Department for Business Innovation & Skills

CONSULTATION DOCUMENT

Consultation on moving Land Registry operations to the private sector

24 MARCH 2016

Contents

Land Registry consultation

It was announced in the Autumn Statement 2015 by the Chancellor that Government intended to consult on options to move operations of Land Registry into the private sector. This is part of a wider aim of the Government to seek up to £5 billion of additional corporate and financial asset sales by March 2020.

This consultation sets out options to move Land Registry into the private sector. A sale of Land Registry is expected to deliver a capital receipt for Government. This can be invested elsewhere for the benefit of the tax payer. In addition, it is expected that a transaction could support Land Registry to be run efficiently and effectively and support the UK property market.

Issued: 24 March 2016

Respond by: 26 May 2016

Enquiries to:

Lizzie Dixon
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 4749
Email: lr.consultation@ukgi.gsi.gov.uk

1. Foreword from the Secretary of State

A strong economy lies at the heart of good government. That means Government not spending more than it can afford, and reducing the national debt.

Where we can help achieve these goals through selling public sector assets, without detriment to delivering public services, it makes sense that we do so. In the 2015 Autumn Statement and Spending Review this Government has therefore targeted up to £5billion of additional corporate and financial asset sales by March 2020.

Land Registry has recently celebrated a landmark 150th year and continues to be an essential part of land and property ownership in England and Wales. It undertakes a range of functions and responsibilities, which support an effective and functioning property market by providing assurance to those who have an interest in land and property and a state-backed guarantee to title. In this way, a well-functioning Land Registry underpins housing supply, home ownership and economic growth.

Those functions remain crucial, but as long as the right protections are put in place, including keeping the statutory register under government ownership, there is no reason for all of the functions Land Registry carries out to be undertaken within the public sector. Indeed, Land Registry could have more freedom in the private sector to continue to evolve into a high performing, innovative business, delivering for customers and the wider market in a 21st century, digital economy.

It makes sense therefore to pursue a move of Land Registry into the private sector that could maximise a sizeable return to Government to reduce debt, and provide a more suitable environment for the future of the organisation.

I am committed to enabling Land Registry to meet Government objectives in the best way possible. Creating an organisation that can focus on delivering modernised services and bringing in “best in class” knowledge and external investment is a key part of this. This consultation offers an opportunity for customers and interested parties to understand, consider and comment on the options being proposed.

High quality Land Registry services and confidence in the property market will remain a priority for Government throughout this process.

We welcome views from all interested stakeholders and we will use your responses to help us shape the future of land registration operations.

2. Executive summary

1. Without sound public finances there is no economic security for working people. In normal economic times governments should prepare financially and economically, so the country is better prepared for whatever lies ahead. The Government is pursuing this goal through a number of means, one of which is selling assets that, with the right protections in place, do not need to be in the public sector (and often do not benefit from public ownership). Asset sales help achieve stronger public finances, reduce national debt and encourage economic growth through investment.

2. In the Autumn Statement, the Chancellor announced that the Government is seeking up to £5billion of additional corporate and financial asset sales by March 2020. As part of this, Government committed to consult on options to move operations of the Land Registry to the private sector from 2017.

3. Land Registry plays an important role in the property market, underpinning property ownership worth over £4 trillion across England and Wales including over £1 trillion of mortgages. Its principal function is to keep a register of ownership of, and interests in, freehold and leasehold land and charges throughout England and Wales, and to record changes to it. It also provides a state-backed guarantee to the information held on the register, and facilitates one of the most active property and mortgage markets in the world. Its functions and the data it holds are therefore vital to all parts of the economy.

4. This consultation sets out proposals to move the operation of Land Registry into the private sector. Any proceeds received by the Government could then be used to pay down debt or enable other investment for the benefit of the taxpayer. Changes to ownership of Land Registry also have the potential to bring supplementary benefits, including access to additional capital, knowledge and skills to drive an accelerated programme of improvements to the service for the benefit of the customer.

5. The purpose of this consultation is therefore:

   a) To clearly set out Government's rationale for proposing change in the status quo;

   b) To propose how a private sector Land Registry would operate, which elements would remain within government, and the controls and safeguards that would be in place to maintain standards;

   c) To share our thinking on possible models for the future Land Registry; and

   d) To seek views on the proposals, especially on our preferred option.

3. How to respond

6. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

7. The consultation response form is available electronically on the consultation page: www.gov.uk/government/consultations/land-registry-moving-operations-to-the-private-sector (until the consultation closes). The form can be submitted online/by email or by letter or fax to:

   Lizzie Dixon

   1 Victoria Street
   London
   SW1H 0ET

   Tel: 0207 215 4749
   Email: lr.consultation@ukgi.gsi.gov.uk

8. Other versions of the document in Braille, other languages or audio-cassette are available on request.

4. Confidentiality and data protection

9. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). There is also a statutory Code of Practice issued under section 45 of the FOIA with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

10. If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

5. Help with queries

11. Questions about the policy issues raised in the document can be addressed to:

Lizzie Dixon

1 Victoria Street
London
SW1H 0ET

Tel: 0207 215 4749
Email: lr.consultation@ukgi.gsi.gov.uk

The consultation principles are in Annex A.

6. The proposals

6.1 Background

12. Land Registry plays an important role in the property market, underpinning property ownership worth over £4 trillion across England and Wales including over £1 trillion of mortgages. Its principal function is to keep a register of ownership of, and interests in, freehold and leasehold land and charges throughout England and Wales, and to record changes to it. It also provides a state-backed guarantee to the information held on the register, and facilitates one of the most active property and mortgage markets in the world.

6.1.1 The Land Register

13. The Land Register is a government-owned register setting out the ownership of land and property in England and Wales, of which 87% is registered. It is a statutory requirement that when there is a change in ownership of land or other property rights and a transaction occurs, the Land Register must be updated so it remains accurate. As the single, authoritative record of ownership, and on behalf of the Crown, it guarantees title to registered estates and interests in land.

14. Sitting alongside this register are a number of other statutory registers: the Land Charges Register including the Bankruptcy Register and the Agricultural Credits Register.

    - The Land Charges Register records and gives publicity to interests that affect unregistered land, such as when someone contracts to buy a piece of unregistered land and needs to ensure that the seller does not sell to someone else without their knowledge.
    - The Bankruptcy Register records bankruptcy proceedings.
    - The Agricultural Credits Register enables lenders to advance credit on the security of farming stock. It achieves this by recording and giving publicity to agricultural charges.

15. Together these registers (referred to in this document as the Registers) are Crown Property, required by legislation to be kept up to date and accurate. Under the proposals put forward in this document, the requirement for individuals to register changes will remain and government will continue to ensure the Registers remain up to date and accurate.

16. This Government believes that it is important that the Registers continue to be owned by government, and this proposal would not change that. The data within the Registers is protected by Crown copyright and database right as material created by a public body. Land Registry has delegated authority from the Controller of Her Majesty's Stationery Office in the National Archives to control and licence the database and copyright in its work and register data. This would not change going forward and the copyright of the Registers would remain under the ownership of the Crown.

Q1. Do you agree that ownership of the Registers should remain in government?

6.1.2 Land Registry

17. At present, the core statutory function of Land Registry is to keep and maintain the Land Register[1]. Individuals or organisations who become landowners or own interests in land must apply to the Land Registry to:

- register land that has not been registered previously;
- register a new owner of a registered property following a sale;
- register an interest affecting registered land, such as a mortgage, a lease or a right of way.

18. The Land Register holds over 24 million titles of land, which evidence ownership of that land. Once land or property is entered in the Register, the Land Registry record any changes in ownership, mortgages or leases that affect that property. It is the responsibility of Land Registry to provide a reliable record of information about the ownership of and interests affecting land. Critically anyone who suffers loss because of an error or omission in the Register, or because the Register needs to be corrected, will normally be compensated. This is known as the state backed guarantee or indemnity. Land Registry also has a role to play in ensuring it receives evidence of compliance with Stamp Duty Land Tax requirements before completing registration.

