in registration of £30.53.

This reduction in errors will help to achieve a further Key Performance Indicator: completing all applications for registration with an error rate of no more than 1.5%. Historically, this has been the most difficult target to achieve. Based on the assumptions set out above, we would reduce the total number of errors by approximately 0.3%.

As mentioned in 2 *Purpose and intended effect* a further possibility associated with the Land Registration Act 2002 was to extend the scope of registrable leases to include those of between more than three years and seven years. Should this occur, the number of applications associated with both the registration and noting of leases will rise still further. The increases in productivity and decreases in costs detailed above will become still more significant as such applications would form a higher percentage of Land Registry's total workload.

At present leases are bulky documents, which are not easy for people untrained in the law to understand. The adoption of prescribed information will assist in making the document easier to understand, and enable leaseholders to identify certain key points of the lease at a glance.

Practitioners will be able to use the prescribed information to apply for the registration of one or more of the standard forms of Land Registry restriction (as set out in Schedule 4 to the Land Registration Rules 2003). This will remove the existing requirement to complete a separate Land Registry application form and result in cost benefits to customers.

Replies to consultation indicated some confusion amongst solicitors as to precisely what aspects of the lease would be registered or noted. This option will mean that those parts of the lease that will result in entries in the register are identified.

## **5.6 General points regarding costs**

For most firms, the preparation and submission of registrable leases to Land Registry is only a small part of their work. The proposed change will not affect transfers of already registered leasehold land, which are far more numerous. Freehold land is unaffected. Most of the additional work will be on the first lease of a development; thereafter it will normally be a case of modifying the existing template.

There may be costs associated with errors made in drafting the prescribed clauses and on the evidence of Zurich Insurance's press release (see 5.5.1 *Costs*) this would appear to be a real possibility. Land Registry have ultimately sought to reduce this impact by allowing subsequent applications for the registration and noting of matters contained in the lease omitted from the prescribed clauses, and reducing the general primacy of the prescribed information suggested in the consultation to affect the description of the property demised only (and that being clearly labelled "for the purposes of registration".)

## **5.7 Business sectors affected**

The following businesses will be affected by the proposed change:

- Legal profession  
This will affect nearly all firms, ranging from a sole practitioner to the major London law firms.

- Property industry  
Any individual or body (including such organizations as local authorities and housing associations) involved in letting of registered land for a term of more than seven years will be affected; directly if they draw up lease documents themselves, indirectly if they employ solicitors.

- Publishing industry

Forms publishers will need to produce paper or electronic versions of the prescribed clauses. We will supply the prescribed clauses free of charge via our website and this may reduce income to forms publishers. Legal textbook publishers will need to make revisions. For example, affected works will include *Encyclopedia of Forms and Precedents*, *Practical Lease Precedents* and *Law Society's Conveyancing Handbook*.

### 5.8. Summary of costs and benefits

Option	Total cost per annum	Total benefit per annum
<b>4.1. Do nothing</b>	Land Registry - £80,000 (year 1)	£0
<b>4.2. Voluntary front end to lease form</b>	Land Registry - £310,000 (year 1) Business – some costs for those choosing to use the form	Depends on uptake
<b>4.3. Mandatory lease form</b>	Land Registry - £310,000 (year 1) Business – significant	£370,000
<b>4.4 Amending existing application forms</b>	Land Registry - £310,000 (year 1) Business – as for 4.3 above but possibly with lower indemnity costs	£370,000
<b>4.5. Mandatory front end to lease form</b>	Land Registry - £310,000 (year 1) Business – some compliance costs but not currently quantifiable	£370,000

## **5.9 Costs and benefits checklist**

### **5.9.1 Equity and fairness**

We are aware of the need for equity and fairness.

We believe that this change will not affect any sector of the community disproportionately, as it will apply to both domestic and commercial leases.

It has been suggested to us by the Law Society that smaller firms would have more initial problems in compliance than large firms, due to a perceived lack of IT expertise in smaller firms. Some larger firms, dealing in more complex leases, foresaw problems in structuring their leases to fit the prescribed clauses (although more objections were raised in this regard in relation to the potential introduction of form L1 than the use of prescribed clauses, which was a factor in our selection of this method of presentation). However, no respondent raised long-term fairness issues between large and small firms.

