



The Law Society

Response of the Law Society of England and Wales to the consultation issued by HM Land Registry on Local Land Charges Rules

July 2016



PREFACE

1. The Law Society of England and Wales ("The Society") is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.
2. The Society welcomes the opportunity to respond to this consultation <https://www.gov.uk/government/consultations/consultation-on-draft-local-land-charges-rules-2017>
3. This response has been prepared by the Society's Conveyancing and Land Law Committee ('the Committee') which comprises practitioners specialising in both residential and commercial property, drawn from a cross-section of the profession.
4. Conveyancing and property related work is an important business activity for the Society members, involving as it does, approximately one fifth of the profession. Both commercial and residential property work involves dealings that may be impacted by the existence of local land charges.

EXECUTIVE SUMMARY

5. Land Registry, under provisions in the Infrastructure Act 2015, proposes to assume responsibility for local land charges which are currently dealt with by local authorities.
6. They will provide a single, digital, local land charges register rather than individual registers being kept by 326 local authorities in England. Land Registry proposes to charge a single fee for searching the register.
7. The consultation seeks views on the rules that will provide the framework for how the new electronic Local Land Charge Register Service operated by Land Registry will work. These are set out and commented upon in the draft Local Land Charges Rules 2017 in the consultation.
8. The proposed rules seem broadly to reflect the current rules enacted in 1977 in so far as applicable. The proposed rules are very similar to the rules enacted forty years ago and we assume that investigations have taken place with local authorities to establish any perceived defects or concerns about the operation of the current rules with a view to improving their operation.

9. This response is treated as being 'stand alone' and the responses given do not take into account the possible privatisation of the Land Registry on which the Department of Business Innovation and Skills has consulted recently and to which we have responded¹.
10. This response also does not refer in any detail to the Society's Con 29 and Con 29O search forms as these fall outside the scope of the current consultation. It is appreciated that there is currently a very close interrelationship between the Con 29 searches and the local land charges search and that the introduction of the new register will necessitate some changes in practice. This will need to be monitored to establish whether there is any marked impact on practice.
11. The Society supports the move to standardising turnaround times, fees and the format of results. It is hoped that the new Con 29 enquiry forms released on 4 July 2016 will, thanks to the assistance of the LGA, LLCI and NLIS, promote more standardisation of the format of results. We understand that because local authorities are obliged to charge for Con29 on a costs recovery basis that it is not possible in law for local authorities to charge a standardised fee for responding to Con 29. Some parts of the market attempt to address this.
12. It is noted that the register will only apply to England and we assume that local authorities in Wales will continue to respond as previously. Obviously it is not helpful to practitioners to have two different systems that apply across physical boundaries and for portfolios of property that include properties both in England and in Wales. Increasingly this is the case in relation to tax, planning and environmental matters. We understand the reasons for this but it complicates practice.
13. In relation to the new electronic Local Land Charge Register Service operated by Land Registry the Society is particularly keen to ensure that :
- appropriate information is provided by Land Registry in the search result to minimise the likelihood of solicitors having to go to the local or other authority to obtain details of the charge with attendant risks of delaying conveyancing transactions;
 - the transitional arrangements that will operate through an incremental 'roll out' programme operates smoothly and that communication across the

¹ <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/bis-consultation-on-moving-land-registry-operations-to-the-private-sector-law-society-response/>

relevant parts of the industry is transparent and continuous until the migration is completed.

RESPONSE

Question 1

Do you agree with the requirements for applications for registration of charges (other than light obstruction notices) being those set out in rule 3? Please provide comments to support your views.

14. The Society agrees with the requirements for applications for registration of charges (subject to dealing with content - see paragraph 51 below). The impact will be greater on local authorities, and other authorities who are obliged to apply for registration of a local land charge, than it is on solicitors.
15. We understand that in preparing a digital register Land Registry will want to receive local land charge information electronically where it can and we assume that Land Registry has discussed this with all of the relevant authorities to ensure that they will be in a position to comply with this requirement.

Question 2

Do you agree that it should not be compulsory to apply electronically to register a light obstruction notice but that a paper application (using Form A) may be made instead? Please provide comments to support your views.

16. The Society agrees that it should not be compulsory to register rights of light obstruction notices electronically. The requirements for applications for registration of light obstruction notices to be made by paper and not compulsorily by electronic means are broadly approved.
17. The ability to apply in a paper format will enable those who wish to apply for registration of light obstruction notices, which may be individuals rather than authorities, to do so even if they do not have the ability to apply electronically. It is correct to allow these people to apply on paper so that they can make an application even in circumstances where they do not have access to electronic systems or where the plans, maps and other supporting material is not easily provided electronically by those applicants.