19. Further to these core statutory functions described above, Land Registry undertakes a number of additional non-statutory activities. These include providing consultancy and advice on international land registration systems, and offering database management – a service to help customers ensure data is accurate and address and ownership information is up to date. A full list of commercial services is available at www.gov.uk/government/collections/commercial-services.

20. Land Registry is financed through the fees it charges for its core statutory functions and to a modest extent income from additional non-statutory activities as outlined above. Fee levels are set by Parliament on the recommendation of Government. The government rules on charging, which are set out in the document Managing Public Money[2], stipulate that fees must be set at a level that recovers the cost of the services to government including a small amount to reflect the cost of capital to central government. Land Registry is supposed to ensure that its income from fees covers its expenditure under normal operating conditions. It is not currently permitted to generate a profit from core statutory functions, because fees must not be used to generate revenue for the Government to spend elsewhere – that is the purpose of taxation.

[1] Land Registry also maintains other registers as part of their statutory activities.
[2] A HM Treasury issued publication which provides guidance on handling public money and outlines how public money should be used responsibly (https://www.gov.uk/government/publications/managing-public-money).

21. In 2014/15 total costs for Land Registry were £260.5m, the majority of which (circa 65%) related to the workforce[3]. By comparison, total revenue for 2014/15 was £297.1m. This is transacted into an average fee for a Registration Service (that is a change to the register information, for example to reflect a change in ownership of land or property) of £83. For an Information Service (for example searches of the register for information on prior ownership of land or property and data provision such as MapSearch) the average fee is £3.

22. Land Registry's statutory income has exceeded expenditure in recent years due to higher than forecast volumes of transactions in the housing market – the key driver of its income. This surplus does not represent profit but arises from difficulties in accurately predicting a volatile housing market. Many of Land Registry's costs are fixed regardless of the volume of transactions it handles. When it handles a greater volume than it had predicted, it receives greater income but the costs do not increase by the same amount. It therefore makes an inadvertent surplus.

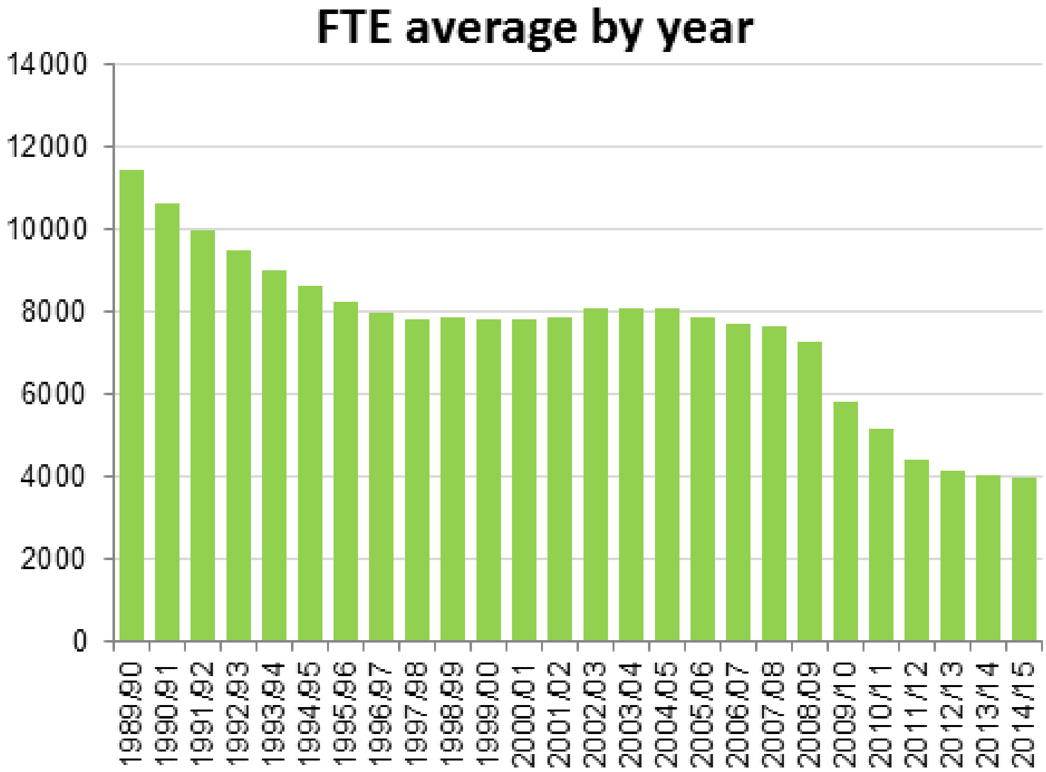
23. As well as the core statutory functions described above, its additional non-statutory activities (described in paragraph 18) generate revenue. At present these account for only £4.6m per annum. Some datasets are also provided to the public free of charge to support the Government's Open Data agenda.

24. The Land Registry is currently an organisation of 4578 staff, based in 14 offices in England and Wales[4].

25. As an organisation, Land Registry has already undertaken several transformations and over the last 20 years or so has developed new services, new approaches and has reduced its workforce from around 12,000 in the 1990s to 4114.9 Full Time Equivalents (FTE) today.

[3] Full details of income and expenditure including dividend as well as broader information on Land Registry's financial position and performance are included in the Land Registry Annual Report and Accounts 2014/15 (www.gov.uk/government/publications/land-registry-annual-report-and-accounts-2014-to-2015).

[4] Offices are located in Birkenhead, Coventry, Croydon, Durham, Fylde, Gloucester, Hull, Leicester, Nottingham, Peterborough, Plymouth, Telford, Swansea, Weymouth.



Source: HMLR analysis

Chart 1: Land Registry headcount over time: average full time equivalents 1989/90 – 2014/15

26. The predominant driver throughout these changes has been the move from a paper based system to an electronic approach to help respond to fluctuations in market demand, and improve cost, speed and accuracy. The next stage of Land Registry's transformation, whether under public or private sector ownership, would be to become a truly digital organisation, reducing the need for clerical or administration staff and with professional staff free to focus on exercising judgement on technical land registration issues where required.

6.2 The case for change

27. Where there is no compelling case for keeping an asset in public ownership and there are clear advantages to considering alternatives it is right to explore a change. There are benefits to moving Land Registry into the private sector in return for receipts that can be used to reduce public debt or fund other public spending. The key test is therefore whether or not there is a strong case for continued public ownership. In Land Registry's case, the Government believes that, with the right protections in place, there is no need for the core functions of the Land Registry to be delivered by civil servants. Subject to a value for money assessment, the balance lies in favour of a sale, releasing resource that can be used elsewhere for the public benefit. This is the primary driver for change.

28. Land Registry is at a critical point in its existence. Its functions are critical to enable the government to meet its commitment to build one million more homes by 2020 and increase home ownership. To continue to deliver the standard of service its customers expect, Land Registry needs to further modernise and digitise the services it offers to provide a more accessible, quicker and more efficient service.

29. Land Registry's strength is in providing land registration services. While it has had successes in developing some digital products – most notably the award winning MapSearch and Property Alert services – wholesale business transformation has proved more challenging and further investment is needed to ensure the capability and technologies are in place to combat and minimize the risk of property registration fraud.

30. Digital transformation can be brought about within the public sector. In the last Parliament government transformed 20 of the biggest public services to make them digital by default. This includes simplifying many of the tasks that used to be time-consuming and paper-based. Reforms including the new Carer's Allowance digital service reducing the size of the application form; individual online voter registration; and ongoing digital transformation of tax processes have delivered £3.5 billion in savings over the last three years and there are plans to go even further during this Parliament.

