

## Alert | Real Estate



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### Under Control? A Consultation Around Land Control in the UK

The UK government is seeking views on proposals to make certain data in respect of ‘contractual control’ interests in land (rights of pre-emption, options, conditional contracts) publicly available.

The [Contractual Controls on Land Consultation](#) which opened on 24 January 2024 and follows the [2020 Call for Evidence](#), is part of the government’s plan to increase transparency around contractual arrangements used to exercise control over the acquisition and disposal of land and move towards a modernised, open-data approach within the planning system to improve the overall development process.

#### Current Position

The Land Registry publicly registers land ownership in England and Wales. Once land is entered in the register any changes to ownership or entry into charges or leases affecting the land are recorded.

However, not all interests affecting land are recorded in detail on the register. Contractual control interests are typically protected by the entry of a notice on the register together with, in some cases, a restriction against the registration of a disposition of land without consent.

Notices can be unilateral or agreed and ensure priority of the interest protected so it can be enforced against a subsequent owner. Unilateral notices require no documentary evidence – only a brief description of the protected interest and the name and address of the beneficiary. Agreed notices require

supporting documentation (and can therefore be less popular where parties want to keep terms private, albeit commercially sensitive details can be exempted), but the key information is still not available on the face of the register.

Depending on the type of protection, the terms of the interest including the owner's ability to freely use, develop or dispose of the land (as applicable) may not be easily available, or indeed at all.

### **Government's Proposals**

The government is proposing to publish a dataset of the key terms of contractual control agreements pursuant to regulations that would be delivered under Part 11 of the Levelling Up and Regeneration Act 2023.

*What types of contractual control agreements would be within scope?*

Any written agreement entered into after the commencement of the regulations with the intention of facilitating registered land in England and Wales for future development (commercial, residential, or mixed-use) including:

- option agreements (beneficiary has the right (but no obligation) to acquire land within a specified period from the landowner who, upon exercise of the option by the beneficiary, is bound to make the 'relevant disposition' (which includes a transfer of the land or the grant of a lease of more than seven years));
- pre-emption agreements (beneficiary has a right of first refusal if the landowner decides to dispose of land thereby preventing or regulating the circumstances within which the landowner can make a relevant disposition);
- conditional contracts (landowner is bound to make a relevant disposition to a purchaser upon the satisfaction of certain conditions often linked to matters such as the grant of a satisfactory planning permission); and
- promotion agreements (developer promotes land to secure planning permission and is entitled to a fee upon a relevant disposition).

Existing agreements entered into after 6 April 2021 or agreements granted at any time but varied to alter any of the required information (see below) or assigned after the date the regulations come into force, would also be within scope.

*What types of agreement are not in scope?*

Agreements relating to the following would not fall within the scope of the regulations:

- where the relevant requirement or agreement will terminate within 12 months with no right to extend;
- made for the purposes of 'national security' or defence;
- to facilitate finance and/or loan agreements;
- relating to overage, clawback, and restrictive covenants; or
- relating to contractual control interests in unregistered land.

*What information would be published and where?*

The information required to be provided includes the parties' names; the type of agreement; the location of the land; the date of and termination date of the agreement and any rights to extend it. This is a welcome move away from the 2020 Call for Evidence which proposed that certain types of agreements would also require the disclosure of financially sensitive information (deposits, premiums, and prices).

A publicly available dataset containing this information would be published in the same way the Land Registry publishes other public datasets on [GOV.UK](https://gov.uk).

*What would be the process for providing the relevant information?*

The beneficiary of the contractual control interest would be required to provide the Land Registry with the relevant information within 60 days of the date of the agreement (or assignment or variation, if applicable). This information would be required by the Land Registry prior to a notice or restriction being registered.

Once again this is a toned-down approach from the 2020 Call for Evidence whereby the government proposed removing the ability to use a unilateral notice to protect a contractual control interest in favour of a requirement to apply for an agreed notice (which would have required a copy of the agreement itself to be provided) but not until certain data had been supplied as a pre-condition.

*What would be the consequences of not providing the relevant information?*

If the relevant information was not provided the Land Registry would refuse to register a notice or restriction against the title to the land, resulting in no protection or priority for the beneficiary. Failure to provide the relevant information (without reasonable excuse) would also be a criminal offence punishable by up to two years imprisonment and potentially unlimited fines for knowingly or recklessly providing false information.

### **Principles Behind the Proposals**

The government's aim is to continue to improve transparency by providing 'a complete picture of where and how land is under control, short of outright ownership'. This in turn should help facilitate the development process for planners and developers alike. In the government's opinion, identifying suitable sites for development can be costly and time-consuming and the lack of available and/or viable land acts as a barrier to home building by SME builders and new market competitors. By providing better data, the time and cost associated with site identification should reduce, and barriers to entry should be lowered encouraging more companies to enter the house-building market and build the homes the country needs. The concern for developers will be that absolute transparency does not always result in successful site assembly. The other concern in making such data available is that increased public interest and time for communities to prepare objections to potential development could have the adverse impact of slowing down the overall development process.

### **Impact of the Proposals**

This would be a relatively significant overhaul of the existing regime and would have a considerable impact on developers particularly.

The government is essentially relying on the self-interest of beneficiaries to provide the additional data required and avoid the financial and legal risks associated with no protection on title. Acknowledging that

application of the proposals to existing arrangements could be unduly burdensome, the government is proposing to limit this to existing interests which are assigned or varied. However, failure to provide the additional data at this point would presumably result in a loss of existing protection. This is an extreme response (with a high degree of consequential risk for the beneficiaries) to what could simply be an erroneous oversight.

Notably, the proposals have been reined in as compared to the 2020 Call for Evidence. In particular, the obligation for beneficiaries to apply for an agreed notice has been removed. Supporting documentation, which may include sensitive business information, would not be required to be disclosed (and therefore publicly accessible), nor would there be an obligation on beneficiaries to certify in their annual accounts that all relevant interests are the subject of an agreed notice. This would avoid the additional time and cost burden for businesses that would have been required in terms of preparing annual accounts and identifying the relevant interests – no mean feat especially within larger corporate structures.

Other potential unintended consequences have been considered by the government but remain real, such as the adverse impact on land values due to increased competition or decreased desirability and increased hesitancy for developers to bring land forward for development to avoid local scrutiny.

## Conclusion

The Land Registry remains committed to improving transparency around the control of land and becoming *‘the world’s leading land registry for speed, simplicity and an open approach to data’*. The aim of this consultation is to clarify the government’s rationale and legal drafting relating to the collection of data and to seek views on the implications. The views and comments the government obtains will help refine the proposals and the onus is on those who will be directly impacted to highlight where potential issues may arise.

The consultation closes on 20 March 2024. The expected commencement date of the regulations would be 6 April 2026.

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