

# **Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England**

**Response to Consultation**

CP (R) 25/06

31/01/2007



## **Local Land Charge Fees:**

Guidance for registering authorities on setting fees for local land charge services in England

**Response to consultation carried out by Her Majesty's Courts Service, part of the Department for Constitutional Affairs. This information is also available on the DCA website at [www.dca.gov.uk](http://www.dca.gov.uk)**



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**Local Land Charge Fees:** Guidance for registering authorities on setting fees for local land charge services in England. Summary of responses.

## Introduction

This document is the post-consultation report for the consultation paper, 'Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England'.

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Matthew Alonso** at the address below:

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This report is also available on the Department's website at: [www.dca.gov.uk](http://www.dca.gov.uk).

## **Executive Summary**

1. From 1 April 2007, registering authorities will need to specify and publish fees for local land charge services (other than for the personal search of the local land charges register) in England. In preparation for this delegation of the Lord Chancellor's fee setting power under the Local Land Charges Act 1975, we issued draft guidance to registering authorities on setting local land charge fees for consultation on 23 October 2006. The consultation period was limited to six weeks so the guidance would be available for use in setting fees for the financial year 2007/8. The consultation period closed on 4 December 2006. 177 responses were received. The responses were analysed and the guidance was then revised. The revised guidance was laid before Parliament and published on 31 January 2007.
2. This response paper summarises the responses received and indicates the changes that were made to the draft guidance and the Regulatory Impact Assessment (RIA) as a result of the comments made in those responses. It also explains why certain changes that were requested were not made.
3. Copies of the text of the final guidance and the RIA are included at Appendices A and B to this document.

## Background

4. The Local Land Charges Act 1975 gave the Lord Chancellor, with the concurrence of HM Treasury, power to prescribe fees for local land charge services in England and Wales. As a result of amendments to the Act made in the Constitutional Reform Act 2005,<sup>1</sup> registering authorities will set fees for local land charge services (other than for personal searches of the local land charges register) from 1 April 2007. In doing so must have regard to any guidance issued by the Lord Chancellor.
5. During the passage of the Constitutional Reform Act 2005 draft illustrative guidance was prepared to assist Members of both Houses in their consideration of the amendments to the 1975 Act. The Government used the draft illustrative guidance as the basis for the proposed guidance issued in its 2006 consultation paper Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England.<sup>2</sup> It was published on 23 October 2006. The paper contained the text of draft guidance. We invited comments on the content of the proposed guidance by reference to a series of specific questions.
6. The draft guidance was prepared by reference to the requirements of the 1975 Act as amended. It also drew on the Treasury Guide on Fees and Charges and the guidance issued by the Office of the Deputy Prime Minister (ODPM) General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003.<sup>3</sup> Our draft guidance was also intended to be consistent with the publications of the Chartered Institute of Public Finance and Accounting (CIPFA). These include the Best Value Accounting Code of Practice (BVACOP) and the Code of Practice on Local Authority Accounting in the United Kingdom 2005 – Statement of Recommended Practice (SORP). These accounting codes will assist registering authorities in complying with their obligations under the 1975 Act.
7. The consultation period closed on 4 December 2006. This paper summarises the responses and explains how the consultation process influenced the development of the proposed guidance.

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<sup>1</sup> Schedule 4, paras 82 to 84.

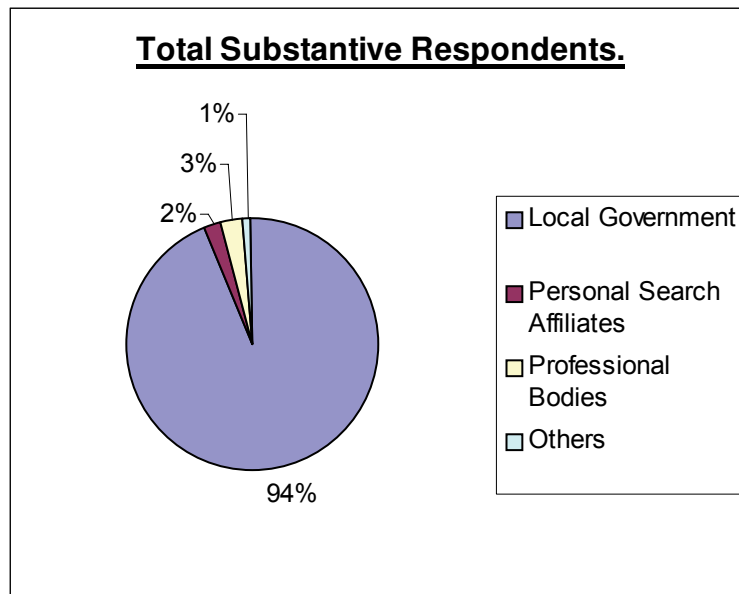
<sup>2</sup> Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England. CP(L) 25/06. Available on the dca website at [www.dca.gov.uk](http://www.dca.gov.uk) under publications.

<sup>3</sup> General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local government Act 2003 (November 2003) can be found at <http://www.local.odpm.gov.uk/guidprop.pdf>.

8. A list of the individuals and organisations who responded to the paper is at Appendix C.
9. References to the 1975 Act in the remainder of this paper are to the Local Land Charges Act 1975 as amended by the Constitutional Reform Act 2005, unless the context otherwise requires.

## Summary of responses

10. A total of 177 responses to the consultation paper were received. 166 (94%) were from local government (165 local authorities and the Local Government Association). Five (3%) were from professional representative bodies and four (2%) were from commercial property search companies or their trade organisations. The two remaining responses were from a member of the public and a person who wishes to remain anonymous. We are very grateful for all of the responses that we received.



11. Responses were analysed for:
- Level of support for each section of the guidance;
  - The likely practical impact of the proposals;
  - Any new approaches that could be used to enhance the proposals; and
  - The clarity of the wording used.
12. Broadly speaking, local government and commercial property search companies took different views. Both perspectives have been taken into account. Although the respondents from local government were more numerous, we are conscious that three of the four responses from the

commercial property search sector were from trade organisations representing a large number of private firms.

13. Responses from professional representative bodies made up the remainder of the responses to this consultation. These bodies represented interests relating to the house buying process, such as the Royal Institute of Chartered Surveyors (RICS), the Directorate of the Council for Licensed Conveyancers and the Council of Mortgage Lenders.
14. Other respondents included the Council of National Land Information Service (C-NLIS), and MDA Hub Ltd, who have a particular interest in electronic searching.<sup>4</sup>
15. Some of the responses were very detailed, but not all respondents answered every question. The majority of respondents concentrated on answering the specific questions on the draft guidance in the paper, but many chose to provide general comments on the local setting of fees for other land and property searches, such as replies to enquiries of the local authority, or to the proposed local and drainage and water enquiries under the Home Information Pack Regulations. These issues were largely outside the scope of the consultation. Nonetheless, for the purposes of this analysis we have collated these other comments in a General Issues section towards the end of this paper.
16. The overall response to the draft guidance was positive. As a result in the comments received we have included some additional detail in the guidance and re-structured some of the text. We hope that these changes will make the guidance clearer and more useful. The following table gives an overall impression of the balance of opinion in relation to each question.

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<sup>4</sup> MDA holds a licence to run the National Land Information Service (NLIS) Hub (an on-line means of obtaining Local Authority (LA) property searches).

<b>Summary of questions in the consultation paper</b>	<b>Yes (%)</b>	<b>No (%)</b>
<b>1: Do you agree with the partial Regulatory Impact Assessment?</b>	63	23
<b>2: Is the summary of the legislation and scope of the guidance satisfactory?</b>	79	11
<b>3: Is the definition of registering authority clear?</b>	84	3
<b>4: Are the duties of registering authorities clear?</b>	81	3
<b>5: Is it clear what a Registering Authority may class as a local land charge service?</b>	72	15
<b>6: Is it clear what is meant by a description of service relating to local land charges?</b>	80	8
<b>7: Is the concept of a group of services or descriptions of service adequately explained?</b>	44	41
<b>8: Is the relationship of the cost of a service and the fee that may be charges clear?</b>	72	17
<b>9: Is the range of options open to a registering authority in calculating the costs of and setting fees clear?</b>	38	46
<b>10: Is the duty to publish fees clear?</b>	82	5
<b>11: Is adequate information given about the possible impact of the Competition Act 1998?</b>	33	53
<b>12: Is the proposed monitoring arrangement adequately described?</b>	75	10

## Responses to Specific Questions

### **Q1: Regulatory Impact Assessment. Do you agree with the partial Regulatory Impact Assessment? If not, please explain why.**

#### *Summary of responses*

17. The RIA is intended to assess the benefits and costs of issuing guidance. It provisionally concluded that guidance should be issued. 158 (89%) respondents replied to this question on the partial RIA. They raised a wide-range of issues. Of these, 111 agreed with the conclusion that we should issue the guidance. Out of these responses, 104 responses were from local government, one response was from a commercial property search company, four responses were from professional representative bodies, and two others responded. 41 respondents did not agree with the conclusion in the partial RIA. These included 38 responses from local government, two responses from commercial property search companies and one response from a professional representative body. Six respondents were unclear, whilst 19 respondents made no comments on the partial RIA. We have arranged our analysis of the comments on the RIA by reference to its sections.
18. **Section 4 Benefits and options considered:** two respondents suggested that the sectors and groups affected (paragraphs 4.1, 4.2) should also mention other organisations that re-sell searches such as NLIS hub and channels and council tax payers. They considered the term 'individuals' as too simplistic. A commercial property search company also suggest that as commercial property search company are not mentioned in the RIA under 'sectors or groups affected' this 'reinforces the Government's failure to fully understand the impact the guidance will have on the search sector'.
19. We do not accept this criticism. Section 4.2 of the partial RIA made clear that any organisation involved in carrying out property searches was likely to be affected. Nonetheless, to avoid any doubt, we have included specific mention of commercial property search companies in the revised RIA,
20. Twenty respondents suggested the benefits for issuing the guidance were inaccurate; as allowing registering authorities to recover costs from those who use it, without changing the personal search fee, will not reflect the true cost of providing the service.
21. We consider that this criticism is largely based on an assumption that the fee for the personal search of the local land charges register is intended to cover expenses that do not relate to such a search. This may be due to the

prevalence of the use of the term 'personal search' to cover all enquiries made of local authorities by an enquirer in person. A confusion that may be exacerbated by the responsibilities of local land charge departments in local authorities extending to answering many such enquiries. We have nonetheless expanded the guidance to make clear the relevance of any shortfall or surplus attributable to fee income from the fee set by the Lord Chancellor in relation to the personal search of the local land charges register.

22. **Section 5 Small Firms Impact Test:** four respondents said that the RIA was incorrect to state 'we do not expect fees to change'. They considered that the current statutory fee did not reflect the true cost of producing an LLC1. One commercial property search company was concerned that paragraph 5.1 underplayed the potentially adverse impact of a rise to the small proportion of fees on the overall costs of buying a property. Four respondents suggested that commercial property search companies are often not small firms, as, in effect most personal searches are carried out by firms with large commercial interests, and a note of this should be made.
23. We have amended this section of the RIA to make it clearer that although fees are likely to change and there will be variations between registering authorities, we anticipate that the overall burden of local land charges fees should not change significantly. We remain of the view that within the context of property purchase costs as a whole, local land charge fees will be a very small item of expenditure. We have amended the text to indicate that some commercial search companies are large businesses.
24. **Section 6 Competition Assessment:** nine respondents suggested that more clarity was needed about the Competition Assessment in paragraph 6.1 and in section 11 of the guidance. One respondent suggested that the Competition Assessment section in the RIA is simplistic' as 'the statement in the RIA says there is no competition, yet reference to Competition legislation implies that there is'.
25. We have amended the text of the RIA relating to competition issues. We hope that this will make the relevance of the competition legislation clearer. Registering authorities should as a result be aware that simply because they are monopoly suppliers of the local land charge services for which they are setting fees competition issues may still arise.
26. **Section 7 Enforcement, sanctions and monitoring:** one representative body for a commercial property search company suggested that it was unlikely that local authorities would comply with the Competition Act 1998, and that any non-compliance would have to be policed by the private sector. One commercial property search company suggested that '... if LA's were to take notice of the guidance the impact would be a reduction in fees to ensure that unlawful profits are no longer made. However there is no requirement for LA's

to comply with this guidance'. Another commercial property search company was equally concerned that the proposed monitoring regime is not enough, and that '...private search organisations are faced with the prospect of costly legal cases should they want to challenge fees set by local authorities'.

27. We have taken note of these criticisms and amended the RIA to make clear that we will survey the fees set and investigate significant discrepancies.

*Summary of changes to the RIA*

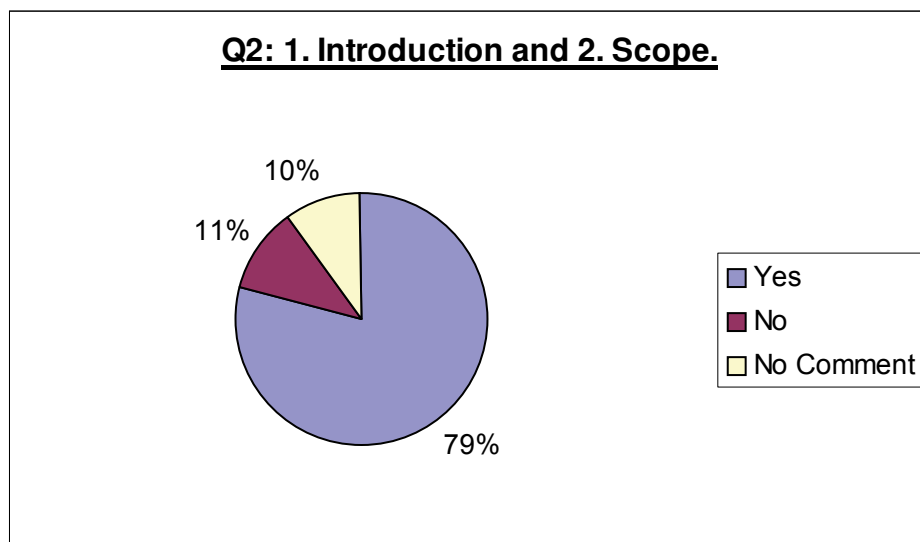
28. The RIA has been amended to take account of the points discussed above. The text is at Appendix B. It concludes that the benefits of issuing the guidance outweigh the costs.