31. Digital transformation could also be brought about if Land Registry were in private ownership. A new owner could bring new knowledge and investment into the organisation and could ensure Land Registry accelerates its transformation into a more efficient and effective service delivery organisation with clear contractual obligations and controls to meet appropriate standards. This could enable it to maximise the potential of the information it holds and diversify the services it offers, whether it is for professional customers or private individuals trying to buy or sell property. All these factors could support an improved, faster transformation into the digital world, and deliver an improved service to customers.

32. Land Registry could also take on additional responsibilities, particularly with respect to other existing, or newly proposed government registers. Work is already underway for Land Registry to take on responsibility for Local Land Charges from individual Local Authorities. Government anticipates consulting shortly regarding some of the rules of the new service. It will use its expertise to consolidate and digitise the data held by individual Local Authorities into a single register, and then deliver a better service for customers. Under private sector ownership, it is expected that a new owner will commit to making progress on delivering this central register of Local Land Charges. This will become part of the core statutory functions of Land Registry and will be one of the Registers remaining under government ownership. We believe there are other opportunities for Land Registry to take on further registers, including some outside the UK, and the proposed change could create conditions for them to do so.

33. The data held by Land Registry already supports a small commercial revenue stream for the organisation, as well as being the basis for commercial products offered by other organisations. As the organisation becomes more digital, so the potential value of the data increases. With the right protections, private sector ownership could

incentivise the organisation to make the most of this potential, maximising the accessibility of Land Registry's data and driving the creation of innovative, new products for the public.

34. The Government believes that with appropriate safeguards for the customer, Land Registry services can be delivered safely and effectively through the private sector, and such a change could bring benefits to the economy, tax payer and Land Registry customers through the delivery of a capital receipt to the Exchequer.

35. Government has previously consulted on the operating model for Land Registry. A consultation was launched on 23 January 2014 that set out proposals of the then Government to create a new company, to which responsibility for the performance of service delivery functions would be transferred, and to have a separate Office of the Chief Land Registrar (OCLR) that would be retained in government.

36. At the time, the Government concluded that further consideration would be valuable. Since then and with the election of the current Government, the future of Land Registry is again being considered. As set out in this document, the Government's aims and objectives differ from those articulated in the last consultation and as a result our proposals have changed. However it is acknowledged that a wide variety of responses were received from interested members of the public, legal professionals, Land Registry employees and international companies to the previous consultation. The Government considered these at the time and the Government response can be found here: www.gov.uk/government/consultations/land-registry-new-service-delivery-company.

37. All the responses to the consultation have been considered during recent policy development albeit against the background of differing objectives.

6.3 Objectives

38. The Government has identified clear objectives for a change of ownership. This is on the basis that any change would need to meet two preconditions.

39. First, a changed Land Registry would need to ensure continuity of an appropriate level of service to support the property market and government's commitment to build one million more homes by 2020 and increase home ownership. Any future ownership model should improve the services offered to the customer, but we are committed to putting in place the right protections to ensure, at a minimum, customers continue to receive a high level of service. This could include, for example, standards set through agreed key performance indicators such as processing time or customer satisfaction levels.

40. Secondly, any change needs to be deliverable in the short term (from 2017). This is not the first time consideration has been given to changing the ownership of the Land Registry. It is firmly considered that continued uncertainty is not in the interest of either the public, or the organisation and its workforce and could risk investor fatigue.

41. Subject to meeting these preconditions and delivering value for money any change would be assessed against the Government's objectives to:

1) Maximise upfront proceeds for the Exchequer
   An upfront capital receipt from a sale of part or all of Land Registry operations would provide proceeds to the Exchequer which would help reduce the national debt or could be invested elsewhere for the benefit of the taxpayer.
2) Allow classification of the new service delivery organisation to the private sector
   This would allow certain freedoms and incentives appropriate to a private sector organisation to help transform the service.
3) Deliver a modern, digitally-based service that benefits Land Registry customers as well as taxpayers as a whole.

42. Of course, as set out above, we would anticipate the transaction delivering wider benefits in addition to the objectives.

6.4 Protecting the customer and wider economy

43. We are clear that while we believe there are benefits to a change in ownership, we also recognise that any change must retain the right level of protection for customers and the wider economy. This is about a change of ownership, which should, in time, deliver an improved service. As a result, many of the current protections would remain unchanged.

6.4.1 Register ownership

44. The Registers are owned by the Crown. This provides government with a single, authoritative record of who owns and has interests in land, and underpins the property market. This is a critical part of our country’s infrastructure, protecting individuals’ interests in land and underpinning our economy. We recognise this makes it important that the Registers remain in public ownership. As set out above, under these proposals this ownership of the Registers would not change. The registers, their intellectual property and rights would remain under the ownership of the Crown and managed within government under the authority of the Controller of Her Majesty’s Stationary Office. Therefore even with a private sector function owning and controlling the processes and operations of the Land Registry the Crown continues to own and government manage the data provided through the existence of an up-to-date register.

6.4.2 Service quality

45. At present, government sets standards for land registration through a combination of statute and orders of the Chief Land Registrar and the Key Performance Indicators (KPIs) it sets Land Registry. For example, the current KPIs include that at least 98% of substantive registrations should pass defined quality checks and that over 90% of customers should rate the overall service as good, very good or excellent. This ensures there is a specified and transparent level of service the customer can expect. Given that most of these services are critical parts of the conveyancing process, it is important that customers can continue to expect and rely on a specified level of service. Under the changes proposed, government would continue to set the required service quality, and retain a mechanism, to audit and monitor performance (under the contract option this might be through a dedicated contract management team in place in government retaining audit and monitoring rights, for example

requesting an independent auditor to review annual or quarterly performance reports) to ensure the private sector delivery body (NewCo) is delivering to the agreed standards.

46. It would be counterproductive to be too restrictive in controlling how NewCo delivers land registration and fetter its ability to improve the service quality. However, government would set standards from the start to ensure service and data availability improves (albeit that the models we are considering would in any case, incentivise the investor to improve service quality and speed). With appropriate standards set from the start and suitable commitments established, NewCo would be expected to meet certain thresholds for service quality (these might be, for example, specified processing times and customer satisfaction levels) and give government continued oversight through appropriate monitoring and audit rights to ensure service quality and the integrity of the Registers is maintained.

47. At present, the government can change these standards and ask Land Registry to take on additional tasks. Any future model would need to provide for the possibility that the government might wish to ask NewCo to take on new responsibilities, and ensure that there are appropriate mechanisms to agree how such services would be paid for, and that NewCo is incentivised to agree to make such changes.

6.4.3 The state-backed guarantee of ownership

48. At present, if someone suffers loss as a result of a mistake in the register, for example if Land Registry registers a mortgage that has been forged, they can claim indemnity or compensation for any loss, from Land Registry. This is a no-fault indemnity, meaning that Land Registry may pay a sum of money as compensation for a financial loss someone suffers as a result of a mistake on the Register, irrespective of whether or not the Land Registry itself was responsible for the mistake. The circumstances in which indemnity must be paid and how the amount of liability is calculated are set out in the Land Registration Act 2002. Indemnity claims are each carefully assessed by Land Registry officials. If there is a dispute over whether indemnity is payable or over the amount that should be paid, the claimant can apply to the High Court or a county court (which court depends on the amount being claimed) for a determination. However, in practice, nearly all indemnity claims are settled without court proceedings.

49. This is something we believe is very important to the smooth functioning of the property market in England and Wales and reduces the cost of transactions. Under these proposals, the principle of no fault indemnity would continue unaffected.

50. The changes proposed in this consultation document would not impact on whether individuals can claim indemnity, meaning that any change in ownership to the Land Registry will not affect the existence of a state guarantee to rectify mistakes, and the customer will always have access to compensation where they are not at fault.

51. The government would seek to agree a mechanism to transfer an appropriate share of financial risk associated with the indemnity to NewCo. This would not, however, affect the assurance to customers that if their own proof of ownership should ever be

subject to challenge they will have the benefit of a state guarantee if they suffer any loss as a result.