The prescribed clauses will be made available in English and Welsh, as will all publicity material.

To comply with the *Disability Discrimination Acts*, we do not prescribe a particular font size when completing a form and customers are free to include Braille on the form in addition to typescript.

We always welcome suggestions on how our handling of these issues might be improved. No such comments were received as part of the responses to consultation.

### **5.9.2. Economic, social and environmental impact**

We do not consider that the proposal impacts these areas.

## **6. Small firms impact test**

We have worked with the Small Business Service (SBS) during the preparation of this part of the RIA. Based on the information provided within this document, the SBS are content that there appears to be no significant or complex impact on small firms in general.

### **6.1. Do nothing**

There is no impact on small firms associated with maintaining current procedures.

### **6.2 Voluntary front end to lease form**

If they chose to adopt a voluntary front end to lease form, small firms would be required to alter any existing precedents to include the new information. Consequently there will be a cost implication, but this should be minimal because:

- any standard leases available for purchase through legal publishers would include the new format;
- we would include the document for download from our website so that any firms with an internet connection can download the text easily; and



- our training material (available to all customers) would include details of how to obtain the document from our internet site. Consequently, there would be no need to purchase the forms from a commercial supplier.

### **6.3 Mandatory lease form**

The mandatory adoption of a lease form by small business would entail the cost implications referred to in 6.2 *Voluntary front end to lease form*.

### **6.4 Amending existing application forms**

The amendment of existing forms of application would require the purchase of new stocks of forms to replace any existing stocks of old forms. As small firms do not traditionally hold large stocks of Land Registry application forms and advance notification of the changes would be proposed, this impact would be minimal.

There would be an additional cost in the time taken to extract information from the lease to accurately complete the application form.

### **6.5 Mandatory front end to lease form**

The mandatory adoption of a front end to lease form by small business would entail the cost implications referred to in 6.2 *Voluntary front end to lease form*.

However the prescribed clauses have been prepared so as to minimise the impact on any existing leases allowing already prepared documents to continue to be used, provided the information is added to them.

## **7. Competition assessment**

Having used the competition filter test in Appendix 3 to *Better Policy Making: A Guide to Regulatory Impact Assessment* in relation to all the options detailed in this part of the RIA, we have determined that few competition concerns arise and therefore a detailed competition assessment is unnecessary.

## **8. Enforcement, sanctions and monitoring**

Irrespective of which option (including 4.1 *Do Nothing*) is adopted, Land Registry have the sanction of cancelling or rejecting an application for registration of a lease, with a resulting loss of priority, where the application is substantially defective or if the applicant fails to comply with requisitions (rule 16 of the Land Registration Rules 2003). We would consider that an application to register a relevant lease which did not use a mandatory lease form to be substantially defective. These sanctions will be consistently and fairly applied in accordance with our current procedures. Other than the costs associated with rectifying the defects in the application and its re-submission, there is no financial penalty on customers in such circumstances as any Land Registry fees already paid will be credited against a renewed application.

New rule 72A, the introduction of which is proposed by the Land Registration (Amendment) (No 2) Rules 2005, sets out the register entries which the registrar must make in the register on completion by registration of a lease affected by these proposals. In certain cases, where interests have not been referred to in the prescribed clauses when they should have been, then

the registrar need take no action in respect of them unless separate application is made. This would mean that the interests might not be protected as they should be. If the application is not made simultaneously with the application to register the lease additional fees will be payable. This sanction would be available to Land Registry whichever option were to be adopted (other than 4.1 *Do Nothing*).

We constantly monitor our performance and service through customer service questionnaires, user panels and structured interviews.

## **9. Implementation and delivery plan**

### **9.1 Do Nothing**

No implementation or delivery plan would be required if option 4.1 *Do Nothing* were adopted.

