

# CONSULTATION STAGE IMPACT ASSESSMENT

<b>Title:</b> Statutory instrument requiring provision of information about contractual control agreements over land. <b>IA No:</b> TBC <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> DLUHC <b>Other departments or agencies:</b> HMLR	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/01/2024
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> ccaconsultation@levellingup.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2019 prices, 2020 present value, £m)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision

**What is the problem under consideration?**

- It is currently difficult to ascertain where and how land is under control, short of outright ownership. Developers and others will often enter contractual control agreements which allow them to exert control over the future use or disposition of land. One such type of arrangement is an option agreement which grants the developer the right to purchase the land during a specified option period.
- There is no legal requirement to record data on contractual control agreements and, although there is often an implicit reference on HM Land Registry titles, the information is not recorded in a clear and easily accessible way.

**What are the current or future harms that are being tackled?**

- Developers - including small builders - communities, and local authorities waste time and resources trying to identify sites that may already be under control which can hinder plans, development, and community support for proposals. It is also not currently possible to produce or examine systematic data about contractual controls, which would be of use to academics, researchers and policy makers in informing policy and forecasting trends in the market.

**Why is government best placed to resolve the issue?**

- There is no individual incentive to make the information public and the private sector has not produced a solution. Government intervention is needed to make the provision and publication of the data mandatory and to ensure it is complete, reliable, and up to date. A legal obligation and regulations setting standards enforced by law is required to ensure this, as provided for by the Levelling Up and Regeneration Act and subsequent regulations.

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### What are the policy objectives of the action or intervention and the intended effects?

- To make available details of what relevant contractual controls are in place for development purposes, by whom, for how long, where, and on what terms.

### What are the desired effects – what will change as a result of intervention?

- There will be greater transparency of land ownership for local government, developers and communities, which could promote competition by removing some of the barriers to entry for smaller businesses and new entrants and improve community engagement and efficiency.
- Property Technology firms and third sector organisations will be able to combine the datasets with their existing data to present the data geospatially using Geographic Information Systems (GIS). These tools will support the housing market to become more diverse, efficient, and competitive, with smaller developers being more able to identify available land more easily.

### What will the indicators of success be?

- Completeness and reliability – there should not be reports of contractual controls which are not registered accurately and the number of contractual control agreements on the system approximating to our estimate of the number of contractual control agreements and downloads/access requests of the data.
- Improved reported accessibility of information about controls over land from developers of all sizes, communities, local government and other stakeholders baselined against the consultation through potential future surveys or engagement.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- (Preferred)* Legally require information be provided when agreeing a relevant kind of contractual agreement over registered land going forwards, **and** also require it be provided about any extant qualifying agreement entered into within 5 years before the commencement of the regulations and/or are varied or assigned after the commencement of the regulations. This imposes a resource burden to firms and to HMLR, which will need to make holders of relevant agreements aware of their obligation to provide the information. However, this will ensure a complete picture more quickly than building the dataset slowly over time by capturing only new agreements.
- Legally require information be provided when agreeing a relevant agreement over registered going forwards only.
  - This would impose a smaller burden on the private sector which would provide more information when coming to HMLR to register an agreement anyway (in most instances). However, this option would take much longer (several years) to achieve a satisfactory level of completeness.
- Do nothing
  - The data available will continue to be below the required level needed to achieve transparency and achieve the desired outcomes.

### Will the policy be reviewed? Subject to monitoring and evaluation. If will not applicable, set review date: Month

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> -		<b>Non-traded:</b> -	
tbcYear				

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

## Summary: Analysis & Evidence

## Policy Option 1

4. **Description:** Legally require information be provided when agreeing a relevant kind of contractual agreement over registered land going forwards, and also require it be provided about any extant qualifying agreement entered into within 5 years before the commencement of the regulations and/or are varied or assigned after the commencement of the regulations.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>					
	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>• The cost for existing staff to upskill and familiarise themselves with new legislation. We expect these costs to affect developers, land promoters, land conveyancers and local planning authorities. The total one-off cost of familiarisation with the new regulations is estimated at £4.8m (discounted, 2019 prices). Of this, £4.5m is estimated to fall to the private sector, with the remaining £0.3m expected to fall on local authorities (including LPAs) (discounted and in 2019 prices).</li> <li>• The cost for HMLR to design and implement the systems required to deliver the regulations, as well as the delivery costs. The total one-off system design and build costs is estimated at £4.6m (discounted and in 2019 prices). The running costs are estimated at c.£190,000 per annum and £1.5m over the 10-year appraisal period (discounted and in 2019 prices) including a small standing staff function, for instance for queries and correspondence.</li> </ul>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p>Due to the requirement to register both future and extant Contractual Control Agreements with HMLR there will be compliance costs to meet this. We anticipate this will affect the grantee of the agreement who will likely use a conveyancer to register their contractual control. It has not been possible to monetise compliance costs at this stage as we do not currently have robust estimates of the number of contractual controls that would need registering. We will build our evidence base on this ahead of the final impact assessment.</p>					
<b>BENEFITS (£m)</b>					
	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<p>We have been unable to monetise key benefits at this stage. We will seek to improve our evidence base around the currently non-monetised benefits through targeted consultation questions and further analysis.</p>					

