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November 2007

Comprehensive land register

Content

Foreword

Introduction

1 – How to respond

2 – Executive summary

3 – The proposals

Annex A

Consultation impact assessment

Annex B

Draft Order under section 5 of the Land Registration Act 2002

Annex C

Sections 4 and 7 of the Land Registration Act 2002 showing the changes that the Order would affect

Annex D

Consultees

Annex E

General principles of consultation

Annex F

Consultation coordinator

Foreword from the Chief Land Registrar

One of Land Registry's strategic objectives is to create a comprehensive land register for England and Wales. It is unsatisfactory to have two national systems (registered and unregistered) of land ownership running side by side.

The Law Commission report *Land Registration for the Twenty-first Century – A Conveyancing Revolution* published in 2001¹, stated that the dual system had absolutely nothing to commend it and should be brought to an end "as soon as is reasonably practicable".

The Land Registration Act 1997 which introduced new triggers for compulsory registration has helped us to move forward in achieving this objective and we wish now to propose additional triggers to further this goal.

A registered title provides real benefits to those holding it – it allows landowners to manage their assets more effectively now and in the long term, to consolidate complex legal information or historic data about their land and to protect it against encroachment. It gives landowners the benefit of state-backed registration. Additionally, an enduring and trusted system of secure land tenure fosters certainty, encourages investment and improvement, while promoting stability and confidence.

Land Registry considers that the best way to make progress towards the comprehensive land register is to continue our policy of encouraging and facilitating voluntary first registrations and to extend compulsory registration by introducing two new triggers that will require first registration. These new triggers are, first, the appointment of a new trustee of unregistered land held in trust where the land vests in the new trustee by deed or other instrument in writing or by a vesting order of the court, and, secondly, the partitioning of unregistered land held in trust among the beneficiaries of the trust.

In this paper we are consulting, on behalf of the Lord Chancellor, this proposal to introduce the new events that will trigger compulsory first registration of land affected by those events.

I would urge you to now give consideration to this paper and give us your views on the proposals.



Peter Collis CB Hon RICS CCMI
Chief Land Registrar

¹ See (2001) Law Com No 271

Introduction

This consultation paper seeks views on the introduction of two new events that would trigger the compulsory registration of title. They are:

- the appointment of a new trustee of unregistered land held in trust where the land vests in the new trustee by deed or other instrument in writing or by vesting order of the court, and
- the partitioning of unregistered land held in trust amongst the beneficiaries of the trust.

This consultation is aimed primarily at conveyancers, regulatory and representative bodies (such as The Law Society, Council of Mortgage Lenders, Council for Licensed Conveyancers and the Charity Commission) and other property professionals such as surveyors and land agents. However, we will be glad to hear from others who have views on the topics dealt with in this paper and would be happy for recipients to pass copies of this document to those they think may have an interest. Respondents do not need to comment on all questions; we will welcome responses dealing with specific topics.

Under section 5(4) of the Land Registration Act 2002 (LRA 2002) the Lord Chancellor must, before making an order under section 5(1) of the LRA 2002 adding to the events, which trigger compulsory registration, consult such persons, as he considers appropriate. Accordingly, on behalf of the Lord Chancellor, we are sending copies of the consultation document to a wide range of Government Departments and representative bodies and individuals, listed in *Annex D – Consultees*.

In addition, 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 website.

After careful consideration, we have decided not to produce a Welsh language version of the proposed order under section 5(1) of the LRA 2002, nor of this consultation paper. Our Welsh Language Scheme recognises that some advisory material, such as this, is too intrinsically 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 (IA). An IA 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 IA relating to the proposed new triggers requiring the first registration of the land affected by those events is included in this consultation

paper at *Annex A – Consultation impact assessment*. Your comments on this would be very welcome and will help us 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 – General principles of consultation*.

The questions in the questionnaire have been included in the sections of this document to which they apply. They are also listed together in full in the questionnaire along with the answer options and requests for detail where necessary.

How to respond

There are several ways in which you can respond to this consultation document.

Our consultation website allows you to respond using our online questionnaire. Your answers may be saved as draft as you go along – you don't 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 inefficient re-typing 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 haven't yet registered, just follow the registration instructions on the consultation web pages:

www.consultations.landregistry.gov.uk

You can also download a MS Word document of the questionnaire which you can complete off-line 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:

comprehensive.register@landregistry.gsi.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:

The Comprehensive Register Team, Room 110, Land Registry,
Lincolns Inn Fields, London WC2A 3PH

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 **29 February 2008**.

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 with, among other things, 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 consultation web pages www.consultations.landregistry.gov.uk
- writing to The Comprehensive Register Team, Room 110, Land Registry, Lincolns Inn Fields, London WC2A 3PH
- sending an email to **comprehensive.register@landregistry.gsi.gov.uk**
- telephoning 0207 166 4405, 0207 166 4257 or 0207 166 4816.

Other formats

This consultation material can be made available in alternative formats. If you or one of your colleagues requires an alternative format, please contact us by one of the above methods.

Enquiries

If you have any questions about the consultation document or how to respond, or about the draft legislation itself, please contact us by one of the above methods.

Executive summary

This consultation paper presents for discussion the proposed Land Registration Act 2002 (Amendment) Order 2008 (the Order).

The purpose of the Order is to add two new events to those that presently trigger compulsory first registration of title. It does this by inserting new paragraphs (a) (iii) and (aa) into section 4(1) of the LRA 2002, which lists the events that give rise to compulsory registration.

The proposed new triggers are:

- the appointment of a new trustee of unregistered land held in trust where the land vests in the new trustee by deed or other instrument in writing or by vesting order of the court, and
- the partitioning of unregistered land held in trust among the beneficiaries of the trust.

The Order is set out in *Annex B – Draft Order under section 5 of the Land Registration Act 2002* and a full explanation of the Order appears in *3 – The proposals*.

3

The proposals

Your views are sought on our proposals to make progress towards creating the comprehensive land register by adding two new triggers to the events listed in section 4(1) of the LRA 2002 that give rise to compulsory registration of title. You will also be asked to comment on the content of the Order that is required under section 5(1) of the LRA 2002 to introduce the two new triggers.