### **9.2 Voluntary front end to lease form**

The adoption and implementation of a voluntary front end to lease form would follow the proposals set out in 9.5 *Mandatory front end to lease form*, with the exception of the additional changes listed in 9.5.2 *Compulsory introduction*.

### **9.3 Mandatory lease form**

The adoption and implementation of a mandatory lease form would follow the proposals set out in 9.5 *Mandatory front end to lease form*.

### **9.4 Amending existing application forms**

Implementation and delivery of amendments to existing forms of statutory application would include the training and publicity materials identified in 9.5 *Mandatory front end to lease form*.

Due to the nature of the changes, it would not be possible to include a transitional period during which we would continue to accept “old” forms of application. Any application submitted to Land Registry after the date of implementation not in the correct form would be rejected.

### **9.5 Mandatory front end to lease form**

The Land Registration (Amendment) (No 2) Rules 2005 are drafted to allow the implementation of prescribed information in registrable leases in two stages. In advance of the voluntary period described below, Land Registry would undertake an extensive campaign of training materials and publicity to ensure that both its staff and customers have the skills and information necessary to implement the new procedures smoothly.

#### **9.5.1 Voluntary period**

- A voluntary period would run for over five months, proposed to commence on 9 January 2006. During this period, applicants will be able (though not obliged) to draw up and submit leases containing the prescribed information. We intend that this period will allow customers (and, to a certain extent, Land Registry staff) to gain familiarity with the new procedures.

- Customers who, on and after 9 January 2006, use the revised format of lease on a voluntary basis would be able to benefit from being able to use the lease document itself to apply for the registration of a standard form of restriction, removing the need to complete an additional application form.
- During the voluntary period, Land Registry would continue to examine the lease for matters that are capable of registration or noting in accordance with its current procedures. On completion of the application we would provide feedback to customers, pointing out those areas of their application which would have had a different result were the use of the revised format of lease compulsory.

#### 9.5.2 Compulsory introduction

- Any registrable lease dated on or after 19 June 2006 would have to be drawn up using the revised lease format. (Certain exceptions to this general rule are set out in the Land Registration (Amendment) (No 2) Rules 2005 and will be included within our publicity and training materials.)
- Failure to submit the lease in this form where required to do so may result in rejection of the application, or, where information is not included when it should have been, interests not being properly protected. (See 8. *Enforcement, sanctions and monitoring*.)

### 10. Post-implementation review

The project to secure the delivery of a form of prescribed information in registrable leases is being conducted using project management procedures of which a formal post-project review is an integral part, whichever method (including 4.1 *Do Nothing*) is adopted.

We also intend to hold a review via a customer survey and focus groups within a year of the change being introduced.

### 11. Summary and recommendation

Following detailed consideration of the replies to consultation, and for the reasons set out in this part of the RIA, we recommend the implementation of a Mandatory front end to lease form. This will take the form of a set of prescribed clauses requesting only that information necessary to complete the registration of the lease at Land Registry.

We considered the use of proposed form L1 carefully, but ultimately rejected it after considering the comments made. The clauses prescribed for inclusion in registrable leases now contain only that information required for the completion of the register and title plan. The clauses are presented in the rules in a tabular format, but it will not be compulsory to present this information to us as a table within the final lease. This will allow customers and practitioners the freedom to draw up this part of the lease in whatever way best suits their practical and IT requirements. These revisions were as a direct result of the replies to consultation.

We have listened to the many concerns about imposing a full lease form and believe that the proposed option achieves a balance between the needs of business and Land Registry's own operational requirements.

## **Part 2**

### **SUBSTITUTED FORM AP1**

#### **AMENDMENTS RELATING TO THE CIVIL PARTNERSHIP ACT 2004**

## **1. Introduction**

We propose to introduce amendments to the Land Registration Rules 2003 to make changes to forms AP1, AN1, UN1 and to the MH series forms. We also propose amendments to the Land Charges Rules 1974 to incorporate changes arising from the Civil Partnership Act 2004 and to make an overdue reference to the Family Law Act 1996.

