

Title: Impact Assessment of the Law of Property Bill [2011] Lead department or agency: Law Commission Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: LAWCOM0008
	Date: June 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries: Colin Oakley	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Easements, covenants and profits à prendre are rights that a person may have over another's land. An example of an easement is a right of way; a right to graze is a profit à prendre. Covenants can be positive or negative; an obligation not to build on land is negative and an obligation to repair a wall is positive. These rights are vital to land and its owners (in excess of 250,000 are created each year) but the law governing them is too complex and often incoherent and arbitrary in its operation. As a result, the market is not operating freely and efficiently because of the constraints of rules which over-regulate the use of land. Government intervention is required to create an effective, coherent and credible system of property rights.

What are the policy objectives and the intended effects?

To improve legal certainty: making it easier to identify the existence and validity of interests over land and making the law less arbitrary in its operation and less confusing for landowners.

To simplify and modernise the law: there are many complications and overlapping areas in the present law. Simplification will streamline the conveyancing process, reduce litigation and improve the marketability of land. It will also provide tools to make transactions, and land management, less complex.

To provide for the efficient removal of rights which are no longer relevant: legal tools will be provided or updated, to allow owners of land to more effectively manage their legal relationships with neighbouring land owners, and to remove interests that no longer serve a purpose.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing (base case).

Option 1: Wide-ranging reform of the law of easements, covenants and profits à prendre. This reform would build on the existing law, modifying a range of legal rules where the current law is not satisfactory. The major distinction between this option and Option 2 is that it would update the law relating to positive obligations. This is the preferred option.

Option 2: This reform is the same as Option 1, but it would not implement those aspects that update the law relating to positive obligations.

Option 1 is preferred. While a more complicated reform, it will bring with it the considerable benefits of making possible the running of positive obligations with land.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

What is the basis for this review? N/A **If applicable, set sunset clause date:** N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No
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Chair's Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Chair: _____ Date: _____

Summary: Analysis and Evidence

Policy Option 1

Description:

Wide ranging reform

Price Base Year 09-10	PV Base Year 2011	Time Period Years 50	Net Benefit (Present Value (PV)) (£m) ¹		
			Low: £10.000	High: £190.000	Best Estimate: £60.000

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual ² (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.851	1	£0	£10.513
High	£0.871		£0	£56.258
Best Estimate	£0.861		£0	£29.206

Description and scale of key monetised costs by 'main affected groups'

JSB and practitioners: Training costs - £0.

Land Registry: Transitional cost eg training, IT changes and land charge infrastructure - £853,500 (year 0)

Lands Chamber: Transitional cost from the extension of jurisdiction - £7,500 (year 0)

Lands Chamber and developers: On-going cost from applications to Lands Chamber - £0 (years 0 – 25) - £8,581,250 (year 50)

Other key non-monetised costs by 'main affected groups' None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	0	£0.583	£19.836
High	£0		£4.634	£243.573
Best Estimate	£0		£2.225	£86.138

Description and scale of key monetised benefits by 'main affected groups'

Legal practitioners and landowners:

On-going reduced conveyancing cost from positive obligations running with the land- £1,326,916;

On-going reduced conveyancing costs by allowing interests over land in single ownership - £398,835;

On-going benefit of fewer obsolete easements hampering development - £82,753

On-going benefit of successful applications to the Lands Chamber - £0 (years 1 – 25), £7,109,375 (year 50);

On-going benefit from reducing parallel applications to the Lands Chamber and the court- £53,625;

On-going benefit from valid parking rights - £23,410 (year 1) - £1,170,523 (year 50);

On-going lower legal costs due to valid parking rights - £232,654;

On-going benefit due to reduced legal costs from simplified prescription and implication rules - £107,051

Other key non-monetised benefits by 'main affected groups'

Increased clarity and certainty will aid legal practitioners and users.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p><i>Assumptions:</i></p> <ul style="list-style-type: none"> Practitioners' training costs will be absorbed through the normal annual CPD requirements. No change in the total number of applications to the Lands Chamber between years 0 and 25, a gradual increase between years 25 and 50. At year 51, the number of applications will plateau. <p><i>Risks:</i></p> <ul style="list-style-type: none"> There is a medium risk that we have underestimated savings, due to the property market downturn and conservative estimates. <p><i>Sensitivities:</i></p> <ul style="list-style-type: none"> Lands Chamber applications to discharge or modify to increase to between 135 and 240 by year 50. 		

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?³	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

¹ NPVs of options are summations of the NPVs of policies rounded according to Ministry of Justice guidance, Details of this guidance are at paras 98 and 99 below.

² Figures are given for years 1 to 25. Annual costs and benefits will increase until year 50.

³ The Law Commission is exempt from the One In, One Out regulations as it does not implement policy.

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			Land Registry, Lands Chamber and the courts		
What is the annual change in enforcement cost (£m)?			£0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: £0	Non-traded: £0	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 100%	Benefits: 100%	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro 0%	< 20 0%	Small 0%	Medium 0%	Large 0%
Are any of these organisations exempt?	Yes	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁴ Statutory Equality Duties Impact Test guidance	No	51
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	51
Small firms Small Firms Impact Test guidance	No	51
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	52
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	52
Social impacts	No	
Health and well-being Health and Well-being Impact Test guidance	No	52
Human rights Human Rights Impact Test guidance	No	51
Justice system Justice Impact Test guidance	Yes	Throughout
Rural proofing Rural Proofing Impact Test guidance	No	52
Sustainable development Sustainable Development Impact Test guidance	No	52

⁴ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Wide ranging reform, but for positive obligations

Price Base Year 09/10	PV Base Year 2011	Time Period Years 50	Net Benefit (Present Value (PV)) (£m)		
			Low: £6.000	High: £80.000	Best Estimate: £30.000

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£0.821	1	£0	£5.652
High	£0.826		£0	£28.520
Best Estimate	£0.824		£0	£14.996

Description and scale of key monetised costs by 'main affected groups'

JSB and practitioners: Training costs - £0.

Land Registry: Transitional costs eg training, IT changes and new rules - £816,000 (year 0)

Lands Chamber: Transitional cost from the extension of jurisdiction- £7,500 (year 0)

Lands Chamber and developers: On-going cost from applications to Lands Chamber - £0 (years 0 – 25) - £4,290,625 (year 50)

Other key non-monetised costs by 'main affected groups' None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	£0	0	£0.251	£11.976
High	£0		£1.648	£113.380
Best Estimate	£0		£0.898	£42.958

Description and scale of key monetised benefits by 'main affected groups'

Legal practitioners and landowners:

On-going reduced conveyancing costs by allowing interests over land in single ownership - £398,835;

On-going benefit of fewer obsolete easements hampering development - £82,753

On-going benefit of successful applications to the Lands Chamber - £0 (years 1 – 25), £3,554,688 (year 50);

On-going benefit from reducing parallel applications to the Lands Chamber and the court - £53,625;

On-going benefit from valid parking rights - £23,410 (year 1) - £1,170,523 (year 50);

On-going lower legal costs due to valid parking rights - £232,654;

On-going benefit due to reduced legal costs from simplified prescription and implication rules - £107,051

Other key non-monetised benefits by 'main affected groups'

Increased clarity and certainty will aid legal practitioners and users.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p><i>Assumptions:</i></p> <ul style="list-style-type: none"> Practitioners' training costs will be absorbed through the normal annual CPD requirements. No change in the total number of applications to the Lands Chamber between years 0 and 25, a gradual increase between years 25 and 50. At year 51, the number of applications will plateau. <p><i>Risks:</i></p> <ul style="list-style-type: none"> There is a medium risk that we have underestimated savings, due to the property market downturn and conservative estimates. <p><i>Sensitivities:</i></p> <ul style="list-style-type: none"> The initial cost to Land Registry is between £846,000 and £861,000, £853,500 best estimate. The number of applications to the Lands Chamber will double by year 50 (in contrast to it trebling by year 50 under option 1). 		

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?	Land Registry, the Lands Chamber and the courts				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: £0		Non-traded: £0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 100%		Benefits: 100%		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro 0%	< 20 0%	Small 0%	Medium 0%	Large 0%
Are any of these organisations exempt?	Yes	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

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Social impacts	No	
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Human rights Human Rights Impact Test guidance	No	51
Justice system Justice Impact Test guidance	Yes	Throughout
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Sustainable development Sustainable Development Impact Test guidance	No	52

⁵ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Law Commission, Easements, Covenants and Profits à Prendre – A Consultation Paper, Law Com CP No 186 (March 2008)
2	Making Land Work: Easements, Covenants and Profits à Prendre, Law Com No 327 (June 2011)
3	Making Land Work: Easements, Covenants and Profits à Prendre – Analysis of Responses to the Consultation Paper (June 2011)
4	Law Commission, Land Registration for the Twenty-First Century – A Conveyancing Revolution, Law Com No 271 (July 2001)

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Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices (unrounded)

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	£0.861	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual recurring cost	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total annual costs	£0.861	£0	£0	£0	£0	£0	£0	£0	£0	£0
Transition benefits	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual recurring benefits	£0	£0.795	£0.818	£0.842	£0.865	£0.888	£0.912	£0.935	£0.959	£0.982
Total annual benefits	£0	£0.795	£0.818	£0.842	£0.865	£0.888	£0.912	£0.935	£0.959	£0.982

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

1. INTRODUCTION

Terminology

1. The subject matter of this reform means that the use of technical terms is sometimes unavoidable. These terms are well understood by the courts and the legal professions. We have concluded that changing them would carry a significant risk of unintended changes in elements of the law that function as they should. To avoid loss of precision we use some of these technical terms in this Impact Assessment. We explain below the three interests in land with which the proposed reform is concerned:
 1. *Easement*: An easement is a right to make some limited use of land belonging to somebody else. An example is a private right of way over a neighbour's land.
 2. *Covenant*: This project is concerned with two sorts of covenant which affect land; restrictive (or negative) covenants and positive covenants. A restrictive covenant is a promise by one land owner to another not to do something on their own land; an example is a covenant not to use a property as a public house. A positive covenant requires the person making the covenant to do something or to spend money in order to comply with it; an example is a covenant to repair a boundary fence.
 3. *Profit à Prendre*: A profit à prendre is a right to remove products of natural growth from another person's land. Examples are rights to take wood or to fish. We shorten the term "profits à prendre" to "profits" throughout this document.
2. We also note here one other term: the *land obligation*. Our preferred option would enable the creation of this new interest in land and we discuss it in detail below.⁶

Background

3. Many people regard their freehold or leasehold land, or the buildings on it, as the most valuable aspect of their land holding. However, what is not always appreciated is the value of the interests in land with which this reform is concerned. The land and buildings comprising a large shopping centre may be nearly worthless if there is no vehicular right of way to reach them, while a house in the countryside may lose much of its value if the owner cannot stop a neighbour's proposal to build a large industrial plant alongside it.
4. The law that governs easements, covenants and profits is ancient – the law relating to restrictive covenants developed in the mid-nineteenth century;⁷ the law relating to easements and profits is many centuries older.⁸ While some statutes have touched upon the area,⁹ it has been left largely to the courts to develop the law over that time.
5. These interests have developed into essential tools for landowners. Most landowners rely upon the interests that are the subject of this reform: Land Registry data from 2009/10 indicates that in excess of 250,000 easements and restrictive covenants were created during that period. The effect is that a significant percentage of registered freehold titles are subject to at least one easement and/or restrictive covenant.¹⁰
6. The reason for their prevalence is simple: landowners often need to make arrangements with neighbours for their property to function efficiently and productively.
7. Such arrangements need to be enforceable. Without them the full use and value of land cannot be realised. With them, both current and future owners of land with the benefit of an

⁶ See para 70 and following.

⁷ See *Whatman v Gibson* (1838) 59 ER 333; 9 Sim 196 and *Tulk v Moxhay* 41 ER 1143; (1848) 2 Ph 774.

⁸ See J Baker, *An Introduction to Legal History*, Butterworths (3rd ed 1990), p 484.

⁹ For example, the Law of Property Act 1925 and the Land Registration Act 2002 (and earlier land registration statutes).

¹⁰ Precise figures are difficult to ascertain due to the way in which Land Registry categorises easements and restrictive covenants.

interest can be certain that arrangements will persist – allowing people to invest confidently in their property. Conversely, the owner of land burdened by an interest must be able to determine with precision what rights affect it in order to avoid interfering with a neighbour's rights and to be able to use and manage the land efficiently and profitably.

8. The principle that legal rules, especially those which impose obligations on individuals, have to be easily accessible is of fundamental importance. The European Court of Human Rights has stated that the law must be: “formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.¹¹ In other words, the parties who benefit from and are burdened by an obligation must, so far as is possible, be capable of establishing their respective legal positions without recourse to litigation.
9. The reform we propose is contained in a draft Bill annexed to our Report.¹² The draft Bill builds upon the Law Commission's previous work which led to the Land Registration Act 2002.¹³ The guiding principle behind that Act was encapsulated in the following extract from the Law Commission's Report:

“The fundamental objective of the [Land Registration Bill] is that, under the system of electronic dealings with land that it seeks to create, the register should be a complete and accurate reflection of the state of the title of the land at any given time ... ”¹⁴
10. This approach is essential in order to improve the certainty and accessibility that the current law is lacking and we have carried it over into this project. As with the Land Registration Act 2002, the scope of this reform is extensive.

Problem under consideration

11. We set out below the six areas of the law with which our reform is most closely concerned.

Problem 1: positive covenants cannot run with land

12. The current law does not allow positive covenants to run with land. In other words, an obligation that requires someone to do something on freehold land can take effect only as a contract. There are two related problems with this:
 1. unless the parties agree otherwise, the covenanting owner will remain liable on a covenant even where he or she has sold the land to which it relates. So an obligation to mend a fence, while it cannot be enforced against the new owner, can be enforced against the person who made the promise; and
 2. future owners of land cannot be directly bound by a positive covenant. Lawyers have developed workarounds to enable purchasers to be bound indirectly, but these are costly and vulnerable to failure.
13. An example of the problem is an obligation to maintain a shared driveway. This is almost certainly intended to bind successive owners of the land. Under the current law, this can only be achieved by using workarounds that are ill-suited to this purpose. These include:¹⁵
 1. granting a lease (where one would not otherwise be required) over the land to be burdened;¹⁶

¹¹ *Sunday Times v United Kingdom* (1979-80) 2 EHRR 245 at [49].

¹² Making Land Work: Easements, Covenants and Profits à Prendre, Law Com No 327. We refer to this report as “the Report” (and the draft Bill annexed to it as the “draft Bill”) throughout this Impact Assessment.

¹³ Land Registration for the Twenty-First Century – A Conveyancing Revolution (2001), Law Com No 271.

¹⁴ Land Registration for the Twenty-First Century – A Conveyancing Revolution (2001), Law Com No 271, para 1.5.

¹⁵ See the Easements, Covenants and Profits à Prendre – A Consultation Paper, Law Com No 186, para 7.46 and following (we refer to this consultation paper as the “Consultation Paper” in this Impact Assessment), and the Report, para 5.21 and following for further information.

¹⁶ This may happen, for example, where the owner of a building wishes to ensure, on the sale of part of their land for development, that the new owner will maintain the property constructed on it to the same high standard as their own but is otherwise uninterested in securing a rental income or in taking possession of the property at

2. using a chain of contractual promises between successive purchasers of the burdened land so that each agrees with the former to comply with an underlying obligation;¹⁷
 3. using the now largely archaic estate rentcharge;¹⁸ and
 4. preventing the disposal of the burdened property without the purchaser of the burdened land giving a direct covenant to the benefiting owner to comply with the obligation.
14. These workarounds require additional drafting and negotiation. Their use, and their disadvantages, will have to be explained to clients, making them expensive. Several are susceptible to failure because they rely upon legal tools that are not intended to last in perpetuity and are prone to human error in their administration. In every transaction where a person wishes to impose a positive obligation, or when contemplating enforcement, he or she must decide whether the expense and uncertainty is justifiable. Advisers must also explain why what may seem like a simple arrangement between neighbours is so difficult and expensive to implement.

Problem 2: interests cannot be created over land in single ownership

15. An easement, restrictive covenant or profit can currently only be created where the benefited and burdened land are owned by different people. This is often called the unity of seisin rule and it creates three key difficulties.
16. The first arises where there is more than one purchase of part of a property – typically a housing development. The plots will need to benefit from, and be burdened by, easements and covenants. But the unity of seisin rule means that these rights can only be valid if created in a particular order.¹⁹ The risk of invalidity, arising from the fact that it is virtually impossible to control the order in which the interests are registered and become effective at law, means that there is a potential for costly litigation, devaluing of land, and payments being made from Land Registry's indemnity fund.²⁰
17. The second difficulty adversely impacts upon the lending market. Sometimes a developer may wish to mortgage part of its land. The same need may arise on a smaller scale if, say, a householder wishes to build on half of his or her land and sell the remainder. A bank will not accept part of the land as security if it cannot be sold by the bank (in the event that it enforces its security) without the creation of additional rights to benefit it (for example, a right of way) over the part that is not subject to the charge.
18. The final difficulty relates to the termination of interests outside of the registration system, and is best explained with an example.

A owns a plot of land and B owns the adjacent property. B uses a right of way across the rear of A's land to get to his or her garden. Both properties are registered and the benefit of the easement is registered on the title of B's land; the burden is noted on the title of A's land.
19. If A or B acquires the other's estate then the law automatically terminates the right of way. Land Registry is unlikely to remove the reference to the easement from either the benefited or burdened titles, but is now guaranteeing the existence of an easement that does not exist, this could lead to an indemnity becoming payable by it to a future purchaser.