Background – compulsory registration of title

Compulsory registration of title means that an owner must apply for first registration of their legal estate if the transfer or grant of the legal estate to them (or the creation of a mortgage of it) is an event listed in section 4(1) of the LRA 2002 to which the requirement for registration applies. Such an event is often referred to as a ‘trigger’.

Under section 6(4) of the LRA 2002, the application for first registration must normally be made within two months of the date of the transfer, grant or mortgage which has triggered the compulsory registration².

If the owner fails to apply for first registration within two months of the trigger event (or such longer period as the registrar may allow), then they will find it difficult to sell, mortgage or otherwise deal with their land until they do register (there is no criminal sanction). This is because, under section 7(1) of the LRA 2002, the transfer or grant of the legal estate, or the creation of the mortgage, which triggered compulsory registration becomes void if it is not registered in time³. If the trigger is a transfer of a freehold or leasehold estate (generally with more than seven years to run), this means the owner’s legal estate reverts to the transferor, who will hold it on bare trust for the transferee under section 7(2)(a) of the LRA 2002. Consequently, the owner cannot deal with his land unless and until the transferor executes a fresh transfer of the legal estate to him. The fresh transfer will trigger compulsory registration (section 4(7)(b) of the LRA 2002).

The benefits of land registration

Creating an enduring and trusted system of secure land tenure fosters certainty, encourages investment and improvement and promotes stability and confidence, which benefits the citizen, the commercial sector and national and local government. Benefits include simplification of the conveyancing process, provision for loss of rights and greater protection for registered owners from squatters acquiring title.

Once land is registered there is no need for repeated lengthy and costly examination of title deeds on sales and other dealings with the land. Repeated examination of paper deeds and documents may result in them becoming damaged and unreadable. Many document stores offer no protection against fire, floods and other natural disasters. Once land is registered there is a secure

² The registrar may by order extend the period for registration (prospectively or retrospectively) following an application under section 6(5), if he thinks there is good reason for doing so.

³ If the registrar extends the period for registration, the transfer is treated as if it had never become void (see section 7(3) of the LRA 2002).

computerised record of title with back-up facilities in place to guard against failure or destruction of the main computer system.

Registered land now offers greater protection against squatters. Lord Justice Bingham noted in the case *Pye v Graham* ([2002] UKHL 30) that “It is reassuring to learn that the Land Registration Act 2002 has addressed the risk that a registered owner may lose his title through inadvertence.”

The comprehensive land register

The creation of a comprehensive land register for England and Wales is one of Land Registry’s strategic objectives, and has been a key aim since Land Registry was founded.

Land Registry’s proposed approach towards achieving a comprehensive land register is to continue the current successful policy of encouraging voluntary first registration and also to rely upon the effect of compulsory registration of title, enhanced by the introduction of two new triggers that will give rise to compulsory registration of title.

The term comprehensive land register will include the majority of freehold land forming the surface of England and Wales. The register need not necessarily include leasehold land although we would expect to register those leasehold interests where the leasehold interest is a valuable interest. The register need not include the seabed and the foreshore. Land where the owner cannot be identified and roads, rivers, and other physical features where ownership is not determined by registration. Also, rentcharges and certain rights that can be registered (such as the right to fish or hold a market) need not be included in the comprehensive land register. However, we would still encourage the registration of all these interests.

The proposed new triggers

To continue to make good progress towards the comprehensive land register, Land Registry proposes the introduction of two new triggers that will give rise to compulsory first registration.

Given the nature of the proposed triggers, the change would affect certain types of landowners more than others. However, there has already been some recognition within the affected sectors that their land holdings should be registered, so as to obtain the benefits of land registration⁴.

1 Appointment of a new trustee

Under this first trigger, the requirement of registration under section 4(1) of the LRA 2002 would apply on the appointment of a new trustee of land held in trust when a qualifying estate⁵ vests in the new trustee by:

- a deed that appoints, or by virtue of section 83 of the Charities Act 1993 has effect as if it appointed, a new trustee or which is made in consequence of the appointment of a new trustee

4 *Report of Official Custodian of Charities 2005/6, p8*
“With greater automation of the records held by (the) Land Registry, we have been raising awareness of the need for trustees to look at registering any unregistered land and to check their land holdings periodically to help protect the charity against the risk of loss through adverse possession.”

5 For the purposes of section 4(1) of the LRA 2002, a ‘qualifying estate’ is defined by section 4(2) as: ‘an unregistered legal estate which is (a) a freehold estate in land, or (b) a leasehold estate in land for a term which, at the time of the transfer, grant or creation, has more than seven years to run.’

- an instrument in writing that appoints a new trustee (or a document treated as such) where section 13 of the Trade Union and Labour Relations Act 1992 applies in relation to the appointment, or
- a vesting order of the court made under section 44 of the Trustee Act 1925 that is consequential upon the appointment of a new trustee.

Vesting by deed may be effected in the deed appointing the new trustee, whether by an express vesting deed or one under section 40(1) of the Trustee Act 1925 (TA 1925), or by a separate conveyance or assignment to the new trustee. Also, the vesting in a new trustee of land held for the purposes of a charity under section 83 of the Charities Act 1993, where a memorandum evidencing the appointment of a new trustee by resolution of a meeting of the charity trustees is executed as a deed, has the same effect as a vesting declaration under section 40(1) of the TA 1925.

In the case of trustees holding land for a trade union or an unincorporated employers' association (including a federated employers' association), section 40(1) of the TA 1925 is modified by section 13, of the Trade Unions and Labour Relations (Consolidation) Act 1992 (as also applied to unincorporated employers' associations and federated employers' associations by sections 129 and 135 of that Act). As a result, a vesting declaration is implied in an 'instrument in writing' appointing a new trustee, or in a memorandum or written record of a resolution which is treated for the purposes of section 40 of the TA 1925 as an 'instrument in writing' appointing a new trustee. In this particular situation, no deed is required. We are not aware of other situations where vesting under section 40 of the TA 1925 takes effect other than by deed.

The court can make a vesting order under section 44 of the TA 1925 vesting land in a new trustee appointed by the court or out of court. Currently a vesting order does not trigger compulsory registration because, as a transfer by operation of law, it is specifically excluded by section 4(3) of the LRA 2002 from the requirement of registration under section 4(1)(a). Section 4(3) carries forward the position under section 123 of the Land Registration Act 1925 (the 1925 Act), as substituted by the Land Registration Act 1997, which introduced a new trigger in respect of conveyances in pursuance of a court order. That trigger is now contained in section 4(1)(a)(i) of the LRA 2002.

