



# Proposals to amend the Land Registration Rules 2003 consultation response form

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The closing date for this consultation is **5 April 2017**.

Please return completed forms to: [lrr2016@landregistry.gov.uk](mailto:lrr2016@landregistry.gov.uk)

1. **Name:** City of London Law Society's Land Law Committee
2. **Organisation (if applicable):** City of London Law Society's Land Law Committee
3. **Address:** 4 College Hill, London EC4R 2RB
4. **Are you responding as: an individual or representing the views of an organisation:**  
Legal representative  
  
Other: [Click here to enter text.](#)
5. **If you are responding on behalf of an organisation, please tell us who you represent:**  
The law firms represented on the Committee.

**Proposal A - To allow for the introduction of fully digital conveyancing documents with e-signatures to be used for land transactions and land registration, and to revoke existing rules allowing only limited digital mortgages**

**Question A**

Do you agree with the proposal to allow (but not require) all dispositions that must be registered to be carried out using digital documents with digital signatures, after the registrar has issued a notice that the service is available?

In principle, the Committee agrees with the proposal to allow (but not require) all dispositions that must be registered to be carried out using digital documents with digital signatures, after the registrar has issued a notice that the service is available.

The Committee represents City law firms, many of whom are established users of electronic signatures ("e-signatures") particularly in finance and corporate documentation. Land Registry's requirement for a wet ink signature has prevented the application of such electronic signature technology to documents that require registration at Land Registry. This has caused some inconvenience and the Committee, therefore, welcomes Land Registry's proposals to put in place a statutory framework to allow for the incremental introduction of secure electronic conveyancing and registration services. The Committee notes that the framework will allow any disposition that must be registered to be carried out using digital documents with e-signatures.

The Committee supports the proposal that usage of the electronic services introduced will not be mandatory. There are likely to be technological and cultural challenges to early adoption and an incremental voluntary introduction will encourage law firms to explore the technology without the pressures of mandatory adoption. If the services are effective, compatible with and improve the efficiency of real estate transactions, they are likely to be used by the legal industry with increasing regularity.

The Committee agrees that it is sensible to commence the project with the more straightforward electronic domestic mortgage. Once that service is established, consideration can be given to mortgages for corporate borrowers followed by electronic transfers and possibly electronic leases. The Committee would ask that Land Registry set up consultative bodies to include the Committee to ensure that the proposals for digital documents and e-signatures are suitable for the various types of property transaction, residential, commercial or other types.

The Committee notes that it is proposed Land Registry's Portal may be used for the digital documents. The Committee is conscious that over the years there have been concerns over the form of network access agreement that needs to be entered into for firms to

access certain Land Registry services. It is important for Land Registry to provide clarification on the terms and conditions (contained in network access agreements or otherwise) that law firms will have to accept to use digital conveyancing documents with e-signatures. If the terms and conditions are unduly onerous or place an unacceptable level of risk on law firms, this will deter take-up of the digital services.

The Committee notes that no witnessing is required for an e-signature as the signatory will have their identity assured through the GOV.UK Verify system which will be integrated into the Land Registry system. Land Registry will be the certifying authority and will use public key infrastructure technology. Once it is satisfied with the person's identity, it will issue signing security credentials by SMS text messaging or even by email.

With the very serious current problems with fraud affecting property transactions, the Committee seeks assurances that the proposed methods do not increase the risk of hacking and the perpetration of fraud – the Committee hopes that the new system will greatly improve the position and reduce the likelihood of fraud. The Committee would wish to see specific details from Land Registry as to how the use of SMS text messaging and emails for the issue of security credentials is to be protected from hackers. More generally, details should be provided of the anti-fraud measures included to protect the new digital documents. The Committee understands that the GOV.UK Verify system may not be as effective for people under 19 years due to a possible lack of credit record. If that is correct, how will identity be assured for 18 year old parties to electronic documents? Please explain how the GOV.UK Verify system will work with forms of execution such as by way of a power of attorney.

The GOV.UK Verify system is designed only for individuals and how does Land Registry intend to verify the identity of businesses? Also there is concern about how the system will verify the identity of overseas based individuals or businesses. If the GOV.UK Verify system is to be the centrepiece of identity assurance for Land Registry, there cannot be gaps in the coverage such as those highlighted. The Committee's concerns are supported by reports in the media that HM Revenue and Customs has had some concerns about Verify.

More generally, it appears that the Verify system does not link the identity check to the relevant property. Much of the focus in relation to fraud prevention around property is ascertaining links between the person purporting to be the owner of the property and the property itself. How would a Land Registry identity assurance system assist in that regard?

The Committee notes that the e-signature will be an "advance electronic signature" as defined in the EU Regulation 910/2014 on electronic identification that came into force on

1 July 2016. The consultation document, perhaps understandably, has little detail on how the e-signature process will work and it is important that full details are provided to enable thorough consideration by all interested parties. In view of the application of EU Regulations, assurance needs to be given that any consequences of Brexit will not adversely impact on the foundations of the e-signature.

The consultation states that the legislation already provides that an e-document signed with an e-signature will be regarded as a deed. The Committee is curious as to how the concept of "delivery" (an intrinsic part of a document being a deed) fits in with fully digital conveyancing documents with e-signatures. Is there a digital equivalent of delivery, or is it deemed unnecessary and if so for what reasons?