Problem 3: difficulties in establishing whether easements have been abandoned

20. A person with the benefit of an easement may cause it to be extinguished by abandoning it. For this to happen it must be proved that he or she intended to abandon the right, but there is no presumption that this is the case – even where there is many decades of non-use. This makes abandonment of an easement exceptionally difficult to prove.
21. To a large degree this is justifiable: an owner of land that benefits from an easement should not be disadvantaged where he or she is not using it but has no intention of abandoning it

some point in the future. This workaround works because a positive covenant by a tenant in a lease is enforceable against his or her successors in title.

¹⁷ A so-called indemnity covenant chain.

¹⁸ See the Consultation Paper, paras 7.50 and 8.114 and following.

¹⁹ The reasons for this are technical and are explained in the Report, para 4.19 and following.

²⁰ Land Registry guarantees the validity of registered title to land and the interests that benefit it; payments upon this guarantee come from Land Registry's indemnity fund.

either – for example, a person whose land benefits from a vehicular right of way who does not use it for 20 years because he or she has no car should not be penalised.

22. However, easements can outlive their usefulness. Where an easement is of no use to the benefited land, rather than just to the owner for the time being, then the value and utility of the burdened land is being reduced unnecessarily by the easement. Where such land is developed, concerns about the burden of the easement may compromise project designs, or force the owner to take risks and incur unnecessary costs (for example by having to insure against the enforcement of the easement) to limit or avoid problems arising in the future.

Problem 4: the jurisdiction of the Lands Chamber of the Upper Tribunal extends only to modification and discharge of restrictive covenants

23. Currently, the Lands Chamber of the Upper Tribunal (formerly the Lands Tribunal)²¹ is able to hear applications to discharge and modify restrictive covenants. Usually this happens when landowners wish to make some specific change to the use of their land which would otherwise be prevented by a restrictive covenant.
24. It has long been thought that the jurisdiction is too limited and that there should be a power to discharge or modify easements as well as restrictive covenants. As the law stands, once an easement or profit has been created it will bind the burdened land for all time even where it has become of little or no use to the benefited land. Furthermore, if a proposed use of land is prevented by an easement or a profit, even where the easement or profit could be as easily exercised over a different part of the burdened land, then there is no power for a landowner to move or discharge the interest without the consent of the benefiting owner. Getting the agreement of all of those entitled to the benefit may be impossible either where they are numerous or cannot be found.
25. A further problem is that the current law gives the courts, rather than the Lands Chamber, a jurisdiction to declare whether freehold land is affected by a restrictive covenant, to declare its nature and extent, and to declare whether, and by whom, it is enforceable. Where there is an application to the Lands Chamber to discharge or modify a restrictive covenant, an application may be made to the court for a declaration at any point during these proceedings. Where this happens, the proceedings in the Lands Chamber may, and if it relates to the entitlement of a person to the benefit of the restrictive covenant, must, be stayed.
26. Applications to the court can be used tactically. A party to proceedings in the Lands Chamber may obtain a strategic benefit by making an application to the court for a declaration in respect of the restrictive covenant in order to delay the resolution of the application in the Lands Chamber. Even where an application to court is made legitimately, the new set of proceedings is unnecessarily time-consuming and expensive for both the court and the parties.

Problem 5: easements that permit near exclusive use are invalid

27. An easement is a limited right which benefits one person's estate (in this context "estate" means an ownership right: a fee simple or a lease) and burdens the estate of another. An easement is not an estate: so, for example, if A grants to B the right, to the exclusion of A and others, to live in a house for one year then this is almost certainly the grant of a leasehold estate in the land, not an easement. In a case such as this we say that B is granted "exclusive possession" of the land, which means, very briefly, that B has the right to possession of the land and the ability to control it. Exclusive possession is a hallmark of estates and it follows that an easement cannot therefore amount to exclusive possession. We make no change to this aspect of the law.
28. A purported easement which does not grant exclusive possession of the land, but which merely prevents the owner from making substantive use of it, is also unlikely to be valid. This rule is too restrictive and is preventing legitimate rights from being valid – rights, the most common of which is a right to park, which are negotiated and paid for by landlords and their tenants and developers and their customers.

²¹ The Lands Tribunal's functions were transferred by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307. We refer to the Lands Chamber of the Upper Tribunal as the Lands Chamber in this Impact Assessment.

29. Many properties – in particular flats – rely upon rights to park and some of these take the form of a grant to exclusively use a parking space. If a court decides that these interests are void then there is a risk that properties will be devalued or that costs will have to be incurred to rectify the problem.

Problem 6: the law relating to the acquisition of easements by prescription and implication is unsatisfactory and too complicated

30. Many easements are granted in writing, often in the document that transfers part of one person's property to another. However, the law allows easements, and sometimes profits, to arise in two other ways: by implication and by prescription.
31. Implication operates on the basis that, on a sale or other disposition of part of an estate, the full extent of the rights benefiting or burdening the now separate plots may not have been expressly set out in the transfer or lease. An easement can be implied by virtue of a number of separate rules,²² and the result is that an easement arises with the same status as if it had been created expressly.
32. The problem with the rules of implication is their complexity: there are at least four methods, which operate differently but overlap. This complexity makes it unnecessarily difficult for landowners and their advisers to determine if an easement has been created by implication and, where it has, what its scope may be.
33. Section 62 of the Law of Property Act 1925 is often regarded as another method of implication. The section operates as an express grant and is a statutory word-saving provision which, unless there is an express exclusion of its effect, writes certain words into dispositions of land. The effect of the section has been criticised because it can create rights unexpectedly and inappropriately.
34. Prescription is another way in which an easement or profit can come into existence even though there has been no express grant. If a landowner makes use of a neighbour's land for a long period without permission, openly and peaceably, in a way that could amount to an easement, the law may create an easement, benefiting the user's freehold estate.
35. Like implication, there are several different methods by which prescription operates; one is statutory²³ and others operate at common law. Each operates differently, making it unnecessarily complicated for landowners and their advisers to determine whether a plot of land has the benefit of, or is subject to, an easement acquired by prescription.

Rationale for intervention

36. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions.
37. The necessity for reform in the area of easements, covenants and profits is driven by a need to afford landowners greater certainty, transparency and flexibility to deal with their land and to formalise arrangements with their neighbours which can be relied upon to bind successors to both the benefited and burdened land. It is also driven by a need to ensure that rights and obligations are more easily created, identifiable and, where appropriate, terminated.
38. The existing law results in market failure due to incomplete information being available to landowners and potential buyers regarding easements, covenants and profits which hampers the ability to negotiate and formalise arrangements. For example, it may not be clear to a potential purchaser of land burdened by a restrictive covenant what land benefits from it and, therefore, who they should approach to discuss its release. Other information may only be available if a potential purchaser incurs substantial legal costs to obtain it.

²² See the Consultation Paper, para 4.54 and following.

²³ The Prescription Act 1832 was introduced to "reduce the uncertainties of prescription" but it has been highlighted as being "one of the worst drafted Acts on the statute book" (see the Consultation Paper, paras 4.159 and following).

39. The existing law is out of date and the common law is unable to develop in the direction needed. The law relating to easements, covenants and profits has a substantial and embedded body of case law associated with it that cannot, without legislative intervention, be amended. Statutory reform of the rules regarding these interests is the only option available if the law is to accommodate the needs of modern society that have arisen from changes in land use, ownership patterns, density of development and the operation of a modern registration system.
40. The market is not operating freely and efficiently as regards these interests in land because of the constraints of unnecessary rules.

Policy objectives

41. The objectives of this project can be summarised under four heads:
 1. to minimise the inefficiency and under-utilisation of land caused by the current law: the law developed at a time when complex relationships between neighbours and high-density developments in towns and cities did not exist;
 2. to provide greater flexibility to landowners in the management of their relationships with neighbours and the development of their estates by providing new legal tools;
 3. to simplify the law and improve legal certainty for landowners and those who advise them: the current law can be confusing, uncertain, complex and arbitrary in its operation; and
 4. to provide for the efficient removal of rights which have outlived their usefulness and serve only to restrict the use of land. The recommendations we make aim to ensure that the rights of those benefited by an interest are fairly balanced against the need to ensure that land remains economically active.

Scale and context

42. We start this section by setting out some information regarding the use of land, its development and an indication of its importance to the economy. The interests that this reform focuses on are essential to enable land to be used efficiently and effectively.
43. The efficient use and re-use by individuals, businesses and public bodies of all 15 million hectares that comprise England and Wales is critical to the UK economy. The uses of land are almost endless – the land itself is not. As the population increases, more pressure is exerted on land in England and Wales.²⁴
44. Many businesses rely upon land. Efficient mechanisms to make new uses of land, and for its subsequent disposal, are of particular importance to the construction industry. This sector is an essential part of the UK economy and, in 2009, was identified as employing over 2 million people and which in 2008 contributed 8.3% of the nation's Gross Value Added.²⁵
45. Many of our policies affect the housing industry. There is evidence that, in 2007, the value of the new homes market was about £45 billion.²⁶ A recent study for the Department for Communities and Local Government states that:

“[The housebuilders included in the study] were unanimous that land shortages have been

²⁴ The population density of England and Wales is amongst the highest in Europe. Figures suggest that the populations of England and Wales in mid-2009 were 51,810,000 and 2,999,000 respectively (see Office for National Statistics, Statistical Bulletin - Population Estimates – June 2010 (2010) (www.statistics.gov.uk/pdfdir/pop0610.pdf (last visited 7 June 2011))). These figures give a population density for England and Wales of approximately 360 people per square kilometre.

²⁵ See the Department for Business Innovation and Skills construction sector website at www.bis.gov.uk/policies/business-sectors/construction (last visited 7 June 2011). Gross Value Added, or GVA, is a measure of the contribution to the economy of an industry sector. A guide to GVA can be found on the Office for National Statistics website at <http://www.statistics.gov.uk/CCI/nugget.asp?ID=254> (last visited 7 June 2011).

²⁶ Office of Fair Trading, Homebuilding in the UK – A Market Study, September 2008, p 20. An electronic copy of this report is available at www.offt.gov.uk/shared_offt/reports/comp_policy/oft1020.pdf (last visited 7 June 2011).

and remain the greatest constraint to expanding their businesses.”²⁷

46. Population increases and the trend towards urbanisation²⁸ have led to increases in the density of development. In 2008/09 and 2009/10, flats comprised between 40% and 46% of the residential, private sector new-build completions in England – ten years earlier flats accounted for only around 15%. The data suggests that flats are fast becoming equal to houses in terms of the number of new-build completions.
47. The percentage of new-build flats compared with the total number of residential new-build completions in 2008/09 is indicated in table 1 below

Table 1: Annual number of private sector new-build completions in England, 1998/99 - 2009/10,²⁹

<i>Financial Year</i>	<i>Total private sector new build completions³⁰</i>	<i>Flats as % of total private sector new build completions³¹</i>
1998/99	121,190	14%
1999/2000	124,470	15%
2008/09	108,080	46%
2009/10	88,630	40%

Source: Department for Communities and Local Government

48. With an increasing density of development comes the risk of a greater number of neighbour disputes. These can take many different forms, but to give an idea of the scale of the problem we have looked at hedge disputes. In 2005 the Office of the Deputy Prime Minister published an impact assessment to implement provisions in the Anti-Social Behaviour Act 2003.³² The document indicated that local authority estimates suggest that there may be between “10,000 and 100,000 households with some tree or hedge related problem”³³ and went on to say that “these might involve individual trees or deciduous hedges which fall outside the scope of the legislation”. It was estimated that, following the clearance of an initial backlog of cases, between 100 and 500 new cases per year within the scope of the Act would arise, resulting in costs of between £20,000 and £440,000 per year.
49. It is very unlikely that quasi-criminal sanctions, such as anti-social behaviour orders, and regimes operated by local authorities, are the ideal way of managing neighbour relationships; private arrangements negotiated at a local level, which these reforms (particularly by enabling positive obligations to run with land) would allow, are a better management tool.

²⁷ Department for Communities and Local Government, *The Housebuilding Industry: Promoting Recovery in Housing Supply* (2010), para 4.14. (www.communities.gov.uk/documents/housing/pdf/1526670.pdf (last visited 7 June 2011)).

²⁸ For details and statistics on population density and urbanisation see the United Nations Department of Economic and Social Affairs, population estimates and projections websites at <http://esa.un.org/unpd/wup/index.htm> and http://esa.un.org/unpd/wup/unup/index_panel1.html (last visited 7 June 2011).

²⁹ Because of differences in the way information is compiled in England and Wales, we have limited this data to England. Where this data is used in estimating benefits, it will have the effect of underestimating them.

³⁰ See Department for Communities and Local Government, *Housing and Planning Statistics Live Table 232* (Housebuilding: permanent dwellings completed, by tenure and region) (www.communities.gov.uk/documents/housing/xls/1473567.xls (last visited 7 June 2011)).

³¹ See Department for Communities and Local Government, *Housing and Planning Statistics Live Table 254* (Housebuilding: permanent dwellings completed, by house and flat, number of bedroom and tenure, England) (www.communities.gov.uk/documents/housing/xls/table254.xls (last visited 7 June 2011)).

³² Office of the Deputy Prime Minister, *Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-social Behaviour Act 2003* (2005). (<http://www.communities.gov.uk/documents/planningandbuilding/pdf/riahighhedges.pdf> (last visited 7 June 2011)).

³³ Office of the Deputy Prime Minister, *Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-social Behaviour Act 2003* (2005), p 8.

Easements, Covenants and Profits

50. The existence or otherwise of easements, covenants and profits, and the adequacy of the law governing them, is important for developers and subsequent purchasers of land. Several members of the London Property Support Lawyers Group³⁴ have assisted us in estimating the percentage of developments hampered by the presence of an easement. They suggest that easements hamper between 10% and 33% of transactions (higher in towns and cities) – although we note that there is a degree of risk in relying upon these figures owing to the small size of the survey.
51. The extent of the rights affected by this proposed reform is extremely significant: Land Registry data prepared for the Consultation Paper indicated that 10,836,366 (approximately 65%) registered freehold titles are subject to at least one easement and that 13,081,491 (approximately 79%) are subject to a restrictive covenant. As of July 2009/10 there were 22,518,000 registered freehold titles.³⁵
52. Issues regarding easements and covenants most often arise on a disposal of land. We have therefore had regard to Land Registry data on the numbers and types of transactions. These have been recently affected by the steep decline in both the residential and commercial markets.³⁶

Stakeholders

53. A wide range of stakeholders will be affected by our recommendations: these reforms have the potential to impact upon anybody who owns an interest in land. The key stakeholders can be split into four groups:
 1. ordinary landowners – including current owners, potential owners and purchasers of land;
 2. those who create interests in land or need to be certain what interests benefit or burden a property because they change the use of land or buildings. These include developers (large and small)³⁷ of housing, commercial and industrial estates, land and building valuers and surveyors and mortgage lenders;
 3. public bodies which oversee land and the relationships between landowners, in particular, Land Registry, the courts and the Lands Chamber;³⁸ and
 4. legal services providers.
54. The stakeholders that we mention above are those that we perceive as key to these reforms; however, we do not wish to understate the benefit to society as a whole. Several of our proposed reforms aim to increase certainty and transparency in the law. We expect such an approach to benefit individuals and groups outside of the key stakeholder groups we identify above.

Land Registry

55. Land Registry keeps a register of title to freehold and leasehold land throughout England and Wales. At the end of the financial year 2009/10 there were in excess of 22 million registered titles covering over 73% of England and Wales by area. It guarantees title to registered

³⁴ The London Property Support Lawyers Group (referred to in this Impact Assessment as the “LPSLG”) are a group of professional support lawyers who work for sizeable regional and London based firms of solicitors. The group responded to the Consultation Paper and were approached during the preparation of this Impact Assessment to establish whether it could give assistance in relation to specific issues. We thank its members for their valuable input.

³⁵ Land Registry, Annual Report and Accounts 2009/10, pg 12.

³⁶ Land Registry’s House Price Index (see <http://www.landreg.gov.uk/house-prices>) reached a peak of 293.2 in February 2008 – but sales volumes had started to decrease several months earlier. It reached 244 in April 2009. Land Registry, in its Annual Report and Accounts 2009/10, p 7, described the year 2008/09 as “... perhaps the toughest in our history, with the level of registrations falling to 60 per cent of its peak the year before”.

³⁷ The Office of Fair Trading conducted a market study of homebuilding in the UK in 2008, it indicates that “The UK homebuilding market consists of a relatively small number of large homebuilders building most new homes and a large number of smaller homebuilders. In 2006 the top 10 homebuilders built 44 per cent of new homes, and the top 25 homebuilders built 54 per cent”, it goes on to indicate that of the 5,850 homebuilders registered with the NHBC, 5,696 of them built fewer than 100 homes (Office of Fair Trading, Homebuilding in the UK, A Market Study (September 2008), paras 3.2 and 3.4).

