

Annexe E

Legal framework in England and Wales

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1 LOCAL AUTHORITIES IN ENGLAND AND WALES: LEGAL AND REGULATORY FRAMEWORK FOR PROPERTY SEARCH INFORMATION

Introduction

- 1.1 Local authorities (LAs) operate within a complex framework of legislation, regulations and guidelines. LAs refer to this framework when setting fees and access conditions for unrefined property information, and for the official search forms they compile using the unrefined property information. Tables 2.1 to 2.3 in Chapter 2 of this annexe list the relevant statutes, regulations and guidelines, and the access conditions and fees pertaining to each type of property information held by LAs.
- 1.2 The information in this annexe and in the accompanying table of statutes, regulations and guidelines was compiled from a variety of different sources, including relevant government departments,¹ members of the Association of Council Secretaries and the Local Land Charges Institute, a sample of LAs, major property search companies (PSCs) and the Council of Property Search Organisations (CoPSO). The information presented here is believed to be essentially correct but, due to the number and complexity of the statutes and regulations involved and the interrelationships between them, there remain some information gaps and the possibility of some inaccuracies.

Types of search

- 1.3 A search of the unrefined property information held by LAs can be conducted in two different ways. The 'official' route² is where the LA compiles the results

¹ The Office of the Deputy Prime Minister (ODPM), Department for Constitutional Affairs (DCA), Department for the Environment, Transport and the Regions (DETR), National Assembly for Wales (NAfW), and the Office of Public Sector Information (OPSI - formerly HMSO).

² An official search of the Local Land Charges Register carried out under section 9 of the Local Land Charges Act 1975 or a search carried out by LA officials of the other statutory registers and property information that they hold.

of the search based on the unrefined information it holds, and presents it on standard search forms (the usual search results needed in every transaction are provided on the LLC1 and CON29 part 1 forms).³ Throughout this annexe we will refer to these searches collectively as **local property searches**.

1.4 Alternatively, conveyancers can search the unrefined themselves, or more usually, commission a compiler such as a PSC to do so on their behalf. There are three categories of unrefined information:

- information made available for public inspection for a fee
- information made available for public inspection free of charge, and
- information only available for inspection by the public at the discretion of an individual LA (with or without a fee).

Unrefined information

1.5 In summary, with regard to requests for searches of unrefined information by competing compilers or members of the public, and as far as we are aware:

- LAs **have to** allow any person to search in any Local Land Charge Register (LLCR) on paying the prescribed fee (Local Land Charges Act 1975 (LLCA75), s.8), which fee is currently set centrally by the Lord Chancellor
- LAs **have to** allow access to all the other unrefined information kept on public registers to any member of the public (in other words, allow inspection of a register, or that part of a register relevant to the property concerned). In many cases the statute requires that access must be

³ These forms may be changed when the Home Information Pack (HIP) is introduced.

granted free of charge.⁴ The requirement to keep a public register, and the specific terms of access, are set out in the various statutes relating to each type of property information

- LAs, **at their discretion**, may allow access to non-public registers and records and can charge a fee for doing so (Local Authorities (Charges for Land Searches) Regulations 1994 – ‘the 1994 Regulations’)
- LAs do not appear to be empowered to levy any fees for including new pieces of information on registers or for updating them,⁵ and
- LAs **have an obligation** to keep and update all the statutory public registers where property information is held, although there is not any equivalent obligation in terms of the other property information held by LAs.

Local property searches – through the official route

1.6 With regard to requests through the 'official route', LAs have the following responsibilities:

- LAs are obliged to make a search of the LLCR and issue an official certificate of the results of the search to any person who makes a requisition for an official search of that register using the LLC1 form (LLCA75, s9). The current price for the LLC1 is set centrally by the Lord Chancellor. LAs in England are to have this power to set fees delegated to them under section 13A LLCA75, once the implementing

⁴ For more detail see Table 2.2 of this annexe.

⁵ Other than for (very rare) Light Obstruction Notices registered by private individuals under the Local Land Charges Act 1975 where a statutory fee, set centrally by the Lord Chancellor, is payable.

provisions are brought into force. LAs are under a quasi-contractual⁶ obligation to compile and provide the CON29 form parts 1 and 2 under an agreement between LAs and the Law Society of England and Wales. LAs can charge for the CON29 form, and since 1994 have had the power to set their fees individually in accordance with the 1994 Regulations.

1.7 In the remainder of this annexe we describe each of the relevant statutes, regulations and guidelines according to whether they relate to:

- official search forms
- searches of unrefined information held by LAs by the public and their agents (such as PSCs), or
- property search activities in general.

1.8 We begin by looking at the statutes, regulations and guidelines relevant to official searches.

Official search forms

1.9 The two official search forms that cover the unrefined information held by LAs that is needed for every property transaction are the LLC1 and CON29 part 1. CON29 part 2 is also compiled by LA officials, but it is an optional search not needed in every property transaction. Copies of these forms are attached at Annexe J.⁷

⁶ The ODPM document *Personal Searches – Guidance for local authorities and personal searchers* refers at paragraph 5.7 to the current system for dealing with CON29 searches being 'outside statutory control' and resting on 'voluntary arrangements agreed between local authorities and the Law Society.'

⁷ A third type of official search form covering LA-held information is the Commons Registration, CR21. However, as it is required in some but not all property transactions it is not considered in detail in this annexe.

- 1.10 We look at each type of official search form in turn. Differences in the situation for the LLC1 in Wales as compared to England are noted at the end of the section.

LLC1

- 1.11 Each LA in England and Wales keeps an LLCR. The LLCR holds information that includes: financial charges; conservation areas; enforcement notices; notices served under various Acts relating to building, the environment, highways, housing and planning; tree preservation orders; smoke control orders; some compulsory purchase orders; planning permissions granted; any restrictions on permitted development; and orders revoking or modifying planning permissions. Form LLC1 is used to request an official search of the register, and by LAs to respond to requests to search the LLCR by any person. The information on this form is required in all property transactions.
- 1.12 The statute governing public access to the LLCR is the LLCA75. Sections 9 and 14, along with the associated Local Land Charges Rules 1977 (as amended), set out the arrangements for obtaining an official search (using form LLC1) and the associated fees.
- 1.13 By virtue of LLCA75 (s10), compensation may be payable in respect of loss suffered by a purchaser as a result of an error in the LLCR or an official search certificate.
- 1.14 Currently (see paragraph 1.16 below), the fees for all LLCR related services in England are set centrally by the Lord Chancellor via statutory instrument; SI 2003 No.2502, Local Land Charges (Amendment) Rules 2003, being the most recent one. The Lord Chancellor must obtain the 'concurrence of Treasury' when setting the fee (LLCA75, s14(1)(h)). HM Treasury considers and, as appropriate, approves proposals on fee changes (usually made to the Lord Chancellor by the Local Government Association). In the past, fee change proposals usually only reflected inflation. The current fees for a form LLC1 search are £4 per land parcel for an electronic search, where the LA allows it, and £6 for a postal search.
- 1.15 There are currently no fees for registering, amending or updating an LLCR, except for Light Obstruction Notices (LONs) registered by private individuals. In other cases the registration is part of the statutory duties of a public

authority or utility company. For LONs, the £67 charge (prescribed by the Local Land Charges (Amendment) Rules 2003) reflects the fact that the updating of the register in these cases is recognition of a private law right created by statute.⁸ In practice, LONs are extremely rare. In all other cases registrations and amendments or updates are on behalf of public authorities or utility companies as part of their respective statutory duties, and no fees are levied in these cases. Fees are also set by the Lord Chancellor for obtaining official copies of any entry in the register. The rules permit LAs to set a reasonable fee for providing official copies of documents or plans filed based on the time and work involved.

- 1.16 In England, it is proposed to give LAs the power to set fees for the local land charge services they provide including in respect of LLC1 searches (but excluding personal search fees). An amendment to the LLCA75 which achieves this was made by s15 and paragraphs 82 to 85 of Schedule 4 to the Constitutional Reform Act 2005 (the 'CRA2005'), which received Royal Assent on 24 March 2005. This has not been implemented pending the outcome of the OFT's market study, and consultation will follow before finalisation of guidance to LAs on exercising these new powers (the current fee setting system is described in paragraph 1.14 above). These provisions add a new s13A, requiring each registering authority (LA) in England to specify fees payable by persons for local land charge services that it provides to them, except fees for personal searches (see paragraph 1.31 (s13A(1) and (2))). Different fees may be set for different services or descriptions of service (s13A(3)).
- 1.17 In setting fees LAs must ensure that, taking one financial year with another, the income from fees for each service, description of service or group of services they think appropriate, does not exceed the costs of its provision (s13A(5)). According to s13A(4) LLCA75, LAs can provide for there to be certain services or descriptions of service in respect of which no fees are payable. Under s13A(7) LAs must publish the fees that they specify before

⁸ There is also a fee for filing further certificates and judgements in relation to LONs.

the date on which they come into force. In setting fees LAs must have regard to any guidance that the Lord Chancellor may issue (s13A(9)).

- 1.18 An indicative draft of the guidance the Lord Chancellor might issue was prepared to assist members of both houses of Parliament in their consideration of the provisions. This provides a more detailed indication of how LAs might in the future be guided in the exercise of their fee setting powers. DCA advise, however, that this was prepared following only limited consultation. They expect to revise this indicative draft in the light of the outcome of the OFT's market study and further consultation. Under the new provisions, LAs may set fees for each separate service function relating to local land charges (for example, making entries, copies, searches, etc). There is a list of the separate services in the Local Land Charges (Amendment) Rules 2003 S.I.2003/2502.
- 1.19 The draft guidance suggests that LAs will be able to set different fees for differently defined or additional services related exclusively to local land charges and also to set fees so as to encourage the take up of particular services. It suggests that it will be most appropriate to group those local land charge services which share a substantial element of common costs, and confirms that grouping with other non-local land charge services would not be permitted under the Act.
- 1.20 The draft guidance also suggests that when calculating the cost of service provision, in order to ensure that income does not exceed costs LAs should be able to include capital and investment costs necessary to improve or extend an existing service and insurance costs relating to claims for compensation under s10 LLCA75. The draft guidance suggests that an appropriate period for assessing costs might be one to three years, or possibly longer for services that require significant capital investment. We are told by DCA that as the primary function of the LLCR is to act as a centralised source for property searches,⁹ it is their current view that it should also be possible for these fees to meet the costs of keeping the register.

⁹ DCA note, however, a secondary function of the LLCR: LA officials may refer to it in order to ensure that land charges over property in its area are appropriately enforced.

- 1.21 The draft guidance also suggests that there should be an accounting system to enable compliance to be demonstrated. It leaves LAs free to decide which methodology to adopt for assessing costs of each service or group of services, but suggests they draw on the familiar principles set out in recognised LA accounting codes. The guidelines warn LAs to comply fully with complementary legislation including the Competition Act 1998. This is mentioned in particular in respect of any decision to charge no fee or to set a fee at less than full cost and in grouping services.

