



**Report on responses to
e-conveyancing secondary legislation part 3**



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1. Foreword by the Chief Land Registrar and Chief Executive

Land Registry has long been committed to moving the majority of our services on-line.

However we've always known that to achieve this ambition we had to get the technology right and convince our customers and stakeholders that we were meeting their needs

Our current range of e-services is testament to our technological successes. But we know we haven't always got it right and we acknowledge the difficulties encountered by customers in the e-charges process, principally with e-signatures.

These problems have contributed to people's doubts about proceeding further down the e-conveyancing road at this time, especially when that journey is taking us towards the cornerstone of the whole electronic system: e-transfers.

This consultation has told us that many of our customers and stakeholders are unconvinced that the time is right to offer e-transfers. They would want to see e-charges and e-signatures sorted out first and they have not yet been persuaded that e-transfers are desirable or achievable in a time of low property sales and increased risk of fraud.

As a result we're planning to put the development of e-transfers on hold and concentrate instead on fully automating our delivery systems, so customers can send us electronically documents that have been prepared in the traditional way.

This outcome will, I am sure, disappoint those who were enthusiastic about moving straight to a fully electronic conveyancing system. But, after listening to a wide range of people, we believe that the solution we're now proposing is practical, sensible and in tune with the times.

Thank you for taking part in the debate.

Malcolm Dawson
Chief Land Registrar and Chief Executive

2. Introduction and background

2.1 The consultation paper

The consultation paper *E-conveyancing Secondary Legislation Part 3* (the paper) was issued on 22 March 2010 and the consultation closed on 25 June 2010.

The paper may be found on our website at:
Consultations/Closed consultations 2009-2010/Land Registration (Electronic Conveyancing) Rules 2011 Consultation.

The executive summary in the paper (at page 9) explained that the consultation presented for discussion the proposed Land Registration (Electronic Conveyancing) Rules 2011. The rules were required to introduce the facility to use e-transfers and extend the use of e-charges.

2.2 The draft rules

The draft rules were set out in section 5 and explained in section 6. They provide for the creation and signature of e-transfers and changes to the method of creation and signature of e-charges.

2.3 Overview of services

By way of background, an earlier consultation paper (Part I published in February 2007) included an overview of e-conveyancing services to give prospective users an idea of how e-conveyancing would work in practice.

Since publication of that first consultation paper a review of our implementation proposals took place, and this was followed by a second consultation paper (Part 2 published in August 2007). This paper focused on the delivery of electronic charges. Responses to the paper on electronic charges were mixed, but it was decided that we should proceed to offer an electronic charge service where charges could be created online, signed electronically by the chargor, and registered electronically. The service has seen very little take-up, with only some 20 or so charges being created and registered using this system.

It was felt that there were several reasons for the lack of take-up, but they included:

- a) a significant drop in the remortgage market
- b) the fact that only remortgages were suitable for the electronic system
- c) perceived difficulties in citizens' ability to sign electronically.

Another of the key reasons appeared to be that only a charge, and not a transfer, could be created and executed electronically. We therefore decided to proceed as soon as possible with the delivery of an electronic transfer solution and enlargement of the scope of electronic charges. The new service would also allow for electronic signing by the conveyancer as agent for the transferor/ transferee or chargor as well as 'citizen signing'.

2.4 The questions

There were 10 questions in the consultation paper (but the first had six sub-questions).

- Q1. We have already asked your views on the electronic charge in standard form in Part 2 of the consultation published in August 2007. Now that we have developed the concept and extended it to electronic transfers are you content with our proposals on the following aspects?
 - Q1.1 The content of the e-transfer and legal charge?
 - Q1.2 E-signature by a conveyancer on behalf of joint proprietors?
 - Q1.3 Forms of authority for signature by a conveyancer on behalf of joint proprietors?
 - Q1.4 E-signature by a conveyancer on behalf of a sole proprietor?
 - Q1.5 Forms of authority for signature by a conveyancer on behalf of a sole proprietor?
 - Q1.6 E-signature by transferors, transferees and borrowers (citizen signing)?
- Q2. Do you agree with our view that an impact assessment is not necessary at this stage since the impact of the rules will have limited effect?

Specific questions

- Q3. It is proposed that the e-transfer should contain the option that it "takes effect upon completion of the purchase of the registered estate which is to be transferred by the transfer", with the subscriber for the transferor notifying the registrar of the date when completion took place. We do not believe that we could reasonably ask the subscriber to specify the time of completion. This is because, in our view, it might be difficult to determine the exact time of completion. Do you share this view? (See paragraph 19 of section 6.) Please give details and reasons.
- Q4. Do you think that reference in the e-transfer to its taking effect upon completion is workable? Specifically, would it be treated, as meaning what we have described as "practical completion" as opposed to "legal completion"? If it is thought not to be workable, can you suggest an alternative which might mark the taking effect of the electronic disposition? (See paragraph 20 of section 6.)

- Q5. Which draft paragraph 1(b) to (d) of Schedule 1 do you prefer? Why? (See paragraph 21 of section 6.)
- Q6. Do you think that the electronic legal charge ought to make express provision allowing for it to be “uncoupled” from a transfer before it (the charge) takes effect? (See paragraph 29 of section 6.)
- Q7. Do you think that there should be an additional option for when the electronic legal charge is to take effect, namely, “upon completion of the charge”? (See paragraph 30 of section 6.)
- Q8. Do you have any other comments that you would like to make on the draft rules?
- Q9. Do you have any views on proposals relating to the operation of the e-transfer/charge? (See section 4.)
- Q10. Do you have any other comments on this consultation?

You can obtain further copies of this report by writing to:

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By email:

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By telephone, where you can leave a message on our voicemail:
02476 867377

By accessing our website:
www.landregistry.gov.uk

3. Summary of responses

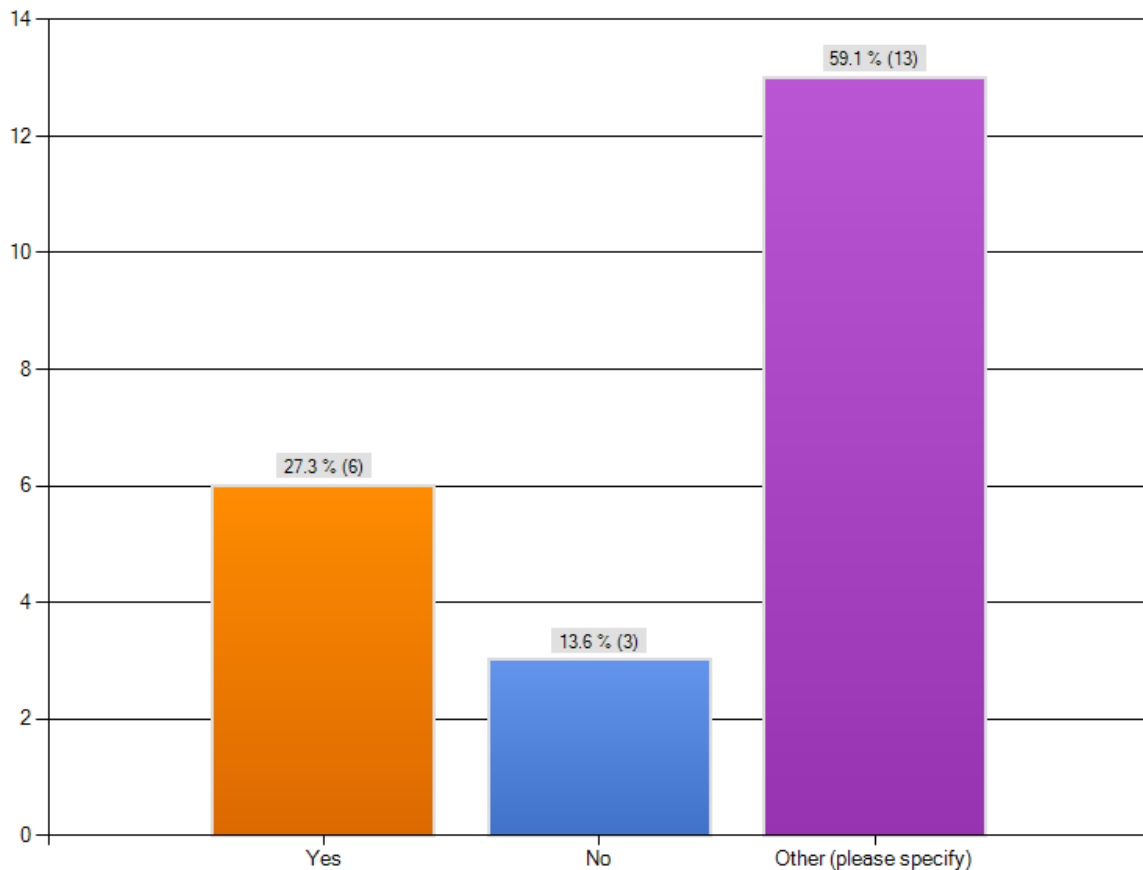
There were 39 responses (one of which was from the London Property Support Lawyers Group, which is made up of? firms). Below is a basic table of responses to the questions. The main topics highlighted in the responses are considered in the next section.

4. Responses in detail

Question 1 (Q1.1 to Q1.6)

We have already asked your views on the electronic charge in standard form in Part 2 of the consultation published in August 2007. Now that we have developed the concept and extended it to electronic transfers are you content with our proposals on the following aspects?

Q1.1 The content of the e-transfer and legal charge



Comments received under 'Other':

- “As this is already in operation, Land Registry may be more aware of the possible shortcomings (if any) of the form. Section 1 (b) (ii) - As for this section, I am not clear as to whether E-charges are only applicable to first charges as, if they also applied to second and subsequent charges, the provision will not be acceptable? Section 1(a) -My suggestions for this form would be the same as in the same section above. Section 1(d) - The borrowers' address may be included thereby eliminating any room for doubts as to the correct address for entry on the register of the transferee(s) as the transferee may not have opportunity to see the address as stated in the E-transfer unless required for their E-signature.”
- “Subject to seeing a working trial, yes.”
- “Yes provided there is scope for 'free' text to cover non-standard situations.”
- “No, why the provision for when the transfer takes effect - instead of just a date? There does not appear to be a justified rationale for control of transactions to pass from the principals to the hazards of electronic system crashes and non availability on all 365 days in a year - when there is no such inhibition on the substantive transaction?”
- “I am a Licensed Conveyancer and I have never seen anything so complicated in my life. You will have to re-write the conveyancing manual because none of the courses I have studied prepare you

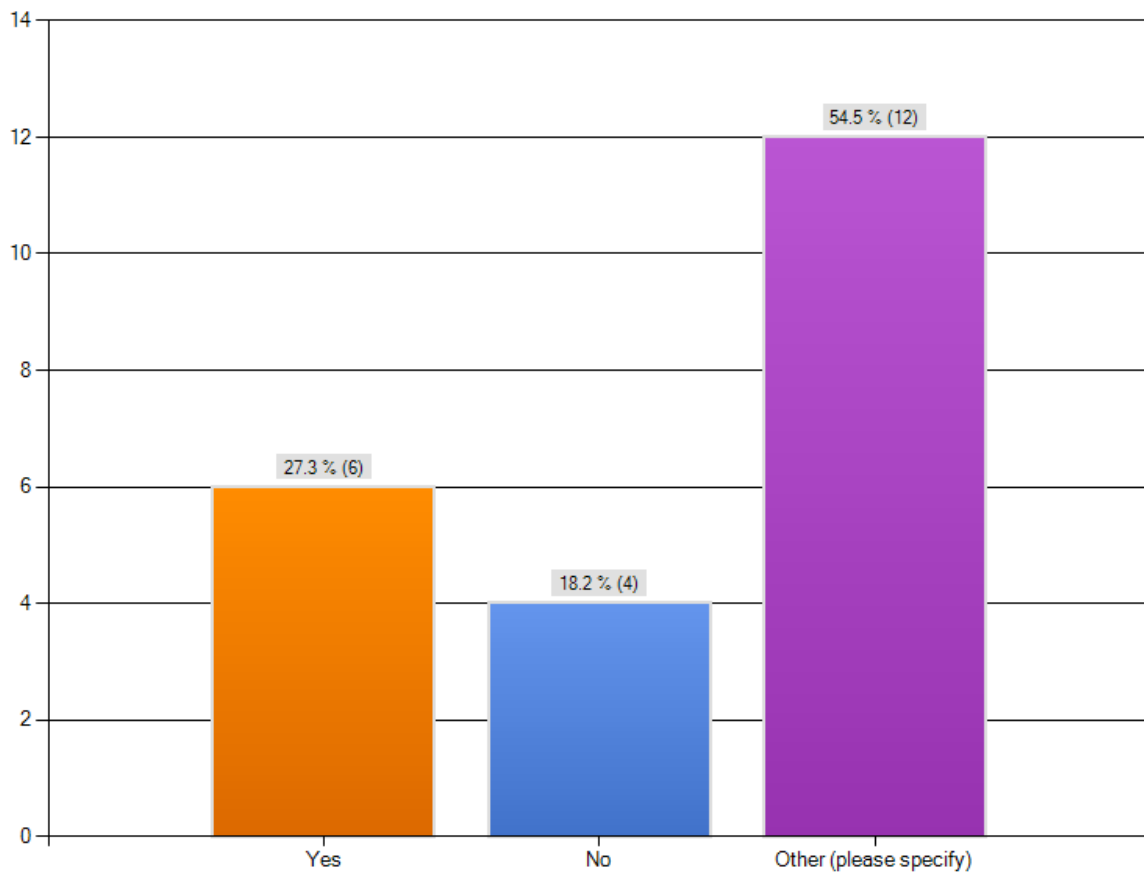
for this. Not only do you have to be an expert in conveyancing but also an expert on computers and IT systems. I also think it is wide open to fraud.”