³⁸ We explain a little about Land Registry and the Lands Chamber at paras 55 to 64 below.

estates and interests in land. In addition to maintaining the register of title, Land Registry also has responsibility for the functions of the Land Charges Department and the Agricultural Credits Department.³⁹ Of these latter two, our recommendations touch only lightly upon the Land Charges regime.⁴⁰

56. The register is computerised and, because of this, Land Registry has been able to provide us with additional information regarding some of our proposed reforms. Land Registry has confirmed that, in the financial year 2009/10, there were 9,541 applications to register grants of the exclusive use of areas of land; a sample of 250 of these fell into the following categories:

Table 2: Grants of exclusive use: breakdown by type (in %)

<i>Type of grant</i>	<i>Percentage of sample</i>
Parking space	81.2%
Balcony	12.4%
Terrace/patio/garden	4.4%
Storage area	0.8%
Loading bay	0.8%
Access	0.4%

Source: Land Registry (2010)

The Lands Chamber of the Upper Tribunal

57. The Lands Chamber has numerous functions. These often concern valuation matters; it determines disputes concerning the compensation payable for compulsorily purchased property; and hears appeals from Valuation Tribunals, Leasehold Valuation Tribunals and Residential Property Tribunals. Appeals from the Lands Chamber are to the Court of Appeal. Of relevance to this project, the Lands Chamber also hears applications to discharge or modify restrictive covenants affecting freehold and certain leasehold estates under section 84 of the Law of Property Act 1925.⁴¹ It is common for parties to be legally represented in the Lands Chamber, although this is not always the case.
58. An effective Lands Chamber jurisdiction is a crucial tool in cleaning titles, increasing the utility of land and making it available for construction and development. In each of the three financial years to April 2010 there has been an average of approximately 60 applications under section 84 of the Law of Property Act 1925 made to the Lands Chamber for the discharge or modification of restrictive covenants. Where these are successful they enable land to be developed and used in new ways. An unsuccessful application will have obliged the owner or owners of the benefited land to participate in legal proceedings in order to protect their existing property right and is likely to result in a costs order against the applicant. It is essential both to the Lands Chamber and all parties to its proceedings that the law governing the modification and discharge of interests in land is clear and that the process is efficient and fit for purpose. The reforms we propose are intended to do this. They are not designed to favour developers over other land users.

³⁹ See Land Registry, Framework Document 2008 (2008), p 4. (<http://www1.landregistry.gov.uk/assets/library/documents/frameworkdoc2008.pdf> (last visited 7 June 2011)).

⁴⁰ The Land Charges system enables the burden of certain interests that affect unregistered land to be registered.

⁴¹ We refer to section 84 of the Law of Property Act 1925 as “section 84” throughout this Impact Assessment.

Table 3: Total Lands Chamber cases: numbers received and disposed of (in total and under section 84 of the Law of Property Act 1925)

	2007/08	2008/09	2009/10
Total number of cases received	1,400	1,100	1100
Total number of cases disposed of	1,000	950	1,000
Total number of cases disposed of that were withdrawn, struck out or settled by consent	450	370	460
Cases received under s84 Law of Property Act 1925 to discharge or modify a restrictive covenant	80	57	45
Total number of cases disposed of brought under s84	72	95	72
Successful cases under s84 (determined, discharged, modified and allowed)	28	25	26
Unsuccessful cases under s84 (dismissed, withdrawn, struck out) ⁴²	41	69	43
Cases under s84 settled by consent order	3	1	3
Percentage of cases received brought under s84	5.7%	5.2%	4.1%
Percentage of cases disposed of brought under s84	7.2%	10.0%	7.2%

Source: Lands Chamber (2010/11)

59. The costs of applicants and objectors fall largely into two categories: Lands Chamber fees and professional fees. The first of these is relatively easy to deal with. The Lands Chamber charges a standard fee for each stage that an application reaches.⁴³ These are as follows:

Table 4: Lands Chamber fees

Process	Fee
Lodging an application	£800
Preliminary hearing (if one is necessary, to determine whether or not an objector is entitled to object)	£500
Interlocutory hearing ⁴⁴	£100
Final hearing	£1,000
Engrossing a final order (only payable where proceedings do not proceed to a final hearing)	£450

Source: Lands Chamber (2010)

60. The total fees payable to the Lands Chamber if an application proceeds to a final hearing are therefore between **£1,250** and **£2,400**.⁴⁵

⁴² The Lands Chamber has indicated that the number of unsuccessful cases is likely to be deceptively high: it includes cases where the parties have settled but not requested a consent order to be issued by the Lands Chamber and which the Lands Chamber eventually strikes out. Some (perhaps many) of these cases would not have settled if the jurisdiction of the Lands Chamber to discharge or modify restrictive covenants had not been invoked.

⁴³ For more detail of Lands Chamber fees, see The Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010, SI 2010 No 2601.

⁴⁴ The Lands Chamber has advised that, during proceedings, most parties will have made at least one if not a number of interlocutory applications at a fee of £100 per application. For the purpose of establishing the total cost, we have assumed that either no interlocutory application is made, or only one is made in each set of proceedings.

⁴⁵ The lower figure of £1,250 is based upon proceedings which involve an application fee (£800) and an engrossed order without final hearing (£450). The higher figure of £2,400 is based upon proceedings which involve an application fee (£800), a preliminary hearing (£500), one interlocutory application (£100) and a final hearing (£1,000).

61. The other costs of the applicant are more difficult to assess because there is no publicly available record of these. Several members of the LPSLG have provided us with estimates of the total cost that may be incurred in applying to the Lands Chamber to discharge or modify a restrictive covenant. A low estimate is **£30,000** and a high estimate is **£100,000**. Our best estimate for an average is the mid-point of the two; **£65,000**.
62. We say above that the section 84 jurisdiction is essential. The relatively low number of applications to the Lands Chamber suggest (and the LPSLG has confirmed) that use of the statutory procedure is made where a proposed use of land cannot proceed without discharge or modification of a restrictive covenant. This may happen where, for example, negotiations to release a covenant have failed or are impossible.⁴⁶
63. Although there are a relatively small number of section 84 applications, the Lands Chamber considers it reasonable to assume that the simple existence of its jurisdiction leads to numerous agreements between those burdened by and those with the benefit of restrictive covenants, who, realising that an application could be made to the Lands Chamber and how the Lands Chamber would be likely to determine it, settle the matter instead by agreement. The benefit conferred by the provision (and its proposed extension in our recommendations) is thought likely to be much greater – indeed very much greater – than the statistics and estimates of cases heard and determined would suggest.
64. We note one risk: our proposed reform will widen the jurisdiction of the Lands Chamber and the figures we use in estimating the cost and benefit of this aspect of the reform may change as a result. We have not taken account of any such changes in the estimates.

Description of options considered

Option 0: do nothing (base case)

65. Retain the existing law relating to easements and covenants. The key features and problems with the current law are summarised here:

Table 5: Current law

<i>Current law</i>	<i>Key features and associated problems</i>
1. Positive covenants cannot run with land	It is currently impossible to create a lasting obligation to allow one landowner to enforce a positive obligation against another – for example, to maintain a shared drive (coupled, perhaps, with an obligation for the other to contribute to the cost). At the present time, any such obligation will not bind future owners, and so it becomes useless once the parties to the covenant part with the land. The only alternative is for the parties to implement one of a number of workarounds which have their own difficulties. ⁴⁷
2. Interests cannot be created over land in single ownership	An owner of land who wishes to mortgage or sell part of it cannot create the interests that will allow that part to function as a standalone parcel of land if the lender has to sell it. This makes some mortgages of part unattractive to lenders. There are also risks to the validity of easements when developments are created which contribute to errors on the register of title maintained by Land Registry and so create potential liability for Land Registry's indemnity fund.
3. There are difficulties in establishing whether easements have been abandoned	Even where an easement has been unused for many years there is no presumption that the owner has intentionally abandoned it. This makes the burden

⁴⁶ The current law means that it may be impossible to tell which land benefits from a restrictive covenant and, therefore, who should be approached to negotiate its release.

⁴⁷ See paras 12 to 14 above.

	suffered by the land subject to the easement potentially very difficult to extinguish, even when the easement will not be used again.
4. The Lands Chamber's jurisdiction extends only to modification and discharge of restrictive covenants	The Lands Chamber has the power to discharge and modify restrictive covenants on certain statutory grounds. There is no corresponding power to discharge easements or profits. This makes these interests potentially very difficult to extinguish and therefore inappropriately burdensome on land. In addition, the power to determine the validity of a restrictive covenant lies only with the court.
5. Easements that permit near exclusive use are potentially invalid	A grant of a right which prevents the owner of land doing anything substantive on it is unlikely to be valid. This rule is too restrictive and is preventing what should be legitimate rights being valid, for example the right to park in an allocated parking space.
6. The law relating to the acquisition of easements by prescription and implication is unsatisfactory and too complicated	The law relating to the acquisition of easements by implication and prescription has too many overlapping and confusing rules. These make the law unnecessarily hard to apply and advise upon.

Option 1: wide-ranging reform

66. This reform builds upon existing principles, replacing or modifying the current law where it is not operating efficiently. This is the preferred option. It is a sizeable reform package but is a targeted measure; it does not seek to codify or restate the law.⁴⁸ It will benefit from the open registration framework created by the Land Registration Act 2002 – and will fit within the system of electronic conveyancing as it is progressively implemented by Land Registry.⁴⁹ The full benefits of the reform will be felt where title to land is registered,⁵⁰ but the reform is not limited to registered land. The majority of the benefits will be felt by owners of land generally – whether their estate is registered or unregistered.
67. Interests that are created post-implementation will be, so far as is possible, visible, understandable and accessible to stakeholders – homeowners and occupiers, buyers of land and property, businesses, housebuilders and developers as well as each of their legal advisors, valuers and lenders.
68. Six areas for reform are of sufficient individual importance – in terms of their costs and/or benefits – to warrant a detailed exposition in this Impact Assessment.⁵¹ These are as follows:
1. the burden of positive obligations will run with land and will therefore be capable of binding successors in title;
 2. interests will be capable of being created over land in single ownership;

⁴⁸ Save that because the drafting of section 84 of the Law of Property Act 1925 is confusing and convoluted, our draft Bill reorders this without changing its effect.

⁴⁹ For more details on electronic conveyancing see www.landreg.gov.uk/e-conveyancing/.

⁵⁰ The Land Registry's annual report for the financial year 2009/10 indicates that around 73% of all of the freehold land in England and Wales was registered. This represented an increase of 4% over the previous year. See Land Registry, Annual Report and Accounts 2009/10 (July 2010), p 12, (http://www.landreg.gov.uk/upload/documents/Annual_Report_0910.pdf (last visited on 7 June 2011)).

⁵¹ There are four other notable recommendations that we make in the Report which we do not consider in detail in this Impact Assessment. The first makes it clear that interests attached to a leasehold estate terminate when the lease to which they are attached terminates – the effect of this recommendation is to revert to a position which practitioners understood to be the law until the case of *Wall v Collins* [2007] EWCA Civ 444, [2007] Ch 390. The second prevents profits, which are essentially commercial arrangements, being created by anything other than express grant. The third is that the express release of an interest in registered land will need to be registered at Land Registry, which reflects common conveyancing practice in any case. The fourth, and final, recommendation is that Land Registry should consider consulting on short-form easements and land obligations – in the event that this happens, any necessary impact assessment will be carried out by Land Registry.

3. easements that are unused for more than 20 years will be presumed to have been abandoned;
 4. the Lands Chamber's jurisdiction will be extended to cover modification and discharge of easements, profits, and positive and negative obligations, in addition to existing restrictive covenants;
 5. easements that permit near exclusive use will be valid; and
 6. the law relating to the acquisition of easements by prescription and implication will be simplified.
69. We have already explained the problems in each of these areas⁵² and we turn now to address how Option 1 would operate in respect of them.

Policy 1: positive obligations will run with land

70. The proposed reform makes certain positive obligations enforceable against future owners of land. These will be obligations that involve doing something on one's own land or on a boundary structure, and obligations to pay, or contribute towards, the cost of performing such an obligation. Examples of valid positive land obligations are obligations to keep a fence or building in repair, to maintain a driveway and obligations to reimburse, in whole or in part, the costs of performing such maintenance obligations. Each obligation must truly benefit other land⁵³ rather than an owner personally.
71. We call these new interests land obligations. They will also perform the function of restrictive covenants – we call these negative land obligations. In most cases, positive and negative land obligations will be transparent to both the owner and any purchaser of both the benefited and burdened land because they will not operate at law without being registered on the title to land.⁵⁴ Those who fail to comply with a land obligation will not be able to argue that they did not know of its existence – this will make enforcement quicker and cheaper and it will be easier for advice to be given to landowners where there is a dispute.
72. A desirable side-effect of attaching land obligations to the land rather than to the owner of that land is that an owner's liabilities come to an end when the property is disposed of – save for any breaches of the obligation already committed at the point of disposal.

Policy 2: interests will be capable of being created over land in single ownership

73. Reform will allow landowners to create a web of necessary rights and obligations between parcels of land in their own ownership before any land is sold.
74. So, for example, prior to the sale of any house from a new housing estate, the developer could divide the estate into plots and create the rights to run services under neighbouring gardens and rights to use estate roads; the developer could also impose restrictive land obligations to use each plot only for residential purposes – each for the benefit of neighbouring plots. At this point the land will still be in the developer's ownership but the rights will have been created – ready for the sales of individual plots after the building works are complete. This cannot be done under the current law. Post-implementation the rights will be certain and valid regardless of the order in which the individual properties are sold.
75. This reform will also benefit borrowers and lenders by facilitating mortgages of part, where, for example, part only of a large property is to be developed or where part of it is contaminated or subject to onerous interests. A lender is currently unlikely to accept as security only part of an estate. The reform will enable an owner of land to create rights over

⁵² See paras 12 to 35 above.

⁵³ Whether something truly benefits, or, in the language of the draft Bill, “touches and concerns” other land is a technical concept and is dealt with in the Report at para 5.49 and following.

⁵⁴ This point is complex, but, briefly, where the benefited and burdened land are registered (or are registered as a result of the transaction that creates the land obligation) the land obligation will need to be registered on both the titles to take effect at law. We anticipate that this will be the most common case because most land in England and Wales is now registered and we expect land obligations to be created in transactions that themselves are subject to the requirement to register. Where the burdened land is registered but the benefited land is not, then, as with easements, there will be no way to register the benefit. Where the burdened land is unregistered, there is no requirement to register the benefit, but the burden will need to be registered as a land charge to bind purchasers of the land for value.

his or her land (benefiting the part to be mortgaged) prior to the creation of the mortgage. It will not be possible, without the lender's consent, to change these following the grant of the mortgage and, therefore, if the borrower defaults and the lender sells the property the land can be disposed of with the necessary rights.

76. This reform will also increase the accuracy of the register of title. Currently, at common law, an easement comes to an end when the benefited and burdened land fall into common ownership; yet that extinguishment is unlikely to be reflected on the register of title, for various practical reasons that we explain in our Report.⁵⁵ It might be argued that, as a result, Land Registry continues to guarantee the validity of an easement that has in fact ceased to exist.
77. Our reform will prevent the automatic extinguishment, at common law, of interests when the benefited and burdened land come into common ownership. This will mean that if the benefited and burdened parcels of land come into the same ownership, and are later disposed of separately, then the rights will continue to benefit and burden the two plots after their disposal and the register will remain an accurate reflection of the interests between the two plots.

Policy 3: easements that are unused for more than 20 years will be presumed to have been abandoned

78. This proposed reform will create a presumption that an easement has been abandoned if it is unused for 20 years. This will reverse the position under the current law so that it will be for the person with the benefit of the easement to show that he or she had no intention to abandon the benefit of the right after 20 years of non-use. Those who have a legitimate reason for not using an easement for the period will be able to rebut the presumption.
79. The intention of this recommendation is to maintain a sensible balance between the need to ensure that unnecessary bars to development and effective use of land are minimised, while preserving those rights which, while underused, are not intended to be lost.

Policy 4: the Lands Chamber's jurisdiction will be extended

80. This reform will make easements, land obligations and profits capable of modification and discharge in largely the same way and on largely the same grounds as those that exist now for restrictive covenants.
81. It will allow for easements and profits created after implementation to be relocated within a burdened owner's land in certain circumstances. However, we do not suggest that variations to the route of an easement, or the land subject to a profit, should become available on the whim of the burdened owner; a change will only be possible where the modified interest will not be materially less convenient to the benefiting owner.
82. Our expectation is that, by opening up the jurisdiction of the Lands Chamber to cover the discharge and modification of easements, profits and land obligations, property owners will be better able to manage and develop their land as society and local circumstances change.
83. The proposed reform would also enable the Lands Chamber to give a declaration in respect of an interest (that is, to determine its validity or scope) where one is required during the course of proceedings. This will avoid duplication of proceedings in the courts and avoid the need to halt proceedings in the Lands Chamber while those in court are completed.

Policy 5: easements that permit near exclusive use will be valid

84. Our reform will clarify the law. It will still be the case that granting an easement which gives exclusive possession will render that grant invalid.⁵⁶ However, if all that it does is to prevent the owner of the burdened land from having effective use of the burdened land then this alone will not prevent the easement being valid.
85. We are aware of several circumstances where such easements are used: easements that purport to give rights to use a balcony and a right to use a bin store, for example. Land Registry has indicated to us that our reform will have the most impact in relation to

⁵⁵ See the Report, para 4.39 and following.

⁵⁶ Although it may amount to the grant of a lease.

easements to use allocated car parking spaces.⁵⁷ We have therefore based our explanation, and later calculation of the quantitative benefit, of this aspect of this policy on parking rights and, more specifically, those attached to residential flats,⁵⁸ although the benefit will be felt more widely than this.

86. The proposed reform will ensure that the vast majority of easements amounting to the grant of a right to park in an allocated space will be valid.

