EXPLANATORY MEMORANDUM TO

THE LAND CHARGES (AMENDMENT) RULES 2012

2012 No. 2884

AND

THE LAND CHARGES FEES (AMENDMENT) RULES 2012

2012 No. 2910

1. This explanatory memorandum has been prepared by Her Majesty's Land Registry.

2. Purpose of the instruments

2.1 The Land Charges (Amendment) Rules 2012 amend the Land Charges Rules 1974 (the Principal Rules).

2.2 The Land Charges Fees (Amendment) Rules 2012 amend the Land Charges Fees Rules 1990 (the Fees Rules).

2.3 The amendments allow for the closure of the Land Charges telephone ordering service, and provide flexibility for the use of new technology (particularly digital) for making all Land Charges applications, with consequential fee amendments.

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

None. (These instruments are not required to be laid.)

4. Legislative Context

4.1 Under the Land Charges Act 1972 the Chief Land Registrar (the registrar) is under a duty to keep various registers recording many third party rights affecting unregistered land (such as second charges, sale contracts and some rights of way), registers in which bankruptcy petitions and orders are recorded, and an index so that all entries made in any of these registers can readily be traced.

4.2 The Principal Rules make detailed provision for how the registers and index are to be kept, how applications are to be made for entries in the registers, for searches of the registers and for copies of the entries, and how the results of those applications are to be given. Under the Principal Rules, applications for new registrations, renewals, rectifications and cancellations of land charges can only be made using paper forms. The Principal Rules make provision for applications for searches of the registers and copies of entries in the registers also to be made by telephone, fax, teleprinter and online.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is not subject to any Parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Land Registry's customer strategy includes moving customers to digital self-service channels wherever possible, and improving responsiveness and efficiency. Electronic services provide a quicker alternative, at the same cost for Land Charges services, and provide access to a wider range of Land Registry services at a lower cost. Electronic services are available for longer and provide immediate electronic results, which can be printed or forwarded electronically.

7.2 Some Land Registry and Land Charges services can be ordered by telephone by businesses with a Land Registry account. Use of this telephone ordering service has fallen by more than 96% since 2003 and continues to fall due to the uptake of online services. In July 2012 only 1.5% of applications were ordered by telephone, compared to 91.7% ordered online and 6.8% by post.

7.3 Both the Land Charges and Land Registry telephone ordering services are provided through the same system. The intention is to close both services at the same time.

7.4 The amendments to the Principal Rules replace the provisions for limited types of applications to be made by telephone, teleprinter, fax or online. Instead, any Land Charges application may be made and the result provided, in the specified circumstances, online or by means of other new technology. If the registrar is satisfied that adequate arrangements will be in place for receiving Land Charges applications, or issuing their results, by means in addition to post, document exchange or delivery by hand, the registrar can give notice publicising the arrangements. The applications can then be made, or the results issued, subject to and in accordance with the limitations contained in that notice. These amendments make the Principal Rules consistent with the Land Registration Rules 2003, which already allow for this flexibility in how applications relating to registered land can be made, and how the results of those applications can be issued.

7.5 The amendments to the Fees Rules are consequent upon the amendments to the Principal Rules. They simplify the table of fees. Instead of a separate fee for each method of application for an official search in the index there is one fee for applications made by post, document exchange or hand delivery and another for those made by any other means of communication. The fees remain the same with the exception of the fee for one particular type of official search, where the fee is now lower.

7.6 In addition, some updating of both the Principal Rules and the Fees Rules has been made. In the Principal Rules there are amendments to the interpretation provision to

include a definition of a unitary authority area, and to allow for changes to the principal office. The word "solicitor" is replaced by "conveyancer" in the prescribed forms, and a definition of conveyancer is added that is consistent with the Legal Services Act 2007 and the Land Registration Rules 2003. Rule 6, form K14, and rule 13(2) have been revoked to simplify applications. In the Fees Rules the updating amendments clarify that payment can be made by cheque and direct debit, as well as by cash and postal order.

- Consolidation

7.7 An informal consolidated text of the Principal Rules and the Fees Rules is available on the Land Registry website—
http://www.landregistry.gov.uk/professional/law-and-practice

The Rules are not being consolidated, due to the additional burden consolidation can place on businesses. Consolidation normally leads to the renumbering and renaming of the individual rules. This requires amendment to any documents that refer to the rules, as well as to the prescribed forms. Conveyancers have to re-train staff, and amend their case management and other systems to cope with new forms. Legal publishers have to revise their publications.

8. Consultation outcome

Land Registry received 23 replies to its consultation "Closure of Telephone Ordering Services and changes to Land Charges rules", from a business customer base of over 20,000. Only 9 respondents objected to the proposals. A summary of the consultation replies and Land Registry's response to the points raised is in the Government Response to the consultation, published on the Land Registry website—
http://www.landregistry.gov.uk/public/about-us/consultations.

9. Guidance

Land Registry has been actively contacting all its business customers inviting them to use its online services for many years. Signing up is free and assistance is given by a dedicated team. A message about the proposal to proceed with closure of the telephone ordering service if these rules were made has been posted on the Land Registry's website, and also included on the paper results of conveyancing searches since 17 September 2012. This gave the few remaining customers who still use the telephone ordering service a full 12 weeks to transfer to online services. A press notice has been issued. Land Registry will publicise the change further through the "Latest news" section of its website, and through *Landnet*, its magazine for practitioners.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as the vast majority already use online services rather than telephone ordering services.

10.2 The impact on the public sector is minimal. The online system is already in place and has the capacity to handle double the current level of business.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to assist them in signing up to land registration and land charges online services if they do not already have a Land Registry business e-services account.

11.3 The fee for most Land Registry services is lower online than by telephone, and Land Charges services fees are the same by telephone or online. Waiting times for results are shorter using online services, and opening times are longer. There are, therefore, efficiencies and savings to be made by both small and larger firms by switching from telephone to digital services.

12. Monitoring & review

12.1 The success criterion for these instruments is a further increase in the use of Land Registry's digital services, in accordance with the Government's digital by default agenda.

12.2 Land Registry constantly monitors the use of its service channels. One of its strategic objectives is to identify, anticipate and satisfy customer needs by constantly refining and developing products, services and channels. Customer satisfaction levels are monitored as one of Land Registry's key performance indicators.

13. Contact

Joy Bailey at the Land Registry Head Office, tel: 0300 006 7738, or email: joy.bailey@landregistry.gsi.gov.uk, can answer any queries regarding the instruments.