

2008 No. 3248

HOUSING, ENGLAND

The Local Authorities (England) (Charges for Property Searches) Regulations 2008

Made - - - - *16th December 2008*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 150 of the Local Government and Housing Act 1989(a), and having, in accordance with section 152(6) of that Act, consulted such representatives of local government as appear to be appropriate:

In accordance with section 150(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (England) (Charges for Property Searches) Regulations 2008.

(2) These Regulations shall come into force seven days after the day on which they are made.

(3) These Regulations apply only to local authorities in England.

Interpretation

2.—(1) In these Regulations, “access to property records” means access to property records granted by a local authority in any of the following ways—

- (a) allowing a person to inspect or search property records at a place designated by the authority for doing so;
- (b) allowing the making of or providing copies of, property records; or
- (c) the electronic transmission of property records, or copies of such records,

and in these Regulations, the expression “access to property records” is to be construed accordingly.

(2) In these Regulations, a reference to a local authority “answering enquiries about a property” means—

- (a) the answering by the authority of any specific oral or written enquiries from a person about a property or property records; or

(a) 1989 c. 42. The powers under sections 150 and 152 of the Act are exercisable in relation to Wales, by the Welsh Ministers; see the reference to the Local Government and Housing Act 1989 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(b) the carrying out by the authority of any activities for the purposes of answering such enquiries.

(3) In these Regulations—

“financial year” means a period of twelve consecutive months ending with 31st March;

“free statutory information” means information required to be provided by a local authority under an enactment, where that enactment expressly—

- (a) prohibits a local authority from making a charge for doing so; or
- (b) requires that the authority provides the information free of charge;

“local authority” means—

- (a) a county council;
- (b) a district council;
- (c) a London Borough Council;
- (d) the Common Council of the City of London; and
- (e) the Council of the Isles of Scilly;

“internal transaction” means the granting of access to property records by one department of a local authority to another department of that authority;

“property” means a specified building or structure or specified land in relation to which property records are held by a local authority;

“property records”—

- (a) includes documents, registers, files and archives (held in any form by the local authority), which relate to a property;
- (b) includes information derived from such documents, registers, files and archives; but
- (c) excludes the local land charges register kept under section 3(2) of the Local Land Charges Act 1975(a);

“request” includes a written, oral, electronic or automated request; and

“unit charge” means the charge described in regulation 6(2).

Revocation and transitional provision

3.—(1) Subject to paragraph (3), the Local Authorities (Charges for Land Searches) Regulations 1994(b) are revoked in relation to England.

(2) These Regulations apply where a local authority receives—

- (a) a request for access to property records; or
- (b) enquiries about a property,

on or after the date these Regulations come into force.

(3) The Local Authorities (Charges for Land Searches) Regulations 1994 continue to apply where a local authority receives—

- (a) a request for access to property records; or
- (b) enquiries about a property,

before the date these Regulations come into force.

Scope of regulations 5 and 8

4.—(1) Subject to paragraphs (2) and (3), regulations 5 and 8 apply in respect of a local authority—

(a) 1975 c. 76.
(b) S.I. 1994/1885.

- (a) granting access to property records; or
- (b) answering enquiries about a property,

whether it does so under a power or duty, created or imposed by any enactment.

(2) Regulations 5 and 8 do not apply—

- (a) to anything in respect of which a local authority may or must impose a charge apart from these Regulations; or
- (b) in respect of access to free statutory information, except to the extent that a local authority is providing a service which is supplementary or incidental to that described in the enactment in question.

(3) Regulations 5 and 8 do not apply in respect of anything done in the course of exercising an excepted function.

Charges for access to property records

5.—(1) This regulation applies where a local authority grants access to property records to a person (including to another local authority).

(2) The authority may impose a charge on that person for granting such access if it makes or proposes to make an internal recharge (analogous to a charge) for internal transactions.

(3) The charges and recharges made under this regulation must be calculated in accordance with regulations 6 and 7.

Calculation of charges for access to property records

6.—(1) This regulation and regulation 7 make provision for the charges and internal recharges made under regulation 5(2) to be no more than the costs to the local authority of granting access to property records.

(2) Subject to paragraph (3), each charge or recharge (the “unit charge”) for access to property records made during a financial year must be calculated by—

- (a) dividing a reasonable estimate of the likely total costs to the local authority in granting access to property records (and performing internal transactions) during the financial year; by
- (b) a reasonable estimate of the number of requests for access to property records likely to be received (from another person or different departments of the authority) over that same financial year.

(3) A local authority must take all reasonable steps to ensure that over the course of any period of three consecutive financial years, the total income (including notional income from internal transactions) from such charges and recharges does not exceed the total costs of granting access to property records.