- “We agree that the content and legal charge as described in the consultation paper and in the draft Statutory Instrument Schedule seem appropriate.”
- “Signature by a conveyancer on behalf of joint proprietors, the Forms of Authority for signature by a conveyancer on behalf of joint proprietors, E-Signature by a conveyancer on behalf of a sole proprietor, Forms of Authority for signature by a conveyancer on behalf of a sole proprietor and for E-signature by transferors, transferees and borrowers (citizen signing) in principle. However, it would have been helpful to have seen a draft version of the e-transfer, albeit in skeletal form.”
- “No additional comment on the Charge. The transfer should allow for declarations concerning the ending of trusts of land Form A restrictions etc, in the standard form. Although it is questionable whether or not the Land Registry should allow any statement in a transfer about the beneficial ownership other than a declaration whether or not a valid receipt for capital money can, or cannot, be given by a sole trustee. The option to state percentages of beneficial ownership in such an abbreviated form is fundamentally dangerous. It has no regard to the issue of cash and debt contributions to a property and can encourage defective/negligent practice.”
- “We are concerned that there is not enough flexibility with the eTransfer. Whilst we appreciate the reasons why initially the eTransfer may only be used in the limited circumstances set out in Section 3.2 of the consultation document, to then limit the scope of the transfer further by not allowing amendments to be made to the transfer by way of additional provisions does, in our view, mean that the opportunity for the use of the form in its current form is further reduced. This may have an adverse effect on take up.”
- “We are satisfied with the content of the e-transfer and legal charge.”
- “The contents of the e-transfer broadly replicate the contents of a paper transfer with the addition of extra content to facilitate electronic signature and processing by the Land Registry. The e-AP1 appears to be envisaged as a separate electronic attachment forming part of the "bundle" given that e-transfers and e-charges will both have to be registered in due course, would it not be simpler to incorporate the e-AP1 information in the body of the e-transfer and e-charge so that registration can automatically follow without the need for additional e-document? Access to the information contained in the e-transfer would be available to both the transferor and transferee, but the inclusion of the details traditionally contained in the AP1 would be common knowledge and would not constitute a breach of the transferee's privacy. The registration details for the e-charge, currently contained in an AP1, could be incorporated into the e-charge document and the transferor would not even know of the existence of the charge. Discharge information for existing mortgages would logically be contained in the e-transfer information on the basis that this would be visible to both the transferor and the transferee. All the documents would fall under the same UTRN so there would be no danger of them becoming separated. Retention of a traditional AP1 document seems to be an outdated and unnecessary additional feature if the information contained in it can be incorporated into the body of the e-documents. It is difficult to conceive of a situation in which e-documents would be submitted to Land Registry without the intention that they were to be registered. The e-charge is to be generated using an E-MD reference agreed between the Land Registry and specific lenders. We note that lenders may have a number of different E-MD references for different mortgage products. Is there a facility for the User to ascertain that the correct E-MD has been generated; will the whole mortgage document appear on the screen?”
- “The proposal is that the e-transfer will contain some standard form purchaser's indemnity covenants and variations to the Law of Property (Miscellaneous Provisions) Act 1994. Although

these provisions are often drafted in a very similar format, in principle we think that solicitors should be allowed to draft covenants and amendments of this nature in the way that best suits the transactions and the requirements of their client and the form of e-transfer should allow "freehand" drafting. If in the future e-transfers were to be used for more complicated transactions this would be essential."

- "When the transferee's name is entered, the property address will be the default address and other information such as price will have to be added. We are concerned that the price can only be inserted in figures and not in words. S58 of the LRA 2002 is disapplied in order to achieve this. Presumably this has been imposed for ease of IT build but there were good reasons for insisting that the consideration should be set out in both words and figures and those reasons remain. It is far easier for errors to occur when only using figures. The Society would urge retention of the application of s58. Whilst it has been argued that the current SDLT system only provides for figures, the underlying amount of the consideration is determined by the transfer itself and the statement of the amount for SDLT purposes is therefore not so critical a figure. By contrast, the e-transfer is the document which constitutes the contractual transactional document between the parties and it is extremely important to reduce the scope for any errors or ambiguities in the document. This consideration ought not to be sacrificed in the interests of ease of IT build. The figure could be evidenced by the contract but first not all transactions involve a contract and secondly the unpicking of the transaction could be extremely time consuming and difficult. Either seller or buyer can prepare a transfer and once saved it will form part of a bundle. It can be amended until agreed and an e-transfer summary will be generated after it has been produced. This will detail the status of the e-transfer as created with its various details inserted. Documents within a bundle may be opened and can be removed or new documents may be added. Once the document has been effectively agreed and saved, the parties need to engage in the approval processes and, when the representatives of both parties have agreed the document, signatories need to be identified and then e-signatures need to be applied. This new process will clearly require systems to be developed and detailed training to take place."

Q1.2 E-signature by a conveyancer on behalf of joint proprietors?



Comments received under 'Other':

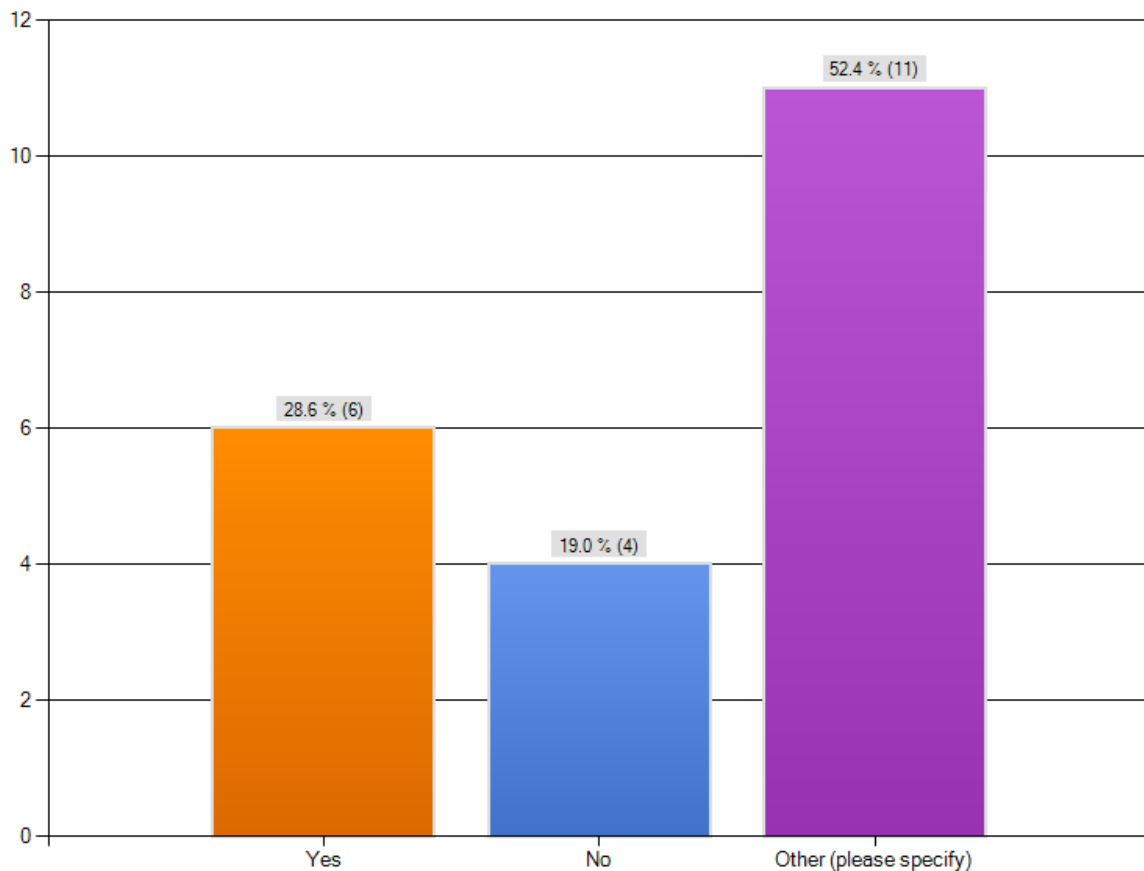
- "I do not envisage any particular problems arising out of this practice."
- "No, I am firmly against documents being signed on behalf of the parties."
- "Provided that the generation and management of the means for creating the e-signature is properly controlled and that the form and content of the e-signature is appropriate to long-term requirements of the system."
- "The following concerns were identified: It is felt that many practices will be cautious about signing upon clients' behalf who hold on statutory or other trusts until case law exists that confirms that the proposed solution is valid, particularly as there are concerns regarding the impact on Sections 7 & 11. If the instructions are not clear or if problems occur later on, it is anticipated that disputes could arise over the validity of the sole electronic signature leading to a high proportion of client signature. There were also concerns over the Declaration of Trust statements contained in the prescribed Transfer and whether solicitors can complete this on behalf of their client(s) or would want to bearing in mind the increasing case law on disputes over beneficial ownership. There were less concerns regarding fraud within firms as the individual can be clearly identified and most firms have reasonably good firewalls, however, there may be an issue with security on individual's PC's where clients are signing personally that may put the integrity of the register at risk."
- "No, it is not adequately secure and could open door to increased fraud."

- “Again I think the whole system is open to fraud.”
- “We agree that the described approach for electronic signatures on behalf of joint proprietors is suitable.”
- “Delegation should only be possible to Users that have the status of Responsible Person or C4 WITH the authority to e-sign. This point has been raised before, that the powers of a C4 user are too wide. It should be possible to define the e-conveyancing services/tasks that each C4 User can perform. This is critical to risk management; the concept of joint delegation needs further consideration. Perhaps delegation should be to separate C4 Users this would create challenges for sole practitioners.”
- “We have no objection to the principles of E-signature on behalf of joint proprietors, providing the conveyancer may rely on forms of authority set out in Section 7 of the draft rules. We would suggest that where the authority appears to be in order, without any manifest errors these should be regarded as appropriate authority. If there is still doubt as to whether delegation to joint proprietors contravenes section 7 of the Trustee Delegation Act 1999, then amending legislation must be considered to put the point beyond doubt.”
- “We would be prepared to deal with e signature on behalf of the joint proprietors but would suggest the procedure for authorisation is streamlined. Our view is it would only work effectively if the Conveyancer dealt with the signature.”
- “To streamline the procedure it would be desirable that the conveyancer should be collectively delegated by joint proprietors to sign on their behalf. Whether an agent can make an effective declaration of trust appears to be a matter of debate among academics and leading practitioners. Ideally the process would be simplified to permit the agent to declare the trust in the e-transfer, but if there is serious long-term doubt about the efficacy of such a purported declaration we would prefer to adopt the more unwieldy process of obtaining evidence of a declaration of trust from the transferees which would then be referred to in the transfer rather than included specifically in it. Should the question become the subject of litigation in the future and result in a decision in favour of separate evidence, the task of regularising the position in numerous old files could be enormous.”
- “We note the Land Registry’s proposals to include provisions in the new rules that will allow practitioners and their clients to choose how a document is signed – either by the parties or by the practitioner as the client’s duly authorised agent. Whilst we would not oppose this change in terms of legislation we think it is worthwhile pointing out that many lenders are unlikely to accept the suggestion that the practitioner signs- whether this is on behalf of joint proprietors or sole proprietors. Lenders have recently experienced unprecedented levels of solicitor led fraud and we doubt that lenders would favour this approach. It is likely that the CML’s Lenders’ Handbook would prevent solicitors from signing in this way where there is a mortgage involved in a sale and purchase transaction. However where lenders are instructing conveyancers to carry out substantial amounts of re-mortgaging work for them this approach (ie signing with authority) might be favoured by lenders. We are concerned that the law on the delegation of authority to one person by joint proprietors is unclear and are uncomfortable that the Land Registry is endorsing this action without legal certainty. Surely the SI could clarify the legal position on this? At present the validity of this part of the process seems to rest on counsel’s opinion – which is a concern for those organisations providing funding for transactions.”
- “The take up of e-charges, e-signatures and e-transfers are interdependent and there are many dependencies. Were lenders to require the take up of e-charges this would probably impact on the use of e-transfers? We are not sure, however, whether lenders are comfortable with solicitors

signing e-charges and we also question what would be the advantage in the solicitor signing the e-transfer and the clients signing the e-charge? Further consideration is required in relation to the proposals for e-signatures particularly in relation to joint purchasers. Allowing this part of the process to rest on secondary legislation and the authority of an opinion from counsel as the Land Registry proposes, rather than obtaining primary legislation, is not a satisfactory way in which to proceed. If there are doubts about the legal efficacy of the procedures proposed, primary legislation is needed before solicitors sign on behalf of joint proprietors.

- The general position is that where there is a conveyance of a legal estate by trustees of land, this overreaches any equitable interest or power affecting that estate if the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees and if capital money arising on such a conveyance is paid to or applied by the direction of no fewer than two persons as trustees or a trust corporation (section 2 Law and Property Act 1925). However, section 7(1) of the Trustee Delegation Act 1971 states that the two-trustees rule is not satisfied by money being paid to or dealt with as directed by, or a receipt for money being given by, a relevant attorney or by a conveyance or deed being executed by such an attorney. 'Relevant attorney' means a person, other than a trust corporation within the meaning of the Trustee Act 1925, who is acting either both as a trustee and as attorney for one or more other trustees, or as attorney for two or more trustees, and who is not acting together with any other person or persons (section 7(2) Trustee Delegation Act 1999). While it may appear that section 7 of the Trustee Delegation Act 1971 does not apply here by virtue of the fact that under the Rules a person is appointed as an agent and not an attorney, it is necessary to look at the purpose of the Trustee Delegation Act. The Society does not accept that the delegation of authority to an agent and the execution of the electronic legal charge by such agent has the effect of overreaching any equitable interest or power affecting the estate. It would seem strange if the more secure and formal process where there is an attorney, were to produce lesser protection than that of a mere agency. It is noted that the Land Registry has obtained counsel's opinion in relation to the issue of whether the giving of a receipt for such capital monies would overreach third party beneficial interests. However, where there is any doubt the necessary provisions should be amended by primary legislation. The Society therefore urges the introduction of primary legislation on this point."

Q1.3 Forms of authority for signature by a conveyancer on behalf of joint proprietors?

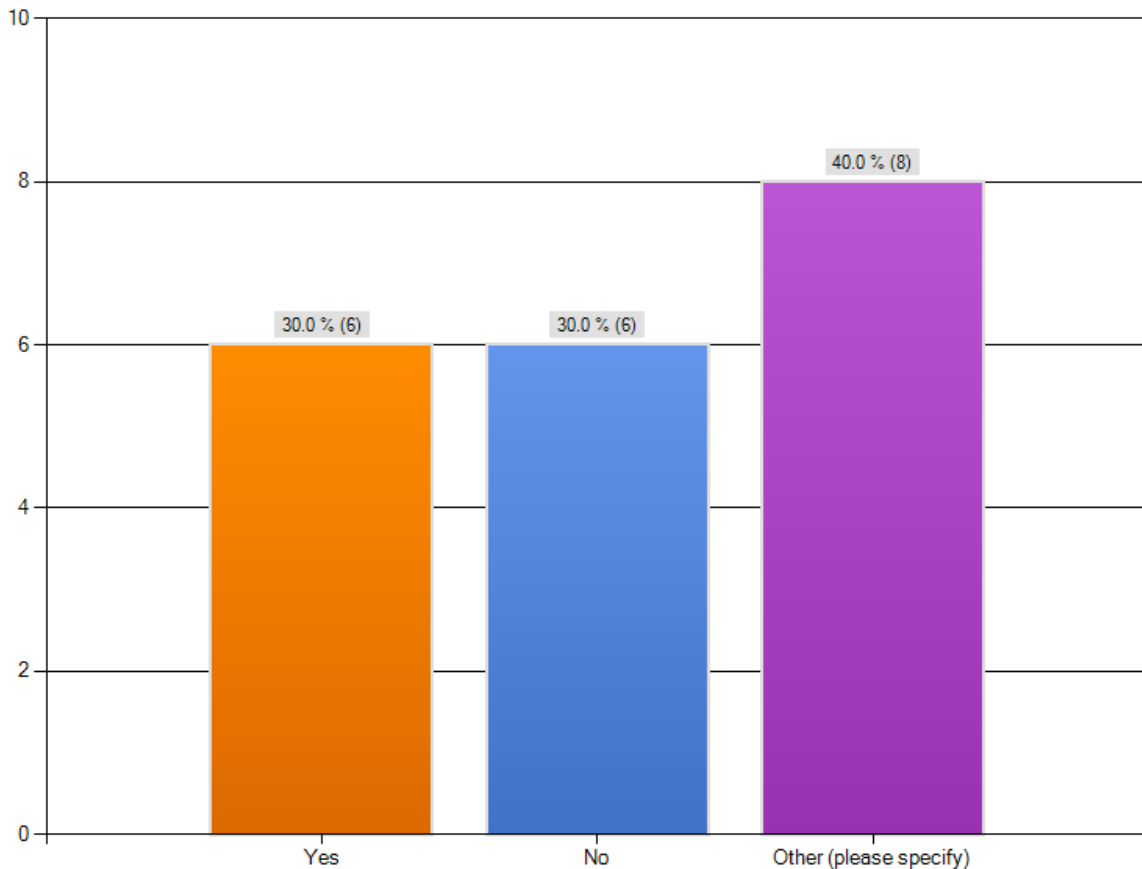


Comments received under 'Other':

- “No I feel only joint proprietors should sign directly.”
- “Yes subject to the concerns over the validity of a sole signature on both the Transfer and the signature declaring the trusts where there are joint purchasers.”
- “No, where is the protection against fraud?”
- “The forms of authority described in Schedule 3 of the draft Statutory Instrument seem appropriate.”
- “No. The document should be witnessed to help reduce the opportunities for fraud/undue influence.”
- “We believe that the Land Registry should address the issue whether once given the authority must be regarded as irrevocable, or set out how the same may be revoked, to prevent Transferors/Transferees attempting to revoke delegation without communicating the same to the authorised user. This is especially important as the authorities are expressly stated not to be made by deed. Consideration should further be given as to if and when the form authority should lapse and we would suggest the current rules relating to powers of attorney granted more than 12 months prior to the disposition maybe a useful analogy”.
- “We have concerns on the timing of obtaining the authority and the current postal requirements in place.”