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### Other key non-monetised benefits by 'main affected groups'

- (i) Better informed planning decisions by local authorities – increased transparency and more information is made available to those making decisions on development of land.
- (ii) Increased competition and diversity in development industry – improvement in access to data on land could reduce information-related barriers to entry to small businesses and new entrants.
- (iii) Promote innovation in Property Technology industry - digital only approach to collecting data will support development of new technology and products in the market. There will be immediate benefits for the Property Technology industry, upon release of the data, who will have an additional dataset to develop their services, which will bring benefits for all users and stakeholders.
- (iv) Cost and time savings for smaller developers in site selection due to improved data.

### Key assumptions/sensitivities/risks

**Discount rate. (%)**

3.5%

There is some uncertainty over the time taken for staff at local planning authorities, developers, land promoters and land conveyancers to familiarise themselves with the new legislation. There is also some uncertainty of the number of individuals (e.g. working as land conveyancers or for developers) that would need to familiarise themselves.

HMLR provided estimates of the start-up and running costs for HMLR, however these are subject to some uncertainty as detailed scoping, design and delivery planning is still underway. For the purpose of this analysis, we are assuming unregistered land is out of scope at this stage, though we will test this position in the public consultation.

Some respondents to the 2020 Call for Evidence flagged a potential risk of behavioural change leading developers to conceal control in alternative ways. We think this risk is low as the only way interests can be protected short of a lawsuit is through HMLR.

Assumption that Property Technology firms (both commercial and not-for-profit) will integrate the dataset with their existing software to produce user-facing services.

We have not monetised compliance costs due to a lack of reliable data, but this is likely to be the most significant category of cost to business.

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** Legally require information be provided when agreeing a relevant kind of agreement after commencement.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

#### Description and scale of key monetised costs by 'main affected groups'

##### Familiarisation costs

- The cost for existing staff to upskill and familiarise themselves with new legislation. We expect these costs to affect developers, land promoters, land conveyancers and local planning authorities. The total one-off cost of familiarisation with the new regulations is estimated at £4.8m (discounted, 2019 prices). Of this, £4.5m is estimated to fall to the private sector, with the remaining £0.3m expected to fall on local authorities (including LPAs) (discounted and in 2019 prices).

##### Public start up and delivery costs.

- The cost for HMLR to design and implement the systems required to deliver the regulations, as well as the delivery costs. The total one-off system design and build costs is estimated at £4.6m (discounted and in 2019 prices). The running costs are estimated at c.£190,000 per annum and £1.5m over the 10-year appraisal period (discounted and in 2019 prices).

#### Other key non-monetised costs by 'main affected groups'

##### Compliance costs

Due to the requirement to register future Contractual Control Agreements with HMLR there will be compliance costs to meet this. We anticipate this will affect the grantee of the agreement who will likely use a conveyancer to register their contractual control. It has not been possible to monetise compliance costs at this stage as we do not currently have robust estimates of the number of contractual controls that would need registering. We will build our evidence base on this ahead of the final impact assessment.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

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<p><b>Description and scale of key monetised benefits by ‘main affected groups’</b></p> <p>We have been unable to monetise key benefits at this stage.</p>		
<p><b>Other key non-monetised benefits by ‘main affected groups’</b></p> <ul style="list-style-type: none"> <li>(i) Better informed planning decisions by local authorities – increased transparency and more information is made available to those making decisions on development of land.</li> <li>(ii) Increased competition and diversity in development industry – improvement in access to data on land could reduce barriers to entry to small businesses and new entrants.</li> <li>(iii) Promote innovation in Property Technology industry - digital only approach to collecting data will support development of new technology and products in the market.</li> <li>(iv) Cost and time savings for smaller developers in site selection due to improved data.</li> </ul>		
<p><b>Key assumptions/sensitivities/risks (%)</b></p>	<p><b>Discount rate</b></p>	<p>3.5%</p>
<p>There is some uncertainty over the time taken for staff at local planning authorities, developers, land promoters and land conveyancers to familiarise themselves with the new legislation. There is also some uncertainty of the number of individuals (e.g. working as land conveyancers or for developers) that would need to familiarise themselves.</p> <p>HMLR provided estimates of the start-up and running costs for HMLR, however these are subject to some uncertainty as detailed scoping, design and delivery planning is still underway. For the purpose of this analysis, we are assuming unregistered land is out of scope, though we will test this position in the public consultation.</p> <p>Some respondents to the 2020 Call for Evidence flagged a potential risk of behavioural change leading developers to conceal control in alternative ways. We think this risk is low as the only way interests can be protected short of a lawsuit is through HMLR.</p> <p>We have not monetised compliance costs due to a lack of reliable data, but this is likely to be the most significant category of cost to business.</p>		

