

**THE HOME INFORMATION PACK
REGULATIONS 2007:
PROCEDURAL GUIDANCE**

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The Home Information Pack Regulations 2007: Procedural Guidance

This guidance provides a commentary on The Home Information Pack Regulations 2007 (“the Regulations”) and is intended to assist those compiling home information packs in accordance with the requirements of the Regulations.

The guidance is aimed at property professionals involved in the home buying and selling process, including solicitors, licensed conveyancers, estate agents, auctioneers, builders, property developers, surveyors, home inspectors, energy assessors, personal search companies and mortgage lenders. The guidance will also be of interest to new companies specialising in producing Home Information Packs for the market and sellers who wish to assemble their own packs.

The guidance is also relevant to local authorities and Drainage and Water Companies in their role as providers of search information. Local authorities also have an interest as housing authorities, as do housing associations. Local authorities are also responsible for the enforcement of the Home Information Pack duties, together with the Office of Fair Trading, and will be interested in this aspect of the guidance.

The guidance does not form part of the Regulations and it should be read in conjunction with them. Where a provision in the Regulations does not seem to require any explanation or comment, none is given.

Compilers of Home Information Packs and those marketing homes with Home Information Packs might also find it helpful to read the Explanatory Notes on Part 5 of the Housing Act 2004 (“the 2004 Act”). The Act and its Explanatory Notes are available from the legislation section of the Office of Public Sector Information’s (formerly Her Majesty’s Stationery Office) website:

www.opsi.gov.uk/legislation/index.htm. They are also available at www.communities.gov.uk/homeinformationpacks

Further information about the home information pack programme is available at: www.homeinformationpacks.gov.uk

PART I

CITATION, COMMENCEMENT, REVOCATION AND INTERPRETATION

Regulation 1: Citation and commencement

This provides that the Home Information Pack Regulations 2007 will come into force in England and Wales on 1st June 2007 when the duties to have a home information pack and to provide a copy to potential buyers on request (in sections 155(1) and 159(2) of the 2004 Act) are expected to be brought into force. This will happen by virtue of a commencement order to be made under section 270(6) of the 2004 Act.

Regulation 2: Revocation of the Home Information Pack Regulations 2006

This regulation revokes the Home Information Pack Regulations 2006.¹

Under section 16(1) of the Interpretation Act 1978, the revocation does not affect anything done under the Home Information Pack Regulations 2006.

Note: In the explanatory memorandum to the 2006 Regulations, the Department undertook to amend those Regulations before the coming into force of the home information pack duties on 1 June 2007. The undertaking was to make such amendments necessary, as a result of experiences during the “dry run”² of home information packs, “to address any deficiencies in their practical effect, to adjust the balance between required and authorised documents”. The 2006 Regulations are accordingly revoked and replaced by these Regulations in order to address concerns raised during the dry run, in order to give effect to the Department’s revised policies, and to add new provisions controlling access to home condition reports.

The “responsible person”

The duties to have a home information pack apply to the “responsible person” as defined by Part 5 of the 2004 Act (rather than these Regulations). The requirements to have or produce a pack occur when a property is first put on the market, or the fact that the property is on the market is made known to the public or a section of the public. The phrase “on the market” is defined in section 149 of the 2004 Act.

There are two categories of people who will be responsible where a property is on the market and therefore subject to the duties concerning the availability of home information packs – the seller of that property, or someone acting as an estate agent for the seller as defined in section 150 of the 2004 Act. Section 152 of the 2004 Act

¹ Statutory Instrument 2006 No.1503

² The “dry run” comprises both a national voluntary scheme to encourage the use of home information packs, and 8 “area trials” for which the Department is providing funding. The dry run and area trials have tested how the 2006 Regulations were implemented in practice, particularly how quickly packs can be compiled and their effect on transactions.

sets out the responsibilities that apply to estate agents and when responsibility ceases. Section 153 describes the responsibilities of sellers who market their property without an estate agent. If a seller instructs an estate agent who has a place of business in England and Wales to put his property on the market, the estate agent or agents will be considered responsible unless the seller also undertakes marketing activity themselves.

Additional duties to have a home information pack apply to estate agents; even where the property is not yet on the market, but the agent is nevertheless attempting to market the property (see section 159 of the 2004 Act).

Regulation 3: Interpretation

3(1), (2) These provisions set out the meaning of some of the expressions used in the Regulations. In some cases, where a definition is relevant to only one provision or part of the Regulations, it is defined at the point it appears. The definitions found in Part 5 of the 2004 Act apply to the Regulations by virtue of section 11 of the Interpretation Act 1978, and as such are not repeated in them. Some of those definitions can be found in sections 148 to 150 and 177 to 178 of the 2004 Act (such as the definition of “residential property”, “acting as estate agent”, “sale”, “ancillary land” and “long lease”).

Some common rules of statutory interpretation and construction can be found in the Interpretation Act 1978 which will generally apply to these Regulations (for example the use of “he” also includes “she”, and words in the singular include the plural and vice versa). Some definitions of words and expressions can also be found in Schedule 1 to the Interpretation Act 1978, such as the definition of “England” and “Wales” and the meaning of “person” (which includes a body of persons corporate or unincorporate).

The definition of “property interest”

“Property interest” is used throughout the Regulations to describe the legal interest that the seller is proposing to sell. It is distinct from references to the property itself. The legal interest will be either a freehold or a leasehold interest, (an interest in a commonhold is a type of freehold interest). Putting a residential property on the market for sale will usually attract the duty to have a home information pack and a “sale” is defined (in section 177 of the 2004 Act) by reference to various freehold or leasehold interests. “Residential property” is defined (in section 148 of the 2004 Act) as meaning “premises in England and Wales consisting of a single dwelling-house including any ancillary land”. Therefore, a home information pack will be required for each dwelling that is on the market providing that the duties in the 2004 Act apply, unless excepted under Part 6 of the Regulations.

3(3) This contains an interpretation of the term “physically complete” where used in relation to a residential property. Where there is a question as to whether a property is physically complete, one which has basic living amenities will be considered complete. This is relevant when determining whether an energy performance certificate, interim energy assessment or predicted energy assessment should be included in the pack (see the commentary on regulations 9(b), 9(c) and 9(d) below).

Regulation 4: Interpretation – first point of marketing

The first point of marketing is defined in regulation 4(1) as the point at which a duty to have a home information pack first arises. This will happen where a person becomes a “responsible person” under section 155(1) of the 2004 Act (sections 151 to 153 of the Act describe when a person becomes responsible) or where an estate agent undertakes a “qualifying action” under section 159(2) of the Act. For the purposes of this section, 'marketing' will begin when the estate agent, acting on instructions from the seller, begins letting potential buyers know about the availability of a specific property, for example telephoning a potential buyer.

However, the first point of marketing can vary in relation to the Pack or a particular document within the Pack if the provisions referred to in regulation 4(2) apply, i.e.

- Regulations 17(3), 18(3), 22(3), 23(5) and 24(3); and
- Paragraphs (3), (4) and (5) of regulation 4.

Regulations 17(3), 18(3), 22(3), 23(5) and 24(3) provide for cases where required or authorised documents are added to the Pack, or superseded by a later version, at a date later than the first point of marketing. In these cases, the date when the document is added to the Pack is treated as the first point of marketing for that particular document. This is particularly important for time sensitive documents that are subject to time limitations when marketing begins. In the case of leasehold sales, for example, paragraph 1(1)(d) of Schedule 6 requires the inclusion of the most recent requests for payment of service charges and other specified matters relating to the 12 months preceding the first point of marketing. Where these documents are added at a later date, the later date is to be treated as the first point of marketing for these purposes.

Regulation 4(3) provides that where a property is taken off the market, and then remarketed within one year, the date of the original first point of marketing is unchanged and the seller will not be under a duty to renew the Pack or any part of it. In other words, Packs do not have to be renewed if marketing stops and then restarts within a year of first being put on the market. However, even though they will not be under a duty to do so, sellers may wish to renew documents voluntarily if they are so out of date as to be of little or no use to potential buyers.

Regulation 4(4) confirms that, unless regulation 4(5) applies, where a property is remarketed more than 12 months after the original first point of marketing, a new first point of marketing is created. That date will be the date on which remarketing starts and the time sensitive contents of the Pack will need to be reassessed with this date in mind and renewed if necessary (see guidance on regulation 16).

Regulation 4(5) provides that if the property is taken off the market because the seller has accepted an offer to buy it, the first point of marketing remains the point at which

marketing originally started if the sale does not proceed (e.g. it has fallen through) and the property is put back on the market. This applies so long as the property is put back on the market within 28 days of the offer, or its acceptance, being withdrawn. The reason for this is to avoid creating a situation where sellers feel obliged to continue marketing once an offer has been accepted (in order to avoid any duty to renew time sensitive documents) and thus risk uncertainty or gazumping. Regulation 4(5) applies whether or not these events occur within 12 months of the property first being marketed.

PART 2

HOME INFORMATION PACK – GENERAL PROVISIONS

Regulation 5: Required, authorised and excluded documents

Regulation 5 provides that the pack must include documents “required” under regulation 9, and may include the documents “authorised” under regulation 10 but should not include any other documents (see guidance on regulation 13 also, which prohibits the inclusion of advertising material in packs).

The difference between “required” and “authorised” documents: compulsory and optional documents

Only documents that are prescribed as either required or authorised may be included in home information packs. Documents which are not mentioned in the Regulations should not be included.

Required documents or information must be included in all cases except in certain limited circumstances where they are unobtainable (either temporarily or permanently) and regulations 17, 18 or 21 apply. Authorised documents or information do not have to be included. However, it is strongly recommended that these documents are included where they are available and are relevant to the property and/or its sale and are likely to be of interest to a potential buyer.

Where a document which is neither required nor authorised to be included in a home information pack is provided to a potential buyer in close proximity to a pack or pack document, it must be separated and clearly distinguished from the pack or pack document. The intention behind this provision is two-fold. Firstly, to distinguish the “official” pack documents from others and to avoid consumers being confused or misled into believing that prohibited documents form part of the pack. Secondly, to ensure that consumers know the difference between pack documents and, for example, advertising or marketing information about other services that they might otherwise feel pressured to accept (see guidance on regulation 13 regarding the exclusion of information advertising or marketing goods and services). This provision does not prevent anyone from giving additional information to a potential buyer providing that the nature of it is made clear and distinct from pack documents.

Regulation 6: The home information pack

Under section 155(1) of the 2004 Act, it is the duty of a responsible person to have a home information pack which complies with the Regulations. Regulation 6 requires that the home information pack must be composed of original documents or true copies of them. “True copy” is not defined in the Regulations but it is understood that a true copy does not have to be an exact copy, but should be a copy reproduced with sufficient accuracy to enable the copy to be understood and the meaning of the document to be unaffected. In the case of a map, plan or drawing in which colours

mark boundaries or other features, for example, those colours must be reproduced accurately (e.g. a green colour used in the original must be identifiable as green in the copy) but some variation in colour tone is acceptable, provided this does not affect the comprehension of the document. This should allow for variability in the reproduction of colours by photocopying machines and printers etc. Similarly, enlarged or reduced copies of documents (for example an A4 copy of an A3 document) are acceptable so long as they are clear and legible and the meaning is unaffected by the enlargement or reduction.

There is no requirement to supply the original home information pack or pack document to a potential buyer under these Regulations or the 2004 Act. Instead, section 156(1) of the 2004 Act provides that copies of the pack or pack documents must be provided to a potential buyer on request (see also the commentary on regulation 7 below).

Regulation 7: Copies of a home information pack

This regulation requires that the copies of a pack or pack document which must be provided to a potential buyer (or an officer of an enforcement authority under section 167 of the 2004 Act) must be a “true copy” of the pack or pack document (see guidance on regulation 6 above regarding “true copy”. A copy can do no more than replicate the original and there is no requirement for a copy to improve the clarity of the original.

Under regulation 9 (see the commentary below), official copies of certain documents held by the Land Registry must be included in the home information pack. Regulation 7 allows the official copies to be copied, but also allows further official copies to be obtained and included in a “copy” pack. See also the commentary on regulation 9(f) below on “Relying on official copies”.

Under section 156(8) of the 2004 Act, a responsible person (as defined by the Act) must provide a potential buyer with a copy of the pack on request and may charge a reasonable sum for the cost of making a paper copy and sending it to a potential buyer. The 2004 Act does not define “reasonable” but they must bear a reasonable relationship to the cost of copying or posting. Therefore, a profit should not be made by virtue of charges made under this provision.

It is expected that copies of packs will often be provided electronically where the potential buyer consents to receiving it in that form (see section 156(11) of the 2004 Act). There is no provision in the 2004 Act for charging for electronic copies of pack documents. In the absence of any specific power to charge for electronic copies, we understand that to mean that potential buyers cannot be charged for a copy of the Pack that is provided in this format (on a cd, dvd or memory key, for example).

Regulation 8: Comprehension of documents

8(1) and (2) - provide that the information contained in copies of the documents included in packs must be legible and clear. However, if despite all reasonable efforts

and enquiries, the only available version of a document is illegible or unclear, this may be included. This exception only applies to the following documents however:

- those documents being relied upon to deduce title to unregistered properties and required under regulation 9(g)(ii);
- official copies of documents referred to in the individual register kept by Land Registry (e.g. historic conveyances) and authorised for inclusion under regulation 10(j);
- commonhold and leasehold information (e.g. leases or regulations made by a landlord or requests for service charges) that is required or authorised for inclusion under regulations 9(h), 9(i), 10(k) and 10(l).

8(3) – If the property is situated in England the information set out in the documents must be in English. If the property is in Wales (wholly or partially), the information may be provided in English or Welsh or a combination of both languages. This does not prevent information being provided in addition, in other languages (see guidance on regulation 10(e) below). **These provisions do not authorise any unlawful act of discrimination and do not confer any authority to refuse to provide a pack or sell a residential property to those who only speak a particular language.**

See also the commentary on regulation 10(f) below, which allows packs to include additional versions of pack documents in alternative forms, such as Braille or large print.

PART 3

CONTENTS OF HOME INFORMATION PACKS

Home information pack forms

Suggested standard forms for use in providing certain required and authorised documents and information in home information packs are available at www.homeinformationpack.gov.uk/industry/. These are:

Home information pack index form – see guidance on regulation 9(a) below

Interim Energy Assessment – see guidance on regulation 9(c) below

Predicted Energy Assessment – see guidance on regulation 9(d) below

Sale statement form – see guidance on regulation 9(e) below

Home contents form and Home use form – The home contents form sets out whether the seller intends to take with them certain fixtures and fittings at the property, or whether they could be included as part of the sale. The home use form covers additional information dealing with the seller’s knowledge of the recent use of the property. Such information would normally be requested as part of the conveyancing process so inclusion of these forms should reduce the transaction time.

Forms with a similar purpose are used under the Law Society “TransAction” scheme and these forms may also be included in the Pack if the seller prefers.

No forms have been prescribed or suggested for any property searches, but Schedule 8 and Schedule 9 set out the required content of local enquiries and drainage and water enquiries. See also guidance on regulations 9(k)-(m), 10(m)-(o) and Schedule 7.

Regulation 9: Required pack documents

9(a) – a home information pack index. This should list all documents contained in the pack. It provides a helpful checklist for sellers, estate agents and enforcement authorities to ensure that no required documents are missing from the pack. The index has to comply with Schedule 1 to the Regulations. Paragraph 2 of Schedule 1 provides that the index may also indicate, for example by document and page numbering, where particular documents can be found in the pack.

In circumstances where certain documents required to be included in the pack are unavailable or unobtainable and regulations 17, 18 or 21 apply, the index must indicate that the document is missing from the pack and the reason it is missing and also, if the document is unavailable, indicate what steps are being taken to obtain it for insertion into the pack. Paragraph 1(c) of Schedule 1 (described further below)

requires that if documents are later added to or removed from the pack, the index must be revised or amended accordingly.

The suggested form for a home information pack index is available at www.homeinformationpack.gov.uk/industry/. However, if the requirements described above are met, the index may take another form.

9(b) Energy performance certificate and recommendation report – The Energy Performance Certificate (EPC) provides a rating of both the energy efficiency and environmental impact of a building on a scale from A-G (where A is the most efficient and G the least efficient) in graphical format. It also includes recommended measures to improve the energy performance of the building. The content of certificates and arrangements under which they must be made are prescribed in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007³.

EPCs may either be produced by an Energy Assessor or Home Inspector who has been accredited under a scheme approved by the Secretary of State. The Energy Performance of Buildings regulations require that the recommendations are always produced with the Certificate.

The purpose of the energy performance certificate is to provide consumers with information about the energy efficiency of the property and ways that this can be improved.

The certificate should be prepared using a Government approved methodology to be specified in the implementing legislation; for the majority of existing homes, the methodology will be “Reduced Data Standard Assessment Procedure” (RdSAP). For new build homes the methodology will be Standard Assessment Procedure (SAP) and for larger (over 450 square metres) or more unusual homes the alternative methodology Simplified Building Energy Model (SBEM) may be used.

Details of these methods are available online at:

- <http://projects.bre.co.uk/sap2005/> (see appendix S of the SAP 2005 specification for RdSAP)
- <http://www.fao.org.uk/documents/RdSAPversion1.pdf> (for RdSAP)
- <http://www.ncm.bre.co.uk/> (for SBEM)

The energy rating of the home is likely to be calculated by computer software from data collected at the property by the Home Inspector or Energy Assessor, following the procedures prescribed in the appropriate methodology.

Where a home condition report is also provided, much of this data required for the certificate would already have been collected by the Home Inspector when preparing the report and only a limited further inspection would be needed to calculate the energy rating.

³ Statutory Instrument 2007 No. 991.

9(c) Interim energy assessment – Part L of the Building Regulations 2000, as amended in 2006, considers the aggregate performance of a building rather than specifying standards for each component of the building. As a result of this increased flexibility, the calculation method (RdSAP) that is used for full EPCs is not able to produce an accurate enough certificate for new homes on sale that have been completed under Part L (2006).

This situation is being rectified to enable production of full EPCs for such properties with effect from 1 October 2007. In the meantime it is important that all potential buyers have information about the energy efficiency of their prospective property from 1 June.

Therefore, for an interim period, these homes will require an “Interim energy assessment” that is derived from the SAP rating determined when the home was constructed. The interim energy assessment should not require a visual inspection of the property.

Where the property is still on the market at 1 October 2007, a full Energy Performance Certificate should be added to the Pack and the “interim energy assessment” removed (see commentary on regulation 23 below).

More detail on the content of an interim energy assessment is available in Schedule 2.

9(d) Predicted energy assessment – Predicted energy assessments are for homes that are not yet built. It is not possible to produce a final energy assessment on a home that has not been completed because its energy rating will depend on the final construction details of the property. While this should remain as designed, it is often the case that minor changes occur during construction.

Where the property is still on the market at the point it becomes physically complete, a full Energy Performance Certificate or interim energy assessment should be added to the Pack and the predicted energy assessment removed (see commentary on regulation 23 below).

Schedule 3 contains more detail on the content of a predicted energy assessment.

9(e) – a sale statement. This will provide a brief summary of the nature of the interest in the property being offered for sale. This statement has to comply with Schedule 4 to the Regulations and include matters such as the address, the nature of the legal interest being sold, whether the property is registered or unregistered, the name of the seller and whether the property is being sold with vacant possession (see also guidance on regulation 9(j)).