Section 123 of the 1925 Act, as substituted, was introduced following analysis of responses to the 1992 consultation document *Completing the Land Register in England and Wales*. Paragraphs A.11 and A.12 at Annex A of that consultation paper looked at possible triggers which did not involve dispositions by the estate owner to a successor, including vesting by virtue of a court order. At paragraph A.12, we said:

“A scheme based on enlargement of the present section 123 could not apply in any of [these] cases because the sanction for failure to

apply for first registration is that the instrument of disposition is rendered void. Such avoidance cannot be applied to the effects of an event of the kinds referred to above.it would be undesirable from the point of view of public policy (eg reversing the effect of vesting in a trustee in bankruptcy would re-vest the property in the bankrupt so defeating the purpose of the insolvency legislation)..”

This ‘public policy argument’ was carried forward in the Law Commission report *First Report of a Joint Working Group on the Implementation of the Law Commission’s Third and Fourth Reports on Land Registration* (1995) Law Com No 235 which prefaced the Draft Land Registration Bill 1997. Referring to the new trigger to be included in the new section 123(6)(iii) in respect of conveyances in pursuance of an order of the court (as now contained in section 4(1)(a)(i) of the LRA 2002), it was stated that:

“Conveyances pursuant to a court order are to be distinguished from the court orders which directly effect a vesting of the land (eg a bankruptcy order). In the former case, a failure to register in time under section 213 would render void the conveyance but not the order. In the latter case, if compulsory registration were to apply, failure to register in time would render the court order ineffective. This, as the consultation paper pointed out, would be undesirable from a public policy viewpoint (eg re-vesting property in a bankrupt would defeat the policy of insolvency legislation). It is not proposed that such orders should be subject to the requirements of compulsory registration.”

The public policy arguments in 1992 and 1995, as set out above, appear to have concentrated upon the undesirable consequences of bankruptcy orders being rendered void on failure to register. We do not think the proposed new trigger under the Order in relation to vesting orders under section 44 of the TA 1925 raises those public policy objections which clearly arise in relation to vesting under bankruptcy orders. On the other hand, a failure to apply for registration within two months of the making of a vesting order would have the effect of making the court order void. However, in practice we consider this is a situation where the registrar would be likely to exercise his discretion under section 6(5) of the LRA 2002 to extend the period for registration, because there would normally be good reason for not requiring a further application to the court for a fresh vesting order.

Introducing the new trustee trigger would increase significantly the area of land that would be registered in the short and medium term, details of which are set out in *Annex A – Consultation Impact Assessment*, and would extend compulsory registration to landholdings that would probably not be under the current legislation.

Q1. Do you have any comments on our proposal that the appointment of a new trustee of land should be a trigger for compulsory first registration when a qualifying estate vests in the new trustee by:

(a) a deed or an appointment treated as made by deed under section 83 of the Charities Act 1993?

(b) an instrument in writing that appoints a new trustee or a document treated as such, where sections 13, 129 and 135 of the Trade Union and Labour Relations (Consolidation) Act 1992 apply?

(c) a vesting order under section 44 of the TA 1925?

2 Partition of land amongst trust beneficiaries

Under this second trigger (the partition trigger), the requirement of registration under section 4(1) of the LRA 2002 would apply on a transfer of a qualifying estate, which gives effect to the partitioning of unregistered land held in trust amongst the beneficiaries of the trust. Partition occurs where land belonging to co-owners is divided and the separate parts are allotted among them, so terminating the co-ownership between some or all of the beneficiaries. Partition may take place at common law by agreement between all the beneficiaries, in which case the trustees, who in many cases will be the co-owners themselves, will give effect to the partition by vesting or transferring the legal estate in the separate parts in the persons entitled by deed. Partition may also occur when trustees exercise their statutory power to partition land under section 7 of the Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996) with the consent of the beneficiaries. Again, the trustees must give effect to the partition by transferring the legal estate by deed.

Partition at common law or under the trustees' statutory power may include the payment of equality money, where, for example, a beneficiary receives more than his beneficial entitlement under the former trust. It is arguable that a transfer of a qualifying estate giving effect to partition which includes payment of equality money, already triggers compulsory registration as a transfer "for valuable or other consideration" under section 4(1)(a)(i) of the LRA 2002. It is also arguable that there is a transfer "for valuable or other consideration" even where no equality money is paid, because the effect of partition will often be that each beneficiary exchanges his beneficial interest as co-owner of the land for the whole legal and beneficial interest in part of it.

In the *Encyclopaedia of Forms and Precedents (Volume 29)* (2006 Reissue) (B) Commentary A: Partition in general Paragraph 8 [4015] Conveyance of unregistered land on partition it states that:

"In accordance with the Trusts of Land and Appointment of Trustees Act 1996, the partition of unregistered land is to be effected by a conveyance, or conveyances, by the trustees in whom the entirety is vested, and in accordance with the ordinary rule this is by deed.

Where the land allotted in severalty becomes subject to a trust of land, it must be conveyed to the trustees of land. Where the land represents a minor's share of the proceeds it is retained by the trustees on trust, and there should be a deed evidencing such retention. A deed of partition has not previously been regarded as a conveyance on sale for the purposes of the Land Registration Acts 1925 and 2002 so as to oblige the recipient to register the title, but this is open to doubt and an application for first registration is recommended."

In footnote 5 to this it is stated that:

"Although a conveyance giving effect to a partition has previously not been a 'conveyance on sale' and therefore subject to compulsory registration, it seems at least arguable that it could be a transfer of a qualifying estate 'for valuable or other consideration' for the purposes of the Land Registration Act 2002 s.4(1)(a). This is because the essence of partition is that beneficiaries who each have an undivided interest in several parcels of land agree to exchange their undivided shares in certain parcels for the whole of the beneficial interest in a particular parcel, the conveyance giving effect to the vesting in the beneficiary of that parcel as a result of the transaction. As a matter of caution the beneficiary should consider applying for first registration."

A contrary argument, at least where the partition is under section 7 of the TLATA 1996 is concerned, is that the partition is giving effect to a distribution in specie to the beneficiaries of a trust asset.