## 1. Policy objective

1. Part 11 of the Levelling Up and Regeneration Act seeks to achieve greater transparency on the ownership and control of land. Part 11 allows government to collect, share and publish details of contractual control agreements used to control land, short of outright ownership.
2. Developers and other market participants such as land promoters will often enter into contractual control agreements which allow them to exert control over the future use and disposition of land. They allow developers to secure land intended for development whilst they acquire the necessary permissions if needed, reducing the risk of investing in land outright that may not be feasible to develop thereby tying up capital. These agreements are almost always referred to on HM Land Registry titles but are not recorded in an easily accessible, detailed, or transparent way and there is currently no legal requirement to record this information. It is therefore difficult to determine where and how land is under control, short of outright ownership.
3. A lack of transparency on the control of land creates and exacerbates multiple problems within the sector and can leave the market vulnerable to anti-competitive behaviour. These are set out in more detail below.
4. The regulations set out to collect, and publish a specified set of information on who holds contractual control agreements over what land and for how long. This will promote transparency by providing a consistent, and accessible source of information for communities, developers, public authorities, and other interested stakeholders.
5. The preferred option is to create a system that gathers both extant and future data on contractual control agreements used to control land. In time, future data will build up the dataset and begin to create the intended view of the control of land and provide the longer-term benefits of the proposal. Providing data on relevant contractual control agreements in place will become a business-as-usual activity for conveyancers and standard practice within registering land. We expect the regulations to commence from April 2026. In order to minimize burdens to business, we propose to exclude all agreements which have less than 12 months to run and are not extendable.
6. Collecting data about existing agreements which have been entered into within 5 years of the commencement date and/or have been varied or assigned since the commencement date, will create a picture of current land controls, allowing the benefits of improved transparency to be seen as early as possible. This includes the mapping out of existing trends in development, potential development pathways and land usage. We will allow for a one-year transition period for extant data to be supplied.
7. Providing extant and future data on contractual control agreements will be given effect through secondary legislation. There will be a one-year time period (expected April 2026 –April 2027) to comply with the requirement to provide information on existing agreements.
8. The measure is expected to go live in 2026 with data collected on extant control agreements during a transition period between April 2026 and April 2027. This period will also allow conveyancers and lawyers to familiarise themselves with the requirements going forward.
9. HM Land Registry will be the departmental body responsible for the collection of the contractual control information and the ongoing operation, storage, and management of the dataset. This will include ongoing systems management, monitoring of compliance and potential iteration after initial implementation. The Department for Levelling Up, Housing and Communities will hold overall policy and ministerial responsibility.
10. The indicators of success will be measured against the system usage and formed datasets. The number of agreements in the system will show general uptake alongside the metadata that shows the number of people accessing the site. Success in terms of the ultimate outcomes we seek may also be measured by commissioning a survey regarding the accessibility of contractual

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control arrangement data. The results of the survey would be baselined against the accessibility data collected through the Land Transparency consultation. A third indicator of success may be the integration of contractual control data in Prop Tech firms' systems and how this data becomes a business-as-usual tool. An indicator of success could be the absence of reports of unregistered contractual controls or inaccurate data.

11. The options are outlined below with the preferred option.

1. *(Preferred)* Legally require information be provided when agreeing a relevant kind of contractual agreement over registered land going forwards, **and** also require it be provided about any qualifying extant agreement where they were entered into within 5 years of the commencement of the regulations and/or were varied or assigned from the commencement of the regulations.
  - a. This imposes a resource burden to firms and to HMLR, which will need to make holders of relevant agreements aware of their obligation to provide the information. However, this will ensure a complete picture more quickly than building the dataset from scratch.
2. Legally require information be provided when agreeing a relevant agreement going forwards only.
  - a. This would impose a smaller burden on the private sector which would provide more information when coming to HMLR to register an agreement anyway (in most instances). However, this option would take much longer (several years) to achieve a satisfactory level of completeness.
3. Do nothing
  - a. The data available will continue to be below the required level needed to achieve full transparency and achieve the desired outcomes.

### **Ensuring that those caught by the regulations fulfil their obligations**

12. Providing information on contractual control information will be required by law under the powers of the Levelling Up and Regeneration Act. Criminal offences may apply if information is not provided accurately without reasonable excuse. Further details will be set out in guidance.
13. Information on existing contractual control agreements will need to be provided to HM Land Registry within a year of the measure going live. There will be targeted communications to make those in scope aware of their obligations.
14. New contractual control agreements will most often be registered with HM Land Registry when going through the process of taking out a notice and/or a restriction, but the information will be required whether or not the grantee is also choosing to protect the agreement with a notice/restriction. Updates on existing Contractual Control Information include any updates to the submitted end date of the arrangement and beneficiaries. A full list of data fields that require updating will be published with the regulations.
15. The policy will be trialled through a digital Beta that we plan to focus on systems delivery, management and efficiency and will be iterated upon its completion. The transition period to supply data provides a soft launch opportunity where systems can be improved and refined, with ongoing systems management allowing for further iteration and improvements after the system is launched.

