



Electronic Registration Consultation Paper

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BACKGROUND

The Topic Of This Consultation

This is a proposal by the Department of Finance and Personnel (“the Department”) to amend existing legislation which provides that all transactions in registered land must be registered using paper deeds.

The Department’s proposal will introduce, for those who volunteer to use it, a new way of registering their transactions in registered land and thereby give them a choice which they don’t have under existing legislation.

Those not wishing to use the new way, will still be able to use paper deeds to register their transactions in registered land.

Body Responsible For This Consultation

This consultation is being carried out by Land & Property Services® (LPS), which is an agency of the Department.

Land & Property Services is the government agency responsible for land registration in Northern Ireland. As such, it houses the three land registries. This document however, relates only to the Land Registry. For this reason throughout the remainder of this consultation document we shall refer to Land Registry rather than Land & Property Services.

The Registrar of Titles is statutorily responsible for land registration policy. She is also responsible for the conduct of this consultation exercise.

The Scope Of This Consultation

In 2008, the Department consulted customers’ representatives of Land Registry about the legalities and practicalities of introducing electronic registration and it amended some aspects of its proposal on the basis of the comments received (see “2008 Consultation Report” at Annex A).

The Department is now conducting a broader based consultation exercise in order to get as many views as possible on the potential benefits and costs of the options it has for introducing electronic registration.

The Geographical Scope Of This Consultation

The proposals are applicable to all land in Northern Ireland and, as land registration is a devolved matter, the Northern Ireland Assembly is solely responsible for deciding whether or not to amend the applicable existing legislation concerned.

Impact Assessments

A Regulatory Impact Assessment can be found at Annex B of this document while the result of an Equality Screening Exercise can be found at Annex C.

Basic Information

The Department would like to hear from anyone interested in the land registration process. In particular, we look forward to receiving responses from:

- The legal profession and academics
- The mortgage lending industry
- Local Authorities and other areas of administration in Northern Ireland
- Consumer interests

Duration

This consultation exercise will be of 12 weeks duration starting on 10 August 2009 and ending at 12 noon on 30 October 2009.

Enquiries

All enquiries about this consultation exercise should, in the first instance, be addressed to Philip.Melarkey@dfpni.gov.uk

Telephone: 028 9025 1672 or 07825 146 956

How To Respond

Please send your response on or before 30 October 2009 to:

Customerfeedback.landregistration@dfpni.gov.uk

or to:

Mr. P Melarkey
Land & Property Services
Lincoln Building,
27-45 Great Victoria Street,
MALONE LOWER
Belfast.
BT2 7SL

In handling your response, we need to know whether you agree to your response being made public. Please read about "Freedom of Information & Data Protection" in Section 6 of this document at page 10, before completing and returning the Respondee Information form which is attached to this letter.

After The Consultation

We hope to prepare a report addressing the responses and publish this on our website by 31 December 2009. Copies of, or extracts from, responses may be included in that report unless confidentiality is requested. All enquires not marked confidential will be checked for any potentially defamatory material before being placed on the website. However, the responsibility for any defamatory comments remains with the sender.

PLEASE COMPLETE THE DETAILS BELOW AND ATTACH IT WITH YOUR RESPONSE.

This will help ensure we handle your response appropriately.

RESPONDEE INFORMATION FORM

Surname

First Name(s)

Postal Address

Consultation Title: Electronic Registration – A Draft Order Under Section 1 Of The Electronic Communications Act (Northern Ireland) 2001 And Draft Land Registration Rules.

1 ARE YOU RESPONDING AS? (Please tick **one** box)

An individual (**go to 2a/b**)

On behalf of a group or organization (**go to 2c**)

2a INDIVIDUALS

Do you agree to your response being made available to the public on the website?

Yes (**go to 2b below**)

No, not at all

2b Where confidentiality is not requested, we will make your response available to the public on the following basis (Please tick **one** of the following boxes)

Yes, make my response, name and address **all** available

Yes, make my response available, but **not** my name or address

Yes, make my response and name available, but **not** my address

2c ON BEHALF OF GROUPS OR ORGANISATIONS

Your name and address, as respondees, will be made available to the public and on our website. Are you content for your response to be made available also?

Yes

No

1. THE NEED FOR LEGISLATIVE CHANGE

1.1 Benefits Of Electronic Registration

Land Registry has embarked on a project to introduce an optional system of electronic registration of applications. This work began several years ago and has, from the outset, fully involved representatives of key stakeholders. Research, dialogue and consultation have demonstrated that there is a desire for an electronic alternative to paper registration and that clear benefits can be seen.

In these transactions the existing familiar property deeds will continue to be used but, instead of being on paper, will be in electronic form. These electronic forms will be generated within a secure system maintained by Land Registry and will contribute to a process which will be faster and cheaper than paper registration.

The introduction of electronic registration should assist the Land Registry to enhance electronic service delivery to customers in accordance with both the Modernising Government initiative and the Northern Ireland Civil Service E-business strategy.

Electronic registration is therefore an essential enabler to achieving the goal of making land transactions easier for all, and will see the development of a service which enables the legal profession and mortgage lenders to lodge documents online.

Similar electronic registration systems are being developed in England, Wales, Scotland and the Republic of Ireland.

