



Land &
Property
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Department of
**Finance and
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**REPORT ON THE RESPONSES
TO ‘PROPOSALS FOR LEGISLATION
THAT WILL FACILITATE THE
ELECTRONIC REGISTRATION OF
TRANSACTIONS IN LAND
IN NORTHERN IRELAND’**

**Consultation on proposals for a draft Electronic
Registration (Northern Ireland) Order 2010**

and

**Land Registration (Amendment) Rules
(Northern Ireland) 2010**

January 2010

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1. Executive summary

The Land & Property Services Agency (“LPS”), on behalf of the Department of Finance and Personnel (“the Department”), issued a consultation document “Electronic Registration: Consultation Paper” in early August 2009, putting forward a proposal to introduce legislation, in the form of the Electronic Registration (Northern Ireland) Order 2010 (Order), which will facilitate the introduction and operation of a new method of registering transactions in registered land.

In keeping with the government’s ‘E-business Policy’, which is to conduct government business electronically wherever practicable, the proposals will introduce a new facility that will enable transactions in land to be registered using electronic means as an alternative to paper-based documentation.

It is proposed that electronic registration will be available for those who volunteer to use it, and it will co-exist alongside the current paper-based arrangements for registering transactions which will still be available for those who opt to use them.

These new arrangements will have little effect on the citizen who is buying or selling a property but the arrangements will change how Solicitors interact with LRNI. If they opt to use the new system, they will be able to process registration applications using electronic instead of paper-based documents. Currently, solicitors and other stakeholders are receiving appropriate training in the new processes from the Land Registry of Northern Ireland (“LRNI”), which is now part of LPS

The proposals will bring LRNI into line with other land registries in the United Kingdom and the Republic of Ireland which already provide, or are in the process of providing, some form of electronic registration or e-conveyancing.

This new facility cannot be introduced without a change in the existing legislation, which requires all transactions in registered land to be registered using paper deeds. The proposed legislative changes are therefore enabling and contributory in nature and their objective is to bring about changes in the existing law where it stands in the way of an electronic means for registering transactions in land.

An initial consultation exercise was carried out during 2008, mainly with solicitors, lending institutions and other stakeholders; and this provided very useful responses about the legislative proposals themselves and the practicalities of implementing the new arrangements. Many of the suggestions in these responses were accepted when drawing up the current proposals. These were then subjected to a second consultation exercise, with a full range of consultees, between 10 August 2009 and 30 October 2009.

Responses to the second consultation exercise are generally in favour of the proposals and there is acceptance that electronic registration, when

introduced, has the potential to reduce registration fees and achieve an even quicker throughput of registration applications.

2. Context of the consultation

LPS conducted an initial stakeholder consultation exercise on proposals for electronic registration in May 2008. Following completion of that exercise a number of the initial proposals were amended and a full consultation on the amended proposals was conducted over a 12 week period from 10 August to 30 October 2009.

This was a public consultation and was aimed at customers of LRNI, including lending institutions, landholders, the legal profession and local and central government.

Consultees were asked for their views on proposals to amend existing legislation which provides that all transactions in registered land must be registered using paper deeds.

It is proposed that the amendments to the existing legislation will be made by the Electronic Registration (Northern Ireland) Order 2010 (“the Order”), which will, if it is passed into law, amend the Land Registration (Northern Ireland) Act 1970. It is also proposed to introduce Land Registration (Amendment) Rules (Northern Ireland) 2010, which will make some consequential amendments to the Land Registration Rules (Northern Ireland) 1994.

The Order will be based on section 1 of the Electronic Communications Act (Northern Ireland) 2001 which permits a government department to make an order that will amend existing legislation where this is a necessary step in giving effect to the government’s ‘E-business Policy’.

The proposal will introduce, for those who opt to use it, a new way of registering their transactions in registered land and thereby give them a choice which is not available under the existing legislation.

Those not wishing to use the new arrangements will still be able to use paper deeds to register their transaction in registered land.

Consultees were invited to comment on any issues relating to the proposals and in particular whether:-

- The benefits of electronic registration appear to be reasonable
- Electronic registrations should attract a lower fee since they should be easier and quicker to process
- The proposed enforcement measures in relation to electronic documents are reasonable

- The proposals could have any unintended consequences

A list of the organisations consulted during the second consultation exercise is given in page 34 of the Consultation Paper.

3. Analysis of consultees' comments and the Department's response

3.1 Consultees' comments

It was encouraging to note that most consultees are in favour of E-Registration, and that several welcomed the fact that LPS had taken account of many of the issues raised in the earlier stakeholder consultation exercise.

Nevertheless, some concerns were raised about the issues and are set out below:

- Potential for Fraud
- Compatibility with GB and ROI
- Standard Forms
- Mapping Issues
- Guarantee of Title
- Mandates
- Priority
- Notices of Deposit
- Registration of Undertakings
- Reduced Fees
- Lead-in period
- Single System
- Specific Queries

3.2 Department's response

- Potential for Fraud
A number of consultees expressed concerns about the potential for fraud. The Law Society helpfully pointed out that the Scottish system is considered to have brought about enhanced protection against fraud and suggested that (a) the Registrar should have an overriding discretion to reject questionable documents and (b) that LRNI should maintain a scanned archive of Mandates, to provide an audit trail as evidence of authorisation.