## 2. Evidence Base

### Current and future harms

16. While land and property transactions for registered land must be recorded at HM Land Registry, there is no legal requirement to record data on agreements used to control land. It is therefore difficult to determine where and how land is controlled past outright ownership.
17. The Government considers that the lack of data on contractual controls is leading to imbalances and failures in the market. Many respondents to the 2020 Call for Evidence reported that the proposals would go some way to making the land market less opaque and more efficient, by decreasing the time and cost involved in understanding where land is under control, providing more certainty to participants, and reducing the risks and associated nugatory costs of failed transactions.
18. As the information is currently considered commercially sensitive, as many respondents to the 2020 Call for Evidence noted, there is no individual incentive to make the information public. For instance:

#### **i. Asymmetric information**

The land control system lacks transparency of information which can hinder effective decision-making by local authorities, developers and others, and disproportionately benefit those who have the resources to find this information. This imbalance and opacity of information leads to SME developers wasting time and resources trying to identify sites that may already be under control, presenting barriers to entry. Most respondents to the 2020 Call for Evidence reported that existing data was difficult to find and the proposals would reduce the cost of finding out whether a developer had an interest in a particular piece of land.

Some respondents to the 2020 Call for Evidence said that the provision of an open dataset of contractual controls would assist local planning authorities and local communities to better understand the likely path of development in their areas, allow local planning authorities to play a supportive role on assembling land for large-scale developments and to better assess the likely delivery timescales for individual sites.

#### **ii. Negative externalities**

Without comprehensive information on those controlling land, local communities and local government cannot fully understand the likely path of development in their area, and therefore are less likely to be able to influence development.

Improved land transparency should allow local government and communities to be more informed about development opportunities in their area, allowing for greater emphasis on local needs, helping create better places and deliver regeneration.

#### **iii. Market power**

Volume housebuilders currently dominate the market<sup>1</sup> and have the resources to be able to navigate the planning system over and above others. Volume housebuilders who have control over of land can have power over Local Planning Authorities decisions on development allocation when trying to meet their own housebuilding pressures and demand due to the lack of alternative developers.<sup>2</sup>

19. Improved land transparency may help reduce barriers to entry for SME developers<sup>3</sup> who are more likely to find the resourcing required to identify sites onerous and to operate on smaller sites. The intervention will allow smaller developers and new entrants to enter the market more easily as their costs and barriers to entry will be reduced. This could lead to increased competition and diversity in development.

<sup>1</sup> Why have the volume housebuilders been so profitable? - UK Collaborative Centre for Housing Evidence, 2023

<sup>2</sup> UK Collaborative Centre For Housing Evidence – Why have the volume housebuilders been so profitable? 2023

<sup>3</sup>Housebuilding Market Study: Update report – Competition and Markets Authority, 2023.

## Government intervention

20. Government intervention is needed to tackle the issue of lack of transparency due to the data gathered currently being considered commercially sensitive. There is currently no individual incentive to make the information public unilaterally as such information is a form of competitive advantage unless applied universally, therefore intervention is needed to make the collection of this data mandatory.
21. While private companies, like Property Technology firms, have been active in the market for a considerable amount of time, they have not formulated their own solution to this problem and instead rely on HMLR's existing datasets – which contain very limited information about contractual controls – due to other information rarely being available publicly. Nonetheless, we expect the comprehensive data set of information on contractual control agreements which we propose to create to be turned into user-friendly tools by commercial Property Technology firms, third sector open data organisations, and potentially, in due course, public sector bodies.
21. User research conducted through a digital discovery into contractual controls and land transparency showed that data is only useful if complete, reliable, and up to date. The legal obligation provided by government intervention and regulations will set standards that are enforceable by law.
22. As HMLR currently hold a large amount of data on property ownership and rights, it is logical and resource efficient to use HMLR processes and systems to hold this data that can be integrated into wider data fields.

## Sectors, markets and stakeholders affected

23. Government intervention will affect multiple stakeholders and sectors. This will differ between affected groups and is outlined below.

### **i. The land market**

- a. **Developers** (including SMEs) who use contractual controls to secure pipelines of land to develop will have to provide information and nature on the contractual controls they use. This will reveal the type of agreement, how much land is covered by such agreements, in which locations, and for how long, with this information being particularly useful to SMEs and new market entrants who are less likely to have internal land teams. Developers and others may choose to opt into more complex trust agreements to avoid providing information on contractual controls. These complex trust agreements allow control of land without an interest or right to the land and will not be required under this intervention to provide information to HM Land Registry. Developers may also decide to move to a model of buying more land outright, although we consider this unlikely given the implications for tying up capital. There may also be moves to longer option agreements in order to reduce the risk of an agreement lapsing unintentionally.
- b. **Landowners** who enter into agreements with property developers or land promoters will see key details of those agreements published and will be able to access clear information on the current control of land in their area and options that have been agreed which can help to provide informed decision-making on site selection. In the 2020 Call for Evidence and further stakeholder engagement programme, some stakeholders have speculated that the information may have either a positive or negative impact on land values by increasing competition or decreasing the desirability of land in scope. In the absence of reliable evidence either way, our judgement is that these effects are likely to be marginal and may cancel each

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other out in aggregate. Landowners may feel pressure by communities who are able to see that they are entering into agreements related to land in their area. This could lead to landowners being hesitant to bring land forward for development. We will be testing the potential impact of this further in the consultation process.

