

**EXPLANATORY MEMORANDUM TO  
THE LOCAL AUTHORITIES (CHARGES FOR PROPERTY SEARCHES) (WALES)  
REGULATIONS 2009**

**AND**

**THE LOCAL AUTHORITIES (CHARGES FOR PROPERTY SEARCHES) (DISAPPLICATION)  
(WALES) ORDER 2009**

This explanatory memorandum has been prepared by the Housing Directorate and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

In this memorandum:

The Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 are referred to as “the Charges Regulations”, and

The Local Authorities (Charges for Property Searches) (Disapplication) (Wales) Order 2009 is referred to as “the Disapplication Order”.

**Description**

1. The Charges Regulations enable local authorities to charge for the granting of access to property records held by an authority and for answering enquiries about a property. The charges for access must be no more than the cost to the local authority of granting access. The charges for answering enquiries must have regard to the costs to the local authority in answering.
2. The Charges Regulations also provide for the annual publication of information setting out how charges are calculated and summarising the total costs and income to the local authority under the Regulations. They revoke existing local authority powers under the Local Authority (Charges for Land Searches) Regulations 1994 (S.I. 1994/1885, “the 1994 Regulations”).
3. The Disapplication Order disapplies an alternative power for local authorities to charge for services.

**Matters of special interest to the Subordinate Legislation Committee**

4. The Charges Regulations are subject to the affirmative resolution procedure, and the Disapplication Order is subject to the negative resolution procedure. As they are directly linked this Explanatory Memorandum has been prepared to cover both. Similar legislation is being introduced in respect of England.

**Legislative Background**

5. The Charges Regulations are made under section 150 of the Local Government and Housing Act 1989, which enables the Welsh Ministers to make regulations providing that a charge may be imposed in respect of anything done of a particular description by a local authority (whether in pursuance of a power or duty). Under section 150(1)(c), this power can only be exercised “in respect of which there is no power or duty to impose a charge apart from the regulations”.

The Charges Regulations revoke existing powers in respect of property searches under the 1994 Regulations. Once this revocation occurs, the Directorate understands that local authorities could use another charging power under section 93(1) of the Local Government Act 2003 in respect of property searches. That power enables local authorities to make charges for discretionary services where there is no other power to charge for the provision of the service (subsection (2)(a)).

6. Consequently, the availability to local authorities of powers under section 93(1) of the Local Government Act 2003 potentially prevents the powers under section 150(1)(c) of the Local Government and Housing Act 1989 from being exercised. Therefore to enable further regulations under section 150(1) to be made once the 1994 Regulations are revoked, it is necessary to disapply section 93 of the 2003 Act. This is possible under section 94 of the 2003 Act.

7. The Charges Regulations are subject to the affirmative resolution procedure, and the Disapplication Order is subject to the negative resolution procedure. As both instruments are directly linked, the Disapplication Order must come into force at the same time as the Charges Regulations.

### **Purpose and intended effect of the legislation**

8. The Charges Regulations are being made in order to clarify the law on local authority charges for property searches and to provide for how charges are to be calculated. This is principally for the benefit of local authorities and the private searches sector, the latter is a significant consumer of local authority property search services. It has been argued that the interpretation of the 1994 Regulations gives rise to some questions. The Charges Regulations attempt to put these issues beyond doubt and facilitate effective competition between the public and private sectors so that ultimately consumers benefit from improved quality searches and better value for money.

9. The Charges Regulations are also being made to introduce a distinction between charges for accessing property records, and those for answering enquiries. They also aim to introduce transparency in the setting of charges by requiring the annual publication of relevant information.

10. Property searches are required in the home buying and selling process to ensure that consumers receive information on which to make informed decisions when buying a property. One of these searches, the 'Local Enquiries' search, is primarily intended to be the subject of the Charges Regulations, although the Regulations do provide for a charge in relation to other enquiries about a property, with some exclusions. It is not intended that the Regulations impose any duty on a local authority to grant access to property records.

11. Property searches are produced by local authorities or private sector search companies (PSCs) (the estimated UK current market split is 30:70 respectively – around 1.2 million searches in total are completed each year in the UK). However, local authorities have a natural monopoly over the unrefined data required to compile a property search. Local authorities incur costs in the collection, maintenance and storage of this information and may also incur additional expenditure in providing access to this information for the private sector e.g. managing appointment arrangements, printing, photocopying etc. In the Assembly Government's view local authorities have a power to charge for this, where appropriate (e.g. if the data does not have to be provided free of charge under statute) under the 1994 Regulations. However, both public and private sectors have questioned the clarity and purpose of these existing provisions.

12. In late 2005 the Office of Fair Trading (OFT) published “Property Searches – A Market Study”. This examined the searches market and made a number of recommendations to achieve a ‘level playing field’ in the market to ensure that competitiveness was improved.