LLC1 in Wales

- 1.22 The Lord Chancellor devolved the fee setting powers related to the LLCR to the NAFW with effect from 31 December 2004 under the National Assembly for Wales (Transfer of Functions) Order 2004. Currently, however, Welsh LAs are still applying the fees set out in SI2003/2502.
- 1.23 In future, NAFW intends to set a uniform fee rate across all Welsh LAs, and wants this fee to be consistent with those in England, in the sense that fees are to be set so as to recover average overall costs over a period of one to three years. Consideration will be given as to whether the costs of maintaining the LLCR should also be reflected in the fee. In the event of a shortfall in revenues, NAFW has agreed with DCA and HM Treasury that this will be met out of NAFW's own resources. NAFW also intends the fee to be consistent with the e-government agenda, and so there is a presumption that the fee will be lower for electronic searches.

CON 29

- 1.24 Unlike the LLC1 form discussed above, there is no statutory basis for the CON29 form used in both England and Wales. The NAFW has no powers over the fee setting for CON29 and does not currently intend to acquire any. Instead there is an agreement between LAs and the Law Society of England and Wales that LAs will provide all the information on the CON29 form. The form is in two parts: the information on part 1 is relevant to all property transactions; part 2 contains standard printed questions, some of which may be relevant in some property transactions, and also space for *ad hoc* conveyancer's questions.

- 1.25 Fees for the CON29 form are set at the discretion of each LA. The price of the standard LA compiled local property search for residential property transactions ranges between £55 and £269.¹⁰ In setting CON29 fees, LAs in England and Wales must follow the 1994 Regulations. The primary legislation behind the 1994 Regulations is the Local Government and Housing Act 1989, ss 150 and 152. The 1994 Regulations cover all LAs and all property information searches *not* related to local land charges (see above).
- 1.26 Regulation 2 (1) of the 1994 Regulations states that: 'A relevant authority may impose a charge in respect of answering enquiries – (a) concerning the discharge of the authority's functions in relation to land which is, or is proposed to be (i) the subject of a transaction between third parties, or (ii) offered for sale by a third party; or (b) in connection with a transfer by the authority of any interest in land. (2) Nothing in paragraph (1) above enables charges to be made in respect of enquiries pursuant to the Local Land Charges Act 1975.'
- 1.27 The 1994 Regulations allow fees to be charged to the person making the enquiry, and the amount is left to the LA's discretion save that it must be set with 'regard to costs in dealing with enquiries'. The Regulations do not specify what 'with regard to costs' means in practice, thereby leaving open the option of LAs generating profits through these charges. Neither do the 1994 Regulations rule out discriminatory treatment of different purchasers of the CON29 form.
- 1.28 Subject to the reasonableness of the exclusion clause on the CON29 form, an LA could only be sued for an erroneous reply to the printed enquiries it contains if the reply is negligent, according to the Law Society (see a copy of a CON29 form in Annexe J).¹¹ However, negligence would have to be proved.

¹⁰ Data supplied to the OFT by MDA TransAction Online, May 2005.

¹¹ The notes to form CON29 include a statement that the LAs do not 'accept legal responsibility for an incorrect reply, except for negligence'.

Searches of unrefined property information by the public and PSCs

1.29 We shall now consider the statutory and regulatory framework governing searches of the three categories of unrefined information (as discussed previously at paragraph 1.4):

- information made available for public inspection for a fee
- information made available for public inspection free of charge, and
- information only available for public inspection at the discretion of an individual LA (with or without a fee).

Information made available for public inspection for a fee

1.30 There is only one public register held by LAs where the public and PSCs have both a statutory right of access, and face a statutory fixed access fee for conducting searches: the LLCR.

1.31 By virtue of s8 LLCA75 a 'personal search'¹² of the LLCR is permitted. This is distinct from a request for a LA search of the LLCR using form LLC1 (an LLC1 response is compiled by the LA using the unrefined information contained on the LLCR). See paragraph 1.11 above for a list of the types of unrefined property information held on the LLCR.¹³

1.32 The obligation to provide for personal searches of the LLCR, and the associated fees, are set out in sections 8 and 14 of the LLCA75 and the Local Land Charges Rules 1977 (as amended). The current charge of £11 per land parcel is set out in the Local Land Charges (Amendment) Rules

¹² Section 8 of the LLCA75 sets out that a 'personal search' in this context is a search by any person of the unrefined property information held in the LLCR. PSCs carry out personal searches, but also searches of the unrefined property information held on other registers and records.

¹³ In addition, under Rule 7 of the Local Land Charges Rules 1977 (as amended), where a charge which is required to be entered on the LLCR has been entered on another record available for public inspection in accordance with a statutory requirement, it will be sufficient to enter a reference in the LLCR so that the particulars in the other record can be traced more easily.

2003 (SI2003/2502). The Lord Chancellor must obtain the 'concurrence of Treasury' when setting fees for personal searches of the LLCR (see LLCA75, s14(1)(h)). Although fee setting for other charges in respect of the LLCR is shortly to be delegated to LAs (see paragraph 1.16 above), the power to set fees for personal searches of the LLCR in England remains with the Lord Chancellor.

- 1.33 The LLCA75 permits LAs to keep the LLCR otherwise than in documentary form, as long as they ensure that a personal searcher can inspect the portion of the register which he wishes to examine in visible and legible form (s8(1A)).
- 1.34 LAs do not guarantee the accuracy of the results of a personal search of the LLCR. S10 of the LLCA 1975 provides a limited right to compensation for errors on the search certificate or omissions on the register at the time of the search.
- 1.35 DCA believes that a review is necessary before making any decisions on whether fee setting for personal searches of the LLCR should be delegated to LAs (legislation is already in place to permit delegation of the other fees related to the LLCR – see paragraph 1.16 above). DCA will decide, following the publication of OFT's report, whether further work on any remaining areas of concern is necessary before taking further action.

Information made available for public inspection free of charge

- 1.36 A large proportion of the unrefined information used to compile a CON29 search form must, according to statute, be held on public registers or records at each LA. LAs have to allow inspection of all of the unrefined information kept on these public registers to any member of the public, including representatives of PSCs. The conditions of access are set out in a variety of different statutes and associated regulations and guidelines depending on the type of unrefined information (see Table 2.2). In many cases the relevant statute states that the information holder must make the register 'available for inspection free of charge at all reasonable hours', or wording to that

effect. In other cases, however, the relevant statute does not state that access to the public register is free of charge.¹⁴ In those cases, our understanding is that LAs may be able to charge for granting access to the public registers under the 1994 Regulations.¹⁵

1.37 According to our discussions and consultations with government departments, LAs, PSCs and members of the Association of Council Secretaries and the Local Land Charges Institute, the unrefined property information used to compile the CON29 form and which is required to be made available to the public free of charge includes, but is not limited to:

- **CON29 part 1:** highways maintainable at public expense, sewer maps, nearby rail schemes, traffic schemes (some), tree preservation orders and contaminated land, and

¹⁴ For example, the register of planning applications and register of enforcement, stop and breach of condition notices are provided for under the Town and Country Planning Act 1990 ('TCPA 90'). The TCPA 90 does not explicitly say that inspection of these registers is to be 'free of charge,' therefore LAs could charge for allowing inspection of them as long as there is an appropriate charging power in place. As of 6 August 2004, s303 of the TCPA 90 provided that the Secretary of State may make regulations about charges or fees in respect of any of the functions performed by the local planning authority. However, this charging power has not been exercised to allow LAs to charge for inspection of these registers.

Also, although TCPA 90 does not stipulate that access to the registers kept pursuant to that Act should be free of charge, guidance issued by ODPM (see footnote 5 and paragraphs 1.95 – 1.97) states that any person is entitled to inspect free of charge any records open for public inspection held by LAs. The guidance gives the TCPA 90 registers as examples of such records.

¹⁵ The 1994 Regulations can only apply in relation to enquiries about land which is, or is proposed to be the subject of a transaction, or offered for sale (Regulation 2(1)(a)). Technically, therefore, if an enquiry relates to land neighbouring that which is to be offered for sale, the 1994 Regulations won't apply. Even where an enquiry relates to land that is or will be the subject of a transaction or offered for sale, the application of the 1994 Regulations is not entirely free from legal doubt. In order for the 1994 Regulations to apply, inspecting a public register would have to fall within the meaning of 'answering queries' in relation to land under Regulation 2(1) of the 1994 Regulations. Our view, and the view of others that we have consulted, is that inspecting the register does amount to 'answering queries' in relation to land. Therefore, in the example given in the previous footnote, for the public registers created under the TCPA 90, even though there is no power to charge under the TCPA 90, the 1994 Regulations allow LAs to charge a fee for inspection of the registers (having regard to their costs in dealing with those enquiries).

- **CON29 part 2:** road proposals by private bodies (in some cases), public rights of way, pipelines, houses in multiple occupation, noise abatement zones (charges may be made for copies), enterprise zones, environment and pollution notices (some), litter control areas/notices, and hedgerow notices.

1.38 In Wales, the majority of the functions covered in the individual components of the CON29 form are devolved to NAFW, but the approach taken in terms of fee setting and regulation are the same as in England.

Discretionary access only

1.39 In compiling a CON29 form, LAs also draw on a range of unrefined information in their keeping that is only available to the public, including PSCs at their discretion. According to our research, unrefined property information in this category includes but is not limited to:

- **CON29 part 1:** highways to be adopted, nearby road schemes (some) and compulsory purchases, and
- **CON29 part 2:** road proposals by private bodies (some), advertisements (some), completion notices, environment and pollution notices (some), and food safety notices.

1.40 In some cases, however, the LA chooses to allow access to this type of unrefined information, for a fee. Our understanding is that where such a fee is charged, the charging power that is used is the power in the 1994 Regulations.

1.41 However, there appears to be some confusion amongst both LAs and central government as to the proper scope of the 1994 Regulations.¹⁶ We understand that the 1994 Regulations were originally drafted with only the CON29 form in mind and at least one LA interprets their scope accordingly,

¹⁶ A view formed as the result of discussions on the scope of the 1994 Regulations with ODPM, LGA, a sample of LAs, and members of the Association of Council Secretaries and the Local Land Charges Institute.

in which case the powers to charge in s93 of the Local Government Act 2003 would apply. See paragraph 1.66 below. Our view, set out in paragraphs 1.25 to 1.29 above, is that the 1994 Regulations also extend to all the unrefined information used to compile the CON29 form, if not already freely available under a statutory obligation. We interpret the words 'Answering enquiries' Regulation 2 (1) of the 1994 Regulations, set out at paragraph 1.26 above, to encompass a broad range of work that the LA does in conjunction with allowing searches of unrefined property information by PSCs as well as responding to 'official' CON29 enquiries.

- 1.42 The 1994 Regulations allow a fee to be charged to the person making the enquiry. The amount can be at the LA's discretion, but in determining the amount the LA is required to have 'regard to its costs in dealing with enquiries' (SI1994/1885, Regulation 3). The lack of specific detail on what 'have regard to costs' means in practice means that there is uncertainty as to whether the 1994 Regulations permit differential fees for different services or descriptions of service and whether they allow profits to be made.
- 1.43 In Wales, the majority of the functions covered in the individual components of the CON29 form are devolved to the NAFW, but the approach taken in terms of fee setting and regulation are the same as in England.

