

## E-REGISTRATION – THE NEXT STEPS

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Several years ago, the Land Registry, like its counterparts in Great Britain and the Republic of Ireland, declared its intention to move towards a system of E-Registration, and, for the past few years, the first phase of that process has been in place. In this phase, authorised customers<sup>1</sup> are able to prepare the registration papers on-line but still have to lodge the physical documents before registration can be finalised. The Registry's declared intention has been to move to the next phase (i.e. full E-Registration) once a number of legal and technical obstacles are overcome, and accordingly it conducted a major consultation exercise last year in order to identify the best way forward.

That process has now resulted in two pieces of subordinate legislation:

- The Land Registration (Electronic Communications) Order (NI) 2011 ("the 2011 Order") and
- The Land Registration (Amendment) Rules (NI) 2011 ("the 2011 Rules").

The combined effect of the legislation will be to facilitate the future introduction of a system of full E-Registration, which will allow authorised customers to make electronic applications instead of paper applications. This E-Registration system will not be compulsory, but it is expected that the financial incentive of reduced registration fees for E-Registration will encourage customers to make use of the system. It appears that certain mortgage lenders who are keen advocates of the E-Registration process are encouraging solicitors to use the current phase of the E-Registration system, because of its speed, efficiency and cost effectiveness.

Both pieces of legislation come into operation on 3 October 2011, and the 2011 Order will amend the Land Registration Act (NI) 1970 ("the 1970 Act") while the 2011 Rules will amend the Land Registration Rules (NI) 1994 ("the 1994 Rules").<sup>2</sup>

### A. Amendments to the 1970 Act

Most of the existing provisions of the 1970 Act will continue to apply to paper-based transactions but a number of important amendments have been made by the 2011 Order, in order to facilitate electronic applications. The principal changes are –

- Article 2(2) amends **Section 32** by permitting authorised applications to be made electronically and allowing the Registrar to issue formal Directions defining the types of dealing which may be made electronically.
- Article 2(3) adds a new **Section 32A**, providing that where any transaction is currently to be effected by deed or instrument in writing, the dealing may be effected in accordance with the provisions of a new Schedule 1A.

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<sup>1</sup> i.e. solicitors and some mortgage lenders.

<sup>2</sup> Information about the legislative changes is available on the Land Registry's website.

- Article 2(4) introduces a new **Schedule 1A** which provides –
  - An electronic document must be authenticated in order to be valid. To be authenticated the digital signature must be created by the signatory and certified in accordance with such conditions as the Registrar may direct.
  - An electronic document which is properly authenticated has the same effect as a written document.
  - The Registrar is entitled to assume that the authentication of an electronic document has been done by the person by whom it purports to be done.

These provisions pave the way for full E-Registration of authorised applications. However, it should be noted that the system of full E-Registration is not yet in force; and, before the system comes into effect, the Registrar must issue formal Directions specifying which dealings are authorised and prescribing the procedures for registration.

Currently phase 1 enables approved customers to create certain applications electronically, but they must still lodge executed paper documents to complete the process. Once certain technical issues in areas such as electronic signatures and electronic mapping have been resolved, the Registrar will issue Directions to introduce the next phase, which will enable entire applications to be completed by electronic means. The Registrar will consult with the Law Society before making the Directions, and current indications are that it is likely to be some time before this stage is reached.

## B. Amendments to the 1994 Rules

As a consequence of the changes to the 1970 Act, the 2011 Rules introduced a number of changes to the 1994 Rules. The principal changes are –

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- An amendment to **Rule 31** to permit customers to apply to be authorised as users of the Registry's electronic direct access service. The Rule also provides that, where any physical proofs, for example a Grant of Probate, are required in relation to an authorised electronic application, the Registry may accept a certificate from an authorised user that the proofs are in his possession.<sup>3</sup> However, the Registrar may require the production of proofs in any particular case, and it is anticipated that this power will be used to create a system of spot checks.
- The existence of Land Certificates and Certificates of Charge creates a major obstacle to E-Registration and a key feature of the 2011 Rules is the dematerialisation of Land Certificates. Unlike the legislation in the Republic of Ireland, which abolished such certificates entirely, the 2011 Rules aim to put in place a process of "creeping dematerialisation" by -
  - Amendments to **Rules 120 and 121** to permit the Registrar to issue electronic Land Certificates and Certificates of Charge.

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<sup>3</sup> In view of this provision, which has been described in other jurisdictions as "tell me don't show me", it is unlikely that anyone other than a solicitor or an organisation which employs in-house solicitors, will be accepted as an authorised user. In addition, note that documentary proofs will still be required for paper-based applications and for electronic applications made under phase 1, which must be followed up by lodgment of paper documents.