6.4.4 Customer fees

52. At present, the fees payable by customers for core statutory functions are prescribed in Fee Orders made by the Secretary of State with the consent of HM Treasury and approved by Parliament. This ensures that the customer fees are transparent, predictable and fair. Under a contract-based approach, fees would still be prescribed in fee orders made by the Secretary of State and set before Parliament. Under a regulator-based approach, fees would be controlled by the regulator.

6.4.5 Disputes and complaints handling

53. It is inevitable that there will always be occasions when ownership is disputed. In such circumstances, there must be an independent arbiter of decision. At present, disputes can be raised to Land Registry who review the dispute. If a suitable outcome cannot be reached between parties the dispute is escalated to the First Tier Tribunal, an independent body that is part of Her Majesty's Courts and Tribunals Service. We believe that the ability to appeal to the First Tier Tribunal should remain under any proposal. The final arrangements would be designed to ensure there would be a smooth transition to the Tribunal services and that hand overs between NewCo and the Tribunal work efficiently.

54. It would also be important to have an effective complaints handling procedure for customers who are dissatisfied with the level of service they have received from NewCo. For any of the proposals set out below a suitable complaints service would be included in the working of the business. Currently, customers have access to the Independent Complaints Reviewer and the Parliamentary Ombudsman. Whilst this route may no longer be applicable, suitable provisions would be provided for an independent complaints service, designed to ensure that the customer has confidence in it, and where concerns can be addressed appropriately.

6.4.6 ICT security

55. Given the nature and criticality of the information contained on the Register, and therefore held by Land Registry, it is crucial that appropriate safeguards are in place. Land Registry holds external certification to the internationally recognised security best practice standard ISO27001[5]. Land Registry works within the Critical National Infrastructure. This identifies elements of infrastructure, the loss or compromise of which would have a major detrimental impact on the availability or integrity of essential services, and is overseen by specialist parts of government including Government Communications Headquarters (GCHQ), (Communications Electronics Security Group (CESG)), particularly their cyber security unit and the Office of Government Senior Information Risk Owner (SIRO). It also operates to the CESG accredited Information Assurance Maturity Model and has advanced accreditation to level 3 in key areas.

[5] www.iso.org/iso/home/standards/management-standards/iso27001.htm

56. Government recognises the importance of this agenda and would ensure it safeguarded the critical IT standards to which Land Registry currently operates in any changes to structure.

6.4.7 Data issues and access to information

57. Data protection maintains confidence in the integrity of the register and the services of Land Registry. With all our proposals, statutory data collected through core statutory functions would continue to be owned by government. NewCo would be a data processor and would be required to comply with the Data Protection Act 1998. This controls how personal information is used by organisations, businesses or government.

58. Everyone responsible for using data has to follow strict rules called ‘data protection principles’. They must make sure the information is:

- used fairly and lawfully;
- used for limited, specifically stated purposes;
- used in a way that is adequate, relevant and not excessive;
- accurate and kept up to date;
- kept for no longer than is necessary;
- handled according to people’s data protection rights;
- kept safe and secure.

59. All data controllers are accountable to the Information Commissioner who has powers to enforce data protection law and impose sanctions.

60. The Government is committed to making data available on a free and open basis and improving the UK’s data infrastructure. At present, Land Registry makes a significant amount of the data it holds freely and openly available. This is then used by other organisations as the basis for building products; including those of a commercial nature they can offer the public. The data is therefore greatly valuable and has the potential to be utilised by all parts of the wider economy. The Government recognises the importance of this data, and is committed to:

i) Maintaining current open data products on the same or better basis as at present: including but not limited to ‘Transaction Data’, ‘Price Paid Data’, House Price Index’, ‘INSPIRE Index Polygons’ and the ‘1862 Act Register’;

ii) Releasing more open data, where this fulfils other public policy goals and represents value for money. Future releases might include the Commercial and Corporate Ownership Dataset’ and ‘National Polygon Service’, as well as consideration of other Land Registry data for which the release could fulfil other public policy goals and offer value for money;

iii) Exploring how to enable the public sector to have free at the point of use access to Land Registry data for policy development and service delivery purposes.

61. Land Registry data also plays an essential role in the formulation of Government policy. The Government therefore also expects that, as a result of this transaction, overall accessibility and quality of data will increase. This is in line with government's commitment to supporting a data-driven economy and should allow more effective policy formulation thereby reducing costs to taxpayers.

Q2 - What steps should government take and what safeguards should it put in place to ensure continued and improved access to high-quality and reliable Land Registry data?

Q3 - How could government use this opportunity to improve the quality and accessibility of data produced by Land Registry for all sectors of the economy?

Q4 - On what basis should government manage the relationship with a privately owned Land Registry to ensure Land Registry meets, as far as is reasonable, the data quality and availability requirements of all stakeholders?

6.4.8 Commercial protection

62. As stated above, there is the potential for NewCo to expand the range of services it offers on a commercial basis. This could be through the analysis and exploitation of data to discern patterns and allow users to make better, more informed decisions; collection of additional, non-statutory data; development of further registers; expansion into other sectors and expansion of consultancy services.
The Government supports innovation and economic growth. Data can be a real driver of innovation and growth. There must, however, be protections against anybody abusing a monopoly position to the detriment of the wider economy. This protection is provided by the Competition and Markets Authority (CMA), and NewCo would need to comply with its rules and the relevant legislation concerning competition and also any applicable state aid and procurement rules. Any change that is implemented will ensure that these protections are included as specific contractual or regulatory requirements in addition to enforcement by the competition authorities.

6.4.9 Safeguards across all options

63. As we have detailed, there are certain safeguards and functions that we consider would be important in all possible models and important to guarantee the protection of the customer and the Register itself. That necessitates ensuring the ability remains in government to manage these safeguards. We would therefore have a separate capability set up within government responsible for managing the relationship with NewCo. This body should have an understanding of land registration, and an ability to agree changes in the scope or standards set for the NewCo in the future.
This might include the ability to manage a contract if required.

64. In addition, the Government is committed to ensuring that any change to the Land Registry's operating model includes suitable mechanisms by which the Government could, after the new arrangements have been put in place, change the requirements

to enable it to meet policy objectives. For example, this could include decisions to release more data or the terms on which it is released, change service standards, and change registration requirements to support the property market. Fees charged for statutory services will continue to be set in a manner consistent with Managing Public Money. As set out above, under a contract-based approach, fees would still be prescribed in fee orders made by the Secretary of State and set before Parliament. Under a regulator-based approach fees would be controlled by the regulator.

65. In contrast to previous policy considerations, we are not, however, seeking to split up the existing Land Registry organisation. Almost all current core statutory and non-statutory additional functions would be transferred into NewCo to retain inter alia the integrity of the current organisation.

Q5. Do you agree that the suggested safeguards should be included in any model?

Q6. Are there any other safeguards that you think should be included?

6.5 Model Options

66. There are two broad approaches, within both of which there a number of potential variants that could (to differing degrees) achieve the Government's objectives. All of these models have common features:

- Ownership of the Registers would remain with government;
- Land Registry operations as a whole would transfer to the private sector as NewCo;
- Existing protections to customers would be retained as explained above, including the state-backed guarantee and the fee to the customer being set by Parliament on the basis of a fee order made by the Secretary of State;
- A group of individuals with an understanding of land registration would remain in government to ensure NewCo delivers against its commitments;
- There would be defined conditions under which the government would have the right and capability to intervene, and either take services back into government or find an alternative service provider to ensure continued service for the customer; and
- New primary legislation would be required for implementation.

67. The key differences between the two approaches are primarily around whether NewCo would deliver land registration services under a contract with government or whether delivery would be monitored by a formal economic regulator.[6] There are then variations within each approach centred around the length of any arrangement, the degree of risk transfer, whether any ownership should be retained by Government (or passed to the workforce), and whether delivery should be split between multiple parties.

