

EXPLANATORY MEMORANDUM

TO

THE COMMONS REGISTRATION (GENERAL) (AMENDMENT) (WALES) REGULATIONS 2007

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing in the Welsh Assembly Government and is laid before the National Assembly for Wales.

Description

1. These Regulations revoke the provisions of the Commons Registration (General) Regulations 1966 (S.I. 1966/1471) (“the 1966 Regulations”) which enable searches of the commons registers held by commons registration authorities to be carried out. The existing search procedure has been replaced by modified existing non-statutory arrangements.

Matters of special interest to the Subordinate Legislation Committee

2. None.

Legislative Background

3. Commons registration authorities are responsible for maintaining registers of common land and town or village greens under the Commons Registration Act 1965 (“the 1965 Act”). The authorities’ functions are re-enacted in Part 1 of the Commons Act 2006 (“the 2006 Act”), which will repeal the 1965 Act once the relevant provisions are brought fully into force.
4. Purchasers of land (including those who buy houses etc.) may currently undertake a statutory search of the commons registers using a procedure prescribed in regulation 32 of the 1966 Regulations, which were made under the 1965 Act. As part of that procedure, purchasers complete a Form 21, which is prescribed in Schedule 1 to the 1966 Regulations (as substituted by the Commons Registration (General) (Amendment) Regulations 1989 (S.I. 1989/2167)) and submit the form, together with the prescribed fee, to the relevant authority.
5. There is no provision in the 2006 Act for statutory searches of the commons registers and, in due course, the existing search Form 21 will cease to exist. Consequently, a new question on commons registers has been incorporated into another widely-used conveyancing form, known as CON 29 Part II.
6. In making these Regulations, the Welsh Ministers will be exercising their powers under section 19(1) of the 1965 Act, which were devolved to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and are now exercisable by the Welsh Ministers by

virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. These Regulations are to be made under the negative resolution procedure.

Purpose and intended effect of the legislation

7. Registered common land and town or village greens are defined by the commons registers held by registration authorities. The registers show the extent of common land and greens, together with any rights which are exercisable over the land (such as rights to graze cattle).
8. The registration of land affects the use which can be made of the land. For example, registered common land is subject to restrictions on the type of works that can be carried-out on the land (such as fencing) and it is an offence to build on, or otherwise interfere with the enjoyment of, greens. People wishing to purchase land often therefore wish to find out whether the land is registered as common land or as a green, particularly where the land is in a rural area or is known to be close to a recognised area of common land or a green.
9. Accordingly, it is important that potential purchasers of land should be able to determine the status of the land and the statutory search procedure currently in operation makes that possible. However, as noted above, the implementation of the 2006 Act will take away the statutory search option and will instead allow a simpler non-statutory option to operate in England and Wales. The objective is to enable authorities to charge search fees at an appropriate rate without the need for further secondary legislation.
10. The CON 29 (Parts I and II) forms are non-statutory forms through which local authorities agree to supply information held by them in return for a fee. The forms are routinely used for local authority searches on almost all purchases of land and residential property. The content of the CON 29 forms is principally negotiated between the Local Government Association and the Law Society. Neither the UK Government nor the Welsh Assembly Government has a direct role in the content of those forms.
11. Home Information Packs (HIPs), which are designed to ensure that the seller of residential property makes available essential information about the property to potential purchasers, has recently been rolled-out in England and Wales. The launch of HIPs required modifications to be made to the CON 29 form. The Department for Environment, Food and Rural Affairs (Defra), after consultation with the Welsh Assembly Government, used this opportunity to reach agreement for an additional question relating to the commons registers to be included in the newly-modified Form CON 29 Part II, which now contains optional search questions that are not answered by the recipient local authority unless specifically selected (and where an additional fee is paid in respect of each of the additional questions asked).

Implementation

12. The Regulations were made on 4 September 2007, with an intended coming into force date of 1 October 2007. Defra will be bringing into force similar Regulations for England at the same time.

Consultation

13. Consultation with stakeholders has taken place at various stages since the publication of the *Common Land Policy Statement 2002*, in which Defra made its initial commitment to enabling search fees to be set at an appropriate rate without the need for secondary legislation. The new arrangements have been agreed and developed with the partners responsible for the management of the CON 29 forms, including the Local Government Association, the Law Society, the Council for Licensed Conveyancers and the Council of Property Search Organisations, and in co-ordination with the Department for Communities and Local Government.
14. Drafts of the new questions to be included in form CON 29 part II were presented to, and discussed by, attendees of the National Seminar on Common Land in September 2006, which was attended by representatives of a number of common land interests including commons registration authorities, landowners, members of the Wales Common Act Stakeholder Group and Welsh Assembly Government officials. In addition, briefing on the changes has been circulated to all commons registration authorities in Wales. With this, and the need to revoke the Form 21 search mechanism in order to avoid confusion, further consultation is considered unnecessary.

Regulatory Impact Assessment

15. A Regulatory Impact Assessment (RIA) was prepared for the Commons Bill in 2005. In relation to the searches relevant to this Memorandum, the outcomes of this RIA remain valid. A copy of the RIA is available at:
<http://www.defra.gov.uk/wildlife-countryside/issues/common/commonbill/pdf/full-ria.pdf>
16. The RIA noted that the change from statutory to non-statutory searches could result in a “wide variance in the charges made by commons registration authorities”, with search fees increasing for some users of the service. The RIA also noted that the change would facilitate electronic searches (which under the present stand-alone system, must be conducted manually), and that it would promote greater awareness and use of the search, thereby reducing the likelihood that purchasers will be unaware of the status of land they are thinking of purchasing.
17. The fee for a search using Form 21 was set in 2003 at £14. Under the Local Authorities (Charges for Land Searches) Regulations 1994 (S.I. 1994/1885), registration authorities are obliged, in relation to searches made using the CON 29 form, to set a fee which has regard to their costs. Where the costs incurred in responding to a search request exceed the present prescribed fee, the Welsh

Assembly Government takes the view that the full cost should be borne by the person commissioning the search, rather than council tax payers in general.

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