



Land Registry
Land Registry Practice Directive
Issued 7 August 2019

Land Registration Act 1982 - Land Registration Rules 2000
Land Registration General Fees and Duty Order 2019

Applications to the Land Registration charged at the Owner Occupier rate.

The Land Registrar acting as Registrar for the purposes of the Land Registration Act 2002 promulgates the following directions under section 77 of the Land Registration Act 1982 and Rules 98 and 99 of the Land Registry Rules 2000 (SD588/00).

These directions come into operation on 1 September 2019 being the date on which the Land Registration General Fees and Duty Order 2019 comes into operation. Acting in accordance with Rule 99(4) the Registrar certifies that it is essential to the operational delivery of the lower fee rate elements of the Fees Orders that the Forms and Guidance promulgated in this Practice Directive to come into operation by 1 September 2019.

Interpretation

In these directions -

“the Act” means the Land Registration Act 1982

“the Registry” means the Land Registry maintained by the Registrar General in accordance with the Act

“the Fees Order” means the Land Registration General Fees and Duty Order 2019

“the Fees” means those fees and duty payable under the Fees Order.

“the Deeds Fees Order” means the Deeds and Probate Registries (Fees and Duty) Order 2019

1. The Owner Occupier rate

Introduction

The Land Registration Act 1982 (the Act) prescribes that any provision in or prescribed by the Act requiring or authorising anything to be done, or any certificate or other document to be issued by the Registrar, or in or from the Land Registry, shall be construed as requiring or authorising it on payment of such fees as may be prescribed by the Treasury. The Treasury has prescribed the Fees in the Fees Order. **The Fees Order is effective from 1 September**

2019. The relevant date for the calculation of fees is the date of deemed receipt of applications by the Land Registry (or the Deeds Registry if documents are lodged in that Registry in advance of an application for registration in the Land Registry). NB transactions completing before the 1 September 2019 but not lodged in the appropriate registry prior to 1 September 2019 will attract charges at the new rates.

The Fees Order prescribes the fees payable for Land Registration services. The Deeds and Probate Registries (Fees and Duty) Order 2019 prescribes fees payable in advance for Land Registration services at the point of lodgement of deeds in the Register of Deeds maintained pursuant to the Registration of Deeds Act 1961 triggering compulsory first registration.

The Land Registrar is entitled to withhold registration of any title or transfer of a title in the Land Registry until he is satisfied that all formalities relating to registration have been addressed. The Registrar may reject an application for registration if he is satisfied that the prescribed fee remains unpaid (in full or in part) on the time of presentation or at any time thereafter (prior to registration).

By article 7(7) of the Fees Order applications for the specific fee rates to apply to a registration event are treated in the same manner as all other proceedings in the Land Registry as applications to the Registrar. The Land Registration Act 1982 provides that any person aggrieved by any decision of the Registrar may appeal to the Land Commissioner who may annul or confirm the decision with or without modification.

The Fees Order prescribes at Article 7(3) that a lower fee may be payable by qualifying applicants. The lower fee band has become known as “**the Owner occupier rate**”. The same rate is prescribed at Article 5(2) of the Deeds Fees Order.

This Practice Directive aims to clarify the requirements and expectations of the Land Registry and to provide for an approved form to be used by applicants for the Owner occupier rate. Applications for the Owner occupier rate are within the scope of Part 11 (Proceedings in the Land Registry) and Part 12 of the Land Registry Rules (Proceedings before the Land Commissioner). The guidance in this document explains how the Land Registrar will administer the operation of applications for the Owner occupier rate.

Promulgation of Form CR1

Acting pursuant to Rule 98 of the Land Registration Rules the Registrar approves Form CR1 for use by applicants when registering transactions giving rise to Land Registration whether for submission either in the Deeds Registry or the Land Registry. The Form will be treated as being submitted to either or both registries if lodged at either registry which are both maintained by the Central Registry. In the case of a document lodged in the Deeds Registry triggering Registration in the Land Registry the existing practice will continue of the fees for Land Registration services being collected at the point the transaction is recorded in the Deeds Registry. However, the Land Registrar may decline to proceed with giving effect to a subsequent land registration application if it appears there is an outstanding sum due to cover the charges of the provision of Land Registration services.

2. The Purpose of the Owner Occupier rate.

The Policy intention of Government is to give support to low and middle income families who only hold one property and do so for their own residential use.

