

## EXPLANATORY MEMORANDUM TO

### THE HOME INFORMATION PACK REGULATIONS 2007

2007 No. 992

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“the Department”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Description

2.1 The Home Information Pack Regulations 2007 (“the 2007 Regulations”) revoke the Home Information Pack Regulations 2006, S.I. 2006/1503 (“the 2006 Regulations”). The 2007 Regulations are to come into force on 1st June 2007.

2.2 The 2007 Regulations have broadly the same purposes as the revoked 2006 Regulations. The matters they deal with include—

- prescribing the contents of home information packs which will be required for marketed sales of residential properties from 1st June 2007, including information about the energy efficiency of homes;
- exceptions from the duties to have or produce a home information pack;
- approval of certification schemes in connection with home condition reports<sup>1</sup>;
- the level of penalty charge that may be levied for a breach of the home information pack duties;

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<sup>1</sup> A report on the condition of a physically complete property carried out by a certificated home inspector. The report is equivalent to a mid level survey. Part 7 of the Home Information Pack Regulations 2006 came into force on 6th July 2006 and makes provision for the approval of certification schemes. The Secretary of State has so far approved three schemes.

- transitional arrangements for homes already on the market when the home information pack duties come into force on 1st June 2007;
- controlling access to a register of home condition reports.

### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

In its 34th Report of Session 2005-06, the Joint Committee on Statutory Instruments drew special attention to the 2006 Regulations. The Committee reported on the drafting of three provisions of those Regulations. The 2007 Regulations replace these provisions and the changes take account of the Committee's comments. These amended provisions are found at regulations 2(1), 10(m) and paragraph 1(1)(a)(ii) of Schedule 6.

### **4. Legislative Background**

4.1 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 1st June 2007. The undertaking was to make such amendments necessary, as a result of experiences during the "dry run"<sup>2</sup> 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 the 2007 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.

4.2 The related commencement order is due to be made in the forthcoming weeks, and will bring into force the home information pack duties in Part 5 of the Housing Act 2004 on 1st June 2007.

4.3 Regulation 3(1) of the 2007 Regulations includes definitions of "energy performance certificate" and "recommendations report" which cross-refer to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007<sup>3</sup>. Those regulations are laid before Parliament on the same day as the 2007 Regulations and are the subject of a separate memorandum.

### **5. Territorial Extent and Application**

This instrument applies in England and Wales. Under section 250(3) of the 2004 Act, the Secretary of State must consult the National Assembly for Wales before making any regulations under Part 5 which relate to residential properties in Wales, and has done so.

### **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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<sup>2</sup> 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.

<sup>3</sup> S.I. 2007/991

## 7. Policy background

7.1 In its 39th Report of Session 2005-06, the Statutory Instruments Merits Committee drew the 2006 Regulations to the special attention of the House on the ground that they gave rise to issues of public policy likely to be of interest to the House. This memorandum explains the policy background to the 2007 Regulations, and updates the Committee on the concerns raised in its 39th Report of Session 2005-06.

### *Policy*

7.2 As the Committee may be aware, the Department's policy on home information packs derives from the Government's 1997 manifesto commitment to "make it easier for people buying and selling homes through a new seller's pack". This resulted in the primary legislation under which the 2007 Regulations are made, as set out in Part 5 of the Housing Act 2004.

7.3 Once in force, Part 5 of the Housing Act 2004 will require a "responsible person" (a seller and/or estate agent) to have in their possession a home information pack when marketing a property for sale with vacant possession (see sections 151 to 153 of the Act). A home information pack must comply with the requirements of the 2007 Regulations (by virtue of section 155) and a responsible person will be required to provide a copy of the home information pack to a potential buyer on request (under section 156).

7.4 The aims of the policy are principally—

- to make the home buying process more transparent, certain and less stressful (and to address the currently high rates of transaction failures);
- reduce the current level of 27% of UK carbon emissions that come from homes.

7.5 The Regulatory Impact Assessment attached to this memorandum describes in detail the economic case underlying these policy aims.

7.6 In addition, the Department believes that the introduction of home information packs should have the benefit of increasing awareness among the general public about energy efficiency matters relating to their properties. Energy Performance Certificates and energy improvement recommendations will be required under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 for marketed sales of residential properties. The Department believes that placing the certificate in the home information pack will enhance its value by providing important energy efficiency information to the buyer at the start of the home buying process and increasing the likelihood that the certificate will be read and recommendations implemented.

7.7 In due course, the Department believes that home information packs could contain further environmental information that would be of benefit to the consumer. This

could include flood risk, ground stability, water efficiency, and waste and recycling facilities.

- 7.8 In relation to registers of Home Condition Reports, the Department's policy is that access to specific reports stored on such registers should be strictly limited to only those involved in the home buying process and to enforcement authorities, given the potential privacy concerns of sellers. Under section 165(7) of the Housing Act 2004, unauthorised disclosure of Home Condition Reports from the register or derived from the register will be a criminal offence.