Question 3

Do you agree to continue having a prescribed Form A? Please provide comments to support your views.

18. The Society agrees that it is probably useful to continue to have a prescribed Form A that effectively acts as a checklist and ensure that the all of the requisite information is provided to the Land Registry.

19. Presumably when the application is made electronically the guidance on screen will effectively direct the applicant along the lines similar to Form A to ensure that all requisite it information is supplied

Question 4

Do you think that the wording of the Form A in these draft Local Land Charges Rules 2017 should be changed in any way? Please provide comments to support your views.

20. The Society is not aware of any of the wording in Form A that needs to be changed but we assume that local land charges officers and others with a direct and day to day working knowledge of local land charges have been, or are being consulted, and will be in a better position to respond.

Question 5

Do you agree that the digital local land charges register should contain all the particulars referred to in Schedule 1, and nothing more? Please provide comments to support your views.

21. No, the Society thinks it would be helpful to provide more than those matters set out in Schedule 1 if practicable.

22. Our primary concern here is to ensure that solicitors and conveyancers are able to obtain the vast majority of the information they need from the register when making a search. If it is the case that on many occasions solicitors and conveyancers will be directed back to the local or other authority to obtain this information, it will have the potential to defeat the primary purpose of the register and to delay the conveyancing process. Whilst this may not have mattered so much in circumstances where the responding authority was also the authority holding the further information when the systems are separated there is obviously the risk of the introduction of a potential drag on the system if information is supplied that simply directs solicitors, conveyancers and others searching the register to alternate authorities to obtain more detail.

23. As an example, it would be most helpful if in circumstances where permitted development rights (PDR) have been removed by an earlier planning consent that these were clearly ascertainable from the local land charges register.
24. It is our understanding that under the current system the removal of PDR by an earlier planning consent ought to be apparent from the local land charges register. However, it is appreciated that if seeking to rely on general PDR, it may be advisable to check conditions in permissions to ensure they do not prevent those rights arising. We understand that the length of time local authorities hold planning records varies but it may be necessary to interrogate these. The case *Dunnett Investments Ltd v Secretary of State for Communities and Local Government*² [March 2016] illustrates the risks seeing the planning permission authorising the construction of a post-1947 building or authorising a change of use that has taken place since 1947. Even if the building or use has existed for many years (in this reported case nearly 35 years) there still may be ongoing planning conditions or limitations that could affect a buyer or tenant. The condition in this case "*This use of this building shall be for purposes falling within Class B1 (Business) as defined in the Town and Country Planning (Use Classes) Order 1987, and for no other purpose whatsoever, without express planning consent from the Local Planning Authority (LPA) first being obtained*", in its requirement first to obtain the LPA's express planning consent, was held by the High Court to prevent any rights under the general permitted development order being obtained for a non-B1 use (residential). That was the case without the need for the condition explicitly to exclude general PDR. The reason for the imposition of the condition made it clear that control was retained by the local authority so that it could be satisfied about the details of any proposal due to the particular character and location. In other words, the sensitivity of the area to potentially unsympathetic uses was protected.
25. Any means of providing this sort of information on the face of the Local Land Charge Register Service would be useful.

Question 6

Do you agree that it is not necessary to include the additional particulars of registration for specific financial charges? Please provide comments to support your views.

26. The Society does not wholly agree. The Society agrees that the second set of wording that relates to the updated position of the financial charge i.e. the

² [2016] EWHC 534 (Admin) [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/534.html&query=title+\(+dunnett+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/534.html&query=title+(+dunnett+)&method=boolean)

date of last payment and the balance of the charge then outstanding, does not need to be included. This is because in practice it is a potentially heavy obligation on local authorities to ensure that this is updated.

27. The Society would however like to see the first part of the wording that sets out the amount originally secured and the rate of interest set out in full. This information ought to be given on first registration and it should be given in search results. Such information would enable some at least rough calculation to be made, even on the assumption that no payments had been made, to establish the likely amount of the monies outstanding. This would provide information so that the necessity to investigate this further at an early stage could be established.

28. Even though arrangements would have to be made for repayment of the charge at some stage it may not be necessary to investigate fully on receipt of the search result simply to ensure that this is paid off at a later date. This could mean one set of contact with the local authority rather than two -- depending on the value of the charge in relation to the value of the transaction as a whole and the instructions from lender and/or lay clients.

Question 7

Do you agree with the proposals for variation and cancellation of registrations of charges in the register (other than those in respect of light obstruction notices)? Please provide comments to support your views.

29. The Society broadly agrees with the proposals for variation and cancellation of registrations of charges. The role of the Chief Land Registrar needs careful consideration. Primarily it is the obligation of those entitled to the benefit of the charge to make applications to vary or cancel the registration.

