

Property searches and the EIR

Environmental Information Regulations

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Introduction

The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities.

An overview of the main provisions of the EIR can be found in [The Guide to the Environmental Information Regulations](#).

This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

This guidance explains how public authorities should respond to requests for local property search information, and the relationship between the EIR and the Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR).

This guidance applies equally to the Local Authorities (Charges for Property Searches) (Wales) Regulations 2009 that do not differ materially from the CPSR.

Overview

- The term 'property searches' usually describes enquiries made to local authorities when buying a property. The answers make prospective buyers aware of issues before they complete their purchase, such as legal interests in the property, rights of way over the property, and planning restrictions or proposals.
- Enquiries are usually made using a CON29 form. Sometimes the local authority will be asked to complete a CON29 form and to guarantee the answers that are given. Sometimes members of the public, legal advisers or property search companies will ask for access to underlying information so that they can answer the questions in the CON29 form themselves.
- The majority of the information that is used to answer property search enquiries is likely to be environmental information as defined by the EIR.
- When a local authority is asked to complete and guarantee the content of a CON29 form, this involves more than simply providing access to environmental information as required by the EIR. Therefore the charging provisions in the EIR will not

apply and local authorities are able to use the CPSR charging regime.

- When a local authority is asked to provide access to underlying environmental information, so that a third party can answer the questions in the CON29 form themselves, the charging provisions in the EIR rather than the CPSR will apply.
- Public authorities cannot use the publication scheme provisions of FOIA to justify applying CPSR rather than the EIR charges for access to environmental information.
- Information that is not environmental should be considered under FOIA. In such cases, the CPSR can form the basis for any charging.

What we mean by property searches

The term 'property searches' usually describes enquiries made to local authorities when buying a property. The answers make prospective buyers aware of issues before they complete their purchase such as legal interests in the property, rights of way over the property, and planning restrictions or proposals, before they complete their purchase.

Property searches are an integral part of the process of purchasing property in England and Wales. Purchasers and mortgage lenders require assurances about the legal and environmental factors which might affect the legal ownership, use or value of a property. Searches cover information about any binding obligations (known as land charges) which apply to the property, and for any additional environmental and planning information about the land and adjacent areas.

The information used to answer property search enquiries is held by local authorities, and the enquiry is usually made through a standard CON29 form devised by the Law Society. Most questions are answered yes or no, although some questions may need more detailed answers.

Property searches and environmental information

As indicated in our guidance [What is environmental information?](#), the definition of what comprises environmental information is broad.

Much of the information used to answer the questions in a CON29 form is likely to be environmental because it affects or is likely to affect the use or state of the land (Regulation 2(1)(c)). For example:

- planning permission, together with other information about the planning process;
- information on land to be acquired for road works and regarding nearby road or railway schemes;
- designation as a conservation area;
- compulsory purchase orders and the use of these powers to demolish buildings; and
- information about contaminated land.

Overall, we consider that the majority of the information contained in property records held by local authorities is likely to be environmental as defined in the EIR. However, with some of the enquiries the situation may be less clear, and so local authorities will need to consider this on a case by case basis.

Charging for environmental information

The EIR charging provisions state that:

8. (1) Subject to paragraphs (2) to (8), where a public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

(2) A public authority shall not make any charge for allowing an applicant—

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for that examination.

(3) A charge under paragraph (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount.

The Commissioner has published further guidance on [Charging for environmental information](#) that explains in detail the circumstances in which an authority can request payment.

In summary, an authority can make a reasonable charge to recover the cost of supplying information in response to a request, including staff and disbursement costs.

The Regulations are clear that an authority cannot charge for providing inspection facilities or access to public registers of environmental information. Staff time spent locating information and making it ready for inspection can be charged.

Interaction between the CPSR and the EIR

Local authorities have traditionally made charges for carrying out property searches but there has been a lack of consistency in this area. The CPSR were introduced to provide a framework for local authorities to make charges, specifically for granting access to property records and for answering enquiries about a property. In essence, they permit charging to be made on a cost recovery basis.

The charging provisions of the CPSR do not apply where:

- the local authority is able to charge for access to property records under another enactment; or
- the local authority has to provide access free of charge under the provisions of another enactment.

The CPSR were enacted in December 2008, nearly four years after the EIR came into force, and so it is likely that they were drafted in recognition of the access provisions contained in the EIR. This position also acknowledges the primacy of EU legislation, whereby European law, such as the EIR, takes precedence over domestic law.

Consequently, the CPSR cannot be used as the basis for charging for access to environmental information and public authorities must adopt the charging provisions in the EIR.

However, it is important to remember that the EIR only provide a right of access to the underlying environmental information that is held by a public authority. If the enquiry goes beyond the provision of underlying environmental information then the EIR may not apply.