The development of this service should lead to a number of potential benefits including:

- Reductions in the cost of processing applications, which may lead to reduced fees for customers who opt for electronic registration
- Improved quality of submitted documentation, leading to fewer rejections and less duplication of effort for Land Registry staff and the staff in solicitors practices
- The potential for faster registration
- Reduced storage costs for customers who opt to obtain electronic documents

1.2 Why Legislation Is Necessary

At present the statute law underpinning registration on the Title Register restricts property transactions to paper processes. The Title Register is already in electronic form but the barriers to full electronic registration lie in the means of communicating input to and output from the Title Register. These barriers can be addressed by amending statutory provision requiring certain prescribed transactions to be in writing.

It is proposed to amend those provisions by way of an Order under the Electronic Communications Act (NI) 2001 (“the 2001 Act”).

Section 1 of the 2001 Act permits a Department, by Order, to amend primary legislation for the purpose of authorising or facilitating the use of electronic communications.

1.3 The Effect Of The Proposed Order

It is proposed to leave the law as it stands for the creation of paper deeds but to make an exception to the requirement for paper writing where the deed is in the form of an electronic document.

The expression “electronic document” will be limited to documents created within the electronic environment, and a formally valid electronic document will be valid only for the creation, transfer, variation or extinction of an interest in land.

The changes proposed to any statutory provision requiring deeds to be in writing will apply only to electronic documents submitted for registration within the confines of the electronic system.

However, the consequential changes proposed to the Land Registration Act (NI) 1970 (“the 1970 Act”) and the Land Registration Rules (NI) 1994 (“the Rules”) in respect of Land Certificates and Certificates of Charge will apply to all registrations, not just those submitted through the electronic system.

We are not recommending the abolition of these Certificates but we propose that Land Registry should be able to issue a Land Certificate or Certificate of Charge in electronic format unless an applicant requests a paper Certificate.

1.4 Development Of Electronic Signatures

The measures underlying legal acceptance of electronic signatures, such as the Electronic Signatures Directive (“the Directive”) and the 2001 Act, proceed on the assumption that an effective market in the supply of electronic signatures will develop. Although the technology is tried and tested, a market has yet to emerge in the United Kingdom. We anticipate that the initial stages of electronic registration will use a specially created certification service to issue digital certificates to participating solicitors and lenders. However, it is proposed that the Order will be drawn in terms which allow for future developments which offer a choice of electronic signatures meeting appropriate quality and technical standards.

2. VALIDITY OF ELECTRONIC DOCUMENTS

2.1 Requirements For Formal Validity

It is proposed that electronic documents will require to be authenticated as opposed to being subscribed or signed. This approach is in line with the language of the Electronic Signatures Regulations 2002 (“the 2002 Regulations”) which implement into United Kingdom law the Directive as a Community framework for electronic signatures.

It is further proposed that four conditions must be met if an electronic document is to be authenticated and therefore formally valid.

- (i)** The document must have the digital signature of each person by whom it purports to be executed. “Digital Signature” is a defined term and is discussed below. Otherwise, this is a direct equivalent to the rule for paper documents.
- (ii)** The digital signature must have been created by the true signatory. This replicates the position for written documents; a paper deed bearing a forged signature is not formally valid.
- (iii)** The digital signature must be certified. The meaning of and intended approach to certification are also considered below at 2.3.
- (iv)** The digital signature must have been created in accordance with conditions that the Registrar of Titles (“the Registrar”) will set out in directions. Registrar’s directions are also discussed at 2.4 below.

2.2 Digital Signatures

To maintain the integrity of the Title Register, the electronic signatures used in the proposed electronic system must be at least as satisfactory at demonstrating authenticity as paper signatures. It is intended the standard for the proposed electronic system will be significantly better than that achieved by paper signature.

The definition of “digital signature” will therefore follow the definition of “advanced electronic signature” which appears in the Directive and 2002 Regulations. This definition also includes objective quality criteria (such that the signature must be uniquely linked to the signatory) which will enhance the security of electronic signatures.

2.3 Certification

“Certification” of an electronic signature can be viewed as the functional equivalent to witnessing. It is proposed to carry this meaning of the term into the requirements for formal validity. The 2002 Regulations repeat the definition from the Directive that “certificate means an electronic attestation which links signature verification data to a person and confirms the identity of that person.”

The Directive and 2002 Regulations also have a further definition “qualified certificate.” Such a certificate must comply with the standards set out in Schedule 1 to the Regulations and be provided by a certification service provider which meets the requirements of Schedule 2. A certificate meeting this definition provides a very high level of assurance. We intend that a requirement for qualified certificates will be imposed by Registrar’s directions.

2.4 Registrar’s Directions

To ensure that an electronic document has been created by the true signatory, both the digital signature and the certification must be in accordance with conditions which will be prescribed by Registrar’s directions.

Directions avoid the need for detailed technical specification of acceptable digital signature and certification processes to be included in primary legislation. They are a means of future proofing in areas where standards and availability of appropriate technical solutions are likely to evolve. The approach aims to achieve the correct balance between flexibility and certainty. As discussed in the preceding section, we intend by direction to stipulate that the digital signatures used in the proposed electronic system must be attested by qualified certificates. **Annex D** gives an indication of other conditions and requirements which we anticipate stipulating in the initial Registrar’s direction.

