EXPLANATORY MEMORANDUM TO

THE LAND REGISTRATION FEE ORDER 2013

2013 No. 3174

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

2. Purpose of the instrument

The Land Registration Fee Order 2013 (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 payment of fees. It replaces the Land Registration Fee Order 2012 (the Fee Order 2012).

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

None.

4. Legislative Context

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

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

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

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

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

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 As a trading fund, Land Registry is required to cover its costs and provide a dividend on capital to HM Treasury. In general terms, this means that Land Registry should not operate a surplus or deficit. Land Registry's main income is from fees. Fees under the Fee Order 2012 are now generating fee income well in excess of Land Registry's requirements, reflecting an increase in market activity and continuing efficiency savings. Therefore the main policy objective is to achieve a reduction in fee income.

7.2 The Order provides for a 50% reduction in the fees for applications to register transfers and charges of the whole of a registered title, and in the fees for some other registration applications, where these applications are lodged electronically. The reduction reflects the efficiencies and benefits that electronic lodgement brings and will provide an incentive for customers to use the e-lodgement service.

7.3 Scale 1 fees apply to applications to register a property for the first time, transfers on sale and leases, and they are assessed on the value of the property, purchase price and/or rent payable. So a Scale 1 fee would apply in most residential and commercial property transactions. The lower Scale 1 fee bands have been simplified to provide for a single band of up to £80 000, with a fee of £40. The fee for the next fee band (£80 001 to £100 000) is reduced to £80. This means that fees for applicants at the lower end of the property market, especially right to buy and shared equity purchases, are reduced.

7.4 The fee arrangements for inspection or official copies of documents have been simplified, and this will mean a reduction in fee for the majority of applicants.

7.5 Specific reference is now made to applications to register an alteration of priority of registered charges. This is for clarification: there will be no change in fee.

7.6 The fee for the cancellation of a notice in the register in respect of an unregistered lease has been amended from a Scale 1 fee to a fixed fee, as it is considered that this is more appropriate and in line with the fee for similar applications.

7.7 The fees for applications for (electronic) copies of an historical edition of the register have been reduced to bring them in line with fees for copies of the current register and documents.

7.8 The exemption for applications to lodge a caution against first registration or to make a register entry relating to chancel repair rights has been deleted as it was always to apply only to applications made on or before 12 October 2013.

7.9 It is usually the seller's or buyer's conveyancer who actually pays the fees to Land Registry, but the fees are ultimately paid by the client.

- Consolidation

7.10 Not applicable

8. Consultation outcome

No formal consultation has been undertaken, for the following reasons:

- The structure of the Order is largely the same as the Fee Order 2012, and the Order will reduce most fees.
- The fees are either small in absolute terms or, where the fee is for an application to register a property for the first time or for the registration of a transfer or grant of a lease, small in proportion to the overall cost of a typical property transaction.
- Under section 102 of the Act, the Secretary of State requires the advice and assistance of the Rule Committee and so a draft of the Order has been considered by the Rule Committee, which includes members of the conveyancing and property sector together with a person appointed for their experience in consumer affairs.
- The proposals were presented to the Land Registry Advisory Council, which includes property sector and consumer representatives.
- Land Registry conducted a survey of customers in January 2010 following the introduction of the Fee Order 2009. This indicated that the cost of the changes that businesses need to make to implement changes in fees are not significant or disproportionate.

9. Guidance

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

- Information about the changes in fees on Land Registry's website.
- Publicity to customers and stakeholders (including representative bodies), for example revised Practice Guides and an article in a magazine for practitioners published by Land Registry.

- A message about the changes will be sent with the results of applications for official searches and official copies of registered titles and documents.
- 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 the overall effect is a reduction in fees and, as explained in paragraph 8.1, the fees are small, at least in relative terms, and the cost of the changes that businesses need to make to implement changes in fees does not appear to be significant or disproportionate. The 50% reduction in fee for applications lodged electronically will provide a very strong incentive for conveyancing firms to apply in this way: the 12 week period between the making of the Order and its coming into effect will allow time for such firms to prepare for this.

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

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

11. Regulating small business

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

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

12. Monitoring & review

The fee income and level of applications will continue to be monitored throughout the financial year 2013/14 and, if adjustment is needed, a further Fee Order may be required. Future Fee Orders will further increase or reduce fees, as they will always reflect the circumstances operating at the time they are formulated and, in particular, the activity of the property market.

13. Contact

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