- An amendment to **Rule 128** to provide that applications for registration (other than applications for Notices of Deposit) need not be accompanied by a Land Certificate or Certificate of Charge.
- A number of consequential amendments such as the deletion of **Rule 32**, which relates to refusal to grant orders for production of certificates, **Rule 134**, which relates to the record of replacement certificates, and **Rule 136(3)**, which relates to the lodgement of certificates, and an amendment to **Rule 138**.

No new arrangements have been introduced regarding the priority of electronic applications, and electronic applications will be governed by the existing rules regarding the order of registration.<sup>4</sup>

### Additional Amendments

In addition to the changes relating to electronic applications, the 2011 Rules introduce the following changes which were suggested during the consultation process -

- An amendment to **Rule 11** to prescribe new forms for applications for first registration with a Possessory title.
- An amendment to **Rule 66** in order to simplify applications for registration of money charges.
- Amendments to **Rule 137** and Form 73 to simplify applications for Notice of Deposit of Land Certificates.
- An amendment to **Rule 149** regarding the rectification of clerical errors in digital maps.
- An amendment to **Rule 209** to simplify the registration of money charges in the Statutory Charges Register.

## **C. What this means in practice**

Although several of the new provisions will not apply until phase 2 of the E-Registration project is brought in by way of a Registrar's Direction, some important changes do come into force on 3 October 2011.

### 1. Land Certificates and Certificates of Charge

It will no longer be necessary to lodge a Land Certificate or Certificate of Charge with any application for registration (except a Notice of Deposit of Land Certificate under Rule 137).<sup>5</sup> The intention behind this provision is that, in time, Land Certificates and Certificates of Charge will be rendered obsolete.

<sup>4</sup> Rule 33 provides that all dealings delivered on a particular day, after the Registry opens for public business and before it closes, are deemed to be received at the same time, and immediately before the Registry closed. All dealings received after the Registry closes for business are deemed to have been received immediately after the Registry opens for business on the next working day.

<sup>5</sup> It is understood that lending institutions stopped taking new equitable deposits some years ago, but applications under this Rule may still be made in relation to existing deposits.

Accordingly the Registry is now discouraging the creation of new Land Certificates and is recommending that, instead of requesting a Land Certificate, customers should request an up to date copy of a new Folio from Landweb Direct when they receive confirmation that it has been opened.<sup>6</sup>

Similarly, since Land Certificates do not have to be lodged, an updated Land Certificate will not normally be sent out on completion of registration; and the Registry therefore recommends that customers should request an up to date copy of the Folio from Landweb Direct on receipt of the notice of completion of registration.

## 2. Registrar's Orders regarding Certificates

Applications for Orders for production, Orders to dispense with production and Orders for the issue of Duplicate Land Certificates and Certificates of Charge are likely to become obsolete, since it is no longer necessary to lodge such certificates when applying for registration.

## 3. Applications for first registration

The situation is unchanged for any applications where the title is to be Absolute, Good Fee Farm Grant or Good Leasehold. But, where an application is for a Possessory title, the application should now be made in –

- The new Form 3A if the applicants have obtained a Court Order declaring their title to the land, or
- Form 3 (as amended) in all other cases.

In addition, where an application is being made for a qualified title, the application should be in –

- Form 1 if the title is being certified by a solicitor, or
- Form 2 (as amended) in all other cases.

## 4. Applications for registration of Notices of Deposit

An application for registration of a Notice of deposit should be in Form 73 (as now amended) and be accompanied by the Land Certificate.

## 5. Applications to register charges in the Land Registry

Charge deeds may now be in such form as the Registrar directs or accepts. The existing forms may still be used, but it is anticipated that this provision will facilitate phase 2 of E-registration in due course.

It will no longer be necessary to lodge a Charge Deed in duplicate unless a Certificate of Charge is required.

## 6. Applications to release a charge

A charge may now be released using Form 33 or 34 without producing the Certificate of Charge, or by way of a vacate endorsed on a Certificate of Charge or on a copy charge deed.

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<sup>6</sup> This will normally be when they receive a notice of completion of registration.

### 7. Applications for registration of money charges in the Statutory Charges Registry

It is no longer necessary to specify the amount of capital or interest in applications to register such charges. This brings the provisions regarding money charges in the Statutory Charges Register into line with the provisions regarding money charges in the Land Registry.

### 8. Electronic Certificates

The new legislation permits the Registry to issue electronic Land Certificates and Certificates of Charge rather than paper Certificates but this will not happen immediately as the Registry wishes to assess whether there will be a continuing demand for Certificates before taking this forward.