By introducing the partition trigger it puts the matter beyond doubt, by providing that a transfer of a qualifying estate giving effect to a partition, on whatever terms, is an event which gives rise to compulsory registration.

It is not Land Registry's intention to introduce the trigger relating to the partitioning of unregistered land without introducing the trigger relating to the appointment of a new trustee. We do not consider that the partition trigger should be introduced on its own as it would not trigger registration of a significant area of land.

Q2. Do you have any comments on our proposal that the partition of land amongst trust beneficiaries should be a trigger for compulsory first registration?

Other options

As part of our review, we considered a number of other options. While they would bring about the comprehensive register much sooner, we do not propose to proceed with any of them at this stage. The other proposals would all introduce unfamiliar concepts to the compulsory first registration process.

The following are details of methods of compulsion considered and why they were disregarded:

Statutory vesting of land after a certain date. Creation of a new estate in land

Vesting creates a new estate in land, above any existing freehold or leasehold estates. The statute would expressly provide that any existing qualifying estate would not be extinguished. It was felt that the creation of a new estate in land is an added complication that did not meet the requirements of the overall objective of compulsion.

Compulsory registration of land subject to chancel repair liability

This would require any land subject to a liability for chancel repair to be the subject of an application for first registration within a set period of time. It would be difficult to identify land subject to a chancel repair liability and there may be unacceptable costs to both the landowner and the Church. It would be difficult to frame a sanction for non-registration and the practical difficulties in implementing such a method of compulsion would be great.

Compulsory registration of land where a company is in administration under the Insolvency Act 1986

All land held by an administrator or administrators of a company who has or have been appointed under the Insolvency Act 1986. Compulsion would secure registration of unregistered land held by public limited companies in administration but the timing of registration could hinder the administrator in the execution of his or her duties and lead to criticism of Land Registry. Also it could lead to the incursion of excessive costs to the landowner at a time when it is in financial difficulty.

Compulsory registration of company land

This would require all land held by corporate bodies registered under the Companies Act 1985 or the Limited Liability Partnership Act 2000 to be registered within a certain period. This method would compel registration of the substantial unregistered land held by the different types of corporate entities but this could lead to significant costs for corporate landowners and the possibility of complex tax and stamp duty issues. It also seems unlikely to be effective unless it is coupled with a strong sanction for non-compliance, such as some form of statutory vesting.

Compulsory registration of specific categories of land or owners of land (eg arable land or land held by charities)

A rolling programme of compulsion under which specific categories of land or owners of land would be designated as compulsory categories from a specific date. Each aspect would give rise to specific types of difficulties. It could lead to disputes regarding the definition of land usage or owner and would be difficult to implement without investigations. It would also be difficult to know from an application lodged after compulsion was required whether or not there had been a breach. Without costly physical inspection,

land usage is often not evident from the Ordnance Survey map or the deeds themselves.

Compulsory registration of common land

This would require all land registered with local authorities under the Commons Registration Act 1965 or the Commons Act 2006, once enacted, to be registered by a given date. This would extend the area of registered land to include all land over which others have common rights such as commons, village greens etc. There would be a duplication of work with the Commons Act 2006. A sanction is difficult to frame and would need to take into account the final provisions of the Commons Act 2006.

Penalty/tax for non-registration of land

The owner of any land remaining unregistered after a given date would incur a penalty or tax, either annually or before the land could be dealt with. It would lead to additional expenses to landowners, many of whom would be unhappy to be 'forced' to register their land or incur such a penalty. A system of collecting penalty/tax would need to be devised.

Compulsory purchase of land by a designated trust corporation

The purchase of unregistered land by a designated trust corporation after a specific date. It would secure registration of land remaining unregistered on a specific date in order to help achieve full geographical coverage but would be unacceptably complex to administer.

We therefore judge it best at this stage to continue with the incremental approach, by widening the range of ownership changes that are caught by the compulsory registration provisions. However the other options may need to be revisited at some point in the future if the decision is taken to finally complete the process of land registration.

Q3. Are there any other cases that you think compulsory registration should apply to?

The draft Order

This consultation document includes the draft of the Land Registration Act 2002 (Amendment) Order 2008 in *Annex B – Draft Order under section 5 of the Land Registration Act 2002*.

As the Order will amend primary legislation, the Parliamentary Counsel has been consulted and it has approved the draft.

Subject to the outcome of this consultation, this Order will introduce the two new triggers described above for compulsory registration under section 4(1) of the LRA 2002 and make consequential amendments to section 7(2).

Sections 4 and 7 of the LRA 2002 are reproduced in *Annex C* showing in red the changes that this order would effect.

The preamble to the Order

This first paragraph recites the powers to be exercised under section 5(1) of the LRA 2002 by the Lord Chancellor. Section 5(1)(a) provides that the Lord Chancellor may by order amend section 4 so as to add to the events that trigger the requirement of registration. Section 5(1)(b) provides that he may also make such consequential amendments of any provision of, or having effect under, any Act as he thinks appropriate.

The second paragraph confirms that the Lord Chancellor will have consulted such persons, as he considers appropriate, as required by section 5(4). The consultation process has been explained above in the introduction.

Article 1 – Citation, commencement and interpretation

This article provides how the Order may be described and when it will come into force. It also provides that all references to ‘the Act’ in the Order are to the LRA 2002.

Article 2 – Amendment of section 4 of the Act

Generally

Article 2 adds the two new triggers described above to the events listed in section 4(1) of the LRA 2002 that give rise to the compulsory registration of title.

Article 2(1)

This provides that section 4(1) is to be amended as provided in articles 2(2) and 2(3).

Article 2(2)

This introduces a transfer of a qualifying estate giving effect to a partition of land subject to a trust of land as an event to which the requirement of registration under section 4(1) applies. This new trigger is added to section 4(1)(a) as new sub-paragraph (iii).

Article 2(3)

This introduces a transfer of a qualifying estate on or in consequence of the appointment of a new trustee as a further event to which the requirement for registration applies under section 4(1). This new trigger is added to section 4(1) as new paragraph (aa), so that it is located logically following the other transfers of a qualifying estate to which the requirement of registration applies.

