



**Law
Commission**
Reforming the law

Registering a Goods Mortgage: Lessons from Other Systems Background paper

**This background paper accompanies From Bills of Sale to Goods Mortgages
(2017) Law Com No 376**

Chapter 1: Introduction

- 1.1 The draft Goods Mortgages Bill aims to provide a more effective registration system at lower cost.
- 1.2 The existing High Court register for bills of sale is not fit for purpose. It is expensive, paper-based and extremely difficult to search. As a result, logbook lenders also register with privately-run asset finance registers (Cap HPI, Experian and Cheshire Datasystems Ltd). These are widely searched by lenders and trade buyers to find out about a range of security interests, including logbook loans.
- 1.3 This paper reviews other systems for registering security in the UK and overseas. It was prepared to outline possible options for the registration of goods mortgages.¹

THE PURPOSE OF REGISTERING SECURITY INTERESTS

- 1.4 As the Bills of Sale consultation paper notes,² there are three reasons to register security interests:
 - (1) *To verify when a security interest was granted, in order to determine priority.* Under most registration systems, the first interest to be registered takes priority over the second. This can be particularly important when a fraudulent borrower grants two competing interests over the same goods.
 - (2) *To give notice to third parties interested in the asset.* In the case of goods mortgages, trade buyers and other lenders need a quick and simple means to check whether the goods are subject to a mortgage.
 - (3) *To alert other potential creditors to “false wealth”.* Registration allows unsecured creditors to find out about secured lenders, who will be paid in preference to them. Otherwise a borrower who remains in possession of valuable but mortgaged goods may give the impression of being wealthier than they are.
- 1.5 Different searchers have different needs. Third parties interested in the goods need to be able to search by asset. By contrast, the company charges register is searchable by company (the debtor) and addresses issues of false wealth.

¹ We are particularly grateful to Professor Louise Gullifer, Gavin McCosker and Marek Dubovec for their help with this paper.

² Bills of Sale (2015) Law Commission Consultation Paper No 225 paras 10.8 to 10.13. Available at: <https://www.lawcom.gov.uk/project/bills-of-sale/>.

THIS PAPER

- 1.6 Many systems throughout the world have grappled with how to meet the objectives in paragraph 1.4 above within cost constraints.³ We provide a brief introduction to different systems for registering personal property security interests.
- 1.7 This paper is divided into three further chapters:
- (1) Chapter 2 describes different types of register, drawing on examples from the UK and overseas.
 - (2) Chapter 3 looks in more detail about how online notice filing systems work in New Zealand, Australia, Jersey and Canada.
 - (3) Chapter 4 considers the potential business for a new registration system.
- 1.8 Where low-income borrowers take small loans, it is particularly important to keep registration charges low, or charges will exacerbate social needs and discourage people from registering. This paper therefore considers the costs of the different systems, for both registration and searching.

³ See Bills of Sale (2015) Law Commission Consultation Paper No 225 para 10.5.

Chapter 2: Different types of register

2.1 There are two main characteristics by which personal property security registers can be classified:

- (1) By subject – some register security interests against assets (such as the property or vehicle), others register the security against the borrower (or “debtor”). A third category of registers uses a combination of both.
- (2) By type of information held – some register the full document creating the security interest (and require a copy of the document to be supplied) (“transaction filing”), while others only register a notice that the security exists (“notice filing”).

2.2 We explore these differences below.

ASSET, DEBTOR OR COMBINED REGISTERS?

2.3 Asset registers register against the asset, while debtor registers register against the debtor. Examples of UK asset registers include HM Land Registry, the Ship Registry and the Register of Civil Aircraft. Their main purpose is to register the land, ship or aircraft. As a consequence they are able to register any mortgage against that asset. To carry out a search, it is necessary to have details of the asset in question.

2.4 By contrast, the company charges register at Companies House is an example of a debtor register. To search it, it is necessary to have details of the company.

Examples of asset registers which register mortgages

HM Land Registry was created in 1862 to register the ownership of land in England and Wales. It is a non-ministerial Government department, reporting to the Department for Business, Energy and Industrial Strategy (BEIS). Following consultation on possible privatisation, current Government policy is that HM Land Registry should remain in the public sector.⁴

Ships have been registered since the 18th century and registration is now required under international law. The current UK Ships Register is run by the Maritime and Coastguard Agency. It is governed by the Merchant Shipping Act 1995 and Merchant Shipping (Registration of Ships) Regulations 1993.⁵

⁴ See HM Treasury, *Autumn Statement 2016* (November 2016). Available at: <https://www.gov.uk/government/publications/autumn-statement-2016-documents/autumn-statement-2016>.

⁵ Merchant Shipping (Registration of Ships) Regulations 1993, SI No 3138 of 1993.

Aircraft registration can be traced back to 1913 and is required under international law. The Civil Aviation Authority (CAA) maintains the UK Register of Civil Aircraft. Mortgages are entered onto the register in accordance with the Mortgaging of Aircraft Order 1972.⁶

- 2.5 Where the register's main purpose is to inform potential purchasers, an asset register is more useful. The potential purchaser will have details of the asset (such as a vehicle, ship or aircraft). However, they may not have reliable information about the debtor.
- 2.6 Where the asset has already changed hands, potential purchasers may not know the borrower's identity at all. Even in a direct sale, borrowers may give a false name or use an intermediary. There can be problems in identifying individuals even where they provide accurate information to begin with. The High Court register for bills of sale lists borrowers by name and postcode, but borrowers can change name and move home.

