



Ministry of Housing,
Communities &
Local Government

Transparency and Competition

A call for evidence on data on land control



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August 2020

Scope of the call for evidence

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|----------------------------------|--|
| Topic of this call for evidence: | This call for evidence seeks views on proposals to require additional data from the beneficiaries of certain types of interests in land—rights of pre-emption, options and estate contracts. It also seeks views on the design of the policy and additional evidence on the impacts of the policy. |
| Scope of this consultation: | The Ministry of Housing, Communities and Local Government is consulting on changes to legislation and registration practice. |
| Geographical scope: | These proposals relate to England and may apply to Wales subject to the agreement of the Welsh Government. |
| Impact Assessment: | N/A |

Basic Information

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| To: | This consultation is open to everyone. We are keen to hear from a wide range of interested parties from across the public and private sectors, as well as from the general public. |
| Body responsible for the consultation: | Ministry of Housing, Communities and Local Government |
| Duration: | This consultation opens on 6 August 2020 and will close at 23:59 on 30 October 2020. |
| Enquiries: | For any enquiries about the consultation please contact contractualcontrols@communities.gov.uk . |
| How to respond: | <p>You can respond completing the pro forma found on the webpage.</p> <p>Email responses should be sent to contractualcontrols@communities.gov.uk</p> <p>Written responses should be sent to: Contractual Controls Ministry of Housing, Communities and Local Government 3rd floor, Fry Building 2 Marsham Street LONDON SW1P 4DF</p> |

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| | <p>When you respond it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> |
|--|---|

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address; and
- a contact telephone number.

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Introduction

1. *Planning for the future* sets out ambitious changes to the planning system, seeking to make it more democratic, more dynamic and more open. Better data on land ownership and control is an essential prerequisite for the achievement of that vision.
2. HM Land Registry (HMLR) is committed to registering all publicly owned land by 2025 and aims to achieve comprehensive registration by 2030. However, data on the control of land are limited. This call for evidence sets out proposals to increase transparency of contractual arrangements used to exercise control over the buying or selling of land. This will improve the ability of local communities to play an informed role in the development of their neighbourhoods and support the Government's efforts to encourage more companies to enter the house building market.
3. The Government seeks a better understanding of the sort of arrangements that exist, asks for views on how best to improve transparency around them, and what additional data should be made public.

Land Ownership and Control

4. Information on the ownership of registered land is held by HMLR. It maintains the register of title to freehold and a large amount of leasehold property in England and Wales, providing a safe and secure system for recording land ownership, mortgages and property rights. Some detail on interests may appear on the land register if they are protected by notices or restrictions.¹

5. HMLR's data have limitations. The land register is not complete and where land is registered, not all interests are required to be recorded. Although the land register is publicly available, the data in it are primarily structured to support the conveyancing process:

- i. HMLR aims to achieve comprehensive registration of England and Wales by 2030. Currently, less than 13% of the land in England and Wales remains unregistered. Around a quarter of this may be publicly owned land.
- ii. Even if a piece of land is registered, not all interests relating to it are necessarily clearly recorded on its title. For example, a land owner may have entered into a contract that gives a developer first right to acquire and develop the land and, depending on how this interest has been protected, this information may not be readily accessible.
- iii. Whilst the land register itself is open and some of HMLR's data cannot be openly released for data protection and other privacy reasons, there are data that have not yet been openly published in a dataset.

6. In the 2017 housing white paper the Government announced a programme of measures to address these limitations, including a commitment to register all publicly owned land by 2025 and the aim of achieving comprehensive registration by 2030.

7. As part of its commitment to becoming 'the world's leading land registry for speed, simplicity and an open approach to data,' HMLR plans to 'make publishable data accessible and free of charge wherever possible and appropriate.'²

¹ For more details of notices and restrictions and the protection of third-party interests in the register see HM Land Registry's Practice Guide 19. <https://www.gov.uk/government/publications/notices-restrictions-and-the-protection-of-third-party-interests-in-the-register/practice-guide-19-notices-restrictions-and-the-protection-of-third-party-interests-in-the-register>

² Not all of HMLR's data can be published as it can be subject to 3rd party IP, fraud and privacy constraints.

8. This call for evidence relates to the Government's commitment to improve the transparency of contractual arrangements—rights of pre-emption, options and conditional contracts—used to control land. It seeks views and comments that will help refine these proposals to minimise the costs to business and maintain the integrity of the land register.

Contractual Controls and Market Failure

9. The Government considers that the lack of data on contractual controls is leading to a market failure resulting in two significant dis-benefits to the public:

- externalities—without comprehensive information on those controlling land, local communities cannot fully understand the likely path of development in their area; and
- information asymmetry—if this information is not readily available it raises a barrier to entry for small builders and new market participants and could potentially offer opportunities to exploit market position, reducing competition and market efficiency.

10. There have been several studies—Barker (2004), Callcutt (2007) and the Office of Fair Trading (2008)—that have looked at the use of contractual controls in relation to the development process. All three found that options and conditional contracts facilitate the bringing forward of land for development by allowing house builders to bring their financial resources and expertise to the promotion of land through the planning system while leaving other risks with the landowner.

