The overarching aim of the e-conveyancing programme is to make conveyancing easier for all, with an electronic system that makes buying and selling property less stressful for the public, conveyancing professionals and the other parties involved.

E-conveyancing will transform the conveyancing process. As part of that transformation Land Registry will introduce new services and change the way it delivers its current services. However we realise that conveyancing involves extremely complicated processes that cannot easily be converted from paper into an electronic system.

The Land Registration Act 2002 (the Act) provided the legislative framework to enable the implementation of e-conveyancing services. Since the Act came into force we have been developing our e-conveyancing proposals and drafting the secondary legislation required to give effect to the provisions contained in the Act.

This paper is the second part of our consultation on the secondary legislation required to support the operation of an e-conveyancing system. It contains our proposals for The Land Registration (Electronic Conveyancing) Rules 2008. The rules introduce a proposed new electronic legal charge complete with electronic signatures earlier than, and separately from, other electronic dispositionary documents. This consultation also proposes enhancements to the existing facility for lodging simple electronic documents, and discusses the possibility of exchanging contracts using Land Registry’s Chain Matrix™ together with a new electronic exchange protocol being developed by The Law Society.

There will be a further consultation on a new fee structure required to bring e-conveyancing into operation, and other new services as these are developed.

We have consulted widely with our stakeholders, representative bodies and the public throughout the development of the e-conveyancing programme and we are tremendously appreciative of all the feedback, help and support we have received along the way. I would once again urge you to give consideration to this paper, and give us your views on the proposed secondary legislation to help us make e-conveyancing a reality.

Peter Collis CB HonRICS
Chief Land Registrar and Chief Executive
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Introduction

This consultation seeks your views on the draft Land Registration (Electronic Conveyancing) Rules 2008.

Following the consultation paper Secondary legislation part I published on 12 February 2007 this is the second in a series of consultations on our proposals for e-conveyancing. It was anticipated that this consultation would cover a complete set of rules on how to go about an e-conveyancing transaction. In view of changes to the proposed timetable introducing e-conveyancing, the draft rules in this paper cover specifically the use of an ‘electronic legal charge’ intended for use primarily in the remortgage market. This accelerated delivery of services means the consultation process will be spread over further stages. While this paper will be concentrating on electronic charges, future papers will deal with the wider services in further detail.

The proposed introduction of an electronic legal charge will deliver earlier some of the benefits of using electronic documents to the re-mortgage market, which constitutes around one million transactions a year. It will, in due course, allow an interface with practitioner’s case management systems to be piloted.

The facility will be extremely limited at the outset because we are still at a relatively early stage in the programme.

Under this proposal straightforward single title number electronic legal charges will be lodged electronically. Once received by Land Registry, they will be processed manually within Land Registry. It is not intended that there will be any automatic processing of electronic charges at the beginning of this phase but this will be implemented as soon as possible. Complete automatic processing of electronic legal charges will not be possible until a system for dealing with outstanding charges and restrictions on the register is developed.

On a general point of terminology, we have taken note of the comments received in the earlier consultation. In order to avoid confusion, we have decided to change the descriptions “User” and ‘Authorised User’ in the draft network access agreement referred to in the previous consultation paper. Please see section 4.2 of this paper.

This consultation is aimed primarily at conveyancers, lenders, financial institutions, regulatory and representative bodies (such as The Law Society, the Council of Mortgage Lenders and the Council for Licensed Conveyancers) and other property professionals such as estate agents. However, we would be glad to hear from others who have views on the draft secondary legislation and we would be happy for recipients to pass copies of this document to those who they think might have an interest. Respondents do not need to comment on all questions; we will welcome responses concentrating on just one particular aspect of the consultation.
The Land Registration Act 2002 does not oblige the Lord Chancellor or the Chief Land Registrar to consult on this set of draft rules. However, we are doing so because of the radical nature of our e-conveyancing proposals and in order to ensure that stakeholders have as much information as possible about these proposals. Accordingly, on behalf of the Lord Chancellor, we are sending copies of this document to a wide range of government departments, representative bodies and individuals, listed in Annex D.

In addition, all our credit account customers (numbering around 16,000) have been invited to participate in the consultation exercise, and the consultation document and questionnaire have been posted on our consultation website.

After careful consideration, we have decided not to produce a Welsh language version of the proposed rules nor this consultation paper. Our Welsh Language Scheme recognises that some advisory material, such as this, is too technical and complex to make a Welsh version practicable.

Any proposed legislative change that is likely to have a direct or indirect impact on business, charities or the voluntary sector requires an impact assessment. An impact assessment is a policy tool that assesses the impact, in terms of costs, benefits and risks, of any proposed regulation that could affect such organisations. It enables policy-makers to reach informed decisions.

A consultation impact assessment relating to the proposed e-conveyancing secondary legislation is included in this consultation paper in Annex A. Your comments on this would also be welcomed and help us to develop it further.

This consultation is being conducted in accordance with the Cabinet Office’s Code of Practice on Written Consultation. The Code of Practice criteria are set out in Annex E.

The questions in the questionnaire are listed in full in Section 8.
How to respond

There are several ways of responding to this consultation document.

Our consultation website allows you to respond using our online questionnaire. Your answers may be saved as a draft as you go along – you do not have to answer all the questions at once. We would encourage you to use this online questionnaire as this feeds directly into our analysis systems, saving retyping or manual analysis. The questionnaire allows you to express specific points of view in your own words, but please help us by assigning those views to key issues and proposals within this document. Some of you will have registered already to respond online. For those of you who have yet to register, registration instructions appear on the consultation website:

econsultations.e-conveyancing.gov.uk

You can also download a version of the questionnaire which you can complete offline and then upload to the website as your response. Please use the pro-forma document wherever possible, as it helps us to assign views to particular discussion points during analysis. If you experience problems with our consultation website, you may email your response to:

consultationsmanager@econsultations.e-conveyancing.gov.uk

Alternatively, you may download a printable questionnaire from the website, or, if you have received a paper copy of the consultation document, you can use the enclosed paper questionnaire.

Please send your paper responses to:

Land Registry
FREEPOST PAM 6169
London W12 8SW

using the envelope provided.

Whichever method you choose, if you are responding on behalf of a group or organisation, please tell us who you represent. Representative groups are asked to supply information on the ethnic profile of their members and to inform us of any potential impact of our proposed policies on different ethnic groups.

Please respond by Friday 16 November 2007.
Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice which public authorities must comply with and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Land Registry.

Land Registry will process your personal data in accordance with the DPA and, in a majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please note that confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

Further copies

You can obtain further copies of this consultation document by:
— downloading from our website www.landregistry.gov.uk
— writing to Kieran Walsh, Trish Connolly or Adrienne Evans at Leigh Court Torrington Ave, Coventry CV4 9XZ
— sending an email to consultationenq@landregistry.gsi.gov.uk
— phoning 024 76 867377.

Other formats

We can supply the consultation material in other formats. If you need the document in any other format, please ask us.

Enquiries

If you have any questions about the consultation document or how to respond, please send an e-mail to consultationenq@landregistry.gsi.gov.uk or by telephoning 02476 867377.
Executive summary

This consultation paper presents for discussion the proposed Land Registration (Electronic Conveyancing) Rules 2008. The rules are required to introduce the facility to use electronic legal charges. The paper uses a number of technical terms, which are explained in the Glossary of terms in Annex C.

The Rules

The Rules are set out in Section 7 and an explanation of them appears in Section 6. They provide for the creation and signature of electronic legal charges.

Overview of services

By way of background, the previous consultation paper (Part I published in February 2007) included an overview of e-conveyancing services to give prospective users an idea of how e-conveyancing will work in practice. Since publication of the first consultation paper a review of our implementation proposals has taken place. We now hope to introduce the following new services and enhancements to existing services by the summer of 2008:

1. Electronic legal charges.
2. Enlargement of the scope of electronic lodgement of documents and enhancement of the current service.
3. An enhanced Chain Matrix™ service to replace the version currently undergoing trials in the Bristol, Fareham and Portsmouth areas, including the ability to use the matrix to facilitate exchange of paper contracts in residential chains using a protocol devised by The Law Society.
4. Since these services create a Land Registry Network practitioners will be required to enter into a network access agreement before they can make use of the services.

Details specific to the processing of electronic legal charges and enhancements to electronic documents and Chain Matrix, together with information on the operation of network access agreements, are outlined in this paper.
Proposals for the early stages of e-conveyancing (services expected to be introduced during 2008)

3.1 Electronic legal charge

The electronic legal charge, which is the central theme of this consultation, is explained at Section 5 of this paper.

3.2 An extension to the other documents that can be lodged electronically

3.2.1 Introduction

Broadly speaking, different electronic documents have different requirements. For example some require the electronic attachment of supporting documentary evidence, some require electronic signatures and some require neither. There is a further difference between those documents that are lodged electronically and lead to an electronic update of the register without human intervention, and those that are lodged electronically but then require Land Registry staff to manually update the register.

3.2.2 Existing Land Registry Direct forms

Currently there are 17 applications that can be lodged electronically at Land Registry (e-lodgement), via Land Registry Direct. Many of these are limited by the inability to attach evidence or conveyancers’ certificates to the application.

We propose to ‘migrate’ 13 of these 17 forms to the e-conveyancing service starting with the most commonly used forms. A comparison of the forms can be found in the summary of forms table on page 14. As the service develops and matures, Land Registry will further refine its electronic documents with the aim of removing those few limitations that still remain. There are four Land Registry Direct forms (ADV2, HR2, RX2 and UT1) that will not be migrated from Land Registry Direct at this stage since these are rarely if ever used. In fact, of these four forms, the only one that has been used since January 2006 is UT1, which has been used once on Land Registry Direct.

3.2.3 New forms (excluding E-DS1 and electronic legal charge)

There will be new additions to the existing Land Registry Direct forms:

- The electronic equivalent of application form AP1.
- AN1 Agreed Notice.
- CN1 Cancellation of Agreed Notice.
- RX3 Cancellation of Restriction.
It is proposed to allow electronic attachments to these forms. A further new document, the E-DS1, is referred to below, in Section 3.2.5.

3.2.4 Conveyancer’s certificates and the attachment solution in detail

Conveyancer’s certificates are statements by a conveyancer in an e-document, certifying that they have either seen or hold the appropriate evidence, or confirming some other information normally supplied in a separate document. The certificate will comprise specified wording, which cannot be amended. Land Registry will know with the use of ‘role based access’ which member of a firm gave that certificate, and it is likely that only those users with a particular ‘access level’ will have authority to provide certificates.

We propose the following two options:

— An extended use of conveyancer’s certificates.
— The use of an electronic attachments facility where a certificate is inappropriate or cannot be given.

The ability to use either a conveyancer’s certificate, or an attachment (other than a plan), or a combination of both will enable a number of the current limitations to the Land Registry Direct e-forms to be lifted. Of course, COA and CPD do not require attachments.

We envisage that there will be instances where the use of a conveyancer’s certificate would be inappropriate and would not be permitted, for example where a written consent is currently required or where it would be preferable for PDF or Word documents to be attached to the application.

For documents lodged as e-attachments the following service is anticipated:

— The ability for users to lodge an e-attachment on the system and to certify that the electronic copy is a true copy of the original. Provision of this certificate is not mandatory as conveyancers must be afforded the facility to decide whether or not they can self certify.
— The e-attachment must be permanently associated with a specific e-document.
— It will be clear to Land Registry staff that there is an e-attachment associated with the e-application.
— It will be clear to Land Registry staff that the e-attachment has been lodged and is available to view.
— Land Registry staff will be able to view the e-attachment in order to process the case.
— Land Registry will be able to store and retrieve the e-attachment whilst the case is pending.
— Land Registry will be able to archive the e-attachment once the case is completed.
— Land Registry will be able to retrieve the e-attachment from archive.
— The e-attachment will be printable.
— After the completion of registration, the e-attachment will be available as a Land Registry official copy for customers.
— There may be more than one e-attachment associated with an e-application.
— The system will prevent any subsequent amendment of an e-attachment following receipt by Land Registry.

3.2.5 The proposed new E-DS1

We anticipate that this service will allow the user to submit an electronic discharge of a charge directly to Land Registry. The charge entries and any associated entries will, wherever possible, be automatically removed from the register. In the first instance this service will be available for corporate lenders and their agents only, who will be trained to use the process prior to being given access to the system, and for whom special arrangements will be put in place.

Access to the E-DS1 will be via the new Land Registry Portal. The E-DS1 is the electronic form of the paper DS1 (discharge of a registered charge). The E-DS1 will act as both the evidence of satisfaction and the application to discharge.

On successful processing the charge entries and any associated entries will be cancelled from the register. Where possible this will be done completely automatically. The E-DS1 is not dependent on any other form of application for registration, nor does it require any form of certification or attachment.