Generic statutes and regulations

- 1.44 In the paragraphs above we discussed the statutory and regulatory framework relevant to official searches and to searches of the three types of unrefined property information (open access for a fee; free open access; and discretionary access only). We now consider 'generic' statutes and regulations: those applying to property search activities in general. We examine, in turn, the:
- Freedom of Information Act 2000
 - Environmental Information Regulations 2004
 - EC directive on the re-use of public sector information 2003/98/EC
 - general power for Best Value Authorities to charge for discretionary services under the Local Government Act 2003, s93

- general power for LAs to trade in function related activities through a company under the Local Government Act 2003, s95
- Data Protection Act 1998
- copyright law
- release of information that might prejudice criminal proceedings
- ODPM guidelines on personal searches of the LLCR and inspection of other records open for public inspection held by LAs
- performance indicators, and
- directives 80/723/EEC and 2000/52 EC.

Freedom of Information Act 2000

- 1.45 The Freedom of Information Act 2000 (FoIA), which came into force on 1st January 2005, gives a general right of access to information held by LAs (s1). **In principle**, the right of access is capable of applying to all types of LA property information, including unrefined information used to compile the CON29 form, even if the information is contained on a public or statutory register. The fact that such information is required under statute to be made 'available for inspection' is not enough to automatically exclude information on registers from the FoIA. Whether access must be granted in an individual case will depend on whether the information benefits from one of the exemptions in the FoIA.
- 1.46 So the FoIA, potentially at least, offers an entirely new access route for property information only previously available to the public via official search forms, such as CON29, submitted to the LA. As discussed below, however, our view is that the FoIA will have only limited practical application for PSCs seeking access to the property information held by LAs. This is for two reasons: firstly, some of the information PSCs seek may benefit from an exemption under FoIA. Secondly, even if information is available, LAs may take up to 20 days, and in some cases longer, to supply it.

1.47 The most relevant exemption seems to be the exemption for information that is reasonably accessible by other means, which is at section 21 FoIA.¹⁷ Information may fall within this exemption even though it is accessible only on payment. It is assumed that information will be reasonably accessible to the applicant for the purposes of this exemption if:

- it is information that the LA is obliged under any enactment to communicate (other than by making the information available for inspection) to members of the public on request (s21(2)(b)), or
- it is information that will be made available on request in accordance with the LA's FoIA publication scheme and the fees payable are specified in or determined in accordance with the scheme (s21(3)).

1.48 Property information is unlikely to fall within either of these classes of information. On the one hand, where property information is made available under statute, the statutory obligation tends to extend only as far as making the information available for inspection, rather than requiring the LA to 'communicate' the information. On the other, although a number of LAs appear to have a publication scheme in place or at least in preparation, according to our discussions with LAs, property information does not appear to be routinely made available in accordance with the LA's FoIA publication scheme.

1.49 However, even if these presumptions do not apply, property information may nevertheless fall within this exemption. The assessment of whether information is 'reasonably accessible' for the purposes of this exemption, is a qualitative one. It will depend on the nature of the requested information and

¹⁷ The exemption at section 40 for personal information, in respect of which there would be restrictions on disclosure under the Data Protection Act 1998, may also apply to certain parts of property information. For this exemption to apply the information would have to be 'personal data' within the meaning of the definition at section 1(1) of the Data Protection Act 1998 (see paragraph 1.76 below). We are aware that certain pieces of property information fall within this definition, such as personal details on building regulation application forms. However, we think it unlikely that very much property information would fall within this category, and we note that some LAs have found a way to make property information available without breaching the disclosure restrictions in the Data Protection Act 1998, for example by releasing information over the telephone.

the nature and characteristics of the applicant. DCA guidance (*Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004*) suggests some relevant factors: in terms of the former, for example, whether the information is readily available to purchase through commercial outlets, capable of being seen and downloaded through the internet, discrete and able to be isolated, or collated, catalogued and indexed. In terms of the applicant's characteristics, relevant factors include whether there are any existing access regimes in place, and the practical arrangements available for obtaining copies of the information requested.

- 1.50 In our view, on the basis of the criteria for exemption listed above, property information that is compiled and contained in LLC1, CON29 and other search responses prepared by LAs is likely to be exempt from the FoIA under s21. This information is available for a fee through an official LLC1 or CON29 request. However, we take the view that unrefined property information would not benefit from the s21 FoIA exemption, and should be accessible by means of an FoIA request.
- 1.51 Our discussions with LAs and others indicates that many LAs interpret the s21 FoIA exemption as applying to all property information rather than as applying only to property information that is compiled in search responses. As a result, LAs may be denying access to all unrefined property information in reliance on the s21 exemption. We think that this may be the wrong approach.
- 1.52 In any case, the FoIA would not achieve the outcome we recommend – the availability of all the property information necessary to complete a local property search for inclusions in a HIP under non-discriminatory terms. Even if an LA decides that the s21 exemption does not apply and a FoIA request is granted, that request would only have to be answered within 20 working days. This 20 day period would be too slow to allow a PSC to compete with the turnaround time of CON29 responses, which is on average five days.¹⁸

¹⁸ Annexe D, Survey of local authorities, Table 3.2.

- 1.53 Whether or not the s21 exemption applies, s39 FoIA provides a separate exemption for information that an LA is obliged to make available to the public under the Environmental Information Regulations 2004 (SI2004/3391), or information that a public authority would be obliged to make available if it weren't exempt under those regulations. This is because there is a separate access regime for environmental information under those regulations. This is considered further in the next section.

Environmental Information Regulations 2004

- 1.54 The Environmental Information Regulations 2004 (EIR) apply to 'environmental information'. This is defined rather broadly as including any information in written, visual, aural, electronic or any other material form on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements....
- 1.55 Under regulation 4 EIR, public authorities, including LAs, are required progressively to make available to the public by electronic means any environmental information that they hold, subject to certain exemptions. Regulation 5 EIR requires public authorities to respond to requests for environmental information by making available the information that they hold as soon as possible and no later than 20 working days after the date of receipt of the request. Again, certain exemptions apply. There are exemptions, for example, for information that is personal data where the

applicant is not the data subject, and for information whose disclosure would adversely affect intellectual property rights, confidentiality of commercial or industrial information, international relations, defence, national security or public safety.

- 1.56 In consultation with DCA and ODPM, our view is that the rights under the EIR will apply to at least some of the unrefined property information used to compile the responses to the LLC1 and CON29, access to which is otherwise discretionary. However, similar to the position under the FoIA, LAs have a 20 day period in which to supply such information. If they do so only towards the end of the 20 day period allowed under regulation 5, this will be of little use to PSCs.

EC Directive on the re-use of public sector information 2003/98/EC

- 1.57 The EC Directive on the re-use of public sector information ('the Directive'), 2003/98/EC, came into force on 31 December 2003. Member States were required to implement the Directive in order for it to become national law by 1st July 2005. Accordingly, HMSO (now the Office of Public Sector Information (OPSI)), the Cabinet Office and DTI worked together to produce the Re-use of Public Sector Information Regulations 2005¹⁹ ('the Re-use Regulations'), which came into force on 1st July 2005.
- 1.58 The underlying objective of the Directive is to 'facilitate the more effective exploitation of public sector information as an economic resource',²⁰ to limit 'distortions to competition on the Community market'²¹ and to stimulate the EU information sector, thereby increasing and improving the availability of value added information services for consumers. The Directive is built on two key pillars of the internal market: transparency and fair competition. It is

¹⁹ SI2005/1515.

²⁰ Paragraph 2.4 *The Re-use of Public Sector Information: A Guide to the Regulations and Best Practice*, OPSI June 2005.

²¹ Recital 25 of the Directive.

intended to provide 'a general framework for the re-use of public sector documents in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information.'²² Re-use, for the purposes of the Directive and the Re-use Regulations means use for a purpose other than the initial purpose within the public task for which the documents were produced.

1.59 The Re-use Regulations and the Directive contain rules on the following:

- responding to requests for the re-use of documents within a timeframe that 'allows their full economic potential to be exploited' (Recital 12 of the Directive). There is a 20 day 'backstop' on this timescale (Article 4 (2) of the Directive and Regulation 8(1))
- the availability of documents for re-use in all formats and languages in which the information exists. Where possible, the information should also be made available by electronic means (Article 5 of the Directive and Regulation 11(1) and (2))
- an upper limit on charging – fee income should not exceed the costs of collection, production, reproduction and dissemination, together with a reasonable return on investment (Article 6 of the Directive and Regulation 15). However, Recital 14 of the Directive requires Member States to encourage public sector bodies to make documents available at lower charges, that do not exceed the marginal costs for reproducing and disseminating the documents²³
- transparency of conditions applicable on re-use (Article 7 of the Directive and Regulation 16). Charges and other conditions have to be

²² Recital 8 of the Directive.

²³ There was a review of studies on the impact of more open data policies carried out as part of the Regulatory Impact Assessment (RIA) of the Regulations. The RIA noted that most analyses conclude that low price models (charging at marginal cost for reproduction and dissemination) lead to greatest economic impact and highest benefits to society as a whole (RIA, paragraph 23, quoting '*Commercial exploitation of Europe's public sector information*' Pira International for the EC, September 2000).

pre-established and published. There needs to be a complaints procedure (Article 7 of the Directive and Regulation 17)

- an obligation to avoid discrimination between market players in the conditions for re-use, including internally, and to avoid cross-subsidies between the public and commercial parts of the same public sector body that re-uses the information (Article 10 of the Directive and Regulation 13). The Regulations do not spell out explicitly that cross-subsidies must be avoided, but the best practice guidance make clear that this is what is intended: 'Regulation 13...makes it clear that there needs to be a level playing field between the public sector body and other re-users. This applies in those circumstances where a public sector body decides to use a document beyond the purpose for which it was originally produced, perhaps for commercial exploitation. In these cases it is important that the public sector body applies the same terms to itself, or to any associated body, as to any other re-user. One way that public sector bodies could ensure that they comply with this principle is to consider the amount they would charge an outside re-user for the re-use of the document. They should then apply the same charge to themselves in setting the price of their value-added product.' (Paragraph 4.19, *The Re-use of Public Sector Information: A Guide to the Regulations and Best Practice*, OPSI June 2005)
- a prohibition of exclusive arrangements unless they can be justified as being necessary for the provision of a service in the public interest, with a long stop date for terminating any existing exclusive agreements which cannot be justified on this basis of 31 December 2008 (Article 11 of the Directive and Regulation 14)
- where conditions for re-use are applied, the conditions should not unnecessarily restrict the way in which a document can be re-used or be used to restrict competition, and the standard licence conditions should be published electronically wherever possible (Article 8 of the Directive and Regulations 12 and 16), and
- practical tools to make it easier to find material available for re-use, such as lists of information assets (Article 9 of the Directive and Regulation 16).

