

Land Registry

Report on consultation July 2008

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Review of the Land Registration Rules 2003 and the Commonhold (Land Registration) Rules 2004

Report on consultation

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Foreword

I am delighted to introduce this report on the outcome of Land Registry's public consultation on its proposed amendments to the Land Registration Rules 2003.

This will mark the third set of land registration amendment rules since the principal rules came into effect in 2003, a rate of change that would have seemed impossible in the era of the 1925 legislation that largely shaped the land registration system.

This reflects the speed with which government agencies must react in the 21st century if they are to meet the changing needs of the society they serve. Land Registry is proud of its record of listening and responding to its customers, and the exhaustive nature of the latest review and consultation is a testament to this.

We are very grateful to all those individuals and organisations that have sent us their views, in many cases in considerable detail.

Peter Collis CB HonRICS CCMI
Chief Land Registrar

Executive summary

Background

On 8 October 2007 Land Registry published a consultation document seeking views on proposals to amend the Land Registration Rules 2003 and the Commonhold (Land Registration) Rules 2004. The proposals were the outcome of a review of those rules carried out within Land Registry. The purpose of the review was to make recommendations as to possible amendments to those rules so as to:

- reduce, where possible, the administrative burden on customers – in particular, to improve the forms prescribed by the principal rules to take account of National Audit Office guidance on forms
- reduce the risk of fraud
- improve operational efficiency and reduce the frequency of customer errors and
- implement the original intention behind a provision in the principal rules where Land Registry experience and customer feedback have shown that this may not have been achieved or that the provision is currently open to an alternative interpretation.

The consultation document sought views on a number of proposals. The proposals were grouped together under suitable subject headings and were accompanied by notes describing the effect of each proposed change.

Many of the proposals related to amendments to existing rules and practice but there were some that introduced new rules and practice.

The consultation document was publicised via our website, an article in *Landnet* and a press release issued immediately prior to the start of the consultation period.

Interested parties could obtain a copy of the consultation document by following the links from the Land Registry website and could complete an online questionnaire using the response tools. Alternatively, paper copies were available by request together with a paper questionnaire, by contacting the consultation manager.

The consultation document was issued in paper form to 662 account holders who had responded to a letter inviting expressions of interest in the proposed programme of Land Registry consultations. A further 1,100 of our account holders expressed a preference to take part using our online consultation facilities and received an electronic invitation on the opening day of the consultation period.

In addition, the consultation document was issued to 61 organisations comprising our key stakeholders. These included regulatory and representative bodies as well as other property professionals. A full list of these organisations can be found in Annex A.

The consultation period closed on 14 January 2008. A total of 62 responses were received during the 14-week consultation period. The analysis of respondents by category can be seen in Annex B.

A list of respondents (other than those who asked for their replies to remain confidential) is included in Annex C.

On 26 November 2007, we sent a supplementary consultation document to the 63 bodies and individuals set out in Appendix A (supplemental) and received 13 replies as listed in Appendix C (supplemental). This supplemental consultation concerned certain proposals relating to possessory titles.

We are grateful to all those who took time to express their views. The responses and associated comments have been carefully considered and have assisted Land Registry to finalise the amendments to the draft Land Registration (Amendment) Rules 2008 and Commonhold (Land Registration) (Amendment) Rules 2008. We are also grateful to the Rule Committee, whose advice and assistance has been invaluable.

The Land Registration (Amendment) Rules 2008 and the Commonhold (Land Registration) (Amendment) Rules 2008 have now been made. With the exception of one provision in the former, these two sets of rules will come into force on 10 November 2008. The exception is the provision amending rule 111 of the Land Registration Rules 2003 (Proposal 34 – see page 33), which will come into force on the day that section 869 of the Companies Act 2006 comes into force.

This report refers to the Land Registration (Amendment) Rules 2008 and the Commonhold (Land Registration) (Amendment) Rules 2008 as ‘the amendment rules’, to the Land Registration Rules 2003 as ‘the Rules’, to the Commonhold (Land Registration) (Rules) 2004 as ‘the Commonhold Rules’, and to the Land Registration Act 2002 as ‘the Act’.

Overview of responses

The following comprises a brief summary of the overall responses to consultation, concentrating on the main changes outlined in the consultation document. For detailed descriptions of the proposals you should refer to the consultation document *Review of Land Registration Rules 2003 and the Commonhold (Land Registration) Rules 2004* available online from www1.landregistry.gov.uk/consultations/. A more detailed appraisal of the responses and the resulting changes to the Rules is provided in the section *Proposals and views expressed*, which begins on page 10 of this document.

Restrictions

Proposals 26 to 32 (inclusive) in the consultation document related to rule amendments affecting restrictions. Our respondents generally agreed with the proposals.

Respondents also agreed that substituted Schedule 4 of the Rules, described in proposal 33 in the consultation document, improves the layout of the standard forms of restriction and standardises the use of italics and brackets (the new schedule also contains a rubric to explain the conventions adopted). Some of the changes introduce additional options that we believe will assist applicants in selecting the appropriate standard restriction for their circumstances. A small number of respondents asked us to go further by introducing yet more standard forms while others asked for further simplification. We have tried to balance these conflicting objectives in the substituted Schedule 4.

Subsequent to consultation and as a result of government guidelines we have amended Schedule 4 to incorporate gender-neutral drafting. The words ‘he’ and ‘his’

have been replaced with 'they' and 'theirs'. Rule 91A gives guidance on the options available to customers when drafting standard restrictions.

As a result of consultation and subsequent internal review some minor amendments were made to some of the standard forms and three further forms added. These are described on pages 22 to 33 below.

Forms

The main proposals were aimed at making the forms prescribed by the Rules easier to read and use, with a clearer font and notes for the user kept separate from the panels to be completed. There was strong support for the new design, including the opportunity it will give regular users who do not need the explanatory notes to enlarge the main panels by removing the left-hand column.

There were a number of detailed suggestions for improvements to the wording, many of which we have accepted, such as the way we ask for the administrative area within which a property falls and for information about companies.

After the consultation, upon applying the changes to the remainder of the statutory forms not set out within the consultation document, our own lawyers suggested further changes to improve clarity and consistency.

The results of these improvements can be seen by accessing the Schedule 1 forms that will come into force on 10 November 2008. These will be available to view and download from our website by 18 August 2008.

Three of the forms contained in the Commonhold Rules will be replaced so as to refer to statements of truth rather than to statutory declarations. However, given the use of these forms is rare, we have not redrafted them along the same lines as the forms prescribed by the Rules.

Confirmation of identity

One of our proposals was to amend Forms AP1 and FR1 to require conveyancers to confirm that they have complied with their professional duties in verifying the identity of any disponee and disponent.

These proposals received a mixed response.

As a result of concerns raised by some of our respondents the proposal was re-evaluated and a revised proposal was put to a number of representative bodies including the Law Society.

After due consideration we have amended the proposals to:

- drop the requirement for conveyancers to confirm that they have complied with their professional duties
- include a reminder on forms that when registering transfers, discharges, charges, leases and other dispositions of land, Land Registry relies on the steps that conveyancers take to verify the identity of their clients
- include a requirement for conveyancers (in respect of all other parties to the disposition) to provide details of the conveyancer, if any, who represented that other party, and if they were not so represented, to either provide confirmation that they are satisfied that sufficient steps have been taken to verify their identity

or lodge evidence of identity in accordance with a direction made by the Chief Land Registrar under section 100(4) of the Act.

The amendments are described more fully on page 48.

Declaration of trust in the light of the decision in *Stack v Dowden*

We also consulted on the approach Land Registry should adopt in the light of the decision by the House of Lords in *Stack v Dowden* [2007] UKHL 17 and, in particular, the comments made by Baroness Hale regarding the inclusion of a 'declaration of trust' panel in transfers relating to registered land. The responses we received, particularly from the Law Society and the Association of Property Support Lawyers, raised some practical issues. We now intend to establish a working party to consider the matter further. See page 59.

Statements of truth

One of the proposals that we anticipated would significantly reduce the administrative burden for both our customers and ourselves was to require statements of truth instead of, or as an alternative, to statutory declarations. See proposal 91 (page 63) below.

Our respondents generally welcomed the proposal and we are to proceed as set out in the original proposal.

A small number of respondents expressed concern that the relative informality of statements of truth could leave Land Registry more open to fraud. These risks have been carefully considered and the view taken that any increased risk is minimal and will in any event be mitigated by clear warnings (eg in the ST forms in Schedule 1 and Forms 2 and 3 in Schedule 3 of the Rules) as to the consequences, under the Fraud Act 2006, of making a dishonest statement. In this regard statements of truth are no different to statutory declarations.

Other miscellaneous rules

The consultation document proposed changes to a number of other rules. These proposals were generally supported. We have taken note of the views expressed and of the suggestions for amendments to drafting.

Each proposal is considered in more detail below (see *Proposals and views expressed*).

Further copies

Further copies of this document can be obtained by downloading from our website; www1.landregistry.gov.uk/consultations/ or by contacting:

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Proposals and views expressed

In this chapter we look at the proposals in more detail.

Each proposal in the consultation document was followed by a question or series of questions and these have been reproduced below, together with a statistical analysis of the responses received.

The analysis records the absolute number of responses in favour and against the proposition in each question. These responses are also represented as a percentage. We have also recorded the number of respondents who chose not to answer that particular question.

We have not 'weighted' the responses as part of the statistical analysis (ie where the response was on behalf of a stakeholder group as opposed to an individual) as this would require us to arbitrarily attribute 'value' to specific stakeholder groups. However commentary from such groups was extremely valuable and received particular attention when we were considering the responses to consultation. All the respondents have assisted Land Registry to finalise the amendment rules.

The statistical overview is followed by a brief commentary including the views expressed by some of our respondents. Where appropriate we have included details and an explanation of any significant changes we have made as a result of consultation.

Where a rule amendment is proceeding as proposed in the consultation document, we have not set out a full description of the changes proposed or replicated the original notes that accompanied the proposed rule change in the consultation document.

A consolidated version of the Rules showing the changes made by the amendment rules (including those to the prescribed forms) will be available on our website sometime before 18 August 2008.

The Register

Proposal 1 (Amendment to rule 5) Rule 5 Contents of the property register

Question 1

Do you agree with the proposal to amend rule 5?

Response	Absolute numbers	% of those who responded
Yes	34	79.1
No	9	20.9
No reply	19	

There was broad agreement that the rule be amended to correct some drafting points and to remove 'covenants' from the class of interests benefiting the registered estate.

One of the respondents to the consultation made the following comment:

“Using your same reasoning for sensibly removing ‘and covenants’, I do not see how the benefit of any ‘condition’ can be anything other than equitable and should therefore also be deleted.”

This point has been accepted and a further amendment has been made in the amendment rules to remove reference to ‘conditions’.

There were a number of comments along the lines of those supplied by Simon Wake:

“Surely it is in keeping with the Land Registry's aim of having a complete register that the benefit of covenants attaching to land be recorded on the register, otherwise it necessitates the proprietor keeping records other than the register to adequately deduce his title?”

However, there is no basis in the Act for the entry or registration of the benefit of restrictive covenants, as the benefit is equitable. There is also the practical difficulty of ascertaining whether a particular piece of land has the benefit of such covenants, both on first registration and on subsequent transfers.

Proposal 2 (Amendment to rule 6)

Rule 6 Property register of a registered leasehold estate

Question 2

Do you agree with the proposal to amend rule 6?

Response	Absolute numbers	% of those who responded
Yes	38	92.7
No	3	7.3
No reply	21	

The proposal to amend rule 6(2) to allow a new entry in relation to alienation received strong support. One respondent said:
“Wording on 6(2) is simplified and less uncertain.”

Robert Martyr commented:

“The proposed wording would put potential lessees on notice of the possible lack of landlord's consent.”

Proposal 3 (Amendment to rule 8)

Rule 8 Contents of the proprietorship register

Question 3

Do you agree with the proposal to amend rule 8?

Response	Absolute numbers	% of those who responded
Yes	40	95.2
No	2	4.8
No reply	20	

There was broad agreement to amend rule 8 to clarify the position regarding the circumstances in which the ‘price paid’ entry is made on the register.

It was proposed to use the word 'practical' in place of the current 'practicable' but as a result of further consideration within Land Registry the word 'practicable' has been re-instated. 'Practicable' is used elsewhere in the Act and Rules.

Proposal 4 (Amendment to rule 9)

Rule 9 Contents of the charges register

Question 4

Do you agree with the proposal to amend rule 9?

Response	Absolute numbers	% of those who responded
Yes	40	93.0
No	3	7.0
No reply	19	

There was general agreement with the proposal to amend rule 9 to mirror rule 5(b) (iv) giving the registrar discretion, where it is more convenient, to enter matters in the charges register which may otherwise be required to be entered in another part of the register.

The Law Society commented:

“While the Committee agrees with Proposal 4, it is important that the register makes it clear when entries benefit or burden the registered title. It is sometimes very difficult to establish whether a right or obligation benefits or burdens the title eg entries burdening the title may appear in the Property Register.”

The amended rule is intended to reflect current practice and entries in this regard will continue to be made in the current form once the amendment rules come into force.

Indices

Proposal 5 (Amendment to rule 11)

Rule 11 Index of proprietors' names

Question 5

Do you agree with the proposal to amend rule 11?

Response	Absolute numbers	% of those who responded
Yes	38	95.0
No	2	5.0
No reply	22	

There was strong support for the proposal to allow a person to apply for a search in the index of proprietors' names in respect of a corporation aggregate.

Laurence Mann commented:

“I think we should have a completely open register and that PN1s should be available for anyone to search for anyone's name without restriction.”

However, only information relating to a living individual may constitute 'personal data' for the purposes of the Data Protection Act 1998, so a distinction between corporations aggregate and individuals seems justified.

Applications: general provisions

Proposal 6 (Amendment to rule 19)

Rule 19 Objections

Question 6

Do you agree with the proposal to amend rule 19?

