

**EXPLANATORY MEMORANDUM TO  
THE LAND REGISTRATION FEE ORDER 2012**

**2012 No. 1969**

1. This explanatory memorandum has been prepared by Her Majesty's Land Registry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Land Registration Fee Order 2012 (the Order) prescribes the fees for applications to, and services provided by, Her Majesty's Land Registry (Land Registry); prescribes the applications and services that are exempt from fees; and contains administrative provisions relating to the payments of fees. It replaces the Land Registration Fee Order 2009 (the Fee Order 2009).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Subject to the loss of a particular discount explained in paragraph 7.3, the Order decreases all fees for applications to and services provided by Land Registry and also makes other adjustments to fees. There are also a number of minor drafting changes, including changes to incorporate gender neutral drafting.

3.2 As a trading fund, Land Registry is required to cover its costs and provide a dividend on capital to HM Treasury. In general terms, this means that Land Registry should not operate a surplus or deficit. Land Registry's main income is from fees. Other income streams, for example, rent receipts, commercial services, are still relatively small.

3.3 Since becoming a trading fund in 1993, generally Land Registry has reduced fees and there have been only two Fee Orders increasing fees; the 2006 Fee Order, which increased fees for preliminary (information) services only, and the Fee Order 2009, which increased all fees (i.e. preliminary service fees and registration fees). The increases in the Fee Order 2009 were necessary in the light of the dramatic fall in the number of property transactions in the financial year 2008/9, resulting in a significant reduction in both work intakes and fee income.

3.4 Fees under the Fee Order 2009 are now generating fee income well in excess of Land Registry's requirements, as its operating costs have reduced significantly since 2009. The surplus for 2011/12 is £67.8 million.

3.5 In property transactions it is usually the seller's or buyer's conveyancer who pays the fees to Land Registry but the fees are ultimately paid by the seller or buyer, as they are part of the conveyancer's disbursements and so paid by or recoverable from the client.

#### **4. Legislative Context**

4.1 Under the Land Registration Act 2002 (the Act), the Chief Land Registrar (the registrar) is under a duty to continue to keep a register of the ownership of land in England and Wales. More precisely, the registrar keeps a register of titles to legal estates in land (for example, freeholds and leases having more than seven years to run) and several other types of estate. Not all legal estates are registrable, and not all those which are registrable have actually been registered.

4.2 A registered owner of land or of a charge (in other words, a mortgage) has certain powers of disposition under the Act. For example, in the case of an owner of land, those powers include the power to transfer the land, to charge it, to grant a lease out of it or to grant a right of way over it. Certain dispositions, such as a transfer or charge, must be completed by registration. They do not take effect in law until this has been done.

4.3 Many different types of applications are made to Land Registry, including applications to register title to a legal estate in land for the first time, to complete dispositions by registration, to protect the priority of certain interests in land and for information.

4.4 Section 102 of the Act provides that the Secretary of State may by order prescribe fees to be paid for dealings with Land Registry and make provision about the payment of these fees. An order under section 102 is made with the advice and assistance of the Rule Committee and with the consent of HM Treasury.

4.5 The Secretary of State has made the Order under sections 102 and 128(1) of the Land Registration Act 2002. In accordance with section 102, the Order has been made with the advice and assistance of the Rule Committee and with the consent of HM Treasury.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

#### **6. European Convention on Human Rights**

6.1 As the instrument is not subject to affirmative or negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- What is being done and why

7.1 The policy reasons for a decrease in fees are set out in section 3. The aim is to reduce fees by an overall average of 10%. It is not possible to reduce all fees by the same percentage, as it would result in fees being set in pence, which creates complications both for customers and Land Registry. Land Registry traditionally rounds fees to multiples of £10 for most substantive services and £1 for preliminary services to reduce the impact of changes. As a result Scale 1 and 2 Fees are reduced by £10 in each band, most fixed fees by £10 and all preliminary (information) service fees by £1.