11. Nevertheless, these reviews were hindered by a lack of consistent and complete data. Callcutt concluded that ‘The amount and ownership of land for development is a familiar issue, but a difficult one to address because of lack of data.’³

12. In 2008 the Office of Fair Trading (OFT) undertook an inquiry into the home building industry. One of the key lines of inquiry was into land banking, where house builders were alleged to be hoarding land with planning permission, rather than building on it, to profit from rising land prices. The OFT found that:

It is possible that other industries, land traders or strategic land funds for example, may landbank permissioned land more extensively than homebuilders. *The fragmented nature of land records has made it impossible for this study to consider these industries' practices within the scope of the current study* [emphasis added].⁴

³ Callcutt, John *et al.* (2007). *The Callcutt Review of Home Building Delivery*, page 33. Retrieved from http://webarchive.nationalarchives.gov.uk/20070130001032/http://callcuttreview.co.uk/downloads/callcuttreview_221107.pdf

⁴ Office for Fair Trading. (2008). *Homebuilding in the UK: A market study*, paragraph 5.92. Retrieved from http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft1020.pdf.

13. This lack of data remains a problem. In his analysis on build out rates, Sir Oliver Letwin expressed his dismay at ‘the paucity of publicly available data on land holdings.’⁵

Benefits of Greater Transparency

The Public Interest

14. Greater transparency on the ownership of land was resisted for hundreds of years. Numerous attempts were made to introduce ‘public registration’ in the years following the failure of the Statute of Enrolments 1535 to address the menace of ‘secret conveyancing’.⁶

15. HMLR was established as a non-ministerial department in 1862 to undertake the statutory function of keeping the register of title to freehold and leasehold property for England and Wales. The land register was opened in 1990, following Law Commission consideration. The Commission noted that ‘The ownership, as well as the user, of land, a finite resource, carries social responsibilities and is a matter of legitimate public interest...’⁷

16. The Government considers that holders of options and parties to conditional contracts carry similar social responsibilities to land owners. It is not unreasonable for the public to expect a similar level of disclosure, particularly as the beneficiaries who have rights in property are provided with far greater protection for their interests through the notice system than is the case for parties to ordinary types of contract under general law.

Improving the development process

17. Better data on contractual controls would improve the development process for planners and developers. The Royal Town Planning Institute noted the need for ‘public access to information on who owns land and *who owns options on land* [emphasis added].’⁸

Transparency of land ownership is important for accountability. It would benefit the local authorities, who would then be able to see who owns strategically important sites; developers, who would then be able to demonstrate how much land they have bought; and the public, who would then be able to see if private owners are stalling development. It will

⁵ Letwin, O. (2018). *Independent Review of Build Out Rates: Draft Analysis*, paragraph 2.5. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718878/Build_Out_Review_Draft_Analysis.pdf.

⁶ Simpson, S. Rowton (1976). *Land Law and Registration*. (Cambridge University Press: Cambridge), pages 49-51.

⁷ Law Commission, *Second Report on Land Registration: Inspection of the Register*, (HC 551, 1984-85), paragraph 18.

⁸ Royal Town Planning Institute. (2013). *Delivering Large Scale Housing: Unlocking Schemes and Sites to Help Meet the UK's Housing Needs*, page 3. Retrieved from <http://www.rtpi.org.uk/media/630969/RTPI%20large%20scale%20housing%20report.pdf>

also provide a useful tool for land assembly where local authorities are innovative in doing so...

Importantly, the issue is not just about land ownership but is also about knowing which developers have bought options on the land. Our roundtable discussions shed light on how little local authorities know about the owners of land options in their area. Land options give the purchaser (a developer) the right to buy outright once planning permission has been granted. The issue is that an option on land affects the market without any transaction of the land having taken place. Here, transparency of land ownership is not as useful as knowing who owns the option during the planning process. This will allow local authorities to see which developers are buying options on land and how fast they are bringing development to conclusion, making for a better market.⁹

18. Greater transparency over options and other contractual controls would also benefit developers themselves. A study for the then Department for Communities and Local Government found that they can be stymied by a lack of transparency.

...in a Growth Area there are likely to be several developers all with options on land, which together form a strategic site from the point of view of the planning authority. Therefore it is in their interests to cooperate, not least because they then share the costs of promoting the overall scheme rather than each individual site. However, it is difficult for them to do this because all their options are different... .. But all the options are confidential so it is impossible to find out about other people's options. So the consortium [of developers] is effectively working in the dark. And all this cooperation takes time.¹⁰

19. The lack of transparency particularly affects SME builders who are more likely to find the effort required to identify and understand land affected by contractual controls onerous. The Government wishes to encourage more small builders and developers to enter the residential construction market to increase the number of houses built. Indeed, the Home Builders Federation (HBF) has estimated that returning to the number of residential builders operational in 2007 could help boost housing supply by 25,000 homes per year.¹¹

20. Both the HBF and the Federation of Master Builders (FMB) have identified a lack of small sites as a major barrier to their members. In responses to the FMB 2016 House Builders' Survey, 'lack of available and viable land' was cited by two thirds (67 per cent) of SME builders as a major barrier to their being able to build more homes.¹²

⁹ *Ibid*, page 13.