30. It is proposed that the Chief Land Registrar has the authority to remove or alter entries. Whilst it is suggested that this power may only be used in restricted circumstances, such as where it was not possible to establish the details of the beneficiary of the charge, it may be preferable to have some overarching restriction on the powers of the Chief Land Registrar to ensure that in appropriate circumstances there will be communication with those entitled to enforce the charge before any change is made in its registration. Rule 6 (7) provides that the Chief Land Registrar has to be 'satisfied' that the charge has been varied or is incorrect. Obviously entries must not be removed arbitrarily or without reference to those owning the benefit where ascertainable.

Question 8

Do you agree with the proposals for variation and cancellation of registrations in respect of light obstruction notices? Please provide comments to support your views.

31. The Society broadly agrees with these proposals but those preparing this response do not profess to be expert in these matters and it may be that some litigation colleagues rather than conveyancers might have different views.

32. It is noted that any application to vary or cancel has to be made within a year of the original registration and we do not have any evidence as to the adequacy or otherwise of these time limits. The changes expressed are in relation to the position or dimension of the structure so as to reduce height or length or increase distance from the dominant building so the reasons for the imposition of time limits are understood.

Question 9

Do you agree to continue having a prescribed Form B? Please provide comments to support your views.

33. The Society agrees that it is probably useful to continue to have a prescribed Form B for use in the circumstances described, for paper rather than electronic applications.

Question 10

Do you think that the wording of the Form B in these draft Local Land Charges Rules 2017 should be changed in any way? Please provide comments to support your views.

34. The Society is not aware of any of the wording in Form B that needs to be changed but we assume that local land charges officers and others with a direct and day to day working knowledge of local land charges will be in a better position to respond.

Question 11

Do you agree with the proposal for notification and cancellation for general charges? Please provide comments to support your views.

35. Yes the Society agrees with these proposals.

Question 12

Do you agree with the proposal for personal searches? Please provide comments to support your views.

36. Yes, the Society agrees that applications for personal searches would need to be made electronically given that the register is electronic and there will be no other manner of carrying out such a search once the new register has been established and complete migration has taken place.
37. Will local authorities be prevented from permitting those who wish to search the register from searching their local land charge records either electronically or physically? How will this be implemented?
38. Is it anticipated that solicitors and conveyancers will make the search themselves perhaps at an early stage in the transaction, before requesting a formal official search, to obtain the data or take a screen shot of relevant entries?

Question 13

Do you agree (a) with the provision made in respect of official searches and (b) in particular with what is required of applicants and what the official search certificate must contain? Please provide comments to support your views.

39. It is unclear what form the official certificate will take or how the information will be presented. Will it set out, for example, if there is a conditional planning permission, 'conditional planning permission' with the date? Will this be accompanied by a note telling the conveyancer / solicitor to make further enquiries of the local authority?
40. If the conveyancer/ solicitor has to do this, how will the costs of obtaining this from the local authority be established? Won't this be something that could produce an additional drag on the speed of conveyancing?
41. Without having seen the proposed format of the form of certificate or understanding what will be on the face of the certificate it is difficult to understand quite how this will operate. We are uncertain as to whether there will be a lot of potentially irrelevant data to interrogate as an initial step followed by the need to refer back to the local authority to obtain further information.
42. We understand that some local authorities have resourcing issues and whilst Land Registry says there will be some assistance through 'a new burdens

provision' we do not understand how this new part of the service is likely to be funded.

Question 14

Do you have comments on the proposed restriction contained in paragraph (2)? If you think a different form of limitation on extent should be adopted, please specify what the form of limitation should be and provide comments to support your views.

43. The Society understand that the provision in paragraph 10(2) is designed to counter the situation where an applicant applies for a search of the local land charges register which may, for example, be of an extremely large piece of land. The rules appear to have been drafted to allow Land Registry some leeway in not responding. The rules provide that the subject of an individual official search cannot be so large so as to interfere with the running of the new service.
44. The restriction only seems to apply to applications for official searches – does this mean for example that the same constraints would not apply in respect of personal searches?
45. The view is expressed that it is expected that for a particular conveyancing transaction the power not to provide the search is unlikely to be invoked.
46. We are uncertain as to whether this is primarily aimed at solicitors who are searching a large number of parcels of land or a large area perhaps across several local authority areas or whether the concern is about the private sector making demands on the register from which they would create products – but if this does not apply to personal searches this could not be the case.
47. We are uncertain as to whether the restriction on the size of the area of land to be searched and which provides some flexibility to Land Registry as to whether it will answer or not is designed to be anti-competitive in any way or whether it is simply providing an opportunity to charge a more realistic fee than might otherwise be offered.
48. This is an attempt to ensure that there are restrictions on the extent of searches that can be carried out. We are not certain what might be in place to prevent someone searching large types of land owners' holdings, storing the results and constantly updating them. Is it anticipated that enquirers will make speculative trawls of the database on an ongoing basis and will Land Registry be content if this occurs?