New paragraph (aa) provides individually in sub-paragraphs (i), (ii) and (iii) for the particular circumstances in which the transfer or vesting of a qualifying estate in a new trustee will trigger compulsory registration. These circumstances have already been described above.

Article 3 – Amendment of section 7 of the Act

This article makes an amendment to section 7(2) of the LRA 2002 consequential upon the introduction of the new trustee trigger under article 2(3). As explained above, section 5(1)(b) gives the Lord

Chancellor the power to make such consequential amendments as he thinks appropriate.

Article 3 provides what the consequence will be where a transfer of a qualifying estate to a new trustee which is required to be registered under new section 4(1)(aa) becomes void under section 7(1) of the LRA 2002, because the new trustee has not complied with the duty in section 6 to apply for registration within two months (or such longer period as the registrar may specify in an order under section 6(5)).

As explained above, currently under section 7(2) when any transfer is rendered void by section 7(1), the legal estate reverts to the transferor who holds it on a bare trust for the transferee under section 7(2)(a). However, a bare trust is clearly not appropriate where the transferee is himself a trustee. Accordingly, article 3 introduces a different sanction in new paragraph (aa) of section 7(2) for transferees who are trustees in a case falling within the new trustee trigger in section 4(1)(aa). In such a case, the legal estate will revert to the person in whom the estate vested immediately before the transfer or vesting in the new trustee. That person will often be the continuing trustee(s) at the date of the transfer by the deed, instrument in writing or vesting order, which originally vested the legal estate in the new trustee.

In the case of a partition, no further sanction is required, because it will fall within existing section 7(2)(a) of the LRA 2002, so that the legal estate will revert to the transferor on a bare trust for the transferee.

Q4. Do you have any comments on the draft order set out in *Annex B – Draft Order under section 5 of the Land Registration Act?*

Q5. Do you have any comments on the consultation impact assessment included in *Annex A – Consultation Impact Assessment?*

Q6. Do you have any other comments on the issues raised by this consultation document?

Annex A

Consultation impact assessment

Summary: Intervention & Options		
Department /Agency: Land Registry	Title: Impact Assessment of Comprehensive Land Register Triggers	
Stage: Consultation	Version: 7.4	Date: 18 July 2007
Related Publications: Consultation Paper		

Available to view or download at:

<http://www.consultations.landregistry.gov.uk>

Contact for enquiries: Janet Burfield **Telephone:** 020 7166 4540

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

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

What are the policy objectives and the intended effects?

To increase the coverage of registered land. The effect will be to double the amount of new land added to the register over the first five years following introduction. As a result the new triggers would add over six per cent to the area of land registered by April 2013.

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

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

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

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 & Evidence					
Policy Option: 1		Description: No change			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'		
	One-off (Transition)	Yrs			
	£ 182,500	1	Land Registry staff costs – £100,962 Land Registry overheads – £81,500		
	Average Annual Cost (excluding one-off)		Total Cost (PV)		
£ 3 million		£ 182,500			
Other key non-monetised costs by 'main affected groups'					
First registration costs					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'		
	One-off	Yrs			
	£ 0				
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)		
£ 0		£ 0			
Other key non-monetised benefits by 'main affected groups'					
Reduced fees for voluntary first registrations					
Key Assumptions/Sensitivities/Risks See evidence base information customer costs and benefits page 24 and Adverse possession page 25 and Option 1 page 26					
Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) £ ±£3 million	NET BENEFIT (NPV Best estimate) £ - £15,182,500		
What is the geographic coverage of the policy/option?			England and Wales		
On what date will the policy be implemented?			March 2009		
Which organisation(s) will enforce the policy?			Land Registry		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			Yes/No		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ negligible		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0
Key: Annual costs and benefits: Constant Prices (Net) Present Value					

Summary: Analysis & Evidence					
Policy Option: 2			Description: Go ahead as proposed		
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Land Registry staff costs – £182,800 Land Registry project implementation costs – £144,700 Land Registry staff training – £10,000 Conveyancers' compliance costs – £111,283		
	One-off (Transition)	Yrs			
	£ 448,783	1			
	Average Annual Cost (excluding one-off)				
£ 0		Total Cost (PV)		£ 448,783	
Other key non-monetised costs by 'main affected groups' First registration costs and compliance costs					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'		
	One-off	Yrs			
	£ 3 million	1			
	Average Annual Benefit (excluding one-off)				
£		Total Benefit (PV)		£ 15 million	
Other key non-monetised benefits by 'main affected groups' see evidence base information Customer costs and benefits and compliance costs page 24, Adverse possession page 25.					
Key Assumptions/Sensitivities/Risks See evidence base information Option 2 pages 27-28					
Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) £ ±£3 million		NET BENEFIT (NPV Best estimate) £ 14,551,217	
What is the geographic coverage of the policy/option?			England and Wales		
On what date will the policy be implemented?			March 2009		
Which organisation(s) will enforce the policy?			Land Registry		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			Yes/No		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ negligible		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro 90	Small 200	Medium 500	Large 1,000
Are any of these organisations exempt?		No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0
Key: Annual costs and benefits: Constant Prices (Net) Present Value					

Summary: Analysis & Evidence					
Policy Option: 3		Description: Compulsory Registration without trigger event			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'		
	One-off (Transition)	Yrs			
	£ 350,000	1	Land Registry staff costs – £30,000		
	Average Annual Cost (excluding one-off)		Land Registry project and implementation costs – £315,000		
£ 3 million		Land Registry staff training costs – £5,000		Total Cost (PV) £ 350,000	
Other key non-monetised costs by 'main affected groups' First registration costs					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'		
	One-off	Yrs			
	£ 0				
	Average Annual Benefit (excluding one-off)				
£ 3 million		Total Benefit (PV) £ 15 million			
Other key non-monetised benefits by 'main affected groups' see evidence base information Customer costs and benefits page 24					
Key Assumptions/Sensitivities/Risks					
Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) £ ±£2.5 million	NET BENEFIT (NPV Best estimate) £ 13,250,000		
What is the geographic coverage of the policy/option?			England and Wales		
On what date will the policy be implemented?			March 2009		
Which organisation(s) will enforce the policy?			Land Registry		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			Yes/No		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ negligible		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase of	£ 0	Decrease of	£ 0	Net Impact £ 0	
Key:			Annual costs and benefits: Constant Prices	(Net) Present Value	

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Option 1 – Do nothing/Voluntary registration

Customer costs and benefits

There are potential costs for the owners of unregistered land, as they are at greater risk of successful claims for adverse possession ('squatter's rights'). (See '**Adverse Possession**' on page 27). Currently farmland in England and Wales is worth about £8,500 per hectare and land with planning permission about £2,970,000 (£11,050,000 for inner London) per hectare (Information obtained from Valuation Office property market website).