### *Consultation*

- 7.9 The Department's policy on home information packs has been the subject of extensive consultation over many years. The consultations occurring before the 2006 Regulations were laid before Parliament are described in paragraph 7.7 of the explanatory memorandum to those Regulations. Since then—

- 7.9.1 The Department has continued its informal consultations with stakeholders, and its formal consultations with them in the form of working groups. These are designed to facilitate detailed discussion within the various industry sectors involved in home buying and selling, including lenders, estate agents, conveyancers, consumer groups. They focus on issues of particular concern to each sector.
- 7.9.2 The Department has been closely examining the progress of the national voluntary dry run and area trials of home information packs. In this respect, the Department noted paragraph 40 of the Committee's 39th Report of Session 2005-06 and its expectation that the Government would monitor preparations particularly in the context of the dry run. Over 18,000 partial home information packs have been produced as part of the dry-run that started in November 2005.
- 7.9.3 In November 2006, area trials started in 6 areas across England (Southampton, Newcastle, Bath, Huddersfield, Cambridge and Northampton). A further two areas were added in January 2007 (Southwark, and North West Wales (Anglesey, Conwy & Gwynedd)). Already, over 2,000 packs have been produced as part of the trials. The results of the area trials are being independently assessed by MORI and will inform the ongoing implementation of home information packs.
- 7.9.4 The Department issued a consultative document, "Home Information Pack Update: Towards 1 June - Consultation<sup>4</sup>" (on 25th January 2007), which proposed adjustments to policy in 18 specific areas. A total of 280 responses were received. These included 65 from search organisations, 48 from the public/those in individual capacity, 40 from conveyancers, 39 from local authorities, 29 from estate agencies, 17 from energy organisations/suppliers, 10 from home information pack providers and 5

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<sup>4</sup> Product code 06 SCD 04358/3. Available at [www.communities.gov.uk/index.asp?id=1505731](http://www.communities.gov.uk/index.asp?id=1505731)

responses from mortgage lenders/those providing financial services. The Department also held a number of sub-sector consultative groups during the consultation period. The views of these groups have also been fed into the consultation process. There was a wide spectrum of feedback and on the basis of this, additional changes were made to the policy on searches, transitional arrangements, and interim energy assessments.

7.10 The Department noted with interest the Committee's 14th Report of Session 2006-07 in which it drew special attention to the Home Information Pack Redress Scheme Order 2007<sup>5</sup>. The report set out the Committee's concern that "the Government have left it to such a late state to resolve a number of uncertainties that surround the scheme; and, in particular, that the Government propose to amend the Regulations laid in June 2006 only two months before the date set for introduction of HIPs".

7.11 The Department believes that the approach it has followed is consistent with the expectation expressed in the Committee's 39th report of Session 2005-06, that [the Department should] "monitor the preparations being made, notably in the context of the "dry run"". Obtaining useful feedback from researchers monitoring the dry run and area trials has inevitably meant delaying final adjustments to implementation plans until there were sufficiently representative numbers of different types of transactions and properties. Moreover, the adjustments made do not affect the fundamental proposals that have been clear since July 2006 and in some respects, respond to industry requests changes in order to ensure the smooth implementation of home information packs. The Department has made every effort to publicise any necessary changes in good time (it set out its proposed changes in January 2007) and to keep stakeholders up-to-date and involved with the remaining implementation issues and detailed policy considerations.

7.12 As a result of its consultations, the 2007 Regulations change the requirements of the 2006 Regulations in the following material respects—

7.12.1 Regulation 10(a). The Department noted paragraph 40 of the Committee's 39th Report of Session 2005-06 and its expectation that the Government would keep under review whether full implementation of home information packs should go ahead in June 2007. Home Condition Reports will now be a voluntary rather than mandatory element of home information packs (this policy is discussed further below). As a consequence of this change, an exception from the requirement to provide a Home Condition Report is no longer required (where a property was the subject of an uncommenced new homes warranty). Provision requiring a report on an incomplete property is also no longer required.

7.12.2 Regulation 18. A responsible person will now be able to market a property without first waiting for local authority searches (and where relevant) leasehold information to arrive. It was apparent from the area trials that in many cases, this information was subject to delays. The Department hopes

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<sup>5</sup> S.I. 2007/560.

that in due course such information can be required at the start of the process, and believes that doing so can bring substantial benefits to that transaction, and time savings to other transactions in the chain. It intends to put in place measures to address local authority performance in relation to local searches and is seeking to develop legislation that will require landlords to provide a regular statement of account relating to service charges.

- 7.12.3 Regulations 9(c) and (d) and Schedules 2 and 3. Energy performance information will be required in packs in respect of properties marketed while under construction (the predicted energy assessment) as Energy Performance Certificates for such properties will not apply under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. The Department received many representations in response to the January 2007 consultation supporting this proposal, and developers have already indicated that they are willing and able to produce such information. The Regulations also make provision for energy information to be provided for recently constructed properties on an interim basis until 16th September 2007 (interim energy assessments). Again, feedback from stakeholders suggested that accurate Energy Performance Certificates cannot yet be produced for such properties because the method of calculating energy performance for most buildings needs to be adjusted to reflect 2006 changes to Part L of the Building Regulations 2000<sup>6</sup>. This should be complete by 16th September 2007.
- 7.12.4 Regulation 14. The documents dealing with energy ratings for a property (the Energy Performance Certificate and recommendations, the interim energy assessment or the predicted energy assessment) will now be the first documents placed in the pack after the index. Feedback from the dry run and area trials suggests that potential buyers are more likely to read and take note of the energy information if placed at the front of the pack.
- 7.12.5 Regulation 34. The transitional period during which properties originally put on the market before 1st June 2007 do not need a home information pack is extended from 31st October 2007 to 31st December 2007. After this date, properties which are on the market are subject to the home information pack duties, regardless of when they were first put on the market. The Department noted paragraph 40 of the Committee's 39th Report of Session 2005-06 and the challenge in keeping to a minimum "any adverse effects on the housing market that might be caused by the transition to the new arrangements". With this in mind, an extension to 31st March 2008 was proposed as part of the consultation. This was suggested as a result of evidence that there may be a sudden influx of properties requiring home information packs from November. Comments from consultees agreed that this could have resulted in a substantial peak in demand for home information packs that might have delayed the

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<sup>6</sup> S.I. 2000/2531.

marketing of properties during the busy autumn period for estate agents. There were, however, concerns raised that extending to 31st March 2008 would also co-incide with the busy Easter period, and would delay realisation of the full benefits of home information packs with Energy Performance Certificates for all properties. The decision was made, after subsequent statistical modelling, to extend the transitional arrangements to 31st December 2007 at a time where the housing market is traditionally slow.