The suggested form for a sale statement is available at www.homeinformationpack.gov.uk/industry/. However, if the requirements described above are met, the sale statement may take another form.

9(f) – the documents described in this regulation and in regulation 9(g) are required to provide satisfactory evidence of title to the property. Regulation 9(f) lists official copies, available on application from Land Registry, which must be included in the pack where the whole or part of the property interest is registered with Land Registry. These documents provide an up to date official record of who owns the land, so no further evidence of title should be needed. These documents should comprise:

- official copies of the “individual register” (made up of a property register, proprietorship register and typically a charges register); and
- an official copy of the title plan.

In the case of a commonhold interest, official copies of the register and title plan should be produced for both the unit and common parts (see the guidance on regulation 9(h) below for further guidance on commonhold land).

There may be other documents referred to and dated in the individual register (for example, the grant of a right of way) and in some instances these documents are summarised or extracted in the register. If a potential buyer has concerns about the implications of such documents, it is often possible to apply to Land Registry for official copies of the documents referred to (known as “filed copies”). Alternatively, he or she can seek professional advice.

A seller can choose to include such documents in the home information pack (see the guidance on regulation 10(g) below) and are strongly recommended to do so as a buyer’s conveyancer is likely to need them, and this will therefore save time.

Relying on official copies

The right to rely on official copies is found in the Land Registration Act 2002. Under section 67(1) and (2) of that Act, a Land Registry official copy has the same legal effect as an original and a person who relies on an official copy in which there is a mistake is not liable for loss suffered by another person by reason of the mistake. Paragraph 1(d) of Schedule 8 of the Land Registration Act 2002 entitles a person to be indemnified by the Chief Land Registrar if he suffers a loss resulting from a mistake in an official copy.

Land Registry official copies were previously known as “office copies”. There is no statutory definition in the Land Registration Act 2002 of “official copy”. In practice, a hard copy of an official copy is one prepared by Land Registry on watermarked paper or a printed version of an electronic official copy (providing that the electronic file has not been modified or corrupted). It is generally considered that a photocopy of an official copy is not an official copy itself. For more information on official copies and how to apply for them, see Land Registry Practice Guide 11⁴.

Copies of the register are Crown copyright. Land Registry permits copies to be reproduced for the benefit of potential purchasers and other relevant parties as part of the home information pack duties, but this permission does not extend to any other purpose.

⁴ Available at <http://www.landregistry.gov.uk/assets/library/documents/lrpg011.pdf>.

9(g) – this regulation applies to unregistered land, that is, where the property interest or part of it is not registered with Land Registry and where therefore the title to the estate, including its past history, needs to be examined in order to deduce title. In such cases, the documents required to be included in the pack are a copy of a certificate of an official search of the index map (this is obtained from Land Registry) and of such other documents as the seller intends to rely on to provide evidence of his or her title to the property and hence their right to sell it. These documents would normally comprise a bundle of title documents held by the seller or by the seller’s lender or solicitor. Usually, there are two ways of deducing title to unregistered land:

1. A “good root of title” together with an “abstract” of title. A good root of title will be a document at least 15 years old which records a transaction with the entire legal and equitable estate in the property, and which does not reveal any potential problems with the title or raise any suspicions about its validity. An “abstract” of title will be a record of every transaction affecting the property dated after the good root of title and summaries of all the documents; or
2. A good root of title together with an “epitome” of title (effectively an index) and full copies of every subsequent transaction.

9(h) – this regulation applies where the property is or includes land registered at Land Registry as a freehold estate in commonhold land. By its nature, a freehold estate in commonhold land does not exist unless its title is registered at Land Registry, so there can be no such interest in unregistered land. Commonhold is a form of freehold ownership, created by the Commonhold and Leasehold Reform Act 2002, which provides a framework for freehold ownership of a part of a multi-occupied development (for example, a flat in a block of flats). Individual title is held in a “unit” and title to the common parts is held by a commonhold association which is a company limited by guarantee. The commonhold community statement sets out the rights and obligations of unit-holders and the commonhold association. The Commonhold Regulations 2004⁵ provide for a model commonhold community statement to be used.

See guidance on **Schedule 5** below which deals with all the additional documents required or authorised to be included in a home information pack for commonhold property interests.

9(i) – this regulation applies where the interest in the property being offered for sale, or any part of it, is leasehold.

See guidance on **Schedule 6** below which deals with all the additional documents required or authorised to be included in a home information pack for leasehold property interests.

9(j) – A home information pack is not required where all or part of the property is not being offered for sale with vacant possession under section 160 of the 2004 Act. However, this is subject to section 171(2) of the 2004 Act which provides that where two or more dwellings in a sub-divided building that was built as a single dwelling are marketed for sale as a single property and at least one of those dwellings is available

⁵ Statutory Instrument No. 2004/1829.

with vacant possession, a home information pack is still required notwithstanding that some element of the single property is not available with vacant possession.

An example would be a house with a “granny flat” where the flat is let separately from the remainder of the house, but where the freehold interest to the house and flat are sold together in order to preserve the integrity of the property as a whole. In such circumstances, this regulation requires that the pack must include a copy of the leases and/or tenancies to which the property is, or is expected to be, subject after the sale has been completed (see guidance on Part 6 for more detail on exceptions to the requirement to provide a home information pack).

9(k) - This requires a home information pack to include a search report that records the results of a search of the local land charges register that relates to the property being sold. The search report may be an “official search certificate” (found in Form C of Schedule 1 to the Local Land Charges Rules 1977) or a report recording the results of a “personal search” under the Local Land Charges Act 1975. In the case of a report recording the results of a personal search, the search report must comply with the general conditions on searches described in Parts 1 and 2 of Schedule 7 to these Regulations.

9(l) - a search report that records the results of a search of records that are either held by or derived from a local authority and which complies with Schedules 7 and 8. Schedule 8 specifies the enquiries that must be included in a search report recording the result of “local enquiries” as they are known in the Regulations. Schedule 7 sets out general provisions on searches and search reports and the responses to local enquiries must be included under this Schedule.

9(m) - a search report relating to drainage and water matters which complies with Schedules 7 and 9. Schedule 7 sets out general provision on searches and search reports. Schedule 9 specifies the enquiries, responses and information that must be included in a search report recording the result of these “drainage and water enquiries”.

Searches - CON 29 Part 1 and Con 29 DW

The local enquiries and drainage and water enquiries set out in Parts 2 of Schedules 8 and 9 are based on the 2002 editions of The Law Society of England and Wales forms “CON 29 Part 1 Standard Enquiries of Local Authority” and “CON 29 DW Standard Drainage and Water Enquiries”. Both those forms are commonly used by conveyancing solicitors.

The CON 29 Part 1 has been adapted slightly to produce the local enquiries in Part 2 of Schedule 8. The CON 29 DW has been adapted to produce the drainage and water enquiries in Part 2 of Schedule 9 with the addition of model responses.

The CON 29 Part 1, CON 29 DW and model responses to CON 29 DW are reproduced and adapted in the Regulations with the knowledge and permission of The Law Society of England and Wales. Although any adaptations are not material to the effect, it is anticipated that The Law Society of England and Wales will re-issue the

CON 29 Part 1 and CON 29 DW to fully comply with Regulations so that they may be included in a home information pack.

Regulation 10: Authorised pack documents

The Regulations prescribe documents which are authorised to be included in home information packs.

Authorised documents contain information that is likely to be of particular interest to potential buyers, but which at this time is not considered to be information which should be compulsory in every case. This may be for a variety of reasons - for example, because the information is not always readily available in a reliable, easily understood and cost-effective form; because products providing the information are relatively new and as yet are not fully tested; because the information is not relevant to all home sales; because the information is provided as part of the present process on a discretionary basis; or because the information, while required at a later stage of the transaction process, is not key to the initial decisions that sellers and buyers need to make.

Authorised documents and information do not have to be provided in home information packs. However, it is strongly recommended that these documents are included in the pack where they are relevant to the property and/or its sale and are likely to be of interest to potential buyers. In particular, it is strongly recommended that a home condition report, home contents and home use information are included.

Including a home condition report in a Pack is likely to ensure that sales are not delayed as a result of condition related problems coming to light later on in the sale.

Home contents and home use forms are available at www.homeinformationpack.gov.uk/industry/. See also the section above, "Home information pack forms".

Authorised documents or information may be added to the pack at any time (see guidance on regulation 15), but it is recommended that where available they are included from the outset. This is important because failure to include in the pack authorised documents where they are relevant could delay the sale of the property and prevent the seller or potential buyer achieving the full benefits the home information pack.

Under regulation 10, the home information pack may include documents consisting of or containing the information specified. Authorised information may therefore be added to required documents included under regulation 9.

10(a) – A home condition report. This is a report providing important information on the physical condition of the property on which the buyer, seller and mortgage lender have a right to rely. The guidance on Schedule 10 gives further details about home condition reports, but in summary, they will be the equivalent of current mid-

range surveys and may only be completed by a person (a “Home Inspector”) who is a member of an approved certification scheme. The role of a certification scheme is to ensure that Home Inspectors are fit and proper persons who are properly qualified and insured to produce home condition reports (see guidance on Part 8 for more information).

Home Inspectors work in a variety of ways, varying from sole traders to employees of substantial corporate enterprises. However, all Home Inspectors will be individual members of a certification scheme and must follow its rules and requirements. Although consumers may directly contact the Home Inspector to obtain a home condition report it is likely that, in many cases, estate agents or other providers of home information packs will engage the Home Inspector on the consumer’s behalf.

The cost of providing the home condition report is not prescribed and will be determined by the market, with regard to such matters as the length and complexity of the task for a particular property. The amount and timing of payment of Home Inspectors’ fees will be a matter for the contract under which they are engaged, although as described in the guidance on Schedule 10 below, the Regulations prescribe certain minimum terms for the contract under which a home condition report is prepared.

10(b) – If a home condition report is obtained, the seller may choose to undertake works to remedy any defects identified in the report. This regulation allows the seller to include in the home information pack documentary evidence of any such work that has been done subsequently, such as receipts or guarantees.

10(c) – This regulation allows the seller to include in the pack any warranties, insurance policies or guarantees relating to the property’s design, building, completion or conversion. An example would be a new homes warranty typically offered by a builder or developer on the sale of a brand-new home.

10(d) – This allows the inclusion of information concerning the design or standards to which the property is or will be built.

As with required documents, authorised documents included in home information packs must be in English where the property is in England and in English and/or Welsh where the property is in Wales. **Regulation 10(e)** provides that, in addition, home information packs may include an accurate translation in any language of any document required or authorised by the Regulations, and **10(f)** authorises the inclusion of additional versions of pack documents in other formats such as Braille or large print.

Other documents and information authorised to be included in home information packs are prescribed in regulation 10(g) to (p) and Schedules 5, 6 and 7 to the Regulations. These are:

10(g) – A summary or explanation of any pack document.

10(h) – Information identifying the property, for example a map, plan or drawing.

10(i) – Information about the source or supply of any pack document (e.g. company logos, names and addresses), and redress procedures relating to pack documents and information. This will help provide information to consumers about who provided documents and to whom they should direct any complaints or requests for redress.

10(j) – Allows people to include extra title information obtained from Land Registry in the form of official copies of documents referred to in the individual register (also known as “filed copies”, see the guidance on regulation 8(e) above).

10(k) – This applies where the property is or includes a freehold estate in commonhold land. See guidance on **Schedule 5** below which deals with all the additional documents required or authorised to be included in a home information pack for commonhold property interests.

10(l) – This applies where the property is leasehold. See guidance on **Schedule 6** below which deals with all the additional documents required or authorised to be included in a home information pack for leasehold property interests.

10(m) - This authorises the inclusion in the home information pack of searches that relate to the property being sold. These searches are not required to be included in the home information pack, but sellers may consider it advantageous to include them where appropriate. It is standard practice to obtain a mining search in areas where coal mining has taken place for example, and sellers will save time if they provide this in the pack. All these authorised search reports must comply with the general conditions on searches described in Part 1 of Schedule 7 of these Regulations. The regulation specifies the matters that may be covered in an authorised search. These are searches:

- Relating to records held by or obtained from a local authority and dealing with matters other than those contained in a search report required by regulation 9(1);
e.g. Supplementary enquiries on matters not covered by the “local enquiries” described in Schedule 8 are sometimes made of local authorities using the Law Society form CON 29 Part 2 (Optional enquiries of Local Authority).
- Relating to common land;
e.g. A “commons registration search” is often made where a residential property is near to land which is common land or a town or village green. It has been agreed that this particular search enquiry will be added to the Law Society form CON.29 Part 2 (Optional enquiries of Local Authority).
- Relating to rights of access to, over or affecting the property interest;
e.g. The “optional enquiries form” referred to above includes a question on rights of way. This information is often requested by buyer’s conveyancers, particularly in rural areas.
- Relating to ground stability, the effects of mining or extractions, or the effects of natural subsidence;
e.g. A coal mining search will indicate whether the property is in the vicinity of workings and similar reports are available covering other mining activities such as Tin (affecting Cornwall, Devon and parts of Somerset), Salt (Cheshire), Limestone (West Midlands), China Clay (Devon, Dorset and Cornwall). The British Geological Survey produce a report on natural

subsidence and they have now cooperated with the Coal Authority and others in the production of a new search covering a range of ground stability matters.

- Relating to actual or potential environmental hazards, including the risks of flooding or contamination from radon gas or any other substance.
e.g. The Environment Agency and others provide search reports that include information on flood risk, proximity to landfill sites, industrial processes, radioactive materials etc. Commercially available environmental reports provide a view on whether land is potentially contaminated and might require further investigation. Information on whether the property is within an area known to be affected by Radon should be included in the Local Enquiries (see commentaries on regulation 9(l) and Schedule 8). There are also commercially available radon gas reports on the market.
- Relating to telecommunications services;
e.g. Telecommunication companies provide search reports on matters affecting the property. These include the existence of wayleaves and services that are connected to the property.
- Relating to utility services;
e.g. Electricity companies provide search reports on wayleaves, electricity equipment, electricity supply and other matters affecting the property. Gas companies provide information on the location of pipes etc. and whether the property can be connected to the gas supply.
- Relating to the potential or actual effects of transport services, including roads, waterways, trams and underground or over-ground railways;
e.g. The Highways Agency, Port of London Authority, London Transport and others provide search reports on matters affecting transport infrastructure that may be of interest to home buyers.
- Relating to liabilities to repair or maintain buildings or land outside the property interest;
e.g. A Chancel Repair search will reveal whether there is a liability to contribute towards repairs at the local parish church.
- Relating to information about any other matter connected with the property that would be of interest to its potential buyers;
e.g. Search reports on other relevant matters not specified here may be included in the home information pack provided they comply with the general conditions described in Schedule 8.

10(n) - This authorises a home information pack to include a search report that relates to other land or property in the vicinity of the property provided it is of a type that is either required or authorised to be included for the property itself. A person selling a house in a rural or sea-front location with a desirable view, for example, might want to show that there are no plans to develop adjacent land.

10(o) - This authorises a home information pack to include a document that is referred to in a search report (e.g. a map).

10(p) - This authorises a home information pack to include additional matters specified in Schedule 11 (see also the guidance on that Schedule). In particular, these provisions authorise the inclusion of the suggested home contents and home use

standard forms (available at www.homeinformationpack.gov.uk/industry/) or similar forms. See also the section above, “Home information pack forms”.

Regulation 11: Creation of interests

11– Under section 177(2) of the 2004 Act, the definition of a “sale” of a property for the purposes of the Act (and consequently the Regulations) includes a reference to the creation of interests. This regulation applies in these circumstances: that is, where the sale involves a leasehold or commonhold interest that has yet to be registered as such at Land Registry, would create a new commonhold or leasehold property interest for example, where a commonhold interest is being sold “off-plan” but the legal interest is yet to be registered with Land Registry, or for example a new leasehold interest is to be created by the proposed sale of a newly created flat within a freehold property. The purpose of this regulation is to ensure that, where appropriate, the documents included in the pack provide appropriate information about the new property interest being offered for sale, notwithstanding that the interest has not yet been legally registered or created.

In particular, regulation 11 provides that where a commonhold or leasehold interest has not been registered or created at the first point of marketing, the following applies:

- **sale statement** - this must be completed as if the interest has been registered or created;
- **evidence of title** – where the property interest has not yet been created, it will not be possible to prove evidence of title to that interest. Consequently, title should be proved for the interests from which the new interest is being created. If the pre-existing title is registered, official copies and the title plan should be produced, and if the pre-existing title is unregistered, an index map search and the other documents deducing title (see the guidance to regulation 9(f) and (g) above);
- **authorised information** – the provisions of Schedules 5 and 6 that deal with authorised information should be read as if they relate to the commonhold or leasehold interests to be registered or created.
- **other required information** – specific provision is made in paragraphs 4 of Schedules 5 and 6 requiring particular documents for the commonhold or leasehold interests not yet registered or created. These documents deal with the arrangements under which the interest is expected to be registered or created (see further the guidance on those Schedules).

Regulation 12: Prohibitions relating to home condition reports

12(1) – Home condition reports must not be included in the home information pack if they are not prepared for the sale by the particular seller currently selling. This means, for example, reports prepared on behalf of a former seller or his estate agent are prohibited from being included. The reason for this prohibition is that a Home Inspector’s professional indemnity insurance is unlikely to cover subsequent transactions. If a potential buyer were to see a copy of such a report which was inaccurate, and relied on it to their detriment, it is unlikely that redress would be readily available. However, insurance and redress that is free at the point of use will

be available in respect of any inaccuracies in reports prepared for or on behalf of the current seller. Third parties have rights in relation to home condition reports (see further the guidance on Schedule 10, paragraph 3 below).

11(2) – This regulation determines that only documents complying with the terms in Schedule 10 may be referred to as home condition reports. This assures consumers that the report in their pack is authentic, and of a high standard (i.e. prepared by a member of an approved certification scheme).

Regulation 13: Exclusion of advertising information

Regulation 13 reinforces Regulation 5(2) (which requires that a pack must not include any other document or information other than that which is required or authorised under regulations 9 and 10) by specifically providing that advertising information must not be included in the pack by the responsible person at his request or with his permission. This is to ensure that consumers receive only official, objective information as part of the pack, and do not receive advertising or marketing information about services that they might believe are officially endorsed, or feel pressured to accept.

13(2) clarifies what would be considered as advertising information; it does not include information advertising goods and services that already forms part of a required or authorised document. The intention is not to require pre-existing information to be “blacked out”, for example.

PART 4

ASSEMBLY OF HOME INFORMATION PACKS

Regulation 14: Order of Pack Documents

This regulation deals with the order in which documents are to be presented when a copy of the Pack is provided to a potential buyer under 156 or 167 of the Housing Act 2004. The index should be the first document in the Pack and this should be followed by the energy information required by regulation 9(b), 9(c) or 9(d). The remaining documents can be presented in any order that the seller wishes.

This regulation does not deal with the order of pack documents where the pack or copies of the pack are stored and not provided to a potential buyer.

Government policy is that information on energy efficiency should be given special prominence in the Pack. This is intended to encourage potential buyers to pay special attention to the energy performance of the property both in their buying decisions and once they have become owners and are considering what improvements to make.

As part of the Government drive to increase consumer awareness of energy efficiency, regulation 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 requires energy performance information to be included in any written particulars of the home being sold. This applies to estate agents written particulars and those prepared by private sellers.

