

Explanatory Memorandum to the Land Registration Rule Committee

Draft Land Registry Fee Order 2003

Brief background

Terms used

1. In this Explanatory Memorandum, the following terms have the meaning indicated-

“the Act”	the Land Registration Act 2002
“the old Act”	the Land Registration Act 1925
“the Rules”	the Land Registration Rules 2003
“the existing order”	the Land Registration Fees Order 2003

2. The Rule Committee was established under section 127 of the Act.
3. One of its functions under section 102 of the Act, is to give advice and assistance to the Lord Chancellor on (a) the prescribing of fees, and, (b) the making of provision about their payment.
4. As well as the need for the advice and assistance of the Rule Committee in paragraph 2. above, section 102 also requires Treasury consent.
5. The need to obtain the advice and assistance of the Rule Committee, and the consent of the Treasury, preserves the current procedure.
6. The Land Registry, a Government Department in its own right, is also a Trading Fund. Trading Funds were introduced by the Trading Funds Act 1973. They makes no call on moneys voted by Parliament, the traditional means of financing the work of Government Departments. Instead, the trading fund status means that the Land Registry is required to ensure that income from fees is sufficient to cover all of its expenditure. Its fee receipts are paid into the trading fund and payments made out of it without the need for further parliamentary authority through annual Supply Estimates. Trading Funds do not have to surrender surplus cash to the Consolidated fund. Financial control is exercised by setting a return on capital employed, currently 6%, as a dividend and through budgetary procedures.
7. Fee changes are made to adjust the projected financial position of the Land Registry and so ensure that its targets are met. In recent years, the increase in the Land Registry’s productivity and efficiency, combined with the increasing property market, has meant that fees have needed to be adjusted downwards, rather than upwards.

8. This has been the principal reason why, in the recent past, the Rule Committee has not met to consider changes to Land Registry fees. The proposed orders have, instead, been dealt with by way of correspondence, with committee members endorsing their consent, and any comments, on the drafts sent to them. Any proposed changes to fees involving reductions are uncontentious, and so have lent themselves to this accelerated procedure.
9. The proposed fee order, whilst preserving the overall level of fees (see paragraph 12 below), introduces fees for a substantial number of new and revised services and it is clearly appropriate for the new committee to meet to consider the proposals. It may, of course, be possible in the future revert to a correspondence protocol for a future proposed order the main effect of which is to reduce fees.
10. There is a need for a totally new order, rather than a supplemental one dealing with new and revised services, because the existing one will fall with the repeal of the old Act. This in turn means that without a fee order made under the Act, the Land Registry would have no authority to charge fees and therefore no way, under its trading fund status, of raising income to cover costs.
11. Fees for all services under the old Act are currently contained in the existing order which came into effect as recently as 1st March 2003. It had been drafted and indeed approved by the previous Rule Committee more than twelve months ago. The Treasury were slow to give their approval.
12. Because of this, it had been felt necessary to give Treasury early sight of these proposals. It has given a provisional indication of its general acceptance of the principles. As already stated, the broad fee structure remains in place. Treasury's principal concern is that any fee setting closely conforms to its *Fees and Charges Guide*, which supplements its guidance on fees and charges contained in *Government Accounting*, issued by the Treasury to all Government departments.

ANNEX A

The proposed order

The name

13. The proposed order is headed "the Land Registration Fee Order 2003" to distinguish it from the existing order (the Land Registration Fee Order 2003) and to avoid any technical difficulties of calling it a (number 2) order. This is the conventional terminology when there are two such orders in one year. However, it would probably be incorrect to call this a (number 2) order given that the proposed order is being made under different legislation to the existing order.

The preamble

14. Reference to section 128 of the Finance Act 1990 has been removed. This is a provision relating to the refund of fees. It no longer has any relevance because, firstly, the provision only applies to Acts in force when the Finance Act 1990 was passed – clearly inapplicable to the Act, and, secondly, because it provides for repayment to be made into the Consolidated fund – inappropriate for a Trading Fund – see paragraph 5 above. Reference to it should have been removed before now.

