

EXPLANATORY MEMORANDUM TO
THE LOCAL LAND CHARGES FEES (ENGLAND) RULES 2018

2018 No. 489

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 Fees (England) Rules 2018 (“the Fees Rules”) make provision for the fees payable for local land charges services.

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 Local Land Charges Rules 2018 (“the 2018 Rules”), which have recently been laid before Parliament, and the Fees Rules will have effect.

- 4.4 The particular rule in the 2018 Rules that revokes the 1977 Rules does not include the fees provisions 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 Fees Rules is England and Wales.
5.2 The territorial application of the Fees Rules is England.

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 2018 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 the standardised arrangements for searching and in doing so contributing to the Government's wider 2017 manifesto pledge to modernise the home buying process.
- 7.7 The Fees Rules provide for fees to be paid for the same services that local authorities generally charge fees for at present, with two exceptions. First, no fee will be payable for lodging a court order directing that the registration of a light obstruction notice be varied or cancelled: there are a minimal number of such lodgements, and it is questionable whether HM Land Registry could properly insist on payment of the fee before acting on the order. Second, no fee will be payable for the provision of copy documents: few such applications are likely to be made, as the Chief Land Registrar will not keep many documents, and the small cost of providing copy documents would make it uneconomic to make the necessary arrangements for charging and recovering a fee. The result is that fees will only be payable for official searches of the register and for various applications relating to light obstruction notices (which make up less than 0.1% of registered local land charges). As a trading fund, HM Land Registry is required to cover its costs and provide a dividend on capital to HM Treasury. Consistent with this, the fees are calculated to include both the development costs and ongoing running costs of the new service.
- 7.8 The Fees Rules allow for a person to request a further official search without paying an additional fee, provided it is in respect of the same land and applied for within six months of an earlier official search for which a fee was paid. This is to address the possibility of a substantial delay between the date when the earlier official search was obtained and the completion of the purchase: the person can apply, free of charge, for a further official search prior to completion to check that no more local land charges have been registered.

8. Consultation outcome

- 8.1 HM Land Registry consulted on the keeping of a central local land charges register for England and Wales in 2014 and on the 2018 Rules in 2016.
- 8.2 No formal consultation on the Fees Rules has been undertaken. However, extensive research and engagement has taken place that has helped to determine the official search fee of £15. This includes research conducted by Ipsos MORI in 2017 which asked customers about the pricing levels. Additionally, for a significant majority of local authority areas, the fees for services will be less than they are currently; there are no services for which a fee will be charged that are generally free at the moment; and the fees are all small in absolute terms and relative to the overall cost of property transactions.

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. Although the conveyancer or search company may actually pay the fees for official searches etc to the local authority, the fees will ultimately be paid by the purchaser or mortgagor.
- 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 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 Fees Rules should not impose any significant additional burden on them, but will provide the benefit of a standard fee.

12. Monitoring & review

- 12.1 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 fee income and level of applications. If adjustment is needed, further Fees Rules may be required.

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.