Response	Absolute numbers	% of those who responded
Yes	40	97.6
No	1	2.4
No reply	21	

There was overwhelming support for the proposal that rule 19 be amended to clarify that the address for service given by an objector must be in accordance with rule 198.

The Council of Mortgage Lenders commented:

"We strongly support this proposal and think it adds clarity."

First registrations

Proposal 7 (Amendment to rule 37)

Rule 37 First registration – notice of lease

Question 7

Do you agree with the proposal to amend rule 37?

Response	Absolute numbers	% of those who responded
Yes	41	100.0
No	0	0.0
No reply	21	

There was unanimous approval for the proposal that we extend rule 37 to apply to leases being registered with good leasehold, qualified or possessory title.

The London Property Support Lawyers Group commented:

"It seems sensible to ensure that the register of the reversion is as comprehensive as possible and includes a note of all leases affecting a title including those with good leasehold, qualified or possessory title."

Cautions against first registration

Proposal 8 (Amendment to rule 49)

Rule 49 Alteration of the cautions register by the registrar

Question 8

Do you agree with the proposal to amend rule 49?

Response	Absolute numbers	% of those who responded
Yes	38	92.7
No	3	7.3
No reply	21	

There was general agreement to our proposals to amend rule 49 to clarify the circumstances in which the registrar is obliged to exercise the power in section 21(1) of the Act, on application, to alter the cautioner's register by entering the applicant in place of the cautioner.

Proposal 9 (Amendment to rule 51)

Rule 51 Alteration of the cautions register – alteration of cautioner

Question 9

Do you agree with the proposal to amend rule 51?

Response	Absolute numbers	% of those who responded
Yes	40	97.6
No	1	2.4
No reply	21	

Proposal 9 was consequential to proposal 8 and proposed amendments to rule 51 to ensure consistency with the wording in proposed new rule 49(2).

Proposal 10 (Amendment to rule 52)

Rule 52 Definition of “the cautioner”

Question 10

Do you agree with the proposal to amend rule 52?

Response	Absolute numbers	% of those who responded
Yes	40	97.6
No	1	2.4
No reply	21	

The proposal to amend rule 52 to clarify that, where more than one person is shown as cautioner in the cautioner's register, each of them is entitled to object under section 73(2) of the Act to an application under section 18 of the Act, received overwhelming support.

Registered land: applications

Proposal 11 (Amendment to rule 54)

Rule 54 Outline applications

Question 11

Do you agree with the proposal to amend rule 54?

Response	Absolute numbers	% of those who responded
Yes	39	95.1
No	2	4.9
No reply	21	

There was broad agreement with the proposal to amend rule 54 to extend the meaning of ‘appropriate office’ to include an office specified for delivery of applications of the nature referred to in an outline application, in a written arrangement made between the registrar and the applicant (or applicant’s solicitor). The proposal included an amendment to remove the obligation to quote the official reference number of the outline application in the application form.

Her Majesty’s Revenue & Customs said:

“We do not normally make official searches of the register, prior to submitting an outline application to register or cancel a restriction, equitable charge or caution. In such circumstances, we would prefer to retain the official reference number on the application form as it confirms that the outline application has been officially accepted.”

An outline application will still be allocated an official reference number. The existence of an official reference number provides the customer with confirmation that the outline application has been ‘officially accepted’; Land Registry records the existence of the outline application by adding it to the daylist. As a result we do not need to be prompted that an outline application exists by inclusion of the reference number on the application form that accompanies the documents lodged in support of the follow-on application. Given that the panel requiring this information added little value to the application and increased the administrative burden by requiring that the applicant provide unnecessary information, we have decided to remove it.

Registered land: covenants

Proposal 12 (Amendment to rule 68)

Rule 68 Additional provisions as to implied covenants

Question 12

Do you agree with the proposal to amend rule 68?

Response	Absolute numbers	% of those who responded
Yes	35	85.4
No	6	14.6
No reply	21	

The proposal to narrow the scope of rule 68 so that it applies only where a document effecting a registrable disposition of leasehold land limits or extends the covenant in section 4 of Part 1 of the Law of Property (Miscellaneous) Provisions Act 1994 was generally welcomed.

Registered land: mines or minerals

Proposal 13 (Amendment to rule 70)

Rule 70 Description of land where mines or minerals situated

Question 13

Do you agree with the proposal to amend rule 70?

Response	Absolute numbers	% of those who responded
Yes	38	92.7
No	3	7.3
No reply	21	

There was general approval for the proposal to amend rule 70 to simplify the wording of the rule and to clarify that it applies to the registration of new estates as well as to existing registered estates.

Proposal 14 (Amendment to rule 71)

Rule 71 Note as to inclusion of mines or minerals in the registered estate

Question 14

Do you agree with the proposal to amend rule 71?

Response	Absolute numbers	% of those who responded
Yes	39	95.1
No	2	4.9
No reply	21	

There was strong support for our proposal to amend rule 71 to clarify the requirements for an application for a note to be entered that a registered estate includes mines and minerals.

One respondent indicated that the new rule was “shorter and easier to understand”.

Registered land: miscellaneous

Proposal 15 (Amendment to rule 72)

Rule 72 Register entries arising from transfers and charges of part

Question 15

Do you agree with the proposal to amend rule 72?

Response	Absolute numbers	% of those who responded
Yes	34	85.0
No	6	15.0
No reply	22	

This proposal included a number of amendments to rule 72, including express provision for entries in respect of other interests created by a transfer or charge of part of a registered estate to be made in the relevant individual registers and confirmation that such entries are not confined to the transferor’s or transferee’s title, but may also be made in other affected titles. The amendments also make clear that

the registrar will only be obliged to make such entries where the title number(s) of affected titles are entered in Form AP1. Overall the proposals were welcomed.

The Council of Mortgage Lenders said:

“Lenders are experiencing real difficulties with the Land Registry’s change of practice relating to charges of part where a separate title number is not allocated to the part of the land subject to the charge... Discretion seems to lie with the registrar under (new) 72(2). We believe it should be the right of the lender to request that a separate title number is allocated and request the Land Registry to consider further amendment to the rules accordingly. We cannot see that such a step would prejudice the Land Registry in any way.”

The rule has always made the creation of a separate title for the part charged discretionary. This is not changing. Separate titles are currently created where a lender has two or more charges of the same date and these cannot be easily identified by way of verbal description. Land Registry will also consider specific requests where the applicant can demonstrate a particular need for charges to be registered under separate titles.

Proposal 16 (New rule 72B)

Rule 72B Entries in the tenant’s registered title in respect of notices in the landlord’s registered title

Question 16

Do you agree with the proposal to introduce new rule 72B?

Response	Absolute numbers	% of those who responded
Yes	39	97.5
No	1	2.5
No reply	22	

The proposed new rule 72B provides that on completion of a lease within section 27(2)(b) of the Act by registration, the registrar must enter a notice or make another entry, as appropriate, in the individual register of the registered lease in respect of any interest which–

- (a) at the time of registration, is the subject of a notice in the individual register of the registered estate out of which the lease is granted, and
- (b) the registrar considers may affect the registered lease.

The proposal was strongly supported.

Proposal 17 (New rule 72C)

Rule 72C Register entries arising from other registrable dispositions

Question 17

Do you agree with the proposal to introduce new rule 72C?

Response	Absolute numbers	% of those who responded
Yes	36	92.3
No	3	7.7
No reply	23	

The proposed new rule covers register entries within section 27(2) of the Act, to which rules 72 and 72A do not apply. This rule will include, for example, entries relating to transfers or charges of the whole of a registered estate.

The proposal was strongly supported.

Proposal 18 (Amendment to rule 73)

Rule 73 Application for register entries for express appurtenant rights over unregistered land

and

Proposal 19 (Amendment to rule 74)

Rule 74 Application for register entries for implied or prescriptive appurtenant rights

Question 18

Do you agree with the proposal to amend rule 73?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

Question 19

Do you agree with the proposal to amend rule 74?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

Proposals 18 and 19 amend rules 73 and 74 to make clearer provision for registration of express reservations (as opposed to express grants) of rights over unregistered land. The proposals were generally welcomed.

Proposal 20 (Amendment to rule 75)

Rule 75 Qualified register entries for appurtenant rights

Question 20

Do you agree with the proposal to amend rule 75?

Response	Absolute numbers	% of those who responded
Yes	39	97.5
No	1	2.5
No reply	22	

This proposal to make minor drafting amendments to rule 75 consequential to the amendments to rules 73 and 74 referred to above was also supported.

(It has subsequently been decided that the amended rules 73, 74 and 75 can conveniently be merged to form one rule.)

Proposal 21 (Amendment to rule 77)

Rule 77 No entry on reversionary title of a right of entry in lease

Question 21

Do you agree with the proposal to amend rule 77?

Response	Absolute numbers	% of those who responded
Yes	39	95.1
No	2	4.9
No reply	21	

The proposed replacement rule 77 makes clear that where there is a right of entry in a grant of a term of years absolute which is a registrable disposition, completion of registration of the lease by entry of the tenant as proprietor of the lease and entry of a notice of the lease in the landlord's title will be sufficient to meet the registration requirements for the right of entry as well. No further entry specifically relating to the right of entry will need to be made in either the tenant's or the landlord's title. The proposal was generally welcomed.

Proposal 22 (Revocation of rule 78)

Rule 78 Note of variation of lease etc on register

Question 22

Do you agree with the proposal to revoke rule 78?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

There was general agreement to our proposal to revoke rule 78 on the basis that the provisions of the current rule are already covered under rule 129.

Proposal 23 (New rule 79A)

Rule 79A Acquisition of the right to manage by a RTM company

Question 23

Do you agree with the proposal to introduce new rule 79A?

Response	Absolute numbers	% of those who responded
Yes	36	90.0
No	4	10.0
No reply	22	

There was strong support for our proposal to introduce a new rule to cover acquisition of the right to manage by a RTM company.

One respondent suggested that a note should also be entered in the tenants' registers. This suggestion has not been taken up. The RTM company simply acquires a number of functions which already affect the tenants' leasehold estates, so there is no apparent need for the acquisition of the right to manage being referred to in their registers. Another respondent questioned the need for the provision, because it did not guarantee that the right to manage had arisen and remained

exercisable. Our view is that, even if the right is not guaranteed, it is still helpful to have it noted in the landlord's register and thus brought to the notice of purchasers and others.

Notices

Proposal 24 (Amendment to rule 86)

Rule 86 Cancellation of a unilateral notice

Question 24

Do you agree with the proposal to amend rule 86?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

The proposal to amend rule 86 to make it clear that where there is more than one beneficiary of a unilateral notice, each such person is entitled to object to an application to cancel that unilateral notice, received broad approval.

Proposal 25 (Amendment to rule 87)

Rule 87 Cancellation of a notice (other than a unilateral notice or a home rights notice)

Question 25

Do you agree with the proposal to amend rule 87?

Response	Absolute numbers	% of those who responded
Yes	35	89.7
No	4	10.3
No reply	23	

The proposal suggested an amendment to rule 87 to allow the registrar to make an entry if the registrar is not satisfied that the interest protected by a notice (other than a unilateral notice or a home rights notice) has come to an end. Such an entry would provide details of the circumstances in which the applicant claims the interest has determined. There was general agreement with this proposal.

NB1982 asked:

“How would this affect the future disposition of the land? Would the buyer take subject to it, or would no disposition be able to take place until full evidence to allow the notice was provided?”

Our response is that the position of the purchaser is not altered by the entry in the register. The purpose of the entry is solely to provide as complete and accurate a picture of the state of the title as possible, enabling the purchaser to make further enquiry of the relevant persons as necessary.

Restrictions

Proposal 26 (Amendment to rule 91A)

Rule 91A Completion of standard forms of restriction

Question 26

Do you agree with the proposal to amend rule 91A to allow Form II to start with the word 'Until' followed by a date?

Response	Absolute numbers	% of those who responded
Yes	39	95.1
No	2	4.9
No reply	21	

Question 27

Do you agree with the proposal to amend rule 91A to provide the option of Forms L, N, S, T and II being worded to show that they cease to have effect on the death of a named person or the survivor of named persons?

Response	Absolute numbers	% of those who responded
Yes	38	92.7
No	3	7.3
No reply	21	

Question 28

Do you agree with the proposal to introduce new rule 91A(6)?

Response	Absolute numbers	% of those who responded
Yes	39	97.5
No	1	2.5
No reply	22	

The proposal to allow Form II to commence with the word 'Until' and the proposal to provide additional options for restrictions in Form L, N, S and T for use in situations where a restriction is intended to cease to have effect on the death of a named person (which should be viewed in conjunction with the proposal discussed under Form L to provide for situations where these restrictions are intended to continue after the death of a named person) are intended to increase the range of situations for which a standard form restriction is suitable. The proposal received broad support.

In their reply ILEX noted that the changes did not reflect their full range of requirements. However, Land Registry considers that it is not possible to anticipate and provide for every possible situation.

The replies to the consultation were in favour of the proposal to introduce rule 91A(6), which provides that where a restriction relates to a charge which is one of two or more of the same date the words 'in favour of' followed by the name of the affected chargee, will be inserted.

In its final form the amended rule takes account of the new standard forms NN, OO and PP discussed below.

Since consultation, the standard forms of restriction have been redrafted to replace gender-specific pronouns with the words 'they' or 'their'. As a result, the following paragraph has been inserted in rule 91A:

“(7) Where in a standard form of restriction the word “they” or “their” refers to a person named in the restriction, it may be replaced as appropriate by the word “he”, “she”, “it”, “his”, “her” or “its”.”

Where 'they' or 'their' refers to a named person, applicants may prefer to replace it with the appropriate singular pronoun (including 'it' or 'its' in the case of corporations); paragraph 7 permits this. If applicants do not use a gender-specific pronoun, Land Registry's practice will be to enter 'they' or 'their' in the restriction.

Gender-neutral drafting is discussed further under proposal 33 (page 27) below.