- “It is assumed that this question and question 1.5 refers to the Forms of Authority in Schedule 3. Should the authority include permission, where relevant, by the transferees for the conveyancer to give an indemnity or enter into a covenant on the transferees' behalf?”
- “The Society wishes to reiterate its concerns about the additional risks conveyancers and borrowers are exposed to as a result of the introduction of electronic signatures. In particular, the Society has concerns regarding the consistency of the new procedures with underlying general principles of law. For example, the principle of ‘non est factum – “it is not [my] deed” – is a doctrine which allows a signing party to escape performance of an agreement. A claim of *non est factum* means that the signature on a contract was signed by mistake, without knowledge of its meaning. A successful claim of *non est factum* makes the contract void. The Society notes the potential for the introduction of such an argument with respect to e-signatures and is concerned to ensure that there are adequate safeguards and procedures in place to reduce the scope for such a claim.”

Q1.4 E-signature by a conveyancer on behalf of a sole proprietor?

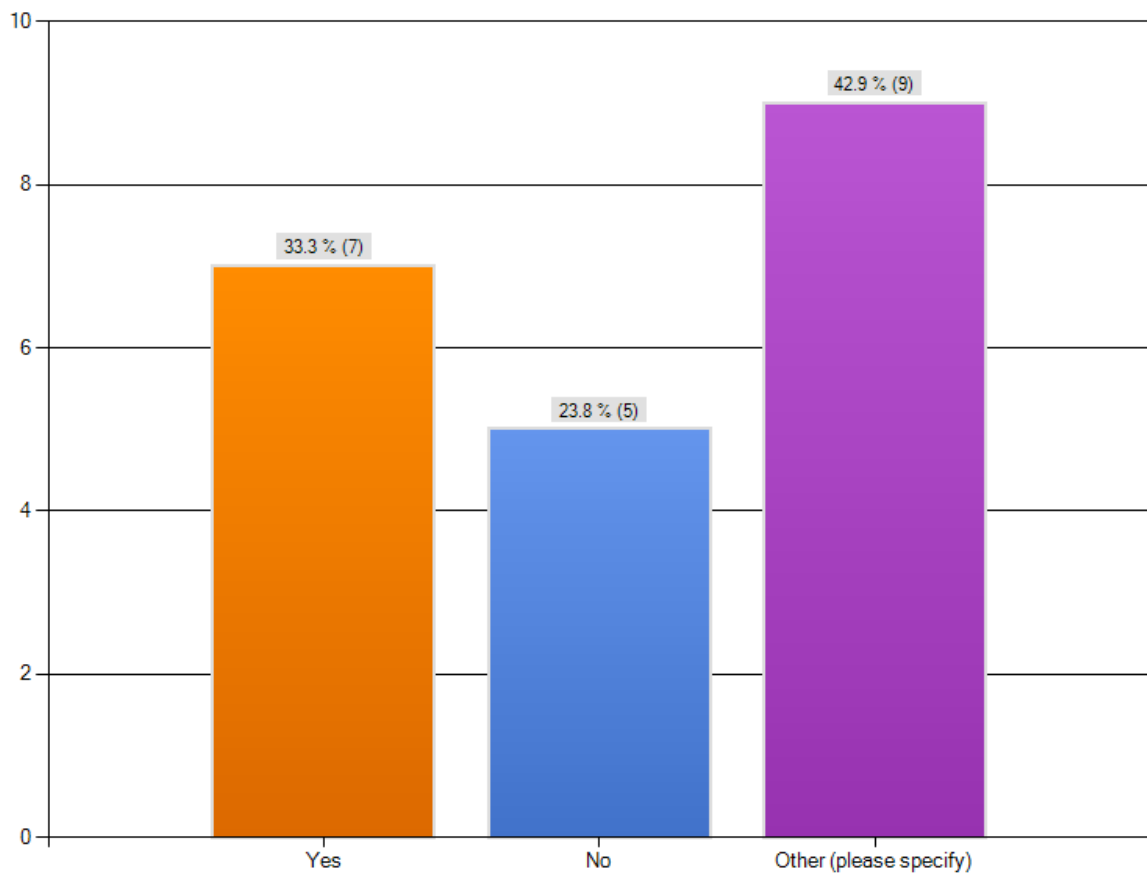


Comments received under ‘Other’:

- “No I feel only joint proprietors should sign directly.”
- “Provided that the generation and management of the means for creating the e-signature is properly controlled and that the form and content of the e-signature is appropriate to long-term requirements.”
- “All e-signatures are fraught with danger - and this has not been adequately addressed.”

- “We agree that the described approach toward sole proprietor electronic signatures seems appropriate.”
- “The points concerning the powers of C4 users noted above apply.”
- “Again we have no objection in principle to E-signature on behalf of a sole proprietor, subject to our comments in paragraph 1 of Q1.2.”

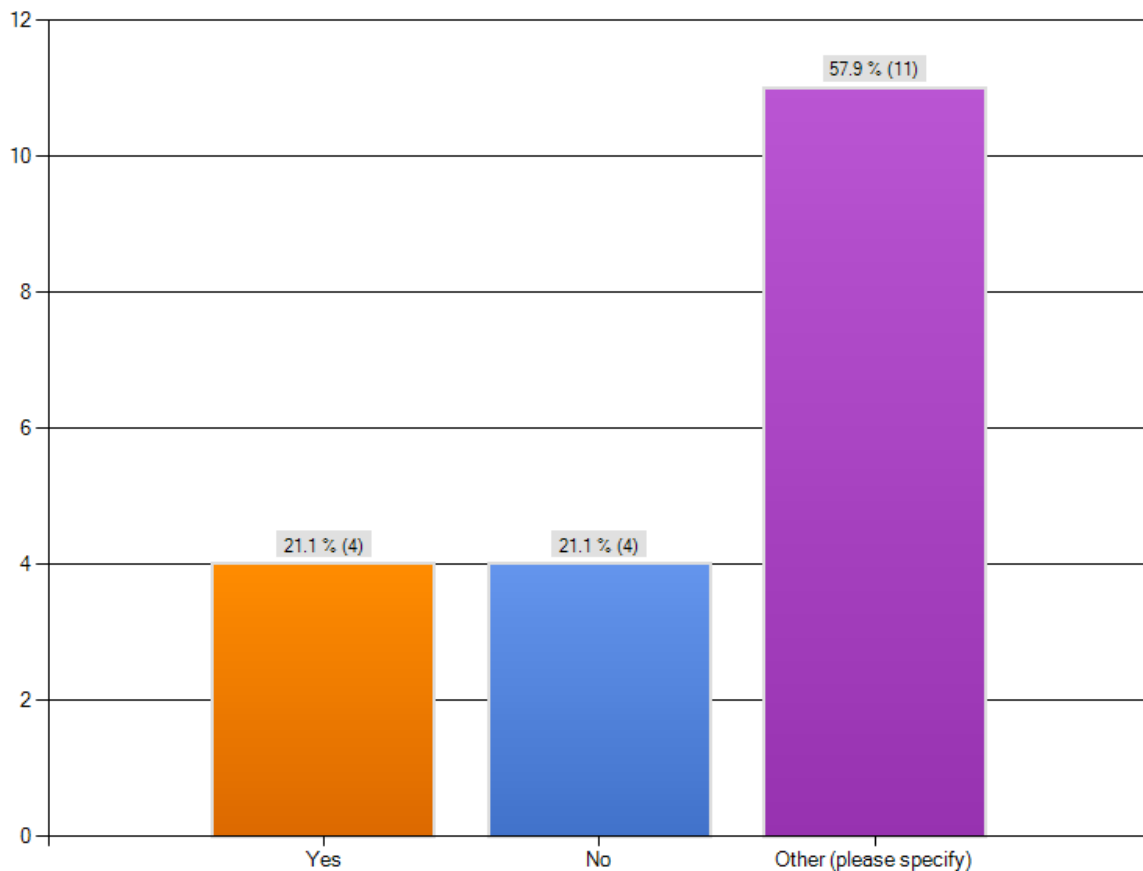
Q1.5 Forms of authority for signature by a conveyancer on behalf of a sole proprietor?



Comments received under ‘Other’:

- “No I feel only joint proprietors should sign directly.”
- “No, where is the protection against fraud?”
- “We agree with the approach set out in the consultation paper toward these forms of authority.”
- “No.”

Q1.6 E-signature by transferors, transferees and borrowers (citizen signing)?



Comments received under 'Other':

- "Subject to seeing a working trial yes. However, there are many occasions where PC access may not be available and the paper system should run concurrently."
- "Yes provided that the communication of what needs to be done to affect signature is clear, so that it can be understood by anyone who may wish to sign."
- "Provided that the generation and management of the means for creating the e-signature is properly controlled and that the form and content of the e-signature is appropriate to long-term requirements of the system."
- "There is the likelihood of a higher risk of fraud or forgery if other people have access to the PC or can get access to the authentication grid. Anything going through the post or sent by email is at risk of interception."
- "All e-signatures are fraught with danger - and this has not been adequately addressed. What is far worse is that on actual completion and hand over of monies, keys etc. no one will know for sure that the transfer will be accepted by the Land Registry - because the Land Registry requires to effect a "post-lodgement" validation exercise that the signature complies with validation requirements - another recipe for uncertainty and potential problems."
- "We agree with the approach described in the consultation paper for e-signatures covering these audiences."
- "It would have been helpful to have seen a draft version of the e-transfer, albeit in skeletal form."

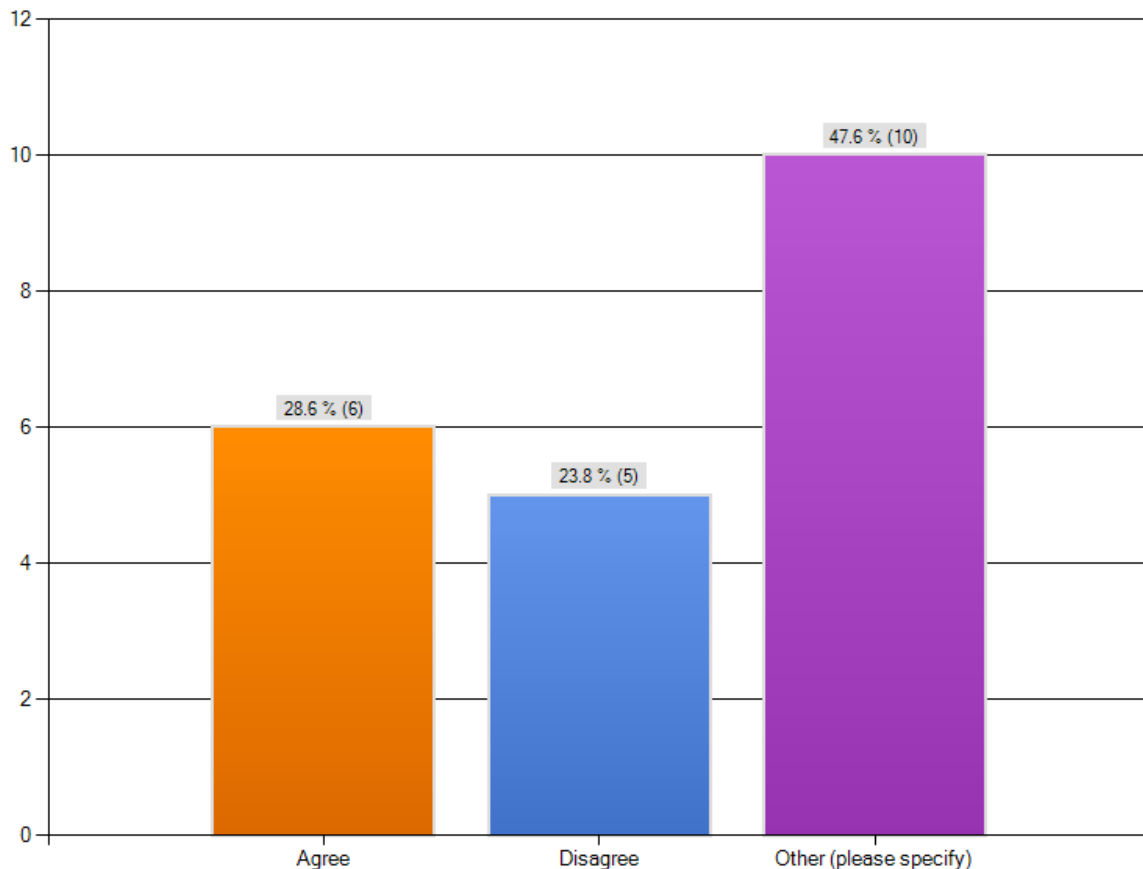
- “The reason for the poor take up of e-CSFs was the deficiency of the Web interface and the complexity of the account creating process. We are happy to discuss this further. Citizens if they must have an account need a different type of account that is limited to the document being signed. The methods of communicating account names and also temporary passwords must be electronic, or at the very least a task given to the conveyancer to handle so that they citizen does not have to grapple with a new and unexpected channel of contact/communication. The lack of e-CSF take up was NOT due to market conditions. This is untrue and false premise on which to proceed. e-CSFS and e-TR1s will be used when the process is smooth, and the surrounding procedure is electronic e.g. handling requisitions and returning TIDs!! So the current proposals for e-signing by citizens are certainly NOT satisfactory and minor changes will not fix the problem. There has to be fundamental review of the process and strategy. Conveyancers dealing with remortgages remotely will be reluctant to assume responsibility for signing the charge, where the borrower is not their client and it is likely that proof of identify is through reliance on the lender's systems. A perfected system for signing by citizens is crucial.”