Combined registers

- 2.7 Without official registration or some form of unique identifier, it is more difficult to identify goods, but not necessarily impossible. It is possible for registers to use a combination of serial number (not necessarily unique) and debtor. In Chapter 3 we consider how this is done in New Zealand and Australia. We also look at the way in which the Art Loss Register identifies goods in Chapter 4.

TRANSACTION FILING OR NOTICE FILING?

- 2.8 Traditionally, UK registers have required lenders to file the full document which creates the mortgage or charge (transaction filing). More modern registers do not require filing the whole document. Instead they only record essential details, to give notice that the document comprising the transaction exists (notice filing).

Examples of transaction filing

- 2.9 The current bills of sale register is an example of transaction filing.

⁶ Mortgaging of Aircraft Order 1972, SI No 1268 of 1972.

Filing a bill of sale document at the High Court

The lender sends a signed security bill of sale document to the High Court by special delivery, together with a copy, a £28 fee and a sworn affidavit from a witness.

On receipt, High Court staff carry out some basic checks of the document, largely to see if the document is signed and witnessed. Staff then stamp both the original and the copy with a date and number.

High Court staff enter details of the parties onto an Excel spreadsheet (including the name and postcode of the borrower).

The original is returned to the lender. The copy is then put into a box, in number order and stored for 5 years.

- 2.10 The UK Ships Register also files mortgage documents. For a fixed sum mortgage, the parties must create the mortgage using a standard form (MSF 4737).⁷ This records not only details of the ship, the lender and the borrower but also details of the loan, including the sum lent, the interest rate and the repayment dates. The lender sends the form by post to the Registry in Cardiff, together with the fee.
- 2.11 For aircraft mortgages, the lender must send a one page form (CA1577) and a certified true copy of the mortgage deed to the CAA register, together with the fee. However, the documents do not have to be posted. They can be scanned and submitted by email.

A comparison with notice filing

- 2.12 In a notice filing system the lender provides sufficient details to identify the borrower, the lender and the asset. It is not necessary to include other information, such as the amount of the loan, interest etc. The aim is simply to give third parties notice that the security interest exists, not to file the document itself. Notice filing means that the terms of the agreement are not publicly available, which may be attractive to parties who wish to keep these details confidential.
- 2.13 Notice filing systems sometimes allow for advanced registration (registration before the interest is created as a matter of law).⁸ Several notice filing systems also allow for “blanket” registration (registration of several security interests in the same notice).⁹ The

⁷ Form MSF 4737 covers mortgages “to secure principal sum and interest”. Form MSF 4736 applies to mortgages to secure a revolving credit.

⁸ This is the case for the Uniform Commercial Code: see art 9-502(d). The Ontario register allows for advanced registration except where the collateral is a “consumer good”: Ontario Personal Property Security Act 1990, s 45(3). In Australia, a person can apply for registration if they believe on reasonable grounds that they will become a secured party: Personal Property Securities Act 2009, s 151(1).

⁹ See Ontario Personal Property Security Act 1990, s 45(4), which provides that “one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties”.

register of goods mortgages established by the Goods Mortgages Bill will not include these features.¹⁰

- 2.14 Many countries have set up online registers which rely on notice filing rather than transaction filing. The lender enters the important details on a series of online screens, or through a direct system link. Third parties can then use the information to search online (either by debtor or by asset) to find out whether a security interest exists. This is usually sufficient. Any third party who wishes to know more details of the loan must contact the lender directly.
- 2.15 Notice filing does not generally require the value of the loan to be specified, so this information is not publicly available. Information about the amount of the initial loan may not be particularly helpful to other prospective creditors, as it does not indicate the amount outstanding at the time the search is carried out. It should be noted that, in any case, the Law Commission's recommended form of goods mortgage itself does not require the amount of loan to be stated.

Development of notice filing around the world

- 2.16 Notice filing systems were pioneered in the United States (US), and are based on the concepts set out in article 9 of the Uniform Commercial Code (UCC), first published in 1952. Following the arrival of the internet in the 1990s, many countries have combined the approach of article 9 with online technology to develop new fully electronic personal property security registers.
- 2.17 These systems tend to use US terminology. Two terms are worth noting:
- (1) The asset is referred to as "*collateral*".
 - (2) The notice which is filed is known as the "*financing statement*". This term can be confusing, however, as financing statements are often confined to details of the parties and the asset, and often say very little about financing matters (such as the amount of the loan or the interest rate).

¹⁰ See From Bills of Sale to Goods Mortgages (2017) Law Com No 376 paras 6.8 to 6.11.

Examples of electronic security registers based on notice filing

The New Zealand Personal Property Securities Register is based on a 1999 Act and started operations in 2002. It is a centralised Government registry which covers all security interests in personal property, whether granted by individuals or companies. The register is wholly electronic: lenders register details known as a “financing statement”.

The Australian Personal Property Securities Register is based on a 2009 Act and started operations in 2012. It is also electronic and covers all security interests in personal property. Again, lenders register a financing statement. The register now records between 2 million and 2.5 million interests a year.