The Department of Trade and Industry have announced that the Civil Partnership Act 2004 will come into force on 5 December 2005, but the commencement order bringing the substantive provisions of the Act into force has not yet been made.

## **2. Purpose and intended effect**

### **2.1 Proposed amendments to the Land Registration Rules 2003**

The proposed amendments to the Land Registration Rules 2003 are:

- in respect of forms AP1, AN1, UN1, MH1 and MH2, to make it clearer who the applicant is;
- in respect of form AP1 to meet certain customer concerns particularly about the completion of dispositions of part of a registered title;
- in respect of the MH series forms, to include home right applications made where there is a civil partnership as defined by the Civil Partnership Act 2004; and
- in respect of forms AN1 and UN1, to remove reference to “matrimonial” on these forms in consequence of the civil partnership changes to the MH series forms and to refer to the relevant new form.

#### **2.1.1 Amendments to Forms AP1, AN1, UN1 and MH series forms**

##### **2.1.1.1 Forms AP1, AN1, UN1, MH1 and MH2 – General points**

We propose amending all the above forms to split the current panel identifying the applicant and the person lodging the application into two separate panels. This is to improve completion of the form as conveyancers often fail to provide all of this information.

We need to know who the applicant is because, amongst other things, we need to know who specifically is applying to change the register and satisfy ourselves that the applicant is in fact entitled to make the application. Although this problem exists in relation to other forms, we only intend to amend the above forms at this time. This is because form AP1 is the principal form used for lodging an application for registration and the other forms require amendment because of the Civil Partnership Act 2004. It makes sense to incorporate this change at the same time to minimise disruption for customers. We propose to leave the other forms as they are until we have had an opportunity to monitor how effective this change is.

##### **2.1.1.2 Form AP1**

We also propose amending form AP1 to add an additional panel to enable an applicant to request notification of completion of a registration to be sent to a third party. This is a customer driven amendment.

The need for this has come about principally as a result of the abolition of land and charge certificates and to address complaints that we do not issue any documentation in respect of the seller's registered title when we complete the registration of a transfer or lease of part. Formerly, sellers of part of a registered title would have placed their land or charge certificate relating to that registered title on deposit to meet the application. On completion of the registration, their certificate would have been made up to reflect the disposition with part of the registered title and then returned.

Since the abolition of certificates, it has been our practice to issue official copies of the register and title plan for the new registered title only on completion. We do not automatically issue official copies for the seller's title. This has led to complaints from sellers that they do not know what changes have been made to their register and title plan; and that they do not know when they should apply for official copies because they do not know when we have completed the registration of the dealing of part.

The new panel 10 in form AP1 will allow the applicant to give the name and address of the seller or a third party, so that notification of completion can be sent informing them that they can now apply for official copies if they so choose.

We propose restricting this change to form AP1 at this time as this is the form used for applications to register transfers and dispositional leases of part and for the majority of dealing applications. We propose to leave the other forms as they are until we have had an opportunity to monitor how effective the change is in addressing the above issue.

#### 2.1.1.3 MH series forms – General points

On 21 February 2005, the Department of Trade and Industry (DTI) announced that the Civil Partnership Act 2004 will be brought into force on 5 December 2005.

We propose a number of additional amendments to the MH series forms (to be renamed HR1 etc.), to meet changes relating to the Civil Partnership Act.

As the MH forms require amendment to reflect the Civil Partnership Act, it makes sense to make the other changes at the same time to minimise disruption for customers.

#### 2.1.1.4 Form HR1 (MH1)

- To rename the form HR1, remove reference to matrimonial and add reference to civil partners.
- To split the address panel 8 (application), as for the form AP1 above.
- To ask for the date of registration at Land Charges in panel 9. Supplying this information will allow us to provide a better speed of service. The applicant will not be penalised if the date is not completed; we will continue to make an internal search but this may result in a delay in actioning the application.
- To remove panel 5 (documents lodged), and to slightly reword panel 10, to cover the few occasions when a document might be lodged. This is to simplify the form as the current version has caused confusion to customers.