At the time of taking the Fees Orders to Tynwald the Treasury Minister communicated the broad policy intentions of the Fees Orders in the following terms:

“The revised approach to Land Registry fees represents for the majority (over 80%) of applicants for Land Registrations service a reduction in the charges made by Government.

I am confident that the Land Registry will be able to produce practice guidance and other advisory and explanatory material prior to the effective date of these fee changes (1 September 2019) as to the manner in which the reduced rate schemes will operate. On this basis advocates will be able confidently to advise their clients as to the operation and administration of the process of accepting an application for reduced fees. The purpose of this guidance will be to provide clarity as to the interpretation to be placed by the Land Registry in operating the Land Registry fee collection mechanism.

The Land Registrar will be principally responsible for ensuring the revised fee orders are applied in practice. The decision of the Registrar will remain subject to judicial oversight by the Land Commissioner in accordance with the provisions of the Land Registration Act 1982.

Declarations will be made by self-assessment and we [the Government] are happy to place our trust in the users of Registration services to make their declaration accurately and in good faith.

The approach of devolving the practical operation of the process of ensuring applicants can confidently opt-in to the reduced fee schemes is within the spirit and the language of the Land Registration Act 1982.

The Government is not seeking to...introduce new bureaucratic enforcement costs within the Land Registry...”

The Land Registrar is thus guided to apply the scheme in reliance on the trust the Treasury Minister places in the public to make their declaration of qualifying for the reduced rate in good faith. This will ensure the maximum number of people honestly believing they are entitled to the Owner Occupier rate will be able to demonstrate they so qualify with the minimum administrative burden.

3. Who is entitled to opt in for the Owner Occupier Rate?

The language used in the fee order at article 7 is that the Owner Occupier rate should be available on the registration of a transaction if:

The applicant or his or her advocates declares:-

1. the land consists of a dwelling house (with or without outbuildings and land assigned to its use)
- 2 that it **will** be occupied for residential use...
3. **...exclusively** by the applicant (and as appropriate the applicant’s household)
4. **...as an Owner Occupier** (defined to mean a natural person (or more than one natural persons holding and occupying land for himself or herself (or themselves) in a personal capacity.)
5. that an applicant or his or her advocate declares **will** be the applicant’s sole property worldwide.

The Owner Occupier rate is only available on transactions valued under £1 million.

Interpreting Article 7(3)

Nature of Declaration

This Practice Directive promulgates a form of declaration to be used. An applicant must be able to declare truthfully that each of the first 4 statements above will apply to the transaction being registered **at the time of the transaction and the application**. The declaration is a self-declaration.

Declaration of Intent

The declaration relates to current and future events. The Registrar accepts the future is something that it is impossible to warrant. The Registrar is satisfied that the declaration must be a declaration of intention of future intention from the time it is made in the Deed Registry or the Land Register or when it is relied on as continuing to be accurate in support of a Land Registry application where this follows a prior registration in the Deed Registry.

Dwelling house for residential use

It will be sufficient for an applicant to claim that the property **will** be a dwelling. Accordingly a purchaser of an off-plan residential house will be able to qualify as the property **will** be a dwelling house in the foreseeable future and **will** be for residential use. By applying the same test of intention it will be possible for an applicant to qualify if it is the intention that the property **will** be occupied exclusively by the applicant or his or her household. No time limit is provided for how long this development may take. The applicant must therefore be confident in making the declaration.

An intention to use the property for TT Homestay, or for working from home, childminding or as a guest house within the meaning of the Town and Country Planning (Permitted Development) Order 2012 will not vitiate the intention for the property to be used for residential use provided these uses are combined or ancillary to residential use.

Occupied exclusively by the applicant (and as appropriate the applicant's household).

Household extends to relations, employees or dependents and other occupiers of the property provided that the applicant maintains the position of being the head of household. Accordingly the presence of lodgers, or annexed accommodation for staff or family units (eg Grandparent annexes) will not exclude an applicant from qualifying. The question of tenancies is considered in more detail below.

The applicant's sole property (land) worldwide. Timing of transactions.