(4) Where under paragraph (2), a local authority makes an overestimate or underestimate of the unit charge for a financial year, it must take this into account in determining the unit charge for the following financial year.

(5) Each unit charge made during a financial year must be the same amount and must be applied on equal terms, regardless of whether it is made in relation to granting access to property records or internal transactions (although multiple unit charges may be made in respect of multiple requests for access or multiple transactions).

Interpretation of costs under regulation 6(1)

7.—(1) In regulation 6(1), “costs” means any costs to the local authority (including related salary costs and the costs of the creation and maintenance of records) reasonably incurred in connection with complying with a request for access to property records.

(2) In regulation 6(1), “costs” does not include—

- (a) such costs as the local authority incurs in granting access to free statutory information; or
- (b) such costs to the authority as are directly referable to the maintenance of free statutory information.

Charges by local authorities for answering enquiries about a property

8.—(1) Subject to paragraph (2), a local authority may charge a person (including another local authority) in respect of answering enquiries from that person about a property.

(2) Any charge made under paragraph (1) may be made at the local authority's discretion but must have regard to the costs to the local authority of answering enquiries about the property.

Transparency in relation to setting of charges

9.—(1) During each financial year, a local authority must publish a statement setting out—

- (a) the estimates the local authority has made under regulation 6(2) (estimates of total costs and estimates of numbers of requests) in respect of the unit charge for the following financial year;
- (b) the basis for those estimates; and
- (c) the amount of the unit charge it proposes for the following financial year.

(2) In respect of every financial year, beginning with that which ends on 31st March 2010, a local authority must publish by 30th June following the end of that financial year, a summary setting out—

- (a) the total costs to the authority in granting access to property records or performing internal transactions;
- (b) the number of requests to which these costs relate; and
- (c) the total income (or notional income) to the authority from charges and recharges made under regulation 5.

(3) In respect of every financial year, beginning with that which ends on 31st March 2010, a local authority must publish by 30th June following the end of that financial year, a summary setting out the total income to the authority from charges made under regulation 8 (answering enquiries about a property).

(4) The information to be published under this regulation must be approved by the person having responsibility for the administration of the financial affairs of the local authority under —

- (a) section 151 of the Local Government Act 1972^(a); or
- (b) in the case of the Common Council of the City of London, section 6 of the Local Government and Housing Act 1989^(b).

Signed by authority of the Secretary of State for Communities and Local Government

16th December 2008

Iain Wright
Parliamentary Under Secretary of State
Department for Communities and Local Government

(a) 1972. c. 70. Section 151 applies to the Council of the Isles of Scilly by virtue of section 265 of the Local Government Act 1972 and the Isles of Scilly Order 1978 (S.I. 1978/1844).

(b) 1989 c. 42.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations allow local authorities to make charges for services provided in connection with property searches, specifically “access to property records” and “answering enquiries about a property”. The interpretation of both expressions is dealt with in regulation 2, along with other relevant expressions.

Regulation 3 revokes the Local Authorities (Charges for Land Searches) Regulations 1994, but makes transitional provision in respect of the charges to be made by local authorities in respect of requests received while those Regulations were in force.

Regulation 4 provides that the charging arrangements set out in the Regulations apply whether or not a local authority provides the services under a power or duty. However, they do not apply where a local authority has another power to charge or is under a duty to do so. They also do not apply in respect of access to “free statutory information” (see regulation 2(3)).

Regulations 5, 6 and 7 deal with the calculation of charges for the granting by a local authority of access to property records. Regulation 6 provides that these charges must not amount to more than the costs of granting access. Specifically, each charge made (“the unit charge”), must be calculated by dividing an estimate of the total yearly costs in providing access by an estimate of the number of requests to be received that year. As the unit charge is based on estimates, paragraphs (4) and (5) provide that over a period of three consecutive years, a local authority must ensure that the total income from charges does not exceed their total costs. In addition, where a local authority has made an under or overestimate of the unit charge, it must take this into account in determining charges for the following year. Regulation 7 provides for the interpretation of “costs”.

Regulation 8 gives a local authority power to make charges in respect of answering enquiries about property. These charges must have regard to the costs to the local authority in answering enquiries.

Regulation 9 requires local authorities to publish certain information each year in connection with the charges made under these Regulations. Each year, a local authority must publish information relating to unit charges. Additionally, from 2010, each must publish a yearly summary of the total income and costs relating to access to property records, and a summary of the total income from answering enquiries. The information published under regulation 9 must be approved by the person having responsibility for the financial affairs of the authority.

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£5.00