#### 2.1.1.5 Form HR2 (MH2)

- To rename the form HR2 and remove reference to matrimonial.
- To split the address panel 7 (application), as for the form AP1 above.
- To remove panel 5 (documents lodged), and to slightly reword panel 8, to cover the few occasions when a document might be lodged. This is to simplify the form. The alternative options in panel 9 are deleted, as this information will now be supplied in panel 8.
- To remove incorrect second reference to 1996 in panel 8.

#### 2.1.1.6 Form HR3 (MH3)

- To rename the form HR3 and remove inappropriate references to matrimonial.

#### 2.1.1.7 Form AN1

- To refer to form HR1 and remove reference to matrimonial. (These changes are a consequence of the Civil Partnership Act.)
- To split the address panel 7 (application), as for the form AP1 above.

#### 2.1.1.8 Form UN1

- To refer to form HR1 and remove reference to matrimonial. These changes are a consequence of the Civil Partnership Act.
- To split the address panel 8 (application), as for the form AP1 above.

## 2.2 Proposed amendments to the Land Charges Rules 1974

The proposed amendments to the Land Charges Rules 1974 are:

- To include home right applications made where there is a civil partnership as defined by the Civil Partnership Act 2004.
- In rule 11(i) to replace “rights of occupation” with “home rights” in accordance with Family Law Act 1996 as amended by the Civil Partnership Act.
- In rule 11(ii) replace the words “section 5(1) of the Matrimonial Homes Act 1967” with “section 33(5) of the Family Law Act 1996”.
- In Schedule 1, paragraph 1(vi) replace the words “section 2(2) of the Matrimonial Homes Act 1967” with “section 53(2) of the Family Law Act 1996”.
- Amendments to the following forms:
  - K2 – insert reference to Family Law Act 1996 in heading and body of form and insert reference to Matrimonial Homes Act 1983 in body of form;
  - K8 – insert reference to Family Law Act 1996 in heading and body of form;
  - and
  - K13 – reference to Family Law Act 1996 in heading.

The opportunity has also been taken to modernize the layout of the forms.

## 3. Consultation

Prior to these proposals we have consulted with the stakeholders listed in this section.

### 3.1 Land Registry Form AP1, AN1, UN1 and MH series forms (other than consequent to the Civil Partnership Act)

We have discussed the form AP1 proposal with customers at a number of Customer Service Focus Group meetings, who all welcomed this proposed change.

The information about the applicant is already required on the current version of form AP1. The amendment is designed to increase compliance.

### **3.2 Civil Partnership Act 2004**

Although we have not consulted on the changes to either the Land Registration Rules 2003 or the Land Charges Rules 1974 consequent to the Civil Partnership Act 2004, the Department of Trade and Industry (DTI) consulted widely on the principle of the Act – see [Regulatory Impact Assessment on Civil Partnership \(http://www.dti.gov.uk/access/ria/pdf/final\\_ria\\_for\\_cp\\_bill.pdf\)](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf).

## **4 Options**

### **4.1 Do nothing**

#### **4.1.1 Land Registration Rules 2003**

##### **4.1.1.1 Form AP1 and non-Civil Partnership Act changes to AN1, UN1, MH1 and MH2**

This is an option as regards the proposed changes to forms. The risks of such a course would be that we would not meet the objectives set out in 2.1 *Proposed amendments to the Land Registration Rules 2003*. Low compliance with the existing applicant's panel would not be improved. There are no implementation issues.

As an alternative to amending form AP1 to include this additional panel we have considered amending our practice, where registered land is developed, to issue official copies for the seller's registered title (the parent title). We have rejected this alternative for the following reasons:

- We considered whether we should issue official copies for the parent title following completion of the last transfer or lease of land out of the parent title, but it is sometimes difficult for us to assess how many transfers or leases there will be from some titles, or when or if the last applications for registration will be made.
- The alternative would be issue parent title official copies routinely each time we completed a transfer of part or new lease application. This would create problems. For some developments, this would mean a continuous and wasteful production of official copies, which might provide little information about each removal. We would also not always know who is acting for the parent title owner and the issuing of unsolicited official copies might cause confusion. It would also be inappropriate to send parent title official copies to the applicant for the new title.