- c. **Land promoters** often use contractual controls to undertake the necessary technical, planning and design work needed to secure planning permission for land. A transparent view on available land and current contractual control information may aid strategic development and purchasing but may also be considered to reduce the value-add of land promotion firms.

### ii. Actors in the wider land market

- a. **Software companies** (e.g. Property Technology companies) are increasingly using government data to provide services in the sector such as geospatial mapping of land. Publishing data on contractual controls will provide a trusted information source for data on contractual controls which will allow them create tools and applications that would reduce the time and cost of site identification and assessment by Local Planning Authorities (LPAs) and developers. Open data organisations and researchers may also produce online tools using the data.

### iii. Communities and public bodies

- a. **Local authorities** use data on availability of land to identify potential sites for development and allocate them in their local plan. The current opacity of available land currently can lead to sites being allocated that may be undeliverable in the timescales presented in local plans. Access to data about controls over land can help inform targets on future availability of land that can be developed for residential purposes. This can be used to help local government plan for development. For example, it could make it easier for local planning authorities to understand who controls land, how it is under control and if it is likely to come forward for development, all of which could support the development of plans.
- b. **Communities** will benefit from being able to better understand likely developments coming forward for planning permission through more easily accessible data. While we believe that greater transparency over control of land will stimulate earlier, constructive engagement between developers and communities to shape proposals that have community support, there is a risk that those so inclined will have more time to prepare objections during the planning process, potentially slowing some development. This is an inevitable consequence of a better engaged and informed community, and we anticipate these effects will cancel out in aggregate.
- c. **Central government, academia and researchers** will use data related to ownership, control and future development to identify trends and create an evidence base for future policy proposals and shape policy direction in this area.

### 3. Monetised and non-monetised costs and benefits

#### Benefits

24. It has not been possible to monetise the key benefits of the policy due to the lack of existing quantitative evidence, although we have drawn on extensive conversations with market actors and responses to the 2020 Call for Evidence. We will gather further evidence via the consultation stage and user testing to support the monetisation of some of the key non-monetised benefits listed below for the final IA stage.

#### Key non-monetised benefits include:

- (i) **Better informed planning decisions:** The policy measure will increase transparency on land ownership, leading to more information being available on land that is/not under contractual control owned and not owned, allowing communities, Local Authorities and other interested parties to make better informed decisions on the development of land.
- (ii) **Reduced information asymmetries:** The policy intervention will increase access to data on land availability. This could reduce barriers to entry for small businesses and new entrants (as detailed above) whilst also increasing competition and variation in development.
- (iii) **Promote innovation:** The policy will take a digital only approach towards collecting data on contractual control 'arrangements'. The policy will not constrain the development of new technology but instead will be providing data which can support new products and innovation in the sector.
- (iv) **Cost savings:** Publishing data on contractual controls will provide a trusted information source for data on contractual controls which will allow firms to create tools and applications that would reduce the time and cost of site identification and assessment by Local Planning Authorities (LPAs) and developers. We are exploring ways to monetise this during the consultation stage for the final IA.

#### Costs

##### *Non-monetised costs*

##### Compliance costs

1. The legislation will require Contractual Control Agreements to be registered with HMLR, which will result in compliance costs for the private sector. We assume that the grantee of the contractual control will use a conveyancer to register their contractual controls, both extant and future, with HMLR.
2. It has not been possible to monetise the compliance costs of the policy due to the lack of robust evidence to estimate on the number of contractual controls that would need registering per year. Based on analysis from HMLR and TPXimpact (who have provided consultancy services in development of the policy, user testing and digital design), we estimate that there are at least 3-11k contractual controls that would need registering per annum. However, there are also c.290k additional applications for protections on the title per annum which includes categories in which we don't have a sufficient sample size to make a judgement of incidence of contractual controls. Based on discussions with lawyers with recent industry experience about the most significant category of unknown entries, we expect the number of contractual controls that need registering per annum to be closer to 3-11k than c.290k. The estimates of the number of contractual controls per annum will be improved for the final stage IA.
3. It is expected that the compliance costs will be the most significant cost to business. We assume that the grantee of the contractual control will use a conveyancer to register their contractual controls, both extant and future, with HMLR. Based on estimates from legal and industry stakeholders, we expect the time taken to register a contractual control to be approximately 1

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hour for extant contractual controls (as it will be necessary to locate and extract key information from filed documents) and around 12 minutes for future new or assigned or varied agreements (as the data will typically be provided at the same time as registering the corresponding protection with HMLR). We estimate the hourly fees to be around £226 per hour (in 2019 prices), which is based on the average of the Solicitors' guideline hourly rates from HM Courts & Tribunals Service as a proxy for a land conveyancer.