Article 1

15. Contains the definitions used in the order and in particular is designed to ensure conformity with the Act and the Rules. Please also see the specific comment in paragraph 20 below in relation to the definition of “rent”. Where possible, the proposed order has removed references to local definitions (those contained in and relevant to specific articles).

Article 2

16. Contains the fees for first registration applications and new leases created out of registered land. Although the overall structure remains unchanged, it brings in fee assessment for first registration of title to profits and franchises. The proposal is that the fees for these should be based on the value of the estate being registered and so they are brought into the fee table (scale 1) contained in schedule 1 which is the existing scale of fees for first registration applications. However, the twenty five per cent discount on fees for voluntary applications for first registration of title to land that currently exists, is not proposed to be extended to profits and franchises. The rationale behind the existing discount, is of course, to provide an incentive to people to register their title to land and hence accelerate the completion of the land register. This consideration does not apply in the same way to profits and franchises.
17. There are, however, two substantive changes to the calculation of fees for leasehold applications, driven partly by a change in the legislation and partly by adverse public comment. Firstly, if you compare the fee assessment in the existing fees order (article 2(2)) you will see that it is currently calculated on a value based on the premium plus ten times the rent. This is not an issue under the old Act where only leases over twenty one years are substantively registrable. The position under the new Act, where leases of over seven years must be registered, renders continued use of the formula unjustifiable. We therefore propose simplifying the assessment to one of value based on the combined sum of the premium and the rent, not ten times the rent.
18. Secondly, we propose changing the definition of “rent”. The definition in the existing order is contained in article 2(2). It is currently, “the largest ascertainable amount of annual rent reserved by the lease”. Adverse comment has shown this can sometimes dramatically and unjustifiably increase the fee payable. There seems to be something of a trend, in long residential leases where there are a number of units contained in a

development, to fix the lease, in tranches, over the whole term. For example, in a 125 year lease, the rent may be fixed, at £1,000 for the first twenty five years, then £5,000 for the next twenty five, and so on, rising to, say, £20,000 for the last twenty five years. You can see that, on the existing formula, where a substantial amount is also paid as a premium for the lease, the “ten times the rent” formula greatly increases the fee payable. The Chief Land Registrar has pledged, in correspondence with solicitors who have pointed to the anomaly, to review this. The result is the proposed new definition of “rent” (contained in article 1), as the largest amount of annual rent the lease reserves within the first five years of its term that can be identified at the time an application to register the lease is made.

Article 3

19. Contains the basis for fee charging where the application is a transfer for value of registered land. As with first registration applications, the fee is assessed on the scale 1 table, based on the value of the land. Value is assessed with article 7 (see paragraph 22 below). There are no changes to the existing order other than to take account of the substantive registration of profits and franchises, so the article refers to registered *estates*, rather than registered *land*.

Article 4

20. This also contains the basis for fee charging for transfers of registered land. But this article applies when the transfer of registered land is not for value. The article uses scale 2 in Schedule 2 as the basis for assessment. Other than the references to *estate* rather than to *land*, there are no changes.

Article 5

21. Deals with the fees where applications relate to the registration of charges. The fees are again assessed using scale 2 and basing the value on the amount the charge secures. There is an important concession, carried forward from the existing order (paragraph 5(2)) no separate fee is payable for registration of a charge where the application is accompanied by an application to register a new proprietor. The vast majority of the many such cases, and the most common example, is when a new owner applies to register the transfer to himself following his purchase and applies at the same time, or before his application has been completed, to register a charge over the property. There are no changes.

Article 6

22. Deals with “big” applications. They are either first registration applications where the area of land exceeds 100 hectares (“large area applications”), or applications –for first registration or applications where the land is already registered – involving at least 20 separate parcels of land (“large area applications”).