It is proposed that the Registrar will consult with the Law Society before issuing directions.

2.5 Self-Proving Status

It is proposed that, where an electronic document satisfies all the conditions for formal validity, The Registrar shall be entitled to assume that it has been authenticated by the person by whom it purports to be authenticated. The result is to confer on electronic documents “self-proving status” equivalent to that conferred on witnessed paper deeds.

2.6 Authentication On Behalf Of Others

At present most members of the public do not have digital signatures. Accordingly, we anticipate that the proposed electronic system will begin on the basis that solicitors will digitally sign deeds on behalf of their clients, having first obtained the required authority from their clients by way of a mandate. A mandate is really a temporary power of attorney, by which a client authorises a solicitor to sign a specified document on the client's behalf.

At present many deeds executed by corporate bodies are signed by individuals who have been appointed as authorised signatories. It is envisaged that similar arrangements can be made for authorised digital signatories.

3. PROPOSED CHANGES TO THE LAND REGISTRATION (NI) ACT 1970

It is proposed to change the 1970 Act by providing:

- (i) That the proposed electronic system may be rolled out on a phased basis.
- (ii) That a registration application may be made by electronic communication where it is in respect of a type of dealing which is authorised by Registrar's direction and falls within a geographical area so authorised.

Our intention is to roll out the proposed electronic system and work up to full operation across the country as soon as may be practicable.

- (iii) For the publication and making of Registrar's directions regarding both roll-out and electronic authentication.
- (iv) For any consequential amendments necessary to facilitate electronic registration.

4. PROPOSED CHANGES TO THE LAND REGISTRATION (NI) RULES 1994

Changes to the Rules may be made under powers conferred by Sections 85 and 85A of the Land Registration Act (Northern Ireland) 1970.

It is proposed that amendments to the Rules will address the following areas:

- (i) **Electronic Applications.** Permit authorised users to make registration applications using the electronic system and to make provision for the electronic system to capture data and certificates.
- (ii) **Mandates.** Require certificates from solicitors, who lodge electronic documents, confirming that the client authorised the signing by way of a mandate. Although the norm will be that the Registrar will rely on certificates from solicitors, the Registrar may call for examination of the mandate in abnormal cases or by way of a spot check.
- (iii) **Proofs.** Address a number of applications which require the lodgment of proofs to confirm their suitability for registration. In a paper application, these proofs would consist of paper documentation. Since such evidence cannot be submitted electronically, the system will seek confirmation from the user of the existence of the evidence.
- (iv) **Electronic Certificates.** Permit Land Certificates and Certificates of Charge to be issued as electronic documents unless the applicant requires a paper certificate.

- (v) **Lodgment of Certificates.** Provide that the lodgment of Land Certificates or Certificates of Charge will no longer be a requirement for most applications for registration. The current Rules require the lodgment of Certificates for various types of application and thus present a major obstacle to electronic registration. A further problem with the current system is that, since there are several significant exceptions that allow the Title Register to be updated without the Land Certificate being produced, the evidential value of Land Certificates has become greatly reduced
- (vi) **Miscellaneous.** Make a number of minor and consequential changes to the Rules.
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5. CONSULTATION

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

- The benefits appear to be reasonable
 - Electronic registrations should attract a lower fee, since they should be easier to process
 - The proposed enforcement measures in relation to electronic documents are reasonable
 - The proposals could have any unintended consequences
-

6. FREEDOM OF INFORMATION & DATA PROTECTION

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA); the Data Protection Act 1998 (DPA) and the Environmental Information Regulations (2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

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ANNEX A REPORT ON THE INITIAL CONSULTATION EXERCISE ON THE DRAFT ELECTRONIC REGISTRATION (NORTHERN IRELAND) ORDER AND THE DRAFT LAND REGISTRATION RULES

1. RESPONSES FROM CONSULTEES

1.1 Land Registry issued consultation papers on proposals for electronic registration to customers' representatives on 6 May 2008. Land Registry subsequently agreed, at the request of some stakeholders, to extend the consultation period until the end of October 2008.

1.2 Formal responses to the consultation exercise were received from the Law Society of Northern Ireland, the Ulster Farmers Union and the Northern Ireland Co-ownership Housing Association Limited, together with a joint response on behalf of the Ulster Bank and Northern Bank.

1.3 The main issues raised by consultees in their responses related to:

- Vires
- Dematerialisation
- Equitable Deposits and Undertakings
- Retrospection
- Compensation
- E-conveyancing
- Consequences of a computer failure
- Mandates, certification and electronic signatures
- Training
- Non-compulsory scheme
- Priority
- Authorised Dealings
- Mapping
- Phased introduction/lead-in period
- Grantor acting in more than one capacity
- Presumption of authenticity
- Impact Assessment
- Consequential changes

2. RESPONSES TO CONSULTEES' COMMENTS

2.1 Vires

- A number of consultees raised queries about the empowering legislation. It can now be confirmed that the Order is proposed to be made under the Electronic Communications (NI) Act 2001 (“the EC Act”) and the Rules are proposed to be made under the Land Registration Act (NI) 1970 (“the LR Act”).