Policy 6: the law relating to the acquisition of easements by prescription and implication will be simplified

Implication

87. The current rules of implication for easements will be replaced by a single statutory method, and it will no longer be possible to create a profit by implication or prescription. Following reform, an easement will only be implied for the benefit of either the land sold or the land retained if it is necessary for the reasonable use of the land that would benefit. It will be possible for parties to a transaction to exclude the effect of this statutory test.
88. Section 62 of the Law of Property Act 1925 will no longer be able to transform precarious arrangements into easements on a part disposal of land.⁵⁹

Prescription

89. We propose a new test to replace the numerous existing methods by which prescription operates and simplify what is a convoluted and confused area of the law. This will make advising on the law easier and more cost effective. The statutory test is not expected to enable more easements to be acquired by prescription than is the case at present.
90. The new statutory test for prescription will create an easement after 20 years' use of the burdened land by the owner of the benefited land. The use must be such that it could have been an easement if granted expressly and must be conducted without force, without stealth and without permission of the burdened land's owner.⁶⁰

Option 2: limited reform

91. The six policy elements that comprise Option 1 are, for the most part, self-contained. They could be implemented individually or in combination with others.⁶¹ However, we see little incentive to implement the policies in a piecemeal fashion beyond what we say here.
92. The reform of positive covenants to enable them to run with land is the most significant and fundamental reform that we propose. The interest that would be created will be new to practitioners, Land Registry and the public and, while other elements of the proposed reform build upon existing principles, the reform to positive covenants⁶² involves a new interest in land and a conceptual change. We therefore think that there is a neat division between this recommendation, and those that remain which build upon or amend the existing law.
93. Furthermore, uncontroversial Law Commission Bills benefit from a time-efficient committee-based procedure in the House of Lords. While we do not suggest that the reform of positive covenants will necessarily be controversial, it is perhaps less likely that a package of reforms including this would be able to take advantage of the procedure.
94. The implementation of the recommendations that comprise Option 1 – but without the reform that would make it possible for positive obligations to run with land – is a viable, but less attractive option. It would not offer the benefits provided by Policy 1, but would still provide a range of important improvements to the law and practice delivered by a less fundamental (and so more easily and cheaply implemented) reform of land law than Option 1.

⁵⁷ See the information in table 2 above.

⁵⁸ As regards houses it is often the case that a car parking space is directly adjacent to the property and that, therefore, it will be transferred to the purchaser in a freehold disposal rather than by way of easement.

⁵⁹ See the Report, para 3.59 and following.

⁶⁰ For full details of the new statutory test see the Report, para 3.115 and following.

⁶¹ It would not be possible to implement Policy 1 (positive obligations will run with land) on its own.

⁶² Policy 1 – see paras 70 to 72 above.

2. COST AND BENEFIT ANALYSIS

95. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding the overall impact to society from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the recommendation impacts differently on particular groups in society or changes in equity and fairness, either positive or negative.
96. When calculating the net present value (NPV) for this Impact Assessment we have used a time frame of fifty years, with the current year (2011) being year 0. This policy has been assessed over a longer timeframe than is standard for two reasons:
1. some costs and benefits will emerge over a prolonged period. Certain recommendations will only affect interests created after implementation of our recommendations and, even then, only after such interests have been in existence for several decades;⁶³ and
 2. the reforms that we propose affect the structure of land law and the benefits will continue to be felt long into the future. History suggests that this type of reform happens very rarely, but, when it does, the benefits that are introduced continue to be realised many decades later.
97. Except when specified, we have assumed that the transitional costs and benefits occur in year 0, and on-going costs and benefits accrue in years 1 to 50. We have used a discount rate of 3.5% for years 1 to 30, and 3% for years 31 to 50, in accordance with HM Treasury guidance.⁶⁴ Unless stated otherwise all figures are in 2009/10 prices, and have been updated where necessary using the GDP deflator.
98. When netting the present values we have subtracted low costs from low benefits and high costs from high benefits. This tightens the range of the net present value, compared with subtracting high costs from low benefits and low costs from high benefits.
99. We have followed Ministry of Justice guidance on rounding when calculating the net present values of the different policy options. The calculations are still shown in full, so readers can calculate an unrounded net present value, or the contact person identified on the front of this impact assessment can supply the precise figures. The Ministry of Justice guidance is as follows:
- Figures below £1m – rounded to the nearest £0.5m
 - Figures above £1m and below £10m – rounded to the nearest £1m
 - Figures above £10m and below £30m – rounded to the nearest £5m
 - Figures above £30m and below £250m – rounded to the nearest £10m
 - Figures above £250m – rounded to the nearest £50m
100. The net present value of Option 1 and Option 2 are presented as the sums of the rounded policy-specific net present values and are not rounded again.
101. Detailed summary analysis and evidence sheets are available for our preferred Option 1. Each policy recommendation is evaluated separately. A summary sheet for Option 2 has been prepared on the basis that Policy 1 (positive obligations will run with land) will not be implemented but that the remaining five policies comprising Option 1 will be implemented. Net present value figures on the summary sheets are also rounded according to Ministry of Justice guidance.
102. We make one further point in respect of the figures used in assessing the costs and benefits of our reform: past and future volatility in the property market may impact on some of the figures we rely upon or calculate in this assessment. The downturn is likely to result in an underestimate of the benefits of reform due to several calculations being made on a “per

⁶³ See para 163 and following below.

⁶⁴ The Green Book.

transaction” basis. The costs of the proposed reform, on the other hand, are often analysed in terms of professional training and litigation which are unlikely to vary greatly regardless of the number of completed transactions.

Costs and benefits of Option 0: do-nothing (base case)

103. We explain the problems in the existing law in some detail at paragraphs 12 to 35; they are summarised below:
1. positive covenants cannot run with land;
 2. interests cannot be created over land in single ownership;
 3. there are difficulties in establishing whether easements have been abandoned;
 4. the Lands Chamber’s jurisdiction extends only to modification and discharge of restrictive covenants;
 5. easements that permit near exclusive use are invalid; and
 6. the law relating to the acquisition of easements by prescription and implication is unsatisfactory and too complicated.
104. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value.

Costs and benefits of Option 1: wide-ranging reform

105. Wide-ranging reform comprises, for the purposes of this Impact Assessment, six policies designed to address key problems – this part of the Impact Assessment considers the costs and benefits of each of them in turn. Before we do this, however, we note that some of the transitional costs attributable to Option 1 are relevant to all or most of the six policies: these are the training costs for legal services providers and the judiciary, and the costs to Land Registry.

Costs of the reform common to all policies

Transitional costs common to all policies

Training costs for legal services providers and the judiciary

106. Other than in respect of positive obligations, the concepts involved in these reforms are, for the most part, not new. However, lawyers involved in this area will want to ensure that they have a comprehensive understanding of how the reforms operate which will require training. We expect that much, if not all, of this cost will be absorbed through the requirements of the common professional development requirements of solicitors, barristers and legal executives affiliated with the Institute of Legal Executives and as a result our best estimate for lawyer training costs is £0. We make an assumption that because of the training requirements, and nature, of these professions, no work will be refused and no profit costs will be lost due to the training which arises as a result of this reform. If this assumption is incorrect, then there will be additional transitional costs, which we have not monetised.
107. To minimise the need for training, the Report and Explanatory Notes to the draft Bill explain how the reforms are to operate and, in the case of positive land obligations (the most significant and conceptually unfamiliar of the proposed reforms), detailed guidance is included in the Report on how best to employ them to minimise the risk of future difficulties or litigation arising. Reading this guidance will, of course, require time to undertake. However, the guidance is short and we have not monetised this “familiarisation cost” in this Impact Assessment.
108. We anticipate that there will be a review of standard documents used by conveyancers to ensure that they take advantage of the reforms. There will be no need for significant investment by businesses in these. Many will use documents that are standard in the legal

professions.⁶⁵ We anticipate that the cost to businesses of reviewing precedents will be minimal and we have not monetised this.

109. Responsibility for training the judiciary rests with the Lord Chief Justice and is exercised through the Judicial College (“the JC”), formerly known as the Judicial Studies Board. We have discussed judicial training needs arising from the recommendations with the JC and it has indicated that it expects the recommendations to be a small enough change to the law to require only an update by way of a regular newsletter without incurring additional costs. Furthermore, the nature of these reforms means that some of them, if they are to be the subject of litigation, will occur many years into the future and therefore, if there is any cost of training it can be phased over several years. We have therefore not monetised this and our best estimate of training the judiciary is **£0**.

Costs to Land Registry in implementing the reforms

110. We expect there to be a need for Land Registry to issue new internal and external guidance and for new rules and prescribed forms to be made (with consultation on these). We also expect there to be a need to modify Land Registry’s IT systems and staff training to be undertaken.
111. Land Registry undertook a recent project which led to the Land Registration (Amendment) Rules 2008. We understand from Land Registry that it required all of the actions mentioned above to be undertaken and that the cost of the project was approximately **£816,000**. Land Registry has indicated that this figure would be the upper limit of its cost estimate to implement our proposed reforms. In order to give a conservative estimate of the benefit of the proposed reforms, we have assumed that the cost to Land Registry of implementing the recommendations is based on this figure. Land Registry does not believe that there would be any saving in costs by implementing the more limited reform package that comprises Option 2.

Benefits of the reform common to all policies

On-going benefits common to all policies

Certainty

112. We anticipate that our recommendations will result in a non-monetised benefit: increased certainty and clarity in the law will benefit landowners, practitioners of the law and the courts. Advice should be easier and quicker to prepare and its content easier to understand. Where disputes arise, the risks inherent within litigation should be lowered. Easier, clearer and more certain law should reduce the stress on those who are involved with it.

Policy 1: positive obligations will run with land

Costs of the reform

Transitional costs

113. Transitional costs to Land Registry, the legal professions and the judiciary have been aggregated for all of the policies that comprise Option 1 and are considered in paragraphs 106 to 111 above.
114. Land Registry has confirmed that there are specific costs to implement a new land charge (which are attributable only to Policy 1) of between **£30,000** and **£45,000**. Our best estimate is the midway point: **£37,500**.

Ongoing costs

115. The creation of a new interest in land might appear to provide the potential for litigation where there was none before and, potentially, to cause the value of land to be reduced because of the existence of an interest which burdens it. However, this is too simplistic. Where positive obligations are currently needed to allow a transaction to proceed they are catered for by employing one of a number of workarounds, each of which has associated

⁶⁵ For example, those available from the Encyclopaedia of Forms and Precedents, published by LexisNexis.

risks and costs.

116. The importance of the positive obligation to the land will often dictate which workaround is used so, for example, an obligation to maintain a fence between residential properties, or an obligation to keep trees pruned to a certain height, may be weakly protected. An obligation to maintain a retaining wall, on the other hand, may be considered so important that it is dealt with by way of the grant of a leasehold interest over the burdened land, or by restricting the burdened owner's ability to dispose of his or her land without having the incoming owner provide a direct contractual promise to the benefiting owner. When used, workarounds may only partially perform the desired function, or may fail to perform over time.
117. The introduction of positive land obligations will therefore reduce the risk of costs, compared with the current situation. In the event that there are more positive land obligations (and therefore a greater number of properties bound) than there are workarounds at the present time, then we have assumed that any risk of additional litigation through a greater number of interests in existence is offset by a reduction in the risk of litigation arising from simpler and more robust law.⁶⁶
118. If there is any negative effect on the value of land as a result of there being a new burden, then we have assumed that this will have been offset or exceeded either by a capitalised payment to the owner, or by an uplift in value to the benefiting plot or arising from the burdened land benefiting from a similar interest in return (so, for example, one plot of land might be burdened by an obligation to maintain a fence in favour of one neighbour but be benefited by a similar obligation owed by another).

Benefits of the reform

Transitional benefits

119. No transitional benefits have been identified.

Ongoing benefits

Reduced conveyancing costs for consumers of legal services:

120. In order to estimate how much will be saved in conveyancing costs we make some assumptions. Positive land obligations are most likely to be imposed on a transfer of part (rather than the whole) of an owner's land, and in 2009/10 Land Registry handled 119,542⁶⁷ of these.
121. We have obtained anecdotal evidence from the LPSLG that onerous workarounds – meaning something more than an indemnity covenant chain⁶⁸ – are employed in between 50% to 75% of transfers of parts. The members of the LPSLG who responded are larger commercial firms and the percentage of transfers that employ workarounds reflects this. To take account of this we have made an assumption that very few residential transfers of part make use of an onerous workaround and, because there are many more residential freehold transfers of part than commercial, we have based our low estimate on 2.5% of transfers employing them, and our best and high estimates are more closely aligned with this.
122. It is extremely difficult to estimate how much cost the use of a workaround adds to a transaction. Responses from the LPSLG suggest that it depends upon the nature of the transaction. One respondent said:
"... all of these [workaround] devices are cumbersome and any improvement on this topic is to be encouraged."

Another said:

"About 50% of transfers of part employ a workaround, although we try to avoid them. They

⁶⁶ If this assumption is incorrect, then there is a potential for a greater number of claims to be heard in the courts, with greater costs being incurred by the courts, and by the parties to any action.

⁶⁷ This figure is down from 138,873 in the preceding financial year. See Land Registry, Annual Report and Accounts 2009/10 (July 2010), p 72 (http://www.landreg.gov.uk/upload/documents/Annual_Report_0910.pdf (last visited on 7 June 2011)).

⁶⁸ More details on how indemnity covenants operate can be found in the Consultation Paper, para 7.47 and following.

usually involve a detailed negotiation about who gives their consent under the terms of a restriction when the purchaser completes a direct deed of covenant.”

123. One respondent estimated the additional cost that workarounds add to a transaction at 20%.
124. Other than what we say above, there is a lack of data on the additional costs incurred in employing workarounds. However, workarounds are over complex by definition and will therefore take longer to settle: we have made an assumption that a low estimate of this additional time is 30 minutes per solicitor in a two party transaction, with a best and high estimate of 1 hour and 1.5 hours respectively.⁶⁹
125. Our low, high and best estimates of this benefit, and the information used to generate them, are set out below:

Table 6: Estimated annual benefit to consumers due to reduced conveyancing costs

	<i>Low</i>	<i>Best</i>	<i>High</i>
Number of transfers of part	119,542	119,542	119,542
Assumed % of transfers of part that currently use a workaround other than an indemnity covenant	2.5%	5%	7.5%
Assumed time saving if positive covenants could be used instead of workarounds (hours)	0.5	1	1.5
Average hourly rate of a solicitor	£111	£111	£111
Number of parties in a transaction	2	2	2
<i>Annual benefit</i>	<i>£331,729</i>	<i>£1,326,916</i>	<i>£2,985,561</i>
<i>Present value over 50 years</i>	<i>£7,859,513</i>	<i>£31,438,053</i>	<i>£70,735,619</i>

126. The cost savings should, in general, be felt by the consumers of legal services. Any reduced fee income to legal services providers (for example, solicitors and licensed conveyancers) would mirror the gains to the clients who use, and pay for, these services. We assume that if there is a reduction in business in this area for legal services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. There may be some minor adjustment costs from the changing pattern of work, but no ongoing costs.
127. Some workarounds, in particular those that rely upon each new owner of the burdened land covenanting directly with the benefiting owner to perform the positive obligation, have ongoing costs on each subsequent sale. Where positive land obligations are used in the future, these will not be incurred. We do not attempt to calculate this benefit because of the difficulties in obtaining data for each of the workarounds. The effect of this will be to underestimate the benefit.

Landowners and purchasers of land will benefit from greater certainty and efficiency

128. Benefits are likely to emerge over several decades⁷⁰ as a result of the increased certainty of

⁶⁹ The figures of 30 minutes, 1 hour and 1.5 hours are based on an estimate of a 20% increase in costs, an average cost of a solicitor at £111 per hour, and an average cost of residential conveyancing of £500 (see para 145 below). The average cost of a solicitor is based upon the guideline hourly rates (2010) for solicitors published by HM Courts Service that are used in the summary assessment of costs. For the purpose of this Impact Assessment we have taken the lowest hourly rate, being the National 2 Band D solicitor. For more information on the guideline hourly rates see www.hmcourts-service.gov.uk/publications/guidance/scco/previous_rates.htm (last visited 7 June 2011).

⁷⁰ It is difficult to estimate the time frame over which the benefits will be felt. However, we believe they will be appreciable approximately 20 years after implementation. To explain this: in 2008/09 there were 22.5 million homes in the housing stock in England (Communities and Local Government, Dwelling stock estimates: 2008 and 2009, England (2010) (www.communities.gov.uk/documents/statistics/pdf/1484641.pdf) (last visited 7 June 2011)). Even if we assume there is no loss from the housing stock and that the current low levels of construction continue so that only approximately 50,000 new private sector freehold homes are constructed per year (see

obligations and efficiencies both in terms of performance and, where litigation is necessary, enforcement. We highlight how these benefits may be realised by reference – as an example only – to the paradigm neighbour dispute case: the hedge dispute. Concerns over high hedge disputes resulted in the inclusion of a provision in the Anti-Social Behaviour Act 2003 enabling owners of land adversely affected by the height of a line of evergreens over two metres in height to complain to their local authority.