¹⁰ Monk, S, Whitehead, C. and Martindale, K. (2008). *Increasing Housing Supply*, (DCLG: London), page 17.

¹¹ Home Builders Federation. (2017). *Reversing the decline of small housebuilders: Reinvigorating entrepreneurialism and building more homes*, page 25.

[http://www.hbf.co.uk/uploads/media/HBF_SME_Report_2017_Web.pdf]

¹² Walker, A. (2016). *Small is beautiful: Delivering more homes through small sites*. London: Local Government Information Unit. Retrieved from <https://www.lgiu.org.uk/report/small-is-beautiful-delivering-more-homes-on-small-sites/>

21. Although the land register contains information on land ownership and interests, it can be costly and time-consuming to identify suitable development sites. A parcel of land must be found and then all interests in it—including contractual controls—must be individually assessed. These costs make it harder for new firms or self-builders to find plots and enter the market, and for existing firms to expand beyond their locality. Better data on land subject to contractual controls will reduce the time and cost of nugatory inquiries.

22. Digital tools and applications have streamlined and simplified business processes in many other sectors of the economy. Given access to free data, equally dramatic cost and time reductions should be achievable in the planning and development processes. However, better data is an essential prerequisite to unlocking these benefits.

Other benefits

23. Collecting more data on contractual controls could also assist in ensuring financial stability. Although there is no evidence of the development of a speculative market in land derivatives, this is an area where the Bank of England and HM Treasury currently lack comprehensive and reliable information. Better data will provide early warning of potential speculative bubbles, allowing action to be taken in good time.

Contractual Controls in the Development Context

24. The Government understands that, in the development context, the most common ways of exercising an element of control over the purchase or sale of land are:

- rights of pre-emption;
- options, and
- estate contracts.

Rights of Pre-emption

25. A right of pre-emption entitles a potential buyer to become a preferred purchaser if, or when, the owner decides to sell the land. In some cases, a right of pre-emption requires the landowner, on deciding to sell, to offer it to the holder of the right for a fixed price (specified in the pre-emption agreement), the market price or by reference to an index. In other cases, the holder of the right is simply entitled to be told of the landowner's wish to sell so that the holder can make an offer that may be accepted or rejected by the landowner.

Options

26. An option is a right to buy (or sell) land either for a fixed sum or at a price to be established by an agreed method of calculation. The person with the benefit of the land option can:

- compel the owner to sell it to them (a “call” option) and/or
- require a buyer to purchase it (a “put” option)

at any time within the agreed period or on the occurrence of a specified event. There is no obligation on the option holder to exercise the right, but if an option is exercised then the other party is bound to buy or sell as the case may be.

27. Leases can also contain options:

- Options to renew—an option to renew a lease (or under lease) allows a tenant to call for a further lease (or under lease) of the demised premises on the expiration of the existing term.
- Options to determine lease—a lease may contain a ‘break’ clause, an express power for either the lessor and lessee, or both, to determine a lease by notice prematurely at the end of the stated period, or on the occurrence of an event.

28. Options may also be created by a will. A testamentary option is a right given by a testator to buy property forming part of an estate. Although wills are not contracts, testamentary options can create equitable interests in land.

Estate Contracts

29. An estate contract is a contract for the creation or transfer of a legal estate in land, for example the buying or selling of a house. Conditional contracts are a specific type of estate contract that are used when completion is dependent on external factors, such as the grant of planning permission, or on the consent of a third party.

30. Conditional contracts are used by landowners and developers to set out their respective obligations. They will generally commit the developer to buy and the land owner to sell a piece of land when certain conditions, such as a grant of planning permission or the grant of a mortgage satisfactory to the buyer, are fulfilled. Contracts are exchanged, but completion only takes place once the conditions have been satisfied.

31. However, these contracts can include numerous commitments that go beyond the obligation on the landowner to sell and on the developer to buy or take a lease. For example, the developer may contract to use its reasonable endeavours to obtain planning permission, to build out a development to certain standards and to an agreed timetable, and to pay overage. The landowner may be placed under a duty to assist the developer with the planning process, for example, by agreeing to enter into planning agreements, undertaking not to apply for a competing planning permission, or to make changes to the condition or occupation of the land.

32. On exchange, a conditional contract becomes an interest in land and, where the land that is the subject of the contract is registered, may be protected by a notice and/or, in some cases, a restriction.

Protecting Interests

Notices

33. Beneficiaries of some types of contractual arrangements, including rights of pre-emption, options, and estate contracts, may, where land that is subject to an interest is registered, protect their interests by means of a notice. Interests protected by notice can be enforced against a subsequent owner if the person with whom the beneficiary has entered the agreement with sells the property. Beneficiaries may apply to HMLR for an agreed notice or a unilateral notice to be entered onto the land register. However, the entry of a notice is not compulsory and the choice of whether to apply for an agreed notice or unilateral notice rests with the applicant. Where the applicant chooses to apply for a unilateral notice, only limited details need be provided. Even when an interest is protected by an agreed notice, key information is not provided on the face of the land register and may only be found in the supporting documentation available from HMLR.