[6] Examples of other economic regulators include OFCOM, OFGEM etc

6.5.1 Privatisation with contract between government and private operator (preferred model)

68. Under this model, all the core statutory functions would be transferred out of government. Whilst the Registers will remain with government, the rights to use the information held within the Registers; the existing employees; and agreed tangible assets of Land Registry would be transferred to a private sector operator (NewCo) in which the investor would buy shares (leading to a receipt for Government). Government could choose to retain some level of ownership of NewCo, and/or to pass some ownership to the workforce.

69. NewCo would benefit from a contract with government for the delivery functions that are currently the responsibility of Land Registry. NewCo would also be expected to extend its commercial services, and to make more data accessible to the market under licence, subject to the obligations identified under data protection, competition law and open data policy set out earlier in this document.

70. The contract ("Service Contract") would govern the scope and service standards that NewCo would deliver in respect of the Register, and specify the amount it would receive from government for doing so, the quality of service to the customer it must provide, and the penalties for failing to do so. It would also specify conditions and mechanisms to address underperformance or failure of service provision. The longer the contract, the greater certainty there will be for investors; the greater the stability for customers; and the larger the receipt to the Exchequer. A longer contract would also, however, make it crucial to have the right protections and change management mechanisms in place.

71. Transfer of risk is likely to be important to the new organisations classification to the private sector. We would therefore anticipate that substantially all of the economic benefits and risks of ownership would be transferred to the private sector.

72. The contract would be expected to cover the following:

    i) *Output specification and performance management framework*: The contract would need to include the statutory services that NewCo would be required to perform in respect of the Register. However it is expected that any contract would be an output rather than an input based agreement. In other words it would specify what NewCo needed to achieve e.g. the registration of transfers of interests in land, rather than the process they need to follow. The contract would also include key performance indicators and other performance management metrics and obligations by which NewCo can be measured. These might include customer satisfaction levels or the speed with which they deliver the core statutory functions to the customer. There would also be appropriate penalties built into the contract for under performance compared to key performance criteria – for example, an unacceptably slow service compared to an agreed level might lead to a reduction in the amount paid to NewCo.

    ii) *Payment terms and profile*: This would effectively represent the amount paid to NewCo for services provided on behalf of Government. We would expect NewCo to become more efficient over time, and that to be reflected in the contract with Government, either through the size of the upfront proceeds to Government, or through a reduction over time of the amount paid to NewCo for delivery of the core statutory functions.

iii) *Term*: The contract length would be subject to detailed negotiations but would need to be long-term, sufficient for NewCo to implement any transformation or other investment plans to increase efficiency, reduce operating costs and develop commercial revenue opportunities and recover investment.

iv) *Termination and step-in rights*: The contract would need to stipulate clear termination provisions and rights for each party (Government and NewCo), including ability for government to “step-in” to continue land registration services where required and clearly define the service failures that could trigger such “step-in” rights. This would need to include how any assets and staff required to deliver the statutory service transferred either back to government or to a new provider of the core statutory functions.

v) *Gain sharing*: government may wish to incorporate specific gain sharing or clawback mechanisms (i.e. an ability for government to share in gains made post sale) into the contract in order to ensure value for money for the taxpayer.

vi) *Monitoring and audit*: It is envisaged that the contract would require government to be provided with regular reports and to ensure that their obligations are being met and to track key performance indicators. For example, there might be a requirement for NewCo to provide regular updates to government on how it is performing compared to any requirements set on speed of service or customer satisfaction. Government may also have the right to conduct periodical audits using an independent auditor, if deemed necessary. Certain service-level agreements would be agreed within the contract.

73. The model is one which has, broadly speaking, been implemented successfully elsewhere, for example in Canada. Management of important national services by privatisation and contract is also a model widely adopted in the UK.

74. Crucial to the success of this model would be retaining the ability within government to manage the contract. Government must remain an intelligent and responsible customer through actively supervising the contract. We would do this by ensuring there were a group of individuals within government with appropriate contract management expertise and understanding of land registration. They would have responsibility for the ongoing government relationship with NewCo. We do not anticipate this client function being either large or costly.

75. The concept of a contract arrangement is well understood by both government and potential investors. In addition, it is considered an effective and affordable option as the management of a long term contract with clearly specified service levels would provide stability to customers. It is believed that it would be capable of being delivered during 2017, and would therefore limit the inevitable uncertainty during any transaction. We would therefore expect it to meet the objectives of maximising upfront proceeds for Government, moving Land Registry into the private sector; maintaining appropriate support to the property market and being deliverable in 2017. For all these reasons, this is the Government’s preferred option at this time.

76. Although the Government's preferred model is a long term contract with risk transferred to NewCo, there are other variants of the contract centred approach that would be possible but less likely to maximise achievement of the Government's objectives. We will, however, consider whether these options provide substantially better value for money.

6.5.1.1 Operating concession variant

77. One such option would be an operating concession model. Under a concession the private sector would be awarded a lease to use or access existing infrastructure and assets in order to deliver a service. Upon expiry of the concession period, the assets (and staff) would be expected to transfer back to the public sector. This contrasts with our preferred model, in which we would expect the contract to transfer the entire business (and related risks) to the private sector on a permanent basis, subject to any step in rights. The transfer of risk needs to be balanced against maintaining the appropriate protections (as set out below) and the likely impact on potential investors.

78. Concessions can of course be structured in many ways and transfer varying degrees of risk: they may operate on an indefinite basis (for example water companies) or on a long term finite basis (for example HS1), or as a form of operating lease (for example certain rail services). However, operating concessions typically leave more of the economic risks with the taxpayer; which may mean NewCo is less likely to be classified to the private sector. Moreover, such an arrangement, particularly if short term, is likely to attract a more limited range of investors and is therefore likely to generate a lower capital receipt. As a whole, this model will most likely fail to meet the key government objectives.

6.5.1.2 Mutual joint venture variant

79. This variant would mean that rather than selling the entirety or vast majority of NewCo, Government would sell only part of the company. Government would retain partial ownership, and some ownership would be passed to the workforce (probably by way of an Employee Benefit Trust rather than individual shares). This is a model Government has used elsewhere, such as in myCSP where Government set up a Joint Venture selling part of the company to a private sector partner (Equiniti), passing a percentage to an employee benefit trust and retaining a stake themselves. Government and the workforce would then both be investors. This can help align owners and staff interests, although it typically works best where the service delivery model is not subject to transformational change. It would, however, most likely lead to a reduction in the upfront receipt to the Exchequer as Government would be selling less of the company.

6.5.2 Privatisation, with independent economic regulation

80. Although under this option NewCo would operate in much the same way as above, a new independent economic regulator would either be established, or additional regulatory powers would be vested in an existing regulator to provide regulatory oversight and review. A licence would be granted by the regulator to NewCo for the provision of land registration statutory services on behalf of government. The regulator would set the prices and standards for NewCo in accordance with its statutory duties.

81. On sale of NewCo a receipt would be paid to government for its shares in NewCo and central government would not expect to have any continuing role in the business or setting standards; which would be performed by the regulator.

82. The model of independent economic regulation has been used widely in the UK including, for example, in the water, energy and transport sectors. In these sectors a regulator has been necessary to ensure that users, who depend on these services, are protected and that there are incentives for companies in these sectors to invest in ageing infrastructure to meet the needs of current and future users. This model works well where the demand for services is relatively predictable and the main requirement is for ongoing investment.

83. Land Registry is also an important service but it is a single business not a sector. The demand for its services is more variable and depends on the housing economy. It will need to continue to reform and invest such that the service delivery will change over time with increasing digitization; we believe, therefore, it is likely to be better to regulate the business through a contract with government which will provide flexibility to meet the changing nature of the business as it evolves rather than through periodic review process embedded in regulation. We also believe that government should continue to play a role in setting prices and standards.

84. Furthermore, a regulatory model is likely to be a more costly way of regulating the service as it will need to consult on all changes to its licencing conditions; this cost would have to be borne by users through fees. It will also take more time as once the regulator has been established, it would take time to develop a track record in decision making which potential investors in NewCo can rely on; it could therefore delay a sale of NewCo.