It is appreciated that real estate property transactions are often protracted especially in the case of people locating or returning to the Island from overseas. The Registrar will rely on the declaration of honest intention from applicants and does not intend to inquire, other than in cases of obviously apparent error or suspected dishonesty, into the declaration made. The Land Registry will not be conducting routine exercises to establish if an applicant owns property in land overseas or indeed already holds land on the Island. The Registrar is entitled to rely on the accuracy of the declaration of intent from an applicant. The scope of this entitlement is provided to ensure that an applicant who may not be able to dispose of his assets conterminously with the completion of an acquisition by registration (pursuant to sections 23 and 31 of the Act) will not be disqualified from an entitlement to claim the Owner Occupier rate.

Ownership of shares in a collective investment vehicle or membership of a pension scheme which may hold land does not need to be declared as a separate property interest as the owner does not enjoy the appropriate level of exclusive occupation and control of that property. The same is the case of ownership of a contract interest allowing common occupation -eg a timeshare. Ownership of shares in a limited company which may own land does not prevent an individual in their personal capacity making the declaration because the company's land is held by a body with a distinct legal personality.

An aspiration to acquire a second property in future does not prevent an applicant from giving a declaration that the first property will qualify for the Owner occupier rate. The second property will not (unless the first property is sold or is to be sold) qualify for the owner occupier relief.

Natural persons holding and occupying land for themselves in a personal capacity.

The Fees Order seeks to provide lower fees for private individuals owning property for themselves. Accordingly land held by an incorporated body will not qualify for the Owner Occupier rate. A *de minimis* exception will apply where, as in the case of shared areas owned by an estate management entity or association in which for example a property owner is required to become a member. This landholder will be deemed to be part and parcel of the principal land ownership to which it is ancillary. Similarly this arrangement will not mean that a declaration cannot be made that an owner in such circumstances will be an owner of two separate property interests.

Trustee ownership

The Registrar recognises that some properties may be held by trustees whether professional or otherwise as executors or trustees. Legal ownership will vest in the trustees who will usually also be the applicants for registration. In order to give effect to the purpose of the owner occupier fee policy, in the case of land held in the capacity of trustees the beneficial owner(s) shall be deemed to be the applicants for the Owner-occupier rate with the legal owners acting on their behalf in holding the land. The declaration that an applicant, agent or advocate is required to make should relate to the beneficial owner (in the case of an owner occupier). For the purpose of the Owner Occupier rate the owner will be deemed to be the beneficiaries of such a trust if they otherwise would qualify for the Owner occupier rate -ie they will occupy the property for residential purposes and satisfy the remaining qualifying aspects of the Owner Occupier rate. In such a case the trust beneficiaries occupying the property must declare in Form CR1 and the applicant must provide a covering letter explaining the relationship with a brief statement of the terms of appointment and the trust relationship.

An applicant may similarly disregard from "other property worldwide" property that he or she may hold as a trustee of a charity. Where an applicant holds land on trust for another type of beneficial owner and wishes to apply for the owner occupier rate this must be disclosed to the Registrar in writing for determination.

In the case of common ownership (other than shared areas in development estate or leasehold common areas) all applicants must be able to declare that on registration of their interest they **will** each hold no other property in land (ie intend to sell any other property) and otherwise qualify for the Owner Occupier scheme (or are able to rely on exemptions in the case of trustee ownership). Where, exceptionally, an applicant is only registering a part ownership the applicant is required only to make the declaration for himself as opposed to other (potentially unknown) shared owners.

Co-ownership

Subject to the above, when an application is made for registration of a single estate in co-ownership (whether as joint tenants or as tenants in common) each applicant must individually be able to qualify for the owner occupier rate for that rate to apply to the application.

4. How will an applicant practically qualify for the Owner Occupier rate.

On application for registration of a transaction either in the Deeds Registry or in the Land Registry an applicant for the Owner Occupier rate must submit Form CR1 accompanying the substantive application for registration. In the case of a transaction lodged in the Deeds Registry and triggering compulsory registration in the Land Registry the applicant's declaration of intent will be assumed to remain accurate unless an applicant informs the Land Registry otherwise in writing that circumstances have changed. The powers and obligations of the Registrar acting in accordance with the Registration of Deeds Act 1961 and the Registrar for the purposes of the Land Registration Act 1982 differ. The Land Registrar is empowered to raise any enquiries deemed necessary in advance of making an award of title and it is therefore possible that a declaration accepted in the Deeds Registry will not be accepted by the Land Registrar in the same terms. The expectation is that this additional power of the Land Registrar will chiefly be exercised in cases of manifest error -where for example the Deeds Registry have accepted a declaration which relates to commercial property or from an incorporated body.