The Department accepts both these suggestions in principle.

- Compatibility with GB and ROI

One consultee proposed that the E-Registration system should be compatible with the systems being developed in GB and ROI.

The Department will endeavour to take account of those systems but there are likely to be constraints arising from the significant differences in Land Law in the different jurisdictions.

- Standard Forms

It was suggested that consideration should be given to a standardisation of the forms used for conveyancing transactions and, in particular that a standardised form of deed for money charges would help to facilitate E-Registration. It was also suggested that (a) applications to register a money charge on the Statutory Charge Register should be simplified so that such charges can be dealt with in a similar manner to money charges in the Land Registry and (b) the current forms for uncertified applications for first registration (Forms 2 and 3) should be reviewed to help reduce the number of defective registrations that are lodged in the Registry.

The Department accepts these proposals in principle.

- Mapping Issues

A number of consultees expressed concerns that the plotting of Land Registry data from old paper maps on to more accurate digitised maps has led to problems about boundary accuracy. Whilst acknowledging that the Land Registration Act (NI) 1970 states that boundaries are not conclusive, the Law Society argued that steps should be taken to address the issue of inaccurate boundaries.

The Department therefore proposes to include provisions in the legislation which would simplify the rectification of boundary discrepancies arising from mapping digitisation.

- Guarantee of Title

Some consultees were concerned that E-Registration might dilute the Land Registry's guarantee of title.

The Department can confirm that the introduction of E-registration is not intended to change the statutory indemnity provisions. Any claim made against the Registry consequential to an E-Registration registration will be handled in the same way as claims arising from a paper registration.

- Mandates

One consultee suggested that (a) mandates should not be general in nature, but should apply to specific transactions and (b) the legislation should state that all corporate bodies have power to grant a mandate.

The Department accepts suggestion (a), but cannot accept suggestion (b) as this could create a situation that the shareholders or stakeholders of some organisations may not desire.

- Priority

One consultee suggested new arrangements for assessing priorities as between electronic and paper transactions.

The Department has considered the experience in other jurisdictions and believes that the existing arrangements should be adequate.

- Notices of Deposit

The Northern Bank and Ulster Bank repeated their concerns about equitable deposits of Land Certificates. The Department has already recognised that the dematerialisation¹ proposal will impact upon the practice of creating equitable deposits of Land Certificates and, following the initial consultation exercise, the Department amended its proposals to try to assist the banks. The current proposals will therefore permit the continuation of the practice of creating equitable deposit mortgages.

The two banks have pointed out that the priority of such deposits will be at risk from subsequent registered transactions unless a Notice of Deposit is registered in the Land Registry, and suggest that this, in effect, makes the registration of such a Notice mandatory. However, this suggestion overlooks the fact that, since 1994, it has been possible to register transactions such as Orders Charging Land, Bankruptcy Orders, Vesting Orders, Matrimonial Charges etc without production of a Land Certificate. If any such transaction were to be registered against land where there is an equitable deposit mortgage, then (in the absence of actual notice) the registered transaction would take priority over the equitable deposit mortgage.

It would seem, therefore, that the practice of taking such hidden mortgages, without registering a Notice of Deposit, has been a high risk practice for some 15 years, and it is not surprising that the majority of mortgage lenders, both in the UK and ROI, have discontinued the practice.

It should be noted that the European Commission Green Paper on Mortgage Credit expressed concern that the registers in some jurisdictions do not reflect all charges affecting property rights; and the European Land Registry Association, in its response, acknowledged that this could have a potential impact on the safety and efficiency of

¹ Dematerialisation refers to the proposal to create electronic Land Certificates and to provide that Land Certificates need not be produced for most applications. This is because a system of electronic registration would be impossible if existing paper Land Certificates had to be lodged with each application. (The legal title to properties is set out in the Title Register and a Land Certificate is merely a copy of the relevant portion of the Register.)

real estate markets. In addition, any system of hidden mortgages results in a lack of transparency which runs contrary to recent developments regarding money laundering and credit-worthiness.

Nevertheless, it appears that there are a number of equitable deposit mortgages still in existence, and the Department proposes to amend Rule 137 to simplify the procedure for the registration of Notices of Deposit and provide that the registration of such Notices will protect the priority of equitable deposits in relation to subsequent charges.

- Registration of Undertakings

The two banks also argued that solicitors' undertakings to deposit a Land Certificate with a bank should be capable of registration in a similar manner to a Notice of Deposit. The Department has some concerns about this suggestion because the nature of undertakings can vary from case to case. For example, if a solicitor gives an undertaking to a bank on behalf of his client, it would appear that the bank would just have a contractual right to a deposit; and such contractual rights are not capable of registration. Alternatively, if a solicitor receives a Land Certificate as agent of a bank, and undertakes to forward it to the bank, then it is arguable that an equitable deposit has been created.