13. One of the main recommendations was that, to deliver a level playing field, local authorities should make the basic unrefined information needed to compile a property search available to PSCs on the same basis that they themselves enjoy. This would mean local authorities providing the private sector with access to all the unrefined data and charging for it at a level that enabled authorities to recover the cost of providing the service. OFT recommended that:

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

The UK Government’s response noted that it favoured the option of local authorities recovering the costs of providing the service.

14. Currently some local authorities do not make all the necessary data available to the private sector arguing this is because they cannot recover the ‘real’ costs of doing so and as a result are subsidising the private sector. Their argument is twofold: (i) there is no clarity on how local authorities should charge; and (ii) some search companies are reluctant to pay for data (a temporary provision (until 31 December 2008) in the Home Information Pack Regulations allows PSCs to use insurance, in limited prescribed circumstances, if a local authority has a policy of denying access to data). There is evidence that the private sector is using insurance to avoid paying for available data. The end result is that consumers lose out by receiving incomplete searches.

15. The Charges Regulations therefore clarify local authority charging arrangements and revoke the 1994 Regulations. They are intended to facilitate access to relevant local authority held data as it will be clear when and how much local authorities should charge for access. It will therefore implement the recommendations made by the OFT to deliver effective competition in the delivery of property searches between the public and private sectors.

16. The policy behind the Disapplication Order is linked to the Charges Regulations, as it is necessary to enable those Regulations to be made.

## **Implementation**

17. It is intended that both the Charges Regulations and the Disapplication Order will come into force on 3 March

18. Non-statutory guidance for local authorities will be published to support the Charges Regulations. This will provide a step by step methodology for authorities to assess the relevant costs to price access to information. A draft of this guidance was included as part of the first public consultation in January to April 2008. It is being revised in light of the Charges Regulations and will be subject to further informal consultation with relevant stakeholders before being published alongside the Regulations coming into force.

19. Copies of the published guidance will be circulated to all local authorities and other key stakeholders and will be available free of charge on the Welsh Assembly Government’s website.

## **Consultation**

20. Prior to a consultation on the draft statutory instruments, the OFT's proposals were the subject of work by consultants KPMG on behalf of Government. This work resulted in a 12 week consultation of stakeholders in England and Wales<sup>1</sup> on proposals for future local authority charging arrangements for property search services between 18 January and 18 April 2008. This consultation proposed a model for local authorities to charge for unrefined data on a cost recovery basis. The consultation also included detailed draft guidance on how this could be achieved.

21. In total, 858 responses were received to the consultation. Three quarters of the responses were from the private sector (mainly two identical response letters); the other 25% were from local authorities. Local authorities overwhelmingly welcomed the proposals while the private search sector was circumspect or opposed. The OFT's response welcomed the direction set out in the consultation, noting that it believed "that the implementation of the course proposed in the consultation will lead to greater competition and efficiency in this sector, and as a result create savings for consumers."

22. Particular concerns of the private sector were that:

(i) Local authorities do not have powers to charge for data – This is based on two arguments: (a) that the 1994 Regulations do not permit local authorities to charge the private sector for data (this is not Government's view of the legislation but in any event the proposed new Charges Regulations would address this); and (b) all the necessary information is 'environmental information' and subject to the Environmental Information Regulations 2004 and cannot be charged for. It is possible that some property search information may fall within this definition but not all; each request for information needs to be treated on a case by case basis. However, the Charges Regulations do not apply where the information must be provided free of charge or a local authority makes charges using another power.

(ii) the proposed monitoring arrangements to ensure reasonable and transparent charges were insufficient to prevent 'unreasonable' charges. The proposed Charges Regulations were therefore drafted to include specific requirements on transparency. This will deliver standardisation for setting charges, transparency and a route for challenge to any 'unreasonable' charges.

23. The common factor between both the public and private sector responses was the need to address the issue of powers for local authorities to charge and provide clarity on this issue. The introduction of revised charging regulations was therefore proposed to deliver this clarity, provide a transparent basis for local authorities to charge for the unrefined data i.e. on an equal basis for both public and private sectors, and to improve access to data as a result. A further consultation on the draft statutory instruments for an 8 week period was therefore carried out jointly between the UK and Assembly Governments from 29 July to 30 September.

24. 225 responses were received to this consultation. Again, responses fell broadly into the same two categories with local authorities welcoming the proposals and the private sector opposing (with one notable exception), raising the same concerns as before (see 8.3). The UK and Assembly Governments believe that these concerns are addressed in a proportionate way through the Charges Regulations as they:

- provide clarity on the what local authorities can charge for;
- prescribe how charges must be assessed;
- prohibit authorities from including a profit margin in providing access to data;
- require authorities to publish annual information on unit charges and a summary of total income and costs; and

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<sup>1</sup> Local Authority Property Search Services: Charges for Property Search Services A Consultation Paper.

