



## Land Registry: (A) proposed changes to the commercial model; and (B) Infrastructure Bill

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This note covers two topics concerning the Land Registry. The first part of this note (section A) considers the Government's proposal to change the status of the Land Registry from a Trading Fund, and to split the delivery and policy functions of the Land Registry with the delivery functions undertaken by a service delivery company, and policy work the responsibility of a new Office of the Chief Land Registrar ("OCLR") to be retained in Government.

This proposal was set out in the January 2014 consultation, [Consultation Document – Introduction of a Land Registry service delivery company](#), published by the Department for Business, Innovation and Skills. The consultation closed on 20 March 2014. In response to the comments received during the consultation, in a July 2014 written ministerial statement the Government stated that it had "concluded that further consideration would be valuable", adding that "therefore, at this time, no decision has been taken to change Land Registry's model".

The second part of this note (section B) considers the *Infrastructure Bill [HL]* which is currently before the House of Commons, including developments at Second Reading and Committee Stage. More detailed background on the Bill can be found in the [Library Research Paper on the Bill \(RP 14/65\)](#), which was published ahead of its Second Reading in the Commons.

It should be noted that the Land Registry only operates in England and Wales.

This note was previously published under the title *Possible changes to HM Land Registry's commercial model*.

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**Contents**

- 1 The consultation: what was proposed 3**
- 2 Background to the statement 5**
  - 2.1 A brief history of HM Land Registry 5
  - 2.2 The current model of Land Registry ownership 5
    - Previous reviews of the Land Registry 6
  - 2.3 The Land Registry’s current Business Strategy 7
- 3 Proposed split of delivery and policy 9**
  - 3.1 Creating a service delivery company and an Office of the Chief Land Registrar 9
  - 3.2 Ownership of the service delivery company and the “privatisation” debate 10
  - 3.3 Legislative changes that would be required 12
  - 3.4 The Government’s position during the consultation 13
- 4 Potential impact on customers of the proposals 14**
- 5 Government response to the consultation and the “further consideration” decision 15**

## **A Consultation on changing the Land Registry's commercial model**

### **1 The consultation: what was proposed**

On 23 January 2014, the then Minister of State at the Department for Business, Innovation and Skills, Michael Fallon, made a written ministerial statement to the House announcing the launch of a “consultation around proposals to help Land Registry deliver more efficient and modern services”, namely to consider the commercial model of the Land Registry. The consultation document was entitled [Introduction of a Land Registry service delivery company](#).

The Government stated that “against the option of remaining as it is, we are considering the proposal to create a new company, to which responsibility for the performance of the service delivery functions would be transferred, and to have a separate Office of the Chief Land Registrar (‘OCLR’) which would be retained in Government”<sup>1</sup> – in other words, a split of the delivery and policy functions of the Land Registry.

On the issue of the possible privatisation of the service delivery company, Mr Fallon told the House that “no decision on ownership and control of this new service delivery company has been made, and several options are being considered”.<sup>2</sup> He added that:

Government believe that changing Land Registry's commercial model by separating policy and delivery of services between two entities could have a number of benefits and enable it to move more successfully into the digital age.

The proposal is to create a new company, still subject to Government oversight, which would be responsible for delivering land registration services. A separate Office of the Chief Land Registrar would be retained in Government to carry out regulatory and fee-setting functions.

This model could allow a greater focus on service delivery, greater operational flexibility around pay, recruitment and possibly provide other services and a more clearly defined relationship with Government.

Land Registry is currently moving into a new phase as it embarks on a new business strategy designed to deliver significant benefits for customers, including:

- Making more land registration services available online, this should reduce processing times, risk of error and the costs of registration;
- Delivering more efficient services, including creating a centralised access point for local land charge searches;
- Maximising the reuse of property data for the benefit of the economy.

As Land Registry moves into this new phase, it is critical that the business has the right commercial model to best deliver these benefits to its customers and the wider economy.<sup>3</sup>

It should be noted that there were also changes planned as part of the Land Registry's strategic review. The then Minister noted that the Land Registry's “ambitious new business

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<sup>1</sup> Department for Business, Innovation and Skills, [Consultation Document – Introduction of a Land Registry service delivery company](#), January 2014, p13, para 29

<sup>2</sup> [HC Deb 23 January 2014 c10WS](#)

<sup>3</sup> [HC Deb 23 January 2014 c10WS](#)

strategy” is “focused on a number of areas”: “the digitisation and re-engineering of its core registration services, which should reduce processing times, risk of error and the costs of those services; playing a wider role in the land and property market, including being able to take on other adjacent registers; and maximising the reuse of property data for the benefit of the wider economy ... [which] will all bring significant benefits for customers and make it easier to register land in England and Wales”.<sup>4</sup> More information on these proposals can be found in section B of this note.

Mr Fallon provided further explanation in his response to a Westminster Hall debate in February 2014:

Commercial models dominated the debate. The hon. Member for Swansea East [Siân C. James] fairly asked: “If it ain’t broke, why fix it?” I will reply directly to that. Of course, the Land Registry is profitable, but we have a responsibility to review continually whether the business can drive further benefits to its customers and the wider market by driving digital by default services, which could deliver lower-cost services and reduce processing time.