129. The proposed reform will not solve existing disputes but it will enable developers of housing estates developed post-implementation to include, for example, obligations not to allow anything to grow higher than two metres.⁷¹ If developers do this, it will allow for infinitely more flexible and transparent local arrangements than the Anti-Social Behaviour Act provides for. The reform would also save public funds and recourse to a quasi-criminal sanction.
130. It is extremely difficult to monetise this benefit, even in the limited arena of high hedge disputes where previous work has been undertaken and a regime implemented.⁷² However, that work suggested that high hedge neighbour disputes caused litigation and a reduction in property values.⁷³ While positive land obligations would not prevent such neighbour disputes entirely, we anticipate that, on housing estates constructed post-implementation and because potential purchasers would know of the existence of any land obligations prior to the sale, there would be a reduction in litigation and a greater acceptance that performance is necessary as a result.
131. There are many other potential areas of dispute where positive obligations may give relief. A few examples are: who owns and maintains fences, arguments over unsightly gardens and dilapidated buildings, and when and who should repair sewerage and drainage conduits.
132. While there is research into neighbour disputes, we have not found information that would assist us in monetising this benefit with any degree of confidence and, in order to avoid overestimating any benefit, we have not done so. We can identify several additional non-monetised benefits: for example, neighbour disputes have a potentially corrosive effect on the value of land⁷⁴ and they can create stress for both parties. We believe that where a land obligation obliges a landowner to maintain something, and a property has been purchased in the knowledge of it, then there will be less scope for a dispute to arise and escalate.

Net Impact

Table 7: Policy 1: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£30,000	£37,500	£45,000
On-going costs (annual)	£0	£0	£0
Present value of costs	£30,000	£37,500	£45,000
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£331,729	£1,326,916	£2,985,561
Present value of benefits	£7,859,513	£31,438,053	£70,735,619
Net present value	£8,000,000	£30,000,000	£70,000,000

table 1 above) (which are the most likely housing type to benefit from this reform), then these new homes will account for approximately 5% of the housing stock in 20 years' time. Many of these properties will have the potential to be benefited by this reform.

⁷¹ Even though this obligation is phrased negatively it is, nevertheless, a positive obligation. This is because it requires action and expenditure by the owner with the burden in order to comply with it.

⁷² An impact assessment on the effect of implementing the high hedge provisions of the Anti-Social Behaviour Act 2003 is available: Office of the Deputy Prime Minister, Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-social Behaviour Act 2003 (2005) (www.communities.gov.uk/documents/planningandbuilding/pdf/riahighhedges.pdf) (last visited 7 June 2011).

⁷³ The impact assessment for the project used values of between £1,000 and £10,000 for the loss in value to a property where a neighbour dispute existed. See Office of the Deputy Prime Minister, Regulatory Impact Assessment: High Hedges – Implementing Part 8 of the Anti-social Behaviour Act 2003 (2005), para 25.

⁷⁴ See n 73 above.

133. We make one final comment about the value of land. We have assumed that any decrease in the value of land as a result of the burden of a positive obligation being imposed will be met by a commensurate increase in the value of the benefiting land. Furthermore, in the event that the previous assumption is incorrect, we have also assumed that, because landowners can already simulate the effect of positive obligations running with land (albeit inefficiently) then there will be no devaluation of land due specifically to implementing Policy 1.

Policy 2: interests will be capable of being created over land in single ownership

Costs of the reform

Transitional costs

134. As with Policy 1, there are likely to be some transitional costs associated with this reform. They arise broadly under the same heads:
1. training and precedent preparation costs for legal services providers; and
 2. costs to Land Registry in implementing the reform.
135. These costs have been aggregated for all of the policies and are considered in paragraphs 106 to 111 above.

Ongoing Costs

136. We are not aware of ongoing costs arising from this reform. There is a potential for mistakes to be made by developers, conveyancers and Land Registry in preparing and handling the documents that create these rights. However, that risk is already in existence. This reform does not increase the number or nature of easements and land obligations that will be made, only the timing and nature of their creation.
137. There will be a need for developers to effect the grant of interests over their land in writing, and for this grant to be registered in order for it to take effect at law: this will require the lodging of the grant with a prescribed application form for its registration.⁷⁵ The cost of making the application to Land Registry has not been monetised for two reasons. Firstly the fee for this service has not been considered or established by Land Registry; however, the cost, in comparison with the total costs of a development (and the savings which it is expected to realise for developers) is expected to be immaterial. Secondly, the use of the power given by the reform will be voluntary.

Benefits of the reform

Transitional benefits

138. No transitional benefits have been identified.

Ongoing benefits

139. We see several benefits to this reform. However, we make one overarching point first; it will not be possible to create rights over unregistered land in one person's ownership. This is because there is an overwhelming need to ensure that rights created in this way are transparent to purchasers, tenants and anybody else who is interested in acquiring any interest in the whole or part of a property. It will, of course, be open to an owner of unregistered land to register it in order to exercise this power.

Reduced conveyancing costs for the consumers of legal services

140. Currently, an owner who makes several transfers out of a single estate to different purchasers will be forced to create obligations separately on each sale for the reasons we have set out above.⁷⁶ A common example of this situation is a freehold housing estate where the owner of each house will need the same right to use estate services and estate roads

⁷⁵ Applications to Land Registry are almost always accompanied by a form. There are several different forms depending upon the nature of the application being made.

⁷⁶ See para 15 and following above.

and be subject to the same restriction not to use the property for business use. Each of these transactions amounts to a transfer of part, rather than a transfer of whole.

141. Where a purchaser's conveyancer is presented with the necessary rights and expected obligations already evident on title then there is little to negotiate, and little need to make any further enquiries. The contract, the transfer, the registration formalities and the reporting to the client are made simpler, with lower costs incurred, as a result.
142. On smaller developments – we have assumed less than ten units – the benefits in terms of developer cost savings may not outweigh the additional pre-sale developer costs incurred in establishing the rights and splitting the development before purchasers become involved. We have excluded these smaller developments from our calculation of the benefit.⁷⁷
143. This reform will benefit where there is a new build house sale rather than where there is the sale of a flat. We have calculated the number of new build houses in England using the number of private sector new build units and deducting the proportion which are flats (see table 1 above). As explained under that table, the data relates to England only, so the benefits are underestimated.
144. We have assumed that between 20% and 40% of residential new build houses are built as part of a development of ten houses or more. Our best estimate is the midpoint between the two.⁷⁸
145. All transactions are different. However, various sources suggest that the conveyancing costs for a purchaser of a £100,000 to £200,000 house are between £350 and £550.⁷⁹ The £350 figure is, we believe, likely to be very low and our best and high estimates for conveyancing costs are £500 and £550 respectively. It has not been possible to get accurate information on how much would be saved as a result of simplified conveyancing. For the reasons we set out in paragraph 141, we have assumed, we think conservatively, that a low estimate of the savings would be 2.5% with a best estimate of 5%, and we make these assumptions in our calculations.
146. As with Policy 1, the cost savings should, in general, be felt by the consumers of legal services. Any reduced fee income to legal services providers (for example, solicitors and licensed conveyancers) would mirror the gains to the clients who use, and pay for, these

⁷⁷ While the reform is not expected to benefit smaller developments, it will not increase their cost.

⁷⁸ Information on the size of developments constructed is very difficult to obtain, and there is a medium to high degree of risk in the estimates that we arrive at in para 144 – although we mitigate this by choosing a wide range. We have used figures derived from a sample of grants of planning permission, rather than the number actually constructed in developments of 10 or more because the latter is unknown. However, there is clearly no guarantee that the number of homes given planning permission is the same as the number of homes actually built; there may be many more given planning permission than are constructed.

We have had recourse to a research paper undertaken by the National Housing and Planning Advice Unit (Housing Supply and Planning Controls – The impact of planning control processing times on Housing Supply in England (2010)) (<http://www.communities.gov.uk/documents/507390/pdf/1436960.pdf> (last checked on 7 June 2011)) – we call this “the Study” in this footnote. This paper explores residential developments over 10 units in size by recourse to a sample of 45 local authorities. 900 sites were included in the Study and it was undertaken in 2005/06 (the Study, p 5).

The Study suggests that 51,000 dwellings (both flats and houses) were to be constructed in developments of 10 or more units (the Study, p34). During the 2005/06 period, a total of 163,400 dwellings (houses and flats) were actually constructed in England (see Department for Communities and Local Government, Housing and Planning Statistics Live Table 232 (Housebuilding: permanent dwellings completed, by tenure and region) (www.communities.gov.uk/documents/housing/xls/1473567.xls (last visited 7 June 2011))).

We make an assumption, that is an element of the risk in our estimates, that the potential uplift in the 51,000 figure noted above which arises from it being based on planning (rather than construction figures) is offset by this being a limited sample of 45 local authorities. In other words, we assume that 51,000 dwellings (or 31% of the total) were built in developments of 10 or more units in 2005/06 (disregarding, as well, the delay between planning and construction). For the purposes of convenience we round this down to 30% for our estimate. We note one further risk to our estimates; it may be the case that flats feature disproportionately highly in larger developments. We assume that this is not the case and that the proportion is as we set out in table 1.

⁷⁹ See <http://www.co-operativebank.co.uk/servlet/Satellite/1193206375473,CFSweb/Page/Bank-Mortgages> (last visited 7 June 2011) and http://www.thisismoney.co.uk/mortgages-and-homes/tips-and-guides/article.html?in_article_id=442178&in_page_id=53957&in_advicepage_id=116 (last visited 7 June 2011).

services. We assume that if there is a reduction in business in this area for legal services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. There may be some minor adjustment costs from the changing pattern of work, but no ongoing costs.

147. We make one final note before moving onto the calculation of the benefit; because this reform is likely to be of greatest benefit to those engaged in the freehold housing market, we have limited our analysis of the benefits to this area. However, we note that the proposed reform will benefit any medium to large development that is disposed of using freehold sales. The decision to limit to the housing market will tend to understate the value of the proposed reform.⁸⁰
148. The calculation below assumes that the developers of all developments that could benefit from this reform will use it – this is unlikely to be the case although we would anticipate that the benefits to the developer in making use of the system will result in many doing so.

Table 8: Estimated annual consumer benefit from reduced conveyancing costs in England

	<i>Low</i>	<i>Best</i>	<i>High</i>
Private new build house completions in England	53,178	53,178	53,178
Estimated percentage in a development of 10 or more houses	20%	30%	40%
Houses in a development with 10 or more houses	10,636	15,953	21,271
Cost of conveyancing for a £100,000 to £200,000 house	£350	£500	£550
Assumed percentage of cost saved per relevant sale	2.5%	5%	5%
Benefit per relevant house	£8.75	£25.00	£27.50
<i>Annual benefit</i>	£93,062	£398,835	£584,958
Present value over 50 years	£2,204,866	£9,449,426	£13,859,157

149. In addition to the monetised benefits set out above, this reform will give rise to two other significant benefits that we have not been in a position to monetise.

Reduced conveyancing risk for purchasers and lenders

150. This reform will allow for a registered estate to be split into individual plots with rights and obligations created between each of them before sale. Purchasers, lenders and their advisers will know, prior to purchase, what rights and obligations benefit and burden the land. This is not the case under the current law, and this creates a risk for purchasers.
151. We have not been able to monetise the benefit of minimising this risk. Any assumptions that we make about how many properties may have potentially unenforceable interests in land, the nature of those interests and the potential reduction in the value of a property as a result are unlikely to be accurate, or within acceptable limits. We therefore make no estimation of this, save to say that our reform will allow for this risk to be eliminated.

Benefits to lenders and developers of land by allowing charges of part

152. Where a charge is taken over land the lender must be sure that, if the property is later sold to realise the security, the land is marketable – this includes being certain at the outset that the land benefits from, or will benefit from, all necessary easements. This is not simple or certain where a charge of part of a property is needed.
153. We have asked the Council of Mortgage Lenders if it has information on how many charges of part are refused as a result of the existing law. It has no data on this, but it has confirmed

⁸⁰ We are not in a position to estimate the extent of the underestimate here. Irrespective of the reforms that are proposed, many developers of commercial and industrial estates are likely to retain their preference for leasehold structures because of the need for greater estate management and estate controls than is the case in the residential sector.

that the law does restrict lending. However, because we do not know how many instances of this problem there are, or the value or type of developments that are hampered by an inability to obtain funding, we are not confident that we can provide a reasonably reliable estimation of the benefit. If the lending market is opened up to such developments then there are benefits not only to the lender and the developer, but also in the creation of jobs and availability of accommodation (whether it be residential, commercial or industrial) as a result of the development proceeding.

Net Impact

Table 9: Policy 2: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£0	£0
Present value of costs	£0	£0	£0
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£93,062	£398,835	£584,958
Present value of benefits	£2,204,866	£9,449,426	£13,859,157
Net present value	£2,000,000	£10,000,000	£15,000,000

154. It is also possible that allowing developers to create easements and land obligations over their own land might allow for some cost savings for Land Registry and its customers.

Policy 3: easements that are unused for more than 20 years will be presumed to have been abandoned

Costs of the reform

Transitional costs

155. This reform is simple and will cause the law to revert to what many practitioners thought was the case until *Benn v Hardinge*.⁸¹ The effect of the change in law will require only very minor adjustment and familiarisation by the legal profession and the judiciary and we have not monetised this.
156. To the extent that any minor transitional costs will be incurred by Land Registry, the legal professions and the judiciary they are incorporated within the global estimation of transitional costs set out in paragraphs 106 to 111 above.

Ongoing costs

157. We have identified no ongoing costs arising as a result of this proposed reform. The nature of the reform means that those landowners who have no intention to abandon their easement will have little difficulty in overturning the presumption.

Benefits of the reform

Transitional benefits

158. We have identified no transitional benefits arising as a result of this proposed reform.

⁸¹ (1993) 66 P & CR 246. This case decided that there was no presumption of an intention to abandon the benefit of an easement at common law.

Ongoing benefits

Fewer obsolete easements will hamper the development of land

159. The abandonment of an easement is not reflected on the register of title and there is no reliable information concerning how many easements are extinguished in this way. Our reform will, however, make abandonment easier to prove and therefore more easements that are obsolete will be extinguished in this way than is the case at the present time. This will allow developers to proceed more confidently with their projects and without the need for insurance to cover the risk of enforcement of a right that has not been used for several decades.
160. Data on the number of development schemes undertaken in England and Wales, and their value, is difficult to ascertain. Because of the amount of data available in the housing sector, we have, again, limited our estimate of the benefit to this area. As our data is limited to England, we have therefore limited our estimate of the benefit to England rather than to England and Wales. The effect of this will be to underestimate the benefit of our reform.
161. In calculating the benefit of our reform, we have been assisted by the LPSLG which was able to suggest that approximately 10% to 33% of developments are hampered by the presence of an easement.⁸² In these cases it was made clear that insurance was not a preferred option but one respondent was able to suggest that, where insurance is taken out, its premium is often around 0.05% of the development value.⁸³ No indication of the percentage of schemes where insurance was taken out was given.
162. As will be clear from what we say above, and due to the lack of available data, we need to make several assumptions in order to determine what benefits may emerge from this recommendation. We have therefore assumed:
1. that the average size of a housing development in England and Wales is seven units and that the average house price on such a development is £163,083;⁸⁴
 2. that between 0.5% and 2.5% of developments where easements hamper a scheme are caused by easements which have not been used for in excess of 20 years and result in insurance being taken out for the full development value of the property (we have found no data on which to base our assumption in this regard – accordingly, we have provided

⁸² As we note above, the survey size is small and there is therefore a degree of risk in the accuracy of these figures.

⁸³ Another respondent suggested that the premium might be around 0.1% of the gross development value. Because of the small sample size we have used the smaller of the two to calculate the benefit.

⁸⁴ The average number of units in a development is, for the reasons we set out in n 78 above, very difficult to ascertain. We set out here how we arrive at our assumption that there are 7 units in an “average” development.

163,400 dwellings were completed in England in 2005/06 (see n 78 above). We have assumed that the number completed in developments over 10 units in size was 51,000 (see n 78 above). The mean number of units in developments over 10 units in size, as set out in the Study (referred to in n 78), in England in 2005/06 was 55. This suggests that for developments over 10 units in size, there were around 900 developments. Of the remaining 112,400 units there were between 112,400 developments (if each was for one unit) and 12,489 developments (if each was for 9 units).

We assume that each small development was for 5 units and we therefore assume that there are 22,480 developments of 5 units giving a total number of developments of 23,380 with an average of 7 units per development. The figure for the number of houses constructed is taken from 2005/06 because it is the year that the statistics used in the Study were compiled. However, this was at a time when construction levels were high. In 2010/11, the number of dwellings constructed had fallen to 105,930 – around 65% of the 2005/06 figure.

In order to avoid overestimating the benefit of our reform, we use the estimate based on the 2005/06 figures of the number of developments as the high estimate. For the purposes of the low estimate, we have multiplied the number of developments in 2005/06 (23,380) by 65%. The best estimate is the midpoint between the two.

The average development value is based on the average cost of a house multiplied by the average number of units in a development. The cost of a house (£163,083) is based upon the Land Registry data showing the average price of a property in England and Wales in April 2011 (see www.landreg.gov.uk/house-prices). The price is likely to be an underestimate because it includes flat sales (which are typically of a lower price than houses). This will tend to underestimate the benefit.

for what we believe to be a conservative range);

3. that the cost of litigation where a developer seeks to argue that an easement is abandoned (rather than taking out insurance) is the same as making an application to the Lands Chamber to discharge or modify a restrictive covenant (between £30,000 and £100,000) and that, because of greater certainty in the law, one case per year could be avoided if our reform is implemented; and
4. that where an easement which has not been used for several decades is affecting a development, 50% of these problem instances will be easily solvable without the need for insurance – either by making an application to Land Registry to remove the reference on title to the easement or because purchasers and lenders take no issue. Again, we have no data to assist in making this assumption, however, we would expect many who would otherwise argue for the retention of the right (despite its lack of use) will not do so as a result of the need for them to rebut the presumption of abandonment.