- 1.60 If challenged, public sector bodies must be ready to justify their charges for the re-use of information.
- 1.61 We considered with OPSI whether, when LAs compile unrefined property information into responses to CON29 search requests they are themselves re-using it within the meaning of the Re-use Regulations and whether the non-discrimination provisions in the Re-use Regulations might require LAs to make the same information available to PSCs within the same time frame as they themselves access it.
- 1.62 As to time frame, we were advised by OPSI that Regulation 13 requires equal treatment principally in terms of conditions of access, rather than timing of administration of requests. As to whether LAs would have to allow re-use if they themselves re-use information, OPSI advised that the non-discrimination provisions in the Re-use Regulations do not require any public sector body to allow the re-use of any document or category of documents generally to all just because permission to re-use that document has been given to one person, whether or not that person is the public sector body itself.
- 1.63 We understand that this approach is a necessary result of Article 1(5) of the Directive. This provides that the obligations in it apply only insofar as they are compatible with international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement. We understand that the combined effect of these agreements²⁴ is that signatory states should only consider legislating in a way that requires intellectual property rights holders to license those rights in circumstances where this does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.
- 1.64 While such conflict or prejudice may not be a problem in the specific case of property information, the Regulations apply to all information held by public sector bodies. Therefore, to guard against creating such a conflict or prejudice in respect of other categories of information, their area of operation is necessarily restricted.

²⁴ In particular Article 9 of the Berne Convention and Article 13 of the TRIPS agreement.

- 1.65 We conclude, therefore, that PSCs cannot use the Re-use Regulations to gain access to and re-use the unrefined property information held by LAs within a time frame that is useful to them. Under the Re-use Regulations, LAs are free to consider each individual request to re-use separate pieces of property information separately, and would only be obliged to apply non-discriminatory conditions if they had first decided to allow re-use in respect of an individual piece of property information.

General power for best value authorities to charge for discretionary services under the Local Government Act 2003, s93

- 1.66 Section 93 (1) of the Local Government Act 2003 ('the LGA03') states that 'Subject to the following provisions, a best value authority may charge a person for providing a service to him if - (a) the authority is authorised, but not required, by an enactment to provide the service to him, and (b) he has agreed to its provision.'
- 1.67 In terms of the scope of these powers, s93 (2) of the LGA03 states that the power to charge will not apply if the LA 'has power apart from this section to charge for the provision of the service, or is expressly prohibited from charging for the provision of the service.'
- 1.68 These powers under the LGA03 do not, therefore, apply to property information covered by an existing charging regime. In our view, all the key unrefined and compiled property information contained on the LLC1 and CON29 forms is already subject to charging regimes (SI1994/1885 in the case of unrefined information provided at the discretion of LAs or unrefined information on a public register access to which is not required by statute to be free of charge, SI 2003 No.2502 in the case of LLC1 and a personal search of the LLCR. Consequently, the power to charge under s93 of the LGA03 is not currently relevant to property information.
- 1.69 We note, however, that this conclusion is based on our interpretation of the scope of the 1994 Regulations set out in paragraphs 1.44 and 1.45. If the scope of the 1994 Regulations were interpreted more narrowly, then it is possible that the s93 powers under the LGA03 would be applicable to property information.

- 1.70 The ODPM guidance '*General Power for Best Value Authorities to Charge for Discretionary Services*', November 2003 provides more detail on the nature of the s93 powers under the Act. Income from the charges for discretionary services must not exceed the costs of provision over a reasonable payback period for investments and any set up costs. However, price discrimination is permitted, as is free provision. LAs must adopt a robust accounting methodology (although no particular method is prescribed). There is flexibility to group similar services together when comparing income with costs for compliance purposes. The ODPM guidance warns that LAs could be subject to the Competition Act 1998, and that government can remove an LA's power to charge, for example in the event of unfair competition.

The s93 powers to charge in Wales

- 1.71 The s93 powers to charge for discretionary services under LGA 2003 apply to Welsh LAs as well as to those in England, and the NAFW has issued guidance that is very similar to the ODPM guidance followed in England. However, as in England, these powers are unlikely to apply to property information due to the presence of existing charging regimes.

General power for LA to trade in function related activities through a company under the LGA03, s95

- 1.72 Section 95 (1) of the LGA03 states: 'The appropriate person may by order - authorise best value authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions' and, in Section 95 (2): 'No order under this section may authorise a best value authority - (a) to do in relation to a person anything which it is required to do in relation to him under its ordinary functions, or (b) to do in relation to a person anything which it is authorised, apart from this section, to do in relation to him for a commercial purpose.'
- 1.73 According to the associated ODPM guidance *General Power for Local Authorities to Trade in Function Related Activities*, July 2004, s95 of the LGA03 permits trading through a company for profit in anything that the LA is authorised to do for the purpose of carrying on its ordinary functions. Section 95 permits long-term contracts (such as supply agreements) between an LA

and its trading company, which can be fully owned by the LA. The guidance reminds LAs that they may be subject to competition law if a traded activity is deemed to be an 'economic activity'.

- 1.74 The powers under s95 apply *in principle* to LAs in England (but not those in Wales), provided they are rated 'Best Value' by the Comprehensive Performance Assessment (CPA) regime (see paragraph 1.98 below). In practice, however, the s95 power to trade through a company does not appear to apply to property information that LAs are required to hold on a public register and allow inspection of since, under s95 (2) these would be required functions of the LA. However, the s95 power to trade through a company might apply to property information access to which is discretionary, since (applying s95(2) again) there will be no required function of the LA in those cases, and arguably the LA is not authorised to trade in such information for commercial purposes.
- 1.75 As far as we are aware, no LAs are known to have used these powers to trade through a company in connection with property information in respect of which access to PSCs is discretionary. Moreover, according to research carried out by the Institute of Local Government Studies (*Local authority trading research topics*, 7 January 2005), there has been little take up of these powers across any potential service areas.

Data Protection Act 1998

- 1.76 The Data Protection Act 1998 ('the DPA') gives every data subject (an individual who is the subject of personal data) a right of access to their personal data, exercisable against the data controller. Where it applies, this right of access must be used instead of seeking access under the FoIA.
- 1.77 The DPA also imposes restrictions on the processing of personal data by data controllers – here LAs. 'Processing' is defined broadly and includes any disclosure. Data controllers must comply with eight data protection principles set out in Schedule 1 of the DPA. The second of these principles prohibits further processing for purposes other than the specified and lawful purpose for which the information was obtained.
- 1.78 The DPA definition of data (at s1 (1)) includes information in the following formats: computer records and files, information which has been stored (for

example on disc) with a view to being put on computer records, paper filing records, accessible records on health and education matters, and public records which are unstructured. This last category of information does not have to be held in electronic format or in a structured manual system. It could include, for example, paper records, emails, information stored on computer, maps and handwritten notes. Personal data means data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller. The data controller is the person that determines how and for what purposes personal data will be processed.

- 1.79 If an LA holds recorded information which relates to a living individual who can be identified from the information and where it is clear and obvious that the information is relevant to and relates to that individual, then it is information which is likely to satisfy the definition of personal data within the meaning of the DPA. The DPA may in some cases, therefore, create a legal obstacle to full access by PSCs to the unrefined information used by LAs to compile a CON29 form. An example is the personal information on a building regulation application seeking LA consent to building works. Planning files, used by the LA to answer 'yes' to the CON29 question about whether there are building regulation approvals in respect of a property, may contain these applications and thus contain personal information which is protected from disclosure by the DPA, thereby preventing direct access to those parts of the files by PSCs or the public.
- 1.80 Our research, however, indicates that there may be ways of granting access to such information without infringing the DPA. For example, one LA indicated that it provided building control information, another category of information which gives rise to DPA concerns, via the telephone in order to avoid DPA infringements. Another solution, particularly as LAs are engaged in the modernisation of their property information systems, could be to offer public access via an electronic 'filter' on a dedicated computer terminal or website. Some LAs already offer, or are planning to offer, this service. It would seem, therefore, that there are practical methods of dealing with DPA issues. LAs in Scotland – also subject to the DPA - appear to be able to offer

full access to all, or nearly all, the unrefined property information used to compile a property enquiry certificate (PEC).²⁵

Copyright law

- 1.81 Some of the property information produced by LAs is likely to attract copyright protection under the Copyright, Designs and Patents Act 1988 (as amended) (the 'CDPA'), as original literary work. The copyright will be owned by the LA that produced the information, and the LA could, in theory, take infringement action against a person, including a PSC, that copied that information, published it or communicated it to the public without the LA's consent.
- 1.82 However, when an LA gives a PSC access to its information covered by copyright for the purpose of passing it on to consumers, it is likely that the LA gives the PSC an implied licence to communicate the information in this way, in which case the LA could not bring successful copyright infringement proceedings against the PSC.
- 1.83 Under section 47(3) of the CDPA there is a separate rule that applies to material which is open to public inspection pursuant to a statutory requirement or which is on a statutory register that contains information about matters of scientific, technical, commercial or economic interest. Under this rule there will be no infringement of copyright if a person takes copies or issues copies of this material to the public by or with the authority of the appropriate person, defined as the person required to make the information available for inspection or the person maintaining the register.²⁶ In our view property information held on public registers falls within this rule as it contains information about matters of commercial and/or economic

²⁵ See Annexe F, Legal framework in Scotland.

²⁶ There are special provisions under this rule in relation to maps open to public inspection or held on a register under the Copyright (Material Open to Public Inspection) (Making of Copies of Maps) Order 1989 SI 1989/1099. The effect of this Order is that any third party copyright in the map remains with the third party copyright holder, and their permission must be sought prior to copying.

interest to a property purchaser, and the 'appropriate person' for these purposes will be the LA.

- 1.84 In addition, if a PSC copies information held by an LA under a statutory requirement onto their own separate file for the purposes of passing this information on to the public, we think it likely that this would fall within section 47(2) CDPA and would also not be an infringement. Section 47(2) provides another exception to copyright infringement. Under section 47(2), material that is open to public inspection under a statutory requirement is not infringed by copying, with the authority of the appropriate person (in this case the LA), if the purpose of the copying is to enable the material to be inspected at a more convenient time or place or otherwise to facilitate the exercise of a right which the statutory requirement to hold the information was designed to protect. We think that PSCs that take copies of information held by LAs under a statutory requirement and keep it on their own separate files to use in future cases could argue that doing so falls within this exception to copyright infringement.
- 1.85 For information on statutory registers, our view is that these provisions will make it difficult for an LA to bring successful copyright infringement proceedings if a PSC creates a copy of the public register or a part of it. We think it would be hard for the LA to argue that even though it had given access to the register as it was required by statute to do, it had also restricted the further use to which the information so accessed could be put, particularly since the purpose for which the PSC takes any copies is likely to be dissemination of the information to the public as expressly anticipated under section 47 CDPA.
- 1.86 If the information is not on a statutory register, however, any actual or implied licence granted by an LA to a PSC might arguably only go as far as allowing the PSC to pass the information on to the particular customer that has requested the information. Licences of copyright can be limited to specific purposes, and each act that is not permitted in respect of copyright material will be a separate infringement of the copyright. If so, the implied licence would not extend to allowing the PSC to create its own separate database for later re-use.
- 1.87 However, there would be no obligation on any LA to enforce its copyright by bringing infringement proceedings, and seeking to do so would run counter

to recent moves within central government to free up access to information. One example is the Information Fair Trader Scheme (IFTS) run by OPSI. Under this scheme organisations give a commitment that, as a matter of principle, the information that they hold will be made available to all those who request it on non-discriminatory terms. This is in line with HM Treasury's 2000 review of the Knowledge Economy, which also called on other public bodies to review their information access strategies and align them with the more liberal approach being taken in relation to Crown copyright. OPSI is charged with broadening the application of the IFTS outside of central government.