6.6 Model variants

85. Under variants of these options, service provision could be split between multiple NewCos rather than a single service provider. We are not currently minded to pursue such a model. While there are benefits to providing a market of service delivery companies for the customer to choose between (in terms of the drive for even further efficiency and the potential to stimulate innovation), we feel these advantages are outweighed by the priority of maintaining a single authoritative register, and the complexities of setting up a model that achieved both. For example, the current skilled Land Registry workforce would transfer to NewCo, but with multiple delivery companies the staff and skill base would need to be split up. Economies of scale would also suggest that one buyer could achieve a greater level of efficiency than multiple buyers, resulting in greater value (for government and customers) from the transaction which would be reflected either in the upfront proceeds to Government or the amount paid to NewCo for core statutory functions (and therefore in the customer fee).

6.7 Options that are not being put forward

86. There are a number of further options that were considered and have been discounted as they would not meet the Government’s objectives of transferring the

Land Registry into the private sector, and realizing a receipt for doing so that can be used to fund other public services. The most notable of these are:

6.7.1 Outsourcing

87. Outsourcing on a short term basis of Land Registry ancillary functions, would leave a considerable element of the operations of Land Registry in the public sector contrary to our objectives. This would also lead to a much reduced receipt.

6.7.2 Government-owned company

88. Similarly, this would not achieve our objectives. It would neither allow Land Registry to take advantage of all the freedoms available in the private sector, such as the ability to bring in investment and expert skills, nor generate a receipt for Government to invest elsewhere.

6.7.3 Status quo

89. Land Registry remains as an Executive Agency and Trading Fund within government. Land Registry would still experience substantial change under this model to ensure that it modernises for the benefit of customers. However, keeping the Land Registry as a whole in government fails to meet Government objectives of reclassification from the public sector and would not deliver the desired culture change and incentivisation to drive transformation. Furthermore, it would not meet the clear requirement of maximizing capital receipt. In addition transformation would take longer and may not bring as much benefit for customers.

Q7. Do you agree with the preferred option?

Q8. What are your reasons for your answer to question 7?

Q9. Do you think an alternative model would be better and why?

Q10. Are there other key costs and benefits that you think we have missed?

6.8 Impact on staff

90. The Government recognises that staff are not only critical to delivering the high quality services that customers enjoy today, but will also play a critical role as these services are modernised and transformed in the future.

91. In the case of a change as proposed in this consultation, we would expect the majority of staff undertaking Land Registry operations and functions to transfer into NewCo. Any changes will occur in compliance with employment law.

92. Land Registry management will engage with Land Registry trade unions on any changes that may affect staff.

Table 1: Assessment of options against transaction objectives

The table below sets out the initial qualitative assessment of each of the long-listed models against the four key transaction objectives as set out by the Secretary of State.

Key: ✓✓ or ×× = Compelling benefits / risk; ✓ or x = Identifiable benefits / risks

Models	Maximisation of Proceeds to Exchequer	Classification to Private Sector	Continuity of service to support property market	Deliverability of transaction by 2017
Privatisation with Contract **(Preferred)**	✓✓ - Transfer of assets/staff to NewCo. Existing precedents in the UK and internationally – the structure is understood by Government and potential investors encouraging investment. Contractual approach to monitoring arguably offers more suitable and greater flexibility to regulate service delivery, and enabling a more VfM solution.	✓ - NewCo within private sector (subject to ONS review of contract).	✓✓- Terms of Contract award to set minimum performance standard. HMG would retain step-in rights under contract to perform service if pre-set conditions/performance measures not met. Well known contractual approach may facilitate greater investment and longer term approach by a private sector party, helping to protect the integrity of the registration system.	✓✓ - Achievable by 2017, transaction process can begin as soon as any required legislation reaches an appropriate stage.

Models	Maximisation of Proceeds to Exchequer	Classification to Private Sector	Continuity of service to support property market	Deliverability of transaction by 2017
	It requires an intelligent customer function within government to manage the contract and relationship with NewCo.			
Operating Concession variant **(considered not to meet all objectives)**	× - Operating concessions are likely to lower capital receipt as less attractive to potential investors and shorter term	× - substantial risk is likely to remain with government and the tax payer reducing likelihood of classification into the private sector	✓✓ - Terms set to agree minimum performance standards, including procedures to protect the integrity of the register and counter-fraud initiatives/measures that are put in place. Government would retain step-in rights to perform service if pre-set conditions/performance measures not met.	✓✓ - Relatively well understood model therefore process achievable by 2017.
Mutual Joint Venture variant **(considered not to meet all objectives)**	× - Government and employees both retaining partial ownership inevitably reduces the percentage of NewCo that is sold to the Private Sector, and therefore would most likely lead to a reduction in the upfront receipt to Government	× - Government and employees retaining a degree of control over NewCo may be inconsistent with a change in classification from the public sector.	✓✓- Terms of Contract award to set minimum performance standard. Shared ownership aligns incentives on private sector partner, Government and the workforce to make the contract succeed. HMG would retain step-in rights under contract to perform service if pre-set conditions/ performance measures not met.	✓✓ - Achievable by 2017, transaction process can begin as soon as any required legislation reaches an appropriate stage.

Models	Maximisation of Proceeds to Exchequer	Classification to Private Sector	Continuity of service to support property market	Deliverability of transaction by 2017
			Well known contractual approach may facilitate greater investment and longer term approach by a private sector party, helping to protect the integrity of the registration system	
Privatisation with Economic Regulator **(considered not to meet all objectives)**	✓ - Transfer of assets/staff to NewCo. However untested regulator with no track record in regulating the LR asset may reduce appetite within private sector	✓ - NewCo within private sector (subject to ONS review of license).	✓✓- Regulatory framework and license to NewCo to set minimum performance standards. Government would set duties of the regulator in legislation	× - Set up of regulator and time to establish approach to regulation likely to be a time consuming process, requiring more legislation and a period of regulatory operation post legislation before any transaction. Lack of track record for non-asset base regulatory function may restrict appetite from the private sector and delay any transaction beyond 2017.

6.9 Conclusion

93. We believe that our preferred model would benefit Land Registry, government, customers and the wider public. In particular we believe that the preferred option set out above, would bring significant benefits to Land Registry and in time, the wider economy by increasing the potential of the business and its data. We believe that a transaction of this type is deliverable in 2017, thereby reducing impact of delay and uncertainty to the workforce. By doing this on this timetable, the change would minimize the disruption to the business. A move of Land Registry operations into the

private sector would enable the organisation to have optimal opportunities, freedoms and incentives to transform and improve. The model proposed would retain the necessary surety government and customers need so that there would continue to be an accurate Register in government ownership. Through the transformation it would deliver an improved, modern, digital and impartial service to customers. Finally, it would raise revenue for Government that can be used to reduce the unsustainable level of public debt or be used to fund other public spending which is a key objective.

7. Consultation questions

Q1. Do you agree that ownership of the Registers should remain in government?

Q2. What steps should government take and what safeguards should it put in place to ensure continued and improved access to high-quality and reliable Land Registry data?

Q3. How could government use this opportunity to improve the quality and accessibility of data produced by Land Registry for all sectors of the economy?

Q4. On what basis should government manage the relationship with a privately owned Land Registry to ensure Land Registry meets, as far as is reasonable, the data quality and availability requirements of all stakeholders?

Q5. Do you agree that the suggested safeguards should be included in any model?

Q6. Are there any other safeguards that you think should be included?

Q7. Do you agree with the preferred option?

Q8. What are your reasons for your answer to question 7?

Q9. Do you think an alternative model would be better and why?

Q10. Are there other key costs and benefits that you think we have missed?

8. What happens next?

94. The consultation will remain open for nine weeks. Government will issue a public response following consideration of the responses. We will aim to publish a response within three months of the close of the consultation.