Table 10: Estimated annual benefit from fewer obsolete easements hampering developments

	<i>Low</i>	<i>Best</i>	<i>High</i>
Assumed number of developments	15,197	19,289	23,380
Assumed percentage of developments hampered by easement	10%	21.5%	33%
Number of developments hampered by easement	1,520	4,147	7,715
Assumed % of developments with easement which hampers a development has been unused for more than 20 years and enforcement has been insured against	0.5%	1.5%	2.5%
Number of relevant developments	8	62	193
Average development value	£1,141,581	£1,141,581	£1,141,581
Insurance cost as % of average development value	0.05%	0.05%	0.05%
Average cost of insurance	£571	£571	£571
Savings if insurance is not taken out in 50% of cases	£2,169	£17,753	£55,048
Savings if one abandonment claim is avoided per annum	£30,000	£65,000	£100,000
<i>Annual benefit</i>	<i>£32,169</i>	<i>£82,753</i>	<i>£155,048</i>
Present value over 50 years	£762,156	£1,960,634	£3,673,496

Net Impact

Table 11: Policy 3: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£0	£0
Present value of costs	£0	£0	£0
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£32,169	£82,753	£155,048
Present value of benefits	£762,156	£1,960,634	£3,673,496
Net present value	£1,000,000	£2,000,000	£4,000,000

Policy 4: the Lands Chamber’s jurisdiction will be extended

163. The costs and benefits of this proposed reform have been discussed with officials from the Lands Chamber who have confirmed that the following represents a fair analysis of the potential impact of the recommendations.

Costs of the reform

Transitional costs

Training costs for the judiciary and practitioners in the legal and surveyor professions

164. Transitional costs to the legal professions and the judiciary have been aggregated for all of the policies in Option 1 and are considered in paragraphs 106 to 109 above.

Lands Chamber costs incurred in implementing the reform

165. We expect there to be a need for new Lands Chamber forms, new guidance, and modifications to the Lands Chamber’s database and rule changes to accommodate the enlarged jurisdiction. The Lands Chamber has advised that the costs associated with future rule changes will depend upon the scale of the change required and that the Tribunal Procedure Committee would decide whether, and on what scale, consultation is required at the relevant time.
166. Lands Chamber officials anticipate that the cost of the changes will be substantially less than those incurred in implementing recent, more extensive, rule changes⁸⁵ and new cost structures. They estimate that the cost to the Lands Chamber of implementing the Law Commission’s recommendations will be several thousands of pounds, but less than ten thousand pounds. We work on the basis that a low estimate of the cost to the Lands Chamber is **£5,000**, a high estimate is **£10,000**, and our best estimate is **£7,500**.

Ongoing costs

167. Our proposed reform will have no immediate effect on the running costs of the Lands Chamber, even though more interests will fall within its jurisdiction. The proposed reform affects only easements, profits and land obligations created post-implementation. It is extremely unlikely that the grounds for discharge or modification of these interests⁸⁶ will be satisfied until several decades after their creation. For the purposes of this Impact Assessment we have estimated, and Lands Chamber officials agree, that there will be no material increase in the total number of applications heard by the Lands Chamber as a result of the Law Commission’s recommendations until 25 years after their implementation.
168. Moving on to the long term cost to the Lands Chamber, we have explained above that we anticipate the total number of applications to discharge or modify an interest to increase – our best estimate is that the number of applications will triple (if Option 1 is implemented) or double (if Option 2 is implemented) over a period of several decades.⁸⁷
169. We expect no change in the total number of applications between years 0 to 25 and a steady increase between years 26 to 50.⁸⁸ The increase over years 26 to 50 is expected as interests that have been created post-implementation start becoming the subject of applications for their discharge and modification. We expect that from year 51 the number of applications made per year will be relatively constant – as is the case now with restrictive covenants. This is our best and only estimate, but we highlight here that this may over-estimate the increase in applications, and that applications may well plateau over a significantly longer time-span.
170. Applications to the Lands Chamber to discharge or modify restrictive covenants comprise only a small part of its total workload – approximately 5%. In considering how the workload may change following the implementation of the proposed reforms we make four

⁸⁵ The new fee rules came about following the Lands Chamber’s “Review of Fees for the Lands Tribunal (The Lands Chamber of the Upper Tribunal)” project. See www.justice.gov.uk/consultations/lands-tribunal-fees.htm (last checked 7 June 2011).

⁸⁶ For example, that the interest is obsolete.

⁸⁷ See paras 170 and 171 below.

⁸⁸ We have not provided a range to take account of a greater or lesser increase in anticipated applications as there is already some considerable uncertainty in the best estimate.

assumptions:

1. we expect significantly more easements and positive and negative land obligations to be created post-implementation than profits; profits are already unusual.⁸⁹ Because of this, we make an assumption that the number of cases that will be brought to modify or discharge a profit, when viewed against the total number of applications that the Lands Chamber deal with, will be sufficiently small to be immaterial for the purposes of this Impact Assessment;
 2. that, while we expect that some applications will relate to multiple interests in land, there will nevertheless be an increase in the total number of applications that the Lands Chamber receives. We make no reduction to our estimate of the annual number of future applications due to multiple interests being dealt with in a single application;
 3. that the number of applications to discharge or modify restrictive covenants will gradually decrease (because no new restrictive covenants – in their current form – will be possible after implementation of Policy 1)⁹⁰ but that this decrease will be matched by an increase in the number of applications made to discharge or modify a post-implementation negative land obligation. So the overall rate of applications to discharge obligations / covenants that are negative in nature will remain constant; and
 4. that applications concerning easements and positive obligations will rise to a level that is, in each case, roughly equivalent to the number of applications received in respect of restrictive covenants today.
171. On the basis of the above assumptions, we expect applications to discharge or modify an interest in land to triple from around 45 to 80⁹¹ to approximately 135 to 240 applications per year in 50 years' time. This would represent an additional 90 to 160 applications per year. However, so far as Option 2 is concerned (if the new land obligations are not implemented), then the applications would double because only easements would be added to the jurisdiction. Summary tables for Option 2 are included below at tables 13, 15 and 18 below.
172. Assuming that there is no change to the Lands Chamber's wider jurisdiction, or the number of applications made under that wider jurisdiction, applications to discharge or modify an interest in land would, we expect, ultimately increase from approximately 5% of the Lands Chamber's total workload to approximately 15% (for Option 2, this figure is 10%).
173. The Lands Chamber takes the view that its new fee structure will result in its fee income covering approximately 48% of its internal costs, including those relating to section 84 applications to modify and/or discharge restrictive covenants.⁹² We understand that it will apply the same fee structure to applications to discharge or modify easements, profits and positive and negative obligations as it does now to restrictive covenants. It is therefore assumed that the Lands Chamber will operate to achieve 50% (rounded, for the sake of convenience, up from the 48% noted above) recovery of its costs through fees. We use this measure (which means that, per application, the amount expected to be irrecoverable through fees is between £1,250 and £2,400) to calculate our estimate of the increase in costs to the Lands Chamber in the tables below. We expect that these costs would increase between years 26 to 50 – and thereafter remain relatively steady – mirroring the increase expected in the number of applications over this period.
174. We note that another way of estimating the increase in costs to Lands Chamber is by looking at its current running costs and estimating the increase by assuming that the Lands

⁸⁹ Because of the way in which Land Registry registers profits, we cannot obtain figures for their total number. However, Land Registry have been able to give details of the number of profits in gross (profits in gross are profits that exist without the need for a benefiting estate and are unique amongst the interests that we have looked at in this respect). There are only around 1,800 of these in total. This is contrasted with the total number of titles (22,518,000) and the number of easements and restrictive covenants created each year – which was in excess of 250,000 in 2009/10.

⁹⁰ The reasons for this are complicated. However, in short, the reform that enables the creation of positive and negative land obligations will also have the effect of preventing the creation of new restrictive covenants.

⁹¹ See table 3 above.

⁹² See Ministry of Justice, Tribunals Service, *Review of Fees for the Lands Tribunal - (The Lands Chamber of the Upper Tribunal) – Response to Consultation*, CP(R)44 / 09 (August 2010), p17 (<http://www.justice.gov.uk/consultations/docs/lands-fees-consultation-response.pdf> (last checked 7 June 2010)).

Chamber's costs are proportionate to its workload. The cost of running the Lands Tribunal⁹³ was approximately £1.68 million⁹⁴ (in 2009/10 prices), following on from the estimated 10% increase in the workload of the Lands Chamber as a result of our proposed reform, this would suggest an increase in the running costs of the Lands Chamber of around £168,000 per annum (for Option 2, because of the estimated 5% increase in the workload of the Lands Chamber, this figure is £84,000). We do not use this method in our calculations because we believe the range that arises from the method in paragraph 173 above is better suited here, and the figure that arises from the method in this paragraph is, in any case, within that range.

175. Therefore, while we expect Lands Chamber costs to increase (albeit at an extremely slow rate) we expect only half of these costs to be borne by the state. However, we understand that the Lands Chamber will conduct a review of its fees on a regular basis, and so it is possible that it will seek to recover more of its costs in the future if that is considered necessary (and we do not anticipate that it would review its fees and recover less).
176. However, because there will be a greater number of applications made to the Lands Chamber, there will be a greater aggregate sum spent by landowners generally in applying for, and objecting to, discharge or modification of easements, positive obligations and profits. The increased litigation costs can be analysed by looking at the typical costs incurred now by an applicant in section 84 proceedings.⁹⁵
177. The costs of applicants fall largely into two categories: Lands Chamber fees and professional fees. We have set out above our estimates for each of these⁹⁶ and the tables below show what costs we anticipate being payable.

Table 12: Option 1: Total costs in making applications to the Lands Chamber pursuant to section 84

	<i>Low</i>	<i>Best</i>	<i>High</i>
Assumed number of additional applications by year 50	90	125	160
Lands Chamber costs per application	£2,500	£3,650	£4,800
Lands Chamber costs recovered through fees (50%) (not used in calculation)	£1,250	£1,825	£2,400
Assumed litigation costs per application	£30,000	£65,000	£100,000
<i>Additional annual costs by year 50</i>	<i>£2,925,000</i>	<i>£8,581,250</i>	<i>£16,768,000</i>
Present value over 50 years	£9,661,740	£28,345,233	£55,387,369

Table 13: Option 2: Total costs in making applications to the Lands Chamber pursuant to section 84

	<i>Low</i>	<i>Best</i>	<i>High</i>
Assumed number of additional applications by year 50	45	62.5	80
Lands Chamber costs per application	£2,500	£3,650	£4,800
Lands Chamber costs recovered through fees (50%) (not used in calculation)	£1,250	£1,825	£2,400
Assumed litigation costs per application	£30,000	£65,000	£100,000
<i>Additional annual costs by year 50</i>	<i>£1,462,500</i>	<i>£4,290,625</i>	<i>£8,384,000</i>
Present value over 50 years	£4,830,870	£14,172,616	£27,693,684

⁹³ As it was in 2008/09 prior to the transfer of function to the Upper Tribunal.

⁹⁴ See Lands Chamber, *Review of Fees for the Lands Tribunal (The Lands Chamber of the Upper Tribunal) – Impact Assessment* (November 2009), p 6. (<http://www.justice.gov.uk/consultations/docs/lands-tribunal-fees-ia.pdf> (last checked 7 June 2011)).

⁹⁵ We estimate these as being between £30,000 and £100,000 per application – see para 61 above.

⁹⁶ See para 59 and following above.

178. However, we make the point here that there is no compulsion to make an application under section 84, and an application would only be expected to be made where the potential benefit exceeds the cost.⁹⁷ The Lands Chamber has powers under its most recent rules to strike out applications that stand no chance of success. It is expected that this will reduce the incidence (and wasted costs) of such claims.
179. Turning to the wider court system; with a greater number of applications being made, there are likely to be more appeals and, potentially, a greater impact upon the court system as a whole. However, in respect of applications to appeal decisions of the Lands Chamber made in the last ten years, only twelve relate to section 84 proceedings – and permission to appeal was refused in four of those cases.⁹⁸ We have not, therefore, monetised the additional impact on the court system which we expect to be minimal and largely offset as a result of greater clarity and certainty in the law which our reforms are expected to bring.

Benefits of the reform

Transitional benefits

180. No transitional benefits have been identified.

Ongoing benefits

Landowners will benefit from a greater potential to develop land.

181. As with the costs of this reform, the main benefit is very unlikely to be felt for a substantial length of time; the Lands Chamber's extended jurisdiction will apply only to interests created following implementation and it is unlikely that any of the grounds for discharge or modification will be applicable for several decades following the creation of an interest.
182. Unlike the costs, the benefits of this reform are extremely difficult to quantify. Leaving aside misconceived applications, where an application is made to the Lands Chamber, the prospective benefit to the applicant is expected to be greater than the prospective costs⁹⁹ – the application would otherwise not be made (a rational user of the section 84 system would be able to foresee the costs, benefits and risks of making an application and would not proceed if, on balance, the cost would exceed the benefit).
183. So, while the aggregate costs of applicants increase (because the number of applications increase), the benefits will increase as well (because more land is being opened up to development as interests are discharged or modified). However, it is not possible to accurately state by how much the benefit will exceed the cost of an application:¹⁰⁰ the discharge of a redundant easement or negative obligation could make viable a £20,000,000 housing development, or a £40,000 barn conversion.
184. The expansion of the jurisdiction of the Lands Chamber to cover all of the common interests burdening land (or, in the case of Option 2, the expansion to cover easements only) results in a greater potential to realise developments – and therefore development value in land – which would otherwise not be possible or which would only be possible by using costly insurance.
185. Our low, best and high estimates of the benefit, for both Option 1 and Option 2, are summarised in tables 14 and 15 below. Our low estimate is that the average benefit of a successful application to the applicant is £0; our best is that it is 2.5 times the cost of an application, and our high is that it is 5 times the cost of an application. It is clearly not correct to say that the benefit to an applicant is linked proportionately to the cost of making it.

⁹⁷ Applicants to the Lands Chamber, even if successful, will very rarely recover their costs. The position for objectors is that they will usually recover their costs if their objection is successful.

⁹⁸ See <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/lands/CTAppeal-Cases.doc> (last visited on 7 June 2011) – one appeal is not yet referred to on this website. Of the eight that were appealed, seven were dismissed and one remains to be heard.

⁹⁹ Including any compensation payable to an objector and irrecoverable legal and other fees payable as a result of the application.

¹⁰⁰ Although a rational person engaged in the application process will be able to assess the likely costs and benefits before making their application, and the calculation at para 187 below is based upon the assumption that an applicant will expect the benefit to them to exceed the cost of the application.

However, there is no data to indicate what benefit is realised in practice – save to say, as we do above, that the benefit arising from making an application would be expected to exceed the cost – we have linked the two in this impact assessment to make this point clear. The figures that arise are, we think, conservative estimates.

186. The estimates below are based, in part, on the percentage of applications to the Lands Chamber that are successful (and which therefore allow additional benefit to be realised from the land). The low, best and high estimates for this figure are based on information provided by the Lands Chamber (see table 3, above) which indicate that, in 2008/09, approximately 26% of the 95 cases disposed of were successful and, in 2009/10, approximately 36% of the 72 cases disposed of were successful.¹⁰¹ For the reason we describe below, we round these to 25% and 35% and use these figures as the low and best estimates in our calculations below.
187. The Lands Chamber has explained that successful cases do not include those cases where the parties satisfactorily settle the matter outside of the Lands Chamber, but do not proceed to a consent order. Some of these cases will be seen, by the developer, as having been concluded successfully. It is not possible to know how many cases that settle outside of the Lands Chamber are concluded successfully, however we have assumed, as a high estimate, that 45% of Lands Chamber cases are concluded successfully.

Table 14: Option 1: Estimated annual benefit from successful applications

	<i>Low</i>	<i>Best</i>	<i>High</i>
Estimated cost of an application to the Lands Chamber to discharge or modify an interest	£30,000	£65,000	£100,000
Assumed benefit as a multiple of the cost of an application	0	2.5	5
Average benefit from a successful application	£0	£162,500	£500,000
Estimated number of additional applications by year 50	90	125	160
Estimate of the % of applications that are successful	25%	35%	45%
<i>Annual benefit by year 50</i>	£0	£7,109,375	£36,000,000
Present value over 50 years	£0	£23,483,396	£118,913,721

Table 15: Option 2: Estimated annual benefit from successful applications

	<i>Low</i>	<i>Best</i>	<i>High</i>
Estimated cost of an application to the Lands Chamber to discharge or modify an interest	£30,000	£65,000	£100,000
Assumed benefit as a multiple of the cost of an application	0	2.5	5
Average benefit from a successful application	£0	£162,500	£500,000
Estimated number of additional applications by year 50	45	62.5	80
Estimate of the % of applications that are successful	25%	35%	45%
<i>Annual benefit by year 50</i>	£0	£3,554,688	£18,000,000
Present value over 50 years	£0	£11,741,698	£59,456,861

Landowners will benefit from reduced legal and court costs where a declaration is sought

188. Under the existing law, if the need arises for a declaration in respect of an interest that is the

¹⁰¹ We have excluded cases settled by consent order from these figures as these cases may be considered “unsuccessful” for the applicant, or only partially successful.

subject of an application for modification or discharge at the Lands Chamber, an application must be made to court for this. The Lands Chamber can stay proceedings where this happens – however, there will be duplicated costs because two different forums are considering one interest.

