

EXPLANATORY MEMORANDUM TO
THE LOCAL LAND CHARGES (AMENDMENT) RULES 2010

2010 No. 1812

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Local Land Charge Rules 1977 specify that local authorities may charge a fee, currently £22, for the inspection of their local land charges registers (which in general terms record matters of public interest affecting individual properties). However, the Environmental Information Regulations 2004 (EIR) provide that access to environmental information must be available free of charge. As the vast majority of local land charges contain environmental information, this instrument revokes the fee for inspection in person of the registers to ensure that the two pieces of legislation are consistent. A reasonable charge may still be made under the EIR when the information is requested otherwise than in person, for example, by post or e-mail.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Department regrets the time taken between the making of the instrument and its laying before Parliament. This delay occurred because the laying of the instrument was intended to be accompanied by information and guidance to all affected local authorities, explaining the change and the actions that were being taken by the government to help them adjust to the new understanding of the EIR. The information and guidance is now ready and hence the instrument can now be laid. The instrument will come into force 21 days after the date on which it is laid.

4. **Legislative Context**

4.1 The change is necessary because it is now understood that most of the information on the local land charges register is environmental information within the EIR and should be available for inspection free of charge.

5. **Territorial Extent and Application**

5.1 This instrument applies to 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

7.1 Public authorities are required under the EIR to provide access to environmental information, including property search information, free of charge.¹ They cannot make any charge for allowing an applicant to access any public registers or lists of environmental information or to examine the information requested at the place which the public authority makes it available for examination. Many local authorities (typically district, London Borough and unitary authorities) are required to maintain a local land charges register and to permit personal searches of it.

7.2 The Information Commissioner's Office (ICO) issued guidance to local authorities on how to respond to requests for property search information and on the relationship between the EIR and the Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR) in July 2009. This concluded that the majority of information contained in property records held by local authorities was likely to be environmental information, as defined in the EIR. Although the guidance does not expressly refer to the local land charges register we have concluded from the guidance and the decisions of the Commissioner in 2009 and the First-Tier Tribunal in March 2010 regarding other property searches² that the same principles should apply.

7.3 As it does not appear to be possible to segregate information that is non-environmental, the only way to ensure consistency between the Local Land Charge Rules 1977 and the EIR is to revoke the prescribed fee; this instrument makes that change.

7.4 The instrument will be of interest to local authorities and property searchers, who are predominantly commercial search agents. There has not been any significant interest in the fee for a personal search of the local land charges register in the media or among the public generally so far, but this may change once it becomes widely known that a fee is no longer payable.

7.5 The instrument is likely to focus attention on the fact that local authorities have charged for personal searches of the local land charges register since 2005 when the EIR came into force. In these cases there may be an obligation on local authorities to refund the fee paid. Each case will depend on its own facts and, for example, an agent who has passed on the cost of the fee to another person might be unjustly enriched by a refund and not entitled

¹ EIR regulation 8.

² For example, the Information Commissioner's decisions in FER0240911 (Stoke City Council); Decision Notice FER0236058 (East Riding of Yorkshire Council), both decided in July 2009, and the First-Tier Tribunal General Regulatory Chamber [Information Rights] Case No. EA/2009/0069, published in March 2010.

to one. Local authorities will need to assess claims as they are made in the light of their own legal advice.

8. Consultation outcome

8.1 There has not been any formal consultation on the change outside government as the instrument is necessary to reflect European law as implemented in the EIR more accurately. The Local Government Association has been informed of the position.

9. Guidance

9.1 The government will shortly be writing to all local authorities about the effect of the EIR on the various property searches carried out by them and will be issuing updated guidance on charging for environmental information under the EIR, which will cover charges for searches of the local land charges register.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument since it does not itself change the law and no one is required to make a search of the local land charges register. However, the fact that local authorities are no longer able to charge these fees will clearly have an impact on their finances. Assuming that commercial search agents pass on the cost of the fee for searching the local land charges register to their customers, they should not be affected by the fact that these fees will no longer be charged.

11. Regulating small business

11.1 The legislation applies to small business but no additional costs are anticipated.

12. Monitoring & review

12.1 The instrument revokes the prescribed fee to ensure consistency with the EIR. No active monitoring of local authorities to ensure compliance with the instrument is proposed. The government will, however, stay in touch with local authorities about the effect of the EIR, including their effect on local land charges.

13. Contact

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