Annex A: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1661
Email: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 5).

Annex B: Regulatory Triage Assessment of Consultation on Land Registry

Introduction to Land Registry

Background

The Land Register is a Government-owned register setting out the ownership of land and property in England and Wales, of which 87% is registered. It is a statutory requirement that when there is a change in ownership of land or other property rights and a transaction occurs, the Land Register must be updated, so that it remains accurate. As the single, authoritative record of ownership, it is also the basis of the state guarantee of ownership and interests in land.

At present, the core statutory functions of Land Registry are to keep and maintain the Land Register. Individuals or organisations who become landowners or own interest in land must apply to the Land Registry to register unregistered land; register a new owner of a registered property following a sale; register an interest affecting registered land, such as a mortgage, a lease or a right of way. The register holds over 24 million titles – the evidence of ownership. Once land or property is entered in the register, Land Registry records any ownership changes, mortgages or leases that affect it.

Land Registry also undertakes a number of additional non-statutory activities including providing advice and consultancy overseas on international land registration systems, and offering database management – a service to help customers ensure data is accurate and ownership information is up to date. .

A full list of services provided by Land Registry is available on www.gov.uk.

Land Registry Business Model

Land Registry is entirely financed through the fees it charges for its core statutory functions and, to a modest extent, income from discretionary and commercial activity as outlined above. Total costs were £260.5m in 2014/15, the majority of which (circa 65%) related to the workforce.

By comparison, total revenue for 2014/15 was £297.1m. The average fee for a Registration Service is currently £83 and for an Information Service (searches and data provision such as MapSearch) the average fee is £3. Fee levels are set by Parliament on the recommendation of Government. The government rules on charging, which are set out in Managing Public Money7, stipulate fees must be set at a level that recovers the cost of the services to government. This includes a small fee to reflect the cost of capital to central government to reflect its costs. By statute, Land Registry is required to ensure that its income from fees covers its expenditure under normal operating conditions. It is not currently permitted to generate a profit from statutory services. Fees must not be used to generate revenue for the Government to spend elsewhere – that is the purpose of taxation.

[7] A HM, Treasury issued publication which provides guidance on handling public money and outlines how public money should be used responsibly.

This document assesses the impact on business of moving operations of the Land Registry into the private sector as set out in the BIS Consultation ("Consultation on the Land Registry") launched in January 2016.

Rationale for intervention and intended effects

Rationale

In normal economic times governments should prepare financially and economically, so the country is better prepared for whatever lies ahead. The Government is pursuing this goal through a number of means, one of which is selling assets that, with the right protections in place, do not need to be in the public sector (and often do not benefit from public ownership).

In the Autumn Statement, the Chancellor announced that the Government is seeking up to a £5billion of corporate and financial asset sales by March 2020. As part of this, Government would consult on options to move operations of the Land Registry to the private sector from 2017.

In Land Registry's case, the Government believes that, with the right protections in place, there is no need for the core functions of the Land Registry to be delivered by civil servants. The balance lies in favour of a sale and releasing resource that can be used elsewhere for the public benefit. The primary driver for change is therefore realisation of upfront proceeds to reduce PSND or fund other public services.

The options below also have the potential to bring supplementary benefits. A new owner could bring investment, and benefit from the greater freedom the private sector has to recruit specialist skills and support. All these factors could support an improved, faster transformation into the digital world, and deliver an improved service to customers,. A new owner would also have a clear incentive to ensure Land Registry accelerates the transformation into a more efficient and effective service delivery organisation based on digital, and in places automated, services.

Under all transaction options considered, the following protections would remain:

Ownership of the Land Register (and other statutory registers maintained by the Land Registry) would remain with Government;

Land Registry as a whole would transfer to the private sector (as a new body referred to in this document as NewCo);

Existing protections to customers would be retained, including: service quality standards set by government through Key Performance Indicators; the state-backed guarantee; dispute resolution through the First Tier Tribunal; maintenance of critical IT security standards; and the fee to the customer for statutory services being set by Parliament on the basis of a fee order proposed by a Secretary of State;

Capability and resource would be provided in government to ensure NewCo delivers against its commitments;

Use of statutory data would continue to be in accordance with statutory requirements, and where data is currently made openly available we are minded that would continue to be the case. New commercial services would be subject to Competition and Market Authority constraints to ensure no abuse of a monopoly position.

Defined conditions under which the Government would have the right and capability to step in, and either re-compete provision of the services related to statutory registers or bring them back into Government to ensure continued service for the customer.

Intended effects

A changed Land Registry would need to ensure continuity of an appropriate level of service to support the property market. Additionally, it should improve the services offered to the customer. Government is committed to putting in place the right protections to ensure, at minimum, customers continue to receive the current high level of service, including through the period of any transition. Many of the current protections would therefore remain unchanged.

Any change should be deliverable in the short term (from 2017). It is firmly considered that continued uncertainty is not in the interest of either the public, or the organisation and its workforce.

The change should maximise upfront proceeds for the Exchequer, reducing the national debt, or allowing the government to increase spending elsewhere.

It should also deliver a modern, digitally-based service that benefits the consumer as well as the taxpayer.

Classification of the new service delivery organisation to the private sector is also important as this would allow certain freedoms and incentives appropriate to a private organisation to help transform the service. This should, over time, lead to improvements – in terms of it being more accessible, quicker, and more efficient - in the service to customers.

While it is not a primary objective of the transaction, private sector ownership would free the Land Registry from Managing Public Money rules, and public sector controls, making it easier to bring in skills and investment, and drive a different culture. This could better incentivise a changed Land Registry to exploit the potential of the data it holds (subject to statutory rules such as the Data Protection Act), and to diversify the services it offers. This could help drive development of new products both for public and business consumption, drive innovation in the sector and have an impact on GVA.

Viable policy options (including alternatives to the preferred model)

The following options have been considered:

Do Nothing
Option 1 - Privatisation with contract between HMG and private operator (our preferred model)
Option 1 variant – Operating concession

Option 1 variant – Mutual Joint Venture
Option 2 - Full privatisation with independent economic regulation.

Do Nothing

Land Registry remains as an Executive Agency and Trading Fund within government. Land Registry would still experience substantial change under this model to ensure that it modernises for the benefit of customers. This would not deliver private sector freedoms and incentivisation, or the receipt for Government use to fund public services. Change through transformation, and therefore the realisation of operational efficiency gains, would likely take longer relative to the transaction options considered, due both to the absence of private capital discipline and the operating freedoms mentioned. Any related consumer and business benefit, in the form of reduced fees, would be delayed.

Option 1 - Privatisation with contract between government and private operator (our preferred model)

Under this model, substantially all of the economic benefits and risks of ownership would be transferred to the private sector. Whilst the Registers would remain with government, the rights to use the intellectual property of Land Registry and its Registers; the existing employees and agreed tangible assets of Land Registry would be transferred to a private sector operator (NewCo) in which the investor would buy shares (leading to a receipt for Government).

NewCo would be subject to a contract with Government for the delivery of functions that are currently the responsibility of Land Registry. NewCo would also be expected to extend these commercial services, in particular to commercialise available data sets, subject to the obligations identified under data protection and Open Data.

A long-term contract (“Service Contract”) would govern the scope and service standards that NewCo would deliver in respect of the Register, and specify the fee it would receive from Government for doing so, the quality of service provided to the customer, and the penalties for failing to do so. It would also specify conditions and mechanisms to address underperformance or failure of service provision.

This option is likely to deliver the maximum upfront proceeds for government to spend on public sector priorities, and the desired classification.

Option 1 variant – operating concession

Under a concession the private sector would be awarded a lease to use of access existing infrastructure and assets in order to deliver a service. Upon expiry of the concession period, the assets (and staff) would be expected to transfer back to the public sector. This contrasts with our preferred model, in which we would expect the contract to transfer the entire business (and related risks) to the private sector on a permanent basis, subject to any step in rights. The transfer of risk needs to be balanced against maintaining the appropriate protections (as set out below) and the likely impact on potential investors.

