

Explanatory Memorandum to the Local Land Charges (Amendment) (Wales) Rules 2010.

This Explanatory Memorandum has been prepared by the Public Services Improvement Department of the Public Services and Local Government Delivery Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of amendments to the Local Land Charges (Amendments) (Wales) Rules 2010.

Jane E. Hutt

Minister for Business and Budget

8 August 2010

Description

1. These rules amend the Local Land Charges Rules 1977 by removing from Schedule 3 (fees) the whole entry for item 5 (personal search in the whole or in part of the register in respect of one parcel of land or, where the search extends to more than one parcel, those parcels). The fee is incompatible with the Environmental Information Regulations 2004 which implement Council Directive 2003/4/EC on public access to environmental information. The amendments revoke charges payable for personal searches of the Local Land Charges Register in Wales.

Matters of Special Interest to the Constitutional Affairs Committee

2. Section 14(3) of the Local Land Charges Act 1975 specifies that these rules must be made by statutory instrument subject to annulment.

Legislative Background

3. Provisions in the Local Land Charges Rules 1977 (SI 1977/985) as amended by the Local Land Charges (Amendment) Rules 2003 (SI 2003/2502) allow for the charging of fees of up to £11 for personal searches of the Local Land Charges Register in Wales.

4. The powers of the Lord Chancellor to make rules under Section 14 of the Local Land Charges Act 1975 were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044). The functions of the National Assembly

for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

These rules follow the negative resolution procedure.

Purpose and Intended Effect of the legislation

5. Under the powers granted to them (as set out in paragraph 4 above), Welsh Ministers have the power to prescribe fees for personal and official searches of the Local Land Charges Register. Welsh Ministers have yet to exercise that power, so the current fees payable in Wales for such searches are those set by the Lord Chancellor on 8 September 2003, under the Local Land Charges (Amendment) Rules 2003 (S.I. 2003/2502), and are currently set at £6 for an official search and £11 for a personal search.

6. The Environmental Information Regulations 2004 and the underlying EU Directive 2003/4/EC require that access to environmental information be available free of charge.

7. It does not appear to be possible to segregate environmental information from that information considered to be non-environmental in undertaking a personal search of the Local Land Charges Register. The only way to ensure consistency between the Local Land Charges Rules 1977 and the Environmental Information Regulations and the underlying EU Directive is for Welsh Ministers to make arrangements to revoke the prescribed fee. This instrument makes that change by removing from Schedule 3 the whole of the entry for item 5 of the Local Land Charges Rules 1977.

8. This is consistent with the position in England, where the UK Government is in the process of revoking the fee for personal searches of the Register in England (currently £22, as set in January 2010) by amending the Local Land Charge Rules 1977 as they apply in England.

9. Welsh Assembly Government officials are in consultation with the UK Government and Local Authorities (and their respective representative bodies) to assess the financial impact.

Consultation

10. There has not been any formal consultation on the change as the instrument is necessary to reflect European Law, as implemented in the Environmental Information Regulations, more accurately. The Welsh Local Government Association is aware of the position. A letter has been sent by the Welsh Assembly Government to local authorities in Wales to inform them of the intention to revoke the fee for personal searches of the Local Land Charges Register.

Regulatory Impact Assessment

11. A Regulatory Impact Assessment has not been prepared as these rules do not place any new obligation, duty or cost on another body and have no impact on Welsh Ministers' statutory duties (sections 77 to 79 Government of

Wales Act 2006) or statutory partners (sections 73 to 75 Government of Wales Act 2006).