We consider our proposal to incorporate the new panel 10 to be an acceptable solution to the issue raised by conveyancers.

##### **4.1.1.2 Civil Partnership Act**

This is not really an option in respect of the MH series of forms and forms AN1 and UN1 as the changes are consequential to primary legislation (Civil Partnership Act 2004).

Although the Civil Partnership Act 2004 contains saving provisions that reference to “matrimonial home rights” means “home rights”, it does not contain a similar provision that reference to husband, wife or marriage, means civil partner or civil partnership.

Form HR1 must therefore be amended. Given that this change must be made, it makes sense to amend the other forms at the same time. Doing nothing would also go against the spirit of the Act.

#### 4.1.2 Land Charges Rules 1974

The provisions referred to in 2.2 *Proposed amendments to the Land Charges Rules 1974* refer to repealed legislation (the Matrimonial Homes Act 1967), and leaving them unchanged is not really an option.

Leaving the forms unchanged is also not really an option. While the Family Law Act 1996 and Civil Partnership Act 2004 contain transitional provisions allowing references to “rights of occupation” or “matrimonial home rights” to be treated as references to “home rights”, there is no such saving for the references to the former statutory provisions permitting renewal of the rights. Furthermore, as these are forms used by applicants, who may not be legally qualified, leaving out of date references in them would cause confusion.

The risks of doing nothing are that we would not meet the objectives set out in paragraph 2.2 *Proposed amendments to the Land Charges Rules 1974*, and that customers may be confused by the obsolete wording. Compliance and implementation issues do not arise.

### 4.2 Voluntary compliance

#### 4.2.1 Land Registration Rules 2003

This is not an option for either. This is because rule 206 of the Land Registration Rules 2003 prescribes that Schedule 1 forms must be used where required – adaptation is possible under rules 207 and 210 but those rules are not relevant in the present context. If these changes are to go ahead they must be by rule change.

The risks and compliance issues would be similar to 4.1 *Do Nothing* above. There are no implementation issues.

#### 4.2.2 Land Charges Rules 1974

Since the provisions referred to in 2.1 *Proposed amendments to the Land Registration Rules 2003* have to be amended, it seems proper, and will avoid unnecessary confusion, to amend the statutory forms at the same time.

The risks and compliance issues would be similar to the Do Nothing option above. There are no implementation issues.

### 4.3 Rule change

#### 4.3.1 Land Registration Rules 2003

Change the existing Land Registration Rules 2003.

To assist compliance the rules propose a transitional period of three months when the old MH series forms and forms AP1, AN1 and UN1 would continue to be accepted, unless in the case of Form MH1 the application is in respect of rights arising under a civil partnership.



Implementation would be to coincide with the Civil Partnership Act 2004 coming into law (which is expected to be on 5 December 2005). In advance of implementation we will publicise the changes, amend or publish new practice guides and make the new forms available.

#### 4.3.2 Land Charges Rules 1974

Change the existing Land Charges Rules 1974.

To assist compliance we would have a changeover period of three months when the old K series forms would continue to be accepted for all applications other than those registering or renewing a land charge arising out of a civil partnership. This will be permitted under rule 24(1).

Implementation would be on with the day that the relevant provisions of the Civil Partnership Act 2004 come into force, which is expected to be 5 December 2005. In advance of implementation we will publicise the changes, amend or publish new practice guides and make the new forms available.

## 5 Costs and benefits

### *5.1 Sectors affected*

The following people and organisations will be affected by these proposals to amend the Land Registration Rules 2003 and the Land Charges Rules 1974:

- conveyancing profession – all, if the changes to Land Registry form AP1 go ahead, and probably most in the case of the civil partnership changes to the Land Registration Rules 2003 and the Land Charges Rules 1974;
- voluntary sector (e.g. Citizens' Advice Bureaus, Law Centres);
- general public making their own applications; and
- publishing Industry – electronic forms suppliers and editors of textbooks.

