

EXPLANATORY MEMORANDUM TO
THE LOCAL LAND CHARGES RULES 2018

2018 No. 273

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Land Registry and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Local land charges are generally charges or restrictions on land which are governmental in character and imposed by public authorities under statutory powers. Common examples are smoke control orders and conditions attached to planning permissions. They affect whoever owns the land and so are registrable to alert purchasers to their existence.
- 2.2 The Local Land Charges Rules 2018 (“the Rules”) make provision for how matters are to be registered as local land charges, and also about the form and content of applications relating to local land charges.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under the Local Land Charges Act 1975 (“the 1975 Act”), local land charges are entered in registers kept by local authorities in England and Wales. Each local authority deals with the local land charges that affect land within its particular administrative area. The Local Land Charges Rules 1977 (“the 1977 Rules”) make the necessary detailed provision about such matters as the form and content of applications, the details to be included in the register, and the amendment and cancellation of registrations.
- 4.2 The 1975 Act provides for the fees in relation to local land charges services in England, other than personal searches, to be specified by each local authority. The fees payable for local land charges services in Wales, again other than personal searches, are prescribed in the 1977 Rules. No fee is payable for personal searches in England or Wales.
- 4.3 The Infrastructure Act 2015 amends the 1975 Act. In particular, the local land charges registers kept by each local authority are to be replaced by a national register kept by the Chief Land Registrar. The amendments have come into force but will only have effect in a local authority area after the Chief Land Registrar has given

notice in writing to the local authority that from the date specified in the notice the amendments are to have effect. At the same time as the amendments to the 1975 Act have effect in a local authority area, the Rules and fees rules for England (which have yet to be made) will have effect.

- 4.4 The particular rule in the Rules that revokes the 1977 Rules is subject to an exception. The provisions in the 1977 Rules dealing with the fees payable for local land charges services are not revoked in relation to Wales. The power to make and revoke fees rules for Wales has been devolved to the Welsh Ministers, so it will be for them to make new rules about fees.

5. Extent and Territorial Application

- 5.1 The extent of the Rules is England and Wales.
- 5.2 The territorial application of the Rules is England and Wales, with the qualification explained in paragraph 4.4.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 A local land charges search is invariably made before contracts are exchanged on the purchase of a property or before a lender lends money on the security of a charge. Almost always the purchaser or lender will have a solicitor or other professional conveyancer acting for them.
- 7.2 The current local land charges service is provided by the 348 local authorities in England and Wales. This allows for significant local variation in the price of official searches (from £3 to £76), the time taken to provide official search certificates, and the format of results. The registers are held in a range of paper and electronic forms. Producing an official search certificate usually involves manual intervention.
- 7.3 The Infrastructure Act 2015 amends the Local Land Charges Act 1975 to provide that the Chief Land Registrar is to keep a local land charges register for England and Wales. Existing registrations will be digitised and transferred to HM Land Registry in stages. Once the new legislation is in effect in a local authority's area, these existing registrations will appear in the new register kept by the Chief Land Registrar, and all future registrations for that local authority area will be in the new register.
- 7.4 The new local land charges register will sit alongside HM Land Registry's existing statutory services: keeping the register of title to land in England and Wales under the Land Registration Act 2002, the register of land charges and other registers under the Land Charges Act 1972, and the agricultural charges register under the Agricultural Credits Act 1928.
- 7.5 The Rules make the necessary detailed provision about how this new register is to work. Like the 1977 Rules, they deal with the form and content of applications, the details to be included in the register, the variation and cancellation of registrations, etc. They provide for all applications, other than those in respect of light obstruction notices, to be made electronically.

- 7.6 The new service will allow for a largely automated system with reduced turnaround times, standardised fees for the various applications that can be made, and standardised arrangements for searching.
- 7.7 At this stage the Rules will have effect only in England, where they will be introduced incrementally. Any transfer of the service in Wales to the Chief Land Registrar will take place later. This is subject to agreement between HM Land Registry and the Welsh Government.