Regulation 15: Time at which pack documents are to be included

15(1) – This regulation provides that the following documents that are required to be included in the HIP under regulation 9 must be in the pack when marketing begins unless the provisions of regulation 17, 18 or 21 apply (see guidance on these regulations for further information). The relevant documents are:

- Regulation 9(a) - home information pack index;
- Regulation 9(b) - energy performance certificate and recommendation report;
- Regulation 9(c) - interim energy assessment;
- Regulation 9(d) - predicted energy assessment;
- Regulation 9(e) - sale statement;
- Regulation 9(f) - evidence of title for registered estates; and
- Regulation 9(g)(i) - official search of the index map for unregistered properties.

15(2) – This regulation applies to the remaining documents that are required to be included in the HIP under regulation 9. The regulation provides that these documents

may be added within 28 days of marketing beginning. This applies where the conditions set out in regulation 18(2) are met and where regulation 21 does not apply (see below for guidance on these regulations). The documents are:

- Regulation 9(g)(ii) - for unregistered properties, the documents on which the seller is relying on to demonstrate title for the purposes of the sale (Note - regulation 9(g)(i) provides that the HIP must include a certificate of an official search of the index map for these sales);
- Regulation 9(h) – for commonhold sales, the documents described in Schedule 5;
- Regulation 9(i) – for leasehold sales, the documents described in Schedule 6;
- Regulation 9(j) – if the property is one to which section 171(2) of the Housing Act 2004 applies, any relevant leases or licences which will apply following completion of the sale (see guidance on 9(j) above);
- Regulation 9(k) – a search report which records the results of a search of the local land charges register;
- Regulation 9(l) – a search report which records the results of a search of local authority records (local enquiries) and which complies with Schedules 7 and 8; and
- Regulation 9(m) – a drainage and water search that complies with Schedules 7 and 9.

15(3) – This regulation provides that documents which are authorised for inclusion under regulation 10 may be included in the pack at any time, i.e. before or during marketing.

Note - when documents are added or removed from the pack or there is a delay in obtaining documents, the index must be updated or annotated accordingly (the guidance on paragraph 1(b) of Schedule 1 described these requirements further). This applies to required and authorised documents.

Regulation 16: Age of pack documents when first included

16(1) – Certain pack documents must be dated no earlier than three months preceding the first point of marketing, in order that potential buyers have recent and accurate information on which to make their decisions. The guidance on regulation 4 describes when a further first point of marketing arises. The relevant documents are:

16(1)(a) – Official Land Registry copies of:

- the individual register and title plan (required under regulation 9(f));
- for commonhold properties, the individual register and title plan of the common parts and the commonhold community statement (required under regulation 9(h) and paragraph 1(a) of Schedule 6);
- for leasehold properties, the lease (under regulation 9(i) and paragraph 1(1)(a) of Schedule 6, this may be an official Land Registry copy of the lease, the original or a copy of the original or an edited summary if that is all that is available).

16(1)(b) – energy performance certificate and recommendation report (required under regulation 9(b);

16(1)(c) – interim energy assessment (required under regulation 9(c) for newly built homes marketed until 16th September 2007);

16(1)(d) – predicted energy assessment (required under regulation 9(d) for new homes marketed before they are physically complete);

16(1)(e) – A certificate of an official search of the index map (required under regulation 9(g)(i) for sales of unregistered land).

16(1)(f) – a search of the local land charges register (required under regulation 9(k));

16(1)(g) – local enquiries (required under regulation 9(l));

16(1)(h) – drainage and water enquiries (required under regulation 9(k));

16(2) – All other pack documents may be more than three months old at the time marketing begins. However, they must be the most recent versions of these documents.

16(3) – For the avoidance of doubt, this provision requires that any separate amendments to documents must be included in the pack if those amendments were made before the pack was first compiled.

Regulation 17: Energy information unobtainable before the first point of marketing

The energy performance information required under regulation 9(b), 9(c) or 9(d) should be included in the Pack when marketing begins and is dealt with under regulation 15(2) and regulation 18 (documents required within 28 days of marketing). However, this regulation recognises that there will be cases where energy information is obtainable but where, despite all reasonable efforts of the responsible person, they cannot be obtained within a reasonable timescale. Examples of such circumstances would be where the document has been produced but mislaid, or the property is of unusual construction and a Domestic Energy Assessor or Home Inspector with the necessary skills and knowledge cannot be engaged within a reasonable timescale. This regulation describes the circumstances in which marketing can take place with a pack that does not include these documents

The regulation does not apply where regulation 21 applies i.e. the documents are completely unobtainable

17(1) provides that the regulation applies to the following documents:

- energy performance certificate and recommendation report (required under regulation 9(b);
- interim energy assessment (required under regulation 9(c) for newly built homes until 16 September 2007);
- predicted energy assessment (required under regulation 9(d) for new homes marketed before they are physically complete).

17(2) provides that where despite all the reasonable efforts of the seller or any person acting as estate agent for the seller, any of the documents listed above cannot be obtained within a reasonable timescale, a home information pack complies with the

Regulations without that document being included in the pack. This is subject to certain conditions, however, as follows:

- the first point of marketing must occur no earlier than 14 days after the date on which the request for the document is delivered. Regulation 20 describes how this date is established. In practice, this means, that the responsible person must wait at least 14 days for the document requested to arrive before marketing activity can be initiated.
- the responsible person (the seller or any person acting as estate agent for the seller) must have done, and continue to do, everything that could reasonably be expected of them to obtain the document and, in particular, to obtain it within 28 days of the date when marketing began (“all reasonable efforts” would include following up requests and, where necessary and possible, seeking to obtain the document from an alternative source).
- that the document is included in the Pack as soon as possible once it is obtained; and
- documentary evidence that the missing information has been requested and which complies with regulation 19(2) is included in the Pack.

17(3) provides that where a document is added to the pack later in the marketing process, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned. This will be relevant for time sensitive documents such as the energy performance certificate and recommendation report which are subject to age limitations when marketing begins.

Note: Regulation 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 requires energy performance information to be included in any written particulars of the home being sold. This applies to estate agents written particulars and those prepared by private sellers. This prevents marketing activity taking place that involves the use of written particulars. The phrase “written particulars is defined in Regulation 6 as any written description of the property which includes at least two of the following-

- a photograph of the building or any room in the building;
- a floor plan of the building; or
- a description of the size of the rooms in the building,

Regulation 18: Documents required within 28 days of the first point of marketing

This regulation applies to the required documents specified in regulation 15(2), except where the document is completely unobtainable (see guidance on regulation 21). The documents in question are documents deducing title to unregistered land, searches and documents relating to leasehold and commonhold sales. The regulation is intended to deal with any delays some sellers may have in obtaining these documents although it is strongly encouraged that these documents are included at the outset wherever possible.

The regulation sets out the conditions that must be satisfied in order for an incomplete Pack to satisfy the requirements of these regulations. The conditions are as follows:

- the document must have been requested before the first point of marketing. (Regulation 18(2)(a)). Regulation 20 describes how the delivery date is established;
- the responsible person (the seller or any person acting as estate agent for the seller) must have reasonable grounds to believe that the document will be obtained within 28 days of first marketing. Such grounds could include, if a specialist “pack provider” company is used, a guarantee by the provider of a 28 day maximum delivery time. The responsible person must also use all reasonable efforts to make sure that it is obtained by then. (Regulation 18(2)(b)).
- The period of 28 days should be regarded as a maximum, and where it is reasonable to expect the document to be delivered earlier then all reasonable efforts should be made to achieve this (“all reasonable efforts” would include following up requests and, where necessary and possible, seeking to obtain the document from an alternative source) (Regulation 18(2)(c)).
- where, despite all reasonable efforts, the document has not been obtained within 28 days, the responsible person continues to use all reasonable efforts to obtain it (Regulation 18(2)(d));
- that the home information pack index required under Regulation 9(a) is updated to show progress on the actions being taken to obtain the missing documents (Regulation 18(2)(e));
- that the document is included in the Pack as soon as possible once it is obtained (Regulation 18(2)(f)); and
- that proof that the document has been requested is included in the Pack. Regulation 19(2) describes what is acceptable proof in this respect (Regulation 18(2)(g)).

Regulation 18(3) provides that where a document is added to the pack later in the marketing process, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned. This will be relevant for time sensitive document such as searches which are subject to age limitations when marketing begins.

Note: This regulation is intended as a transitional measure and will be reviewed by December 2007.

Regulation 19: Requests for documents under this Part

Regulation 19(1) provides that the request for a document must have been properly addressed to a person who usually provides or is likely to provide such a document (for example, to a Home Inspector or domestic energy assessor in the case of an Energy Performance Certificate and recommendations); and the request must have been made in such form, and containing the information and payment, or an undertaking to make the payment, as is usually necessary to obtain that document from that source.

Regulations 17 and 18 require that in certain circumstances, proof that a document has been requested must be included in the Pack. Regulation 19(2) sets out what is acceptable proof. This is a written statement which names the documents that have been requested together with:

- the date on which the request was delivered (see guidance on regulation 20);
- the name of the person to whom the request was delivered;
- the date on which it is expected that the document will be delivered (see further the guidance on regulations 17 and 18); and
- confirmation that the request complied with regulation 19(1) (see above).

Regulation 20: Delivery of documents under this Part

This regulation supplements regulations 17(2)(a) and 8(2)(a) by describing how the date on which a request for a document is delivered is established. This is important as this date could be relevant for enforcement purposes if there are disputes about whether packs comply with the regulations at a particular time.

20(1) provides that the day a request for a document is delivered will depend on the method of delivery, as described in sub-paragraphs (a) to (e). Where a document is served personally or left at an intended recipient's address, the day of delivery is that day. However, where the request is sent by post, it should be presumed to be the day it would be delivered in the ordinary course of post [*Note: this is currently not less than one day if sent by first class post and not less than two days if sent by second class post*], unless it can be proved to have been delivered sooner. Where a document exchange is used, it should be presumed to be the second day after it has been left at the document exchange of the sender, unless it can be proved to have been delivered sooner. Where sent by fax or electronic communication, it should be presumed to be the day it is sent, unless it can be proved to have been delivered later.

20(2) sets out special provisions that apply in relation to requests for documents from Land Registry. Requests must usually be delivered by post, document exchange or personal delivery to a "proper office" of Land Registry. Currently, requests can also be made to Land Registry by oral means, telephone, fax or other electronic method.

20(3) makes provision for cases where a request for a document is made in parts (the day of delivery is the day the last part is delivered), delivery more than once (only the first delivery day is relevant) and delivery using more than one method of delivery (again, only the first delivery day is relevant).

20(4) provides that a document is served personally on an individual when it is left with that person; with a business when it is left with an employee or the owner of the business, or if the intended recipient is another form of body by leaving it with an employee or member of that body.

20(5) provides that the recipient's address is:

- in the case of an individual either his usual or last known residence, or if that is the property being sold and the intended recipient no longer resides there, both that address and any other address from which it can be assumed the person will be contacted; and
- in the case of a business or corporate body, any principal or last known place of business from which the requested document or information is usually or likely to be provided; or
- in the case of an electronic address, the electronic address, identification or number published or provided by the intended recipient for that purpose.

Regulation 21: Required documents which are completely unobtainable

Regulation 21 ensures that marketing is not prevented or delayed when there is reasonable cause to believe that certain required documents specified in regulation 9 are unobtainable. The documents are as follows:

- an interim energy assessment (regulation 9(c))
- a predicted energy assessment (regulation 9(d))
- those deducing title to an unregistered property (regulation 9(g)(ii));
- those relating to commonhold properties (regulation 9(h));
- those relating to leasehold properties (regulation 9(i)); or
- leases or licences for homes to which section 171(2) of the 2004 Act applies (regulation 9(j)).

Where, following all reasonable enquiries and efforts, the responsible person has good cause to believe that the document no longer exists in any form, or cannot be obtained from or created by another person, the requirement to include the document in the pack (and the duties in Part 5 of the Housing Act 2004 that might have applied to that document) ceases to apply. In such circumstances, the Pack need not contain the document, although the home information pack index should indicate that the document is missing and the reason why (see guidance on regulation 9(a) and Schedule 1).

***Note:** Where a hard copy of a document has been destroyed but an electronic version exists, it should not be considered that the document no longer exists or cannot be obtained from or created by another person - as a hard copy could be made easily in these circumstances.*

PART 5

ACCURACY OF HOME INFORMATION PACKS

Regulation 22: Updating of required pack documents

There is no requirement in the 2004 Act or in the regulations for the contents of the home information pack to be updated during the marketing of the property except where the responsible person obtains or creates a further version of a required document already in the pack. Regulation 22 provides that in these circumstances the new document must be added to the pack and the responsible person must remove any document that has been wholly superseded by the new document. Where translations or additional versions of that document were included in the pack, they must be updated accordingly.

Regulation 22(3) provides that where a document is amended or superseded later in the marketing process, the date at which it is added will be considered the “first point of marketing” so far as that document is concerned. This will be relevant for time sensitive documents (e.g. required searches) which are subject to age limitations when marketing begins.

Regulation 23: Updating of energy performance information

This regulation concerns the duty to update the energy efficiency information in the Pack in two sets of circumstances.

The first is dealt with in regulation 23(2) and applies to properties that are not physically complete at the first point of marketing, but which become physically complete while still on the market. In these cases, the pack must be updated to replace the predicted energy assessment with either of the following documents that are required of physically complete properties (see the guidance on regulations 9(b), 9(c) and 9(d) for further details):

- **23(2)(a)** – an energy performance certificate and recommendation report of a type described in regulation 9(b), or.
- **23(2)(b)** – an interim energy assessment described in regulation 9(b) and Schedule 2.

23(3) Where the property is subject to the requirement for an interim energy assessment (before 16 September 2007), this must be replaced with an energy performance certificate and recommendation report before 1 October 2007 if the property is still on the market at that point.

23(4)(a) – Once the property becomes physically complete, whichever of the above documents is required must be included in the pack within 14 days if marketing is still taking place.

23(4)(b) – The above documents will effectively supersede the predicted energy assessment which is already in the pack (included under regulation 9(d)), and this superseded document must be removed at the point when the new ones are included.

23(5) – This regulation provides that the interim energy assessment must be removed from the Pack when it is superseded by an energy performance certificate and recommendation report under regulation 23(3).

Note: Where this regulation applies, the index must be updated accordingly as with all changes to the pack (see guidance on Schedule 1).

Regulation 24: Updating of authorised pack documents

Regulation 24 makes provision for the updating of documents which are authorised (rather than required) to be included in home information packs under Regulation 10 and is similar to Regulation 22 above. It provides that where a responsible person wishes to revise or substitute a document authorised to be included in the pack they may do so if they wish (in contrast there is duty to replace documents under regulation 22). Where a document is amended or superseded, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned (this is relevant in determining for time-sensitive documents where the age of the document when it is included is prescribed by the Regulations).

Regulation 25: Seller’s check of the home information pack

Regulation 25 provides that where the responsible person is not the seller (e.g. he is the seller’s estate agent), he must provide the seller with a copy of pack documents if the seller requests them in order to check their accuracy. This is important both to help ensure that the contents of the pack are accurate and to ensure that the seller has access to documents which concern his property. It does not deal with any contractual arrangements that might exist preventing a seller from using the pack in a subsequent sale or in the event that the seller employs another estate agent.

PART 6

EXCEPTIONS

The home information pack legislation is only intended to cover the sale of properties that will, or could, be used as a permanent residential dwelling by the owner without any adaptation. There are likely to be instances where a residential property is being sold, but the circumstances of the sale indicate that it is not to be used as a permanent residential dwelling or the sale is unlikely to form part of a chain of transactions in the normal housing market. Thus a number of exceptions from the home information pack duties are necessary. These exceptions are set out in regulations 26 to 33. In addition, regulation 34 provides for exceptions in certain circumstances for a short transitional period.

Sales of static caravans on a recognised site (usually referred to as “Park Homes”) are not affected by the HIP duties. That is because this type of home is not considered to be a “dwelling-house” within the meaning of section 148 of the Housing Act 2004 as it is not a building (i.e. a permanent fixed structure). Similar considerations apply in relation to house boats and other types of home that are not considered to be “buildings” in the ordinary sense of the word and are not sold freehold or under a long lease (see section 177(1) of 2004 Act).

Regulation 26: Meaning of “non-residential premises”

26(1)(a) – A home information pack is only required when marketing a residential property for sale (by virtue of section 151 of the Housing Act 2004, and “residential property” is defined in sections 148 and 177 of that Act). The duties relating to home information packs in Part 5 of the 2004 Act and these Regulations do not apply to non-residential premises. Regulation 26 provides clarification on what are described as “non-residential” premises in Part 6 of the Regulations.

Under this provision, whether premises are considered “non-residential” should be determined by its most recent primary use.

“Most recent”

It is the intention that the term “most recent” should refer to:

- if the property is occupied – the current use;
- if the property is vacant – the last use.

For example, if a property was last used as an office, but it is vacant at the time of marketing, it will be non-residential premises and therefore a home information pack would not be required when marketing it for sale, unless it is due to be converted to a dwelling by the time the sale is completed (see also guidance on regulation 27 below).

“Primary”

It is the intention that “primary” should refer to the main use of the property, taking into consideration matters such as:

- the proportion of floor area used for residential and non-residential purposes;
- the effect the non-residential and residential use has on the value of the property;
- the amount of time the property is used for each purpose.

For example, a family home where one room is used for conducting private music lessons should be considered a residential property because:

- 1) a greater amount of the floor space is used for residential purposes as opposed to non-residential purposes;
- 2) it is likely that the value of the property would be based on its residential use; and
- 3) most of the activity which takes place within the property would reasonably be described as residential.

Note: Although all three factors should be considered, there may be an overriding reason, depending on the circumstances, as to why a property should be considered a residential or non-residential based on just one of the three criteria described above.

26(1)(b) – Under this provision, residential properties due to be converted for non-residential use by the time the sale is complete are also considered non-residential premises and are therefore exempt from the home information pack duties. However, to benefit from this exception the sale must meet both the following criteria:

- 1) it is clear from the marketing that the property is due to be converted for non-residential use by the time the sale is complete;
- 2) all the relevant planning permissions and listed building consents have been obtained for the conversion.

Marketing not only includes the promotional material (e.g. a property’s particulars), but also any discussion (e.g. the discussions an agent might have with a potential buyer).

26(2) – Regulation 26(2) provides clarity as to what constitutes non-residential premises where there is some doubt over how ancillary land (e.g. a garden or open space which may or may not be adjacent to the property or covering a single area) affects the premises. This is dealt with below:

Properties sold with land

26(2) – Often there will be no doubt as to whether land sold with a residential dwelling is part of the residential property because it is ancillary to it (e.g. a garden), or whether it is non-residential. For example, if the land adjoining a property was used as a petrol station then that land would clearly be non-residential. However, if there is a question over the use of the land say where there is a small element of the land being used for profit e.g. surplus plants or produce are sold from the land or a paddock is used to give occasional riding lessons, regulation 26(2) should be used to

determine whether the land is part of the residential property (as ancillary to it) or whether it is non-residential property sold along side it.

Land may be considered “non-residential” if both of the following conditions apply:

26(3)(a) - The land covers five hectares or more; and

26(3)(b) - The land is used for one or more of the following purposes:

- horticulture or cultivation
- the breeding or keeping of animals or livestock
- grazing or woodland

A consequence of the ancillary land being considered non-residential may be that one of the exceptions in regulation 29 or 30 applies.