- 1.88 LA property information files may also contain material in respect of which third parties enjoy copyright. One example we were given is building plans drawn up by architects, surveyors etc. LAs would have to excise or remove this information from their files before granting access to them to PSCs.
- 1.89 Included in the definition of 'literary work' to which copyright may attach under the CDPA are databases. However, a separate database right is created under Part III of the Copyright and Rights in Databases Regulations 1997 (SI1997/3032) for databases in respect of which there has been substantial investment. It will be an infringement of database right, without the consent of the owner of the right, to extract or re-use all or a substantial part of its contents or repeatedly to extract or re-use insubstantial parts of its contents. Database right is circumscribed when the database in question has been made available to the public in any manner. In those circumstances, lawful re-use of insubstantial parts of a database will not infringe the database right. Also, to the extent that any property information is held in database form on a public register, or under a statutory requirement, there is a similar provision to section 47 CDPA in Schedule 1 of the Copyright and Rights in Databases Regulations. The effect of these provisions is likely to be that there will be no infringement of database right where PSCs extract and re-use information from any database which is kept as a public register, or open to public inspection pursuant to any statutory obligation.
- 1.90 The CDPA provisions as to licensing of copyright also apply to database rights, by virtue of Regulation 23 of the Copyright and Rights in Databases Regulations. Therefore, where property information is held by LAs in database form, and it is not a requirement of statute that they hold it and

grant access to it, LAs may license acts that would otherwise be infringements of any database right (extraction and re-use). If LAs grant access to PSCs to information on such databases they may give actual or implied licence to extract and/or re-use the information, which could prevent LAs from enforcing any database rights they have.

Release of information that might prejudice criminal proceedings

- 1.91 We were told by one LA that certain information relating to contravention of building regulations used by the LA to answer 'yes' to the CON29 question about whether the LA has authorised building regulations infringement proceedings in respect of the property could not be disclosed to PSCs or the public because doing so could prejudice the investigation and prosecution of a criminal offence. We were told that the information in question included names and addresses of complainants, details of law enforcement on contraventions and information about investigations. Before LAs could grant access to building regulations files, any such information would need to be excised or removed.

ODPM guidance on personal searches of the LLCR and inspection of other records open for public inspection held by LAs

- 1.92 ODPM's guidance (the 'Guidance') for PSCs and LAs published in February 2005 was prepared with the help of the Local Government Association (LGA), the Institute of Local Land Charge Officers (LLCI), and major players in the property search industry.
- 1.93 The Guidance provides an indication of the records and registers held by LAs that are open for public inspection under statute (but not a comprehensive list). The Guidance also states that any person is entitled to inspect free of charge any records open for public inspection held by LAs.²⁷

²⁷ See paragraph 3.2 of the ODPM document *Personal Searches – Guidance for local authorities and personal searchers*.

This is the case even where the relevant statutes do not explicitly say that the relevant information must be made available free of charge. It also sets out good practice guidance for LAs in terms of publicising the access arrangements for PSCs, the scope of information available (and unavailable), charges for personal searches and appointments. The Guidance suggests the adoption of common hours of opening across Departments and that wherever possible (and where requested) any appointment system should allow PSCs access to records open for public inspection not later than the next working day. There are also best practice guidelines for PSCs, covering issues such as advance notice, appointments, payment and assistance from LA staff.

- 1.94 The Guidance sets out best practice, but it is not legally binding. How closely the Guidance is followed in practice remains to be seen as it has just been issued. The Best Value turnaround target aimed at 'standard' official searches (see below) may, for example, reduce compliance with the best practice guideline for dealing with PSC searches of records open for public inspection on the next working day.

Performance Indicators

- 1.95 Best Value Performance Indicators (BVPIs) are measures of performance set under section 4 of the Local Government Act 1999 (the 'LGA99') by the departments in central government for England and by NAFW for Wales (in Scotland there is a different system of guidance for achieving Best Value under the Local Government in Scotland Act 2003). BVPIs apply to Best Value Authorities in England and Wales. All LAs in England²⁸ and Wales²⁹ are Best Value Authorities, under section 1 of the LGA99.
- 1.96 Under section 3 of the LGA99, Best Value Authorities must make arrangements to secure continuous improvement in the way in which their

²⁸ Except any parish councils with a budgeted income of £500,000 or less in each of the financial years beginning 1997, 1998 and 1999 (SI2003/3343).

²⁹ Except community councils with a budgeted gross revenue expenditure of £1 million or less for either of the financial years beginning 1998 or 1999 (SI2000/1029).

functions are exercised, having regard to a combination of economy, efficiency and effectiveness. For 2005/06 there are 94 BVPIs for Best Value Authorities in England which cover many, but not all, aspects of services provided by LAs (five relate to planning services). BVPI's cover five dimensions of performance:³⁰

- strategic objectives – why the service exists
- cost and efficiency – the resources committed to a service and the efficiency with which they are turned to planning cost
- service delivery outcomes – how well the service is doing against the strategic objectives
- quality – the quality of the services delivered, explicitly reflecting users' experience of services, and
- fair access – ease and equality of access to services.

1.97 BVPIs and targets³¹ for planning services are only altered after consultation between ODPM, the Audit Commission (AC) and LAs. Any targets may be based on previous performance levels, and are meant to drive up the delivery standards of local services. Performance information is published by the LA, and may be checked by an external auditor appointed by the AC.

1.98 Assessment of the actual performance levels of the LA, including performance in terms of use of resources, occurs via a Comprehensive Performance Assessment process (CPA), a process introduced in the Local Government Act 2000 and run by the AC. The CPA involves measuring LA performance in terms of value for money and service quality with the aid of BVPI outcomes, along with inspections and self-assessment by the LA. On the basis of this analysis, the AC produces a report detailing any problems and, if appropriate, suggesting an action plan. The consequences of a high CPA rating include greater freedom to borrow, invest, trade, charge and set

³⁰ Source: www.bvpi.gov.uk/pages/faq.asp

³¹ It should be noted that some but not all BVPIs have targets.

spending priorities, and less onerous future inspections. The AC tends to limit inspections to less able LAs that are rated 'poor', 'weak' or 'fair', but property information services, accounting for only a small proportion of an LA's total resources, are unlikely to come under detailed scrutiny unless there are specific complaints or evidence of significant anomalies in accounting or fee levels.

- 1.99 There are two BVPIs of relevance to property information search services. BV179 relates to the percentage of standard searches carried out within ten working days, where a 'standard search' is defined as form LLC1 plus Form CON29 part 1. BV157 is defined as 'the number of types of interactions enabled for e-delivery as a percentage of types of interactions legally permissible for e-delivery'. 'Types of interaction' means any contact between the citizen and the LA and includes: providing information; collecting revenue; providing benefits and grants; consultation; regulation (such as issuing licences); applications for services; booking venues, resources and courses; paying for goods and services; providing access to community, professional or business networks; and, procurement. The national target relating to electronic delivery of government services is 100 per cent for all LAs by the end of 2005.
- 1.100 Improvements in the performance of LAs in terms of property search services have been attributed partly to the role of BVPIs. However, the design of BV179 may have encouraged some LAs to prioritise standard searches at the expense of other types of search, skewing activity away from requests for personal searches, other searches of public registers/records by PSCs and stand-alone requests for LLC1 forms.

Performance Indicators in Wales

- 1.101 The Welsh equivalent BVPI 179 is NAWPI 7.7 (National Assembly for Wales Performance Indicators): the percentage of standard searches carried out in 10 working days.

Directives 80/723/EEC and 2000/52/EC

- 1.102 These directives relate to the transparency of financial relations between Member States and public undertakings. The directives have not yet been

implemented in the UK although in March 2005 the government went out to consultation on draft implementing regulations.

- 1.103 As part of this study we considered whether, if and when implemented, these directives would have any impact or effect on LAs' dealings in property information. We concluded that, as matters currently stand, they would not.
- 1.104 The directives provide for transparency of financial relations between public authorities and public undertakings. 'Public authorities' would include LAs. 'Public undertakings' refers to undertakings over which public authorities may exercise, directly or indirectly, a dominant influence by virtue of their ownership of it, their financial participation in it or the rules which govern it.
- 1.105 The transparency that is required is to enable the following to emerge clearly:
- public funds made available directly by public authorities to the public undertakings concerned
 - public funds made available by public authorities through the intermediary of public undertakings or financial institutions, and
 - the use to which these public funds are actually put.
- 1.106 In addition the directives impose accounting requirements on any 'undertaking required to maintain separate accounts'. These are defined as undertakings that enjoy special or exclusive rights granted by a Member State pursuant to Article 86(1) of the EC Treaty, or that are entrusted with the operation of a service of general economic interest under Article 86(2) of the EC Treaty if they receive state aid in any form.
- 1.107 The transparency and separate accounting requirements of the directives do not apply in respect of services the supply of which are not liable to affect trade between Member States to an appreciable extent, or to undertakings whose total annual net turnover over the relevant two financial years was less than EUR 40 million.
- 1.108 We think it unlikely that the supply of property information in the UK has an appreciable effect on trade between Member States of the EU. If this is the

case, the directives, once implemented, will not apply to any of the bodies involved in the supply of property information.

- 1.109 In any event, the undertakings involved in NLIS are three private sector companies that are not controlled or influenced in their management decisions by any public authority. Nor do the NLIS companies receive public funding – rather they make a commercial profit on the services they provide. On this basis, even if there is an effect on trade between Member States, the transparency directives, if and when implemented, will have no bearing on NLIS.
- 1.110 We do not have sufficient information to judge whether C-NLIS may be or become (as and when it changes from a limited company to a Community Interest Company) a public undertaking or an undertaking which could be required to maintain separate accounts for the purposes of the directives. To the extent that it is or becomes either, and to the extent that there is both an appreciable effect on trade between Member States and the financial threshold in the directives is exceeded, C-NLIS will be bound by any implementing legislation that is put in place to supplement existing law. However we do not believe this will have any effect on the way property information is dealt with or on the recommendations of this study.

2 TABLES

Table 2.1: Official search forms

Search form	Access Fee	Who sets fees?	Relevant statutes, regulations and guidelines
LLC1	<p><i>England and Wales:</i></p> <ul style="list-style-type: none"> ▪ £4 (electronic direct from LA) ▪ £6 (postal) 	<p><i>England:</i></p> <ul style="list-style-type: none"> ▪ DCA sets uniform statutory fee with 'concurrency' of HM Treasury (LLCA 1975, s14 (1)(h)). ▪ DCA to delegate fee-setting power to discretion of each LA. <p><i>Wales:</i></p> <ul style="list-style-type: none"> ▪ NAFW sets uniform statutory fee (since 31/12/04). ▪ NAFW to retain centralised, uniform statutory fee. 	<p><i>England:</i></p> <ul style="list-style-type: none"> ▪ Statutory access and fee: Local Land Charges Act 1975 s9 and s14; Local Land Charges Rules 1977. ▪ Statutory fees until delegation of fee setting: SI 2003 No.2502: Local Land Charges (Amendment) Rules 2003. ▪ Delegation of fee setting to LAs (amendment to LLCA 1975 (not yet in force): included in Constitutional Reform Act 2005, paragraphs 82-85 Schedule 4 (assent on 24/03/05). ▪ DCA Draft Guidance on Setting Fees for Local Land Charge Services after delegation of fee setting to LAs (implementation expected in autumn/winter 2005). <p><i>Wales:</i></p> <ul style="list-style-type: none"> ▪ Delegation of fee setting to NAFW from 31/12/04: Schedule 1 article 2, National Assembly for Wales (Transfer of Functions) Order 2004 (SI 2004 No. 3044). ▪ Uniform fee to be set at cost-recovery level over 3 years, after formal consultation and cost assessment (Guidance to be issued) – in the meantime, will apply fees set out in SI 2003 No. 2502 (see above).