- “It is assumed that the grid card represents a secure medium for encoding the signature of an individual. How is it envisaged that the grid care will be transmitted to the "citizen"? We are concerned, incidentally, that the use of the word "citizen" appears to exclude individuals who are entitled to purchase property in the UK but are not actually defined as "citizens" by other government bodies.”

- “The experience with ‘citizen signing’ for remortgages using e-charges suggests that ‘ease of use’ may not have been achieved. Borrowers have had to use the ‘battleship’ style grid system and this has not always proved simple. Much further information and ‘handholding’ has had to be provided. Detailed explanations for clients will need to be provided – for some more than others. Solicitors will be expected to provide this and will bear responsibility for providing the signatory’s details to the Land Registry. This will include details of where the information to activate the digital signature should be sent. The potential for fraud where, for example, both sets of information are sent to the same address, but both are operated by the same person remains as with the paper system. However under the current proposals solicitors will assume more liability for loss under the NAA. There is also the risk that the scale of fraud could escalate once the system is breached or abused. If the practitioner escapes the jurisdiction then the public and the consumer bears the loss. A control on multiple transactions taking place through the same account may be necessary.”

Question 2

Do you agree with our view that an impact assessment is not necessary at this stage since the impact of the rules will have limited effect?



Comments received under 'Other':

- “Our practitioner feedback disagreed that an impact assessment is not necessary at this stage, and furthermore we consider it appropriate as a matter of best practice to carry out an impact assessment at each stage. This view is guided by the nature of this project together with past experiences with the Land Registry and HMRC on IT projects. Our practitioners also have concern that past experiences has shown that the full impact of changes to rules and procedures have not been fully appreciated, which have led to numerous problems post implementation.”
- “I would partially agree with this - however, bearing in mind the long term plans for total electronic services and paperless registration when e-conveyancing will be mandatory and the only form of conveyancing, it may be worthwhile considering an impact assessment for those who volunteer to take part in this exercise. Of course, this may not be a financially viable option if the numbers volunteering are small. May I therefore suggest an impact assessment be considered at a slightly later time depending on the number of people participating in the initial exercise and what reactions exist in subsequent months?”
- “No, I think an impact assessment should be carried out, in order to ensure that an independent consideration of what is proposed and its impact is taken. It may be that there will be impacts unforeseen by the Land Registry.”

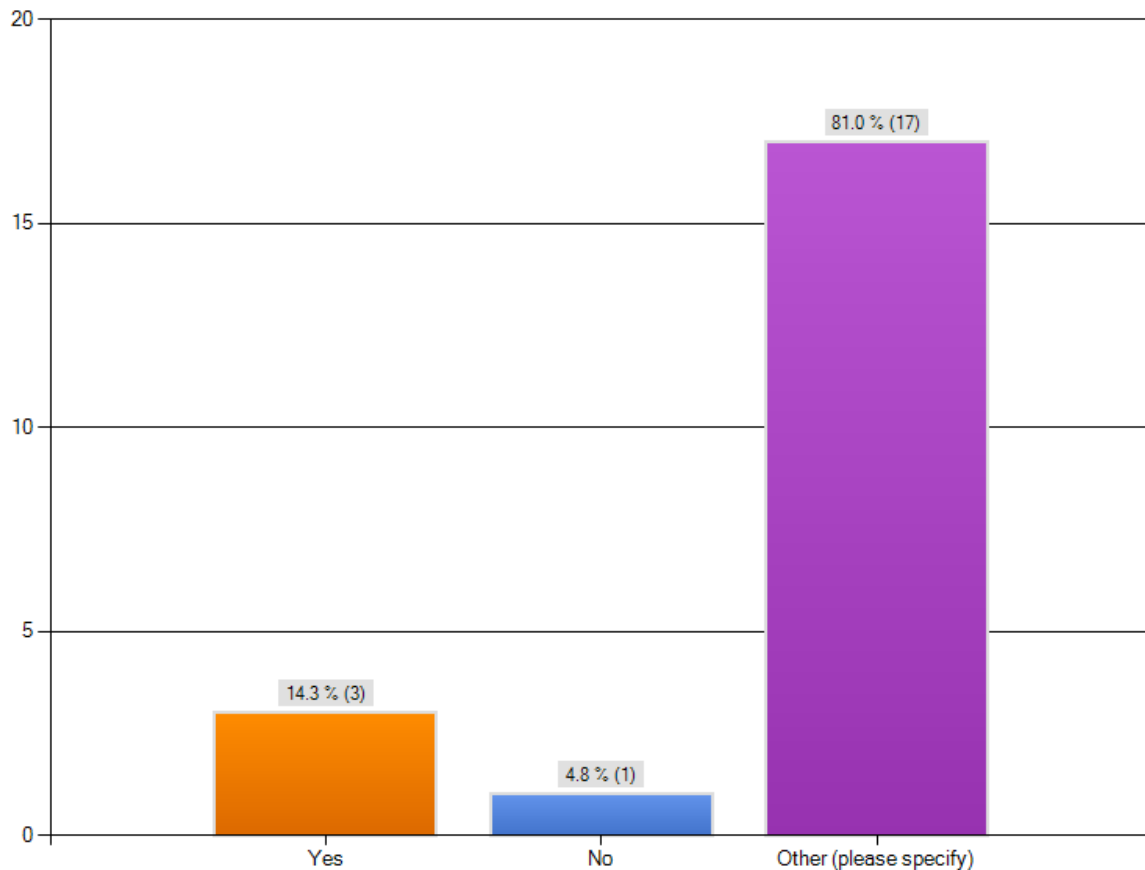
- “As a firm which has the capacity and the intention to be in the vanguard in terms of interfacing with the Land Registry and its technology, we have no problem with the lack of an impact assessment.”
- “No, the impact on those charged with ensuring protection from fraud is potentially vast and it needs to be fully addressed.”
- “I think it is very necessary because I think the whole system is unworkable. It’s a very bad time to introduce this sort of change because of the lack of conveyancing going on - those conveyancers who have been unemployed will be left behind through no fault of their own.”
- “We note the Land Registry's position toward impact assess approach and the conclusion that the voluntary nature of the new services should negate the need to assess their impact. While we agree with this conclusion, we would however recommend that the Land Registry commits to assessing the impact of the new services once they have been made available. This will be important in order to ensure that the new services are genuinely available and accessible to all participants in the conveyancing process, without any unintended barriers or restrictions being experienced by those that use them. In particular, once the services have been launched and taken-up by different stakeholders, we believe it important that the Land Registry considers the impact of the new services toward equality.”
- “While the Society welcomes the introduction of an e-conveyancing system, it cannot be predicated on illusory benefits. The Society believes that a more realistic position (and typical of many IT projects), is that the early phases of such a project do not provide immediate, tangible benefits to the User community. The 'benefit' of the initial phase of the project accrues (primarily) to the Land Registry in that it will have a basic infrastructure that can be developed and expanded. It will have electronic applications. The Land Registry is incorporating the standard covenants that the Land Registry uses.
- With these basic expectations in place, a clear and realistic assessment of the benefits should be carried out and mapped to all the various 'phases' of the e-conveyancing initiative. Again, taking a service orientated approach would assist as the benefits of each service could be analysed individually. If the services are then placed in a sequence mirroring the likely sequence in which they will be introduced it will be possible to see how the cumulative benefits accrue as services are introduced to users.
- The Society is not aware of one clear tangible benefit; rather there may be a few minor potential benefits.
- The Society believes that the Land Registry should make this clear to all parties so expectations are set at an appropriate level. The Society therefore believes that initially, there will be no material change in the reliability of information or there will be no demonstrable cost savings; costs may be increased because of the need to run parallel processes and record many more steps than at present in relation to the affixing of e-signatures.
- A fee reduction may provide some incentive to solicitors to adopt e-transfers. Some believe a reduction in fees will not affect take-up because fees do not fall on the solicitor but on the client. Others however anticipate that a reduction in fees may enable them to achieve a competitive advantage.
- The speed of any conveyancing transaction will continue to be a function of the market and the individuals that are party to that transaction or chain of transactions. It is unlikely to be affected by the development of e-transfers. There will clearly be no extra speed or tangible benefit for the

transferor or transferee if they go down the 'citizen signing' route as this involves an even greater administrative burden. Once contracts are exchanged the time for completion is fixed and the ability to produce a transfer quickly is unlikely to affect the length of a transaction. Consumers are keen to reach exchange of contracts so that they are certain the transaction will proceed. Buyers are not always overly concerned about the time between exchange and completion, and are not always concerned about completion of registration. Lenders too are protected, in relation to the timing of transactions, by the existence of solicitors' undertakings.

- There may be some 'early adopter' benefits in marketing the firm as offering e-transfer and training staff to use the system incrementally.
- There may be some reduction in the 'registration gap' which is an advantage to lenders and buyers although it is mainly lenders who would perceive the benefit.
- It may be possible for a buyer's solicitor to complete, make arrangements to pay SDLT and make the application for registration at a single sitting rather than piecemeal reducing the risk of not concluding a step and reducing the overall time spent.
- The Society would like to know from the Land Registry what approximate percentage of transfers would be capable of being 'e-transferred' on the assumptions that both parties wanted to use the service and there was no charge or an e-charge
- Provided the new e-services are linked in to existing case management packages there could be operational benefits. In order for there to be a substantial uptake of this system, the Land Registry needs to demonstrate the benefits over the current system. Using the SDLT electronic filing system for example had provided the real benefits of immediate certification. As a result take up is now above 85%. Creating an e-transfer in portal will effectively be creating a document step by step when these are created automatically by case management systems at present. If the case management system connected to the Business Gateway via an XML link this would ensure a front end process that would be similar to the current process and not be more complicated and time consuming."

Question 3

It is proposed that the e-transfer should contain the option that it "takes effect upon completion of the purchase of the registered estate which is to be transferred by the transfer", with the subscriber for the transferor notifying the registrar of the date when completion took place. We do not believe that we could reasonably ask the subscriber to specify the time of completion. This is because, in our view, it might be difficult to determine the exact time of completion. Do you share this view?



Comments received under 'Other':

- "ILEX notes that in practice there is no current requirement to specify a time of completion and agrees that it would be extremely difficult in practice to determine such a time."
- "No it would always be possible to state the time of completion."
- "It should be effective when the money has been received from the buyer's conveyancer."
- "Yes time will be impossible to predict or know."
- "Yes, there is often not a set time of completion, but the e-transfer should take effect only on the date it is dated as with the current system."
- "I think this must be available at least as an option, since otherwise a technical problem in communicating with the Portal might result in transactions taking place in an inappropriate order."
- "We agree with the flexibility that this option will create within the e-conveyancing process. A typical conveyancing process can of course be subject to numerous changes and influences and

as such we agree that it would not be practicable to commit the subscriber to specify a completion time that may subsequently change anyway.”

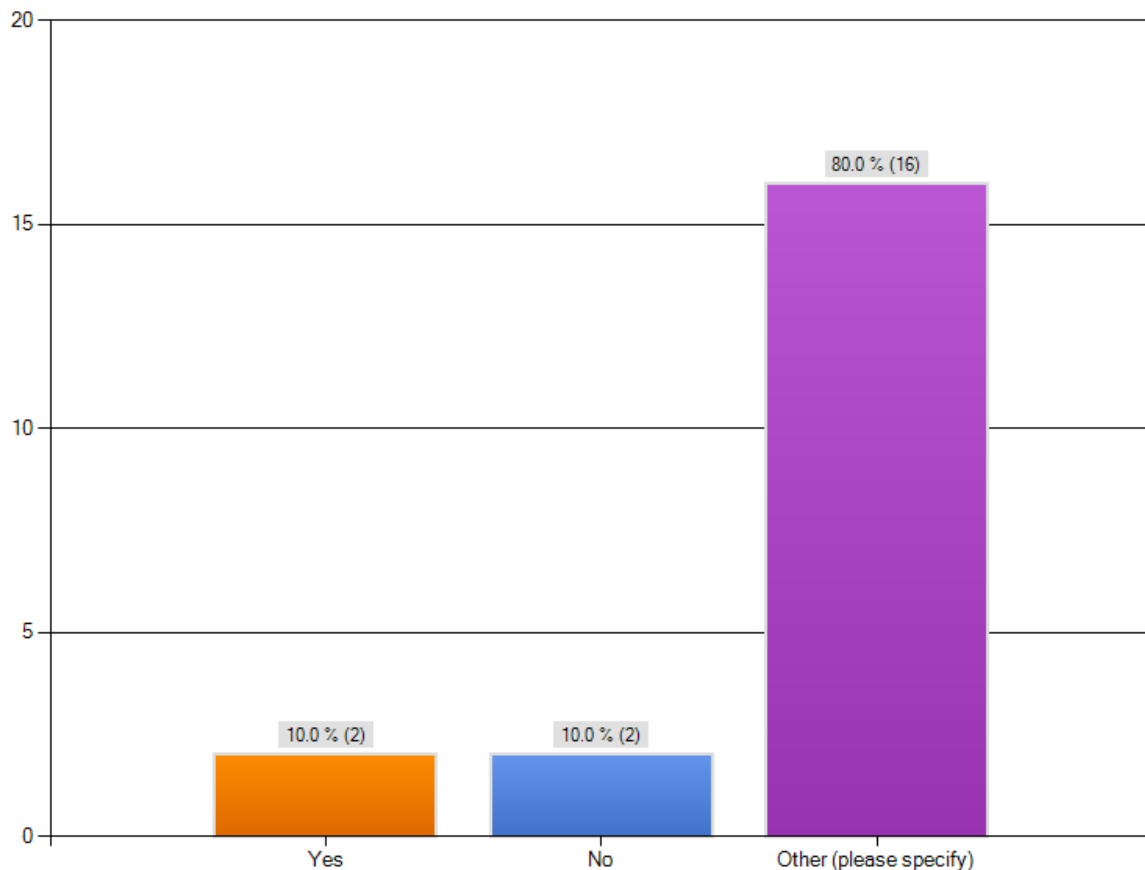
- “This view is shared. Under the current timing of completion all parties are informed and the transfer dated but not timed. It is for the solicitors to agree under the conditions of the contract that they agree to completion and dating of the Transfer but not a specific time.”
- “No I do not agree. The exact time of completion would usually be confirmed/agreed between the 2 parties over the telephone on completion of the document.”
- “It is routine when exchanging or completing a contract or a transfer for the solicitors to keep a record of the time as well as the date. We see no difficulty in the transferor's solicitors notifying the registrar of the time when completion took place if this option is being adopted. Having said that, the consultation suggests that the Land Registry has taken the view that notwithstanding Section 91(3) (a), it is not necessary for the time to be notified if this option is adopted. We see no particular advantage in registering the note of the time of completion (rather than just the date) and if this can be avoided we have no problem with this. As an ancillary point, the draft envisages that only the transferor's solicitors can notify the registrar that completion has taken place. Is there any reason why the transferee's solicitors should not be able to deal with this? As proposed the transferee (and its mortgagee) will have to rely on an undertaking from the transferor's solicitors to notify the registrar of completion. If the transferor's solicitors fail to do so why should the transferee's solicitors not be able to do so instead?”
- “No, we are concerned that the basic premise of e-transfers will be wide open to fraud. The opening of the Register itself has given rise to widespread abuse and the current proposals are bound to make matters worse. For example there have been several instances where transfers have been registered and mortgages created without the true owner's knowledge.”
- “We cannot see any advantage in noting the time of completion. The present system does not offer this facility and it is difficult to see that it would add anything to the process. Adding a time of completion for the transfer would mean specifying a slightly later time for the e-charge and a different time again for the discharge of an earlier charge. As long as actual completion takes place on a given day and the registration of the transaction deals with the registration of the e-documents in the correct order, there seems to be no need for any additional complication.”
- “We agree as there is a risk that the seller's conveyancer will delay notifying the registrar and buyer's representatives will not be happy if their transaction only takes effect when a third party notifies if there is no capacity to specify the actual date completion took place. Currently completion is not fixed to a specific time and there are too many variables as to when that time should be linked to confirmation of receipt of the cleared funds handing over of the keys etc to make it practical to require a time to be specified. However, it is felt that there should be the opportunity to enter the time in situations where contractually the time of completion is crucial but normally there should be no need.”
- “Yes. You should also allow a transferee to notify the date of completion, or indeed the Conveyancer for the lender. Lenders frequently need to have independent representation and must be able to date and register transfers, without relying on the actions of others. It is not uncommon for transferee conveyancers to hold all the signed documents at completion. The system needs to allow for the lender's conveyancer to be associated with a transfer; view it, edit it and date it. The conveyancers between them will agree who actually dates the transfer, and will deal between themselves any issues arising concerning broken agreements and/or unauthorised actions. Law Society protocols can create formulae for completion taking account of the options and arrangements that can arise in practice. The Land Registry needs to create a system that

allows all the appropriate parties to take the actions that might be necessary. Limiting the actions (e.g. making documents effective) that can be taken by some parties would be problematic, and also limit the take up of the system.”