Regulation 27: Exclusion from the meaning of “non-residential premises”

Regulation 27 provides further clarification on the boundary between residential properties and non-residential premises in relation to conversions or home working or letting.

27(a) – Under regulation 27(a), non-residential premises that are due to be converted for residential use by the time the sale is complete are considered residential, and therefore the home information pack duties apply.

27(b)(i) – Under regulation 27(b), properties used for rental purposes are considered residential, although note that under section 160 of the 2004 Act, the home information pack duties do not apply to a residential property not available with vacant possession (subject to section 171(2) of the Act - see the guidance on regulation 9(j) above). Therefore a home information pack is required when marketing a vacant property that was, or could be, used for rental purposes. This is because the property could equally be bought for owner occupation or easily used for such purposes.

Examples of rental purposes include properties that are used as student accommodation, multiple occupancy tenancies, buy-to-let, short and long term tenancies.

Many of the exceptions in Part 6 depend on whether the property is residential or non-residential, the following provides some examples of residential and non-residential properties using the interpretation principles set out in regulations 26 and 27:

Example of property being marketed for sale	Residential or non-residential property?
Vacant property last used as a shop and to continue to be used as a shop	Non-residential
Ex-school which has been converted into a home	Residential
Shop due to be converted for residential use by the time the sale is complete	Residential
Property last used as a family home but	Non-residential

will be converted into an office by the time the sale is complete.	
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27(b)(ii) – Under regulation 27(b)(ii) properties used for home working are considered residential and therefore the home information pack duties would apply.

Home working takes many different forms and can range from having a study which is occasional used for work purposes to a home that has been adapted for work purposes. If the primary use of the property is residential (see regulation 26(1)(a)), it should be considered a residential property. However, as described below in the guidance on regulation 30 (dual use of a dwelling), home-working will necessarily be a question of fact and degree and the intensity of use will be relevant.

To avoid home working being confused with a non-residential use or non-residential premises, the following provides some examples of home working (note the home information pack duties apply in these cases):

Examples of residential properties by virtue of home-working
A house where the loft has been converted into an architect’s studio (with no special adaptation) for use by the owner.
A house with a separate garage or shed which has been converted into an office for use by an owner and which is intended to be occupied and enjoyed together with the house.
A house with an out-building used for operating the owner’s car cleaning service where the out-building is intended to be occupied and enjoyed together with the house.
A house where a post office/small shop is run by the owner from the front room. Customers gain access via the same route used for accessing the residential part of the property.
A house where one room has been converted into an office and is used by the owner to work from home.
A house where a room has been adapted into a hair salon for use by the owner.
A house where no adaptation has taken place but where one room is used for private music lessons conducted by the owner.
A house where an outbuilding is used by the owner to store gardening or building equipment which they use for work (e.g. as a landscape gardener).

Regulation 28: Exception for seasonal and holiday accommodation

28 – There is no requirement to provide a home information pack in cases where both the following apply:

- 28(a)** - there is a planning restriction which either limits:
 - (i) the occupancy of the property to 11 months or less in a 12 month period, or
 - (ii) - limits the use of the property to holiday accommodation
- 28(b)** - the marketing makes it clear that such a restriction applies.

Note: this exception does not cover properties that are leased or used as holiday homes, but where there is no such planning restriction on the use of the property.

Regulation 29: Exception for mixed sales

29– The duty to have a home information pack does not apply to a mixed sale.

In this guidance, the term “mixed sale” refers to a property where **one** residential property is marketed for sale as **ancillary to** (i.e. intended to be occupied and enjoyed with) one or more buildings, or areas of land, used for non-residential purposes (as defined in regulations 26 and 27). Examples of mixed sales include:

- a farm house sold with agricultural land and buildings
- a property consisting of a shop on one floor and living accommodation on the other
- a petrol station sold with an adjoining house

If more than one residential property is sold, the exception for portfolios of properties is likely to apply (see regulation 31).

However, the exception for a mixed sale only applies if both the following apply:

1. At the time of first marketing, the seller only intends to accept an offer for the properties together (non-residential buildings/land as well as the dwelling) (regulation 29(c)); and
2. The marketing makes clear to potential buyers that offers will only be accepted for the properties together (i.e. offers will not be accepted for the residential dwelling alone). For example, if a farm with a house and outbuildings are marketed for sale and the agent/seller makes it explicit that the seller does not intend to sell the farm house independently of the land and buildings (regulation 29(d)).

If during marketing, an offer is made on the residential property alone and the seller decides to accept the offer, the exception ceases to apply. Where no marketing of the residential dwelling alone has taken place it can be treated as a private sale and no home information pack is required (under Part 5 of the Housing Act 2004, the home information pack duties only apply where marketing activity takes place).

For the exception to apply, all the conditions in paragraphs (a) to (d) need to be met. Therefore, if the seller changes their marketing approach (i.e. they simply decide to market the property differently) so that the residential dwelling alone is marketed for sale, the exception ceases to apply and a home information pack is likely to be required. Additionally, if the seller changes their mind and decides that they would be prepared to accept separate offers for the properties, the exception ceases to apply.

Regulation 30: Exception for dual use of a dwelling-house

30 – The duty to have a home information pack does not apply to dwelling-houses which have a dual use.

In this guidance, the term “dual use” refers to properties which can be used for both residential and non-residential purposes simultaneously. It should be noted that there are likely to be many instances where a use which would otherwise be home working is in fact “dual use” for the purposes of regulation 30 (see guidance on regulation 27 above). This is likely to occur where the owner is not using the property and hence is

not working at home (e.g. a house with a separate garage or shed which has been converted into an office for use but is leased to another person or business), or because extensive special adaptations have occurred to make the dwelling suitable for non-residential use as well as residential use (e.g. a large house where one half is used as a dentist's surgery and the other half is used as the dentist's home). However, whether a use is home working or dual use will necessarily be a question of fact and degree, and the intensity of use will be relevant.

Under this regulation, a property will only be exempt from the home information pack duties if both the following apply:

- 30(a)** – it is currently dual use, or, if unoccupied, was dual use when last occupied
- 30(b)** – the marketing makes clear the property is suitable for only non-residential use, or for dual use.

Guesthouses/B&Bs

There are a number of different circumstances in which guesthouse/B&Bs can be sold. To clarify:

- Guesthouse/B&B with no accommodation for the owner should be considered **non-residential premises**.
- Guesthouse/B&B with living accommodation for the owner within the same building should be considered **dual use i.e. both residential and non-residential use** (and is not in our view home-working given the extent of adaptations usually required to make the property suitable for use as a guesthouse).
- Guesthouse sold together with living accommodation for the owner in a separate building should be considered **non-residential premises sold together with a residential property** (see guidance on regulation 25).
- A residential property in which the owner lives with no special adaptations and one or two rooms that are for paying guests should be considered **residential** (on the basis that the property is “primarily” residential or that there is home working - see guidance on regulations 26 and 27 above).

Regulation 31: Exceptions for portfolios of properties

The home information pack duties do not apply to the sale of a dwelling house being sold together with one or more other dwellings where:

- The other dwellings are available with vacant possession and are not dwellings to which 171(2) of the Housing Act 2004 applies (see guidance on regulation 9(j) for advice on this).
- The seller does not intend to accept an offer for any of the properties in isolation from the others (see regulation 31(1)(c)). For example, the home information pack duties would not apply when selling a block of flats, a group of holiday homes or an entire new development.
- It is clear from the marketing that offers will only be accepted for the complete portfolio (i.e. that offers will not be accepted for any one of the properties in isolation from the others) (see regulation 31(1)(d)).

If, during marketing, an offer is made on just one residential property and the seller decides to accept, no pack will be required because no marketing has taken place for that individual property and therefore it can be treated as a private sale (under Part 5 of the Housing Act 2004, the home information pack duties only apply where marketing activity takes place). However, if the seller decides that they would be prepared to accept separate offers, and changes their marketing approach so that a single residential property is marketed for sale, the exception ceases to apply (all the criteria set out in paragraphs (1)(a) to (d) must be satisfied for the exception to apply), and a pack must be prepared before marketing of the individual property can commence.

The following should not be considered portfolios:

1. **Sales which consist of more than one dwelling-house which is ancillary to a principal dwelling-house** (e.g. a large house with other dwellings for staff). See regulation 31(2).
2. **Two or more dwelling-houses in a sub-divided building marketed for sale as a single property** (for example, a house with a granny flat attached or a house with a basement flat) where one or more is available for sale with vacant possession (under section 171(2) of the Housing Act 2004).
3. **“Tyneside leases” and similar transfers** where, typically, each of the leaseholders of a pair of flats in a single building is also the freeholder of the other flat. When such flats are sold, the lease is transferred together with the freehold in the other flat. The portfolio exemption does not apply to these sales as the freehold part of the sale is not with vacant possession.

Regulation 32: Exception for unsafe properties

32 – A home information pack is not required when marketing properties that are considered unsafe. However, this exception only applies if all of the following conditions are met:

- 32(a)** - the property is unoccupied
- 32(b)** - the property is not suitable for occupation because its condition poses a serious risk to the health and safety of potential occupants and visitors
- 32(c)** - the manner in which the property is marketed indicates that it is unsuitable for occupation in its present condition.

As soon as a property fails to meet all three criteria, the exception ceases to apply. For example, if the property was made safe during marketing or if it was being marketed on the understanding that it would be made safe prior to completion of the transaction, the exception would cease to apply.

Regulation 33: Exception for properties due to be demolished

33 – A home information pack is not required when marketing a property **solely** for demolition and redevelopment. However this exception only applies if the marketing makes it clear that:

- 33(a)** - the residential dwelling is suitable for demolition and the resulting site is suitable for redevelopment

- 33(b)** - all the relevant planning permissions, listed building consents and conservation area consents have been obtained for the demolition
- 33(c)** - outline planning permission or planning permission (or both) exists for the re-development together with any necessary listed building consent.

Note: This exception would not apply to the sale of a large house which is suitable for conversion to flats, even if the relevant planning permissions for such a conversion have been obtained and it is being marketed on that basis.

Regulation 34: Exception – Transitional arrangements

“Transitional period”

Regulation 34 makes special provision for a transitional period in order to avoid the problems that could be caused by a peak in properties put on the market before 1 June 2007. The regulation also ensures that properties put on the market before 1 June 2007, and remaining on the market afterwards, cannot be marketed indefinitely without triggering the duty to provide a home information pack.

Regulation 34(1) – Defines the “transitional period” as the period between 1 June 2007 and 31 December 2007.

Under sections 152(1) and 153(1) of the 2004 Act, there are two actions which trigger the home information pack duties of a “responsible person”. These are actions by a seller or person acting as estate agent for the seller which:

- puts the property on the market (sections 152(1)(a) and 153(1)(a)); or
- makes public the fact that the property is on the market (sections 152(1)(b) and 153(1)(b)).

Under sections 152(1)(a) and 153(1)(a) of the 2004 Act, putting a home on the market before 1 June 2007 will not trigger the home information pack duties under the 2004 Act - because these cannot apply retrospectively. However, under sections 152(1)(b) and 153(1)(b), where action is taken on or after 1 June 2007 making public the fact that the property is on the market, a responsibility could potentially arise in respect of such action (even though no responsibility had arisen under sections 152(1)(a) or 153(1)(a) because the property was put on the market before 1 June). This regulation confers an exception from the home information pack duties in these circumstances. To qualify for the exception, the conditions set out in **regulation 34(2)** must also apply. These are:

- that the property was put on the market before 1 June 2007;
- that marketing activity has taken place at some time during the period starting on 1 June 2006 and ending on 31 May; (*Note: this means that the exception will not apply where there was some kind of marketing activity before 1 June 2006 that had ceased by that date*)
- that this marketing activity was genuinely taken with the intention of selling the property before 1 June, and
- that the marketing activity was sustained to a reasonable extent during the period in question.

The effect of this is to exempt properties that have been genuinely marketed for sale in the run up to the introduction of the mandatory scheme on 1 June 2007, and to provide that the exemption lasts until 31 December 2007 if marketing continues until that date. The exception does not apply to properties that are only nominally “on the market” in order to avoid the home information pack duties. Sham marketing arrangements would not qualify for the exemption and in these circumstances any genuine marketing activity taking place after 1 June 2007 would trigger the home information pack duties under sections 152(1)(b) or 153(1)(b) of the Housing Act 2004.

Regulation 34(3) clarifies that a seller or estate agent marketing a property to which this regulation applies is not treated as a “responsible person” for the purposes of Part 5 of the 2004 Act.

Regulation 34(4) provides that the home information pack duties do not apply to a property that is put back on the market during the transitional period provided that:

- it was on the market before the start of the transitional period i.e. before 1 June 2007, and
- had been taken off the market because the seller had accepted an offer to buy the property, and
- was put back on the market within 28 days of the sale falling through.

Note: without this exception, the act of putting the property on the market would activate the home information pack duties under sections 152(1)(a) or 153(1)(a) of the Housing Act 2004.

Regulation 34(5) provides that the provisions of paragraphs (2) and (4) above will cease to apply once the transitional period has ended. This means that a home information pack will be required for all homes that are marketed from that date onwards (providing the 2004 Act applies and no other exception is relevant). This will apply regardless of whether the property was put on the market before 1 June 2007.

PART 7

ENFORCEMENT

Regulation 35: Amount of penalty charge

Section 168 of the 2004 Act provides that where an authorised officer of an enforcement authority (that is, a local weights and measures authority) believes that a responsible person has committed a breach of the home information pack duties, that officer may give a penalty charge notice. Schedule 8 to the 2004 Act provides that the penalty charge specified in the notice shall be prescribed by regulations and shall not exceed £500.

Regulation 35 sets the penalty charge initially at £200. It should be noted that payment of this penalty charge does not entitle the person to continue marketing the property in breach of the home information pack duties. To do so could render that person liable to further penalty charge notices. If the person is an estate agent, it also amounts to an “undesirable practice” for the purposes of section 3(1)(d) of the Estate Agents Act 1979, and would render them liable to action by the Office of Fair Trading. This could result in a banning order which would prevent them from continuing to trade (see section 175 of the 2004 Act).

The consultation paper “Home Information Pack Update – towards 1 June” suggested there is a case for increasing the fixed penalty for estate agents to £500 whilst leaving the penalty charge for individuals selling their own homes at £200. This would recognise that professionals who break the law should pay a higher penalty than private individuals. It could also make it more worthwhile for Trading Standards Officers to pursue the debt in cases of non-payment. The decision was taken not to make the change from 1 June but this will be reconsidered in the light of experience following 1 June.

Regulation 36: Exclusion of penalty charges for contents of pack documents

Paragraph 11(b) of Schedule 8 to the 2004 Act provides that the Secretary of State may make regulations that make provision supplementary to Part 5 of the 2004 Act, and in particular prescribe the circumstances in which penalty charge notices may not be given. Regulation 36 recognises that the content of many of the documents required to be included in a home information pack is determined by people other than the responsible person. For example, the content of a home condition report is determined by a Home Inspector who is a member of a certification scheme approved by the Secretary of State, and search information may be provided by a local authority responsible for maintaining public registers containing that information.

It is not intended that the seller or the seller’s estate agent should be held responsible for the accuracy of the information contained in such documents included in the pack. Accordingly, regulation 36 provides that the penalty provisions contained in section 168(1)(a) of the 2004 Act shall not apply to a breach of the home information pack duties to the extent that the content of a document, other than the home information

pack index and the sale statement, fails to comply with the requirements of the regulations. This applies so long as the seller or the seller's estate agent has reasonable grounds to believe that the document does comply with the Regulations.

PART 8

APPROVED CERTIFICATION SCHEMES

The role of certification schemes is to ensure that Home Inspectors are fit and proper persons who are properly qualified and insured to prepare home condition reports. All Home Inspectors will be required to belong to a certification scheme approved by the Secretary of State, and must follow its rules and requirements.

The Secretary of State's policy is to grant approval to certification schemes which meet the statutory criteria described below, if he is satisfied that a scheme will operate in accordance with standards published by the Department for Communities and Local Government which expand upon the statutory criteria. These policy standards define the outcomes that certification schemes are expected to achieve.

Under the equivalent provisions of the Home Information Pack Regulations 2006, the Secretary of State has approved three certification schemes. These are:

- BRE (Buildings Research Establishment)
www.breinspector.co.uk
01923 664 829
- RICS (Royal Institution of Chartered Surveyors)
www.rics.org/hips
0870 333 1600
- SAVA (Surveyors and Valuers Accreditation Ltd)
www.sava-cs.org.uk
0870 837 650

Regulation 37: Approval of certification schemes

This regulation provides that before approving a certification scheme, the Secretary of State must be satisfied that it includes a number of safeguards, also set out in section 164(5) of the Housing Act 2004 (see explanatory notes on 2004 Act). Home condition reports must be made by members of a certification scheme (Home Inspectors), so that their quality can be assured by assessing and monitoring the initial and continuing competence of those who produce reports. The Secretary of State must be satisfied that the scheme contains appropriate provision for:

37(a) – undertaking checks to ensure that members are fit and proper and qualified. This should be done in accordance with the standards published by the Department (see www.communities.gov.uk/index.asp?id=1500727) Home inspectors must be qualified to produce home condition reports and the Department's policy standards require them to demonstrate this by holding a qualification in home inspection that delivers the National Occupational Standards for Home Inspection and is approved by the Qualifications and Curriculum Authority. Their accreditation of a qualification ensures that it is a reliable and robust indicator of an individual's level of attainment in Home Inspection. The Diploma in Home Inspection qualifications that are currently available are through ABBE (www.abbega.co.uk), and more recently City and Guilds

(www.cityandguilds.com) but the Regulations do not place a restriction on the number of qualifications or specify the qualification itself.

The Department's policy standards also give details of the background checks expected by schemes, including Criminal Records Bureau checks to ensure home inspectors are 'fit and proper' persons to carry out inspections. These standards require such a check in all cases, and the Department has only approved schemes that have undertaken to carry out these checks.

37(b) – ensuring members have suitable indemnity insurance. Certification schemes will be required to ensure that Home Inspectors carry insurance which meets minimum acceptable terms set out in the Department's policy standards, so that consumers obtain redress where, for example, they incur a loss due to a Home Inspector's negligence.

37(c) – implementing a system for dealing with complaints about its members. This will ensure that consumers have an avenue for solving any complaints and obtaining redress, if needed.

37(d) – ensuring that home condition reports are entered onto a register. (See guidance on Schedule 10, paragraph 1(b), for additional information.) The home condition report register is the subject of provision made in Part 9 of the Regulations that set out who will hold and have access to it.

37(e) – keeping a register of their members. This will allow certification schemes to monitor their membership, and will be public, helping consumers to locate Home Inspectors in their area for example.

37(f) – requiring all members to use the standard form of home condition report including certain prescribed terms. All certification schemes must use the form developed by the Department in consultation with relevant stakeholders. Having a standard form assures consumers of the quality of reports, and allows them to compare reports from different properties easily (see guidance on Schedule 10 for further details).

Regulation 38: Terms of approved certification schemes

This regulation sets minimum requirements for certification schemes. It is intended to ensure they deliver their key role of ensuring the trustworthiness of home condition reports and Home Inspectors, allowing consumers and mortgage lenders to have confidence in the report.

38(a) – This regulation describes the underlying purpose of a certification scheme; to protect, promote and facilitate the reliability of home condition reports and Home Inspectors.