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**Q2: 1.Introduction and 2. Scope. Do sections 1 and 2 of the draft guidance provide a satisfactory summary of the relevant legislative provisions and the scope of the guidance? If not, please explain why.**

*Summary of responses*

29. 159 respondents (89%) answered this question. 139 (79%) said they thought the draft guidance provided a satisfactory summary of the legislative provisions. These included 131 responses from local government, one response from a commercial property search companies, five responses were from professional representative bodies and two others. However, 20 respondents did not agree with question 2. These included 19 responses from local government and one response from a commercial property search company. A further 18 respondents had no comments to make on this question.



30. One respondent suggested that the background of the 1 April 2007 implementation date could be explained more clearly and asked whether 'those provisions of S.I.2003 No.2505 (The Local Land Charges (Amendment) Rules 2003) which will no longer apply need to be separately repealed or revoked'.

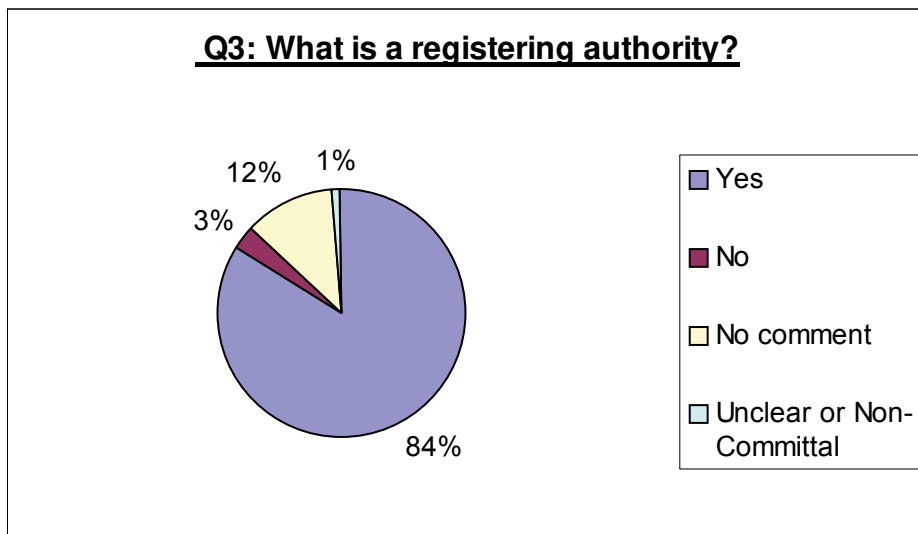
#### *Changes to the guidance*

31. Consideration of the comments received on the Introduction and Scope sections of the proposed guidance has led us to revisit the format of this part of the guidance. We have made separate sections dealing with the aim and scope of the guidance and provided an extended background section (much of which was previously in the consultation paper). The revisions make absolutely clear that this guidance only relates to local land charge services and not other property searches. The new aim and scope section now makes clear that the guidance does not relate to the setting of fees for other land or property searches, such as replies to local enquiries (CON29) of the local authority, or to the proposed local, drainage and water enquiries under the Home Information Pack Regulations. We have also re-ordered some of the content to separate out the issues more clearly.
32. The Local Land Charges (Amendment) Rules 2003 will cease to have effect from 1 April 2007 (other than for the fee for the personal search of the local land charges register).

**Q3: What is a registering authority? Does section 3 of the draft guidance make clear which authorities are required to set local land charge fees? If not, please explain why.**

*Summary of responses*

33. 156 respondents answered question 3. Of those, 148 said they thought the draft guidance provided a satisfactory summary of the legislative provisions. 140 of these responses were from local government, one response was from a commercial property search company, and five responses were from professional representative bodies and two from others. However, six responded that they did not agree with question 3. This included five responses from local government and one response from a commercial property search company. A further 21 respondents made no comments on this question, and two respondents were unclear/non-committal in their comments.



34. Ten respondents suggested that the definition did not go wide enough and that it should take into account the full spectrum of local authorities. They referred to two tier authorities where separate authorities have control over certain parts of the LLC process such as planning registers, highways enquiries etc.

*Changes to the guidance*

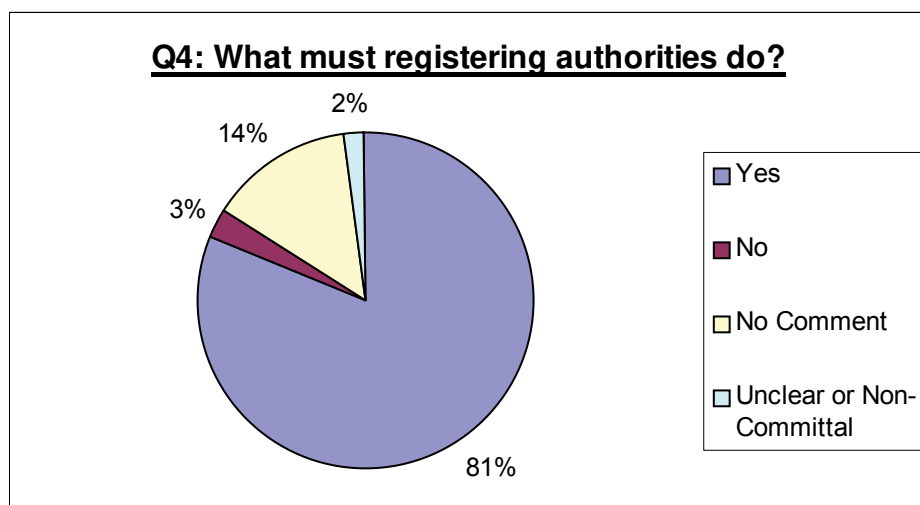
35. The references made by respondents to functions that do not relate to the provisions of local land charge services under the 1975 Act is indicative of the confusions that exists regarding the scope of the fees. The guidance makes clear that in planning and building control services, for example, are not local land charge services.

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**Q4: What must registering authorities do? Does section 4 of the draft guidance make clear the duties of registering authorities in relation to the setting of fees under the LLC Act 1975? If not, please explain why.**

*Summary of responses*

36. 152 (86%) respondents answered question 4 asking. 144 of those respondents said they thought the draft guidance provided a satisfactory summary of the legislative provisions. These included 137 responses from local government, two responses from commercial property search companies and four responses from professional representative bodies and one other. Only five respondents did not agree with question 4, of which four were from local government, one was from a professional representative body. A further 25 had no comments to make on this question, whilst three responses were unclear or non-committal.



37. Three respondents (2%) requested greater clarity of wording, and the use of familiar terms throughout section 4 when outlining what a registering authority must do. In particular, in relation to the differences between the LLC1 and CON29, there was concern that those unfamiliar with the process would not realise that the guidance only relates to local land charge services, including the LLC1.

38. In addition to clarification of the scope of the guidance, a couple of local authorities requested further clarification on the meaning of section 3 of the 1975 Act, which we refer to in paragraph 4.1 of the guidance. One authority comments 'although section 4 of the draft guidance reinforces the basis of the duties of authorities to set fees, it would be a good opportunity to define what

constitutes “an index in which entries can be easily traced” and indeed who this can be accessed by. This is particularly apparent in recent years with the continued expansion in ICT to provide indexes and indeed the security and availability of such indexes via the Internet and other such media.’

#### *Changes to the guidance*

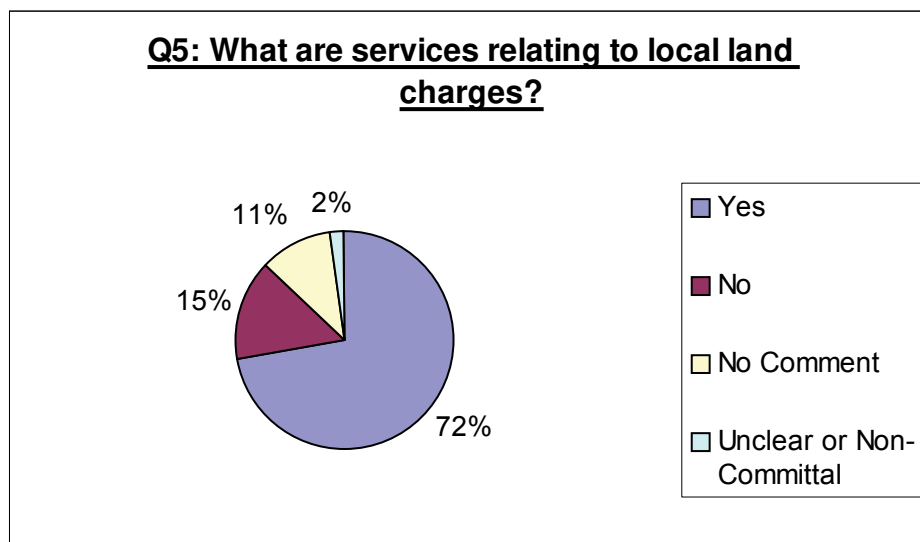
39. Consideration of the comments received on what registering authorities must do has led us to make some to the guidance.
40. Paragraph 4.1, now 2.1, has been revised to make clear that fees for the local land charge services should be set according to the 1975 Act and registering authorities must have regard to this guidance when setting the fees.
41. Paragraph 4.2, now 2.2, has been slightly revised to refer to the 1975 Act.
42. We have also clarified, in the Aim and scope section of the guidance: ‘The guidance does not relate to the setting of fees for other land or property searches, such as replies to enquiries of the local authority, or to the proposed local and drainage water enquiries under the Home Information Pack Regulations, whether made in person, by post, or by e-mail’.
43. The guidance does not expand on the reference to the index required under the 1975 Act. This is a long-standing requirement that does not relate to fee setting.

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**Q5: What are services relating to local land charges? Does section 5 of the draft guidance help to clarify what a registering authority may class as a local land charge service? If not, please explain why.**

#### *Summary of responses*

44. 158 (89%) respondents replied to this question. Out of those responses 128 (72%) thought the draft guidance provided a satisfactory summary of the services relating to local land charges. These included 123 responses from local government, three responses from professional representative bodies and two others. Only 27 respondents (15%) did not agree with question 5, of which 22 were from local government, three were from commercial property search companies and two were from professional representative bodies. A further 19 had no comments to make on this question, whilst three responses were unclear or non-committal.



45. Eight respondents suggested that more examples of what may be classed as a local land charge service would have been beneficial. There was also a request to give 'examples of services for which fees have not previously been set by the Lord Chancellor'. A commercial property search company expressed concerns that the definition is too wide and would allow too much flexibility; as paragraph 5.1 'is unclear and it should be possible to draw up a definitive list of the services to avoid spurious new 'services', for which charges are imposed, arising in the future.'
46. One respondent suggests that 'allowance must be made for authorities which are either fully computerised, partially computerised or totally manual and the links to the supporting internal services. It is now 30 years since the Act. These issues will affect the costing of the maintenance of the register and searches'.
47. Four respondents suggested that a wide variation in fees and definitions of services was likely to take place, similar to the variation that has arisen in relation to fees for replying to CON29 enquiries. Three respondents have asked for clarity as to where the responsibility lies for charging of office copies and they would ask that the guidance be more specific as LLC departments in provision of LLC services interact with other departments in the local authority and other legislation. For example, 'in respect of Schedule 3, item 7 "Office copy of an entry in the register" it would be helpful if the guidance made it clear which legislation we should be referring to when setting the fee for this service – Local Land Charges Act 1975 or the FOI and/or Environmental Information Regulations 2004.'
48. One respondent suggests further information 'as to the statutory fee of £67 for registering a light obstruction notice is calculated by the Lord Chancellor and

what factors are taken into account in this would be of assistance when authorities come to undertake this exercise.’

### *Changes to the guidance*

49. We have restructured the guidance to give clarity of what a service is earlier in the guidance and have expanded the background to provide more information about how the Lord Chancellor set the fees for local land charge services. The fees were set in accordance with HM Treasury’s Guide on Fees and Charges.
50. We have added a table to give examples of the points made in new section 3, on what may constitute possible new services, different services and descriptions of service.
51. In relation to the fee for an office copy, the guidance refers registering authorities to the list of services for which a fee was specified in the Local Land Charges (Amendment) Rules 2003, schedule 3. This is set out at Appendix B to the guidance. In this list, provision is made for office copies of entries on the register and other documents, under items 7 and 8. All relate to the local land charges register. In relation to office copies of any plan or other document filed pursuant to the Local Land Charge Rules 1977 registering authorities already set a fee by reference to the time and work involved. A registering authority might wish to specify fees for the same range of local land charge services, including items 7 and 8, as the Lord Chancellor.
52. Devolving power to registering authorities to set their own fees will enable them to be more responsive to local circumstances, both in the fees they set and the services they provide. Some variations between authorities are an inevitable consequence of this freedom.

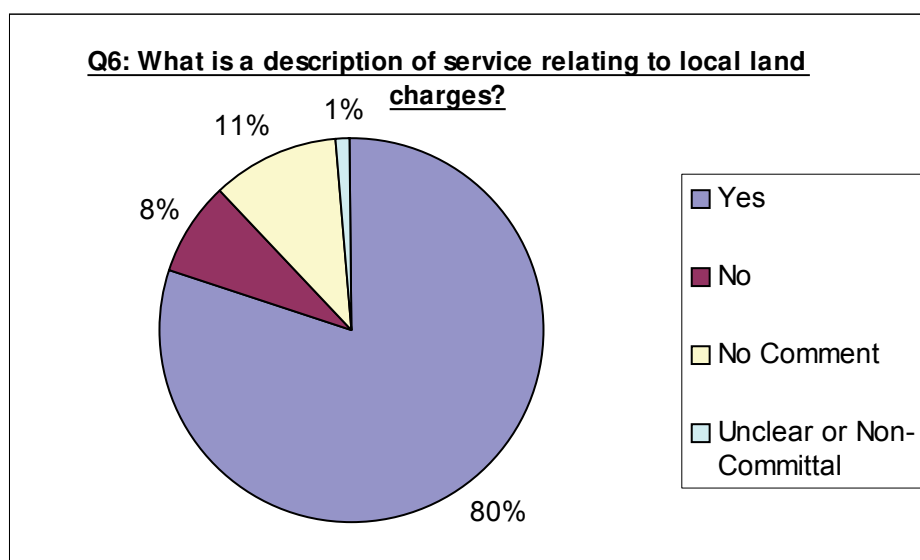
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**Q6: What is a description of service relating to local land charges? Does the content of section 6 of the draft guidance clarify what a description of service relating to local land charges is, as set out in the legislation? If not, please explain why.**

### *Summary of responses*

53. 157 (89%) respondents answered this question. Out of those responses 141 (80%) thought the draft guidance provided clarity on a description of service relating to local land charges. These included 135 responses from local government, one response was from a commercial property search company, three responses were from professional representative bodies and there were two others. Only 15 respondents (8%) did not agree with question 6, of which 11 were from local government, two were from commercial property search

companies and two were from professional representative bodies. A further 20 had no comments to make on this question, whilst one response was unclear or non-committal.