The proposal in the consultation to introduce a new service delivery company is aimed at supporting the business in delivering its business strategy in the best way possible. We have been working with the business to consider whether the current model is fit for purpose or whether there may be benefits in considering alternative commercial models. Following that, there should be a number of benefits through a greater focus on service delivery, greater operational flexibility and a more clearly defined relationship with Government. Central to any change in the commercial model is the guiding principle that we must continue to protect the integrity of the registry in such a way that its role in underpinning the property market by giving confidence to buyers, sellers and lenders is not compromised.<sup>5</sup>

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<sup>4</sup> [HC Deb 25 February 2014 c89WH](#)

<sup>5</sup> [HC Deb 25 February 2014 cc89WH–90WH](#)

## 2 Background to the January announcement

### 2.1 A brief history of HM Land Registry

Her Majesty's [Land Registry](#) was created in 1862 as a non-Ministerial department. From 1990 it became an executive agency of the Ministry of Justice. Since July 2011, the Land Registry has been an executive agency of the Department for Business Innovation and Skills (BIS).

The Land Registry holds and maintains the register for land and properties that have their ownership status entered onto it (currently over 23 million titles). The Land Registry's existence was continued by the *Land Registration Act 2002*, which provides that it "is to deal with the business of registration under this Act". The 2002 Act introduced some of the most recent changes to the Land Registry. The Act implemented a number of recommendations made by the Law Commission in their 2001 report; [Land Registration for the Twenty-First Century: A Conveyancing Revolution](#).

The [Land Registry website](#) provides a summary of the main events in its 150 year history since its creation in 1862.

### 2.2 The current model of Land Registry ownership

Since April 1993, the Land Registry has been a "Trading Fund", in accordance with the *Government Trading Funds Act 1973*, as amended by the *Government Trading Act 1990*.<sup>6</sup> As a Trading Fund, the Land Registry "does not make any call on monies voted by Parliament. By statute, it is required to ensure that its income from fees covers all of its expenditure under normal operating conditions".<sup>7</sup> Its trading fund status means that the Land Registry "must match our resources to the volumes of work expected in the financial year".<sup>8</sup>

The Land Registry is self-funding: it charges fees for registering properties and changes of ownership and other services. It also generates income from its "[Add Value Services](#)" through which it provides services to professionals, businesses and members of the public who want Land Registry information in specific formats. This commercial arm of the Land Registry was created in 2005 in order to use public information more effectively

The Land Registry is not unique in being a Trading Fund:

Land Registry is part of the PDG [Public Data Group] of trading funds, along with Ordnance Survey, the Met Office and Companies House. The aim of the PDG is to support growth in the UK economy by delivering efficiencies and improvements in public services through collaboration and better use and sharing of data by its members and partners. This aim is in addition to Land Registry's statutory responsibilities.<sup>9</sup>

In its 2013/14 Annual Management Plan, the Land Registry noted that "trading fund status allows us to respond dynamically to fluctuations in demand while working within cost controls such as the unit cost".<sup>10</sup>

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<sup>6</sup> Land Registry, [Framework Document 2012](#), October 2012, p2

<sup>7</sup> Land Registry, [2013/14 Annual Management Plan](#), p6

<sup>8</sup> As above, p10

<sup>9</sup> As above, p6

<sup>10</sup> As above, p10

### **Previous reviews of the Land Registry**

A Quinquennial Review of the Land Registry was [launched in 2000](#).<sup>11</sup> On 27 June 2001, the [Local Government Chronicle](#) reported that following the publication of the review the then Lord Chancellor, Lord Irvine, had “accepted the conclusions of the review that HM Land Registry should remain in the public sector as a government department, executive agency and trading fund while continuing the significant amount of work in partnership with the private sector that it currently undertakes”.<sup>12</sup>

In October 2009, the Ministry of Justice announced a five-year “accelerated transformation” programme at the Land Registry, intended to cut costs and deliver services effectively.<sup>13</sup> The proposed changes followed from a 10-year ‘blueprint’ document for the Land Registry’s future published in 2006. A [consultation was launched](#) into the proposals, and consultation responses were published in March 2010 in [Land Registry Accelerated Transformation Programme - Consultation Responses Report](#). The report concluded that two of the five offices originally planned to close would remain open, but that other proposals such as the sale of their Head Office building and plans for increased outsourcing would go ahead unchanged.

The Cabinet Office 2010 review of Arm’s Length Bodies (ALBs) resulted in plans to reduce the number of ALBs. The results of the Government’s review were published on 14 October 2010, [Public bodies reform: proposals for change](#).<sup>14</sup> The review concluded that the Land Registry should be “retained and substantially reformed”, adding “retain on the grounds of transparency - but Government will undertake a feasibility study to scope out the opportunities presented by private sector investment”.<sup>15</sup>

Following the 2010 review, Lord McNally, the then Justice Minister, led a feasibility study of the options for greater private sector involvement in the delivery of Land Registry services, which reported to Ministers around spring of 2011.<sup>16</sup> The then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, told the House that “given the registry’s importance in the housing market, we must give thorough consideration to those findings before making any decisions or announcements about its future direction”.<sup>17</sup>

In response to the review by Lord McNally, the FDA union released a press notice criticising the Government’s plans; “[Union criticises Land Registry’s privatisation review](#)”, and the PCS union started a [Land Registry campaign against closures](#).

In July 2011 responsibility for the Land Registry transferred from the Ministry of Justice to BIS.

In December 2011, the Cabinet Office published an updated [Public bodies reform: proposals for change](#), which stated the following in respect of the Land Registry: “Retain - Retain on the

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<sup>11</sup> “[Independent review of Her Majesty’s Land Registry](#)”, *Local Government Chronicle*, 6 September 2000 [subscription required]

<sup>12</sup> “[Land Registry to remain in the public sector](#)”, *Local Government Chronicle*, 27 June 2001 [subscription required]

<sup>13</sup> HC Deb 22 October 2009 c76WS

<sup>14</sup> The 2010 Cabinet Office review resulted in the [Public Bodies Act 2011](#), which allowed for the abolition and reform of ALBs.