7.12.6 Regulation 9(1) and paragraph 4 of Schedule 7. The Regulations now facilitate effective competition in the market for local property searches. They continue to stipulate that local authorities must be the source for “local enquiries” (i.e. local search information concerning planning, building control, traffic, highways, compulsory purchase and other matters), but provide that where a local authority does not provide access to such information to a personal searcher, a search may be included in a home information pack which excludes this information in strictly limited circumstances, and as long as the consumer is protected by insurance in respect of any missing information. Experience suggests this is likely to apply to only a small number of properties, particularly following changes to open up access to building regulations information from October 2007. Feedback from the Department’s stakeholders suggested that these changes are needed so that the growing market for personal search companies is not stifled. The Department intends to take steps to address local authority performance in respect of search information and therefore, this provision is for an interim period until 1st April 2008.

7.13 A central register, containing all Home Condition Reports was proposed as part of a consultation on home information packs, carried out in March 2003<sup>7</sup>. The policy aims were that that such a register should be established only to:

- assist the monitoring and audit of home inspectors;
- ensure transparency (so that a potential buyer could check whether any other reports had been produced for the property during the preceding year);
- to prevent fraudulent tampering with reports;
- avoid duplicate reporting.

7.14 The policy was subsequently adopted and a number of additional technical and operational details relating to the register were discussed by working groups established by the Department. During the course of 2006, a competitive tendering process was carried out to select the contractor to operate the register on behalf of the Department. In addition, Ministers made clear that the only people who would be allowed access to the registers of Home Condition Reports should be buyers

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<sup>7</sup> “Reforming the home buying process in England and Wales - contents of the home information pack. A consultation paper.” (Published by the Office of the Deputy Prime Minister, March 2003, product code: 03HC01057).

and sellers, their advisers, mortgage lenders acting in relation to the sale, those monitoring the performance and quality of reports, and enforcement authorities.

- 7.15 In relation to the Department's policy on Home Condition Reports, the Committee will be aware of the written statement made to Parliament on 18th July 2006 by the Minister for Housing, Yvette Cooper M.P.<sup>8</sup>. The Minister stated that the Home Condition Reports would no longer be required as a mandatory element of home information packs and the Department would instead encourage their voluntary take up.
- 7.16 The laying of the 2006 Regulations and the publication of the Regulatory Impact Assessment inevitably led to renewed debate about home information packs and a range of representations were received on various aspects of the policy in the course of ongoing discussions with stakeholders. In particular, it became apparent that, despite the Department's firm intention to implement home information packs from 1st June 2007, many mortgage lenders would still require buyers to pay for costly valuation inspections in addition to Home Condition Reports as they would not be ready to implement automated valuation models from that date. This meant that consumers were likely to face duplicate costs if the mandatory requirement for Home Condition Reports had remained as it was. There were also growing concerns about other aspects of the readiness of the industry to implement home information packs fully from 1st June, including doubts about the availability of sufficient Home Inspectors. This led to the conclusion that bringing in compulsory Home Condition Reports at the same time as the rest of the Pack would have been risky for consumers and the industry - and could have jeopardised the introduction of Energy Performance Certificates, which are a key part of our climate change strategy. As soon as this conclusion was reached an announcement was made so that those businesses and individuals affected were informed at the earliest possible opportunity.
- 7.17 As described in the explanatory memorandum to the 2006 Regulations, the Department strongly believes that including Home Condition Reports in packs can have significant and positive effects on home buying and selling. The Department developed the Home Condition Report over a number of years in consultation with experienced stakeholders involved in the surveying industry. The Department continues to believe that it is a worthwhile report and to be the best value product of its kind.
- 7.18 The Department noted paragraph 40 of the Committee's 39th Report of Session 2005-06, in which it observed that it did not "underestimate the difficulties involved in making such an important change to the long-standing arrangements for buying and selling property" and believed that "it will be a major organisational challenge", "to ensure that there are enough qualified Home Inspectors to meet the likely demand for Home Condition Reports". Prior to the 18th July 2006, it was estimated that up to 7500 Home Inspectors would be required by 1st June 2007, reflecting the demand and time required to undertake the task.

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<sup>8</sup> Yvette Cooper M.P., Hansard vol.449, Part 186, Column 12WS.



7.19 For the Committee's information, it is expected that the demand for Home Condition Reports and Energy Performance Certificates (for residential properties marketed for sale) will require an estimated 2500-3000 Home Inspectors or Domestic Energy Assessors from 1st June, taking into account the time taken to produce such certificates, likely working patterns and the complexity of the task. Given the number of trainee Domestic Energy Assessors on accredited courses, and the estimated number of qualified and certificated Home Inspectors available, the Department is confident that there will be enough Domestic Energy Assessors and Home Inspectors from 1st June to produce both the Energy Performance Certificates required for home information packs and the authorised Home Condition Reports.

7.20 The Department is monitoring progress week by week, tracking the numbers entering and completing training as well as those joining certification and accreditation schemes. For the Committee's information, the latest figures obtained from the certification schemes and training bodies show that:

- 1085 trainee Home Inspectors have already passed their exams;
- there are currently 2750 people training or who have applied for training to be Domestic Energy Assessors.<sup>9</sup> Recruitment road shows for Domestic Energy Assessors have been heavily oversubscribed and we expect substantial numbers to enter training in the next few weeks. We expect this number to increase further as we approach 1st June 2007.