34. Entries on the land register relating to interests that can be protected by the notice are not readily searchable and key information relating to a protected interest does not always have to be provided in the application. For example, there is no requirement to provide the duration of an option or the conditional elements of a conditional contract.

35. Under the agreed notice procedure, the application must be lodged by the owner of the land or with his or her consent, or the Registrar must be satisfied as to the validity of the interest claimed. Where a document gives rise to the interest claimed, the document must be lodged at HMLR. The usual land register entry (in respect of an option) is:

Option to purchase in favour of [name] contained in a [document or deed] dated [date] made between [names of parties] upon the terms therein mentioned.

NOTE: copy filed.

36. An application under the unilateral notice procedure does not require the document creating the interest to be lodged, if the applicant gives sufficient indication that the interest for which protection is sought is an interest in land. An applicant is not required to satisfy the Registrar of the validity of a claim, although the Registrar must be satisfied that the interest claimed is of a type that is protectable by notice. A typical entry might read:

UNILATERAL NOTICE in respect of an estate contract dated [date].

BENEFICIARY: [Name] of [address]

Sometimes a copy of the agreement is filed, in which case the entry will note 'copy filed'.

Restrictions

37. Beneficiaries may also protect their rights using restrictions. A restriction is an entry in the land register that prohibits the making of another entry in the register to record a sale or lease or mortgage of the land without a specified condition being met, such as the consent of a third party.

38. A restriction can only be used where the registered owner's powers to sell the land are limited, or a prior condition must be met before a sale can be registered. Such limitations on the owner's powers may be included in an estate contract or option. A restriction cannot be used to protect the priority of an interest that could be protected by a notice.

39. A restriction does not confer priority or protect the option itself (which is the purpose of a notice). The restriction is protecting the agreement not to transfer without consent, rather than the estate contract or option itself.

40. Applications for a restriction are often made by the registered owner (or by somebody entitled to be registered as owner) or with their consent. If an applicant is not the owner or acting with their consent, then an applicant has to explain their interest and produce evidence of it to satisfy the Registrar that its entry was 'necessary or desirable' for one of a number of reasons.¹³

¹³ See s42 of the LRA 2002.

Proposals for Reform

41. The following proposals have been developed with two principles in mind:

- securing the public interest in greater transparency, and
- limiting the burdens on business

Securing the Public Interest

42. The opening of the land register in 1990 established the principle that there is a public interest in open access to information on land ownership. However, without better data on contractual controls the public cannot fully understand who exercises control over land, which may be more important than knowing who the legal owner is. The Government considers that there is a public interest in the publication of better data on land that is subject to contractual controls, the nature of those controls, and their beneficiaries.

43. However, the data held by HMLR on rights of pre-emption, options and estate contracts are limited and difficult to access and interpret. HMLR is unable to provide an estimate of the number of titles that are subject to these types of contractual controls.

44. Therefore, the Government proposes to collect additional data that will allow the public to easily understand what land is subject to a contractual control, who is the beneficiary of that control and on what terms control is exercised.

45. Councils and local communities will immediately benefit as they will be able to better understand who owns and controls land in their area. The additional data will also provide the Government with a sound evidence base from which to identify inefficiencies in the land market.

46. A new contractual controls dataset will also enable the PropTech sector to create tools and applications to reduce the time and cost of site identification and assessment by local planning authorities and developers. A reduction in these costs will assist SME builders and lower the barriers to entry for firms seeking to enter the residential construction market.

47. As the public interest lies mainly in land that could be used for development, it is not proposed to collect data on an individual's contractual arrangements or rights relating to the purchase or lease of a domestic residence, testamentary options or statutory rights¹⁴.

Minimising the Burdens on Business

48. The Government is mindful of the need to minimise new burdens on businesses and individuals and proposes to work with the grain of the existing land registration system.

49. A failure to note an interest on the land register may result in financial and legal risk to both parties. If an interest is not protected, the related land may be sold to a third party without its provisions being binding on the new owner. If an interest is unenforceable against third parties because of non-registration, the grantor may be liable in damages to the beneficiary.

50. The Government understands that most of the interests on which it wishes to collect additional data are generally protected by a notice. It proposes to rely primarily on the self-interest of beneficiaries to note their interest on the land register and adapt the current agreed notice system for registered land to incorporate the collection of additional data.

51. It also does not propose to extend the new system to holders of contractual control interests over unregistered land. The procedure for protecting beneficiaries' rights is separate and distinct and it will disappear once comprehensive registration is achieved.

Implementation

52. Implementation will require primary and secondary legislation, for example, to expand the functions of HMLR to collect additional data on certain types of interest, to introduce new requirements around the use of notices, and to provide a statutory definition of contractual controls.

¹⁴ Statutory rights include a tenant's right to acquire the freehold reversion or an extended lease of a house under the Leasehold Reform Act 1967, or of flats under the Leasehold Reform Housing and Urban Development Act 1993, rights of pre-emption under Part I of the Landlord and Tenant Act 1987 or the right to buy under the Housing Act 1985.

Questions

The Public interest

53. For the reasons set out above, the Government considers that there is a strong public interest in collating and publishing additional data on:

- rights of pre-emption;
- options, and
- estate contracts.