## **D. Transitional arrangements for uncompleted applications**

It is likely that the changes to the Rules will impact upon a number of applications that have already been lodged in the Registry and accordingly transitional arrangements will apply in the following circumstances.

### 1. Where an existing application was accompanied by an application for an Order for production of the Land Certificate

If an application for an Order for Production was lodged but the Certificate has not yet been produced, then, provided the application is otherwise in order, registration will now proceed without production of the Certificate and the original date of registration will be deemed to apply.

### 2. Where an existing application was not accompanied by an OPLC

If the application should have been accompanied by the Land Certificate but no Land Certificate or application for an OPLC was lodged then, provided the application is otherwise in order, registration will proceed as if it had been lodged after the introduction of the 2011 Rules and the date of registration will become 3 October 2011. If the transaction is not otherwise in order, it will not proceed until any outstanding issues have been resolved.

### 3. Where a Land Certificate is held in Land Registry for a future transaction

If a Land Certificate was lodged (or is subsequently received) in anticipation of a subsequent transaction, which has not yet been received, it will be returned to the person who lodged it, since its production is no longer required.

### 4. Where a Land Certificate was lodged only for a specific transaction

If the person who lodged a Land Certificate requested that it should only be used for a specific transaction, such a request will become redundant on 3 October 2011 because production of the Land Certificate for other transactions will no longer be necessary. Therefore, if someone wishes to prevent other transactions affecting a particular Folio, they should consider applying for a caution or inhibition.

In a situation where such a request was made but a subsequent transaction was lodged before 3 October 2011, it is expected that the Land Registry will notify the interested parties and treat each application on its own facts.

## **E. Fraud prevention**

The Land Registry has recognised that acceptance of applications without an accompanying Land Certificate could increase opportunities for fraud and it intends to introduce a number of arrangements to minimise the potential for fraud –

- When a transaction is lodged without the Land Certificate, the Registry may give notice of the application to the registered owner.
- In any particular case the Registrar may require the applicant to produce the necessary Land Certificate.
- It is intended that further fraud prevention measures relating to phase 2 of E-Registration will be prescribed in the Registrar's Directions when that phase is being introduced.

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## **LAND REGISTRY PRACTICE DIRECTION (PD2/2011) TITLES ACQUIRED UNDER THE GROUND RENTS ACT (NI) 2011**

On the first registration of freehold titles that were acquired under the Ground Rents Act (NI) 2001 it had been the Land Registry's practice to grant only a Qualified title. However, following discussions with the Northern Ireland Law Commission, the Registrar has recently issued a Practice Direction permitting the granting of an Absolute title in the case of freehold estates acquired under that Act.

### **First Registration**

The Practice Direction explains that applicants for first registration, who have acquired a freehold estate by way of a Certificate of Redemption, may apply for registration with an Absolute title by using Form 1, ticking the third box in Panel 5, stating "The root of title consists of a Lease [OR a *Fee Farm Grant*] dated ... and a Certificate of Redemption dated ..." and inserting in the Schedule (before inserting details of any mortgages etc.) "Such of the covenants contained in the Lease/Fee Farm Grant as continue in force under the Ground Rents Act (NI) 2001".

### **Electronic Applications**

It should be noted that the present phase of the e-registration system does not recognise a Certificate of Redemption as a root of title for a first registration application. Therefore, anyone wishing to make an electronic application in these circumstances is advised to proceed as follows

- (i) where the root of title is a Lease or Fee Farm Grant, and a certificate of Redemption, complete the electronic application as normal (i.e. as if the Lease/Fee Farm Grant is the root of title);
- (ii) before lodging the paper application complete a second paper Form 1 requesting an Absolute title, quoting the Certificate of Redemption as the root of title and stating in the Schedule (before inserting details of any mortgages etc.) "Such of the covenants contained in the Lease/Fee Farm Grant as continue in force under the Ground Rents Act (NI) 2001"; and
- (iii) staple the two Form 1 applications together and explain in a covering letter that they are to be treated as a single application under Practice Direction 2/2011.

### **Reclassification**

The Practice Direction also permits registered owners of freehold land, which had been registered with a Qualified title because the freehold was acquired under that Act, to apply for the title to be reclassified as Absolute. Applications to reclassify such Qualified titles may be made using the precedent set out in the Practice Direction.

A copy of the Practice Direction, which came into operation on 1 October 2011, may be inspected on the Land Registry website at [www.landwebni.gov.uk](http://www.landwebni.gov.uk).