2.2 Dematerialisation

- Some consultees suggested that using an Order under the EC Act to achieve dematerialisation would be ultra vires if this involved abolishing Land Certificates. However, it is **not** intended to abolish Certificates, and Registered Owners and Charge Owners will still be able to obtain such Certificates. It is intended that, following the introduction of electronic registration, Certificates will be produced electronically, unless a registered owner specifically requests a paper version, rather than by adding information to existing paper Certificates. (It should be noted that 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.)
- The reference to dematerialisation of Certificates, in a Northern Ireland context, amounts to a proposal to amend the Rules, under powers contained in the LR Act, to provide that it will no longer be essential for Land Certificates to be produced for most dealings. This is because a meaningful system of electronic registration would be impossible if any existing paper Certificates had to be lodged with each application.

2.3 Equitable Deposits/Undertakings

- It is recognised that the dematerialisation proposal will impact upon the practice of creating equitable deposits of Land Certificates, and a number of consultees argued in favour of retaining this practice. Accordingly, it is intended that the draft Rules will not prevent the creation of equitable deposits of certificates, but will amend Rule 137 to simplify the procedure for the registration of notices of deposit of certificates and provide that registration of such notices will protect the priority of equitable deposits in relation to registered charges. Also, instead of deleting Rule 128, it is intended to amend that Rule so as to provide that applications for registration, other than notices of deposit of certificates, need not be accompanied by a Land Certificate.
- Some consultees pointed out that there is no mechanism under the proposed system for registering notices of solicitors' undertakings. The other Registries in the UK and Ireland do not operate such a system and it is not proposed to introduce such a system in Northern Ireland.
- It has been suggested that, since equitable mortgages will be unenforceable against a bona fide purchaser for value without notice, the proposed changes to the Rules are at odds with S1 (3) of the EC Act. However, the Rules are to be made under the LR Act not the EC Act and, as mentioned above, the Rules will continue to permit equitable mortgagees to protect their security by registering a notice of the deposit.
- In relation to the two preceding bullet points, the proposed arrangements are intended to be in line with the spirit of the LR Act in keeping trusts and equitable interests off the title. It is not intended that the proposed changes, referred to in the first sub-paragraph of paragraph 2.3, should affect the equitable remedies of an equitable mortgagee vis-à-vis a person who has notice of the equitable mortgage.

- Some of the local banks suggested that, since the process of identifying notices of deposit of Land Certificates and registering them with Land Registry will be costly; Land Registry should waive the fees for the registration of notices of deposits of Land Certificates. However, to do so would mean other Land Registry customers having to subsidise banks, who, as a result of taking equitable mortgages rather than legal charges, had previously avoided the costs of registering those securities.
- Comparisons were also drawn with the fee charging arrangements in the Republic of Ireland. However, the Irish Land Registry's approach to dematerialisation is to abolish Land Certificates entirely, so the two situations are not on all fours.
- Some consultees proposed that, as in the Republic of Ireland, there should be a lead-in period before the dematerialisation of Land Certificates is introduced. The Registrar is sensitive to this concern and intends to consult further with representatives of interested organisations.

2.4 Retrospection

- Some consultees queried whether there might be a retrospective element to the dematerialisation provisions. It is confirmed that the proposals will not mean that existing equitable deposits will cease to have effect. Nevertheless, as a result of the proposals, it is very likely that equitable mortgagees will wish to register notices of deposit in relation to existing equitable deposits in order to protect their priority.

2.5 Compensation

- Some queries were raised about possible changes to the statutory compensation scheme. However, it is not intended that any changes will be made to that scheme.

2.6 E-Conveyancing

- While most consultees were broadly in favour of e-registration, some had concerns that it is intended as a stepping-stone towards the introduction of e-conveyancing. However, although the e-registration system must be able to facilitate any future movement towards e-conveyancing, the Registrar is not aware of any plans for the introduction of e-conveyancing in Northern Ireland.

2.6 Consequences Of A Computer Failure

- Some concerns were expressed that a computer failure could lead to a delay in the lodgment of an urgent application, and a consequent loss of priority. However, since e-registration will be voluntary, applicants will still be able to lodge paper applications if computer problems should arise.

2.7 Mandates/Electronic Signatures/Certifying

- A number of consultees raised queries about how the mandate and electronic signature processes would operate in practice and The Registrar intends to consult further with interested parties on these issues.
- It was also suggested that certification should not precede the execution of an electronic document and this is accepted.

2.8 Training

- Some queries were raised about the pace of training and consultees proposed that there should not be any reduced fees for e-registration applications until all solicitors firms have had an opportunity to be trained in the system. This proposal is broadly acceptable.

2.9 Non-Compulsory

- Some consultees sought an assurance that e-registration would be an optional scheme. It is confirmed that the proposed scheme is intended to be optional and that customers will not be forced to make electronic applications for registration if they would prefer to make paper-based applications. Customers will also continue to be entitled to request paper Land Certificates.

2.10 Priority

- Some consultees queried how lodgment priorities might be affected as between electronic and paper transactions. Experience in other jurisdictions suggests that the existing arrangements should be adequate and it is not intended to change these provisions (which are contained in Rule 33). However, it is intended that the situation will be kept under review in case any difficulties should arise in this area.