The Jersey Security Interest Register is based on a 2012 law and came into force in 2014. It is based on the New Zealand and Australian systems.

In **Canada**, personal property security registers are run at provincial level. For the purposes of this paper, we have looked briefly at the registers in Saskatchewan and Ontario.

Hybrid systems

2.18 The system for registering a security interest over a patent is a hybrid between transaction filing and notice filing. The applicant fills out a two page form (Form 21) “to give notice of rights acquired in a patent or patent application”, which must be sent by post or email to the Intellectual Property Office in Newport. If Form 21 is not signed by the borrower, then the lender must also send a copy of the mortgage document.

2.19 Staff then place a note on the register that the security interest exists. Below is an example of what the note looks like:

06 January 2017	Notification of security agreement between MCLAREN AUTOMOTIVE LIMITED, Incorporated in the United Kingdom, Chertsey Road, Horsell, WOKING, Surrey, GU21 4YH, United Kingdom [ADP No. 10543361001] and THE ROYAL BANK OF SCOTLAND PLC, 36 St Andrew Square, Edingburgh, EH1 1YB, United Kingdom [ADP No. 11874674001] dated 10.06.2016. Form 21 and documents filed on EP2470413.
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THE DIFFERENCE IN COST

2.20 Notice filing systems tend to be substantially cheaper than transaction filing systems, especially when combined with online registration.

Registration fees

2.21 Table 1 below illustrates the differences in registration fees. While ship mortgages cost £84 to register, and a mortgage on a small aircraft costs £175, notice can be entered

onto the New Zealand register for only NZD16.10 (£8.30)¹¹ and onto the Australian register for only AUD6.80 (£3.89).¹² The hybrid patent register costs £50.

2.22 Some registers allow lenders to choose how long the security interest should be registered and charge for each year of registration (payable at the time of the initial registration). For example, in Jersey registration is £8 each year and for three years would therefore cost £24.

Table 1: A comparison of registration fees

Register	Cost of registration
Transaction filing systems	
UK Bills of Sale (High Court Registry)	£28
UK Ship Mortgages	£84 (premium fee for 24 hour service: £184)
UK Aircraft Mortgages	£175 to £1,040 (depending on weight of aircraft)
Electronic notice filing systems	
New Zealand Personal Property Securities Register	NZD16.10 (£8.30)
Australian Personal Property Securities Register	AUD6.80 (£3.89) ¹³
Jersey Security Interests Register	£8 per year registered ¹⁴
Canadian Personal Property Security Registers	Saskatchewan Personal Property Registry: CAD10 (£5.91) ¹⁵ per year registered
	ServiceOntario Register: CAD8 (£4.72) per year registered

¹¹ This paper uses a currency conversion at the rate of NZD1 = £0.52, as of 21 November 2017.

¹² This paper uses a currency conversion at the rate of AUD1 = £0.57, as of 21 November 2017.

¹³ Where the duration of the security interest is more than seven years but less than or equal to 25 years the cost is AUD34 (£19.46). Higher fees apply for registrations over 25 years or indefinitely.

¹⁴ Higher fees apply for registrations over 20 years.

¹⁵ This paper uses a currency conversion at the rate of CAD1 = £0.59, as of 21 November 2017.

Search fees

- 2.23 Transaction filing systems are also expensive and time consuming to search. Table 2 illustrates the differences in search fees. Those wanting to know about a ship mortgage can request a transcript of the register relating to that ship. This costs £21 if there is no hurry for the result. However, if results are required within 24 hours, the premium service costs £71.
- 2.24 Those wishing to know about aircraft mortgages must post, fax or scan “Form CA350” to the CAA, with a fee of £29. If results are needed urgently, applicants may attend the CAA offices in Kingsway, central London between 10am and 4pm from Monday to Friday.¹⁶ The fee for such searches is also £29.
- 2.25 By contrast, electronic registers can be searched online and yield immediate results. Fees are considerably less. They range from £4.72 in Ontario to £1.19 in New Zealand. New Zealand also provides a text service to those buying second hand cars, at the same cost of £1.19.

Table 2: A comparison of search fees

Register	Cost of search
Transaction filing systems	
UK Bills of Sale (High Court Registry)	£50
UK Ship Mortgages	£21 (premium fee for 24 hour service: £71)
UK Aircraft Mortgages	£29
Electronic notice filing systems	
New Zealand Personal Property Securities Register	NZD2.30 (£1.19)
Australian Personal Property Securities Register	AUD3.40 (£1.95)
Jersey Security Interests Register	£4
Canadian Personal Property Security Registers	Saskatchewan Personal Property Registry: CAD7 (£4.13)

¹⁶ Civil Aviation Authority, *Forms and Fees*. Available at: <https://www.caa.co.uk/Aircraft-register/Aircraft-mortgages/Forms-and-fees/>.

Register	Cost of search
	ServiceOntario Register: CAD8 (£4.72)

CALLS FOR ELECTRONIC NOTICE FILING

World Bank Report

2.26 Many organisations have called for cumbersome transaction filing systems to be replaced by online notice filing. Chief among these is the World Bank. Each year, the World Bank issues a comparative report on the ease of doing business in different countries. One criterion for this report is whether a state provides a single national “collateral registry” to record security interests on moveable assets. The World Bank argues strongly that this should be based on notice filing, not transaction filing:

The registration process needs to be simple, requiring only the basic information related to the collateral, such as identifiers of the parties, description of the collateral and the secured amount without need for specification.

