

# Contents

Contents

[Contents 2](#_Toc502754091)

[Foreword from the Chief Land Registrar 3](#_Toc502754092)

[1. Executive summary 4](#_Toc502754093)

[2. Introduction 5](#_Toc502754094)

[3. Consultation process 6](#_Toc502754095)

[4. Summary of responses and government response 6](#_Toc502754096)

[5. Next steps 21](#_Toc502754097)

[Annex A: List of respondents 22](#_Toc502754098)

## Foreword from the Chief Land Registrar

We opened a public consultation on **9 February 2017** on proposed changes to the Land Registration Rules 2003, and the revocation of the Land Registration (Electronic Conveyancing) Rules 2008 and the Land Registration (Proper Office) Order 2013. The government has expressed its ambition, in the Housing White Paper, for HMLR to become the world’s leading land registry for speed, simplicity and an open approach to data and the proposed changes take a number of steps towards that. They will allow us to continue our digital transformation programme, and modernise and simplify our services.

The consultation sought views on six areas:

1. To allow for fully digital conveyancing documents with e-signatures for land transactions and land registration and revoke the Land Registration (Electronic Conveyancing) Rules that allow for only limited digital mortgages.
2. To revoke the Land Registration (Proper Office) Order 2013 and make consequential amendments to the Land Registration Rules 2003.
3. To allow for the introduction of new statutory services identified as beneficial to our users through user research.
4. To reflect how we have already modernised and simplified our services through digital transformation.
5. To allow for more flexibility as to when Land Registry is open for business and open to the public.
6. To make some minor technical improvements in the Rules, to make applications easier and simpler.

The consultation closed on **5 April 2017**. This report looks at the responses we received and our consideration of them. As a result of the widespread support for the proposals the Government intends to proceed with the Rule changes.

To further support government policy, HM Land Registry will work with relevant bodies with the aim of bringing the Housing White Paper 2025 commitment forwards to 2022, in order to meet the ambition of registering all public land as soon as possible.

We are very grateful to all those individuals and organisations that have sent us their views.

 Graham Farrant

Chief Executive and Chief Land Registrar

HM Land Registry

January 2018

## 1. Executive summary

1.1 This document sets out the government’s response to the replies received to the consultation on proposals to amend the Land Registration Rules 2003, which took place between 9 February and 5 April 2017. The consultation document can be found at <https://www.gov.uk/government/consultations/proposals-to-amend-the-land-registration-rules-2003>

1.2 The consultation explained proposals to amend the Land Registration Rules 2003, to facilitate HM Land Registry’s strategic objective to drive innovation and continually improve our processes by digital transformation. The draft amendments to the existing rules were shown in detail. They were intended to:

1. allow for fully digital conveyancing documents with electronic signatures,
2. introduce new statutory services requested by our customers,
3. allow for more flexibility as to when we are open for business and open to the public,
4. bring the rules up to date to reflect the modernisation and simplification of our services,
5. make small improvements to assist our customers and correct clerical errors in the rules.

1.3 The consultation also proposed the revocation of two statutory instruments that will no longer be needed after the amendments are made to the 2003 Rules.

1.4 A total of 49 responses to the consultation were received, of which 30 were from individuals or conveyancing firms and 19 were from representative organisations. These supported the proposed amendments shown in the consultation document by a large majority. The most common concerns received were those relating to online fraud and identity fraud.

1.5 No changes arose from the consultation, as there was widespread support for the proposals.

1.6 The draft rules were considered by HM Land Registry’s Rule Committee on 8 May 2017, as required by section 127 of the Land Registration Act 2002. The Rule Committee supported the proposals, and approved a small number of clarificatory and consequential amendments that were not shown in the consultation. They also suggested some small drafting improvements, which have been incorporated into the draft Land Registration (Amendment) Rules 2017.

## 2. Introduction

2.1 HM Land Registry (“HMLR”) is committed to digital transformation, to help achieve our objective of driving innovation and continually improving our processes. The government has expressed its ambition, in the February 2017 Housing White Paper, for HMLR to become the world’s leading land registry for speed, simplicity and an open approach to data, and the proposals outlined in the consultation support that ambition.

2.2 The Land Registration Rules 2003 (“the principal rules”) provide detailed requirements for the registration of transactions and interests in land. They were drafted when most conveyancing transactions took place using paper. They need updating so that HMLR can provide digital processes for conveyancing and registration.

2.3 The intention is to enable conveyancing transactions to be carried out entirely online, as provided for in the Land Registration Act 2002. The amendments also allow for more flexibility in the way we deliver our statutory services online and reflect changes that have already taken place. They make some other minor improvements and updates to the principal rules.

