EXPLANATORY MEMORANDUM TO

THE CONSTITUTIONAL REFORM ACT 2005 (SUPPLEMENTARY PROVISIONS) ORDER 2006

2006 No. 1693

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the Select Committee on Merits of Statutory Instruments.

2. Description

2.1 The purpose of this statutory instrument is to make supplemental, transitory and transitional provision with respect to section 13A of the Local Land Charges Act 1975 (c.76) ("the 1975 Act"), as inserted by paragraph 83 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) ("the 2005 Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order is of interest to the JCSI for the following reasons.

3.2 The Order involves an unusual use of the power provided by section 143 of the Constitutional Reform Act 2005, and uses this power so as to have retrospective effect. Section 143 permits (amongst other things) supplementary, transitory and transitional provision to be made in order to give full effect to any provision of the 2005 Act. As explained further below, paragraphs 82 to 85 of Schedule 4 to the 2005 Act were commenced in error, and this Order makes provision to remedy the effect of that commencement and give full effect to the policy intention. The use of the power is unusual in that it makes provision to modify the future effect of section 13A of the 1975 Act after that section has come into force in full. It also uses the power under section 143 retrospectively to make provision to modify the effect of section 13A from 3rd April 2006, the date on which that section came into force.

3.3 The Order is laid in breach the 21-day rule. The circumstances are such that it is necessary that this Order should come into force as soon as possible and as such it has been drafted to come into force on the day after the day on which it is made.

3.4 To ensure that the Order is given effect as quickly as possible the Order will come into force before it is laid before Parliament. The Speaker of the House of Commons and the Speaker of the House of Lords were notified in accordance with section 4 of the Statutory Instruments Act 1946 on 28th June 2006.

4. Legislative Background

4.1 The Constitutional Reform Act 2005 effected various amendments to the Local Land Charges Act 1975. These amendments are set out in paragraphs 83 to 85 of schedule 4 to the Act. They relate to the setting of fees for local land charge services provided by registering authorities in England and Wales. These provisions were to be brought into force on a date to be fixed (section 148). The power to do so

was exercised by the Lord Chancellor on 31 March 2006 when he made the Constitutional Reform Act 2005 (Commencement No. 5) Order 2006 (SI 2006 No 1014). This order brought the provisions of paragraphs 43 to 115 of schedule 4 to the Act into force on 3 April 2006 (schedule 1, paragraph 11(e)).

4.2 The commencement of paragraphs 83 to 85 relating to the functions of the Lord Chancellor in relation to local land charges with the remainder of paragraphs 43 to 115 relating to the Lord Chancellor's judicial functions was an error.

4.3 The Order is intended to remedy the effects of the inadvertent and premature commencement of paragraphs 83 to 85. It is made under section 143 of the Constitutional Reform Act 2005.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and as it does not amend primary legislation, no statement is required.

7. Policy background

7.1 It was intended that the amendments to section 13A of the Local Land Charges Act 1975 would be brought into force following the issue of guidance by the Lord Chancellor on the setting of fees. This guidance is in course of preparation and is to be the subject of a public consultation later in the year. Once finalised, the guidance will be laid before Parliament and issued to registering authorities.

7.2 The premature and inadvertent commencement of the amendments has frustrated these plans, leaving registering authorities without guidance on how to set fees. Whilst section 13A does not prescribe that guidance is required, the absence of guidance would impose a burden on registering authorities who intend to set fees in accordance with section 13A.

7.3 The issue of property search fees, including fees for local land charge searches, has recently been the subject of a market study by the Office of Fair Trading. In its report, OFT 810, "Property Searches – A market study", published in September 2005, OFT recommended that:

"Central government should provide clear guidance for local authorities, on how they should recover the costs of providing property information in compiled and unrefined forms and, if local authorities are to set their own prices for these two services, how they should set these charges to avoid distorting competition in the supply of local property searches."

7.4 The Government accepted the recommendation and said that it would consult stakeholders on the content of guidance to be issued by the Lord Chancellor ("Property Searches – Government response to Office of Fair Trading (OFT) Property Searches Market Study", December 2005). The unintended commencement of section 13A clearly runs contrary to this undertaking.

8. Impact

8.1 The effect of the order is to restore the position to the situation that existed before the Commencement Order No 5 was made on 31 March. So far as we are aware no registering authority has set any fees under section 13A. The practical impact of the Order is therefore to validate the status quo rather than to make any change. Nonetheless, this must be done as quickly as possible to remove the risk of the situation altering. We have therefore not prepared a separate Regulatory Impact Assessment. In addition, the effect of the order will be transitory. It will expire on 31 March 2007. Registering authorities will, by then, be able to set fees, having regard to guidance issued by the Lord Chancellor.

9. Contact

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