5. What happens if circumstances change after the declaration is made?

If an applicant applies for the Owner Occupier rate in good faith but circumstances subsequently change the Registrar does not consider he has any enforcement powers against an applicant which would affect the registered title; nor, for the reasons set out above any cause of action if the declaration was honestly made. However, if action is taken by the Treasury to recover a fraud against the General Revenue or by any other body in the case of any actions for deception then it is possible such an action may lead, after due process, to an inhibition or a charge being placed on the property as part of an action to recover any debt. The fraudulent procurement of an entry on the register is void between all parties privy to the fraud in accordance with section 75 of the Land Registration Act 1982.

The Registrar does not consider that an applicant subsequently acquiring a second property will vitiate the application of the Owner Occupier rate to the first registration event provided that at the time the first application occurred it was **the intention** of the applicant that the first property would be his only property worldwide. No time test will be applied because the only relevant time is the time the declaration is made (the time of application). Inevitably, however, the second acquisition will not qualify for the Owner Occupier rate (assuming the first property is being retained or it is not the intention to dispose of the first property).

If an applicant buys a property for sole occupation by his family/household but subsequently decides to subdivide the dwelling (planning formalities being satisfied) or to change the use of the property this will not vitiate the application of the Owner Occupier scheme. This is provided that **at the time of the transaction and the declaration, the intention was** for the property to be occupied solely as a family dwelling (within the meaning of this Directive) and this was the honest intention of the applicant. This will operate in the same way as if the value of the property, as a result perhaps of renovation, comes to exceed the maximum £1 million threshold. The declaration relates to the point in time it was made. If an applicant has a definite irrevocable intention, as opposed to, possible or conjectural intent, to

subdivide the property or to let it out then it would be wrong for the applicant to make a declaration applying for the Owner Occupier rate to apply.

For these reasons the Land Registrar is unwilling to provide any guidance as to the timescales for compliance since the operative test is that of intention only. While it may be dishonest for an applicant to apply for the Owner occupier rate because of some known event in the future (such as coming into an interest in real property) that will definitely occur 3 years in the future it would not render an application made in good faith dishonest simply if an unexpected legacy of some land were to vest in the applicant the day after registration is applied for. In short an applicant must be able to make a declaration honestly that they intend to hold no other property at the conclusion of the course of dealing and that they intend to occupy the registration property for residential purposes. Such issues as an expectation of an inheritance in future will not vitiate the application because it cannot be a certainty that the legacy will materialize. Wills change, fortunes vary, death comes as a thief in the night. If a prospective applicant does not feel able in all good conscience honestly to make an application for the Owner occupier rate which satisfies the test of intent then it is likely the necessary intent is absent.

6. Household, Lodgers, and Tenants.

The word “household” was adopted in the Fees Order with the intention that this would be sufficiently broad, on its ordinary construction, to include lodgers whether or not they share living space. Whether a shared occupation will lead to the establishment of more than one household will ultimately be a question of fact in each case but the policy intention was that those people who intend or later decide to make accommodation available for lodgers will still be able to qualify for the Owner Occupier rate. If the property will become a house in multiple occupation for the purposes of the Housing (Multiple-Occupancy) Act 2005 the premises will be considered to be occupied by two households rather than one.

As regards Tenants as opposed to Lodgers the relevant test will be the test applied in the planning regime of whether a property consists of a sufficiently discrete residential unit. Reference may be made to the Town and Country Planning (Permitted Development) Order 2012 for additional guidance.

The desired outcome is not to prevent small scale independent rental of domestic quarters more in the character of leases than licences. However, this will need to depend on the extent of the rights and the character of the facilities to which the arrangement relates. Proportionality will be fundamental in determining this. Where for example these domestic quarters have the character of an entirely separate dwelling (for example where an area structurally separate from the main dwelling is rented out at a rack rent) it is less likely that the applicant should confidently expect to qualify for the lower measure of fees. This is because the property as a whole will either not be one unit (the sole property of the applicant) or will not be occupied exclusively by the applicant and his household.

7. The reduced rate for couples on marriage, civil partnership, separation and break-ups.

Union

The Fee Order prescribes that a gift of property following marriage or a civil partnership amongst themselves will attract a set fee of £250 irrespective of the value of the property interest gifted. For example where one party owns a property prior to entering into a civil partnership of which the other party will be made a joint tenant or tenant in common there will be a set fee of £250.