2.4 We emailed 96 individuals and organisations the link to the consultation document. We published the consultation on our website on GOV.UK, and publicised it through HMLR’s digital media channels. We visited two major stakeholders during the consultation period, and discussed the proposals with key stakeholders who are represented on the Land Registry Advisory Committee. We received 49 responses to the consultation document.

2.5 39% of the responses we received were from representative bodies and professional bodies, representing a total of many thousands of businesses in the conveyancing industry.

 33% were from conveyancing firms.

 28% were from individuals.

2.6 This document sets out the government’s response to the written consultation submissions.

## 3. Consultation process

* 1. The consultation asked for views on several proposals and a series of questions on six key areas:
		1. to allow for all dispositions that must be registered to be carried out using digital documents with digital signatures, after the registrar has issued a notice that satisfactory arrangements are in place;
		2. to allow for more flexibility in the way we deliver statutory services online, as requested by our customers;
		3. to allow for more flexibility as to when we are open for business and open to the public;
		4. to bring the rules up to date to reflect the digitisation, modernisation and simplification of our services;
		5. to make small improvements to assist our customers and correct clerical errors in the rules;
		6. the revocation of two statutory instruments that will no longer be needed after the amendments are made to the principal rules.
	2. We received a total of 49 written responses to the consultation. These included replies from several professional bodies who represent a large number of stakeholders. A full list of organisations, businesses and individuals that responded to the consultation is at Annex A.
	3. The following sections provide the summary of the responses received and our consideration of them.

## 4. Summary of responses and government response

####

#### Proposal A – To allow for the introduction of fully digital conveyancing documents with e-signatures to be used for land transactions and land registration, and to revoke existing rules allowing only limited digital mortgages

**Question A**

Do you agree with the proposal to allow (but not require) all dispositions that must be registered to be carried out using digital documents with digital signatures, after the registrar has issued a notice that the service is available?

**Summary of responses**

49 responses to this question, of which 77% agreed with the proposals.

38 agreed with the proposal, of which 21 added comments or a qualification.

1. disagreed with the proposal.

1 was undecided.

4.1 There was overwhelming support for the proposal. One respondent said “it is essential to get this up and running at long last.”

* 1. The main reasons for qualification of approval and for disagreeing with the proposal were fear of fraud, including identity theft.
	2. Twelve respondents expressed concerns that online transactions might be more susceptible to misuse by fraudsters and hackers.
	3. Twenty respondents questioned whether the GOV.UK Verify service was sufficiently robust and adequate to provide identity assurance for those who will be electronically signing digital conveyancing documents, given current levels of identity theft. One respondent stated that Verify is currently shutting out 40% of those trying to access it. One person suggested that the checking of identity should remain with conveyancers. Others pointed out that as yet, Verify does not allow for identity assurance for companies, charities and legal entities other than individuals. On the other hand, some commented that the use of Verify would lead to more secure conveyancing transactions and a significantly reduced fraud risk.
	4. Four respondents supported the fact that the use of digital documents would not be compulsory.
	5. Some queried where liability would lie if fraud did occur.
	6. Commercial signature solutions were mentioned by three respondents, who asked whether they would be compatible with HMLR’s systems.
	7. One respondent questioned the legal basis for electronic land transactions with e-signatures. Two also expressed concern about the effect that system failure might have on the priority of transactions, or even whether it could result in the loss of applications.
	8. The Public and Commercial Services Union (PCS), one of the two recognised trade unions in HMLR with over 3000 members, gave a detailed response expressing several concerns, particularly-
* lack of parliamentary and public scrutiny of each new digital service
* reduction in HMLR caseworker involvement and assessment of applications
* a shift in liability from HMLR to the conveyancer applicants
* favouring larger conveyancing firms over smaller ones
* whether Verify is sufficiently robust for use with digital signatures
	1. A detailed reply to all points raised by the Union will be sent directly to the PCS, but many of the points are covered below in this response, where we discuss the main themes that arose.

**Government response**

**Fraud**

4.11 Prevention of registration fraud is one of HMLR’s key objectives, and is fundamental to what we do. HMLR systems and procedures are designed to reduce fraud. We cannot go into detail about our counter-fraud measures, but we believe the proposed amendments will enable digital services that are no less secure than paper transactions.

4.12 Verify procedures will be in addition to existing conveyancer ID checks. HMLR security is constantly checked, tested and invested in, to assure us and our customers that it is secure and robust. Our solution is regularly and independently penetration tested by UK Government approved testers and HMLR is also externally certified to the internationally recognised security standard ISO27001, which is independently reviewed every six months.

4.13 HMLR is particularly interested in ensuring the integrity and security of the systems that it operates and protects, not only because of the value of the assets that registration protects, but also because of our statutory liability to pay indemnity for losses that arise in respect of certain mistakes on the register.

