

SL(5)752 – The Local Land Charges (Fees) (Wales) Rules 2021

Background and Purpose

These Rules prescribe the fees payable to the Chief Land Registrar for various services relating to local land charges affecting land in Wales. Those services are provided under the Local Land Charges Act 1975 (“1975 Act”) and the Local Land Charges Rules 2018. The fees prescribed in these Rules replace the fees specified by rule 14 of and Schedule 3 to the Local Land Charges Rules 1977 for similar services relating to local land charges provided by local authorities in Wales. These Rules have effect in the administrative area of a local authority on or after the date specified in a notice given by the Chief Land Registrar to that local authority in accordance with Part 4 of Schedule 5 to the Infrastructure Act 2015.

The services for which fees are payable are set out in the Schedule. Paragraphs (1) to (4) are services in connection with light obstruction notices, which are a particular type of local land charge. Under paragraph (5), a fee is payable for an official search of the register – that fee is not payable if an application for such a search is received within 6 months of an earlier application by the same person, in relation to the same land, for which a fee was paid.

Procedure

Negative

The Rules were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Rules within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Rules are made under section 14(1) of the 1975 Act, which provides that:

“The Lord Chancellor may, with the concurrence of the Treasury as to fees, make rules for carrying this Act into effect”.



These Rules contain provisions which set fees for certain local land charges.

The equivalent rules in place in England – the Local Land Charges Fees (England) Rules 2018 – were made under the same enabling power, with the agreement of the Treasury.

We note the following paragraph in the Explanatory Memorandum:

“The power of the Lord Chancellor under section 14(1)(h) of the 1975 Act, so far as it is exercisable in relation to Wales, was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2004. Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.”

This explains the transfer of the Lord Chancellor’s power to the Welsh Ministers, but does not reference the function of the Treasury. There is no reference within these Rules or the Explanatory Memorandum to the Treasury agreeing to the making of these Rules.

It would be helpful to understand the Welsh Government’s legal basis for making these Rules if the agreement of the Treasury has not been obtained.

Welsh Government response

Welsh Ministers are not required to obtain Treasury consent before exercising their function under section 14(1)(h) of the Local Land Charges Act 1975 (the 1975 Act).

That function of making rules was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2004 (the 2004 TFO) and subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The 2004 TFO was made under sections 22 and 24(1) of and paragraphs 1, 3 and 9 of Schedule 3 to the Government of Wales Act 1998 (the 1998 Act). Section 22 of the 1998 Act applies Schedule 3 of the 1998 Act.

Paragraph 9(1)(a) of Schedule 3 to the 1998 Act applies where a function of a Minister of the Crown (MoC) is exercisable only with the agreement of, or after consultation with, another MoC. Section 155(1) of the 1998 Act defines a MoC and includes the Treasury.

Paragraph 9(2) of Schedule 3 to the 1998 Act provides an Order under section 22 of the 1998 Act transferring a function to the NAFW shall be free from that requirement unless the Order provides otherwise.

The 2004 TFO does not provide otherwise. Accordingly Welsh Ministers are not required to obtain Treasury consent when exercising the function under section 14(1) of the 1975 Act.



Committee Consideration

The Committee considered the instrument and Government response at its meeting on 8 March 2021 and reports to the Senedd in line with the reporting point above. In addition, the Committee agreed to seek further clarification in respect of the Welsh Government's response.

