The Law Commission

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REPORT ON LOCAL LAND CHARGES

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THE LAW COMMISSION

Item IX of the First Programme

LOCAL LAND CHARGES

To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain

A—INTRODUCTION

1. In the course of our consideration of the law relating to the transfer of land we have reviewed the working of the Land Charges Act 1925. Our first report on that Act[1] dealt with land charges affecting unregistered land[2]. We did not, however, deal in that report with local land charges[3] which differ from land charges in certain important respects. It is with local land charges that we now deal.

(*a*) The two types of charge—similarities and differences

2. Despite the differences, land charges and local land charges have at least two important features in common. First, both classes of charge comprise instruments or matters which impose some burden or restriction on land or on its use or enjoyment, and consequently are of concern to prospective purchasers of interests in land[4]. Secondly, all are registrable, so as to enable purchasers to obtain reliable (and in some cases conclusive) evidence as to the charges which may affect a particular piece of land. Land charges are now registered centrally at the Land Charges Registry[5], or (if the land is registered land) are noted against the title at the Land Registry. Local land charges, as their name suggests, are registered locally in registers kept by local authorities.

3. Apart from the fact that the two types of charge are registrable in different registers, the principal difference between them is that, by and large, local land charges comprise public matters (that is to say, matters such as financial charges and planning restrictions[6] in which local authorities, departments of central government and other public bodies are interested), whereas land charges are private matters[7]. Examples of such private matters are restrictive covenants, contracts and options for the purchase of land and certain mortgages not

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[1] Law Com. No. 18; (1968–69) H.C. 125, published in March 1969. The legislative recommendations made in that report have been enacted as ss. 24 to 27 of the Law of Property Act 1969.

[2] The statutory provisions relating to land charges (other than local land charges) affecting unregistered land have since been consolidated and are now contained in the Land Charges Act 1972.

[3] The statutory provisions relating to these are in Part VI of the Land Charges Act 1925 (reproduced with amendments in Sch. 4 to the Land Charges Act 1972).

[4] In this report the words "purchaser", "vendor" and "purchase" are used in the wider senses indicated in para. 9 below.

[5] The Registry is a department of H.M. Land Registry. It has recently been transferred from Kidbrooke to Plymouth.

[6] We recommend later in this report that certain planning matters should cease to be local land charges.

[7] There are exceptions: light obstruction notices under the Rights of Light Act 1959 and schemes under s. 19 of the Leasehold Reform Act 1967 are registered as local land charges, while Inland Revenue charges for Estate duty are Class D(i) land charges.

protected or secured by a deposit of the deeds. The local land charges registers, moreover, may contain entries relating to both registered[8] and unregistered land, whereas the land charges register is confined to matters affecting land the title to which is not registered. Last, but not least, the two types of charge are registered in entirely different ways. Local land charges are registered against the land affected, whereas land charges are registered only against the name of the estate owner at the time of the imposition of the charge.

4. From the point of view of prospective purchasers, this difference in the method of registration is all-important. As we have said, the purpose of maintaining these registers is to enable them to find out about existing charges. Ideally, a purchaser will wish to find out about such matters before he is actually committed to his purchase, that is to say, before there is a binding contract. This presents little difficulty in the case of local land charges, because an intending purchaser can always search against the land he is proposing to purchase. In the case of land charges, however, he does not generally know the names of all the persons against whom he ought to search until *after* the contract has been entered into[9]. Conveyancing procedures, and consequently the conditions of sale normally used, are therefore different in relation to the two types of charge. The usual practice is that searches for local land charges are made before contract and the purchaser accepts the risk that he will take subject to any local land charges imposed between the date of contract and the date on which the purchase is completed[10]. Searches for land charges are now usually made between contract and completion, and the purchaser will generally be entitled to rescind the contract if the property is discovered to be subject to a land charge which was not disclosed at the date of contract and which the vendor is unable or unwilling to remove[11]. It will, therefore, be seen that the purchaser's search for ordinary land charges relates to the position immediately before completion, whereas his search for local land charges is aimed at discovering, so far as possible, what the position will be when he enters into his contract.

(*b*) **The Stainton Report**

5. This is not the first time that local land charges have been the subject of a report. In 1949, Lord Jowitt, L.C. appointed a Committee under the chairmanship of Sir John Stainton and their Report[12] was published in January 1952. The Committee's terms of reference contained certain limitations (to which we are not subject) but after a very thorough examination of the whole of the system they made a substantial number of recommendations. Some of these have been implemented: in particular, the rules made under the Land Charges Act and many subsequent Acts were consolidated in 1966, and the joint effect of the London Government Act 1963 and the Local Government Act 1972 has been to reduce the number of local registers[13]. We will have occasion in this

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[8] Under the Land Registration Act 1925, s. 70(1)(i). local land charges are "overriding interests" and so do not have to be noted on the register of title for their protection.

[9] See Law Com. No. 18, paras. 14 ff.

[10] In practice, purchasers accept this risk from an even earlier date than the date of contract, namely the date of search.

[11] See Law of Property Act 1969, s. 24.

[12] *Report of the Committee on Local Land Charges* (1951–52), Cmd. 8440.

[13] See para. 19 below.

report to make frequent reference to the report of the Stainton Committee because much of our work on this topic has involved a re-examination of the matters considered by them.

6. We have one general observation to make about the Stainton Committee's report. Although that Committee considered that the system in general was "not in practice working badly", they appear to have taken a somewhat pessimistic view of the prospects for the future if their recommendations were not carried out, and even went so far as to talk in terms of administrative breakdown[14]. This has not happened, and we do not think that those who operate and use the system would accept that view today. Two things, in fact, have helped to simplify matters from the administrative point of view. The first is the existence of Professor J. F. Garner's *Local Land Charges*. This book was first published in 1949 and the Stainton Committee acknowledged its helpfulness; it has since achieved general recognition as a work of authority and is undoubtedly of great practical assistance. Also, the consolidation of the rules (as recommended by the Stainton Committee) has helped to clarify the situation.

(*c*) **Supplementary Enquiries**

7. As we have already indicated, a purchaser is very much concerned to discover whether there are (or are likely to be) any matters which will adversely affect his enjoyment of the property which he is buying, or its value. The statutory registration system is, however, very far from exhaustive and, as we shall see, only certain public matters are registrable in the registers of local land charges. The rest can only be discovered by making specific enquiry of the local authority. The making of these enquiries has been greatly simplified by the issue of a series of printed forms[15] setting out questions which local authorities have agreed with The Law Society to answer. These Supplementary Enquiries (which generally accompany requisitions for official searches of the local land charges registers) are an essential part of the system as a whole, and, as the Stainton Committee recognised, any study of local land charges which did not consider the role played by them would be seriously incomplete.

(*d*) **Consultation**

8. In the introduction to our earlier report on land charges[16] we referred to the memoranda on conveyancing matters which the Council of The Law Society submitted to us in 1966, and to our working paper[17] which followed. The second part of that working paper was devoted to the local land charges system but the paper was not circulated as widely as it would have been under our current practice. Accordingly it formed only the basis of our preliminary consultations on this subject. In the spring of 1972 we decided that a draft of this report, which had then been prepared, should be treated as a consultative document. Copies were sent to the Bar Council and The Law Society, and to other professional legal associations; all the local authority associations (and those of their clerks); every Government department known to be concerned

[14] Cmd. 8440, para. 80.
[15] Con. 29A (latest edition April 1974); and Con. 29D (January 1973), which is the form in use in London.
[16] Law Com. No. 18, paras. 8 and 9.
[17] Working Paper No. 10: Proposals for changes in the law relating to land charges affecting unregistered land and to local land charges; (May 1967).

with conveyancing; the National Coal Board and British Railways Board; the National Trust; the Building Societies' Association; Lloyds; the Royal Institution of Chartered Surveyors; the Incorporated Society of Valuers and Auctioneers; the Royal Town Planning Institute; and the National Federation of Building Trade Employers. Copies were also sent to a small number of individuals including Mr. Justice Goulding (one of the few surviving members of the Stainton Committee) and Professor Garner. While we were revising the draft in the light of the comments received, we had a very useful exchange of views with local authority representatives at a meeting held in July 1973. We are extremely grateful to all those who sent us their comments on the draft report.

(*e*) **Definitions**

9. Before describing the system, it will be convenient to define certain terms which will appear frequently in this report:

"the Act" means the Land Charges Act 1925 as amended by the Law of Property (Amendment) Act 1926, the Town and Country Planning Act 1947, the Law of Property Act 1969 and the Land Charges Act 1972;

"county council" means the council of any county (whether metropolitan or not) and includes the Greater London Council; by contrast,

"district council" means the council of any district as constituted by the Local Government Act 1972, the council of any of the London boroughs and the Common Council of the City of London;

"local registrar" means the proper officer of the local authority responsible under the Act for maintaining the local land charges register;

"purchaser" includes, where the context admits, any lessee for value or mortgagee; and "vendor" and "purchase", have corresponding meanings;

"the Rules" mean the Local Land Charges Rules 1966[18]. (Further rules, not cited in this report but currently in force, were made in 1969[19], 1970[20], 1972[21], 1973[22] and 1974[23].)

B—OUTLINE OF THE SYSTEM

10. In the later years of the last century, local authorities started obtaining statutory powers which were liable to lead to the imposition of encumbrances on land in private ownership. The Public Health Act 1875, for example, authorised local authorities to require undrained houses to be properly drained[24]; and in default of compliance by the owners of the houses, they were further authorised to carry out the work themselves. In that event the authority's expenses were recoverable from the owners and until recovery they constituted a charge on the premises in respect of which they were incurred[25]. The same Act gave local authorities a power to enforce the making-up and lighting of

[18] S.I. 1966/579 (1966 II, p. 1318).
[19] S.I. 1969/1152 (1969 II, p. 3406).
[20] S.I. 1970/1775 (1970 III, p. 5775).
[21] S.I. 1972/690 (1972 II, p. 2226).
[22] S.I. 1973/1862 (1973 III, p. 6448).
[23] S.I. 1974/424 (1974 I, p. 1375).
[24] Sect. 23.
[25] Sect. 257.

private streets by frontagers[26]. A number of other Acts made provision for charges to arise in comparable circumstances and it was to be expected that, since such charges would not appear on the title to the land in the ordinary way, a demand would grow up for their registration for the protection of purchasers. A number of years passed before that demand was met.

11. Land charges registration started in an embryonic form with the Land Charges Registration and Searches Act 1888, but that Act operated in a very narrow field, covering only those charges which estate owners created under statutory authority. It did not apply to ordinary charges imposed by estate owners on their land; nor did it apply to charges imposed by local authorities under, for example, the Public Health Act [27].

12. The 1888 Act did, however, incorporate a new and, in the event, far-reaching principle. Notice of a charge to which the Act applied was to be derived by a purchaser solely from the register, and any such charge which had not been duly registered would be void against him. The Law of Property Act 1922 (which initiated the reforms culminating in the series of Acts passed in 1925) vastly extended the scope of the Act of 1888 by bringing under its provisions a wide variety of charges and equitable interests (including restrictive covenants) imposed on or created in land by estate owners[28]; and analogous charges ("local land charges") acquired by local authorities under the Public Health Acts and similar legislation were also made registrable, though in separate registers to be maintained by the local authorities themselves and not at a central registry[29]. Furthermore, as soon as it had expended any money on works which, when completed, would give rise to a quantified charge, a local authority was permitted to register an unquantified local land charge against the land affected. Such a charge is commonly known as a "general financial charge".

13. The land charges and local land charges provisions in the 1922 Act were carried into the consolidating Land Charges Act 1925. Section 15 (constituting the whole of Part VI of that Act) dealt with the matters then registrable as local land charges—specific financial charges in subsection (1), general financial charges in subsection (4) and prohibitions and restrictions on the use of land (and resolutions relating to town planning schemes[30]) in subsection (7).

14. The 1925 Act adopted the principle on which the 1888 Act was passed: it was declared in section 15(1) that any local land charge—

> "shall . . . be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby, unless registered in the appropriate register before the completion of the purchase."

The Act also provided that any person might search the register[31] and in particular that any person might require the registrar to make an official search and to

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[26] Sect. 150.
[27] *R.* v. *Land Registry Office* (1889) 24 Q.B.D. 178.
[28] Law of Property Act 1922, Schedule 7, para. 1.
[29] *ibid.*, para. 2.
[30] These were added in view of the passing of the Town Planning Act 1925.
[31] Sect. 16.

issue a certificate setting out the result[32]. The effect of such a certificate is not now uniform as respects all matters which should be entered in the register but as respects those matters registrable under section 15 of the Act it is as follows:—

> ". . . an official certificate of search shall be conclusive according to the tenor thereof, affirmatively or negatively as the case may be, in favour of a purchaser or intending purchaser as against authorities or persons interested under or in respect of charges required or allowed to be entered in the register."[33]

15. In the following year, the Law of Property (Amendment) Act 1926 altered the local land charges provisions in several respects. First, section 15(7) was redrafted. It was made plain that prohibitions and restrictions contained in town planning schemes were not separately registrable under the head of "prohibitions and restrictions". The substituted subsection also altered the formula under which matters which did fall under this head became registrable; instead of being deemed to be restrictive covenants they were to be registrable "as if" they were local land charges (thus indicating that local land charges, strictly speaking, are limited to financial charges). Secondly, the 1926 Act dealt with a manifest weakness in the system as it affected ordinary land charges. Several days were likely to elapse between the creation of a charge and its registration (or between a search and completion), if only because of the time taken by the documents in the post, and in that interval a charge could be overreached by a sale of the land affected, or could become binding by registration although it had not appeared on a search. In order to overcome this timing difficulty, the 1926 Act provided that the giving of a priority notice by a person in whose favour an intended charge would operate, and the making by an intending purchaser of an official search, should confer a degree of priority over subsequent transactions up to completion. These provisions were applied to local land charges as well as to ordinary land charges and we return to them later in this report[34].

16. Finally, section 15(7) of the Land Charges Act 1925 was amended again in 1947 when, by the Town and Country Planning Act of that year, the references to town planning schemes were removed. Later[35], we will have to discuss the difficulties to which that amendment (probably unwittingly) gave rise[36].

17. In its early days the local land charges system was a simple one. Each county and district council[37] kept a register of its own charges, and the only matters registrable as local land charges were those which fell within the

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[32] Sect. 17(1), (2). These provisions (which, in view of the definitions of "registry" and "registrar" in s. 20(10) apply directly only to land charges) are applied to local land charges by rr. 24(1) and (4), made under s. 15(6). It is also sometimes suggested that they apply to local land charges by virtue of s. 15(3) which provides that the local registrar is under the same obligations as is the Chief Land Registrar in respect of land charges.

[33] Rule 24(6), reproducing the effect of s. 17(3) of the Act.

[34] Paras. 65–75 below.

[35] Paras. 40–45 below.

[36] For the sake of completeness we should add that Schedule 3 to the Land Charges Act 1972 contains some consequential amendments affecting local land charges, notably in the rule-making powers.

[37] In this and the following paragraph, the word "district" refers, of course, to the former local authority areas now replaced by districts in the sense defined in para. 9 of this report.

formulae contained in subsections (1) and (7) of section 15 of the Act. A number of statutes passed since 1925 have created charges which are similarly registrable as local land charges because they fall within those formulae; but the formula in section 15(1) does not embrace charges acquired by any public body other than the local authority in whose register the charge is to be entered, and that in section 15(7) covers only prohibitions and restrictions on the use of land which have been imposed by the relevant local authority. A planning restriction imposed by a Minister or government department is therefore not registrable as a local land charge under section 15(7); and a restriction originally imposed by a local authority may be rendered non-registrable by its conversion into a ministerial restriction following an appeal from the authority's decision. Registering in the local land charges registers has, however, been found to be so convenient that since 1925 numerous Acts have specifically made matters registrable in them[38]. One such Act[39] actually declares the charges to be local land charges; others declare matters to be registrable as if they were local land charges[40] and yet others merely declare that certain matters are to be registered in the local land charges register. Many of these additional charges are imposed by government departments or by public bodies such as the National Coal Board; but in two instances entirely private matters[41] have been made registrable in the local registers. It does not, however, follow from the fact that matters are registrable in a local register that the provisions of the Act and Rules apply in the same way to them all. Rule 24(6) specifically provides that the protection afforded by a clear certificate of search does not apply to a large number of matters; and it is necessary to look at the legislation in each case to find out whether an unregistered charge is enforceable against a purchaser. Complications have thus set in with the greatly extended use of the local land charges system and we think that these should, if possible, be eliminated. Later in this report[42] we make certain recommendations to that end, but first it will be convenient to discuss some other matters.

C—THE REGISTERS

(*a*) Bodies maintaining registers

18. Before 1963, every county and district council maintained a register of local land charges. The register of a county borough contained all the entries relating to land within its area, but an intending purchaser of land in any other area had to search in two places because relevant entries might be in either the county or the district register.

19. The Stainton Committee commented adversely on the need to make two searches in many cases. The first step towards avoiding it was taken in 1964 when the register previously kept by the London County Council was closed and the entries were transferred to the London borough (and City) registers.

[38] Some of the matters thus made registrable cannot really be described as "charges" at all, but are rather matters of information: *e.g.*, the fact that an advance payment has been made under the Land Compensation Act 1973.

[39] The Weeds Act 1959 which creates financial charges in favour of the Minister of Agriculture, Fisheries and Food.

[40] Thus adopting the formula contained in s. 15(7) of the Act (as amended in 1926).

[41] Light obstruction notices under the Rights of Light Act 1959; and schemes under s. 19 of the Leasehold Reform Act 1967.

[42] Para. 52 below.

Since then all local land charges in the London area have been registered exclusively at "district" level; the Greater London Council has never kept a local land charges register[43]. One of the recommendations which we expected to make in this report was that all the other county registers should similarly be closed, and that local land charges registers should be kept by the new district councils only. Happily, we have been overtaken by events: that has been the position since 1 April 1974 when the Local Government Act 1972 came fully into force.