4.14 With paper applications HMLR receives the transaction for registration only after it is completed. With digital transactions, the electronic documents will be prepared within HMLR’s secure databases using highly secure access platforms. Integrity checks can be built in at an earlier stage in the process and conveyancers can benefit from world-class cyber security. The service has been designed to be secure and to mitigate the risk of fraud, with the added benefits over paper based transactions of increased speed and ease of use.

4.15 HMLR believes the digital mortgage and other digital documents will be no less secure than paper transactions. In the unlikely event that proved not to be the case, and in the extreme, the service could be suspended or limited while any issues were addressed.

**Verify**

4.16 The identity service providers who carry out identity assurance in the GOV.UK Verify service are bound by detailed contractual requirements to provide highly robust procedures and results. User security and privacy is at the heart of the Verify service. All certified companies were audited and had to complete a rigorous onboarding process before joining Verify.

4.17 The Government Digital Service, which provides Verify, is scaling up and constantly improving the service. Nobody is excluded from a service if they cannot be verified by Verify. Other channels (paper) are available for those who cannot, or do not wish to use digital services, including those who are not able to verify their identity entirely digitally. We believe that, given the profile of individuals likely to be taking out mortgages and buying and selling property, most will be able to use Verify.

4.18 User support is available for people having difficulty completing the Verify process. They have access to live support from their chosen certified company from 8am to 8pm on weekdays, and for shorter hours at weekends.

4.19 Verify currently provides ID assurance to assurance level 2 as defined in the government’s guidance document “Identity Proofing and Verification of an Individual” published by CESG (now the National Cyber Security Centre) and the Cabinet Office[[1]](#footnote-1). HMLR’s use of Verify will not absolve conveyancers and lenders from their duties under the Money Laundering Regulations, but will be in addition to them. There is nothing to prevent conveyancers from carrying out level 3 checks if they feel they are necessary.

4.20 We believe most conveyancers and their clients will welcome the extra level of verification being brought into the conveyancing process by the use of Verify. Their clients will have to prove their identity to the Verify service provider, adding a check not usually present in paper transactions. Verify identity service providers may require a passport or driver’s licence details, and details of the person’s credit record such as information about bank accounts, mortgages and phone contracts. A paper mortgage does not usually have this additional check by the conveyancer.

4.21 Verify services, like HMLR’s digital services, are developed in close collaboration with other government agencies and industry partners. There will never be a solution, in paper or digital, that provides a 100% guarantee that a user is who they say they are. The current paper process is flawed and prone to fraud. The digital processes will be designed with greater protections and additional fraud checks than in the paper process.

4.22 With regard to identity assurance for corporate bodies, HMRC is continuing the development of a new Government Gateway service (GG3), which will provide service credential management for businesses and organisations wishing to use government digital services. HMLR will be in a strong position to work with HMRC to develop a solution. There is also support for this from The Open Identity Exchange UK Europe (OIX UK), a non-profit, technology agnostic, collaborative cross sector membership organisation with the purpose of accelerating the adoption of digital identity services based on open standards.

**Use of commercial signature solutions**

4.23 HMLR will continue to look at and monitor other e-signature solutions that exist or emerge in the market, but we are currently satisfied that our own will be appropriate for the rigours of the land registration system.

**Basis for electronic transactions**

4.24 The Land Registration Act 2002, Part 8 and Schedule 5, has given HMLR the legal framework for providing digital conveyancing, using electronic documents with electronic signatures. The types of transactions that can be carried out electronically must be specified in rules. We presently have the Land Registration (Electronic Conveyancing) Rules 2008, which specify charges (mortgages) as being transactions that can be undertaken using e-documents and e-signatures. The proposed rule amendments will allow us to introduce other digital conveyancing documents for any disposition that must be registered when a satisfactory service has been built.

4.25 For e-signatures, HMLR will be operating as a trust service provider using advanced electronic signatures. We will be subject to EU Regulation 910/2014. This means the e-signatures will not be denied legal effect and admissibility as evidence in legal proceedings. We cannot predict what will happen after Brexit, but we expect that the Great Repeal Bill will transpose much existing EU law into domestic law.

**Lack of Parliamentary and public scrutiny of new digital services**

4.26 HMLR is offering alternative ways of carrying out standard conveyancing transactions. Where a transaction is completed digitally, the requirements for a valid mortgage, transfer or lease of registered land will not change. All that will change is the way of preparing those documents. The documents, and the law behind them, will be fundamentally the same. There is no need to make detailed rules by statutory instrument to say what must be in electronic documents. Both conveyancers and HMLR already know the legal requirements for valid conveyancing documents.

4.27 The main change is that the parties will use a different kind of signature, and to complete the document the conveyancer will press a button on their computer requesting HMLR’s system to apply the date to the e-document, instead of using a pen to write the date on it.

