

Explanatory Memorandum to The Local Land Charges (Fees) (Wales) Rules 2021.

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Land Charges (Fees) (Wales) Rules 2021 and I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
15 February 2021

PART 1 – EXPLANATORY MEMORANDUM

Description

1. The Local Land Charges (Fees) (Wales) Rules 2021 (the Rules) is a technical piece of legislation which implements changes to who and how fees payable for local land charges services in Wales are to be made.
2. The Rules prescribe the fees payable to the Chief Land Registrar and the available methods of payment for those fees, for various services relating to local land charges which affect land in Wales.
3. The fees prescribed in these Rules replace the fees specified by Rule 14 and Schedule 3 to the Local Land Charges Rules 1977 (the 1977 Rules) for similar services relating to local land charges provided by Welsh local authorities.
4. These Rules will only have effect in the administrative area of a Welsh local authority on or after the date specified in a notice given by the Chief Land Registrar to that local authority which becomes effective in accordance with Part 4 of Schedule 5 to the Infrastructure Act 2015.

Matters of special interest to the Legislation, Justice and Constitution Committee

5. There are no matters of special interest to the Committee.

Legislative background

6. Local land charges are generally charges or restrictions on land which are governmental in character and imposed by public authorities under statutory powers.
7. The Local Land Charges Act 1975 (the 1975 Act), provides that 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 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. The fees payable for local land charges services in Wales, other than personal searches, are prescribed in the 1977 Rules. No fee is payable for personal searches in Wales.
8. The Infrastructure Act 2015 (the 2015 Act) 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 on or after the date specified in a written notice given by the Chief Land Registrar to that local authority in accordance with Part 4 of Schedule 5 to the 2015 Act.

9. The Local Land Charges Rules 2018 (the 2018 Rules) apply to both Wales and England and revoke the 1977 Rules, with the exception of the provisions relating to the fees payable for local land charges services in Wales.

10. At the same time as the amendments to the 1975 Act made by the 2015 Act have effect in a local authority area, the 2018 Rules, and these Rules will also have effect.

11. Section 14(1)(h) of the 1975 Act provides that the Lord Chancellor has, with regard to local land charges services, the power to make rules for prescribing fees and the manner of payment of those fees in respect of the provision of those services.

12. The power of the Lord Chancellor under section 14(1)(h) of the 1975 Act, so far as it is exercisable in relation to Wales, was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2004. Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

13. Section 14(3) of the 1975 Act provides that rules made under section 14 of the 1975 Act are to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

14. The purpose of these Rules is to facilitate the implementation of HM Land Registry's *Local Land Charge Programme* objective of creating and maintaining a centralised, digitised register for a local land charge search system for England and Wales as required by the 2015 Act. The centralised register will provide a consistent, standardised customer experience, including a single, universal fee in respect of each local land charge service.

15. Under these Rules, the Welsh Ministers will revoke Rule 14 and Schedule 3 of the 1977 Rules. The effect will be that these Rules will specify the level of fees payable, and the methods of payment in respect those fees, to the Chief Land Registrar for the provision of local land charges services. The services, fees and methods of payment will be the same in both Wales and England.

16. The Rules, set out in the Schedule the services for which fees are payable. Paragraphs (1) to (4) are services in connection with light obstruction notices, which are a particular type of local land charge. Under paragraph (5), a fee is payable for an official search of the register. However, that fee is not payable if an application for a search is received within 6 months of an earlier application by the same person, in relation to the same land, for which a fee was paid.

17. The Rules also amend the 2018 Rules by removing the provisions in the 2018 Rules that apply the 1977 Rules to Wales.

18. The Rules will only have effect in a local authority area on or after the date specified in a written notice given by the Chief Land Registrar to that local

authority which takes effect in accordance with Part 4 of Schedule 5 to the 2015 Act.

Consultation

19. Welsh Ministers undertook a 12 week consultation on a draft of the proposed Rules which ran from 11 August 2020 to 3 November 2020. The consultation was drawn to the attention of a wide audience of key stakeholders including local authorities, the Law Society and other stakeholders identified by HM Land Registry. Six responses were received to the consultation.

20. The Welsh Ministers have considered the consultation responses. All respondents noted that aligning the fee structure and method of payment with those which apply in England seemed a sensible approach. Other comments included noting the increase to £15 as a small sum in comparison to other costs when purchasing a property. Most respondents also identified a single digital system would provide customers with a smoother process, better value for money, quicker responses and the ability to instantly check if there had been changes to search results for up to 6 months following the request.