Option 2 – Go ahead as proposed

Customer costs and benefits

Initially trusts will incur first registration costs including Land Registry fees and solicitor's charges when a new trustee is appointed although charities whose land is vested in the Official Custodian can avoid these costs. However, once the land is registered the costs of any subsequent dealings will be reduced as the repeated, lengthy and costly examination of the title deeds would be unnecessary. Also the re-mortgage of land is cheaper for registered land as a mortgage or re-mortgage of unregistered land triggers compulsory first registration and so attracts a full registration fee.

Land registration promotes an active land market and productive land use. It provides security of title and encourages the development of a mortgage market on which a functioning economy depends. The Charity Commission¹ together with The Baptist Union² and Land Trusts Association recommends registration for these reasons. Land Trusts Association recommends registration, saying it will be cheaper in the future, see page 13 of its Occasional Paper No.10 at <http://www.landtrusts.org.uk/occasionalpaper10.pdf>. Members of regulatory and representative bodies would benefit also from the increased revenue the triggers would generate.

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

There are potentially considerable savings for customers in greater protection from squatters acquiring title by adverse possession (see page 27). Under the LRA 2002, the owner of registered land is better protected against squatters claiming adverse possession of their land than the owner of unregistered land. We estimate potential savings in the region of £3 million pa³.

Compliance costs

Inevitably there will be costs to customers in the changes proposed. However these will be more than offset by the overall benefits that registration brings. The main costs will be first registration costs and training on how to process their applications using the new triggers. Estimated at an hour of training, this would result in approximate costs of £111,283 spent by conveyancers and their staff.⁴

Option 3 – Compulsory registration without a trigger event

Customer costs and benefits

¹ Report of Official Custodian of Charities 2005/6, page 8

² See http://www.baptist.org.uk/resources/resource_downloads/204.pdf Churches Land Registration C21.

³ Currently the number of first registration applications based on adverse possession of unregistered land for the year 2006/7 is expected to be 978 applications worth £12.2 million (this does not include cancelled applications). The figure is based on a quarter of successful applications being prevented.

⁴ There are 3,730 active high street conveyancers (source – Land Registry Business Segmentation Report). Based on an estimate one hour's training per firm (approximate salary scales used).

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

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

Adverse possession

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

The total number of applications of adverse possession of unregistered land received 2006/7 has an approximate value of £12 million. The introduction of the triggers on best estimate would appear to have the potential of saving £3 million a year.

Background information

Currently, an unregistered legal estate only becomes subject to compulsory registration when one of the events listed in section 4(1) of the LRA 2002 occurs. Section 5(1) of the LRA 2002 allows for the addition to the list of events that would trigger the compulsory registration of an estate. Title to land must be registered by the proprietor at Land Registry when it is subject to a 'triggering' event. Triggering events include most transfers of freehold land and grants or assignments of leases having more than seven years to run, first legal mortgages of such land, and assents following death. Large areas of England and Wales have never been the subject of such an event and currently remain unregistered. As a result two systems of land ownership run side by side: unregistered and registered conveyancing.

The proposal

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

1. Where land vests in a new trustee by:

- a. a deed that appoints, or under section 83 of the Charities Act 1993 has effect as if it appointed, a new trustee, or is made in consequence of the appointment of a new trustee
- b. an instrument in writing, or a document treated as such, in relation to the appointment of a new trustee of a trade union or an unincorporated employers' association where section 13 of the Trade Union and Labour Relations Act 1992 applies, or
- c. a vesting order made under section 44 of the Trustee Act 1925 that is consequential upon the appointment of a new trustee.

(the new trustee trigger)

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

(the partition trigger)

Rationale for government intervention

The Land Register is a valuable and authoritative record of unique and important information about ownership and interests in land. Land registration facilitates conveyancing and provides certainty and guarantees for purchasers and lenders. Where land remains unregistered, issues relating to boundaries, rights of access, easements, covenants and so on can be more difficult for the owners of neighbouring properties to get information about. A comprehensive land register⁵ provides safeguards for the individual citizen. It will not be possible in the foreseeable future to deal fully with unregistered land by way of e-conveyancing. A comprehensive land register, which brings the maximum amount of land within the capability of a system of e-conveyancing, is therefore essential to the success of the current progression towards achieving Land Registry's aim of transforming the

⁵ Definition: The comprehensive land register will include the majority of freehold land forming the surface of England and Wales.

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

property transaction process and to 'make property transactions easier for all'. Where information about ownership is ever more important the land register needs to be comprehensive. If we are to achieve this within a reasonable timescale, legislation is the only way forward.

Objective

To make progress in the drive for a comprehensive land register for England and Wales by making it compulsory for all trusts to register their land holdings on the appointment of new trustees or on partition. Making the land register as comprehensive as possible will allow the benefits of e-conveyancing to be maximised and will provide certainty and guarantees for purchasers and lenders, safeguards for citizens and valuable information on land ownership.

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

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

Public consultation to date

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

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

Enforcement, sanctions and monitoring

Depending on the outcome of the public consultation the making of an order under section 5 of the LRA 2002 to implement two new triggers with amendments to sections 4(1) and 7(2).

Monitoring the registration of land will remain in operation to ensure progress towards the comprehensive land register is maintained. Section 7 of the LRA 2002 sets out the effect of non-compliance with section 6 of the LRA. Where the requirement of registration applies application will have to be made within two months of the triggering event. If it is not the transfer grant or creation becomes void as regards the transfer, grant or creation of a legal estate.

Policy options

Option 1 – Do nothing/Voluntary registration

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

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

Land Registry would continue to encourage voluntary registration.

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

Based on current trends the amount of additional geographical coverage for this current year is anticipated at 550,000 hectares. The amount of additional (or new) land expected to be registered is projected to decline by approximately 30 per cent each year as more land becomes registered.