- require authorities to adjust charges for any over/under recovery of costs over a 3 year period.

A detailed joint analysis comprising both consultations can be found on the Welsh Assembly Government website.

### **Regulatory Impact Assessment**

25. The impact on business is up to £25.4m in England and Wales - a proportion of these costs should be incurred under the existing charging arrangements but there is evidence that the private sector is using insurance instead to avoid paying for the available data.

26. The impact on the public sector in England and Wales is an equivalent benefit i.e. up to £25.4m.

27. A Regulatory Impact Assessment, prepared by the Department for Communities and Local Government is attached below for information. This shows net benefits in England and Wales of £4.8m-6.7m. The chief beneficiaries will be consumers as a result of greater competition based on the OFT's envisaged level playing field. This will place pressures on search prices to fall in the medium to longer term. In the short term, as the market adjusts, effects on search prices will be minimal. However in both scenarios consumers will benefit from better quality private sector searches (i.e. containing all the necessary data) and therefore better value for money.

### **Post implementation review**

28. The intended outcomes of the instruments are that:

- the private sector will be able to access all the relevant data;
- local authorities will be able to recover the costs of delivering the service; and
- consumers will realise benefits from improved quality property searches at competitive prices.

29. As a result of the Charges Regulations, from 2010-11 authorities would be required to publish an annual assessment that sets out the costs and income to the authority in providing access to unrefined data property records. Government will also continue to monitor informally the levels of access to data and average costs of property searches to consumers.

## Summary: Intervention & Options

Department /Agency: Housing Directorate	Title: Impact Assessment of Introducing Cost Recovery Guidance to Local Authorities for Property Search Data	
Stage: <b>Final Proposal</b>	Version: 1	Date: <b>January 2009</b>
<p style="color: #0070c0;">Related Publications:</p> <p><b>1) Communities and Local Government (CLG)/Ministry of Justice (MoJ) Local Authority Property Search Services: Charges for Property Search Services: A Consultation Paper;</b></p> <p><b>2) CLG/Welsh Assembly Government - Local Authorities (England) (Charges for Property Searches) Regulations, Local Authorities (Charges for Property Searches) (Wales) Regulations, Consultation.</b></p>		

**What is the problem under consideration? Why is government intervention necessary?**

Local Authorities (LAs) hold unrefined data required to compile property searches necessary to inform consumers as part of the home buying and selling process. LAs incur costs in the collection, maintenance, storage of this data and in the provision of access to such data by individuals and private search companies (PSCs).

For effective competition to exist between public and private sectors in the provision of property searches, unrefined data should be both accessible and supplied to each party on an equal cost basis.

At present there is evidence that in some LAs competition is being distorted by over/ under pricing of data or non-cost barriers to access to the data (e.g. excessive waiting times). Some LAs currently restrict access to the necessary data and in such circumstances PSCs are able to use insurance to cover data gaps. This is a transitional arrangement in the Home Information Pack Regulations which in practice is now also contributing to distorting the searches market. The provision is set to end on 6 April 2009.

**What are the policy objectives and the intended effects?**

The Office of Fair Trading (OFT) report 'Property searches – A market study' (2005) stated that Central Government should provide clear guidance for LAs on how they should recover their costs in delivering property search services.

LAs recovering costs would improve access to the necessary data and contribute to creating the level playing field for access to unrefined data envisaged by the OFT. In turn, this should facilitate effective competition in the delivery of searches; improve the quality of searches; and, secure better value for money for consumers.

**What policy options have been considered? Please justify any preferred option.**

Leading on from the OFT report, KMPG were commissioned to assess a number of charging models. Based on this work and related local government charging policy a 'cost recovery' model was proposed.

This impact assessment (IA) provides an analysis of the effects of such a costing regime. It has been prepared by the UK Government to cover England and Wales and has been informed by the two consultations highlighted above in the 'Related Publications' section.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The operation of HIPs will be evaluated as part of an NAO value for money study to be undertaken in 2010/11 and a refresh of the UK Government's 2006 baseline study which is planned for 2010. As a result of the proposed charging arrangements, from 2010-11 LAs will be required to publish an annual assessment that sets out the costs and income to the authority in providing access to unrefined data property records.