21. One response proposed immediately amending the level of fee to enable Welsh local authorities to charge £15 for an official search of the local land charges register, for the period prior to the register being migrated to the Chief Land Registrar. The Welsh Government understands the fee of £15 in respect of the provision of local land charges services by the Chief Land Registrar has been set to recuperate the initial cost of setting up and migrating the local land charges service to HM Land Registry's new digital portal and therefore does not reflect the cost of an official search. Accordingly, Welsh Ministers did not consider this proposal further.

22. Some responses to the consultation raised matters that are not relevant to these Rules. Those responses were passed to HM Land Registry for their consideration.

23. Post consultation, some small, technical drafting amendments were made to the Rules. However, those amendments change neither the function, purpose nor scope of the Rules and the Welsh Government have not consulted further on those changes.

24. Section 71 of the Government of Wales Act 2006 permits the Welsh Ministers to do anything conducive or incidental to any of their other functions. A summary of the consultation responses is published in exercise of that power and is available at: <https://gov.wales/local-land-charges-fees>

Regulatory Impact Assessment

25. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Rules and a Regulatory Impact Assessment has been conducted and is set out in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

26. This Regulatory Impact Assessment assesses the costs and impacts of either making or not making the Rules on the future provision of a digital local land charge service in Wales.

Options

27. Two options have been considered:

Option 1 – Do Nothing

28. Welsh Ministers could choose to maintain the status quo. Doing so would mean that there would probably be no changes to the provision of local land charges services in Wales, the fees would remain at £6 for an official search of the local land charges register and search requestors would be able to continue using the same payment methods they currently use. Welsh local authorities would continue to provide local land charges services in the way that they currently do. Though, the Chief Land Registrar in accordance with the provisions of the 2015 Act, could still serve notice on a Welsh local authority to assume responsibility for the provision of local land charges services in Wales. However, in those circumstances HM Land Registry would not be able to charge or collect fees for the provision of local land charges services in Wales. On that basis, it is likely that HM Land Registry would exclude Wales from the digital local land charges register service.

Cost / Risks

29. If Welsh Ministers decide not to take any action, Welsh local authorities will continue to operate the current system for the provision of local land charges services in Wales. Whilst local authorities in Wales have maintained a reputation for excellent service, they will not have the capacity to implement similar reforms to their systems to match the HM Land Registry system, which will provide instant search results leading to the provision of a two tier system of local land charges services operating in Wales and England. The use of paper-based search records presents the risk of permanent loss of vital data or increased cost to maintain. The sustainability of the future of the local land charges service in Wales will need to be considered if Welsh Ministers decide to maintain the status quo.

30. The *Local Land Charges Programme* is one of a number of UK Government capital investment projects to modernise public services. Wales would be at risk of appearing as not wishing to modernise its local land charges service and therefore, there is a risk that there may be an adverse public perception of the Welsh Government and Wales. Further, there is a risk that the Welsh Government may have to finance any future transition of the local land charges service to the Chief Land Registrar as HM Land Registry may not or may not be able to offer the same level of financial support to Welsh local authorities as is currently available.

31. Under the provisions of the 2015 Act, the Chief Land Registrar would still be able to serve written notice on Welsh local authorities in order to assume responsibility for the provision of local land charges services in Wales without Welsh Ministers amending the current fees provisions. However, if Welsh Ministers do not amend the current fee rules, there is no provision for HM Land Registry, on behalf of the Chief Land Registrar, to charge and receive the fees for the provision of the services. This is likely to mean that it would not be economically viable for the Chief Land Registrar to provide a digital local land charges service in Wales as to do so, would require the users of the English service to subsidise the users of the Welsh service. This would not provide equality of service for all service users. Additionally, Wales could be perceived as not wishing to modernise and be part of the significant investment in the local land charges digital age infrastructure.

Option 2 – Align the fees with those chargeable in England

32. Welsh Ministers, in exercise of the powers conferred on the Lord Chancellor by section 14(1)(h) of the 1975 Act, are able to make rules prescribing fees and the method of their payment in relation to the provision of local land charges services in Wales.

33. Welsh Ministers are able to set a level of fees that align with the fees payable for the provision of local land charges services by the Chief Land Registrar in England, facilitating HM Land Registry in the provision and delivery of a standardised service. Doing so, will enable HM Land Registry to implement the digital local land charges register in Wales alongside England, providing a unified service with universal fees across both nations. This is the preferred option put to the Welsh Ministers.

