EXPLANATORY MEMORANDUM TO

THE LAND REGISTRATION FEE ORDER 2009

2009 No. 845

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

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

2. Purpose of the instrument

2.1 The Land Registration Fee Order 2009 (the Order) prescribes the fees for applications to, and services provided by, Her Majesty's Land Registry (Land Registry); prescribes the applications and services that are exempt from fees; and contains administrative provisions relating to the payments of fees. It replaces the Land Registration Fee Order 2006 (the Fee Order 2006).

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

3.1 The Order increases all fees for applications to and services provided by Land Registry and also makes other adjustments to fees. The Schedule below gives details of the increases in fees. There are also a number of minor drafting changes.

3.2 Land Registry is a trading fund and so must recover from its fees and charges its entire operating costs and the HM Treasury prescribed return on capital employed (3.5%). In 2007/8, Land Registry derived 99% of its income from fees. Other income streams, for example, rent receipts and commercial services, are small. Since Land Registry became a trading fund in 1993, there has been only one Fee Order increasing fees, being the Fee Order 2006, which increased fees for information services only. In the Land Registration Fees Order 1994, Scale 1 fees ranged from £40 to £1800. In the Order the range now is from £50 to £920. In the 1994 Order, the standard fixed fee was £40 and the Order increases that fee to £50. Inflation over the period from 1994 to February 2009, based on the RPI all items index, has been 53%.

3.3 Land Registry has been severely affected by the dramatic fall in the number of property transactions in the financial year 2008/9, which has resulted in a significant reduction in both work intakes and fee income. The fee income anticipated in Land Registry's 2008/09 Business Plan was £438.5 million but the latest fee income projection is £299.2 million, as at the end of February 2009. Although several cost-cutting exercises have been undertaken to reduce expenditure, these measures cannot wholly compensate for the downturn in fee income and a loss of at least £148.1 million is projected for

2008/09. This loss will be funded from Land Registry's reserves following an agreement reached with HM Treasury.

3.4 Without any increase in transactions or fees, Land Registry projects a loss of £140 million for 2009/10. Given the uncertainty of economic conditions, the workloads could be significantly less than anticipated which would mean that the loss could well be even greater and, without a fee increase, all of Land Registry's reserves might be used up.

3.5 As well as reducing the loss of reserves, the increase in fees is intended to enable Land Registry to continue with further investment in e-services and with re-structuring its operations so that they are more appropriate for its longer term customer needs. These are cost-saving measures which Land Registry needs to implement as soon as it can. A delay in implementation would mean incurring higher costs for longer than necessary.

3.6 The increase in fees is significant and above the rate of inflation but is necessary in view of Land Registry's financial position as outlined above. The increase has been made only after detailed discussions with the Ministry of Justice and HM Treasury.

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

4. Legislative Context

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

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

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

4.4 Section 102 of the Act provides that the Lord Chancellor may by order prescribe fees to be paid for dealings with Land Registry and make provision

about the payment of these fees. An order under section 102 is made with the advice and assistance of the Rule Committee and with the consent of HM Treasury.

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

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The policy reasons for an increase in fees are set out in section 3.

7.2 It is anticipated that the increase in fees will raise an additional fee income of £86 million in a full financial year. Even with an increase in fees from July 2009, Land Registry anticipates that there may be a loss in the financial year 2009/10 of around £75 million and is planning for this to be met from its reserves. The level of increase reflects a balance between use of reserves and the extent to which fees can reasonably be increased.

7.3 As mentioned in paragraph 3.1, the attached Schedule gives details of the increases in fees. There are also some other changes made, the most significant being the following.

7.4 The Fee Order 2006 provides for a maximum fee of £200 for applications under rule 140 of the Land Registration Rules 2003, being applications for information services in connection with criminal investigation, court proceedings, insolvency or tax liability. This provision has not been carried forward to the Order.

7.5 The Fee Order 2006 provides for fees and an exemption where an applicant requests a title number to be supplied when seeking to inspect or be supplied with an official copy of a register or title plan. These provisions have not been carried forward to the Order; there is no fee for the supply of a title number and the usual practice will be to issue an official copy of a single registered title even though the title number has not been supplied by the applicant.

7.6 The Fee Order 2006 provides for a fee for an application to be supplied with the name and address of the registered proprietor of a registered title identified by its postal address. This provision has not been carried forward, as this service has been withdrawn.