38(b) – Certification schemes must prescribe a code of conduct for Home Inspectors. This should set out the rules and standards of conduct that are expected of Home Inspectors, and inform the public of the standards of conduct they can expect from a

Home Inspector. It is intended to promote the best standards of practice by Home Inspectors and aid confidence in the integrity of them and the home condition report.

38(c) – This provides that a scheme must make provision for the conduct of inspections by its members. The content and quality of the home condition report should be underpinned by standards developed by the scheme (in accordance with the Department’s policy standards) which must be followed during the inspection and reporting process. Ensuring that proper standards are prescribed and followed during the inspection will contribute to consumer trust in the accuracy of home condition reports and the consistency between reports prepared by different inspectors.

38(d) – As described above, all certification schemes must use the standard form developed by the Department for home condition reports. Certification schemes will be responsible for ensuring that all of their members use the standard form of report.

Regulation 39: Withdrawal of approval from certification schemes

This regulation gives the Secretary of State the power to withdraw approval of a certification scheme, for example if it fails to perform its functions appropriately. The withdrawal of approval may have immediate effect, may be made with notice, or apply temporarily.

PART 9

HOME CONDITION REPORT REGISTER

Overview

Under section 164(5)(d) of the 2004 Act and regulation 37(d), the Secretary of State must before approving a certification scheme be satisfied that the scheme contains appropriate provision for requiring home condition reports made by its members (i.e. Home Inspectors) to be entered on to a register kept pursuant to section 165. Part 9 contains these regulations. Under section 165(5)(e) and regulation 37(e) schemes must contain appropriate provision for the keeping of a public register of Home Inspectors.

The Register referred to in Part 9 is an archive of all home condition reports produced by Home Inspectors. The intention is that it should provide an independent means for potential buyers (and those acting on their behalf, including lenders) who are given reports to check that the home condition report provided in a home information pack is authentic and has not been altered since it was produced by a Home Inspector. Access to the register, as set out in Part 9, is therefore strictly limited to those involved in the sale, to those who require access to monitor the work of Home Inspectors and to enforcement authorities.

Under section 165(7) of the 2004 Act, any disclosure of a home condition report from the register, which is not permitted by these Regulations is a criminal offence not exceeding level 5 on the standard scale (currently £5,000)

Note: All home condition reports must be entered onto the register whether or not they are included in a home information pack (see guidance on regulation 10(a) above). However, it will be possible for a seller to impose restrictions on the disclosure of a home condition report under section 157 of the 2004 Act, and to request that the keeper of the register does not disclose a report to anybody or to lenders. This is intended to address any concerns a seller might have about privacy concerns or ethical or religious concerns they might have about disclosure to lenders.

At this stage, the keeper of the register is the Secretary of State or those keeping the register on behalf of the Secretary of State (see regulation 40). Those entitled to access the register may do so at www.hcrregister.com. This provides a portal to the public register of Home Inspectors which allows visitors to the portal to search for a Home Inspector who meets their defined criteria (e.g. one who specialises in listed or historic buildings).

Regulation 40: Interpretation of this Part

This regulation sets out the meaning of some of the expressions used in Part 9 of the Regulations. Under these provisions, a distinction is made between a “primary disclosure”, which amounts to a disclosure of a home condition report directly from

the register and a “secondary disclosure” which is a disclosure of information obtained by virtue of a primary disclosure.

As part of this decision making process, the mortgage lender may use an Automated Valuation Model (AVM) to value the property. An AVM is a computerised system which provides instant, electronic valuations on residential properties based on historic data on house prices etc. Many lenders use AVM's to some extent but, up to now, mainly for assessing applications for remortgages or further advances. AVM suppliers can use the data from the HCR to value a property without undertaking a physical inspection of the property.

Chapter 2

Arrangements for keeping the register

Regulation 41: Registration of home condition reports

This provides that each home condition report entered onto the register must be registered under a report reference number. Under paragraphs 1(b) and 6(c) of Schedule 10 to the Regulations (see further guidance below), home condition reports must be entered on to the register and must contain a report reference number. Therefore, a Report is not “valid” for the purposes of the Regulations until it has been registered and allocated a report reference number. Each report reference number will be unique to each report.

Under this regulation, the content of a report cannot be altered once it has been entered on the register. However the status and accessibility of a report may change and this is described further in regulations 42 and 43 below.

Regulation 42: Retention of home condition reports

Currently, the policy is that home condition reports may only be entered onto the register by certification schemes. This regulation provides that the keeper of the register must cancel a home condition report entered onto the register in the event that a certification scheme informs it that there is an inaccuracy in the report. Paragraph (2) provides that unless this happens, the home condition report must be kept on the register for at least 15 years.

Regulation 43: Restrictions on disclosure by the keeper of the register in pursuance of a seller’s instructions.

Under this regulation, a Home Inspector may inform the keeper of the register that the seller does not wish the keeper of the register to disclose a home condition report prepared for the purposes of the sale, to:

- any person - paragraph (2)(a)
- a mortgage lender or automated valuation supplier - paragraph (2)(b);

As described above (see guidance on regulation 10(a)), the inclusion of home condition reports in a home information pack is, at this stage, voluntary. Therefore, a

seller could decide after a report has been prepared that they do not wish to include it in the pack. The restriction on disclosure to any person in paragraph (2)(a) therefore protects the right of the seller to make this choice.

The restriction on disclosure in paragraph 2(b) is intended to deal with situations where a seller is content for those involved in the sale to see the home condition report, but may have, for instance, ethical or religious objections to the home condition report being used for lending purposes and therefore does not wish the report to be disclosed to mortgage lenders or automated valuation suppliers.

It is expected that when receiving instructions, Home Inspectors will first enquire whether these are issued by or on behalf of the seller of the property and then whether the seller requires any restriction to be placed on the disclosure of the home condition report. The inspector should then advise the keeper of the register accordingly.

Regulation 44: Other registers

This provides that anyone keeping an archive of home condition reports or of information obtained from reports (e.g. a certification scheme) is covered by the rules on disclosure described below. This is necessary to prevent the limitations on disclosure and the protections on privacy set out in the Regulations, being circumvented by organisations that choose to establish their own archives.

Note: where another archive is kept in this way, the restrictions on disclosure set out in Chapters 3 and 4 apply, and references to the keeper of the register should be read as if they are references to the keeper of that archive.

CHAPTER 3

DISCLOSURE - GENERAL PROVISIONS

Chapters 3 and 4 deal with the disclosure of home condition reports from the register and refer to “primary” and “secondary” disclosure. As described above, regulation 40 provides that the term “primary disclosure” refers to one or more of the following situations:

- an inspection of the register or of a home condition report entered onto the register;
- the taking or giving of electronic or paper copies of the register or of a home condition report entered onto the register; or
- giving out information contained in or derived from the register or a home condition report entered onto the register;

A “secondary disclosure” is a disclosure of a home condition report or its contents following its provision under a primary disclosure.

Regulation 45: Section 157 conditions

Under section 157 of the 2004 Act, before being provided with a copy of a home information pack, a potential buyer may be required to accept any written terms specified by the seller which relate to the disclosure of the pack. For example, a person who is concerned to ensure that information within their pack is not passed to the press or organisations marketing goods or services may require a potential buyer not to do so under section 157.

Home condition reports which are properly compiled should not include personal data within the meaning of the Data Protection Act 1998, or any other information which is personal to the seller. However, regulation 45 should ensure that the home condition report register is not used to circumvent any conditions relating to such reports which have been imposed under section 157. It provides that the authorised disclosures set out in the regulations do not apply where the person proposing to make such a disclosure is aware of such a condition.

Regulation 46: Suspicion of unauthorised use

Under this regulation, home condition reports should not be disclosed where it is suspected that doing so will result in a further disclosure not authorised by the Regulations. For example, the keeper of the register may not make a disclosure to a particular lender if it believes that the lender is likely to make an unauthorised disclosure (e.g. to a double-glazing company).

Regulation 47: Commercial use by the keeper of the register

Access to the register is strictly controlled by the Regulations. Regulation 47 confirms that the keeper of the register may not make commercial use of the register.

Regulation 48: Responsibility for proving purposes of disclosure

Chapter 4 of the Regulations sets out specific authorised disclosures from the register and in some instances refers to the purposes of a disclosure. This regulation provides that it is the responsibility of the person seeking the disclosure to prove those purposes to the satisfaction of the person from whom disclosure is sought.

Regulation 49: Responsibility for proving agency

Chapter 4 of the Regulations sets out specific authorised disclosures from the register and in some instances refer to a disclosure being authorised to someone's agent. This regulation provides that it is the responsibility of the person claiming to be the agent of to prove to the satisfaction of the person from whom disclosure is sought that there is a legitimate agency agreement in existence.

Regulation 50: Possession of report reference number

This regulation provides that before making a primary disclosure, the keeper of the register may require the person seeking disclosure to provide the relevant report reference number for a particular report. It is envisaged that at this stage, access to individual home condition reports will be in most cases via the report reference number unless there are exceptional circumstances (e.g. a report is sought urgently by an enforcement authority which does not have the reference number).

It is currently envisaged that access via the register portal will enable retrieval of the home condition report requested, as well as a list of home condition reports for the same property produced in the previous 25 months. If a potential buyer wishes to see these other home condition reports, they will need to request a list of related reports to be returned rather than an individual report from the portal.

It is expected that those seeking disclosure from the register with a report reference number will be required to confirm that they are a person to whom disclosure is permitted (e.g. a potential buyer or lender). However, given the volumes of potential requests that the keeper is likely to be met with, this regulation provides that the keeper may presume that a person presenting a report reference number has obtained it lawfully.

CHAPTER 4

AUTHORISED DISCLOSURES

Regulation 51: Internal processing of information

This regulation authorises the internal use of copies of reports obtained from the register within organisations or between persons who would normally share information solely between themselves.

Note: the organisation or persons should have first obtained the report or information by virtue of a disclosure authorised by the Regulations.

Regulation 52: Sellers and their agents

This regulation authorises the keeper of the register to make a primary disclosure to sellers or their agents and allows it to require the person seeking the disclosure to prove who they are.

It also provides that the seller may then make a secondary disclosure of information to anyone (for any purpose). Their agents may disclose the information/reports further, with the express permission of the seller.

Regulation 53: Potential buyers and their advisers

This regulation authorises the keeper of the register to make a primary disclosure to an actual or potential buyer or their agent. It allows the keeper to require the person seeking the disclosure to prove who they are, that the request relates to a report for a property they are genuinely interested in or that the request is made for the purposes of checking the authenticity of a report or whether the seller has sought any other reports (for example if they were “shopping around” for a report).

This regulation does not authorise a secondary disclosure by an actual or potential buyer or their agent.

Regulation 54: Mortgage lenders or automated valuation suppliers

Provided that the seller has not placed a restriction on disclosure to lenders or automated valuation suppliers (see note on regulation 43 above), the keeper of the register may make a primary disclosure to such persons or their agents. The keeper may require the person seeking disclosure to prove who they are, that the request relates to a property they have been asked to consider by a potential or actual buyer or that the request is made for the purposes of checking the authenticity of a report, appraising the property’s suitability for a loan.

This regulation does not authorise a secondary disclosure by lenders or automated valuation suppliers or their agents.

Regulation 55: Approved certification schemes or complaints against home inspectors

This provides that the keeper of the register may make a primary disclosure to certification schemes or their independent complaints handlers. The keeper may require the person seeking disclosure to prove who they are, that the request is made for the purpose of complaints or disciplinary procedures relating to a Home Inspector, for monitoring and auditing the work of their members or for replacing any record of a scheme which has been destroyed and which was kept for these purposes.

This regulation does not authorise a secondary disclosure by a certification scheme or its complaints handler.

Regulation 56: Enforcement officers

This provides that the keeper of the register may make a primary disclosure to an authorised officer of an enforcement authority (a local weights and measures authority, in most cases the trading standards department of a local authority). The keeper may require the person seeking disclosure to prove who they are or that the request is for the purposes of enforcing the home information pack duties.

This regulation does not authorise a secondary disclosure by an enforcement authority.

Regulation 57: Office of Fair Trading

This provides that the keeper of the register may make a primary disclosure to the Office of Fair Trading. The keeper may require the Office of Fair Trading to prove that the request is for the purposes of its functions under the Estate Agents Act 1979 or the Housing Act 2004.

This regulation does not authorise a secondary disclosure by the Office of Fair Trading.

Regulation 58: Information from which no particular property is identifiable

This provides that any person may make a primary or secondary disclosure where no particular property would be identifiable in doing so. In other words, where a home condition report or information from a report has been obtained from the register, it may be disclosed if it is anonymised.

Regulation 59: Disclosures for the purposes of complying with the 2004 Act and these Regulations

This regulation makes it clear that any person may make a primary or secondary disclosure where this is necessary in order to comply with the duty under section 156 of the Housing Act to provide copies of documents on request; or the provisions of these regulations concerning the inclusion of a home condition report in the Pack.

Regulation 60 Prevention of crime

This provides that any person may make a primary or secondary disclosure for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders. For example, the keeper of the register may be asked if it can provide a copy of a registered Home Condition Report for the purposes of a fraud case, where for instance there is a dispute as to whether another copy has been altered.

Regulation 61: Legal proceedings and court orders

This provides that any person may make a primary or secondary disclosure where it is for the purposes of establishing the exercise or defence of legal rights, or in connection with an order of the court.

Note: Other than in the circumstances listed in the Regulations and described here, no other bodies, whether public or private, may be given access to the register or may disclose information obtained from the register. This includes any bodies with an interest in council or property taxes.

CHAPTER 5 FEES

Regulation 62: Fees

The amount of the fee for successfully lodging a report onto the register is prescribed at £1.15.

Note: there is no fee charged for unsuccessful lodgements, changing the status of reports or the retrieval of reports.

It is currently expected that the fee will be reviewed periodically (i.e. every three years).

SCHEDULE 1 – HOME INFORMATION PACK INDEX

This Schedule prescribes the required information that a home information pack index must contain and information that is authorised for inclusion.

The home information index pack index must be clearly labelled as such and include the address of the property together with a list of the documents included in the Pack. The index must be revised whenever a document is added or removed. Where regulations 17, 18 or 21 apply (required documents that are temporarily or completely unobtainable), the index must say which document is missing and why. If the document is temporarily unavailable, the index should state what steps are being taken to obtain it, when it is expected to be obtained, the reason for any delay, and the further date by which the document is expected to be obtained.

The index may contain information indicating where a particular document can be found in the pack e.g. a list of contents with page numbers.

The suggested form for a home information pack index is available at www.homeinformationpack.gov.uk/industry/. However, if the requirements described above are met, the report may take another form.

SCHEDULE 2– INTERIM ENERGY ASSESSMENT

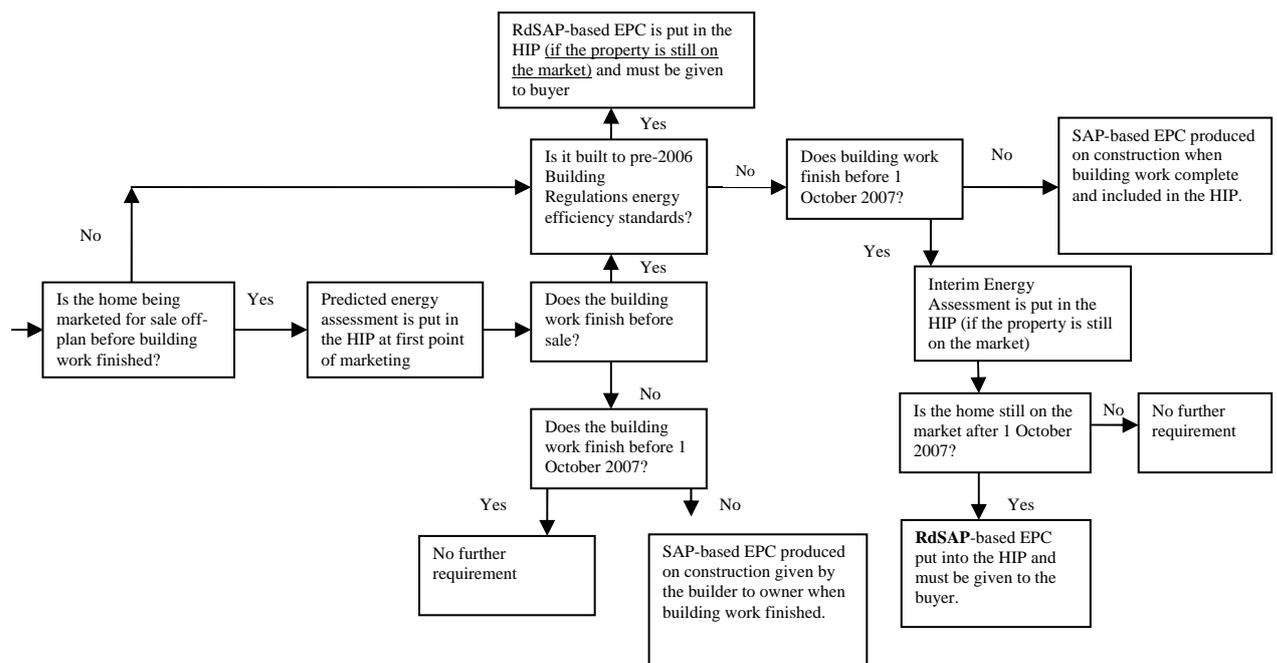
Interim energy assessments are only necessary for new homes that are physically completed and put on the market between 1 June 2007 and 16 September 2007.

They are required for new homes built in accordance with Part L 2006 of the building regulations. For these homes only the energy efficiency and environmental impact rating graphs will be required and not the full Energy Performance Certificate.

Once the SAP energy rating is available, anyone will be able to use this to produce an interim energy assessment. However, there are a number of requirements for the assessment that need to be followed and the interim energy assessment must contain:

- the predicted asset rating of the building based on its plans and specifications; and expressed in a way approved by the Secretary of State under regulation 17A of the Building Regulations 2000.
- an explanation of that asset rating.
- the title “Interim Energy Assessment”
- the address or proposed address of the property;
- the following statement “This document is an Interim Energy Assessment required to be included in a Home Information Pack for recently built properties during an interim period. From 1st October 2007, a full Energy Performance Certificate will be required on the sale of the property.”

Note: The following flowchart shows the type of energy assessment that will be needed for new homes marketed between June and October 2007.



There is no prescribed format for the interim energy assessment, although a suggested form is available at www.homeinformationpacks.gov.uk/industry. There is no need for the certificates to be lodged in the register.

SCHEDULE 3– PREDICTED ENERGY ASSESSMENT

Predicted energy assessments are for homes that are not yet physically complete before or at the first point of marketing. Normally, when a home is designed, a “target energy rating” based on the design is produced to show a building inspector that the property will meet requirements under Part L of the Building Regulations. The final energy performance of the property must achieve at least this target energy rating to receive its final sign-off from the building inspector.

Given the importance of conveying energy efficiency information to the prospective buyer, this existing process will be used to produce a “predicted energy assessment.”

