

Recognising that ownership may not be the final word when it comes to who ultimately has control over land, the Department for Levelling Up, Housing and Communities (DLUHC) has recently closed its consultation on “contractual controls on land”. The consultation relates to proposed regulations to increase transparency by creating a freely accessible dataset of developers’ rights over land. The stated objectives are to:

- Allow communities to find out more about where land is being brought forward for development
- Support developers to identify sites
- Support an understanding of where and how land is controlled
- The proposed regulations target agreements used by developers to secure and restrict the sale of land while necessary planning permissions are obtained. As these agreements fall short of outright ownership, they are not currently required to be publicly registered.

Who Will Be Affected and How

If implemented, the regulations will require a person benefitting from certain contractual controls on land (typically a developer) to instruct a conveyancer to register details of it with HM Land Registry. It is currently proposed that the requirement will apply to the following types of agreement:

Within Scope of Proposed Regulations	Beyond Scope of Proposed Regulations
Option Agreements	Agreements relating to a lease of less than seven years
Pre-Emption Agreements	Agreements relating to unregistered land
Conditional Contracts	Agreements incapable of lasting more than 12 months
Promotion Agreements	Agreements to facilitate a finance agreement or a loan agreement
	Restrictive Covenants
	Overage Agreements
	Clawback Agreements

If an agreement is within the scope of the regulations, the following details would need to be provided:

- The type of contractual control
- The parties to the agreement
- The dates the agreement will be effective from and to
- Any entitlement to extend the agreement
- Legal representatives
- The land affected by the agreement.



For agreements entered, altered or assigned after the commencement date (expected to be 6 April 2026), this information would need to be provided within 60 days. The DLUHC also propose collecting data on agreements entered within the five years prior to commencement (i.e. from 6 April 2021 – 5 April 2026) and developers would have a year from commencement to provide this information. Retrospective regulation of this nature is unusual and such a long period is potentially controversial.

Consequences for Non-compliance

Failing to provide information or knowingly or recklessly providing false information will be a criminal offence for which individuals could face up to two years imprisonment and an unlimited fine.

Additionally, provision of the required information will be necessary for HM Land Registry to accept an application to register a notice or restriction against the relevant title, as is commonly done to protect the rights.

Likely Impact If Implemented

From a commercial perspective, the regulations will allow land available for development to be more easily identified. However, the creation of an additional requirement and public register may lead to developers amending the types of agreement they enter with landowners to circumvent the regulations, in turn restricting their utility and benefit.

From a residential perspective, greater awareness of potential developments could give communities more time to prepare objections to planning permission applications. Furthermore, with the existence of such agreements more readily available to their neighbours, landowners may become more hesitant to enter contractual control agreements with developers.

Given that there is already a date for implementation, one could be forgiven for wondering exactly how genuine a consultation this is. Either way, the regulations are expected to take effect from 6 April 2026 and further guidance will be published prior to this date. In the meantime, please reach out to your usual firm contact or the individuals below if you have any questions.

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