## Summary: Analysis & Evidence

Policy Option: A	Description: Cost recovery charging guidance for unrefined data
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COSTS	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  Increase in cost for PSCs (may be passed on in part to consumers) of purchasing unrefined data - likely to be eroded by competition over time.  LA loss of revenue from duplicate searches.				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"><b>One-off</b> (Transition)</td> <td style="text-align: right;"><b>Yrs</b></td> </tr> <tr> <td style="background-color: #f0e68c;">£</td> <td></td> </tr> </table>		<b>One-off</b> (Transition)	<b>Yrs</b>	£	
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<table style="width: 100%; border-collapse: collapse;"> <tr> <td><b>Average Annual Cost</b> (excluding one-off)</td> </tr> <tr> <td style="background-color: #f0e68c;">£ 31m to 38m</td> </tr> </table>	<b>Average Annual Cost</b> (excluding one-off)	£ 31m to 38m				
<b>Average Annual Cost</b> (excluding one-off)						
£ 31m to 38m						
<b>Total Cost (PV)</b> £ 373m-452m						

### Other key non-monetised costs by 'main affected groups'

Potential for legal challenge to LAs if they set unreasonable charges despite the prescribed cost recovery methodology. .

BENEFITS	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  LAs able to recover costs and eliminate potential burden.  Reduced costs to PSCs from insurance  Reduced consumer costs due to duplication and better value for money from improved quality of personal searches				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"><b>One-off</b></td> <td style="text-align: right;"><b>Yrs</b></td> </tr> <tr> <td style="background-color: #f0e68c;">£</td> <td></td> </tr> </table>		<b>One-off</b>	<b>Yrs</b>	£	
	<b>One-off</b>		<b>Yrs</b>			
£						
<table style="width: 100%; border-collapse: collapse;"> <tr> <td><b>Average Annual Benefit</b> (excluding one-off)</td> </tr> <tr> <td style="background-color: #f0e68c;">£ 36m to 45m</td> </tr> </table>	<b>Average Annual Benefit</b> (excluding one-off)	£ 36m to 45m				
<b>Average Annual Benefit</b> (excluding one-off)						
£ 36m to 45m						
<b>Total Benefit (PV)</b> £ 430m- 532m						

### Other key non-monetised benefits by 'main affected groups'

More effective competition, better quality and improved services for consumers.

Clear legal framework for LA and PSCs to work with.

Potential increased market share for PSCs and LAs.

Key assumptions listed in evidence base.

The range of costs of benefits are based on different assumptions outlined in Table 5.

Price Base Year 2007	Time Period Years 15	<b>Net Benefit Range</b> (NPV) <b>£57- 80m</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£69m</b>
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?	04 March 2009				
Which organisation(s) will enforce the policy?	LA audit process				
What is the total annual cost of enforcement for these organisations?	£ Nil				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	Yes				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro</td> <td style="width: 25%;">Small</td> <td style="width: 25%;">Medium</td> <td style="width: 25%;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Increase of	£	Decrease of	£	<b>Net Impact</b>	£ N/A
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Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

## Evidence Base (for summary sheets)

### IMPACTS OF THE LOCAL AUTHORITIES (CHARGES FOR PROPERTY SEARCHES) REGULATIONS ON A TYPICAL LOCAL AUTHORITY (LA) & PERSONAL SEARCH COMPANY (PSC)

#### Current situation

There are two property searches required in the home buying and selling process which are necessary to ensure that consumers get the right information on which to make informed decisions when buying a property:

(i) the 'Local Enquiries' search – the subject of the Local Authorities (Charges for Property Searches) Regulations; and,

(ii) a search of the Local Land Charges Register (LLCR) – which if produced by a LA is charged on a cost recovery basis whereas its private sector equivalent is currently subject to a statutory £11 fee in Wales (set historically by the Ministry of Justice under the Local Land Charges Act 1975). The power to set fees for this search in Wales now sits with Welsh Ministers and a consultation on the fee level is planned for 2009.

Property searches are produced by LAs or private sector search companies (PSCs), in the latter case known as 'personal searches'. The data to compile the Local Enquiries search is held by Local Authorities (LAs). LAs have a power to charge for this data, where appropriate (e.g. if it does not have to be provided free of charge on a public register) under Local Authority (Charges for Land Searches) Regulations 1994. However, currently in practice only 15-22.5% of PSCs pay for this, others avoid paying by using insurance instead. The Home Information Packs (No2) Regulations 2007 contain a transitional provision (to 5 April 2009) enabling PSCs to use insurance, in limited circumstances, if a LA restricts access to data. Many LAs state they provide the data but PSCs do not obtain it relying on insurance instead because it is cheaper. This would not be compliant with the insurance provision in the HIPs Regulations.

In late 2005 the Office of Fair Trading (OFT) published "Property Searches – A Market Study". This examined the market and made a number of recommendations to ensure not only that it continued to function well but that competitiveness was improved. The UK Government accepted the report and endorsed its recommendations.