Once the SAP energy rating is available, anyone is able to use this to produce the predicted energy assessment. However, there are a number of requirements for the assessment that need to be adhered to. Specifically, the predicted energy assessment must contain:

- the address or proposed address of the property;
- the predicted asset rating of the building based on its plans and specifications; and expressed in a way approved by the Secretary of State under regulation 17A of the Building Regulations 2000;
- an explanation of that asset rating;
- the title “Predicted Energy Assessment”;
- the following statement “This document is a Predicted Energy Assessment required to be included in a Home Information Pack for properties marketed when they are incomplete. It includes a predicted energy rating which might not represent the final energy rating of the property on completion, although once the property is completed, the Pack should include information about the energy performance of the completed property.”

There is no prescribed format for the predicted energy assessment, although a suggested form is available www.homeinformationpack.gov.uk/industry/. There is no need for the certificates to be lodged in the register.

SCHEDULE 4 – SALE STATEMENT

This Schedule prescribes the content of the sale statement that is required to be included in the home information pack. The sale statement is intended to provide a brief summary of the circumstances and nature of the sale.

It should include:

- the address or proposed address of the property;
- whether the property interest is a freehold (including commonhold) or leasehold interest;
- whether it is registered at Land Registry or unregistered;
- the name of the seller, and the capacity in which they are selling the property e.g. as a representative for a deceased owner or representative of a living owner with the legal authority to sell);
- whether the property is being sold entirely with vacant possession or there is some element of occupation together with an element of vacant possession (e.g. a “granny-flat” sold with a house - see also guidance on regulation 9(j) above); and
- if there is any element of occupation, the nature of that occupation (e.g. the “granny-flat” is subject to a lease with 5 years left to run).

The suggested form for a sale statement is available at www.homeinformationpack.gov.uk/industry/. However, if the requirements described above are met, the report may take another form.

SCHEDULE 5 – COMMONHOLD INFORMATION

This Schedule sets out additional documents and information required or authorised to be included in the home information pack where the property being offered for sale is or includes a freehold estate in commonhold land. See the commentary on regulations 9(h) and 10(k) above.

The commonhold documents and information required to be included in the pack are found in paragraphs 1 and 2 of Schedule 5. These include:

- an official copy of the individual register and title plan for the common parts. This is in addition to official copies for the unit (which are required under regulation 9(f), also see guidance on regulation 9(h), above).
- an official copy of the commonhold community statement.

These documents can be obtained from Land Registry.

The official copies listed above are the key commonhold documents of interest to potential buyers. Because any amendments to the CCS are not effective for the purposes of commonhold legislation until they are registered with Land Registry, an official copy will be the most definitive version.

Where they are in the seller's possession or else the seller has access to them or can reasonably obtain them (again taking into account reasonable enquiries of the unit-holder if not the seller, the commonhold association and any managing agents) the following documents are required to be included:

- copies of any regulations or rules that have been made by the commonhold association or by those responsible for managing the commonhold or their predecessors but which are not in the commonhold community statement.
- copies of any requests for payments made in the previous 12 months in respect of commonhold assessment, reserve fund levy and insurance (if not covered by a request for commonhold assessment). *Note: reserve funds can only be used for repair and maintenance.*

Where the seller can reasonably be expected to be aware of the following matters, taking into account reasonable enquiries of the unit-holder if not the seller, the commonhold association and any managing agents, the following information is also required to be included in the pack:

- the name and address of any managing agents or other persons appointed or proposed to be appointed by the commonhold association to manage the commonhold.
- any amendments proposed to those regulations or rules or to the commonhold community statement.
- a summary of works affecting the commonhold that are current or proposed.

Under paragraph 3 of Schedule 5 other information relevant to commonhold properties is authorised to be included in the home information pack. This information

is intended to supplement the required documents listed in paragraphs 1 and 2 of Schedule 5 with other documents providing similar or related information. These provisions should cover most matters relating to the commonhold interest that may be considered relevant information.

Under paragraph 4 of the Schedule, where the sale involves a commonhold interest which has yet to be registered as a commonhold unit at Land Registry, the home information pack must include (in addition to a sale statement and evidence of title - see guidance on regulation 11(2) above):

- the proposed commonhold community statement; and.
- an estimate of costs expected of the unit-holder in the first 12 months of new ownership.

SCHEDULE 6 – LEASEHOLD INFORMATION

This Schedule sets out additional documents and information required or authorised to be included in the home information pack where the property being offered for sale comprises or includes a leasehold interest. See the commentary on regulations 9(i) and 10(i) above.

The leasehold documents and information required to be included in the pack are found in paragraphs 1 and 2 of Schedule 6. These include:

- In all cases, a copy of the lease. The lease contains information of key importance to potential buyers and their legal advisers – for example, the length of the term of the lease, details of obligations with which the buyer would have to comply, any restrictions that the buyer would have to observe, any rights that would apply to the buyer, and obligations falling to the landlord, or management company where one is specified in the lease. The copy of the lease required to be included in the pack can be:
 - an official copy obtained from Land Registry; or
 - the original lease (or a “true copy” of it as described in Regulation 6), or
 - if despite all reasonable efforts the lease can only be obtained in an edited form held by Land Registry, a copy of the lease in that form. Typically a document will be designated an “exempt information document” under land registration rules because someone has applied for the full version to be exempt from disclosure on the grounds of commercial or personal confidentiality. An application for exemption must be accompanied by an edited version - “an edited information document”, and this should only be included in a pack where there is no other form of the lease available. A potential buyer’s legal adviser is likely to wish to see the full version of the lease in due course.

Where they are in the seller’s possession or else the seller has access to them or can reasonably obtain them (again taking into account reasonable enquiries of the lease holder if not the seller, the lessor and any managing agents) the following documents are required to be included:

- any regulations or rules relating to the management of the property made or proposed to be made by the existing or proposed landlord, managing agents or other persons involved with the management of the property and their predecessors (if any). In some cases, the terms of the lease may enable the landlord or management company etc to make regulations or rules relating to the management of the building. These could be significant to a potential buyer – for example they could cover the provision of services or impose restrictions on leaseholders’ activities;
- statements of account for service charges or summaries of service charges in relation to the property that have been supplied to the leaseholder by the landlord or managing agents and which relate to the past 3 years. These might have been supplied as a result of the

leaseholder's rights under section 21 of the Landlord and Tenant Act 1985 or might be contained in some other form of document. These documents should be in the seller's possession. If the seller has requested and received them but not retained them, copies might be available from the landlord or managing agents;

- the most recent request for payment made by or on behalf of the landlord in relation to service charges and ground rent, and also insurance and other charges relating to use of the property (if not covered by a request for service charges or ground rent). The request for payment required to be included in the pack is that relating to the 12 months preceding the date that the property is put on the market for sale. If the seller has not retained the request for payment, a copy might be available from the landlord or managing agents.

Where the seller can reasonably be expected to be aware of the following matters, taking into account reasonable enquiries of the leaseholder if not the seller, the lessor, and any managing agents, the following information is also required to be included in the pack:

- the name and address of :
 - the current landlord or, if the property is in the process of being built or the landlord is in the process of changing, the proposed landlord;
 - any managing agents appointed or proposed to be appointed by the landlord; and
 - any other persons who manage, or who are likely to manage, the property.

This contact information will be important if potential buyers or their legal advisers need to make further enquiries.

- Any amendments proposed to the lease, to regulations or rules relating to the management of the property.
- Where section 20 of the Landlord and Tenant Act 1985 applies to qualifying works or qualifying long term agreements in respect of the property a summary is required of outstanding costs due from the leaseholder amongst other details of the works or liabilities.

Unless a landlord is given a dispensation from the need to consult by a leasehold valuation tribunal, the law requires landlords to follow a specific consultation procedure with their tenants where they propose to carry out works on a building or any other premises where the cost to any one tenant who has to contribute towards the costs under the terms of their lease is more than £250. A similar consultation procedure must also be carried out where a landlord proposes to enter into an agreement for more than 12 months where the cost to any one tenant who has to contribute towards the costs of the agreement under the terms of their lease is more than £100 in any 12 month accounting period. Where a dispensation from the need to consult has been given or is being applied for, any similar information also needs to be supplied where available.

Details of the consultation procedures can be found in the following Regulations:

- The Service Charges (Consultation Requirements) (England) Regulations 2003. SI 2003/1987.
- The Service Charges (Consultation Requirements)(Amendment)(England) Regulations 2004. SI 2004/2665.
- The Service Charges (Consultation Requirements)(Amendment)(No.2)(England) Regulations 2004. SI 2004/2939.
- The Service Charges (Consultation Requirements)(Wales)Regulations 2004. Welsh SI 2004/684.

Information about costs which do not relate to qualifying works or long term agreements is not required to be included in the Pack.

Under paragraph 3 of Schedule 6 other information relevant to leasehold properties is authorised to be included in the home information pack. This information is intended to supplement the required documents listed in paragraphs 1 and 2 of Schedule 6 with other documents providing similar or related information. These provisions should cover most matters relating to the leasehold interest that may be considered relevant information.

Under paragraph 4 of the Schedule, where the sale involves the creation of a leasehold interest, the home information pack must include (in addition to a sale statement and evidence of title - see guidance on regulation 11(3) above):-

- the terms of the proposed lease; and
- an estimate of costs expected of the leaseholder in the first 12 months of new ownership in respect of service charges, ground rent, buildings and third party liability insurance.

SCHEDULE 7- GENERAL PROVISION ABOUT SEARCHES AND SEARCH REPORTS

Part 1 of Schedule 7 describes general provisions that apply to all search reports included in the home information pack, apart from official search certificates of the local land register carried out by a local authority. An official search of the local land charges register (section 13A of the Local Land Charges Act 1975 (the LLC1 form)) must conform to conditions that are contained in the Local Land Charges Act 1975 and the Local Land Charges Rules 1977⁶.

1 – General requirements

Paragraph 1 describes the information that must be contained in search reports included in home information packs. The information required is as follows:

- 1(a) the address of the property which is the subject of the search;
- 1(b) a statement on whether there is any connection, either personal or financial, between the provider of the search report and any other person involved in the sale of the property, e.g. the seller's estate agent or conveyancer. This is intended to ensure transparency by requiring that any business referral or other arrangements between the parties should be disclosed. This is a positive duty to disclose existing relationships and there is no duty to provide a statement where no such relationships exists;
- 1(c) the questions that were asked to obtain the information contained within the search report – e.g. a copy of a search application form;
- 1(d) the results of the search;
- 1(e) the date the search was completed. The information contained within the search report will be treated as though it were current at this point;
- 1(f) a description of the records that were examined to obtain the information contained within the search report and who they are held by;
- 1(g) if the records searched are derived from other records (e.g. they are not derived from the original records) a description of the other records must be included and who they are held by;
- 1(h) a description of how any relevant documents that supplement the search replies can be obtained – e.g. documents relating to any planning permissions disclosed under paragraph 3 of Schedule 8.
- 1(i) the name and address of the person responsible under the contract for carrying out the inspection for the search report and, where different, the name and address of the person responsible for preparing the report;
- 1(j) the name of the person who is responsible for any errors in the search report;
- 1(k) a description of the procedures that the search provider has put in place to deal with complaints or claims for redress;⁷
- 1(l) the terms on which the search report is provided, including those that are required by virtue of paragraphs 5, 6 and 7 of this Schedule, and the names of

⁶ Statutory Instrument 1977 No. 985.

⁷ This takes account of the Office of Fair Trading report "*Property searches - a market study*" OFT810 September 2005. The report recommends that information concerning consumer redress and indemnity insurance should be included within any search reports in home information packs.

the persons liable to pay financial compensation as described in paragraphs 4(g), 4(h), 7(b) and 7(c) of this Schedule (see guidance on these paragraphs below).

2 – Additional search information

This provides that search reports may include additional information that helps explain or identify the search results but which is not required under these Regulations. This additional information may include, information identifying the search or the property, those involved in providing the report, information indexing or explaining the results or information identifying local features. The latter could include an aerial photograph of the property and information on local facilities such as local schools, leisure facilities, shops (although the inclusion of advertising or marketing material for particular companies is prohibited).

3 – Unavailable search results

This provides that the search report must provide all the information sought, except in cases where the information cannot be obtained under any circumstances; from a local authority in the case of a search report dealing with local land charges, local enquiries or additional enquiries of a local authority, or any other person for any other search report (e.g. a water company in the case of the drainage and water search).

This regulation only applies to information that is unavailable to any user and does not apply to information which is available, but for which a local authority charges a fee. Where there is a fee for information, therefore, this regulation cannot be cited as the reason for the search providers failure to include it in a search report (although see guidance on paragraph 4 below on the transitional arrangements that apply where access to records is not granted).

Where information is missing from the search report because it is unavailable in any circumstances, the report must include a statement to this effect.

Note: Paragraph 3(a), is intended to ensure that search reports include all the results where information is held and is made available by the local authority. It is not intended that additional burdens are placed upon authorities to make records available which are not normally searchable, for example, historical data not held in accessible formats.

Part 2 – Specific required search reports

This Part describes the terms that must form part of a required search (other than an official certificate of the local land charges register) and transitional arrangements that allow the inclusion of an incomplete search in certain circumstances.

4 – Access to local authority records

Many private search companies currently use insurance policies where they are unable to obtain information from local authority records. This transitional provision will allow this to continue in relation to the local enquiries (see guidance on Schedule

8 below) for sales where the first point of marketing occurs before 1 April 2008, where all the following conditions apply:

- 4(b) – that the information in question is held by a local authority;
- 4(c) – that it is the expressed policy or practice of the local authority not to provide access to, or inspection of, the records in question;
- 4(d) – that the local authority has not been asked to produce the search report itself;
- 4(e) – that the information omitted from the search reply is covered by insurance that provides cover against the risk that if the information had been provided it would have affected the buyer’s decision to buy the property, or the price they would have paid for it, and result in a financial loss;
- 4(f), 4(g), 4(h) – that the insurance policy complies with the conditions set out in these sub-paragraphs. See the guidance note on similar provisions in paragraph 7 below (insurance cover for third party contractual rights).
- 4(i) – that the search report contains a description of the terms and effect of the insurance provided under this paragraph and which enquiries are covered by it.

5 – Terms for the preparation of required searches

Paragraphs 5, 6 and 7 specify the express terms that must form part of the contract under which a required search report is provided. They do not apply to authorised searches or official searches of the local land charges register (see the commentary on paragraph 11 below). These are necessary to give consumers, their legal representatives and mortgage lenders the assurance that search reports required to form part of the home information pack are reliable. The specified terms in paragraph 4 provide that:

- 5(a) - the search report will be prepared with reasonable care and skill. This makes express the term that is implied into contracts for the supply of goods or services to consumers;
- 5(b) the search report is prepared on terms ensuring that any copyright in a search report does not prevent responsible persons from making copies of searches and including these in home information packs. The use of Ordnance Survey mapping or data within the home information pack will need to be licensed via the originating source of any report or search used. All mapping within reports and searches should therefore be from authorised and easily identifiable sources.

6– Third party contractual rights in relation to search reports

The specified terms in paragraph 6 provide that the seller, buyer and mortgage lender have rights to enforce the contract under which the search is prepared. A person providing inaccurate information might owe duties under the law of negligence to third parties when preparing the report, but such liability would depend on the individual circumstances of each case. This provision guarantees direct legal rights for sellers, buyers and lenders (whether or not they are a party to the contract) and ensures that they are able to rely on required searches.

7 – Insurance cover for third party contractual rights

The specified terms in paragraph 7 provide that the liability arising under the contract must result in financial compensation. The paragraph also guarantees that in the event that a party to the contract cannot, does not or will not meet the liability (e.g. because it is unwilling to or has gone out of business), it will be met through insurance.

Suitable insurance arrangements must be in place with an insurer authorised under the Financial Services and Markets Act 2000 to cover the terms mentioned in paragraph 6 (including “run-off” cover).

If the insurance company goes out of business, compensation might be available from the Financial Services Compensation Scheme (FSCS). The Financial Ombudsman Service may also provide help in resolving disputes involving insurance companies.

8 – Permitted limit on liability for financial loss

This provides that the amount of financial compensation referred to in paragraph 7 may be limited to the value a potential or actual buyer reasonably believed to be the value of the property at the time the search report was completed (e.g. the value had a search report been properly prepared), but may also exceed this amount. In this context, the “value” is the value of the property as a residential property and does not include, for example, the value put on any commercial development potential of the property.

9– Inclusion of additional or more favourable terms for required search reports

This provides that additional terms may be included in the contract under which required search reports are prepared. Those listed in paragraph 5, 6 and 7 of Schedule 7 must not be excluded or limited in any way but may be enhanced to provide greater protection.

10 - Less favourable terms

This makes it clear that a search which contains terms less favourable than those described in Part 2 of the Schedule does not comply with the requirements of Schedule 7.

11 - Required searches by another name

Paragraph 11 provides that the requirements of paragraph 5 apply to any documents in the home information pack that contain the information prescribed in regulations 9(k)(ii), 9(l) or 9(m). The effect of this is to ensure that the terms and conditions in paragraph 5 apply to all required searches in the pack even where they are given a different name to that used in the regulations or purport to be included in the home information pack under a different provision of the regulations, for example, Schedule 11.

SCHEDULE 8 - LOCAL ENQUIRIES

Regulation 9(k) provides that the home information pack must include a search report that records the results of a search of records that are either held by or derived from a local authority and which complies with Parts 1 and 2 of Schedule 7 (General provision on searches and search reports) and Schedule 8. This Schedule specifies the information that must be included in a search report recording the result of local enquiries.

Part 1 of Schedule 8 deals with general provisions.

1 - Interpretation

Paragraph 1 contains definitions of terms and expressions used in Part 2 of the Schedule.

2 - Enquiries

Paragraph 2 provides that a search will only comply with the requirements of regulation 9(k) if it contains the enquiries set out in Part 2 of this Schedule. Under paragraph 1(d) of Schedule 7, the results of those enquiries must also be included. The enquiries must relate to the property in question and, for the avoidance of doubt, the enquiries in paragraphs 6 to 18 do not relate to matters covered by the appropriate local land charges register.

Part 2 of Schedule 8 describes the local enquiries. This is information that is provided now in most property transactions in response to an application to a local authority using the Law Society's form CON 29 Part 1 (standard enquiries of local authority), or similar searches by private search companies (who typically compile the information themselves). The enquiries set out in Part 2 of this Schedule reproduce the questions, and the order of questions, used in form CON 29 Part 1.

No standard forms have been prescribed or suggested for local enquiries and results at this stage. Note that while the appearance of the local enquiries and additional authorised or required information may vary, the content of the enquiries themselves must not.

The following guidance also includes suggested standard answers to enquiries and provides further notes on them. There is no requirement for search providers to use these standard answers but, for the sake of consistency, it is **strongly recommended** that they do so.

Part 2 - Enquiries

Planning decisions and pending applications

3. Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications—

- (a) a planning permission;

- (b) a listed building consent;
- (c) a conservation area consent;
- (d) a certificate of lawfulness of existing use or development;
- (e) a certificate of lawfulness of proposed use or development;
- (f) building regulations approvals; and
- (g) a building regulations completion certificate; and
- (h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme

Suggested answer

- (a) A list of the relevant documents is included and copies may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy; or
- (b) None.

Notes:

This question asks the local authority to provide a list of approvals, refusals, certificates and pending applications relating to the property in respect of planning matters and building regulations.

The reply, except where there are no such matters, should comprise a list which includes the nature of the document, its date and reference, and the description of development or use (as set out in the document itself). The reply should also say how copies of documents can be obtained, including contact details and fees.

Where the local authority's records of a particular type of document do not extend back before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council's records of [specify the type of document] do not extend back before [insert date] and this reply covers only the period since that date”.