189. Following implementation, it will be the case that the Lands Chamber can give a declaration in respect of an interest in land if the need arises in the course of proceedings, avoiding the need for a fresh application to court.
190. Again, it is difficult to monetise the benefits of this reform because of a lack of data concerning the number and cost of such applications – although it is clear that, by avoiding duplication, there will be some. We have therefore made certain (we believe, conservative) assumptions:
1. that the cost to the applicant of the proceedings in court will amount to between 25% and 50% (best estimate 37.5%) of the costs in the Lands Chamber to discharge or modify an interest;¹⁰²
 2. that between one and five cases per year will avoid the need to apply to court;
 3. that where an application is, instead, made to the Lands Chamber (and considered with the main application) the costs incurred will increase by between 5% and 15%. This assumes that much of the material in front of the Lands Chamber will be the same regardless of whether an application for a declaration is before it; and
 4. that (because the assumed range of the number of cases per year that will benefit – see (2) above – is so small) the number of cases making use of this per year will not differ between Options 1 and 2.¹⁰³

Table 16: Estimated annual benefit from making applications to the Lands Chamber for declarations

	<i>Low</i>	<i>Best</i>	<i>High</i>
Estimated cost of an application to the Lands Chamber ¹⁰⁴	£30,000	£65,000	£100,000
Assumed cost of a parallel application to court as a percentage of the costs in the Lands Chamber	25%	37.5%	50%
Cost of a parallel application to court	£7,500	£24,375	£50,000
Assumed increase in costs to the applicant by seeking a declaration in the Lands Chamber as a percentage of the costs of an application	5%	10%	15%
Cost increase to the applicant	£1,500	£6,500	£15,000
Cost savings per Lands Chamber declaration	£6,000	£17,875	£35,000
Number of cases per year which will benefit	1	3	5
<i>Annual benefit</i>	<i>£6,000</i>	<i>£53,625</i>	<i>£175,000</i>
Present value over 50 years	£142,155	£1,270,514	£4,146,199

¹⁰² Some of the material used in the application to the Lands Chamber is likely to be able to be reused in the court application, and the costs attributable to the application to court is therefore unlikely to reach the level of costs that arise in the Lands Chamber.

¹⁰³ This is unlikely to be correct; with a lesser increase in the number of cases anticipated under Option 2, there is likely to be fewer cases benefiting per year. However, the number of cases is, we think, already conservative and we take no account of this in calculating the benefits of Option 1 and 2.

¹⁰⁴ We have not included the Lands Chamber or court fees in this calculation because we do not have information on what court fees are payable for a declaration or what fees the Lands Chamber are likely to charge for a declaration.

Net Impact

Table 17: Option 1: Policy 4: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£5,000	£7,500	£10,000
On-going costs (annual), years 1 to 25	£0	£0	£0
On-going costs (annual), year 50	£2,925,000	£8,581,250	£16,768,000
Present value of costs	£9,666,740	£28,352,733	£55,397,369
Transitional benefits	£0	£0	£0
On-going benefits (annual), years 1 to 25	£6,000	£53,625	£175,000
On-going benefits (annual), year 50	£6,000	£7,163,000	£36,175,000
Present value of benefits	£142,155	£24,753,909	£123,059,921
Net present value	-£10,000,000	-£4,000,000	£70,000,000

Table 18: Option 2: Policy 4: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£5,000	£7,500	£10,000
On-going costs (annual), years 1 to 25	£0	£0	£0
On-going costs (annual), year 50	£1,462,500	£4,290,625	£8,384,000
Present value of costs	£4,835,870	£14,180,116	£27,703,684
Transitional benefits	£0	£0	£0
On-going benefits (annual), years 1 to 25	£6,000	£53,625	£175,000
On-going benefits (annual), year 50	£6,000	£3,608,313	£18,175,000
Present value of benefits	£142,155	£13,012,212	£63,603,060
Net present value	-£5,000,000	-£1,000,000	£40,000,000

Landowners will benefit immediately from an improved statutory framework for the discharge and modification of interests in land

191. We have not sought to monetise these benefits, which will have significantly less financial impact than the longer term benefits noted above. However, we note them here because, by improving the readability and structure of the statutory framework our reforms will make advising on the provisions easier and improve the clarity of the law, providing consistency and uniformity where currently there is little.

Policy 5: Easements that permit near exclusive use will be valid

Costs of the reform

Transitional costs

192. The effect of this reform will be to increase the number of easements that are valid at law. While there may be some training to explain to practitioners how to achieve the maximum benefit, the absence of training, and therefore absence of any change in a practitioner's approach, will not cause either easements or leases (being used as they were prior to implementation) to become invalid. In addition, it is already necessary to ensure that

practitioners are aware of the current law, which is subject to change as a result of court decisions, in order to avoid or mitigate the current risks. We do not, therefore, regard this as a material cost. To the extent that there are costs (either in training or the preparation of precedents) we have covered the same in our comments regarding training costs for the providers of legal services and the judiciary at paragraphs 106 to 109 above.

193. The only substantive cost that we have identified will be incurred by Land Registry in updating its internal guidance and in training its staff to be able to identify what constitutes a valid easement. Transitional costs to Land Registry have been aggregated for all of the policies and are considered in paragraphs 110 to 111 above.

Ongoing costs

194. No ongoing costs are associated with this aspect of the reform

Benefits of the reform

Transitional benefits

195. No transitional benefits are associated with this aspect of the reform.

Ongoing benefits

Landowners will benefit from the preservation of property values

196. A large number of easements granted each year purport to give a right to exclusive use. The most common of these is a right to park. For reasons that we explain in the Report,¹⁰⁵ they are potentially invalid. The risk of a challenge to their validity is low. However, in the event that a single exclusive right to park is determined by a court to be invalid then the result is likely to be felt across the market with purchasers, residential conveyancers and lenders no longer being comfortable relying upon these rights.
197. Our reform will impact only upon rights created post-implementation. There will therefore be a stockpile of rights that remain at risk and a benefit to be realised by early implementation of the proposed reforms to prevent the growth of the stockpile.
198. In the calculations which follow, we concentrate solely on residential parking spaces attached to flats – being the property and easement type most affected by this issue – and we assume that all exclusive use parking rights are attached to residential flats.¹⁰⁶ However, the reform will potentially benefit all those cases where near exclusive use of land is granted. The effect of our concentrating on parking rights will tend to understate the benefit.
199. Parking spaces add approximately 6% to the value of a residential property.¹⁰⁷ We assume that the converse is true – if the owner of a property cannot enforce a right to park then a commensurate decrease in its value would be expected. The property value that is at risk is enormous: we suggest below that it is between approximately £60 million and £90 million per year.¹⁰⁸ However, this is not an accurate representation of the benefit of this reform. In fact the financial benefit will be very significantly lower, for three reasons:
1. there is a low risk of litigation arising that concerns expressly granted rights to park – we have assumed that this is between 0.5% and 1%.¹⁰⁹

¹⁰⁵ See the Report, para 3.199 and following.

¹⁰⁶ This is unlikely to be accurate, but the majority of exclusive rights to park will be granted in favour of residential flats.

¹⁰⁷ One source suggests that a property with off-street parking carries a premium of 6% over similar homes (The Times Online, Ten things you need to know about ... adding value to your house, 4 January 2008 (http://property.timesonline.co.uk/tol/life_and_style/property/specials/property_guides/article3128614.ece (last visited 7 June 2011)) while the Nationwide Building Society suggests that the figure is 6.5% (Nationwide Building Society, “What adds value to your home”, May 2006 (http://www.nationwide.co.uk/hpi/historical/What_Adds_Value_06.pdf)). We adopt the 6% figure in our calculations.

¹⁰⁸ The calculation is based upon the number of exclusive use easements created per year multiplied by 6% of the value of the average value of a flat.

¹⁰⁹ There is considerable difficulty in quantifying this risk. It is certainly very low. If a subsequent purchaser of land is aware that there is, on the face of it, a right in favour of a neighbour to park a car on their land in a specific

2. in the event of litigation there is a potential for a court to decide that such rights are valid – we have assumed that there is an equal chance of a court determining that the right is valid as deciding that it is not;¹¹⁰ and
 3. if the litigation risk arises and results in the validity of all parking spaces granted on similar grounds being questioned then we have assumed that only a small number of landlords, for one reason or another, will fail, refuse, or charge a premium to reinstate the right to park in the form of a lease – we have assumed that between 98% and 99.5% of cases would be resolved.¹¹¹
200. It follows that much of the benefit that we calculate is based upon avoidance of the cost to rectify the problem. These costs would be expected to be borne by the tenant.¹¹² We have assumed that the cost of rectification, including both landlord and tenant legal fees and Land Registry fees, would be £700 per case.¹¹³ The remaining benefit is due to the preservation of property values in the minority of cases where rectification would not be possible.
201. We say above that the reform will only protect easements that are created after implementation of the reform. The annual benefit of our reform is intended to price in the risk that rights granted for the near exclusive use of a parking space are found to be invalid in the future. In the event that this risk materialises then the benefits of the reform will be significantly higher.
202. The benefits are cumulative, in that in year 1 our reforms will protect the value of grants of a right to park made in year 1, but by year 25 our reforms will be protecting the value of parking rights granted in years 1 to 25. Therefore our present value appears high compared with the savings in year 1. The savings in year 50 are 50 times the savings in year 1.

position then most will not argue that it is void. Court cases concerning expressly granted easements are rare and it is more likely that, if the litigation risk arises, it will be by analogy through a case concerning prescriptive acquisition of a right. There have been recent cases based on prescriptive acquisition of easements where the right to park in a single space has been an issue. There is, at least in principle, a risk that a Court will be compelled to make a decision on a prescriptively acquired easement that is directly analogous to an expressly granted easement over a single space. If this occurs then the litigation risk will materialise.

¹¹⁰ This could be done by a court finding, for example, a lease rather than an easement – although there are problems that would arise with this as well, particularly as regards enforceability against a landlord following a transfer of the reversion.

¹¹¹ There are a variety of reasons for this. In a sizeable number of cases, the tenant will have an interest in the freehold as well (as is often the case where a house has been converted into two or more flats and each tenant is a director and shareholder of the managing company in which the ownership of the freehold resides). In many of the remaining cases the landlord will see little merit in taking the aggressive action of extracting a ransom payment which would almost certainly be seen as having been extracted in bad faith by the tenants. Where landlords do demand a ransom payment we make an assumption that they will demand the difference between the reduced value of the property and its value with the benefit of the parking space

¹¹² Again, taking the example of a property which has been converted to flats where each tenant owns a share of the freehold, there is no separate income for the tenants in their capacity as freehold owner to use for the payment of the landlord company's fees. Tenants would either cover the landlord's fees directly, or "reimburse" the landlord through the service charge provisions in the lease.

¹¹³ This figure is based upon a Land Registry fee of £50 and landlord and tenant solicitor fees of £330 each (being approximately 3 hours of solicitor time at £110 per hour). We have not suggested a range in this case because the calculation is already subject to a degree of uncertainty. We have chosen what we believe to be a conservative estimate of the cost.

Table 19: Estimated annual benefit due to grants of near exclusive for parking being valid

	<i>Low</i>	<i>Best</i>	<i>High</i>
Average value of a flat ¹¹⁴	£123,197	£152,778	£182,358
Average value arising from a parking space (6% of the average value of a flat)	£7,392	£9,167	£10,941
Annual number of grants of an exclusive use of land for parking	7,747	7,747	7,747
Total annual value of new parking spaces	£57,264,430	£71,014,038	£84,763,646
Assumed annual risk that litigation directly concerns the validity of a near exclusive right to park	0.5%	0.75%	1%
Assumed risk of the litigation resulting in near exclusive rights to park in a single space being unenforceable	50%	50%	50%
Assumed probability of rectification	99.5%	98.75%	98%
Assumed cost of rectification	£700	£700	£700
<i>Estimated cost of rectification (year 1)</i>	<i>£13,489</i>	<i>£20,082</i>	<i>£26,572</i>
<i>Estimated loss of value (year 1)</i>	<i>£716</i>	<i>£3,329</i>	<i>£8,476</i>
<i>Annual benefit (year 1)</i>	<i>£14,205</i>	<i>£23,410</i>	<i>£35,049</i>
Present value over 50 years	£6,363,810	£10,487,638	£15,701,390

203. Our assumptions and calculations are based upon the view that a single piece of successful litigation will adversely affect all properties which purport to benefit from a right to park in a single space. This is because, in the event that that risk crystallises, it is likely that on a re-mortgage or sale, lenders and purchasers' solicitors will require rectification of the problem or otherwise commensurately reduce or retract the mortgage or purchase offer in analogous cases. We have assumed that all affected properties would be subject to a re-mortgage or a disposal at some point within a 50 year period and that it is therefore fair to assume that rectification or loss of value would occur in all adversely affected properties.

Benefits to landowners and lenders of having legal certainty in the validity of easements

204. We make no suggestion that grants of a near exclusive use of land; for example a right to park, or to use a balcony or a bin store should be, or will be challenged. Unfortunately, the mere potential that this could occur is a daunting one. The sums at stake are enormous and, with an increasing density and diversity expected in developments, likely to increase.

205. While we cannot quantify the positive impact that legal certainty will deliver it is difficult to argue that the current law is acceptable and operating as society requires. Reform of the law in this area will have a positive impact on those who engage within the property market and it will enable developers to have greater flexibility in their schemes, and purchasers and their lenders to have certainty that rights are secure. As a result we would expect sellers, buyers and their respective agents, advisers and lenders to have increased confidence through the law becoming clear, certain and consistent.

¹¹⁴ This range for the average value of a flat derives from figures in Table 4.1 of the Housing and Planning Statistics 2010 (Communities and Local Government, Housing and Planning Statistics 2010, December 2010) (<http://www.communities.gov.uk/documents/statistics/pdf/1785484.pdf> (last checked 7 June 2011)). The low estimate comes from dividing by two the total of the average cost in 2009 of a purpose built flat, and a flat in a converted house in Wales (where property prices are, on average, lower) and the high estimate is calculated in the same way, but for flats in England, where property prices are, on average, higher). The best estimate is the midpoint between the two.

Lower transactional costs for purchasers and landowners

206. We explain above that practitioners sometimes use a lease to give a right to a tenant to park in an allocated space. The benefit of this is certainty – a lease can unquestionably grant to a tenant the ability to park in a specific space. The downside is that the lease is inflexible for the landlord and ill suited where there is no intention or need to pass control and management of the land to its main user.
207. More complex scenarios exist. It is possible that, where there is a combination of allocated and unallocated parking, a practitioner may draft a lease so that it covers spaces that are specifically allocated and also provide for the grant of an easement (in common with other tenants) to use those spaces that are unallocated. A lease is not suitable for granting a right to use any space in a car park while an easement is.
208. We see no reason why the same legal tool should not be used whether parking spaces are allocated or unallocated. Leases are generally more complicated to draft and negotiate than easements and, in any case, the rights and reservations benefiting and burdening the parking space are unlikely to be the same as those for the flat itself. If easements could be used confidently in preference to the grant of a lease to facilitate tenant parking and other rights then there is a potential for conveyancing costs to be lowered. We have assumed that acquisitions of between 25% and 50% of new-build flats will benefit from this reform.
209. We have assumed that between 2.5% and 5% of the cost of negotiating and completing the purchase of a flat would be saved as a result of the proposed reform and that the cost of conveyancing is between £350 and £550 per transaction.¹¹⁵

Table 20: Estimated annual benefit from lower legal costs due to grants of near exclusive use for parking being enforceable

	<i>Low</i>	<i>Best</i>	<i>High</i>
Number of new build flats	35,452	35,452	35,452
Assumed percentage of new build flats that benefit from the reform	25%	35%	45%
Assumed percentage of the legal costs saved	2.5%	3.75%	5%
Cost of conveyancing for a house worth between £100,000 and £200,000	£350	£500	£550
<i>Annual benefit</i>	<i>£77,551</i>	<i>£232,654</i>	<i>£438,719</i>
Present value over 50 years	£1,837,388	£5,512,165	£10,394,368

210. Even though the savings in each transaction are anticipated to be small, the benefit of this reform should, in general, be felt by the consumers of legal services. Any reduced fee income to legal services providers (for example, solicitors and licensed conveyancers) would mirror the gains to the clients who use, and pay for, these services. We assume that if there is a reduction in business in this area for legal services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. There may be some minor adjustment costs from the changing pattern of work, but no ongoing costs.

¹¹⁵ We explain the figures for conveyancing costs at para 145 above.

Net Impact

Table 21: Policy 5: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£0	£0
Present value of costs	£0	£0	£0
Transitional benefits	£0	£0	£0
On-going benefits (annual), year 1	£91,757	£256,064	£473,767
On-going benefits (annual), year 50	£787,815	£1,403,177	£2,191,147
Present value of benefits	£8,201,198	£15,999,803	£26,095,758
Net present value	£8,000,000	£15,000,000	£25,000,000

Policy 6: the law relating to the acquisition of easements by prescription and implication will be simplified.

Costs of the reform

Transitional costs

211. Transitional costs to Land Registry, the legal professions and the judiciary have been aggregated and are considered in paragraphs 106 to 111 above.