Property searches and the EIR in practice

There are different approaches to answering property search enquiries made through a CON29 form. Sometimes the local authority will be asked to complete a CON29 form and to guarantee the answers that are given. Sometimes members of the public, legal advisers or property search companies will ask to inspect or be given copies of underlying environmental information so that they can answer the questions in the CON29 form themselves.

Providing an 'official' response to property searches

A CON29 form completed through a personal search or by using a response to an EIR request is not always adequate for the purposes of a property transaction. In particular, lenders and legal representatives might require the answers to the CON29 questions to be checked and guaranteed by the relevant local authority. This process is often called an 'official search' and is backed by a guarantee of accuracy. An official search can also require the authority to analyse underlying information and use their own expertise or judgement to provide answers. For example instead of providing a map showing a property and its surroundings, the authority will confirm the nature of adjacent highways or other features.

A public authority's duty under EIR is to provide access to environmental information, either by allowing inspection or providing copies of the information.

Other services, such as providing an officially-guaranteed CON29, go beyond simply providing environmental information. If a local authority is asked to provide an official search or to analyse underlying information and guarantee the accuracy of CON29

answers, then the EIR will not apply and the authority will be free to apply the charging provisions in the CPSR.

This is likely to apply to the vast majority of CON29 requests made to local authorities by solicitors or conveyancing firms as part of an individual conveyancing transaction.

Personal inspection of information

In some cases individuals (including those working for property search companies) will ask to inspect underlying environmental information so that they can answer the CON29 questions themselves. This is often referred to as a 'personal search'. The underlying environmental information is usually held in a register or database, and might be accessed electronically or through paper files held by the local authority.

In this situation the EIR charging regime applies because all that is being asked for is access to underlying environmental information. The local authority is not providing the additional official search service of analysing information and guaranteeing the accuracy of CON29 answers.

The EIR allow an authority to charge a reasonable amount to cover the costs of locating the information in order to make the same available for examination.

In most personal search cases, however, the local authority will not have to prepare any information for inspection. This is because they will give the person conducting the personal search access to registers, databases and files and will locate the relevant information themselves. For this reason it is unlikely that it will be reasonable to make any charge for staff time.

However, if the searcher then asks to make photocopies of the located information, local authorities will be able to charge for the photocopying. For further information on photocopying charges please see our guidance on [Charging for environmental information](#)

Providing copies of underlying environmental information

In some cases a person requesting information will ask to be provided with copies of the underlying environmental information instead of searching for and inspecting the documents themselves.

Under the EIR, applicants are entitled to ask for copies of environmental information. In the context of property searches, this could relate to various types of information about a specific property. A request for information which would allow the applicant to complete a CON29 enquiry form is likely to be a valid EIR request.

In these cases the public authority is entitled to make a charge for the cost of supplying the information, including staff costs and the disbursement costs involved in producing a copy (ie the cost of photocopying and posting the information). The charge must be reasonable, and it must be clearly explained to the applicant. Further detailed guidance on charging under the EIR is available in the ICO's [Charging for environmental information](#).

Time for compliance

To the extent that the property search enquiries are requests for environmental information they should be complied with as soon as possible and no later than 20 working days following receipt of the request as set out in the EIR.

However, in view of the potentially large number of enquiries that a local authority may receive, there may be difficulties in providing inspection facilities that meet the requirements of each requester. Consequently, a local authority could use an appointments system, potentially involving a number of different locations, and explain to applicants why an appointment is not as early in the 20 working day period as they may have expected.

In cases involving search enquiries for a number of properties, it may be possible for a public authority to extend the time limit for compliance by a further 20 working days due to the volume of information involved and the difficulties in making arrangements for inspection (regulation 7(1)).

Manifestly unreasonable requests

Regulation 12(4)(b) provides an exception from the duty to disclose environmental information where a request is manifestly unreasonable. For example, a request for the records relating to all, or a significant number of, properties within the local authority's

area. However, a public authority must be aware of its duty to advise and assist applicants (which could, for example, help to refine the request) and that the exception is subject to a public interest test. For further information on when this exception can apply, please see our guidance [Manifestly unreasonable requests](#).

Publication scheme

It may be possible for a public authority to include property search records as a category of information that is published through a publication scheme adopted under section 19 of FOIA. However, an authority cannot use the charging policy of the scheme to import the charging provisions of the CPSR on the basis that charging is authorised under another statute.

Where the records comprise environmental information, the requirements of the EIR take precedence. An authority cannot circumvent the provisions of the EIR and seek to make a CPSR charge on the basis that this is permitted under the publication scheme.

Public authorities should also include a schedule of charges in their publication scheme. For more information about the requirement to provide a schedule of charges see our guidance on [Charging for environmental information](#).

More information

Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other EIR exceptions or FOIA exemptions.

This guidance has been developed drawing on ICO experience. Because of this, it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at www.ico.org.uk.