When creating an E-DS1, the system will recognise the user and will identify whether they have the appropriate access rights to discharge a charge in respect of a particular lender. Unlike the electronic notification of discharges (ENDs), the E-DS1 would provide immediate certainty of discharge, the system will still require the evidence for each discharge to be keyed manually by the operator but use of the service should be no more onerous than the ENDs service. A view of the discharge data provided will be made available to Land Registry staff in the form of a template, showing the details of the E-DS1 application where manual processing is required. The machine to machine electronic discharges (EDs) service, currently used by a small number of lenders, will continue to be available.
### 3.2.6 Summary of forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Use</th>
<th>Currently available on Land Registry Direct</th>
<th>Certification and/or the attachment facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (E-AN1)</td>
<td>Electronic application to enter an agreed notice</td>
<td>No</td>
<td>Documentary evidence will always be required. Limitations on the use of the electronic form exist.</td>
</tr>
<tr>
<td>2. (E-AP1) Equivalent</td>
<td>Application to change the register</td>
<td>No</td>
<td>The application will always be associated with either a disposition or supporting documentary evidence.</td>
</tr>
<tr>
<td>3. (E-CCD)</td>
<td>Electronic application to cancel a caution against dealings</td>
<td>Yes</td>
<td>This application does not require any supporting evidence but requests certification where the applicant is applying as someone who is entitled to be registered as proprietor of the land or charge.</td>
</tr>
<tr>
<td>4. (E-CN1)</td>
<td>Application to cancel a notice (other than a unilateral notice)</td>
<td>No</td>
<td>This application will cater for attachments however there is no requirement for certificates.</td>
</tr>
<tr>
<td>5. (E-COA)</td>
<td>Application for change of address</td>
<td>Yes</td>
<td>The application has no current limitations; it does not need supporting documentary evidence or certificates.</td>
</tr>
<tr>
<td>6. (E-CON)</td>
<td>Application for registration of change of name by marriage/deed poll/registration of civil partnership</td>
<td>Yes</td>
<td>At the outset the most common forms of evidence will be provided for by certification, other circumstances will still exist as a limitation for the electronic form.</td>
</tr>
<tr>
<td>7. (E-CPD)</td>
<td>Application for change of property description</td>
<td>Yes</td>
<td>The application has no current limitations; it does not need supporting documentary evidence or certificates.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
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</tr>
<tr>
<td>8. (E-DJP)</td>
<td>Application to remove from the register the name of a deceased joint proprietor</td>
<td>Yes</td>
<td>At the outset the most common form of evidence will be provided for by certification, other exceptional circumstances will still exist as a limitation for the electronic form.</td>
</tr>
<tr>
<td>9. (E-DS1)</td>
<td>Electronic discharge of registered charge</td>
<td>No</td>
<td>The application does not need supporting documentary evidence or certificates.</td>
</tr>
<tr>
<td>10. (E-HR1)</td>
<td>Application for registration of a notice of home rights</td>
<td>Yes</td>
<td>No attachment solution is required, but if a court order is made under the Family Law Act 1996, then a certificate is needed in lieu of lodging a copy of the court order. A limitation exists in that the electronic application cannot be used when the applicant's husband, wife or civil partner is not a registered proprietor.</td>
</tr>
<tr>
<td>11. (E-HR4)</td>
<td>Application to cancel an existing home rights notice</td>
<td>Yes</td>
<td>Depending on the circumstance, the form caters for certification or the attachment of supporting evidence.</td>
</tr>
<tr>
<td>12. (E-RX1)</td>
<td>Electronic application to enter a restriction</td>
<td>Yes</td>
<td>The electronic form relies on certification in some instances; it does not cater for the attachment of supporting evidence.</td>
</tr>
<tr>
<td>13. (E-RX3)</td>
<td>Electronic application to cancel a restriction</td>
<td>No</td>
<td>No certification is required; supporting evidence may be attached if necessary.</td>
</tr>
<tr>
<td>14. (E-RX4)</td>
<td>Electronic application to withdraw a restriction</td>
<td>Yes</td>
<td>In some circumstances certification is required; supporting evidence is not necessary.</td>
</tr>
<tr>
<td>15. (E-UN1)</td>
<td>Electronic application to enter a unilateral notice</td>
<td>Yes</td>
<td>The form caters for certification. Some limitations on use remain.</td>
</tr>
</tbody>
</table>
### 3.3 Enhanced Chain Matrix™ service

#### 3.3.1 Introduction

Chain Matrix is discussed in the overview section of the previous consultation paper published in February 2007, and more information on the service can also be found on Land Registry’s website. It is an electronic information tool for conveyancers and others to view a chain of conveyancing transactions, to see whether the important stages in each transaction have been reached. Information can be shared with other conveyancers, clients and estate agents. Conveyancers with a full network access agreement can update Chain Matrix. There is already a completion calendar by which conveyancers can provide information to agree a completion date. Users are also able to receive email messages about the progress of certain transactions or the chain as a whole.

#### 3.3.2 Exchange of paper contracts using a new Law Society ‘Formula E protocol’

Land Registry is working closely with The Law Society to create a means by which Chain Matrix can be used instead of the telephone to effect exchange of paper contracts. This has been the subject of detailed discussions with some members of the Conveyancing and Land Law Committee of The Law Society. These members have prepared a proposed formula for exchange by Chain Matrix, which is likely to be called ‘Formula E’. The proposed formula is under consideration by The Law Society and will, in due course, require the approval of the Solicitors Regulation Authority. More information on this proposal will be forthcoming in due course.

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<table>
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<tbody>
<tr>
<td>16. (E-UN2)</td>
<td>Electronic application for the removal of a unilateral notice</td>
<td>Yes</td>
</tr>
<tr>
<td>17. (E-UN4)</td>
<td>Electronic application for the cancellation of a unilateral notice</td>
<td>Yes</td>
</tr>
<tr>
<td>18. (E-WCT)</td>
<td>Electronic application to withdraw a caution</td>
<td>Yes</td>
</tr>
</tbody>
</table>
3.3.3 The requirement for a network access agreement and an interim charging regime

A network access agreement will be required by practitioners who wish to access the e-conveyancing system in order to exchange contracts using Chain Matrix for preparing, signing and submitting electronic legal charges for registration and for electronic lodgement of applications. Network access agreements and interim charges are referred to in the next section.
The use of network access agreements in the early stages of e-conveyancing (with the services we are expecting to introduce by the summer of 2008)

4.1 Introduction

It is a requirement of the Land Registration Act 2002 that a person (the Subscriber) can only access the Network under a network access agreement (NAA) entered into with the Chief Land Registrar.

NAAs were the subject of the consultation paper *Secondary legislation part I* published in February 2007 and that paper includes a draft NAA. Work is still in progress on the draft NAA in the light of comments received as a result of the last consultation.

4.2 Change of terminology

We have decided to change the descriptions ‘User’ and ‘Authorised User’ that are in the draft NAA (in the previous consultation paper). This is to avoid confusion as so many people say “user” when they are referring to an individual who is using the system.

Under the draft NAA these were as follows.

User: meant the organisation or individual that enters into the NAAs with the Chief Land Registrar.

Authorised User: meant a person who is a partner, member or employee of the User who has been authorised by the User to use the Network.

We therefore intend to re-draft the NAA as follows:

— the ‘User’ in the draft NAA will become the ‘Subscriber’
— ‘the Authorised User’ will become the ‘User’ and the definition will be altered in line with the draft rules contained in this consultation.

Wherever it is necessary to distinguish between a User who is authorised and a user who is not authorised we will refer to an unauthorised user.

This is also referred to in draft rule 2 of the draft rules.
4.3 Technical manual

The draft NAA refers to the ‘technical manual’. This is not yet available. The technical manual is intended to be a separate document, but incorporated by reference into the NAA, detailing system and security requirements and other technical aspects of the network. Because of the need to keep these requirements up to date, the technical manual will be revised regularly and updated from time to time. However, at this stage, because of the detail required, we are not in a position to draft the technical manual.

The requirements and conditions it will cover, such as IT, security and e-signatures, will change over time as innovations are developed and security measures become obsolete. Until the service and the security solution are fully designed, we do not know what these technical requirements will be, and so cannot include them in the NAA.

4.4 Pilot NAAs

Customers who do require access to the Network to use any of the new proposed services will need to sign a NAA once the proposed legislation is in place. This will be a pilot of the NAA since it will be the first version available and its terms will be reviewed in the light of experience. The proposed pilot NAA will provide for payment for all services within the proposed new package. Fees for the existing services, including discharges, will be governed by the existing fees order until replaced, (eg we would use scale 2 for electronic charges). Charges which will be payable under the NAA (for example Chain Matrix services) will be set on an indicative basis at this stage.
An explanation of how electronic legal charges will operate

5.1 Introduction

The electronic legal charge will be the first ‘dispositionary’ electronic document provided under the e-conveyancing service.

An overview of electronic documents and e-lodgement can be found at Part 5 of the consultation paper *Secondary legislation part I* published in February 2007. Page 53 of that paper introduced the concept of an electronic legal charge and asked the following question:

“Do you have any comments on the proposal for an electronic charge in standard form?”

Land Registry received nearly 50 replies, the majority of which, both from lenders and practitioners were supportive of the idea. There follows a selection of quotations extracted from these responses which shows the range of responses, for and against.

“…we do not consider that it is commercially realistic. Legal charges in commercial (as opposed to residential) transactions are often individually negotiated and very long – they could not be shoe-horned into a standard form any more than it is possible to use a standard form of lease for all commercial lease transactions.

“In our view, one option would be to adopt a similar solution to that adopted for leases, namely a series of compulsory prescribed clauses at the beginning of the charge capturing (only) the information required by Land Registry to register the charge.”

“…there has to be some flexibility to allow for different terms to be imposed. We welcome the suggestion that mortgage terms and conditions can be incorporated by reference – without this the proposal would not work.”

“The introduction of an e-charge is likely to involve systems changes for lenders and a suitable lead in period with close consultation with the industry is therefore needed.”

“Lenders need to be assured that their security is not jeopardised by the introduction of e-signatures.”

“Standardisation of documents saves time and reduces the risk of errors for users, the public and Land Registry staff.”

“In theory I don’t think it will make much change other than to cut down on the number of documents in current use. However, it would be much easier if all mortgage deeds had to be in the same
format including an obligation to make further advances rather than as now where we have to check the CML for every lender to see if we are required to submit a CH1. Also all mortgage deeds should incorporate the standard restriction for mortgage lenders to consent to dealings as some new mortgage lenders still require us to send up an RX1.”

“We have a paperless system and it would be highly advantageous to us to be able to produce charges on screen rather than using individual lenders paper forms as at present.”

“We would generally welcome, subject to satisfactory provisions concerning the security, enforceability and auditability of e-signatures.”

“I can see the reasoning for it, which seems sound enough. As long as the e-charges are still capable of performing their function then there is no need to object to this proposal.”

 “[We] believe that the standardisation of documentation is beneficial so long as a degree of flexibility is retained. However to comment on the e-charge specifically would require further information about the form of the e-charge, the scenarios in which it would be employed and the surrounding processes.”

5.2 Legislation required to facilitate the electronic legal charge

Sections 6 and 7 of this paper introduce and explain the draft rules necessary for their use.

5.3 Contents of electronic legal charge

The contents of the electronic legal charge are prescribed in Schedule 1 of the proposed rules.

5.4 E-signatures

An overview of this subject can be found at Part 5 of the consultation paper Secondary legislation part I published in February 2007. This paper provides further details.

In the early stages the electronic legal charge will need to be signed by a single user who signs the charge on behalf of the borrower(s). They will do so under a NAA, using a form of authority provided for in the rules. Later on, the system will have the capability to accommodate borrower signing and the capacity for more than one signature on the electronic disposition.

It is likely that the majority of conveyancers will sign using a signing key held on a cryptographic token, which they hold in their possession. Before creating an electronic signature the token needs to be connected to the conveyancer’s computer. The token contains
a signature key and a certificate that certifies that the key belongs to the conveyancer. The certificate on the token is subject to certain conditions that have to be met for the signature to be valid. When a conveyancer uses the signing key to sign a document in accordance with Land Registry’s Certificate Policy, the authenticity of that signed document can be assured. This will leave an evidential trail that will allow Land Registry to establish in retrospect that the certificate (and therefore the signature) was valid when applied. Land Registry’s system will check all electronic signatures to ensure that they are valid. This includes checking that the certificate used was valid at the time the signature was applied. Land Registry’s system will also check that the digital identity of the person who is logged into the system relates to the authorised individual who was issued with the certificate, and the document and signature(s) have not been tampered with.

Land Registry will make dispositions effective when instructed to do so by the conveyancer(s). Initially for charges, this will be when the conveyancer electronically submits the charge for registration. The document takes effect when Land Registry adds its own signature. Land Registry signing the document is effectively Land Registry stating we believe this to be true. It is not a guarantee underwriting the transaction.

In the case of joint proprietors, Land Registry anticipates a single conveyancer (user) signing on behalf of both proprietors. This would be done under a form of authority signed under hand.

Under section 11 of the Trustee Act 2000, trustees of land have the power to collectively delegate to an agent the execution and authentication of charges and other dispositions and the receipt of capital monies. The statutory powers of collective delegation are wide, and are defined in subsections 11(2) and 11(3). The only circumstance in which the trustees would not have such power would be where the trust instrument restricted the powers of delegation that they would otherwise have under section 11 of the Trustee Act 2000. With regard to giving a receipt for capital monies we accept there is a question on whether such a charge would overreach third party beneficial interests. However, in our view a single practitioner’s signature in these circumstances would overreach, and this is supported by counsel’s opinion.