Since consultation, the following paragraph has also been inserted in rule 91A:

“(8) Where a standard form of restriction permits a type of disposition to be specified in place of the word “disposition”, the types of disposition that may be specified are “transfer”, “lease”, “charge” or “sub-charge”, or any appropriate combination of those types.”

Paragraph (8) is also discussed under proposal 33 (question 37) (on page 27) below.

Proposal 27 (New rule 91B)

Rule 91B Where a certificate or consent under a restriction is given by a corporation

Question 29

Do you agree with the proposal to introduce new rule 91B?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

The proposal to amend standard forms of restriction Forms L, M, N, O, P, S and T and introduce a new rule to explain who should sign a certificate or written consent which a corporation has to give under the terms of any restriction has been broadly accepted.

Some of the comments made and queries raised indicate the need for some additional guidance on the drafting of restrictions, including who is to sign any consent or certificate required. Practice guides and other materials covering these changes will be introduced to coincide with the amendment rules coming into force.

One respondent commented:

“We would prefer that option (d) specifically refers to an employee of the corporation. Where an application for consent is made to a lender, this will, in practice, most likely be dealt with by an employee. We would also query the need for reference to a “duly appointed agent” – how will the Land Registry check the appointment? We would have thought that it is likely that lenders would either use a conveyancer or an

employee to deal with the application for consent. If the appointment of the agent is not checked, we wonder whether there is potential for abuse and whether there is need for reference to an agent at all.”

We have amended the rule to refer to ‘its duly authorised employee or agent’. A reference to employees alone would not be sufficient since, for example, landlords may want their managing agent to give consents or certificates.

Since the consultation, we have inserted the following paragraph in rule 91B:

“(2) This rule does not apply where the certificate or written consent is given in a deed executed by the company or in a document to which section 91 of the Act applies.”

There may be occasions when a certificate or consent is given in a deed, or can be implied from it (for example, when a chargee who has the benefit of a restriction executes a deed agreeing to postpone its charge to a subsequent charge). The execution of the deed might not comply with paragraph (1) of rule 91B. Section 91 of the Act authorises electronic dispositions, which have the effect of deeds, though they are technically not deeds.

Proposal 28 (Amendment to rule 92)

Rule 92 Application for a restriction and the prescribed period under section 45(2) of the Act

Question 30

Do you agree with the proposal to require details of the nature of the applicant's interest and of how that interest arose, in cases where an application to enter a restriction is made by a person claiming he has sufficient interest in the making of the entry?

Response	Absolute numbers	% of those who responded
Yes	36	87.8
No	5	12.2
No reply	21	

The proposal to amend rule 92(3) introduces a requirement for an applicant for entry of a restriction (where the application is made upon the basis that the applicant claims to have a sufficient interest) to provide full details of the nature of the interest.

In practice the Registry already asks for this information if it is not provided when the application is made.

The proposal may appear to introduce at rule 92(3)(b) an additional requirement for applications in respect of interests that do not fall within rule 93.

However, in practice the information already required by Land Registry in respect of such an application would meet the requirements of the amended rule.

The proposal was broadly accepted.

Since consultation, paragraph (7)(b) of rule 92 has been further updated to include reference to an electronic legal charge. This incorporates the amendment made to it by the Land Registration (Electronic Conveyancing) Rules 2008 (S.I. 2008/1750), which come into force on 4 August 2008. It now reads (in part):

“(7) Paragraph (1) of this rule does not apply where a person applies for the entry of a standard form of restriction—

.....(b) in panel 7 of Form CH1 or in an electronic legal charge,.....”

Proposal 29 (Amendment to rule 93)

Rule 93 Persons regarded as having a sufficient interest to apply for a restriction

Question 31

Do you agree with the proposal to amend rule 93?

Response	Absolute numbers	% of those who responded
Yes	36	90.0
No	4	10.0
No reply	22	

The proposal to amend rule 93 to reflect more clearly the existing position that neither a bankrupt nor the trustee in bankruptcy may have a restriction (other than in Form A) in respect of a derivative interest under a trust of land, has been generally welcomed.

As to paragraph rule 93 (x), see the notes on Form MM in Schedule 4 of the Rules on page 31.

One respondent suggested rule 93 should be further amended to include situations where the Official Solicitor or a deputy or receiver appointed by the Court of Protection is acting on behalf of a patient. We do not consider this is appropriate. The powers of the person appointed by the Court will depend on the nature of the court order appointing him or her. An application to enter a restriction made by such a person should include a copy of the court order as evidence of that person’s powers.

Proposal 30 (Amendment to rule 94)

Rule 94 When an application for a restriction must be made

Question 32

Do you agree with the proposal to amend rule 94 to extend the circumstances in which application must be made to enter a restriction in Form A to include situations where two or more persons apply to be registered as proprietor of an estate that is a rentcharge, profit a prendre in gross, franchise or manor and the survivor of them cannot give a valid receipt for capital money?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

Question 33

Do you agree with the proposal to amend rule 94 to provide that the obligation to apply for entry of a restriction contained in rules 94(1), (3) and (4) will be satisfied by an application that has not been made by all the registered proprietors or personal representatives?

Response	Absolute numbers	% of those who responded
Yes	35	87.5
No	5	12.5
No reply	22	

The proposal to introduce rule 94(2A) was generally accepted. Some suggestions were made to amend the drafting of rule 94(2A). These have been considered but not adopted.

Respondents commented that the obligation to apply for entry of a restriction contained in rule 94 (1), (3) and (4) applies to all the proprietors or personal representatives.

Our view is that the new paragraphs (9) and (10) will mean that:

- the duty to apply remains on all the proprietors or personal representatives but can be satisfied by any one of them
- the application by one proprietor or personal representative will be made in pursuance of a rule made under section 43(2)(a) of the Act and so will not be a notifiable application within the meaning of section 45 (see section 45(3)(b)). In practice we would notify the other registered proprietors, but only after making the entry and not so as to give them the opportunity to object
- the application will not be made by the registered proprietor within the meaning of section 43(1)(a) of the Act, because ‘the registered proprietor’ means all the joint proprietors. It is also unlikely to be made with their consent (section 43(1)(b))
- consequently, the application will normally be one to which section 43(1)(c) will apply, and the applicant will have to show a sufficient interest in the making of the entry. Rules 92(2)(e) and 92(4), relating to evidence, will therefore apply.

Proposal 31 (Amendment to rule 96)

Rule 96 Application for an order that a restriction can be disapplied or modified

Question 34

Do you agree with the proposal to amend rule 96?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

The proposal to amend rule 96 to give the registrar a discretion as to whether or not to make an entry in the register to note the terms of an order made by the registrar under section 41(2) of the Act, was generally accepted.

We received two replies to the effect that the amended rule should explicitly set out the circumstances in which a note of an order disapplying or modifying a restriction would be entered in the register. As the aim of the amendment is to ensure superfluous entries are not made in the register the Registry's view is that it is appropriate to make this decision on a case-by-case basis.

However, to make it clear that an entry must be made unless there is good reason not to, we have changed the wording of the amendment, so that paragraph (5) of the rule will now read:

'(5) A note of the terms of any order made by the registrar under section 41(2) of the Act must, if appropriate, be entered in the register.'

Proposal 32 (Amendment to rule 98)

Rule 98 Applications to withdraw a restriction from the register

Question 35

Do you agree to the proposal to amend rule 98?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

There was general agreement that rule 98 should be amended to improve the drafting and remove a possible ambiguity.

In the final version, we have recast the rule completely, though we believe the effect to be the same as the draft consulted on. We have also added a sub-paragraph to clarify the position in cases where a restriction asks for the consent of a named person or a certificate from a different named person as an alternative – in such a case both must consent to or participate in a withdrawal.

Proposal 33 (Amendment to Schedule 4)

Question 36

Do you consider the revised layout of the standard restrictions makes the standard restrictions easier to apply?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

In general terms the proposals relating to the revised layout of Schedule 4 and to the majority of the standard forms of restriction were welcomed.

Some respondents commented to the effect that although the proposed amended Schedule 4 is an improvement on the current version, the proposals do not go far enough in simplifying the standard form restrictions. We do not however feel able to go beyond the proposed amendments without prejudicing the purpose of standard form restrictions, which is to provide for as broad a range of situations as possible.

A reminder of the provisions of new rule 91B has now been added to the beginning of schedule 4 (see proposal 27 on page 22 above).

'Gender-neutral drafting'

Government policy is that all new secondary legislation drafted after 1 October 2008 should adopt a gender-neutral style of drafting, so far as it is practical to do so at no more than a reasonable cost to brevity and intelligibility. Among other things, this means that, notwithstanding the Interpretation Act 1978, the use of male pronouns (when not referring to a specific male person) should be avoided.

Whilst the amendment rules are exempt from that requirement for two reasons (ie they were drafted and consulted on before the policy came into effect, and they amend rules that are drafted in a different style), we thought it best that, since Schedule 4 was being entirely replaced, the standard forms of restriction should follow the new style.

The method we have adopted has usually been to replace 'he' and 'his' where they occur in schedule 4 with 'they' and 'their'. The use of 'they' seems the simplest solution in this context. An amendment to rule 91A has been added to allow the use of 'he' 'she' 'his' or 'her' when referring to a named individual, or 'it' or 'its' when referring to a named corporation, since we recognise that some users of the restrictions may be uncomfortable with this particular use of language.

'Specify type of disposition'

Question 37

Do you agree with the proposal that where they occur in standard restrictions, the words "No disposition [*or specify details*]" should be replaced with "No [disposition or *specify type of disposition*]"?

Response	Absolute numbers	% of those who responded
Yes	36	92.3
No	3	7.7
No reply	23	

The proposal was broadly supported.

Forms B, L, M, N, O, P, Q, R, S and T currently commence 'No disposition [*or specify details*]'. We propose amending this to 'No [disposition *or specify type of disposition*]'. Since consultation a new paragraph (8) has been added to rule 91A explaining that the only types of disposition that may be specified are 'transfer', 'lease', 'charge', 'sub-charge' or some appropriate combination of these. This is not intended to lead to any change of Land Registry practice.

The intention behind both the new and the old wording, and current Land Registry practice, is not to permit applicants to specify a more complex provision (for example, 'lease for a term of more than 21 years' or 'transfer by way of gift'). Such types of provision can be included in non-standard restrictions, where greater thought can be given to their precise wording.

The London Property Support Lawyers Group said in their reply to consultation:

“The guidance notes to this generic change indicate that "disposition" may be replaced by a particular type of disposition eg "lease, charge, transfer" but not by a more complex provision eg "lease for a term of more than 21 years" and that, where such a complex provision is required, it should be dealt with by way of a non-standard restriction.

We do not agree to this proposal for the following reason. Where a large property portfolio has been mortgaged it is common for the parties to agree that certain types of dealings, in particular, short-term rack rent leases will not need the mortgagee's consent and are therefore to be expressly excluded from the terms of the restriction. The above guidance notes indicate that these types of arrangement should now be dealt with by way of a non-standard restriction. If so, this proposed change of practice will force applicants in such circumstances to enter into direct dialogue and negotiation with the relevant district land registry to 'agree' the form of such 'non-standard' restriction so as to obtain certainty that the form of that non-standard restriction will be accepted on application post completion as 'non-standard' restrictions do not carry any guarantee of approval and significantly increase the borrower's costs as the wording of the non-standard restriction will have to be agreed and an additional fee of £80 will be payable for each title.”

Another respondent said:

“Please include examples and guidance on the standard forms of disposition in the notes to schedule 4.”

Anecdotal evidence suggests that difficulty does arise from lack of clarity in the existing forms as to what type of disposition may be specified, and the proposed amended wording might not, on its own, completely solve this. The new paragraph (8) added to rule 91A stating what types of disposition may be specified has therefore been introduced to add clarity.

We understand the force of the London Property Support Lawyers Group's argument, particularly concerning the length of leases, and that this has been an issue in practice. On the other hand, we have indicated in the Consultation document some of the difficulties in specifying the term of a permitted lease. We think that the amendment mentioned under *Additional generic changes* below, allowing for a certificate confirming that a particular provision does not apply to the disposition in question, will assist in many cases.

'Dispositions under power of sale in a prior charge'

Question 38

Do you agree with the proposal to amend Forms J, K, L, M, N, O, P, R, II and JJ to make it clear on their face that they do not apply to dispositions by a proprietor of a charge registered before the restriction?

Response	Absolute numbers	% of those who responded
Yes	36	92.3
No	3	7.7
No reply	23	

There was general support for this proposal.

We did however receive comments to the proposal that it did not allow for situations where a chargee may be bound by a restriction entered after registration of the charge. Where this is the case, the correct course of action is to apply for entry of a restriction against the charge.

Additional generic changes

Since the consultation we have made two additional changes affecting a number of standard restrictions:

As a result of an internal suggestion, we have changed the order of some of the options in Forms L, O, P, S and the new forms NN and OO. Where a certificate signed by a conveyancer or by the applicant for registration or their conveyancer are among the options, they are now placed first in the list, in the hope that this will encourage their use.

In Forms L, M, O, P, S and the new forms NN, OO and PP, we have allowed for a certificate to be to the effect that the specified provisions do not apply to the disposition concerned. This will be an optional addition to the form of restriction. As well as situations where a short term lease does not need a mortgagee’s consent it is common for there to be exempt dispositions specified within transfers for example transfers or deeds of grant to utility companies. In the latter situation problems arise when a standard restriction has been entered requiring a certificate of compliance for all dispositions but it is then not possible to give the certificate for an exempt disposition.

The wording at the end of these restrictions will be amended to “that the provisions of [specify clause, paragraph or other particulars] of [specify details] have been complied with [or that they do not apply to the disposition]”.

Amendments to individual standard forms of restriction

Question 39

Do you agree with the proposal to amend Form C?

Response	Absolute numbers	% of those who responded
Yes	37	94.9
No	2	5.1
No reply	23	

The proposal to amend Form C received strong support. Since consultation we have made three further changes.