20. Although there is now no county register to search, it remains true that Supplementary Enquiries may have to be answered by the county councils about matters within their jurisdiction but outside the scope of the local land charges register. It is, however, not necessary for the purchaser to send Supplementary Enquiries to the relevant county council as well as to the relevant district council; the form is sent to the district council, which will obtain from the county council the answers to the few questions which the district council cannot answer. An arrangement of this sort has been in operation in London since 1964 between the London boroughs and the Greater London Council, and we have no evidence that it has increased the time taken in obtaining the answers to Supplementary Enquiries. The effect from the purchaser's point of view is that the county and district Supplementary Enquiry procedures have been amalgamated as well as the respective registers.

(*b*) Direct responsibility for the registers

21. At present, the responsibility for maintaining the local land charges registers is imposed by the Act not on the district councils but on the "proper officers" (in practice, the Clerks to the councils), so that although the local registrars are, in fact, senior officers of their councils, the statutory duties are performed by them on their own behalf and not on behalf of their councils. We think that in 1925 it was in keeping with tradition, when setting up a statutory register, to impose the duties on the registrar personally; and this approach may have been considered particularly apposite in relation to local registers because the Act treats local land charges simply as a species of land charge, and the duties of the local registrar are accordingly assimilated to those of the Chief Land Registrar. We do not regard these reasons for placing personal responsibility on the registrar as having any validity today. Furthermore, it is only in relation to his statutory functions that the local registrar has this personal responsibility: there is no doubt that he deals with Supplementary Enquiries (which are an integral part of the mechanics of providing notice of public matters) in his capacity as a senior officer of the council. There is no justification for the distinction. It is also to be noted that it is at least arguable that junior officials of the council, when engaged on local land charge business, would be regarded as the registrar's personal officers and not as officers of the council. This is, if anything, even more offensive to common sense than that the registrar himself does not, as such, act as an officer of the council.

22. Placing the responsibility on the registrar personally has, moreover, given rise to difficulty in connection with liability for errors in the registry. It has now

[43] London Government Act 1963, s. 79.

been held by the Court of Appeal in *Ministry of Housing & Local Government* v. *Sharp*[44] that the registrar is under no absolute civil liability for breach of statutory duty. This means that if any person suffers loss in consequence of an error in the registry the existence of a remedy depends upon proof of negligence on the part of the official who made the mistake (almost certainly not the registrar himself); and in practical terms it also depends on the local authority either accepting vicarious liability (as it did in *Sharp's* case) or standing behind the local registrar in the event of his being vicariously liable. We have little doubt that a local authority would (by insurance or otherwise) protect the registrar in these circumstances and that demonstrates the unreality of the present position. In our view the question of liability for errors in the registry should be approached in a quite different way, and we deal with this later in this report in Part E.

23. For those reasons we agree with the Stainton Committee that the statutory duties in connection with local land charges registers should be directly imposed on the district councils themselves[45].

(*c*) **Control and supervision**

24. With one small exception (which we discuss in paragraph 26 below), formal matters relating to local land charges are the concern of the Lord Chancellor, who is the rule-making authority. Subject to compliance with the rules, the day-to-day administration of the system is left to the local authorities; and the general responsibility for local government affairs is vested not in the Lord Chancellor but in the Secretary of State for the Environment. The Stainton Committee took the view that this division of responsibility made it difficult for local registrars to obtain help and guidance in carrying out their duties, and they recommended that there should be one responsible government department[46], and that it should appoint "one or more inspectors with the duty of travelling round the registries, giving the registrars advice and assistance and securing, so far as possible, uniformity in methods of registration"[47].

25. We recognise that in the past some councils may not have had the advantage of having experienced staff working full-time in this field, and we think that there was a good deal to be said for those recommendations at the time when they were made. In our view, however, the case for adopting them now has largely evaporated. The keeping of the local registers is but one of a vast number of local authority functions and we do not think that any useful purpose would be served by transferring general administrative responsibility for that one function from the Secretary of State to the Lord Chancellor. In particular, while we agree that the Lord Chancellor should remain the rule-making authority (and so responsible for the formal aspects of the system), we do not now endorse the Stainton Committee's recommendation that a close supervisory system should be set up, for the following reasons:—

(i) Notwithstanding the expansion of the system to which we have already referred, every local register still largely reflects the activities

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[44] [1970] 2 Q.B. 223.
[45] Cmd. 8440, para. 49.
[46] The Committee declared a preference for the Lord Chancellor's Office.
[47] Cmd. 8440, para. 47.

of its own council (and will continue to do so), and we think that responsibility for everything connected with the register should lie with the council and nowhere else. This could hardly be maintained if the supervisory function of the Lord Chancellor's Department and of its inspectors resulted in control. (Even the exercise of a purely advisory role could raise problems: what, for example, would be the position if a council relied on advice as to whether or not a particular matter was registrable, and that advice turned out to be mistaken?)

(ii) The need for guidance is probably less now than it was in 1952. It is in this field that Professor Garner's book has been so important; it provides an answer to many of the questions which the Stainton Committee heard about. The thorough examination of these questions in the Committee's Report has also, we think, been helpful in this respect. Local registrars, moreover, can and do get the benefit of the experience of others through personal contact and through their Associations by whom training courses are arranged. We also think that the recent reorganisation of local government, and the reduction in the number of small registering authorities, will help in this connection.

(iii) We are doubtful of the advantages to be gained from strict uniformity in the manner of keeping the local registers. The Rules provide a framework, but what really matters is that registration should duly take place and that the registry staff should be able, when a search is made, quickly to turn up all the relevant entries. There is no virtue in uniformity for its own sake; and if local authorities are to continue to be responsible for financing the system they must be allowed to take their own decisions on administrative matters. We do not think that any lack of uniformity embarrasses solicitors or members of the public when making personal searches (not a common practice anyway) since such searches will not be made without the assistance of the registry staff.

(iv) A system of inspection would, we think, require quite a number of full-time staff, all of whom would have to be recruited for the purpose and given extensive training. We do not believe that an inspectorate would serve a sufficiently useful purpose to justify the cost. It has not been suggested that such inspectors should be concerned with matters outside the Act and Rules; but the need for greater efficiency lies perhaps not so much in that area as in the Supplementary Enquiry field, and supervision of that part of the system could well involve considerable interference in the deployment of local authorities' staff.

26. We conclude our consideration of the control of the system with a discussion of the Secretary of State's one formal function relating to the register[48]. By virtue of rule 28, "no forms other than those supplied" for the purpose by H.M. Stationery Office "shall be used or accepted by local registrars without the approval of the Minister". So far as the wording on the forms is concerned,

[48] Before 8 December 1973 the Secretary of State was also concerned in approving variations in the form of the index to the register. This function was abolished by the Local Land Charges (Amendment) Rules 1973 (S.I. 1973/1862).

this part of rule 28 may not be necessary because other rules provide for applications and certificates to be in certain particular forms scheduled to the Rules. We understand, however, that local authorities attach some importance to the control (provided by this rule) over the size, lay-out, and so on of the forms. On the other hand, we see no reason why the authority to permit variations should not be vested in the Lord Chancellor rather than in the Minister. We accordingly recommend that the Rules be further amended to that effect, thus eliminating the Secretary of State's specific involvement with the system.

(*d*) The Parts of the registers

27. In accordance with the Rules the register is divided into a number of Parts, currently twelve. Parts 1 and 2 contain financial charges (general and specific); Part 3, planning charges; Part 4, miscellaneous charges; Parts 5–10, various charges and orders under particular statutes; Part 11, light obstruction notices; and Part 12, entries relating to land drainage schemes. The two last[49] have come into being since the Stainton Committee reported.

28. The purpose of the Parts is to enable different detailed rules to be made for different sorts of matter—one set of rules for each Part. Convenience would not be served by having different rules for different classes of matter contained in the same Part. Moreover, it is not possible to forecast what matters Parliament may in the future wish to make registrable in local registers, and if it makes registrable something for which no existing set of detailed rules is appropriate, the creation of a new Part will be inevitable[50]. The existence of separate Parts does not affect the public, because when a search is requisitioned it is almost invariably of the whole register.

29. The Stainton Committee thought that the number of Parts should be reduced; on the other hand, we have heard arguments in favour of their being increased. It seems to us that it is sensible to group similar types of local land charge together for the purpose of making rules, but that the way in which that is done is a purely administrative matter upon which it is not necessary for us to express an opinion.

D—CONTENTS OF THE REGISTER

(*a*) Obsolete entries

30. Rule 22 reads: "In addition and without prejudice to any other provision of these Rules in that behalf, where any charge has been discharged or become unenforceable, the local registrar shall thereupon cancel the entry in the register relating to that charge". The other provisions referred to are rule 6(3), which requires general financial charges to be cancelled not more than fifteen months after the ascertainment and allotment of specific financial charges; rule 17(3), which requires the cancellation of light obstruction notices in certain circumstances and in any event after 21 years; and rules 9(4) and 14(4), under which the local registrar has to cancel wayleave orders and certain orders made by the National Coal Board on being duly informed that they have been revoked. Further, under rule 7(3) the local registrar is required to enter the amounts paid

[49] Relating respectively to the Rights of Light Act 1959 and Land Drainage Act 1961.
[50] Part 11 (light obstruction notices) is an outstanding example.

from time to time in respect of a specific financial charge, so that if the amount of the charge has been paid in full that fact will appear on the face of the register, whether or not the charge has been formally cancelled.

31. Notwithstanding rule 22, there is no doubt that the local registers contain a good deal of obsolete matter, especially in Part 3 (planning charges). The difficulties facing the local registrar are of two kinds.

32. First, in relation to planning charges (notably, conditions attached to the grant of planning permission) imposed by his own council, it is generally impossible for the registrar to tell whether or not a charge is spent (or has become unenforceable) without the ascertainment of facts and inspection of the land in question. Such an inspection would have to be carried out by technical officers of the local authority outside the registrar's own department. Regular review of the register would thus involve a number of people and would be quite disproportionately time-consuming.

33. Secondly, in relation to charges imposed by other ("foreign") authorities it is obviously difficult for the local registrar to cancel such charges on his own initiative, even if he himself thinks that they are no longer relevant. An erroneous cancellation might cause the registering authority financial loss at the suit of the charging authority[51] (or, if our later proposals[52] are accepted, at the suit of the landowner). Furthermore, even if the local registrar did take it upon himself to cancel such entries, we think he would be obliged to preserve a record of his having done so (either in the register or separately) because he must not destroy what, as between the charging and registering authorities, may be the only evidence of the charging entry having been duly applied for and made. This would in some measure defeat the object of the exercise.

34. Apart from the two cases mentioned above in which rules 9(4) and 14(4) apply, the Rules do not require either "foreign" authorities or landowners to inform the local registrar when a charge has become spent or unenforceable. This is not in any way surprising. If the conditions attached to a planning permission have been complied with, or if the permission itself is not going to be acted upon, it is difficult to conceive of any sanction which would effectively encourage compliance with any such rule.

35. In principle, it is undesirable that obsolete entries should remain on the register; but we do not think that their presence creates a serious problem in practice. Although the total number of such entries on any local register may be substantial, the number affecting any one piece of land will usually be small and on the occasion of a transfer of that land the purchaser will not pay attention to any entry disclosed in his certificate of search which relates, for example, to a temporary structure which he knows no longer exists, or to permission for a development which he can see was never carried out. The fact that a particular entry is obsolete will generally be apparent to all concerned at the material time. Nevertheless, it would be desirable to have fewer obsolete entries on the local registers in the future, and our recommendations contained in the following paragraphs, relating to conditions and limitations attached to grants of planning

[51] *cf. Ministry of Housing and Local Government* v. *Sharp* [1970] 2 Q.B. 223.
[52] Para. 52 below.

permission, should largely deal with the problem. Such matters are inherently prone to obsolescence; but if they cease to be registrable, that large class of obsolete material on the register will automatically disappear.

(*b*) **Conditions attached to planning permissions**

36. At first sight, a limitation on or a condition attached to planning permission appears to be a "restriction on the user or mode of user of land or buildings", and most local authorities accordingly register such limitations or conditions, imposed by themselves, as local land charges. There is, however, some doubt as to whether this is correct. In *Rose* v. *Leeds Corporation*[53], the Court of Appeal held that a limit imposed by the corporation on the duration of a permitted change of user was not a "prohibition or restriction" and so was not a registrable charge. Although the Court was concerned only with a time limitation, its reasoning clearly applies to any sort of condition. The decision was founded on the proposition that since 1943[54] there has been a general restriction on development imposed by statute, and that any planning permission granted since then accordingly operates as an alleviation of that restriction and does not itself constitute a restriction, however limited its terms.

37. The Stainton Committee reported long before the decision in *Rose* v. *Leeds Corporation*, and they adverted only to the undoubted fact that conditions imposed by the Minister, on successful appeals from refusal of planning permission, were not registrable as local land charges because section 15(7) of the Act refers only to prohibitions and restrictions imposed by local authorities. The Committee recommended that Ministerial conditions should be brought into line with what was believed to be the position in relation to conditions imposed by local authorities, and be registered[55]. The adoption of that recommendation would involve the statutory reversal of *Rose* v. *Leeds Corporation*; in any event, the doubts created by that decision must be laid to rest.

38. We have come to the conclusion that the full effect of *Rose* v. *Leeds Corporation* should be affirmed in any new local land charges legislation, and that conditions and limitations attached to grants of planning permission should be kept off the local land charges registers, no matter by whom they were imposed. We have already noted that that would help in the long run to reduce the number of obsolete entries on the local registers; but that alone would not be a sufficient reason for making this recommendation. The fact is, however, that registration of these conditions in local land charges registers, as a means of giving notice of their existence to purchasers, is unnecessary and, indeed, represents a duplication of effort. Under the Town and Country Planning Act 1947 (which established the modern system of development control) local planning authorities were required to maintain special registers containing planning applications and information relating to them, including the decisions made on them. That provision is now to be found in section 34 of the Town and Country Planning Act 1971, coupled with Article 17 of the General Development Order 1973[56]. A further special register is kept under the Town

[53] [1964] 1 W.L.R. 1393.
[54] Town and Country Planning (Interim Development) Act 1943.
[55] Cmd. 8440, App. D, para. 5.
[56] S.I. 1973/31 (1973 I, p. 207).

and Country Planning (Control of Advertisements) Regulations 1969[57]. A purchaser is therefore able to obtain the full modern planning history of the land in which he is interested by looking at these planning registers, which are much more informative in this respect than are the local land charges registers. Furthermore, a purchaser will be put on notice of the existence of relevant entries on the planning registers by the replies to Supplementary Enquiries, because questions about the planning registers are included among the standard enquiries on the printed forms. The registration of conditions in the local land charges registers as well as in the planning registers seems therefore to be administratively wasteful, without having any corresponding advantages for purchasers, for whose benefit the system was devised.

39. We also recommend that conditions attached to deemed planning permissions[58] should also be excluded from the local land charges registers[59]. Deemed planning permission is not very common and the circumstances in which it arises are rather special. The recipients of the permission are either local authorities or statutory undertakers who have sought and obtained ministerial authority to carry out some operation which would normally require planning permission. It is reasonable to assume that the permission will have been acted upon (and that any attached conditions will have been complied with) before there is any question of a disposal of the land to an outside purchaser. Although it is true that the deemed permission (and any attached conditions) may not appear on the planning register, we think that it would be rare indeed for conditions attached to such permission to be of any significance to subsequent purchasers. The continued exclusion of these conditions from the local land charges register follows the policy, which we think should be consistent, of excluding all planning conditions from that register. If necessary, consideration may be given to extending the scope of the planning register to accommodate them.

(*c*) **Pre-1948 planning restrictions**

40. Before the modern system of development control was established by the Town and Country Planning Act 1947, a different (and, until 1943, an essentially piecemeal) system operated. A local authority could resolve to prepare a planning scheme and thereafter, by virtue of a system of interim development orders, development required planning permission. The scheme itself, when introduced, would contain prohibitions or restrictions on development. By the Town and Country Planning (Interim Development) Act 1943 the whole country was deemed to be subject to resolutions for schemes, so the need for planning permission became general.

41. Prohibitions and restrictions under the old system were therefore of two kinds: prohibitions or restrictions contained in schemes, and conditions attached to permissions. The former were not registrable as local land charges, as the result of a specific exemption (though the schemes as a whole were); the

[57] S.I. 1969/1532 (1969 III, p. 4962).

[58] Under, *e.g.*, s. 2 of the Opencast Coal Act 1958 and s. 40 of the Town and Country Planning Act 1971.

[59] This recommendation simply preserves the present position since the conditions in question are imposed by the Minister's order and are therefore outside the scope of s. 15(7) of the Act.

position of the latter was somewhat uncertain but would not seem, in principle, to differ from that of modern conditions[60]. The 1947 Act, far from clearing up any obscurities in relation to registrability, made the situation worse: it preserved some of the restrictions contained in existing schemes, but it repealed the provision exempting them from registration without indicating whether they then (years after their imposition) had to be entered in the local registers. To be on the safe side, many local authorities registered the restrictions carried forward from the old system.

42. The Stainton Committee recommended that pre-1948 restrictions should be registrable[61]. It must, however, be remembered that they were considering the matter at a time when it was still easy to contemplate action being taken in respect of breaches of those restrictions which had occurred before 1948. The situation now is very different, because in almost every case the time limit within which a local authority could have attacked any non-conforming development which took place before 1948 has long since expired.

43. There is, however, an exception to this which may be met in practice. Under the Building Restrictions (War-Time Contraventions) Act 1946, local authorities were given five years in which to take enforcement proceedings in respect of breaches of planning control under the then existing system, which had occurred during the war period[62]; but in computing those five years, any time during which the Crown has had an interest in the property does not count[63]. Thus, if the Crown was in continuous occupation between March 1946 and the end of 1969, enforcement action can still be taken in respect of war-time contraventions.

44. The existence of this exception is referred to in standard conveyancing text books[64] as a matter which should lead to special enquiries being made by a purchaser before contract, and a purchaser direct from the Crown should obviously make such enquiries, whether his search of the local register discloses an old condition or restriction or not. If the vendor is not the Crown, however, a purchaser may overlook the risk if there is nothing on the register to remind him of it.