34. Welsh Ministers could decide to set the fees above or below the levels that are set in England. However, either option would not be sensible, and would potentially be disadvantageous to users of the Welsh service and the economy. Additionally, HM Land Registry are unlikely to welcome either option as either would be likely to create a further burden to their administration of a single unified service and result in uncertainty as to whether the Chief Land Registrar would be able to provide a centralised digital local land charges service in Wales. If Welsh Ministers wish to change the level of fees and/or the methods of payment of those fees, this would need to be achieved using secondary legislation. Therefore, setting fees that do not align with those chargeable in England is not the recommended or preferred option for Welsh Ministers.

Cost / Risks

35. There would be no cost to the Welsh Government associated with these Rules beyond the administration cost to create and implement the Rules legislatively.

36. There will be an increased cost for consumers of local land charges services, those who wish to perform an official search of the register in respect of land in Wales via the HM Land Registry portal. Currently, the fee in Wales is set at £6

and accounts for 0.06% of the home buying process costs. Therefore, the £9 increase to £15 will increase this to 0.15% of the home buying process. This is unlikely to have any significant impact on home purchases or the wider housing market, such as home construction, due to the negligible nature of the cost.

37. If the fees in England and Wales are not aligned and the Chief Land Registrar proceeds to issue written notices to Welsh local authorities under the 2015 Act transferring responsibility for the provision of local land charges services, there is the risk of cross-border subsidisation. If consumers of local land charges services in England pay a £15 fee in comparison to consumers using the services in Wales, where Welsh Ministers decide to charge a lesser fee, English consumers will in effect be subsidising Welsh consumers. Whilst the likelihood of this happening is slim due to the impracticalities of the scenario, the Chief Land Registrar is able to issue notices under the 2015 Act at any time.

38. The Rules when they come into force, will only have effect in a local authority area on or after the date specified in a written notice given by the Chief Land Registrar to that local authority in accordance with the provisions of Part 4 of Schedule 5 to the 2015 Act. HM Land Registry and local authority officials will develop an implementation plan prior to a notice being served detailing how the local land charges services will transition to the Chief Land Registrar. Until the date specified in the notice from the Chief Land Registrar becomes effective, the services will remain under the current fee regime and Welsh local authorities will continue to provide searches for requestors.

39. Any additional expenditure incurred by local authorities during the *Local Land Charges Programme* migration and live service stages are a matter for HM Land Registry and the UK Government. Welsh local authorities will be eligible for new burdens payments to help mitigate the costs. Further details can be found here:

<https://www.gov.uk/government/publications/hm-land-registry-local-land-charges-programme/new-burdens-information>

Option Selection

40. Options are limited as the primary aim is to enable Wales to be a part of the *Local Land Charges Programme* and the digital register as operated by the Chief Land Registrar. If Welsh Ministers decide to maintain the status quo or amend the fees to an amount that is different to those set in England, HM Land Registry and Welsh local authorities may experience difficulties in migrating local land charges services in accordance with the 2015 Act. Therefore, Option 1 is not recommended and Option 2 is the preferred option.

Analysis of other effects and impacts

41. Promoting Economic Opportunity for All (Tackling Poverty)

41.1. No adverse impacts have been identified in relation to the promotion of economic opportunity for all. The increase in fees is insignificant and should not

adversely affect those who wish to purchase properties or search against land in Wales.

42. UNCRC

42.1. No particular impact on the rights of children has been identified.

43. Welsh language

43.1. No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified. All services provided by HM Land Registry will be available bilingually as per their duty under the Welsh Language Standards.

44. Equalities

44.1. No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

45. Well-being of Future Generations (Wales) Act 2015

45.1. By aiding the transition to a digital system, this system will be more sustainable for the future.

46. Impact on voluntary sector

46.1. No specific impacts have been identified for the voluntary, charitable or not-for-profit sector.

47. Competition Assessment

47.1. Not applicable.

48. Post implementation review

48.1. The Welsh Government will continue to monitor the level of fee and methods of payment in Wales and proactively take action where Wales and those using the Welsh services may be affected. HM Land Registry will undertake appropriate reviews in line with their policy for implementation and review of the *Local Land Charges Programme* and inform Welsh Government officials of any impacts that may affect areas within Wales on an ad-hoc basis.