1. We have removed a pair of brackets in the second bullet point. If the laws of intestacy apply without variation, there is no scope for a limitation to which this restriction would apply. In this respect, the new form now agrees with the original version of Form C in the 2003 rules.
2. We have clarified the form by replacing “other than a transfer as personal representative” with “other than a transfer by way of assent”. The form derives from Form 11B, introduced by the Land Registration Rules 1996 (made under the Land Registration Act 1925). That form referred to “no disposition ...other than an assent”. The intention, when the Land Registration Rules 2003 were made, appears to have been to reproduce Form 11B, updated only so far as necessary to reflect the Act.

The Act does not refer to assents in the context of registered land (it refers to them only in section 4, which relates to first registration). Instead, it must regard them as a species of transfer. For much of the drafting process, therefore, the forms of assent in the draft of what became the 2003 Rules were headed “transfer as personal representative”. Eventually that wording was abandoned, no doubt partly because there are other forms of transfer which a personal representative can make, but Form C was not changed. We have now changed it.

3. We also propose to simplify the restriction by removing the reference to the name of the personal representative and the need to specify ‘executor’ or ‘administrator’. Whilst this is useful information, we envisage that in most cases where Form C is used the personal representatives will have been registered as proprietors. In that case, the proprietorship entry will give the names and indicate whether they are executors or administrators. If the personal representatives have not been registered, evidence of their appointment will in any case be required when application is made to register a disposition. The revised form will have the advantage that the entry will not need to be changed if the personal representative changes.

Question 40

Do you agree with the proposal to amend Forms L, N, S and T to provide for situations when it is intended that a restriction is to continue to have effect after the death of a restrictioner?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

There was general support for this proposal.

Question 41

Do you agree with the proposal to amend Forms L, N, S and T to allow a certificate or consent to be given by one or other of two (or more) named individuals?

Response	Absolute numbers	% of those who responded
Yes	34	89.5
No	4	10.5
No reply	24	

This proposal received general support.

Question 42

Do you agree with the proposal to amend Forms AA and BB?

Response	Absolute numbers	% of those who responded
Yes	37	94.9
No	2	5.1
No reply	23	

This proposal received general support.

Question 43

Do you agree with the proposal to amend Form JJ to allow the restriction to be used in respect of a statutory charge on a beneficial interest in a registered charge?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

While this proposal also received general support one respondent made the following comment; "There is scope for error or/and fraud and it would be better for LR to serve notice on LSC". If this comment is a suggestion that Land Registry should serve the notice required by the restriction, it would in all cases increase the time between the disposition and the service of notice. We intend to review our practice with regards to service of an information notice when a Form JJ restriction is cancelled following registration of a transfer which effects overreaching of beneficial interests.

Question 44

Do you agree with the proposal to introduce Form MM?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

The form differs from the version in the consultation document, in that in paragraph (2) 'completed by registration' has (relying on rule 91(3)) been replaced with 'registered'. We have also inserted 'the' before the title of the Act in the same paragraph and inserted a reference to section 22(1) of the Health and Social Services and Social Security Adjudications Act 1983.

We received two replies to the consultation to the effect that where a charge under section 22 of the Health and Social Services and Social Security Adjudications Act 1983 has arisen against the interest of a person who is a tenant in common, it should be possible to enter a restriction other than one in Form A in respect of the charge. These comments are really a reflection on the principle of overreaching. This is a fundamental issue that cannot be resolved through the Rules.

One respondent also objected to the proposed wording of Form MM on the grounds that it is capable of being overreached. This is a result of the nature of a charge arising under section 22. Where beneficial joint tenants are registered, the charge is a derivative interest until such time it becomes a charge on the legal estate (ie upon the death of a co-owner and the survivor becoming the sole beneficial owner). Until that time any restriction entered in respect of the charge will be capable of being overreached as a beneficial interest under a trust of land.

Question 45

Do you have any other comment on the proposed changes to Schedule 4?

Such commentary as was received in response to question 45 was considered and where appropriate incorporated in the changes described above.

Additional amendments to Schedule 4 since consultation

Forms N and T currently provide for either a consent or a certificate to be provided. The length of some of the standard forms was commented on adversely by certain respondents, and Forms N and T are the worst offenders. In fact the majority of Form N restrictions and almost all Form T restrictions applied for call only for a consent. These restrictions have now been divided into Forms N, T, NN and OO. Forms N and T have been simplified and provide for a consent only. The new Forms NN and OO will allow either a consent or a certificate.

To further simplify Forms NN and OO, the options available for the provision of the certificate have been reduced to:

- by a conveyancer
- by the applicant for registration [or their conveyancer]
- by [name] of [address] [or [their conveyancer or specify appropriate details]].

We believe that it would be extremely rare for applicants to want a different option in the 'certificate' section from that in the 'consent' section, other than the three listed above. We also consider that there is no purpose in a restriction that allows the same person to give either a consent or a certificate – if they can give a certificate, they can just as easily give a consent.

Forms S and T (which are restrictions against dispositions by the proprietors of registered charges) have been changed as a result of an internal consultation response, to allow for the possibility of a consent or certificate from the proprietor for the time being of a registered sub-charge. In the light of the judgment of the Court of Appeal in *Credit and Mercantile plc v. Marks* [2004] EWCA (Civ) 568, relating to the relative powers of chargees and subchargees in relation to the registered estate, there is a need for a standard restriction on these lines.

Forms W and X have been amended to cater for the possibility of consent from the Welsh Ministers, and Form KK has been updated to refer to them.

An additional standard restriction has been introduced, Form PP. This is worded as follows:

Form PP (Disposition by registered proprietor of registered estate or proprietor of charge – certificate of landlord etc, or of a conveyancer, required)

No [disposition or specify type of disposition] of the registered estate [(other than a charge)] by the proprietor of the registered estate [, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a certificate signed by

[choose **one** of the bulleted clauses]

- the proprietor for the time being of the registered estate comprising the reversion immediately expectant on the determination of the registered lease,
- the proprietor for the time being of the estate registered under title number [specify title number],
- [name] of [address] [or by [name] of [address]],

or by a conveyancer, that the provisions of [specify clause, paragraph or other particulars] of [specify details] have been complied with [or that they do not apply to the disposition].

The restriction is based on Forms L and M. This restriction could be used in a number of circumstances, but it is particularly aimed at landlords (and their managing agents) where the object of the restriction is to ensure compliance with a provision in the lease relating to a disposition of the registered lease. For example, the provision in a residential lease might be a requirement that the landlord or its managing agent be provided with the details of the assignee under a transfer of the lease.

At present, a restriction in these circumstances will usually require the consent, or a certificate of compliance with the provision, from the landlord or managing agent and this can cause delay in registration while it is obtained, expense for the assignee and an administrative burden for the landlord or managing agent. In drafting this restriction, we have attempted to strike a balance between the interests of landlords and tenants. The option referring to the proprietor of the registered reversion is entirely new and removes the need to update the restriction when the landlord's interest changes hands, which can be both expensive and hard to arrange if a large number of leasehold properties are involved.

However, the need to obtain an express consent or certificate from a landlord can cause equal difficulty and expense to tenants (not to mention often unwanted work for landlords), and unnecessary delays in the registration process. There seems to be no justification for a restriction that requires the tenant to do any more than is expressly required by the lease. It is therefore a compulsory part of the restriction that a conveyancer (who might be the tenant's or assignee's conveyancer) can give a certificate of compliance. A conveyancer's certificate of compliance should be sufficient protection for the landlord.

The title number/named person options allow the restriction to be used by management companies or developers of freehold developments, though with these there is no solution to the 'updating' problem when, for example, ownership of the reversion changes.

Charges

Proposal 34 (Amendment to rule 111)

Rule 111 Certificate of registration of company charge

Question 46

Do you agree with the proposal to amend rule 111?

Response	Absolute numbers	% of those who responded
Yes	38	92.7
No	3	7.3
No reply	21	

The proposal to amend rule 111 to accord with the provisions of the Companies Act 2006 was strongly supported.

The current rule 111 will not be replaced by this rule until section 869 of the Companies Act 2006 (register of charges to be kept by registrar) comes into force, as provided by rule 1(2) of the Rules. At the time of consultation it was anticipated that section 869 and the other sections referred to in new rule 111 would come into force in October 2008. These sections are now likely to come into force in October 2009.

Since consultation, we have added a reference to Limited Liability Partnerships incorporated in Northern Ireland, and corrected one of the statutory references in the draft rule.

Proposal 35 (Amendment to rule 113)

Rule 113 Variation of the terms of a registered charge

Question 47

Do you agree with the proposal to amend rule 113?

Response	Absolute numbers	% of those who responded
Yes	39	97.5
No	1	2.5
No reply	22	

The proposed amendment to rule 113 makes it clear that the consent of the proprietor of a registered sub-charge of every other registered charge of equal or inferior priority that is prejudicially affected by the variation is required unless such a person has executed the instrument varying the charge, or such consent is not required by the terms of the sub-charge. The proposal was well supported.

However the proposal has been amended following consultation. Firstly, by making paragraph (1) subject to paragraph (2). Secondly, by inserting a new paragraph (2) to clarify the circumstances when the consent of a registered charge or sub-charge is not required. Thirdly, by consequential re-numbering of the existing paragraphs (2), (3) and (4) to read (3), (4) and (5). Fourthly, by adding the words 'and of any registered sub-charge of that registered charge' in the re-numbered paragraph (4). Fifthly, by adding a paragraph (6) to clarify that reference to registered sub-charge in this rule includes any further sub-charge of that sub-charge.

Proposal 36 (New rule 116A)

Rule 116A Information relating to deeds of postponement in respect of registered charges and noted charges

Question 48

Do you agree with the proposal to introduce new rule 116A?

Response	Absolute numbers	% of those who responded
Yes	38	95.0
No	2	5.0
No reply	22	

The proposed rule gives express power to the registrar to make an entry referring to an agreement made as to priorities between a registered charge and a charge protected by a notice in the register. The proposal was generally welcomed.

One respondent commented:

“The register should be clear and certain as to priorities. Words such as 'claimed' should not appear in the context of priorities which have been addressed in an agreement between the concerned parties. Use of 'claimed' means that anybody concerned with the question of priorities must look behind the register.”

The use of the word 'claimed' is intended to reflect the fact that the interest that is the subject of the notice is not guaranteed (section 32(3) of the Act).

Boundaries

Proposal 37 (Amendment to rule 119)

Rule 119 Procedure on an application for the determination of exact line of a boundary

Question 49

Do you agree with the proposal to amend rule 119?

Response	Absolute numbers	% of those who responded
Yes	35	94.6
No	2	5.4
No reply	25	

The proposal to amend rule 119 so that the registrar is not obliged to serve notice of the application on an adjoining owner where the line of the boundary has been determined by the court or is the subject of an agreement in writing between the parties has been broadly accepted. The registrar retains the discretionary power to serve notice if this is appropriate.

Information

Proposal 38 (Amendment to rule 131)

Rule 131 Definitions

Question 50

Do you agree with the proposal to amend rule 131?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

As edited information documents can also arise under rules 136(6) and 138(4), the proposed amended rule 131 clarifies that an 'edited information document' also includes one that is prepared by the registrar under rules 136(6) or 138(4). The proposal also removed reference in the rule to transitional period documents, as the transitional period ended on 12 October 2005. The proposals were overwhelmingly accepted.

One respondent said:

"General 'tidying' of the Rule avoids any potential confusion."

Proposal 39 (Amendment to rule 133)

Rule 133 - Inspection and copying and

Proposal 40 (Amendment to rule 135)

Rule 135 – Application for official copies of documents referred to in the register of title and other documents kept by the registrar

Question 51

Do you agree with the proposal to amend rules 133 and 135?

Response	Absolute numbers	% of those who responded
Yes	41	97.6
No	1	2.4
No reply	20	

The proposed amendments to rules 133 and 135 add further exceptions to the documents in respect of which there is a right of inspection and a right to obtain official copies. One of these exceptions relates to documents provided or obtained for establishing identity. The main purpose of this proposed exclusion was to reduce the possibility of identity fraud. The other exception relates to documents connected with the investigation of crime, the concern being that it may be prejudicial to the investigation of crime if such documents were not excepted. The proposal received overwhelming support.

The Council of Mortgage Lenders said:

“We welcome these proposals and believe that they are useful...”

Two comments suggested signatures be removed or obscured from documents available for inspection. However, the signature is a fundamental part of deeds and if they were to be redacted from official copies, the recipient would not be able to make any judgement about the validity of the document supplied. Including the signatures in official copies is also common practice elsewhere, and for similar reasons. For example, Companies House and the Probate Office provide copies of documents with signatures on them.

Proposal 41 (Amendment to rule 136)

Rule 136 Application that the registrar designate a document an exempt information document

Question 52

Do you agree with the proposal to amend rule 136?

Response	Absolute numbers	% of those who responded
Yes	38	95.0
No	2	5.0
No reply	22	

There was general agreement for our proposal to amend rule 136 so as to require an applicant to show in an exempt information document where information has been excluded.

Proposal 42 (Revocation of rule 139)

Rule 139 Inspection, copying and official copies of transitional period documents

Question 53

Do you agree with the proposal to revoke rule 139?

Response	Absolute numbers	% of those who responded
Yes	36	92.3
No	3	7.7
No reply	23	

There was general agreement to our proposal to revoke rule 139. The rule referred to inspection copying and official copies of transitional period documents and is to be revoked on the basis that the transitional period ended on 12 October 2005.

Proposal 43 (Amendment to rule 140)

Rule 140 Application in connection with court proceedings, insolvency and tax liability

Question 54

Do you agree with the proposal to amend rule 140?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

Rule 140 has been amended to remove reference to transitional period documents as the transitional period ended 12 October 2005. (See revocation of rule 139 above.)

Miscellaneous

Proposal 44 (Amendment to rule 162)

Rule 162 Transfer by a personal representative

Question 55

Do you agree with the proposal to amend rule 162?