4.28 The rules specify what transactions can be carried out using e-documents with e-signatures. The rule amendments enable the policy behind the Land Registration Act 2002 to be fulfilled in the most efficient way, but they do not otherwise change the law. Conveyancing is carried out in accordance with land and property law, and, in many cases, Law Society and lender protocols. The e-documents that HMLR introduces must comply with land law and work with conveyancing practice otherwise conveyancers and lenders will not use them. HMLR is not making the use of e-documents compulsory. Conveyancers and lenders will use the services only if they meet their needs and offer benefits. We will continue working with conveyancers and lenders, as well as members of the public, to develop the services.

4.29 Thus HMLR can confirm that when we extend the classes of e-documents, such as the introduction of e-transfers, we will consult with relevant stakeholders. We will not normally consult on the introduction of small incremental changes, such as larger document size capacity. In any event it is likely that small improvements will have been brought about as a result of customer feedback. We will continue this collaborative approach.

4.30 In any event, there will be Parliamentary scrutiny in the making of these rules. The government’s better regulation processes ensure thorough scrutiny before any new statutory instrument comes into force. In making these rules, Parliament will be entrusting the registrar to introduce digital services in this way.

4.31 The respondent that raised the question of scrutiny suggested that Parliament and the public should scrutinise HMLR’s security arrangements. Security arrangements cannot be made public, for obvious reasons. HMLR works with other government agencies to ensure our systems remain of the highest possible standard for the protection of all our customers.

**Shift of liability**

4.32 HMLR will be taking on some additional risk as a result of being a trust service provider for the purpose of e-signatures. The liability is set out in EU Regulation 210/2014 on electronic identification and trust services for electronic transactions.

4.33 Conveyancers and lenders will continue to have the same duties as already exist under the Money Laundering Regulations. The statutory indemnity provisions of Schedule 8 to the Land Registration Act 2002 will continue to apply and are unaffected by the mode of the disposition – whether digital or in paper. The existing framework will not change, and it is hard to see any shift in liability away from HMLR.

**Digital documents favour larger conveyancing firms**

4.34 One respondent was concerned that the proposals would favour larger firms as smaller conveyancing firms may not use digital services. We do not believe this is the case. We recognise that many small and medium size firms use case management software provided by intermediaries. HMLR’s APIs will be available to those case management suppliers as soon as the systems are established and stable. The market is constantly adapting to digital ways of working, and HMLR has no wish to hold back that progress. In any case, the proposed amendments to the principal rules will not make digital dispositions mandatory.

**System failure and priority**

4.35 HMLR’s internal and external infrastructure is designed to have considerable resilience and spare capacity (redundancy) built in. We use the latest Geographically Dispersed Parallel Sysplex technologies, so that our continuous service capability is maintained even in the event of the loss or unavailability of one of our data centres.

4.36 The integrity and availability of data is paramount. Three copies of our data are continuously mirrored. Additionally, a fourth copy (a snapshot) is made once a day. We also have full backups of our systems on tape and retain logs of all changes that occur during the day.

4.37 HMLR is both well prepared and vigilant with regard to arrangements to deal with the impact of a major incident or disaster on the business. Automated monitoring of business-critical business services takes place, and a process to manage major service incidents is deployed. This integrates with our business continuity procedures.

4.38 In the event of a disaster, our recovery time will vary depending upon the nature of the incident. Our objective is to make business critical internal services available within two hours of the business decision to invoke the disaster recovery plan, with all services available within five hours. Routine testing of our plans is undertaken and we proactively seek to improve upon our recovery time objectives where possible.

4.39 So digital documents will not be lost. Any delay will be short-lived and should be covered by a timely official search with priority. The priority regime provided by the Land Registration Act and Rules is not affected by the introduction of digital documents, and they will be less likely to get lost or delayed than documents sent in the post.

**Open register**

4.40 Some respondents to this question raised concerns about the fact that the land register is an “open register”, available for public inspection and copying. Several respondents raised this issue when replying to other questions. The respondents suggested that the open register is attracting organised criminals because of the value of property. They suggested that fraud has ballooned since the register was opened in 1990, whereas it is minimal in Scotland where the register is closed.

4.41 The open register is provided for in section 66 of the Land Registration Act 2002. We cannot change primary legislation by means of secondary legislation, so the issue is not strictly relevant to this consultation.

4.42 However, we would point out that the majority of UK incidents of fraud and computer misuse relate to bank and credit account fraud – that is, fraudulent access to bank, building society or credit card accounts or fraudulent use of plastic card details (2.5 million incidents). Figures indicate a 64% rise in fraud offences on UK-issued cards between the year ending March 2011 (the earliest year for which this data is available) and the year ending March 2016[[2]](#footnote-2). In contrast, the figures for the payment of indemnity by HMLR to victims of registration fraud relating to registered land have been falling since 2011, in spite of the generally steady rise in property values. They fell from £7.3 million in 2010-11 to £4.9 million in 2016-17 (a reduction of more than 30%). The register first became open in 1990, and fraud relating to registered land rose very little until about 2005-6.