2.11 Authorised Dealings

- The Law Society suggested that the concept of ‘authorised dealing’, which is to be determined by the Registrar, would require further consultation and this is accepted. In addition, it is intended to amend the draft proposals to provide that The Registrar will consult the Law Society before issuing Directions.

2.12 Mapping

- Some consultees pointed out that the consultation document is silent about the issue of maps, and sought further information. It is intended that arrangements for electronic registration will be phased in by way of Registrar’s Directions, following discussion with the Law Society, and proposals for mapped transactions will form part of those discussions.

1.13 Phased Introduction/Lead-In Period

- As mentioned above, some consultees requested a phased introduction of e-registration with a lead-in period for changes regarding equitable mortgages and this is accepted.
- Other consultees suggested that electronic registration should await the outcome of the Law Commission’s on-going review of Land Law. This is not acceptable, since the end date for implementation of that review is unknown. However, it is intended that the legislation should be drafted in a manner that permits an element of flexibility, in case the review should lead to relevant changes. In addition, the process of phasing in e-registration by way of Registrar’s Directions will enable the Registrar to take account of developments when preparing Directions.

1.14 Grantor Acting In More Than One Capacity

- Concerns were raised that someone who grants a document in more than one capacity will be deemed to be bound in all such capacities. It is proposed to amend this provision by providing that the presumption will not apply where a contrary intention appears.

1.15 Presumption Of Authenticity

- Concerns were raised about the extent of this presumption and it is intended to clarify this by stating that the Registrar shall be entitled to assume authenticity where the prescribed requirements have been met.

1.16 Impact Assessments

- Some consultees recommended that there should be Regulatory Impact, Equality Impact and Human Rights Impact Assessments and it is confirmed that these are already being arranged.

1.17 Consequential Changes

- It has been pointed out that the proposed amendments to the Land Registration Rules will have an impact upon some other provisions in the Rules which will require amendment. It is proposed to include these amendments in the draft Rules.

ANNEX B REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

The Department of Finance and Personnel (the Department) proposes to take the powers available to it in section 1 of the Electronic Communications Act (Northern Ireland) 2001 (2001 Chapter 9) to make an order that will make provision for the electronic registration of transactions in land.

The title of the order will be Electronic Registration (Northern Ireland) Order 2011.

The Department also proposes to take the powers available to it in sections 85 and 85A of the Land Registration Act (Northern Ireland) 1970 (c.18 (NI)) to make consequential amendments to the Land Registration Rules (Northern Ireland) 1994 (S.R. 1994 No. 424).

The title of these rules will be the Land Registration (Amendment) Rules (Northern Ireland) 2011.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

(i) The Objective

Under existing legislation; namely, the Land Registration Act (Northern Ireland) 1970 and the Land Registration Rules (Northern Ireland) 1994; all transactions in land must be made using paper deeds whereas the proposed order will provide that such transactions may instead be registered using electronic means.

The effect will be that customers of Land Registry will, for the first time, have a choice and will be able to register their transactions in land using either electronic means or paper deeds.

(ii) Background

The proposed order and consequential rules will not impose any new regulatory burdens or penalties. Use of the electronic system will be voluntary and no additional regulatory burden is imposed on continued usage of the existing paper registration process. The economic and practical impacts for the persons and organisations with interests in the system are described below.

Also, Officials have considered all the evidence available and have concluded that there will not be any adverse differential impact upon any of the nine Section 75 categories and therefore this policy has been screened out.

(iii) Risk Assessment

Under existing legislation, all transactions in land must be registered using papers deeds. This means that customers of Land Registry do not have any choice but to use paper deeds which are time consuming and expensive to process.

The changes will lead to cheaper, faster and more accurate registration, all of which benefit the public involved in property transactions. It is intended that registration fees for applications processed through the system will be cheaper. Although not the largest component in the overall cost of a conveyancing transaction, registration fees are nonetheless a significant part of the overall bill.

Members of the public who are involved in conveyancing and remortgage transactions will continue to deal with the solicitor (or independent licensed conveyancer) conducting the transaction and their chosen lender in the same way as at present. The only practical difference will be that instead of signing paper deeds they would, at least until citizen electronic signatures become common, be signing a paper mandate which authorises the solicitor to digitally sign the electronic documents on their behalf.

3. OPTIONS

There are three options, namely:

Option 1. Introduce the electronic registration of land transaction on a compulsory basis.

The Department considered this option but ruled it out on the grounds that not everyone in Northern Ireland has access to, or uses electronic systems in their course of business.

Option 2. Do nothing.

This is the do nothing option. If the existing legislation is not changed, customers of Land Registry would not have any choice when it comes to registering their transactions in land. They would continue to pay expensive fees and experience unacceptable delays in the process.

While the Department considered this option, it ruled it out on the grounds that retaining the present paper-based arrangements for all registrations, would be contrary to government policy which is to introduce, wherever practicable, electronic methods of doing business.

Option 3. Introduce electronic registration on a voluntary basis.

The Department decided to go with this option as it will mean that customers of Land Registry will be able, for the first time in Northern Ireland, to select a means of registration which suits them best.