- “Agree, you also fail to take into account the impossibility of governing the time when banks will affect the transfer of monies. In practice we have to wait for a telephone call or a print out from the bank confirming the money has arrived. Then we have to obtain authority for the release of this money to enable completion to be effected. At some time during this process documents are dated - usually a few minutes after the crucial completion event being the handover of keys (or cash or rent authorities). So "legal completion" is not necessarily coincident with factual completion as a business event or as a beneficial use of property event.”
- “Just a legal completion date – it will be difficult to update the system at the actual time of completion. The majority of the processing will be done later in the day or even the following day by the conveyancers – as the completion day can be intense with telephone calls and other tasks.”
- “The Society favours procedure that mirrors the paper practice. The provisions should state that the transfer takes effect on such date and at such time as shall be notified to the Registrar by the transferor’s Subscriber as the effective date and time of the transaction to which the e-transfer gives effect. The Society supports the proposal that the e-transfer should state that it will take effect on the completion of the transaction to which it gives effect, coupled for record purposes with the facility for the transferor’s Subscriber to notify LR of the date (and, if relevant, the time) which the transferor and transferee have agreed is the date (and, if relevant, time) of that completion. We agree that there should be an optional alternative clause for non-transactional cases stating that the transfer takes effect on receipt by the Registrar of notification, but that this should be the second choice and not the clause to which the screen defaults.”

Question 4

Do you think that reference in the e-transfer to its taking effect upon completion is workable? Specifically, would it be treated, as meaning what we have described as "practical completion" as opposed to "legal completion"? If it is thought not to be workable, can you suggest an alternative which might mark the taking effect of the electronic disposition?



Comments received under 'Other':

- "ILEX agrees that the reference in the e-transfer to its taking effect upon completion is workable. This reflects current practice, with completion being confirmed once monies are received, and the transfer is dated accordingly."
- "In our view practical completion requires two elements, payment of the purchase price and completion of the transfer or assurance by the seller to the buyer. We therefore see that the date and time the eTransfer takes effect as an essential element in ensuring practical completion. We therefore do see a conflict within Paragraph 1 of Schedule 1 to the rules. This states that completion should take place and as a separate act as soon as reasonable practicable the transferor's subscriber notifies the Registrar the transfer is to take effect. This therefore envisages a time gap between receipt of funds and completion of the transfer. We would suggest that this time gap is unacceptable and we see the requirements for the transferor's Subscriber to notify the Registrar that the transfer is to take effect as the key trigger in the completion process. It follows therefore that there must be some obligation on the transferor's Subscriber to notify the Registrar upon receipt of the funds by him or when the transferor's and transferee's Subscribers agree that completion takes place. In any event, we believe that the wording in paragraph 1(c) of Schedule 1 which requires the Subscriber to notify "as soon as reasonable practicable" as weak and open to interpretation. We can envisage that the purchase price may be paid to the seller but the seller's solicitors are unable due to technical reasons, to log on for a further 7 days - would this be

regarded as "soon as reasonable practicable"? This means that the buyer is not in possession of the completed transfer and so is unable to register the transfer to the legal estate pending the delay and further the position of any lender dependent on the transfer may be compromised. We would therefore suggest that the wording should be amended to read "forthwith". We would suggest that all completions now take place by post and this is supported by the Law Society's Code for Completion by Post and we endorse the view that for the completion of the eTransfer to be workable in practice this must be supported by an amendment to the Code to enable conveyancers to rely on the undertaking given to notify the Registrar of completion of the eTransfer. Where a conveyancer is not acting we would suggest that rules must accommodate the fact that a buyer's conveyancer will not wish to rely on the fact the transfer is being made effective solely on the transferor's Subscriber's notice. There must be power for the transferor's subscriber to delegate authority, say to transferee's Subscriber, the Registrar or to another conveyancer. Disputes do from time to time occur as to whether completion has in fact taken place and whilst we appreciate this is a matter for the courts, for the avoidance of doubt, we would suggest that rules should make it clear that there is power for the Registrar to make the eTransfer effective on order of the Court and/or the ability of the transferee's Subscriber to request that the eTransfer is made effective with any dispute being referred for adjudication in accordance with current Land Registry practice."

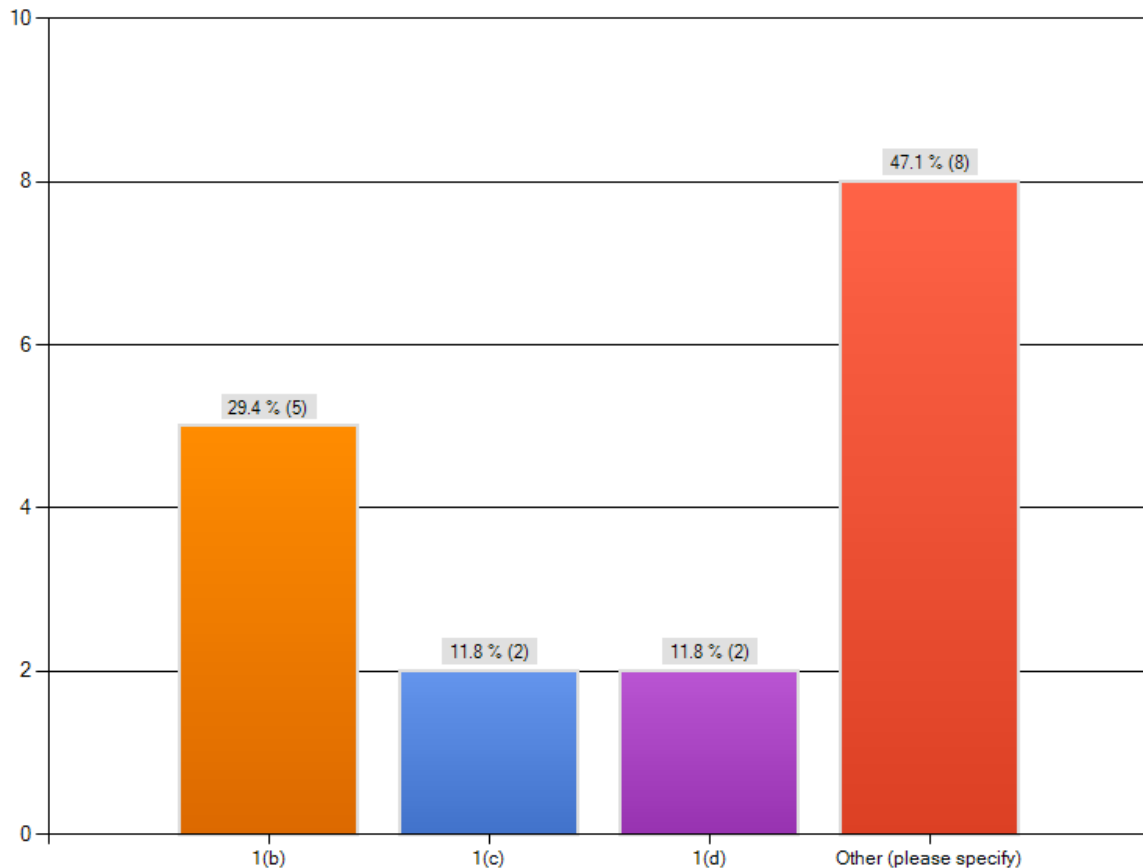
- "We consider the distinction between "practical completion" and "legal completion" in this context to be spurious. In paper conveyancing the transfer is signed in readiness for completion and only takes effect as a deed when the purchase monies are received. This is legal completion and equivalent situation with an e-transfer seems to be analogous. We are not aware of any term of art relating to "practical completion" the handing over of keys is a housekeeping detail; ideally this occurs as soon as the money arrives in the seller's solicitor's bank account but the fact that the keys are not handed over straight away does not mean that completion has not taken place. In such circumstances the buyer would be perfectly entitled to break a window and get in because he already owns the property - although this is clearly not a desirable outcome! If the buyer arrives at the property to find that vacant possession has not been given this does not mean that the completion has not taken place. It merely means that the seller is in breach of the contract. We would propose that all reference to "practical completion" is abandoned and that completion is deemed to occur at the time of legal completion. For the Land Registry's purposes, the date of completion should suffice."
- "Yes there is often not a set time of completion, but the e-transfer should take effect only on the date it is dated as with the current system."
- "It is workable."
- "I don't agree with the whole concept of e-transfers there seems little point in sending something to the land registry until completion has taken place."
- "We do not see the distinction between "practical" completion and "legal" completion as being a helpful one. Under present conveyancing practice completion takes place when the solicitors agree to treat the transaction as completed and the transfer will be dated accordingly. Completion undertakings stem from this basis. Although we understand that it is sometimes the case that solicitors treat completion as having taken place from a practical point of view when the money has been received, we think that this is not the correct legal analysis and creates uncertainty. If this is a legally binding arrangement to trigger completion then "practical" and "legal" completion occur at the same time. If it is akin to releasing a transfer, i.e., an undertaking to complete at a subsequent point in time, then "practical" completion is not completion at all but the trigger for a subsequent "legal" completion. We think it is more common for the money to be transferred to the transferor's solicitors before completion to be held to the order of the transferee's solicitors pending

completion, and this undertaking would normally be released (either expressly or implicitly) at the point at which the solicitors agree that completion takes place.”

- “I believe completion in the wider context would imply practical completion as well as the transfer taking effect - there must be a meeting point of the two at some stage in the transaction. In effect, completion takes place when the practical aspects have been dealt with and effect is given to the transfer.”
- “I am not sure that this is a practical problem. Essentially, what usually happens with 'paper' completions is that the two parties' conveyancers agree completion, i.e. delivery of the deed. That may be when the seller's conveyancer is notified of the money arriving in his account, or when he rings to confirm he has received it and agrees that completion has been affected. It would be comparatively simple for the seller's conveyancer to assess/agree that point in the same way as is at present. It might be necessary to amend the clause to refer to the completion of the purchase 'as agreed between the parties' conveyancers' or similar wording.”
- “I do not think it workable, and am not aware of any way in which this issue can be resolved.”
- “Taking effect should have the same implication as dating. Practical completion is when the conveyancers say they have completed. Legal completion is when the document is dated on paper or electronically. Registration is the securing of practical and legal completion as against all other claims, when done within the priority period of a search. The 3 clear steps need to be kept clear and not merged. It is for this reason transferees must have the ability to date (make effective) the e-TR1 and then register it within priority.”
- “Provided completion may be notified by the subscriber for the Transferor at a time and date subsequent to legal and/or practical completion we see no problem with this.”
- “No see our general concerns above.”
- “Legal completion date should remain – the actual effect would be when the notification is received – as it is now – after the legal event.”
- “The transfer should take effect when it is completed (there will be a date for this). The Land Registry will record the time they are notified as an annex to the transfer (only the date). The time and date associated with the transfer will not be the time and date of completion. It will be for evidential purposes only in terms of authenticating the e-signatures. There is an acknowledged need for protocols to confirm the steps to be taken at the completion stage. It seems unlikely that control over the 'completion' of the transfer can be left entirely to the decision of the seller without input from the buyer who will have various concerns and requirements. But it must remain within the control of the parties jointly. The new Protocol and Code for Completion will need to follow the steps required by the Land Registry closely. Will there be any requirement to look behind the various steps taken to obtain the e-signatures? The parties will need to be satisfied that execution has taken place in a manner that binds. The Protocol will need to set out the mechanics of the completion itself. It may need to set out which party creates the documents and bundles and which has responsibility for the bundle(s). There may need to be some obligations in relation to the notification of the Registrar. Consideration needs to be given to amendments to the Standard Conditions of Sale and TA13 in addition to the Code itself. It is proposed that an addendum will be added to the revised Code when the Land Registration (Electronic Conveyancing) Rules 2011 are concluded and have been laid.”

Question 5

Which draft paragraph of paragraph 1 Schedule 1 do you prefer?



Comments received under 'Other':

- “ILEX is unconvinced that it is necessary to consider such changes. Practitioner feedback seems to suggest that this overcomplicates matters, and may ultimately lead to confusion. Such confusion may arise where there is a long conveyancing chain and a delay with monies reaching the next party. This would automatically delay completion. ILEX feels that the electronic equivalent of dating the transfer prior to sending it for registration should be kept as simple as possible, and suggests that the parties simply agree a date for completion between themselves.”
- “For the reasons above we see no merit in the alternative that the eTransfer becomes effective at midnight of the end of the day in which completion takes place.”
- “We prefer the version set out in Schedule 1 and not the version in the notes. There is no need for the provision that the transfer takes effect on the earlier of the two events and, as already mentioned, no need for the time of completion to be noted. The Land Registry' obligation is to register the transaction and not to superintend it and until there is sufficient funding to introduce a fully integrated e-conveyancing system (including integrated payment system) the draft paragraph first of the two proposals will suffice.”
- “None of the provisions are attractive. The problem is solved by providing for transferee and lender conveyancers to date/make the deed effective!”

- “None, at present the transferee has to lodge the transfer to effect registration and the transferor's involvement ceases when he delivers the signed transfer. Why should the transferor be burdened with further responsibility when you are trying to make the process simpler?”

Question 5.1

Please explain the reason for the choice you have made at question 5.