54. The majority of respondents here did not elaborate on their answers here. However, four respondents queried the difference between electronic searches and paper copy searches. Two local authorities commented that an electronic search often costs more to conduct than a paper search, because other costs are incurred, and it is not true to say that electronic services reflect lower costs as mentioned in paragraph 6.1. For example, 'internal post room facilities, printing costs and cheque processing may be saved, but may be negated by the need to access providers' websites to retrieve searches and the checking, cross-referencing and validation of electronic BACS statements and resolution of queries. There is also the cost of the software / hardware to facilitate electronic searches'.
55. There is also concern from one professional representative body that an authority may set a price without regard to the cost of the service, albeit lower than cost recovery. One local authority comments that section 6 seems at odds with section 9 of the guidance; that fees should be fair and set transparently.
56. One local authority questions whether cost justification is needed, as pricing services at lower than cost recovery goes against the principles of the Competition Act 1998. However, two other local authorities question whether, as a lower fee can be set to encourage the uptake of a 'service', that suggests a premium can be levied on other more popular services to compensate for the subsidy.

57. Three respondents suggested that the definition of 'different services' and 'description of service' is unclear, and more practical examples would be helpful.
58. One respondent suggested that all fees should be based on electronic service to follow general government policy.

#### *Changes to the guidance*

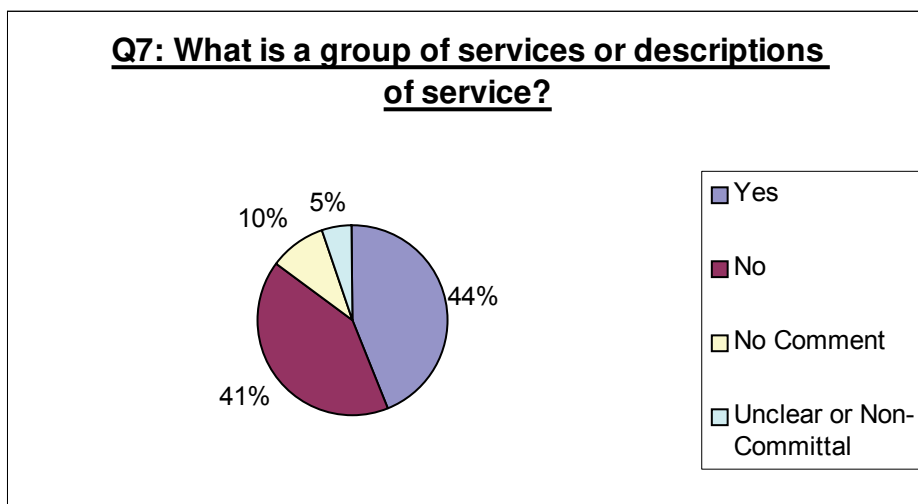
59. We have amended the draft guidance to make it clearer and have included further explanation, and examples, of possible new services, different services and descriptions of service in new section 3 'What is a service relating to land charges?'. The overriding principle of the legislation is that income should not exceed costs. If it transpires that electronic services are more expensive than the fees may reflect this. However, we think it generally true that electronic services are intended to be cheaper to deliver than their traditional equivalents.

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**Q7: What is a group of services or descriptions of service? Does the content of section 7 of the draft guidance adequately explain what groups of local land charge services or descriptions of local land charge services are? If not, please explain why.**

#### *Summary of responses*

60. 158 (89%) respondents answered this question. Out of those responses 77 (44%) thought the draft guidance adequately explained what a group of services or descriptions of service are. These included 69 responses from local government, one response from a commercial property search company, five responses from professional representative bodies and two others. 72 respondents (41%) did not agree with question 7, of which 71 were from local government and one was from a commercial property search company. A further 19 had no comments to make on this question, whilst nine responses were non-committal.



61. With regard to question 7 in general, 75 (42%), respondents expressed concern that the exclusion of the personal search fee from the devolution might lead to cross-subsidisation. These respondents commented that an artificially low personal search fee would be anti-competitive as it would disadvantage the local authority in favour of personal search companies.
62. Nineteen respondents asked for section 7 to contain greater detail for varying reasons. These included confusion surrounding whether the section referred to grouping CON29 and LLC1 services, whether the section meant splitting each part of the register into a different service.
63. Paragraph 7.2 of the consultation paper suggests that in grouping services registering authorities should consider competition issues. Of the specific comments about this section the most common was how does the Competition Act 1998 apply to the Local Land Charges service. 50 respondents raised this point (28%). These respondents thought that as the local authority is required by statute to provide a register therefore the Competition Act 1998 should not apply. For example one respondent writes: "As we are the only suppliers of the service how can we be subject to competition?".
64. Of the commercial personal property search companies, one was supportive of the need for Local Authorities to have regard to the Competition Act. Another argued that the maintenance of the register is not a 'service' but a statutory duty for which they receive funding from central government.

#### *Changes to the guidance*

65. We have noted the comments regarding the possibility of cross-subsidisation. The guidance makes clear how shortfalls and surpluses from the fee for personal searches of the local land charges register are to be dealt with in setting fees for other local land charge services. As mentioned, CON29

services do not relate to the local land charges register and are to be treated separately.

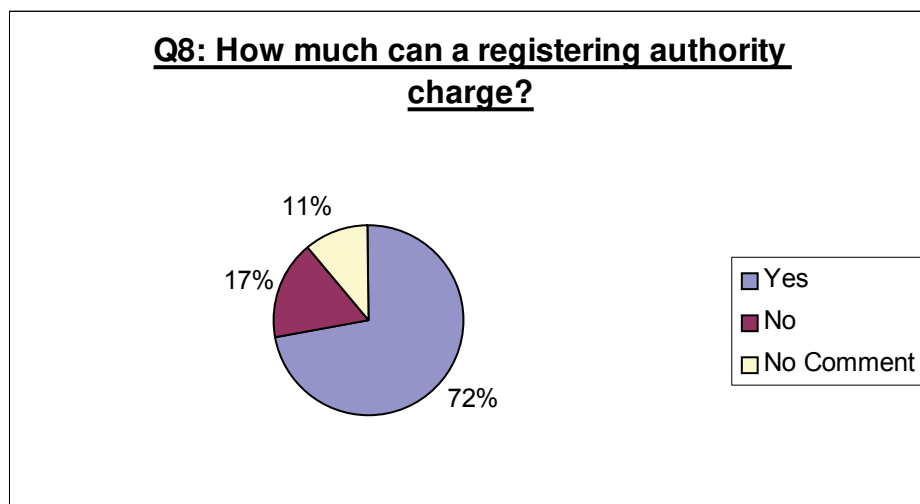
66. We have carefully considered references to the Competition Act 1998 in the text of section 7 and at section 11 and have changed the wording in the guidance to add clarity and provide further information. Registering authorities should be aware of the possibility of their pricing having anti-competitive effects.
67. We have also added Annex C, which reproduces Annex E to the Treasury Fees and Charges Guide summarising the effect of the Competition Act 1998. Registering authorities are recommended to direct their enquiries about competition to OFT and seek their own legal advice as appropriate.

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**Q8: How much can a registering authority charge? Does section 8 of the draft guidance adequately describe the relationship between the cost of providing a local land charge service and the fee that may be charged for it? If not, please explain why.**

*Summary of responses*

68. 158 (89%) respondents replied to this question. Out of those responses 128 (72%) agreed with the question. These included 122 responses from local government, four responses from professional representative bodies and two others. 30 respondents (17%) did not agree with question 8, of which 26 were from local government, three were from commercial property search companies, and one response was from a professional representative body. A further 19 had no comments to make on this question.



69. On the question of whether section 8 adequately describes the relationship between cost and the fee that may be charged, the majority were in agreement, 128 (72%). This consisted of 122 from local government, four professional representative bodies, and two others. However, 30 respondents (17%) were in disagreement; of these responses 26 were from local government, three from commercial personal search groups and one professional representative body. The remainder of respondents, 19, made no comment.
70. Six respondents expressed concerns over the process. For example, one respondent suggested that the method would not be practical as it is a demand led service and it is difficult to predict demand precisely. Also, another person responded that if there is a sudden upturn or crash in the housing market after a fee is set then the local authority could be in surplus or find income does not cover costs. One respondent suggests that there 'needs to be some tolerance for the local authority to create a surplus to minimise the risk to council taxpayers.'
71. Four respondents were unsure about the definition of taking one financial year with another. One respondent asked whether a trading account would need to be maintained, while another enquired whether it meant that fees may be charged higher than cost in one year to off-set fees charged lower than cost in the previous year.
72. A further point made by four respondents was that the guidance should be specific about what costs could be included but for different reasons. For example one commercial property search company thought that the basics of how fees have been arrived at should be made explicit in the guidance to make challenges to fees easier, whereas another respondent thought more detail would assist local authorities.

*Changes to the guidance*

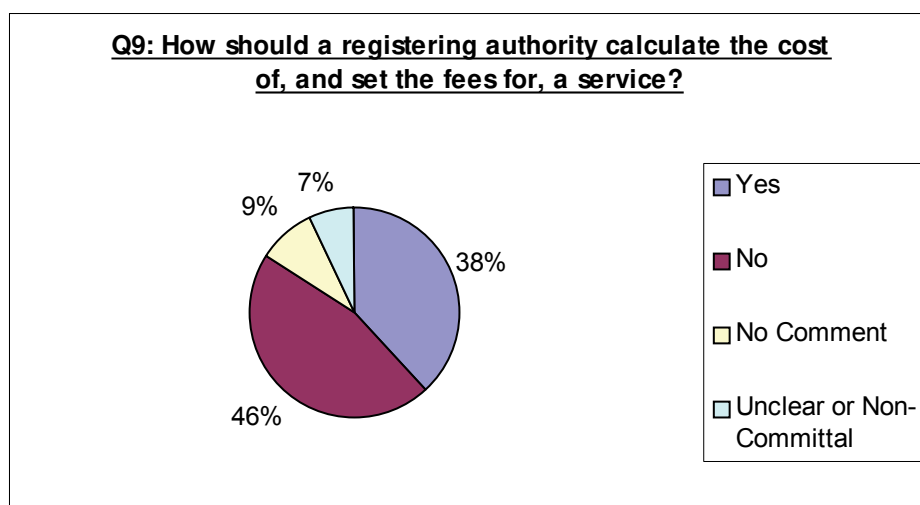
73. We have considered the points made by respondents to question 8 of the draft guidance. We have made some changes to the section on charging. This is now at section 4, of the guidance. We have included greater detail of how costs should be calculated and future demand estimated, with particular reference to the requirement that income should not exceed costs ‘taking one financial year with another’. We have noted the comments relating to including more prescriptive detail of how authorities should present their fees. Given the different systems in use in registering authorities we doubt this would be helpful. Authorities are under a duty to publish their fees (see question 10) and the guidance makes clear the need to ensure the fees set can be justified.
74. We discuss market fluctuation in relation to question 9.

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**Q9: How should a registering authority calculate the cost of, and set the fees for, a service? Does section 9 of the draft guidance adequately describe the range of options open to registering authorities in calculating the costs of, and setting the fees for, a service? If not, please explain why.**

*Summary of responses*

75. Of the 92% of respondents who answered this question 68 (38%), were in agreement. These consisted of 66 from local government, and two others. However, the majority disagreed 81 (46%). These consisted of 75 from local government, two personal search companies, and four professional bodies. Of the remainder 15 made no comment and 13 were non-committal.



76. 59 respondents commented that it would be difficult to predict the number of users of the service over subsequent years. The guidance suggested between one and three years. They noted that this was very hard to predict as it is determined by how buoyant the property market may be.
77. With regard to paragraph 9.4 these respondents argue further that this will ultimately lead to either a profit or a loss for the service. They ask whether the guidance can be clearer on how to deal with the problem of surplus or loss. One respondent asks for example: “is it possible to recoup losses?”.
78. Another common statement was with reference to paragraph 9.9 was to enquire about the absence of CIPFA guidance, 33 respondents raised this point. They ask how the proposed guidance will fit in with this, and with the section as a whole. For example one respondent argues that without the detailed technical guidance promised from CIPFA the section does not have the necessary detail to undertake the robust calculations required.
79. 26 respondents argued that the guidance in this section needs to differentiate between the costs of providing a service and the cost of the infrastructure needed to support these services in an area. One respondent argues for example that a fair proportion of infrastructure costs should be included in the costs of providing a service as there may be more than one type of output for each category.
80. 51 respondents made the point that it would have been preferable to have a uniform costing methodology in place. One respondent notes this would ensure clarity and uniformity in calculating how changes were arrived at. Another argues that there is a danger that authorities will calculate costs in several different ways bearing in mind the different departmental structures, management and budget responsibilities that exist across the country. They go on to say that a couple of worked examples would be helpful. Meanwhile a commercial property search company respondent thought all local authorities should use the same methodology as well, to make challenges to high fees possible.
81. 25 respondents suggested that the approach in paragraph 9.10 favours personal search companies, as authorities would not be able to charge different amounts to different users of the same service.
82. Two authorities were concerned that the costs breakdown into separate sections would be difficult due to the automated processes used in many authorities.
83. Six local authorities requested clarification about how the guidance relates to information exchanged with other areas of the registering authority. Two respondents said that capital investment should not be included. Five respondents said that sections 9.4/9.5 should be altered to a minimum of 3

years to allow for fluctuations in demand, and that government should be more supportive of local authorities in general by being more prescriptive.

