

**EXPLANATORY MEMORANDUM TO
THE LOCAL LAND CHARGES AMENDMENT RULES 2009**

2009 No. 2494 (L. 27)

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 purpose of the instrument is to increase the fee payable to relevant local authorities in England for a personal search of the local land charges register from £11 to £22 with effect from 1st January 2010. The register is kept by relevant local authorities, typically district and unitary authorities, and records local land charges affecting a property. Local land charges are matters of public interest affecting individual properties. A personal search is a search of the register carried out by an individual on payment of the prescribed fee.

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

- 3.1 The fee was last changed in 2003, when it was increased from £10 to £11¹. The proposed increase will double the existing fee. This is significantly in excess of the rate of inflation over the period from 2003. However, an increase of this order is necessary because the fee is intended to cover the cost of providing the service and, at present, the cost appears to exceed significantly the current fee income generated. Details of the information on which this conclusion is based are given in paragraph 8 below.

4. **Legislative Context**

- 4.1 The instrument is being made because it is clear from the information obtained on consultation that the current fee is too low for local authorities to recover their costs in providing the personal search of the local land charges register service.

- 4.2 Mark Oaten (Winchester) asked two parliamentary questions about the increase in the fee for a personal search of the local land charges register. In her written answer on 28 January 2009 (Column 454W) Bridget Prentice undertook to announce the outcome of the consultation on changing the fee and to publish a response document as soon as practicable.

5. **Territorial Extent and Application**

- 5.1 The instrument applies to England only.

¹ The Local Land Charges (Amendment) Rules 2003 (SI 2003/2502)

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*

Most property search fees are set by the local authorities providing the relevant search service², but the fee for a personal search of the local land charges register in England is set by the Lord Chancellor, with the concurrence of HM Treasury, under section 14 of the Local Land Charges Act 1975. The 1975 Act does not specify the basis on which the fee is to be set but the practice has been to try to set a fee that over the country as a whole will broadly recover the costs of providing the service.

Section 3 (2) of the Local Land Charges Act 1975 requires registering authorities to maintain local land charges registers and section 8(1) requires them to permit personal searches of the registers on payment of the prescribed fee. Registering authorities are defined in section 3(1) of the 1975 Act.

Since 2005 the Ministry of Justice and its predecessor departments have received increasing numbers of representations from local authorities that the present fee is inadequate.

A market study by the Office of Fair Trading (OFT) on property search information in 2005³ identified the importance of creating a level playing field for local authorities and personal search companies. OFT recommended that the fee for unrefined information should be based on cost recovery and charged equally to the authority itself and its customers. The OFT's approach was broadly accepted by the Government⁴.

8. Consultation outcome

- 8.1 A joint consultation paper by the Ministry of Justice and the Department for Communities and Local Government (CLG) in January 2008⁵ invited comments, amongst other matters, on whether the current level of the fee for a personal search of the local land charges register should be changed. 858 responses were received. Amongst these, there were 549 responses from personal search companies and 224 from local authorities. The detailed information provided by local authorities on the costs incurred in providing the personal search service clearly indicated that the current level of fee does not enable local authorities to recover their costs.

² See for example, The Local Authorities (England) (Charges for Property Searches) Regulations 2008 (SI 2008/3248)

³ Property searches, A market study September 2005

⁴ Property Searches, Government Response to Office of Fair Trading (OFT) Property Searches Market Study December 2005

⁵ Local Authority Property Search Services: Charges for Property Search Services - A consultation paper 18 January 2008

8.2 The Ministry of Justice has published a post-consultation report in relation to the local land charge fee issues in the consultation paper. It is available on the Ministry of Justice website at: <http://www.justice.gov.uk/consultations/lacpss180108.htm> .

9. Guidance

9.1 No guidance will be issued. The change is a straightforward increase in the level of the fee charged for a personal search of the local land charges register only.

10. Impact

10.1 An impact assessment of the effect of the increase in the fee on the costs of business and the voluntary sector is available in the response to the consultation Local Authority Property Search Services – Charges for Property Search Services – The Fee for a Personal Search of the Local Land Charges Register. A copy is annexed to this paper.

10.2 The impact on the public sector is beneficial. As a whole, local authorities will receive an increase in revenue from personal search fees, moving them closer to cost recovery in provision of the personal search of the local land charges register service.

11. Regulating small business

11.1 The legislation will not apply specifically to small business, but to all users of the personal search service.

12. Monitoring & review

12.1 The instrument increases an existing fee. If the fee is not paid the service will not be provided. The Ministry of Justice does not monitor the payment of the present fee and does not propose to monitor the new fee. However, the Ministry will review the effectiveness of the change in the fee in 3 to 5 years time from implementation or sooner if adequate evidence is provided to show that the fee needs to be changed.

13. Contact

The points of contact are:

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Annex – Impact Assessment

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment Should the Fee for a Personal Search of the Local Land Charges Register be changed?	
Stage: Final IA	Version: FINAL	Date: August 2009
Related Publications: Local Authority Property Search Services, Charges for Property Search Services – A consultation paper – (Communities and Local Government / Ministry of Justice) 18 January 2008; and the MoJ response document on the fee for a personal search of the local land charges register September 2009.		