23. When dealing with a large area application, if the registrar thinks the costs of dealing with the application will substantially exceed the scale 1 fee, he can direct payment of an additional fee up to the excess costs of the work involved (article 6(3)).
24. The fee for a large scale application is either the appropriate scale 1 or 2 fee, or where there are 500 or fewer separate land parcels, £10 for each land parcel, where there are more than 500 parcels, £5,000 plus £5 for each parcel over the first 500 up to a maximum fee of £40,000. There is an exception to this formula, (low value applications) which applies to applications where the value of the land or charge the subject of the application is £30,000 or under. Such a case may otherwise cause hardship where the registration fee could cost as much, or even exceed, the transaction cost. Examples of such applications could be bulk transfers of rentcharge titles or freehold reversions where the rentcharge or annual rent of each title is very low.
25. There are no changes, except, firstly, a slight amendment to the definition of “large area application”, to take account of the possibility that some franchises and profits may amount to large area applications and therefore qualify for payment of the additional fee (6(1)(a)). Secondly to make it clear that large area applications also qualify for the 25% voluntary discount (6(4)).

Article 7

26. This article combines articles 7 and 8 in the existing order. There seems to be no real reason to have to refer to separate articles dealing with valuation dependent upon whether the land is registered or not. In addition, reference to applications made within a year of sale, appearing in article 7(1) of the existing order, has been removed. In its place, similar instructions will be issued to staff to apply substantially the same criteria as appear in the existing order. In the vast majority of cases value will mean the consideration given in the transfer which does not change the current position in any way.

Article 8

27. This is article 9 in the existing order. There are no changes.

Article 9

28. This provides for the fixed fees contained in schedule 3 (see paragraph 38 onwards). There is one addition, which is in relation to applications to determine the exact line of a boundary. This addition allows the registrar to seek payment of an additional fee to the fixed fee such applications are proposed to attract where the cost of the work involved in dealing with an application would substantially exceed the fixed fee. It also allows the applicant to withdraw the application in the event of the registrar giving such a notification, in which case no fee is payable (paragraphs 9(4) and (5)).

Articles 10 and 11

29. There are no changes to articles 11 and 12 of the existing order which these two articles replace.

Article 12

30. This replaces article 13 in the existing order. The only change is to add *surveys* to the heading and as a specified item in the body of the article. It has been added because surveys are the single largest “special enquiry” in volume the Land Registry undertakes. They are, for example, invariably undertaken when an application is made for the registration of title based on adverse possession.

31. Article 14 of the existing order has been removed (fixed boundaries) because there is a new procedure for dealing with the determination of boundaries – see paragraph 49 below.

Article 13

32. The wording of this article is unchanged from that in article 15 of the existing order.

Article 14

33. This article (article 16 of the existing order) provides methods of payment of fees. It refers to orders payable to *the Land Registry* as opposed to “H.M. Land Registry”, to tie in with the wording in the Act. In addition, (paragraph 14(4)) it makes provision for the payment of fees by direct debit where there is an agreement and where the registrar permits. This follows the formula contained in rule 207(1)(c)¹ of the Rules. The Land Registry intends to undertake a pilot scheme with a number of its major customers in the autumn to determine the feasibility of payment by direct debit. There are no other changes.

Article 15

34. This article (article 17 of the existing order) provides for the operation of credit accounts. There are no substantive changes.

Changes

35. The detail of the changes can be found in the following paragraphs which explain the effect of each article, but it is thought helpful to have a summary explaining the broad thinking behind the proposals.

¹ 207(1)(c) “a fee order made under section 102 of the Act and sections 2 and 3 of the Public Offices Fees Act 1879 permits, where there is an agreement with the registrar payment by direct debit of the fee for the matter ..”

- No substantive changes to fees for unaltered services – last altered with effect from 1st March 2003
- New and revised registration services receive treatment analogous to closest existing services
- Fees for new types of first registration applications - profits and franchises - are based on the value of the estate being registered, just as currently with first registration of land applications
- Fees for other new substantive applications are broadly based on their anticipated cost to the Land Registry for dealing with them having regard to existing fees and services
- Fee exemptions for clerical and some other amendments of the registers, to keep them up to date, are extended
- The new order follows the basic structure of the existing one, but is simplified and put into plainer English

36. Each main numbered paragraph in a fee order is called an article, and there follows a summary of the effect of each article and the four schedules – where there are changes – it contains

Schedules 1 and 2

37. There are no changes.

Schedule 3 Part 1

38. As with the existing order, this contains the fixed fee applications. Only changes or additional items are referred to in this memorandum.