#### *Changes to the guidance*

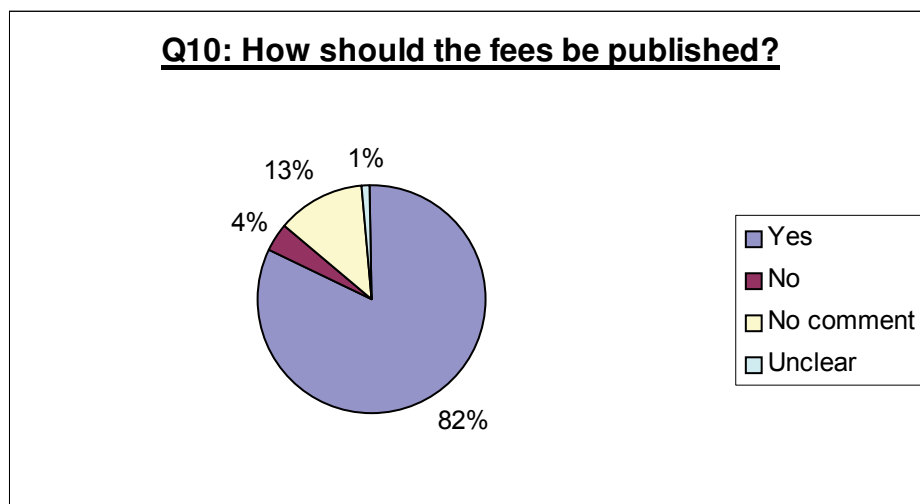
84. We have considered the responses to question 9, some of which echo the concerns of question 8 about charging and the calculation of costs. We have made changes to the revised section at question 5 'How should a registering authority calculate the cost of a service?' and new section 6 'how should a registering authority specify fees for local land charge services?'. Both these sections are now more detailed and provide greater clarity to registering authorities. We acknowledge that estimating demand is an imprecise science. We consider the freedom to the one financial year with another and the long experience of delivering these services will equip registering authorities to deal with this problem.
85. As mentioned we have explained how surpluses and shortfalls are to be dealt with. The 1975 Act does not permit a profit, small or otherwise.
86. The guidance makes clear that the cost of providing a service is the total cost – just as it was for the Lord Chancellor in setting the national fee under the previous legislation. We advise registering authorities to refer to CIPFA's codes of accounting practice, BVACOP and SORP, when compiling their costs. We assume that the reference by several respondents to the absence of CIPFA guidance refers to guidance that was commissioned in connection with the setting of fees for property searches more generally. This guidance did not proceed beyond a draft and was not finalised. It is likely to be suspended by the guidance to be prepared pursuant to the consultation announced by the Department for Communities and Local Government on 25 January 2007 (see 'Next Steps' below).

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**Q10: How should the fees be published? Does section 10 of the draft guidance sufficiently describe the duty of registering authorities to publish the fees that they set? If not, please explain why.**

#### *Summary of responses*

87. Of the 87% of respondents who answered this question, the vast majority, 145 (82%) were in agreement. Those that agreed consisted of 140 from local government, three professional bodies and two others. Of the eight (5%) respondents that did not agree, four were from local authorities, two from commercial property search companies, and two were professional representative bodies. 23 (13%) of respondents made no comments, and one respondent was non-committal/unclear.



88. One respondent suggested that publication would require an assessment of fee level, which would mean that there is not enough time in which to put new fees in place. The respondent was concerned that many local authorities will have already set budgets for the 2007/8 financial year.
89. Three local authorities were supportive of publishing their fees on the council's website. Another respondent planned to include the new set of fees in a newsletter. There was concern from one authority, asking whether the fees should be published in the local press, by way of a letter to local firms.
90. Two respondents sought more clarity on how much notice should be given when publishing a change in fees for local land charge services, as formal requirements lead to a consistent approach among authorities and a specified minimum period is sought.
91. One commercial personal search respondent was concerned that as a 'consumer should always be able to know the cost of the service prior to purchase, search companies should have this information so they can make an informed decision whether to undertake a personal search instead', so the fees should be published well enough in advance to allow the consumer to make a decision of whether to undertake an official search or a personal search of the local land charges register based on the fees.
92. Two respondents suggested that the authority should be required to explain how fees have been calculated; as 'all local authorities will have recently been through this exercise, it should not present any additional burden on them to do so'.

### *Changes to the guidance*

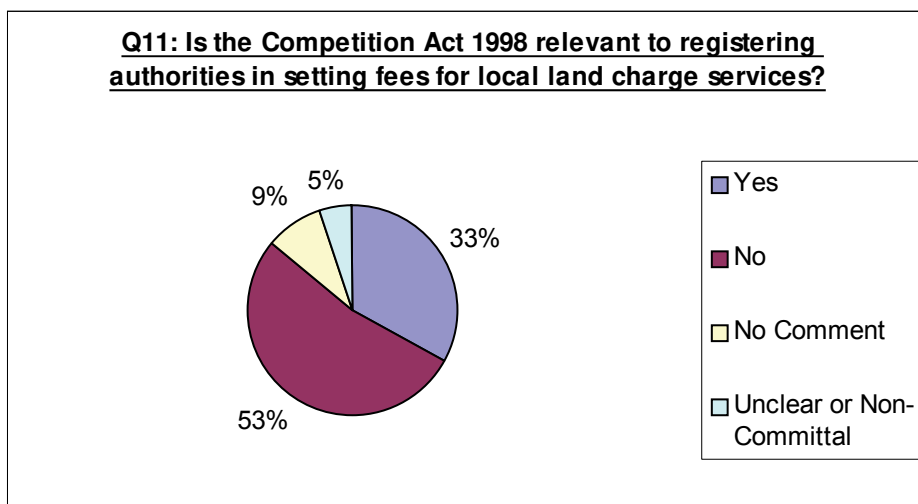
93. Following consideration of the support for section 10 'How should the fees be published?' of the guidance, now at section 7, no significant changes have been made to the guidance.
94. In the guidance we have clarified that registering authorities are to publish details of the fees, as a matter of course, at the beginning of the financial year as they are bound to under section 13A (8) of the 1975 Act. We have not specified any minimum period of notice for the introduction of new fees. It is for each registering authority to decide how far in advance to publish. We expect that there will be local variations. We are unconvinced that consumers require a significant period to decide between a personal search of the local land charges register and an official search of the register.
95. The 1975 Act does not require registering authorities to explain how their fees are calculated when publishing them. However, we have recommended in the guidance that in publishing the fees registering authorities should also be able to explain how those fees were calculated. We do not consider that a prescribed form of fee calculation record is necessary. Nonetheless, this is something that might be considered if there are disputes about the legality of fees.

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**Q 11: Is the Competition Act 1998 relevant to registering authorities in setting fees for local land charge services? Does section 11 of the draft guidance provide adequate information about the possible effect of the Competition Act 1998? If not, please explain why.**

### *Summary of responses*

96. 161 (91%) respondents answered this question. Out of those responses 58 (33%) agreed with question 11, that the Competition Act 1998 is relevant to registering authorities in setting fees for local land charge services. Out of these, 53 responses were from local government, four responses were from professional representative bodies and one other. 95 respondents (53%) did not agree with question 11, of which 91 were from local government, two were from commercial property search companies, one was from a professional representative body and one other. A further 16 people had no comments to make on this question, whilst eight people were either unclear or non-committal in their responses.



97. 32 (18%) of respondents were concerned that there is not enough detail in section 11, as 'it does not provide adequate information on possible effect of the Competition Act 1998. The Lord Chancellor must be aware of the nature of services provided by registering authorities under Section 13A and more guidance on the relevance of competition legislation to these services would be welcome'.
98. Ten authorities suggested that there is not enough clarity, and as a consequence, they cannot see how the Competition Act applies to local authorities as they have a statutory duty to maintain the register. One authority comments that 'It is difficult to accept the council holds a 'dominant position' in the marketplace since it is merely complying with a statutory requirement to hold, compile and publish certain information, and does not have the option of ceasing to provide the service.'
99. Five authorities have suggested that they should not need to consult local business ahead of setting their fees.
100. Five authorities raised further concerns about marketing, which prevents them from engaging in fair competition, as 'Local authorities are unable to market their service outside their borough. This puts local authorities at a disadvantage over commercial companies who have no marketing restrictions, particularly those that border two counties.'
101. Three local authorities raised concerns about partnership workings, and asked for clarity in the guidance; in particular 'If local authorities go into partnership working to make efficiencies, this may be seen as anti-competitive as they have to have (by virtue of the agreement) arrangements for working together which may, apparently, disadvantage others.'

*Changes to the guidance*

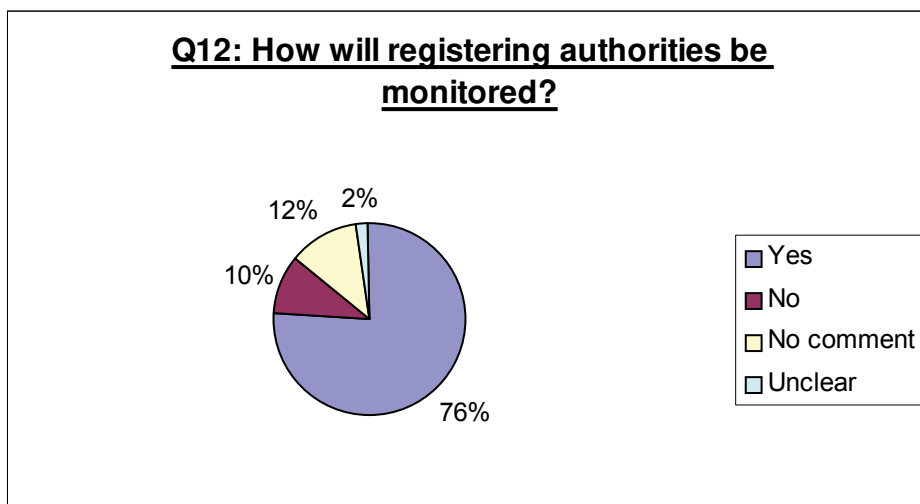
102. We have considered the responses to question 11: Is the Competition Act 1998 relevant to registering authorities in setting fees for local land charge services? We have amended the draft guidance and included Annex E from the Treasury fees and charges guide because several consultees expressed uncertainty as to how competition issues could arise. We hope this annex will provide clarity for authorities on why the Competition Act 1998 is relevant to them in setting their fees. We agree that the most likely way in which anti-competitive issues may be relevant will be if the fee for a local land charge service, such as an official search fee, is set well below the cost of its personal search fee. This may impact unfairly on providers of personal search services by reducing demand for personal searches of the local land charges register. Whether there is such an effect and if there is whether it is anti-competitive will be determined in the facts of the case.

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**Q12: How will registering authorities be monitored? Does section 12 adequately describe the proposed monitoring arrangement? If not, please explain why.**

*Summary of responses*

103. 155 (88%) respondents answered this question. 133 (75%) agreed that section 12 adequately describes the proposed monitoring arrangement. These included 128 responses from local government, three responses from professional representative bodies, and two others. 18 respondents (10%) did not agree with question 12, of which 14 were from local authorities, two were from commercial property search companies and two were from professional representative bodies. A further 22 had no comments to make on this question, whilst four people were either unclear or non-committal in their responses.



104. Six respondents suggested that the monitoring system provisions in the guidance appear weak. One professional representative body raised concerns that ‘an annual return is not required. The system of monitoring sounds ad hoc is therefore potentially inadequate’, and one commercial property search company suggested that the proposed monitoring section is weak and will ‘allow local authorities to set charges in the knowledge that they will be unchallenged by Government. Local authorities must be required to provide formal returns to central Government on the fees set, which will then be open to Government scrutiny.’
105. One local authority suggests that ‘a robust monitoring and enforcement system could prevent the threat of Judicial Review currently being used by a Personal Search Group where fee levels are considered to bring the element of competition into question’, and another authority questions how government will gather data, if not by a formal return.
106. Eight respondents requested clarification on the nature of the monitoring system, and one person suggested that a ‘criteria for calculations will have to be circulated otherwise comparisons will be meaningless.’
107. Three respondents questioned why the government would be collating information about fee levels ‘at a cost to the taxpayer? If there is a complaint about the fees an authority is charging there are mechanisms to look into that’.
108. One professional representative body suggested that ‘a relatively simple XML report could be provided on an annual, bi-annual basis’ to the NLIS hub to collate.

*Changes to the guidance*

109. Having considered the responses to section 12 on monitoring arrangements, we have revised the guidance to propose a review in 2007; we will compare the fees set with effect from 1 April 2007 and investigate any significant variations. This information can be obtained relatively easily from websites. This is in addition to the standard 3-5 year review of the policy mentioned in the RIA. We comment on this under 'Next Steps' below.

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**Q13: Is there any further information that the guidance should include? Is there any more information that should be included in this guidance? If so, please give details.**

110. Respondents have suggested that the guidance should include more information on the following:

- Re-Use of Public Sector Information;
- Freedom of Information;
- Reference to ODPM guidance – 'Making planning system accessible to everyone guidance';
- Best Value Performance Indicator;
- CIPFA guidance; and
- Markinson Case.

111. **Re-Use of Public Sector Information:** Four respondents supported the inclusion of additional guidance on The Re-Use of Public Sector Information Regulations 2005. They suggested that all information (including the personal search information) should be provided at cost 'especially if being sold onto a third party for profit', and that the issue of 'personal search companies', 'compiling their own registers because of the open access to information', 'the conflict with The Re-Use of Public Sector Information Regulations 2005 has not been adequately resolved, nor referred to in this guidance'.

112. Another concern raised by one respondent was that if personal search companies compile their own registers, because of open access to information, there is a potential conflict with re-use of public sector information regulations.

