



## Isle of Man Land Registry -Policy Guidance Note GN02/2018

### Statement of internal policy of discretionary use of rule 127 powers to reduce risk to the Register at First Registration.

This guidance relates to those applications for the First Registration of Land at the Land Registry identified as high risk applications by the Registrar and the steps taken by the Land Registrar to mitigate the risk to the integrity of the Register and to the General Revenue.

Land Registry Users are familiar with the procedure that has been exercised for several years in connection with applications for possessory title or for applications involving claims of prescriptive rights. These applications are treated as high risk and, subject to the specific matters identified in each application, the Land Registrar has developed the practice of requiring notices to be served to parties identified as interested and also where appropriate to require adverts to be published in one or more newspapers printed and in circulation in the Isle of Man.

The same approach is now being applied to applications for voluntary registration and applications in which both sides of a transactions are represented by the same firm of advocates. These applications are deemed high risk and this note is intended to provide further clarity to Land Registry Users as to the exercise of the discretionary powers of the Land Registrar to mitigate such risk.

In high risk matters the Land Registrar considers whether to award the class of title applied for. The Land Registration Act 1982 imposes no positive duty on the Land Registrar to approve any title and the Land Registrar may withhold registration in any application proceedings until such information and documents as he considers necessary to justify the award of title are provided. The Land Registrar is being asked to provide a state guarantee and must be satisfied that it is justified to do so.

A method of providing greater transparency and certainty to the process of registration and guaranteeing title is by serving notice on the relevant land and/or requiring advertisement of the application in newspapers circulating in the Island. People are then given an opportunity

to object or to ensure that any rights or claims that they have over the land are taken into account.

Bringing greater publicity to the registration process has long been recognised in the process of applying for possessory title and generally as a safeguard against fraud, concealment or honest oversight and helps the Land Registrar to protect the integrity of the Register.

### Identifying the risk profile of the application

1. By way of examples only it is likely to be considered highly desirable for additional notices to be served to manage risk where:
  - a. the balance of the surrounding land is unregistered especially in a rural setting or where boundary features are not clear
  - b. an application relates to land that appears to have the potential to be used in common with others (eg unadopted access roads, agricultural tracks and bridges, estate areas in urban settings)
  - c. where the root and devolution of title are devoid of accurate plans.
2. By contrast the following circumstances are likely to mitigate risk and so limit the necessity of addressing the risk contained in an application by way of further notices:
  - a. all the neighbouring properties are registered or abut adopted highways
  - b. the network of burdens and appurtenances appears established and this is captured on the register
  - c. other evidence on the register supporting the nature of the application (for example the presence of a large number of registered leases of an absolute class of title will operate to reduce the risk of an application for registration of a freehold made by a reversioner)
  - d. the presence of an approved development plan
  - e. the presence of registered leasehold interests providing in themselves supporting evidence of a level of control and interest from a disponent to a disponee.
  - f. other factors derived from the Land Registry's familiarity or previous experiences of the application land or its surrounds.

in such cases and especially if pre-application notice has been served in accordance with Practice Directive PD02/2017 then the Registrar may only require post-registration notice to be made on the Land Registry notices webpage [www.gov.im/landregnotices](http://www.gov.im/landregnotices) or in exceptional cases (and where rule 40 does not apply) no notice to be given at all.

### Risk management

It is an exercise of the Land Registrar's discretion whether how and to whom notice should be given. The Land Registrar is interested in both the merits of each individual application (on which he will be informed by the Senior Registration Officer handling a particular matter in

the first instance) but also to ensure consistency of approach and that as a whole registration is delivered in accordance with the overriding objective of the Land Registry -**the just expeditious and economical disposal of registration proceedings.**

It is recognised that prior to providing any undertakings to lenders an advocate requires as much certainty as possible in advance of submitting an application. Practice Directive PD02/2017 accordingly facilitates advance notice being given of a proposed application for voluntary first registration.

The following are examples of the factors that the Land Registrar will consider before making any order for additional notice or publications (if any are to be made):

3. *Whether the Applicant has adopted the pre-application notification process provided in Practice Directive PD02/2017.*

Pre-application notice does not guarantee title will be granted as applied for but in reducing the risk of objection it will be considered a positive factor and may lead to no further notices being required. Even where an Applicant has elected to follow the Practice Directive PD02/2017 procedure the Land Registrar may consider it desirable to require additional notices to be served before authorising the award of title.