8. Consultation outcome

- 8.1 HM Land Registry consulted on the Rules over a nine-week period from 9 May to 11 July 2016. The consultation period was proportionate to the nature and impact of the proposals, in line with government consultation principles.
- 8.2 A summary of responses was published on 4 October 2016: <https://www.gov.uk/government/consultations/consultation-on-draft-local-land-charges-rules-2017>. The government response to the consultation will be published before, or at the time, these Rules are laid before Parliament.
- 8.3 104 responses to the consultation were received, 74 of which were from local authorities. Responses were also received from regulatory and representative organisations, property professionals and other interested parties.
- 8.4 Changes were made to the version of the Rules in the consultation document as a result of the responses to the consultation. In particular, the “particulars of registration” (the information about the charge which is included in the register) in respect of a “specific financial charge” (a financial charge in favour of a public body which is binding on successive owners of the land affected) were changed to include more information.

9. Guidance

- 9.1 Before the new local land charges system comes into operation, detailed guidance will be provided by HM Land Registry for local authorities and others who need to apply to register charges and, subsequently, to vary or cancel the registrations. Separate guidance will be provided for conveyancers and others who wish to apply for official and personal searches of the register or for copies of documents kept by the Chief Land Registrar. This guidance will be available online.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is considered to be minimal except where the business is a conveyancing business and so likely to make applications for searches or a search company. These businesses will benefit from eventually being able to go to the same place for all their local land charges searches, regardless of where the land concerned happens to be, and to apply electronically and at a standard fee; there may be the modest costs to business referred to in paragraph 12.1.
- 10.2 The impact on the public sector is limited almost entirely to local authorities. Currently, as explained, they maintain a local land charge register in which they register local land charges affecting land within their administrative area. The changes to the existing legislation will mean that the register is instead maintained by the Chief Land Registrar.

10.3 The Regulatory Impact Assessment will be published alongside the Explanatory Memorandum for the related fees rules for England on the legislation.gov.uk website when these fees rules are made and laid before Parliament. A Regulatory Impact Assessment is not required for these Rules because they are out of scope of the better regulations framework.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses and to everyone else who wishes to make an application in relation to the registration of local land charges. The small businesses most likely to be affected are conveyancing firms. The Rules should not impose any additional burden on them apart from the modest costs referred to in paragraph 12.1, but will provide the benefits mentioned in paragraph 10.1. and there may be the small savings referred to in paragraph 12.1.

12. Monitoring & review

12.1 A review clause has not been included in the Rules because it would be inappropriate. The Rules are substantially the same as the 1977 Rules in terms of the requirements they place on businesses making local land charges applications. In practice, this will nearly always be conveyancers and search companies making search applications. The differences are mainly to allow for applications to be made electronically, following the local authority registers being replaced by a national local land charges register in electronic form, as allowed for by the Infrastructure Act 2015. The Rules are not expected to have a significant regulatory impact on conveyancers or other businesses. There may be some familiarisation and training costs, and costs associated with changing case management systems, but stakeholder research has suggested that these will be modest; at the same time there may be small savings in postage and paper costs. Also, the potential burdens of post-implementation statutory reviews are likely to outweigh any potential benefits, particularly as the scope for operating the new local land charges register under substantially different rules is limited.

12.2 HM Land Registry will regularly review and evaluate the operation of the new register in light of experience as it is extended to more local authority areas in stages. In particular, the first such stage is due to be completed early next year, and so towards the end of this period there will be a review and evaluation of the new register, including the operation of the Rules. In addition, the effectiveness of the publicity detailed in paragraph 9.1 will be continually monitored, and appropriate steps will be taken to deal with any general lack of understanding on the part of local authorities, conveyancers or others making applications.

13. Contact

13.1 Sushma Acharya at HM Land Registry, Telephone: 0300 006 7046 or email: Sushma.Acharya@landregistry.gov.uk can answer any queries regarding the instrument.