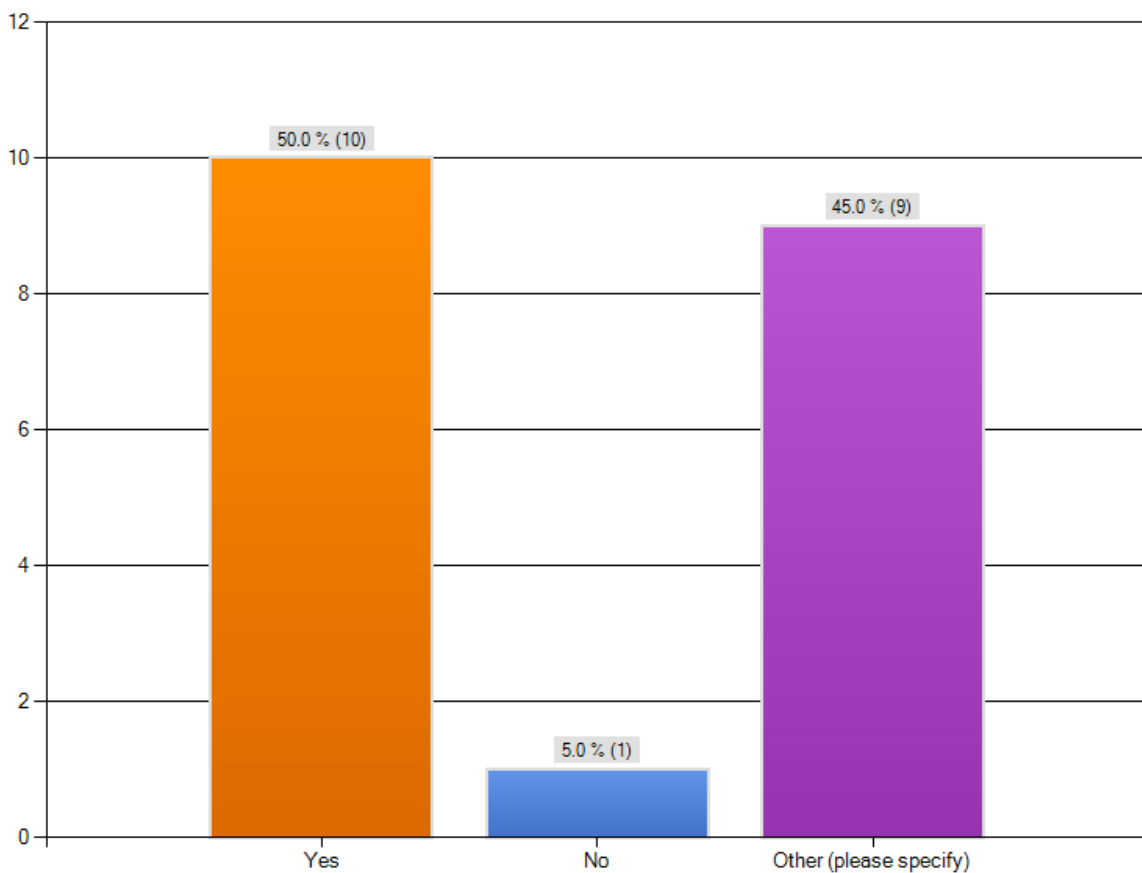
Comments received:

- “It makes sense that there is consistency for all such matters and having a 12 midnight cut-off ensures that completion legally took effect on that day.”
- “Paragraph 1(b) is the preferred paragraph; however, 1(d) would need to be available when things have not gone to plan.”
- “The current or first draft, I prefer the wording of section b.”
- “We prefer the draft paragraph set out in the draft Order. Of the two options (b) (i) and (b) (ii) we think that the first option would only be suitable for very straightforward transactions such as that currently envisaged by the form of e-transfer. Our concern with the first option is that legal completion will not take place until the registrar has received the notification from the transferor's solicitor. Notwithstanding that the transferor's solicitor will give an undertaking on completion to notify the registrar, if for any reason this notification does not take place (either through the failure of the solicitor or because of the failure of the system itself, either at the Land Registry's end or the transferor's solicitor's end) then legal completion will not have taken place at the time when the parties intended it. It may be that for a very straightforward transaction this has no practical significance- legal completion will take place as soon as the registrar is notified and should it be necessary the undertaking can be enforced to achieve this. More complicated is a situation where other transactions depend on the transfer being completed where it is essential for the parties to be certain that completion takes place on the date that they intend.
- We would therefore prefer in practice to use the option in (b) (ii) and we assume mortgagees will prefer this. You are still dependent upon the transferor's solicitors notifying the registrar that legal completion has taken place, but assuming that notification is made at some point, legal completion is then deemed to have taken place at the correct time on the correct date.
- As an ancillary point with regard to option (b) (ii) we do not see why it is necessary (as required under paragraph 1(c) for this provision to be contained in the transfer itself. The transferor's solicitors will not be a party to the transfer so will not be bound by this covenant. We envisage an undertaking being given on completion by the transferor's solicitor to notify the registrar of completion.
- We do not think that the alternative set out in Section 6 paragraph 21 is helpful. We see no practical advantage in completion being deemed to take place at midnight at the end of the day rather than at the time that completion actually took place. Again, for a very simple transaction this may have no practical significance, but for a more complicated transaction it may be essential that completion has taken place at an earlier time so that other things can follow. Option 1(b) (ii) (in the draft Schedule 1) is the closest to current conveyancing practice and we think this is the preferred approach.”
- “I prefer paragraph (d) as it provides a uniform way for the Land Registry to deal with the aspect of completion instead of leaving conveyancers to approach this area with what each feels is the best way.”

- “That contained in the draft Schedule 1 - I think in practice practitioners will have their own preferences and will stick to them, so will prefer to have the relevant provision specified in advance.”
- “(c) - least complicated and most effective way to confirm completion.”
- “1(b) is preferred – as it doesn’t solely place the responsibility on to the transferor’s solicitors to process – which could be a double edged sword.”
- “The Land Registry could require Subscribers to supply a date only and remove the provision relating to completion. This would require only Schedule 1(b)(i) to be used. The Land Registry requires other information to be supplied during the process and time and date could be a similar requirement. This is an alternative to Schedule 1(b)(i) and (ii). This option may not be suitable to those lending funds to facilitate the transfer. The “midnight” provision, whereby the transfer takes effect at midnight marking the end of the day when completion takes place, could be used. The “midnight” provision could also be utilised in circumstances where there has been a system failure. Having a “midnight” longstop prevents the document not having a time ascribed to it and therefore falling foul of the requirements of an electronic disposition.”

Question 6

Do you think that the electronic legal charge ought to make express provision allowing for it to be "uncoupled" from a transfer before it (the charge) takes effect?

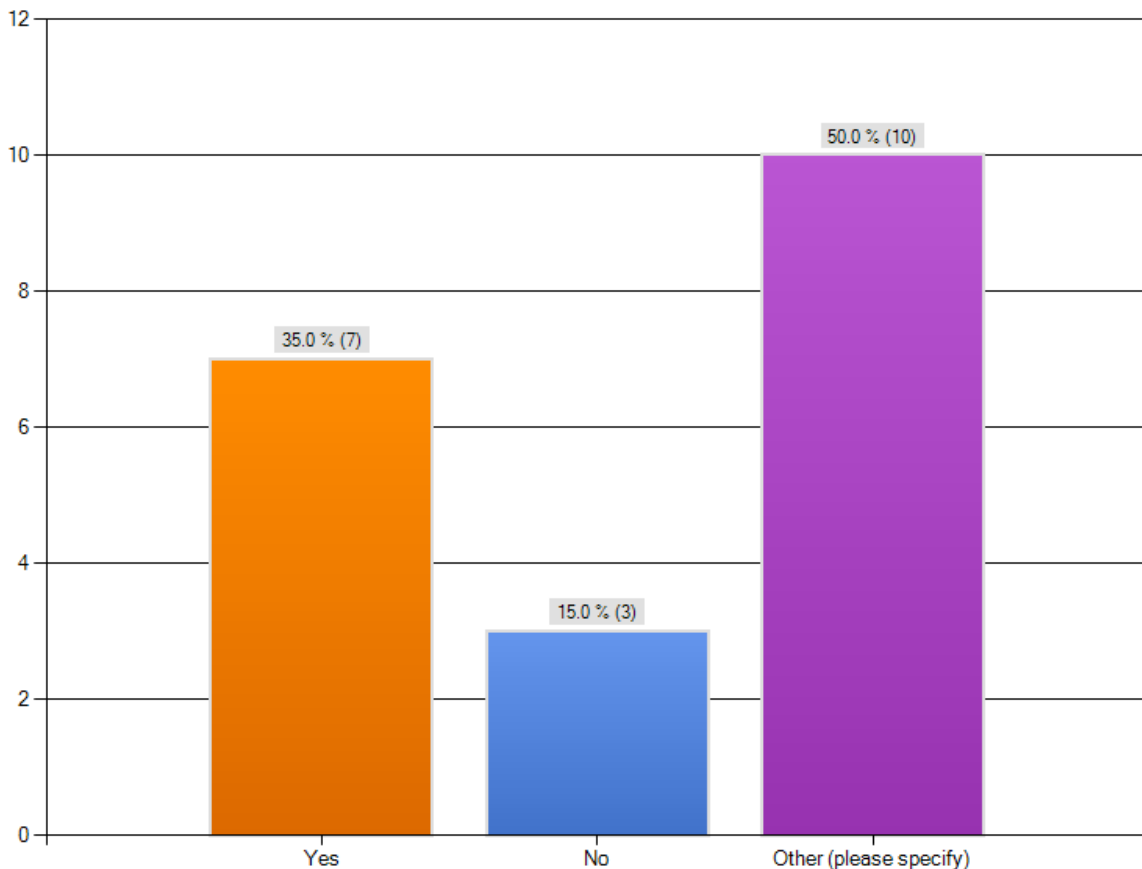


Comments received under 'Other':

- “Practitioner feedback suggests that "uncoupling" is unnecessary, particularly given that it is the intention for the transfer and the charge to take effect simultaneously.”
- “We note that an electronic charge may still be 'uncoupled' from a transfer by virtue of a replacement charge being prepared, which we believe is the most suitable way for this part of the conveyancing process to work.”
- “Yes it is essential that the eCharge can be removed or added to the eTransfer bundle up to the time on which the transfer becomes effective. This will account for changes in funding arrangements which can take place throughout the purchase process.”
- “No, how can it when the mortgagor will only appear on the title once the transfer is registered.”
- “Yes, if this is necessary depending on the circumstances of the particular case.”
- “Yes!!! There seems to be little advantage in having charges capable of being coupled to a TR1. It would be better to stick with the clear and simple structure of e-documents that can be registered through an e-AP1, whether that is a standalone e-CSF or an eTR1 and an eCSF, and any supplemental applications e.g. RX1 etc. Bundling does not seem to deliver any benefit at all. In fact it has the positive disadvantage that the dating of the charge, under the current proposal, passes the responsibility for dating the charge to a third party; which is highly undesirable. It is strongly suggested that devising additional options for process and bundling, initially, is counter intuitive and should be avoided.”

Question 7

Do you think there should be an additional option for when the electronic legal charge is to take effect, namely, "upon completion of the charge"?



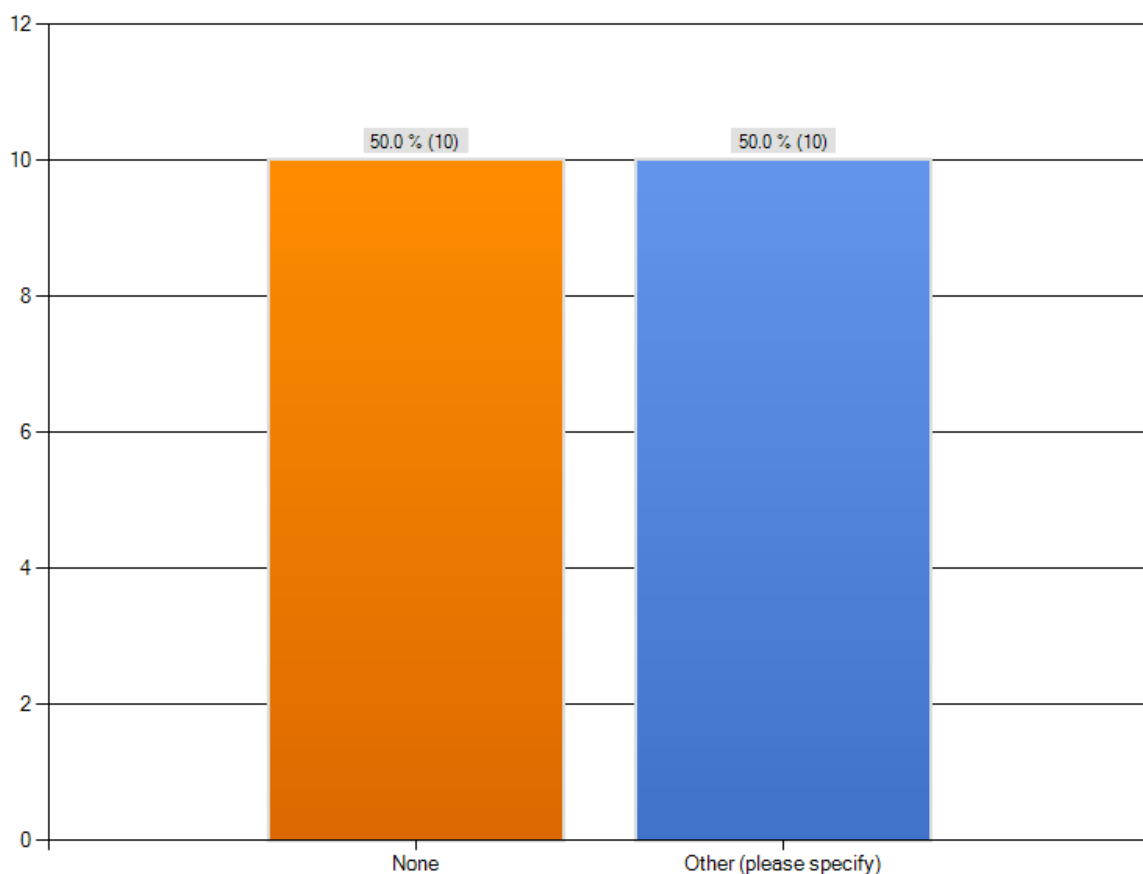
Comments received under 'Other':

- “Again practitioner feedback suggests it would not be necessary to have such an additional option, since the intention is usually for the transfer and charge to take effect simultaneously.”
- “As the Land Registry confirms in paragraph 30, it may prove problematic to define in all cases what is meant by 'completion' of a charge and due to this ambiguity we believe this option should be removed unless a clear and definitive definition can be attached to 'completion' as part of the e-conveyancing process.”
- “We would suggest that the wording contained in the current paragraph 1(b) is sufficient as it allows either for the eCharge to be made effective on completion of the transfer or on notification by the Subscriber as appropriate.”
- “Yes It is similar to the position for transfers, and our preferred approach is for there to be provision for the charge to take effect "on completion" with the registrar being notified after the event that completion has taken place.”
- “Considering the impractical side of determining when a charge is completed, which may never be the case in some instances, I would not prefer to adopt the additional option.”
- “Yes, again I am not sure that the identification of the relevant date is a real problem. Conveyancers manage it now without any real difficulty.”