45. We have carefully considered whether this exception precludes our recommending that pre-1948 planning matters should not be registrable local land charges. The advantages flowing from the adoption of such a recommendation (which is, of course, entirely consistent with the general policy of keeping planning matters off the local land charges registers) are obvious, but we have been conscious of the fact that the wholesale removal of entries may in some cases help to induce a false sense of security. We have come to the conclusion that the advantages outweigh the risk. In the first place, we think that the risk

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[60] The reasoning in *Rose* v. *Leeds Corporation*, as set out in para. 36 above, would appear to apply equally to conditions attached to permissions under the old system of control. The relevant prohibition or restriction was imposed by the resolution to prepare a scheme, or by the scheme thereafter adopted; a condition attached to a permission was accordingly not itself a restriction but merely limited the extent to which the basic restriction was lifted.

[61] Cmd. 8440, App. D, para. 4.

[62] Sect. 4.

[63] Sect. 7(6).

[64] *e.g.*, *Emmet on Title*, 15th ed. (1967) p. 22.

is pretty remote in relation to purchasers not from the Crown, because if the local authority has been anxious to take steps in relation to a war-time contravention of planning control (but has been unable to do so because of Crown occupation) it will probably take action as soon as it knows that the Crown's interest has come to an end. Secondly, we feel that if a purchaser is caught by the exception, the cause of his falling into the trap will be not so much the absence of an entry in the local land charges register, indicating the nature of any restriction imposed by pre-1948 planning control (an entry that he could normally ignore with complete safety) as his ignorance of the Crown's former interest. It is the latter fact which gives rise to the risk, but the Crown's interest will not appear from the register in any circumstances. Finally, we have had to bear in mind that many authorities never put the old planning restrictions onto the registers in 1948, and that some others, who did, have since removed them. It is therefore a matter of pure chance whether they are now to be found on any particular register. If our Bill were to make the old restrictions registrable local land charges for the purposes of preserving the entries which happen to exist, we could hardly avoid making all the others registrable. That, we think, is out of the question. We therefore recommend that restrictions contained in planning schemes and conditions attached to pre-1948 planning permissions should not be local land charges.

E—THE CONSEQUENCES OF FAILURE TO REGISTER AND OF ERRONEOUS CERTIFICATES OF SEARCH

46. When the Land Charges Act came into force in 1926 the consequences of non-compliance with its provisions were reasonably straightforward. Under the concluding words of section 15(1), any financial local land charge was void as against a purchaser for money or money's worth of a legal estate unless it had been duly registered before completion of the purchase. There was perhaps some room for doubt whether that provision ("the section 15 protection") applied to the matters made registrable by section 15(7), but those matters were originally deemed to be restrictive covenants and purchasers would have had the benefit of a similar protection under the parallel provision for Class D land charges then contained in section 13(2)[65]. When section 15(7) charges became registrable "as if" they were local land charges[66] they fell within the ambit of the section 15 protection instead. Furthermore, by section 17(3)[67], an official certificate of search was, in favour of a purchaser, always conclusive as to the state of the register, so that if a clear certificate were mistakenly issued the undisclosed charge would be unenforceable against a purchaser ("the section 17 protection").

47. The more extended use of the local registers has, however, brought complications in its train. Some of the additional matters are registrable (like section 15(7) prohibitions and restrictions) "as if" they were local land charges; but it may not be safe to assume that they, too, are subject to the section 15 protection because that protection is not expressly applied to them as it is to charges falling strictly within section 15(7). In many cases, moreover, subsequent

[65] Now s. 4(6) of the Land Charges Act 1972.
[66] Law of Property (Amendment) Act 1926.
[67] As applied to local land charges by the Rules. (The corresponding section in the Land Charges Act 1972 is s. 10(4).)

legislation has merely made the new material registrable in the local registers and has not attempted to assimilate it to local land charges; and where the legislation takes that particular form, the section 15 protection clearly does not exist. On the true construction of the particular statute, however, the citizen may have a more extensive form of protection in the event of the non-registration of a new charge of the latter class: registration may have been made a condition precedent to the enforceability of the charge against anyone[68], and not only against purchasers for value.

48. In any event, in its application to local land charges, section 15 is, we think, defective, or at least irrational. The protection is tied to the position at the date of completion but (as we have pointed out in the introduction to this report) it is the position at the date of contract which is really important to a purchaser because he cannot usually rescind his contract on account of the existence of local land charges. The purpose of the section 15 protection is not to penalise charging authorities for having failed to register their charges before a particular date selected by the parties to the contract, but is, rather, to ensure that purchasers get notice of material matters before they are finally committed. After contracts are exchanged, a purchaser is normally, as we have explained, at risk *vis-à-vis* his vendor so far as local land charges are concerned, and there would appear to be no reason why he should not then also be at risk *vis-à-vis* the charging authority.

49. Turning to section 17, it is no longer true that the protection is always available. An official search certificate is only conclusive "according to the tenor thereof", that is to say (in the case of a clear certificate) that there are no relevant entries in the register. The usefulness of such a search is somewhat limited if the charge happens to be one which is enforceable notwithstanding non-registration[69] and has not, in fact, been registered. So far as certificates are concerned, rule 24(6) states that the section 17 protection does not apply to the matters registrable in many of the Parts of the register.

50. Even in those cases to which it applies, the section 15 protection is not always as comprehensive as may appear at first sight. First, there is nothing to prevent the reimposition of charges of a non-financial variety, and if a restriction which has been avoided is regarded by the local authority as being of sufficient importance, a new order will doubtless be made. Secondly, in the case of financial charges, the provision only avoids the local land charge itself; it does not necessarily avoid liability for the debt for the payment of which the charge is security. (Professor Garner gives an example which shows how far this principle can go[70]. A demolition order made under section 17 of the Housing Act 1957 is registrable because it plainly restricts the use of the building. But, he suggests, non-registration of the order would not protect a purchaser from the duty to comply with the order because that duty is not itself a local land charge upon which the section 15 protection can operate.)

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[68] See, *e.g.*, as to the effect of what is now s. 159 of the Town and Country Planning Act 1971 on compensation notices registrable under s. 158 of that Act, *Ministry of Housing and Local Government* v. *Sharp* [1970] 2 Q.B. 223 at pp. 271C and 272A (Salmon L.J.) and p. 288H (Cross L.J.). Light obstruction notices are also in this class: Rights of Light Act 1959, s. 3.
[69] See para. 47 above.
[70] *Local Land Charges*, 6th ed. (1971) p. 90, footnote 3.

51. It follows from what we have said in the previous paragraphs that it is not now possible to state in general terms what the consequences of non-registration (or of an erroneous certificate of search) are. Everything depends on the formula which Parliament has employed in making the matter in question registrable. But this much is plain, that such protection as a purchaser may have against being misled by the register is likely to be precarious, and in many cases he has no practical remedy at all. This situation has arisen through the adoption of a registration system, one of the principal features of which (namely, the unenforceability of unregistered charges against purchasers for value) is inherently unsuited to the majority of charges of a public nature[71].

52. In our view what is required is an entirely new approach, thinking no longer in terms of unenforceability but, rather, in terms of compensatory damages for breach of statutory duty on the part of the registering authority (or of the authority imposing the charge). We accordingly recommend that failure to register a registrable charge shall not affect its enforceability, and that a purchaser who has made a search of the register shall be entitled to compensation for loss suffered by reason that a charge existing at the date of the search was not disclosed thereby. Such a provision would not in our opinion be unfair to purchasers against whom (under the present law) the charge would be void; and it would clearly be beneficial to those against whom the charge would now be valid notwithstanding non-registration, and to those on whom the authority could reimpose the charge. The compensation should be paid by the authority maintaining the register but it should be ultimately borne by the authority at fault, which might be some other authority which had imposed a charge but had failed to take steps to get it registered. These recommendations are substantially in line with those made by the Stainton Committee[72], save that—and in this respect we agree with the Council of The Law Society—we think that it would be simpler not to preserve the present form of protection against unregistered financial charges but formally to apply the compensation principle to them as well[73]. There are, we think, considerable difficulties in the way of the further recommendation made by the Stainton Committee, namely, that the charging authority should be able, in appropriate cases, to avoid the liability to pay compensation by cancelling the local land charge in question[74]. We do not recommend the enactment of a provision to that effect; but this need not prevent a compromise being reached by the parties in any particular case.

53. We do, however, accept that there may always be some matters, specifically made registrable in local land charges registers, for which unenforceability remains the most appropriate consequence of a failure to register. This is particularly true, perhaps, of any non-public matters now or in the future capable of entry in those registers, the registration of which is intended to be

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[71] The unenforceability of unregistered charges is appropriate to private land charges and its adoption as a feature of the local land charges system may have been reasonable as the 1925 Act was originally conceived; but the significance of inserting s. 15(7) (planning restrictions) into the local land charges part of the Act seems to have been overlooked.

[72] Cmd. 8440, para. 52.

[73] In practice, in the case of a financial charge, the compensation would normally be equal to the amount of the charge itself, so that no action would be taken on either side.

[74] The cancellation of a charge would often be meaningless unless it were accompanied by an undertaking not to reimpose it; but a local authority cannot bind itself not in the future to exercise powers which it may be under a statutory duty to exercise.

entirely voluntary. In any such case, the Act creating the registrable matter can make registration a condition precedent either to the very existence of the rights in question (as under the Rights of Light Act), or to the enforceability of the rights against subsequent owners of the land (as in the case of schemes under the Leasehold Reform Act). Failure to register such a matter would not give rise to any right to compensation because, by definition, no loss requiring compensation would have been incurred. Although it may sometimes be right to draft legislation relating to charges of a public nature in this way, we hope that such cases will be confined to the minimum, so that no substantial body of exceptions to the general rule will grow up. All matters intended to be entered in local land charges registers (but not covered by the formulae which would make them so registrable without express words) should, so far as possible, simply be declared to be local land charges, so that the consequences of non-registration (or of the giving of an inaccurate official search certificate) will be uniform.

54. Although we regard compensation as much more appropriate than avoidance in the context of obligations or restrictions of a public nature, we recognise that the change which we recommend may in some cases give rise to arguments which do not arise under the present law. Any knowledge which a purchaser may have of the existence of an unregistered matter is now irrelevant: relevant notice is acquired exclusively from the register. Compensation, however, cannot operate on that basis[75]; it must be related to loss, and, moreover, to loss attributable to something. As to the loss, this will generally be quantified by assessing the difference between the price which the purchaser has paid or agreed to pay and the price which he would have expected to pay had the local land charge been duly disclosed. In most cases there will be no difficulty in attributing the existence of that loss to the failure of the register (or of the official certificate of search) to disclose the charge, because the purchaser has received no information tending to discredit the result of his search. But in some cases the purchaser may be in possession of information which conflicts with the result of his search; his vendor, or an official of the local authority, may have told him that a particular charge existed. What is the purchaser to believe? He is in receipt of contradictory information from two sources, of which one is "official" and the other more or less reliable, depending on the facts. We consider that in such circumstances a purchaser should not be entitled invariably to rely on the result of his search and to take no steps to mitigate (or eliminate) the loss resulting from paying too much for the property. Compensation is designed to relieve purchasers who have been misled by their searches; that, in short, is the essence of the matter. There is one case, it seems to us, in which it is clear that a purchaser could not claim to have been misled by the state of the register or by an official certificate: that is, where, after making a search which has failed to reveal a charge, he has (before entering into his contract) made a second search, and that second search has revealed it.

55. One inevitable consequence of altering the effect of non-registration, so that it is no longer the same as that of non-registration of an ordinary land charge, is that it must no longer be possible (as it is now) for some charges to

[75] A fixed money payment could, of course, operate on that basis, but that would be a different form of compensation.

fall within the definitions of both types of charge. The draft Bill annexed to this report accordingly ensures that the subject matters of the Land Charges Act 1972 and of that Bill are mutually exclusive: see clauses 2(*c*) and 16(1), and the notes thereon.

56. There is one final point which we wish to make on this aspect of the system. In the early days of local land charges the charging authority and the registering authority were always the same, and the Rules did not include detailed provisions relating to the manner in which charges should be reported to the registrar for registration. Despite the changed situation, the Rules are still silent as to the manner in which a "foreign" charging authority should apply to the registering authority to have its charges registered. If the compensation principle is accepted, we think that an appropriate procedure ought to be prescribed by the Rules because if compensation becomes payable to a citizen by the registering authority on the ground that a charge was not registered, the question of fault, as between the two authorities, will be relevant in deciding which of them is ultimately to bear the financial loss. The importance of this is perhaps enhanced by the fact that with the disappearance of the county registers there is bound to be some increase in the number of registrations on behalf of "foreign" authorities.

F—THE EFFECT OF REGISTRATION AS BETWEEN VENDOR AND PURCHASER

57. By virtue of section 198 of the Law of Property Act 1925, registration of a local land charge (as of an ordinary land charge) constitutes actual notice of the charge to all persons and for all relevant purposes. In *Re Forsey and Hollebone's Contract*[76] it was held, in consequence of that provision, that a purchaser could not rescind her contract on account of a registered local land charge undisclosed before contract (but discovered during the investigation of the vendor's title), although the vendor had contracted to sell "free from encumbrances".

58. The situation was considered at some length by the Stainton Committee[77] and since the reasoning in *Re Forsey and Hollebone's Contract* applied with equal force to ordinary land charges it was further examined by the Committee on Land Charges (the Roxburgh Committee) which reported in 1956[78]. So far as ordinary land charges were concerned, the position was clearly indefensible: an intending purchaser of unregistered land would usually be unable to make an effective search before contract and so could not be certain of acquiring actual knowledge of the matters notice of which was ascribed to him by section 198 of the Law of Property Act 1925. The Roxburgh Committee accordingly recommended that the mere fact of registration of a land charge should not affect the position as between vendor and purchaser whatever the contract might say; this was supported by us[79] and was implemented by section 24 of the Law of Property Act 1969, thus abrogating the rule in *Re Forsey and Hollebone's Contract* in relation to ordinary land charges.

[76] [1927] 2 Ch. 379.
[77] Cmd. 8440, paras. 62–67.
[78] *Report of the Committee on Land Charges*, (1955–56) Cmd. 9825, paras. 23–33 (reprinted in our *Report on Land Charges*, Law Com. No. 18, Appendix II).
[79] Law Com. No. 18, para. 29.

59. That section of the 1969 Act does not apply to local land charges, but as we have already explained there is no difficulty in making a local land charges search in the appropriate register before the parties are bound by contract. The decision in *Re Forsey and Hollebone's Contract* thus still applies to local land charges, and this is one of the reasons why purchasers make their local searches before contract.

60. The Stainton Committee did not recommend legislation affecting the position as between vendor and purchaser in relation to local land charges, but the Roxburgh Committee did. The latter Committee appear to have regarded the existing situation as acceptable in most cases, but as being possibly unfair to purchasers under "open contracts", that is to say, under contracts containing no conditions save those implied by law. Where such contracts are formed, the parties are often not legally advised, and the purchaser would probably not know that it was desirable to search for local land charges beforehand: indeed, he might not even have heard of them. The Roxburgh Committee accordingly recommended that the rule in *Re Forsey and Hollebone's Contract* should not remain for local land charges either, but, if it did not remain, vendors should be permitted to preserve the existing position by including an appropriate term in the contract. They recognised that most vendors would take advantage of this but a vendor under an open contract, by definition, could not.

61. While we appreciate the point made by the Roxburgh Committee, we have come to the conclusion that the general law should not be altered in the way they suggested. Open contracts for the purchase and sale of land are uncommon and the principal effect of a change in the general law would, we think, simply be the addition of yet one more clause (negativing the change) to The Law Society's and National Conditions of Sale. If, in fact, open contracts do in this respect present problems in practice (and we have seen no evidence of this), those problems can be borne in mind if and when section 46 of the Law of Property Act 1925 and the conditions of sale prescribed by the Lord Chancellor pursuant to that section[80] are reviewed.

62. Contracts concluded under auction conditions are not open contracts, but an unadvised purchaser (who may well not appreciate the importance of making local searches and enquiries beforehand) is as much at risk buying at auction as he is under an open contract. The Roxburgh Committee's suggestion would not help him because the present law could (and probably would) be preserved by a term in the auction conditions. It is, however, a common practice for vendors themselves to make official searches in the local registers (and appropriate Supplementary Enquiries), and to make the results available to bidders. This practice has our strong approval, and we hope that it will rapidly become standard procedure in sales by auction.

63. We have one further point to raise under this heading, namely that it should be made clear that the rule in *Re Forsey and Hollebone's Contract* applies to all matters on the local land charges register. The wording of section 198 of the Law of Property Act 1925 is such that it is at least arguable that it does not apply to matters specifically made registrable by Acts passed since 1925. We

[80] S.R. & O. 1925/779 (Rev. IV, p. 861).

agree with the majority of the members of the Stainton Committee that this doubt should be resolved in favour of the general applicability of the section[81].

64. We have given anxious consideration to the Stainton Committee's view[82] that a vendor should continue to be under no general duty to disclose before contract the existence of any unregistered local land charge of which he is aware. It is arguable that there should be such a duty if (as the Committee and we propose) the Act no longer protects the purchaser against enforcement of the charge. If the purchaser will be bound by the local land charge, a right to rescind the contract on subsequent discovery of the charge may be more useful than a right to compensation; but as things stand he has no such right to rescind, even if the vendor had (and withheld) knowledge of the charge. At first sight, this result seems rather shocking, and it is impossible to be altogether happy with it. Nonetheless, we think the Committee were right. In the first place, the chances of the situation arising are somewhat remote: the relevant authority must have failed to register the charge; the vendor must have been aware not only of the existence of the charge but also that it was not registered—and perhaps also that the purchaser did not know of it from any other source; and the purchaser must have discovered the existence of the charge between contract and completion of the purchase (thereafter, his normal remedy would lie in damages, not recission, and he can look to the local authority for them). Furthermore, the argument that a change in the effect of non-registration should lead to a change in the vendor's duty towards the purchaser presupposes that at present the provisions of section 15(1) afford effective protection. As we have already shown, this is seldom so—either because the subsection does not apply or because in so many cases the charge can be reimposed. We do not think, therefore, that our proposals place a purchaser in a worse position than he is in now, or that they themselves provide any substantial justification for imposing a new duty on vendors. Whatever view may be taken of the conduct of a vendor who does not disclose the existence of a charge known to him, the fact remains that if such a charge has not been registered (or has not been revealed on an official search) either the registering authority or the authority creating the charge has been at fault and we are not convinced that the vendor should be obliged (directly or indirectly) to come to the authority's relief.