In the case of sole proprietor there would be a different form of authority, and again this is provided for in the draft rules in Sections 6 and 7 of this paper.
It is worth pointing out that perhaps as early as 2008 signatures by conveyancers under forms of authority will be supplemented by the possibility of borrowers signing their own charge. This will not be facilitated via a token, but rather by the use of an Identity Guard Authentication Grid (a unique card, with a grid of numbers that the user can be prompted to input by the computer, for example: enter the numbers at A3, B4 and C1). This system authenticates that the person using the card is the person issued with the certificate (and signing key) to which it relates. This form of signing will be issued to citizens by conveyancers for the life of their transaction. It will also be made available to conveyancers where their own computers cannot accommodate the token signing method.

With digital signatures the concept of a signature in the paper sense should be supplemented by the concept of an integral envelope or wrapper. Once a document has been signed electronically it cannot be altered without destroying the integral wrapper and therefore the signature.

### 5.5 How it will work – proposed chain of events (high level event flow) for the creation of an electronic charge

1. User selects charge from the e-documents menu.
2. System checks that user is authorised to prepare a charge.
3. User enters the title number on the screen.
4. System confirms the address of the property.
5. User enters borrowers’ names.
6. System checks the borrowers names match the registered proprietors.
7. User prompted to enter a lender code (probably the equivalent of the current MD Reference shown on approved charges).
8. System displays name of lender and code for confirmation.
9. System populates charge with all known details for that lender code including any additional provisions if required.
10. User can insert account code if required.
11. User requested to complete title guarantee.
12. System presents auto-populated details of signatory (ie who is signing as agent on behalf of whom).
15. System requests information from user to complete the application for registration.
16. User supplies application information.
17. System displays submit screen.
18. User submits charge for registration.
19. Registrar validates user signature and signs the charge, which takes effect at that date and time.
20. Application for the registration of the charge is entered on day list.
5.6 Other aspects of electronic legal charges

5.6.1 Cancelled applications

In some circumstances an electronic charge will be cancelled, for example if there is a restriction on the title which cannot be removed and no consent to the new charge is forthcoming, or where a conveyancer has not been able to reply to some other requisition.

It is envisaged that cancelled electronic charges will be stored, without priority. We will inform the applicant that the charge will be stored for a given number of years at which point it will be destroyed, but that they can apply for an official copy at any time before then.

5.6.2 Exempt documents

At this stage it will not be possible to apply the exempt document provisions to electronic legal charges. Therefore, if an applicant wishes to invoke the provisions he can only do so by lodging a charge in paper form.

5.6.3 Official copies

Any official copy of an electronic legal charge will be accompanied by information about the electronic signature incorporated into the charge, or otherwise logically associated with it, the certification of such signatures and the date and time when the registrar’s electronic signature was logically associated with the charge.
Draft of the Land Registration (Electronic Conveyancing) Rules 2008

STATUTORY INSTRUMENTS

2008 No.

LAND REGISTRATION, ENGLAND AND WALES

The Land Registration (Electronic Conveyancing) Rules 2008

Made - - - - ***
Laid before Parliament ***
Coming into force - **

The Lord Chancellor makes the following rules in exercise of the powers conferred by sections 1(2), 25(1), 71, 91(2), 91(5)(d), and 95(b) of, and paragraph 5 of Schedule 5 and paragraphs 6(a), (b) and (c) and 8 of Schedule 10 to, the Land Registration Act 2002(a).

In accordance with section 127(b) of the Land Registration Act 2002, he has received the advice and assistance of the Rule Committee appointed under that section.

Citation and commencement

1. These rules may be cited as the Land Registration (Electronic Conveyancing) Rules 2008 and shall come into force on……

Interpretation

2.—(1) In these rules—

“Borrower” means the person who charges the registered estate,
“electronic legal charge” means a charge within rule 3(1),
“full network access agreement!” has the same meaning as in the Land Registration (Network Access) Rules 2008(e),
“Joint Borrower” means, where the Borrower comprises two or more persons, one of those persons,
“Lender” means the person to whom the registered estate is charged,
“the principal rules” means the Land Registration Rules 2003(d),
“Subscriber” means a person who has entered into a full network access agreement with the registrar,

(a) 2002 c.9.
(b) Section 127 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, Part 1, paragraphs 301 and 302.
(c) S.I. 2008/.
“User” means the Subscriber where the Subscriber is one individual, or a person authorised by a Subscriber (whether or not the Subscriber is one individual), in accordance with the terms of a full network access agreement, to use the land registry network on that Subscriber’s behalf.

(2) Expressions used in these rules have the meaning that they bear in the principal rules, unless the contrary intention appears.

(3) In Schedule 3, a reference to a rule by number is a reference to the rule so numbered in the principal rules.

Electronic legal charges

3.—(1) Subject to paragraphs (2), (3), (4) and (5), the grant of a legal charge of the whole of the registered estate in a single registered title is a disposition within section 91(2) of the Act.

(2) Paragraph (1) does not apply to—

(a) a disposition to which rule 38 of the principal rules applies,

(b) the grant of a legal charge by a body corporate, whether the body corporate is the Borrower or a Joint Borrower.

(3) Paragraph (1) only applies if at the time a person authenticates the charge as Borrower or Joint Borrower, or an agent does so on his behalf—

(a) that person is entered in the register as proprietor or joint proprietor of the registered estate that is charged, or

(b) there is entered in the day list notice of an application to register that person as proprietor or joint proprietor of the registered estate that is charged.

(4) Paragraph (1) only applies if each electronic signature which the charge has, and the certification of each electronic signature, are in accordance with the provisions of a network access agreement.

(5) Schedule 1 (which makes provision about the contents of an electronic legal charge) has effect.

(6) In this rule, “joint proprietor” means, where the proprietor of a registered estate comprises two or more persons, one of those persons.

Logical association of registrar’s electronic signature with an electronic legal charge

4.—(1) Subject to paragraph (2), when notified by the Borrower that the charge is ready to take effect, the registrar must arrange for his electronic signature to be logically associated with the electronic legal charge.

(2) The registrar’s signature must not be logically associated with an electronic legal charge until that charge has the electronic signature of every person who, in accordance with the provision in the charge required by paragraph 1(1) of Schedule 1, is to authenticate it, and each such signature has been certified.

Forms of authority for agents to authenticate an electronic legal charge

5.—(1) Where two or more persons intend to enter into an electronic legal charge as Borrower, either each person must authenticate the charge personally or they must collectively delegate the authentication of the charge to a User using, subject to paragraph (2), Form A in Part 1 of Schedule 2.

(2) Where a charitable or other trust makes express provision which enables its trustees to make a majority decision whether to exercise their powers under section 11 of the Trustee Act 2000(a), Form A in Part 1 of Schedule 2 may be modified as set out in Part 2 of Schedule 2.

(a) 2000 c.29.
(3) Where one person intends to enter into an electronic legal charge as Borrower, he may authorise his agent to authenticate the charge using Form B in Part 3 of Schedule 2.

Network transaction dependent on a power of attorney or other agency

6. Where a network transaction (or any element of it) is dependent on the act of an attorney or other agent, the registrar may require the production of evidence to satisfy him as to the terms of the power or other form of authority under which the attorney or other agent was appointed.

Amendments to the principal rules

7. The principal rules are amended as set out in Part 1 of Schedule 3.

Disapplication of certain provisions in the principal rules


Signed by authority of the Lord Chancellor

Minister of State,

Date

Ministry of Justice
SCHEDULE 1

CONTENTS OF AN ELECTRONIC LEGAL CHARGE

1. To be within rule 3(1), a charge must contain the following—
   
   (a) The title number and description of the property that is charged.

   (b) A provision that the charge takes effect at the time and date that, after the Borrower’s (or
       his agent’s) electronic signature has been applied and certified, the registrar’s electronic
       signature is logically associated with that charge.

   (c) The Borrower’s name.

   (d) The MD reference, if any, applicable to the charge.

   (e) The Lender’s name and intended address for service for entry in the register.

   (f) If the Lender is a company registered in [England and Wales or Scotland] [any part of the
       United Kingdom] under the Companies Acts, the Lender’s registered number.

   (g) If the Lender is a limited liability partnership incorporated under the Limited Liability
       Partnerships Act 2000(a), the Lender’s registered number.

   (h) If the Lender is a corporation incorporated outside [England and Wales or Scotland] [the
       United Kingdom], the territory in which the Lender is incorporated and the Lender’s
       registered number, if any, in England and Wales.

   (i) A statement to the effect that the Borrower (stating, if desired, whether with full or
       limited title guarantee) charges to the Lender the property referred to in sub-paragraph (a)
       by way of legal mortgage with payment of all money secured by the charge.

   (j) A statement, if such be the case, that the Lender is under an obligation to make further
       advances and applies for the obligation to be entered in the register.

   (k) A statement, if such be the case, that the Borrower applies to enter a standard form of
       restriction in the proprietorship register of the registered estate that is charged and, if so,
       the wording of the standard form of restriction.

   (l) A provision stating who is to authenticate the charge.

   (m) Where an agent is to authenticate the charge on behalf of his principal, a provision in the
       charge—

       (i) stating that this is the case,

       (ii) stating that the agent is acting under the authority of the principal, and

       (iii) identifying the principal.

2.—(1) A charge within rule 3(1) may contain provisions additional to those in paragraph 1.

   (2) For the purposes of registration of an electronic legal charge, if there is a conflict between
       any such additional provision and a provision contained in the charge in accordance with
       paragraph 1 the latter provision shall prevail.

   (3) The registrar need make no entry in the register in respect of any matter contained in any
       such additional provisions.

3. In this Schedule, “MD reference” means a reference supplied by the registrar to identify a
   form of charge which he has approved.

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(a) 2000 c.12.
SCHEDULE 2  

FORMS OF AUTHORITY

PART 1

FORM A

FORM OF AUTHORITY WHERE THERE IS COLLECTIVE DELEGATION BY INTENDING JOINT BORROWERS

“The Property”—

Title number:

Address or other property description:

1. We [name and address of every intending Joint Borrower] have unanimously agreed to exercise our powers under section 11 of the Trustee Act 2000 to make the delegation referred to below.

2. We authorise [name of one User] (“the Agent”) of [name and address of the Subscriber, or the address of the Subscriber where he is the Agent] to exercise the following functions as our agent in relation to The Property—

   (a) authenticating an electronic legal charge to be granted by us to [name of proposed lender] [or such other lender whom we shall identify to the Agent] [or] [the lender whom we shall identify to the Agent].

   (b) receiving, on our behalf and at our direction, any capital monies advanced [when the legal charge is granted] [or] [at any time under the legal charge], and

   (c) giving a receipt on our behalf for any such capital monies.

3. The Agent may appoint one other User under the same full network access agreement to exercise the functions in paragraph 2 in place of the Agent, if the Agent is, or is likely to be, unable to exercise them personally at the appropriate time.

3/4. We declare that this authority is not made by way of deed.

Date..........................

Signed [signatures of each intending Joint Borrower]
PART 2

MODIFICATION OF FORM A IN PART 1 WHERE COLLECTIVE DELEGATION MAY BE MADE BY A MAJORITY DECISION OF THE TRUSTEES

1. For the words that appear before paragraph 2 in Form A substitute—

"FORM OF AUTHORITY WHERE COLLECTIVE DELEGATION MAY BE MADE BY A MAJORITY DECISION OF THE TRUSTEES"

“The Property”—

Title number:

Address or other property description:

1. The trustees of the [name of charitable (or other) trust] have decided to exercise their powers under section 11 of the Trustee Act 2000 to make the delegation referred to below.

2. We [name and address of every intending Joint Borrower] are the intending Borrower in respect of the Property.”

2. The subsequent paragraphs of Form A in Part 1 must be renumbered and, if paragraph 3 is used, there must be substituted for the reference to paragraph 2 a reference to paragraph 3.
PART 3

FORM B

FORM OF AUTHORITY THAT MAY BE USED WHERE ONE PERSON IS THE INTENDING BORROWER

"The Property"

Title number:

Address or other property description:

[1.] I [name and address of the one person who is the intending Borrower] authorise [name of one User] ("the Agent") of [name and address of Subscriber, or the address of the Subscriber where he is the Agent] to exercise the following functions as my agent in relation to The Property—

(a) authenticating an electronic legal charge to be granted by me to [name of proposed lender] [or such other lender whom I shall identify to the Agent] [or] [the lender whom I shall identify to the Agent].

(b) receiving on my behalf any monies advanced [when the legal charge is granted] [or] [at any time under the legal charge], and

(c) giving a receipt on my behalf for any such monies.

[2. The Agent may appoint one other User under the same full network access agreement to exercise the functions in paragraph 1 in place of the Agent, if the Agent is, or is likely to be, unable to exercise them personally at the appropriate time.]

Date .....................

Signed [signature of the intending Borrower]
SCHEDULE 3

PROVISIONS AFFECTING THE PRINCIPAL RULES

PART 1

AMENDMENTS TO THE PRINCIPAL RULES

Amendment of rule 12

1. In rule 12(4), after “include” insert “an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act, or”.

Amendment of rule 13

2. In rule 13(2), omit the “or” preceding sub-paragraph (c), and after that sub-paragraph insert—

“or

(d) an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act.”

Amendment of rule 15

3. (1) In rule 15(2)(a), for “a business” substitute “the”.

(2) In rule 15(4), after “apply” insert “to an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act, or”.