4. We will seek to gather further evidence via the consultation and user testing to support the monetisation of compliance costs for the final IA stage.

### *Monetised costs*

5. There are three monetised costs identified, which are as follows:
  - i) Familiarisation costs
  - ii) Start-up/build costs
  - iii) Running costs

### Familiarisation Costs

6. Familiarisation refers to the cost for existing staff to upskill and familiarise themselves with the new legislation. Through the introduction of the legislation, we expect there to be familiarisation costs the developers, land promoters, land conveyancers and the Local Planning Authorities. These costs will capture any costs incurred as a result of understanding the new process by staff in both the public and private planning sectors. For the private sector staff, this will mean a direct cost to business.
7. The approach taken uses wage rates to estimate the one-off monetary costs of pure familiarisation of new documentation and regulation, applying the assumptions below:
  - a. Staff at local planning authorities will be required to familiarise themselves with these changes. Data from the Royal Town Planning Institute (RTPI) suggests that there are 9,900 planners at least partially employed by local planning authorities in England and Wales who would need to familiarise themselves with the legislation. We estimate it will take 1 hour for familiarisation. We use the median hourly wage for 'Town Planning Officers' from the 2022 Annual Survey of Hours and Earnings (£20.83), which are uprated by 30% to account for over heads and deflated to 2019 prices to get £24.54 per hour. This results in an estimated **£0.2m** familiarisation cost (discounted and in 2019 prices).
  - b. Developers will want to understand the new requirements and how it will affect their business, for example they will need to understand whether they have a relevant agreement in scope. This familiarisation is likely to take the form of a CPD seminar or training session. Using data from the ONS<sup>4</sup>, there are estimated to be 42,535 developers in England and Wales. For the purpose of this analysis, we assume each developer requires one member of staff to familiarise themselves with the new legislation. This is on the basis that according to ONS data, 96% of developers in England and Wales are micro businesses (defined as having less than 10 employees) and we do not expect every developer would complete training for their employees, although in some cases there may be more than one employee that would familiarise. We estimate it will take 1 hour for familiarisation. We use the median hourly wage for 'Management consultants and business analysts' from the 2022 Annual Survey of Hours and Earnings (£23.33), which are uprated by 30% and deflated to 2019 prices to get £27.48. This results in an estimated **£1.1m** familiarisation cost (discounted and in 2019 prices).

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<sup>4</sup> UK Business Counts – enterprises by industry and employment size band, 2023. As defined by the Standard Industrial Classification 41100: 'Development of building projects'.

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- c. Staff at land promoters will be required to familiarise themselves with these changes. Using evidence from discussions with stakeholders on the estimated number of land promoters and assuming 1-4 staff per land promoter (midpoint 2.5) would need to familiarise, we estimate there are c.250 staff working for land promoters that would need to familiarise themselves with the new legislation. We estimate it will take 1 hour for familiarisation. We use the median hourly wage for 'Construction project managers and related professionals' from the 2022 Annual Survey of Hours and Earnings (£18.36), which are uprated by 30% and deflated to 2019 prices to get £21.63. This results in an estimated **£0.01m** familiarisation cost (discounted and in 2019 prices).
  - d. Conveyancers (including those employed by, or on a retainer from, local authorities, developers and land promoters) will be required to familiarise themselves with these changes. Data from HMLR and internal sources suggests that there are c.33,000 registered conveyancers (individuals) operating in England and Wales who may need to familiarise themselves with the legislation. Of these, there are estimated to be 750-1000 that works for Local Authorities, and we take the midpoint in the absence of further evidence (875). For the purpose of this analysis, we have assumed that all conveyancers in England and Wales are required to familiarise themselves with the new legislation, but in practice this is likely to be an over-estimate. We estimate it will take half a day (3.7 hours) for conveyancers to familiarise themselves with the legislation. We use the median hourly wage for 'Solicitors and lawyers' as a proxy for land conveyancers from the 2022 Annual Survey of Hours and Earnings (£26.26), which are uprated by 30% and deflated to 2019 prices to get £30.93. This results in an estimated **£3.4m** familiarisation cost to conveyancers in the private sector and **£0.1m** familiarisation cost to conveyancers working in local authorities (discounted and in 2019 prices).
8. Using this approach, the total one-off cost of familiarisation with the new regulation is estimated at **£4.8m** (discounted, 2019 prices). Of this, **£4.5m** is estimated to fall to the private sector, with the remaining **£0.3m** expected to fall on local authorities (including LPAs) (discounted and in 2019 prices). Any anticipated costs to local authorities will be subject to a new burdens assessment.