One of the main recommendations was that local authorities should make the basic information needed for a search available to PSCs on the same basis as to themselves to ensure a level playing field. This would mean full access to information and a clear basis for charging. It recommended that:

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

#### Rationale for government intervention

LAs have a natural monopoly over the unrefined data required to compile property searches. They incur costs in the collection, maintenance and storage of this information and may also incur additional expenditure in providing access to this information (e.g. managing appointment arrangements, printing, photocopying etc). LAs should be able to recover these costs. If this were not the case then LAs would effectively be subsidising the cost of providing PSCs access to data – thereby distorting competition in the process. LAs have powers, where appropriate to charge for access to the data used in compiling a Local Enquiries search. However, both public and private sectors have questioned the clarity and usefulness of these existing provisions.

For effective competition to exist in the market for compiling property searches, the unrefined data must be made available on terms that do not discriminate against PSCs on the basis of their status. Specifically, LAs should offer access to others on comparable terms to those of LAs themselves when they compile local property searches. The OFT believed that this would effectively create a 'level playing field' fostering competition and a better deal for consumers.

As a consequence, competition in the market for property searches, where LAs and the private sector offer search services, is not yet fully effective. In effect, there is a market failure.

The market failure is in two broad forms:

**Firstly**, where LAs erect barriers (monetary or otherwise) which impede PSCs. This takes a number of forms:

1. **Restricting access to one or more of the search records** – while PSCs are currently allowed to use insurance in such cases the ability for PSCs to compete with LAs on the basis of quality is hampered. This raises questions about whether personal searches in some circumstances are acceptable to solicitors or mortgage lenders e.g. because the search report is incomplete. Conversely, by using insurance, PSCs are able to undercut LA search prices, again distorting the market.
2. **Allowing access, but imposing ‘unreasonable’ arrangements** – for example where the number of appointments per PSC a day may be restricted. This may give LAs an advantage in terms of turnaround time, but in doing so leads to delays in the time taken to produce Home Information Packs (HIPs)
3. **Allowing access, but setting access charges at a level above the recovery of their costs** – this might reduce incentives on LAs to price competitively, be cost efficient and innovate. This in turn could impact negatively on the price paid by consumers as LAs are the sole data holder e.g. costs can vary for the same piece of data (from £5 to £69.50).

**Secondly, where a LA incurs a cost of compiling data** yet does not charge for it. In effect the LA subsidises the PSC. In this case the PSC gains an unfair competitive advantage over LA's. Many LAs claim they already make data available but PSCs do not obtain it so as to save costs and gain a market advantage by using insurance instead. In effect LAs are not realising the ‘real’ costs currently of providing the service.

## Proposal

The Consultation paper ‘*Local Authority Property Search Services: Charges for Property Search Services*’ published in January 2008<sup>2</sup> proposed a model enabling LAs to charge, where appropriate, for unrefined data on a cost recovery basis (see consultation paper for more details). To implement the cost recovery model proposed, and to provide the necessary clarity on charging that all parties seek, the Local Authorities (Charges for Property Searches) Regulations 2008 are being introduced.

The Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 would, in respect of Wales, provide LAs with a standardised, transparent and auditable framework for charging for property search services. Similar Regulations are being made for England (The Local Authorities (England) (Charges for Property Searches) Regulations 2008).

The Welsh and English Regulations would:

- enable LAs to recover the actual costs of delivering the service i.e. a clear and fair basis for LAs/private searches to compete;
- maximise the number of LAs providing access thereby contributing to the level playing field;
- improve the quality of the product and value for money for consumers;
- reduce duplicate searches on the basis of incompleteness.

Given the limited availability of reliable data, this IA has necessarily had to adopt a number of assumptions. A number of these have been updated in light of the responses to the consultation on a draft of the proposed Regulations published in July 2008<sup>3</sup>. These include assumptions for the:

- cost of insurance per search;
- current market split between LAs and PSCs; and
- proportion of PSCs using insurance instead of providing data.

This IA assumes a worse case scenario based on the possibility that PSCs could pass on any new costs to the consumer. On that basis the IA indicates that the benefits of the proposals should outweigh the costs but that in the short term there may be a minimal rise in the cost of PSC searches as the market adjusts but this will be heavily dependent on market restraints, e.g. potential resulting falls in LA property search prices as they would be recouping the ‘actual’ costs of providing the service. Search costs, would therefore erode over time from the resulting competition.

The range of costs and benefits are based on the assumptions set out in Table 5 (see Annex). The Data is for both England and Wales.