Search form	Access Fee	Who sets fees?	Relevant statutes, regulations and guidelines
CON 29 (part I)	Postal fees for residential searches in May 2005 ranged from £55 - £269, with a median price of £119.	Fees set at discretion of each LA, with ' <i>regard to costs in dealing with enquiries</i> ' (SI1994/1885).	<ul style="list-style-type: none"> ▪ No statutory basis for CON 29 form: LAs have a 'quasi-contractual' agreement with the Law Society to release such information as they hold in response to a CON 29 search request (see ODPM Guidance paragraph 5.7). ▪ Fees for CON 29 form governed by: Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885.
CON 29 (part II)	Average fee in May 2005 was £11 per standard printed question (postal and electronic).	Fees set at discretion of each LA, with ' <i>regard to costs in dealing with enquiries</i> ' (SI1994/1885).	<ul style="list-style-type: none"> ▪ No statutory basis for CON 29 form: LAs have a 'quasi-contractual' agreement with the Law Society to release such information as they hold in response to a CON 29 search request (see ODPM Guidance paragraph 5.7). ▪ Fees for CON 29 form governed by: Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885.

Search form	Access Fee	Who sets fees?	Relevant statutes, regulations and guidelines
CR21	£14 per parcel of land.	<ul style="list-style-type: none"> ▪ <i>England</i>: DEFRA (with LAs consulted). ▪ <i>Wales</i>: NAFW. 	<p><i>England</i>:</p> <ul style="list-style-type: none"> ▪ Statutory access and fee for CR21 form: s3(1) and (2) Commons Registration Act 1965; Commons Registration (General) Regulations 1966 (as amended). <p><i>Wales</i>:</p> <ul style="list-style-type: none"> ▪ Functions transferred to NAFW under National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999 No. 672, article 2, schedule 1. ▪ Current statutory fees set out in Commons Registrations 1966, schedule 3 as amended by the Commons Registration (General) (Amendment) (Wales) Regulations, SI 2003 No. 994 (W.143), regulation 2(b) (from 01/05/03).
CON 29DW	-	-	No statutory basis for CON 29DW Form <i>Water Industry Act ss 198-199: Maps of water works and Sewer Maps</i>

Table 2.2: Public access to unrefined property information

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Local Land Charges register		LLC1	Open access: £11 per land parcel.	<p><i>England:</i></p> <ul style="list-style-type: none"> ▪ DCA sets uniform statutory fee with 'concurrency' of HM Treasury (LLCA 1975, s14 (1)(h)). ▪ Considering whether to devolve fee-setting powers to LAs. <p><i>Wales:</i></p> <ul style="list-style-type: none"> ▪ NAFW sets uniform statutory fee (since 31/12/04). 	<p><i>England:</i></p> <ul style="list-style-type: none"> ▪ Statutory access and fees: Local Land Charges Act 1975, s8 and s14; Local Land Charges Rules 1977. ▪ Statutory fees: SI 2003 No.2502: schedule 3, Local Land Charges (Amendment) Rules 2003. <p><i>Wales:</i></p> <ul style="list-style-type: none"> ▪ Delegation of fee setting to NAFW from 31/12/04: Art.2, Schedule 1 National Assembly for Wales (Transfer of Functions) Order 2004. ▪ Aim to keep fee setting approach consistent with England.
Planning register	S69 TCPA 90 statutory requirement to keep a	CON 29 part 1	Available for public inspection	-	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, s69: Inspection at all reasonable hours.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	register available for public inspection at all reasonable hours. No explicit statement that inspection is free.	Q1.1 (a) - (d)	at all reasonable hours. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.		<ul style="list-style-type: none"> Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Planning (building regulations)	Information not available as of right on public register. Some authorities make information available within planning enquiries.	CON 29 part 1 Q1.1 (e) – (g)	Discretionary access and charges.	LA	<ul style="list-style-type: none"> • Building Act 1984, section 91A once it comes into force this section will make provision for LAs to keep registers as prescribed under the Act which shall be available for inspection by the public during prescribed periods. The LA will be obliged, in prescribed circumstances, to provide copies of information and documents kept in the register and may, in prescribed circumstances charge a fee for copies (fees to be calculated in a prescribed manner). (Section 91A inserted by the Sustainable and Secure Buildings Act 2004 s7 from a date to be appointed). • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Planning designations and proposals	No statutory register to be kept, but there is a statutory requirement to make plans	CON 29 part 1 Q1.2	Information to be available for inspection by the public during	-	<ul style="list-style-type: none"> • Town and Country Planning (Development Plan) (England) Regulations 1999 (SI 1999/3280),

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	available for inspection. The 2004 Regulations, which apply to England, provide that all proposals or alterations to plans should be made available for public inspection and require certain documents to be published on the relevant authority's website. There is no explicit reference to inspection being free of charge.		normal office hours. Certain documents to be published on the relevant authority's website. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.		<p>Regulations 38, 11 and 22</p> <ul style="list-style-type: none"> • adopted and proposed plans to be publicly available. • Planning and Compulsory Purchase (Local Development) (England) (Regulations) 2004 (SI 2004/2204), Regulations 12, 36 and 50. Local development schemes, development plan documents and local development documents to be made publicly available and to be published on relevant LA's website. • Regulations 17 and 26 – concern supplementary planning documents and pre-submission public participation. • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Highways maintainable at public expense	S 36 (6) Highways Act 1980 – Statutory requirement for a list to be compiled which is to be open to inspection free of charge.	CON 29 part 1 Q2 (a)	Available for public inspection free of charge at all reasonable hours.	-	<ul style="list-style-type: none"> • Highways Act 1980, s36 (6) and (7): any list must be kept at the LA where it was made and be available for public inspection free of charge at all reasonable hours.
Highways	No statutory register	CON 29 part 1 Q2 (b) – (d)	Discretionary access and fees	LA	<ul style="list-style-type: none"> • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Land required for public purposes	No statutory requirement to keep a register. Information is available by consulting public local plans which are held by the LA.	CON 29 part 1 Q3.1	Available for public inspection at all reasonable hours. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.	LA	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, function set out in Schedule 13 (paragraphs 5 and 6). • Paragraph 5 – land indicated in a plan other than a development plan. Such information would not appear in a local plan. • Paragraph 6 – land which may be referred to in a local plan but will not always be. • Access and fees: Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Land to be acquired for road works	Statutory obligation to maintain a register of any land subject to	CON 29 part 1 Q3.2	Available for inspection by the public at all	LA	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, s69: Register of applications etc
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Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	applications of planning permission. There are no explicit statements to the effect that access is free of charge.		reasonable hours where relevant land is subject to application for planning permission. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No 1885, may give LAs the power to charge.		<ul style="list-style-type: none"> Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Drainage agreements: sewer maps	Statutory duty to maintain records of every public sewer etc. Pursuant to s199, these are to be open	CON 29 part 1 Q3.3 (part)	To be made available to the public at all reasonable times free of charge.	-	<ul style="list-style-type: none"> Water Industry Act 1991, s199 and s200. Public sewer maps: Information on sewer maps to be made available to the public at all reasonable times free of charge.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	for inspection free of charge pursuant to s199 (4).				
Drainage agreements: other		CON 29 part 1 Q3.3 (part)	Open for public inspection at all reasonable times where information is required to be included on the register kept pursuant to s 69 TCPA 90. Inspection not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994 AI 1994 No 1885, may give LAs the power to charge.	-	<ul style="list-style-type: none"> • Building Act 1984, s22: empowers LAs to agree with adjoining building owners that joint private sewer should be constructed. • Town and Country Planning Act 1990, where information would be required to be recorded on a register pursuant to s69 TCPA: Statutory obligation for a register to be kept open to public inspection at reasonable times

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Nearby road schemes	<p>No register but there is a statutory obligation pursuant to Part 5A Local Government Act 1972 (LGA) for all minutes to be open to public inspection.</p> <p>Street works – there is a statutory obligation under the New Roads and Street Works Act for a register to be maintained which is to be open to public inspection free of charge.</p>	<p>CON 29 part 1 Q3.4 (a) – (f) (part)</p>	<p>Register available for inspection by the public free of charge where information is unrestricted information. (Where the register relates to restricted information access is restricted to any person having the authority to execute works or who otherwise appears to the authority to have sufficient interest).</p>	-	<ul style="list-style-type: none"> • New Roads and Street Works Act 1991, s53 and s112: (register of street works prescribed, executed or proposed): open to public inspection free of charge at all reasonable hours. So far as the information relates to restricted information access is limited to any person having the authority to execute relevant works or who otherwise appears to the authority to have a sufficient interest. • Public access to minutes of Planning Committee Meetings and road schemes advertised by Secretary of State. Part 5A of the LGA (inserted by the Local Government (Access to Information) Act 1984) requires meetings held by LAs to be open to the public. • The public may be excluded where information is confidential or where the information is exempt information as set out in Part 1 of Schedule 12A.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
					<ul style="list-style-type: none"> Minutes of any meetings held in public must be made and kept for a period of six years from the date of the meeting. This would include minutes of any planning meetings open to the public.
Nearby road schemes		CON 29 part 1 Q3.4 (a) – (f) (part)	Discretionary access and fees	LA	<ul style="list-style-type: none"> Access and fees for information not available from public sources (see above): Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Nearby rail schemes		CON 29 part 1 Q3.5	Available for inspection free of charge at all reasonable hours.	-	<ul style="list-style-type: none"> Secretary of State has power to make Orders relating to the construction or operation (and matters ancillary to the construction or operation) of railways (and other specified transport systems (Section 1(2) Transport and Works Act 1992).