The law should not have as a registration requirement that the underlying security documentation—such as loan agreements, security agreements, and the terms and conditions of the loan—be reported to the collateral registry for the simple reason that the purpose of the registry is only to “give notice” of a security interest and to establish a priority scheme.

Also, a notice-based system eliminates the risk of human error by registry employees and reduces the cost of operating the collateral registry. Policy makers should encourage a modest registration fee be charged to offset the operational costs of running the registry.¹⁷

2.27 Personal property security interests can be registered much more cheaply in New Zealand than the UK. This is one reason why the World Bank ranks New Zealand first for ease of getting credit, while the UK is ranked 20th.¹⁸

2.28 The World Bank cites studies that the introduction of central collateral registries has increased access to finance and reduced interest rates, particularly for small businesses. Since the World Bank’s strong advocacy of central collateral registries, many developing countries have adopted the New Zealand model. The World Bank reports that from 2014 to 2016, online registers were established in Colombia, Costa Rica, Jamaica, Afghanistan, El Salvador, Liberia and Malawi.¹⁹ Around 70 projects are currently in development, so many more registers will be coming online in the next few years.

¹⁷ World Bank Group, *Doing Business 2017: Equal Opportunity for All* (14th ed 2017) p 55. Available at: <http://www.doingbusiness.org/-/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>.

¹⁸ World Bank Group, *Doing Business 2017: Equal Opportunity for All* (14th ed 2017) pp 228 and 248.

¹⁹ World Bank Group, *Doing Business 2017: Equal Opportunity for All* (14th ed 2017) p 53.

Law Commission report: Company security interests

2.29 In 2006, the Law Commission conducted a review of company charges which argued that substantial savings could be made from a change from transaction filing to notice filing. We said:

In 2003-04, Companies House registered 197,000 mortgage documents for England and Wales. In each case, the secured party or the company prepared particulars of the charge and posted or delivered them with the original charge document to Companies House. There the paper work was checked by staff and entered manually on the register. In many cases, the party registering also requested a certificate of registration, which was sent by post.²⁰

2.30 At the time, the fee was £28 and the register required 32 staff. We contrasted this with the New Zealand system of notice filing, whereby lenders submitted particulars online, referred to as “financing statements”:

In 2003-04, over 465,000 financing statements were registered on the Personal Property Securities Register. The Registry currently has the full-time equivalent of 5 staff, plus some part-time computer support. We understand that the charges for registering and searching reflect the real costs of the system. The fee for registering a security interest was initially a mere NZD5 [£2.58] and NZD3 [£1.55] to search. This fee resulted in an income that enabled the set-up costs to be recovered in around 7 months.²¹

POTENTIAL SAVINGS

2.31 There is clearly potential for cost savings in moving from a paper-based, document-based system to a computerised notice-based system.

2.32 The savings derive from two sources: a reduction in the £28 registration fee and a reduction of the administrative costs which accompany paper-based registration. Below we explore the administrative costs currently incurred by logbook lenders.

The current system: administrative costs for logbook lenders

Under the present system, logbook lenders incur administrative costs in addition to the registration fees. A lender who is submitting only one bill of sale must incur the following costs:

- (1) The representative must visit a solicitor to swear an affidavit (estimated at £3.50 to £10);
- (2) The solicitor will charge a fee – usually £5;
- (3) The lender must send two documents and cheque by special delivery (£6.45);

²⁰ Company Security Interests (2005) Law Com No 296 para 2.5. Available at: http://www.lawcom.gov.uk/app/uploads/2015/03/lc296_Company_Security_Interests.pdf.

²¹ Company Security Interests (2005) Law Com No 296 para 2.9.

- (4) On return, the lender must open the envelope and file the documents. We have been told that the system is susceptible to error – one lender mentioned receiving a competitor’s bill by mistake. These errors take time to resolve;
- (5) Whenever the seven day registration limit is missed, the lender must pay an additional £100 for late registration. We were told that some late registrations were inevitable. If they occur in 2% to 5% of cases, this adds £2 to £5 to the cost of each bill registered.

2.33 On this basis, lenders incur administration costs of around £17 to £26.50 for each bill registered. This is a significant sum for a small loan: our 2015 survey found that the mean loan amount was only £844. An online notice filing system should remove these costs, and the potential for errors and consequent delays.

Chapter 3: How does notice filing work?

WHAT INFORMATION DO NOTICE FILING SYSTEMS RECORD?

3.1 The purpose of a centralised registry is to allow third parties to search by debtor or (where appropriate) by asset to find out whether the security interest exists. If it does, the searcher is referred to the lender for more information should they require it. On this basis registries need to record sufficient information to identify:

- (1) the borrower;
- (2) the asset (“collateral”); and
- (3) the lender.

3.2 Many registers also record an expiry date, to prevent the register from being clogged with outdated interests.²²

Example: New Zealand Personal Property Securities Register

3.3 To register a security interest in the New Zealand register the lender is required to file the following information:

- (1) Debtor details (if an individual: full name, address, date of birth; if a company: organisation name, job title of person acting on behalf of organisation and company number of organisation);
- (2) Collateral details:²³
 - (a) For motor vehicles:
 - (i) Make;
 - (ii) Model;
 - (iii) Year (of manufacture); and
 - (iv) Vehicle Identification Number (VIN), chassis number or registration number.