Question 1: The Public Interest

Do you think there is a public interest in collating and publishing additional data on contractual controls over land?

Please give reasons.

Definitional Principles

54. The Government wishes to precisely target additional data requirements to avoid placing unnecessary costs on parties to normal residential or commercial transactions and their professional advisers. It would welcome views on the best ways of identifying those contractual control interests it is concerned with.

Rights of pre-emption and options

55. Rights of pre-emption and options are subject to Stamp Duty Land Tax¹⁵ and must be identified so that due tax is paid. The Government proposes to use the same definition in the Finance Act 2003, s. 46, subject to the exemptions below, as the basis for defining rights of pre-emption and options that will be subject to additional data requirements.

56. The Government will exempt statutory options, testamentary options and rights of pre-emption and options held by individuals relating to the purchase or lease of residential property for use as a domestic residence from additional data requirements. The final class of exempted options would lose their exemption if the option was dependent on the fulfilment or non-fulfilment of a condition that required planning permission.

¹⁵ <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdlitm01300>.

Question 2: Rights of pre-emption and options

- (a) Do you think that the definition of rights of pre-emption and land options in the Finance Act 2003, s. 46¹⁶ is a suitable basis for defining rights of pre-emption and options that will be subject to additional data requirements?
Please give reasons.
- (b) Is the exemption for options and rights of pre-emption for the purchase or lease of residential property for use as a domestic residence sufficient to cover:
- options relating to the provision of occupational housing and
 - shared ownership schemes?
- Please give reasons.
- (c) Are there any types of rights of pre-emption or options that do not fall under the scope of the definition in the Finance Act 2003, s. 46?
Please give reasons.

Estate contracts

57. The Government is not interested in collecting additional data on most estate contracts. It wishes to target a narrow subset of these contracts—long term conditional contracts—that relate to the development of land.

58. It proposes to limit the scope of additional data requirements to estate contracts through a completion date and conditionality test, i.e. contracts that:

- may complete outside of a six-month period from exchange of contracts, and
- include a condition for which the grant of planning permission would be required if it were to be met.

¹⁶ Options and rights of pre-emption

- (1) The acquisition of—
- (a) an option binding the grantor to enter into a land transaction, or
- (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
- is a land transaction distinct from any land transaction resulting from the exercise of the option or right. They may be “linked transactions” (see section 108).
- (2) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge his obligations under the option in some other way.

Question 3: Estate contracts

Are the tests set out above sufficient to avoid inadvertently capturing transactions not related to the development of land?

If not, please give examples.

Other contractual controls

59. The Government wishes to include all types of contractual arrangements that allow a third party to exercise control over the purchase or sale of land.

Question 4: Other contractual controls

(a) Are there any contractual arrangements by which control can be exercised over the purchase or sale of land, which should be included within this regime and which are not rights of pre-emption, options or estate contracts?

Please give examples.

(b) If so, do you consider them (i) an interest in land (interests that are capable of being protected by way of a notice on the land register); or (ii) not an interest in land?

Please give reasons.

Data Requirements and Releases

Data requirements

60. To realise the benefits of greater transparency set out above, the Government proposes to place some additional data on the land register and to publish—free of charge—a contractual control interests dataset. Other data collected under this regime will be limited to official use and shared across government for the purposes of national security, law enforcement and financial stability. Full details of proposed additional data requirements for each type of contractual control interest can be found in Annex A.

Question 5: Data requirements

- (a) Are there any data fields that (i) should; or (ii) should not be subject to additional data requirements?
Please give reasons.
- (b) Are there any data fields that (i) should; or (ii) should not be placed on the land register?
Please give reasons.
- (c) Are there any data fields that (i) should; or (ii) should not be included in a contractual control interest dataset?
Please give reasons.
- (d) Are there other data fields that should be collected?
Please give reasons.
- (e) Do any of the data fields give rise to privacy risks?
Please give reasons.

Prejudicial information

61. Under the Land Registration Act 2002, there is a general right to inspect the land register, documents kept by the registrar that are referred to in the land register, and other documents that relate to applications (which includes the application forms themselves); that general right is subject to exceptions that are provided for in Land Registration Rules 2003.¹⁷ The rules allow a person to apply for 'prejudicial information' to be excluded from the general right to inspect, which can, in appropriate circumstances, include commercially sensitive information. The Government intends to retain the current procedures for excluding prejudicial information contained within the supporting documentation¹⁸ except for the additional data that needs to be provided under the new regime.

Contractual conditions

62. Simply publishing data on land that is subject to a contractual control interests may limit the gains from greater transparency. There may be benefits in collecting more granular data on the conditions included in estate contracts or options to assist councils and local communities in better understanding the likely pattern of development. Table One below sets out data on conditions that the Government considers might be of interest to councils and local communities.

¹⁷ See rules 136 to 138 of the Land Registration Rules 2003.