Amendment of rule 92

4. In rule 92(7)(b), after “CH1” insert “or in an electronic legal charge”.

Amendment of rule 108

5. In rule 108(3), after “CH1” insert “or in an electronic charge”.

Amendment of rule 217

6. In rule 217(1), after the definition of “day list”, insert “‘electronic legal charge’ has the same meaning as in the Land Registration (Electronic Conveyancing) Rules 2008,”.

PART 2

DISAPPLCIATION OF PROVISIONS IN THE PRINCIPAL RULES

Disapplication of rule 57

1. Rule 57 does not apply to a person applying to register an electronic legal charge.
Disapplication of rule 81(1)(b)

2. Rule 81(1)(b) does not apply to an application for an agreed notice in respect of an electronic legal charge, where the charge is stored by the registrar, but in that case the applicant must give sufficient details of the charge to enable the registrar to identify it.

Disapplication of rule 203

3. Rule 203 does not apply to an application made using the land registry network where the document delivered with the application is in electronic form but the registrar may retain the document and at any time thereafter delete it if he is satisfied that further retention is unnecessary.
EXPLANATORY NOTE
(This note is not part of the Order)

[To be completed]
Notes on the draft Land Registration (Electronic Conveyancing) Rules 2008

Introduction

1. These draft rules would prescribe an electronic legal charge as the first kind of electronic disposition of registered land. The Rules would provide that the charge must be by an existing proprietor or by a person who has applied to Land Registry to be registered as proprietor and so the charge is likely to be used for re-mortgages and second or subsequent mortgages and not for charges associated with purchases of registered land.

2. Section 91 of the Land Registration Act 2002 (the Act) sets out the formal requirements which, if met, will enable certain dispositions of registered land to be effected electronically when they would otherwise have to be made in writing or by deed.

3. First, there must be a document made in electronic form that purports to effect a disposition (section 91(1)(a)).

4. Secondly, that disposition must fall within section 91(2). That subsection includes a disposition of a registered estate or charge which is of a kind specified by rules (section 91(2)(a)).

5. Thirdly, the document in electronic form must meet the four conditions that are set out in section 91(3), namely—

   (a) The document must make provision for the time and date when it takes effect (section 91(3)(a)).
   (b) The document must have the electronic signature of each person by whom it purports to be authenticated (section 91(3)(b)). References to an electronic signature are to be read in accordance with section 7(2)1 of the Electronic Communications Act 2000 (section 91(10)). An electronic signature is a means by which an electronic document can be authenticated as that of the party making it.

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1 Section 7(2) provides—

"(2) For the purposes of this section an electronic signature is so much of anything in electronic form as—
   (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
   (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both."
(c) Each electronic signature must be certified (section 91(3)(c)). Certification is the means by which an electronic signature can be linked to a particular individual. For these purposes, certification has the meaning given to it in section 7(3)\(^2\) of the Electronic Communications Act 2000 (section 91(10)).

(d) There must be compliance with such other conditions as rules may provide (section 91(3)(d)).

6. Under section 91(4), if an electronic document satisfies the requirements in section 91(1), (2) and (3), discussed above, it is to be regarded as—

(a) in writing; and
(b) signed by each individual, and sealed by each corporation, whose electronic signature it has.

7. Broadly—

— Rule 3 and Schedule 1 of the draft Rules contain provisions which would be made under section 91.
— Rule 4 (read with paragraph 1(b) of Schedule 1) deals with the time and date when an electronic legal charge takes effect.
— Rule 5 and Schedule 2 deal with authentication of electronic legal charges by agents. And rule 6 deals with evidential requirements in respect of agents.
— Rules 7 and 8 and Schedule 3 deal with mainly consequential amendments to the Land Registration Rules 2003 (the principal rules).

Recitals and rules 1 and 2

8. These are mainly self-explanatory.

9. There has been a change of proposed terminology since Land Registry’s consultation – Secondary legislation part 1 (published in February 2007). The person now defined in rule 2(1) as the “Subscriber” is referred to that Consultation Paper as the “User” and the person defined as the “User”, in rule 2(1), is referred to as the “Authorised User” in that Consultation Paper. (But in that Consultation Paper the term does not explicitly include the Subscriber (formerly the User).)

\(^{2}\) Section 7(3) provides—

“\(\text{“(3) For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that-}
\(\text{(a) the signature,}
\(\text{(b) a means of producing, communicating or verifying the signature, or}
\(\text{(c) a procedure applied to the signature,}
\text{is (either alone or in combination with other factors) a valid means of establishing the authenticity of the communication or data, the integrity of the communication or data, or both.”}\)\)
Rules 3, 4 and Schedule 1 – electronic legal charges

Rule 3

10. Rule 3 provides that an electronic legal charge is a disposition within section 91(2) of the Act.

11. To be an electronic legal charge—

a the charge must be of the whole of a registered estate in a single registered title (rule 3(1)); so it cannot be a charge of part of a registered title or of more than one registered title – this is to keep transactions relatively simple for the initial phase of electronic conveyancing

b it must not be a charge created after the requirement for first registration arises and before application is made to register the estate (rule 3(2)(a)) – it is planned to develop first electronic conveyancing in respect of registered titles

c it must not be one by a body corporate (or a body corporate and another person) (rule 3(2)(b)) – if bodies corporate were included then, often, the registrar would (currently) need paper evidence that the charge had been registered under the Companies Acts or, in default, a note would have to be entered under rule 111 of the principal rules. Longer term an electronic solution, under section 893 of the Companies Act 2006, is likely to be found

d at the time a Borrower or Joint Borrower authenticates the charge he must either be the proprietor or a joint proprietor of the charged estate or there must be entered in the day list notice of an application to register him as proprietor or joint proprietor of the charged estate (rule 3(3)). This will allow a basic data check of the charge against the information in the register and in the day list (but in the latter case it will not be possible for the system to tell whether an application recorded in the day list is to register the Borrower or Joint Borrower as proprietor). At least initially, manual intervention, after an application to register the (purported) electronic charge has been made, would be required

Joint proprietor is defined, in rule 3(6), because although Land Registry and others commonly refer to joint proprietors, the reference in the Act is to the proprietor (except in section 56, in relation to a receipt by joint proprietors of a charge. For example, in section 44(1), the Act says “If the registrar enters two or more persons in the register as the proprietor of a registered estate in land ....”.

e. Each electronic signature which the charge has and the certification of each electronic signature must be in accordance with the provisions of a network access agreement (rule 3(4)) – this is to ensure that the electronic signature is one that Land Registry is capable of processing.

f. It must contain the provisions referred to in paragraph 1 of Schedule 1 (rule 3(5)).

Schedule 1

12. The provisions referred to at paragraph 1(a), 1(c) and 1(e) to (k) of Schedule 1 (title number, description of the charged property, the parties, words of charge, obligation to make further advances and application for a standard form of restriction) are all provisions which are essential for, or commonly appear in, a paper legal charge.

13. Paragraph 1(d) provides for any MD reference applicable to the charge to be entered. An MD reference is a reference supplied by the registrar to identify a form of charge which he has approved (paragraph 3). A Lender may have more than one form of approved charge. It is proposed to develop the system so that if an MD reference is included certain information (such as the Lender’s name and intended address for service and any standard form of restriction to be applied for) will be automatically included in the draft charge.

14. Paragraph 2 allows for additional provisions to be included in the charge. Such provisions might be as to the charge being subject to the Lender’s standard conditions.

15. Paragraph 2(b) provides for the effect of the additional provisions. For the purpose of registration of an electronic legal charge, if there is a conflict between an additional provision and a provision contained in the charge under paragraph 1 (the rest of the charge), the paragraph 1 provision is to prevail. This is to avoid the need for manual intervention to consider the effect of any additional provisions and is based on a similar provision in clause LR4 (property description) for prescribed clauses leases in Schedule 1A to the principal rules (inserted by rule 8 of, and Schedule 1 to, the Land Registration (Amendment) (No 2) Rules 2005 (S.I. 2005/1982)).
16. Paragraph 2(c) provides that the registrar need make no entry in respect of any additional provisions. This is consistent with there being no need for manual intervention in respect of additional provisions. It is similar to the provisions about when the registrar need take no action if a prescribed clauses lease is not completed correctly (rule 72A(3) and (4)(a) of the principal rules (inserted by rule 6 of the Land Registration (Amendment) (No 2) Rules 2005)).

Schedule 1, paragraph 1(b) and (l) and rule 4

17. Section 91(3)(a) of the Act provides that a document effecting an electronic disposition within that section must make provision for the time and date when it takes effect. Paragraph 1(b) imposes a condition under section 91(3)(d) that the provision is that the electronic legal charge takes effect at the time and date that the registrar’s electronic signature is logically associated with that charge (in accordance with rule 4).

18. Rule 4 provides that when the Borrower notifies the registrar that the charge is ready to take effect, then the registrar’s electronic signature must be logically associated with the charge.

19. The registrar’s signature must not be logically associated with the charge until the charge has the electronic signature of every person who is to authenticate it, in accordance with the provision to that effect contained in the charge, as required by paragraph 1(l) of Schedule 1, and each signature has been certified.

20. Paragraph 1(m) of Schedule 1 (which provides for a provision where an agent is to authenticate the charge on behalf of a party to the charge) is discussed at paragraph 23 below.

21. The powers to prescribe rule 3 and Schedule 1 are contained in sections 91(2), 91(3)(d), and 25(1) of the Act.

Rules 5 and 6, paragraph 1(m) of Schedule 1 and Schedule 2 – authentication by agents
22. Authentication by agents (including where there are Joint Borrowers) is discussed in some detail at section 5.4 of this paper.

23. If an agent is to authenticate the charge, the charge must contain a provision stating that this is the case, that the agent is acting under the authority of the principal and identifying the principal (paragraph 1(m) of Schedule 1). One reason for requiring this is so that paragraph 8 of Schedule 5 to the Act (presumption of authority) will apply where the agent is a User and deem him or her, in favour of any other party, to be so acting for their principal. Paragraph 8 provides—

Where—
(a) a person who is authorised under a network access agreement to do so uses the network for the making of a disposition or contract, and
(b) the document which purports to effect the disposition or to be the contract-
   (i) purports to be authenticated by him as agent, and
   (ii) contains a statement to the effect that he is acting under the authority of his principal,
he shall be deemed, in favour of any other party, to be so acting.

24. Rule 5(1) (and Form A in Part 1 and Part 2 of Schedule 2) provide that where there are Joint Borrowers they must either authenticate the charge personally or authorise one User to be their agent. The User must be appointed by collective delegation under section 11 of the Trustee Act 2000. Generally, the Joint Borrowers must use Form A for collective delegation. Rule 5(2) provides for an exception. This is to cover the rare cases where the trustees can make a decision by majority. That will be the situation in relation to a charitable trust and, it seems, in relation to some private trusts that make express provision for a majority decision. In the latter case, Lewin on Trusts (17th edition, 2000) at paragraph 29-28 (page 737) says: “[T]he validity of such a provision has not been challenged.” (The Joint Borrowers will, obviously, still have to give the requisite authority.) To cover majority decision cases, Form A may be modified in accordance with Part 2 of Schedule 2 (rule 5(2)). Form A could still be used in unmodified form if the Joint Borrowers are the only trustees of such a trust and an unanimous decision has been made by them to delegate.
25. Because, unless there is collective delegation to a User, all of the Joint Borrowers must authenticate the charge under rule 5(1), it will not be possible to use section 82 of the Charities Act 1983 to enable two out of a large number of charitable trustees registered as joint proprietors to authenticate an electronic legal charge. However, it seems unlikely that charitable trustees would wish to use an electronic legal charge in the early phases of e-conveyancing and longer term it is intended to provide for authentication within section 82.

26. Where the Borrower is one person, he or she may authorise one User to be their agent using Form B in Part 3 of Schedule 2 (rule 5(3)).

27. The power to prescribe rule 5 and Schedule 2 is contained in paragraph 5(1) of Schedule 5 to the Act.

28. Rule 6 is a general provision enabling the registrar, where a network transaction (or any element of it) is dependent on the act of an attorney or other agent, to require evidence to be produced to satisfy him as to the terms of the power or other form of authority under which the attorney or other agent was appointed. “Network transaction” is defined in paragraph 12 of Schedule 5 to the Act to mean, in that Schedule, a transaction carried out by means of a land registry network; and such a network is defined as a network provided under section 92(1). The rule could be used, say, if the Borrower is one person and appointed an agent, but not by using Form B.

29. The power to prescribe rule 6 is contained in paragraph 5 of Schedule 5 and paragraph 6(b) of Schedule 10 to the Act.

Rules 7 and 8 and Schedule 3 – amendments to, and disapplication of certain provisions in, the principal rules

30. Rule 7 and Part 1 of Schedule 3 provide for amendments to the principal rules and rule 8 and Part 2 of Schedule 3 provide for disapplication of provisions in the principal rules. In subsequent sets of rules, when more electronic dispositions are covered, it is likely that the approach will be not to disapply rules but rather to redraft rules in the principal rules so that their scope does not extend to what would otherwise be “disapplied” circumstances.

31. In the following extracts from the principal rules the proposed amendments are shown in pink.
Paragraph 1 of Part 1 of Schedule 3 – amendment of rule 12

32. The purpose of this amendment is to make it clear that an application for a network access agreement does not have to be entered in the day list. The power to prescribe this provision is section 1(2) of, and paragraph 8 of Schedule 10 to, the Act.