<sup>15</sup> Cabinet Office, [Public Bodies Reform – Proposals For Change](#), 14 December 2011, p3

<sup>16</sup> Land Registry, [Update on Land Registry Feasibility Study](#), 7 April 2011

<sup>17</sup> [HC Deb 29 March 2011 c151](#)

grounds of independently establishing facts - but Government will undertake a feasibility study to scope out the opportunities".<sup>18</sup>

In a statement on public bodies reform, on 15 December 2011, the Cabinet Office Minister, Francis Maude, announced that there would be ongoing triennial reviews looking at the status of ALBs identified by departments.<sup>19</sup>

### **2.3 The Land Registry's current Business Strategy**

As the January 2014 consultation document set out:

To further improve the ease and efficiency with which land registration services are accessed, Land Registry has developed a business strategy for 2013 to 2018. The strategy is based on meeting the needs of its customers and stakeholders, facilitating digitisation of land registration services, and improving the management and re-use of land and property data.

There are significant benefits to customers from Land Registry delivering its business strategy including reduced processing times, reduced risk of error and fraud, lower search costs, a centralised access point for searches and greater access to a richer data set.<sup>20</sup>

The Business Strategy for 2013 to 2018 set out the main drivers for change; the strategy was intended to address several "challenges and opportunities":

Economic – The broader economic climate is uncertain; driving economic growth is a national priority. The Property market is suppressed through lack of access to credit causing a paradigm shift away from ownership towards renting. Property fraud is increasing in volume and sophistication

Data – Greater transparency, accessibility and re-use of public sector data provides an excellent opportunity to help stimulate economic growth

Customer – The customer base is increasingly diverse, cost conscious and e-enabled

Stakeholder – Pressure on the public purse is demanding increased efficiency, resulting in a drive to digital by default, a need to reduce regulation and to efficiently monitor compliance. The Civil Service Reform Plan sets out the Government's ambition for the civil service.<sup>21</sup>

The Land Registry published the following overview of their strategy:<sup>22</sup>

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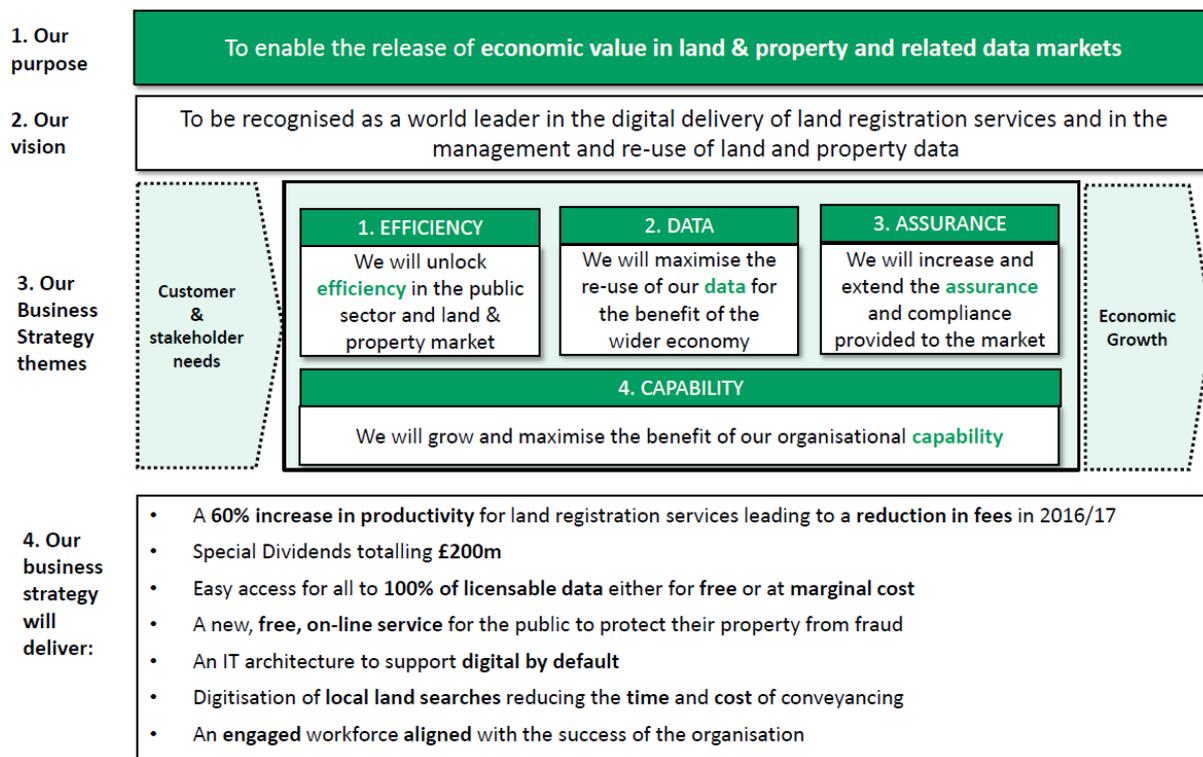
<sup>18</sup> Cabinet Office, *Public Bodies Reform – Proposals For Change*, 14 December 2011, p3

