

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 8: Electronic Conveyancing

Section 91: Electronic dispositions: formalities

146. **Section 91** lays down a uniform requirement for making an electronic document, whether that document does the work of a formal deed, such as a transfer or a charge, which must be witnessed, or of unwitnessed signed writing, such as a contract. The use of electronic documents is new and forms a necessary step towards the introduction of a full electronic conveyancing system. The section can be applied to any document in electronic form which effects the disposition of a registered estate or charge, is a disposition of an interest which is noted in the register; or triggers first registration of title of unregistered land. The actual scope of its application from time to time is to be governed by rules.
147. In addition, for the section to apply, the electronic document must meet several conditions designed to reflect the way in which the paper system works at present. First, the electronic document must record the time and date when it takes effect to fix the time at which it operates. Paper documents take effect on “delivery”, the formal transfer of a deed by act or by word to the grantee (or a third party). The mechanisms both for executing and for handing over electronic documents can be different. It is therefore necessary to ensure that the document makes specific provision for the time and date when it takes effect, to replace the concept of delivery. Secondly, the electronic document must bear the electronic signature of each person who must authenticate it. In this context, electronic signature does not necessarily mean a “signature” in the ordinarily accepted sense. It is the means by which an electronic document can be authenticated as that of the party making it. There are already several ways in which authentication could be achieved, but they are likely to change and develop with general electronic business and commerce. It is therefore important that the legislation does not seek to specify a particular method or methods. Thirdly, each of the signatures must be certified. Certification is the mechanism by which an electronic signature is authenticated. The current certification methods are also likely to change and develop. Additionally, rules may provide for other requirements to be met to take advantage of further developments in this field which might aid the security of transactions.
148. The section does not disapply the formal statutory or common law requirements relating to deeds and documents but deems compliance with them. When the section applies, the electronic document is therefore to be treated as being in writing, having been executed by each individual or corporation who has attached an electronic signature to it, and, where appropriate, as a deed. The section also includes a further deeming provision. It operates in relation to the various statutory provisions, such as section 53(1)(a) of the Law of Property Act 1925, that require a disposition by an agent Acting by or on behalf of his or her principal to be authorised in writing. In relation to the execution of electronic documents by agents the provision has the effect that where a document covered by the section is authenticated by an individual as agent, it is to be regarded

as having been authenticated by him or her under the *written* (as opposed to the oral) authority of his or her principal. It will, therefore, not be possible to raise any question as to whether the agent did in fact have *written* (as opposed to oral) authority to make the authentication. It is likely that solicitors and licensed conveyancers will wish to review their procedures for taking instructions from their clients to ensure that electronic signatures are properly authorised, as a matter of proper professional practice. At common law, authorisation to execute a deed must be given by deed. This is not the case in relation to an electronic document covered by this section as the document is not a deed, merely treated as if it were.

149. In a paper-based system, documents have to be executed by the parties and then exchanged and delivered. Where there is a disposition, they must therefore travel from donor to donee, and then to the Land Registry for registration. This 'registration gap' has created scope for a number of problems. Electronic conveyancing enables the gap to be eliminated: electronic documents can be executed at the specified time and date, and simultaneous and automatic changes made to the entry in the register. *Subsection (7)* deals with the assignment of an interest protected by means of a notice. Whether such disposition can be made electronically depends on rules under *subsection (1)*. If it can, *subsection (7)* enables notice of the assignment to be given electronically as well. This is relevant for the purposes of section 136(1) of the Law of Property Act 1925, which requires notice to be in writing.
150. *Subsection (8)* disapplies section 75 of the Law of Property Act 1925 which provides that a person may at their own cost have the conveyance to them attested by a person appointed by them. The arrangements in the Act for the execution of electronic documents will make this provision otiose. Lastly, *subsection (9)* deals with electronic documents executed without a seal on behalf of a company. There are a number of ways in which companies can validly execute documents. Section 36A(6) of the Companies Act 1985 provides a presumption of due execution to protect purchasers. *Subsection (9)* makes it clear that the protection afforded by that section will apply to a document which has been electronically authenticated on behalf of the company.

Section 92: Land registry network

151. **Section 92** enables the registrar to establish an electronic communications network, either himself or through a third party, which will be used as he sees fit in connection with registration, and with the carrying out of transactions which involve registration and are capable of being effected electronically. Electronic conveyancing is likely to involve a significant change in the practices of both the Land Registry and of conveyancers. The ways in which it will operate in detail will, therefore, need to be worked out with them, after extensive consultation. These ways are likely to change as the range of conveyancing transactions carried out electronically increases, and as electronic commerce in general expands. The main elements are, however, likely to be that:
- conveyancers will, as now, prepare draft documents but in electronic form;
 - those drafts will be shown to the Land Registry, as well as to the parties to the transaction during preparation, to enable errors and discrepancies to be identified at the earliest possible stage;
 - once the drafts are approved and a date and time for execution set, the documents will be executed and simultaneous amendments made to the entry in the register, directly by the responsible conveyancer;
 - the Land Registry will also have to make sure that do-it-yourself conveyancers would not be excluded from electronic conveyancing.
152. **Schedule 5** establishes a framework for the creation and use of the network.

Section 93: Power to require simultaneous registration

153. Initially, paper and electronic conveyancing systems will operate side by side. If electronic conveyancing is to maximise the savings and benefits for the user, however, it must become the only system. For example, if just one link in a conveyancing chain is conducted in the conventional paper-based manner, the advantages of electronic chain management are likely to be lost. Section 93 contains the power to require transactions which involve registration to be done electronically at the contract and completion stages. Specified transactions involving registered land would have no effect unless effected by a document in electronic form, and simultaneously registered (which could be done automatically by the system). The section contains a power to prescribe which dispositions of registered estates and charges are caught by the requirement. It also contains power to prescribe which dispositions of interests the subject of notices in the register are caught by the requirement (at present the transfer of noted interests are not recorded in the register, see also paragraph 149 noting section 91(7)). The Lord Chancellor is under a duty to consult before making these rules. The section specifically provides that a document varying the priority order of registered charges is included within the dispositions of registered charges covered by the section. The registration requirements for a registrable disposition will be the requirements set out in Schedule 2. For all other documents, including, contracts and dispositions relating to the transfer of noted interests, the requirements may be specified in rules. Once a transaction is caught by this section, section 27(1) is no longer relevant and is disapplied.

Section 94: Electronic Settlement

154. Section 94 empowers the registrar to take such steps as he thinks fit to secure the provision of an electronic settlement system in relation to transactions involving registration.

Section 95: Supplementary

155. Because different considerations apply to the storage of electronic documentation from those applied to paper documents. Section 95 provides that rules may make provision about how that documentation is stored. Rules may also deal with the communication of electronic documents to the registrar.