33. The amended rule would read—

The day list

12.—(1) The registrar must keep a record (known as the day list) showing the date and time at which every pending application under the Act or these rules was made and of every application for an official search with priority under rule 147.

(2) The entry of notice of an application for an official search with priority must remain on the day list until the priority period conferred by the entry has ceased to have effect.

(3) Where the registrar proposes to alter the register without having received an application he must enter his proposal on the day list and, when so entered, the proposal will have the same effect for the purposes of rules 15 and 20 as if it were an application to the registrar made at the date and time of its entry.

(4) In this rule the term “pending application” does not include an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act, or an application within Part 13, other than an application that the registrar designate a document an exempt information document under rule 136.

Paragraph 2 of Part 1 of Schedule 3 - amendment of rule 13

34. This amendment would make it clear that an application for a network access agreement is not to be made in Form AP1. The power to prescribe this provision is paragraph 6(a) of Schedule 10 to the Act.

35. The amended rule would read—

Form AP1

13.—(1) Any application made under the Act or these rules for which no other application form is prescribed must be made in Form AP1.

(2) Paragraph (1) does not apply to—

(a) an application to remove from the register the name of a deceased joint registered proprietor,
(b) applications made under rule 14,
(c) outline applications as defined in rule 54, or
(d) an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act.
Paragraph 3 of Part 1 of Schedule 3 – amendment of rule 15

36. The amendment to the rule 15(2)(a) would allow applications received on a non-business day to be entered in the day list at any time instead of only on a business day, but with the long stop that if the application is not entered in the day list before midnight at the end of the next business day after the day it was received, it would be taken as made at midnight at the end of that business day. Although the proposed amendment would allow an application to be entered in the day list at any time, there would be no obligation on the registrar to make the entry on a non-business day. The rule would give flexibility for this to be done, say in relation to electronic applications under electronic conveyancing or/and (more generally) if work is carried out at Land Registry on a Saturday, but Saturday is not a business day within the meaning of rule 217 of the principal rules.

So, for example, if an application to register a transfer was received on a Saturday (not being a business day) the application could then be entered in the day list on the Saturday, Sunday or on the next business day, Monday, (and, if it was, the application would be deemed to have been made at the time of the day that it was entered). But if it were not entered in the day list by the end of Monday, then the application would be deemed to have been made at midnight at the end of Monday. Currently, such an application would usually be entered in the day list on the Monday and if it was not then (as under the revised rule) the application would be deemed to have been made at midnight at the end of Monday.

37. The amendment to rule 15(4) would make it clear that the rule does not apply to an application for a network access agreement,

38. The power to prescribe this provision is paragraph 6(c) of Schedule 10 to the Act.

39. The amended rule would read—

**Time at which applications are taken to be made**

15. —(1) An application received on a business day is to be taken as made at the earlier of—

(a) the time of the day that notice of it is entered in the day list, or

(b) midnight marking the end of the day it was received if the application was received before 12 noon, or

(i) midnight marking the end of the next business day after the day it was received if the application was received at or after 12 noon.
(2) An application received on a day which is not a business day is to be taken as made at the earlier of—
   (a) the time of the day that notice of it is entered in the day list, or
   (b) midnight marking the end of the next business day after the day it was received.

(3) In this rule an application is received when it is delivered—
   (a) to the designated proper office in accordance with an order under section 100(3) of the Act, or
   (b) to the registrar in accordance with a written arrangement as to delivery made between the registrar and the applicant or between the registrar and the applicant’s conveyancer, or
   (c) to the registrar under the provisions of any relevant notice given under Schedule 2.

(4) This rule does not apply to an application for a network access agreement under paragraph 1(4) of Schedule 5 to the Act, or to applications under Part 13, other than an application that the registrar designate a document an exempt information document under rule 136.

*Paragraph 4 of Part 1 of Schedule 3 – amendment of rule 92*

40. This amendment would add an application for a standard form of restriction in an electronic legal charge as an exception to the general requirement that an application for a restriction must be in Form RX1. The power to prescribe this provision is paragraph 6(a) of Schedule 10 to the Act.

41. The amended rule would read—

**Application for a restriction and the prescribed period under section 45(2) of the Act**

92.—(1) Subject to paragraphs (5), (6), (7) and (8) an application for a restriction to be entered in the register must be made in Form RX1.

(7) Paragraph (1) of this rule does not apply where—
   (a) a person applies for the entry of a standard form of restriction in the additional provisions panel of Form TP1, TP2, TP3, TR1, TR2, TR3, TR4, TR5, AS1, AS2 or AS3,
   (b) a person applies for the entry of a standard form of restriction in panel 7 of Form CH1 or in an electronic legal charge, or
   (c) a person applies for the entry of a standard form of restriction in an approved charge.
Paragraph 5 of Part 1 of Schedule 3 – amendment of rule 108

42. This amendment would add an application contained in an electronic legal charge as an exception to the general requirement that an application for an obligation to make further advances to be entered in the register must be in Form CH2. The power to prescribe this provision is paragraph 6(a) of Schedule 10 to the Act.

43. The amended rule would read—

Obligations to make further advances

108.—(1) The proprietor of a registered charge or a person applying to be so registered, who is under an obligation to make further advances on the security of that charge, may apply to the registrar for such obligation to be entered in the register for the purposes of section 49(3) of the Act.

(2) Except as provided in paragraph (3), the application must be made in Form CH2.

(3) Form CH2 need not be used if the application is contained in panel 7 of Form CH1 or in an electronic legal charge, or in a charge received for registration where the form of that charge has been approved by the registrar.

(4) The registrar must make an entry in the register in such terms as he considers appropriate to give effect to an application under this rule.

Paragraph 6 of Part 1 of Schedule 3 – amendment of rule 217

44. This amendment would add a definition of electronic legal charge because the term would be used in amended rules 92(7)(b) and 108(3).

45. The amended rule would read—

General Interpretation

217. —(1) In these rules—

“the Act” means the Land Registration Act 2002,

“day list” has the same meaning given by rule 12,

“electronic legal charge” has the same meaning as in the Land Registration (Electronic Conveyancing) Rules 2008,

“exempt charity” has the same meaning as in section 96 of the Charities Act 1993 and “non-exempt charity” means a charity which is not an exempt charity,
Paragraph 1 of Part 2 of Schedule 3 – disapplication of rule 57

46. Rule 57 provides that a person applying to register a registrable disposition of a registered estate must provide information to the registrar about most of the overriding interests that fall within Schedule 3 to the Act that—

(a) are within the actual knowledge of the applicant, and
(b) affect the estate to which the application relates.

47. In practice it is rare for such overriding interests to be revealed under rule 57 and rarer still where the registrable disposition is a legal charge.

48. In the early days of electronic conveyancing it will be difficult to provide a workable solution to revealing overriding interests and given this and that it is anticipated that most electronic legal charges will, initially, be re-mortgages or second mortgages where overriding interests would be very unlikely to be revealed, it is proposed that rule 57 should not apply to an applicant applying to register an electronic legal charge. The power to prescribe this provision is section 71(b) of the Act.

Paragraph 2 of Part 2 of Schedule 3 – disapplication of rule 81(1)(b)

49. Rule 81(1)(b) provides that an application for an agreed notice must, amongst other things, be accompanied by the order or instrument (if any) giving rise to the interest claimed or, if there is no such order or instrument, such other details of the interest claimed as satisfy the registrar as to the nature of the applicant’s claim. In certain circumstances a copy of any order or instrument may be produced instead of the original (rule 214).

50. Paragraph 2 would provide that rule 81(1)(b) did not apply to an application for an agreed notice in respect of an electronic legal charge, where the charge was stored by the registrar, but in such a case the applicant would have to give sufficient details of the charge to enable the registrar to identify it. The power to prescribe this provision is paragraph 5 of Schedule 5 and paragraph 6(b) of Schedule 10 to the Act.
Paragraph 3 of Part 2 of Schedule 3 – disapplication of rule 203

51. Rule 203, in broad terms, provides that on completion of an application the registrar may retain all or any of the documents that accompanied the application and must return documents not retained. The applicant or his conveyancer may request the return of a document if (subject to two exceptions) a certified copy of the document is delivered with the application. If the registrar retains a document he may destroy it if he is satisfied that either he has made and retained a sufficient copy of it or that further retention is unnecessary. There are arguments that rule 203 could have no application to an electronic document which accompanied an application but to put the point beyond doubt, paragraph 3 would disapply the rule in respect of an application made using the land registry network where the document delivered with the application was in electronic form. But it would allow the registrar to retain the document and at any time thereafter delete it if he was satisfied that further retention was unnecessary.
Questions

1. Although we asked your views on the proposed electronic charge in standard form in Part 1 of the consultation published in February 2007, now that we have developed this concept in further detail are you content with our proposals on the following aspects of this?

1.1 The content of the electronic legal charge.

1.2 Electronic signature by a conveyancer on behalf of joint proprietors.

1.3 Forms of authority for signature by a conveyancer on behalf of joint proprietors.

1.4 Electronic signature by a conveyancer on behalf of a sole proprietor.

1.5 Forms of authority for signature by a conveyancer on behalf of a sole proprietor.

1.6 Electronic signature by the borrowers (citizen signing).

2. Do you have any comments on the proposal to exempt electronic legal charges from the duty to disclose overriding interests?

3. Any other comments that you might like to make on the rules?

4. Any other comments on the matters described in this consultation?
Consultation impact assessment

Summary: Intervention and options

<table>
<thead>
<tr>
<th>Department/Agency:</th>
<th>Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>HM Land Registry (hereinafter called ‘Land Registry’)</td>
<td>Impact assessment of The Land Registration (Electronic Conveyancing) Rules 2008</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Stage:</th>
<th>Version:</th>
<th>Date:</th>
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</thead>
<tbody>
<tr>
<td>Consultation stage</td>
<td>1.0</td>
<td>July 2007</td>
</tr>
</tbody>
</table>

Related Publications:
Consultation paper part 1

http://www.econsultations.e-conveyancing.gov.uk

Contact for enquiries: Kieran Walsh
Telephone: 02476 868098

What is the problem under consideration? Why is government intervention necessary?
Under Section 91 of the Land Registration Act 2002, rules may be made specifying which dispositions can be carried out electronically. The purpose of the Land Registration (Electronic Conveyancing) Rules 2008 (the Rules) is to introduce electronic legal charges (e-charges) as an alternative to paper. The e-charge is the first dispositionary document in the phased introduction of electronic conveyancing (e-conveyancing). Land Registry's e-conveyancing programme as a whole is Land Registry's response to the White Paper Modernising Government. It is the subject of a separate (partial) RIA, which received Ministerial approval in December 2006.

What are the policy objectives and the intended effects?
These proposals seek to reduce the administrative burden on lenders and conveyancers acting on their behalf in relation to re-mortgages; improve operational efficiency and reduce the possibility of customer errors; assist lenders and conveyancers (especially bulk conveyancers) by providing a more secure, streamlined and efficient process; and trial Land Registry's electronic signatures (e-signatures) solution without the risk of full rollout (e-signatures will be provided for conveyancers only, not for citizens at this stage).
What policy options have been considered?
Please justify any preferred option.

— Option 1 – Do nothing

— Option 2 – Introduce e-charges at the same time as other dispositionary e-documents

— Option 3 – Proceed with the changes as stated in this paper.

Preferred option see evidence base below.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Three to five years depending on take up.

Ministerial sign-off for consultation stage impact assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible minister:

__________________________________________
Date:
### Summary: Analysis and evidence

**Policy option:** 1  
**Description:** Option 1 – Do nothing only changes to costs and benefits analysed – no change here – therefore all = Nil

#### Costs

<table>
<thead>
<tr>
<th>Description and scale of key monetised costs by ‘main affected groups’</th>
<th>Nil</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual costs</strong></td>
<td></td>
</tr>
<tr>
<td><strong>One-off</strong> (Transition)</td>
<td>Yrs</td>
</tr>
<tr>
<td><strong>Average annual cost</strong> (excluding one-off)</td>
<td>£</td>
</tr>
<tr>
<td><strong>Total cost (PV)</strong></td>
<td>£ Nil</td>
</tr>
<tr>
<td>Other key non-monetised costs by ‘main affected groups’</td>
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</tr>
</tbody>
</table>

#### Benefits

<table>
<thead>
<tr>
<th>Description and scale of key monetised benefits by ‘main affected groups’</th>
<th>Nil</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual benefits</strong></td>
<td></td>
</tr>
<tr>
<td><strong>One-off</strong></td>
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</tr>
<tr>
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<td>£</td>
</tr>
<tr>
<td>Other key non-monetised benefits by ‘main affected groups’</td>
<td></td>
</tr>
</tbody>
</table>
Key assumptions/sensitivities/risks

See evidence base below

<table>
<thead>
<tr>
<th>Price base year</th>
<th>Time period years</th>
<th>Net benefit range (NPV)</th>
<th>Net benefit (NPV best estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>5</td>
<td>£ Nil</td>
<td>£ Nil</td>
</tr>
</tbody>
</table>

What is the geographic coverage of the policy/option? England and Wales

On what date will the policy be implemented? N/A

Which organisation(s) will enforce the policy? Land Registry

What is the total annual cost of enforcement for these organisations? £ Nil

Does enforcement comply with Hampton principles? Yes

Will implementation go beyond minimum EU requirements? N/A

What is the value of the proposed offsetting measure per year? £ N/A

What is the value of changes in greenhouse gas emissions? £ Negligible

Will the proposal have a significant impact on competition? No

Annual cost (£-£) per organisation (excluding one-off)