Response	Absolute numbers	% of those who responded
Yes	31	81.6
No	7	18.4
No reply	24	

The proposed amended rule allows for essentially the same evidence to accompany an application to register a transfer by a personal representative as is required under rule 163 for registration of a personal representative as proprietor. There was a generally positive response to this proposal.

Proposal 45 (Amendment to rule 175)
Rule 175 Entry of Church Commissioners etc as proprietor

Question 56

Do you agree with the proposal to amend rule 175?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

The proposal relates to the addition of a new paragraph (2)(b)(i) to take account of the amendments made to the Pastoral Measure 1983 by the Church of England (Miscellaneous Provisions) Measure 2005. The proposed amendments were overwhelmingly accepted.

Proposal 46 (Revocation of rule 181)
Rule 181 Registration of companies and limited liability partnerships

Question 57

Do you agree with the proposal to revoke rule 181?

Response	Absolute numbers	% of those who responded
Yes	35	87.5
No	5	12.5
No reply	22	

The proposal to revoke rule 181 has been broadly accepted.

Three respondents expressed the view that the primary requirement to provide company registration details should come from an express rule rather than from the prescribed Schedule 1 forms. The forms are however part of the Rules.

It was also suggested in the replies to consultation that we should require the home territory registration details of overseas companies. We do not intend to ask for this information because of the differing registration regimes that exist globally.

Proposal 47 (Amendment to rule 182)
Registration of trustees of charitable, ecclesiastical or public trust

Question 58

Do you agree with the proposal to amend rule 182?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

Amendments to this rule relate to consequential redrafting of rules as a result of revocation of rule 181 and the introduction of new rule 183A. The proposal received strong support.

Proposal 48 (Amendment to rule 183)
Rule 183 Registration of certain corporations

Question 59

Do you agree with the proposal to amend rule 183 and introduce Forms 7 and 8?

Response	Absolute numbers	% of those who responded
Yes	37	92.5
No	3	7.5
No reply	22	

As in proposals 46 and 47 above, the amendments to rule 183 relate to the redrafting of associated rules. In addition, the proposed amendment to paragraph (2) of rule 183 and the addition of Forms 7 and 8 in Schedule 3 to the Rules allow certificates to be given either by a lawyer practising in the territory of incorporation of an overseas corporation, or by the applicant's conveyancer in respect of all other corporations to which the rules applies, as an alternative to providing the documents constituting the corporation for the registrar to consider. The proposals were generally accepted.

We have added a reference to Limited Liability Partnerships incorporated in Northern Ireland.

Proposal 49 (New rule 183A)
Registration of registered social landlords and unregistered housing associations

Question 60

Do you agree with the proposal to introduce new rule 183A?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

This new rule contains additional requirements relating to registered social landlords and unregistered housing associations that are applying to be registered as proprietor of a registered estate or registered charge. The requirements are the same as those included in the existing rules 181(2) and (3) (in the case of registered companies), 182(2) and (3) (in the case of trusts) and 183(3) and (4) (in the case of other corporations). The proposal was strongly supported.

Proposal 50 (Amendment to rule 187)
Rule 187 Interpretation

Question 61

Do you agree with the proposal to amend rule 187?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

The proposal amended rule 187 by the addition of paragraphs (2) and (4) which applied the definitions of ‘post’ and ‘working day’ as used in rule 199 to apportionment of charges under new rules 194A to 194G. See proposal 53 (page 40).

Similarly paragraph (3) defined ‘qualified surveyor’, which is another term used in the Rules concerning apportionment of charges.

The suggested amendments were generally accepted. However, the term ‘working day’ and its current definition is to be added to rule 217 (general interpretation).

**Proposal 51 (Amendment to rule 188)
Rule 188 Applications for registration – procedure**

Question 62
Do you agree with the proposal to amend rule 188?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

Rule 188 relates to the procedure to be followed when an application is made under paragraphs 1 or 6 of Schedule 6 to the Act. The amendment provides for circumstances under which the requirement to supply a plan to identify the land which is the subject of the application is no longer to apply. The proposal received overwhelming support.

**Proposal 52 (New rule 188A)
Rule 188A Notification of application where registered proprietor is a dissolved company**

Question 63
Do you agree with the proposal to introduce new rule 188A?

Response	Absolute numbers	% of those who responded
Yes	38	97.4
No	1	2.6
No reply	23	

Proposed new rule 188A applies where an application under paragraph 1 of Schedule 6 to the Act is made and relates to notification of application where the registered proprietor is a dissolved company. The proposal was generally accepted.

- Proposal 53 (New rules 194A-194G)**
- Rule 194A Notice of required apportionment**
- Rule 194B Arbitration requested by proprietor**
- Rule 194C Apportionment**
- Rule 194D Basis of valuation**

Rule 194E Service of notice

Rule 194F Notice of apportionment

Rule 194G Costs

Question 64

Do you agree with the proposal to introduce new rules 194A to G?

Response	Absolute numbers	% of those who responded
Yes	36	92.3
No	3	7.7
No reply	23	

Proposals to introduce new rules 194A to G relating to paragraph 10 of Schedule 6 to the Act, which provides for the apportionment of a charge that binds a squatter who has become registered under Schedule 6 to the Act, have been welcomed. The rules set out provisions for the procedure to be adopted, for valuation, for the calculation of the chargee's costs and for the payment of the chargor's costs. The proposals were outlined in a discussion paper and discussed with the Council of Mortgage Lenders in a pre consultation exercise ahead of the formal consultation.

The Council of Mortgage Lenders noted that:

"The proposals relating to squatters and chargees were discussed by the Land Registry with the CML's Legal Advisory panel...we agree these suggested changes."

The drafting of rule 194D has been amended, in the light of consultation, to try to ensure that the apportionment takes proper account of the effect of the squatter's registration on the chargee's security. The value of the proprietor's registered estate is now to be the diminution in value of the other property affected by the charge. This will be the difference between (a) the value of all the property subject to the charge if the chargor were the proprietor and in possession of the proprietor's registered estate, and (b) the value of the property subject to the charge without the proprietor's registered estate.

Proposal 54 (Amendment to rule 195)

Rule 195 Payment of interest on an indemnity

Question 65

Do you agree with the proposal to amend rule 195?

Response	Absolute numbers	% of those who responded
Yes	35	92.1
No	3	7.9
No reply	24	

The proposed amendment to rule 195 would change the rate at which interest is payable on indemnity so that, in future, it is determined by reference to the Bank of England base rate (which is currently set by the Monetary Policy Committee), rather than by reference to the rate set for court judgment debts. The proposal has been generally accepted. However, on reviewing the matter, it has now been decided that the rate should be 1% above base rate, as this seems to strike a fairer balance.

Proposal 55 (New rules 196A and 196B)
196A Possessory title to rentcharges
196B Application of sections 11, 12 and 29 of the Act to franchises

Question 66

Do you agree with the proposal to introduce new rules 196A and 196B?

Response	Absolute numbers	% of those who responded
Yes	33	91.7
No	3	8.3
No reply	26	

The new rule 196A (the wording of which has been simplified following the consultation) allows possessory freehold and possessory leasehold titles to be granted in respect of rentcharges and new rule 196B relates to a particular problem regarding liability to forfeiture, that arises in relation to certain franchises. The proposals have been broadly accepted.

General provisions

Proposal 56 (Amendment to rule 198)
Rule 198 Address for service of notice

Question 67

Do you agree with the proposal to amend rule 198?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

Under section 56(4) of the Land Registration Act 1925 (as preserved by paragraph 2(3) of Schedule 12 to the Act) the personal representative of a deceased cautioner may consent or object to registration of a dealing in the same manner as the cautioner. This proposal to add a paragraph to rule 198 to allow for the personal representative to apply to change the address for service of the deceased cautioner or add addresses received overwhelming support.

Proposal 57 (Amendment to rule 203)
Rule 203 Retention of documents on completion of an application

Question 68

Do you agree with the proposal to amend rule 203?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6

No reply	24	
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The proposed amendment to this rule confirms that a certified copy of a certificate relating to stamp duty land tax or a certified copy of a statement of truth should also be provided with an application for first registration if the applicant requires the original to be returned. The proposal received overwhelming support.

Land Registry – when open to public

Proposal 58 (Amendment to rule 216)

Rule 216 Days on which the Land Registry is open to the public

Question 69

Do you agree with the proposal to amend rule 216?

Response	Absolute numbers	% of those who responded
Yes	36	87.8
No	5	12.2
No reply	21	

The amendments to rule 216 were to allow for the closure of Land Registry for a period of time in circumstances where this is thought to be necessary. For example, if there were to be a flu pandemic in this country. The amendments to the rule allow for this by effectively introducing the concept of 'interrupted days' and allowing for these to be ignored in the computation of 'business days' as defined in rule 217. The proposal was generally accepted. However, in view of concerns raised, the registrar's power to certify a day as an interrupted day has been modified in two respects: first, the certification must be before the start of the day being certified and, secondly, this can only be done where it is likely that there will be a general delay in, or failure of, a communications service *causing a substantial interruption in Land Registry's normal operations*.

Transitional

Proposal 59 (Amendment to rule 223)

Rule 223 Cancellation of a caution—application by the proprietor etc

Question 70

Do you agree with the proposal to amend rule 223?

Response	Absolute numbers	% of those who responded
Yes	36	94.7
No	2	5.3
No reply	24	

The proposed amendment to rule 223 would allow persons who are entitled to be registered as proprietor notwithstanding the existence of a caution, such as a personal representative, to apply for cancellation of a caution. At present they cannot apply for cancellation of the caution until they have been registered as proprietor. The proposal received strong support.

Forms

During the review of forms the recommendations of the National Audit Office on government forms, together with customer and staff suggestions, have been taken into consideration. The aim has been to reduce the administrative burden on customers by making the forms:

- clearer
- easier and quicker to complete
- less confusing for non-professional users
- easier for Land Registry staff to extract information from.

We have tried to achieve this by:

- using the Arial font for the forms. This is generally accepted as being a clearer and easier-to-read font than Times New Roman. The RNIB recommends the use of non-serif fonts such as Arial
- standardising panels on forms as far as possible, such as the fee panel. This will give the forms a consistent appearance and make them easier to complete
- separating explanatory and functional text and placing explanatory text in a separate left-hand column. Several other government departments and agencies have successfully adopted this approach. Regular form users who do not require the explanatory notes will be able to remove the text outside the panels of a Schedule 1 form, other than the name and description of the form at the top of the first page and any text at the end (such as the Warnings on statements of truth forms); they will also be able to expand the right-hand column across the page, shortening the length of the form
- amending the Rules to allow us to expand, alter or update the explanatory text. This will allow us more flexibility to change information that becomes out of date or add additional guidance where necessary.

Proposal 60 (Proposed new layout)

Question 71

Do you think the new Arial font style and size are an improvement?

Response	Absolute numbers	% of those who responded
Yes	32	88.9
No	4	11.1
No reply	26	

In general we received a favourable response to our proposal to change from Times New Roman font to Arial.

One respondent commented that:

“The absence of the serif helps those with visual acuity problems and makes it easier for all of us to read.”

Whilst another said:
“Forms are much clearer to read.”

Question 72

Is the two-column format with the instructions and information/guidance notes placed at the side clearer to read?

Response	Absolute numbers	% of those who responded
Yes	33	84.6
No	6	15.4
No reply	23	

The proposal to standardise forms into a two-column format was also generally accepted.

Question 73

Will the ability to remove the left-hand panel containing the information/guidance notes be a beneficial feature?

Response	Absolute numbers	% of those who responded
Yes	35	92.1
No	3	7.9
No reply	24	

The proposal to separate explanatory and functional text and to allow regular form users, who do not require the explanatory text, to remove the left hand column and expand the right hand column has been welcomed.

The Association of Property Support Lawyers said:

“This would shorten the forms where law firms felt able to remove the notes and reduce the environmental cost of conveyancing.”

Question 74

Do you think that forms in the proposed new format will be quicker/easier to complete than the current forms?

Response	Absolute numbers	% of those who responded
Yes	28	80.0
No	7	20.0
No reply	27	

In general terms the proposed new layout and design of the forms has been supported.

Question 75

If all the forms were changed to the proposed new format, would this cause your firm/organisation any significant problems?

Response	Absolute numbers	% of those who responded
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Yes	9	25.0
No	27	75.0
No reply	26	

Most respondents did not feel that the changes would cause any significant problems. Of those who expressed some opposition the main concern related to the transitional period and specifically the time allowed for in house systems to be updated to reflect the changes. These concerns are dealt with under proposal 85 (page 58) below.

Question 76

Overall do you think the proposed new layout is an improvement over the current one?

Response	Absolute numbers	% of those who responded
Yes	32	84.2
No	6	15.8
No reply	24	

In general terms the proposed new layout and design of the forms has been supported.

The Association of Property Support Lawyers said:

“The new layout should be particularly useful for new users of the forms. This should reduce training time for firms and organisations using Land Registry services. The removal of the Stamp Duty panel is welcome.”

There were some respondents who felt that the current forms were perfectly adequate and did not see the need for change. However, in accordance with National Audit Office guidelines Land Registry have taken the opportunity presented by this review to consider improvements to forms with a view to reducing the administrative burden.

Proposal 61 (Administrative area)

Question 77

Do you think the request to provide the name of the local authority (to which local searches are made) is clearer than the current request for the ‘administrative area’?

Response	Absolute numbers	% of those who responded
Yes	37	90.2
No	4	9.8
No reply	21	

The proposal to ask applicants to provide the name of the local authority rather than to identify the administrative area was welcomed. As a result of a suggestion from one of our respondents the side note has been amended to say ‘Where there is more than one local authority serving an area, enter the one to which Council Tax or Business Rates are normally paid.’ It is believed that this will assist applicants to identify the information required to complete this panel.