²² We explore ways to “clean” the register below.

²³ Each item of collateral may be described by one or more collateral type. There are a total of 13 different collateral types to choose from including: goods – livestock, goods – crops, documents of title (bills of lading), chattel paper (hire purchase agreements), investment securities (shares or options), negotiable instruments, money, intangibles (patents etc), all present and after acquired personal property.

For further information see New Zealand Companies Office Personal Property Securities Register, *What you need to know: collateral* (2010). Available at: <http://www.ppsr.govt.nz/cms/secured-party-information/financing-statements/what-you-need-to-know/collateral>.

- (3) Secured party (lender) details; and
- (4) Expiry date if the financing statement is to be registered for less than five years.

A comparison with Australia

- 3.4 The Australian registry takes a similar approach. Lenders must register for an account, which allows them to pay online and to enter details onto the system. Again the register records debtor details (if an individual: name and date of birth; if an organisation: company name and business number).
- 3.5 Both the New Zealand and the Australian systems have various standard classifications for different types of collateral. For example, the Australian register distinguishes between commercial and consumer collateral. Both registers cover many more types of collateral than goods mortgages, so some of the classifications (such as intangible property) are irrelevant for our purposes. In the field of goods, the New Zealand register differentiates between motor vehicles, aircraft, livestock, crops and other. The Australian register differentiates between motor vehicles, watercraft, aircraft, agriculture (including crops and livestock) and other goods.
- 3.6 For motor vehicles, the Australian system requires the account holder to enter the 17 character VIN, with alternatives of a chassis number (for vehicles without a VIN) or a manufacturer's number (for vehicles without either a VIN or chassis number).
- 3.7 The Australian register then has a direct link to the database which provides information about the vehicle. This allows confirmation of the make, model and status (written off and/or stolen) of the vehicle in question. A paper provided to us by the Registrar and Deputy Registrar of the Australian Personal Property Securities Register (PPSR) explains:

We have ... sought to integrate with other sources of truth to enable secured parties to cross check the details they want to enter against an authoritative source. For example, the PPSR allows users to cross check a company number with information held on the companies register. We also provide information with respect to motor vehicle status and other details with a direct link to the National Exchange of Vehicle and Driver Identification System (NEVDIS).²⁴

Screen shots

- 3.8 To illustrate these differences, we provide screen shots of the two systems. Below is the New Zealand register screen, which asks for eight items of information.

²⁴ G McCosker and P Edwards, "Responsibility or control? Choosing the right digital operating model for registry services".

COLLATERAL DETAILS

SAVE | VIEW | ADD ANOTHER COLLATERAL | ADD ANOTHER ITEM | EXIT

Please enter the collateral details and press 'SAVE'.

Note: Fields marked with an asterisk (*) must be completed.

IMPORTANT: If known, all numbers (registration, chassis and VIN) must be specified.

Collateral Type: Goods - Motor Vehicles

ITEM:

VIN:

Chassis Number:

Registration Number:

Make:

Model:

Year:

Colour:

Item Description:

3.9 The next screen shot is from the Australian register and asks only for a VIN, with alternatives for the vehicles which do not have a VIN.

Registration kind:
Security interest

What is the collateral type?
Commercial property

Is the registration transitional?
Not transitional

Collateral 1

Collateral class: * ?
Motor vehicle ([Change collateral class](#))

The collateral is a specific motor vehicle: *

Yes

No

[Read more about collateral classes](#) or see [motor vehicle](#).

Enter vehicle identification numbers (one is mandatory): *

Vehicle Identification Number (VIN):

Chassis number: (Enter only if no VIN)

Manufacturer's number: (Enter only if no VIN or chassis number)

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3.10 Unlike the New Zealand and Australian Personal Property Securities Registers, the Jersey Security Interests Register does not record a VIN. Instead, the collateral details are a free text box.

CHALLENGES

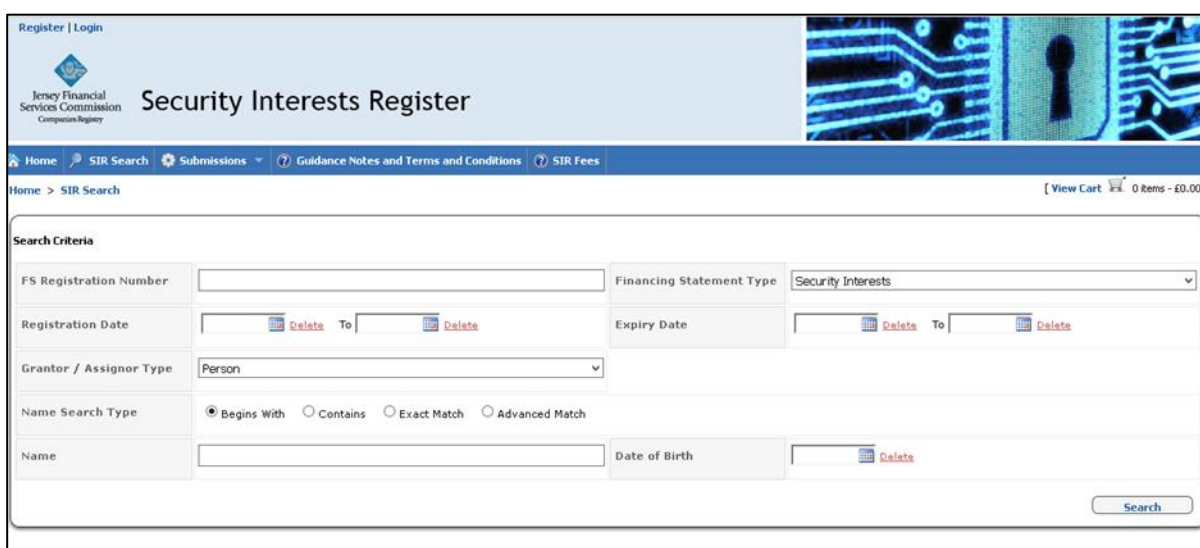
3.11 The main challenges are how to identify debtors (both individuals and businesses) and how to identify assets (both vehicles and non-vehicles).