<table>
<thead>
<tr>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Are any of these organisations exempt? N/A

Impact on admin burdens baseline (2005 prices) (Increase – Decrease)

<table>
<thead>
<tr>
<th>Increase of £</th>
<th>Decrease of £</th>
<th>Net impact £</th>
</tr>
</thead>
</table>

Key: Annual costs and benefits (Net) Present
Summary: Analysis and evidence

| Policy option: 2 | Description: Option 2 – Introduce e-charges at the same time as other dispositionary e-documents. |

Costs

<table>
<thead>
<tr>
<th>Description and scale of key monetised costs by ‘main affected groups’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conveyancer = £48,076 Annual</td>
</tr>
<tr>
<td>Land Registry = Unknown once</td>
</tr>
<tr>
<td>Project and Implementation cost = Unavailable once</td>
</tr>
<tr>
<td>Customers = Nil annual</td>
</tr>
</tbody>
</table>

**Total cost (PV)**: £48,076

Other key non-monetised costs by ‘main affected groups’

Benefits

<table>
<thead>
<tr>
<th>Description and scale of key monetised benefits by ‘main affected groups’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conveyancer = £336,532 Annual</td>
</tr>
<tr>
<td>Land Registry = Unknown annual</td>
</tr>
<tr>
<td>Customers = Nil annual small closure in registration gap—not a value</td>
</tr>
</tbody>
</table>

**Total benefits (PV)**: £336,532

Other key non-monetised benefits by ‘main affected groups’

Land Registry and customers – clarification of the law
Key assumptions/sensitivities/risks

See evidence base below

<table>
<thead>
<tr>
<th>Price base year</th>
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<th>Net benefit range (NPV)</th>
<th>Net benefit (NPV best estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>N/A</td>
<td>£ Nil</td>
<td>£ Nil</td>
</tr>
</tbody>
</table>

- What is the geographic coverage of the policy/option?
- On what date will the policy be implemented?
- Which organisation(s) will enforce the policy?
- What is the total annual cost of enforcement for these organisations?
- Does enforcement comply with Hampton principles?
- Will implementation go beyond minimum EU requirements?
- What is the value of the proposed offsetting measure per year?
- What is the value of changes in greenhouse gas emissions?
- Will the proposal have a significant impact on competition?

<table>
<thead>
<tr>
<th>Annual cost (£-£) per organisation (excluding one-off)</th>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
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</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>£160.25</td>
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Impact on admin burdens baseline (2005 prices) (Increase – Decrease)

<table>
<thead>
<tr>
<th>Increase of £</th>
<th>Decrease of £</th>
<th>Net impact £</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</table>

Key: Annual costs and benefits (Net Present Value)
### Summary: Analysis and evidence

**Policy option:** 3  
**Description:** Option 3 – Proceed with the changes as stated in this paper.

### Costs

<table>
<thead>
<tr>
<th></th>
<th>Description and scale of <strong>key monetised costs</strong> by ‘main affected groups’</th>
</tr>
</thead>
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<tr>
<td><strong>Conveyancer</strong></td>
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**Total cost (PV)**: £48,076

**Other key non-monetised costs** by ‘main affected groups’

### Benefits

<table>
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<tr>
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<th>Description and scale of <strong>key monetised benefits</strong> by ‘main affected groups’</th>
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<tr>
<td><strong>Conveyancer</strong></td>
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</tr>
<tr>
<td><strong>Land Registry</strong></td>
<td>Not calculated</td>
</tr>
<tr>
<td><strong>Customers</strong></td>
<td>Nil annual</td>
</tr>
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</table>

**Total benefits (PV)**: £336,532

**Other key non-monetised benefits** by ‘main affected groups’

Land Registry and customers – clarification of the law
**Key assumptions/sensitivities/risks**

See evidence base and the annex below.

<table>
<thead>
<tr>
<th>Price base year</th>
<th>Time period years</th>
<th>Net benefit range (NPV)</th>
<th>Net benefit (NPV best estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>Summer 2008</td>
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<td>£ Nil</td>
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<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<td>What is the geographic coverage of the policy/option?</td>
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<td>Summer 2008</td>
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<tr>
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<td>Land Registry</td>
</tr>
<tr>
<td>What is the total annual cost of enforcement for these organisations?</td>
<td>£0</td>
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<tr>
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</tr>
<tr>
<td>Will implementation go beyond minimum EU requirements?</td>
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<th>Large</th>
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<tbody>
<tr>
<td>Are any of these organisations exempt?</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>£160.25</td>
</tr>
</tbody>
</table>

**Impact on admin burdens baseline (2005 prices)**

<table>
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<tr>
<th>Increase of £</th>
<th>Decrease of £</th>
<th>Net impact £</th>
</tr>
</thead>
</table>

Key: **Annual costs and benefits** (Net Present)
Evidence base (for summary sheets)

Consultation to date

E-conveyancing has been, and continues to be, the subject of extensive consultation with Land Registry’s stakeholders. The stakeholders consulted include licensed conveyancers and law firms of various sizes; mortgage lenders; banks; estate agents; other government departments (for example, HM Revenue & Customs); and representative bodies such as the Council of Mortgage Lenders, The Law Society, the Council for Licensed Conveyancers, the Association for Payment Clearing Services, CHAPS Clearing Company, and the National Association of Estate Agents. Consultation and discussion documents have been issued as shown below.

<table>
<thead>
<tr>
<th>Title of document</th>
<th>Date of publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-conveyancing – a Land Registry consultation</td>
<td>May 2002</td>
</tr>
<tr>
<td>E-conveyancing – a Land Registry consultation report</td>
<td>November 2002</td>
</tr>
<tr>
<td>Defining the service – Electronic Funds Transfer</td>
<td>April 2005</td>
</tr>
<tr>
<td>Analysis of the responses to Defining the service – Electronic Funds Transfer</td>
<td>November 2005</td>
</tr>
<tr>
<td>E-conveyancing – Secondary legislation part 1</td>
<td>February 2007</td>
</tr>
</tbody>
</table>

In addition to these, many workshops have been held and focus groups established to discuss particular aspects of the E-conveyancing Programme, such as the implementation strategy, Chain Matrix™ and the service for lenders. Well over 100 consultation sessions have taken place with key groups of stakeholders (legal services, financial services and property marketing agents), involving over 1000 professionals.

Consultations have generally shown broad support for Land Registry’s E-conveyancing Programme and for the specific proposals relating to services, service delivery and implementation. However, early consultations especially also revealed apprehension among stakeholders at the prospect of radical and far-reaching changes whose ramifications had not been adequately understood.

1 In all, over 120 conveyancers have been involved in workshops concerning Chain Matrix, for example.
By May 2006, when GfK NOP carried out market research among high street conveyancers and solicitors on Land Registry’s behalf, these fears had been so far overcome that the projected take-up figure for automatic registration on completion was 86 per cent, and no feature of the programme achieved a projected take-up below 43 per cent. Other features of the programme achieved projected take-up rates between 50 per cent and 80 per cent. Significantly, e-conveyancing is viewed more positively by those familiar with the proposed changes than by those who are unfamiliar with them².

The responses from stakeholders to those consultations have helped to shape the services offered in the E-conveyancing Programme and the way in which those services will be delivered. This is the second consultation exercise on secondary legislation. Further consultations are planned and will take place when appropriate³. Informal consultations with the full range of stakeholders and their several representative bodies will continue throughout the life of the programme, such as through the Business User Group and Government User Group, which meet every 3-5 months.

Details of proposed changes – e-charges

The Rules provide, subject to certain exclusions, for the granting of e-charges as an alternative to paper deeds of charge.

The main exclusions are as follows:
— charges of part only (ie not the whole) of the land in a registered title
— charges affecting more than one registered title
— charges of unregistered land
— charges by a body corporate, whether the body corporate is a sole or a joint borrower.

² Source: E-conveyancing Market Analysis amongst High Street Conveyancers and Solicitors, pub. May 2006, prepared for Land Registry by GfK NOP.
³ It is intended that e-conveyancing will first be introduced on a voluntary basis, so that two systems of conveyancing will run in parallel, paper and electronic. However, the question when to end the paper-based system will need consideration and consultation.
E-charges will be prepared using Land Registry's central e-conveyancing service. The e-charge must be electronically authenticated, using Land Registry's e-signatures solution, the key features of which are described under ‘Details of proposed changes – e-security’ below. Application to register the e-charge will be made through the central e-conveyancing service. A network access agreement will be necessary to access the central e-conveyancing service.

Land Registry has taken Counsel's opinion on the question of whether section 11 of the Trustee Act 2000 permits two or more joint borrowers to collectively delegate the authentication (ie e-signing) of a charge to a single agent. The opinion was that the signature of one agent on behalf of joint proprietors would suffice to overreach the beneficial interests. A single agent may, therefore, act on behalf of joint borrowers where such borrowers have collectively delegated the authentication of an e-charge to him/her. So, in the case of joint borrowers, Land Registry anticipates, in the early days of e-charges, a single conveyancer (user) signing on behalf of both borrowers.

Schedule 1 to the Rules stipulates the contents of e-charges, although no form, as such, is prescribed.

The benefits of e-charges are as follows.

**Internal benefits**

— Land Registry staff will not need to scan e-charges (or any supporting evidence – eg consents, certificates – as all supporting evidence must be electronic) for filing. This also obviates storage/retrieval/disposal problems and associated costs in relation to paper charges.

— Automated processing will be introduced gradually which will help to eliminate clerical errors. (In a fully automated system, everything will be automated – lodgement, processing and output.)

— Even where manual processing is required, partial automation will be encouraged wherever practicable – eg even if an application is processed manually, outputs such as notifications will be electronic. Pre-draft register entries will also be possible and will help to prevent errors.

— E-dispatch saves printing, stationery, postage and some staff costs.
External benefits

— Some of the above savings – such as printing, stationery, postage – will also apply to conveyancers, lenders etc.

— Immediacy and certainty of application – the applicant will be able to request that as soon as the e-charge has come into effect an electronic application to register it will be made.

— Data checking as part of the e-documents process gives early warning of defects in the application, thus avoiding the need for requisitions at a later stage. It is worth noting that requisitions also involve the threat of cancellation in the event of non-compliance, which leads to associated costs.

Details of proposed changes – e-security

The security of e-charges will be underpinned by Land Registry’s e-security solution, the essential characteristics of which are as follows:

Identity checks

Land Registry will register organisations and their respective administrators. The latter will be responsible for the creation and maintenance of user records within their organisation.

Role-based access control

Land Registry’s e-security solution will incorporate a system of role-based access control (RBAC). Within a RBAC, users have roles and the role each user has defines his/her permissions to use Land Registry’s services. An analysis of roles has been undertaken with stakeholders and a number of roles have been identified. Local administrators will assign a role to each of their users when creating the user’s account.

Authentication

Most users will gain access to the e-conveyancing services via a user ID and password. Access to administrators’ services will require two-factor authentication, ie ‘something you have’ and ‘something you know’. In the present case, the ‘something you have’ will be a USB token and the ‘something you know’ will be a PIN to unlock the token. Likewise, before applying an e-signature, the user will be forced to apply two-factor authentication.
E-signing

It is currently proposed that the document will be presented in a browser window in HTML. Before signing, the user will be required to confirm his/her identity. After having signed the e-charge, the user will receive a digital receipt confirming:

— the circumstances of the signing event
— the document that was signed
— the names of the signatories
— the signing of the document by Land Registry
— the archiving by Land Registry of a signed copy of the document
— instructions on how to verify independently the validity of the signatures.

Paragraph 1(b) of Schedule 1 to the Rules provides that an e-charge must contain a provision that the charge takes effect at the time and date that, after the Borrower’s (or his agent’s) e-signature has been applied and certified, the registrar’s e-signature is logically associated with that charge. In practice, certification of the borrower’s e-signature and the logical association of the registrar’s e-signature will be virtually instantaneous.

It is considered that the audit trail afforded by e-charges and e-signatures will offer a significantly higher level of security and protection against fraud than manually signed paper charges. It is not necessarily the case that the commission of fraud will thereby be rendered more difficult: rather that the temptation to commit fraud will be diminished because it will be easier and less time-consuming to identify the perpetrator.

Impact tests

Competition assessment

The affected markets are:
— conveyancing, banking, lending institutions
— providers of services (administrative, legal, publishing) to the above.

The lending market has two players with over 10 per cent of the new lending market – HBOS (21 per cent) and Abbey (10 per cent). But the market is robust and in recent years it has become easier for new entrants. The top five lenders had 57 per cent of the market in 2000, but this had fallen to 55 per cent in 2005. The Competition Commission is unlikely to allow further consolidation amongst the market leaders.
The conveyancing market is much more fragmented. It ranges from small high street firms, who do conveyancing as part of a range of services, to large volume conveyancing ‘factories’ (hereinafter referred to as bulk conveyancers). Hammonds Direct claims to be the largest conveyancing firm, with about 10 per cent of the market.6

Having run the competition filter test, we do not believe that the proposals will raise any significant competition issues.