¹⁸ Practice guide 57: exempting documents from the general right to inspect and copy, available at <https://www.gov.uk/government/publications/exempting-documents-from-the-general-right-to-inspect-and-copy/practice-guide-57-exempting-documents-from-the-general-right-to-inspect-and-copy>

Table One

| Field | Description | On land register | In dataset |
|----------------------------|--|-------------------------|-------------------|
| Conditions | Planning permission or other? | N | Y |
| Planning permission type | Outline; Full | N | Y |
| Usage type | Residential; Commercial; Mixed | N | Y |
| Number of units (in bands) | Number of units (residential & commercial) | N | Y |
| Square footage (in bands) | Office | N | Y |

Question 6: Contractual conditions

- (a) Are there any data fields that (i) should; or (ii) should not be subject to additional data requirements?
Please give reasons.
- (b) Are there any data fields that (i) should; or (ii) should not be placed on the land register?
Please give reasons.
- (c) Are there any data fields that (i) should; or (ii) should not be included in a contractual control interest dataset?
Please give reasons.

Legal Entity Identifiers

63. To understand how much land is subject to contractual control interests and who the beneficiaries are, the Government proposes to ask all legal entities that are beneficiaries of contractual control interests to provide a Legal Entity Identifier (LEI).

64. The Legal Entity Identifier (LEI) is a 20-digit, alpha-numeric code that was originally developed to provide a clear and unique identification of corporate entities participating in financial transactions. Further information on LEIs can be found at <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei>.

65. Large companies often have numerous subsidiaries and it can be difficult to link a particular legal entity to the ultimate parent company. A requirement for beneficiaries to hold an LEI would greatly simplify the process for establishing ‘who owns whom’ as legal entities that have an LEI will report their ‘direct accounting consolidating parent’ as well as their ‘ultimate accounting consolidating parent’. The ability to link the subsidiaries holding a contractual control interest to their parents will provide valuable data on the extent to which particular groups may be influencing local land markets.

Question 7: Legal Entity Identifiers

Should legal entities that are beneficiaries of contractual arrangements be asked to provide a Legal Entity Identifier?

Please give reasons.

Data currency

66. The counterparties and other important details of contractual arrangements may change over time. To ensure that the land register remains accurate, the Government is considering requiring holders of contractual control interests to update the additional data on the occurrence of certain events. It proposes that if a contractual control interest is subject to variation, assignment or novation updated data should be provided.

Question 8: Data currency

(a) Should beneficiaries be required to provide updated information on:

- variation
- termination, or
- assignment or novation?

Please give reasons.

(b) Are there other ways in which data currency could be maintained?

67. Alternatively, the inclusion of a contractual control interest on an entity's balance sheet could provide the trigger for the provision of additional data for interests that had been varied, terminated, assigned or novated.

Question 9: Accounting treatment

If your organisation is required to produce annual accounts, when are: (i) rights of pre-emption; (ii) options; and (iii) estate contracts recognised on the balance sheet?

Please give reasons and state the accounting standard used.

Existing contractual control interests

68. Many contractual control interests last for a number of years. Therefore, the Government would like views on whether the requirement to provide additional data should be extended to existing arrangements. It could be unduly burdensome to ask beneficiaries to collate and provide additional information on all their contractual control interests, so the Government proposes to limit the need to provide additional data to those existing contractual control interests that are varied, assigned or novated. If the additional data were not provided within a certain timescale, protection would be lost.

Question 10: Existing contractual control interests

(a) Should the requirement to supply additional data be limited to: (i) new contractual control interests only; or (ii) all extant interests?

Please give reasons.

(b) How long should beneficiaries of an extant contractual control interests that is varied, assigned or novated be given to provide additional data before losing protection: (i) three months; or six months?

Current beneficiaries

69. HMLR may not hold up-to-date information on current beneficiaries or be able to identify the interest as one caught by the new regime, so the Government would welcome views on how best to inform current beneficiaries of the need to provide additional data on their interests.

Question 11: Current beneficiaries

What are the best ways of informing current beneficiaries of the need to provide additional data?

Please give reasons.

Data provision

Notice system

70. To minimise the burdens on businesses and individuals, the Government proposes that parties to contractual control interests would not be able to apply for an agreed notice until additional data had been supplied. For these interests the ability to use a unilateral notice will be removed as is the case for some other notable interests.¹⁹

71. Once the additional data have been provided, an agreed notice can be applied for in the normal manner. Failure to provide the additional data required will mean that an application for an agreed notice will not be processed by HMLR.

A digital process?

72. The Government wishes to make the process for providing additional data as simple as possible. Therefore, in line with the Digital by Default policy, it proposes that the process for capturing additional data on contractual arrangements should be wholly digital (with assisted digital support if required).

¹⁹ See rule 80 of the Land Registration Rules 2003.

Question 12: A digital process?

Should the provision of additional data prior to the application process for an agreed notice be exclusively digital (with assisted digital support if required)?

Please give reasons.

Enforcement

Certification

73. Although it is in both parties' interests to note a contractual control interest on the land register, the Government would like views on options to make notification mandatory in certain cases.

74. As most contractual control arrangements are likely to be held by legal entities, whose boards have a duty to protect their entity's assets, the Government proposes a new requirement on beneficiaries of contractual control interests to certify in the annual accounts that all relevant interests are the subject of an agreed notice.