<sup>19</sup> [HC Deb 15 December 2011 cc108WS–109WS](#)

<sup>20</sup> Department for Business, Innovation and Skills, *Consultation Document – Introduction of a Land Registry service delivery company*, January 2014, p7, paras 2–3

<sup>21</sup> Land Registry, *Proposed Business Strategy 2013/14 – 2017/18*, p4

<sup>22</sup> As above, p5



BIS explained that:

It is envisaged that the benefits to customers of delivering the business strategy are significant:

- more extensive, effective and efficient digital services would help Land Registry reduce processing times and also reduce the risk of error and fraud;
- customers would see reduced costs across Land Registry preliminary searches and registration as well as potentially local land searches;
- a centralised access point for searches would be created with more consistent service levels;
- customers would have greater access to a richer data set, brought together in one place.<sup>23</sup>

<sup>23</sup> Department for Business, Innovation and Skills, *Consultation Document – Introduction of a Land Registry service delivery company*, January 2014, p12, para 26

### 3 Proposed split of delivery and policy

#### 3.1 Creating a service delivery company and an Office of the Chief Land Registrar

As the Government noted, under the current model, “today, Land Registry is a Trading Fund and is responsible for both policy and delivery”. It added that “it is also a creature of statute, which means that its ability to carry out additional activities is constrained by legislation”.<sup>24</sup> Instead, BIS proposed splitting the “delivery” and “policy” sides of the Land Registry:

Against the option of remaining as it is, we are considering the proposal to create a new company, to which responsibility for the performance of the service delivery functions would be transferred, and to have a separate Office of the Chief Land Registrar (“OCLR”) which would be retained in Government.

The relationship between the OCLR and the service delivery company would be managed through a service contract.<sup>25</sup>

In terms of the roles of the two elements of the Land Registry, it explained that:

The OCLR would primarily perform regulatory and fee-setting functions to ensure that customers’ interests continue to be protected, whereas the Land Registry service delivery company would focus on the delivery of land and property services on behalf of the OCLR.<sup>26</sup>

[...]

By creating a distinct entity, a service delivery company, that is responsible for the performance of the delivery functions of land registration on behalf of the OCLR, which has greater flexibility to operate, but which is still subject to Government oversight, it is considered that Land Registry would be able to serve the property market more effectively.<sup>27</sup>

[...]

Central to any plans for the future is that we continue to protect the integrity of the Register such that Land Registry’s role of underpinning the property market - by giving confidence to buyers, sellers and lenders - is not compromised.<sup>28</sup>

The consultation document noted that the proposal “looks to separate policy and delivery and address each of these objectives”:

- Focus on delivery: A new company would be created to focus on delivering services on behalf of the Chief Land Registrar (“CLR”);
- Flexibility to operate: The delivery company would be outside the civil service and would be subject to company law, which would give greater future flexibilities to operate around pay and recruitment and possibly provide other services;
- Clearly defined relationship: The service delivery company would deliver land and property services on behalf of the OCLR. CLR [Chief Land Registrar] would have a clearly defined relationship with the service delivery company

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<sup>24</sup> As above, p7, para 5

<sup>25</sup> As above, p7, paras 6–7

<sup>26</sup> As above, p7, para 8

<sup>27</sup> As above, p13, para 30

<sup>28</sup> As above, p13, para 31

through a service contract. It would also manage or oversee (depending on the circumstances) continued relationships with the Rule Committee, Independent Complaints Reviewer (“ICR”) and the First-tier Tribunal;

- Protect the integrity of the register: To maintain operational integrity and stakeholder confidence, certain functions would remain with the CLR. The CLR would retain a small office, known as the ‘Office of the Chief Land Registrar’ (“OCLR”).<sup>29</sup>

### 3.2 Ownership of the service delivery company and the “privatisation” debate

The consultation document states that “no decision has been made yet on ownership” of the service delivery company, although it sets out some options:

- a service delivery company which is 100% owned by Government;
- a service delivery company which is jointly owned by both Government and a private sector company;
- a service delivery company which is 100% owned by Government but day-to-day operations would be the responsibility of a private sector company on Government’s behalf.<sup>30</sup>

BIS also detailed the Government’s principles underlying such a decision:

The Government is committed to ensuring the effective and efficient management of publicly owned assets. This includes assessing options for moving assets to the private sector where there is no longer a strong policy reason for continued public ownership or where there is potential for an asset to operate more sensibly and efficiently in the private sector.<sup>31</sup>

BIS added that the safeguards it had designed would mean that “Land Registry customers and the integrity of the register of title and related registers would be protected irrespective of the decision on ownership and control”.<sup>32</sup>

These points were highlighted by Mr Fallon in his response to the February 2014 Westminster Hall debate:

I emphasise that no decision has yet been taken about the ownership of such a new company, should we move forward with the proposal to create it following the consultation. A number of models are being considered, but the oversight that will be retained by the office of the chief land registrar would ensure that Land Registry companies and the integrity of the register would be protected irrespective of ownership. Models being considered include a wholly owned Government company, a joint venture and a contracting-out model. It is Government policy to assess options for moving assets to the private sector where there is no longer a strong policy reason for continued public ownership or where there is potential for an asset to operate more sensibly and efficiently in the private sector.<sup>33</sup>

The consultation document provided information on the governance and ownership of the proposed service delivery company, including:

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<sup>29</sup> As above, p13 para 32

<sup>30</sup> As above, p20, para 58

<sup>31</sup> As above, p20, para 57

<sup>32</sup> As above, p21, para 60

<sup>33</sup> [HC Deb 25 February 2014 c90WH](#)

The service delivery company would be a company limited by shares, subject to the provisions of company law.