#### *Guidance and publicity*

7.21 The procedural guidance that accompanied the 2006 Regulations will be amended and updated to reflect the changes in the 2007 Regulations.

7.22 In addition, the Department is cooperating with the industry in producing help and guidance on the new duties where requested. For example, it intends to co-produce guidance for estate agents with the National Association of Estate Agents, the Association of Home Information Pack Providers, and the Royal Institute of Chartered Surveyors.

7.23 The enforcement of home information packs will be carried out by local authority trading standards officers<sup>10</sup> and the Department is currently consulting LACORS<sup>11</sup> on draft guidance for enforcement authorities. The Department expects that the training of trading standards officers and the enforcement by them of home information packs will be linked with that relating to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (the enforcement of which

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<sup>9</sup> Domestic Energy Assessors cannot be accredited until the relevant provisions of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 come into force.

<sup>10</sup> Any failure to comply with the Regulations will be subject to a £200 penalty charge.

<sup>11</sup> Local Authorities Coordinators of Regulatory Services, the body that represents the interests of trading standards officers.

will also be a function of trading standards officers). This should reduce costs and ensure an integrated and effective approach to enforcement.

7.24 The 2006 Regulations were laid before Parliament almost 12 months before Part 5 of the Housing Act 2004 was expected to come into force. As noted in the explanatory memorandum to those Regulations, the Department's intention was that this would provide time to conduct a publicity and educational campaign about the effects of the proposed changes before 1st June. In this respect, the Department noted the Committee's views at paragraph 40 of its 39th Report of Session 2005-06, that it would be a challenge to ensure that "buyers and sellers of property understand the changes in good time." Since the 2006 Regulations, the Department's publicity strategy has been to:

- maximise awareness and understanding of the rationale and benefits of Home Information Packs for consumers and the industry;
- place national advertising and advertorials in the trade media and regional press, and in the areas in which the area trials occurred;
- commission a national consumer campaign, (commencing late March 2007 - the Department's advice is that consumer campaigns about changes in legislation should be commenced as close as possible to the target date, to maximise their benefit);
- reaffirm to industry that home information packs will be introduced on 1st June 2007, through intensive work with stakeholders, including through sector-specific consultative groups;
- re-design a specific Home Information Pack website;
- undertake direct marketing to those in the industry;
- regularly produce a newsletter for those with an interest in Home Information Packs.

### *Consolidation*

7.25 The 2007 Regulations revoke and replace the 2006 Regulations rather than amend them. In the Department's view, the number of drafting changes justifies such consolidation (although the major policy changes are few and there are no such changes which were not described in the Department's consultative document of January 2007). It believes that there is merit in ensuring that all relevant the secondary legislation is in one instrument and for this reason, the 2007 Regulations contain provisions on Home Condition Report registers.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

Steven Daniels at the Department of Communities and Local Government Tel: 0207 944 4168 or e-mail: [steven.daniels@communities.gsi.gov.uk](mailto:steven.daniels@communities.gsi.gov.uk) can answer any queries regarding the instrument.

**Annex to Explanatory Memorandum  
Home Information Pack Regulations 2007**

Regulatory Impact Assessment for the Implementation of the Home Information Pack Regulations in England and Wales

## Summary

Our current home buying and selling process is slow, expensive and uncertain. Most buyers are provided with little or no information about the energy efficiency of the home they are considering buying. Home Information Packs are intended to improve the homebuying and selling experience for consumers and to reduce the carbon emissions from homes. The Home Information Pack regulations will require a Home Information Pack to be compiled for residential properties that are marketed for sale.

The Pack must contain legal documents (title information, sale statement and leasehold documents where relevant), searches and an Energy Performance Certificate (required by the Energy Performance of Buildings Directive and considered in a separate RIA), In addition, sellers may choose to include a Home Condition Report, providing condition-related information about the property.

The Home Information Pack is intended as one element of a series of both Government-promoted and market-led reforms aimed at improving the home buying and selling process in England and Wales. By making key information available to both buyers and sellers early in the transaction process it is expected that HIPs will lead to reduced transaction times, a reduction in wasted costs and more certain and transparent transactions.

The following Options have been analysed:

- |          |  |
|----------|--|
| Option 1 | Do nothing apart from requiring an Energy Performance Certificate (EPC) to be provided when a home is marketed.  |
| Option 2 | Require a Home Information Pack consisting of an EPC, searches, legal documents and, where appropriate, leasehold documents to be provided for all dwellings that are marketed for sale. |
| Option 3 | As Option 2, but require the pack to include a Home Condition Report.  |

The overall costs and benefits are summarised in the table below. Option 2 is shown to be the most cost-effective option and is expected to lead to a small reduction in costs to consumers and industry at the same time as delivering real benefits in terms of transparency, certainty and transaction times. It is also anticipated that Home Information Packs will pave the way for further, market-led changes in home buying and selling that will bring substantial further benefits to consumers.

All the required components of the Home Information Pack are documents that will need to be produced at some stage in the transaction. The Home Information Pack represents a transfer of responsibility from buyer to seller in order to maximise the benefit from making these documents available early in the process. Therefore, in the majority of cases where an individual who is selling one property is also looking to buy another property, the overall impact will be broadly neutral.

No significant adverse impacts have been identified with respect to race equality, health, small firms or competition.

*Summary of Costs and Benefits for Home Information Packs*

<b>Scenario</b>	<b>Total Cost (£ millions)</b>	<b>% increase above Base Case</b>	<b>Total cost per successful transaction</b>	<b>% increase above Base Case</b>	<b>Average cost of a transaction without a failure</b>	<b>% increase above Base Case</b>
Option 1 - Do nothing	£3,060	0%	£2,635	0%	£2,235	0%
Option 2 - HIP without HCR	£3,010	-2%	£2,589	-2%	£2,163	-3%
Option 3 - HIP with HCR	£3,090	1%	£2,668	1%	£2,252	1%

Note: 'Total Cost' includes cost to buyers and sellers for surveys/inspections, searches and conveyancing. Estate agents' fees are excluded, but an estimate is made of the direct marketing costs incurred by estate agents.