- ***Consolidation***

7.7 Not applicable.

8. Consultation outcome

8.1 Although the Order increases fees, the fee structure is unchanged. The fees remain either small in absolute terms or, where the fee is for the first registration of an estate in land or for the registration of a transfer or grant of a lease, small in proportion to the overall cost of a typical property transaction. In view of Land Registry's financial position, and after the matter had been considered in detail by HM Treasury, it was agreed that fees had to be increased if any reasonable amount of reserves were to be maintained. A draft of the Order was considered by the Rule Committee, which includes members of the conveyancing and property sector (for example representatives of the legal profession, mortgage lenders and surveyors together with a person appointed for their experience in consumer affairs). Land Registry believes that the changes that businesses will need to make to implement the changes in fees are not significant. In these circumstances it has not been thought necessary or appropriate to undertake consultation.

8.2 Land Registry has also planned further contact with stakeholders in the property sector to explain the financial background and the proposed increases in fees.

9. Guidance

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

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

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant because, as explained in paragraph 8.1, the new fees remain small, at least in relative terms.

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

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

11.2 To minimise the impact of the increase in fees on conveyancing firms employing up to 20 people, which are the small businesses likely to be most immediately affected, and to minimise the impact on others, including other small businesses which may use Land Registry's information services, Land Registry will be publishing on its website and in paper form details of the increased fees. This information will be available free of charge.

12. Monitoring & review

12.1 The fee income and level of applications will continue to be monitored throughout the financial year 2009/10 and, if adjustment is needed, a further Fee Order would be required. Future Fee Orders will further increase or reduce fees, as they will always reflect the circumstances operating at the time they are formulated and, in particular, the activity of the property market.

13. Contact

Mike Westcott Rudd at HM Land Registry, 32 Lincoln's Inn Fields, London WC2A 3PH
Tel: 0207 166 4337 or e-mail: mike.westcott-rudd@landregistry.gsi.gov.uk can answer any queries regarding the instrument.

SCHEDULE OUTLINING INCREASES IN FEES

1. SCALE 1 FEES

A Scale 1 fee is payable on applications for:

- the first registration of a freehold or leasehold estate, franchise or profit;
- the registration of the grant of a lease;
- the registration of a transfer of a registered estate for monetary consideration;
- the registration of a surrender of a leasehold estate for monetary consideration.

Amount or value £	**New fee** **£**	Previous Fee £	Reduced fee for voluntary registration. **New Fee** **£**	Reduced fee for voluntary registration. Previous Fee £
0–50,000	**50**	40	**40**	30
50,001–80,000	**80**	60	**60**	45
80,001–100,000	**130**	100	**100**	75
100,001–200,000	**200**	150	**150**	110
200,001–500,000	**280**	220	**210**	165
500,001-1,000,000	**550**	420	**410**	315
1,000,001 and over	**920**	700	**690**	525

2. SCALE 2 FEES

A Scale 2 fee is payable on applications for the registration of:

- a transfer of a registered estate otherwise than for monetary consideration;
- a surrender of a registered leasehold estate otherwise than for monetary consideration;
- a transfer of a registered estate by operation of law on death or bankruptcy, of an individual proprietor;
- an assent of a registered estate (including a vesting assent);
- an appropriation of a registered estate;
- a vesting order or declaration;
- an alteration of the register;
- a transfer of a registered estate made pursuant to an order of the Court (under the Matrimonial Causes Act 1973 or the Civil Partnership Act 2004);
- a charge;
- a transfer of a registered charge.

NOTE: In general terms, there is an abatement of the fee for the application for the registration of a charge if the application accompanies a Scale 1 or Scale 2 application. For example, in a typical house purchase, a Scale 1 fee would be charged for the registration of the transfer to the Buyer, but no fee charged for the registration of the charge (mortgage).

Amount or value £	**New fee** **£**	Previous fee £
0–100,000	**50**	40
100,001–200,000	**70**	50
200,001–500,000	**90**	70
500,001–1,000,000	**130**	100
1,000,001 and over	**260**	200

3. FIXED FEE APPLICATIONS

Application	**New Fee** **£**	Previous Fee £
(1) To register: (a) a standard form of restriction contained in Schedule 4 to the Land Registration Rules 2003 (the rules), or (b) a notice (other than a notice to which section 117(2)(b) of the Land Registration Act 2002 (the Act) applies), or (c) a new or additional beneficiary of a unilateral notice - total fee for up to three registered titles affected …….. - additional fee for each subsequent registered title affected… Provided that no such fee is payable if, in relation to each registered title affected, the application is accompanied by a scale fee application or another application which attracts a fee under this paragraph.	 **50** **25**	 40 20
(2) To register a restriction in a form not contained in Schedule 4 to the rules – for each registered title……	**100**	80
(3) To register a caution against first registration (other than a caution to which section 117(2)(a) of the Act applies)…….	**50**	40
(4) To alter the cautions register – for each individual caution register……..	**50**	40
(5) To close or partly close a registered leasehold or a registered rentcharge title other than on surrender –for each registered title closed or partly closed …… Provided that no such fee is payable if the application is accompanied by a scale fee application.	**50**	40
(6) To upgrade from one class of registered title to another … Provided that no such fee is payable if the application for upgrading is accompanied by a scale fee application.	**50**	40
(7) To cancel an entry in the register of notice of an unregistered rentcharge which has determined – for each registered title affected…….	**50**	40