Concessions can of course be structured in many ways and transfer varying degrees of risk: they may operate on an indefinite basis (for example water companies) or on a long term finite bases (for example HS1), or as a form of operating lease (for example certain rail services). However, operating concessions typically leave more of the economic risks with the taxpayer; which may mean NewCo is less likely to be classified to the private sector. Moreover, such an arrangement, particularly if short term, is likely to attract a more limited range of investors and is therefore likely to generate a lower capital receipt. As a whole, this model will most likely fail to meet the key government objectives.

Option 1 variant – mutual Joint Venture

This variant would mean that rather than selling the entirety or vast majority of NewCo, Government would sell only part of the company. Government would retain partial ownership, and some ownership would be passed to the workforce (probably by way of an Employee Benefit Trust rather than individual shares). This is a model Government has used elsewhere, such as in myCSP where Government set up a Joint Venture selling part of the company to a private sector partner (Equiniti), passing a percentage to an employee benefit trust and retaining a stake themselves. Government and the workforce would then both be investors. This can help align owners and staff interests. It would, however, most likely reduce the upfront receipt to the Exchequer as Government would be selling less of the company.

Option 2 - Full privatisation with independent economic regulation

This model is to all intents and purposes the same as Option 1. However under this model, a new independent economic regulator would either be established, or additional regulatory powers would be vested in an existing regulator to provide regulatory oversight and review. A licence would be granted by the regulator to NewCo for the provision of land registration statutory services on behalf of Government. The regulator would set the prices and standards for NewCo in accordance with its statutory duties.

This would be more complex to implement than a contractual mechanism.

Initial assessment of the business impact

Initial costs

The potential for transition costs has been identified in the options generation work that has been undertaken. These potential costs, which are common to all of the options under consideration, including the Do Nothing, are:

Familiarisation costs – conveyancing firms, personal search companies and mortgage lenders are Land Registry's key business customer groups. Each will have an interest in how Land Registry is organised under the transaction options considered here. The need to understand how a changed Land Registry impacts upon each business that buys statutory and commercial services from Land Registry imposes a cost on those buyers. The following calculation has been undertaken to estimate these familiarisation costs:

18,000[8] x £27.41 to £42.83[9] x 1[10]

This generates a one-off familiarisation cost of between approximately £493k and £771k.

Systems change capital and management costs – under each of the options considered, including the Do Nothing option, Land Registry is expected to undergo a transformation. This transformation will realise efficiency gains across the organisation. This transformation may require alteration to, or replacement of, Land Registry's internal processes and systems infrastructure. This, in turn, may require conveyancing firms, personal search companies and mortgage lenders to incur the cost of the changes required to their own internal systems infrastructure. The proposals are about who is responsible for delivery. They will incentivise increased efficiency of service, but will not prescribe how the new organisation delivers this. Even under the 'Do Nothing' option quite what the delivered transformation will look like is currently unclear. It is therefore currently challenging to foresee what, if any, changes businesses will need to make with how they interact with Land Registry, and what, if any, systems infrastructure costs will be incurred. These cost estimates will be developed in the post-consultation analysis undertaken and during business case development. This cost is not quantified here.

Recurring costs to customers

The only recurring cost identified in the options generations work undertaken is the monitoring and reporting costs which are likely to be required to be borne by NewCo under Option 2: full privatisation with an economic regulator. In terms of the regulator operating costs, the flow of costs – and whether these will be borne by HMT or passed on to NewCo - will become clearer as the model matures between now and a decision being taken post consultation[11]. In principle, however, Managing Public Money sets out that government should set customer fees to recover the direct costs to government, and we would not expect to depart from that principle. Additionally, only after a post-consultation decision has been taken will it be possible to determine whether regulatory powers will be vested in a 'standalone' regulator or an existing regulator, or the scope of the regulatory oversight that the independent regulator will possess. Therefore, these cost estimates will be developed in the post-consultation analysis undertaken and during business case development. The annual operating costs for the economic regulator are expected to be no more than those for other smaller regulators. For instance, the annual operating cost of the Groceries Code Adjudicator (which has less than 10 full-time employees) was approximately £680k for the year to 31st March 2015.

Initial benefits

Transition benefits to business are not expected.

Recurring benefits

[8] The approximate number of conveyancing firms, personal search companies and mortgage lenders in the UK.

[9] The range is generated by taking the hourly wage rate earned by solicitors and legal professionals (which are taken from 2014 ONS Annual Survey of Hours and Earnings) and uprating them by 19.76% to cover non-cover employment costs (in line with Eurostat guidance).

[10] [Approximately the number of hours that it is expected to take those individuals to whom the task has been delegated to become familiar with any post-transaction guidance published by the Land Registry.]

[11] It should be noted that the operating costs of economic regulators are typically recovered via the levying of a fee on regulated firms (e.g. Ofcom).

The transformation of Land Registry – which is common to all of the options considered, including the Do Nothing – will realise operational efficiency gains in statutory service delivery. The marginal cost of delivery will fall as a result, and this may be reflected in future statutory fee orders. Where this is the case, buyers and sellers of commercial property will be among direct beneficiaries. This benefit is likely to be larger than the familiarisation and systems change costs outlined above. Work to understand and estimate the size of this impact will be undertaken during 2016, as part of business case development. It will be blended in to a full options appraisal for a final stage impact assessment.

Business Impact Target status

The options described above are an IN for the Business Impact Target. The impacts are regulatory but suitable for Fast Track, and therefore not subject to RPC scrutiny.

Rationale for Triage rating

The options described above are regulatory. Each of the options considered, including the Do Nothing, impose familiarisation costs on business and may necessitate the incurring of the cost of systems infrastructure replacement. However, the quantified gross cost of the options presented here is estimated to be less than £1 million.

Annex C: Response form

The consultation is available at: http://www.gov.uk/government/consultations/land-registry-moving-operations-to-the-private-sector

The closing date for responses is 26 May 2016.

Please return completed forms to:

Lizzie Dixon
1 Victoria Street
London
SW1H 0ET

Tel: 0207 215 4749
Email: lr.consultation@ukgi.gsi.gov.uk

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see section 4 of the consultation for further information.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments:

Questions

Name:
Organisation (if applicable):
Address:

	Respondent type
☐	Business representative organisation/trade body
☐	Central government
☐	Charity or social enterprise
☐	Individual
☐	Large business (over 250 staff)
☐	Legal representative
☐	Local government
☐	Medium business (50 to 250 staff)
☐	Micro business (up to 9 staff)
☐	Small business (10 to 49 staff)
☐	Trade union or staff association
☐	Other (please describe)

1. Do you agree that the ownership of the Registers should remain in government?

☐Yes ☐No ☐ Not sure

Comments:

2. What steps should government take and what safeguards should it put in place to ensure continued and improved access to high-quality and reliable Land Registry data?

Comments:

3. How could government use this opportunity to improve the quality and accessibility of data produced by Land Registry for all sectors of the economy?

Comments:

4. On what basis should government manage the relationship with a privately owned Land Registry to ensure Land Registry meets, as far as is reasonable, the data quality and availability requirements of all stakeholders?

Comments:

5. Do you agree that the suggested safeguards should be included in any model?

☐Yes ☐No ☐ Not sure

Comments:

6. Are there any other safeguards that you think should be included?

☐Yes ☐No ☐ Not sure

Comments:

7. Do you agree with the preferred option?

☐Yes ☐No ☐ Not sure

Comments:

8. What are your reasons for your answer to question 7?

Comments:

9. Do you think an alternative model would be better and why?

☐Yes ☐No ☐ Not sure

Comments:

10. Are there other key costs and benefits that you think we might have missed?

☐Yes ☐No ☐ Not sure

Comments:

Do you have any other comments that might aid the consultation process as a whole? Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☐

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☐Yes ☐No

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Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

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