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## **Purpose and Intended Effect of Measure Objective**

1. Home Information Packs have two key roles:
  - improving the home buying and selling process for consumers; and
  - encouraging greater energy efficiency to reduce the 27% of carbon emissions that come from homes.
2. Home Information Packs will not achieve either objective on their own. They are part of wider strategies:
  - HIPs will work alongside e-conveyancing, strengthened redress arrangements for estate agents and market-led changes such as the growing use of the internet and “point of sale” mortgages to bring about major change in the way we buy and sell homes.

The Government’s concern is to accelerate those changes and to see that they bring the fullest possible benefits to consumers. The housing market is also a significant part of the economy. There are potentially significant economic and social benefits to be gained from improvements in its efficiency.

- the introduction of Energy Performance Certificates in HIPs is a key early step in our strategy to reduce emissions from buildings alongside the strengthening of Part L of Building Regulations, and the introduction of the Code for Sustainable Homes.

## **Background**

1. The current home buying and selling process has evolved over a considerable period:
  - Most homes are sold through estate agents who operate on a ‘no sale-no fee’ basis. The seller can withdraw at any time without cost, even though they may impose substantial costs on potential purchasers and estate agents by doing so.
  - Typically agents charge a commission of between 1.5% and 2% of the sale price, more where the seller chooses to market their property through multiple agencies. These rates have not changed significantly in ten years even though nominal house prices have trebled over the same period.
  - Homes are sold on the basis of “caveat emptor” – buyer beware. The seller is under no obligation to ensure that the buyer is aware of all material facts. Indeed, homes are offered for sale on the basis of particulars that provide scant information bearing in mind that buying a home is the most important transaction most people enter into. The Property Mis-descriptions Act, 1991 provides some protection for consumers against estate agents.
  - Offers are generally made on the basis of no more than the estate agent’s particulars and the buyer’s impressions of a property based on a viewing. The offer is not



binding on either party. Both can withdraw without cost - and in roughly a quarter of cases they do.

- The reasons for people withdrawing offers are many and varied. The “human factor” undoubtedly accounts for a large proportion of cases: for example, people might change their minds, see a property they prefer, decide they don’t want to move after all, have second thoughts about a key feature of the property, or have a relationship breakdown. But the discovery of significant faults with a property is also a major factor.
- The costs incurred when an offer is withdrawn lie where they fall, generally to the prospective buyer. The amount of cost that is wasted depends on how far advanced the process is when the transaction falls through. Little or no cost is incurred when an offer is withdrawn as a result of a buyer having second thoughts shortly after the offer has been made and before legal advisers and surveyors have been instructed. If a transaction falls through at a later stage the costs can be substantial - money that those stretching themselves to buy their first home or a new home for a growing family can ill afford. The cost is, however, a great deal more than financial. This stage in the process can be highly stressful.
- The process is further complicated because most home sales and purchases are part of a chain of transactions, given that few existing homeowners can afford to buy a new property without selling their existing home. The average length of chain is 4 transactions. Chains move at the speed of the slowest link. A failure anywhere in the chain can cause all of the transactions in the chain to fail – with substantial wasted costs.
- Buyers only begin to find out in detail about the property they are proposing to buy after they have had an offer accepted and when they instruct surveyors and conveyancers.
- Only a minority of buyers carry out a “Level 2” survey such as the “Home Buyers Survey and Valuation” and very few have a full structural survey carried out: most rely on their lender’s mortgage valuation survey - even though that is designed to tell the lender whether the property is a good security for the loan that is being sought rather than to inform the buyer about the state of the property.
- Both buyer and seller engage a lawyer to handle the conveyancing process, which is near impenetrable to consumers. Conveyancers make detailed inquiries about the property on behalf of buyers, either by requesting official searches or by using personal searches. These typically identify a number of issues on which further inquiries are raised. In some areas it can take a fortnight or more for searches to be returned, causing delays to the process. Delays can also be caused if leasehold sellers do not have key leasehold documentation to hand and these have to be requested from the freeholder or their managing agent.
- During the conveyancing process it can be very difficult for buyers and sellers to find out what is happening and where or what the cause of delays is. Few buyers are

aware of the alternatives on offer in the search market and will tend to accept whatever service their solicitor chooses - and charges for.

2. It is unsurprising that a process like this is slow, expensive and uncertain. This has been confirmed most recently by the HIPs Baseline research conducted in summer 2006 by the Building Research Establishment and Ipsos MORI. The study was based on 1059 completed transactions over a one month period. A total of 490 telephone interviews were conducted with buyers and sellers and 487 with solicitors. The key conclusions were:

- The average (mean) transaction time from marketing to completion was over 6½ months. Median transaction times were nearly 5 months. 1 in 4 takes 9 months or longer.
- The average time from “offer agreed” to “exchange of contract” was 81 days - about 10 days longer than in 1998.
- 23% of buyers who had completed a transaction experienced at least one failed transaction during the course of their most recent house buying and selling experience.
- Estate agents' records show that 20% of failed transactions were due to the results of a survey commissioned on the transaction that failed. A further 57% failed due to a collapse elsewhere in the chain.
- On the assumption that the reasons for failures elsewhere in the chain are the same as in the transaction surveyed some 46% of all transaction failures are due to survey-related issues.
- Where a transaction fails at a sufficiently late stage between offer and exchange the buyer's wasted costs are typically over £1000.
- The average cost, in terms of searches, conveyancing and surveys, of a completed transaction was £1,546, with first-time buyers paying slightly more.
- 11% of sellers undertook repairs to their property prior to marketing.