- “If you allow the dating process by transferees and lender conveyancers, and do not allow bundling of the TR1 and the Charge there will be no need to allow an additional option for dating/making effective the Charge separate from a bundled TR1. The messaging for the dating of the TR1 will give a prompt to conveyancers to date their charges. They will want to date all charges that they create and know it is done, rather than doing it only when default by the transferor becomes apparent.”
- “If the definition of the “upon completion of the electronic charge” can be specifically defined.”

Question 8

Do you have any other comments that you would like to make on the draft rules?



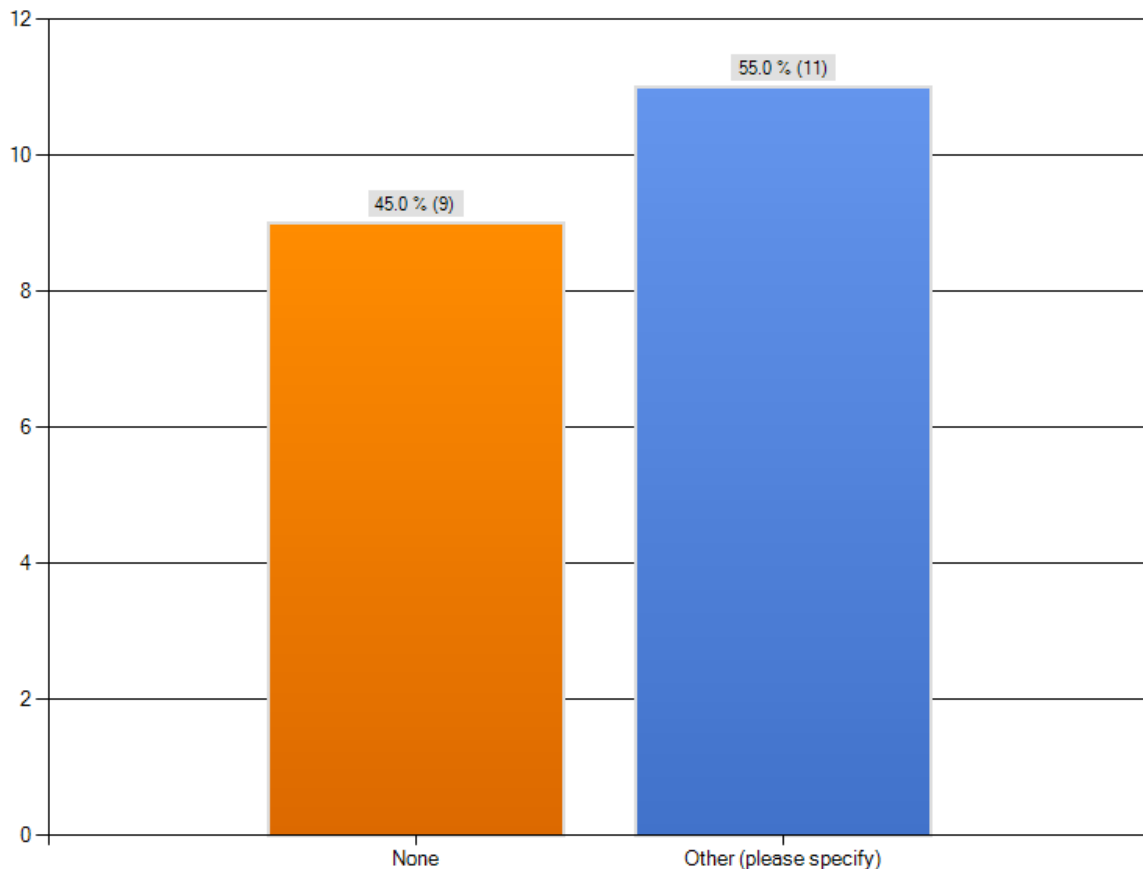
Comments received under ‘Other’:

- “Save for comments made throughout, practitioner feedback suggests that the draft rules seem to be unnecessarily overcomplicated in places. ILEX believes that ultimately the rules should be kept as simple as possible. Furthermore, they should reflect, as near as possible, current conveyancing best practice.”
- “Yes they should not be implemented as they are a recipe for fraud and disaster like dematerialisation of title deeds.”
- “Only a feeling of great discomfort with the entire process which is proposed.”
- “Again I think it’s very complicated and lots of conveyancers will have to go back to the drawing board to re-learn all of this. I also think that small firms who do not have access to e-conveyancing will be left behind.”

- “We note and appreciate the reason for the initial limitations on the eTransfer but would suggest that an electronic format may find more take up if it could be used by a lender in possession (TR2). In these cases the lender governs the form of transfer and often takes the responsibility for its preparation and form at the cost of the buyer. The lender's solicitors in this case could attempt to influence the use of an eTransfer as they may be in a position to offer a price incentive to buyer's solicitors to use the electronic method, rather than paper TR2.”
- “We have a concern with paragraph 2(ii) of Schedule 2. If the solicitors for the parties have gone to the trouble of drafting additional provisions to be contained within an e-charge, then in our view they should prevail over any of the standard provisions. Further, with reference to paragraph 2(iii), if any of those additional provisions contain matters that would warrant an entry on register (for example a restriction) then this should be done. We appreciate that for the way the e-charge is currently envisaged this may be beyond the scope of what the system will allow, in which case it will simply make the use of an e-charge inappropriate in any circumstances where additional provisions need to be included. If at some point it is intended that the system should be used more widely, or made compulsory, or used for more complicated transactions, it will be regarded as being essential that additional provisions can be included and that they should prevail over any standard provisions and should be reflected on the register should that be appropriate. We see no difficulty in establishing the point of completion where no monies are being advanced on completion of the charge. Normal conveyancing procedure would be for the solicitors acting for the relevant parties to agree the point at which completion of the charge takes place.”
- “Has or are any provisions being made for early completion as has been the practice from 3 August 2009 - if not are there any plans in the pipeline to this effect?”
- “In 5(1) there is a reference to the time - not just the date. If this is an internal Land Registry procedure for priority purposes that is appropriate. If it is intended to reflect the moment when completion took place it is wrong. For example, a buyer may need to give a notice to a tenant immediately after completion, the notice can only be valid if given by the legal owner, how can the buyer be sure the notice will be valid if he has no control over the time to be inserted by the Land Registry and even if he does, he may subsequently be put to proof that the notice was not posted prematurely. Waiting a day is not an answer as that would mean that procedural rules are governing the substantive rights of the citizen.”
- “Only to ensure that it allows for changes that are needed based on experience. We do not want to find ourselves where we are now on e-CSFs. We have a broadly sound idea that cannot be used due to defects in the system, which cannot it seems be corrected within the rules as they stand.”
- “I think the changes already made i.e. no land & charge certificates have led to a massive increase in fraud. Not only that but when someone makes such a large purchase, they should have more than a couple of sheets of A4. This will lead to yet more potential for fraud. I do not think that this will speed things up. It will also, I think lead to a lot of negligence claims against solicitors when clients say they did not understand the whole process - clients often do not read all the documentation but when they actually have to sign something that focuses their minds and it is something readily understood. I do like the fact that searches can be done online but I feel that the purchase or sale of a property is far too big an event for the majority of the population for it to be reduced to this.”

Question 9

Do you have any views on proposals relating to the operation of the e-transfer/charge?



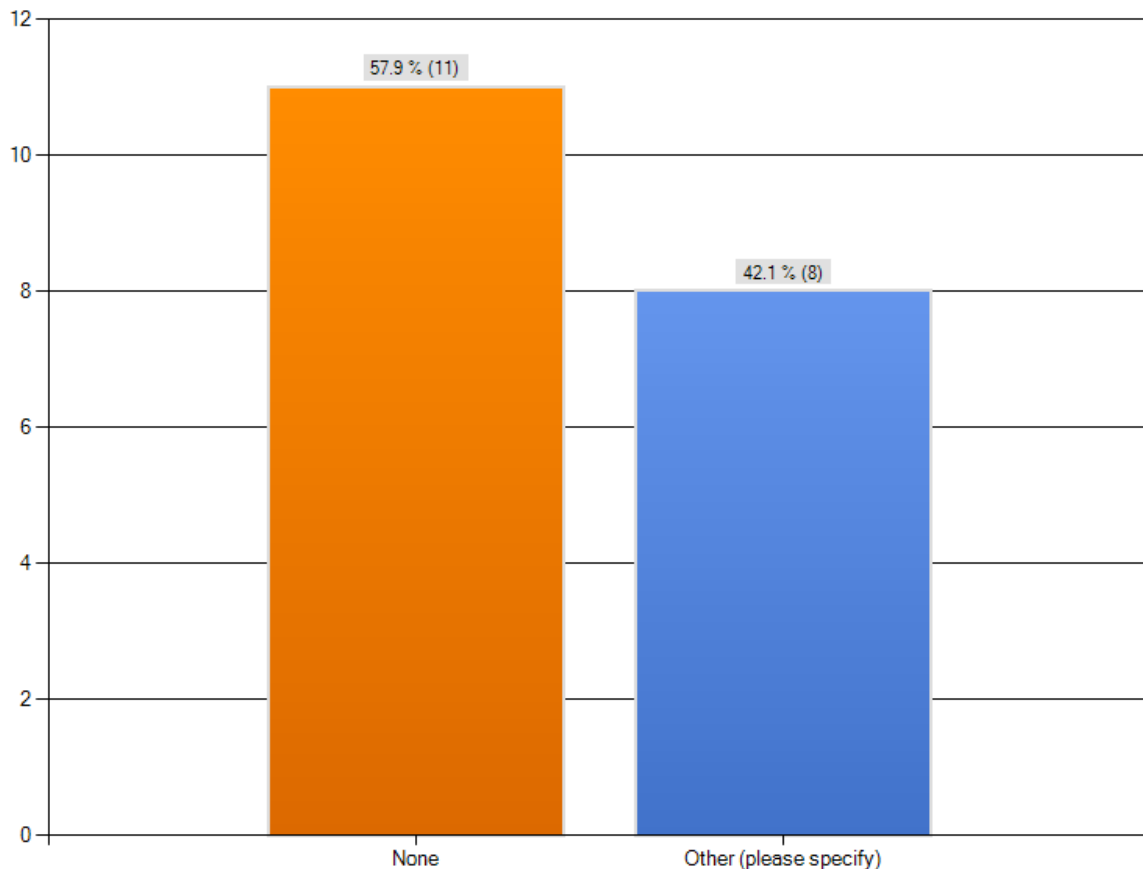
Comments received under 'Other':

- “ILEX believes that in order for any proposals to operate successfully integration between lenders, the Land Registry and HMRC needs to be ensured. Such integration will enable the e-transfer and e-charge to take effect in the same way a paper transaction would, i.e. simultaneously. ILEX appreciates that such integration will mean information sharing across completely different platforms and organisations. The work involved in this cannot be under estimated. The feedback from our Practitioners stresses that following previous matrix experience, it is essential that all parties are involved at a level that enables collaboration and delivery to be achieved on the back of a seamless platform, perhaps by utilising elements of the Electronic Notification Discharge ('END') process which already operates together with the HMRC online filing systems.”
- “Yes they should not be implemented as they are a recipe for fraud and disaster like dematerialisation of title deeds.”
- “There are problems as some building societies no longer give notice that they have dealt with the land registry which makes undertakings given on completion problematic and leaves purchasers in the lurch as to whether a charge has actually been redeemed. It is much simpler if the building society gives notice that they have dealt with redemption or if there can be a search done at no cost that the charge has been redeemed.”
- “Only that the parties should be signing their own documents directly. There is no need for powers of agency to conveyancers to sign on.”

- “Main concerns are the input timing. The framework is designed to streamline and gain efficiencies which the currently rules do not seem to support, mainly in view of the authorisation procedure.”
- “Yes, see above in connection with decoupling the TR1 and the Charges; C4 rights need to be refined; e-signing by citizens have to be improved; optional clauses need to be refined in TR1's; system must work with evolving practice not restrict practice or unnecessarily change practice; the eCSF's and e-TR1s must be in a system that is e-based for creation of the transfer/charge, to registration, through requisitions to completion of registration and return of the TID. Moving between e-process and paper based process is unattractive and will discourage use.”
- “I would urge the Registry not to be too prescriptive about the terms that can be included in the transfer. There are all sorts of terms that might need to be included in a transfer that are not within 'standard' clauses, and if the Registry wishes to have the system used widely, it will have to try and accommodate those circumstances. A panel for 'free' drafting should be included.”
- “As is clear from the above, I do not believe there are adequate procedures in place to ensure protection from fraud before this significant change is made to the registration process.”
- “We have reviewed the proposals but have no further comments on the details of these. We would however echo the sentiment expressed in paragraph 4.1 of the consultation paper, that the new signing process should be developed to be as consumer-friendly as possible.”
- “4.2: As far as possible, the parties concerned must be encouraged to do their own e-signatures. Signing by conveyancers on behalf of citizens must be used only as a last resort. Is a password being provided to those who operate the system to ensure thorough security? It may be useful to have facilities to add more addresses if co-owners were to have different addresses for service. Does the system have the ability for personal representatives/executors to act for the deceased owner? It may be ideal for both parties to a transaction to be able to view the transfer before it is accepted as if there are disagreements it can be sorted out at an early stage.”
- “The proposal envisages that once a signature has been applied to an e-document there can be no further edit to the e-document without invalidating the e-signature. We feel strongly that the Land Registry should allow an e signature to be reapplied to a document once any agreed amendments have been made. It is not clear whether the Land Registry is proposing to allow further amendments once all e-signatures have been applied but the e-transfer not yet completed. In our view the system should allow for amendments to be made to an e-transfer at any time up to completion; if appropriate any e-signature that has already been made should be reapplied before completion. Late amendments to documents are common, and if this is not allowed then, (we assume) that the only alternative would be to abandon the e-transfer and to create a new one from scratch. We assume that this would also envisage having to re-create all other documents bundled with it (for example e-charges, e-AP1's) which would be extremely inconvenient in practice. Although we would not expect e-transfer to be amended at this late stage (bearing in mind that typically the form of transfer is agreed at exchange or dictated by the terms of the contract), one reason for having to make a late change would be to reflect the fact that a party had decided to arrange for their solicitor to e-sign rather than to do it themselves (or vice versa), and this has to be stated on the transfer itself.”

Question 10

Do you have any other comments on this consultation?