While an e-document signed with an e-signature is regarded as a deed, is this solely for Land Registry purposes? Would the electronic document be recognised as a deed for other legislative purposes, for example, limitation periods? Or would further legislation be required to enable this to happen?

The Committee notes that it is proposed that liability in respect of e-signatures primarily falls on Land Registry who would have to prove that any damage arising from the use of the signature had occurred without its intention or negligence. This seems a logical allocation of liability in view of the novel nature of the technology.

The proposal is for the Land Registration Rules 2003 to be amended to allow the undertaking of transactions entirely digitally and as each new digital service is developed, a registrar's notice will be published confirming that it can be used. This appears an unbureaucratic way of introducing new digital documents once the appropriate testing has been undertaken.

A number of law firms are using electronic signature products, an example of which is DocuSign <https://www.docuSign.co.uk/> which is used especially on corporate and finance transactions.

Many law firms use "virtual signatures" and "virtual exchanges" especially where their clients are based overseas. The Law Society has issued a practice note on this topic - <http://www.lawsociety.org.uk/support-services/advice/practice-notes/execution-of-documents-by-virtual-means/>. Currently, because Land Registry requires a wet ink signature, a virtually signed document (with a pdf signature) is not accepted by Land Registry and contracts signed in that way cannot be protected by an agreed notice for that reason.

The Committee would ask that any digital conveyancing system should allow for existing e-signature technologies and virtually signed documents. The Committee would be very happy to discuss with Land Registry the existing technologies and explore with them compatibility issues and the lessons that can be learnt from experiences using those technologies for Land Registry's proposals.

In summary, the Committee broadly welcomes Land Registry's proposals. The accompanying triage assessment justifies the proposals on the basis that without it conveyancers are constrained to using paper deeds with wet ink signatures. Such a situation would be very anachronistic in this digital age and the Committee looks forward to working with Land Registry to develop the electronic documents in a way that increases efficiency and ease of use for all but ensures that security is assured. In that respect, Land Registry must provide more assurance on the effectiveness of the GOV.UK Verify system.

**Proposal B - Revoke the Proper Office Order and make consequential amendments to the Land Registration Rules 2003**

**Question B**

Do you agree that the Proper Office Order 2013 is superfluous and can be revoked?

The Committee agrees. Clearly, such a measure must not have an adverse impact on the quality of service provided by Land Registry.

**Proposal C - Allow for the introduction of new statutory services identified as beneficial to our users through user research**

**Question C**

C1. Do you agree that the Rules should allow for an online service for inspection, copying and official copies of parts of the register and documents, as well as full copies?

The Committee agrees and considers that it would be very helpful for there to be an online service for inspection, copying and official copies of parts of the register and documents, as well as full copies.

C2. Do you agree that the Rules should allow for an online service for historic day list information and historic information about a registered title?

The Committee agrees that there should be an online service for historic day list information and historic information about a registered title. Full information should be provided about the fees for these new services.

**Proposal D - Reflect the modernisation and simplification of our services through digital transformation**

**Question D**

D1. Do you have any comments on the proposals to amend rules 203 – 205 and 214 (retention and return of documents), and rules 19 and 199 (use of fax) to reflect changes we have already made in our practice?

The Committee agrees that the Rules should reflect the Land Registry's new fully electronic way of working. The Committee does continue to be concerned about the destruction of original documents and problems that can be caused by losing particularly the originals of complex coloured plans. Copies may not be as revealing as the original. While Land Registry has clearly warned that originals received will be destroyed subject to exceptions, there is the unwitting submission of originals. The prevalent use of e-DRS means that this problem is diminishing. The Committee also agrees with the proposal to remove the ability to serve notices by fax, except in the circumstances mentioned in the consultation document.

D2. Do you agree with the proposal to revoke the provision for outline applications?

The Committee agrees with this proposal. The wide use of e-DRS makes outline applications increasingly redundant.

**Proposal E - Allow for more flexibility as to when the Land Registry is open for business and open to the public****Question E**

E1. Do you have any comments on the proposals to clarify the definitions of business day and working day?

The Committee supports the proposals to clarify the definitions of business day and working day and notes that the time limits will not be reduced as a result for responding to notices served by Land Registry.

E2. Do you agree that Land Registry should have more flexibility about when it is open for personal visits?

The Committee agrees that Land Registry should have more flexibility about when it is open for personal visits.

**Proposal F - Make minor improvements in the Rules****Question F**

Do you agree with the proposals—  
F1. To add Form AN1 to rule 90?

The Committee strongly supports the proposal to add Form AN1 to rule 90. Easements are often unwittingly protected using an AN1 rather than an AP1 and the proposal will overcome problems created by the wrong form being used.

F2. To amend rule 140 and Schedule 5, and remove form CIT from the list of prescribed forms so it can be amended when necessary?

The Committee agrees with the proposal. However, it is important that the Land Registry will continue to ensure that the privacy and personal data of those in the register is protected from abuse.

If not please say why.

N/A.

### **General Question**

#### **Question G**

Do you have any other comments about the proposed Rule amendments?

The Committee agrees with the suggested amendments in Proposal G and Part 8.

Thank you for taking the time to let us have your views on this consultation. We do not intend to acknowledge receipt of individual responses unless requested below.

Please send an acknowledgment of receipt to the City of London Law Society at 4 College Hill, London EC4R 2RB FAO Kevin Hart/Liz Thomas.