Proposal 62 (Name of applicant)

Question 78

Do you agree that we should amend all application forms to include separate panels for the applicant's name and the details of the person lodging the application?

Response	Absolute numbers	% of those who responded
Yes	37	94.9
No	2	5.1
No reply	23	

The proposal to amend forms to include separate panels for the name of the applicant and the details of the person lodging the application has been strongly supported. This will bring forms into line with Form AP1 which was amended as a result of the Land Registration (Amendment) Rules 2005. This amendment has been applied to forms where appropriate.

NB1982 said:

"...the general public will find them more user-friendly".

Proposal 63 (Outline application reference to be quoted)

Question 79

Do you agree with our proposal to remove the requirement for the applicant to quote the outline application reference when the follow-up application is lodged?

Response	Absolute numbers	% of those who responded
Yes	31	79.5
No	8	20.5
No reply	23	

The proposal to remove the requirement for the applicant to quote the outline application reference was broadly accepted. One or two respondents expressed concern that this may result in the benefit of the priority period being lost. However Land Registry records the existence of the outline application on the daylist ensuring that staff are on notice of the outline application when the follow-up application is lodged. See also proposal 11 (page 14) above.

Proposal 64 (Company details)

We did not ask any specific questions relating to the proposal to update some forms so as to require a registration number for companies and limited liability partnerships incorporated in the United Kingdom, and in the case of overseas companies the territory of incorporation and a United Kingdom registration number (if it has one). The reasons for doing this were set out under proposal 46. However as a result of a suggestion from the London Property Support Lawyers Group we have further redesigned and improved the way we ask for information about companies.

Proposal 65 (Requests for Land Registry to deal with a third party)

Question 80

Do you agree with our proposal no longer to raise requisitions with a third party?

Response	Absolute numbers	% of those who responded
Yes	29	72.5
No	11	27.5
No reply	22	

Question 81

Do you ever ask Land Registry to send either the copy register and so on, or specified documents, to a third party?

Response	Absolute numbers	% of those who responded
Yes	23	57.5
No	17	42.5
No reply	22	

Question 82

If Land Registry returned everything to the person who lodged the application (except where the only application is the discharge of a charge when we would send the registered proprietor(s) a copy register), would this be acceptable?

Response	Absolute numbers	% of those who responded
Yes	29	70.7
No	12	29.3
No reply	21	

The proposals relating to the removal of the option for an applicant to request that Land Registry raise requisitions with a third party, received majority support. A minority of respondents were opposed and argued that a third party is occasionally the ultimate destination for requisitions or post application documentation.

Land Registry concedes that applicants may need to contact a third party as a result of a requisition, but believes that in lodging an application the person doing so takes responsibility for replying to subsequent queries and that this responsibility should not be delegated.

There was also majority support for the proposal to return documentation only to the person who lodged the application (except where the only application is a discharge of a charge when we would send to the registered proprietor(s) a copy of the register).

We will continue to offer the option of informing a third party when the application is completed.

Proposal 66 (Confirmation of identity)

Question 83

Do you agree with our proposal to include a confirmation of identity panel in Form AP1?

Response	Absolute numbers	% of those who responded
Yes	21	41.2

No	30	58.8
No reply	11	

Question 84

Do you agree with our proposal to include a confirmation of identity panel in Form FR1?

Response	Absolute numbers	% of those who responded
Yes	21	42.0
No	29	58.0
No reply	12	

The proposal to amend Forms AP1 and FR1 to require conveyancers to confirm that they have complied with their professional duties in verifying the disponee's and disponent's identity, had a mixed response. Whilst receiving significant support in numerical terms, a number of representative bodies raised concerns about various aspects of this proposal.

Some respondents said that the proposal would result in a "very significant reallocation of the responsibility for identity fraud from Land Registry to the legal profession (Law Society) and that Land Registry was "trying to pass the indemnity to the conveyancer" (J D G Hinchcliffe).

The proposal was considered by some to be "an unnecessary administrative burden on conveyancers" and that it would be unreasonable "to place a responsibility on conveyancers to have to check the identity of other parties to transactions, eg sellers, lessors and grantors" (Neil Burton), with one respondent saying "whilst we are under a duty to confirm identification, it remains to be seen if solicitors acting for the seller will take kindly to being asked whether they have checked also, as it amounts to saying, 'have you done your job properly?'" (NB1982)

Beachcroft said in their response "imposing any requirement on conveyancers to verify the disponent's identity when the disponent is not their client is wholly unacceptable".

Also, Simon Wake said "This is an additional and unwarranted burden on conveyancers, who are already acting as policemen in the case of identity far beyond the point of reasonableness. It is NOT Land Registry's business to concern itself with these questions, regardless of the possible indemnity costs".

A number of respondents questioned the meaning of 'professional duties' and in particular what these duties are in relation to a disponent:

"Conveyancers are under a duty to verify identity of clients. However, to certify that they have complied with professional duties is a step too far" (ILEX)

"The CLLS does not believe that 'professional duties' extend to verifying (in the sense contemplated by paragraph 66 that the disponent is the registered proprietor/estate owner". (City of London Law Society)

“The proposal refers to ‘professional duties’ – however, what exactly are those duties?” (Council of Mortgage Lenders)

Two respondents suggested possible alternatives:

“How about the requirement by the Registry for the disponent’s legal representative to provide certified copies of the written confirmation received by him?”
(Mangala)

“Insofar as [panel] 12(1) is concerned, any confirmation by the conveyancer for the disponent should be in a standard form addressed directly to Land Registry and not to the applicant’s conveyancer. That confirmation would then be submitted with the application for registration. This would be more straightforward than the current proposal, under which the position and the potential liability of the applicant’s conveyancer as intermediary are unclear and uncertain. There will be a risk that the disponent’s conveyancer will not produce the confirmation, thus preventing registration. This will need to be addressed, either in the contract or, preferably, as a matter of professional conduct under the Solicitors’ Code of Conduct.”
(London Property Support Lawyers Group)

We also received a number of requests for this proposal to be detached from the rest of the proposed rule amendments for separate and further consultation.

Land Registry subsequently met with representatives from the Law Society to discuss their concerns, following which we sent a revised proposal to them and other representative bodies for consideration.

Under these changes we are not asking conveyancers to confirm that they have verified the identity of their client, but the forms include a reminder that when registering transfers, discharges, charges, leases and other dispositions of land, Land Registry relies on the steps that conveyancers take, where appropriate, to verify the identity of their clients, and that these checks reduce the risk of property fraud.

The forms also include a requirement for conveyancers (in respect of all other parties) to provide details of the conveyancer, if any, who represented that other party, and if they were not so represented, to either provide confirmation that they are satisfied that sufficient steps have been taken to verify their identity or lodge evidence of identity in accordance with a Direction made by the Chief Land Registrar under section 100(4) of the Act (currently there is no such direction and Forms ID1 or ID2 are used).

We dropped the requirement for conveyancers to confirm that they have complied with their professional duties, as the responses to our consultation show that these are not defined or are not clear in relation to disponents.

We subsequently reached an understanding with the Law Society in respect of the revised proposal. This formed the basis for the eventual changes to Forms AP1 and FR1. We have extended this approach to cover Form DS2. This is because it is an application form that can be used for a discharge and an applicant using it should be in the same position as they would be if instead they used a Form AP1 for the discharge.

We think a difficulty has been that our original proposal was misunderstood, the Law Society, for example, believing that it would impose greater responsibilities than we

intended. We see the proposal as a modest one: that all we want to do, for cases where the party is represented, is to remind conveyancers of the reliance we place on their making appropriate identity checks. Where a party is not represented then evidence is required in the form of either a confirmation or evidence of identity (as appropriate).

It remains our view that we all have a shared interest in ensuring that the integrity of the register and of those who rely on it remains intact. We are not seeking to pass on the responsibility for identity fraud or for indemnity to the conveyancer. We already rely on conveyancers taking appropriate care to check identities; the proposed changes are intended to remind them of this and that the integrity of the system is threatened by property fraud.

In dealing with cases of fraudulent registration Land Registry will remain ultimately responsible. It has not been our policy to use our powers of recourse to recover moneys paid by way of indemnity where a conveyancer has been neither fraudulent nor negligent.

Proposal 67 (Form AP1 – address for service)

Question 85

Do you agree that the proposed tick box is a useful addition to Form AP1?

Response	Absolute numbers	% of those who responded
Yes	40	97.6
No	1	2.4
No reply	21	

The proposal to add a tick box to allow applicants to indicate, where appropriate, that the address for service is the same as the property subject of the application was overwhelmingly supported.

Question 86

Do you consider the proposed AP1 is clearer and easier to complete than the current version?

Response	Absolute numbers	% of those who responded
Much easier	6	15.4
Easier	22	56.4
About the same	10	25.6
Harder	1	2.6
Much harder	0	0
No reply	23	

The revised AP1 as presented in the consultation document received general approval.

Proposal 68 (Form FR1)

Question 87

Do you agree with the proposal not to ask for confirmation on Form FR1 that no disclosable overriding interests affect the property?

Response	Absolute numbers	% of those who responded
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Yes	35	89.7
No	4	10.3
No reply	23	

There was general support for the proposal to remove the obligation to confirm that no overriding interests affect the estate.

Question 88

Do you agree with the proposed amendment to panel 12 of FR1 to ask who is in possession of the property rather than if anyone is in adverse possession?

Response	Absolute numbers	% of those who responded
Yes	34	87.2
No	5	12.8
No reply	23	

The proposal to amend panel 12 was generally supported.

Following consultation, we have put brackets rounds the words 'other than applicant' in the second option in panel 12 to assist interpretation of that panel, so that it now reads:

"The applicant knows only of the following additional such rights, interests and claims, including those of any person (other than the applicant) in actual possession of the property or in receipt of the rent and profits from the property:"

Question 89

Do you consider the proposed FR1 is clearer and easier to complete than the current version?

Response	Absolute numbers	% of those who responded
Much easier	6	15.8
Easier	18	47.4
About the same	10	26.3
Harder	3	7.9
Much harder	1	2.6
No reply	24	

The revised FR1 as presented in the consultation document received general approval.

Proposal 69 (Form HR4 – new prescribed form)

Question 90

Do you consider that the proposed introduction of the new Form HR4 will make it easier to apply to cancel a home rights notice?

Response	Absolute numbers	% of those who responded
Yes	34	91.9
No	3	8.1
No reply	25	

Question 91

Do you think that the proposed new Form HR4 is clear and easy to use?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

Question 92

Does the new Form HR4 contain all the information you would require to assist you in lodging all the necessary evidence to support applications?

Response	Absolute numbers	% of those who responded
Yes	33	94.3
No	2	5.7
No reply	27	

The proposal to introduce Form HR4 was strongly supported. We have accepted some suggestions from respondents relating to minor amendments to the wording to improve usability.

We have added, in panel 8 regarding evidence in support, a new option C and appropriate side note, for the case where there is an entry in the register referring to an order under s.33(5) of the Family Law Act 1996. The option reads:

‘C. Any order under section 33(5) of the Family Law Act 1996 has ceased to have effect.’

Also we accepted a suggestion to improve the wording of the ‘release of home rights’ panel of Form HR4, by cross-referring to the panel in which the property is identified.

Proposal 70 (Form OC1 – Option to issue official copies electronically or in paper format)

Question 93

Do you agree that the additional panel provides a practical method of indicating a preference for postal delivery of official copies?

Response	Absolute numbers	% of those who responded
Yes	35	92.1
No	3	7.9
No reply	24	

Although the proposal to amend Forms OC1 and OC2, effectively to allow an applicant to receive official copies in electronic format where an email address had been supplied, was well received, we are not going to proceed with this innovation immediately. We hope to be able to introduce such a service in the future. A panel has been added to the forms in anticipation of this service being introduced. The side note indicates that the availability of the service will be dependent on a future direction by the registrar and that suitable publicity will accompany such a direction.

Although not consulted on, it is proposed, in due course, to extend electronic delivery to results issued in response to an application for a search of the index map on Form SIM.

**Proposal 71 (Form RX1 – Evidence of applicant’s interest)
and
Proposal 72 (Forms RX1, RX4, AN1, UN4, UT1 – simplifying completion)**

Question 94

Do you think Land Registry’s approach in merging the panels on RX1 and other forms is correct?

Response	Absolute numbers	% of those who responded
Yes	35	94.6
No	2	5.4
No reply	25	

Question 95

Do you consider the proposed Forms RX1, AN1, UN4, and UT1 are clearer and easier to complete than the current versions?

Response	Absolute numbers	% of those who responded
Much easier	4	10.5
Easier	22	57.9
About the same	10	26.3
Harder	2	5.3
Much harder	0	0
No reply	24	

We have amended Form RX1 so that details of the nature of the applicant’s interest and how it arose must be provided. This can be by means of a statement by the applicant or a conveyancer’s certificate, depending on the circumstances. These details are not required where the applicant is the registered proprietor, someone entitled to be registered as proprietor, or someone applying with the consent of the registered proprietor or of someone entitled to be registered as proprietor.

The proposals for amendments to these forms were generally welcomed. Following suggestions from respondents and further consideration by us, we have also adopted a number of amendments, applying them across the forms where appropriate. They are:

- to further shorten and clarify the options in panel 8 of Form RX1
- to cater explicitly for more than one applicant
- to insert a colon where the applicant must complete a statement
- to add the side note ‘List any supporting documents in panel 5 or on Forms AP1 or DL’ to the ‘statement’ and ‘certificate’ panels of Form RX1
- to clarify the request for details of a registered charge in panel 3 of Form AN1
- to add the phrase ‘affected by the interest’ to the options in panel 9 of Form AN1

- to add a side note to the fee panel of Forms UN4 and SEV to the effect that no fee is currently payable
- to add a side note 'The conveyancer must sign if they have given the certificate in panel 9' to panel 10 of Form UN4
- to add a side note to panel 9 of Form UT1 ('Entitlement to apply') to clarify that only one option can be chosen, and to cross-refer in the second option to the title number given earlier
- to add to Form TR4 the standard side note about the address
- to harmonise the heading of the 'Property' column of panel 1 in Forms TR4 and TR5
- to delete the requirement for the firm's name in panel 13 of Form RX1
- to delete the requirement for the firm's address in panel 13 of Form RX1
- to clarify the side note to Form TR4 to avoid the implication that unregistered charges can be included.