[...]

The service delivery company would have its own articles of association and, with it, the flexibility to facilitate a wider role in the property market, consistent with the business strategy.

[...]

The new service delivery company would be governed by a Board of Directors who would be responsible for all aspects of managing delivery, on behalf of the OCLR. This focus on delivery only would enable them to more effectively achieve the ambitions of the business strategy.

[...]

The Board itself would be constituted in line with best practice in corporate governance. It would be presided over by an independent Chair and would include the Chief Executive Officer, directors from within the company, and non-executives who bring a suitable range of skills and experience.

[...]

It is anticipated that the service contract would have provisions to enable Government to take back delivery responsibility should the company fail to fulfil the terms of the service contract.<sup>34</sup>

The proposals in the governance consultation have been described in the media as “plans that could lead to a sell-off or part privatisation of the Land Registry”.<sup>35</sup> However, it has been reported that “A spokesman for the Department for Business, Innovation and Skills said full privatisation of the Land Registry is not being considered at this stage”.<sup>36</sup>

A report written by Professor Roger Seifert and published by the PCS union (who commissioned it) shortly after the launch of the Government’s consultation argued that “The political and organisational drivers behind the proposals seem to be a combination of a generalised desire by government to privatise; a belief among senior decision-makers that such a move would ‘free up’ management strategies to improve the Land Registry’s operational processes and target achievement; and that this would improve services to customers”.<sup>37</sup>

In a report of 5 May 2014, *The Guardian* reported that “the Land Registry is headed towards privatisation, in a move which will give private firms a say in the granting of land rights, according to leaked minutes from a meeting of its board members”. The article continued:

Documents seen by the Guardian show that far from still considering public ownership of the 150-year-old body as a viable option – as ministers publicly claim – senior civil servants are deciding between a joint venture between the government and a private company, or letting a private company run it as a so-called Govco.

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<sup>34</sup> Department for Business, Innovation and Skills, [Consultation Document – Introduction of a Land Registry service delivery company](#), January 2014, pp14–15, paras 34, 36, 38, 39 and 41

<sup>35</sup> “UK government poised to sell off Land Registry”, *Financial Times*, 23 January 2014 [subscription required]

<sup>36</sup> “Government move towards privatisation of Land Registry”, *Today’s Conveyancer*, 13 February 2014

<sup>37</sup> PCS, [The future of our Land Registry](#), January 2014, p5

[...]

Minutes show that civil servants believe the government could raise £1.225bn from entering a deal with a joint venture company, marginally higher than the £1.1bn GovCo evaluation and that the registry's board has appointed their head of legal services as a company secretary for a new venture but have not yet announced it.

John Manthorpe, the former chief land registrar, said that the minutes appeared to show that the board was going ahead with a policy of privatisation.

"Appointing a company secretary gives the game away that the consultation may be a sham. I am not aware of any government department having a company secretary. The registry board are thinking in company terms already.

[...]

Under the heading "business strategy", the board appeared to discuss a KPMG presentation on the possibility of a private sector partner. The minutes record how the capital return would be under three blocks and note that "NPV [net present value] equalling £1.225bn, marginally higher than the £1.1bn GovCO valuation".

The minutes also note that under option two – the joint venture company – there may be "insufficient risk transfer to the PSP [private sector partner]" as well as a "significant risk of industrial action."

But nowhere in the minutes does the board consider the possibility of keeping the body as an executive agency of government.

Critics have pointed out that when the original January consultation document was published, the government had not consulted the registry's principal professional customers: the Law Society, representing conveyancers, and the Council of Mortgage Lenders, representing banks and building societies.

Staff at the Land Registry are expected to announce a two-day strike over the potential privatisation after managers failed to give assurances over compulsory redundancies or office closures.

[...]

A spokesman for the Department of Business, Innovation and Skills said a decision would be made shortly on whether to privatise the registry and that all options remained under consideration.

"The company secretary role is in connection with the existing Land Registry board. It is a newly created position in order to meet recognised best practice on board governance.<sup>38</sup>

### **3.3 Legislative changes that would be required**

The consultation document noted that, to enable a separation between delivery functions and the policy and regulatory functions, the Government is "propos[ing] to make changes to legislation, principally amendments to the LRA [Land Registration Act] 2002". The amendments to the Act would be necessary to "allow for certain (but not all) functions of the

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<sup>38</sup> ["Land Registry privatisation plans revealed in leaked document"](#), *The Guardian*, 5 May 2014

CLR [Chief Land Registrar] to be performed on his/her behalf by a service delivery company outside of the civil service".<sup>39</sup>

### **3.4 The Government's position during the consultation**

The Government has stated:

As Land Registry strives to deliver the business strategy and become an efficient, digital and data centric organisation which can play a wider role in the property market, we consider that it would benefit from a separation of policy and delivery, a greater focus on service delivery, greater flexibilities to operate around pay, recruitment and possibly provide other services and a more clearly defined relationship with Government.<sup>40</sup>

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<sup>39</sup> Department for Business, Innovation and Skills, *Consultation Document – Introduction of a Land Registry service delivery company*, January 2014, p15, para 46

<sup>40</sup> As above, p12, para 28

## 4 The proposal's potential impact on customers

In terms of the potential impact of the Government's current proposals, the consultation document included a section entitled "What is the impact on customers of Land Registry?" which stated:

61. The proposals outlined in this document would have a very limited impact on customers.
62. The indemnity arrangements would continue to be state-backed.
63. In all cases, there would continue to be a primary point of contact for customers, through the service delivery company, following the separation.
64. In the event of complaints, these would be managed internally by the service delivery company. The ICR would continue to consider complaints unresolved within the internal system which are of a customer service nature.
65. Disputes between parties which relate to objections to applications, which cannot be resolved between the parties, would be referred to the OCLR. The OCLR would give further consideration to the application, and where appropriate the CLR would refer the dispute to the First-tier Tribunal (which is inline with current practice).
66. Data protection procedures that currently apply to Land Registry would continue to be in place for the service delivery company to ensure personal information is not mishandled or exploited.<sup>41</sup>

As previously noted, the Seifert report published by the PCS union argued that "The political and organisational drivers behind the proposals seem to be a combination of a generalised desire by government to privatise; a belief among senior decision-makers that such a move would 'free up' management strategies to improve the Land Registry's operational processes and target achievement; and that this would improve services to customers".<sup>42</sup>

The Seifert report stated that "the question is asked of any new system, what are the potential risks?" and in regard to customers the following is put forward:

Customers might be concerned about service integrity and profiteering by any private partner are well founded based on recent evidence from those sectors that have been privatised or part-privatised [*sic*]. In the case of the LR with its specialist customer base and the high importance of error-free delivery this would appear a very high risk.<sup>43</sup>

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<sup>41</sup> Department for Business, Innovation and Skills, [Consultation Document – Introduction of a Land Registry service delivery company](#), January 2014, p21

<sup>42</sup> PCS, [The future of our Land Registry](#), January 2014, p5

<sup>43</sup> As above, p12

## 5 Government response to the consultation and the “further consideration” decision

The consultation closed on 20 March 2014, and on 15 July 2014 the Government published [its response to the consultation](#). The Government noted that it had received a total of 304 formal responses to the consultation, as well as “views expressed through correspondence to BIS and during the Westminster Hall Debate in Parliament on 25 February”. Respondents had included “interested members of the public, members of the legal profession, Land Registry employees and international companies”.<sup>44</sup>

The consultation response was accompanied by a written ministerial statement by Mr Fallon which stated:

Given the importance of the Land Registry to the effective operation of the UK property market, we have concluded that further consideration would be valuable. Therefore, at this time, no decision has been taken to change Land Registry’s model.<sup>45</sup>

Although the statement noted that “further consideration” would be undertaken and that “no decision” had been taken at that time, the consultation response noted that the Government’s posture was unchanged, namely that:

Government continues to believe that there could be benefits in creating an arm's length service delivery company to transform and modernise the way in which land registration is carried out in the UK, as well as to support new opportunities for the business to play a wider role in the property market. Therefore, we will continue to develop policy and engage with stakeholders. This is consistent with Government policy continually to review publicly owned assets. If there were to be proposals to change Land Registry’s commercial model, we will again consult.<sup>46</sup>

The consultation document highlighted the level of opposition from respondents to some of the key questions posed by the BIS, such as:

- 91% of respondents did not agree that creating a more delivery-focused organisation at arm’s length from Government would enable Land Registry to carry out its operations more efficiently and effectively. 5% agreed and 4% were not sure.
- 88% of respondents did not agree that the overall design provides the right checks and balances to protect the integrity of the register and safeguard the provision of indemnities and state title guarantee. 4% agreed and 8% were not sure.
- 89% stated they would not be comfortable with non-civil servants processing land registration information, even if they did this within a framework set out by the OCLR in a service contract. 8% stated they would be comfortable, with 4% not sure.<sup>47</sup>

As BIS noted in its response, “the majority of responses expressed concern about the proposal to separate the functions of the Land Registry”. It added that:

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<sup>44</sup> Department for Business, Innovation and Skills, [Government Response – Introduction of a Land Registry service delivery company](#), July 2014, p6, para 5

<sup>45</sup> [HC Deb 14 July 2014 c40WS](#)

<sup>46</sup> Department for Business, Innovation and Skills, [Government Response – Introduction of a Land Registry service delivery company](#), July 2014, p7, para 10

<sup>47</sup> As above, p15, para 30

The primary drivers of this caution stemmed from:

- Uncertainty over the implications for data protection from a change in commercial model;
- Concern over the impact of the profit motive on the operations and priorities of the service delivery company;
- Uncertainty over the responsibilities of the OCLR.

There was a general appetite for greater information among many respondents, particularly in relation to the rationale for change and the impact on staff under each of the proposed options.<sup>48</sup>

In regard to the *Infrastructure Bill*, which is currently before Parliament, the then Minister added that:

It may be helpful to note that measures introduced in the Infrastructure Bill to amend the Land Registration Act 2002 and Local Land Charges Act 1975 are changes required for Land Registry to play a wider role in the property market and to take on responsibility for providing a single, digital local land charge register. The Infrastructure Bill does not include any measures having the aim of changing Land Registry's model and introducing a new service delivery company.

The Government's ambition for effective, digital-by-default data services remain an underlying policy objective. The business has already started its digital transformation, which has resulted in the organisation's headcount reducing by more than half over the last 20 years. This modernisation will continue irrespective of the need to consider further the Land Registry's commercial model, and will deliver improved services for customers.<sup>49</sup>

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<sup>48</sup> As above, p16, paras 33–34

<sup>49</sup> [HC Deb 14 July 2014 c40WS](#)

## B HM Land Registry and the Infrastructure Bill

Sections 6 and 7 below provide a summary of section 3.4 of the [Library Research Paper on the Infrastructure Bill \(RP 14/65\)](#) that was published before the Bill had its Second Reading in the Commons. Section 8 provides an update on relevant developments since the Research Paper was published, namely proceedings during Second Reading and Committee Stage.