### System Design / Build Costs

9. The legislation will require HMLR to create a dataset to store contractual control information and allow parties to access it. The total one-off system design and build costs is estimated at **£4.6m** (discounted and in 2019 prices). This is for the central scenario, based on cost information provided by HMLR, with work conducted by a mix of new HMLR resource and delivery partner resource.
10. These costs will be refined following consultation, with costs to HMLR based on agreements over registered land only. We will consult on whether contractual controls over unregistered land should be in scope, and will further refine these estimates at full IA stage.

### Running costs

11. The dataset HMLR will manage and produce will require ongoing running costs related to system maintenance, data assurance and general management. The running costs are estimated at approximately £190,000 per annum and **£1.5m** over the 10-year appraisal period (discounted and in 2019 prices). This is based on data provided by HMLR to cover the ongoing staff and system costs.
12. As above, these costs will be refined following consultation, with costs to HMLR based on registered agreements over registered land only, including where those agreements are not protected by a notice or restriction. We are assuming unregistered land is out of scope, though we will test this position in the public consultation.

**4. Rationale and evidence to justify the level of analysis used in the IA (proportionality approach) analysis**

13. The impacts of the legislation will be further defined through consultation stage, once detailed design and estimated impacts for the system have been refined. Therefore, the level of analysis conducted for this Impact Assessment is proportionate level to the information that is currently known to us. The analysis presented is therefore based on a mixture of open and internal data. Whilst it was not possible to monetise compliance costs in this IA due to a lack of robust evidence on the number of CCAs that would need registering, we will seek to monetise this in the final IA. Due to a lack of evidence, it was also not possible to monetise key benefits (such as better informed planning decisions) at this stage.
14. The preferred option presented will lead to the stated desired outcomes by producing a comprehensive data set of information on contractual control agreements which we expect will be turned into user-friendly tools by commercial Property Technology firms, third sector open data organisations, and potentially, in due course, public sector bodies.

## 5. Risks and assumptions

### Unintended consequences

15. As part of this impact assessment, we have considered potential unintended consequences of the proposal. The impacts of these unintended consequences are uncertain, but we will monitor any such behavioural responses and consider whether any response is necessary. We will gather views on unintended consequences in the consultation.
- a. **Impact on land values** – In the 2020 Call for Evidence and further stakeholder engagement programme, some stakeholders have speculated that the information may have either a positive or negative impact on land values by increasing competition or decreasing the desirability of land in scope. In the absence of reliable evidence either way, we would like to use the consultation to test this.
  - b. **Pressure on landowners** - Landowners may feel pressure by communities who are able to see that they are entering into agreements related to land in their area. This could lead to landowners being hesitant to bring land forward for development. We will be testing the potential impact of this further in the consultation process.
  - c. **Communities** – While we believe that greater transparency over control of land will stimulate earlier, constructive engagement between developers and communities to shape proposals that have community support, there is a risk that those so inclined will have more time to prepare objections during the planning process, potentially slowing some development. This is an inevitable consequence of a better engaged and informed community. We would like to use the consultation to test these potential consequences further.
  - d. **Developers and others**- Developers and others may choose to opt into more complex trust agreements to avoid providing information on contractual controls. These complex trust agreements allow control of land without an interest or right to the land and will not be required under this intervention to provide information to HM Land Registry. Developers may also decide to move to a model of buying more land outright, although we consider this unlikely given the implications for tying up capital. There may also be moves to longer option agreements in order to reduce the risk of an agreement lapsing unintentionally.

### Time and cost assumptions

40. The estimate of the time taken for familiarisation with the legislation are based on information gathered from a combination of institutional knowledge and stakeholder engagement, whilst wages are estimated using the Annual Survey of Hours and Earnings (ASHE).
41. However, there is some uncertainty of the time taken for individuals to familiarise. The number of staff affected assumptions use a combination of published and unpublished data, with unpublished figures determined via stakeholder engagement. There is also some uncertainty over the number of individuals that would need to familiarise with the new legislation. HMLR provided estimates of the start-up and running costs for HMLR, however these are subject to some uncertainty as detailed scope, design and delivery decisions are still to be taken. We will look to refine and test our assumptions throughout the consultation stage.

### Operational risks

42. There are potential operational risks to the proposal that have been identified. These include:
- a. Data security and breaches of sensitive data would affect the security of the data collected, resulting in reputational, financial, and legal risks. These risks will be mitigated through

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implementing and maintaining the dataset using current HMLR systems and practices that meet data protection standards.

- b. Inaccuracies or gaps in data provided could result in complaints from system users, leading to a reputational risk and questions about the reliability of the data. There will be data quality assurance checks in place in addition to the stringent legal obligations and criminal offences, and there will be a clear statement of no guarantee of accuracy, nor application of HMLR liability.
- c. Commercial or third sector Prop Tech firms not moving quickly enough to integrate the data with their systems and services, or only making these available at a cost which is prohibitive to smaller developers, public bodies, members of the public or community groups.