Available to view or download at:

<http://www.justice.gov.uk>

Contact for enquiries: Charles Stewart

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

Whether the fee for a personal search of the Local Land Charges Register (LLCR) in England needs to be changed. The fee is charged by local authorities but is set by the Lord Chancellor with the consent of HM Treasury (Local Land Charges Act 1975, s14). It was last changed in 2003. The LLCR records matters of public interest affecting individual private properties (such as tree preservation orders and planning conditions). It is maintained by local authorities. A personal search is a search of the register conducted in person by an applicant.

What are the policy objectives and the intended effects?

To set a fee for a personal search of the LLCR broadly at cost recovery over England as a whole, taking account of the effects on customers and consumers.

An appropriate fee should encourage fair competition in the provision of property searches. It should enable most LAs to recover their costs of providing the personal search service. This will save money for the council taxpayer, while encouraging efficient delivery of services. The main affected groups are local authorities, personal search companies and their respective customers.

What policy options have been considered? Please justify any preferred option.

Option 1 – The fee should remain unchanged; Option 2 – The fee should be changed.

Preferred option – Option 2, increasing the fee from £11 to £22.

Evidence received from consultation responses showed the £11 fee to be inadequate. In all but one case the existing fee did not cover costs. The increase to £22 will give LAs an increase in income and provide an incentive to reduce costs, whilst not overburdening personal search companies. Any increase in the costs of a property transaction will be minimal for their customers and consumers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Post-implementation review will follow 3 to 5 years after implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Bridget Prentice..... Date: 28th August 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Increase the fee from £11 to £22

ANNUAL COSTS		Yrs	Description and scale of key monetised costs by 'main affected groups' The increase in the fee will fall to personal search companies and their customers. No additional costs will fall to LAs. The increase is £11 per search. Nationally, assuming 1,160,000 personal searches of the LLCR are conducted per year, this represents a transfer of an £12,760,000 annual loss by LAs to cost to personal searchers, usually personal search companies. The increased cost is likely to be passed on by personal search companies to their customers, representing a transfer of the burden of fees from LAs and council tax payers in general to consumers of the service. The extra cost of £11 to a property search in terms of the overall price of a property transaction is minimal and will not materially affect consumers, who generally only buy and sell property infrequently.
One-off (Transition)	£		
£ Nil	1		
Average Annual Cost (excluding one-off)			
£ 12.76 million		Total Cost (PV)	£ 12.76 million
Other key non-monetised costs by 'main affected groups'			

ANNUAL BENEFITS		Yrs	Description and scale of key monetised benefits by 'main affected groups' There are <u>no one-off benefits</u> to the main affected groups. LAs will benefit by a £12.76m increase in income. As the current fee is £11 that represents a benefit across the vast majority of the 353 LAs required to keep a LLCR in England of £36,147 per LA per year or £11 per personal search. The fee is intended to reflect costs incurred or achievable by a significant number of LAs in England. Actual benefit may be greater or less depending on local conditions.
One-off	£		
£ Nil	1		
Average Annual Benefit (excluding one-off)			
£ 12.76 million		Total Benefit (PV)	£ 12.76 million
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks There are 353 LAs required to keep local land charge registers in England. Costs are believed to vary significantly between them. Numbers of searches may vary year on year depending on property market activity.

The total number of personal searches is estimated to be about 1,160,250 per annum. This figure was calculated as follows: – Number of completed transactions in England (2008) – about 750,000 (Her Majesty's Revenue and Customs); allow about 20% failed transactions (where search conducted) – 175,000 – and about 647,000 remortgages. Total 1,547,000. Assume 75% of searches are personal searches = 1,160,000 personal searches of LLCR.

Applying a single standard deviation, the £22 figure represents the upper limit of the first quartile of LA cost information, as supplied by 76 LAs who replied in full to the consultation paper (Local Authority Property Search Services, Charges for Property Search Services' – Communities and Local Government / Ministry of Justice – January 2008).

Price Base Year 2008	Time Period Years 3-5	Net Benefit Range (NPV) £ Nil	NET BENEFIT (NPV Best estimate) £ Nil
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What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	01-01-2010
Which organisation(s) will enforce the policy?	Ministry of Justice
What is the total annual cost of enforcement for these organisations?	£ negligible
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ negligible
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No No No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact £ Nil

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Related Publications

1. 'Local Authority Property Search Services, Charges for Property Search Services – A consultation paper' – (Communities and Local Government (CLG) / Ministry of Justice (MoJ) - January 2008) and the MoJ response document on the fee for a personal search of the local land charges register (2009).