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
					<ul style="list-style-type: none"> Where an Order is made, the person who applied for the Order is required to deposit a copy of each document (or as much of the document as is relevant to the works) with each council in whose area the works authorised by the Order are to take place. (Section 14(5) Transport and Works Act 1992). The relevant council must make this information available to the public free of charge at all reasonable hours. (Section 14(8) Transport and Works Act 1992). Nearby railway schemes may also have to be registered as part of a relevant plan under the Town and Country Planning (Local Development) (England) Regulations 2004.
Traffic schemes	Where information relates to roads or street works, statutory obligation to maintain a register which is to	CON 29 part 1 Q3.6 (a) – (l) (part)	Where information is required to be registered under the New Roads	-	<ul style="list-style-type: none"> New Roads and Street Works Act 1991, s53 and s112, (register of street works prescribed, executed or proposed): open to public inspection at all reasonable hours free of charge (subject to limits on access

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	be open to inspection free of charge (subject to limits on access to restricted information).		and Street Works Act 1991 the register is available for inspection by the public at all reasonable hours free of charge (subject to limits on access to restricted information).		to restricted information). <ul style="list-style-type: none"> Some information on proposals from Highway Agency website (according to COPSO).
Outstanding Notices		CON 29 part 1 Q3.7 (part)		-	<ul style="list-style-type: none"> Depending on the type of notice some information will be available on a public register. Where information is not required to be recorded on a register the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994/1885 apply and fees must be set with regard to costs in dealing with enquiries.
Infringement	No statutory register	CON 29	Discretionary	-	<ul style="list-style-type: none"> This information may be required to be

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
of Building Regulations		part 1 Q3.8 (part)	access and fees.		included on a register after the entry into force of section 91A of the Building Act 1984 (see above section 'Planning (building regulations)' for details of the requirements of section 91A. <ul style="list-style-type: none"> Access and fees for information not available from public sources (see above): Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Notices, Orders, Directions and Proceedings under Planning Acts	Enforcement and stop notices information will be available from the public enforcement and stop register. Under the TCPA 90 there is a statutory obligation to keep a register but there is no explicit reference to	CON 29 part 1 Q3.9 (e) – (k) and (m)	Available for public inspection at all reasonable hours. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for	LA	<ul style="list-style-type: none"> Town and Country Planning Act 1990, s188: register of enforcement and stop notices. Register must be available for inspection by the public at all reasonable hours. Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard</i>

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	inspection being free of charge.		Land Searches) Regulations 1994, SI 1994 No 1885, may give LAs the power to charge.		<i>to costs in dealing with enquiries'.</i>
Notices, Orders, Directions and Proceedings under Planning Acts (Tree Preservation Orders) Q3.9 (l)	Statutory register to be kept which should be open to inspection free of charge.	CON 29 part 1 Q3.9 (l)	Available for public inspection free of charge at all reasonable hours.	-	<ul style="list-style-type: none"> • Town and Country Planning (Trees) Regulations 1999 Regulation 3: authority making the order must make the order available for public inspection free of charge at all reasonable hours at the office of the authority who made the order. • Town and Country Planning Act 1990, 214: register of particulars of notices in relation to the preservation of trees in conservations areas under s211 available for public inspection free of charge at all reasonable hours at a convenient place. • Also: DoE Circular 36/78 Trees and

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
					Forestry and Welsh Office Circular 64/78.
Conservation Areas	Conservation areas are registered as local land charges. The fees to inspect the LLCR are £11 per parcel of land.	CON 29 part 1 Q3.10	Open access:£11 per parcel of land	-	<ul style="list-style-type: none"> • Planning (Listed buildings and Conservation Areas) Act 1990, c.9 Part II: Statutory access to public plans. • Planning Act (Listed buildings and conservation areas) Act 1990, s69 (4): Conservation area designations are registered as local land charges in the Local Land Charges Register under Part II s69 (4) of this Act. • The provisions of the Local Land Charges Act 1975 and the Local Land Charges Rules 1977 (as amended) apply (see section 'LLC1' for details).
Compulsory purchase	No statutory register	CON 29 part 1 Q3.11	Discretionary access and fees.	LA	<ul style="list-style-type: none"> • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Contaminated land	Statutory register which is free to inspect	CON 29 part 1 Q3.12	Available for inspection by the public free of charge at all reasonable hours. Relevant authorities also required to provide facilities for making copies of register entries.	-	<ul style="list-style-type: none"> • Environmental Protection Act 1990, s64 (6-7), s78 and s78R (1): • Free inspection at reasonable hours of information relating to matters set out in sections 64 and 78R. The relevant authorities are also required to afford members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.
Radon gas	No statutory register	CON 29 part 1 Q3.13		-	<ul style="list-style-type: none"> • Public maps of affected areas published by National Radiological Protection Board: NRPB website and sent to each LA.
Road proposals by private bodies	Where information is required to be kept on registers under the New Roads and Street Works Act 1991,	CON 29 part 2 Q4 (part)	Available for inspection by the public free of charge at all reasonable hours	-	<ul style="list-style-type: none"> • New Roads and Street Works Act 1991, s53 and 112: (register of street works prescribed, executed or proposed): open to public inspection free of charge (subject to

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	statutory register and inspection is free of charge (subject to limits on access in respect of restricted information).		(subject to limits on access in respect of restricted information).		<p>limits on access in respect of restricted information).</p> <ul style="list-style-type: none"> Some information may be available free from public register of approved and completed planning applications (new housing developments only) or Local Plan/Unitary Development Plan (UDP) if a designated proposals site: (see below for details in relation to access to the UDP).
Road proposals by private bodies	Some information is not required to be kept on a statutory register	CON 29 part 2 Q4 (part)	Discretionary access and fees	LA	<ul style="list-style-type: none"> Access and fees for information not available from public sources (see above): Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Public rights of way	Statutory duty to keep maps open to inspection free of	CON 29 part 2 Q5	Free open access	-	<p><i>England:</i></p> <ul style="list-style-type: none"> Wildlife and Countryside Act 1981, s57 (5): LA's map and statement to be made

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	charge				<p>available for inspection at all reasonable hours free of charge.</p> <p><i>Wales:</i></p> <ul style="list-style-type: none"> • National Assembly for Wales (Transfer of Functions) Order 1999, SI1999/672, article 2 schedule 1. Functions transferred to NAFW.
Advertisements	There is a duty to maintain a statutory register of all applications for consents concerning advertisements.	CON 29 part 2 Q6.1, Q6.2, Q6.3 (a)	Available for public inspection at all reasonable times. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No 1885, may give	-	<ul style="list-style-type: none"> • Town and Country Planning (Control of Advertisements) Regulations 1992: article 21 – Duty to maintain a statutory register containing particulars of applications for consent for the display of an advertisement and other related information. The register shall be open to public inspection at all reasonable times.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
			LAs the power to charge.		
Advertisements	For information not required on a statutory register	CON 29 part 2 Q6.3 (b), (d) and (e)	Discretionary access and fees	LA	<ul style="list-style-type: none"> • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Completion Notices	No statutory register	CON 29 part 2 Q7	Discretionary access and fees	LA	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, s94: no duty to keep a public register. • Access and fees: Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Parks and	Statutory duty to	CON 29	Available for	-	<ul style="list-style-type: none"> • National Parks and Access to the

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Countryside	maintain a register but it is not stated to be free of charge.	part 2 Q8	public inspection at all reasonable hours. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No 1885, may give LAs the power to charge.		<p>Countryside Act 1949, s7 and s87 (s87 now repealed): statutory register available for public inspection at all reasonable hours:</p> <ul style="list-style-type: none"> • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Pipelines	Statutory duty for plans to be deposited with the local authority. Access is to be open at all reasonable hours and free of charge.	CON 29 part 2 Q9	Available for inspection by the public free of charge at all reasonable hours.	-	<ul style="list-style-type: none"> • Pipelines Act 1962, s35: statutory access to register open to the public at all reasonable hours free of charge.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Houses in multiple occupation	A copy of the registration scheme and the register should be open to inspection at reasonable time without charge.	CON 29 part 2 Q10 (part)	Available for public inspection free of charge at all reasonable hours. Obligation to supply copies on request on payment of reasonable fee.	-	<ul style="list-style-type: none"> • Housing Act 1985, s346, s347, s349 : on a statutory public register. Under section 349, the register is available for public inspection free of charge at all reasonable hours. • On request, the authority must supply copies of the scheme, the register or any entry on the register to any person on payment of a reasonable fee.
Noise abatement zones	Statutory register of noise levels in noise abatement zones to be open to inspection at all reasonable times, free of charge. Proposals for designation of noise abatement zones are also available for inspection by the	CON 29 part 2 Q11	Available for inspection by the public free of charge at all reasonable hours.	-	<ul style="list-style-type: none"> • Control of Pollution Act 1974 (CPA 1974), s64: statutory register open for public inspection free of charge at all reasonable hours. • Proposals for the designation of noise abatement zones must be kept available for inspection by any person free of charge at all reasonable times.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	public free of charge at all reasonable times during a certain period before the proposal is adopted.				
Urban Development Areas	.	CON 29 part 2 Q12		-	<ul style="list-style-type: none"> • Local Government, Planning and Land Act 1980, s134 sets out provisions for the SoS to make an Order designating an area as an urban development area. However it is not clear whether such a designation would have to be published – perhaps as part of the UDP.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Enterprise Zones	Any member of the public may inspect a copy of the scheme and make copies or extracts from it at any reasonable time without payment. The relevant authority must make copies of the scheme available at a reasonable cost to any member of the public.	CON 29 part 2 Q13	Available for public inspection free of charge at any reasonable time. Charges can be made for copies made by the authority.	-	<ul style="list-style-type: none"> • Local Government, Planning and Land Act 1980, schedule 32, paragraph 6: If a scheme is designated as an enterprise zone an advertisement should be published containing a statement that a copy of the scheme can be inspected without payment and details of where and the times it may be inspected. • Paragraph 3 sets out that a copy of the scheme (whether or not designated as an enterprise zone) should be deposited at the principal office of the relevant authority where it may be inspected by any member of the public at any reasonable time without payment. Copies or extracts from the scheme may also be made by the public without payment. The authority has to make copies available to the public at a reasonable cost.
Inner urban improvement areas	The Schedule to the Inner Urban Areas Act 1978 states where a	CON 29 part 2 Q14	Available for inspection by the public free of	-	<ul style="list-style-type: none"> • Inner Urban Areas Act 1978, Schedule paragraph 1(3). Resolution creating an inner urban improvement area must be

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	relevant authority makes a resolution designating an area as an improvement area, the relevant authority shall publish a notice of the effect of the resolution identifying the area and naming a place or places where a copy of the resolution and a map on which the area is defined may be inspected at all reasonable times.		charge at all reasonable times.		published. The notice is to identify the area and name the place(s) where a copy of the resolution and a map where the area is defined may be inspected by the public at all reasonable times
Simplified planning zones	The scheme is to be available to inspection by the public but there is no explicit reference to inspection being free of charge	CON 29 part 2 Q15	Available for inspection by the public. Charging powers under the Local Authorities (Charges for	-	<ul style="list-style-type: none"> • Town and Country Planning (Simplified Planning Zones) Regulations 1992 (as amended) SI 1992/2414. Proposals to create a simplified planning zone must be made available for inspection at the principal office of the relevant authority and

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
			Land Searches) Regulations 1994, SI 1994 No 1885, may give LAs the power to charge.		<p>at such other places as may be appropriate (Regulation 4). A copy of the authority's report after it has received representations and a statement of its decision and reasons also has to be made available for inspection (Regulation 10). Adopted proposals also have to be made available for inspection (Regulation 20). The authority must also provide copies of all documents open to inspection under the Regulations on payment of a reasonable charge.</p> <ul style="list-style-type: none"> • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Land Maintenance Notices	Statutory register open to public inspection at all reasonable hours.	CON 29 part 2 Q16	Available for public inspection at all reasonable hours.	-	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, s215: statutory enforcement register

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
Mineral Consultation Areas		CON 29 part 2 Q17	Proposed plans and adopted plans available for public inspection. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.	-	<ul style="list-style-type: none"> • Town and Country Planning Act 1990, schedule 1 paragraph 7: Public access to UDP prior to adoption: Details of mineral consultation areas are set out in the UDP. Pre-adoption, UDP proposals are to be made available for public inspection at the principal office of the authority and such other places as appropriate. Once adopted the adoption notice is also made available for public inspection at the same places. • Town and Country Planning (Development Plan)(England) Regulations 1999, Regulations 11 and 22. • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Hazardous substances consents	Statutory requirement for a register to be maintained and	CON 29 part 2 Q18	Available for public inspection at all reasonable	-	<ul style="list-style-type: none"> • Planning (Hazardous Substances) Act 1990, s28: statutory registers open for