G—PRIORITY NOTICE PROCEDURE AND PROTECTION BY SEARCH

65. In setting out the history of the land charges system we referred[83] to the priority notice procedure introduced by the amending Act of 1926[84], and to the reasons for its introduction. The procedure applies both to ordinary land charges and (in an adapted form[85]) to local land charges.

66. The operation of the procedure in relation to ordinary land charges is most easily demonstrated by taking the facts of an imaginary but typical case. V intends, on a given future date (say 1 June), to convey Blackacre to P, simultaneously imposing on the land a restrictive covenant for the benefit of

[81] Cmd. 8440, para. 65.
[82] *ibid.*, para. 66.
[83] Para. 15 above.
[84] Now contained in s. 11 of the Land Charges Act 1972.
[85] Rule 25.

other land retained by him. It is anticipated that P will raise the bulk of the purchase money by mortgaging Blackacre to M immediately after taking the conveyance. V is anxious that the restrictive covenant should bind M. Without more, the covenant would be void as against M (and, more important, against any purchaser from M) because it would not have been registered on 1 June when the mortgage would have been completed. About a month before 1 June[86] V accordingly applies for a priority notice to be entered on the register of land charges: and if, after the restrictive covenant has been entered into on 1 June, he duly applies to have it registered within 30 working days of the entry of the priority notice, that registration will be treated as having been made as on 1 June, and V's object is achieved. These provisions are now contained in section 11(1) to (3) of the Land Charges Act 1972.

67. There is also a form of priority by search for purchasers (section 11(5)). If a purchaser obtains a certificate of search and completes his purchase within 15 working days thereafter, he will not be affected by any entry made during the interval. If there was a priority notice on the register at the date of the search, however, it would appear on the certificate and the purchaser would be bound by the charge if its substantive registration were made in due time.

Critique of the procedures

68. Priority notices in respect of ordinary land charges are common enough, but they are very seldom found in local land charges registers. This at first surprised the Stainton Committee but, on looking at the procedure more closely, they saw that it was fundamentally inappropriate to local land charges. It proceeds on the assumption that the person in whose favour the charge will operate (V in our example) knows that a charge is going to be imposed on a given later date. The corresponding prior intention on the part of the local authority (or other body or person in whom the power to make local land charges may be vested) rarely exists—the decision to create the charge and its actual creation by formal resolution are generally simultaneous. Even if he could do so, it might not be considered proper for a town clerk (or civil servant) to anticipate the decision of his authority (or Minister), so there is no opportunity to enter a priority notice. Sometimes, the charging authority may pass an appropriate resolution postponing the actual creation of the charge to some later date (for example, to the date of the issue of a notice to the landowner affected); a priority notice could be entered in such a case, but (in the example taken) the charging authority's clerk would under the present rules[87] have to hold up the issue of the notice to the landowner for at least fifteen working days, and that might not be at all desirable.

69. Furthermore, having analysed the existing procedure and the operation of the provision giving a purchaser protection between search and completion, the Stainton Committee found that the effect of the provision was almost entirely fortuitous. There is no natural connection between on the one hand a transaction of purchase and sale (or mortgage) carried out by private citizens and, on the other, the order-making activities of a local authority; yet the effect of the provisions depends upon the relationship in time between them. More-

[86] It must be at least 15 working days.
[87] Rule 25(3) as amended.

over, it seems to us that the protection which the search procedure purports to give to a purchaser is, in relation to local land charges, largely illusory, because, to qualify for the protection, the purchaser must complete within 15 working days of the date of the official search; and as the search is made before contract it will usually not be possible for completion to take place within that period. The provisions of section 11(5) as they stand are therefore inappropriate to local land charges.

Our conclusions

70. We think it possible that the changes in the law which we are suggesting (and in particular the substitution of compensation for avoidance) may give rise to a demand for some form of priority notice procedure, and it has been suggested that the present procedure (which cannot be said to do any positive harm at the moment) may be better than none. We have come to the conclusion, however, that the present procedure is in general so ill-fitted to local land charges that it would be preferable not to have section 11(1)-(3) of the Land Charges Act 1972 applying, through the Rules, to local land charges. If at some future date it is clear that the revision of the local land charges system has created difficulties which require to be solved, a new procedure, appropriate to meet the difficulties proved by experience to exist, can be devised in order to enable charging authorities to obtain a measure of priority for their charges[88].

71. Although the existing provision for protection by search seems to have been conceived as a corollary to the provision for priority notices, the removal from the local land charges system of the latter (which we have just recommended) does not necessarily mean that protection by search must go with it. The Stainton Committee, however, thought that it should[89]. They described this protection as a "lucky dip" because again there is nothing to connect the creation of a charge with the date on which the affected land may be disposed of by its owner. Furthermore, they found that it would be particularly obnoxious to a local authority that it should be obliged to pay compensation in respect of a charge properly imposed and duly registered merely because a purchase transaction had reached a particular stage. Protection by search is an anomaly in the context of local land charges, but it is not so in relation to ordinary land charges. In the nature of things, no obligation registrable as an ordinary land charge can arise after a sale has been completed, unless the purchaser has knowledge of it; and the search procedure simply has the effect of extending that immunity backwards in time to the date of search (thus protecting the purchaser from charges created behind his back by his vendor). A purchaser has, however, no protection against the imposition of local land charges after completion so that if the search procedure operates at all it operates to create an immunity unrelated to anything else. If these provisions relating to ordinary land charges were applied to local land charges on the ground that the situations were analogous, it seems to us that the analogy was false.

72. In considering this matter we have been much struck by the fact that although the "protection by search" provision has always been largely ineffective

[88] Alternatively, if it is desirable that some matter should be on the register in advance of, *e.g.*, the payment of a sum of money, the particular legislation may so provide. See the amendments to s. 52 of the Land Compensation Act 1973 made in Sch. 1 to the draft Bill annexed to this report.

[89] Cmd. 8440, paras. 57 and 58.

in relation to local land charges[90], there has been a marked absence of complaint. Indeed, there is nothing in the Stainton Report to suggest that the point was even mentioned to that Committee. This must mean that purchasers (and their solicitors) are in practice prepared to accept the risk that charges, of which they will have no knowledge, may be created after their searches but before they are committed to their transactions by contract. The acceptance of this risk is, perhaps, less surprising when it is appreciated that purchasers must inevitably accept the similar, and often more serious, risk that some unregistrable matter will make its appearance after they have received their replies to Supplementary Enquiries.

73. It would not be difficult to cure the defect in the present provision so far as it operates on local land charges. From the purchaser's point of view all that is essentially required is the substitution of a reference to the date of contract for the existing reference to completion of the contract. This would give the purchaser a period of protection[91] if he entered into his contract within 15 working days of making his official search, and compliance with that condition would normally be feasible. It would be a matter of pure chance, depending on the date on which a new charge was imposed, whether the provision would be effective in any particular case; but purchasers would undoubtedly be glad to have the benefit of the chance. We know that The Law Society would like to see the "protection by search" provision made more effective in this way.

74. We have carefully considered this matter after full consultation and have come to the conclusion that the Stainton Committee were right to condemn the existence of a protected period which is wholly dependent on the coincidence of unrelated facts. There has been no evident demand for such protection in the past and the disappearance of the provision from the local land charges scene would not, in fact, constitute the removal of effective existing rights. Any risk which a purchaser runs of entering into a contract in ignorance of a new post-search charge is due to the fact that some time is bound to elapse between making the search and exchanging contracts; the extent of the delay may or may not be a matter within the control of the purchaser, but it certainly has nothing to do with the charging authority.

75. Furthermore it is clear that if (contrary to our view) purchasers were to be given an effective period of protection by search, it would be necessary also to provide machinery whereby registering authorities could, by timely action, protect themselves against a liability to pay compensation in respect of a charge imposed during the currency of a protected period. Plainly, no compensation should be payable if the registering authority had delivered a fresh or amended certificate of search, disclosing the new charge, before the parties were bound by contract. The provision of any such machinery (importing, in practice, a duty to use it) would inevitably increase the work in the offices of registering authorities, and therefore the cost of operating the search system. It has also been pointed out to us that any provision of this sort might tempt some people so to date their contracts as to make it appear that they had been

[90] Para. 69 above.

[91] The protection would, of course, be of a different nature from that contemplated by the existing provision; any new charge would usually not be void, but its imposition would give the purchaser a right to claim compensation.

made at some time between the imposition of the new charge and the delivery of the related amended certificate of search.

H—SUPPLEMENTARY ENQUIRIES

(a) Introduction

76. Supplementary Enquiries are not part of the statutory system but are an essential adjunct to it. There are many matters of fact, not registrable as local land charges, which are within the knowledge of the local authority and of which any prospective purchaser of land would wish to be informed before he becomes bound by contract. The Local Authority Associations have agreed with The Law Society that the clerks to their constituent authorities will answer, for a fee[92], a substantial number of questions; these are printed on forms and are generally submitted by the purchaser's solicitor to the appropriate authority or authorities at the same time as the requisition for an official search of the local land charges register. As we indicate later, the choice of questions to be included on the forms can give rise to difficulties but the following list is a sample of the matters now covered:—

- whether the roads abutting on the property are maintained at the public expense;
- whether the property is likely to be affected by any approved proposals for the construction or alteration of roads;
- whether the property is served by public sewers;
- whether the property is affected by a compulsory purchase order or a smoke control order;
- whether there are entries relating to the property in other statutory registers (for example, the planning and Rent Act registers) maintained by the local authority;
- the use (if any) specified in the Development Plan.

That short list shows that many of the matters covered by the Supplementary Enquiry forms are not suitable for transfer to the local land charges register; but the nature of some of them (for example, compulsory purchase and smoke control orders) is such that they might well have been made registrable.

(b) Scope of the Enquiries

77. The arrangement with The Law Society under which Supplementary Enquiries are made is (formally, at least) an entirely voluntary one. This means, among other things, that the local authorities have been able to exercise control over the contents of the forms. It is sometimes suggested that many other matters ought to be included and would be but for the unduly restrictive attitude which the Local Authority Associations are alleged to adopt. It must, however, be recognised that there are very real difficulties in extending the scope of the Enquiries, especially in the direction of matters on which the local authority in question has not yet come to a decision and which can therefore be matters of opinion only. A prospective purchaser would no doubt like to know about

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[92] The total fee depends on the number of questions required to be answered but it is unlikely in relation to any one parcel of land to exceed £3. The printed questions are divided into two Parts: all in Part I are answered for a single fee, and there is a separate fee for each question in Part II to which an answer is required. Further questions may be written in at the end of Part II.

almost anything which is under discussion at the Town Hall and which might conceivably affect the property which he is considering buying, but it is very difficult to define "under discussion" in this context. Before any scheme comes before the Council for final approval it will have progressed through a number of formal and informal stages. In its early days its existence may have been known to very few people, perhaps not including the clerk to the authority who answers Supplementary Enquiries. Plainly, a line has to be drawn somewhere. A local authority must be careful when making statements which are capable of affecting property values, and it is not easy for it to preserve a proper balance between the conflicting interests of vendors and purchasers. We do not think that a local authority would (or, indeed, could consistently with its duty to its ratepayers) decline to answer any specific question relating to a proposal which has become a matter of public knowledge in the district, and which may therefore be known to a vendor but not to a purchaser living in another area; but the same duty requires a local authority to treat some information as confidential and it must be recognised that such an authority cannot be required to disclose all its thinking to any enquirer.

(*c*) **Liability for inaccurate answers**

78. A further consequence of the voluntary nature of Supplementary Enquiries has been that local authorities have hitherto regarded themselves as free not to accept liability for erroneous answers. At the head of every Enquiry form there appeared until recently an exemption clause which (it was believed) protected the local authority and its officers from any liability for inaccurate answers. In 1971 this belief was shown to be unfounded[93] and a number of local authorities favoured the adoption of a stronger form of words with a view to guaranteeing immunity from claims. In 1972, however, one of the periodic reviews of the contents of the Supplementary Enquiry forms took place and we wrote to the parties to that review (The Law Society and the Associations representing local authorities and their chief officers) indicating that we were opposed in principle to exemption from liability for negligence. We are glad to say that such liability is expressly accepted in the modified exemption clause in the current edition of the forms.

79. Some months after publication of the new edition of the forms it came to our notice that solicitors were, in a few areas, experiencing some difficulty in getting the local authority to accept the modified exemption clause. In most cases we believe this to have been due to a misunderstanding, which no longer exists; but there may be one or two councils who do not regard themselves as bound by the agreement between their representative associations and The Law Society. While it is true that such agreements have no binding force, it would we think be unfortunate if they were not universally adhered to. The Supplementary Enquiry procedure is of the utmost importance in conveyancing transactions, and confidence in a voluntary system is apt to be undermined if it appears that individual councils cannot be relied upon to operate the system as agreed. In our view, a uniform voluntary system, regularly reviewed by the official bodies representing the interested parties, is (because of its flexibility and the speed with which changes can be made) to be preferred to a statutory

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[93] *Coats, Patons (Retail) Ltd.* v. *Birmingham Corporation* (1971) 69 L.G.R. 356; 218 Estates Gazette 711.

system under which local authorities would be required on demand to answer enquiries prescribed by the Lord Chancellor; and we are confident that The Law Society and the local authorities would endorse that view. We would be sorry to see the continuing validity of the voluntary system put in question.

80. When, in paragraph 77 above, we were discussing the scope of Supplementary Enquiries we were particularly concerned with the scope of the printed questions on the forms. There are, in addition, blank spaces at the end of the forms in which the enquirer (usually the purchaser's solicitor) may write further questions. The clerk to the district council is under no obligation to answer these, though he will usually do so if they are reasonable. We doubt whether it could ever have been thought reasonable to write in a wide-ranging question of a purely fishing nature[94]; but it is in our view clear that the clerk to the authority would be fully justified in declining to answer such a question, especially now that authorities accept liability for negligence. If an enquirer wants a precise and accurate answer he must ask a precise question.

(*d*) **Delays**

81. Complaints are made from time to time about delays in furnishing answers to Supplementary Enquiries, and we have considered whether it would be right to impose on district councils an obligation to send the replies (or some of them) within a prescribed number of days. We are convinced that any such step would be not only impracticable[95], but, in many cases, positively unhelpful to purchasers. First, we cannot conceive of any sanction which would further purchasers' interests. Secondly, it would be necessary, in fixing the time limit, to take account of all sorts of difficulties which may beset district councils in answering Supplementary Enquiries, in order to arrive at a period which would not be unreasonably short for any authority bearing in mind that they may have county enquiries to make as well. Supplementary Enquiries (unlike searches of the local land charges register) often cannot be dealt with within the clerk's own department; other officers may be involved and it may sometimes be necessary to make a physical inspection of the property. If a time limit were imposed it would, we are sure, have to be longer than many local authorities now usually take. Any delay in answering Supplementary Enquiries is, however, likely to hold up the exchange of contracts between vendor and purchaser, and district councils should accordingly make every effort to furnish the answers as soon as possible[96].

82. It is not easy to anticipate the effect which the reorganisation of local government will have on the time taken in replying to Supplementary Enquiries. Hitherto, some authorities have been able to furnish replies expeditiously because they have been small enough for their clerks to carry most of the answers in their heads[97]. We do not think it likely that clerks will be able to deal with

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[94] To take an extreme example, "Is the Council aware of any other matter which might affect the value or use of the property?"

[95] It would be especially difficult to impose such a requirement in the context of a voluntary system.

[96] It is worth noting in this context that since solicitors generally find it inconvenient to receive the official certificate of search and the answers to Enquiries at different times, the practice has grown up of delivering them together. In the result, any delay in relation to Enquiries affects the official search also.

[97] Despite the obvious advantages normally to be gained from this, reliance on the personal knowledge of one or two individuals must have rendered the smooth running of the system somewhat vulnerable, and unusual delays must sometimes have been occasioned by the illness, or transfer, of the clerk or staff concerned.

Supplementary Enquiries on that basis in the future, and some delay may be caused by the necessity of gathering information from different departments of the authority, which may be scattered over the district. Communication problems may be difficult in the initial stages of reorganisation, but they must be overcome. If, in any district, a satisfactory system for dealing with Supplementary Enquiries is not in operation, this will be apparent to local solicitors; and we would hope that pressure brought to bear at local level by solicitors (either individually or collectively through the local Law Societies) would provide an effective means of obtaining improvements.

(*e*) General point

83. Before leaving the subject of Supplementary Enquiries there is an important point which we feel we ought to make. For reasons which we have already indicated, these enquiries are not exhaustive of the matters lying in the public field which may affect the property which a purchaser is thinking of buying. This fact is not, we think, always appreciated by purchasers, who may believe that everything relevant will emerge as a result of their solicitor's enquiries. While local authorities feel that their commitment to answer questions (coupled with liability for negligence in answering) must be limited to those questions which are included on the Supplementary Enquiry forms, their staffs are commonly prepared informally to discuss other matters and if a purchaser desires to find out more about the prospects for any particular property, there is really no substitute for a visit to the Council offices. We do not think that it is within the scope of the purchaser's solicitor's ordinary duty to make such additional enquiries; but just as solicitors often draw their clients' attention to the advisability of obtaining their own surveys, so we think they might warn their clients of the limitations on the Enquiries which they will make, so that there will be no misunderstanding between them.

I—SEARCHES AND SUPPLEMENTARY ENQUIRIES MADE BY VENDORS

84. In paragraph 62 above, when we were discussing the relationship between vendor and purchaser, we approved the practice whereby vendors selling by auction commonly made local searches and appropriate Supplementary Enquiries before the sale, and made the results available to bidders. We agree with The Law Society that there is no reason why this practice should be confined to sales by auction; a vendor's solicitor can always make these searches and Enquiries when he is preparing the draft contract, so that he can supply them to the purchaser's solicitor with the draft contract or as soon as possible afterwards. So far as Supplementary Enquiries are concerned, no useful purpose would be served by their being made in advance if they were not likely to meet a purchaser's ordinary requirements; the vendor's solicitor should therefore not confine himself to the standard questions printed in Part I of the forms, but should also ask such of the optional enquiries in Part II as may seem to be relevant. We think that a local authority would be liable to the purchaser for loss caused by negligence in answering Enquiries made by the vendor[98].