113. We have decided not to include guidance on The Re-use of Public Sector Information Regulations 2005 (SI 2005 No. 1515).<sup>5</sup> This is because the guidance to implement section 13A of the 1975 Act is to aid registering authorities in specifying and publishing fees for local land charge services.
114. **Freedom of Information (FOI):** Seven respondents made particular reference to the Freedom of Information Act 2000. The issues varied from enquiring how far would an authority be exempt on the basis of commercial sensitivity to querying whether local authorities costings would be publicly viewable under the FOI legislation. As under the existing FOI legislation, commercial property search companies would be able to request the calculations for the cost of a local land charge service. We do not consider any further guidance is necessary in the context of setting and publishing fees.
115. **Reference to ODPM guidance – ‘Making planning system accessible to everyone guidance’:** One commercial property search company respondent refers to guidance on ‘Making the Planning System Accessible to Everyone’, and suggests that staff time should not be recovered. The ODPM guide is intended to help and encourage local planning authorities (LPAs) to go beyond the minimum requirements for access to planning information, and for providing information at a reasonable cost to the customer. It will help in preparing statements of community involvement by providing practical examples of ways in which LPAs have increased access to planning information. The Local Land Charges Act 1975 allows for registering authorities to specify fees for services relating to local land charges. This would include, if the registering authority specified, fees for indirect costs, such as contributions to central and overhead costs (see paragraph 5.3 of the guidance). The planning register is separate from the local land charges register.
116. **Best Value Performance Indicator:** One local authority respondent also asks whether BV179 will become obsolete and if so whether it will be replaced by another BVPI. BVPI’s are not within scope of the 1975 Act, and so are not included in the guidance document. This issue may be considered in the context of the outcome of the guidance to be published by the Department for Communities and Local Government (see ‘Next Steps’ below).
117. **Guidance from the Chartered Institute for Public Finance and Accountancy (CIPFA):** 40 respondents asked for the further details about the detailed technical guidance, that was to be issued by CIPFA. The issues raised varying from when would it to be issued, how would it fit with the DCA guidance, and how detailed and technical was it aiming to be. 20 out of 166 local authorities commented that the technical CIPFA guidance was needed, to accompany this guidance, to fully appreciate the implications.

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<sup>5</sup> <http://www.opsi.gov.uk/si/si2005/20051515.htm>

118. As we have explained the CIPFA guidance in relation to property search fees generally has not proceeded beyond a draft and has not been finalised. It may be superseded by guidance issued as a result of the proposed consultation announced by the Department for Communities and Local Government (see 'Next Steps'). To try to meet the underlying concern expressed as to the amount of detail in the guidance, we have included greater detail of how costs should be calculated and future demand estimated, with particular reference to the requirement that income should not exceed costs 'taking one financial year with another'. We hope that the amendments will go some way to filling the gaps identified by lack of technical guidance.
119. **Markinson case:** two respondents suggested that there was a conflict between the outcome of the recent 'Markinson'<sup>6</sup> court case and the costing for office copies. We think this is mistaken. The Markinson case relates to discretionary access to information. This is not the case for local land charge services.

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## General Issues

120. In this section we briefly summarise issues raised by respondents that did not relate to the guidance.
121. **Personal search fee:** 142 local government respondents were concerned that the personal search fee was not included in, or part of the consultation. The fee for personal searches of the local land charges register will continue to be set by the Lord Chancellor. No application has been made to the government to increase this fee.
122. Local authorities raise this point because the local land charge services share common overheads. There has been considerable discussion as to whether the personal search fee should only relate to the costs of permitting access to the register or should also contain an element towards the costs of maintaining the register. The Treasury Guide on Fees and Charges makes clear that fees are expected to be set to recover total costs. A contribution to general overheads from the personal search fee is therefore to be expected.
123. We have added some detail to the guidance to reflect this, at paragraph 5.5. The £11 personal search fee contains a contribution to the indirect costs of enabling the search and that the income from these fees should be taken into account in calculating the total cost of local land charge services. On this basis a registering authority can credit any surplus income from the £11 fees to the

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<sup>6</sup> Full details of the David Markinson case can be found in the report of the case – appeal no. EA/2005/0014, at: [http://www.informationtribunal.gov.uk/Files/ourDecisions/david\\_markinson\\_v\\_info.pdf](http://www.informationtribunal.gov.uk/Files/ourDecisions/david_markinson_v_info.pdf)

general local land charge services account and equally be able to spread any shortfall in relation to the personal search of the local land charge fees over the remainder of their local land charge services.

124. It is difficult to assess the real extent of any loss because most of the respondents are making a claim about personal searches of other registers. The guidance makes clear what can and cannot be included in the calculation of the costs of local land charge services.
125. **Other local enquiries:** There was some confusion about the scope of the guidance, and whether all parts of a local search enquiry is covered by the guidance. Two respondents were concerned that fee-setting for CON29 services should have been published at the same time as this consultation.
126. We have clarified the guidance to state that the guidance is for the setting of fees for local land charge services, as defined by the 1975 Act, and not the fees for any other local enquiry, whether made in person or in writing.
127. **Implementation:** One respondent suggested that there is not enough time in which to put new fees in place and that some registering authorities will already have set their budget for 2007/8. We acknowledge that it would have been better if the guidance could have been published earlier. We understand however, that it will be in time for most registering authorities. If authorities have already set and published fees in accordance with the 1975 Act then they have complied with their duty.

## Conclusion and Next Steps

128. Following the responses to consultation, we consider that guidance taking account of the responses to the consultation should be published to assist registering authorities in exercising the powers conferred on them by section 13A of the Local Land Charges Act 1975 to set fees for local land charge services (other than personal searches of the local land charges register) in England from 1 April 2007. The full text of the guidance is at Appendix A.

### Next Steps

129. The Lord Chancellor will lay the final guidance before Parliament on 31 January. This will allow two clear months for registering authorities to set their fees for local land charge services (other than for personal searches of the local land charges register) for 2007/8.

130. Everyone who replied to the consultation will receive a copy of this response paper.

131. We will directly, or indirectly (through LGA and the LLCI) contact every registering authority before 2 February to inform them of the publication of the guidance and to remind them of the need to set fees from 1 April. We will also seek details of the fees they set in due course. We will investigate significant variations.

132. We will be working with the Department for Communities and Local Government (DCLG) in relation to property searches generally over the coming months.

133. This guidance may be revised in the light of the outcome of the work being undertaken by this department and the DCLG to review the setting of fees for personal searches of the local land charges register and to commission guidance on the setting of property search fees generally. This work was announced on 25 January in DCLG's consultation paper 'Home Information Pack Update: Towards 1 June'.<sup>7</sup>

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<sup>7</sup> Paragraph 27 b).

## **Consultation Co-ordinator contact details**

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at [consultation@dca.gsi.gov.uk](mailto:consultation@dca.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Laurence Fiddler  
Consultation Co-ordinator  
Department for Constitutional Affairs  
5<sup>th</sup> Floor Selborne House  
54-60 Victoria Street  
London  
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## **The Consultation Criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **Appendix A: Text from ‘Guidance for registering authorities on setting fees for local land charge services in England’**

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## Introduction

This guidance is issued by the Lord Chancellor to registering authorities<sup>1</sup> in England under section 13A of the Local Land Charges Act 1975.<sup>2</sup>

### *Aim and scope*

The guidance is intended to help registering authorities specify and publish fees for local land charges services other than fees for personal searches of the local land charges register, which will continue to be set by the Lord Chancellor, with effect from 1 April 2007.<sup>3</sup>

The guidance does not relate to the setting of fees for other land or property searches, such as replies to enquiries of the local authority, or to the proposed local and drainage and water enquiries under the Home Information Pack Regulations, whether made in person, by post, or by e-mail.

This guidance does not apply to registering authorities in Wales. The Lord Chancellor's fee setting power in relation to all local land charges services in Wales was transferred to the National Assembly for Wales with effect from 31 December 2004.<sup>4</sup>

### *Background*

Under the Local Land Charges Act 1975 each registering authority is responsible for keeping a register of local land charges for its area, and an index in which the entries can be readily traced. The Act gave the Lord Chancellor, with the concurrence of HM Treasury, power to prescribe fees for local land charges services in England and Wales.

The Lord Chancellor set the fees in accordance with HM Treasury's Fees and Charges Guide.<sup>5</sup> The current edition of the guide specifies that fees and charges should normally be set to recover the full cost of the service, which should usually be the total cost of all resources used in providing the service. This includes direct and indirect costs, including a full proportional share of overhead costs, distribution costs, insurance, depreciation and cost of capital. The guide also provides that the fees should not be set to recover a surplus unless the enabling legislation permits.

As the methods of providing local land charges services differ from one registering authority to another, the fees set by the Lord Chancellor could only approximate to an average cost for all registering authorities rather than the cost to each authority.

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<sup>1</sup> See paragraph 1.1

<sup>2</sup> The text of section 13A of the 1975 Act is set out at Annex A.

<sup>3</sup> The 1975 Act, section 14(1)(h).

<sup>4</sup> The National Assembly for Wales (Transfer of Functions) Order 2004.

<sup>5</sup> HM Treasury The fees and charges guide. (ISBN 0115600434) available at: <http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&action=book&productid=0115600434> &From.

It was therefore decided to pass the power to set fees to individual registering authorities, so that fees could be set by reference to actual costs at each registering authority.

The Local Land Charges Act 1975 was accordingly amended by the Constitutional Reform Act 2005<sup>6</sup> so as to require registering authorities in England to specify and publicise their own fees for local land charges services except for personal searches of the local land charges register. The 1975 Act specifies that in setting fees registering authorities in England must secure that, taking one financial year with another,<sup>7</sup> fee income does not exceed the cost of providing the service.

During the passage of the Constitutional Reform Act 2005 draft illustrative guidance was prepared to assist Members of both Houses of Parliament in their consideration of the amendments to the Local Land Charges Act 1975. The Government used their draft guidance as the basis for the proposed guidance issued in its 2006 consultation paper Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England.<sup>8</sup>

This guidance takes into account comments made in the 2006 consultation, particularly in relation to the scope of the legislative power and the process of setting fees. It also draws upon the Treasury Guide on Fees and Charges and the guidance issued by the Office of the Deputy Prime Minister (ODPM) General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003.<sup>9</sup>

The guidance is intended to be consistent with the publications of the Chartered Institute of Public Finance and Accounting (CIPFA) and, in particular, the Best Value Accounting Code of Practice (BVACOP) and the Code of Practice on Local Authority Accounting in the United Kingdom 2005 – Statement of Recommended Practice (SORP). These codes of accounting practice will assist registering authorities in complying with their obligations under the 1975 Act.

In specifying and publishing the fees, registering authorities must have regard to this guidance. Having done so, they may decide that for their own circumstances the fees should be set differently. So long as the fees are set in accordance with the 1975 Act as amended, this would be entirely proper. This guidance does not therefore prescribe a methodology that has to be followed. In general terms, the guidance recommends that registering authorities start the process of specifying fees for local land charges services by identifying the local land charges services

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<sup>6</sup> Schedule 4, paras 82 to 84.

<sup>7</sup> The 1975 Act, section 13A(5). See paragraph 6.3.

<sup>8</sup> Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England. CP(L) 25/06. Available on the Department for Constitutional Affairs website at [www.dca.gov.uk](http://www.dca.gov.uk) under publications.

<sup>9</sup> General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003 (November 2003) can be found at <http://www.local.odpm.gov.uk/guidprop.pdf>

they provide and calculating the cost of those services. The authority will then be able to calculate a unit cost for those services.

Registering authorities are familiar with the process of setting fees under other statutory powers. Many of those fees will be financially much more significant than the fees chargeable for local land charges services. Registering authorities may therefore already have in place systems that will facilitate the setting and publicising of fees for local land charges services.

*Structure of this guidance and definitions used*

Having provided general background information in the introduction, the remainder of this guidance is structured round a series of questions. These are listed in the table of contents.

- **Question 1** identifies who can set local land charges fees.
- **Question 2** sets out the duty to set fees.
- **Question 3** describes the underlying concepts of services and descriptions of service.
- **Question 4** describes the upper limit on the fees that may be set.
- **Question 5** describes how the costs of providing a service should be calculated.
- **Question 6** sets out factors to be taken into account in specifying a fee.
- **Question 7** sets out how the fees should be published.
- **Question 8** explains how the competition law may be relevant to fee setting.
- **Question 9** explains how fees will be monitored.
- **Annex A** sets out the text of section 13A of the Local Land Charges Act 1975 as amended.
- **Annex B** lists the local land charges services for which the Lord Chancellor set a fee in 2003.
- **Annex C** reproduces Annex E to the Treasury Fees and Charges Guide, which summarises the effect of the Competition Act 1998.

In this guidance references to “the 1975 Act” are to the Local Land Charges Act 1975 as amended by the Constitutional Reform Act 2005.

### **Question 1: What is a registering authority?**

- 1.1 Registering authorities are defined by the 1975 Act as the council of any district, the council of any London Borough or the Common Council of the City of London.<sup>10</sup>

### **Question 2: What must registering authorities do?**

- 2.1 Each registering authority must specify fees which are to be payable for services relating to local land charges. In setting these fees the registering authority must have regard to this guidance and comply with the 1975 Act.
- 2.2 The 1975 Act permits registering authorities to specify different fees for different services or descriptions of service and to provide services or descriptions of service for which no fee is payable.
- 2.3 Fees must be set to cover but not exceed the costs.<sup>11</sup> In most cases we would expect the registering authority to set fees so as to recover their costs. Where a registering authority decides that the fee for a local land charges service should recover less than its full cost there should be a clear justification for this, especially when a nil fee is set.
- 2.4 Registering authorities should review fees annually to check whether they remain appropriate.

### **Question 3: What is a service relating to local land charges?**

- 3.1 The 1975 Act does not provide a definition. For the purposes of this guidance, a service is an output that a registering authority intends to provide on a continuing basis.
- 3.2 Local land charges services for these purposes should not be confused with the different and wider concept of services provided by the Local Land Charges Department or Section of a local authority.
- 3.3 The 1975 Act states that different fees may be charged for different services. In the past the Lord Chancellor prescribed different fees for different services.<sup>12</sup>
- 3.4 The 1975 Act also provides that different fees may be charged for different descriptions of services. It does not define the point at which a description of a service becomes a different service. This is a question of degree. The Lord

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<sup>10</sup> The 1975 Act, section 3. For further information, contact the LLCI Limited on 01924 502070, <http://www.llci.org>, or visit <http://www.direct.gov.uk/DI1/Directories/LocalCouncils/fs/en>

<sup>11</sup> For further details see question 6.