	Applications	Hectares Voluntary	Hectares Compulsory
Year 1	74,508	138,600	246,400
Year 2	52,155	97,020	172,480
Year 3	36,509	67,914	120,736
Year 4	25,557	47,540	84,515
Year 5	17,889	33,278	59,161
Total	206,618	384,352	683,292

Option 2 – Go ahead as proposed

The 'new trustee trigger'

The proposed trigger 'Appointment of new trustees' is expected to make a significant impact on the goal of completing the comprehensive land register and increasing total geographic coverage in England and Wales. Trusts of all sizes where land is vested in individual trustees will be affected.

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

The 'partition trigger'

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

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

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

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

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

Effect of the triggers

Sixty per cent of land is currently registered. The remaining 40 per cent of unregistered land amounts to approximately six million hectares, four million hectares of which are estimated to be owned by landed estates. Based on an analysis of intakes over a five-year period from 2001 statistics show that 52.5 per cent of landed estates are held in trust, and 60 per cent of them will appoint a new trustee within five years. On the assumption that the estates registered would be a cross section of sizes this will equate to 1.27 million hectares of land that is likely to be compulsorily registered in the first five years from landed estates alone. Although some of these might have voluntarily registered during that period in any event the assessment excludes land held in trust other than by landed estates. We anticipate that this land will compensate for land that would have been voluntarily registered so that the figures quoted represent genuinely additional land. This would make a significant contribution towards achieving the comprehensive register, by bringing nearly a million hectares onto the register within five years that would not have otherwise done so. For a comparison the counties of Devon and Cornwall combined amount to 1.027 million hectares.

	Without Trigger Million ha reg'd	Per cent	With Trigger Million ha reg'd ⁶	Per cent
April 2008	9.72	63.04%	9.72	63.04%
April 2009	10.10	65.54%	10.26	66.58%
April 2010	10.37	67.29%	10.72	69.54%
April 2011	10.56	68.51%	11.12	72.10%
April 2012	10.70	69.37%	11.47	74.39%
April 2013	10.79	69.97%	11.79	76.48%

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

For these reasons, this is the recommended option.

Option 3 – Compulsory registration without a trigger event

Compulsion is considered to be a long-term possibility that is likely to be essential if full geographical coverage of the register is ever to be achieved. However, compulsion is not desirable at the present time; the new triggers combined with our existing triggers and our current strategy of persuading landowners to register their land voluntarily will make an impact on increasing the amount of registered land.

Main sectors and groups affected

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

- landed estates
- charities
- business partnerships
- unincorporated sports and social clubs
- certain trade unions and unincorporated employers' associations.

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

A wide set of organisations and bodies as consultees are listed in the consultation paper, and will of course be also considering any views that are expressed as part of the analysis of the outcome of the consultation.

Impact Tests

Competition Assessment

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

Small Firms Impact Test

At the suggestion of the Small Business Service we will be contacting a selection of professional bodies and trade associations including conveyancers, surveyors and land agents to assess whether the proposal will have a significant or disproportionate impact on small businesses. We will do this as part of the consultation process and will be revisited for inclusion in the impact assessment.

Legal Aid and Administration of Justice Impact Test

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

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

Not applicable.

⁶ This includes a third of voluntary applications (non-landed estates) and 252,000 hectares per year from landed estates.

Diversity

We do not believe that the proposals will affect any sector of society more than another and we do not believe that there are any significant race, gender or age issues involved in these proposals, however an equality impact assessment will be completed as part of the consultation process to ensure the proposals fully comply with equality legislation and are not discriminatory.

Human Rights

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

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

Rural Proofing

Land registration is a national system that is equally applicable to rural and urban areas, so no separate issues arise.

Specific Impact Tests: Checklist

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

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

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

Annex B

Draft order under section 5 of the Land Registration Act 2002

STATUTORY INSTRUMENTS

2008 No.

LAND REGISTRATION, ENGLAND AND WALES

The Land Registration Act 2002 (Amendment) Order 2008

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Lord Chancellor makes the following Order in exercise of the powers conferred on him by section 5(1) of the Land Registration Act 2002⁽⁶⁾.

In accordance with section 5(4) of that Act, he has consulted such persons as he considers appropriate.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land Registration Act 2002 (Amendment) Order 2008 and shall come into force on [].

(2) In this Order, “the Act” means the Land Registration Act 2002.

Amendment of section 4 of the Act

2.—(1) In section 4 of the Act (when title must be registered), subsection (1) is amended as follows.

(2) In paragraph (a), omit the “or” preceding sub-paragraph (ii), and after that sub-paragraph insert—

“or

(iii) giving effect to a partition of land subject to a trust of land;”.

(3) After paragraph (a) insert—

“(aa) the transfer of a qualifying estate—

(i) by a deed that appoints, or by virtue of section 83 of the Charities Act 1993 has effect as if it appointed, a new trustee or is made in consequence of the appointment of a new trustee,

⁽⁶⁾ 2002 c.9.

- (ii) by an instrument in writing that appoints a new trustee, or a document treated as such an instrument, in circumstances where section 13 of the Trade Union and Labour Relations (Consolidation) Act 1992 applies in relation to the appointment, or
- (iii) by a vesting order under section 44 of the Trustee Act 1925 that is consequential upon the appointment of a new trustee;”.

Amendment of section 7 of the Act

3. In section 7 of the Act (effect of non-compliance with section 6), in subsection (2), before the “and” at the end of paragraph (a) insert–

“(aa) in a case falling within section 4(1)(aa), the title to the legal estate reverts to the person in whom it was vested immediately before the transfer.”.