[98] *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] A.C. 465 (see in particular the passage in the speech of Lord Morris of Borth-y-Gest at pp. 502, 503, which was specifically endorsed by Lord Hodson at p. 514); *Dutton* v. *Bognor Regis U.D.C.* [1972] 1 Q.B. 373, *per* Lord Denning M.R. at pp. 394H and 395.

85. Quite apart from the fact that this procedure seems right in principle, it should help to reduce the interval which now commonly elapses between the agreement of the price and the exchange of formal contracts. Any procedure which does not operate to the prejudice of either party, and which enables that interval to be reduced if the parties so desire, would clearly be advantageous.

J—THE RELATIONSHIP BETWEEN THE LOCAL REGISTERS AND SUPPLEMENTARY ENQUIRIES

86. The Stainton Committee recommended that certain additional matters (in particular, compulsory purchase orders) should be made registrable. As we have seen, matters become registrable in one of two ways: they may fall within one of the general formulae contained in section 15 of the Act, or they may be made registrable by the legislation providing for the charge. Ideally, the formulae in the Act should, perhaps, be all-embracing, so that resort to the second method would be unnecessary; but the matters involved are of such a mixed character that we do not think that it would be safe to try to rely on general formulae alone.

87. The existing formulae can, however, be broadened to cover prohibitions and restrictions imposed by Ministers and government departments, as well as positive covenants[99]. The draft Bill attached to this report does this, and a number of additional matters will thus become registrable automatically[100]. We have not, however, combed the Statute book for particular matters which are not now registrable but which might conceivably be made registrable. Schedule 1 to the draft Bill annexed to this report does, indeed, contain a number of amendments to existing Acts but those amendments do not have the effect of creating new registrable matter. The important recommendation which we made in paragraph 52 above (namely, that failure to register should in general have a uniform consequence in the shape of compensation for loss) will, if adopted, have this effect, that when new registrable matters are specifically created in the future the draftsman's task will be simplified because, even if the matters are outside the formulae making them automatically registrable, he will be able to attract all the general provisions of the Local Land Charges Act simply by declaring the new matters to be local land charges[101]. Hitherto, this has not usually been possible because attraction of the provisions of Part VI of the Land Charges Act 1925 as a whole (and, in particular, section 15(1)) was not desired; and this has meant that the draftsman has been obliged to provide not only for the registrability of the new matter but also for the manner of registration and the making of rules. The sole purpose of the amendments made in Schedule 1 (coupled with some of the repeals in Schedule 2) to the draft Bill is to make the existing legislation in this field conform to the simplified pattern. In short, we have been concerned in the present review to modernise the mechanics of the local land charges system, and to make the legislation fit the changes which have taken place; we have not set out on a fundamental review of the matters which are or might be registrable.

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[99] At present, positive convenants cannot normally be local land charges because, under the general law, the burden does not run with the land and successors in title to the original covenantor are not affected, irrespective of notice. We have the question of changing this rule of the general law under consideration; and many local authorities have anticipated that change by obtaining local Acts authorising landowners to enter into positive covenants with them which will, by statute, be enforceable against successors in title.

[100] Clause 1(1)(*c*) and (*d*) of the draft Bill.

[101] Clause 1(1)(*e*) of the draft Bill.

88. But the fact that certain local authority matters are not at present registrable does not, as we have explained, mean that a purchaser cannot obtain notice of them before contract. In this respect, Supplementary Enquiries perform the same function as the local register: for example, a question about compulsory purchase orders made by local authorities is now a standard Enquiry. Furthermore, the effects of searches and Supplementary Enquiries are closely assimilated, and in practical terms it does not normally matter whether a particular local authority charge is registrable or not. We are, however, aware of the fact that this is not equally true of compulsory purchase powers exercised by other bodies and that orders made under such powers are accordingly discoverable only by ordinary enquiry of the vendor before contract. We doubt if that is satisfactory, and while we regard the matter as one which lies outside the scope of this report, we would welcome consideration by Ministers of the question whether such orders should be made registrable.

K—GENERAL CONCLUSION

89. The Land Charges Act 1972 consolidated the 1925 and later legislation relating to ordinary land charges but it deliberately did not touch the law relating to local land charges. The separation of the enactments relating to the two types of land charge was long overdue. Even in 1925 some of the general provisions of the Land Charges Act of that year, designed primarily to fit ordinary land charges, had to be modified by rules to fit local land charges; and with the passage of time the two drifted further apart. The draft Local Land Charges Bill which we append to this report incorporates what remains of the 1925 Act (after the enactment of the Land Charges Act 1972), together with changes recommended in the body of this report and (in some cases) in the notes on the Clauses.

90. The Stainton Committee thought that the present system, on the whole, worked satisfactorily, and we are of the same opinion. There is no general demand for changes and the amendments incorporated in the appended draft Bill are essentially in the nature of repairs to the system with which practitioners and local authorities have become familiar. There is another reason for our having adopted this approach: we foresee developments which, in due course, will enable a much more radical review of the registration of public charges on land to be undertaken. Technical advances may make it practicable to amalgamate the local land charges registers with the local authorities' planning registers and other statutory registers; and we expect that computers will also be able to take on much of the Supplementary Enquiry material. Moreover, there will eventually come a time when the title to all, or substantially all, the land in England and Wales is registered and it may then be feasible to link the local land charges registers (in whatever form they may be) with the charges registers at H.M. Land Registry. In those circumstances, no useful purpose would appear to be served by attempting at this point of time to devise a wholly new (even if improved) system.

91. Finally, having mentioned computers, we wish to say something more about them. We know that at least one large local authority is already anxious to be able to put its local land charges material onto a computer and to be free from the obligation to maintain a register in the ordinary sense of the word.

Information can, of course, be stored in a computer just as it can be preserved on a register so that a computer can be made to do the same job as a register; but although registers may take different forms we think it would be an abuse of language to treat a computer simply as a form of register. It may be that Parliament will at some future date decide that computers may safely be substituted for registers, but that will be an administrative decision of general application, and will affect a large number of statutory registers. We do not think that a Bill relating to local land charges is a proper place in which to introduce such a substitution; nor do we consider ourselves the right body to recommend such a course. While there is no reason why a registering authority should not use a computer as a technical aid—clause 3(3) of the draft Bill envisages computerisation of the index to the register—we take the view that the duty to maintain a register in ordinary form should not as a general principle be dispensed with.

92. If, in order to accommodate the desire of individual registering authorities to substitute a computer for a register, it is considered that the new principal Act should enable special arrangements to be made for them, a power authorising the Lord Chancellor to make adaptations by rule could be included. We would, however, draw attention to the fact that the necessary adaptations would be more than formal ones, and that the power would have to be correspondingly wide in its terms. Computerisation effectively abolishes the right of personal search (as traditionally understood), and there would be no more risk of error in a search made informally—in response to a personal request "over the counter"—than in an official search: the computer would not recognise the difference and its answers would inevitably be the same. In those circumstances, the special significance currently attached to official searches (a significance preserved in clause 10 of the draft Bill) would become meaningless. We believe, therefore, that adaptation of the Bill to fit a computerised system would involve re-writing much of clause 10 (the compensation clause). This would be no small matter to consign to delegated legislation. Having said that, we leave the desirability of making exceptional provision for computerisation to others.

L—SUMMARY OF CONCLUSIONS

93. The following is a summary of our principal recommendations:—

(i) The statutory duties in connection with the local registers should be imposed directly on the district councils (and not, as at present, on the local registrars as individuals) (paragraphs 21 to 23; clause 3(1) and (2)).

(ii) Conditions and limitations attached to grants of planning permission (which are readily discoverable by inspection of the planning registers kept by local authorities under the Town and County Planning legislation) should not be registrable also as local land charges (paragraphs 36 to 39; clause 2(*e*)).

(iii) The removal from the registers of restrictions derived from pre-1948 Town Planning schemes should be authorised (paragraphs 40 to 45; clause 2(*f*)).

(iv) The descriptions of matters registrable by virtue of the Local Land Charges Act itself should be extended to include prohibitions and restrictions (other than those falling within (ii) above) imposed by

Ministers of the Crown and government departments; and corresponding positive covenants should also be covered (paragraph 87; clause 1(1)(*c*) and (*d*)).

(v) The legislation should include a formula by means of which the provisions of the Local Land Charges Act may, when desired, readily be made to apply to other matters arising under other Acts (paragraph 87; clause 1(1)(*e*)).

(vi) The overwhelming majority of charges registrable in the local land charges registers are created in the public interest and it is usually inappropriate that lack of registration (or non-disclosure in an official certificate of search) should affect their enforceability. We recommend, however, that a purchaser should be entitled to compensation for any loss suffered by reason that a charge which existed at the date of his search was not thereby disclosed (paragraphs 52 to 54; clause 10).

(vii) The procedure to be followed by any charging authority (other than the district council responsible for the register in question) in applying to have its charges registered should be prescribed by the Rules (paragraph 56; clause 13(1)(*b*)).

(viii) For the elimination of doubt, it should be made clear that in its application to local land charges section 198 of the Law of Property Act 1925 applies to all registrable matters and not only to those made registrable by the Land Charges Act 1925 itself (paragraph 63; Schedule 1).

(ix) The priority notice and protection by search procedures contained in section 11 of the Land Charges Act 1972 should not be applied to local land charges (paragraphs 65 to 75).

94. We do not recommend:—

(*a*) The establishment of a supervisory system under the eye of a central Government department (paragraphs 24 to 25);

(*b*) any basic change in the present position as between vendor and purchaser in relation to the disclosure by the vendor of the existence of local land charges (paragraphs 57 to 64); or

(*c*) requiring local authorities to answer Supplementary Enquiries within a prescribed time (paragraph 81).

(*Signed*) SAMUEL COOKE, *Chairman*.
CLAUD BICKNELL.
AUBREY L. DIAMOND.
DEREK HODGSON.
NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary*.

21 *October* 1974.

APPENDIX

Draft Local Land Charges Bill

ARRANGEMENT OF CLAUSES

Definition of local land charges

Clause

1. Local land charges.
2. Matters which are not local land charges.

Local land charges registers, registration and related matters

3. Registering authorities, local land charges registers, and indexes.
4. The appropriate local land charges register.
5. Registration of local land charges.
6. Local authority's right to register a general charge against land in certain circumstances.
7. Effect of registering certain financial charges.

Searches

8. Personal searches.
9. Official searches.

Compensation for non-registration or defective official search certificate

10. Compensation for non-registration or defective official search certificate.

Miscellaneous and supplementary

11. Office copies as evidence.
12. Protection of solicitors, trustees, etc.
13. Rules.
14. Financial provisions.
15. Interpretation.
16. Amendments of other statutory provisions.
17. Power to amend local Acts.
18. Repeals and transitional provisions.
19. Short title, etc.

SCHEDULES:

Schedule 1—Consequential amendments.
Schedule 2—Repeals.

DRAFT

OF A

BILL

TO

A.D. 1974

MAKE fresh provision for and in connection with the keeping of local land charges registers and the registration of matters therein, and for purposes connected therewith.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Definition of local land charges

Local land charges

1.—(1) A charge or other matter affecting land is a local land charge if it falls within any of the following descriptions and is not one of the matters set out in section 2 below:—

(*a*) any charge acquired either before or after the commencement of this Act by a local authority under the Public Health Acts 1936 and 1937, the Highways Act 1959, the Public Health Act 1961 or the Highways Act 1971, or any similar charge acquired under any other Act, whether passed before or after this Act, being a charge that is binding on successive owners of the land affected;

(*b*) any prohibition of or restriction on the use of land—

(i) imposed by a local authority on or after 1st January 1926 (including any prohibition or restriction embodied in any condition attached to a consent, approval or licence granted by a local authority on or after that date), or

(ii) enforceable by a local authority under any covenant or agreement made with them on or after that date,

being a prohibition or restriction binding on successive owners of the land affected;

(*c*) any prohibition of or restriction on the use of land—

(i) imposed by a Minister of the Crown or government department on or after the date of the commencement of this Act (including any prohibition or restriction embodied in any condition attached to a consent, approval or licence granted by such a Minister or department on or after that date), or

EXPLANATORY NOTES

References in these notes to "the 1925 Act" are to the Land Charges Act 1925.

Clauses 1 *and* 2 describe the scope of the term "local land charges". They set out by means of inclusion (clause 1) and exclusion (clause 2) the general characteristics of all the matters which fall to be entered in local land charges registers. These matters are so varied in nature that the term defies simple definition: the only characteristic which they share is that they are all matters which will bind successive owners of the land affected, and of which intending purchasers should therefore be given notice.

Clause 1(1)

Paragraph (*a*) substantially reproduces existing law (1925 Act, the first part of section 15(1)). Under this head come financial charges to enable local authorities to recover the cost of certain works carried out under the Acts named. (Under the existing law only these charges are "local land charges" properly so called.)

Paragraph (*b*) substantially reproduces existing law (1925 Act (as amended), the first part of section 15(7)(*b*)), but its content is materially affected by the exclusion (clause 2 paragraph (*e*)) of conditions attached to grants of planning permission.

Paragraph (*c*) is new, in that it covers restrictions imposed or enforceable not by local authorities but by Ministers or government departments. Hitherto, if such matters were to be registrable, specific provision therefor has had to be made in the statute authorising the imposition of the restriction.

(ii) enforceable by such a Minister or department under any covenant or agreement made with him or them on or after that date,

being a prohibition or restriction binding on successive owners of the land affected;

(*d*) any positive obligation affecting land enforceable by a Minister of the Crown, government department or local authority under any covenant or agreement made with him or them on or after the date of the commencement of this Act and binding on successive owners of the land affected;

(*e*) any charge or other matter which is expressly made a local land charge by any statutory provision not contained in this section.

(2) For the purposes of subsection (1)(*a*) above, any sum which is recoverable by a local authority from successive owners or occupiers of the land in respect of which the sum is recoverable shall be treated as a charge, whether the sum is expressed to be a charge on the land or not.

Clause 1(1) (*continued*)

Paragraph (*d*) looks largely to the future, because under the present law positive obligations are not generally enforceable against successors in title. The enforceability of such obligations is, however, already a feature of many local authorities' local Acts: see footnote 99 on page 30 of the report.

Paragraph (*e*) is a "sweeping up" provision. Its special importance lies in the fact that any matter contained in any future Act of Parliament which does not fall within any of the previous subsections, but which Parliament wishes nevertheless to be registrable, will become so simply by making it "a local land charge"; and the use of that short formula will, without more, attract all the provisions of this Bill. Attention is drawn to the concluding words of the subsection ". . . not contained in this section". Schedule 1 to the Bill introduces the words of the formula into a number of existing Acts. In consequence, the provisions of the present Bill (and in particular the compensation provisions of clause 10) will, unless otherwise stated, apply henceforth to matters arising under those Acts.

Clause 1(2) reproduces existing law (1925 Act (as amended), end of section 15(1)).

Matters which are not local land charges.

2. The following matters are not local land charges:—

(*a*) a prohibition or restriction imposed by a covenant or agreement made between a lessor and a lessee;

(*b*) a positive obligation imposed by a covenant or agreement made between a lessor and a lessee;

(*c*) a prohibition or restriction enforceable by a Minister of the Crown, government department or local authority under any covenant or agreement, being a prohibition or restriction binding on successive owners of the land affected by reason of the fact that the covenant or agreement is made for the benefit of land of the Minister, government department or local authority;

(*d*) a prohibition or restriction imposed by any bye-laws;

(*e*) a condition or limitation subject to which planning permission was or is granted or (by virtue of any statutory provision) deemed to be granted under any statutory provision relating to town and country planning, whether by a Minister of the Crown, government department or local authority and whether before or after the passing of this Act;

(*f*) a prohibition or restriction imposed before 1st July 1948 by a planning scheme (that is to say a scheme under the Town and Country Planning Act 1932 or any enactment repealed by that Act);

(*g*) a prohibition or restriction enforceable under a forestry dedication covenant entered into pursuant to section 5 of the Forestry Act 1967;

(*h*) a prohibition or restriction affecting the whole of any of the following areas:—

(i) England, Wales or England and Wales;

(ii) England, or England and Wales, with the exception of, or of any part of, Greater London;

(iii) Greater London.

Clause 2

Paragraphs (*a*) *and* (*b*). The first of these paragraphs reproduces existing law (1925 Act (as amended), exception (iii) in section 15(7)(*b*)). The second corresponds to it, and follows from the inclusion of positive obligations (clause 1(1)(*d*)).

Paragraph (*c*). Local authorities and many government departments are landowners, and, as such, are often parties to the imposition of restrictive covenants. Under the present law it appears that such covenants imposed for the benefit of local authorities can be registered either as ordinary land charges (under the Land Charges Act 1972) or as local land charges. It has not hitherto mattered that this should be so, because the statutory consequence of failure to register (or of giving an inaccurate certificate of search) has been the same whether the matter is treated as a land charge or as a local land charge—in either case the restriction would be void against a purchaser of a legal estate in the land affected. The present Bill, however, as recommended in paragraph 52 of the report, provides (in clause 10) a different consequence in relation to local land charges and it is therefore essential that the subject matters covered by the Land Charges Act and this Bill should not overlap. The prohibitions and restrictions referred to in this paragraph are of a type enforceable under the general law in accordance with the rule in *Tulk* v. *Moxhay* (1848) 2 Ph. 774; they are Class D(ii) land charges under the Land Charges Act 1972 and it is more appropriate that they be registrable under that Act than in the local land charges registers. The paragraph does not exclude from the definition of local land charges restrictive covenants enforceable against purchasers by virtue, not of the general law, but of special statutory provision. (Since restrictive covenants of this sort imposed by Ministers or government departments have never been local land charges, but only Class D(ii) land charges, this paragraph effects no change in the law so far as they are concerned.)