39. References to cautions and inhibitions have been removed. There is no provision for their continuance under the Act.

40. The registration of a new or additional beneficiary of a unilateral notice (paragraph (1)(c)). This is a new service – see rule 88 of the Rules. A fee for it has been added to this part of the order as the most appropriate place. The proposal is that such an application will attract a fee of £40 for up to three titles and £20 for each subsequent registered title as with the current services under this part of the order. This formula replicates that in the existing order, for the registration of notices, restrictions etc (paragraph (1) of the existing order).

41. Also note in paragraph (1)(a) the addition of the words “standard form”, to “restrictions”. This means a restriction in a form set out in Schedule 4 to the new rules. The existing fee and structure remains for the standard form restriction.
42. A non standard form restriction is dealt with under paragraph (2) of the proposed order. The proposal is to charge a fee of £80 for each application to register a restriction in a non standard form. The rationale here is that consideration of a non standard restriction is known to be time consuming and must be dealt with at a senior level. It would therefore be inappropriate to charge the same fee for such a restriction.
43. Applications to register cautions against first registrations under paragraph (3) receive specific treatment for the first time. They were taken to appear in paragraph (1) of the existing order as a type of “caution”. The fee is unchanged. However, it is now, of course, possible to alter a cautions register (paragraph (4)). This is a new service. It is introduced in rules 50 and 51 of the Rules. A fee of £40 has been set for such an application. Alteration is not expected to be any more or less costly than with other sorts of £40 fixed fee applications.
44. There is no longer any reference to applications in relation to land or charge certificates (paragraph (4) of the existing order). The new Act makes no provision for the issue of such certificates and this service is therefore rendered moribund.
45. Paragraph (8) – the entry or removal of a record of a defect in title – is a new service, see section 64(1) of the Act. Please see comments in paragraph 43 above for the rationale behind the fee setting at £40.
46. Another new service introduced under the new Act is a provision enabling an application to be made for the registrar to make an order either disapplying a restriction or that it has effect with specified modifications (section 41(2) of the new Act). The proposed fee is also £40 for the reasons given in paragraph 43 above.

Fees for applications in relation to adverse possession of a registered estate

46. The provisions in relation to adverse possession of a registered estate have, of course, changed substantially. Based on our experience of the current procedures, applications will be time consuming and will invariably need to be dealt with at a senior level. As mentioned in paragraph 32 above, a survey is always undertaken and the £40 fee requisitioned at that time. The new application fee (paragraph (11)), set at £100, takes account of the need to survey and removes the need for a separate fee requisition. Currently all adverse possession applications are treated as applications to which scale 1 applies. Given that the value of the land is almost invariably under £50,000, this means the current minimum fee of £50 only is payable. In view of the factors mentioned above it seems right to increase the fee for this new service – a

radically altered procedure where adverse possession is against a registered estate (paragraph 11). In the case of an unregistered estate the existing fee structure (and the existing procedure) remains in place.

48. A new provision (see rule 194 of the Rules) entitles a person to be notified of an application for adverse possession. The proposed fee (paragraph (12)) for this service has been set at £40 for the same reason that the other new services already mentioned have been set at that fee.

Determination of an exact line of a boundary

49. This, too, is a new service introduced under the Act (and see rule 118 of the Rules). The proposed fee (paragraph (13)) has been set at £80 to take account of the fact that a substantial amount of work (in the main, plans work) at a senior level will need to be undertaken to ensure that an application is in order, and then to give effect to it. This is the reason why article 9(4) contains a provision enabling the registrar to charge an additional fee if the cost of the work in dealing with an application substantially exceeds the £80 fee – see paragraph 30 above.