4. *Whether the application extends to the registration of any appurtenant rights over registered or unregistered land. Many applications will.*

Prior to the registration of such rights rule 40 of the Land Registry Rules 2000 requires notice to be served on all persons appearing to have an interest in or be in possession of that land and also (in the case of registered servient land) on the registered owner. Where rule 40 requires notice of the appurtenance to be registered it will be prudent in most circumstances also to advertise (at the same time) the escalated risk nature of the application. A rule 40 notice is mandatory but the method of providing notice is a matter of discretion. The following will be considered:

- a. the type of rule 40 notice which is most appropriate to be served. As a bare minimum it is likely the Registrar will require post-completion registration to be published on the Land Registry notifications page. This will be done by the Land Registry without further involvement from the Applicant.
- b. whether pre-award notice should also be given and if so:
  - i. on the Land Registry website,
  - ii. by planning style notice on the land,
  - iii. by written letter to neighbours; and/or,
  - iv. by advertisement in the Island press.
- c. the time period for this rule 40 notice. Where notice is required the **minimum** period is 21 days but there may be times when a longer notice period may be considered desirable (where for example the land interest is high value but it is difficult to identify the affected owners of servient land).

5. The Land Registrar may consider it appropriate to inform the Applicant in advance of the intended decision as regards any additional publication or notice requirements as a draft Direction or otherwise. If this is done, the Land Registrar will consider any responses received. When this has been done in the past there have often been valid reasons advanced by the Applicant for a particular mode of notice or evidence submitted which reduces the risk profile (for example Court awards relating to the location of boundaries). Once a Directions order has been given the applicant is at liberty to apply for it to be reviewed by the Land Registrar where there is reasonable cause for it to be reconsidered.

The Land Registry are sensitive to the additional burden this process places on applicants but seeks to reassure Land Registry Users that we would not be requiring additional notifications if it was not desirable for the purposes of maintaining an accurate title register in accordance with our obligations under the Land Registration Act 1982. Tynwald expressly explored this point when considering the Recommendations of the Select Committee on the Registration of Land [PP No 2016/0078] and concluded that the additional burden placed on the applicant was proportionate to the goal of populating an accurate and definitive register of title.

There is an appeals process to the Land Commissioner against any order of the Land Registrar. However, it is not the intention of the Land Registry to force Advocates to incur the cost of resorting to this appeal mechanism. We aim where we can to accommodate valid comments made by submitting advocates about our approach where alternative evidence can be provided to mitigate the perceived risk.

6. Advocates need to be able to evaluate whether detailed directions will be given in any specific case to enable them to manage their clients' expectations. As a working rule it may be prudent for submitting advocates to start from a presumption that (where the application presents a high risk and it is therefore desirable for it to be served) the Registrar expects to see (i) notice given for 21 days by prominent notice on the land and (ii) by letter to neighbours and/or by advertisement in the newspaper either in advance of or during the application process. This is considered a proportionate response to mitigate the increased risk to which we expose the General Revenue whenever we make a title award. Example factors for evaluating high risk applications are considered at point 1 and 2 above.

#### **The range of Land Registry requirements.**

7. Having identified that an application is high risk there are a range of responses the Registrar may order. These include:
  - a. rejection (where for example the certificate of title is materially flawed);
  - b. no further notice required (where for example Practice Directive PD02/2017 has been followed or adjacent owners/interest parties can be easily identified and have all indicated their support of the application) or where the Land Registry already have detailed knowledge of an application site or related

titles to such a degree that it is deemed low risk to proceed without further notice;

- c. notices limited to notice on the Land Registry notices webpage [www.gov.im/landregnotices](http://www.gov.im/landregnotices) in advance of or following registration only;
  - d. Notice in the Island press **and/or** letters to neighbours **and/or** a planning style notice to be erected on the land for a defined period of time.
  - e. If there is a suggestion contained in any of the application material that there is a third party who does not live near the site (or on the Isle of Man) then the Land Registrar may require service of an extra notice on that named individual.
8. The Land Registry power to require further notices to be given is a discretionary one and its use will be kept open to review. If the Law Society amends its practice rules around advocates acting for both parties in such a way as to introduce additional safeguards for clients then this may lead to a reassessment of the necessity of notice in such cases.

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**Isle of Man Land Registry**  
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