The Department will consider with the Departmental Solicitors Office how Rule 137 might be amended to take account of the latter category.

- Reduced Fees for Electronic Transactions

This proposal arose during the initial consultation, and is under serious consideration at present.

It has also been suggested that Notices of Deposit should be capable of being registered electronically so as to reduce administrative costs and avail of reduced fees (if that proposal goes ahead).

An arrangement for electronic registration of Notices of Deposit is already in place under the initial phase of the scheme (which involves following up the electronic application with paper documentation), and one of the local banks has already processed its equitable deposits using this procedure.

- Lead-in period

The two banks again requested a lead in period before dematerialisation is introduced so that they can arrange to register Notices of Deposit for their equitable mortgage portfolios.

The Registrar is sensitive to this concern and has agreed to consult with the local banks in due course. However, it should be noted that it is now two years since the banks were first informed of the proposals for dematerialisation and that other local banks have already taken

steps to address the issue. In these circumstances it would be difficult to justify a long lead-in period.

- Single System

Two consultees suggested having a single electronic system, including unregistered land, rather than allowing an E-Registration system and a paper-based system to run side by side. However, it was clear from the previous consultation exercise that most consultees would not be in favour of a compulsory E-registration system, which would be necessary for the creation of a single system.

It may be that the suggestion arose from some confusion about the nature of the current situation and how the proposed system will operate. The “live” records of the Land Registry and the Registry of Deeds are already computerised. The purpose of the E-Registration project is simply to give applicants for registration the option of lodging their transactions on-line. Applications that are lodged in the traditional paper-based manner will be scanned into the Landweb computer system on lodgement. Therefore, so far as documentary records are concerned, there will in effect be a single computerised system.

- Specific Queries

The following queries were raised on specific issues –

- Back-up arrangements and contingency plans to cope with the consequences of computer failure. These arrangements are already in place.
- Minimising the risk of Data Protection breaches. These arrangements are already in place.
- Two people attempting to register the same plot of land. Once an application to register a plot of unregistered land is lodged, the Registry will provisionally plot its location on the Registry’s computerised map. So it would be immediately apparent if someone else tried to register the same plot.
- Access to view electronic land deeds. Authorised customers can already view Folio and map information on-line and, since the Land Registry is open to the public, anyone can inspect the Registry’s electronic records on a computer at the customer information centres in Belfast and Ballymena. (This situation will continue following the introduction of E-Registration.)
- Assessment of Human Rights impact as neutral. This query was raised in relation to equitable mortgages as it was suggested that some mortgage lenders will incur costs in identifying, monitoring and registering their equitable mortgages. However, since those equitable mortgages will continue to exist following

the introduction of E-Registration there will be no loss of property rights. In addition, the Department understands that the identification, monitoring and registration of equitable mortgages should already be regarded as good business practice (for the reasons mentioned at 3.7 above).

- Protection of a vulnerable individual's property rights The existing legislation gives the Registrar power to notify registered owners about any applications affecting their land. It is envisaged that, following dematerialisation, this power will be exercised more frequently than at present.

4. Regulatory Impact Assessment and Equality Screening Exercise

This is contained in Annex B (page 20) of the Consultation Paper.

It shows that these proposals will not impose any new regulatory burdens or penalties given use of the new electronic facility for registering transactions in land will be entirely voluntary and given that no additional regulatory burden will be imposed on those who opt to continue to use the current paper based system of registration. The Regulatory Impact Assessment will be signed off by the Minister of Finance and Personnel when the draft Electronic Registration (Northern Ireland) Order 2010 is laid before the Assembly.

5. Outcome of Equality Screening Exercise

This is contained in Annex C (page 26) of the Consultation Paper.

The Equality Screening Exercise revealed that it was not necessary to carry out an Equality Impact Assessment as the policy to introduce electronic registration in Northern Ireland does not have a significant impact on equality of opportunity.

Use of the new electronic facility for registering transactions in land will be voluntary and no one will be under any compunction to use it. Moreover, it will still be possible for those not wishing to use the new facility to continue to use the current paper-based facility for registering their transactions.

None of the responses indicated concern that any of the nine categories of persons as set out in Section 75 of the Northern Ireland Act 1998 is likely to be adversely affected by, or suffer disadvantage through, the introduction of electronic registration in Northern Ireland.

6. The way forward and next steps

The responses to the consultation exercise, which are summarised in this report, will help inform the detailed proposals to amend the Land Registration (Northern Ireland) Act 1970 and the Land Registration Rules (Northern Ireland) 1994 and the development of a draft Electronic Registration (Northern Ireland) Order 2010.

LPS wishes to express its thanks to all those who responded to the consultation exercise and for the valuable comments offered.

7. General

7.1 Additional copies

You may make copies of this report without seeking permission, or by downloading it from the following website:

http://www.lpsni.gov.uk/e-reg_consultation_papers

7.2 Comments and Complaints

If you have any other observations, or wish to make a complaint about the substance or conduct of this consultation exercise, please write to:

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