<sup>2</sup> Available at <http://www.justice.gov.uk/docs/property-search-consultation-part1.pdf>

<sup>3</sup> Available at <http://www.communities.gov.uk/publications/housing/chargespropertysearch>

## Intended Effect

### Assumptions

**1.2 million** – average total number of annual searches.<sup>4</sup>

**35:65 to 20:80** - range of estimates of the current market split between LAs and PSCs.

**780,000 – 960,000** - number of PSC searches per year.

**£33** - average cost of unrefined data set.<sup>5</sup>

**£115** - average cost of LA compiled search.

**£85** - average cost of PSC compiled search.

**£5.50** - average cost of insurance per search (taken from and estimated range of £4 - £7).

**50%** - proportion of insurance costs that cover omissions in data.

*Details of how these figs are calculated are set out in the annex to this IA. Note figures may not sum due to rounding.*

**50%** - proportion of data charged at cost is covered by insurance.

**15-22 ½ %** - proportion of PSCs paying for unrefined data despite the availability of data

(Therefore – **30-45%** - proportion of data covered by charge for access)

**30-15%** - proportion of PSCs accessing some data for free.

**41%** - proportion of LAs 'restrict' access to unrefined data

**56-63 ½%** - proportion of PSCs using insurance

**25%** - of PSC searches with insurance are duplicated

### Current position

Between 15 and 22½% of PSCs currently pay for unrefined data (despite data being available) and thus the revenue received by LAs is between £3.5m and £6.3m. Where there is (i) no charge for data and (ii) where data is available at a charge but insurance is used (assumed half of where data is charged) LAs in total should receive between £14.4m and £15.6m – this is a current potential burden on the LA.

An estimated 41% of LAs 'restrict' access to some unrefined data (e.g. it is not available to inspect). In these cases LAs forego any revenue they may receive, whilst PSCs may use insurance to cover missing data. LAs could receive revenue of between £8.0m and £9.8m for this 'restricted' data.

Where insurance is used to cover gaps in searches consumers do not receive all the required information, limiting the usefulness of the search. In addition, indications are that some searches with insurance are being rejected by solicitors, requiring the buyer to buy an additional search to duplicate the one provided by the seller. If 25% of searches with insurance are being duplicated, the effective price of searches for consumers would be considerably higher. Instead of paying an average £85 for a PSC search – because of duplication – 25% of consumers may effectively pay an average £200 for a search i.e. £85 plus the additional average £115 for a replacement from the LA.

### Impact of the Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 (together with the corresponding English Regulations).

By recovering the actual costs of providing the unrefined data, LAs would not have to bear all the cost of delivering the service. **LA revenue received could therefore rise by between £22.3m and £25.4m** (given 50% of data charges are avoided by PSCs using insurance). However, **LAs will lose the potential revenue gained from searches that are currently duplicated**; on the other hand this would be to the benefit of consumers (see below). This loss – minus the cost incurred in producing – is estimated at between **£9.0m and £12.5m**.

For **PSCs there is a cost of between £22.3m and £25.4m** for purchasing the available data. A proportion of these costs should be incurred under the existing charging arrangements but are avoided by the use of insurance. However, the cost is offset slightly by the **savings from insurance to cover omissions in data** (assumed to be 50% of total PSCs insurance costs), **which is estimated at between £1.2m and £1.7m** (£5.50 paid on each search with insurance – estimated at 56% - 63½% of PSC searches). It is possible therefore that the cost of a PSC search could potentially rise if this cost is passed onto consumers. Market restraints will be a key factor here e.g. competition between search providers and with LAs (LA search prices have fallen by on average 23% in the last 18 months) in a contracting housing market.

<sup>4</sup> Note: although we expect the number of transactions to fall this year, because the appraisal period is 15 years, we assume the size of the market remains at 2006 levels i.e. 1.2 million searches in total.

<sup>5</sup> CLG survey – April 2007

Any potential costs to consumers will also be offset by eliminating the need for duplicate searches (as a result of missing data). If we assume 25% of searches with insurance are rejected by solicitors and consumers thus have to purchase a duplicate search from a LA (at £115) the **savings would be between £12.6m and £17.5m.**

Furthermore, the quality of searches will be improved by the Regulations, since consumers will be provided with complete searches. The use of insurance by PSCs ends on 5 April 2009. Therefore without including all the data, PSCs will not be able to continue to compile searches. The proposals will therefore deliver **better quality personal searches and better value for money for consumers.**

### Summary matrix

	Benefits	Costs
LAs	<b>Will recover actual costs - additional revenue</b> from charging for unrefined data, <b>between £22.3m and £25.4m.</b>	<b>Revenue gained from duplicate searches,</b> less cost of data, <b>between £9.0m and £12.5m.</b>
PSCs	<b>Saving from insurance, between £1.2m and £1.7m.</b>	
Consumers	<p><b>Better value for money - savings from potential duplication, between £12.6m and £17.5m.</b></p> <p><b>Greater efficiency in delivery</b> of searches from improved competition.</p> <p><b>Better quality searches</b> with all the data provided.</p>	<p>↑</p> <p><b>Cost of unrefined data, between £22.4m and £25.4m*</b></p> <p>↓</p>
Total	<b>Between £36.1m and £46.3m</b>	<b>Between £31.3m and £37.9m</b>

\* A proportion of these costs should be incurred under the existing charging arrangements but are avoided through the use of insurance.