#### Proposal B – Revoke the Proper Office Order and make consequential amendments to the Land Registration Rules 2003

**Question B**

Do you agree that the Proper Office Order 2013 is superfluous and can be revoked?

**Summary of responses**

40 responses to this question, of which 97% agreed with the proposal.

39 agreed with the proposal.

1 disagreed.

4.43 Several commented that it made sense to revoke this Order.

**Government response**

4.44 We intend to proceed with the revocation of the Land Registration Proper Office Order 2013, and make consequential amendments to the Land Registration Rules 2003.

#### Proposal C – Allow for the introduction of new statutory services identified as beneficial to our users through user research

**Question C1**.

Do you agree that the rules should allow for an online service for inspection, copying and official copies of parts of the register and documents, as well as full copies?

**Summary of responses**

43 responses to this question, of which 86% agreed with the proposals.

37 agreed, of which 11 added a qualification.

5 disagreed.

1 was undecided.

4.45 Of those who gave qualified agreement, four commented that building this service should not be a priority if it would take staff away from completing registration work. Five suggested that registered proprietors of land should be notified each time there was any activity on their land registry title, such as a request for copies of their register, as an anti-fraud measure.

4.46 Those who disagreed did so out of concerns about property fraud. Five thought that the register should not be open to the public, as it provides criminals with too much information. One respondent suggested that there could be a limit on the information available to the public, while legal practitioners could have access to more detail.

**Government response**

4.47 HMLR is undertaking a large scale digital transformation programme, so any new service we build will be evaluated for priority and customer need. The potential new services were identified during user research that HMLR regularly undertakes. We may not be in a position to build the services that the proposed amendments would allow straight away, but we would like to be in a position to make them available when resources permit. The services would be developed by our IT teams not casework teams, so the work would not affect casework activities.

4.48 HMLR already has a notification service – Property Alert – which can be used to help combat the risk of fraud. Customers can apply to receive email notifications about significant activity on up to ten title numbers in which they are interested. This includes official searches and transactions. It is a free service. HMLR could not make this an automatic service to all customers as we do not have their email addresses. Also, some people may not want to receive these updates. Property Alert does not alert people to requests for official copies. The Land Registration Act 2002 enables anyone to inspect and make copies of the register of title and other registers kept by the registrar, so requests for copies may not be linked to any proposed dealing.

**Question C2**.

Do you agree that the rules should allow for an online service for historic day list information and historic information about a registered title?

##### **Summary of responses**

##### 41 responses to this question, of which 92% agreed with the proposals.

##### 38 agreed with the proposals, of which 7 added comments or qualification.

##### 3 disagreed.

4.49 One respondent commented that historic information was a useful tool to assist in retrospective valuation and other purposes. Others confirmed that historic information would be useful in helping to unravel issues relating to complex titles, and in tracing ownership in contentious cases.

4.50 One respondent felt that this service should be available only for qualified legal personnel. They suggested that criminals could use the information for their advantage.

**Government response**

4.51 Making historic information more easily accessible was something identified as a user need during user research sessions, which HMLR regularly undertakes. There are already provisions in section 69 of the Land Registration Act 2002 and in rule 144 of the Land Registration Rules 2003 that allow for historic copies of the register to be issued. The proposed amendments will allow us to make the service more useful. We expect an online service will enable customers to identify the correct version of the document or historic register that they want. There are no immediate plans to build the new services but we will proceed with the proposed amendments so that the services can be built when resources allow.

#### Proposal D – Reflect the modernisation and simplification of our services through digital transformation

**Question D1**

Do you have any comments on the proposals to amend rules 203 – 205 and 214 (retention and return of documents), and rules 19 and 199 (use of fax) to reflect changes we have already made in our practice?

**Summary of responses**

41 responses to this question, of which 85% had no comments or agreed with the proposals.

35 approved of which 13 added comments or qualifications.

6 disapproved.

4.52 A large majority were in favour of the proposals. Of those who made comments, they were generally in favour but raised some concerns about the lack of retention of original documents. Five suggested that the destruction of documents can be problematic where a transfer document contains a declaration of trust. They explained that the information might be needed on the death of one of the co-owners, and the conveyancer’s file is routinely destroyed 12 years after the transaction completes.

4.53 Another respondent emphasised that copy documents kept by HMLR should be properly checked to ensure they are complete. They felt that there have been increasing numbers of cases where copy leases, in particular, are incomplete or do not have coloured plans. There were five comments in all regarding the quality of documents held by HMLR.