### 6 Background

The *Infrastructure Bill*, a portmanteau bill, includes three clauses and one schedule relating to the Land Registry.

In summary, the proposals in the Bill would transfer responsibility for Local Land Charge (LLC) searches from local authorities to the Land Registry; responsibility for collating LLC data, and for undertaking CON29 searches (which are usually made alongside LLC searches) would remain with local authorities. The Bill also proposes widening the existing powers of the Land Registry to enable it to provide information and register services relating to land and other property. This applies to England and Wales only.

On the first point, in January 2014 the Department for Business, Innovation and Skills (BIS) issued a consultation document entitled [Land Registry: Wider Powers and Local Land Charges](#).

The response to the consultation, published in June 2014, was in two parts. Part 1 of the consultation concerned widening the existing powers of the Land Registry. BIS reported that the majority of respondents did not want to see the Land Registry “play a greater role in the property market” by providing information and register services additional to land registration services; or providing consultancy and advisory services relating to land and other property.<sup>50</sup>

Part 2 of the consultation concerned the Land Registry assuming responsibility for LLC. In the response document, the Land Registry noted that:

The majority of respondents to this question felt that the reasons given in the consultation to change LLC services were not supported by the evidence produced and that the perceived problems with the current service had been overstated. Many felt that the consultation did not provide sufficient information of how the proposals would work in practice and that they would not produce the costs benefits or a centralised one stop shop. An overwhelming majority stated that the services should all remain with local authorities.<sup>51</sup>

However, in its response to both parts of the consultation, the Land Registry said:

After careful consideration, the Government has decided LR [Land Registry] should proceed with the following proposals:

- That LR’s current legal powers under the LRA 2002 be extended to enable it to engage in the provision of information and register services relating to land and other property, including the provision of consultancy and advisory services
- That LR should take over responsibility as the sole registering authority for LLCs to enable it to hold and maintain a composite LLCR [Local Land Charges

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<sup>50</sup> Land Registry, [Land Registry, Wider Powers and Local Land Charges – Government Response to consultation](#), June 2014, p14, Questions 2A and 2B

<sup>51</sup> *ibid.*, p25

Register] for England and Wales and be the sole provider of LLC official search results. All charges for LLC will be set in full compliance with the guidance in HM Treasury's publication *Managing Public Money* to ensure proper Parliamentary oversight over fees.<sup>52</sup>

In terms of the costs of the proposals, the Impact Assessment (IA) that was published in October 2014 stated that the best cost estimate of the proposal for the Land Registry to assume responsibility for LLC searches was £48.5 million, while benefits were estimated at £134 million.<sup>53</sup> These figures included an assumption that the charge per search would initially be £12, reducing to £5 in 2018/19 in England.<sup>54</sup> Fees in Wales would be set by the Welsh Government – the IA assumed that fees in Wales would remain at £6.<sup>55</sup>

## 7 The Bill as introduced to the Commons at First Reading

The following concerns the relevant provisions of the *Infrastructure Bill* as it was brought from the Lords for First Reading in the Commons i.e. [Bill 124](#) of the 2014–15 session.

**Clause 29** would make provision about the transfer of responsibility for LLC searches from individual local authorities in England and Wales to the Chief Land Registrar (CLR). Clause 29 would give effect to **Schedule 4**, which in turn would amend the existing legislation to achieve this policy.

**Clause 30** would provide for the widening of the Land Registry's existing powers [see consultation, above]. The Explanatory Notes state:

At present, under the LRA [Land Registration Act] 2002, the CLR's powers are limited to functions and services relating to land registration. These powers are to be extended to enable Land Registry, in addition, to provide information and register services relating to land and other property.<sup>56</sup>

Section 14 of the [Local Land Charges Act 1975](#) provides for the Lord Chancellor (with the concurrence of the Treasury in regard to fees) to make rules for carrying that Act into effect.<sup>57</sup> This power is exercisable "with the advice and assistance of a Rule Committee". **Clause 31** seeks to change the nomination procedure to the Rule Committee in respect of the designated member for the "person with experience in, and knowledge of, consumer affairs". At present, the nomination is made by the Lord Chancellor; clause 31 would reassign this responsibility to the Secretary of State.

## 8 Commons consideration

### 8.1 Second Reading Stage

During Second Reading stage, there was only limited consideration of the proposals in the Bill concerning the Land Registry. Introducing the Bill for its Second Reading in the Commons, the Minister of State at the Department for Transport, John Hayes, said that:

The move to digitise and centralise local land charges and free up the Land Registry to take a wider role will ultimately help people buying and selling their homes. The Government aim to make dealing with property quicker, cheaper and easier. The Land

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<sup>52</sup> *ibid.*, p75, para 5.4

<sup>53</sup> *ibid.*, p3

<sup>54</sup> *ibid.*, p12, section 5.2

<sup>55</sup> *ibid.*, p3

<sup>56</sup> *ibid.*, p32, para 178

<sup>57</sup> [HC Bill 124 EN](#), p29, para 165

Registry is well placed to help achieve that aim because it is already at the centre of the conveyancing process and is the largest single source of property information. The changes in the Bill will stop the wider disparities in charging, currently ranging from approximately £3 to £76, and will lead to a more efficient service for searches as people access a single provider rather than one of 348 separate providers. We need modern systems to underpin the property market.<sup>58</sup>