Provided that no such fee is payable if the application is accompanied by a scale fee application.		
(8) To enter or remove a record of a defect in title pursuant to section 64(1) of the Act…… Provided that no such fee is payable if the application is accompanied by a scale fee application.	**50**	40
(9) An outline application made under rule 54: where delivered from a remote terminal…….. where delivered by any other permitted means…… Such fee is payable in addition to any other fee which is payable in respect of the application.	**3** **6**	2 4
(10) For an order in respect of a restriction under section 41(2) of the Act – for each registered title affected……..	**50**	40
(11) To register a person in adverse possession of a registered estate – for each registered title affected……...	**150**	100
(12) For registration as a person entitled to be notified of an application for adverse possession – for each registered title affected……..	**50**	40
(13) For the determination of the exact line of a boundary under rule 118 – for each application……	**100**	80
(14) To register a freehold estate in land as a freehold estate in commonhold land which is not accompanied by a statement under section 9(1)(b) of the Commonhold and Leasehold Reform Act 2002 (the CLRA): (a) up to 20 commonhold units……. (b) for every 20 commonhold units, or up to 20 commonhold units, thereafter……..	**50** **15**	40 10
(15) To add land to a commonhold: (a) adding land to the common parts title…….…. (b) adding land to a commonhold unit…….. (c) adding commonhold units - up to 20 commonhold units…… - for every 20 commonhold units, or up to 20 commonhold units, thereafter……	**50** **50** **50** **15**	40 40 40 10
(16) To apply for a freehold estate in land to cease to be registered as a freehold estate in commonhold land during the transitional period, as defined in the CLRA…….	**50**	40
(17) To register a freehold estate in land as a freehold estate in commonhold land, which is accompanied by a statement under section 9(1)(b) of the CLRA - for each commonhold unit converted…….	**50**	40
(18) To register an amended commonhold community		

statement which changes the extent of the common parts or any commonhold unit: (a) for the common parts……... (b) for up to three commonhold units…… (c) for each subsequent commonhold unit…… Provided that no such fee shall be payable if, in relation to each registered title affected, the application is accompanied by a scale fee application or another application that attracts a fee under this Part.	 **50** **50** **25**	 40 40 20
(19) To register an amended commonhold community statement, which does not change the extent of a registered title within the commonhold……. Provided that no such fee shall be payable if, in relation to each registered title affected, the application is accompanied by a scale fee application or another application that attracts a fee under this Part.	**50**	40
(20) To register an alteration to the Memorandum or Articles of Association of a commonhold association……	**50**	40
(21) To make a termination application - for each registered title affected……..	**50**	40
(22) To note the surrender of a development right under section 58 of the CLRA…….	**50**	40

4. INFORMATION SERVICES - INSPECTION AND COPYING

Application	**New Fee** **£**	Previous Fee £
(1) Inspection, from a remote terminal: (a) for each individual register…….……. (b) for each title plan……. (c) for any or all of the documents (other than leases) referred to in an individual register – for each registered title…… (d) for each lease kept by the registrar which is referred to in an individual register or which relates to an application to him…… (e) for the individual register and title plan of a commonhold common parts title – for each registered title…… (f) for each individual caution register…….. (g) for each caution plan…… (h) for any other document kept by the registrar which relates to an application to him - for each document……	 **4** **4** **6** **12** **4** **4** **4** **6**	 3 3 5 10 3 3 3 5
(2) Inspection (otherwise than under paragraph (1)): (a) for each individual register…….……. (b) for each title plan……. (c) for any or all of the documents (other than leases) referred to in an individual register – for each registered title……	 **8** **8** **12**	 6 6 10