Small firms

Conveyancing is still overwhelmingly undertaken by small businesses. A high street segmentation report by Land Registry found that of the 3,730 active high street conveyancers, 57 per cent fall within the definition of ‘micro-business’ (fewer than 10 full time equivalent employees) with a 49 per cent share of the conveyancing market. Only 23 per cent of firms had more than 20 full-time equivalent staff, and they had a 33 per cent share of the conveyancing market. While the number of bulk conveyancers has increased in recent years, it appears that they have absorbed the increasing volume of conveyancing transactions, not taken work from smaller firms.

Most of the specific compliance issues raised that would be equally applicable to firms of any size markets are:
— staff training/slower while getting used to e-charges
— update organisation’s software.

In connection with an earlier impact assessment, the Small Business Service of the DTI was approached and suggested that we should contact a selection of professional bodies and trade associations including conveyancers, surveyors and land agents. This will be done as part of this consultation process. Indeed, we have regular contact with members of stakeholder representative bodies through the quarterly meetings of our Business User Group.

After consultation the proposed effect and whether there will a significant or disproportionate impact on small businesses will be evaluated.

Legal aid

Not applicable.

Sustainable development, carbon, other environment, and health impact assessments

Not applicable.

*See webpage www.legalmove.com/ They deal with about 9,900 conveyancing transactions per month.
Race, disability and gender equality

We do not believe that there are any significant race, gender or age issues involved in these proposals, and none have been raised in initial consultations. E-documents in general have the potential to disadvantage conveyancers and other practitioners who have impaired vision, especially those whose impairment is severe. In order to avoid such an outcome, Land Registry has maintained close links with the Society for Visually Impaired Lawyers since 2002 and has engaged with their consultants at the Royal National Institute for the Blind. E-conveyancing screens generally meet the highest level of compliance recommended under the Disability Discrimination Act.

It is planned that a Welsh version of the e-charge will be made available after the pilot stage.

Human rights

We do not believe that any human rights issues arise in relation to the recommended proposals.

Rural proofing

Land Registration is a national system that is equally applicable to rural and urban areas: no separate issues arise.

Option breakdowns

Option 1 – Do nothing

By maintaining the existing Land Registration Rules 2003, Land Registry would be failing to drive forward the reforms mandated by the E-conveyancing Programme. Specifically, this option would leave untouched the cumbersome paper-based system, which is prone to delays and allows scope for error (eg using the wrong form of charge) and the commission of fraud (eg forgery, impersonation).

Given that the E-conveyancing Programme has been approved by ministers and the development of electronic documents (including e-charges) is an essential element within that programme, doing nothing is not a long-term option.

The costs for Land Registry (of development and implementation) will be incurred in any event, whether e-charges are implemented now or later.

Risks would be increased and no significant savings would be made by deferring implementation of e-charges.

For these reasons we do not recommend this option.

7 For example, the impact of any failure of the e-signatures solution would be much greater if all the functionality for e-documents was introduced at the same time, rather than being introduced incrementally.
Option 2 – Introduce e-charges at the same time as other dispositionary e-documents

The E-conveyancing Programme is being implemented in a series of tranches and phases, each of which builds on the achievements and lessons learned in the previous one(s). The object of this approach is to manage and minimise risk. The introduction of dispositionary e-documents (other than e-charges) currently forms part of Tranche 2, Phase 1, scheduled for introduction in June 2009.

This option proposes to combine the implementation of e-charges with that of other dispositionary e-documents.

By collapsing the development and delivery of all e-documents into a single phase, this option would offer savings in implementation costs, but such savings would be relatively minor and more than outweighed by the increase in the number, and severity of impact, of risks associated with a ‘big bang’ approach.

For these reasons we do not recommend this option.

Option 3 – Proceed with the changes as stated in this paper

Land Registry aims at simplifying and streamlining processes, enhancing security, reducing errors and increasing operational efficiency, while managing risks to the E-conveyancing Programme effectively. This combination of aims can be met only by the incremental introduction of services and functionality, which alone enables Land Registry to trial new services and products and test market responses thereto prior to full rollout.

In the evidence base, significant benefits of this approach have been identified to both Land Registry and its stakeholders.

For these reasons this is the **recommended** option.
### Specific impact tests: Checklist

<table>
<thead>
<tr>
<th>Type of testing undertaken</th>
<th>Results in evidence base?</th>
<th>Results annexed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competition assessment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Small firms impact test</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Legal aid</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Sustainable development</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Carbon assessment</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Other environment</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Health impact assessment</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Race equality</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Disability equality</td>
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<td>No</td>
</tr>
<tr>
<td>Gender equality</td>
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<td>No</td>
</tr>
<tr>
<td>Human rights</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Rural proofing</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Preface

Please read

The reader of this document is advised that all figures contained are estimates, and the authors have attempted to be as thorough as possible in attempting to collate factual data from source.

In certain instances we found several conflicting sets of numbers, especially for benefits related to Land Registry. Exercising prudence we have elected not to populate certain cells as this would lead to misleading and unjustifiable numbers.
Soft benefits to Option 3

1. Allows volume top 300 conveyancer to gain familiarity with e-conveyancing prior to full roll-out.
2. Allows volume top 300 conveyancer to gain familiarity with portal services.
3. Allows volume top 300 conveyancer to gain familiarity with XML interface.
4. Allows volume top 300 conveyancer to gain familiarity with prepare and gain knowledge of how their case management systems (CMS) will integrate with e-conveyancing.
5. Allows small controllable roll-out of e-signatures.
6. Allows Land Registry to test and give further thought to how the remainder of the e-conveyancing XML should work.
7. Allows Land Registry to start marketing activities earlier, therefore gaining momentum earlier.

Impact assessment - notes

Comments

1. Applying a charge on behalf of lender is typically undertaken by a conveyancer. This can happen in two instances:
   — 1a. When a mortgage is taken for the purchase of a property – normally undertaken by a high street conveyancer
   — 1b. When a property is re-mortgage – normally undertaken by direct conveyancers

2. Number of residential charges applied in 2006 was: 2,074,977 or 100 per cent

   2a. Number of commercial charges in 2006 – ignored in this benefits and cost analysis: 366,172

   2b. Number of charges applied for a purchase of a property was: 1,001,853 or 48.3 per cent

   2c. Number of charges applied for re-mortgage was: 1,073,124 or 51.7 per cent
2d Roll out will be top 300 firms over 30 months. Top 100 = 20 per cent of remortgage market, assuming 50 per cent less transactions in next 100 firms and reduces another 50 per cent in the next 100 firms. (20 per cent + 10 per cent + 5 per cent = 35 per cent total = 375,593)

3. Top 300 firms processes for applying a charge (re-mortgage) is like to take an average of seven minutes. 7 minutes

3a. It is assumed that a fee earner does not get involved, and therefore a support staff manage to apply the charge costing the firm £7.69 per hour (£14,000/52weeks/35hrs)

0.128 £ per min
— Based on SimplyLawJobs.com's Wage Watch report 2006, Page 4 NW Property Law Student wages figure £14k-used here for support/admin staff

3b. Top 300 firms processes for applying is shown in eCSF process tab below, takes an average of one minute. 1 minute

4. High street conveyancers process for applying a charge (not re-mortgage) is an average of two minutes. 2 minutes

4a. Typically this task is undertaken by the support/admin staff – same hourly rate of £7.69 used as for direct conveyancing 0.128 £ per min

5. Market breakdown of charge applying market

5a. Direct conveyancers complete approx 20 per cent of all re-mortgages, and therefore the related charge (market change estimate) 214,625 or 10.3 per cent

5b. High street conveyances complete all remaining charge applications 1,860,352 or 89.7 per cent
Conveyancer’s time – seconds 60 total

1a User selects e-charge from the e-documents menu 5

1b System checks that user is authorised to prepare a charge 0

2a User enters the title number on the screen 10

2b System confirms the address of the property 0

3a User enters borrowers’ names 10

3b System checks the borrowers’ names match the registered proprietors 0

4a System presents auto-populated details of signatory 0

4b User appends electronic signature 20

5 System populates e-charge with all known details for that lender code, including any additional provisions if required 0

6a User prompted to enter a lender code 5

6b System displays name of lender and code for confirmation 0

7a System displays submit screen 0

7b User submits e-charge for registration 5

8a Registrar validates user signature and signs the charge, which takes effect at that date and time 0

8b Application for the registration of the charge is entered on day list 0

9 User receives immediate e-acknowledgement 5

Times based on estimates
## Conveyancer's time – seconds 420 total

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Open case file</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>Conveyancer enters the title number on form</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Conveyancer enters borrowers’ names</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Conveyancer completes other details on form</td>
<td>45</td>
</tr>
<tr>
<td>5</td>
<td>Creates covering letter probably from template + print</td>
<td>10</td>
</tr>
<tr>
<td>6a</td>
<td>Conveyancer puts form and letter in envelope for sending + addressing + attached address envelope for reply, may inc return postage cost</td>
<td>30</td>
</tr>
<tr>
<td>6b</td>
<td>Post room to frank/ stamp and deliver to Post office</td>
<td>20</td>
</tr>
<tr>
<td>7a</td>
<td>Customer receives, reads and signs (Non conveyancer’s time)</td>
<td>0</td>
</tr>
<tr>
<td>7b</td>
<td>Customer collates and posts (Non conveyancer’s time)</td>
<td>0</td>
</tr>
<tr>
<td>8a</td>
<td>Post room delivers to correct dept</td>
<td>20</td>
</tr>
<tr>
<td>9</td>
<td>Open envelope and forward to right person</td>
<td>15</td>
</tr>
<tr>
<td>10</td>
<td>Conveyancer checks doc to ensure all is acceptable, + lodge receipt in system</td>
<td>45</td>
</tr>
<tr>
<td>11</td>
<td>Conveyancer puts form in envelope to Land Registry and sends to post room</td>
<td>30</td>
</tr>
<tr>
<td>12</td>
<td>Conveyancer informs lender that charge has been sent to Land Registry</td>
<td>30</td>
</tr>
<tr>
<td>13</td>
<td>Conveyancer updates system</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Land Registry sends confirmation of charge applied</td>
<td>15</td>
</tr>
</tbody>
</table>
14a Post room delivers to correct dept 20
14b Open envelope and forward to right person 15
14c Conveyancer checks doc to ensure all is acceptable and in line with lender's expectations 45
15 Conveyancer informs lender that charge has been applied by Land Registry 30

Times based on estimates
Relevant legislation

**Trustee Delegation Act 1999**

Section 7 Two-trustee rules
(1) A requirement imposed by an enactment—

(a) that capital money be paid to, or dealt with as directed by, at least two trustees or that a valid receipt for capital money be given otherwise than by a sole trustee, or

(b) that, in order for an interest or power to be overreached, a conveyance or deed be executed by at least two trustees,

is not satisfied by money being paid to or dealt with as directed by, or a receipt for money being given by, a relevant attorney or by a conveyance or deed being executed by such an attorney.

(2) In this section “relevant attorney” means a person (other than a trust corporation within the meaning of the Trustee Act 1925) who is acting either—

(a) both as a trustee and as attorney for one or more other trustees, or

(b) as attorney for two or more trustees,

and who is not acting together with any other person or persons.

(3) This section applies whether a relevant attorney is acting under a power created before or after the commencement of this Act (but in the case of such an attorney acting under an enduring power created before that commencement is without prejudice to any continuing application of section 3(3) of the Enduring Powers of Attorney Act 1985 to the enduring power after that commencement in accordance with section 4 above).

**Trustee Act 2000**

Section 11 Power to employ agents
(1) Subject to the provisions of this Part, the trustees of a trust may authorise any person to exercise any or all of their delegable functions as their agent.

(2) In the case of a trust other than a charitable trust, the trustees’ delegable functions consist of any function other than—

(a) any function relating to whether or in what way any assets of the trust should be distributed,

(b) any power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital,
(c) any power to appoint a person to be a trustee of the trust, or

(d) any power conferred by any other enactment or the trust instrument which permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.

(3) In the case of a charitable trust, the trustees’ delegable functions are—

(a) any function consisting of carrying out a decision that the trustees have taken;

(b) any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);

(c) any function relating to the raising of funds for the trust otherwise than by means of profits of a trade which is an integral part of carrying out the trust's charitable purpose;

(d) any other function prescribed by an order made by the Secretary of State.

(4) For the purposes of subsection (3)(c) a trade is an integral part of carrying out a trust's charitable purpose if, whether carried on in the United Kingdom or elsewhere, the profits are applied solely to the purposes of the trust and either—

(a) the trade is exercised in the course of the actual carrying out of a primary purpose of the trust, or

(b) the work in connection with the trade is mainly carried out by beneficiaries of the trust.

(5) The power to make an order under subsection (3)(d) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Land Registration Act 2002**

Section 91 Electronic dispositions: formalities

(1) This section applies to a document in electronic form where—

(a) the document purports to effect a disposition which falls within subsection (2), and

(b) the conditions in subsection (3) are met.

(2) A disposition falls within this subsection if it is—

(a) a disposition of a registered estate or charge,

(b) a disposition of an interest which is the subject of a notice in the register, or

(c) a disposition which triggers the requirement of registration, which is of a kind specified by rules.
(3) The conditions referred to above are that—
(a) the document makes provision for the time and date when it takes effect,
(b) the document has the electronic signature of each person by whom it purports to be authenticated,
(c) each electronic signature is certified, and
(d) such other conditions as rules may provide are met.

