

E-REGISTRATION IN THE LAND REGISTRY

Forthcoming legislative changes¹

For several years the Land Registry of Northern Ireland has been moving towards the introduction of an electronic registration system and the first phase of that system is already in place. Under phase 1 authorised customers of the Land Registry may prepare their applications on-line but they still have to lodge the physical documents with each application. It is the Registry's intention to move to the next phase (i.e. full E-Registration) once a number of legal and technical obstacles are overcome, and accordingly a major consultation exercise was conducted over the last two years in order to identify the best way forward.

That process has now resulted in two pieces of subordinate legislation: the Electronic Registration (NI) Order 2011 and the Land Registration (Amendment) Rules (NI) 2011 which are due to come into operation on **3 October 2011**.

The principal amendments are:

1. The Registry may accept transactions for registration without the production of the relevant Land Certificate (or Certificate of Charge), except where the transaction is an application to register a Notice of Deposit of Land Certificate.
2. The Registry is permitted to issue electronic Land Certificates and Certificates of Charge.
3. The system of full electronic registration may be rolled out on a phased basis in accordance with directions issued by the Registrar, after consultation with the Law Society.
4. In the case of fully electronic applications, there will be an exception to the requirement for conveyancing transactions to be carried out by way of a paper deed.
5. Where extrinsic evidence, for example a Grant of Probate, is required for fully electronic applications, authorised customers may certify the existence of that evidence instead of producing it.

The legislation also makes some additional amendments to first registration procedures, which were proposed during the consultation process (see below).

The combined effect of these pieces of amending legislation is to prepare the way for a full E-registration system that will give customers the option of lodging applications electronically. **But please note that phase 2 of the E-registration system will not come into force until the Registrar issues a formal Direction prescribing the procedures for electronic registration. Since a number of technical obstacles remain to be overcome, it may be some time before phase 2 comes into operation.**

Therefore, so far as practitioners are concerned, the main practical changes that will come into operation on 3 October are –

¹ Details of the changes can be viewed on the LPS website (www.dfpni.gov.uk/lps) and an explanatory article is due to appear in the forthcoming edition of Folio.

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). The intention behind this provision is that, in time, Land Certificates and Certificates of Charge will become obsolete.

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 on receipt of the notice of completion of registration.

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 obtain 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 Certificates 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 remains unchanged for any applications where the title is to be Absolute, Good Fee Farm Grant or Good Leasehold.² 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.

² Applications in Form 1 may be made under E-registration phase 1, but it is not currently possible to make applications in Forms 2, 3 or 3A electronically.