The same side note is used against both 'Rights granted...' and 'Rights reserved...'.

Also for consistency we adopted the suggestion by London Property Support Lawyers to add the words 'affected by the interest' after 'estate/charge' in parts (B) and (C) of panel 9 in these forms, which only previously appeared in part (A).

We also received suggestions to improve and harmonise the 'Additional provisions' panel and its side notes on Forms TP1, TP2 and TR5, which we accepted. The heading 'other' has been added, with the side note 'Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on'.

Proposal 73 (New Form SEV)

Question 96

Do you consider that the proposed introduction of the new Form SEV will make it easier to apply for a Form A restriction where there has been a severance of the joint tenancy in equity by agreement or notice?

Response	Absolute numbers	% of those who responded
Yes	36	97.3
No	1	2.7
No reply	25	

Question 97

Do you think that the proposed new Form SEV is clear and easy to use?

Response	Absolute numbers	% of those who responded
Yes	34	94.4
No	2	5.6
No reply	26	

Question 98

Does the new Form SEV clearly set out our requirements for supporting evidence where it is required?

Response	Absolute numbers	% of those who responded
Yes	33	89.2
No	4	10.8
No reply	25	

The proposal to introduce new Form SEV was generally welcomed.

Following comments from respondents, the 'Evidence of severance' and 'Certificate' panels are now merged for greater clarity. This also makes for consistency with the equivalent panel of Form RX1.

The side note to the 'Signature' panel is also amended.

Proposal 74 (Form UN4 – Remove current panel 6)

Question 99

Do you agree with the proposal to remove from Form UN4 the panel requiring the applicant to supply details of any person, other than the registered beneficiary of the notice, whom the applicant believes is entitled to be registered as the beneficiary of the notice?

Response	Absolute numbers	% of those who responded
Yes	34	91.9
No	3	8.1
No reply	25	

There was general agreement with this proposal.

Proposal 75 (Revoking unnecessary forms)

Question 100

Do you agree with the proposal to revoke Forms TR3 and TP3?

Response	Absolute numbers	% of those who responded
Yes	33	91.7
No	3	8.3
No reply	26	

There was strong support for this proposal with no one making a case to retain Forms TR3 and TP3.

Proposal 76 (Additional users of Form CIT)

Proposal 77 (Amendment to rule 58)

Proposal 78 (New rule 87A)

**Proposal 79 (Amendment to rule 116)
Rule 116 Transfer of a registered charge**

**Proposal 80 (Amendment to rule 206)
Rule 206 Use of forms**

There were no questions in the consultation paper associated with proposals 76 to 80 inclusive.

**Proposal 81 (Revocation of rule 207)
Rule 207 Adaptation of certain Schedule 1 forms to provide for direct debit.**

Question 101
Do you agree with the proposal to revoke rule 207?

Response	Absolute numbers	% of those who responded
Yes	36	94.7
No	2	5.3
No reply	24	

The proposal that rule 207 be revoked was strongly supported. The rule allowed the registrar to amend the payment of fee panel of a Schedule 1 form where it did not provide for the payment by direct debit, but the registrar had entered into an agreement with an applicant to pay that fee by direct debit. The rule is no longer required as all forms (where a fee is required) will be amended to include provision for payment by direct debit.

Proposal 82 (New rule 207A)

Rule 207A Amendment of certain Schedule 1 forms to provide for explanatory information to be altered

Question 102
Do you agree with the proposed new rule 207A?

Response	Absolute numbers	% of those who responded
Yes	36	97.3
No	1	2.7
No reply	25	

The proposed new rule, which allows Land Registry to amend the explanatory text to certain Schedule 1 forms, was overwhelmingly supported. This rule allows Land Registry to implement one of the changes outlined in proposal 60.

**Proposal 83 (Amendment to rule 210)
Rule 210 Documents in a Schedule 1 form**

Question 103
Do you agree with the proposal to amend rule 210?

Response	Absolute numbers	% of those who responded
Yes	36	94.7
No	2	5.3
No reply	24	

The proposed amendment to rule 210 was to allow a Schedule 1 form to be altered first to comply with proposed rule 215A where it contained a statement of truth signed by or on behalf of an individual who cannot read or sign himself and secondly by the omission of instructions and explanatory text outside the panels.

The proposed amendment received strong support. However the second part of the amendment is now to be achieved by way of the amendment to rule 211 (see below).

A further proposed amendment allows the wording of a Schedule 1 form to be altered to comply with proposed rule 215A where it contains a statement of truth signed by or on behalf of an individual who cannot read or sign himself.

The proposed amendments received strong support.

Proposal 84 (Amendment to rule 211)
Rule 211 Electronically produced forms

Question 104

Do you agree with the proposal to amend rule 211?

Response	Absolute numbers	% of those who responded
Yes	36	94.7
No	2	5.3
No reply	24	

The proposed amendment to rule 211 was to allow for electronically produced forms to be printed omitting the instructions on the left-hand side or at the end of a Schedule 1 form, and was generally supported. The amendment rules will achieve essentially this purpose, but by providing for any text outside the panels to be omitted other than the name and description of the form at the top of the first page and any text after the final panel: this is to avoid the need for all removable instructions to appear to the left of the panels.

Proposal 85
Use of old forms

Question 105

Do you agree with the proposal to introduce a rule governing transitional arrangements for the introduction of new forms?

Response	Absolute numbers	% of those who responded
Yes	36	90.0
No	4	10.0
No reply	22	

The proposal to introduce a transitional period for the introduction of new forms has been broadly accepted. The transitional period is stated to be three months beginning with the day on which the amendment rules come into force.

Several respondents referred to the need for the transitional period to be longer than the three months referred to due to staff training issues. However Land Registry intends to begin publicity relating to the changes three months ahead of the amendment rules coming into force. Customers should begin preparation for the changes at this time. This gives a total lead-in time of six months.

It should be noted that Forms AP1, FR1 and DS2, which contain new panels relating to identity, are excluded from these transitional arrangements.

Forms changes not consulted upon

In the consultation document it was not practicable to mention every change we planned to make to the forms. Instead we consulted on broad principles, such as:

- layout (proposal 60)
- administrative area (proposal 61)
- name of applicant (proposal 62)
- outline applications (proposal 63)
- company details (proposal 64)
- dealing with third parties (proposal 65)
- certificates of identity (proposal 66).

We also consulted on specific aspects of Forms AP1 (Proposal 67); FR1 (Proposal 68); HR4 (Proposal 69); OC1 (Proposal 70); RX1, RX4, AN1, UN4, UT1 (Proposals 71-72); SEV1-4 (Proposal 73) and Forms TR4 and TR5 (Proposal 75).

Together with Forms DL and TP1 all these forms, with proposed changes, were published in an appendix to the consultation document. This allowed customers to see both the specific changes to those forms, and also the general changes of proposals 60-66.

After the consultation process we have further considered the forms and made some other minor changes not mentioned in the consultation document. It is not practicable to describe these in detail as they relate mainly to minor drafting points designed to improve usability and clarity and as far as possible to ensure consistency and uniformity between forms.

Declaration of trust in the light of the decision in *Stack v Dowden*

Proposal 86 (Implications of the decision in *Stack v. Dowden*)

The proposal asked for comments regarding the approach Land Registry should take in the light of the recent decision by the House of Lords in *Stack v Dowden* [2007] UKHL 17 which included certain comments by Baroness Hale regarding the inclusion of a 'declaration of trust' panel in transfers relating to registered land.

In effect, proposed option (a) as outlined in the consultation document maintained the status quo, while option (b) suggested changes that would ensure an appropriate

declaration of trust, duly executed by the disponees, was lodged with each application by joint disponees for registration of registrable transfers and leases of a registered estate in land falling within section 27(2)(a) or (b) of the Act. There would also be an additional tick box for those who did not wish to commit themselves to a formal declaration of trust. On applications for first registration, completion of a declaration of trust panel would not be compulsory, but would be an available option.

Question 106

Do you think the completion of the 'declaration of trust' panel in Schedule 1 forms of disposition and clause LR14 of a prescribed clauses lease should be made compulsory?

Response	Absolute numbers	% of those who responded
Yes	33	78.6
No	9	21.4
No reply	20	

Question 107

Do you think execution of the disposition by the disponees where the 'declaration of trust' panel has been completed should be made compulsory?

Response	Absolute numbers	% of those who responded
Yes	30	78.9
No	8	21.1
No reply	24	

Question 108

Do you think Land Registry should amend the 'declaration of trust' panel in Schedule 1 forms and clause LR14 of a prescribed clauses lease so as to contain a further option for those applicants who do not wish to commit themselves to an express declaration?

Response	Absolute numbers	% of those who responded
Yes	29	69.0
No	13	31.0
No reply	20	

While the proposals to introduce change received some support doubts were expressed by some of our key stakeholders. Respondents included The Law Society and the Association of Property Support Lawyers.

The Law Society said:

"The Committee considers that the completion of the 'declaration of trust' panel should not be made compulsory and favours maintaining current practice. It should be noted, however, that this is not a unanimous view of the Committee.

“The majority of the Committee, while acknowledging Baroness Hale's comments in *Stack v Dowden*, is concerned at the practical implications of proposed option (b) (introduce new practice) and that any benefits from option (b) would be outweighed by its disadvantages.

“If completion of the declaration of trust is made mandatory with the possible consequence that the declarants would have to execute the relevant deed (even if they do not covenant in the deed), the Committee is concerned that this would lead to many applications for registration being rejected because of the failure to execute the deed when it should have been executed because of the declaration. Such a situation would prove frustrating for practitioners and consumers alike and add to costs and delay.

“The purported benefit of making the declaration compulsory is it focuses the minds of the practitioners and consumers on the issue. However, practitioners should in any event highlight to their clients the differences between holding property as joint tenants and tenants in common. Greater education of the public as to such differences by the Land Registry, the Law Society and other professional bodies should perhaps be the aim rather than making declarations mandatory with potential negative practical consequences.

“Some tenants in common will not want details of their holdings to be contained in the deed and held at the Land Registry. While the Committee welcomes the additional fourth box under the Land Registry's new proposal, the additional box will simply become the equivalent to not completing the declaration under current practice. So in that sense the proposal does not improve the position.

“With both the current practice and the proposed new practice, there is ultimately the default position of Restriction in Form A. Again there is no extra benefit from the new proposal.

“In conclusion, the Committee can understand the Land Registry's motivations behind the proposal, but considers that many of its benefits are already available and that the proposal has some practical disadvantages.”

The Association of Property Support Lawyers said:

“Although we agree that the declaration of trust should be encouraged in relation to all new trusts, no such declaration could be treated as definitive. The relevant shares may change without this being recorded. Informal transactions and resulting and implied trusts will not lead to a TR1 being completed. LRA 2002 allows Land Registry to register a property subject to a trust even without such a declaration. Any declaration therefore cannot be binding if it conflicts with other evidence.

“Land Registry should raise a requisition rather than cancel the entire application if the declaration of trust panel is not completed.

“If this panel is to be made compulsory, the guidance on the left of the form should be clarified.”

Having considered in detail both the comments of Baroness Hale that led to the inclusion of proposal 86 within the consultation document, and the responses of consultees to that proposal, Land Registry has taken the view that the proposal warrants further consideration and consultation. This reflects both the importance of

the learned comments by Baroness Hale and the significant practical implications of implementing a proposal of this nature, both for Land Registry and its customers.

It is therefore intended that the issues raised in proposal 86 should be the subject of a separate review, rather than being carried forward as part of the current review of the Rules. It is envisaged that a working party will be appointed by Land Registry, comprising both members of Land Registry and also external representatives, such as members of the Law Society and other representative bodies. This working party would further review the issues raised by proposal 86 ahead of a final decision being made.

Documents and other evidence in support of an application - statements of truth

Proposal 87 (Amendment to rule 27)

Rule 27 First registration application based on adverse possession or where title documents are otherwise unavailable

Question 109

Do you agree with the proposal to amend rule 27?

Response	Absolute numbers	% of those who responded
Yes	33	86.8
No	5	13.2
No reply	24	

See commentary to proposal 91

Question 110

Do you agree with the proposal to introduce Forms ST1, ST2 and ST3?

Response	Absolute numbers	% of those who responded
Yes	33	89.2
No	4	10.8
No reply	25	

See commentary to proposal 91

Proposal 88 (Amendment to rule 33)

Rule 33 First registration—entry of beneficial rights

Question 111

Do you agree with the proposal to amend rule 33?

Response	Absolute numbers	% of those who responded
Yes	35	89.7
No	4	10.3
No reply	23	

See commentary to proposal 91

Question 112

Do you agree with the proposal to introduce Form ST4?

Response	Absolute numbers	% of those who responded
Yes	34	87.2
No	5	12.8
No reply	23	

See commentary to proposal 91

Proposal 89 (Amendment to rule 62)

Rule 62 Evidence of non-revocation of power more than 12 months old

Question 113

Do you agree with the proposal to amend rule 62?

Response	Absolute numbers	% of those who responded
Yes	35	89.7
No	4	10.3
No reply	23	

See commentary to proposal 91

Proposal 90 (Amendment to rule 63)

Rule 63 Evidence in support of power delegating trustees' functions to a beneficiary

Question 114

Do you agree with the proposal to amend rule 63?

Response	Absolute numbers	% of those who responded
Yes	33	89.2
No	4	10.8
No reply	25	

See commentary to proposal 91

Proposal 91 (New rule 215A)

Rule 215A Statements of truth

Question 115

Do you agree with the proposal to introduce new rule 215A?