Paragraph (*d*). This exclusion is for the avoidance of doubt. It has never been supposed that particular prohibitions or restrictions imposed by statute should be registrable, and bye-laws come within that principle. Notice of matters so imposed is presumed to be general.

Paragraph (*e*). This exclusion is explained in paragraphs 36–45 of the report, and the provision applies to all planning conditions or limitations, including those imposed under legislation earlier than the Town and Country Planning Act 1947. In most cases, information relating to planning permission is available on the separate planning register.

Paragraph (*f*). This exclusion is explained in paragraphs 40–45 of the report. Together with paragraph (*e*) it facilitates the removal from the registers of material which is mostly obsolete.

Paragraph (*g*). Prohibitions and restrictions contained in forestry dedication covenants, though not naturally Class D(ii) land charges under the Land Charges Act 1972, are effectively made so by the Forestry Act 1967. For the reason indicated in the note to paragraph (*c*) above they cannot be permitted to be both land charges and local land charges; and it is more convenient that they remain as land charges and be excluded from the operation of this Bill.

Paragraph (*h*). This Bill drops the existing exception affecting prohibitions or restrictions operating over the whole of a local authority's area (1925 Act (as amended), exception (i) in section 15(7)(*b*)), a potential source of difficulty on the occasion of changes in such areas. Nevertheless, it is still thought reasonable to exclude the necessity to register, in many different local registers, matters having very wide application.

Local land charges registers, registration and related matters

Registering authorities, local land charges registers, and indexes.

3.—(1) Each of the following local authorities, that is to say—

(*a*) the council of any district;

(*b*) the council of any London borough; and

(*c*) the Common Council of the City of London,

shall be a registering authority for the purposes of this Act.

(2) There shall continue to be kept for the area of each registering authority—

(*a*) a local land charges register; and

(*b*) an index whereby all entries made in that register can readily be traced;

and as from the commencement of this Act the register and index kept for the area of a registering authority shall be kept by that authority.

(3) In this section "index" includes any device or combination of devices serving the purpose of an index.

EXPLANATORY NOTES

Clause 3

See paragraphs 18–23 of the report. The duty to maintain the local registers is, by *subsection* (2), imposed directly on the appropriate local authorities (mostly district councils). *Subsection* (3), which follows s. 1(7) of the Land Charges Act 1972, would permit computerisation of the index.

The appropriate local land charges register.

4. In this Act and any other statutory provision, unless the context otherwise requires, "the appropriate local land charges register", in relation to any land or to a local land charge, means the local land charges register for the area in which the land or, as the case may be, the land affected by the charge is situated or, if the land in question is situated in two or more areas for which local land charges registers are kept, each of the local land charges registers kept for those areas respectively.

EXPLANATORY NOTES

Clause 4 is a new definition clause, useful for this Bill and designed to be of assistance in drafting future legislation.

Registration of local land charges.

5.—(1) Subject to subsection (6) below, where a local land charge is brought into existence by the registering authority or on its coming into existence is enforceable by the registering authority, it shall be the duty of the registering authority to register it in the appropriate local land charges register.

(2) Subject to subsection (6) below, where a local land charge is brought into existence by a person other than the registering authority or on its coming into existence is enforceable by a person other than the registering authority, it shall be the duty of that person to apply for its registration in the appropriate local land charges register and upon any such application being made it shall be the duty of the registering authority to register the charge accordingly.

(3) The registration in a local land charges register of a local land charge, or of any matter which when registered becomes a local land charge, shall be carried out by reference to the land affected or such part of it as is situated in the area for which the register is kept.

(4) For the purposes of this section a local land charge brought into existence by a Minister of the Crown or government department on an appeal from a decision or determination of a local authority or in the exercise of powers ordinarily exercisable by a local authority shall be treated as brought into existence by the local authority in question.

(5) The registration of a local land charge may be cancelled pursuant to an order of the court.

(6) Where a charge or other matter is registrable in a local land charges register and before the commencement of this Act was also registrable in a register kept under the Land Charges Act 1972, then, if before the commencement of this Act it was registered in a register kept under that Act, there shall be no duty to register it, or to apply for its registration, under this Act and section 10 below shall not apply in relation to it.

EXPLANATORY NOTES

Clause 5

Subsections (1)–(4) impose for the first time a positive statutory duty on the appropriate authority to enter registrable matters (or to cause them to be entered) in the appropriate register or registers. Since conditions attached to grants of planning permission are excluded from registration (clause 2, paragraph (*e*)) there may be little content at present in subsection (4), but an attempt has been made in this Bill to anticipate possible future developments, and to make reasonable provision accordingly.

It will occasionally be appropriate (particularly in connection with special matters becoming registrable only by virtue of clause 1(1)(*e*) of the Bill) for a statute expressly to negative the duties imposed by subsections (1) and (2) of this clause. Several examples are in fact provided by Acts appearing in Schedule 1. It is sometimes desirable that registration should be voluntary (coupled with a provision to the effect that the matter shall not be enforceable unless it has been registered). An obvious instance of this is provided by rights under the Rights of Light Act 1959.

Subsection (5) reproduces existing law (1925 Act, as amended, s. 15(7B)—see Land Charges Act 1972, Sch. 4).

Subsection (6) operates only in relation to those cases where (as mentioned in the note to clause 2, paragraph (*c*)) local authorities had imposed charges which were capable of registration either as ordinary land charges or as local land charges, but which will henceforth be local land charges only. Perhaps the most common example is a restrictive covenant enforceable against successors in title by virtue not of the general law but of special statutory provision. If the existing charge has actually been registered under the Land Charges Act it is not necessary that it be re-registered as a local land charge. (Clause 16(1)(*b*), which amends the Land Charges Act 1972, is designed to prevent there being any new charges in this position.) A purchaser would not be prejudiced by the fact that the charge had been registered in what will have become an inappropriate register because he would normally be entitled (in consequence of the provisions of section 24 of the Law of Property Act 1969) to rescind the contract if he subsequently discovered a registered charge which had not previously been disclosed by his vendor.

Local authority's right to register a general charge against land in certain circumstances.

6.—(1) Where a local authority have expended money for any purpose which, when the work is completed and any requisite resolution is passed or order is made, will confer a charge upon land, the following provisions of this section shall apply.

(2) The registering authority may at any time before the charge mentioned in subsection (1) above comes into existence register in the appropriate local land charges register a general charge against the land, without specifying the amount; but if the money in question was expended by a local authority other than the registering authority, a general charge shall not be registered under this section unless an application for its registration is made by that other authority.

(3) A general charge registered under this section shall be a local land charge; but section 5(1) and (2) above shall not apply in relation to such a general charge.

(4) If a general charge is registered under this section, its registration shall be cancelled within such time (not being less than one year after the charge mentioned in subsection (1) above comes into existence) as may be prescribed; and on the cancellation of the general charge, the specific charge shall, unless previously discharged, be registered as of the date on which the general charge was registered.

EXPLANATORY NOTES

Clause 6 substantially reproduces existing law (1925 Act, s. 15(4)). The primary function of a general charge under this clause is to gain a measure of priority for a specific financial charge (within clause 1(1)(*a*)), pending the ascertainment of the precise amount to be secured by the specific charge. General charges are cancelled when specific charges are entered in the register. A general charge is at present permitted by the Rules to remain on the register for 15 months after the amounts of the several specific charges have been ascertained—most landowners discharge their liabilities during this period, and the necessity for replacing the general with specific charge entries is, in that event, avoided.

Effect of registering certain financial charges. 1925 c. 20.

7. A local land charge falling within section 1(1)(*a*) above shall, when registered, take effect as if it had been created by a deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.

Clause 7 reproduces existing law (1925 Act, s. 15(2) and Land Charges Act 1972, s. 4(1)). In relation to financial charges a local authority has, of course, its right to sue for the money owing: this clause gives it in addition the ordinary remedies of a legal mortgagee which include, in particular, a right to appoint a receiver and a right to sell. If the legislation under which a financial charge is acquired imposes a charge on all interests in the land, the priority of the charge in relation to the other interests will not be affected by the date of its registration. This is the purpose of the final words of the clause.

Searches

Personal searches.

8.—(1) Any person may search in any local land charges register on paying the prescribed fee.

(2) Without prejudice to subsection (1) above, a registering authority may provide facilities for enabling persons entitled to search in the authority's local land charges register to see photographic or other images or copies of any portion of the register which they may wish to examine.

Clause 8

Subsection (1) reproduces existing law (1925 Act, s. 16) save that it is not now thought necessary to provide a separate right to search the index, as distinct from the register. Furthermore, an index may, under clause 3(3), take such a form as to render a right of personal search impracticable.

Subsection (2) adopts a provision now applying to ordinary land charges (Land Charges Act 1972 s. 9(2)).

Official searches.

9.—(1) Where any person requires an official search of the appropriate local land charges register to be made in respect of any land, he may make a requisition in that behalf to the registering authority.

(2) A requisition under this section must be in writing, and shall be made by serving it on the registering authority in accordance with section 231(1) of the Local Government Act 1972 or, in the case of a requisition relating to land in the City of London, by delivering it at, or sending it by post to, the principal office of the Common Council or any other office of the Common Council specified by them as one at which they will accept requisitions under this section.

(3) The prescribed fee shall be payable in the prescribed manner in respect of every requisition made under this section.

(4) Where a requisition is made to a registering authority under this section and the fee payable in respect of it is paid in accordance with subsection (3) above, the registering authority shall thereupon make the search required and shall issue an official certificate setting out the result of the search.

EXPLANATORY NOTES

Clause 9 substantially reproduces existing law as provided, not by the 1925 Act, but by the rules made thereunder (1966 Rules, r. 24(1) and (4)).

Compensation for non-registration or defective official search certificate

Compensation for non-registration or defective official search certificate.

10.—(1) Failure to register a local land charge in the appropriate local land charges register shall not affect the enforceability of the charge but where a person has purchased any land affected by a local land charge, then—

(*a*) in a case where a material personal search of the appropriate local land charges register was made in respect of the land in question before the relevant time, if at the time of the search the charge was in existence but not registered in that register; or

(*b*) in a case where a material official search of the appropriate local land charges register was made in respect of the land in question before the relevant time, if the charge was in existence at the time of the search but (whether registered or not) was not shown by the official search certificate as registered in that register,

the purchaser shall be entitled to compensation for any loss suffered by him by reason that the charge was not registered in the appropriate local land charges register or, as the case may be, was not shown as registered in it by the official search certificate.

Clause 10

This clause sets out the rights of a purchaser prejudiced by a failure of the system to reveal a charge. This may occur either through a breach of duty (see clause 5(1) or (2)) in relation to registration, or through the issue under clause 9(4) of an inaccurate certificate of search.

The clause is entirely new and gives effect to the most significant of the reforms recommended in the report. Under the present law (as explained more fully in paragraphs 46–51 of the report) a failure of the system has one or other of two extreme consequences: either the charge is wholly unenforceable against the purchaser; or the purchaser is bound by the charge of which he had no notice, and he has no form of redress. Fairly balancing the interests of purchasers and of the public at large, neither of these consequences is generally supportable.

The clause substitutes a new rule (to apply in all cases unless individual statutes specifically provide otherwise), namely, that a failure of the system to reveal a charge will give rise to a right to compensation for loss caused thereby, but will not affect the enforceability of the charge.

(If, exceptionally, it is desired in the case of any particular type of local land charge that enforceability should be absolutely dependent on registration, the specific legislation under which such a charge may be created may so provide; and this clause should then be specifically disapplied. It may be that in such a case the duty to register imposed by clause 5 should also be negatived: see for example the proposed amendment "(*d*)" to section 17 of the Land Powers (Defence) Act 1958, contained in Schedule 1 to the draft Bill.)

Subsection (1) is the principal subsection giving effect to the Commission's recommendation. In order to obtain compensation a purchaser will have to prove that:—

- (i) a search (personal or official) had been made;
- (ii) the search failed to reveal the local land charge in question, either (paragraph (*a*), personal search) because the charge had not been registered when it should have been or (paragraph (*b*), official search) because the certificate, for any reason, did not disclose it;
- (iii) he has suffered loss. This should give rise to no difficulty if the charge is a financial one; in other cases the purchaser will have to show that the existence of the charge affected the market value of the property; and
- (iv) that loss was suffered by reason of the non-registration of the charge, or of the inaccuracy of the certificate. As explained in paragraph 54 of the report, the facts in a particular case may indicate that the purchaser was not (or could not reasonably claim that he was) misled by the result of the search; and no compensation will be payable in such circumstances.

(2) At any time when rules made under this Act make provision for local land charges registers to be divided into parts then, for the purposes of subsection (1) above—

(*a*) a search (whether personal or official) of a part or parts only of any such register shall not constitute a search of that register in relation to any local land charge registrable in a part of the register not searched; and

(*b*) a charge shall not be taken to be registered in the appropriate local land charges register unless registered in the appropriate part of the register.

(3) For the purposes of this section—

(*a*) a person purchases land where, for valuable consideration, he acquires any interest in or in a charge on land or the proceeds of sale of land, and this includes cases where he acquires as mortgagee or lessee and shall be treated as including cases where an interest is conveyed or assigned at his direction to another person;

(*b*) the relevant time—

(i) where the acquisition of the interest in question was preceded by a contract for its acquisition, is the time when that contract was made;

(ii) in any other case, is the time when the purchaser acquired the interest in question or, if he acquired it under a disposition which took effect only when registered under the Land Registration Act 1925, the time when that disposition was made;

(*c*) a personal search is material if, but only if—

(i) it is made after the commencement of this Act, and

(ii) it is made by or on behalf of the purchaser or, before the relevant time, the purchaser or his agent has knowledge of the result of it;

(*d*) an official search is material if, but only if—

(i) it is made after the commencement of this Act, and

(ii) it is requisitioned by or on behalf of the purchaser or, before the relevant time, the purchaser or his agent has knowledge of the contents of the official search certificate.

Clause 10 (*continued*)

Subsection (2) contains refinements made necessary by the fact that under the Rules a search may be made in one or more Parts of the register only. If a purchaser has only searched in (for example) Parts 1 and 2 (financial charges), he will not be able to claim compensation in relation to a planning charge (registrable in Part 3), even if the latter charge had not in fact been registered. Conversely, if a financial charge had not been revealed by his search of Parts 1 and 2, the purchaser's *prima facie* right to compensation will not be affected by subsequent searches limited to some other Part or Parts of the register. Although registration in the wrong Part formally constitutes non-registration, a search of the whole register will disclose the charge and the technical non-registration will therefore not be the cause of loss.

Subsection (3)

Paragraph (*a*) adopts the sense of the general definition of "purchaser" contained in section 20 of the 1925 Act, and the right to compensation given by the present Bill is therefore available to a somewhat wider class of purchasers than is the existing protection, which is extended only to purchasers of legal estates (see the concluding words of section 15(1) of the 1925 Act). It also makes it clear that a claim to compensation may be made by the purchaser of an undivided share in land.

Paragraph (*b*). A purchaser is expected to search for local land charges before he is committed to his purchase, and only searches made before that time are therefore relevant to the question whether he should be entitled to compensation. In some cases he will not be so committed before he formally acquires the interest in the land affected; but he will usually be committed earlier, *viz.* on the execution of the instrument of transfer (in the case of registered land) or, if there has been a prior contract, on exchange of contracts.

Paragraphs (*c*) *and* (*d*) do two things. First, they provide that the new rule shall not operate retrospectively to found claims to compensation which would not have been competent when the relevant search was made. Purchasers entering into contracts shortly after the Bill becomes law may be well advised (if relying on the results of a search made while the old law was in force) to make a fresh search. Secondly, these paragraphs provide that a claim may be founded on a search made or requisitioned by anybody, if the purchaser (or his agent) was aware of the result when he committed himself to the purchase. Vendors (or their solicitors) may thus requisition searches of which advantage may be taken by purchasers. (See Part I of the report.)

(4) Any compensation for loss under this section shall be paid by the registering authority in whose area the land affected is situated; and where the purchaser has incurred expenditure for the purpose of obtaining compensation under this section, the amount of the compensation shall include the amount of the expenditure reasonably incurred by him for that purpose (so far as that expenditure would not otherwise fall to be treated as loss for which he is entitled to compensation under this section).

(5) Where any compensation for loss under this section is paid by a registering authority in respect of a local land charge which was brought into existence by a person other than the registering authority or which on its coming into existence was enforceable by a person other than the registering authority, then, unless an application for registration of the charge was made to the registering authority by that person in time for it to be practicable for the registering authority to avoid incurring liability to pay that compensation, an amount equal thereto shall be recoverable from that person by the registering authority.

(6) For the purposes of subsection (5) above a local land charge brought into existence by a Minister of the Crown or government department on an appeal from a decision or determination of a local authority or in the exercise of powers ordinarily exercisable by a local authority shall be treated as brought into existence by the local authority in question.

Clause 10 (*continued*)

Subsections (4) *and* (5)

If an existing charge is not revealed on a search, the purchaser's claim to compensation will always be made to (and, if justified, met by) the registering authority. The purchaser will not be concerned to discover the cause of the non-disclosure.

In some cases the non-disclosure will have been caused by the failure of some other authority (by whom the charge has been created) to apply to the registering authority for its registration. In such circumstances, the registering authority may recover from the charging authority the amount of any compensation properly paid. A registering authority proposing to avail itself of this right will presumably act in concert with the charging authority when settling a purchaser's claim (or join it as a party in any proceedings) in order to minimise the risk of subsequent dispute between them. A charging authority can, of course, be required to reimburse only the amount of compensation to which the purchaser was truly entitled.

The purchaser's claim to compensation is based on the non-disclosure of the charge, and not on the existence of fault. It may sometimes happen that non-disclosure will occur through no fault on anybody's part: however short the interval between the creation of a charge and its registration a search may intervene. The purchaser's *prima facie* right to compensation will not be affected in such circumstances and (if the registering authority is not at fault) the burden of the compensation will be cast on the authority having the benefit of the charge.

Subsection (6) is an ancillary provision parallel to that in subsection (4) of clause 5, noted above.

(7) Where any compensation for loss under this section is paid by a registering authority, no part of the amount paid, or of any corresponding amount paid to the authority by any person under subsection (5) above, shall be recoverable by the authority or that person from any other person except as provided by subsection (5) above or under a policy of insurance.