4.54 One respondent expressed concern about HMLR destroying very old documents. They thought that any documents of antiquarian or historic interest should not be destroyed. Instead they should be returned to the applicant or sent to an appropriate record office.

4.55 Three respondents mentioned that fax should be retained for the service of notice and for the receipt of objections by the registrar. They felt it is becoming more important and expressed the view that it is more secure than email.

**Government response**

4.56 HMLR retains copies of all deeds that induce registration. Official Copies of the documents can be requested and, under section 67 of the Land Registration Act 2002, an official copy is admissible in evidence to the same extent as the original. Thus an official copy of a transfer from HMLR is equivalent to, or potentially more reliable than, the original, which could have been damaged, tampered with, or lost after many years.

4.57 With regard to copies made by HMLR, documents that are scanned by our contractor are subject to a Service Level Agreement to assure quality. They perform daily quality checks on a sample set of the applications and consistently achieve their targets. They do not check to see if a document is complete. Instead, HMLR caseworkers consider if documents are complete and raise a requisition if they believe there is an issue.

4.58 We do see errors in documents lodged through our Electronic Document Registration Service as we are dependent on the customer scanning them, and errors include missing pages. Requests by us for a replacement are usually made by telephone.

4.59 The destruction of old documents need not happen under current HMLR practice. Applications for first registration can now be made by conveyancers lodging certified copies of the deeds and documents. This means that they can retain the original document. Even if originals are sent, they will be returned if the applicant also lodges a certified copy of the document. Where documents are more than 50 years old they are returned to the applicant after registration with an information sheet explaining how they can deposit old deeds with a local record office.

4.60 All applications relating to registered land can be made with certified copies of the deeds and documents.

4.61 With regard to the service of notice by and objections on the registrar by fax, HMLR no longer has the facilities to send and receive faxes. The reinstatement of fax facilities for delivery of documents is not an effective or efficient way for HMLR to operate.

**Question D2**

Do you agree with the proposal to revoke the provision for outline applications?

**Summary of responses**

40 responses to the question, of which 85% agreed with the proposal.

34 agreed of which 1 added a qualification.

5 disagreed.

1 was undecided.

4.62 The overwhelming majority of respondents agreed with the proposal.

4.63 One respondent asked what the proposal is for replacing outline applications of part and for customers needing an outline search but not using online services. Another thought that the proposal does not take account of a position where exchange/completion has taken place but an application for registration cannot be made immediately because the documentation required to do so has not yet been received by the applicant. We think both these comments mean that the respondents have either misunderstood the proposal or the nature of outline applications. Further explanation is in the government’s response below.

4.64 Another respondent said that there is still a need from time to time to submit an application by post (so the outline application could be used to protect the application being posted).

**Government response**

4.65 It has never been possible to use an outline application to protect an application relating to part of a registered title. That was specifically excluded by rule 54(1)(a). An outline application is not a search. The Official Search with priority service will still be available under rule 147 to protect substantive applications. The outline application was designed for applications that cannot be protected by an official search with priority. However, the right, interest or matter that is the subject of the outline application must exist at the time the application is made. That is why they are now superfluous, since a full application can now be made online, to give instant priority protection to the interest.

4.66 The completion of a transfer or mortgage (including one of part of a registered title) should be protected by an Official Search with priority. It could not be protected by an outline application.

4.67 In the circumstances where a document requires protecting by a notice and the right exists, but the document is not available, the interest can be protected immediately by a unilateral notice. That does not require a copy of the document to be lodged, just confirmation of the details of the interest.

4.68 In reply to the comment about the need to submit an application by post, we are not clear why this should be, unless it was because the customer was unable to scan the document due to its size. In that case we think it would probably be acceptable to lodge the application form electronically, explaining the circumstances and stating that the document will follow immediately in the post. The document could then be sent with the HMLR application reference. The use of our electronic delivery services has increased significantly in recent years.

#### Proposal E – Allow for more flexibility as to when Land Registry is open for business and open to the public

**Question E1**

Do you have any comments on the proposals to clarify the definitions of business day and working day?

**Summary of responses**

41 responses to the question, of which 97% had no comments or agreed with the proposals.

40 had no comments or agreed with the proposals.

1 disagreed.

4.69 All except one of the respondents supported the proposals. One respondent said “We agree that the current complexity created by the differing and overlapping definitions of various operational days should be streamlined. We note that there has been consideration of how the changes will potentially affect application priority, and that the changes are not intended to advantage or disadvantage those who work within normal working hours. This is welcome as it is important that application priority is preserved.”

4.70 One representative organisation commented that greater clarity on when HMLR is open for business should complement the work carried out by their members, many of whom work at weekends.