### *5.2 Equity issues*

We do not anticipate that the proposals adversely or disproportionately affect any sector of society or business by the changes to either the Land Registration Rules 2003 or the Land Charges Rules 1974. We undertake to publish bespoke copies of any leaflet in other languages, or on tape or Braille for the blind.

Welsh language versions of the amended land registration forms and of all guidance will be available.

### *5.3 Costs*

Estimated costs for Land Registry to implement the changes to the Land Registration Rules 2003 and the Land Charges Rules 1974 cover:

- revision and publication of new forms and practice guides;
- consultation process;
- revisions to practice material and staff training; and
- reprogramming systems.

There will be costs for our customers in compliance:

- redrafting precedent forms;
- staff training; and
- amending legal textbooks.

## 5.4 Benefits

### 5.4.1 Land Registration Rules 2003

There are benefits to both Land Registry and our customers in making Forms AP1, AN1, UN1 and MH series forms easier for our staff to process quickly and accurately. Fewer customer errors on application forms will reduce the need for requisitions. One of the changes to form AP1 is in response to repeated requests by our customers.

### 5.4.2 Land Charges Rules 1974

The benefits to both Land Charges and our customers in making forms correctly refer to legislation therefore reducing confusion.

### 5.4.3 Civil Partnership Act

The costs and benefits of this change are discussed at large in [Regulatory Impact Assessment on Civil Partnership](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf) ([http://www.dti.gov.uk/access/ria/pdf/final\\_ria\\_for\\_cp\\_bill.pdf](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf)), published by the DTI.

## 5.5 Do nothing

- Land Registry – the costs of this exercise to date for the Land Registration and Land Charges changes are:
  - Non civil-partnership - £264.32.
  - Civil Partnership - £14,189.93.
- Customers – nil.

## 5.6 Voluntary compliance

- For Land Registry the costs of voluntary and mandatory changes to the Land Registration Rules 2003 and Land Charges Rules 1974 are alike, as they still involve the same amount of work (to include system changes, printing and amendments to internal practice material):
  - Form changes - £1,892.20.
  - Civil Partnership - £61,375.93.
- The cost to customers would depend on whether they choose to comply or not. As only six Land Registry forms and three Land Charges forms would require minor amendment and they would be freely available to download from Land Registry's website, we do not believe that compliance costs will be high.

## 5.7 Rule Change

- Land Registry – the costs for changes to the Land Registration Rules 2003 and the Land Charges Rules 1974 would be the same as in 5.6 *Voluntary Compliance*, because the same development costs would be involved. However the benefits would be much greater in terms of improved application processing and better customer service. The benefits to us are clear but somewhat difficult to quantify in monetary terms. However we anticipate faster completion of applications and the receipt of fewer complaints about service.
- Customers – because the change would be mandatory, the numbers affected would be greater than in 5.6 *Voluntary Compliance*. However we would take steps to minimise the costs to practitioners. For example there would be the three-month changeover period, when customers could use up any unused stocks of forms.

Customers would benefit by the non-Civil Partnership improvements to Land Registry forms AP1, AN1, UN1 and MH series forms, which would meet expressed concerns and make them more straightforward to complete. They would benefit from having to answer fewer requisitions arising from inaccurately completed forms.

Land Charges customers would benefit by removing the confusing references to the Matrimonial Homes Act 1967.

- The costs and benefits to society at large from the Civil Partnership law are set out the [Regulatory Impact Assessment on Civil Partnership](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf) ([http://www.dti.gov.uk/access/ria/pdf/final\\_ria\\_for\\_cp\\_bill.pdf](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf)), published by the DTI.

## **6 Small business impact test**

The majority of our customers affected by the changes to Land Registration Rules 2003 and Land Charges Rules 1974 would fall within the DTI definition of a small business (i.e. under 250 employees), therefore the impact on small business must be considered and consultation made as necessary.

We hold regular focus groups with our customers, and some of the changes to form AP1 arose from what our customers told us they wanted.