Comments received under 'Other':

- “We see the use of the e-transfer (and associated e-documents) as being an additional amount of work beyond current conveyancing practice and envisage that solicitors may take the view that it is easier to carry on with their current practice rather than to adopt the form of e-transfer suggested. Has the Land Registry addressed how it might persuade solicitors that this is something that they should adopt? What are the real practical benefits of the new system for solicitors?
 - The consultation assumes that only two firms of solicitors will be involved and that the transferee's solicitor will always be acting for the mortgagee. While this is often the case in residential conveyancing, it is not always the case (some mortgagees like to have a separate firm representing them) and in more complicated or commercial transactions it is usual to have a separate firm acting. Can the system allow this?
 - Even if the answer to question 2 above is no, we envisage that if e-conveyancing is going to become more widespread in the future then at some point the system must allow a number of different firms of solicitors to be involved, and clearly, all must be able to look at all or parts of the e-bundle to the extent that they concern their client. It should not be difficult to create an electronic system of gateways so that certain firms of solicitors can be given access (acting for certain of the parties) to some of the documents in the system. This is already envisaged by the acknowledgement that under the current proposal a transferor will not be able to see or know of the existence of a charge by the transferee.
 - The consultation assumes that the lender's solicitors will notify the registrar of completion of any e-charge (if not coupled with the e-transfer). If the solicitor is also acting for the

- buyer this is fine. If the system were to allow two firms to be acting separately for buyer and lender then in our view either should be allowed to notify the registrar of completion.
- At present the system only envisages two parties (the two firms of solicitors) actually being able to access the e-transfer on the system. Is there any reason why the parties themselves (the transferee and the transferor) should not be able to have access to look at the documents on the system if they think it is appropriate? It may be that for the sort of very straight forward transaction that is currently envisaged it is unusual for the transferee and the transferor to be involved in the drafting and negotiation process, but they would expect to see the document and have an opportunity to read it when they sign (and where solicitors sign documents on behalf of their clients they require their clients to read and approve the document before it is signed). At what stage under the current proposals will a transferee be able to review the e-transfer?
 - Following on from this, we envisage that if the system were to be used for a slightly more complicated transaction there may be other parties apart from the transferor and the transferee and the mortgagee and their respective solicitors who might have an interest in reviewing the e-documents, for example if the transferor were trustees, the underlying beneficiary may have an interest in approving documents. If the transferee were a joint venture then two parties and possibly two firms of solicitors might be involved. We appreciate that this may not be possible under the current proposals, but it would be necessary if this were to be expanded in the future.
 - The proposals do not appear to envisage attaching an e-DS1 to an e-transfer at the point of completion. Is there any reason why this should not be allowed under the system? Although it is common in residential conveyancing for discharges to be dealt with sometime after completion, this causes problems in practice and with more complicated transactions (and commercial transactions) it is normal to require a DS1 to be handed over on completion together with the completed transfer, and we think that it would be helpful if this could be incorporated now.
 - We assume that if additional provisions are to be included in a charge (under paragraph 2(2) of Schedule 20) they will have to be typed into the e-charge on each transaction. Will it be possible to upload in electronic format an extract from a word or pdf document? While we do not necessarily envisage that this is being necessary for the sort of very basic transfer and charge forms that are being used at present, if the system is to be more widely used in the future this would be necessary.”
- “The rules and schedules described appear to describe a plausible technical solution that builds upon the existing Land Registry network where practitioners are required to enter into Network Access Agreements that govern the creation and usage of the relevant electronic credentials. Our concern is that the ultimate trust and security in the system will depend on the processes that create and manage these credentials and, therefore, such a system should be externally accredited to ensure that it meets appropriate standards such as those applied by tScheme. Without having appropriate trust in the provision of credentials to solicitors or citizens, or in the application of appropriate technical means for the generation of keys, the selection of algorithms and key-parameters, the use of timestamps and the format of applied electronic signatures it is impossible to say whether the system is sufficiently robust to protect users now and in the future. Retrospective questioning of the technology would be a nightmare!”
- “The e-processes must have a proactive element, delivering email messages/alerts with links, to conveyancers, so that the process is more intuitive with prompts. Conveyancers would then have to interrogate the systems less to become aware of e-events.”
- “I object to overly long consultation papers - as they inhibit busy practitioners from consideration of these far reaching proposals. I object to a consultation paper which does not have an adequate executive summary at the outset (that which has been provided is as opaque as the paper on which the print out has been produced). I object in the extreme to the use of Network Access

agreement terms as they do not enable the firms involved to identify which individual has made entries so monitoring and checking for security is jeopardized. I am concerned that SDLT should be restricted to those with an online service; they invited independent firms to exhibit their services - which extend a better and more comprehensive service than the basic one of HMRC. By only allowing HMRC service users, it appears you are discriminating against the independent providers.”

- “With regard to the inability of the Land Registry system to auto populate the transferors' names - I am not entirely convinced that this will essentially prevent fraud. Also, I feel that there must be systems in place to edit the transferors' names if they are incorrect on checking the latest official copies of the register. As for provisions for the same firm to act for both parties - does this not contradict the 'Conflict of Interest Rules'? I would like to clarify whether this applies across the board to even 'Transactions at Arm's Length'. Due to various formalities involved with E-Conveyancing, mainly the Network Access Agreement, would it be possible for members of the public to do DIY conveyancing? If the answer to this is in the affirmative, then how will people be educated as to what exactly will be involved to do their own conveyancing? Is it possible to provide them with an online induction for a fee?”
- “Optima Legal supports the Land Registry in their e conveyancing project. We have concerns, however, regarding the level of investment required to take up the new eTransfer and eCSF, compared with the general take up by other conveyancers and lenders. We therefore consider that a fees incentive for dealing with an e transaction is appropriate to facilitate greater uptake and participation. We appreciate that Land Registry are unable to provide a business advantage to one subscriber over another but we feel the same can be justified on commercial grounds in that it must be demonstrably cheaper for the Land Registry to complete an electronic case than one which is paper based.”
- “I went to a consultation about 10 years ago and when a lot of this was discussed and the land registry said that no way would fraud be increased and it has. One of the results of fraud is an increase in our premiums and firms being knocked off solicitors panels. I think this whole scheme is a recipe for disaster.”
- “Yes, they should not be implemented as they are a recipe for fraud and disaster like dematerialisation of title deeds.”
- “The Society supports the introduction of e-transfers and e-signing by clients and their solicitors when the terms on which this is to take place – and the circumstances in which this can safely take place – have been settled. The Society reiterates its support for the development of an e-conveyancing system and is committed to working with the Land Registry in order to try and resolve the type of issues which have been identified in this document. The following main areas of concern have however been set out in this Response, which the Society believes will inhibit the take-up and jeopardise the success of the e-conveyancing initiative generally unless addressed:
 - The Society is of the opinion that there is a lack of information about the system's scope, introduction times and operation of the system as a whole. The Society believes that the e-transfer and e-signature services that form part of this offering need to be set in the context of an overall project. This would set out the nature of the other services that are likely to be offered and when these might be available.
 - The current hybrid system of paper and electronic services combined has served to reduce the security of the system. As these services become more than information services and become major parts of the conveyancing process the fact that they will run in parallel with paper systems serves to increase rather than decrease the work of conveyancing solicitors.
 - We are concerned as to the proper legal basis by which a conveyancer can e-sign a document for a lay client.

- The services proposed should not be introduced prematurely. Other more fundamental issues need to be resolved in priority.
- More work needs to be carried out in relation to the mechanics of the manner in which completion is taken place using an e-transfer and is notified to the Land Registry so that authentication can take place and the Society is keen to work closely with the Land Registry to resolve these issues.”

5. Conclusion.

As always, we are extremely grateful to everybody who has taken the time to respond to the consultation. It is clear that many respondents have given it detailed consideration and have put much thought into their responses. The views expressed on the ‘technical’ application of the draft rules, and our proposals for the operation of the electronic system (see questions 3 to 9 inclusive), have helped us to refine both the draft rules and the proposed system to ensure we build a system that is both secure and user-friendly.

5.1

However, from our analysis of general comments we believe that four main areas of concern emerge from the responses. These are:

- 5.1.1 fraud
- 5.1.2 timing and take-up
- 5.1.3 the use of electronic signatures
- 5.1.4 impact assessment.

5.1.1 Fraud

There was a general concern (shared by the Land Registry) that nothing we do should increase the already unacceptable amount of conveyancing and mortgage fraud. However, several respondents felt that fraud was such a major issue that we should not proceed any further with e-conveyancing as this will only exacerbate the situation.

No respondent explained the link between e-conveyancing and fraud other than to link the rise in fraud to the abolition of land and charge certificates following the implementation of the Land Registration Act 2002. We do not accept that this is the case.

The rise in fraud has occurred during a period when, apart from a small number of electronic charges, it is not possible to use or submit for registration electronic documents. Whereas it is true that some concerns were raised by the ability of an individual to apply anonymously for an official copy of the register and documents referred to therein, the Land Registry closed down that facility some time ago.

With regard to land and charge certificates the decision to abandon the use of charge certificates was taken many years ago at the request of lenders, and there is no evidence that this has caused a problem. Indeed it is difficult to see how this could be the case. The abolition of land certificates could arguably make fraud easier, but if the conveyancer or lender carries out the required identity and ‘know your client’ checks fully and correctly this should not be a problem.

Furthermore, we are aware of instances where a fraudster has improperly obtained or stolen a land certificate and this has lulled the conveyancer into a false sense of security, taking the view that if his client has the land certificate they must be who they say they are.

The situation with discharges has actually been improved by the use of e-DS1s. Many fraudsters have in the past attempted to produce fake paper DS1s and some have succeeded in having a charge removed from a register, allowing them to sell or mortgage the property free of the original charge. The use of e-

DS1s by a large number of lenders has put a stop to this. Lenders submit their discharges directly and securely to Land Registry where staff can automatically identify the sender.

5.1.2 Timing and take-up

Several respondents felt our timing is wrong on the introduction of e-transfers, and they made various points about this. One argument was that, in a period when the housing market is so depressed, this is not the time to launch a new approach to conveyancing.

Others pointed to the very limited number of electronic charges lodged to indicate the limited appetite for electronic documentation, not only from conveyancers, but also from lenders and the public at large. The Law Society in particular felt that if we are to proceed with the introduction of e-transfers we should ensure that Land Registry should have the legislation and all its practice instructions in place a good six months before the system is launched to allow for training in and acclimatisation with the new system.

Even then the Law Society felt a long pilot service should be introduced before it became 'business as usual'. It also felt that the limited take-up of electronic charges indicated that the likely take-up of e-transfers would also be small, with little or no benefit to conveyancers and their clients for some time.

5.1.3 E-signatures

Our earlier consultation on the proposed introduction of electronic charges generated a great deal of discussion around the question of e-signatures and whether it was possible for trustees to delegate signing to a single agent and achieve the 'overreaching' effect of section 2 of the Law of Property Act 1925. In view of this debate we amended the supporting secondary legislation so that a chargor or chargors could only sign an electronic charge in person. It was not possible to delegate the signing to an agent.

Since then we felt that opinions had changed and that a significant number of conveyancing professionals wanted a system where conveyancers could sign on behalf of their clients. The new proposed Rule 7(1) provided that where the electronic disposition is to be authenticated by or on behalf of two or persons as transferor, transferee or borrower, either:

- each person must authenticate personally
- they must collectively delegate the authentication to a user using Form A in Schedule 3.

The collective delegation is under section 11 of the Trustee Act 2000. In section 5.4 of the consultation paper *Secondary Legislation Part II*, we gave our view that where there was collective delegation by joint proprietors to a single person, a disposition signed by that person would have an overreaching effect, despite section 7 of the Trustee Delegation Act 1999. We explained that this view was supported by counsel's opinion.

The proposed rules were therefore drafted with this in mind and gave conveyancers a choice. They could either get their clients to attach their own electronic signatures in person or they could arrange for their clients to delegate this task to an agent, who was likely to be the conveyancer.

Respondents expressed concerns over this in previous consultations and continue to do so. The Council of Mortgage Lenders, for example, felt that in view of the high incidence of fraud its members would not allow delegated signing on behalf of borrowers except in a few limited situations.

Contrastingly, the Law Society felt that conveyancer signing had to be the way forward. However, both the Council of Mortgage Lenders and the Law Society, alongside a number of other respondents, raised concerns over the acceptability of a single conveyancer signing on behalf of all the joint owners of a property. As we have mentioned above, Land Registry's view, supported by counsel's opinion, is that it is possible and the resulting signature by the sole agent is sufficient to overreach all beneficial interests, provided there is collective delegation in the form set out in the draft rules.

However, the general feeling was that there was still some doubt whether our proposal does achieve its aim and that, unless the question was either settled definitively by the court or was clarified by primary legislation, many conveyancers and charges would be reluctant to allow collective delegation. Of course, under the proposed new rules, any conveyancer or lender who had doubts could have the documents signed electronically by the parties in person.

5.1.4 Impact assessment

Land Registry adheres strictly to the Government's protocols on the production of impact assessments when they are deemed necessary. In the current situation we consider that an impact assessment was not needed, and our view was accepted by colleagues in the Ministry of Justice. However, several respondents (even those who supported our proposals) did not share this view (please see responses to Question 2). A clear majority felt that an impact assessment was essential.

5.2

Land Registry's concerns and response

Although it would be fair to say that we have received a mixed response to our general proposals to introduce e-transfers, and there clearly is a need to modernise the system of conveyancing and land registration in England and Wales, it is also clear that several respondents, including some who support our aims and objectives, are uneasy about proceeding at the present time.

We are therefore concerned that, in the current market conditions, take-up of a new e-conveyancing system could be limited, and we do not believe we can justify the cost of setting up a system that, in the foreseeable future, is unlikely to be used by large numbers of conveyancers.

We realise that, for a transfer of property to be effected electronically, we would need the cooperation of both seller and buyer, their respective conveyancers and the mortgagee. Given our experience with electronic charges, where fewer parties are involved, we feel that the number of transactions that we can expect in the early days of an electronic system is likely to be small.

We therefore propose to put the development of an e-transfer system 'on hold' for the immediate future and to delay implementation of the planned new rules until the return of a healthier financial climate and a more active property and mortgage market.

This does not mean that we are abandoning our work on electronic conveyancing, or that we will stop work on making the conveyancing and land registration systems in England and Wales simpler and more user-friendly both for practitioners and their clients.

We will continue to examine our proposals, especially the areas of particular concern to respondents (fraud and collective delegation by joint proprietors), so that we can produce a more acceptable solution over the next few years.

We will, however, continue to offer our electronic charge service and we will examine the possibilities for making this service more user friendly.

In the meantime we have decided to concentrate on a simpler e-delivery service. This would provide a simple system whereby applications for most transactions affecting registered land could be lodged electronically and confirmation of a successful application (including an updated register) would be returned electronically.

Our intention is to create a system whereby electronic applications are submitted with attached scanned copies of the dispositional documents. We believe we can achieve this within the current legislation, although we have yet to consider this in detail. To the customer, such an application would appear to be totally electronic, and might be submitted through any of the existing electronic channels. However, at

least at the outset, the vast majority of the registration process within Land Registry would continue to be manual, although this process would gradually include more automatic systems.

We believe that such a system will provide clear benefits to customers within a much shorter period than expected under the full electronic conveyancing system. It would enable customers to complete their process electronically as all forms they require for a particular process will be available. As the actual conveyancing process (as opposed to the registration process) does not change, an applicant could lodge an application electronically without having to involve other parties to the transaction.

Advantages for Land Registry and its stakeholders in relation to adopting a strategy of accepting and returning applications electronically are:

- Land Registry can be utilised as a fully online business across preliminary and substantive applications
- reduced time to market when compared with full automation
- easy for customer to understand – single/clean channel for entire process
- creates a 'level playing field' for all users, irrespective of specific form usage
- avoids e-signature issues
- development of full e-processing can be prioritised to suit Land Registry's needs and those of its customers.