4.71 One respondent disagreed, suggesting only “business day” should be used, and that having both working days and business days is confusing particularly for members of the public.

**Government response**

4.72 We intend to proceed with the proposals to amend the definitions. Using only “business day” would not achieve the aim of enabling, if the registrar thinks it appropriate, the digital registry to be open for business on days that are not considered to be normal working days. Meanwhile customers who do work normal working days should not be prejudiced.

**Question E2**

Do you agree that Land Registry should have more flexibility about when it is open for personal visits?

**Summary of responses**

41 responses to this question, of which 87% agreed with the proposal.

36 agreed, of which 19 added a qualification.

4 disagreed.

1 was undecided.

4.73 A large majority of respondents agreed with the proposal.

4.74 Eight agreed, subject to access being maintained for those customers who are unable to access HMLR services or help online.

4.75 Two respondents suggested that a charge could be made for personal visits, to keep overall costs down. Three others commented that HMLR staff resources would be better used to improve the speed at which applications are processed rather than servicing personal visits.

4.76 Some suggested that conveyancers’ charges for providing identity checking are quite high, and that many conveyancers might not be prepared to offer this service at all, particularly as a result of recent developments in the law[[3]](#footnote-3). One respondent said that customers are now experiencing difficulties in getting ID1 forms (HMLR identity forms) signed as practitioners have become more nervous in undertaking this activity due to the risk of fraud. They felt that HMLR should not shift the risk to the profession by removing a valuable free service. They suggested developing the e-equivalent of the ID1 form for unrepresented parties.

4.77 Most had no objection to a more flexible approach.

4.78 Three respondents thought that the register should be closed to public inspection, and access for personal visits limited to authorised and verified legal professionals.

4.79 One respondent felt that using staff to deal with personal visits by customers should not involve any cost to HMLR.

4.80 One respondent suggested that the words “any other specified location” should be omitted, as “specified offices” is enough.

**Government response**

4.81 The government’s assisted digital support website[[4]](#footnote-4), with which HMLR complies, states:

“The support you provide can be either:

* someone guiding a user through the digital service
* someone entering the user’s information into the service on their behalf

You can provide this support by phone, web chat or face to face.”

4.82 So it is not essential to provide assisted digital services through HMLR’s offices. Customers can be helped by phone. This is likely to be cheaper, quicker and easier for them. In any event not all customers will have access to an HMLR office due to their geographical spread.

4.83 HMLR provides an identification checking service for personal callers who come to lodge applications, but this is not a statutory service, and the Land Registration Act 2002 does not make HMLR responsible for checking identity. It could be withdrawn at any time. HMLR would, of course, have to consider the needs of customers and whether (or what) alternative provisions should be made available before doing so.

4.84 The proposed amendments are to allow for flexibility. There is a resource cost to HMLR in ensuring there are staff available to meet with visitors from 8.30am to 6pm on working days. The proposals would allow for shorter hours for personal visits, but they would also allow for evening and weekend opening if there was a need for it and the registrar declared a weekend day as a business day. Also the use of the words “any other specified location” mean that a call-in service could be offered at locations other than HMLR offices if it was thought to be a useful and efficient means of dealing with customers.

#### Proposal F – Make minor improvements in the rules

**Question F1**

Do you agree with the proposals to add form AN1 to rule 90?

If not please say why.

**Summary of responses**

40 responses to the question, of which 95% agreed with the proposal.

38 agreed.

2 were undecided.

4.85 There was overwhelming support for this proposal. Only one respondent qualified their agreement by suggesting that HMLR should discuss with the Court of Protection whether a restriction might also be needed in respect of those who hold a Lasting Power of Attorney.

**Government response**

4.86 The Court of Protection has not requested such a restriction. It would not seem to be necessary as HMLR will check that a Lasting Power of Attorney gives the donee the appropriate rights to make the disposition being registered.

**Question F2**

Do you agree with the proposals to amend rule 140 and Schedule 5, and remove form CIT from the list of prescribed forms so it can be amended when necessary?

If not please say why.

**Summary of responses**

38 responses to the question, of which 94 % agreed with the proposals.

36 agreed, of which 3 added a qualification.

2 were undecided.

4.87 These proposals would revoke the prescribed form CIT and allow the registrar to promulgate a form for use under rule 140 of, and Schedule 5 to, the principal rules.

4.88 Rule 140 allows for confidential applications to be made by certain bodies with statutory powers of investigation and enforcement (for instance, about the ownership of property). Confidentiality is necessary for these bodies due to the sensitivity of their investigations. If they were not protected by this rule and rule 133(5), which makes the form CIT a document excepted from the right to inspect and make copies, anyone could apply for a copy of these searches and correspondence. That would potentially undermine investigations.

