

# **Explanatory Memorandum to the Land Registration Rule Committee**

## **Draft Land Registry Fee Order 2004**

### **1. Purpose of new order**

- 1.1 Land Registry needs to make a minor adjustment to its financial position and to reduce slightly the overall fee income it receives over the next financial year. This arises out of its status as a Trading Fund. For an explanation of Trading Fund status, please see paragraph 6 of my Explanatory Memorandum sent with the first fee order made under the 2002 Act. A copy of the 2003 memorandum is attached for ease of reference. A new Treasury Minute revises Land Registry's financial target of achieving an annual 6% return on capital employed and reducing it to one of 3.5% return. This followed a written statement by the Chief Secretary to the Treasury in September 2003 formally announcing the reduction in costs of capital rate in fees and charges from 6% to 3.5%. The revised Treasury Minute is effective from 1 April 2004 and the fee order is due to come into force on the same day.
- 1.2 The financial adjustment necessary will amount to approximately £9-£10 million reduction in fee income. A new fee order has been prepared for this purpose. The only changes to substantive fees are explained in paragraph 2.
- 1.3 The draft fee order also contains some amendments explained below following the published reports of the Joint Committee on Statutory Instruments (JCSI), which were circulated to you, along with Land Registry's responses, in December. My note to you then anticipated that the next fee order would take account of the comments of the JCSI. These are explained in paragraph 3 below.
- 1.4 At the same time, the opportunity has been taken to "tidy up" the wording in places based on our experiences of how the new legislation and fee order are working in practice. These are nothing more than technical: they have no financial implications. They are explained in the schedule attached to this memorandum.

### **2. Fee reductions**

- 2.1 Scale fees (schedule 1). These amendments are the only financial adjustments in the new draft order.
- 2.2 The top three (highest value) bands all attract lower fees. These are as follows
  - £200,001 - £500,000 from £250 to £220 – reduced fee where applicable - £190 to £165
  - £500,001 - £1,000,000 from £450 to £220 – reduced fee where applicable - £340 to £315
  - £1,000,001 and over from £750 to £700 – reduced fee where applicable - £560 to £525
- 2.3 The proposed new scale 1, together with the existing scale 1, are set out in the comparative table attached.

### 3. JCSI comments

- 3.1 The information referred to above and sent to you in relation to the JCSI report shows that Land Registry does not wholly share the conclusions of the committee as to the doubtful vires of the questioned articles except in relation to existing article 11 “Refund of fees”. Nevertheless, Land Registry has, as you would expect, debated long and hard over the conclusions and the implications. Full removal of the questioned provisions (listed in paragraph 3.2 for ease of reference) was clearly the ideal goal. It has been achieved. Happily, a financial analysis demonstrates that there are no significant fee implications. This was, of course, a major consideration.
- 3.2 The current fee order is attached for ease of reference. The questioned provisions were articles 4(3), 6(3), 9(3) and (4), 11 and 13. An explanation of how each has been dealt with follows –
- 4(3) (deals with fees for alteration of the register) – the registrar is given a discretion to reduce the fee if he believes this to be excessive or to waive it if he believes payment to be unreasonable. The obvious purpose of the discretion is to waive or reduce a fee, particularly when Land Registry may have been the cause of the error. Removal of the article means that article 4(1) applies and the fee is assessed under scale 2, with no discretion. In reality, Land Registry is always able to refund the fee in whole or part if it has caused or contributed to the error.
  - 6(3) the category of “large area applications”, where the registrar was given the discretion to charge an additional fee if the costs of dealing with the application substantially exceeded the scale fee, has been omitted. This means that what formerly qualified as a large area application will now either qualify as a large scale application or, if not, will be assessed using scale 1.
  - 9(3) this enables the registrar to waive the whole or part of any fixed fee specified in Schedule 3. All fee waivers were, of course, well publicised and regarded by Treasury as acceptable. These have therefore been added to the schedule of exemptions in Schedule 4 of the order.
  - 9(4) discretion of the registrar to charge an additional fee if the cost of the work involved in dealing with either a search of the index map or boundary determination application would substantially exceed the fixed fee provided for in the order. As to searches of the index map, the order now provides for the first ten titles revealed to be free of charge – this replicates the current waiver – and for a charge of £4 for each additional title revealed. As to boundary determinations, the £80 is considered to be sufficient in the majority of cases.
  - 11 fee refunds. This has been removed in its entirety. The correspondence with the JCSI reveals Land Registry’s actions in immediately withdrawing its former practice of retaining up to £10 as an administrative charge where an overpayment was made.

- 13 gives the registrar a discretion to charge a fee “having regard to the work involved” upon an application for which no other fee is payable under the order. The provision has been retained but the fee set at £40, being Land Registry’s benchmark fee as explained in the 2003 Explanatory Memorandum.

- 3.3 The draft order in its current form is being sent to the legal team attached to the JCSI. This is conventional in cases where provisions have been questioned. Land Registry seeks to ensure in advance that the JCSI is satisfied as to its provisions and in particular that the draft addresses their concerns. It is, of course, not possible to “set a deadline” to respond – the process is anyway informal – and any comments may well follow the Rule Committee meeting. Land Registry will, of course, relay any comments received from JCSI to the Rule Committee.
- 3.4 In addition, the Rule Committee is also aware that the Treasury also has to concur in the making of the order. The draft is being sent to them at the same time and they too may have comments. Any they make will be relayed as in 3.3 above.