Identifying individual debtors

3.12 Clearly, names are not unique identifiers: many people share a name, and a single person may lawfully go by several names (for example, by using abbreviations of a given name, or by changing a family name on marriage). The New Zealand, Australian and Jersey systems all record a date of birth to help identify an individual.

3.13 The Jersey register provides a variety of search techniques to help a third party narrow down the search for an individual. The searcher may enter a name and/or date of birth and (if they know it) a range of registration dates. The register then allows a choice of searches: “begins with”; “contains”; “exact match” and “advanced match”.

3.14 A screenshot of a debtor search on the Jersey register is shown below:



The screenshot shows the 'Security Interests Register' search page. The header includes the Jersey Financial Services Commission logo and navigation links for Home, SIR Search, Submissions, Guidance Notes and Terms and Conditions, and SIR Fees. The search criteria form includes fields for FS Registration Number, Financing Statement Type (set to Security Interests), Registration Date (with delete buttons), Expiry Date (with delete buttons), Grantor / Assignor Type (set to Person), Name Search Type (with radio buttons for Begins With, Contains, Exact Match, and Advanced Match), Name, and Date of Birth (with a delete button). A Search button is located at the bottom right of the form.

Identifying businesses

3.15 Problems in identifying businesses have sometimes caused issues. The Australian register records a business number in order to accurately identify businesses.

Identifying motor vehicles

3.16 Motor vehicles are identified by a VIN, which serves as a unique identifier throughout the world. The types of motor vehicles identified by VINs include motorcycles, scooters and mopeds. VINs also identify towed vehicles, such as trailers and caravans.

3.17 Since 1981, all VINs have consisted of 17 characters, which are either numbers or capital letters. The first characters record the place where the vehicle was built, the

identity of the manufacturer and the type of vehicle, while the last six digits are a serial number for the vehicle.

- 3.18 Vehicles manufactured from 1954 to 1981 also have VINs, but they are not necessarily in this 17 character standard format. These non-standard VINs may be referred to as chassis numbers. Classic cars, manufactured before 1954, will have some other manufacturer's identifier.
- 3.19 The main difficulty in typing a VIN into a registration system is that it is easy to make a transcription error. Logbook lenders may type details of hundreds, if not thousands, of vehicles each year. Without an accuracy check, a small percentage are likely to be wrong.
- 3.20 The current privately-run asset registers are able to guard against these problems by providing an accuracy check on the VIN. This is done through a direct link to the DVLA database of vehicles.

REMOVING REGISTRATIONS FROM THE REGISTER

Problems with the current system

- 3.21 Under the current High Court register for bills of sale, registrations lapse after five years. Most logbook loans are paid off much quicker than this. In our 2015 survey of 92 logbook loans, all but two were granted for between six months and three years, with a mean of 16 to 17 months. One loan was for four years and one was for five years.²⁵

Failure to remove registrations where the loan has been paid

- 3.22 In theory, when a logbook loan is paid off, either the logbook lender or the borrower may apply to the High Court for a "memorandum of satisfaction" to be written on the security bill, to show that ownership has returned to the borrower. Even if both parties agree, this procedure costs £28.
- 3.23 Unsurprisingly, we found no evidence of memoranda of satisfaction being filed. It appears that parties are not willing or cannot afford to pay costs of this type, and prefer simply to let the registration rest.
- 3.24 As the current register is almost never searched, the issue of outdated registrations does not cause practical difficulties. However, if buyers were to search the register more frequently, these old registrations would cause problems. This is because former logbook borrowers who have paid off their loan would find it difficult to sell or re-mortgage their vehicles.

Automatic lapse

- 3.25 The current system by which bills of sale automatically lapse after five years may also cause problems. For some businesses, which make loans against business goods, five year expiration terms may be too short. Loan agreements might provide for repayments over a longer period of time. The Law Commission has recommended that High Court registration on goods other than vehicles should only lapse automatically after 10 years.

²⁵ Bills of Sale (2015) Law Commission Consultation Paper No 225 para 2.8.

3.26 However, a 10-year registration period has the potential to clog the register. We have therefore considered the way in which other registers have dealt with this issue.