### **Rationale for Government Intervention**

3. The current home buying and selling process is slow, costly, and uncertain. The process is fraught with information failures and lack of transparency for both sellers and buyers. It is also fragmented and requires a number of parties to work together in order for transactions to complete successfully. These problems are exacerbated by the fact that most home sales are part of a chain of transactions, with the consequence that a problem with any individual transaction impacts on all other links in the chain.

4. The combined result of all of these factors is to prevent effective price competition, contribute to delays, uncertainty, wasted costs and transaction failures, and leave many consumers with a raw deal.
5. The current home buying and selling process does not serve consumers well. A number of market failures can be identified. Reducing these market failures will lead to an improvement in the economic efficiency of the home buying and selling industry, delivering benefits for consumers and industry alike:

#### **Asymmetric information**

- Buyers make offers on the basis of the estate agents' particulars and a tour of the property. They only commission a survey after they have made an offer. This increases the likelihood of costly transaction failures occurring at a late stage when delays or failures will impact on others in the chain.
- Home buyers and sellers and their advisers cannot easily see what is happening up and down a chain of transactions. This reduces the pressure on those in the chain to ensure delays are minimised.

#### **Principal-agent issues**

- Buyers and sellers have little understanding of what is involved in the conveyancing process and are not able to act as informed clients. Conveyancers commission various documents, the costs of which are simply passed through to their clients as 'disbursements'. As a result, there is limited price competition around searches.

#### **Externalities**

- Most housing transactions are part of chains. A chain only moves as quickly as the slowest transaction in the chain. One transaction in the chain falling through may well cause all other transactions to fail, potentially resulting in wasted costs for all the prospective buyers. Reducing delays at any point in the chain will therefore have significant spillover benefits.
- The 'no sale, no fee' deals offered by estate agents mean that sellers don't need to take account of the costs they cause others. In particular, when a seller withdraws a property from the market without paying anything, the costs that their estate agent has incurred in marketing their property are borne by those who do successfully complete a transaction through the fees that they pay.

#### **Lack of Price Competition**

- There is little price competition among estate agents. Estate agents commissions continue to be charged at the same percentage rates as ten years ago even though nominal prices have trebled in this period. Lack of clarity about the selling process and the seller's focus on the price achieved in a sale tend to reduce the pressure for price competition.

#### **Co-ordination failures**

- The fragmented nature of the home buying and selling process means that no single industry group is capable of driving the kind of market-led transformation that would address the problems outlined above. Nor is there an incentive for them to do so.
6. The overall result is a market that does not function to drive down prices or increase choice and quality for the consumer. The complexity of the arrangements and the fragmented nature of the market contribute to unnecessary delays and high failure rates - and have perhaps been the reason why competitive pressures have not led to the market reforming itself.

### **The Impact of Home Information Packs**

7. The components of the mandatory pack have an important role to play in speeding up the home buying and selling process and drawing attention to any problems at an early stage before they delay the transaction or, possibly, cause it to fail. The Home Information Pack will ensure that important information about a property is available to buyers and sellers early in the home buying and selling process. In combination with other government initiatives as well as market-led innovation, HIPs will act as a catalyst for reform, leading to a home buying selling process that is:
- **More transparent** - giving consumers a clearer, up-front picture of what they are buying and/or selling;
  - **Quicker** - with reduced transaction times;
  - **More certain** - with a reduction in the number of transactions that fall through between offer and exchange;
  - **Reduced wasted cost** - a more efficient process, with a reduction in abortive costs;
  - **Smoother** - the above reforms add up to a process that is less stressful and less confusing for consumers.

### **Consultation**

8. Both the general public and industry have been consulted extensively over a number of years on the general principle of the Home Information Pack and its contents. A number of government departments and agencies have also been consulted about Home Information Packs. This dialogue has been ongoing throughout the development of the policy.
9. The consultation paper *The key to easier home buying and selling* was published in December 1998 and *Contents of the home information pack* was published in March 2003. In addition to these formal consultation processes, the Department for Communities and Local Government and its predecessor Departments have discussed options and sought feedback on policy ideas from key external stakeholders via working groups and project boards.

10. These consultation exercises have demonstrated strong support from all sectors for the principle that sellers should assemble an information pack about the property, and that the Home Information Pack should be compulsory.
11. A number of respondents expressed concern about the mandatory inclusion of a Home Condition Report, which has been addressed by making the HCR an authorised component for inclusion on a voluntary basis at the seller's discretion. The other main concern was that the Home Information Pack would have a limited shelf-life. However this should not be a significant problem as the most time sensitive documents, the searches, are usually accepted to be valid by lenders for six months and it is anticipated that where necessary it will be possible to “refresh” searches at a reduced cost. Home Information Packs should reduce the time taken to buy and sell properties, thus minimising the requirement for any pack document to be refreshed.
12. A further document *Home Information Pack Update: Towards 1 June* was published on 25 January 2006, setting out a small number of proposed transitional arrangements to facilitate the smooth implementation of Home Information Packs on 1 June 2007. The responses to this consultation have informed the fine-tuning of these measures.

## Options Available

13. Three main options were considered in developing the policy:

Option 1 - Do nothing, apart from requiring that an Energy Performance Certificate is provided for each marketed property, as required by the Energy Performance of Buildings Directive

Option 2 - Impose a compulsory Home Information Pack on everyone marketing homes for sale. Under this option every seller would have to assemble a Home Information Pack<sup>12</sup> whatever the route that is used to sell their property. Sellers may choose to include a Home Condition Report as part of the pack, but there is no regulatory requirement to do so.