(4) A document to which this section applies is to be regarded as—
(a) in writing, and
(b) signed by each individual, and sealed by each corporation, whose electronic signature it has.

(5) A document to which this section applies is to be regarded for the purposes of any enactment as a deed.

(6) If a document to which this section applies is authenticated by a person as agent, it is to be regarded for the purposes of any enactment as authenticated by him under the written authority of his principal.

(7) If notice of an assignment made by means of a document to which this section applies is given in electronic form in accordance with rules, it is to be regarded for the purposes of any enactment as given in writing.

(8) The right conferred by section 75 of the Law of Property Act 1925 (c 20) (purchaser’s right to have the execution of a conveyance attested) does not apply to a document to which this section applies.

(9) If subsection (4) of section 36A of the Companies Act 1985 (c 6) (execution of documents) applies to a document because of subsection (4) above, subsection (6) of that section (presumption of due execution) shall have effect in relation to the document with the substitution of “authenticated” for “signed” [(and subsection (8) of that section, in so far as it relates to the document, shall be read accordingly)].

(9A) If subsection (3) of section 29C of the Industrial and Provident Societies Act 1965 (execution of documents) applies to a document because of subsection (4) above, subsection (5) of that section (presumption of due execution) shall have effect in relation to the document with the substitution of “authenticated” for “signed”.

(10) In this section, references to an electronic signature and to the certification of such a signature are to be read in accordance with section 7(2) and (3) of the Electronic Communications Act 2000 (c 7).
Section 92 Land Registry network

(1) The registrar may provide, or arrange for the provision of, an electronic communications network for use for such purposes as he thinks fit relating to registration or the carrying on of transactions which—
(a) involve registration, and
(b) are capable of being effected electronically.

(2) Schedule 5 (which makes provision in connection with a network provided under subsection (1) and transactions carried on by means of such a network) has effect.

Schedule 5 Land Registry Network

1 Access to network
(1) A person who is not a member of the land registry may only have access to a land registry network under authority conferred by means of an agreement with the registrar.

(2) An agreement for the purposes of sub-paragraph (1) (“network access agreement”) may authorise access for—
(a) the communication, posting or retrieval of information,
(b) the making of changes to the register of title or cautions register,
(c) the issue of official search certificates,
(d) the issue of official copies, or
(e) such other conveyancing purposes as the registrar thinks fit.

(3) Rules may regulate the use of network access agreements to confer authority to carry out functions of the registrar.

(4) The registrar must, on application, enter into a network access agreement with the applicant if the applicant meets such criteria as rules may provide.

2 Terms of access
(1) The terms on which access to a land registry network is authorised shall be such as the registrar thinks fit, subject to sub-paragraphs (3) and (4), and may, in particular, include charges for access.

(2) The power under sub-paragraph (1) may be used, not only for the purpose of regulating the use of the network, but also for—
(a) securing that the person granted access uses the network to carry on such qualifying transactions as may be specified in, or under, the agreement,
(b) such other purpose relating to the carrying on of qualifying transactions as rules may provide, or
(c) enabling network transactions to be monitored.

(3) It shall be a condition of a network access agreement which enables the person granted access to use the network to carry on qualifying transactions that he must comply with any rules for the time being in force under paragraph 5.
(4) Rules may regulate the terms on which access to a land registry network is authorised.

3 Termination of access
(1) The person granted access by a network access agreement may terminate the agreement at any time by notice to the registrar.

(2) Rules may make provision about the termination of a network access agreement by the registrar and may, in particular, make provision about—
(a) the grounds of termination,
(b) the procedure to be followed in relation to termination, and
(c) the suspension of termination pending appeal.

(3) Without prejudice to the generality of sub-paragraph (2)(a), rules under that provision may authorise the registrar to terminate a network access agreement if the person granted access—
(a) fails to comply with the terms of the agreement,
(b) ceases to be a person with whom the registrar would be required to enter into a network access agreement conferring the authority which the agreement confers, or
(c) does not meet such conditions as the rules may provide.

4 Appeals
(1) A person who is aggrieved by a decision of the registrar with respect to entry into, or termination of, a network access agreement may appeal against the decision to the adjudicator.

(2) On determining an appeal under this paragraph, the adjudicator may give such directions as he considers appropriate to give effect to his determination.

(3) Rules may make provision about appeals under this paragraph.

5 Network transaction rules
(1) Rules may make provision about how to go about network transactions.

(2) Rules under sub-paragraph (1) may, in particular, make provision about dealings with the land registry, including provision about—
(a) the procedure to be followed, and
(b) the supply of information (including information about unregistered interests).

6 Overriding nature of network access obligations
To the extent that an obligation not owed under a network access agreement conflicts with an obligation owed under such an agreement by the person granted access, the obligation not owed under the agreement is discharged.
7 Do-it-yourself conveyancing
(1) If there is a land registry network, the registrar has a duty to provide such assistance as he thinks appropriate for the purpose of enabling persons engaged in qualifying transactions who wish to do their own conveyancing to do so by means of the network.
(2) The duty under sub-paragraph (1) does not extend to the provision of legal advice.

8 Presumption of authority
Where—
(a) a person who is authorised under a network access agreement to do so uses the network for the making of a disposition or contract, and
(b) the document which purports to effect the disposition or to be the contract—
(i) purports to be authenticated by him as agent, and
(ii) contains a statement to the effect that he is acting under the authority of his principal, he shall be deemed, in favour of any other party, to be so acting.

9 Management of network transactions
(1) The registrar may use monitoring information for the purpose of managing network transactions and may, in particular, disclose such information to persons authorised to use the network, and authorise the further disclosure of information so disclosed, if he considers it is necessary or desirable to do so.
(2) The registrar may delegate his functions under sub-paragraph (1), subject to such conditions as he thinks fit.
(3) In sub-paragraph (1), “monitoring information” means information provided in pursuance of provision in a network access agreement included under paragraph 2(2)(c).

10 Supplementary
The registrar may provide, or arrange for the provision of, education and training in relation to the use of a land registry network.

11
(1) Power to make rules under paragraph 1, 2 or 3 is exercisable by the Lord Chancellor.
(2) Before making such rules, the Lord Chancellor must consult such persons as he considers appropriate.
(3) In making rules under paragraph 1 or 3(2)(a), the Lord Chancellor must have regard, in particular, to the need to secure—
(a) the confidentiality of private information kept on the network,
(b) competence in relation to the use of the network (in particular for the purpose of making changes), and
(c) the adequate insurance of potential liabilities in connection with use of the network.
12 In this Schedule—
“land registry network” means a network provided under section 92(1);
“network access agreement” has the meaning given by paragraph 1(2);
“network transaction” means a transaction carried on by means of a land registry network;
“qualifying transaction” means a transaction which—
(a) involves registration, and
(b) is capable of being effected electronically.
## Glossary of terms

A glossary can also be found at Annex C of the previous consultation paper *Secondary legislation part I* published in February 2007.

<table>
<thead>
<tr>
<th>Word or phrase</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Case management software</td>
<td>This is software used by conveyancers to control and manage the progress of cases. Typical features include legal calendar control, file and document control, time/billing and accounting, email, to-do lists, court rules and timeliness, address books, and reporting features.</td>
</tr>
<tr>
<td>Charge</td>
<td>A ‘charge by way of legal mortgage’ is the form of legal mortgage almost invariably used nowadays. A mortgage is a way of securing the payment of money. A mortgage is given to the mortgage lender when a person borrows money and signs a mortgage deed. The mortgage is registered against the borrower's property until the loan is repaid. If the loan is not repaid, the lender has the right to sell the property.</td>
</tr>
<tr>
<td>Completion</td>
<td>The point in time when the act of completing a property transaction takes place, which is typically when the seller delivers the property to the buyer and the buyer pays the balance of the purchase moneys to the seller.</td>
</tr>
<tr>
<td>Conveyancing</td>
<td>The legal process of creating or dealing with a right of ownership, such as a freehold or leasehold.</td>
</tr>
<tr>
<td>Electronic signature</td>
<td>This term is explained in s.7(2), Electronic Communications Act 2000: see Annex B. Broadly, an electronic signature is so much of anything in electronic form as is incorporated into or otherwise logically associated with electronic data in order to establish the authenticity and integrity of that data.</td>
</tr>
<tr>
<td>Land Registration Act 2002 (the Act)</td>
<td>The Act, which came into force on 13 October 2003, creates a framework that will make possible the electronic creation and transfer of interests in registered land.</td>
</tr>
<tr>
<td>Word or phrase</td>
<td>Definition</td>
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<tr>
<td>Land Registry</td>
<td>This is Her Majesty’s Land Registry, a government department set up in 1862 for the purpose of creating and maintaining a Register of Title.</td>
</tr>
<tr>
<td>Land Registry Network</td>
<td>Refers to the electronic communications network provided by Land Registry under s.92 of the Act for registration and conveyancing purposes.</td>
</tr>
<tr>
<td>LRD</td>
<td>Land Registry Direct (LR Direct) A web-based service, launched in June 2000, which enables services to be provided electronically.</td>
</tr>
<tr>
<td>PDF</td>
<td>Portable document format. A file format that enables document exchange by allowing documents to be opened across a broad range of hardware and software and to look exactly as intended, with layout, fonts, links, and images intact.</td>
</tr>
<tr>
<td>Portal</td>
<td>The customer will be able to contact, transact or interact via the Land Registry e-conveyancing website portal, thus enabling customer self service. The website shall contain information including, but not restricted to products and services, transaction progress (read only), links to downloadable forms, useful contact points, and frequently asked questions (FAQs).</td>
</tr>
<tr>
<td>Role based Access</td>
<td>For e-security, access via Portal will be granted at different levels of authority (or roles) within a conveyancing firm. The system will identify the individual who is logged on.</td>
</tr>
<tr>
<td>Technical manual</td>
<td>A part of the network access agreement providing for the proper administration by users of the system.</td>
</tr>
<tr>
<td>USB</td>
<td>(Universal Serial Bus): A port on a computer for connecting devices such as a printer or scanner.</td>
</tr>
</tbody>
</table>
Consultees

Copies of this consultation paper have been sent to:

**Government**
- Office of the Adjudicator to HM Land Registry
- Assets Recovery Agency
- Bank of England
- Cabinet Office
- Companies House
- Crown Prosecution Service
- Department for Communities and Local Government
- Ministry of Justice
- Department for Trade and Industry
- Department for Work and Pensions
- e-Government Unit
- English Partnerships
- HM Courts Service
- HM Revenue and Customs: Stamp Taxes
- HM Treasury
- Home Office
- Housing Corporation
- Improvement and Development Agency
- Independent Complaints Reviewer
- Insolvency Service
- Members of the Land Registration Rule Committee
- Ministerial Committee on Domestic Affairs
- National Assembly for Wales
- National Criminal Intelligence Service
- Ofcom
- Office of Fair Trading
- Ordnance Survey
- Registers of Scotland
- Security Service
- Serious Fraud Office
- Serious Organised Crime Agency
- Small Business Service
- Valuation Office Agency
Regulatory and representative bodies/individuals

- Agricultural Law Association
- Association of British Insurers
- Association of Residential Managing Agents
- The Bar Council
- British Bankers Association
- British Property Federation
- British Retail Consortium
- Building Societies Association
- C-NLIS
- Chancery Bar Association
- Charities’ Property Association
- Charity Commission
- Citizens Advice
- College of Law
- Confederation of British Industry
- Consumer and Commercial Law Research Group
- Council for Licensed Conveyancers
- Council of Mortgage Lenders
- Country Land and Business Association
- The Crown Estate
- Direct Conveyancing Association
- Ecclesiastical Law Society
- Federation of Small Businesses
- Financial Ombudsman Service
- Dr. Charles Harpum
- Home Builders’ Federation
- Insolvency Practitioners’ Association
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Secretaries and Administrators
- Institute of Legal Executives
- Intermediary Mortgage Lenders Association
- Law Commission
- The Law Society
- Law Society of Scotland
- Legal Software Suppliers Association
- Local Government Association
- National Association of Citizens Advice Bureaux
- National Association of Estate Agents
- National Consumer Council
- National Housing Federation
- Notaries Society
- Property Litigation Association
- Royal Institution of Chartered Surveyors
- The Scottish Law Commission
- Society for Computers and Law
- Society of Asian Lawyers
- Society of Legal Scholars
- Society of Licensed Conveyancers
- Society of Property Researchers
- Society of Trust & Estate Practitioners
- Society of Visually Impaired Lawyers
- Solicitors Benevolent Association
- Which?
In addition to the above, all Land Registry's credit account customers have been invited to participate. Credit account holders include:
— conveyancers
— lenders
— financial institutions
— builders and developers
— surveyors
— estate agents and other property professionals
— insurers
— private individuals.
General principles of consultation

The criteria in the Code of Practice on Written Consultation issued by the Cabinet Office are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department’s effectiveness at consultation, including through the use of a designated consultation coordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out an impact assessment if appropriate.
Consultation coordinator

If you have any comments or complaints about this consultation process, you should contact Mick Lewis by telephone on 020 7166 4848 or email him at mick.lewis@landregistry.gsi.gov.uk

Alternatively, you may write to him at the address below:

Mick Lewis
Consultation Coordinator
Land Registry, Head Office
Lincoln’s Inn Fields
London
WC2A 3PH

Or:

DX No. 1098
London/Chancery Lane WC2