Schedule 3 Part 2

50. Paragraphs (1)(d) and (e) have been added to take account of the fact that it will be possible to inspect cautions registers and caution plans. The inspection fees proposed are the same as those for inspections of registers and plans.
51. Paragraphs (2)(d) and (e) are identical to those services mentioned in paragraph 50 above, but where inspection does not take place electronically. The proposed fee setting is the same as for the existing services in paragraph (2).
52. Paragraph (4) is the new facility to obtain official copies of caution registers and the proposed fee structure is the same as for registered titles, namely, £4 if a paper copy, £2 if an electronically obtained copy.
53. Paragraph (6) reflects the fact that copies of charges and leases referred to on a register, or other documents kept by the Land Registry, where the document in question was lodged or filed at the Registry before 13 October (transitional period documents – see rules 131 and 139 of the Rules) will not be publicly available as of right for two years. Although the nomenclature, transitional period document, is new, the principle of the exercise of a discretion to release these documents is not and, essentially, this paragraph does nothing more than restate paragraph (4) of the existing order.
54. Paragraph (7) is new – the ability to apply for an historic edition of a register kept in electronic form – see rule 144 of the Rules. In practice the Land Registry will supply all such editions up to the date requested and the proposed £8 fee takes this into account. There will be a certain amount of work in collating the information

requested, and it is estimated that the fee of £8 is consistent with the anticipated workload.

Part 3 – searches

55. There is only one change, namely, the addition of paragraph (7). Rule 146 enables a person to apply for an official search of the index of relating franchises and manors. This is a new index. The proposed fee is set at £4 where the search is made non electronically and £2 where made electronically. This is consistent with the fees for other search services.

Part 4 – other information

56. There is no longer any reference to the service described in paragraph (2) of the existing order. There will no longer be an Index Map Section. This was information available when the index map was kept in paper form.

57. The new paragraph (2) – application for the return of a document under rule 204 of the Rules – relates to the new service. The proposed £8 fee keeps it in line for the document retrieval services mentioned in paragraph 54 above.

58. There is no longer any reference to paragraph (3) of the existing order. This related to the interchange of information between the Land Registry and other departments and local authorities. Insofar as the information requested is unavailable publicly, relevant departments, such as HM Customs & Excise have their own statutory powers of inspection – see rule 140 of the Rules – rendering this paragraph obsolete.

Exempt information

59. The procedure of designating a document an exempt information document under rule 136 of the Rules is new. Ensuring that the designation is properly executed in all respects by the Land Registry is anticipated to be time consuming and not regarded as wholly clerical because of the sensitivity involved. The proposed fee (paragraph (4)) of £20 has been set to reflect this.

60. Applications for an official copy of exempt information documents under rule 137 of the Rules will involve the service of notices and in all probability such service will elicit conflicting responses. The evaluation of this correspondence and of the application generally will need to be carried out at the most senior (lawyer) level and may involve the exercise of discretion. The proposed fee (paragraph (5)) of £40 has been set to reflect this.

Schedule 4 – exemptions

61. There is no longer reference to paragraph (1) of the existing order because there will no longer be any provision for land or charge certificates.

62. The wording of what is now paragraph (1) (paragraph (2) of the existing order), has been changed from “changing” to “reflecting a change” and so narrowing the scope of the exemption. It could have been argued that the old paragraph (2) enabled this exemption to apply on a transfer of title.
63. In paragraph (7) (paragraph (11) of the existing order), “cautions against first registration” have been specifically added. Please see the comment in paragraph 43 above.
64. In addition, the removal of the designation of a document as an exempt information document has been added to paragraph (7) ensuring that the absence of fee will encourage people to remove such designations.
65. Paragraph (10) concerns the de registration of a manor. Section 119 of the Act enables a proprietor to apply for the de registration of his manor. This is new. It is proposed that such an application should not attract a fee.
66. Paragraph (13) of the existing order is not reproduced, because it is no longer possible for the registrar to issue a summons. Neither is there provision for the taking of an affidavit or declaration which is why Schedule 3 part 5 of the existing order has also not been carried forward.
67. Paragraph (12) of the proposed order relates to joint proprietorship restrictions. The entry of such a restriction does not currently attract a fee (see paragraph (10) of the existing order).