We do not consider a small business impact test is necessary for the remaining changes proposed, because the impact of the changes in Civil Partnership law has already been dealt with in [Regulatory Impact Assessment on Civil Partnership](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf) ([http://www.dti.gov.uk/access/ria/pdf/final\\_ria\\_for\\_cp\\_bill.pdf](http://www.dti.gov.uk/access/ria/pdf/final_ria_for_cp_bill.pdf)), published by the DTI. The other changes are of a very minor nature.

## **7. Competition assessment**

Using the DTI [competition assessment](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/competition_assessment.asp) ([http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/competition\\_assessment.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/competition_assessment.asp)), we believe that no significant competition issues arise from the changes to either the Land Registration Rules 2003 or the Land Charges Rules 1974. We understand that no firm has more than 10% of the conveyancing business, and the proposals would not alter market structure, nor affect the ability of a newcomer to enter the market.

Some competition issues may arise for firms that will have to redraft precedents held on computer. A large firm is more likely to have the resources to do this than a small one. However, given the small number of forms involved and the relatively minor changes involved, we judge that this does not *significantly* impact on competition.

## **8. Enforcement**

The enforcement issues of each option are discussed in turn below:

### **8.1 Do nothing**

No enforcement issues arise under this option for either the Land Registration Rules 2003 or the Land Charges Rules 1974.

### **8.2 Voluntary compliance**

No enforcement issues arise under this option for either the Land Registration Rules 2003 or the Land Charges Rules 1974.

### **8.3 Rule change**

#### **8.3.1 Land Registration Rules 2003**

We will publish the new forms at least three months before implementation. Post implementation, there would be a three month changeover period when we would continue to accept the old forms for all applications except those relating to the registration of interests arising under civil partnerships. This is to allow practitioners plenty of time to use up old stocks of the forms, and to redraft any precedents.

After that period, they would be treated like any other defective application, that is liable to requisition or rejection.

As many customers use electronic forms supplied by ourselves or software houses, we expect compliance to be high.

#### **8.3.2 Land Charges Rules 1974**

We will publish the new forms at least three months before implementation. Post implementation there would be a three month changeover period when we would continue to accept the old forms for all applications except the registration or renewal of a land charge arising out of a civil partnership. This is to allow practitioners plenty of time to use up old stocks of the forms, and to redraft any precedents.

The post implementation three month changeover period is a policy commitment. We would review compliance at the end of that period.

As many customers use electronic forms supplied by ourselves or software houses, we expect compliance to be high.

## 9. Implementation and delivery

The target date for implementation would be 5 December 2005, to coincide with when the Civil Partnership Act 2004 is expected to come into effect. The proposed timetable for implementation is set out below:

July 2005	Proposed rule changes made and laid before Parliament.
Aug 2005	Software house form changes approved.
Sept 2005	Publicity in customer newsletter.
Sept 2005	New forms published.
Nov 2005	Publication of revised customer Guides.
Nov 2005	Publication of revised practice guidance for staff.

## 10. Post-implementation Review

The effect of the non-Civil Partnership changes will be reviewed within a year of implementation. In particular the success or otherwise of splitting the applicant's panel on form AP1 will be looked at, with a view to extending it to other forms.

## 11 Recommendation

Option	Total Cost	Total Benefit
Option 1 – Do nothing	Land Registry – non-recoverable development costs of £14,500. Continuing risk of poorly completed forms. Customers – none	Land Registry – none Customers - none
Option 2 – Voluntary compliance	Not an option	Not an option
Option 3 – Rule Change	Land Registry – project costs of about £63,270. Staff Training costs.  Customers – some costs in amending precedent forms, training etc.	Land Registry – improved processing of applications, better customer service. Customers – fewer requisitions because of application form errors. Requests for sellers to be informed on transfers or leases of part of their registered titles met.

For the reasons stated above, we recommend Option 3 - *Changes to the Land Registration Rules 2003 and Land Charges Rules 1974* to come into force when the Civil Partnership Act 2004 comes into force (expected to be on 5 December 2005).

**12. Declaration and publication**

I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs.

Signed .....

Baroness Ashton, Parliamentary Under Secretary of State, Department for Constitutional Affairs

**Contact point**

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