Question 13: Certification

Should beneficiaries of contractual control interests with a duty to produce annual accounts be required to certify that all relevant interests have been noted?

Please give reasons.

Restrictions

75. It is possible that if additional data requirements are introduced as a pre-condition for an application for an agreed notice, beneficiaries might be tempted to forgo the protection of a notice and seek to protect their interests by way of a restriction. There are a number of options to address this risk on which the Government would welcome views.

76. One response would be to require beneficiaries of contractual control interests to obtain an agreed notice before they could apply for a restriction. Alternatively, the benefits of a restriction might be limited or removed where it was being used to protect an interest subject to this regime and where no corresponding agreed notice was on the land register. Finally, the Law Commission proposes in its report on land registration that the Secretary of State be given a power 'to make rules to determine: whether particular types of contractual obligation cannot be capable of protection by way of a restriction...' If this recommendation is accepted, the Government will consider whether contractual control interests should fall into the category of interests that cannot be capable of protection by a way of a restriction.

Question 14: Restrictions

- (a) Should beneficiaries of contractual control interests be required to obtain an agreed notice before they could apply for a restriction?
Please give reasons.
- (b) Should the protections of restrictions placed on an un-noted contractual control interest be (i) limited; or (ii) removed?
Please give reasons.
- (c) If the Government accepts the Law Commission's recommendation on restrictions, should contractual control interest fall into the category of interest that cannot be capable of protection by way of a restriction?
Please give reasons.

Alternative Options

77. The Government is keen to work, as far as possible, with the grain of the existing notice system. However, it would also welcome views on alternative options to achieve its requirements.

Question 15: Alternative options

- (a) Should a mandatory system be introduced whereby the beneficiary of a contractual control interest would, where it is possible to do so, be required to note their interest with HMLR?
Please give reasons.
- (b) If so, how should the system be enforced?
Please give reasons.

Costs and Benefits

78. The Government will use responses to this call for evidence to refine its proposals and thus would like a better understanding of their costs. Its preference is to work with the grain of the existing notice system and limit additional data requirements to data that should be readily available to beneficiaries.

Current Practice

79. The Government would be grateful for further information on the ways in which beneficiaries currently protect their interests.

| | | | | | |
|---|---------------|-------------------|--------------------|--------------|-----------------------|
| Question 16: Current practice | | | | | |
| (a) If you are a beneficiary of a right of pre-emption, option or estate contract, please indicate how you protect your interest. | | | | | |
| | Notice | | Restriction | Other | Do not protect |
| | Agreed | Unilateral | | | |
| Right of pre-emption | | | | | |
| Option | | | | | |
| Estate contract | | | | | |
| (b) What factors influence your choice? Please give reasons. | | | | | |

Data collation and provision

80. The Government proposes that additional data should be provided digitally at the same time as an application for an agreed notice.

| |
|---|
| Question 17: Data collation and provision |
| (a) Are there any data fields in Annex A that contracting parties would not have readily to hand? Please list them. |
| (b) What is your estimate of the time needed to provide the additional data? |
| (c) Does your entity hold a Legal Entity Identifier? |

Data currency

81. The Government is considering requiring legal entities that are required to produce annual accounts to update the land register if a contractual control interest is subject to one of the following events:

- termination, or;
- assignment or novation.

| |
|---|
| Question 18: Data currency |
| What additional work (over and above the time and cost of preparing annual accounts) would your organisation need to undertake to identify contractual control interests that needed to be updated? |

Certification

82. It is also considering placing a duty for the board of a legal entity to certify that all relevant contractual control interests have been noted.

Question 19: Certification

What additional work (over and above the time and cost of preparing annual accounts) would your organisation need to undertake to certify in your organisation's annual accounts that all relevant contractual control interests had been noted on the land register where the land is registered?

Economic impact**Question 20: Economic impact**

What impact, if any, do you think that these proposals will have on the English land market (residential and commercial)?

Please describe the effects and provide evidence.

Costs**Question 21: Costs**

What impact, if any, do you think that these proposals will have on the costs incurred by participants in the English land market (residential and commercial)?

Please describe the effects and provide evidence.

Benefits

83. The Government would also like to collect evidence on monetisable and non-monetisable benefits.

84. It would be interested to know more about the costs related to identifying and understanding land burdened by a contractual control interest.

Question 22: Identifying and understanding contractual control interests

- (a) Can you estimate the amount of (i) time and (ii) money that you have spent on identifying land affected by a contractual control interest?
- (b) What is the source of your information?
- (c) Can you estimate the amount of (i) time and (ii) money that you have spent on seeking professional advice on exactly how a contractual control interest affects a piece of land?

85. It is also interested in the effect of contractual control interests on the operation of the land market and citizens' trust in the planning system.

Question 23: Market impact

- (a) If you are a small or medium enterprise (SME) builder or developer, do contractual controls hinder your ability to assess the viability of a local market?
Please give reasons.
- (b) If you are an SME builder or developer, does a lack of freely accessible and understandable data act as a barrier to you entering the market?
Please give reasons.