Ongoing costs

212. We expect our reform to be roughly neutral in terms of the numbers of easements created, although there may be a smaller number of easements arising by implication. This may result in those who would otherwise have benefited from an easement not having such a benefit. However, owners of the land that would have been burdened will benefit by not suffering a potentially unexpected burden and we therefore assume the net effect to be neutral.

Benefits of the reform

Transitional benefits

213. No transitional benefits have been identified.

Ongoing benefits

Reduced costs for the consumers of legal services from lower transaction costs

214. Our proposed reform is expected to result in no change to the number of easements acquired by prescription and, if anything, a slight reduction in the number of easements acquired by implication. There is no data available concerning how many instances of implication and prescription occur under the current law – however, (and as we say at paragraph 212 above) our reform is expected to be roughly neutral in terms of the number of easements created, and, if there is a smaller number of easements created by implication, then we have assumed that there is no net benefit arising.

215. The ongoing benefits are expected to materialise because it will be easier for legal services providers to give advice in respect of easements acquired by implication and/or prescription.

216. The responses from members of the LPSLG have assisted us by suggesting that between 10% and 20% of developments require advice in respect of prescriptive and/or implied easements. We have made certain assumptions to make an estimate of the benefit:

1. it is possible for implied or prescriptive easements to adversely affect any property, not

just those that are being developed. However, such easements are likely to come to the fore in such situations. In order to give a conservative estimate (and because of the lack of availability of data), we have assumed that advice in respect of these interests is given once (by one party's solicitor) in relation to 10% to 20% of housing developments in England.¹¹⁶

2. we have assumed that our reform would not alter the outcome of the advice given, but that the advice would take between 10 and 30 minutes less to prepare because the law will be significantly more simple and transparent.

Table 22: Estimated annual benefit due to reduced legal provider costs

	<i>Low</i>	<i>Best</i>	<i>High</i>
Number of developments	15,197	19,289	23,380
Estimated percentage of developments where advice is given in respect of easements arising by implication and/or prescription	10%	15%	20%
Number of developments hampered by an easement arising by implication and/or prescription	1,520	2,893	4,676
Average hourly rate of a solicitor	£111	£111	£111
Time saved in advising clients (in minutes)	10	20	30
<i>Annual benefit</i>	<i>£28,114</i>	<i>£107,051</i>	<i>£259,518</i>
Present value over 50 years	£666,104	£2,536,317	£6,148,648

217. The benefit of this reform should, in general, be felt by the consumers of legal services. Any reduced fee income to legal services providers (for example, solicitors and licensed conveyancers) would mirror the gains to the clients who use, and pay for, these services. We assume that if there is a reduction in business in this area for legal services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. There may be some minor adjustment costs from the changing pattern of work, but no ongoing costs.

Reduced potential for litigation owing to greater certainty in the law

218. We have not sought to monetise this benefit because it is not clear how many cases based on prescription or implication proceed to court as a result of uncertainty in the law (rather than, for example, the evidence upon which claims are based).
219. We are not aware of large numbers of applications being made which arise from confusion over the law relating to implication and prescription (although there have been many over the years that the rules have emerged).
220. While it may be expected that our reform would tend to reduce the number of claims that are based upon technical difficulties that arise from uncertainty with the current law, it may be the case that additional claims would be made if the law were clearer (as we propose) due to a reduced litigation risk, or lower litigation costs. We assume that there will be no net effect on the number of claims progressing to court for the purposes of this Impact Assessment.

¹¹⁶ We have estimated the number of housing developments in England above at n 84 above.

Net Impact

Table 23: Policy 6: Net present value over 50 years

	<i>Low</i>	<i>Best</i>	<i>High</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£0	£0
Present value of costs	£0	£0	£0
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£28,114	£107,051	£259,518
Present value of benefits	£666,104	£2,536,317	£6,148,648
Net present value	£1,000,000	£3,000,000	£6,000,000

Net Impact

221. The net impact of Option 1 is equal to the summation of the present value of the six policies plus the independent transitional costs. It is set out in table 24B below.

Table 24A: Option 1: Summary of net present value of policies over 50 years

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Independent transitional costs	-£1,000,000	-£1,000,000	-£1,000,000
Policy 1	£8,000,000	£30,000,000	£70,000,000
Policy 2	£2,000,000	£10,000,000	£15,000,000
Policy 3	£1,000,000	£2,000,000	£4,000,000
Policy 4	-£10,000,000	-£4,000,000	£70,000,000
Policy 5	£8,000,000	£15,000,000	£25,000,000
Policy 6	£1,000,000	£3,000,000	£6,000,000
Option 1	£10,000,000	£60,000,000	£190,000,000

Table 24B: Net Present Value of Option 1 over 50 years

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£851,000	£861,000	£871,000
On-going costs (annual), years 1 to 25	£0	£0	£0
On-going costs (annual), year 50	£2,925,000	£8,581,250	£16,768,000
Present value of costs	£10,512,740	£29,206,233	£56,258,369
Transitional benefits	£0	£0	£0
On-going benefits (annual), year 1	£582,830	£2,225,245	£4,633,853
On-going benefits (annual), year 50	£1,278,888	£10,481,732	£42,351,233
Present value of benefits	£19,835,993	£86,138,142	£243,572,600
Net present value	£10,000,000	£60,000,000	£190,000,000

222. The net impact of Option 2 is calculated by summing the present values of policies 2 to 6 together with the £816,000 of independent transitional costs. Calculations are set out in table 25B below.

Table 25A: Option 2: Summary of net present value of policies over 50 years

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Independent transitional costs	-£1,000,000	-£1,000,000	-£1,000,000
Policy 2	£2,000,000	£10,000,000	£15,000,000
Policy 3	£1,000,000	£2,000,000	£4,000,000
Policy 4	-£5,000,000	-£1,000,000	£40,000,000
Policy 5	£8,000,000	£15,000,000	£25,000,000
Policy 6	£1,000,000	£3,000,000	£6,000,000
Option 2	£6,000,000	£30,000,000	£80,000,000

Table 25B: Net Present Value of Option 2 over 50 years

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£821,000	£823,500	£826,000
On-going costs (annual), years 1 to 25	£0	£0	£0
On-going costs (annual), year 50	£1,462,500	£4,290,625	£8,384,000
Present value of costs	£5,651,870	£14,996,116	£28,519,684
Transitional benefits	£0	£0	£0
On-going benefits (annual), year 1	£251,101	£898,329	£1,648,292
On-going benefits (annual), year 50	£947,159	£5,600,129	£21,365,672
Present value of benefits	£11,976,479	£42,958,392	£113,380,120
Net present value	£6,000,000	£30,000,000	£80,000,000

Assumptions

223. For the purposes of this cost benefit analysis we have made several assumptions:

- a. Users of the reformed law are rational and risk neutral.
- b. Legal practitioners' training costs will be absorbed through the normal annual CPD requirements.
- c. The cost of training the judiciary will be covered by a newsletter, the costs of which are already incurred by the Judicial College.
- d. Positive land obligations are most likely to be imposed on a transfer of part rather than as part of a standalone deal between neighbours where no transfer is involved (Policy 1).
- e. Commercial property transfers make much greater use of onerous workarounds than residential property transfers (Policy 1).
- f. Reductions in the time taken for legal professionals to give advice or to complete a transaction will result in cost savings for the consumers. Legal professionals will absorb any loss of income as a result by undertaking more work to offset this.

- g. Any decrease in the value of land as a result of the burden of a positive obligation being imposed will be met by a commensurate increase in the value of the benefiting land, a capital payment or an uplift in the value of the burdened land because it benefits from a similar obligation.
- h. There is no benefit of cost savings, arising from Policy 2, to developers constructing developments of less than 10 units. This is unlikely to be correct and the result is likely to be that the benefit is understated.
- i. That 51,000 houses were built in 2005/06 (which is very unlikely to be the case – see footnote 78 above) as part of developments of 10 units or more (policy 2). We also assume that where a development is less than 10 units, the average number of dwellings comprising the development is 5 (Policy 3).
- j. The average size of a housing development in England and Wales is seven units and that the average house price is £163,083 (Policy 3).
- k. That after implementation 50% of problem cases where an easement has not been used for 20 years will be solvable without insurance or recourse to the court (Policy 3).
- l. That the cost of litigation in respect of a claim concerning abandonment is the same as the cost of an application to the Lands Chamber (Policy 3).
- m. There will be no change in the total number of applications to the Lands Chamber between years 0 and 25; application numbers will then gradually increase between years 25 and 50 and from year 51 the number of applications will be relatively constant. In the case of Option 2, we also assume that there will be a decrease in the number of applications regarding restrictive covenants that will be met by an increase in the number of applications regarding negative land obligations (Policy 4).
- n. That the number of applications to the Lands Chamber regarding profits will be minimal and that the number regarding easements and positive land obligations will be the same as the number concerning restrictive covenants at the present time (Policy 4).
- o. That the operational costs of the Lands Chamber are proportionate to its workload (Policy 4).
- p. That there will be no change to the Lands Chamber's wider jurisdiction over the 50 year period and that throughout this period it will operate to achieve 50% recovery of costs through fees charged (Policy 4).
- q. That the impact on the wider court system as a result of a greater number of applications to the Lands Chamber will be minimal (Policy 4).
- r. That all exclusive use parking rights are attached to residential flats (which is very unlikely to be the case) and that all flats are the subject of a re-mortgage or a disposal at some point within 50 years of implementation (Policy 5).
- s. That there is an equal possibility for a court will decide that a right to exclusively use land is valid as there is of it deciding that it is invalid (Policy 5).
- t. That the reform of prescription and implication will not materially change the number of easements acquired by those methods (Policy 6).
- u. By simplifying the law in several areas, the cost of making claims may be reduced, which may, in turn, encourage more claims. However, we have assumed throughout this Impact Assessment that the current complexity of the law is causing higher costs to be incurred in the cases that do arise, and that some cases will not proceed to court as a result of clearer law. We assume that the overall effect (in terms of costs and benefits) is neutral.

Risks

224. Risks to be considered include the risk that our assumptions and/or sensitivity ranges are incorrect, or that the estimations of costs, benefits or other relevant information given by other bodies are incorrect. In addition there is a risk that we have under-estimated the potential increase in costs associated with our recommended changes or over-estimated the benefits; we believe, however, that the risk of these arising is relatively low because we have (where possible) attempted to use conservative figures and ranges in our estimates.

225. We highlight some key risks below:

- a. There is a medium risk that we have underestimated savings, due to the downturn in the property market, because several of calculations are made on a “per transaction” basis. In the current climate the benefits arising from the calculations will be reduced.
- b. There is a medium risk that we have incorrectly estimated the costs and benefits to the Lands Chamber. Our proposed reform will widen the jurisdiction of the Lands Chamber and there is a possibility that the figures that we rely upon in estimating the cost and benefit of this aspect of the reform will change as a result.
- c. There is a medium to high risk that our estimate of the number of developments (and the size and composition of those developments) is not correct (see paragraph 144 and the footnote in respect of it).
- d. There is a low risk that we have over-estimated the savings from the ability to create interests over land in single ownership, as we have assumed that all developers who can make use of this will do so (Policy 2).
- e. There is the low to medium risk that we have over-estimated the pace at which the number of applications to the Lands Chamber will increase and that they will increase and plateau over a longer period than 50 years (Policy 4).
- f. There is a medium risk that the benefit arising as a result of the extension of the Lands Chamber’s jurisdiction is underestimated as the number of successful claims may be underestimated (see footnote 42, also see para 63) (Policy 4).
- g. Much of the data used to calculate benefits is based on housing data (and much is only for England rather than England and Wales) therefore there is a high risk that we have underestimated the full benefit of the policies where this is the case.

Sensitivities

226. In order to reduce the risk that our assumptions are incorrect we have used sensitivity ranges:

- a. The implementation cost to Land Registry (of Option 1) is between £846,000 and £861,000 (best estimate £853,500).
- b. The total cost of an application to the Lands Chamber (excluding Lands Chamber fees) is between £30,000 and £100,000, best estimate £65,000. The fees payable to the Lands Chamber on an application are between £1,250 and £2,400.
- c. The proportion of transfers involving a workaround ranges from 2.5% to 7.5% (best estimate 5%) (Policy 1).
- d. Use of positive land obligations instead of workarounds would save between 0.5 hours and 1.5 hours (best estimate 1 hour) in solicitors’ time (Policy 1).
- e. Between 20% and 40% of private sector new-build houses are built as part of a development of ten houses or more (best estimate 30%).
- f. Conveyancing costs on the purchase of a £100,000 to £200,000 house are between £350 and £550, best estimate £500.
- g. The simplified conveyancing procedure arising from Policy 2 will provide legal cost savings of between 2.5% and 5% (best estimate 5%).
- h. Between 10% and 33% (best estimate 21.5%) of developments are hampered by an easement (Policy 3).
- i. Between 0.5% and 2.5%, best estimate 1.5%, of developments where easements hamper a scheme are caused by easements which have not been used for in excess of 20 years but result in insurance being taken out for the full development value of the property (Policy 3).
- j. Applications to discharge or modify an interest in land to triple (in the case of Option 1) or double (in the case of Option 2) from around 45 to 80 to approximately 135 to 240 (in the

case of Option 1) or 90 to 160 (in the case of Option 2) applications per year in 50 years' time (Policy 4).

- k. Between 25% and 45%, best estimate 35%, of the applications to the Lands Chamber to discharge or modify an interest are successful. The benefit from a successful application is between £0 and £500,000, best estimate £162,500 (Policy 4).
- l. The costs savings per application by applying to the Lands Chamber and not the court for a declaration are between £6,000 and £35,000, best estimate £17,875. Between 1 and 5, best estimate 3, cases will benefit each year (Policy 4).
- m. The average value of a flat is between £123,197 and £182,358, best estimate £152,778. The average value of a parking space is 6% of the average value of a flat and the value of a parking space is therefore between £7,680 and £11,460, best estimate £9,570 (Policy 5).
- n. The annual risk that litigation directly concerns the validity of an exclusive right to park is between 0.5% and 1%, best estimate 0.75%. The probability of rectification if a right is invalid is between 98% and 99.5%, best estimate 98.75%.
- o. That between 25% and 45% (best estimate 35%) of new-build flats sold after reform will benefit from cheaper conveyancing costs of between 2.5% and 5% (Policy 5).
- p. Between 10% and 20% (best estimate 15%) of developments require legal advice to be given in respect of easements arising by implication or prescription, and that the reforms proposed will save a legal adviser between 10 minutes and 30 minutes (best estimate 20 minutes) in giving this advice where it is required.

3. SPECIFIC IMPACT TESTS

Statutory Equality Duties

- 227. In order to determine whether the proposed policy will have equality impacts on different groups of people we have considered a range of information sources and evidence as part of the initial screening process indicated in the equality impact assessment. We have concluded that, because these reforms will benefit landowners generally, then the proposed policy will not particularly impact on any group and will not impact on equality of opportunity. On this basis a full equality impact assessment is not required.

Human Rights

- 228. These reforms are compliant with the Human Rights Act 1998.

Justice System

- 229. The justice impacts flowing from these reforms have been considered and evaluated throughout the narrative in the cost benefit analysis section.

Competition Assessment

- 230. A competition assessment must be completed if there is a positive answer to any of the four Office of Fair Trading (OFT) filter questions. Our recommendations do not directly or indirectly limit the number of suppliers. Nor do they limit the suppliers' ability to compete or incentives to compete vigorously. Therefore no competition assessment is required.
- 231. From the negative responses to the OFT filter questions, it is considered that these reforms will not have any negative effects on competition.

Small Firms Impact Check

- 232. Following preliminary consideration of this impact test, it is considered that these reforms will

not have any negative effects on small firms. We note that some legal professionals may also be small firms and that legal professionals will need training in respect of these reforms. However, we explain that we expect these training requirements to be manageable within the professional CPD requirements. The training requirements are expected to be the same for practitioners within small firms and larger firms.

Greenhouse Gas Assessment

233. Following preliminary consideration of this impact test, it is considered that these reforms will not have any negative effects on greenhouse gas emissions. It is possible that our reforms may enable additional developments, but these will be completed under the current environmental standards for the construction industry. As a proportion of the construction works undertaken in England and Wales, any extra development arising from the reforms is expected to be minimal.

Wider Environmental Issues

234. Following preliminary consideration of this impact test, it is considered that these reforms will not have any negative effects on the wider environment. It is possible that our reforms may enable additional developments, but these will be completed under the current environmental standards for the construction industry. As a proportion of the construction works undertaken in England and Wales, any extra development arising from the reforms is expected to be minimal.

Health and Well-being

235. There are several screening questions to ascertain whether a health impact assessment is required. We considered them and do not believe that our recommendations would have a significant impact on human health, impact on lifestyle related variables, increased demand for health or social care services or global health. Therefore we have not conducted a health impact assessment, and we consider that the recommended reforms will not have any negative effects on human health.

Rural Proofing

236. Following preliminary consideration of this impact test using the screening questions, it is considered that these reforms will not have any disproportionate impacts on rural areas.

Sustainable Development

237. Following preliminary consideration of this impact test using the screening questions, it is considered that these reforms will not have any negative effects on sustainable development.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>While the Law Commission does not implement policy, we note that, if, during and following implementation, it is desirable to monitor information then it may be that Land Registry and the Lands Chamber are in a position to provide data that will assist. This should be discussed at the time of implementation.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>The Law Commission does not implement policy, therefore does it not conduct post implementation reviews.</p>