

EXTRACT FROM PAGES 40-42:

Guidance to commons registration authorities and PINS for the pioneer implementation

Version 1.42, February 2011

4.5 Copies and inspection of the commons registers

Dissemination of information

4.5.1 Most registration authorities will hold much data comprised in and relating to the commons registers. In addition to the registers themselves, authorities may hold applications to register land and rights of common (including those made between 1967 and 1970 under the 1965 Act), objections to applications and background information about what is shown on the registers (such as the ownership of land to which rights of common are attached, or anomalies in what is registered).

4.5.2 A registration authority is under a duty to:

- progressively make the information available to the public by electronic means which are easily accessible; and
- take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information⁹⁴.

⁹⁴ Regulation 4(1) of the Environmental Information Regulations 2004 (SI 2004/3391)

The use of electronic means to make information available or to organize information is not required in relation to information collected before 1 January 2005 in non-electronic form (conversely, the duty will apply, for example, to digitised copies of the registers, whenever made)⁹⁵.

⁹⁵ Regulation 4(2)

Inspection and making copies

4.5.3 Section 20 provides for a right of public access to the commons registers, and to records held in connection with applications for registration under Part 1 of the 2006 Act or under the 1965 Act. Section 21 provides for the admissibility in evidence, and the issue of, official copies.

4.5.4 Section 20(1)(a) confers in particular a right for the public to inspect and make copies of the register, and any register map. This right is unconstrained by regulations, and a registration authority must therefore accede to any request for these purposes during normal office hours. In Defra's view, a person need not make an appointment for this purpose (but an authority may wish to recommend an appointment where assistance is likely to be sought). No charge may be made to any person who wishes to inspect or make copies of the register (but the authority may charge for copies provided by the authority itself: see paragraph 4.5.9 *et seq* below).

4.5.5 Section 50(1) of the Copyright, Designs and Patents Act 1988 provides that:

“Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.”

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So there is no infringement of copyright where a person wishes to make a copy of, for example, a register map. In Defra's view, 'make copies' means a person taking copies using, for example, a public photocopying machine, a camera, tracing paper, or by transcription.

4.5.6 Regulation 53 provides that a request to inspect documents ancillary to the register or to take copies of such documents, must be treated as a request for information under the Environmental Information Regulations 2004 ('EIR')⁹⁶ or, where EIR do not apply, the Freedom of Information Act 2000 ('FOI').

⁹⁶ SI 2004/3391: www.defra.gov.uk/corporate/policy/opengov/index.htm and www.ico.gov.uk/what_we_cover/environmental_information_regulation.aspx.

4.5.7 The EIR apply to "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect"... "the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components". The scope of the EIR has been interpreted very broadly, and in Defra's view, the commons registers, and most documents which relate to an application in relation to the commons registers, will fall within the scope of the EIR. The date of a document is immaterial to a request under the EIR. If, in a registration authority's view, any document does not fall within the scope of the EIR, a request for inspection of such a document must be treated as falling within the scope of FOI.

Withholding information

4.5.8 The EIR allow for the withholding of information where specified conditions are met and it is in the public interest to withhold that information. Registration authorities should refer to their own EIR co-ordinator for advice on handling any request for information under the EIR, particularly where a refusal is contemplated.

Providing copies

4.5.9 Where a request is made to the registration authority to provide copies of the commons registers or ancillary documents (other than copies made by the public, or an official copy under Section 21 and Regulation 54), such a request may be made under EIR, or should be treated as a request under EIR. However, in a case under the EIR heard by the Information Tribunal⁹⁷, the tribunal noted that "the obligation is to provide access to an applicant, which may not mean

physically providing an applicant with a copy of the information *i.e.* there is no obligation to communicate it to the applicant. For example, the obligation under EIR could be met by allowing inspection of the information held by the public authority. If the applicant does not like the way that it has been made available, but then requests the information in a particular form or format, [EIR] regulation 6 comes into play."

⁹⁷ *Rhondda Cynon Taff County Borough Council v The Information Commissioner*.

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4.5.10 Regulation 6 of EIR enables the authority to decline to make the information available in a particular format if it is available for public inspection. The tribunal also noted that, if a refusal were made under regulation 6 of EIR, then the authority would need to consider whether section 1(1) of FOI applies. However, FOI section 21 exempts any obligation arising under FOI if the information is reasonably accessible to the applicant, FOI section 21(3) provides that information is reasonably accessible if there is an obligation “by or under any Enactment to communicate [the information] (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment”, and that test is satisfied by Section 21 and Regulation 54.

4.5.11 Accordingly, in Defra’s view, there is no obligation on a registration authority to provide copies (other than official copies) of the register under EIR — but of course, it may choose to do so.

4.5.12 Defra does not prescribe fees or a charging structure for copies of the registers, except for official copies under Regulation 54. Where registration authorities provide copies (other than official copies) of the register or ancillary documents, their charging structures should be consistent with the requirements of EIR. Under EIR, no charge can be made for the inspection of public registers⁹⁸, though a charge may be made for the supply of copies. Authorities may otherwise charge a reasonable amount for the supply of environmental information, which may include the costs to the authority of releasing it under licence from a copyright holder. These charges should not exceed the cost of providing the information. Charges should be set out clearly in a schedule of charges published by the authority.

⁹⁸ EIR, regulation 8(2)(a).

4.5.13 In a further case under the EIR heard by the Information Tribunal⁹⁹, the complainant referred to the unreasonable charges imposed by a local authority for copies of a register of planning permissions. The Tribunal ruled that the local authority must not profit from providing copies of documents which legislation requires to be kept in a public register, and that the authority would need to demonstrate its reasons to depart from a charge in the region of 10p per standard A4 copy.

⁹⁹ *Markinson v the Information Commissioner*.

4.5.14 The principles on charging in this case do not in Defra’s view apply to official copies of the register or ancillary documents. Regulation 54 enables the registration authority to supply an official copy of the register or records held in connection with the register. An official copy must be certified as a true extract or copy of the document. The charges for official copies must not exceed the authority’s costs in providing official copies.