Question 24: Trust in the planning system

- (a) Do you think that a lack of accessible and understandable data on contractual controls makes it more difficult for local communities to understand the likely pattern of development?
Please give reasons.
- (b) If so, to what extent does it undermine trust and confidence in the planning system:
(i) not much; (ii) somewhat; (iii) a great deal?
Please give reasons.

Public Sector Equality Duty

86. Under the Public Sector Equality Duty, the Government is required to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- foster good relations between people who share a protected characteristic and people who do not share it.

Question 25: Public Sector Equality Duty

What impact, if any, do you think that these proposals will have on people who share protected characteristics²⁰? Please describe the effects and provide evidence.

Wales

87. HMLR is responsible for land registration in England and Wales. There may be operational benefits in not operating different systems relating to the capturing of data about contractual control interests and their protection on the land register. However, the

²⁰ The Equality Duty covers the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (this includes ethnic or national origins, colour or nationality); religion or belief (this includes lack of belief); sex; and sexual orientation.

UK Government will not extend a contractual control interest regime to Wales without canvassing the views of its people and seeking the consent of the Welsh Government.

Question 26: Wales

Should a contractual control interest regime be extended to Wales?

Please give reasons.

Annex A: Proposed data requirements

| | Field | Description | On land register | In dataset | Official Use Only |
|----------------------|--|--|------------------|------------|-------------------|
| Common Fields | Unique transaction identifier | | N | Y | N |
| | Contract Type | Right of pre-emption, option or estate contract | Y | Y | N |
| | Contracting Party One (beneficiary) | If firm | Y | Y | N |
| | | If individual | Y | N | Y |
| | Beneficiary type | Firm or individual | N | Y | Y |
| | Registration number of Contracting Party One (beneficiary) | Companies House Number or equivalent | Y | Y | N |
| | Legal Entity Identifier of Contracting Party One (beneficiary) | LEI Code | Y | Y | N |
| | Contracting Party Two | If firm | Y | Y | N |
| | | If individual | Y | N | N |
| | Reporter type | Firm or individual | N | Y | N |
| | Registration number of Contracting Party Two | Companies House Number or equivalent | Y | Y | N |
| | Legal Entity Identifier of Contracting Party Two | LEI Code | Y | Y | N |
| | Effective Date or Start Date | The date a contract becomes effective or starts. | Y | Y | N |

| | | | | | |
|-------------------------|--------------------------------|--|-----|---|---|
| | Longstop Date | The day an agreement expires. | Y | Y | N |
| | Interim termination provisions | Can the agreement be terminated before the longstop date. | N | Y | N |
| | In perpetuity | Is the agreement in perpetuity. | Y | Y | N |
| | Assignable? | Is the Agreement capable of being assigned, charged or mortgaged | N | Y | N |
| | Solicitor Name | Name of solicitor | N | N | Y |
| | Law Firm | Name of solicitor firm | N | N | Y |
| | SRA number | Solicitor's Regulation Authority number | N | N | Y |
| | Conveyancer Name | Name of licensed | N | N | Y |
| | Conveyancer Firm | Name of licensed conveyancer firm | N | N | Y |
| | Conveyancer Firm Number | Council for Licensed Conveyancers number | N | N | Y |
| | Geospatial and location data | Location and details of land effected | N | Y | N |
| | Area | | N | Y | N |
| | HMLR Title Number | | N/A | Y | N |
| Estate Contracts | Conditional? | Is the contract conditional? | N | Y | N |
| | Extendable | Is the agreement extendable? | N | Y | N |
| | Deposit | Deposit paid | N | N | Y |
| | Price Type | Fixed; Fixed with indexation; Market; Floor | N | N | Y |
| | Price Amount | If fixed | N | N | Y |
| | Index | If fixed with indexation, index to be used | N | N | Y |
| Options | Option Type | E.g. put, call, put | N | Y | N |

| | | | | | |
|------------------------------|----------------|---|---|---|---|
| | | and call | | | |
| | Lockout Period | Date of first allowable exercise. | N | Y | N |
| | Option Premium | Fixed premium paid by the grantee to the grantor. | N | N | Y |
| | Price Type | Fixed; Fixed with indexation; Market; Floor | N | N | Y |
| | Price Amount | If fixed | N | N | Y |
| | Index | If fixed with indexation, index to be used | N | N | Y |
| Rights of pre-emption | Fee | Fee paid | N | N | Y |

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Personal data

The following is to explain your rights and give you the information you are be entitled to under data protection legislation.

These rights apply to your personal data (your name, direct contact details such as an email address, and any other information that could be used to identify you personally).

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gov.uk.

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

Article 6(1)(e) of the General Data Protection Regulation 2016 (GDPR) provides that processing shall be lawful if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. Section 8(d) of the Data Protection Act 2018 further provides that this shall include processing of personal data that is necessary for the exercise of a function of the Crown, a Minister of the Crown or a government department.

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Ministry of Housing, Communities and Local Government. The task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies in relation to planning.

4. With whom we will be sharing your personal data

We will not share your personal data with organisations outside of MHCLG without contacting you for your permission first.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation.

6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law.

You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Storage of your personal data

The Data you provide directly will be stored by MHCLG's appointed third-party on their servers. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

8. Your personal data will not be used for any automated decision making.