Option 3 - Impose a compulsory system, and include a Home Condition Report as a mandatory component of the Home Information Pack.

14. **Option 1** would not address any of the problems with the current home buying and selling process.

15. **Option 2** would provide buyers with important information (searches and legal documents, including leasehold documents) early in the home buying and selling process. At present searches and leasehold documents can take many weeks to compile, thus slowing transactions, and in many cases entire chains of transactions, in the crucial period between offer and acceptance and exchange of contracts. Option 2 would also reduce the wasted costs that are incurred when transactions fall through after an offer has been accepted, as the seller could re-use the documents.

16. **Option 3** goes further than Option 2 by mandating the inclusion of a Home Condition Report in all packs. This was the recommended policy option in the partial RIA published on 16 June 2006. However, it was subsequently concluded that the Home Condition Report should be a document that sellers could choose to add to their packs, not something that would be required. It was also felt to be inappropriate to require HCRs when it was clear that many lenders would not have Automated Valuation Models in place, with the result that a large number of consumers would end up paying both for an HCR and a valuation survey. The Government also believes that there is benefit in allowing the market to develop in response to consumers and that consumers will see benefits in topping up their HIPs to include an HCR. Moreover, bringing in compulsory HCRs at the same time as the rest of the Pack would have been risky for consumers and the industry - and could have jeopardised the introduction of EPCs, which are a key part of our climate change strategy.

## Alternative Options Considered

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<sup>12</sup> Consisting of legal documents, such as terms of sale and evidence of title and searches.

17. Other options considered were:

Option 4 - Non-statutory voluntary implementation of Home Information Packs.

Option 5 - Only impose a compulsory system on those marketing homes as a business.

18. **Option 4** is not supported by experience. Previous attempts at voluntary reforms have not been successful. Transactions with packs would become caught up in chains with other transactions without packs. Transactions involved in chains only move as quickly as the slowest link in the chain. Thus any time savings attributable to the presence of a Home Information Pack would probably be lost in these circumstances. In addition, sellers who provided and paid for the Home Information Packs might find that they were expected to pay for these items again in their role as buyers.

19. **Option 5** would avoid involving private individuals in legal obligations and potential sanctions. Currently, less than 5 per cent of people choose to sell their home without involving an estate agent. This proportion might increase substantially, with the growth in home sale websites. Like Option 4, transactions with a Home Information Pack would become linked with transactions without a pack. This would cancel out the benefits of the pack. There may also be unintended consequences as businesses may adapt their selling procedures with greater home seller involvement simply to avoid the requirement to produce a Pack. This would further reduce the proportion of homes marketed without a Home Information Pack and therefore further undo the intended benefits of the pack.

### **Structure of the RIA**

20. The RIA first considers the contents of the Home Information Pack under the recommended policy Option 2. The costs and benefits associated with this Option are then considered in greater detail, followed by an analysis of the complementarities between Home Information Packs and other initiatives to transform the home buying and selling process. Finally the RIA considers the impact of the policy on small firms, a competitiveness assessment, other impacts, enforcement and monitoring.

## Contents of the Home Information Pack

### *Title documents, the sale statement and leasehold documents*

21. The title documents, the sale statement and, where relevant, the leasehold documents are all documents that need to be provided at some stage in a transaction. Providing them upfront has a number of advantages.
22. For leasehold properties, obtaining the lease documents, if these have not been kept by the seller, can be a major cause of delay. Where fresh copies of the documents need to be obtained from the landlord or managing agent this can take several weeks. This could delay an entire chain if the documents are not to hand before a chain forms. Moreover, if, when they do arrive, the documents identify unexpected issues such as restrictions that would be unacceptable to a potential purchaser (e.g. restrictions on keeping pets) or unexpected liabilities (e.g. an obligation to contribute to major repairs to a block of flats) these could lead to last minute re-negotiations or the complete failure of the transaction.
23. Problems with title documents may be rarer - although there are still a significant number of properties with unregistered titles. Such problems are best revealed and tackled at an early stage.

### *Searches*

24. Searches are one of the most important parts of the home buying and selling process. They tell buyers, for example, about planning permissions which might affect their property, compulsory purchase orders or road schemes. Yet performance in providing searches is very variable.
  - **Time to produce a search.** Some searches are slow and delay transactions. Searches can be produced in less than two days, some taking less than a day. The majority take between five and ten days. In the worst 10% of local authorities they can take between two and four weeks. The fastest searches can be done in minutes; the worst take over 40 days.
  - **Cost.** The cost of an official search varies from £59 to £269 and it is difficult to see how such a large variation can be justified
  - **Quality.** In some areas private search companies are prevented from providing searches based on the full data available to local authorities.
25. The best way to ensure that consumers get the fast and high quality service on searches they need is through competition between local authorities and private search companies that provide searches using data held by local authorities and other bodies. The Government has accepted the conclusions reached by the OFT in its 2005 report on the provision of searches. Private search companies are an essential part of delivering the services home buyers and sellers need. The OFT's view is that effective competition between local authorities and



personal search companies, based on non-discriminatory access to the unrefined information held by local authorities, will deliver the best results for consumers.

26. We are already seeing evidence of competition in this market. Some authorities have made dramatic improvements in the service they provide for consumers. We also welcome the moves already made by the private search industry to adopt a code of practice, and will work with stakeholders to build on this. By making the process of compiling searches more transparent, Home Information Packs will help create a genuinely level playing field and thus further stimulate this competition.