<sup>12</sup> See Annex B. It lists the services for which a fee was specified in the Local Land Charges (Amendment) Rules 2003, schedule 3.

Chancellor prescribed different fees for an official search of the local land charges register: £6.00 if the application was made in the traditional fashion and £4.00 if the application was made electronically. These fees were for the same service supplied in different ways.

- 3.5 A registering authority might specify fees for the same range of local land charges services and description of service, or for each group of services or descriptions of service as the Lord Chancellor, but is not obliged to do so. It might, for example, specify a fee for a new service.
- 3.6 The following table brings together examples of the points made above.

<b>TABLE 1</b>	<b>Description of fee</b>
<b>Possible new services</b>	A registering authority might, for example, decide to specify charges for the registration of all local land charges.
<b>Different services</b>	The making of the entry on a register and the provision of an official certificate of search in Form LLC1.
<b>Descriptions of service</b>	The request of an official certificate of search in Form LLC1 electronically and by post. An expedited premium service and a standard time service.

#### **Question 4: How much can a registering authority charge?**

- 4.1 The 1975 Act allows registering authorities some flexibility in setting the fees for local land charges services. However, each authority must ensure that taking one financial year with another the income from fees charged for each service does not exceed the costs of providing the service. The same principle applies to each description of service and each group of services or descriptions of service for which the registering authority sets a fee.
- 4.2 In carrying out this comparison, registering authorities must compare the income with the cost of the provision of the service, description of service, group of services or group of descriptions of service, as the case may be, to which the income relates. A registering authority might decide, for example, to group together the income from the following services: filing a definitive certificate of the Lands Tribunal under rule 10(3); filing a judgment, order or application for the variation or cancellation of any entry in Part 11 of the register; and the registration of a charge in Part 11 of the register (light obstruction notices). Grouping of services is discussed further in relation to question 6.

- 4.3 Registering authorities wishing to set a fee below cost should give careful consideration to any anti-competitive implications of such pricing.<sup>13</sup>
- 4.4 For the purpose of setting fees, registering authorities may not group local land charges services or descriptions of service with any other services it may provide, for example, replying to enquiries of the local authority.

**Question 5: How should a registering authority calculate the cost of a service?**

- 5.1 As mentioned, a service is an output. It should be a separate and readily identifiable function. A description of a service should be equally separable and identifiable. In setting fees registering authorities should first identify the services and descriptions of local land charges service that they provide or wish to provide. These will presumably include all the items for which the Lord Chancellor previously set a fee, other than personal searches of the local land charges register, but need not be limited to them.<sup>14</sup> A registering authority might, for example, decide to specify charges for the registration of all local land charges.
- 5.2 Having identified the outputs for which fees are to be charged, registering authorities should then calculate the total cost of providing these services or descriptions of service. In most cases, the relevant activities are already ongoing and closely related to activities for which local authorities already set fees. Information about the definition and cost of many of the services or descriptions of service for which a fee is to be levied should therefore be relatively readily available.
- 5.3 The cost of service or description of service provision should be the total cost of the provision of the service or description of service. This will include the direct costs of maintaining the local land charges register and its index and keeping them up to date. The cost will also generally include indirect costs, such as contributions to central and overhead costs, insurance, amortised costs, depreciation and cost of capital.<sup>15</sup> Registering authorities may find it helpful to refer to BVACOP and SORP when compiling these costs.<sup>16</sup> Registering authorities will also usually have proven methods of establishing costs in place for use in the pricing of other services. These methods should be used wherever possible.

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<sup>13</sup> See section 8 and Annex C. It outlines the Competition Act 1998. See also paragraph 2.3.

<sup>14</sup> See Annex B. It lists the services for which a fee was specified in the Local Land Charges (Amendment) Rules 2003, schedule 3.

<sup>15</sup> The rate used for the Lord Chancellor's fee was based on the Treasury Fees and Charges Guide states that the return on capital to be included in the total cost of providing a service is 3.5% (i.e. 3.5 per cent of the value of the net assets employed (see paragraph 2.4.10). Registering authorities may apply their own rate for cost of capital.

<sup>16</sup> See page 4.

- 5.4 In costing services registering authorities will have to estimate demand for the services. They should use experience and information available from previous years in making these estimates. There are a variety of forecasting methods, but as a starting point registering authorities may wish to gather data from the past five years, if possible, and then calculate a moving average to estimate future demand.
- 5.5 Registering authorities will receive a statutory fee specified by the Lord Chancellor under the 1975 Act for each personal search of the local land charges register. This is £11 at present. This is intended to approximate to the average total cost over all registering authorities in permitting the personal search. As personal searches would not be possible without a register, the fee is intended to include a contribution to the indirect costs of enabling a personal search of the local land charges register. Income from the £11 fee should be taken into account in calculating the total costs of providing local land charges services. So, if the direct cost for the personal search is less than the £11 set fee, the surplus should be offset against other local land charge service costs.
- 5.6 The £11 fee for a personal search of the local land charges register relates only to a personal search of that register. It does not authorise the payer to inspect any other register or make any other enquiry of the registering authority. Costs attributable to those inspections or enquiries do not relate to local land charge services.

#### **Question 6: How should a registering authority specify fees for local land charges services?**

- 6.1 Having defined the services and descriptions of service for which fees are to be specified and calculated their total cost, registering authorities must then specify what the actual fees payable are to be. The simplest method would be to divide the total cost by the expected number of unit outputs in the year and specify the result as the fee.
- 6.2 However, this approach may need to be refined. First, registering authorities may need to allow for fluctuations in demand for the services by taking one financial year with another. Secondly, they may wish to group services or descriptions of service. Thirdly, they must act within their powers.
- 6.3 The requirement to take 'one financial year with another' means that a registering authority should take account of surpluses and deficits in the current and previous years in setting fees for the forthcoming year so that, over time, income does not exceed costs. However, where a fee has been set at a level below cost, any shortfall in fee income from that service or group of

services cannot be met by charging fees that would over-recover costs for another service, descriptions of service or group of services.<sup>17</sup>

- 6.4 The 1975 Act does not define how many previous years should be taken into account. This will depend on the circumstances of the individual case and may vary between registering authorities. Where registering authorities already apply similar requirements in relation to other fees it may well be sensible to apply the same methodology. Nonetheless, registering authorities may initially find it useful to consider assessing the cost of providing a service, the projected take-up of that service, and thus the charge that should be made, over a period of between 1 and 3 years.
- 6.5 The 1975 Act also provides that in specifying fees a registering authority may group services together for the purpose of measuring the income from the group of services against the costs of its provision.<sup>18</sup> This will allow common costs to be shared and avoid the need to create artificially small divisions between services of descriptions of service.
- 6.6 Grouping should therefore make the process of cost setting more straightforward but it is a new concept in relation to fees for local land charges services. The 1975 Act does not provide a definition of a group of services or impose any restrictions on the local land charge services or descriptions of service that can be grouped for these purposes. All that is required is that the services or descriptions of services grouped are services or descriptions of service in respect of which fees can be set by the registering authority under the 1975 Act.
- 6.7 In setting fees registering authorities will be exercising a statutory power. They must act within the scope of the power. For example, the same fee must be charged to all users of the same service or description of service.<sup>19</sup> Exceeding the power will expose registering authorities to judicial review. Registering authorities should take their own legal advice as appropriate in relation to the extent of the power.
- 6.8 Registering authorities should therefore ensure that they can demonstrate compliance with the 1975 Act, including having had regard to this guidance. They should ensure that their accounting and other information systems can provide the financial information required for setting fees and for monitoring the income from fees against the costs for each local land charges service they provide and for which a fee is set. The same applies to descriptions of service, groups of services and groups of descriptions of services.

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<sup>17</sup> The 1975 Act, section 13A(5).

<sup>18</sup> The 1975 Act, section 13A(5).

<sup>19</sup> The 1975 Act does not provide an equivalent provision to section 93(5) of the Local Government Act 2003, which expressly authorises the specification of different fees for the same services.

6.9 Registering authorities should consider the preparation of statements showing actual costs against estimated costs and fee income for each service, description of service, group of services or descriptions of services. These should be differentiated down to individual service level where appropriate.

### **Question 7: How should details of the fees be published?**

- 7.1 The 1975 Act requires that registering authorities, when specifying new fees for local land charges services, must specify the date on or after which those fees will be payable.<sup>20</sup>
- 7.2 Changes in fees for local land charges services should ideally be announced in advance of their application. Registering authorities should therefore publish details of the fees a reasonable time before they come into force and, as a matter of course, at the beginning of each financial year.<sup>21</sup>
- 7.3 In publishing details of the fees, registering authorities should provide a clear description of the service to which each fee relates. The same principle applies to each description of service, or for each group of services or descriptions of service that it thinks appropriate. They may also wish to indicate the manner in which fees should be paid: for example, in advance rather than within, say, seven days of the delivery of the service.
- 7.4 As mentioned, registering authorities should be able to explain how the fees were calculated. It may be helpful for the published fees to be accompanied by an outline of the calculations used. The outline of the calculations used to reach the published fees should also be available on request.
- 7.5 The 1975 Act requires registering authorities to publish the fees, but does not specify where the fees must be published. Registering authorities should ensure that details of the fees are readily accessible to businesses and consumers. It may therefore be helpful to publish the fees on the authority's website and in a prominent position in the place where local land charges business is conducted.

### **Question 8: Is the Competition Act 1998 relevant to registering authorities in setting fees for local land charges services?**

8.1 In general, competition law only applies to the discretionary commercial activities of registering authorities not to the setting of statutory fees. Nonetheless, in the context of the property information market registering authorities need to ensure that, when exercising their power to specify fees for

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<sup>20</sup> The 1975 Act, section 13A(6).

<sup>21</sup> The 1975 Act, section 13A(7) and (8).

local land charge services, they comply fully with the Competition Act 1998 ("CA98").

- 8.2 Annex E to the Treasury Fees and Charges Guide, which summarises the CA98, is reproduced at Annex C to this guidance. This outlines a non-exhaustive set of examples where conduct by an undertaking may constitute an abuse. In particular, registering authorities may need to consider the relevance of the CA98 where they are the principal holder of information used by commercial businesses and against whom they also compete to provide services.
- 8.3 Registering authorities should take their own legal advice as appropriate in relation to any competition concerns setting fees for services.

**Question 9: How will registering authorities be monitored?**

- 9.1 During 2007 the Department will compare fees set with effect from 1 April and investigate any significant variations.
- 9.2 We will review the effectiveness of the guidance in 3 to 5 years time. The review will involve consultation within government and external stakeholders as appropriate.
- 9.3 As the geographical make up and organisation of each registering authority differs, it is expected that costs may vary and that consequently the fee levels may vary between registering authorities.

## **Annex A: Local Land Charges Act 1975, section 13A**

### *Specification of fees by registering authorities in England*

- 13A.** – (1) Each registering authority in England must specify fees which are to be payable by persons for services relating to local land charges which are provided to them by the authority.
- (2) This section does not apply to any fees payable for the making of a personal search (for which see section 14(1)(h)(i) below).
  - (3) Different fees may be specified for different services or descriptions of service.
  - (4) A registering authority may provide for there to be services or descriptions of service in respect of which no fees are to be payable.
  - (5) In specifying fees, a registering authority must secure that, taking one financial year with another, the income from fees for each service or description of service, or for each group of services or descriptions of service that they think appropriate, does not exceed the costs of its provision.
  - (6) When exercising the duty under subsection (1) above, a registering authority must specify the date on or after which the fees specified under that subsection are to be payable.
  - (7) Where the duty under subsection (1) above is exercised by a registering authority, they must publish details of the fees specified under that subsection before the date mentioned in subsection (6) above.
  - (8) If any fees specified under subsection (1) above are to be the same immediately before as immediately after the beginning of a financial year, a registering authority must publish details of those fees shortly before the beginning of the financial year.
  - (9) In specifying fees or publishing details of fees, a registering authority must have regard to such guidance as the Lord Chancellor may issue.
  - (10) That guidance:
    - (a) may also include provision concerning the manner in which fees are to be paid, and
    - (b) may be framed by reference to guidance issued by a person other than the Lord Chancellor.
  - (11) The Lord Chancellor must lay before both Houses of Parliament any guidance that he issues under this section.
  - (12) In this section “financial year” means a period of 12 months beginning with 1st April.

## **Annex B: Local Land Charges (Amendment) Rules 2003**

### ***Item***

1. Registration of a charge in Part 11 of the register (light obstruction notices)
2. Filing a definitive certificate of the Lands Tribunal under rule 10(3)
3. Filing a judgment, order or application for the variation or cancellation of any entry in Part 11 of the register (light obstruction charges)
4. Inspection of documents filed under rule 10 in respect of each parcel of land
5. Personal search in the whole or in part of the register in respect of one parcel of land and in addition, in respect of each additional parcel of land, where under rule 11(3) the search extends to more than one parcel...
6. Official search (including issue of official certificate of search) in respect of one parcel of land -
  - (a) in any one part of the register
  - (b) in the whole of the register
  - (i) where the requisition is made by electronic means in accordance with rule 16; and
  - (ii) in any other caseand in addition, in respect of each additional parcel of land, where under rule 11(3) more than one parcel is included in the same requisition (whether the requisition is for a search in the whole or any part of the register)...
7. Office copy of any entry in the register (not including a copy or extract of any plan or document filed pursuant to these Rules)
8. Office copy of any plan or other document filed pursuant to these Rules.

## **Annex C: Annex E to the Treasury Fees and Charges Guide, Competition Act 1998**

1. Articles 81 and 82 of the EC Treaty (“Articles 81/2”) prohibit anti-competitive agreements and abuse of a dominant position that may affect trade between member states. These are directly effective and government bodies need to comply with them. In addition, the Competition Act 1998 (‘the Act’) introduced two very similar prohibitions into domestic law (referred to in the Act as the “Chapter I and Chapter II prohibitions), which apply in cases where there is an effect on trade within the United Kingdom. The chief enforcement body for the Act is the Director General of Fair Trading (DGFT);<sup>22</sup> some sectoral regulators like OFCOM also have enforcement powers in relation to regulated matters.
2. The Act provides that to the extent possible the domestic prohibitions are to be interpreted in accordance with the jurisprudence on Articles 81 and 82. Both the EC and the Act prohibitions apply to “undertakings”. Broadly speaking, an undertaking includes any natural or legal person that is engaged in economic or commercial activity relating to goods or services, regardless of its legal status and the way in which it is funded. However, public sector bodies may be capable of falling within this definition, to the extent that they are carrying on such activity.