(d) for each lease kept by the registrar which is referred to in an individual register or which relates to an application to him…….	**24**	20
(e) for the individual register and title plan of a commonhold common parts title – for each registered title……	**8**	6
(f) for each individual caution register……..	**8**	6
(g) for each caution plan……	**8**	6
(h) for any other document kept by the registrar which relates to an application to him - for each document……	**12**	10
(3) Official copy in respect of a registered title:		
(a) for each individual register		
(i) where an official copy in electronic form is requested from a remote terminal…….	**4**	3
(ii) where an official copy in paper form is requested by any permitted means…….	**8**	6
(b) for each title plan		
(i) where an official copy in electronic form is requested from a remote terminal……..	**4**	3
(ii) where an official copy in paper form is requested by any permitted means……..	**8**	6
(c) for each commonhold common parts individual register and title plan:		
(i) where an official copy in electronic form is requested from a remote terminal……	**4**	3
(ii) where an official copy in paper form is requested by any permitted means……	**8**	6
(4) Official copy in respect of the cautions register		
(a) for each individual caution register		
(i) where an official copy in electronic form is requested from a remote terminal……..	**4**	3
(ii) where an official copy in paper form is requested by any permitted means……..	**8**	6
(b) for each caution plan		
(i) where an official copy in electronic form is requested from a remote terminal……..	**4**	3
(ii) where an official copy in paper form is requested by any permitted means……..	**8**	6
(5) Official copy of any or all of the documents (other than a lease) referred to in an individual register – for each registered title		
(a) where an official copy in electronic form is requested from a remote terminal…….	**6**	5
(b) where an official copy in paper form is requested by any permitted means ……...	**12**	10
(6) Official copy of a lease kept by the registrar which is referred to in an individual register or which relates to an application to him – for each lease		
(a) where an official copy in electronic form is requested from a remote terminal and a copy of the lease is held in electronic form by the registrar……	**12**	10
(b) where an official copy in electronic form is requested		

from a remote terminal and a copy of the lease is not held in electronic form by the registrar…….	**24**	20
(c) where an official copy in paper form is requested by any permitted means……	**24**	20
(7) Official copy of any other document kept by the registrar which relates to an application to him – for each document		
(a) where an official copy in electronic form is requested from a remote terminal and a copy of the document is held in electronic form by the registrar…….	**6**	5
(b) where an official copy in electronic form is requested from a remote terminal and a copy of the document is not held in electronic form by the registrar…….	**12**	10
(c) where an official copy in paper form is requested by any permitted means…….	**12**	10
(8) Copy of an historical edition of a registered title (or of part of the edition where rule 144(4) applies) – for each title...	**10**	8

5. INFORMATION SERVICES - SEARCHES

Application	**New Fee £**	Previous Fee £
(1) An official search of an individual register or of a pending first registration application made to the registrar from a remote terminal– for each title……..	**4**	3
(2) An official search of an individual register by a mortgagee for the purpose of section 56(3) of the Family Law Act 1996 made to the registrar from a remote terminal……	**4**	3
(3) An official search of an individual register or of a pending first registration application other than as described in paragraphs (1) and (2) – for each title……...	**8**	6
(4) The issue of a certificate of inspection of a title plan……..	**8**	6
(5) An official search of the index map –		
(a) where no or not more than five registered titles are disclosed……	**5**	No fee where not more than 10 titles are disclosed. £4 per title in excess of 10
(b) where more than five registered titles are disclosed -		
(i) for the first five titles……	**5**	
(ii) for every ten titles, or up to ten titles, thereafter……..	**3**	
(6) Search of the index of proprietors' names – for each name……..	**12**	10
(7) An official search of the index of relating franchises and manors – for each administrative area		
(a) where the application is made from a remote terminal……	**4**	3
(b) where the application is made by any other permitted means……	**8**	6

6. OTHER SERVICES

Application	**New Fee** **£**	Previous Fee £
(1) Application for return of a document under rule 204……..	**10**	8
(2) Application that the registrar designate a document an exempt information document……..	**26**	20

7. LARGE SCALE APPLICATIONS (ARTICLE 6).

In general terms, large scale applications are applications for first registration or to register a transfer or charge which affect 20 or more land units (a land unit is a single title, if registered or, a separate area of land, if unregistered). The fee payable is the greater of (a) the scale fee or (b) the fee calculated on the basis set out in the table below.

	New Fee	Previous Fee
(1) where the application relates to not more than 500 land units	**£12 for each land unit**	£10 for each land unit
(2) where the application relates to more than 500 land units	**£6000 plus £6 for each land unit in excess of 500**	£5000 plus £5 for each land unit in excess of 500

NOTE: *The maximum fee for large scale applications has been increased from £40,000 to £52,000 and the maximum fee will now apply only to large scale applications for first registration.*

8. OTHER APPLICATIONS

Application	**New Fee** **£**	Previous Fee £
Minimum fee for the registration of title to a lease or for the registration of the grant of a lease	**50**	40
First registration of a rentcharge	**50**	40
Application where no other fee is prescribed	**50**	40
The amount payable where fee is not immediately quantifiable	**50**	40