Question 15

Do you agree with the proposal for destruction of documents? Please provide comments to support your views.

49. Yes the Society agrees with this proposal.

Question 16

Do you think that there are any other types of documents that are likely to be kept by the Chief Land Registrar in respect of which it ought to be possible to apply for copies? If yes, please identify the type of document and provide comments to support your views.

50. The Society agrees that these will mainly relate to rights of light – light obstruction notices.

Question 17

Do you have any comments on the matters which the Chief Land Registrar may determine?

51. The Society agrees that the Chief Land Registrar needs to be able to determine the content and means of application to accord with the current technological developments but the views of those needing to use the system need to be taken into account. It is no use setting out the most technologically advanced system if users do not widely have access to such systems.

Question 18

Do you agree with the proposal for the Chief Land Registrar to be obliged to specify an address to which paper applications in respect of light obstruction notices must be sent? Please provide comments to support your views.

52. Yes the Society agrees with the proposal that the Chief Land Registrar should be able to set out an address to which paper applications in respect of light obstruction notices must be sent. It must be most efficient for the Land Registry to designate a single office to deal with this sort of application. This office may change from time to time therefore it makes sense to grant the Chief Land Registrar the flexibility to change the specified address as necessary.

Question 19

Do you have any further comments on the proposed draft Local Land Charges Rules 2017?

53. As may be apparent from the answers given above, the Society has very limited information as to exactly how the new register will operate in several key respects including:

- the fees across official and personal searches
- what the official certificate will contain
- the inter relationship between the local authority and the Land Registry in relation to the provision of further information
- the potential information gaps when matters are put on the register and where liability for this potentially missing information will sit

We would like to know more about exactly what is proposed.

54. We are assuming that as matters progress there will be consultation with conveyancers and solicitors about how this project this will operate in practice. As the rules are to be retained in a format similar to those introduced in 1977, set out at a very high operational level without setting out any detail, issues may arise from the fact that a new body is to operate the register that have not been thought of at this stage. It would be helpful if there were a forum for discussing issues as they arise. The new rules are broadly similar to the old rules but these are very high level and may not necessarily provide detail that is needed but the deficiencies may not be discernible until encountered in practice.

55. Hopefully some of these would come to light at an early stage in the roll out. Whilst it might not at that stage be possible to amend the rules it may be possible to amend Land Registry practice to accommodate.

Question 20

Do you have any comments on the Regulatory Impact Assessment?

56. The assessment provides interesting reading. Whilst it is appreciated that the project relates only to local land charge searches as has widely been commented on this only forms part of what is commonly known as the 'local authority search'. Fees, timing and standardisation benefits are potentially compromised by this.

57. Part of the assessment is that once the initial investment is paid off customers will benefit by paying a lower fee. In the whole scheme of fees paid in relation

to conveyancing, the fee for a local land charges search is negligible and will probably continue to be so, especially when set against other impositions, particularly stamp duty land tax. As the fee only relates to the local land charges search part of the whole 'local search' fee which commonly means that fee combined with the Con 29 fee, the fee then effectively becomes non standard as local authorities are obliged to charge on a costs recovery basis.

58. The greater benefit may be in the preservation of records. Again the consistency of search results and timing of delivery are compromised because there is another part of the search to carry out. The benefits of timing could be improved by achieving a greater consistency of results to Con 29 searches.

59. Generally the timing of receipt of results of searches is not thought to impact transaction times unduly.

60. In terms of the wider impact on different parts of the market we have no comments at this stage but will be interested to see the nature of the impact across the market.

Question 21

Do you have any comments at this stage on CON 29 searches and how they relate to our proposed changes to local land charges, including the practical steps taken to digitise local land charges information?

61. This is probably not the appropriate forum to discuss this issue. The Society would like to understand how the Con 29 and the new local land charge search will interact in practice particularly in relation to fees and timing.

62. For example in relation to timing were an Article 4 direction to be made in the period between the local land charge search and the Con 29 what would be the status of that direction in the intervening period? If the Land Registry through the new service provided information about local land charges within say two days and the Con 29 is provided within say five days what is the position as to entries made in the interim?

63. It is not entirely clear as to the method by which the solicitor will define the extent of the search, presumably with an electronic tool to mark the relevant area where a postal address is insufficient. Will this create discrepancies as between the results of the new official local land charge search and the results in relation to the Con 29 enquiries?

FOR FURTHER INFORMATION

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