### *The Chapter I prohibition*

3. This is based on Article 81. It is as set out in section 2 of the Act and covers agreements between undertakings that have the object or effect of preventing, restricting or distorting competition. Examples of the sorts of agreements that will be caught by the Chapter I prohibition (unless excluded by or exempted under the Act – see paragraphs 5 and 9 below) are those which:
  - directly or indirectly fix purchase or selling prices or any other trading conditions;
  - limit or control production, markets, technical development or investment;
  - share markets or sources of supply;
  - apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - make the conclusion of contract subject to acceptance of unrelated conditions.

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<sup>22</sup> All references in this annex made to the Director General of Fair Trading (DGFT), should be to the Office of Fair Trading (OFT).

4. The Chapter I prohibition applies where the agreement in question has an ‘appreciable’ effect on trade. As a general rule, the DGFT has said that an agreement is unlikely to have an appreciable effect where the combined market share of the parties does not exceed 25 per cent. However, agreements to fix prices impose minimum resale prices or share markets may have an appreciable effect even where the market share of the parties falls below 25 per cent. This also applies where the agreement is one of a network of similar agreements that have a cumulative effect on the market.
5. Certain agreements may be exempted from the Chapter I prohibition if they meet the criteria set out in section 9 of the Act, which are modelled on the exemption criteria of Article 81(3).

*The Chapter II prohibition*

6. This is based on Article 82, and is set out in section 18 of the Act. It covers conduct by one or more undertakings, which amounts to abuse of a dominant position in a market within the United Kingdom. The prohibition is of the abuse, not the dominant position. So to determine whether it has been breached it is necessary to establish it first, whether an undertaking is dominant in a relevant market and, if so, second, whether it is abusing that dominant position.
7. To determine the relevant market will generally involve identifying two dimensions: the product market, and the geographic market. What constitutes a dominant position in that market will require analysis of all the circumstances of the particular market. One indicator of relevance, however, is likely to be the market share of undertakings. The Act does not set any market share thresholds for dominance. European Court of Justice case law suggests a presumption of dominance in the absence of evidence to the contrary if an undertaking has a market share persistently above 50 per cent. The Director General of the Office of Fair Trading considers it unlikely that an undertaking will be individually dominant if its market share is below 40 per cent, although dominance could be established below that figure if other relevant factors (such as the weak position of competitors in that market) provided strong evidence of dominance (See OFT guidance on the Chapter II prohibition.)
8. Abusive conduct generally falls into one of the following categories:
  - i. conduct that exploits customers or suppliers, for example:
    - excessively high prices (to establish abuse prices would have to allow profits which significantly and persistently exceed the undertaking’s cost of capital);
    - discriminatory (different) prices, or discrimination in other terms and conditions either for the same product to different customers (except for objective reasons such as differences in quality or quantity or other

different characteristics in the items supplied, or the same prices to different customers where the costs of supply were very different;

- ii. Anti-competitive behaviour that removes or limits competition from existing competitors, or excludes potential new entrants to the market, e.g.
  - predatory behaviour where prices are set so low as to threaten the competitive process: the OFT has given broad guidelines based on judgements of the European Court that indicate that the price of the product should never be set:
    - below the average variable cost of production, or
    - above average variable costs, but below average total costs in any case where the pricing decision could be shown to be intended to eliminate a competitor (there could, of course, be other reasons for such pricing decisions e.g. short term special offers to move excess stock);
  - certain types of vertical restrictions: various common business practices, such as only supplying one distributor in a particular territory, can be an abuse, but only if they lead to a reduction in competition;
  - refusing to supply existing or potential competitors without objective justification (objective justification could include e.g. customer's poor creditworthiness, or supplies temporarily out of stock).

## General

9. Certain cases are excluded from the Chapter I and Chapter II prohibitions. For example, the Chapter I prohibition does not apply to an agreement made in order to comply with a specified legal requirement; or the Chapter II prohibition to conduct to the extent to which it is engaged in an order to comply with a specified legal requirement. Other exclusions are set out in the Act.
10. The OFT has issued a series of guidelines on the Act. All the guidelines can be ordered or downloaded from the OFT's website [www.offt.gov.uk/](http://www.offt.gov.uk/).
11. Departments should take their own legal advice as appropriate, and if there are competition concerns in respect of their commercial activities they should consult the Department of Trade and Industry (DTI). Departments should always consult the DTI before asserting that they are an "undertaking" which may have wider implications for other government bodies.<sup>23</sup>

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<sup>23</sup> These enquiries should now be directed to the Office of Fair Trading (OFT).

## **Appendix B: Final Regulatory Impact Assessment ‘Local Land Charge Fees: Guidance for registering authorities on setting fees for local land charge services in England.’**

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## **Local Land Charges Fees: Guidance for registering authorities on setting fees for local land charges services in England.**

### ***Implementation of section 13A of the Local Land Charges Act 1975***

#### **1. Purpose and intended effect**

##### *Objective*

- 1.1 To provide framework guidance for registering authorities<sup>24</sup> to help them set fair and transparent fees for certain local land charges services from 1 April 2007.

##### *Background*

- 1.2 Under section 14 of the Local Land Charges Act 1975 (the “1975 Act”) the Lord Chancellor has, with the concurrence of Her Majesty’s Treasury (HM Treasury), power to prescribe fees for local land charges services. These fees must be set in accordance with the HM Treasury guide on fees and charges and the consent of HM Treasury is required for any proposed change.
- 1.3 Registering authorities in England provide local land charges services and maintain the local land charges register.
- 1.4 The Constitutional Reform Act 2005 amended the Local Land Charges Act 1975. The new provisions give individual registering authorities in England the power to set their own fees for local land charges services (other than fees for personal searches of the local land charges register), having regard to guidance issued by the Lord Chancellor.
- 1.5 Section 13A of the Local Land Charges Act 1975 provides:
  - (9) In specifying fees or publishing details of fees, a registering authority must have regard to such guidance as the Lord Chancellor may issue.
  - (10) That guidance may:
    - include provision concerning the manner in which fees are to be paid
    - be framed by reference to guidance issued by a person other than the Lord Chancellor.
  - (11) The Lord Chancellor must lay before both Houses of Parliament any guidance that he issues under this section.’

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<sup>24</sup> Broadly, London Borough, district and unitary local authorities: a full definition is provided in the guidance.

- 1.6 In September 2005 the Office of Fair Trading (OFT) published its report no. 810 *Property Searches – A market study*. OFT recommended that:

“Central government should provide clear guidance for local authorities, on how they should recover the costs of providing property information in compiled and unrefined forms and, if local authorities are to set their own prices for these two services, how they should set these charges to avoid distorting competition in the supply of local property searches.”

- 1.7 The Government accepted the recommendation and said that it would consult stakeholders on the content of guidance to be issued by the Lord Chancellor on setting fees for local land charges services (other than personal searches)<sup>25</sup> and then publish guidance as envisaged by section 13(A).<sup>26</sup>

#### *Rationale for government intervention*

- 1.8 The Lord Chancellor currently sets uniform fees for registering authorities across England to charge for local land charges services. The fee prescribed for an official search of the local land charges register is currently set at £4 for an electronic search and £6 for a paper search<sup>27</sup>.
- 1.9 As the business systems and circumstances of registering authorities vary considerably, it is reasonably certain that the fees set by the Lord Chancellor will not accurately reflect the cost to each registering authority of providing the service in question. The draft guidance will help local authorities to set those fees according to their own circumstances and to:
- Recover up to the actual cost of providing the service, which may not be covered by the standard fee set by the Lord Chancellor at present.
  - Prevent over-recovery by registering authorities, which may be occurring in some cases at present.
  - Prevent distortion to competition.
  - Promote transparent, fair and open local government by encouraging registering authorities to explain how fees are set.
- 1.10 The guidance will help to address the risk of unacceptable variations in fee levels between registering authorities arising from widely diverging methods for setting fees.

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<sup>25</sup> *Property Searches – Government response to Office of Fair Trading (OFT) Property Searches Market Study*, December 2005

<sup>26</sup> See Annex A. The 1975 Act, section 13A.

<sup>27</sup> See Annex B, fees prescribed by the Lord Chancellor.

## 2. Consultation

### *Within government*

- 2.1 During the passage of the Constitutional Reform Act 2005 draft illustrative guidance was prepared to assist Members of both Houses in their consideration of the amendments to the 1975 Act. The illustrative guidance was based on the material that had been prepared in connection with David Borrow MP's Local Land Charges (Fees) Bill 2004, which did not proceed beyond second reading.

When we developed this illustrative guidance we sought and included comments from the following:

- Office of the Deputy Prime Minister (ODPM);
- Local Government Association (LGA);
- Chartered Institute of Public Finance and Accountancy (CIPFA);
- Association of Local Council Secretaries and Solicitors;
- Local Land Charges Institute; and
- Society Of Local Authority Chief Executives (SOLACE)

No responses or comments on the final version of the illustrative guidance were received from Members of Parliament, Peers or other stakeholders.

Copies of the draft proposed guidance have been provided in the course of its preparation to:

- OFT;
- Department of Trade and Industry (DTI);
- HM Treasury;
- Communities and Local Government (CLG) and
- Department for Environment, Food and Rural Affairs (DEFRA).

### *Public consultation*

- 2.2 The Department published a consultation paper on the draft guidance on 23 October 2006. 177 responses were received. 166 of these responses were from registering authorities. Overall the response was positive and stakeholders were supportive of the government's approach. The guidance will therefore be issued.
- 2.3 We have taken into account the comments made and have revised the guidance to improve its clarity.

### **3. Options considered**

#### ***Option 1 – Do Nothing – do not issue guidance***

- 3.1 There is no statutory requirement for Government to provide guidance for registering authorities.

#### ***Option 2 – Issue the guidance***

- 3.2 This option would fulfil the government's publicly stated policy to publish guidance for registering authorities.

### **4. Benefits and costs of options considered**

#### ***Sectors and groups affected***

- 4.1 Registering Authorities: the primary group to be affected by the guidance will be registering authorities in England, as in setting the fees for local land charges they will need to have regard to the guidance. The guidance is being published to assist them to set fair and transparent fees that will allow full recovery of the costs of providing the search service.
- 4.2 Consumers (individuals, businesses etc): any individual or organisation involved in or carrying out searches before buying a property in England is likely to pay fees for local land charge services. This group includes solicitors, conveyancers, commercial property information search companies (including the NLIS hub and channels), property developers, estate agents and individuals. Some of these businesses may be large.

#### ***Benefits and costs***

##### *Option 1 – Do Nothing – Do not issue guidance*

##### Benefits

- 4.3 There is no legal requirement to issue guidance.
- 4.4 Registering authorities will still be expected to set fees which do not exceed their actual costs in providing the local land charge services, even if the guidance is not issued.

## Costs

- 4.5 Without guidance registering authorities would need to devise their own methods for calculating and setting fee levels for local land charges services. They would need to develop the fees from scratch, so taking up more effort and time.
- 4.6 If there is no guidance, the concerns identified in the OFT market study on Property Searches would remain unresolved, namely that:
- there should be consistency between local authorities in the way they set their prices, and
  - local authorities should have clear guidance on how they should recover costs in providing the local services.
- 4.7 Government would need to explain why it was not issuing guidance when it had agreed to do so in the response to the OFT report.<sup>28</sup>
- 4.8 Without guidance there is an increased risk that registering authorities would develop diverging methods for setting fees, leading to unacceptable differences in the level of fees for the same services between registering authorities. This outcome could attract enquiry, and possible legal challenge (judicial review), by those seeking local land charges services.
- 4.9 Without guidance there may be a greater risk that some fees might be set on an anti-competitive basis.
- 4.10 There is also a risk that registering authorities may not be as open and transparent as they should be when publishing their fee levels and how they arrived at them. In addition, the costs of the service could be inadvertently inflated leading to fee levels being set higher than they should be.

## *Option 2 – Issue the guidance*

### Benefits

- 4.11 The published guidance will give all registering authorities access to a uniform high-level guidance on the principles to be applied when setting fees for local land charges services. This should promote a uniformity of approach and make it more likely that customers will pay a fair fee.
- 4.12 The guidance will make registering authorities better able to recover the cost of providing services in relation to local land charges from those who use them.

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<sup>28</sup> *Property searches – Government response to Office of Fair Trading (OFT) Property Searches Market Study*, December 2005.

- 4.13 The guidance will draw the attention of registering authorities to anti-competitive and other legal issues relating to the setting of fees, encouraging compliance with the law.
- 4.14 The guidance is likely to provide reassurance to both registering authorities and stakeholders that the fees should generally be calculated according to a consistent and standard method. In addition, greater transparency and openness in the calculation of fees will enable consumers to compare fees between different authorities. This could bring the costs of local land charges services down.

#### Costs

- 4.15 Preparing and publishing the guidance is a one-off (relatively minor cost). The guidance must also be monitored and reviewed.
- 4.16 If the guidance is published, registering authorities will have to build consideration of it into their fee setting processes.
- 4.17 The guidance may result in fees being different from the fees that would have been set had there been no guidance. These fees could be higher or lower depending on the circumstances of the registering authority. If lower, the cost would fall onto the authority and if higher the cost would fall on the customer.

#### ***Options Conclusion***

- 4.18 The preferred option is Option 2 (Issue the guidance).

### **5. Small Firms Impact Test**

- 5.1 Our assessment is that there will not be a significant impact on small businesses. This guidance is intended solely for the use of registering authorities to assist them in their newly devolved fee setting role. It relates to legislation already enacted but yet to be fully implemented and concerns the transfer of powers from central government to local government. While we do not expect the burden of fees overall to change significantly, registering authorities may make changes to the fees to allow for local and regional differences. The new fees could be higher or lower than the present fees.
- 5.2 The fees for local land charges services currently prescribed are nominal in comparison to the cost of buying a property. The fees are paid by small firms such as personal search companies and private solicitors' firms as well as individuals, conveyancers, property developers and estate agents. Ultimately, the costs are generally borne by the buyer or potential buyer of the property

in question. We have consulted the Small Business Service who agree with our view.