During her speech, Labour's Roberta Blackman-Woods said:

If I am flummoxed as to why there are no measures to support new garden cities in the Bill, I am equally at a loss in trying to understand why the changes to the Land Registry are necessary. The Government have given no real rationale for that measure. That has led many Opposition Members and others to worry that the purpose is simply to fatten up the Land Registry for privatisation. Perhaps the Minister could reassure us on that specific issue when he sums up.<sup>59</sup>

Responding for the Government, the Parliamentary Under-Secretary of State for Communities and Local Government, Stephen Williams, said that “the reforms to the Land Registry are necessary to bring local land charges into the 21st century and digitise 348 card indexes around the country. There is absolutely no intention to fatten up either company for privatisation”.<sup>60</sup>

## 8.2 Committee Stage

The Public Bill Committee (PBC) scrutinising the Bill considered the one and only amendment in regard to the clauses relating to the Land Registry. The amendment, tabled by Roberta Blackman-Woods, concerned clause 29 which, as noted above, would transfer responsibility for LLC searches from individual local authorities in England and Wales to the Chief Land Registrar (CLR) by bringing the changes in Schedule 4 of the Bill into effect. The amendment proposed that:

This section shall not come into force until the Secretary of State has laid an independent report before both Houses of Parliament on the effects of the transferral of responsibility for local land charges to the Land Registry, and the report shall include—

- (a) an implementation plan;
- (b) an assessment of the impact it will have on local authorities;
- (c) an assessment of the impact it will have on businesses; and
- (d) an assessment of the impact it will have on home buyers and sellers.<sup>61</sup>

During the PBC's consideration of the amendment, Ms Blackman-Woods said that the “Opposition believe that peeling off part of the service will make the service worse, not better, and that the delivery, impact and cost implications of the change have not been properly assessed or considered”, adding “that sentiment is echoed by organisations across the industries that will be affected by the changes”.<sup>62</sup>

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<sup>58</sup> [HC Deb 8 December 2014 c658](#)

<sup>59</sup> [HC Deb 8 December 2014 c737](#)

<sup>60</sup> [HC Deb 8 December 2014 c738](#)

<sup>61</sup> Public Bill Committee, *Infrastructure Bill [Lords] – new amendments*, 8 January 2015

<sup>62</sup> [PBC Deb 8 January 2015 c188](#)

Ms Blackman-Woods explained that the amendment “is designed to ensure that the proposals in the clause do not come into force until the Secretary of State has laid before Parliament a detailed, independent report on the transfer, setting out an implementation plan, an assessment of the effect of the changes on local authorities, and an assessment of the wider effect of the transfer on businesses, home buyers and sellers”.<sup>63</sup>

She sought an explanation of “what made the Government press ahead with the proposals despite the magnitude of opposition that is so well documented in the response to the consultation”. Ms Blackman-Woods also noted that the “Land Registry will hold the data and will carry out searches of the register, but local authorities will continue to collect the information to go in the register and all other local land charge data”, arguing “that simply does not make sense, because the Land Registry will take on only one part of the service, leaving the more complex part of the service with local authorities”.<sup>64</sup>

In regard to the cost of implementing the new approach, Ms Blackman-Woods noted that the Local Government Association (LGA) had called “for a firm commitment on the face of the Bill that the transitional costs are met in full under the new burdens doctrine, and all ongoing costs based on an independent cost assessment are funded by central government”.<sup>65</sup>

In his response for the Government, the Parliamentary Under-Secretary of State for Communities and Local Government noted that, in regard to the costs, that he could “confirm that all the costs of the conversion from the various databases held locally at the moment, whether they involve paper, microfiche or any other format, to a digitised process will be met by the Land Registry; those costs will not fall on the individual local authority”.<sup>66</sup> The Minister added:

If I understand it correctly, most of the objections from local authorities—directly or via the LGA—were purely on the subject of uncertainty about whether the cost of moving to the new service would be covered. I have answered that and given reassurance that the cost will be covered. That is what most of the objections were about, or so I am told.<sup>67</sup>

The Minister added that because the CON29 search would continue to be provided by local authorities, and revenue will still accrue to them for providing that service.<sup>68</sup>

Looking ahead, Mr Williams said that “implementation will also require a range of secondary legislation to support the changes; an example is land charges rules. That will ensure that Parliament has the opportunity to monitor progress and to ask further questions”.<sup>69</sup>

Ms Blackman-Woods concluded the debate by saying that “I urge the Minister to go away and read what the people who work in the sector are saying about this. They are greatly concerned that we are moving towards digitising the service in the Land Registry without thinking through what is already happening”. She added that “we therefore need to think more about the clause, but, for now, I beg to ask leave to withdraw the amendment”.<sup>70</sup>

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<sup>63</sup> PBC Deb 8 January 2015 c188

<sup>64</sup> PBC Deb 8 January 2015 c189

<sup>65</sup> PBC Deb 8 January 2015 c191

<sup>66</sup> PBC Deb 8 January 2015 c194

<sup>67</sup> PBC Deb 8 January 2015 c196

<sup>68</sup> PBC Deb 8 January 2015 c196

<sup>69</sup> PBC Deb 8 January 2015 c193

<sup>70</sup> PBC Deb 8 January 2015 c197

The amendment was withdrawn, and the Committee agreed that clauses 29, 30 and 31 and schedule 4 should stand part of the Bill without amendment.