This is dependent on an applicant declaring to the applicant in Form CR2 (Part A) that:

- i) the gift is of a residential property interest,
- ii) that the property will be the sole property of the couple and
- iii) it will be occupied exclusively by them and their household.

The application must be accompanied by a certified copy of the civil partnership/marriage certificate. No certificate of valuation will be required.

As with the Owner Occupier rate application this declaration is a declaration of intent at the time of the transaction and application.

Separation

On a separation or divorce the transfer of land away from one spousal or partnership interest to the other pursuant to an Order of the Court will attract a fixed fee of £250. Such an application must be accompanied a certified copy of the order and a declaration in Form CR2 (Part B) that this is a transaction to which Article 7(6)(a) of the Fees Order applies or Article 5(5)(a) of the Deeds Fees Order.

Form CR2 (Part B) will also apply when couples in an *intimate personal relationship* owning residential property together as tenants in common or joint tenants split up/separate and in consequence of such separation one party transfers or conveys its interest in the property to the other. The applicant will be required to declare that this is a transaction to which Article 7(6)(b) of the Fees Order applies or Article 5(5)(b) of the Deeds Fees Order. The process of applying for such a rate to apply is an optional one for an applicant.

Supporting evidence of intimate personal relationships.

The wording ‘intimate personal relationship’ is intended to cover couples (2 people) living together outside of marriage or a civil partnership as if they were in such a union. Parties within a prohibited degree of relationship as set out in Schedules 1 of the Civil Partnership Act 2011 and the Marriage Act 1984 will not be recognized as persons in an intimate personal relationship.

In the absence of any other evidence being available to the Registrar the self-declaration of an applicant that this is an application to which article 7(6)(b) applies will be inferred as a declaration that the interest transferred is being effected as a result of a transfer from a party with whom the applicant was one half of a couple sharing an intimate personal relationship. This is intended to be an administrative declaration and although the Land Registrar is empowered to make further enquiries if it is deemed necessary no applicant will be required, at the point of application, to provide any details as to the nature or extent of the intimacy referred to. Nor, for reasons of sensitivity to what may be an intrusion into private grief, will there be an expectation that the departing partner should make a commensurate declaration. As a point of practice, if conveyancing advocates were to include a statement or recital into the conveyance or transfer that the instrument is made in consequence of the conclusion of an intimate personal relationship between the parties (or some of them) then this would assist in the operation of this fee rate.

Promulgation of Form CR2

Acting pursuant to Rule 98 of the Land Registration Act the Registrar approves the general use of Form CR2 for use by applicants when registering transactions giving rise to Land Registration whether for submission either in the Deeds Registry or the Land Registry. The Form will be treated as being submitted to either or both registries if lodged at either registry which are both maintained by the Central Registry. In the case of a document lodged in the Deeds Registry triggering Registration in the Land Registry the existing practice will continue of the fees for Land Registration services being collected at the point of registration of the transaction in the Deeds Registry. However, the Land Registrar may decline to proceed with giving effect to a land registration application when it is received if it appears there is an outstanding sum due to cover the charges of the provision of Land Registration services.

8. Removing Formality in due course.

As the Land Registry moves towards online services it is anticipated that a more streamlined method of facilitating the delivery of these declarations may be developed. The Land Registry is empowered to disregard any formal requirements of these forms where such information can be obtained through an alternative method such as online submission.

9. Frequently Asked Questions and Clearance.

The Land Registry will arrange for the publication of additional Frequently Asked Questions - with corresponding answers to be published alongside this document and forms on the Land Registry website www.gov.im/landregistry.

Until such time as the FAQ can be produced indicative clearance will be provided on request to landgeneral.ded@gov.im in response to specific applications about which applicants or their advocates harbour any uncertainty.

10. Conclusion

Essentially, for the purposes of these fee orders the intention is for the Land Registry to apply a purposive construction for the benefit of those the policy is intended to benefit. This liberal construction will demand that the provisions be construed in favour of applicants who reasonably believe they qualify for reduced fees rather than in favour of the General Revenue as might result from a strict interpretation.

The Registrar will not, without good cause, routinely investigate or inquire as to the honesty of a declaration submitted by an applicant reflecting the intentions of the Treasury Minister that the Land Registrar may rely on the honesty of applicants.

Schedule 1 Form CR1 and Form CR2.

Made by Nick Arculus
Land Registrar

Isle of Man Land Registry
7 August 2019