Registrations can be removed without charge

3.27 The New Zealand, Australia and Jersey registers all allow registrations to be removed at no cost. The rationale behind not charging removal fees is to encourage lenders to remove outdated registrations.

Differential fees

3.28 The other way that registers minimise the number of outdated entries is to charge fees for longer-lasting registrations.

- (1) In Australia, the normal fee of AUD6.80 (£3.89) only covers registrations of seven years or less. A registration of more than seven years but less than 25 years costs AUD34 (£19.46), while a registration with no stated end time costs AUD119 (£68.12).
- (2) In Jersey, the registration fee is £8 per year, leaving it up to the lender to decide how long to register the loan.
- (3) Canadian registers take a similar approach:
 - (a) The Saskatchewan registry charges CAD10 (£5.91) per year for security agreements with a term of up to 25 years. For an indefinite term they charge CAD500 (£295.25); and
 - (b) The register in Ontario charges CAD8 (£4.72) per year, up to 25 years. For an indefinite term they charge CAD500 (£295.25).

3.29 If the new charging structure were to follow the Jersey model of £8 per year, security for a typical logbook loan for 18 months could be registered for £16, and for a three year logbook loan for £24. Security for the larger, longer business loans would probably be registered for 10 years, at a cost of £80.

LIABILITY FOR INACCURACIES

3.30 Registries differ in the extent to which they accept liability for mistakes on the register. As we explore below, the Saskatchewan and Ontario registers accept liability, while the Jersey register does not.

Saskatchewan

3.31 The Saskatchewan register accepts liability up to a maximum of CAD300,000 (£177,150).²⁶ Section 52 of the Saskatchewan Personal Property Security Act 1993 states:

²⁶ The Personal Property Security Regulations 1995 (P6-2R1), s 25.1(1). Available at: <http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/P6-2R1.pdf>.

52(1) A person may bring an action against the Crown to recover loss or damage suffered by that person because of an error or omission in the operation of the registry if the loss or damage resulted:

- (a) from reliance on a printed search result issued by the registry; or
- (b) except as provided in subsections 42.4(2), 43(3) and 43(10) and section 43.1, from the failure of the registrar to register a printed financing statement submitted for registration pursuant to section 43.²⁷

Ontario

3.32 In Ontario, the Government has established a fund known as “the Personal Property Security Assurance Fund”. Section 44(4) of the Personal Property Security Act 1990 provides that:

Any person who suffers loss or damage as a result of the person’s reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part ... is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid.²⁸

3.33 The maximum amount payable from the fund is CAD1million (£590,503).²⁹

Jersey

3.34 By contrast, the Jersey Registrar of Companies is protected from liability for the discharge of its functions under the Security Interests (Jersey) Law 2012. It is not liable in respect of any inaccuracy of information contained in financing statements. The guidance issued by the Jersey Financial Services Commission states:

The Registrar is protected by statute from liability for the discharge of its functions under the Law and is not liable in respect of any malfunction of the SIR [Security Interests Register] or the accuracy or completeness of SIR Data.³⁰

UK registries

3.35 A similar variety in terms of liability exists within the UK. HM Land Registry is not protected from liability for financial loss suffered as a result of a mistake on the register, and may offer compensation where loss is suffered.³¹ Whereas the statutes are silent

²⁷ The Personal Property Security Act 1993 (P6-2). Available at: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P6-2.pdf>.

²⁸ Personal Property Security Act 1990. Available at: <https://www.ontario.ca/laws/statute/90p10#BK60>.

²⁹ Personal Property Security Act 1990, s 44(20).

³⁰ Jersey Financial Services Commission, *Terms of Access to and Use of the Security Interests Register* (September 2014) part 3 para 5.24. Available at: <https://sir.jerseyfsc.org/JFSC-SIR-GuidanceNotes.htm>.

³¹ HM Land Registry, *Practice Guide 39: rectification and indemnity* (May 2017). Available at: <https://www.gov.uk/government/publications/rectification-and-indemnity/practice-guide-39-rectification-and-indemnity#applications-for-indemnity>.

on the liability of the Companies House register, it appears that it can be liable at common law.³²

- 3.36 Conversely the Intellectual Property Office does not have an indemnity scheme.³³ Parties may apply to rectify the patents and trademarks registers.³⁴ However, neither the Patents Act 1977 nor the Trade Marks Act 1994 contain any provision for compensation to be awarded where the register is ordered to be rectified.

DEALING WITH INCORRECT REGISTRATIONS

- 3.37 A further issue with existing registers is that people attempt to register security interests which they do not in fact possess. Gavin McCosker and Peter Edwards have explained that, unlike New Zealand, the Australian Personal Property Securities Act incorporates a quasi-judicial function for the Registrar to adjudicate on matters raised by aggrieved parties. The Australian Registrar will also refer cases for enforcement action:

Where we form the view that a secured party is intentionally maintaining a registration they know to hold incorrect information, we will also consider referring the matter for possible enforcement action.³⁵

PROFIT?

- 3.38 The World Bank argues that only modest fees should be charged for registration systems, to offset costs.³⁶ Its position is that policymakers should not attempt to use registers to raise revenue or generate profit.
- 3.39 The Australian agency responsible for overseeing personal property securities laws states that “the Australian Government will make no profit from the Personal Property Securities Register”.³⁷ Costs are determined on a cost recovery basis.³⁸

³² *Sebry v Companies House* [2015] EWHC 115 (QB), [\[2016\] 1 WLR 2499](#).