4.89 One respondent commented that it is important that HMLR ensures that the privacy and personal data of those identified in the register are protected from abuse.

4.90 Two respondents thought that changes by the registrar to those who can make use of the provisions should only be made where an entity already included in Schedule 5 had changed their name, and only after public consultation. They did not understand why the Charity Commission or the Fire Authority should have such rights.

**Government response**

4.91 Support for the proposal was overwhelming.

4.92 The purpose of rule 140 and Schedule 5 is to provide privacy and protection both to those who are under investigation, as well as to the body that is investigating. The proposals will not change our need to protect confidentiality in these circumstances.

4.93 The purpose of the proposed amendment is not intended to widen the effect of rule 140. It will remain the case that applications under rule 140 will only be available to bodies with statutory powers of investigation and enforcement. These bodies will already have those powers through legislation, which is likely to have been subject to public consultation before the powers were granted. The purpose of the change is to enable the registrar to keep up to date the list of bodies who might make an application, and the form that must be used.

4.94 The Charity Commission and the Fire Brigade have statutory powers and duties of investigation and enforcement, and may need clarity on the ownership of property to fulfil those duties.

#### General question

#### Question G

#### Do you have any other comments about the proposed Rules amendments?

**Summary of responses**

23 respondents offered additional comments.

4.95 Several of the comments re-iterated those that the respondents had already made in response to other questions in the consultation. Those included—

1. Comments about GOV.UK Verify.
2. Questions about what will happen to e-documents in the event of a system crash or other technical failure.
3. A suggestion that HMLR should examine the use of Blockchain.
4. Concerns that the register should not be open to the public.
5. Suggestions that amendments are needed to allow personal representatives to protect a beneficiary’s interest in registered and unregistered land prior to the grant of letters of administration or probate.
6. A view that personal representatives should be able to register a charge (mortgage) in respect of a deceased’s property prior to the grant of probate or letters of administration if they have had to pay out money (such as inheritance tax).
7. Comments that a valid Energy Performance Certificate should be in place before registration and that there should be integration between the EPC register and the register of title (together with the view that HMLR should potentially take responsibility for the EPC and DEC (Display Energy Certificate) registers).
8. The view that implementation of digital conveyancing will bring about a fundamental change, and will see the conveyancing of land brought into the 21st century.

**Government response**

4.96 Most of these themes have already been covered in the Government response to earlier questions. Points e, f and g are outside the scope of this consultation.

##

## 5. Next steps

The amendment rules will be made and will come into force on **6 April 2018**.

## Annex A: List of respondents

Agricultural Law Association

Berwin Leighton Paisner LLP

Bold Legal Group

BPL Solicitors Limited

Building Societies Association

Burges Salmon LLP

Charities’ Property Association

Chartered Institute of Legal Executives (CILEx)

Conveyancing Association

Council for Licensed Conveyancers

Council of Mortgage Lenders (CML)

Dorling Cottrel Limited and JS Law Limited

Enact Conveyancing Ltd

Flexihouse Ltd and PEXA (Property Exchange Australia)

Forshaws Davies Ridgeway

Keoghs Conveyancing

Kuit Steinart Levy LLP

London Property Support Lawyers Group

Maples Teesdale LLP

National Association of Estate Agents (NAEA) Propertymark

Northern Power Grid

PCS – HM Land Registry Group

Property Energy Professionals Association

RICS

Serious Fraud Office

Shakespeare Martineau

Stokes Solicitors LLP

Surrey Law Society

Taylor Wessing LLP

The City of London Law Society

The Law Society

The Society of Licensed Conveyancers

Total Conveyancing Services

Virgin Money plc

Wright Hassall LLP

Amie Younger

Diana Forde

Miss Pinfold

Gemma Lodge

Graham Phillips

Jack Marriott

Jenna Pengilley

Jeremy Priestley

Jeremy Sims

Linda Turner

Louise Clapham

Mangala Murali

Michael McGarry

Rhian McTiffin

##

© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available from [www.gov.uk/landregistry](http://www.gov.uk/landregistry)

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Land Registry

Head Office, Trafalgar House

1 Bedford Park, Croydon

CR0 2AQ

Tel: 0300 006 0004

Email: lrr2016@landregistry.gov.uk

1. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370033/GPG_45_identity_proofing_v2_3_July_2014.pdf> [↑](#footnote-ref-1)
2. See Office for National Statistics: Overview of fraud statistics: year ending March 2016. [↑](#footnote-ref-2)
3. *Dreamvar (UK) Ltd v Mishcon de Reya and others [2016] EWHC 3316 (Ch)* [↑](#footnote-ref-3)
4. <https://www.gov.uk/service-manual/helping-people-to-use-your-service/assisted-digital-support-introduction> [↑](#footnote-ref-4)