Signed by the authority of the Lord Chancellor

Date

Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

[Text to be inserted]

Annex C

Sections 4 and 7 of the Land Registration Act 2002, showing in red the changes proposed by the draft Land Registration Act 2002 (Amendment) Order 2008

4 When title must be registered

(1) The requirement of registration applies on the occurrence of any of the following events-

(a) the transfer of a qualifying estate-

(i) for valuable or other consideration, by way of gift or in pursuance of an order of any court, ~~or~~

(ii) by means of an assent (including a vesting assent), or

(iii) giving effect to a partition of land subject to a trust of land;

(aa) the transfer of a qualifying estate-

– (i) by a deed that appoints, or by virtue of section 83 of the Charities Act 1993 has effect as if it appointed, a new trustee or is made in consequence of the appointment of a new trustee,

(ii) by an instrument in writing that appoints a new trustee, or a document treated as such an instrument, in circumstances where section 13 of the Trade Union and Labour Relations (Consolidation) Act 1992 applies in relation to the appointment, or

(iii) by a vesting order under section 44 of the Trustee Act 1925 that is consequential upon the appointment of a new trustee;

(b) the transfer of an unregistered legal estate in land in circumstances where section 171A of the Housing Act 1985 (c. 68) applies (disposal by landlord which leads to a person no longer being a secure tenant);

(c) the grant out of a qualifying estate of an estate in land-

(i) for a term of years absolute of more than seven years from the date of the grant, and

(ii) for valuable or other consideration, by way of gift or in pursuance of an order of any court;

(d) the grant out of a qualifying estate of an estate in land for a term of years absolute to take effect in possession after the end of the period of three months beginning with the date of the grant;

(e) the grant of a lease in pursuance of Part 5 of the Housing Act 1985 (the right to buy) out of an unregistered legal estate in land;

- (f) the grant of a lease out of an unregistered legal estate in land in such circumstances as are mentioned in paragraph (b);
- (g) the creation of a protected first legal mortgage of a qualifying estate;

(2) For the purposes of subsection (1), a qualifying estate is an unregistered legal estate which is-

- (a) a freehold estate in land, or
- (b) a leasehold estate in land for a term which, at the time of the transfer, grant or creation, has more than seven years to run.

(3) In subsection (1)(a), the reference to transfer does not include transfer by operation of law.

(4) Subsection (1)(a) does not apply to-

- (a) the assignment of a mortgage term, or
- (b) the assignment or surrender of a lease to the owner of the immediate reversion where the term is to merge in that reversion.

(5) Subsection (1)(c) does not apply to the grant of an estate to a person as a mortgagee.

(6) For the purposes of subsection (1)(a) and (c), if the estate transferred or granted has a negative value, it is to be regarded as transferred or granted for valuable or other consideration.

(7) In subsection (1)(a) and (c), references to transfer or grant by way of gift include transfer or grant for the purpose of-

- (a) constituting a trust under which the settlor does not retain the whole of the beneficial interest, or
- (b) uniting the bare legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest.

(8) For the purposes of subsection (1)(g)-

- (a) a legal mortgage is protected if it takes effect on its creation as a mortgage to be protected by the deposit of documents relating to the mortgaged estate, and
- (b) a first legal mortgage is one which, on its creation, ranks in priority ahead of any other mortgages then affecting the mortgaged estate.

(9) In this section-

"land" does not include mines and minerals held apart from the surface;
"vesting assent" has the same meaning as in the Settled Land Act 1925 (c. 18).

7 Effect of non-compliance with section 6

(1) If the requirement of registration is not complied with, the transfer, grant or creation becomes void as regards the transfer, grant or creation of a legal estate.

(2) On the application of subsection (1)-

- (a) in a case falling within section 4(1)(a) or (b), the title to the legal estate reverts to the transferor who holds it on a bare trust for the transferee,
(aa) in a case falling within section 4(1)(aa), the title to the legal estate reverts to the person in whom it was vested immediately before the transfer, and
- (b) in a case falling within section 4(1)(c) to (g), the grant or creation has effect as a contract made for valuable consideration to grant or create the legal estate concerned.

(3) If an order under section 6(5) is made in a case where subsection (1) has already applied, that application of the subsection is to be treated as not having occurred.

(4) The possibility of reverter under subsection (1) is to be disregarded for the purposes of determining whether a fee simple is a fee simple absolute.

Annex D

Consultees

Copies of this consultation paper have been sent to:

Government:

- Office of the Adjudicator to HM Registry
- Assets Recovery Agency
- Cabinet Office
- Child Support Agency
- Companies House
- Department for Communities and Local Government
- Department for Business, Enterprise and Regulatory Reform
- Department for Works and Pensions
- e-Government Unit
- English Partnerships
- Environment Agency
- Forestry Commission
- HM Revenue and Customs (Stamp Taxes)
- HM Treasury
- Home Office
- Housing Corporation
- Improvement and Development Agency
- Independent Complaints Reviewer
- Insolvency Service
- Keeper of the Registers of Scotland
- Members of the Land Registration Rule Committee
- Ministry of Defence (Defence Estates)
- Ministry of Justice
- Official Solicitor and Public Trustee
- Ordnance Survey
- Public Guardianship Office
- Serious Fraud Office
- Small Business Service
- Valuation Office Agency
- Welsh Assembly Government

Regulatory and Representative Bodies/Individuals:

- Agricultural Law Association
- Association of Chief Executives of Voluntary Organisations
- British Chambers of Commerce
- British Dental Association
- British Medical Council
- British Property Federation
- Catholic Trust for England and Wales
- Central Association of Agricultural Valuers
- Charity Commission
- Charity Law Association
- The Church Commissioners
- Club and Institute Union

- College of Law
- Council for Licensed Conveyancers
- Council of Mortgage Lenders
- Country Land and Business Association
- Farmers’ Union of Wales
- Historic Houses Association
- Incorporated Association of Preparatory Schools
- Independent Schools Council
- Institute of Legal Executives
- Institute of Will Writers
- Law Commission
- The Law Society
- Local Government Association
- National Association of Local Councils
- National Council of Voluntary Organisations
- National Farmers’ Union
- Royal Institution of Chartered Surveyors
- Society of Trust and Estate Practitioners
- Trusteenet

In addition to the above, all of 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.

If you know of any organisation or group that we have not consulted or invited to participate but you feel may be able to contribute to the consultation process please either:

- direct them to our website
www.consultations.landregistry.gov.uk
- write to us: The Comprehensive Land Register Team, Room 110, Land Registry, Lincoln's Inn Fields, London WC2A 3PH
- email us at comprehensive.register@landregistry.gsi.gov.uk
- phone us on 0207 166 4405, 0207 166 4257 or 0207 166 4816.

Annex E

General principles of consultation

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

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
- be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
- ensure that your consultation is clear, concise and widely accessible
- give feedback regarding the responses received and how the consultation process influenced the policy
- monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
- ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Annex F

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 wish to 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.