Under existing legislation and registration arrangements, customers do not have any choice when it comes to registering their transactions and they have no option but to use paper-based deeds.

The new arrangements will allow customers to choose either electronic or paper-based means when registering their land transactions.

In going for this option, the Department is also complying with government policy which is to introduce, wherever practicable, electronic methods of doing business.

4. BUSINESS SECTORS AFFECTED

Solicitors

- 4.1** The development of the system has taken place in discussion with the legal profession. In addition to contact with the Law Society of Northern Ireland, Land Registry has delivered presentations on, and discussed the proposal with, local Solicitors' faculties throughout the country. Whilst not all firms will wish to use the system, most are enthusiastic. The interest in using it does not appear to bear a correlation to the size or location of firms. Large city firms handling high volumes of work see advantages in an electronic process but equally practitioners in smaller rural firms have made the point that the electronic process levels the playing field. All participant firms are on the Registrar's electronic doorstep regardless of physical distance and the variances in postal and legal document exchange services around the country.
- 4.2** Use of the system requires a user solicitor to have a PC with internet access. Indications are that these are now normal business tools for most conveyancing practitioners – for example the Council of Mortgage Lenders Handbook, which is an essential reference for residential conveyancers, can now only be accessed online. The system will be free standing and not introduce any compulsion to operate case management or other in-house systems. There may be some cost to having a digital suitable for the system. This cost is intended to be small and should be fully covered by the savings in postage and like costs resulting from use of the electronic system.

Mortgage Lenders

- 4.3** A major benefit for lenders is that the changes proposed in the Order will mean that there is the choice as to whether paper Land Certificates and Charge Certificates are issued. At present lenders routinely hold paper certificates of title for all the properties they hold loans over. This involves maintaining large Deeds Stores, which are expensive to run.
- 4.4** Paper certificates of title are sent by the solicitor to the lender at the completion of each transaction and usually need to be borrowed back from the lender before the next transaction can advance. This involves administration for both lenders and solicitors and can delay later transactions by the borrower. The delays in moving paper deeds packets around, and occasional loss and damage to these, are also a source of dissatisfaction to lenders, solicitors and borrowers. Consultation and discussion with the lending industry makes it evident that lenders look forward to a future in which they do not handle paper deeds at all. The major lenders operate in a very competitive market and are keen to realise any advantage which may enable them to provide better loan products to the public.
- 4.5** In a digital environment, electronic data feeds to lenders' back office systems, can enable automatic confirmation to the lender within a few days of loan funds being released that a valid charge is in place to secure the loan. In contrast, with paper deeds, months may pass between release of funds and ultimate receipt of a deeds packet including the registered standard security. During this period the lender is unsure whether they have effectual security and may be unaware of irregular transactions. This long time lapse can be exploited by fraudsters. The speed of the electronic process will make it easier to identify and track mortgage fraud.

Land & Property Services (LPS)

- 4.6** Substantial benefits to LPS arise from being able to accept direct digital input of verified data. Registration accuracy will be improved and removing paper-handling gives substantial administrative savings. The system should result in a reduction in the number of staff required to administer these transactions. It is anticipated that introduction of the system will both allow LPS to reduce registration fees and also permit some re-deployment of resource from processing of routine dealings.

Small to Medium Size Enterprises

- 4.7** Many conveyancing law practices will fall within this head. The impact on these firms is discussed at paragraphs 3 to 5 above. Beyond that, the System is not anticipated to have any significant consequence for small to medium sized enterprises.

5. COSTS

(i) Compliance Costs

As far as customers of Land Registry are concerned, there should not be any increase in costs and in any event, the new arrangements will be entirely voluntary and no one will be under any compunction whatsoever to use the new electronic means to register their transactions in land.

(ii) Other Costs

There should not be any costs imposed on society generally or on the environment as a result of the introduction of electronic registration.

(iii) Costs For A Typical Business

In this particular context, a firm of solicitors which uses Land Registry would be a typical business.

There should not be any increase in costs for typical businesses since electronic registration can be operated from their own existing systems.

In the longer term, Land Registry will consider the possibility of reducing the cost of registrations if it transpires that applications using electronic-based means can be processed more cheaply than ones that involve paper deeds.

6. CONSULTATION WITH SMALL BUSINESS

Those small business interests, which are existing customers of our land registration service, were consulted during 2008 about these proposals (see Annex A).

Land Registry is also providing a programme of training in the new processes and procedures for solicitor firms and their staff.

7. ENFORCEMENT AND SANCTIONS

The proposed legislation will be enforced by LPS which, amongst other things, may call for examination of mandates in abnormal cases or by way of a spot check (see section 4 (iii) of the consultation document).

It is unlikely these proposals will impose additional costs on other Departments.

8. MONITORING AND REVIEW

In the first year of operating the new arrangements, all incomplete or incorrect applications will be reported to applicants. If this reveals that further guidance is necessary, LPS will carry out a review and issue further guidance to address the specific issues revealed by the monitoring process.

9. CONSULTATION

All government departments in Northern Ireland are being consulted about these proposals as will all Local Authorities and any public body which is a customer or potential customer of Land Registry.

This is the second and final phase of consultation for these proposals. In the first stage, which ran from May to October 2008, stakeholders (solicitors, banks and the like) were consulted. The responses received in response to that consultation helped the Department develop its proposals further (see Annex A to the consultation document).