³³ Patents Act 1977, s 116; Trade Marks Act 1994, s 70.

³⁴ Patents Act 1977, s 34; Trade Marks Act 1994, s 64.

³⁵ G McCosker and P Edwards, “Responsibility or control? Choosing the right digital operating model for registry services”.

³⁶ World Bank Group, *Doing Business 2017: Equal Opportunity for All* (14th ed 2017) p 53. Available at: <http://www.doingbusiness.org/-/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>.

³⁷ Australian Financial Security Authority, *The PPSR and priorities*. Available at: <https://www.ppsr.gov.au/personal-property-securities-pps-register-and-priorities>.

³⁸ Australian Financial Security Authority, *The PPSR and priorities*. Available at: <https://www.ppsr.gov.au/personal-property-securities-pps-register-and-priorities>.

Chapter 4: Potential business for a new register

- 4.1 The primary purpose of the new register will be to register logbook loans, of which there are currently around 30,000 a year. However, a new register may also create new business. McCosker and Edwards explain that Australia has started to see evidence of “a wider range of businesses seeking to secure capital through intangible collateral types, such as accounts receivable”.³⁹ Here we look briefly at the potential for new types of registration.

MORTGAGES ON GOODS OTHER THAN VEHICLES

- 4.2 At present, very few bills of sale are registered on goods other than vehicles. We conducted two surveys of the bills of sale register in 2015, in which we found several bills of sale granted on wine, hotel furniture, arts and antiques, a vintage steam engine and a herd of cows. Based on our surveys, we estimated that no more than 260 such bills of sale were registered each year.
- 4.3 Given the low number, in 2016 we recommended retaining the High Court register with only limited changes. However, since 2016, we have been told that there is substantial potential to increase the number of non-vehicle goods mortgages, provided that a searchable register can be established.
- 4.4 The potential is thought to be greatest in the art market. At a recent conference on the art market it was said that the lack of a searchable register was holding back art lending.⁴⁰ A representative from a major auction house complained that she recently visited the High Court with the name of a seller, and was told that it was not possible to search the register on the basis of a name alone.

Can one search an art register by asset?

- 4.5 It might be possible to provide an art register which can be searched by asset.
- 4.6 We have had discussions with the Art Loss Register, which has pioneered work in this area. The Art Loss Register keeps a database of stolen and looted art works. At present, searching is a human process rather than an automated one. The searcher submits a request, and the Register’s staff then consults the electronic register, using an element of judgement as to search terms. We were told that size is often the most useful search criterion, especially when combined with a description of the asset.
- 4.7 One limitation which hampers the Art Loss Register’s utility is that it rarely contains good quality photographs of the registered art works. This is especially the case for works looted during World War II. In the future, technological advances may mean that it is

³⁹ G McCosker and P Edwards, “Responsibility or control? Choosing the right digital operating model for registry services”.

⁴⁰ Institute of Art & Law and Lipman Karas conference, “Art & Insolvency: Managing ‘worst case scenarios’ for art collections” (July 2017).

possible to upload a photograph of an art work into a search query, so as to disclose any art works contained on the register which match the image searched for.

- 4.8 At present, this method of asset-matching is not justified by the level of art-related bills of sale. It would be enough that the register can be searched by debtor. However, in the longer term, there may be a demand for this increased functionality.

GENERAL ASSIGNMENTS OF BOOK DEBTS

- 4.9 A general assignment of book debts is a way in which an unincorporated business can borrow money on its outstanding invoices – often referred to as receivables or book debts. They are not bills of sale, but under section 344 of the Insolvency Act 1986, they must be registered as if they were “absolute” bills of sale. Otherwise the assignment is void on insolvency.
- 4.10 An “absolute” bill is an archaic form of bill which is particularly expensive to register. It involves three separate solicitors. In 2015, we were told that total registration costs, involving solicitors, administration and registry fees, were in a range of between £480 and £1,735.⁴¹
- 4.11 The system is so expensive and archaic that very few lenders register their security over book debts. As far as possible, lenders will restructure their arrangements as “facultative agreements”, which circumvents the need to register. We have been told that, even if the agreement cannot be restructured, some lenders simply decide not to register and take their chances on insolvency.
- 4.12 Although the invoice financing industry has been growing, the number of registered general assignments has been dropping each year, from 221 in 2010 to only 68 in 2015.⁴²

A potential for increase

- 4.13 The industry view is that a cheap, easy registration system would represent a real improvement. The Asset Based Finance Association (ABFA) is the trade association that represents over 95% of invoice financiers by turnover. Its long term aim is to achieve a unified register for general assignments of book debts made by both unincorporated and incorporated businesses.
- 4.14 The register that we have proposed is not the unified system ABFA have been calling for, as it would only cover unincorporated businesses. However, it would be a significant step forward in streamlining the registration system for asset based finance.
- 4.15 We anticipate that, with an online system, the number of registrations is likely to increase substantially. Further consultation on the details of the register will be needed to ensure that it meets the needs of invoice financiers.

⁴¹ Bills of Sale (2015) Law Commission Consultation Paper No 225 para 13.10.

⁴² See Bills of Sale (2016) Law Com No 369 table 11.5.