Where a computer system is used to reply to the enquiries but the computerisation does not include records before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council's computerised records of [specify the type of document] do not extend back before [insert date] and this reply covers only the period since that date. Prior records would have to be searched manually at additional cost.”

Where the practice of issuing the particular type of document does not extend back before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council did not issue [specify the type of document] before [insert date].”

If building control for the property is currently being administered by an outside body (e.g. the NHBC for a new residential development in the course of construction) it is recommended that this should be stated in the reply, and in that case (but not where

the council is administering building control or already holds copies of all consents and certificates) adding the statement:

“Informative: The seller or developer should be asked to provide evidence of compliance with building regulations”.

Question 1(1)(g) on Form Con.29 Part 1 (2002 edition) has been replaced by 3(h) above. The current question only concerns self-certified glazing work carried out, without building regulation approval, by a person who is registered under the Fenestration Self-Assessment Scheme (FENSA) by the Glass and Glazing Federation. The replacement question is designed to reveal information on work carried out under all competent person self-certification schemes. These schemes include the installation of:

- heat producing gas appliances;*
- oil-fired combustion devices, oil storage tanks and heating and hot water services systems connected to them;*
- certain solid fuel burning appliances and heating and hot water service systems connected to them;*
- air conditioning or ventilation systems;*
- lighting or electric heating systems;*
- certain electrical installations;*
- sanitary ware or washing facilities.*

***Note:** The Department will be amending the Building Regulations to provide that local authorities are under a duty to record the information referred to in paragraphs 3(f) to 3(h) of this Schedule and make it publicly accessible. The aim is to achieve this by October 2007 but local authorities are encouraged to provide the information before this if they are in a position to do so.*

Planning designations and proposals

4. What designations of land use for the property or the area, and what specific proposals for the property, are contained in any existing or proposed development plan?

Suggested answer

(a) The [insert name] plan indicates that the designations or proposals are [insert description of designations or proposals] and copies may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy; or

(b) None.

Notes: This question requires the inspection of plans to reveal the primary use indicated for the area in which the property is situated (e.g. “residential”, “industrial” etc (these matters are dealt with in question 1.2 of form CON 29).

In relation to these matters, the search report should either:

- *Describe the land use or uses indicated by the adopted or proposed Structure Plan, Local Plan or non-statutory plan, or*
- *Include a statement that the adopted or proposed Structure Plan, Local Plan or non non-statutory plan contains no specific proposals for the property, or, if there is such a proposal, a description of the proposal.*

The search report should also indicate where copies of the documents containing more details of the proposals can be obtained from and the fee for obtaining copies of documents.

Roads

5. Which of the roads, footways and footpaths on which the property is or will be situated are—

- (a) highways maintainable at public expense;
 - (b) subject to adoption and supported by a bond or bond waiver;
 - (c) to be constructed by a local authority who will reclaim the cost of the frontagers;
- or
- (d) to be adopted by a local authority without reclaiming the cost of the frontagers?

Suggested answer

(a) [*insert name or location of road, footway or footpath*] is a highway maintainable at public expense; or

(b) [*insert name or location of road, footway or footpath*] is to be adopted as a highway maintainable at public expense under an agreement dated [*insert date of agreement*], subject to the agreement being fully performed. That agreement is supported by a bond or a bond waiver; or

(c) [*insert name or location of road, footway or footpath*] is to be constructed by a local authority who will reclaim the cost of the frontagers, and will then become a highway maintainable at public expense; [*insert name or location of road, footway or footpath*] is to be adopted by a local authority without reclaiming the cost of the frontagers and will then become a highway maintainable at public expense; or

(d) [*insert name or location of road, footway or footpath*] is private or otherwise not maintainable at public expense, and is not subject to any agreement or decision under which it would become a highway maintainable at public expense.

Notes: This question requires the inspection of records to reveal whether roads adjoining the property are “adopted” and thus maintainable at public expense, or are the subject of an application to become maintainable at public expense. If any roads are not adopted and are being constructed by a private party, e.g. a developer, the search report should state if the roads are the subject of a formal adoption agreement with the local highway authority and supported by a bond or bond waiver. If any roads are not adopted but subject to planned works by the local authority the search

report should state whether the householders will be charged for the work and if so how much or whether the local authority may adopt the road and complete the works at no cost to the householder (these matters are dealt with in question 2 of form CON 29).

Land required for public purposes

6. Is the property included in land required for public purposes?

Suggested answer

- (a) Yes [Insert details of matter and add]. Copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or
(b) No.

Notes: This question requires the inspection of records to reveal whether the property, or a part of the property, is affected by planning provisions that provide for the land to be protected from development in the interests of the future needs of a public body or statutory undertaker, e.g. gas, water, sewage, electricity, telecommunications etc (this matter is dealt with in question 3.1 of form CON 29).

Land to be acquired for road works

7. Is the property included in land to be acquired for road works?

Suggested answer

- (a) Yes [Insert details of matter and add]. Copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or
(b) No.

Notes: This question requires the inspection of records to reveal whether the property, or a part of the property, is affected by road proposals approved by the local authority or notified to it by the Secretary of State and which might involve the compulsory purchase of the property or part of the property (this matter is dealt with in question 3.2 of form CON 29).

Drainage agreements and consents

- 8.** Do either of the following exist in relation to the property—
- (i) an agreement to drain buildings in combination into an existing sewer by means of a private sewer; or
 - (j) an agreement or consent for—
 - (i) a building; or
 - (ii) extension to a building on the property, to be built over or in the vicinity of a drain, sewer or disposal main?

Suggested answer

- (a) Yes [Insert details of matter and add]. Copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or
- (b) No.

Notes: *This question requires the inspection of records to reveal whether there is a consent or agreement for building over or near a drain, sewer or disposal main. Although drainage matters are now dealt with by water companies (see paragraph 8 of Schedule 10 of these Regulations), local authorities may have records on these matters dating from before the privatisation of the water industry and which are not held by the current sewerage undertaker (this matter is dealt with in question 3.3 of form CON 29).*

Nearby road schemes

- 9.** Is the property (or will it be) within 200 metres of any of the following—
- (a) the centre line of a new trunk road or special road specified in any order, draft order or scheme;
 - (b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway;
 - (c) the outer limits of construction works for a proposed alteration or improvement to an existing road, involving—
 - (i) construction of a roundabout (other than a mini-roundabout); or
 - (ii) widening by construction of one or more additional traffic lanes;
 - (d) the outer limits of—
 - (i) construction of a new road to be built by a local authority;
 - (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; or
 - (iii) construction of a roundabout (other than a mini-roundabout) or widening by construction of one or more additional traffic lanes;
 - (e) the centre line of the proposed route of a new road under proposals published for public consultation; or
 - (f) the outer limits of—
 - (i) construction of a possible alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway;
 - (ii) construction of a roundabout (other than a mini-roundabout); or
 - (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: This question requires the inspection of records to reveal whether there are any proposals to construct new roads, or to alter or improve existing roads, in the vicinity of the property that would not necessarily involve the acquisition of the property or any part of it. Local authorities can only provide information on proposals that they are aware of. (This matter is dealt with in question 3.4 of form CON 29).

Nearby railway schemes

10. Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: This question requires the inspection of records to reveal whether the property lies within 200 metres of a proposed railway, tramway, light railway or monorail (this matter is dealt with in question 3.5 in form CON 29).

Traffic schemes

11. Has a local authority approved but not yet implemented any of the following for roads, footways and footpaths which abut the boundaries of the property—

- a) permanent stopping up or diversion;
- b) waiting or loading restrictions;
- c) one way driving;
- d) prohibition of driving;
- e) pedestrianisation;
- f) vehicle width or weight restriction;
- g) traffic calming works including road humps;
- h) residents parking controls;
- i) minor road widening or improvement;
- j) pedestrian crossings;
- k) cycle tracks; or
- l) bridge building?

Suggested answer

- (a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or
(b) Not so far as is known.

Notes: This question requires the inspection of records to reveal whether certain changes have been approved by the local authority, but not yet implemented, which affect roads within 200 metres of the property (this matter is dealt with in question 3.6 in form CON 29).

Outstanding notices

12. Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule—

- (a) building works;
- (b) environment;
- (c) health and safety;
- (d) housing;
- (e) highways; or
- (f) public health?

Suggested answer

- (a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or
(b) Not so far as is known.

Notes: This question requires the inspection of records to reveal whether there are any current statutory notices under legislation relating to the above matters, other than those covered elsewhere in Part 2 of these Regulations. (This matter is dealt with in question 3.7 in form CON 29).

Contravention of building regulations

13. Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in building regulations?

Suggested answer

- (a) Yes; or
- (b) No

Notes: This question requires the inspection of records to reveal whether the local authority has authorised proceedings for infringement of the building regulations in respect of the property (this matter is dealt with in question 3.8 of form CON 29).

Notices, orders, directions and proceedings under Planning Acts

14. Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following—

- (a) an enforcement notice;
- (b) a stop notice;
- (c) a listed building enforcement notice;
- (d) a breach of condition notice;
- (e) a planning contravention notice;
- (f) another notice relating to breach of planning control;
- (g) a listed building repairs notice;
- (h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation;
- (i) a building preservation notice;
- (j) a direction restricting permitted development;
- (k) an order revoking or modifying planning permission;
- (l) an order requiring discontinuance of use or alteration or removal of buildings or works;
- (m) a tree preservation order; or
- (n) proceedings to enforce a planning agreement or planning contribution?

Suggested answer

(a) Yes, the relevant matters are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) No.

Notes: This question requires the inspection of records to reveal action taken or proposed to be taken by the local authority in respect of breaches of planning control affecting the property. The question is intended to reveal subsisting matters so any matter that is defunct or not capable of being enforced can be disregarded (this matter is dealt with in question 3.9 of form CON 29).

Conservation areas

15. Do the following apply in relation to the property—

- (o) the making of the area a conservation area before 31st August 1974; or
- (p) an unimplemented resolution to designate the area a conservation area?

Suggested answer

(a) Yes, a decision was taken on [*insert date*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) No

Notes: This question requires the inspection of records to reveal details of whether the property is within an area designated as a conservation area before 31 August 1974 and therefore subject to any applications and decisions in respect of conservation area consents. Conservation areas designated after this date are local land charges and revealed in the search of the local land charge register that is required under regulation 8(m) of the Regulations. The question also requires the inspection of records to reveal whether the property is within an area that has been designated by resolution of the local authority as a conservation area but not yet registered as a local land charge (these matters are dealt with in questions 3.10 of form CON 29).

Compulsory purchase

16. Has any enforceable order or decision been made to compulsorily purchase or acquire the property?

Suggested answer

(a) Yes, a decision was taken on [*insert date*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy;; or

(b) Not so far as is known

Notes: This question requires the inspection of records to reveal whether the local authority has made an enforceable compulsory purchase order or has passed a resolution to make such an order in respect of the property or any part of it (this matter is dealt with in question 3.11 of form CON 29).

Contaminated land

17. Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property)—

(a) a contaminated land notice;

(b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990⁽⁸⁾—

(i) a decision to make an entry; or

(ii) an entry; or

(c) consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990⁽⁹⁾ before the service of a remediation notice?

⁽⁸⁾ 1990 c. 43. Section 78R was inserted by section 57 of the Environment Act 1995.

⁽⁹⁾ Section 78G was inserted by section 57 of the Environment Act 1995.

Suggested answer

- (a) Yes, the relevant matters are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or
- (b) No.

Notes: *This question requires the inspection of the registers of contaminated land and notices in respect of the remediation of contaminated land. The reply should include the following statement – “A negative reply does not imply that the property is free from contamination or from risk of it, and the reply may not disclose steps taken by another council in whose are adjacent or adjoining land is situated.” (This matter is dealt with in question 3.12 of form CON 29).*

Radon gas

18. Do records indicate that the property is in a “Radon Affected Area” as identified by the Health Protection Agency⁽¹⁰⁾?

Suggested answer

- (a) *Yes, it is in an area where 1% or more of homes are estimated to be at or above the Action Level. See the informative paragraph below for further information that sellers are recommended to provide.*
- (b) *No. Yes, it is in an area where less than 1% of homes are estimated to be at or above the Action Level.*

Informative: “Radon Affected Area” means a part of the country with a 1% probability or more of present or future homes being above the Action Level. Such areas are designated by the Health Protection Agency which also advises Government on the numerical value of the “Radon Action Level” (the recommended maximum radon concentration for present homes expressed as an annual average concentration in the home. Radon concentrations above the Action Level should be reduced below it and become as low as reasonably practicable).

The areas are identified from radiological evidence and are periodically reviewed by the Health Protection Agency or its predecessor the National Radiation Protection Board. Existing homes in Affected Areas should have radon measurements. The present owner should say whether the radon concentration has been measured in the property; whether the result was at or above the Action Level and if so whether remedial measures were installed and whether the radon concentration was re-tested to assess the effectiveness of the remedy.

Radon preventative measures are required for new buildings in higher risk areas. For new properties the builder and/or the owners of properties built after 1988 should say whether protective measures were incorporated in the construction of the property.

Further information on radon, including an indicative version of the radon Affected Areas map, the associated health risks and common questions and answers is available on the Health Protection Agency (HPA) web site (<http://www.hpa.org.uk/radiation/radon/index.htm>). Alternatively information can be

⁽¹⁰⁾ A body established under section 1 of the Health Protection Agency Act 2004 (c. 17).

requested from HPA by telephone (0800 614529 (24h) or 01235 822622 (D/T)) or by writing to Radon Studies, Health Protection Agency, Radiation Protection Division, Chilton, Didcot, Oxon, OX11 0RQ

SCHEDULE 9 - DRAINAGE AND WATER ENQUIRIES

Regulation 8(o) provides that the home information pack must include a search report which complies with both Schedule 8 (General provision on searches and search reports) and Schedule 9, which concerns enquiries on drainage and water matters.

Most of the information described in this Schedule is currently provided in response to an application by a buyer's conveyancer to the appropriate company providing drainage and water services using the Law Society application form CON 29 DW (standard drainage and water enquiries).

As with local enquiries, no standard forms have been prescribed or suggested for drainage and water enquiries and responses. Although it should be noted that while the appearance of the drainage and water enquiries and additional authorised or required information may vary, the content of the drainage and water enquiries and responses themselves may not.

Part 1 of Schedule 9 deals with general provisions.

1 - Interpretation

This contains definitions of terms and expressions used in Part 2 of the Schedule.

2 - Enquiries and responses

This provides that a search will only comply with the requirements of regulation 8(o) if it contains the enquiries and the appropriate responses set out in Part 2 of this Schedule. Where the search report reproduces all the enquiries and possible responses, the person preparing the report should delete or strike out the responses that are not appropriate. In some cases, the appropriate response includes words in italics which indicate the information that should be included. In these cases the information in question must be included but the words in italics may be deleted. Where a response refers to an additional document being included, the document must be attached to the search report.

Note: All the questions set out in Part 2 of this Schedule must be answered without exception, unless paragraph 3 of Schedule 7 applies.

Part 2 - Enquiries and responses

3 - Public sewer map

This requires the search report to include an extract of the actual public sewer map unless there are no public sewers in the vicinity of the property, in which case the report should include a statement to this effect. Public Sewers are defined as those for which the Water Company holds statutory responsibility under the Water Industry Act 1991. Where a map is provided it should show the location (or expected location if it has not yet been built) of the property and the location of public sewers, disposal mains and lateral drains within the boundaries of the property (*this matter is dealt with in question 1.1 of form CON 29DW*).

4 - Foul water

This requires the inspection of records to reveal whether or not foul drainage water drains, or will drain, from the property to a public sewer. (*This matter is dealt with in question 1.2 of form CON 29DW*).

Notes: Water companies are not responsible for any private drains and sewers that connect the property to the public sewerage system, and do not hold details of these. The property owner will normally have sole responsibility for private drains serving the property and may have shared responsibility, with other users, if the property is served by a private sewer which also serves other properties. These may pass through land outside of the control of the seller and the buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal.

If foul water does not drain to the public sewerage system the property may have private facilities in the form of a cesspit, septic tank or other type of treatment plant.

5 - Surface water

This requires the inspection of records to reveal whether or not surface drainage water drains, or will drain, from the property to a public sewer (*this matter is dealt with in question 1.3 of form CON 29DW*).

Notes: Water companies are not responsible for private drains and sewers that connect the property to the public sewerage system and do not hold details of these. The property owner will normally have sole responsibility for private drains serving the property and may have shared responsibility, with other users, if the property is served by a private sewer which also serves other properties. These may pass through land outside of the control of the seller and the buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal.

In some cases, water company records do not distinguish between foul and surface water connections to the public sewerage system. If on inspection the buyer finds that the property is not connected for surface water drainage, the property may be eligible for a rebate of the surface water drainage charge. Details can be obtained from the company. If surface water does not drain to the public sewerage system the property may have private facilities in the form of a soakaway or private connection to a watercourse.

6 - Public adoption of sewers and lateral drains

This requires that records are inspected to reveal whether any sewers or lateral drains serving the property are or will be adopted (*this matter is dealt with in question 1.4 of form CON 29DW*).

Notes: This enquiry is of interest to purchasers of new homes who will want to know whether or not the property will be linked to a public sewer. Where the property is part of a very recent or ongoing development and the sewers are not the subject of an adoption application, buyers should consult with the developer to ascertain the extent of private drains and sewers for which they will hold maintenance and renewal

liabilities. Final adoption is subject to the developer complying with the terms of the adoption agreement under Section 104 of the Water Industry Act 1991.

7 - Public sewers within the boundary of the property

This requires that the public sewer map is inspected to reveal whether any public sewer, disposal main or lateral drain is within the boundaries of the property (*this matter is dealt with in question 2.1 of form CON 29DW*).

Notes: The presence of a public sewer within the boundary of the property may restrict further development. The water company has a statutory right of access to carry out work on its assets, subject to notice. This may result in employees of the water company or its contractors needing to enter the property to carry out work.

Sewers indicated on the extract of the public sewer map as being subject to an agreement under section 104 of the Water Industry Act 1991 are not an 'as constructed' record. It is recommended that these details are checked with the developer.

8 - Public sewers near to the property

This requires that the public sewer map is inspected to reveal whether there is a public sewer within 30.48 metres (or 100 feet) of any buildings within the property (*this matter is dealt with in question 2.2 of form CON 29DW*).

Notes: The presence of a public sewer within 30.48 metres (100 feet) of the building(s) within the property can result in the local authority requiring a property to be connected to the public sewer. The measure is estimated from the Ordnance Survey record, between the building(s) within the boundary of the property and the nearest public sewer.

Sewers indicated on the extract of the public sewer map as being subject to an agreement under section 104 of the Water Industry Act 1991 are not an 'as constructed' record. It is recommended that these details are checked with the developer.

9 - Building over a public sewer, disposal main or drain

This requires an inspection of records to determine whether the sewerage undertaker has approved (by legal agreement or otherwise) or been consulted about any plans to build over or near a public sewer, disposal main or drain (*this matter is dealt with in question 2.3 of form CON 29DW*).

Notes: Buildings or extensions erected over a sewer in contravention of building controls may have to be removed or altered. See also paragraph 8 of Schedule 9 to this Schedule in connection with agreements and consents by local authorities.