(8) In the case of an action to recover compensation under this section the cause of action shall be deemed for the purposes of the Limitation Act 1939 to accrue at the time when the local land charge comes to the notice of the purchaser; and for the purposes of this subsection the question when the charge came to his notice shall be determined without regard to the provisions of section 198 of the Law of Property Act 1925 (under which registration under certain enactments is deemed to constitute actual notice).

(9) Where the amount claimed by way of compensation under this section does not exceed the limit for the time being imposed on the jurisdiction of a county court by paragraph (*b*) of section 40(1) of the County Courts Act 1959 (money recoverable by statute), proceedings for the recovery of such compensation may be begun in the county court.

(10) If in any proceedings for the recovery of compensation under this section the court dismisses a claim to compensation, it shall not order the purchaser to pay the registering authority's costs unless it considers that it was unreasonable for the purchaser to commence the proceedings.

Clause 10 (*continued*)

Subsection (7)

The terms of contracts between vendors and purchasers are normally such that the vendor is not under an obligation to notify the purchaser of non-financial local land charges. Nonetheless, if the existence of such a charge has been clearly brought to a purchaser's attention by his vendor, the registering authority may have a defence to a claim to compensation, on the ground that in the circumstances any loss could not be said to have been suffered by reason of any failure to disclose on search. The purpose of this subsection is to forestall any argument on the part of registering (or charging) authorities that vendors owe *them* a duty to disclose to their purchasers any local land charges of which they may be aware.

Subsection (8)

The time limit for instituting proceedings for compensation would be six years (Limitation Act 1939, s. 2(1)(*d*)). Time will not start to run against a purchaser by reason only of the registration of the charge: actual notice (perhaps afforded by enforcement of the charge by the charging authority) is necessary.

Subsection (9)

The county court jurisdiction is currently limited to claims not exceeding £1000 (County Courts Jurisdiction Order 1974, S.I. 1974/1273).

Subsection (10)

Section 25 of the Law of Property Act 1969 (which relates to compensation in certain cases for loss due to undiscovered ordinary land charges) contains a similar provision (subsection (6)). If the applicant's claim to compensation is reasonably made, he should not have to bear more than his own costs, even if (because, for example, of a difficulty in proving financial loss) he is ultimately unsuccessful. The claim could not have been got on to its feet unless there had been some failure in the system, and probably some fault on the part of the charging or registering authority.

Miscellaneous and supplementary

Office copies as evidence.

11. An office copy of an entry in any register of local land charges kept under this Act shall be admissible in evidence in all proceedings and between all parties to the same extent as the original would be admissible.

Clause 11

An official certificate of search merely indicates the presence or otherwise of entries on the register: it does not necessarily give full information as to the entries themselves. The 1925 Act did not make provision for the making of office copies of entries, nor does the present Bill impose a duty on registering authorities to provide them. But for many years such copies have in fact been made by local registries (as by the Land Charges Registry) and, under the Rules, fees are charged for doing so. The admissibility of office copies of entries in the Land Charges Register was covered (for the first time) in the Land Registration and Land Charges Act 1971 (see now the Land Charges Act 1972, s. 1(5)), and this clause does the same for local land charges.

Protection of solicitors, trustees etc.

12. A solicitor or a trustee, personal representative, agent or other person in a fiduciary position, shall not be answerable in respect of any loss occasioned by reliance on an erroneous official search certificate or an erroneous office copy of an entry in a local land charges register.

Clause 12

Rule 24(7) (which, prior to the Land Charges Act 1972, corresponded to subsections (7), (8) and (9) of s. 17 of the 1925 Act) protects solicitors, trustees etc. so far as they rely on official certificates of search. It seems preferable that this protection should be in the Act itself, and the opportunity has been taken of extending it to cases where reliance has been placed on office copies of entries.

Rules.

13.—(1) The Lord Chancellor may, with the concurrence of the Treasury as to fees, make rules for carrying this Act into effect and, in particular, rules—

(*a*) for regulating the practice of registering authorities in connection with the registration of local land charges or matters which, when registered, become local land charges;

(*b*) as to forms and contents of applications for registration, and the manner in which such applications are to be made;

(*c*) as to the manner in which the land affected or to be affected by a local land charge is, where practicable, to be identified for purposes of registration;

(*d*) as to the manner in which and the times at which registrable matters are to be registered;

(*e*) as to forms and contents of requisitions for official searches and of official search certificates;

(*f*) for regulating personal searches and related matters;

(*g*) as to the cancellation without an order of the court of the registration of a local land charge on its cesser, or with the consent of the authority or body by whom it is enforceable;

(*h*) for prescribing the fees, it any, to be paid for the filing of documents with a registering authority, the making of any entry on a register, the supply of copies of, or the variation or cancellation of, any such entry, and the making of any search of a register.

(2) Without prejudice to the generality of subsection (1) above, the power to make rules under that subsection shall include power to make rules (with the concurrence of the Treasury as to fees) for carrying into effect the provisions of any statutory provision by virtue of which any matter is registrable in any local land charges register.

(3) The power to make rules under this section shall be exercisable by statutory instrument.

EXPLANATORY NOTES

Clause 13

Subsection (1) redraws the Lord Chancellor's rule-making powers. Many of the existing powers, which are set out in Sch. 4 to the Land Charges Act 1972 (as s. 19 of the 1925 Act as amended) are inappropriate for inclusion in this Bill: either because they refer to elements in the existing law which are not being carried forward (for example, the imposition of duties on a "proper officer"; and priority notices—see paragraphs 21–23 and 65–75 of the report) or because the matters to which they refer are covered fully in the Bill itself (in particular, the substantive provisions relating to searches and the effect of official certificates). Attention is drawn to *paragraph* (*b*), which recognises that charges may be created by persons or bodies other than the registering authority and accordingly makes provision for rules relating to applications for registration: see paragraph 56 of the report.

If, in any future Act, some matter is made registrable in the local registers but is not to be a local land charge even when registered, *subsection* (2) will operate as a rule-making power in relation to such matter and it should not be necessary to include such a power in the Act in question.

Financial provisions.

14. There shall be paid out of money provided by Parliament—

(*a*) any administrative expenses incurred by a Minister of the Crown or government department in consequence of this Act;

(*b*) any expenditure incurred by a Minister of the Crown or government department in the payment of any amount recoverable from him or them under this Act by a registering authority;

(*c*) any increase attributable to this Act in the sums so payable under any other Act.

Interpretation.

15.—(1) In this Act, except where the context otherwise requires—

"the appropriate local land charges register" has the meaning provided by section 4 above;

"the court" means the High Court, or the county court in a case where the county court has jurisdiction;

"land" includes land (whether registered or unregistered) of any tenure and mines and minerals, whether or not severed from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments;

"official search certificate" means a certificate issued pursuant to section 9(4) above;

"person" (without prejudice to section 19 of the Interpretation Act 1889) includes government department;

"personal search" means a search pursuant to section 8 above;

"prescribed" means prescribed by rules made under section 13 above;

"the registering authority", in relation to any land or to a local land charge, means the registering authority in whose area the land or, as the case may be, the land affected by the charge is situated, or, if the land in question is situated in the areas of two or more registering authorities, each of those authorities respectively;

"statutory provision" means a provision of this Act or of any other Act or Measure, whenever passed, or a provision of any rules, regulations, order or similar instrument made (whether before or after the passing of this Act) under an Act, whenever passed.

(2) Except in so far as the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended, extended or applied by or under any other enactment, including this Act.

Clause 15

Subsection (1)

The definition of "land" differs from that in the 1925 Act in that it excludes incorporeal hereditaments, such as rentcharges, and appurtenant rights (*e.g.*, easements). The nature of local land charges is such that they affect corporeal hereditaments only and, indeed, the registration system is dependent on the ability to make entries by reference to actual land or physical structures with a definite geographical location. "Other corporeal hereditaments" would be apt to cover structures, such as bridges, which might not readily be regarded as "buildings".

Amendments of other statutory provisions.

16.—(1) The Land Charges Act 1972 shall be amended as follows—

(*a*) for section 1(3) there shall be substituted—

"(3) Where any charge or other matter is registrable in more than one of the registers kept under this Act, it shall be sufficient if it is registered in one such register, and if it is so registered the person entitled to the benefit of it shall not be prejudicially affected by any provision of this Act as to the effect of non-registration in any other such register.

(3A) Where any charge or other matter is registrable in a register kept under this Act and was also, before the commencement of the Local Land Charges Act 1974, registrable in a local land charges register, then, if before the commencement of the said Act it was registered in the appropriate local land charges register, it shall be treated for the purposes of the provisions of this Act as to the effect of non-registration as if it had been registered in the appropriate register under this Act; and any certificate setting out the result of an official search of the appropriate local land charges register shall, in relation to it, have effect as if it were a certificate setting out the result of an official search under this Act";

(*b*) in section 2(4) and in section 2(5) the words "(not being a local land charge)" shall be inserted after "any of the following".

(2) Schedule 1 to this Act (which contains consequential amendments of other Acts and of a Measure) shall have effect.

Clause 16

Subsection (1)

The 1925 Act did not make the land charges and local land charges systems mutually exclusive and some matters—notably restrictive covenants imposed by local authorities as landowners in the ordinary course of selling land belonging to them—are comprehended within the definitions of both types of charge. Furthermore, a number of matters which are not, primarily, "land charges" are also registrable at the Land Charges Registry; but in individual cases some of these may also happen to fall within the definition of a land charge.

In order to avoid multiple registrations, the 1925 Act provided (as section 1(3) of the Land Charges Act 1972 now provides) that if a matter is registrable under more than one head, registration under any head is sufficient. For present purposes, this means that if a local authority has registered a restrictive covenant of the type mentioned above as a Class D(ii) land charge at the Land Charges Registry, the covenant will not be rendered void as against subsequent purchasers of the land by reason of its not having been registered also in the local register as a local land charge.

The provisions of this Bill do not affect the relationship between land charges and the other matters registrable at the Land Charges Registry, and the proposed new subsection (3) of section 1 of the Land Charges Act 1972 accordingly preserves the present position as between them.

This Bill does, however, materially alter the relationship between land charges and local land charges because, under clause 10, failure to register a local land charge will produce a result quite different from that following failure to register an ordinary land charge. It is therefore essential that there should no longer be any overlapping between the two sorts of charge.

The problem has been largely solved for the future by paragraph (*c*) of clause 2 of the Bill which provides that those restrictive covenants which are (and will remain) registrable as ordinary land charges shall not henceforth be local land charges. Paragraph (*b*) of the present subsection completes the picture by excluding from the scope of the Land Charges Act 1972 matters which are local land charges under this Bill.

There remains the question of existing charges which have been registered in what will have become the inappropriate register. The position of charges which will in future be local land charges only, but which at the date of their creation were capable of registration (in the alternative) in the Land Charges Register, and were so registered, is dealt with in clause 5(6). The converse position of charges which will have become land charges only, but which were registered in local registers, is dealt with in the proposed new subsection (3A) of section 1 of the Land Charges Act 1972. A purchaser should not be prejudiced by the fact that such a charge will not have been registered at the Land Charges Registry (and may well not have been disclosed to him before contract by his vendor) because the normal proper practice is for him to search the local register before contract, and any land charge registered there will appear on the search along with any local land charges.

Subsection (2)

See the notes to Schedule 1.

Power to amend local Acts.

17.—(1) Subject to the provisions of this section, the Lord Chancellor may by order made by statutory instrument repeal or amend any relevant local Act provision that appears to him to be inconsistent with, or to require modification in consequence of, any provision of this Act.

(2) For the purposes of this section, a relevant local Act provision is a provision—

(*a*) contained in any local Act passed before this Act, and

(*b*) providing for any matter to be, or to be registered as, a local land charge or otherwise requiring or authorising the registration of any matter in a local land charges register.

(3) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament and may be varied or revoked by a subsequent order under this section.

(4) Before making an order under this section the Lord Chancellor shall consult any local authority appearing to him to be concerned.

EXPLANATORY NOTES

Clause 17 makes provision for bringing local Acts into line by amendment or repeal in a manner similar to that adopted for public Acts by Schedules 1 and 2 to this Bill.

Repeals and transitional provisions.

18.—(1) The enactments specified in Schedule 2 to this Act (which include certain spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.

(2) Nothing in this Act shall operate to impose any obligation to register or apply for the registration of any local land charge within the meaning of this Act which immediately before the commencement of this Act was by virtue of subsection (7)(*b*)(i) of section 15 of the Land Charges Act 1925 not required by that section to be registered as a local land charge, except after the expiration of one year from the commencement of this Act; and a purchaser shall not be entitled to compensation under section 10 above by virtue of section 10(1)(*a*) or, where the charge was not registered at the time of the search, section 10(1)(*b*) in respect of a local land charge which at the time of the search was not required to be registered.

(3) In so far as any entry subsisting in a local land charges register at the commencement of this Act could have been made in that register pursuant to this Act it shall be treated as having been so made, but nothing in this Act shall render enforceable against any purchaser whose purchase was completed before the commencement of this Act any local land charge which immediately before the commencement of this Act was not enforceable against him.

EXPLANATORY NOTES

Clause 18

Subsection (1)

A number of the repeals in Schedule 2 are consequential on the amendments contained in Schedule 1: as soon as the particular matters become local land charges in the full sense the rule-making powers etc. contained in the Bill will apply to them and the existing special provisions will become unnecessary (or wrong).

Subsection (2)

See the note to paragraph (*h*) of clause 2. Local authorities will have to register these hitherto exempted prohibitions or restrictions, but are given a year in which to do so.

Subsection (3) preserves the continuity of the registration system, notwithstanding the changes made by this Bill.

Short title, etc.

19.—(1) This Act may be cited as the Local Land Charges Act 1974.

(2) This Act binds the Crown, but nothing in this Act shall be taken to render land owned by or occupied for the purposes of the Crown subject to any charge to which, independently of this Act, it would not be subject.

(3) This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.

(4) This Act extends to England and Wales only.

EXPLANATORY NOTES

Clause 19

Subsection (3)

Between Royal assent and the commencement date the Local Land Charges Rules will have to be revised. The new rules should be shorter, since much of the material will be contained in the Act itself.

Subsection (4)

A different registration system applies in Scotland.

SCHEDULES

Section 16.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

ACTS

1925 c. 20.

The Law of Property Act 1925

In section 198 of the Law of Property Act 1925—

(*a*) in subsection (1), for the words from "under" to "elsewhere" substitute "in any register kept under the Land Charges Act 1972 or any local land charges register";

(*b*) in subsection (2), for "under the Land Charges Act 1925" substitute "in any such register".

1925 c. 21.

The Land Registration Act 1925

For section 3(ix) of the Land Registration Act 1925 substitute—

"(ix) 'Land charge' means a land charge of any class described in section 2 of the Land Charges Act 1972 or a local land charge;"

1931 c. 16.

The Ancient Monuments Act 1931

In section 11 of the Ancient Monuments Act 1931, for the words from the beginning to "as if they were" substitute "The following instruments shall be" and omit the words from "and every such" to the end of the section.

1948 c. 17.

The Requisitioned Land and War Works Act 1948

In section 14 of the Requisitioned Land and War Works Act 1948—

(*a*) in subsection (1), omit the words "in the prescribed manner";

(*b*) in subsection (3), for the words from "but the said section" to the end of the subsection substitute "but the rights conferred by that section shall, as respects the land on which the line as diverted, and any such works, are constructed be a local land charge and shall, for the purposes of the Local Land Charges Act 1974, be treated as having been brought into existence by the Minister maintaining and using, or authorising the maintenance and use of, the said line or works";

(*c*) for subsection (4) substitute—

"(4) Rights registered in a local land charges register in pursuance of subsection (1) of this section shall be a local land charge, but

(*a*) section 5(1) and (2) and section 10 of the Local Land Charges Act 1974 shall not apply in relation thereto; and

EXPLANATORY NOTES

Schedule 1

(i) *Law of Property Act* 1925

This amendment eliminates a small problem on the construction of section 198 of that Act, thereby giving effect to the recommendation contained in paragraph 63 of the report.

(ii) *Land Registration Act* 1925

This amendment up-dates the existing definition in that Act of "land charge".

(iii) The primary purpose of the amendments to *each of the other Acts and the Measure* is to bring within the framework of the Bill the matters which, under existing special legislation, are now registrable. In most cases this is effected by declaring that the matters in question are local land charges (thus attracting the provisions of the Bill through clause 1(1)(*e*)). Certain matters under the Highways Act 1959 and the Field Monuments Act 1972 will however become local land charges in the full sense as a result of the enlargement of the general scope of such charges effected by clause 1(1)(*c*).

Where necessary or appropriate the amendments also—

(*a*) eliminate material (*e.g.*, provisions relating to the making of rules) which is covered by provisions in the Bill itself;

(*b*) modify the existing law to enable the compensation provisions in clause 10 to apply;

(*c*) modify the operation of the provisions in the Bill in order to ensure that parts of the new system (and in particular the compensation provisions) will not apply to matters to which they are inappropriate;

(*d*) in the case of the Land Compensation Act 1973, alter the law in order to prevent charging authorities being prejudiced by the absence from the new system of priority notices.

(*b*) a certificate setting out the result of an official search of the appropriate local land charges register shall, as respects any pipeline or works accessory thereto, be conclusive of the question whether, at the time of the issue of the certificate, rights registrable under subsection (1) of this section were registered".

1949 c. 67.

The Civil Aviation Act 1949

In section 33 of the Civil Aviation Act 1949—

(*a*) in subsection (1), for the words from the beginning to "that is to say" substitute "The following instruments shall, when operative, be local land charges" and omit the words from "becomes operative" to the end of the subsection;

(*b*) omit subsections (2) and (3).

1949 c. 74.

The Coast Protection Act 1949

For section 8(8) of the Coast Protection Act 1949 substitute—

"(8) A works scheme indicating land as contributory land shall, when operative, be a local land charge as respects the contributory land.".

1950 c. 39.

The Public Utilities Street Works Act 1950

For paragraphs 2 to 4 of Schedule 2 to the Public Utilities Street Works Act 1950 substitute—

"2. A declaration made under this Schedule shall be a local land charge.".