Background

2. The Lord Chancellor has the power to set the fee for a personal search of the local land charges register, with the consent of HM Treasury, under section 14 of the Local Land Charges Act 1975. It was last set in 2003 at £11. The fee was intended to produce an increase across England that broadly represented the cost of providing the service. A number of LAs have written to MoJ in recent years stating that the £11 fee for a personal search of the LLCR is insufficient to allow them to recover their costs of providing the service. As part of its ongoing response to the OFT recommendations in its report on Property Searches in 2005⁶ (see background below), the Government decided to use the 'Local Authority Property Search Services' consultation paper (see above) to ask LAs to send in their costing information.
3. Further background to the review of the fee for a personal search of the LLCR can be found at pages 30 and 88 of 'Local Authority Property Search Services, Charges for Property Search Services – A consultation paper' (<http://www.justice.gov.uk/consultations/lacpss180108.htm>)

Current Position

4. CLG and MOJ jointly published the consultation paper Local Authority Property Search Services (see above) on 18 January 2008. The 12-week consultation period ended on 18 April 2008. CLG and MoJ received 858 responses to the consultation.
5. In the responses received, MoJ received fee information from 129 LAs. The detail and quality of this fee information was variable. 76 responses contained the necessary level of detail to assess whether the current fee should remain set at £11. From this information, MoJ calculated a weighted average cost to LAs in England of providing a personal search of the LLCR of £33.

Problem

6. The fee for a personal search of the LLCR appears to be set too low for recovery of LA costs in a large number of cases. However, it is clear that costs vary significantly between local authorities.

⁶ The OFT report is available at http://www.of.gov.uk/shared_of/reports/consumer_protection/oft810.pdf; and the Government's response at <http://www.dti.gov.uk/files/file25861.pdf>.

Options

Option 1 – No change

7. The evidence is that the £11 fee is inadequate to meet the cost of providing the service. Based on the fee evidence analysed, this option would represent an annual loss to LAs of £12.76 million or £36,147 per LA.
8. Keeping the fee unchanged would benefit private search companies, as it would help them to offer their customers searches at a lower price than that which LAs could charge for their equivalent compiled property search product: the official search of the local land charges register in form LCC1. This could result in the council taxpayer or other customers effectively subsidising the cost of privately compiled searches. However in reality, we understand that LAs have made good some or all of the shortfall on the local land charge personal searches by charging more for other services. The extent of this cross-subsidisation is difficult to determine but the practice does not encourage transparency. Keeping the fee unchanged would encourage further cross-subsidisation, which would be more difficult to achieve under the new fee setting powers introduced in The Local Authorities (England) (Charges for Property Searches) Regulations 2008 (SI No. 3248), or increase losses for LAs.
9. Option 2 – Increase the fee.
10. The cost information received from LAs indicates the fee should be increased. This will benefit LAs by allowing more of them to recover their costs of providing the service.
11. Private search companies may be disadvantaged if the fee is increased. They would be forced to add the increase to every personal search they carry out or absorb the cost. MoJ do not anticipate that passing the cost on to their customers will have a major impact, as this extra cost is minimal with regard to the cost of purchasing a property. Also, if the increase reduces cross-subsidisation between different property search services it will increase transparency and produce a smaller increase (if any) in overall terms for LA customers. In view of these factors, we consider that there is a very strong case for an increase in the fee.
12. Having concluded that an increase in the fee is required, we need to determine the level of increase. This could not be a precise science. Our aim in general terms is to achieve cost recovery over England as whole. On that basis, £11 is clearly too low. Applying a single standard deviation, the first two quartiles fell below £27. But, in the absence of any audit of the costs provided and to accommodate a margin to encourage efficiency, setting the fee at £22, the upper limit of the first quartile, seemed reasonable. The level of fee will provide a significant increase in income for LAs whilst at the same time not overburdening the private sector search companies or their customers. The new fee should, therefore, provide LAs with both a significant level of cost recovery and an incentive towards greater efficiency in provision of personal search services, without distorting competition.

Proposal

13. MoJ conclude that on balance, the evidence shows that the current fee does not cover the cost to LAs of providing the service. MoJ therefore recommend that the fee be increased from its current level of £11 to £22.
14. The fee change will be enacted by secondary legislation. The fee will come into force on 1 January 2010.

Enforcement, sanctions and monitoring

15. MoJ will review the effectiveness of the change in the fee in 3 to 5 year's time from implementation or sooner if adequate evidence is provided to show that the fee needs to be changed.

Competition Assessment

16. MoJ have assessed this proposal and conclude it will not have any adverse impact on competition. Local authorities provide official searches of the LLCR and other property information in competition with the personal searches provided by personal search companies (which include a personal search of the LLCR). The present fee is too low and may be distorting competition by burdening LAs with a possible shortfall in income and charging their competitors too little for the service they use. The increased fee is aimed at cost recovery over England as a whole and should provide a fairer base for competition between local authorities and personal search companies.

Small Firms Impact Test

17. This proposal will have a small impact on the margins and/or cash flows of private search companies, but this should be minimal. The increase in the search fee may well be passed onto the consumer for whom it will be an insignificant increase in the cost of the transaction.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No