Response	Absolute numbers	% of those who responded
Yes	34	87.2
No	5	12.8
No reply	23	

Proposals 87 to 93 inclusive relate to the introduction of statements of truth as an alternative, in certain circumstances, to a statutory declaration. The proposals were generally welcomed.

Some concern was expressed regarding the increased possibility of fraud.

The Association of Property Support Lawyers said:

“Conveyancing is a complex process and involves the protection of valuable interests. Statements of truth are less formal than statutory declarations. We agree with Land Registry that statements of truth would be simpler to use. However applicants may not treat the content of a statement of truth with sufficient care. Clients may also press agents or solicitors to sign statements on their behalf. The content may be less reliable than the content of a statutory declaration. The number of claims and disputes may therefore increase.”

Other respondents expressed similar concerns.

Land Registry understands the concerns expressed but does not consider that this is in practice a risk.

If someone is prepared to make a false statement (which appears to occur only relatively rarely), this will be so regardless of the format of the document, be it statutory declaration, affidavit or statement of truth. Such a person is unlikely to be deterred by the supposedly greater ‘formality’ of a statutory declaration in comparison to that of a statement of truth.

In any event, the designation ‘statement of truth’ and the requirement to use the specified wording prescribed by rule 215A mean that a degree of formality is an inherent part of a statement of truth and should remind persons making such a statement of the need to be accurate and truthful.

The various scheduled forms of statement of truth to be introduced into the Rules (eg the ST Forms in Schedule 1 and Forms 2 and 3 in Schedule 3 to the Rules) contain a clear warning as to the consequences, under the Fraud Act 2006, of making a dishonest statement. Such a warning again serves to remind declarants of the need to be accurate and truthful in the statements they make.

The description and wording of a statement of truth is clearer and easier to understand than the relatively archaic terminology relating to statutory declarations, particularly for lay persons, who may be unclear as to the nature and effect of the ‘statutory declaration’ they are signing.

The fact that a statutory declaration has to be sworn before a solicitor/commissioner for oaths in practice adds little in anti-fraud terms. If a declarant is prepared to perpetrate a fraud, he or she is unlikely to be deterred by a short visit to a solicitor, especially as the solicitor will presumably not carry out any checks either as to the declarant’s identity or as to the accuracy of their statements.

The courts already accept statements of truth. One respondent (APSL) commented that witness statements are ‘tested in court through cross examination’ and that this is not usually the case in the conveyancing process. In practice, as far as disputed Land Registry applications are concerned, the declarant’s statements are tested as a result of the objection and (where the dispute is referred to him) as part of the proceedings before the Adjudicator. In other instances, Land Registry will have to assume the veracity of the declarant’s statements in the absence of evidence to the

contrary, and this will be the case whether the statements are contained within a statutory declaration or a statement of truth (although it will serve notice of the application, so as to elicit contrary arguments and evidence by third parties, where appropriate and practical).

In most instances under the proposed rule changes, the option of using a statutory declaration, rather than a statement of truth, will remain for those who prefer this.

It is believed that the benefits to be derived, in terms of the reduction in the administrative burden and the resulting reduction of costs for both customers and Land Registry, justify the proposed innovations.

Proposal 92 (Amendment to rule 217) Rule 217 General Interpretation

There were no questions in the consultation paper associated with proposal 92.

As mentioned in respect of Proposal 50, the definition of 'working day' is being moved to this rule.

Another intended change to this rule not consulted on is the amendment of the definition of 'conveyancer' so that it is now the same as the definition of 'qualified person' in the Land Registration (Network Access) Rules 2008, except that 'qualified person' does not include a fellow of the Institute of Legal Executives. Under these network access rules, individuals or bodies must (broadly) be, or employ, a 'qualified person' (although there is an exemption for government departments) in order to be able to enter into a full network access agreement enabling them to carry out electronic conveyancing. Since certificates by conveyancers are likely to be widely used in electronic conveyancing, there is merit in bringing the two definitions closer together. Fellows of the Institute of Legal Executives (who cannot practise independently) might need to give certificates as part of an in-house legal team and hence their inclusion in the definition of 'conveyancer', despite their not being 'qualified persons'.

Amendments to the Commonhold (Land Registration) Rules 2004 as a result of the introduction of statements of truth

Proposal 93 (Amendments to rules 5, 6, 14 and 20, Commonhold (Land Registration) Rules 2004)

Question 116

Do you agree with the proposal to amend the Commonhold Rules?

Response	Absolute numbers	% of those who responded
Yes	34	94.4
No	2	5.6
No reply	26	

See commentary to proposal 91

Amendments to Schedules to the Rules

Proposal 94 (Amendment to Schedule 6, Part 3)

Question 117

Do you agree with the proposal to amend Schedule 6 Part 3?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

Our proposal to amend paragraph G to Schedule 6, Part 3, was intended to clarify that a proposal by the registrar to alter the register must be included in the result of an official search. We also proposed a minor drafting amendment to paragraph H to make explicit what is implicit from rule 148(1). The proposals were overwhelmingly accepted.

Proposal 95 (Amendment to Schedule 6, Part 4)

Question 118

Do you agree with the proposal to amend Schedule 6 Part 4?

Response	Absolute numbers	% of those who responded
Yes	37	97.4
No	1	2.6
No reply	24	

Our proposal to amend paragraph I to Schedule 6, Part 4, was (as in the case of paragraph H above) to make explicit what is implicit from rule 148(1) was overwhelmingly accepted.

Proposal 96 (Amendment to Schedule 6, Part 5)

Question 119

Do you agree with the proposal to amend schedule 6 Part 5?

Response	Absolute numbers	% of those who responded
Yes	36	94.7
No	2	5.3
No reply	24	

The proposed amendments of Schedule 6, Part 5, were to make clear that information provided in the result of an official search by a mortgagee for the purpose of Section 56(3) of the Family Law Act 1996 is information as at the date and time of the search result. The proposal received strong support.

Proposal 97 (Amendment to Form C, Schedule 9)

Question 120

Do you agree with the proposal to amend Form C?

Response	Absolute numbers	% of those who responded
Yes	35	92.1

No	3	7.9
No reply	24	

The proposal to amend Form C was intended to assist customers to fulfil the requirement under section 1(2A), Law of Property (Miscellaneous Provisions) Act 1989, introduced by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, for it to be clear on the face of a document that it is intended to be a deed. The proposal received general support.

Supplementary consultation – Possessory title

On 26 November 2007, we sent the supplementary consultation to the 63 bodies and individuals set out in Appendix A (supplemental) and received 13 replies as listed in Appendix C (supplemental).

We proposed to:

- remove the requirement in rule 8(1)(i) for Land Registry to retain the name of the first proprietor in a register with possessory title
- allow Land Registry to update existing possessory titles by removing the ‘first proprietor’ entry.

Twelve replies expressed support for the proposal, with one ‘no comment’ reply. We received the following comment from the Independent Complaints Reviewer.

“I take the view that unless there are persuasive reasons for doing otherwise, Land Registry should look for ways of simplifying registration processes and providing as consistent an approach as possible for the benefit of current and future customers. Any change that supports these objectives is welcome... With regard to this particular proposal, we take the view that reference to the first proprietor in possessory titles is unnecessary and obsolete. I cannot recall any complaint that related to this issue.”

(Independent Complaints Reviewer)

As a result of these proposals rule 8(1)(i) has been removed.

Annex A

List of stakeholders

Copies of the consultation paper were sent to:

Agricultural Law Association
Assets Recovery Agency
Association of British Insurers
Bar Council
Blake Laphorn Tarlo Lyons
British Bankers Association
British Property Federation
Building Societies Association
Burgess Salmon LLP
CAB
Cabinet Office
Charities' Property Association
Chartered Institute of Arbitrators
Church Commissioners
College of Law
Companies House
Council for Licensed Conveyancers
Council of Mortgage Lenders
Crown Estate
Department for Communities and Local Government
Department for Trade and Industry
Department for Work and Pensions
Duchy of Cornwall
Duchy of Lancaster
Ecclesiastical Law Society
English Partnerships
Federation of Small Businesses
HM Revenue & Customs Stamp Taxes
Home Builders' Federation
Home Office
Housing Corporation
Improvement & Development Agency

Independent Complaints Reviewer
Insolvency Practitioners' Association
Insolvency Service
Institute of Legal Executives
Keeper of Registers of Scotland
Law Commission
Law Society
Leasehold Advisory Service
Local Government Association
Ministry of Justice
National Association of Estate Agents
National Housing Federation
Notaries Society
Office of the Adjudicator to HM Land Registry
Ordnance Survey
Property Litigation Association
Representative Body of the Church in Wales
Royal Institution of Chartered Surveyors
Serious Fraud Office
Small Business Service
Society of Licensed Conveyancers
Society of Trust & Estate Practitioners
Society of Visually Impaired Lawyers
Treasury
Treasury Solicitors Department
Valuation Office Agency
Welsh Assembly Government
Which?

Annex A (supplemental). Copies of the supplemental consultation were sent to:

Agricultural Law Association
Assets Recovery Agency
Association of British Insurers
Blake Laphorn Tarlo Lyons

British Bankers Association
British Property Federation
Building Societies Association
Burgess Salmon LLP
Cabinet Office
Charities' Property Association
Chartered Institute of Arbitrators
Companies House
Council for Licensed Conveyancers
Council of Mortgage Lenders
Department for Business, Enterprise and Regulatory Reform
Department for Communities and Local Government
Department for Work and Pensions
Ecclesiastical Law Society
English Partnerships
Farrer & Co (Crown Estate)
Farrer & Co
HM Revenue & Customs Stamp Taxes
HM Treasury
Home Builders' Federation
Home Office
Housing Corporation
Improvement & Development Agency
Insolvency Practitioners' Association
Insolvency Service
Institute of Legal Executives
Keeper of Registers of Scotland
Law Commission
Law Society (Conveyancing Committee)
Law Society (Ms Latter)
Leasehold Advisory Service
Local Government Association
Ministry of Justice
National Association of Citizens' Advice Bureaux
National Association of Estate Agents
National Housing Federation
Ordnance Survey

Property Litigation Association
Representative Body of the Church in Wales
Royal Institution of Chartered Surveyors
Serious Fraud Office
Small Business Service
Society of Licensed Conveyancers
Society of Trust & Estate Practitioners
Society of Visually Impaired Lawyers
The Bar Council
The Church Commissioners
The College of Law
The Crown Estate
The Independent Complaints Reviewer
The National Federation of Self-Employed and Small Businesses Ltd
The Notaries Society
The Office of the Adjudicator to HM Land Registry
Treasury Solicitors Department
Valuation Office Agency
Welsh Assembly Government
Westminster Law Society
Which?

Annex B

Analysis of respondents by category

In order to be able to properly analyse the responses we received we also collected data relating to:

- the number of people being represented by a particular respondent
- the role of the respondent within the conveyancing community.

The results are summarised below.

Table showing the number of people represented by a particular respondent

Number of people represented by the respondent	Absolute numbers	% of total
I am responding as an individual	30	48.4
My response represents the views of between two and nine people	10	16.1
My response represents the views of between 10 and 25 people	1	1.6
My response represents the views of more than 25 people	11	17.7
No answer	10	16.1

Table showing the role of the respondent within the conveyancing community

Role	Absolute numbers	% of total
Conveyancing professional: solicitor	21	33.9
Conveyancing professional: licensed conveyancer	3	4.8
Conveyancing professional: property support lawyer	4	6.5
Conveyancing professional: other legal practice staff	6	9.7
Other property professional: surveyor	0	
Other property professional: estate agent	0	
Government department	3	4.8
Regulatory or representative body	10	16.1
Financial institution eg bank or building society	1	1.6
Other	9	14.5
No answer	5	8.1

Annex C

List of respondents

A list of respondents (other than those who asked for their replies to remain confidential) is set out below. Where a respondent indicated that their response represented the views of more than one person, the name of the organisation has been included. The names are transcribed as provided and in some instances represent the user name the respondent adopted when replying using the online version of the consultation.

Keith Amos	Tanfields
Samantha Barnett	Council of Mortgage Lenders
Beachcroft	
Christine Bissett	
John Burrell	
Neil Burton	
Denis Cameron LLB	
Neill Campbell	
P Charlton	
Paul Clark	
Paul Forrester	
Edward Foulger	
Gus Ghataura	ILEX
Suzanne Gill	McGrigors LLP
Patrick Gleave	National Trust
Warren Gordon	Law Society
NCA Gurney-Champion	Southern Area Association of Law Societies
Jayne Henshaw	
Mr J D G Hinchcliffe	
Graham Hulbert	
Richard Hutchinson	Hertfordshire Law Society
Megan Jenkins	Association of Property Support Lawyers
Paul Jenkins	Treasury Solicitors
Michael Johnson	
Henry Karen	
C M F Langdon	
Mangala	
Laurence Mann	

Robert Martyr	
David McIntosh	City of London Law Society
Alan Moran	
Gerald T Moran	
Miss C M Mudie	HM Revenue & Customs
NB1982	
H C Nicholson	Annie Liew & Co Solicitors
Sue Otty	
Roger Parkinson	
Alistair M Patterson	Amphletts Solicitors
Glenn Owen Riley	
P A Rochford	South Eastern Leaseholders Commonholders and Homeowners Association
April Ross	Isle of Wight Law Society
R Sandars	Official Solicitor and Public Trustee
Brian Shacklady	Howell-Jones
Jeffrey Shaw	Nether Edge Law
R J Smyth	
Chris Strutt	Mayo and Perkins
TDAY	
Elizabeth Thompson	London Property Support Lawyers Group
Simon Wake	
Hilary Woodward	

**Annex C (supplemental). Responses to the supplementary consultation
were received from:**

Adrian Christmas
Church of England
Council of Licensed Conveyancers
Crown Estate
Ecclesiastical Law Society
Hadaway
Independent Complaints Reviewer
Lanyon Bowdler
Property Support Lawyers
Serious Fraud Office
Westminster & Holborn Law Soc