1954 c. 23.

The Hill Farming Act 1954

In section 2(1) of the Hill Farming Act 1954, for the words from "shall be registered" to the end of the subsection substitute "shall be a local land charge".

1956 c. 59.

The Underground Works (London) Act 1956

For section 6(9) of the Underground Works (London) Act 1956 substitute—

"(9) The restriction imposed by subsection (1) of this section shall be a local land charge, and for the purposes of the Local Land Charges Act 1974 shall be treated as having been brought into existence by the Secretary of State.".

1957 c. 56.

The Housing Act 1957

For section 104(5) of the Housing Act 1957 substitute—

"(5) Any such condition as is mentioned in subsection (3)(*a*) or (*b*) of this section imposed on the sale of a house by a local authority shall be a local land charge.".

1958 c. 30.

The Land Powers (Defence) Act 1958

In section 17 of the Land Powers (Defence) Act 1958—

(*a*) for subsection (1) substitute—

"(1) A wayleave order shall be a local land charge.";

(*b*) after subsection (1) insert—

"(1A) Notwithstanding subsection (1) of this section and subject to subsection (1B) of this section, where, before the commencement of the Local Land Charges Act 1974, a draft wayleave order was registered in the appropriate local land charges register there shall be no duty to register, or to apply for the registration of, any wayleave order made pursuant to the draft order, and section 10 of the said Act shall not apply in relation to any such wayleave order.

(1B) Subsection (1A) of this section shall not apply to any wayleave order so far as the order applies to land not affected by the draft wayleave order or, where the registration of the draft order was, before the commencement of the said Act of 1974, varied in consequence of the order as made differing from the draft, so far as it applies to land not shown as affected in the registered particulars of the draft order as varied.";

(*c*) in subsection (2)(*a*), for the words from "in the prescribed manner" to "situated" substitute "in the appropriate local land charges register";

(*d*) for subsection (3) substitute—

"(3) A notice registered in a local land charges register in pursuance of subsection (2) of this section shall be a local land charge, but—

(*a*) section 5(1) and (2) and section 10 of the Local Land Charges Act 1974 shall not apply in relation thereto; and

(*b*) a certificate setting out the result of an official search of the appropriate local land charges register shall, as respects any land, be conclusive of the question whether, at the time of the issue of the certificate, a notice registrable in pursuance of subsection (2) of this section was registered in the register.";

(*e*) in subsection (4)—

(i) for "the said subsection (6)" substitute "section 13 of the Local Land Charges Act 1974", and

(ii) omit paragraphs (*a*) and (*b*) and the words "under this section" in paragraph (*c*).

1958 c. 69.

The Opencast Coal Act 1958

In section 11 of the Opencast Coal Act 1958—

(*a*) for subsection (1) substitute—

"(1) A compulsory rights order shall be a local land charge.";

(*b*) in subsection (3), for the words from "by virtue of" to "preceding subsection" substitute "under section 13 of the Local Land Charges Act 1974 for the purposes of this section".

1959 c. 25.

The Highways Act 1959

In the Highways Act 1959—

(*a*) in each of the following provisions, namely sections 72(11), 73(11) and 81(13)—

(i) for the words from the beginning to "apply to" substitute "In relation to"; and

(ii) for the words from "as if" to the end of the subsection substitute "section 1(1)(*c*) of the Local Land Charges Act 1974 shall have effect as if the references to the date of the commencement of that Act were omitted";

(*b*) for section 92(5) substitute—

"(5) An agreement under this section shall be a local land charge.";

(*c*) in section 197(1), for the words from "registered" to the end of the subsection substitute "local land charges".

1959 c. 56.

The Rights of Light Act 1959

In the Rights of Light Act 1959—

(*a*) in section 2(4), for the words from "the proper officer" to the end of the subsection substitute "that authority to register the notice in the appropriate local land charges register, and—

(*a*) any notice so registered under this section shall be a local land charge; but

(*b*) section 5(1) and (2) and section 10 of the Local Land Charges Act 1974 shall not apply in relation thereto.";

(*b*) in section 5(2) for the words from "by virtue of" to "preceding subsection" substitute "under section 13 of the Local Land Charges Act 1974 for the purposes of section 2 of this Act";

(*c*) in section 7(1), for the definition of "local authority" substitute—

" 'local authority', in relation to land in a district or a London borough, means the council of the district or borough, and, in relation to land in the City of London, means the Common Council of the City;".

H

1961 c. 48.

The Land Drainage Act 1961

In section 30 of the Land Drainage Act 1961, omit the words from "and any such" to the end of the subsection in subsection (8) and after that subsection insert—

"(8A) A scheme made under this section shall be a local land charge.".

1961 c. 49.

The Covent Garden Market Act 1961

For section 48(1) of the Covent Garden Market Act 1961 substitute—

"(1) A restriction imposed by section twenty-three of the Covent Garden Market Act 1966 shall be a local land charge, and for the purposes of the Local Land Charges Act 1974 any such restriction shall be treated as having been brought into existence by the registering authority.".

1961 c. 65.

The Housing Act 1961

For section 12(7) of the Housing Act 1961 substitute—

"(7) An order under this section shall be a local land charge.".

1964 c. 56.

The Housing Act 1964

For section 73(5) of the Housing Act 1964 substitute—

"(5) A control order shall be a local land charge.".

1965 c. 36.

The Gas Act 1965

In the Gas Act 1965—

(*a*) for section 5(10) substitute—

"(10) The following shall be local land charges, namely, a storage authorisation order, any conditions attached to a consent given by the Secretary of State under this section and, save in so far as it revokes any conditions, any further decision taken by the Secretary of State under subsection (8) of this section.";

(*b*) in section 11(3), for the words from "registered" to the end of the subsection substitute "a local land charge.";

(*c*) for section 27(1) substitute—

"(1) For the purposes of the Local Land Charges Act 1974, any matter which is a local land charge by virtue of this Part of this Act shall be treated as brought into existence, and enforceable on its coming into existence, by the Corporation.";

(*d*) omit section 27(2) to (4).

1965 c. 59.

The New Towns Act 1965

In the New Towns Act 1965—

(*a*) for section 1(4) substitute—

"(4) An order under this section shall, when operative, be a local land charge.";

(*b*) for section 9 substitute—

"9. A compulsory purchase order under section 7 or 8 of this Act shall, when operative, be a local land charge.".

1967 c. 22.

The Agriculture Act 1967

In the Agriculture Act 1967—

(*a*) for section 45(6) substitute—

"(6) As respects the area of a Rural Development Board established under this section the provisions of this Part of this Act controlling sales of land and controlling afforestation shall be a local land charge, and for the purposes of the Local Land Charges Act 1974 shall be treated as having been brought into existence by the appropriate Minister.";

(*b*) for paragraph 2(1) of Schedule 3 substitute—

"(1) As respects a unit of land to which the conditions so specified apply, the conditions shall (notwithstanding section 2(*a*) or (*b*) of the Local Land Charges Act 1974) be a local land charge, and for the purposes of that Act shall be treated as having been brought into existence by the appropriate Minister."

1967 c. 88.

The Leasehold Reform Act 1967

In section 19 of the Leasehold Reform Act 1967—

(*a*) in subsection (10), for the words from "shall be registered" to "so registered" substitute "shall (notwithstanding section 2(*a*) or (*b*) of the Local Land Charges Act 1974) be a local land charge and shall be treated for the purposes of section 5 of that Act as brought into existence by the landlord for the area to which it relates; and where a scheme is registered in the appropriate local land charges register";

(*b*) after subsection (10) insert—

"(10A) Section 10 of the Local Land Charges Act 1974 shall not apply in relation to schemes which, by virtue of this section, are local land charges.".

1968 c. 61.

The Civil Aviation Act 1968

In section 21 of the Civil Aviation Act 1968—

(*a*) for subsection (1) substitute—

"(1) A right in or in relation to land in England and Wales granted or agreed to be granted after the passing of this Act and enforceable by virtue of section 23(7) of the Civil Aviation Act 1949 (powers over land in connection with civil aviation) shall be a local land charge.";

(*b*) omit subsections (2) and (3).

The Highways Act 1971

1971 c. 41.

In the Highways Act 1971—

(a) for section 4(4) substitute—

"(4) [illegible] contained in [illegible] agreement [illegible] section and entered into [illegible] shall be [illegible] local land charge.";

(b) in section 59(11) [illegible]

[illegible]

[illegible]

(c) in section 69(2) substitute—

"(2) Any charge [illegible] applied [illegible]

[illegible]

The Civil Aviation Act 1971

1971 c. 75.

In section 16 of the Civil Aviation Act 1971—

(a) for subsection (3) substitute—

"(3) A right [illegible] land in England and Wales granted or agreed to be granted [illegible] section [illegible] enforceable by virtue of the preceding [illegible] shall be a local land charge.";

(b) omit subsections (5) and (6).

The Town and Country Planning Act 1971

1971 c. 78.

In the Town and Country Planning Act 1971—

(a) in section 158(5), for the words from "be deemed" to the end of the subsection substitute "a local land charge"; and

(b) in section 159(5), for the words from "be deemed" to the end of the subsection substitute "a local land charge".

The Field Monuments Act 1972

1972 c. 43.

In the Schedule to the Field Monuments Act 1972 [illegible] and substitute—

"(3) In relation to acknowledgement payment agreements [illegible] section 1(7) of the Local Land Charges Act 1975 shall have effect as if the references [illegible] to the date of the [illegible] of that Act were references to the date of the passing of this Act."

The Land Compensation Act 1973

1973 c. 26.

In the Land Compensation Act 1973—

(a) in section 8(4), for the words "to be registered" to the end of the subsection substitute "a local land charge";

1971 c. 41.

The Highways Act 1971

In the Highways Act 1971—

(*a*) for section 18(4) substitute—

"(4) A covenant contained in an agreement under this section and entered into by a person having an interest in any land affected by the agreement shall be a local land charge.";

(*b*) in section 38(11)—

(i) for the words from the beginning to "apply to" substitute "In relation to"; and

(ii) for the words from "as if" to the end of the subsection substitute "section 1(1)(*c*) of the Local Land Charges Act 1974 shall have effect as if the references to the date of the commencement of that Act were references to the date of the coming into force of this section.";

(*c*) for section 81(2) substitute—

"(2) Any charge acquired by the Secretary of State by virtue of subsection (1) of the said section 264 shall be a local land charge.".

1971 c. 75.

The Civil Aviation Act 1971

In section 16 of the Civil Aviation Act 1971—

(*a*) for subsection (2) substitute—

"(2) A right in or in relation to land in England and Wales granted or agreed to be granted to the Authority and enforceable by virtue of the preceding subsection shall be a local land charge.";

(*b*) omit subsections (3) and (4).

1971 c. 78.

The Town and Country Planning Act 1971

In the Town and Country Planning Act 1971—

(*a*) in section 54(6), for the words from "registered" to the end of the subsection substitute "a local land charge"; and

(*b*) in section 158(5), for the words from "registered" to the end of the subsection substitute "local land charges".

1972 c. 43.

The Field Monuments Act 1972

In the Schedule to the Field Monuments Act 1972, for paragraphs 3 and 4 substitute—

"3. In relation to acknowledgment payment agreements section 1(1)(*c*) of the Local Land Charges Act 1974 shall have effect as if the references to the date of the commencement of that Act were references to the date of the passing of this Act.".

1973 c. 26.

The Land Compensation Act 1973

In the Land Compensation Act 1973—

(*a*) in section 8(4), for the words from "registered" to the end of the subsection substitute "a local land charge";

(*b*) in section 24(3), omit the words "Subject to subsection (4) below", and for section 24(4) substitute—

"(4) An agreement made under this section shall be a local land charge.";

(*c*) in section 52(8), substitute "Before" for "Where", insert "to be made" after "payment" in the second place where that word occurs, and for the words from "registered" to the end of the subsection substitute "a local land charge";

(*d*) in section 52(9), for the words from the beginning to "the claimant" substitute "Where a local land charge is registered in the appropriate local land charges register pursuant to subsection (8) above and the advance payment to which the charge relates is made to the claimant, then if thereafter he".

1974 c. 44.

The Housing Act 1974

In the Housing Act 1974—

(*a*) in section 36, for subsection (5) substitute—

"(5) A resolution declaring an area to be a housing action area shall be a local land charge.";

(*b*) in section 52, for subsection (6) substitute—

"(6) A resolution declaring an area to be a priority neighbourhood shall be a local land charge.";

(*c*) in section 75, for subsection (5) substitute—

"(5) A grant condition shall be a local land charge.";

(*d*) in section 90 for subsection (4) substitute—

"(4) An improvement notice served under this section shall be a local land charge.";

(*e*) in section 126, for the words from "register of local land charges" to the end of the subsection in subsection (1) substitute "appropriate local land charges register" and after subsection (4) insert—

"(4A) An instrument of the kind specified in subsection (1) above shall be a local land charge but—

(*a*) section 5(1) and (2) and section 10 of the Local Land Charges Act 1974 shall not apply in relation thereto;

(*b*) a certificate setting out the result of an official search of the appropriate local land charges register shall, as respects any land, be conclusive of the question whether, at the time of the issue of the certificate, any such instrument was registered in the register; and

(*c*) a covenant of the kind specified in subsection (2) above contained in any such instrument shall (notwithstanding anything in the Local Land Charges Act 1974) not itself be a local land charge".

MEASURE

1968 No. 1. *The Pastoral Measure* 1968

In section 65(5) of the Pastoral Measure 1968, for the words from "shall be deposited" to the end of the subsection substitute "shall be deposited with the registering authority (within the meaning of the Local Land Charges Act 1974), and the order shall be a local land charge."

Section 18.

SCHEDULE 2

REPEALS

Chapter	Short title	Extent of repeal
15 & 16 Geo. 5. c. 22.	The Land Charges Act 1925.	The whole Act.
16 & 17 Geo. 5. c. 11.	The Law of Property (Amendment) Act 1926.	In the Schedule, the entries relating to section 15 of the Land Charges Act 1925.
21 & 22 Geo. 5. c. 16.	The Ancient Monuments Act 1931.	In section 6(3) and (4), the words from "(subject" to "by this Act)". In section 11, the words from "and every such" to the end of the section.
4 & 5 Geo. 6. c. 50.	The Agriculture (Miscellaneous Provisions) Act 1941.	In section 8(4), the words from "and shall" to "accordingly".
9 & 10 Geo. 6. c. 20.	The Building Materials and Housing Act 1945.	Section 8.
11 & 12 Geo. 6. c. 17.	The Requisitioned Land and War Works Act 1948.	In section 14(1), the words "in the prescribed manner".
12 & 13 Geo. 6. c. 67.	The Civil Aviation Act 1949.	In section 33, in subsection (1) the words from "becomes operative" to the end of the subsection, and subsections (2) and (3).
14 Geo. 6. c. 39.	The Public Utilities Street Works Act 1950.	In Schedule 7, paragraph 5(*b*).
1 & 2 Eliz. 2. c. 49.	The Historic Buildings and Ancient Monuments Act 1953.	In section 19, subsections (1) and (3) and, in subsection (2), the words "as amended by the preceding subsection".
2 & 3 Eliz. 2. c. 23.	The Hill Farming Act 1954.	Section 2(2).
5 & 6 Eliz. 2. c. 57.	The Housing Act 1957.	Section 15(6).
6 & 7 Eliz. 2. c. 30.	The Land Powers (Defence) Act 1958.	In section 17(4), paragraphs (*a*) and (*b*) and the words "under this section" in paragraph (*c*).
6 & 7 Eliz. 2. c. 69.	The Opencast Coal Act 1958.	Section 11(2).
7 & 8 Eliz. 2. c. 25.	The Highways Act 1959.	In section 72(4), the words from the beginning to "that section)". In section 73(3), the words from the beginning to "that section)". In section 81(5), the words from "but subject" to "that section)". In section 169, the words from "subject to the provisions" to "that section)".

Chapter	Short title	Extent of repeal
		In section 181(3), the words from the beginning to "local land charges". Section 304.
7 & 8 Eliz. 2. c. 54.	The Weeds Act 1959.	In section 3(3), the words "and shall be registrable under section 15 of the Land Charges Act 1925 accordingly".
7 & 8 Eliz. 2. c. 56.	The Rights of Light Act 1959.	Section 5(1).
9 & 10 Eliz. 2. c. 48.	The Land Drainage Act 1961.	In section 30(8), the words from "and any such" to the end of the subsection.
9 & 10 Eliz. 2. c. 49.	The Covent Garden Market Act 1961.	Section 48(3) and (4).
1963 c. 33.	The London Government Act 1963.	Section 79.
1965 c. 16.	The Airports Authority Act 1965.	In Schedule 4, paragraph 9(1).
1965 c. 36.	The Gas Act 1965.	Section 27(2) to (4).
1966 c. i.	The Covent Garden Market Act 1966.	In Schedule 4 and in Schedule 5, the entries relating to section 48.
1967 c. 1.	The Land Commission Act 1967.	In section 11, in subsection (5) the words "the proper officer of", and subsection (6).
1967 c. 22.	The Agriculture Act 1967.	In section 45, subsections (7) and (8) and, in subsection (9), the words "(7) and (8)". In Schedule 3, paragraphs 2(2) and (3).
1968 c. 61.	The Civil Aviation Act 1968.	Section 21(2) and (3).
1971 c. 41.	The Highways Act 1971.	In section 38(2), the words from "subject to the provisions" to "that section)".
1971 c. 54.	The Land Registration and Land Charges Act 1971.	Section 14(1)(*c*).
1971 c. 75.	The Civil Aviation Act 1971.	Section 16(3) and (4). In Schedule 3, in paragraph 9(1) the words "(2) and ".
1972 c. 61.	The Land Charges Act 1972.	In section 2(3), the words "within the meaning of the Land Charges Act 1925". Section 18(2). In Schedule 3, paragraphs 2 to 6. Schedule 4.
1972 c. 70.	The Local Government Act 1972.	Section 212.
1973 c. 26.	The Land Compensation Act 1973.	In section 24(3), the words "Subject to subsection (4) below,".

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