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	access given at all reasonable hours but no explicit reference to it being free of charge		hours. Inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.		<p>public inspection at all reasonable hours</p> <ul style="list-style-type: none"> • Control of Major Accident Hazards Regulations 1999 (notifications, safety reports by operators with dangerous substances on site). • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Environment and Pollution Notices	Statutory duty for a register to be kept and open to public inspection free of charge. A reasonable charge can be made for any copies.	CON 29 part 2 Q19 (some notices)	Available for public inspection at all reasonable hours free of charge. Charges for copies only.	-	<ul style="list-style-type: none"> • Environmental Protection Act 1990, ss20 (pollution) and 64 (6-7) (waste): Some qualifying notices on a public register which is open to inspection by the public free of charge at all reasonable hours. The authority must also provide facilities for copying on payment of a reasonable charge. • Control of Pollution Act 1974, s64 noise

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
					level register shall be open to public inspection at the local authority free of charge at all reasonable hours. The authority must provide reasonable facilities for copying on payment of a reasonable charge.
Environment and Pollution Notices		CON 29 part 2 Q19 (some notices)	Discretionary access and fees. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.	LA	<ul style="list-style-type: none"> Access and fees for information not available from public sources (see above): Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Litter control areas / notices	Statutory register open to inspection free of charge. In addition, the	CON 29 part 2 Q19	Available for public inspection at all reasonable	-	<ul style="list-style-type: none"> Environmental Protection Act 1990, s95 (1-5): statutory public register available for

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	authority must give the public facilities for obtaining copies of the documents on the payment of reasonable charges.		times free of charge. Facilities for obtaining copies must also be made available on payment of reasonable charges.		public inspection at all reasonable times free of charge. The relevant authority must also afford members of the public facilities for obtaining copies of the documents in the register on payment of reasonable charges.
Food Safety Notices	No statutory register	CON 29 part 2 Q20	Discretionary access and fees. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.	LA	<ul style="list-style-type: none"> • Functions: Food Safety Act 1990. • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.
Hedgerow Notices	Statutory Register open to inspection free	CON 29 part 2	Available for public inspection	-	<ul style="list-style-type: none"> • Hedgerows Regulations 1997 S.I.

Information type	Statutory Register and fees	LA use	Access conditions	Who sets fees?	Relevant statutes, regulations and guidelines
	of charge	Q21	at all reasonable times free of charge.		1997/1160, Regulation 10: statutory register available for inspection at all reasonable hours free of charge.
Common land/ town and village greens	Statutory duty to maintain a register but no explicit reference to inspection being free of charge	CR21	Available for inspection by the public - inspection is not explicitly free. Charging powers under the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994 No. 1885, may give LAs the power to charge.	-	<ul style="list-style-type: none"> • Commons Registration Act 1965, s3(1) and (2): Commons register and the Towns and Village Greens register: Register available for inspection by the public at all reasonable times. • Local Authorities (Charges for Land Searches) Regulations 1994, SI1994/1885: fees must be set with '<i>regard to costs in dealing with enquiries</i>'.

Table 2.3: Generic statutes, regulations and guidelines

Statute, regulation or guideline	Scope	Key features
Freedom of Information Act 2000 (FoIA 2000)	In principle, covers all LAs and all LA property information.	<ul style="list-style-type: none"> ▪ LAs may claim exemption from FoIA 2000 under s21 (availability of official search forms).
DCA Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004	Exemption for information already subject to charging/access arrangements or currently freely available on a discretionary basis.	<ul style="list-style-type: none"> ▪ FoIA 2000 mutually exclusive with Data Protection Act 1998 and EC Directive on the re-use of public sector information (see below). ▪ Requires provision of information within 20 working days of a request.
DCA Guidance on the application of the FoIA exemptions.		<ul style="list-style-type: none"> ▪ LAs may refuse to provide information if cost of reformatting, reproducing and postage exceeds £450. In cases of such refusal the LA must be able to justify their costing. If only £5-10, DCA Guidelines suggest no charge is levied by information holder. ▪ If information is not exempt unlikely to be useful for third party compilers because of 20 day time frame for responding to requests.

Statute, regulation or guideline	Scope	Key features
Environmental Information Regulations 2004 SI 2004/3391	<ul style="list-style-type: none"> Covers 'environmental information' which is broadly defined. 	<ul style="list-style-type: none"> Requires public authorities to respond to requests for environmental information by making it available as soon as possible and no later than 20 working days after the request. There are several exemptions, including information whose disclosure would adversely affect the confidentiality of commercial or industrial information. Likely to apply to at least some of the property information held by LAs but in practice unlikely to be useful for third party compilers because of 20 day time frame for responding.
<p>EC Directive on the re-use of public sector information 2003/98/EC</p> <p>The Re-use of Public Sector Information Regulations 2005 SI2005/1515</p>	<p>Re-use is defined as use for a purpose other than the initial purpose within the public task for which the documents were produced.</p> <p>The Regulations do not require public sector bodies to allow re-use of public sector documents, but if they allow re-use the Regulations apply.</p>	<ul style="list-style-type: none"> Where re-use is allowed, any conditions that apply to the re-use must not unnecessarily restrict competition, and should not discriminate between applicants who want to re-use for comparable purposes. Public sector bodies must usually respond to requests for re-use within 20 days. Any fee income should not exceed total costs of collection, production, reproduction and dissemination, together with a reasonable return on investment (but aim for fees that do not exceed marginal costs of reproduction and dissemination). If challenged, LAs must be ready to justify their fees.

Statute, regulation or guideline	Scope	Key features
<p>General power for best value authorities to charge for discretionary services under the Local Government Act 2003, s93</p> <ul style="list-style-type: none"> ▪ <i>England:</i> ODPM Guidance, November 2003. ▪ <i>Wales:</i> NAFW Guidance (same approach on fee-setting as ODPM Guidance). 	<ul style="list-style-type: none"> ▪ Some legal uncertainty but appears that powers do not apply: as separate charging powers already exist for property information. ▪ If, however, scope of SI 1994/1885 interpreted narrowly, then powers would apply to that unrefined property information without any existing statutory rights of public access (see above). 	<ul style="list-style-type: none"> ▪ No exclusive agreements without objective justification on public interest grounds (backstop for terminating such agreements that cannot be justified by end of 2008). ▪ Regulations do not require LAs to allow third party compilers of property information to re-use the property information that LAs use to compile property search responses: LAs have discretion to refuse any application to re-use. <ul style="list-style-type: none"> ▪ Fee income must not exceed the costs of provision over a reasonable pay-back period for investments and set-up costs made. ▪ Price discrimination is permitted.

Statute, regulation or guideline	Scope	Key features
<p>General power for local authorities to trade in function related activities through a company under the Local Government Act 2003, s95</p> <ul style="list-style-type: none"> ▪ ODPM Guidance, July 2004 	<ul style="list-style-type: none"> ▪ Powers might apply to property information where access is discretionary. ▪ No LAs are known to have used these powers in connection with property information. 	<p>The power to trade is only available to best value authorities which are categorised as 'excellent, good or fair' by virtue of an order made under the Local Government Act 2003, s 99 (4).</p> <p>This power is only exercisable with the authorisation of the appropriate person (The Secretary of State in England and the in Wales the National Assembly for Wales).</p> <p>An order can be made only in respect of a discretionary function and only if there are no other legislative provisions allowing Local Authorities to carry out that function for a commercial purpose. We do not believe that there are other statutory provisions allowing local authorities to provide property search information on a commercial basis. Therefore this power probably applies.</p>
<p>Data Protection Act 1998</p>	<ul style="list-style-type: none"> ▪ All data held by public authorities that is personal information. ▪ Mutually exclusive with FoIA 	<ul style="list-style-type: none"> ▪ Act imposes restrictions on the processing – including disclosure – of personal data. ▪ May apply to property information where this contains personal information.

Statute, regulation or guideline	Scope	Key features
	2000 (see above).	
Copyright, Designs and Patents Act 1988 (as amended) Copyright and Rights in Databases Regulations 1997 SI 1997/3032	<ul style="list-style-type: none"> ▪ LA property information that qualifies as a 'literary work'. ▪ LA property information on a database in respect of which there has been substantial investment. 	<ul style="list-style-type: none"> ▪ Information on statutory registers: no infringement of copyright if a person, including a PSC, copies or issues to the public copies of information, for the purpose of disseminating it to the public. ▪ Other information: LA could take infringement action against a person, including a PSC that copied, published or communicated it to the public without the LA's consent (allowing access to this information is likely to give actual or implied licence to copy – but this may only permit information to be passed on to the particular customer requesting the search). ▪ Similar rules apply for separate database rights, to the extent that any property information is contained on a database.
ODPM Guidelines: Personal searches of the local land charges register and inspection of other records open for public	<ul style="list-style-type: none"> ▪ Recommended good practice for all LAs and personal search companies (PSCs). 	<ul style="list-style-type: none"> ▪ Guidance on access to unrefined property information held by LAs. ▪ Non-mandatory.

Statute, regulation or guideline	Scope	Key features
inspection held by local authorities February 2005		
Best Value Performance Indicators under s4 Local Government Act 1999	<ul style="list-style-type: none"> ▪ Applies to all LAs in England and Wales. ▪ BV179 / NAWPI 7.7: 'The percentage of standard searches carried out in 10 working days' (LLC1 plus Con 29 part 1). ▪ BV157: 'the number of types of interactions enabled for e-delivery as a percentage of types of interactions legally permissible for e-delivery' 	<ul style="list-style-type: none"> ▪ BVPIs introduced as part of the Local Government Act 1999. ▪ 94 BVPIs in total, five set by ODPM for planning services. ▪ Aim is to raise the efficiency, effectiveness and economy of service delivery. ▪ National target for electronic delivery of government services is 100 per cent by the end of 2005.
<i>England: BV179 and BV157</i>		
<i>Wales: NAWPI 7.7</i>		
Transparency directives: Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings	<ul style="list-style-type: none"> ▪ No UK implementing legislation as yet. ▪ If and when implemented, will apply to: <ul style="list-style-type: none"> - Financial relations between public authorities and public 	<ul style="list-style-type: none"> ▪ Requires transparency of financial relations such that it is clear to which public undertakings public funds have been made available, and to what use they have been put. ▪ Requires separation of accounts for undertakings with special or exclusive rights or entrusted with the operation of services of general economic interest. ▪ The supply of property information may not appreciably

Statute, regulation or guideline	Scope	Key features
Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings	<p>undertakings and</p> <ul style="list-style-type: none"> - Undertakings required to maintain separate accounts. <p>Only applies where the supply of services is liable to affect trade between Member States to an appreciable extent.</p>	<p>affect trade between Member States. If so, the directives will not affect property information.</p> <ul style="list-style-type: none"> ▪ In any event directives are unlikely to apply to the private sector NLIS companies – though they may (when implemented) apply to the C-NLIS public sector body.
Government consultation on draft implementing regulation		