The list of consultees is shown in Appendix 1.

10. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed _____

(N.B. This remains unsigned until the legislation is submitted to the Assembly)

Date _____

ANNEX C OUTCOME OF EQUALITY IMPACT SCREENING EXERCISE

Brief description of policy to be screened:

The policy is to introduce in Northern Ireland, a facility whereby certain prescribed transactions in registered land may be registered using electronic instead of paper deeds.

Use of the new facility will be on a voluntary basis and no one will be under any compulsion to use it.

It will still be possible for those not wishing to use the new facility, to register the transactions concerned using paper deeds.

Legislation is required to implement the policy given the current applicable law, particularly, the Land Registration Act (Northern Ireland) 1970 and the Land Registration Rules (Northern Ireland) 1994, provides that transactions of this nature must be effected by deed or instrument in writing.

Aims of Policy To Be Screened

These are to facilitate the introduction of electronic registration and thus bring the Land Registry into line with other registries in the United Kingdom and Republic of Ireland, which have already moved in this direction.

It is anticipated that, in addition to providing an enhanced service to Land Registry customers, electronic registration will provide the following benefits to Land Registry:

- Reduce the number of defective registration applications
- Reduce the number of paper deeds or land certificates (LCs) by removing the need to lodge LCs with applications for registration
- Reduce the potential for fraud
- Bring down the administrative costs of maintaining within Land Registry, thousands of paper LCs
- Reduce the staffing and other costs associated with inputting and/or scanning paper LCs onto the Landweb System
- Reduce the cost of postage and other consumables associated with paper LCs

Land Registry is the Business Unit responsible for devising and delivering this policy. There are not any linkages to other Northern Ireland Departments or Non Departmental Public Bodies in relation to this policy.

On Whom Will The Policy Impact?

Although it will impact on all who wish to register certain transactions in registered land, the greatest impact will be on solicitors, banks and other lending bodies.

Who Will Implement The Policy?

Land Registry will be responsible for implementing this policy.

Equality Screening Analysis

In order to determine whether an Equality Impact Assessment is necessary, departments are required to screen new policies for significant equality issues.

The policy to introduce electronic registration in Northern Ireland was screened and it was concluded that it does not have a significant impact on equality of opportunity.

As the policy does not have a significant impact on equality of opportunity, it is not necessary to complete an Equality Impact Assessment.

The Legal Background

Section 75 Of The Northern Ireland Act 1998

This requires the Department to have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- Between men and women generally
- Between persons with a disability and persons without
- Between persons with dependants and persons without

Without prejudice to the obligations set out above, the Department is also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Human Rights Act 1998

This gives legal status in UK law to fundamental human rights set out in the European Convention on Human Rights (ECHR). The Act is about respecting and fostering the Convention Rights in everything we do. Public bodies now have a statutory duty to ensure that their decisions and actions are compatible with ECHR and to act in accordance with these rights. What is more, we need to be pro active in ensuring that we comply with our obligations and ensure that we develop a human rights culture. The Act gives people a right to redress in a UK court if they think that their human rights have been violated by a public authority.

Disability Discrimination Act (1995) (DDA)

Under the most recent amendment of the 1995 Disability Discrimination Act, which came into effect in January 2007, public authorities, in all areas of their work must now consider how to promote positive attitudes towards disabled people and encourage participation by disabled people in public life.

The following is the outcome of the policy screening.

1. PARTICIPATION/UPTAKE

1.1 As indicated in the following table, there is not any evidence of higher or lower participation or uptake by different groups.

CATEGORY	YES	NO	DON'T KNOW
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

Evidence as to participation by these particular categories is inapplicable in this case given users of the new registration facility will do so in the capacity as an employee or representative of a firm of solicitors/lending institution and not as an individual.

1.2 As indicated in the following table, there is no evidence that different groups have different needs, experiences, issues and priorities in relation to this particular policy.

CATEGORY	YES	NO	DON'T KNOW
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

Evidence as to the needs, experiences, issues and priorities of these particular categories is inapplicable in this case given users of the new registration facility will do so in the capacity as an employee or representative of a firm of solicitors/lending institution and not as an individual.

- 1.3** As the table below indicates, there isn't an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in Government or in the larger community.

CATEGORY	YES	NO	DON'T KNOW
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

The policy will apply equally to all who use electronic registration which will introduce a quicker means of registering transactions in registered land and as such, will not have any obvious affect on these particular categories within a community.

- 1.4** Equality Commission guidance states that the screening process should include pre-consultation with those that may be affected by the policy.

Pre-consultations took place during 2008 with relevant groups and organisations and as the following table indicates, the policy does not create problems which are specific to any of the categories listed therein.

CATEGORY	YES	NO	DON'T KNOW
Gender		X	
Sexual orientation		X	
Religion		X	
Political opinion		X	
Disability (physical and learning)		X	
Race or ethnic origin (includes Travellers)		X	
Age		X	
Dependant responsibilities		X	
Marital status		X	

A consultation exercise was carried out from May to October 2008 with organisations representing Land Registry customers.

The specific problems they highlighted concerned the legalities and practicalities of applying the policy/legislation and none highlighted or indicated any problems that were specific to any of these particular categories.