### Impact of any change to the fee for a personal search of the Local Land Charges Register (LLCR)

The impacts of the Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 are closely tied to the £11 statutory fee for a personal search of the (LLCR). Many LAs claim they have to subsidise the costs of this search from their charges for property search services as the current £11 fee is insufficient to cover the cost of delivering that service. The Charging Regulations prevent cross-subsidisation in the calculation of the unrefined data.

Ministry of Justice (MoJ) is currently reviewing the statutory fee for a personal search of the LLCR following consultation earlier this year. One outcome is that the fee may change. This, taken with the impact of this IA, would impact on the overall costs of property searches and the resulting market dynamic.

Welsh Ministers plan to consult during 2009 on the level of fees to be charged in Wales for both official and personal searches of the Local Land Charges Register.

### Conclusion

The proposals deliver an overall estimated net benefit of £4.8m-£6.7m per annum across Wales and England. They will deliver greater, and more effective, competition between LAs and the private sector. Consumers will

benefit from better quality personal searches and therefore realise better value for money – at present many searches are compiled with incomplete data.

The Regulations will facilitate the removal of the potential for personal searches to be rejected by a buyer's solicitor on the grounds that they are incomplete. In practice this means that currently the effective cost of a PSC search is higher than the advertised cost.

PSCs and LAs need to remain competitive, (there has already been a 23% reduction in LA search prices) therefore market pressures will restrain the ability of PSCs to pass on any additional costs. The outcome of MoJ's and the Welsh Assembly Government's work could add further to these market pressures and, combined with the effect of the Charging Regulations, lead to further reductions in LA prices. This improved competition, based on the OFT's envisaged 'level playing field', will place pressures on search prices to fall in the medium to longer term. In the short term, as the market adjusts, effects on search prices will be minimal.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Competition assessment

The Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 aim to contribute to the level playing field envisaged by the OFT by correcting the market failures that currently exist. The Regulations will enhance competition for local enquiry searches to the benefit of consumers – a view supported by the OFT in response to the January 2008 consultation.

With no intervention – and the ability to use insurance ending on 5 April 2009 - in areas where LAs restrict access to data, PSCs would no longer be able to complete searches. This would effectively give LAs a monopoly.

### Small firms' impact

The Regulations contribute to facilitating equal access to unrefined data for PSCs (large and small). If the Regulations were not introduced – and the temporary insurance provision ended – PSCs could be excluded from the market in areas where there was no access to certain LA data.

While unrefined data costs will impact on small firms, these are not new costs. LAs currently charge for unrefined data but only 15-22½% of search companies (no break down by size exists) pay for it. Others rely on insurance which if used a mechanism to avoid charges would not be compliant with the temporary insurance provision in the HIPs Regulations.

Equal access to LA held data at the same set price (i.e. the same for all those compiling searches regardless of the size of the company) will increase the quality of private sector searches. This will enable fairer competition for small and larger search companies both with LAs and with other PSCs because they will also be able to provide all the required data. This will eliminate the issue of duplicate searches as a result of incomplete data and thereby help improve the reputation of PSC searches.

With a uniform price for the data set and an improved product (containing all the data) there is scope for all PSCs to increase market share (including small firms).

### Risk assessment

There are two potential risks arising from the 'cost recovery' model:

- LAs will set 'unreasonable' charges for data, increasing search costs with no quick avenue to challenge them - the proposed Charging Regulations with related supporting guidance, and related LA accountancy and monitoring regimes will provide arrangements to restrain data costs, provide transparency and an avenue for challenge consistent with other LA regimes; and
- LAs will continue to restrict access - LAs have long argued that if they can recover costs then access would not be an issue. Levels of access are improving and the Charging Regulations are designed to improve this further.

### Calculations

Note: although we expect the number of transactions to fall this year, because the appraisal period is 15 years, we assume the size of the market remains at 2006 levels i.e. 1.2 million searches in total.

From the consultation document:

**Table 1: Average cost of data per LA**

Average cost	Planning £1.75	Building £10.69	Traffic £13.70	Roads £6.90	Total £33.04
Provide access free	181	62	29	75	
Charge for access	14	50	29	27	
Restrict access	8	62	40	12	
Sample	203	174	98	114	

Source: CLG Survey – April 2007

Calculating the proportions by individual data subject (e.g. for those LAs providing access for free 181 divided by planning sample of 203 gives 89%).