10 - Map of waterworks

Paragraph 10 requires a copy of an extract from the map of waterworks where relevant. Where such a map is provided it should show where the property is, or will be, situated and the location of any water mains, resource mains or discharge pipes within the property (*this matter is dealt with in question 3.1 of form CON 29DW*).

Notes: The “water mains” in this context are those which are vested in and maintainable by the water company under statute. Water companies are not responsible for private supply pipes connecting the property to the public water main and do not hold details of these. These may pass through land outside of the control of the seller, or may be shared with adjacent properties. The buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal. If an extract of the map of waterworks is provided it will show known public water mains in the vicinity of the property. It should be possible to estimate the likely length and route of any private water supply pipe connecting the property to the public water network.

11- Adoption of water mains and service pipes

Paragraph 11 requires an inspection of records to determine whether any water main or service pipe serving or proposed to serve the property has been or will be adopted (*this matter is not currently dealt with in form CON 29DW*).

Notes: This enquiry is of interest to purchasers of new homes who will want to know whether or not the property will be linked to the mains water supply.

12 - Sewerage and water undertakers

Paragraph 12 requires the report to state the names and addresses of the companies responsible for sewerage and water supply (*this matter is currently dealt with in question 3.2 in form CON 29DW*).

13 -Connection to mains water supply

Paragraph 13 requires an inspection of records to determine whether the property is connected to the mains water supply and, if so, the name and address of the water company that provides the water supply (*this matter is currently dealt with in question 3.3 in form CON 29DW*).

14 - Water mains, resource mains or discharge pipes

Paragraph 14 requires an inspection of the map of waterworks to determine whether there are any water mains, resource mains or discharge pipes within the boundaries of the property (*this matter is currently dealt with in question 3.4 in form CON 29DW*).

Notes: The presence of a public water main within the boundary of the property may restrict further development within it. Water companies have a statutory right of access to carry out work on their assets, subject to notice. This may result in

employees of the company or its contractors needing to enter the property to carry out work.

15 - Current basis for sewerage and water charges

Paragraph 15 requires an inspection of records to determine the current basis for charging for sewerage and water services (*this matter is currently dealt with in question 4.1 in form CON 29DW*).

16 - Charges following change of occupation

Paragraph 16 requires an inspection of records to determine whether the charging arrangements for sewerage and water services will change as a consequence of a change in occupation (*this matter is not currently dealt with in form CON 29DW*).

Notes: This is a new question and is designed to reveal whether, for example, the water company intends to change to a metered supply following a change in occupation.

17 - Surface water drainage charges

Paragraph 17 requires the inspection of records to determine whether or not surface water charges are, or will be, payable for the property (*this matter is currently dealt with in question 4.2 in form CON 29DW*).

Notes: Where surface water from a property does not drain to the public sewerage system no surface water drainage charges are payable. Where surface water charges are payable but upon inspection the property owner believes that surface water does not drain to the public sewerage system, application can be made to the water company to end surface water charges.

18 - Water meters

Paragraph 18 requires the inspection of records to reveal whether the property is fitted with a water meter and if so where the meter is or will be located (*this matter is currently dealt with in question 4.3 in form CON 29 DW*).

19 - Sewerage bills

Paragraph 19 requires the report to provide details of the company responsible for charging for sewerage services or, where appropriate, that the property is not billed for sewerage services (*this matter is currently dealt with in question 4.4 in form CON 29 DW*).

20 - Water bills

This requires the report to provide details of the company responsible for charging for water services or, where appropriate, that the property is not billed for water services (*this matter is currently dealt with in question 4.4 in form CON 29 DW*).

Notes: The preceding two questions are dealt with together in CON 29 DW but separately in these Regulations The company supplying water or sewerage services may arrange billing via an alternative company under some circumstances.

21- Risk of flooding due to overloaded public sewers

Paragraph 21 requires the inspection of records to reveal whether the property is at risk of flooding as a result of an overloaded public sewer, has flooded as a result of a overloaded public sewer or is not recorded as being at risk of flooding for this reason (*this matter is currently dealt with in questions 5.1 and 5.2 in form CON 29 DW*).

Notes: A sewer is “overloaded” when the flow from a storm is unable to pass through it due to a permanent problem (e.g. flat gradient, small diameter). Flooding as a result of temporary problems such as blockages, siltation, collapses and equipment or operational failures are excluded.

“Internal flooding” from public sewers is defined as flooding which enters a building or passes below a suspended floor. For reporting purposes, buildings are restricted to those normally occupied and used for residential, public, commercial, business or industrial purposes.

“At Risk” properties are those that the water company is required to include in the Regulatory Register that is reported annually to the Director General of Water Services. These are defined as properties that have suffered or are likely to suffer internal flooding from public foul, combined or surface water sewers due to overloading of the sewerage system more frequently than the relevant reference period (either once or twice in ten years) as determined by the Company's reporting procedure.

Flooding as a result of storm events proven to be exceptional and beyond the reference period of one in ten years are not included on the At Risk register. Properties may be at risk of flooding but not included on the Register where flooding incidents have not been reported to the Company.

22 - Risk of low water pressure or flow

Paragraph 22 requires the inspection of records to reveal whether the property is at risk of receiving low water pressure or flow. Where there is such a risk, a report should be provided explaining what action has been taken or is proposed. Where there is no recorded risk the reply should say so (*this matter is currently dealt with in questions 6.1 and 6.2 in form CON 29 DW*).

Notes: “Low water pressure” means water pressure below the regulatory reference level which is the minimum pressure when demand on the system is not abnormal. Water Companies are required to include in the Regulatory Register that is reported annually to the Director General of Water Services properties receiving pressure below the reference level, provided that allowable exclusions do not apply (i.e. events which can cause pressure to temporarily fall below the reference level).

23 - Water quality analysis

Paragraph 23 requires the inspection of records to reveal details of the most recent water quality analysis made by the water undertaker (*this matter is currently dealt with in question 7.1 in form CON 29 DW*).

Notes: Water companies have a duty to provide wholesome water that meets the standards of the Water Supply (Water Quality) Regulations 2000. However, the householder is responsible for any deterioration in water quality that is a result of the domestic distribution system (the supply pipe and the plumbing within the property) that results in the standards not being met.

24 - Water quality standards

Paragraph 24 requires the inspection of records to reveal details of any authorised departures from the standards of water supply (*this matter is currently dealt with in question 7.2 in form CON 29 DW*).

Notes: Authorised departures are not permitted if the extent of the departure from the standard is likely to constitute a potential danger to human health.

25 - Sewage treatment works

Paragraph 25 requires that an inspection of the records is undertaken to reveal the distance between the property and the nearest sewage treatment works (*this matter is currently dealt with in question 8.1 in form CON 29 DW*).

Notes: The nearest sewage treatment works will not always be the sewage treatment works serving the catchment area within which the property is situated.

SCHEDULE 10 - HOME CONDITION REPORT

This Schedule provides more detail about the content of the home condition report and the terms on which it is prepared.

The home condition report should be an objective report on the physical condition of a property. The purpose of the home condition report is to provide the buyer, seller and mortgage lender with reliable information about the condition of a home.

The detailed form and content of home condition reports is not prescribed in Regulations because it is envisaged that, over time, it will be necessary to make amendments to reflect changes in building construction and the experience of Home Inspectors and consumers in using the home condition report. Instead the Secretary of State's current policy is that all certification schemes must use the form developed by the Department and available on the website:
www.homeinformationpack.gov.uk/industry/.

Certification schemes will be required to ensure their members use the standard format so that consumers and lenders can readily use the reports and compare properties (see guidance on regulation 33(f)). The format of the report will adapt electronically to cater to the specific reporting needs of different types of property (e.g. houses and flats).

1 – Home condition reports

1(a) – Inspections: For the purpose of the Regulations, a home condition report must be prepared by a Home Inspector following an inspection carried out in accordance with inspection and reporting standards set by the certification scheme of which he is a member. Such a certification scheme may be approved by the Secretary of State under section 164 of the Housing Act 2004 and these Regulations, only if he is satisfied that the scheme contains a number of safeguards for consumers in the way the scheme is run (see the guidance on regulations 33 to 35). A scheme should ensure that the Home Inspector is competent, insured, and a fit and proper person to carry out the inspection.

1(b) – The register: For the purposes of these Regulations a home condition report is only valid once it is entered onto the register described in Part 9 of the Regulations. Registration will enable consumers and their professional advisers to check the authenticity of reports, and enable other reports to be identified that should be included in the pack. It will also help the certification schemes to monitor the performance and conduct of their members.

The register of home condition reports will be subject to separate regulations made under section 165 of the 2004 Act, specifying who keeps it and who has access to the reports stored in it, and on what terms.

2 – Terms for the preparation of a home condition report

To ensure consistency in the preparation of home condition reports, and protection for consumers in the event that details in a report are wrong, they must be prepared under the minimum core terms.

Paragraph 2 specifies the express terms that must be included in the contract under which the Home Inspector prepares the home condition report. These must all be included without exclusion or limitation (see the commentary on paragraph 4 below), to ensure that reports are prepared under the same fundamental terms as these underpin the content of the home condition report. This also allows consumers to reliably compare different reports.

2(a) – This provides that the report will be prepared with reasonable care and skill and is similar to the term implied in most contracts for the supply of goods or services to consumers.

2(b) and (c) – The Home Inspector has a duty to provide an objective opinion about the condition of a home based on the inspection he has carried out. To ensure the opinion expressed is objective, a certification scheme will be required to ensure that its members work to inspection and reporting standards, and use preferred text when completing the home condition report, as prescribed by the Department. This also helps to ensure consistency between reports, so that consumers are able to compare them.

2(d) – This provision requires a Home Inspector to identify repairs that need to be made, or serious defects in the property. In the majority of cases, the Home Inspector should be able to come to a conclusion about the condition of each part of the building, and the inspection and reporting standards required under the terms of approval of a scheme by the Secretary of State will require the Home Inspector to do so. The Home Inspector is required to allocate numerical ratings to prescribed parts of the home to indicate their condition and provide commentary explaining why the rating has been given. However, in cases where the Home Inspector is unable properly to assess the condition of an element of the property, for example where access is not available, the inspector may recommend further investigation.

2(e) & (f) – These paragraphs ensure that any copyright in a home condition report does not prevent responsible persons from making copies of home condition reports and including these in the home information pack, without infringing the copyright of the Home Inspector (or their employer) as author of the report. This protection will also apply to reports obtained from the home condition report register by those granted access to it in the separate regulations that are to be made to address this issue (as described in guidance on Schedule 5, paragraph 1(b), above). However, these users will also be required to abide by rules on the use of data specified in these separate regulations.

***Note:** the amount and time of payment of the Home Inspector's fee are not covered by the regulations and are entirely a matter for the contract under which the report is prepared.*

3 – Third party contractual rights in relation to home condition reports

This ensures that the seller, buyer (potential and actual) and mortgage lender have rights to enforce the contract under which the home condition report is prepared. A Home Inspector might owe duties under the law of negligence to third parties when preparing the report, but such liability would depend on the individual circumstances of each case. This provision guarantees direct legal rights for sellers, buyers and lenders and ensures that they are able to rely on the home condition report. Not requiring such legal rights would severely restrict the benefit of including the home condition report in the home information pack. This paragraph is also intended to minimise the need for buyers and lenders to seek their own report or survey on a property, which would result in delay to the transaction.

4 – Inclusion of additional or more favourable terms for home condition reports

A home condition report must be prepared under the terms of paragraph 2 of the Schedule, but these are the minimum terms for a contract, and this paragraph enables other terms to be added. These might, for example, relate to the Home Inspector's fee and timing of payment. These additional terms must not limit or exclude the effect of the minimum terms. The contract under which the home condition report is prepared may also include different terms if these are more favourable to the seller, buyers, or mortgage lender.

5 – Less favourable terms

While the home condition report may be prepared under terms more favourable to the seller, buyers, and the mortgage lender, it may not be made under terms less favourable to these parties. Any such report would not comply with the Regulations, and would therefore not be able to be included in the home information pack.

6 – Completion of home condition reports by Home Inspectors

This paragraph sets out the core contents of the home condition report. Under sub paragraph (t), the certification scheme of which a Home Inspector is a member may require additional contents.

6(a) – The Home Inspector will have individual membership of the certification scheme, which will be responsible for prescribing standards and ensuring that these are maintained by its members. The identity of the inspector that prepared the report must be formally disclosed on the report for the information of those relying on the report and the certification scheme of which the inspector is a member.

6(b) – The home condition report must specify any business or personal relationships between the Home Inspector and anyone involved in the sale, for the purpose of transparency. This will ensure that all parties are made aware of the situation, enabling them to consider whether any such relationship is prejudicial to their interests. A certification scheme is required under regulation 34(1)(b) to publish a code of conduct for its members. This will set out rules covering conflicts of interest and guidance to Home Inspectors on required standards of behaviour and how they should act in cases where there is an actual or perceived conflict of interest. It should

also clarify what sort of business and personal relationships should be disclosed in the home condition report.

6(c) – The individual report is identified through a unique reference number or code. This will aid identification of reports on the home condition report register (described in Part 9 of the Regulations, see guidance above).

6(d) and (e) – The names of all certification schemes of which the Home Inspector is a member are included, and the inspector’s membership number. In the event of a complaint that is not satisfactorily resolved by the Home Inspector, the consumer should have recourse to the independent complaints resolution procedures put in place by the certification scheme (under regulation 33(c)).

6(f) – A Home Inspector could work for a firm or as an individual; the name and address of the firm are therefore included if applicable.

6(g) – The date of inspection is relevant, as the home condition report is a record of the condition of the property at the time of the inspection. Although the condition of a property would not normally change quickly, an intervening event such as a fire or flood could cause a rapid deterioration of condition after the inspection has been made so it is important that those reading the report note the date of the inspection. If there are, for example, particular weather conditions on the day the inspection is carried out, this will be relevant to the Home Inspector’s inspection of parts of the property, such as the performance of gutters and drainpipes.

Although the home condition report is likely to be written up quickly after an inspection, it can also be good practice to allow for a period of ‘reflective thought’, for example, and the date of completing the report might be later than the date of the inspection.

6(h) identifies the property by address.

6(i) to (q) - Key elements of the property for the buyer, seller and mortgage lender to know about are listed in these paragraphs:

(i) requires the year the property was constructed, or an estimate where the exact year cannot be determined;

(j) requires the number of storeys in the home, and rooms on each storey;

(k) requires information about parking for vehicles;

(l) requires information about utility services that are connected to the property. This would include a condition rating (for more information about condition ratings, see guidance on paragraph 2(b) of Schedule 5);

(m) is concerned with the building that contains a flat or maisonette, and requires details about the number of storeys in that building, other flats in the same building and any lift facilities. As with existing surveys of flats, it is not cost-efficient for the Home Inspector to report in detail on the external

condition of the whole building, because that could be a substantial and costly task. Therefore the Home Inspector will report on the general condition of the outside of the building containing the flat, and will report specifically on only the external parts of the flat itself. Similarly, inside, the Home Inspector will report on the condition of the roof structure only if it is accessed directly from the flat itself, and he will only report on common areas leading to the flat, not all common areas in the building;

(n) requires a general assessment of health and safety to identify whether any of the risks specified in a list prescribed in the inspection and reporting standards, is present at the property. This will not include a condition rating;

(o) is an assessment of the condition of the outside parts of the building such as roof coverings, rainwater pipes and gutters, chimney stacks, walls, doors and windows. These will require a condition rating;

(p) is an assessment of the condition of the inside parts of the property, such as roof structures, ceilings, floors, walls, and kitchen and bathroom fittings. They will also be assessed for dampness. These will require a condition rating;

(q) is an assessment of the general condition of outbuildings, which will not include a condition rating.

6(r) – When the inspection is carried out, there may be parts of the property that would normally be inspected, but which the inspector is not able to see, for example where there is no access to the roof space. In such cases, the Home Inspector should make a statement in the report, identifying the part of the building that was not inspected. He might be able to draw conclusions about the condition from his observations of the parts that can be seen, and could recommend further investigations where appropriate.

6(s) – This allows the certification scheme to add to the matters that the Home Inspector must comment on in the home condition report, subject to the scheme's approval by the Secretary of State (see guidance on paragraph 1(a) of Schedule 5, above).

7 – Conduct of inspections

A scheme must make provision for the conduct of inspections by its members, based on the policy standards to be published by the Department which are likely to form the basis of an approval of a certification scheme by the Secretary of State (see guidance on Part 7 above). These standards should be followed during the inspection and reporting process. In common with existing surveys, Home Inspectors will not be required to inspect areas of the property not accessible on the day of inspection, or to move furniture, fittings or personal items during the inspection (see guidance on paragraph 6(s) of Schedule 5 for further information).

8 – Prohibition on personal and security information

Certain information must not be included in the home condition report. To protect the privacy of individuals, there must be nothing in the report identifying or expressing an opinion on an individual (other than the name of the Home Inspector, see parts (a) and (b)). This is equivalent to the definition of “personal data” in section 1 of the Data Protection Act 1998 and consequently, home condition reports must not contain personal data and that Act is unlikely to apply. Part (c) prohibits the inclusion of information about the security of the property that potentially could be misused.

SCHEDULE 11 - ADDITIONAL RELEVANT INFORMATION

Regulation 10 describes the information that is authorised for inclusion in the home information pack. Regulation 10(p) provides that this includes information relating to any matters described in Schedule 11 that would be of interest to a potential buyer. These matters are information on:

- energy performance, environmental impact or sustainability;
- potential or actual environmental hazards that might affect the property or its occupants;
- the price of the property or information on previous price paid;
- the length of time the property has been available for sale;
- the location or address of the property;
- information on the property in relation to the surrounding area - e.g. the view, its aspect and the local environment;
- information on local services, facilities and amenities (but note bar on inclusion of advertising material in regulation 13).
- information concerning Welsh speaking communities in the local area and the use of the Welsh language;
- the property's contents, fixtures and fittings;
- information on the history of the property, including previous use of the land on which it is situated;
- information on tenure or estate;
- the application of any statutory provision that restricts the use of the land or requires it to be used or preserved in a certain way;
- the existence and effect of any restrictive covenants, restrictions on resale, easements, servitudes or wayleaves;
- Communications from the Land Registry relating to the property;
- equitable interests in the property;
- rights of access to or over the property; or land outside the property;
- rights of access to or over any ancillary land to the property, including obligations to maintain such land; or whether any payments for maintaining such land are outstanding;
- obligations to maintain the boundaries of the property;
- communications from any public authority or person with statutory functions, that affect or might affect the property, including whether any request made by them (under any enactment or otherwise) has been complied with;
- the acquisition of any land by a public authority or person with statutory functions that affects or might affect the property;

- standards of safety, building, repair or maintenance to which the property, its contents or the building in which it is situated ought to comply, and whether such standards have been complied with;
- the property's suitability or potential suitability for occupancy by a disabled person;
- alterations or other works relating to the property and whether any necessary permissions for such alterations or works have been obtained; and relevant consultations have been conducted;
- use or occupation of the property or use or occupation of other premises which affects or might affect the property;
- the identity of any person or persons involved in the design, construction, repair, or treatment of the property or any part of it;
- the measurements of the property;
- information concerning the use or occupation of the property, or the use or occupation of another property, that might affect the property;
- insurance policies, warranties, certificates or guarantees for the property or its contents;
- utility services connected to the property;
- taxes, levies or charges relating to the property; and
- information described in this Schedule that concerns neighbouring, adjoining or nearby properties.