The consultation exercise was aimed at these particular stakeholders given they are most likely to be affected by electronic registration.

Under the Land Registration Act (Northern Ireland) 1970, Land Registry must also consult the Land Registry Rules Committee (a statutory committee chaired by a High Court Judge, with members drawn from both branches of the legal profession), about any proposed legislative changes. This will be done once the draft legislation has been checked by the Departmental Solicitors Office.

3. EQUALITY IMPACT ASSESSMENT

Equality impact assessment procedures are confined to those policies considered likely to have significant implications for equality of opportunity.

As this screening exercise indicates that the policy will not have any significant implications for equality of opportunity, it is considered unnecessary to submit it to a full equality impact assessment.

4. DISABILITY DISCRIMINATION

4.1 It is considered that the policy does not in any way discourage disabled people from participating in public life or fail to promote positive attitudes towards disabled people.

4.2 The policy applies equally to all who will use the electronic registration facility it will introduce.

4.3 Moreover, the arrangements to be introduced by the policy, namely electronic registration, will be voluntary, and applicants for registration will still be entitled to apply under the existing paper-based arrangements.

5. CONSIDERATION OF HUMAN RIGHTS

5.1 As the table below indicates, this policy will not affect anyone's Human Rights.

ARTICLE		POSITIVE IMPACT	NEGATIVE IMPACT=human right interfered with or restricted	NEUTRAL IMPACT
Article 2	Right to life			X
Article 3	Right to freedom from torture, inhuman or degrading treatment or punishment			X
Article 4	Right to freedom from slavery, servitude & forced or compulsory labour			X
Article 5	Right to liberty & security of person			X
Article 6	Right to a fair & public trial within a reasonable time			X
Article 7	Right to freedom from retrospective criminal law & no punishment without law			X
Article 8	Right to respect for private & family life, home and correspondence			X
Article 9	Right to freedom of thought, conscience & religion			X
Article 10	Right to freedom of expression			X
Article 11	Right to freedom of assembly & association			X
Article 12	Right to marry & found a family			X
Article 14	Prohibition of discrimination in the enjoyment of the convention rights			X
1st protocol Article 1	Right to a peaceful enjoyment of possessions & protection of property			X
1st protocol Article 2	Right of access to education			X

ANNEX D

MATTERS FOR CONSIDERATION IN A DIRECTION ON ELECTRONIC SIGNATURE

The details of the content of the initial Registrar's direction setting a standard for acceptable electronic signatures has yet to be determined. The outline below will however give an indication of the types of conditions and requirements which are likely to be stipulated by Registrar's direction.

To qualify for conferring formal validity an electronic signature must meet the proposed statutory definition of "digital signature" (i.e. be an advanced electronic signature) and

- a.** Comply with X509 version 3. This is a UK Government technical standard.
- b.** Be attested by a qualified certificate within the meaning of the Electronic Signatures Regulations 2002.
- c.** Be provided by a certification service provider (CSP) meeting the standard of t-Scheme, which is a UK voluntary certification scheme for CSPs which gives a good benchmark of quality.
- d.** Be bound to the holder in an identification process at minimum meeting level 2 in HMG's Minimum Requirements for the Verification of the Identity of Individuals. This is a UK Government standard.
- e.** Be created under a certificate issued by a provider having policy and capability of processing all instructions for revocation in under 24 hours.
- f.** Be created by a private key encrypted to at least 128 bit encryption.
- g.** Employ a hashing algorithm no less satisfactory than SHA-1. SHA-1 is a commonly used and satisfactory approach to hashing.
- h.** Not be subject to any limitation preventing use for authentication of conveyancing deeds and certification of stamp duty land tax returns.
- i.** Be created under a certificate issued under policy, contractual and reliance documentation which contains no exclusion or limitation of liability clauses inappropriate to the reliance placed on conveyancing deeds, land registration applications and tax returns.
- j.** Not be created under a certificate issued under policy, contractual or reliance documentation including choice of law or prorogation of jurisdiction clauses serving to refer Northern Ireland land law and property registration issues to the courts or legal system of a jurisdiction other than Northern Ireland, or to refer SDLT issues to the courts or legal system of a jurisdiction outwith the United Kingdom.

APPENDIX 1

LIST OF CONSULTEES

- All Government Departments in Northern Ireland
- Local Authorities in Northern Ireland
- Law Society of Northern Ireland and local Solicitors' Associations
- Council of Mortgage Lenders
- Bar Council
- Northern Bank Limited
- Ulster Bank Limited
- Bank of Ireland
- First Trust Bank
- Royal Institute of Chartered Surveyors
- General Consumer Council for Northern Ireland
- Northern Ireland Chamber of Commerce and Industry
- Institute of Professional Legal Studies
- Queens University of Belfast School of Law
- Northern Ireland Law Commission
- Land Registry Rules Committee
- Institute of Directors (Northern Ireland)
- Northern Ireland Housing Executive (Legal Department)
- Northern Ireland Co-Ownership Housing Association Limited, Legal Department
- Departmental Solicitor
- Assembly Committee for Finance and Personnel
- Members of the Northern Ireland Assembly
- Ulster Farmers Union