**Table 2: Proportion of LAs**

	Planning	Building	Traffic	Roads
Provide access free	89%	36%	30%	66%
Charge for access	7%	29%	30%	24%
Restrict access	4%	36%	41%	11%

Source: CLG Survey – April 2007

Using both tables above we can calculate weighted costs. For example, 89% of LAs currently give free access, and thus in future will have to pay £1.75 for planning data. This gives an addition cost of £1.2m (when multiplied by the number of PSC searches).

The total column thus gives the total costs across the four data groups who currently provide, charge and restrict access. Thus the additional cost of £22.3m is calculated from the total revenue from LAs that currently provide free access, plus the cost of those who restrict access, plus our assumption that 50% of data currently charged for is covered by insurance instead. This gives us £22.3m.

**Table 3: Estimated additional cost of data (a)**

	Planning	Building	Traffic	Roads	total
Provide access free	£1,217,069	£2,971,083	£3,162,184	£3,540,789	<b>£10,891,125</b>
Charge for access	£94,138	£2,396,034	£3,162,184	£1,274,684	<b>£6,927,040</b>
Restrict access	£53,793	£2,971,083	£4,361,633	£566,526	<b>£7,953,035</b>

Source: CLG Survey – April 2007

Although the above results relate directly to the January 2008 consultation document, traffic and roads data is predominantly not held by District and Borough Councils, but by County Councils. Therefore it is possible that many LAs who stated they gave free access simply do not hold the data and data would be available at cost from the County Council. This means that the 30% and 66% allowing free access to traffic and roads data (table 2) may be overestimated.

As a result we assume half do not hold the information, but are charged by the County Council. This increases the 'charge for access' for traffic and roads to 45% and 57% respectively (with 15% and 33% providing free access for traffic and roads respectively). Once again we assume half of those charged for access will use insurance. However, assuming an 20:80 split between search undertaken by LAs and PSCs (therefore 960,000 searches are undertaken by PSCs), using the same methodology as above, gives an additional cost of £25.4m. Table 4, provides the estimated costs of data, given the two changes to the split between the numbers of searches undertaken by LAs and PSCs and the change to the proportions in table 2.

**Table 4: Estimated additional cost of data (b)**

	Planning	Building	Traffic	Roads	Total
Provide access free	£1,497,931	£3,656,717	£1,945,959	£2,178,947	<b>£9,279,555</b>
Charge for access	£115,862	£2,948,966	£5,837,878	£3,747,789	<b>£12,650,495</b>
Restrict access	£66,207	£3,656,717	£5,368,163	£697,263	<b>£9,788,351</b>

Source: CLG Survey – April 2007

From table 2 above, we also calculate our estimates of those who currently provide for free, charge and restrict access for all data – this is needed to work out how many use insurance and hence savings and the savings from duplicate searches.

Traffic is the most expensive component of data. Currently 30% of LAs provide free access to traffic data. The corresponding figure for all other data groups is greater (thus we assume that if there is free access to traffic data, there is also likely to be free access to the other components). As a result, we have a maximum estimate of 30% provide free access to all data.

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Corresponding figures show 41% currently restrict access to traffic data and 30% charge for access. These figures are treated as minimums. Given our assumption that half of those charged for data, use insurance instead – this gives a best estimate of 56% of PSC searches currently use insurance (half of 30% of those that charge for access and the full 41% that restrict access).

Given our assumptions of traffic and roads data outlined above, the estimates above are adjusted. This gives up to 63½% of PSCs using insurance (half of 45% of those that charge for access and the full 41% that restrict access), 15% providing free access and 22½% paying for unrefined data. These figures partly determine the range used throughout the IA.

The other determinant of the range is the market split between LAs and PSCs with the range of 20:80 and 35:65 used. Given these the net benefits for the following scenarios with differing assumptions, have been estimated:

**Table 5: Matrix of Scenarios**

	35:65 split	20:80 split
56% of PSCs searches using insurance and other associated proportions <sup>6</sup> .	A : Lowest net benefit	B: Medium net benefit
63½% of PSCs searches using insurance and other associated proportions <sup>7</sup> .	C: Medium net benefit	D: Highest net benefit

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Scenarios A and D provide the lowest and highest net benefits of the four scenarios in Table 5. Consequently, these figures form the ranges found throughout this IA, with scenarios B and C falling between this range.

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<sup>6</sup> Including 15% proportion of PSCs paying for unrefined data; 30% proportion of data covered by charge for access and 30% proportion of PSCs accessing some data for free.

<sup>7</sup> Including 22½% proportion of PSCs paying for unrefined data; 45% proportion of data covered by charge for access and 15% proportion of PSCs accessing some data for free.