## 6. Impact on small and micro businesses

43. An objective of the intervention is to support small and micro businesses (SMBs), for example small builders, to more easily identify land for development. Currently, information regarding contractual controls at HM Land Registry must be paid for, is limited, unclear in nature and not easily searchable. This is likely to favour larger developers who have the time, resource, and expertise to dedicate to identifying land for development.
44. Our research and sector engagement suggests the systematic and user-friendly collection and publication of contractual control data will have a positive impact on SMBs because they will be able to freely access standardised, accessible and up to date data on land control. The intervention will allow smaller developers and new entrants to enter the market and compete more easily as their costs and barriers to entry will be reduced. This could lead to increased competition and diversity in the development industry.
45. SMBs, in addition to medium and larger businesses, public bodies and third sector organisations, will need to provide details of existing contractual control agreements that they hold within scope and provide additional details going forward creating a small resource impact. While the costs may be the same per agreement, these may be proportionately larger for SMBs who are less likely to have in-house legal advisers, for instance. We are making efficiency and simplicity a focus of the digital design of the system to minimise the burden on SMBs. The accompanying consultation will be seeking more detail on the potential impacts for SMBs.
43. The preferred position is not to exempt SMBs from this policy and we welcome views in the consultation on how SMBs will be affected. Exempting SMBs would be difficult to do practically as Special Purpose Vehicles are widely used in the industry and could have a very large parent company. Additionally, excluding collecting contractual control data where small and micro builders are the grantees of a contractual control would exclude the small sites that such parties typically seek to develop<sup>5</sup>. Providing a comprehensive picture of contractual control that includes smaller sites is necessary to reduce information asymmetries for micro and small developers and achieve our policy objective of transparency.

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<sup>5</sup> State of play: challenges and opportunities facing SME Homes Builders – House Builders Federation (HBF), 2023.

## 7. Wider impacts of proposal

### Protected characteristics

46. We anticipate that the proposal will have no direct impact on characteristics listed in the Equalities Act 2010. Below we have listed more general considerations that have been made.
  - a. Accessibility – GOV.UK has a variety of features including text size adjustments, printable/downloadable versions of forms and text to speech software if needed.
  - b. No adverse impact is anticipated on the other protected characteristics.

### Data protection

47. Data will be published with regard to obligations and principles under the Data Protection Act 2018 and the Equalities Act 2010.

### Environmental impacts

48. We have completed an Environmental Principles Assessment and conclude there are no environmental impacts of this policy.

### Socioeconomic impacts

49. There will be extra costs imposed on those required to instruct a conveyancer for providing contractual control information. This could disproportionately affect those from less affluent socioeconomic groups, although in the overwhelming majority of cases we expect the obligation to fall on firms rather than private individuals. Conveyancers are already typically used to assist with contractual controls and to provide information to HMLR. We therefore do not consider the impact to be significant in most cases; and where it is, this can be managed through discretion by the registrar on a case by case basis due to the small number of those potentially affected.
50. There will be no mitigation, monitoring and evaluation measures of inequalities as there are no substantial dis-benefits under the Equality Act in this legislation.

### Impact on wider incentives and behaviours

51. The intervention also has interdependencies with current government objectives. The government currently has an objective to build one million homes by the end of parliament and a target of 300k new homes each year by the mid 2020s. The collection and publication of contractual control information will support evidence-based policy making and objective setting in the future around housing, ownership, control and change. As above, while we believe that greater transparency over control of land will stimulate earlier, constructive engagement between developers and communities to shape proposals that have community support, there is a risk that those so inclined will have more time to prepare objections during the planning process, potentially slowing some development. This is an inevitable consequence of a better engaged and informed community, and we anticipate these effects will cancel out in aggregate.
52. The contents of this Impact Assessment are not expected to carry any international trade and investment impacts.

## 9. Monitoring and Evaluation

53. To monitor the impact of the arrangement, we expect that HMLR will gather data on the number of submissions through metadata as a by-product of the application process. This will tell us the number and location of agreements and will provide some insight into how land is controlled through contractual control agreements. User surveys could be conducted periodically to ensure the data collected and published is meeting user needs.
54. The original objectives will have been met if the dataset which is created and published contains comprehensive, accurate and reliable data about contractual controls; which is used by developers, local authorities, and communities; and evidence shows that it has made it easier to see what land is subject to contractual controls, where, and the nature of that control.
55. The changes in the market or sector that would require the policy to be reviewed sooner include:
  - a. User benefits - Under the proposal, SMEs should be able to more easily find information about available land. If commercial or third sector Prop Tech firms do not move quickly enough to integrate the data with their systems and services, or only making these available at a cost which is prohibitive to smaller developers, public bodies, members of the public or community groups, then we will need to review the case for a publicly funded user-facing service.
  - b. Behavioural changes – significant behavioural changes in the market materialise with wider economic/financial implications, may trigger a review of the policy.