7.2 There are also some other changes made, the most significant being the following.

7.3 The 25% discount in fee for voluntary applications no longer applies to applications for first registration of mines and minerals, where the title for the mines and minerals is separate to the title to the surface. In many cases, these applications are detailed and complex and therefore it does not seem appropriate that the discount should apply to them. The applications are currently not significant in number.

7.4 There is now a fixed fee for applications to alter the register (paragraph 14 of Part 1 of Schedule 3) rather than a fee under Scale 2 (based on the value of the property less any registered charge), as it is considered that a fixed fee is more appropriate in view of the wide range of types of application that alteration covers, many of which are routine.

7.5 There is now specific reference to applications to register an obligation to make further advances and an agreement for a maximum amount of security in paragraph 1 of Part 1 of Schedule 3. This is to clarify and regularise the present position and there is no change in fee policy in this area.

7.6 A fee for electronic applications for an historical (electronic) copy of register entries has been included in paragraph 8 of Part 2 of Schedule 3. This is a new service that is planned to be introduced in the near future.

7.7 The fee exemption for applications to lodge a caution against first registration or to make a register entry relating to chancel repair rights (paragraph 15 of Schedule 4) has been amended to make it clear that it applies only to applications made on or before 12 October 2013. It has always been Land Registry's policy that the exemption should apply for this limited period and this is consistent with the exemption applying to other similar types of overriding interest, under s117(2) of the Act. As we are now close to the end of the limited period, it is appropriate to confirm expressly that the exemption applies only to applications made on or before 12 October 2013.

- Consolidation

7.8 Not applicable

## **8. Consultation outcome**

8.1 Although the Order reduces fees, the fee structure is unchanged. The fees are either small in absolute terms or, where the fee is for the first registration of an estate in land or for the registration of a transfer or grant of a lease, small in proportion to the overall cost of a typical property transaction. Under section 102 of the Act, the Secretary of State requires the advice and assistance of the Rule Committee and so a draft of the Order has been considered by the Rule Committee, which includes members of the conveyancing and property sector (representatives of the legal profession, mortgage lenders and surveyors together with a person appointed for their experience in consumer affairs). Land Registry conducted a survey of customers in January 2010 following the introduction of the Fee Order 2009, which indicated that the cost of the changes that businesses need to make to implement changes in fees are not significant or disproportionate. In the circumstances it has not been thought necessary or appropriate to undertake consultation.

## **9. Guidance**

9.1 Land Registry will provide the following publicity about the Order and decrease in fees:

- Information about the reduced fees in Land Registry's website.
- Publicity to customers and stakeholders (including representative bodies), for example revised Practice Guides.
- Notices/information in legal publications (for example, Law Society Gazette).

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is not significant because it is a reduction in fees and, as explained in paragraph 8.1, the fees are small, at least in relative terms, and the cost of the changes that businesses need to make to implement changes in fees does not appear to be significant or disproportionate.

10.2 The impact on the public sector is not significant, for the same reason as is given in paragraph 10.1.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business and to everyone else who makes applications to Land Registry for which a fee is payable.

11.2 To minimise the impact of the change in fees on conveyancing firms employing up to 20 people, which are the small businesses likely to be most immediately affected, and to minimise the impact on others, including other small businesses which may use

Land Registry's information services, Land Registry will be publishing on its website and in paper form details of the reduced fees. This information will be available free of charge.

## **12. Monitoring & review**

12.1 The fee income and level of applications will continue to be monitored throughout the financial year 2012/13 and, if adjustment is needed, a further Fee Order would be required. Future Fee Orders will further increase or reduce fees, as they will always reflect the circumstances operating at the time they are formulated and, in particular, the activity of the property market.

## **13. Contact**

Mike Westcott Rudd at HM Land Registry email: [mike.westcott-rudd@landregistry.gsi.gov.uk](mailto:mike.westcott-rudd@landregistry.gsi.gov.uk) can answer any queries regarding the instrument.