## **6. Competition assessment**

- 6.1 Registering authorities are the only group that provide local land charges services. They provide information and carry out official searches on behalf of individuals or business entities that provide property search or conveyancing services. They will not, therefore, be competing with anyone else in this market. Nonetheless, the fees set may have an effect on behaviour in the wider property search market.
- 6.2 The guidance therefore addresses the possibility of anti-competitive behaviour in fee setting.

## **7. Administrative burdens and simplification**

- 7.1 The guidance is intended for registering authorities, to ensure that the fees they set are transparent, consistent and fair and do not allow over-recovery of costs. The guidance does not itself affect the private sector or add regulatory or administrative burdens for companies in this sector. This approach benefits registering authorities in that it gives them the power to set the fees for services for which the registering authority is the delivery body, rather than central Government.

## **8. Enforcement, sanctions and monitoring**

- 8.1 The Government is responsible for the policy on local land charges, and as such must be satisfied that the devolution of these powers is not abused.

## **9. Implementation and delivery plan**

- 9.1 The final guidance will be laid before Parliament and the response document to the consultation will be published on 31 January 2007. This will allow two clear months for registering authorities to set their budgets for 2007/8. Registering authorities will need to consider the following process ahead of implementation on 1 April 2007: developing costing methodology, setting the fees, ratifying the fees internally at Committee and publishing the fees to the customers of the local land charges services.

- 9.2 The guidance and response paper will be available on-line at DCA's website, publications section, at [www.dca.gov.uk](http://www.dca.gov.uk). The guidance will also be available on the TSO website at [www.tso.co.uk](http://www.tso.co.uk).
- 9.3 Every registering authority will be notified of the publication of the guidance by 1 February.

## 10. Post-implementation review

- 10.1 During 2007 the Department will compare fees set with effect from 1 April and investigate any significant variations.
- 10.2 We will review the effectiveness of the guidance in 3 to 5 years time. The review will involve consultation within government and external stakeholders as appropriate.
- 10.3 It is possible that the guidance may be reviewed as a consequence of the proposed review of how and by whom fees for personal searches of the local land charges register are set. If the outcome of that review is that registering authorities should also set those fees, it is likely that guidance will be issued. Such guidance could be combined with the guidance on setting fees for other local land charges services. The review should be completed in 2007.

## 11. Summary costs and benefits table

<b>Option</b>	<b>Total benefit per annum: economic, environmental, social</b>	<b>Total cost per annum: - economic, environmental, social - policy and administrative</b>
<b>1 – Do Nothing – do not issue guidance</b>	The costs of issuing and reviewing guidance and the costs to registering authorities of complying with the guidance would be avoided.	Potential costs are difficult to predict. Registering authorities would have no guidance to assist them to set fees for local land charges services. They would still be required to specify and publish fees with effect from 1 April 2007. They might not be as transparent in their methods of specifying and publishing fees.  The issues raised by registering authorities in the consultation on the proposed guidance would remain unresolved, and there might be an issue of registering authorities not fully understanding their transferred powers and setting fees at over recovery, breaching from section 13A of the Local Land Charges Act 1975.

<b>Option</b>	<b>Total benefit per annum: economic, environmental, social</b>	<b>Total cost per annum: - economic, environmental, social - policy and administrative</b>
<b>2 – Issue the guidance</b>	<p>Potential system savings are difficult to predict.</p> <p>Guidance should promote good practice and consistency among registering authorities. It will help registering authorities to avoid legal challenge.</p> <p>By helping avoid anti-competitive behaviour by registering authorities, the guidance should assist commercial property information providers.</p> <p>Guidance should assist registering authorities to recover the costs of providing local land charges services.</p> <p>The final guidance takes into account issues that respondents have raised to further clarify the registering authorities' duties under section 13A of the Local Land Charges Act 1975. This should assist registering authorities.</p>	<p>Potential costs are difficult to predict.</p> <p>Guidance will have to be developed and published. It will also have to be reviewed.</p> <p>Registering authorities will need to take guidance into account.</p> <p>Fees may be lower or higher as a result of the guidance. A lower fee would be a cost to the authority and a higher fee a cost to the customer.</p>

11.1 The benefits and costs of the two options are difficult to quantify. However, Option 2 (Issue the guidance) offers clear advantages in helping registering authorities to exercise their new power. We accordingly consider that guidance should be published.

## 12. Declaration and publication

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed:**



**Date: 31 January 2007**

**Vera Baird QC MP**

**Parliamentary Under-Secretary of State  
Department for Constitutional Affairs**

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## **Annex A: Local Land Charges Act 1975, section 13A**

### *Specification of fees by registering authorities in England*

- 13A.** – (1) Each registering authority in England must specify fees which are to be payable by persons for services relating to local land charges which are provided to them by the authority.
- (13) This section does not apply to any fees payable for the making of a personal search (for which see section 14(1)(h)(i) below).
  - (14) Different fees may be specified for different services or descriptions of service.
  - (15) A registering authority may provide for there to be services or descriptions of service in respect of which no fees are to be payable.
  - (16) In specifying fees, a registering authority must secure that, taking one financial year with another, the income from fees for each service or description of service, or for each group of services or descriptions of service that they think appropriate, does not exceed the costs of its provision.
  - (17) When exercising the duty under subsection (1) above, a registering authority must specify the date on or after which the fees specified under that subsection are to be payable.
  - (18) Where the duty under subsection (1) above is exercised by a registering authority, they must publish details of the fees specified under that subsection before the date mentioned in subsection (6) above.
  - (19) If any fees specified under subsection (1) above are to be the same immediately before as immediately after the beginning of a financial year, a registering authority must publish details of those fees shortly before the beginning of the financial year.
  - (20) In specifying fees or publishing details of fees, a registering authority must have regard to such guidance as the Lord Chancellor may issue.
  - (21) That guidance:
    - (a) may also include provision concerning the manner in which fees are to be paid, and
    - (b) may be framed by reference to guidance issued by a person other than the Lord Chancellor.
  - (22) The Lord Chancellor must lay before both Houses of Parliament any guidance that he issues under this section.
  - (23) In this section “financial year” means a period of 12 months beginning with 1st April.

**Annex B: Fees prescribed by the Lord Chancellor**

<i>Item</i>	<i>Old Fee (£)</i>	<i>New Fee (£)</i>
<b>1.</b> Registration of a charge in Part 11 of the register (light obstruction notices)	60.00	67.00
<b>2.</b> Filing a definitive certificate of the Lands Tribunal under rule 10(3)	2.10	2.50
<b>3.</b> Filing a judgment, order or application for the variation or cancellation of any entry in Part 11 of the register (light obstruction charges)	6.30	7.00
<b>4.</b> Inspection of documents filed under rule 10 in respect of each parcel of land	2.10	2.50
<b>5.</b> Personal search in the whole or in part of the register in respect of one parcel of land	10.00	11.00
in respect of each additional parcel, subject to a maximum of £16.00 (previously £13.00)	1.00	1.00
<b>6.</b> Official search (including issue of official certificate of search) in respect of one parcel of land -		
(a) in any one part of the register	1.90	2.00
(b) in the whole of the register -		
(i) where the requisition is made by electronic means in accordance with rule 16; and	-	4.00
(ii) in any other case	5.00	6.00
in respect of each additional parcel of land, subject to a maximum of £16.00 (previously £13.00)	0.80	1.00
<b>7.</b> Office copy of any entry in the register (not including a copy or extract of any plan or document filed pursuant to these Rules)	1.40	1.50

## **Appendix C: List of Respondents**

### *Commercial Property Search Companies*

1. COPSO (Council of Property Search Organisations).
2. IPSA (Institute of Personal Search Agents).
3. PSG (The Property Search Group).
4. Richards Gray.

### *Professional Representative Bodies*

1. C-NLIS (Council of the National Land Information Service).
2. Council of Mortgage Lenders.
3. MDA (Macdonald Dettwiler and Associates) Hub Ltd.
4. RICS (Royal Institution of Chartered Surveyors).
5. The Directorate of the Council for Licensed Conveyancers.

### *Local Government*

1. Local Government Association (LGA).
2. Adur District Council.
3. Arun District Council.
4. Ashfield District Council.
5. Barnet (London Borough of).
6. Basingstoke and Dean Borough Council.
7. Bassetlaw District Council.
8. Birmingham City Council.
9. Blackburn with Darwen Borough Council.
10. Blackpool Council.
11. Bolsover District Council.
12. Bolton Metropolitan Borough Council.
13. Bournemouth Borough Council, (together with Poole Borough Council).
14. Brent (London Borough of).
15. Brighton and Hove City Council.

16. Broadland District Council.
17. Bromley (London Borough of).
18. Broxtowe Borough Council.
19. Burnley Borough Council.
20. Calderdale Metropolitan Borough Council.
21. Canterbury City Council.
22. Castle Point Borough Council.
23. Chelmsford Borough Council.
24. Cherwell District Council.
25. Chester City Council.
26. Chichester District Council.
27. Chiltern District Council.
28. Colchester Borough Council.
29. Copeland Borough Council.
30. Corporation of London.
31. Craven District Council.
32. Crawley Borough Council.
33. Croydon, (London Borough of).
34. Darlington Borough Council.
35. Dartford Borough Council.
36. Derby City Council.
37. Devon Local Land Charges Group.
38. Dudley Metropolitan Borough Council.
39. East Hampshire District Council.
40. East Herts Council.
41. East Lindsey District Council.
42. East Staffordshire Borough Council.
43. Eden District Council.
44. Elmbridge Borough Council.
45. Enfield, (London Borough of).
46. Epping Forest District Council.
47. Exeter City Council.

48. Fareham Borough Council.
49. Gosport Borough Council.
50. Greenwich, (London Borough of).
51. Guildford Borough Council.
52. Gwynedd Council.
53. Hambleton District Council.
54. Harborough District Council.
55. Haringey, (London Borough of).
56. Harrogate Borough Council.
57. Hart District Council.
58. Hartlepool Borough Council.
59. Havant Borough Council.
60. Hertsmere Borough Council.
61. Hillingdon, (London Borough of).
62. Hinckley and Bosworth Borough Council.
63. Horsham District Council.
64. Islington, (London Borough of).
65. Kennet District Council.
66. Kensington & Chelsea, (Royal London Borough of).
67. Kettering Borough Council.
68. Kingston, (Royal London Borough of).
69. Kirklees Metropolitan Council.
70. Knowsley Metropolitan Borough Council.
71. Lancaster City Council.
72. Leeds City Council.
73. Leicester City Council.
74. Lewisham, (London Borough of).
75. Medway Council.
76. Melton Borough Council.
77. Merton, (London Borough of).
78. Mid Beds District Council.
79. Mid Sussex District Council.

80. Mole Valley District Council.
81. Monmouthshire County Council.
82. New Forest District Council.
83. Newham, (London Borough of).
84. Newark and Sherwood District Council.
85. Nottingham City Council.
86. Northampton Borough Council.
87. North Devon District Council.
88. North Dorset District Council.
89. North Hertfordshire District Council.
90. North Somerset Council.
91. North Warwickshire Borough Council.
92. North Wiltshire District Council.
93. Nuneaton and Bedworth Borough Council.
94. Oadby and Wigston Borough Council.
95. Peterborough City Council.
96. Poole Borough Council.
97. Portsmouth City Council.
98. Reading Borough Council.
99. Redbridge, (London Borough of).
100. Reigate-Banstead Borough Council.
101. Restormel Borough Council.
102. Richmondshire District Council.
103. Richmond upon Thames, (London Borough of).
104. Rother District Council.
105. Rotherham Metropolitan Borough Council.
106. Rugby Borough Council.
107. Rushcliffe Borough Council.
108. Salisbury District Council.
109. Sandwell Metropolitan Borough Council.
110. Scarborough Borough Council.
111. Sedgemoor District Council.

112. Sefton Metropolitan Borough Council.
113. Sheffield City Council.
114. Shepway District Council (Folkestone Hythe and Romney Marsh).
115. Slough Borough Council.
116. Solihull Metropolitan Borough Council.
117. South Derbyshire District Council.
118. South Gloucestershire Council.
119. South Hams District Council.
120. South Gloucestershire Council.
121. South Northamptonshire Council.
122. South Lakeland District Council.
123. South Norfolk Council.
124. South Ribble Borough Council.
125. South Shropshire District Council.
126. South Somerset District Council.
127. South Staffordshire Council.
128. Spelthorne Borough Council.
129. Stafford Borough Council.
130. Staffordshire Moorlands District Council.
131. St Edmundsbury Borough Council.
132. Stoke Council.
133. Stratford on Avon District Council.
134. Sunderland City Council.
135. Surrey Heath Borough Council.
136. Sutton, (London Borough of).
137. Swindon Borough Council.
138. Tameside Metropolitan Borough Council.
139. Taunton Deane Borough Council.
140. Teignbridge District Council.
141. Test Valley Borough Council.
142. Three Rivers District Council.
143. Tonbridge and Malling Borough Council.

144. Torbay Council.
145. Torridge District Council.
146. Tower Hamlets, (London Borough of).
147. Tunbridge Wells Borough Council.
148. Uttlesford District Council.
149. Walsall Council.
150. Waltham Forest, (London Borough of).
151. Wandsworth, (London Borough of).
152. Wansbeck District Council.
153. Watford Borough Council.
154. Wealden District Council.
155. Wellingborough Borough Council.
156. West Devon Borough Council.
157. West Lindsey District Council.
158. Westminster City Council.
159. West Oxfordshire District Council.
160. West Wiltshire District Council.
161. Weymouth and Portland Borough Council.
162. Worthing Borough Council.
163. Wrexham County Borough Council.
164. Wycombe District Council.
165. Wyre Forest District Council.
166. York City Council.

*Others*

1. Member of the Public.
2. Anonymous.

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Produced by DCA Corporate Communications  
January/2007  
DCA CP (R) 25/06 - 31/07