## Breakdown of Costs and Benefits

### *Costs*

27. Option 2 requires all components of a Home Information Pack to be commissioned prior to marketing. Evidence of title and an Energy Performance Certificate must be in place before a property can be listed for sale. All of the information contained in the pack is required under the existing home buying and selling process, but is generally commissioned by prospective buyers once an offer has been accepted.<sup>13</sup>
28. Option 2 therefore involves a transfer of costs from buyer to sellers. As most people who sell a home also purchase a dwelling at the same time, the overall impact for most consumers will be broadly neutral. The expectation is that increased competition should exert downward pressure on prices for Home information Packs and their component parts.
29. There are three scenarios under which Home Information Packs will lead to additional costs:
- ***Speculative listings*** - A significant minority of properties that are listed for sale do not receive an offer that is acceptable to the owner. This may be because the seller is 'testing the market' or is not fully committed to selling for some other reason. In these cases, the Home Information Pack will represent a wasted cost.

However, those who market their homes without a firm intention to sell are distorting the housing market and imposing costs that are picked up by estate agents and passed onto other consumers. It is expected that Home Information Packs will reduce the incidence of such listings.

- ***Search expiry*** - searches are the most time sensitive documents in Home Information Packs. Most lenders accept searches as valid as long as they are not longer than six months old. Evidence from the HIP Baseline study suggests that nearly half of all transactions take 6 months or more from marketing to completion in which case a large number of searches would need to be refreshed. A number of search companies have indicated that they are considering offering refresh searches at reduced costs. Moreover, Home Information Packs should reduce the time taken to buy and sell properties, thus reducing the requirement for any pack document to be refreshed.
- ***Acceptability of private searches to conveyancers*** - some conveyancers are reluctant to accept searches carried out by private search companies and as a result a local authority search will be commissioned and duplicate costs will be incurred.

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<sup>13</sup> The exception to this is the Energy Performance Certificate, which is covered in a separate RIA to accompany regulations to implement the Energy Performance of Buildings Directive.

30. Estate agents will need to make minor changes to the way they operate, as they would no longer be able to market a property for sale until a skeleton Home Information Pack has been assembled. The changes required to their systems, business processes and any staff training required may involve some additional expenditure. The regulations have been carefully drafted to minimise the impact on estate agents.

*Benefits*

31. Prospective homebuyers will benefit by having important information and legal documentation available at an early stage in the transaction process. Both buyers and sellers will benefit from a reduction in delays to transactions caused by problems obtaining these documents.

32. First time buyers will be amongst the biggest beneficiaries as they will receive from the seller much of the information they now have to pay for and they will stand to lose much less if transactions fall through. At present, first-time buyers face slightly higher transaction costs than previous owners, costs that those who are struggling to get onto the property ladder can ill afford.

33. Home Information Packs should drive cost out of the current transaction process by increasing transparency around what services are involved and the costs of providing these services:

- ***Reduced cost of property searches*** - By facilitating the establishment of a level playing field and encouraging greater competition in the market for property searches, the expectation is that both private and official searches will become cheaper. Opening up competition will also lead to improved search times. As search information forms a required part of the Home Information Pack and packs will need to be produced before the property can be marketed for sale there will be an increased focus on speed of delivery for search products.
- ***Reduced rate of transaction failure*** - A number of studies have found that approximately one in four transactions fall through between offer acceptance and exchange. Where a transaction fails at a sufficiently late stage between offer and exchange the buyer's wasted costs are typically over £1000. There are a number of reasons for a transaction falling through and the human factor is clearly important in many cases. However, issues related to a survey or to the condition of the property are another major cause.

The Home Information Pack will make the process more transparent by providing homebuyers with important legal information early in the process. This is expected to have a limited impact on transaction failure. However, if all sellers chose to supplement the core Home Information Pack with a Home Condition Report, then transaction failures would be expected to fall substantially.

- ***Reduced cost of transaction failure*** - Home Information Packs will mean that it is the seller who commissions and owns the information contained in the Pack. It will therefore

be possible for the Pack documents to be re-used if and when transactions do fail, thus reducing wasteful duplication.

- ***Reduced wasted costs to estate agents*** - The 'no sale, no fee' deals offered by estate agents mean that those who market their homes on a speculative basis don't need to take account of the costs they cause others. An individual can withdraw their property from the market without paying anything. However, their estate agent will have incurred costs in marketing the property on their behalf. These wasted marketing costs will be borne by those who do successfully complete a transaction through the fees that they pay.

34. The requirement to provide a Home Information Pack is expected to deter those 'sellers' who only wish to test the market or who market 'spontaneously' without thinking their decision through fully. The reduction in non-serious listings will reduce costs to estate agents, savings which are expected to be passed onto consumers. Moreover, it will give prospective buyers a more accurate picture of the true housing market with greater certainty that a particular property is genuinely for sale.

#### *Environmental Impacts*

35. Article 7 of the EU Directive 2002/91/EC, requiring an Energy Performance Certificate to be provided whenever a property is constructed, sold or rented will have to be implemented irrespective of the introduction of Home Information Packs. The benefits and costs of the Energy Performance Certificate (EPC) are covered in a separate RIA to accompany the regulations implementing the Energy Performance of Buildings Directive.

## **Other Initiatives in the Home Buying and Selling Market**

### *Home Condition Reports*

36. At present many buyers know very little about the condition of the properties they want to buy before they make an offer. Many people are bidding in the dark. They only obtain solid information about a property's condition when their offer has been accepted. A substantial proportion rely entirely on the valuation survey carried out for their mortgage lender rather than commissioning a survey of their own, notwithstanding that a valuation survey is designed to tell the lender whether the property is a good security for the lender, rather than to tell the buyer what condition it is in.
37. Should problems emerge once surveyors and conveyancers have been commissioned the buyer will already have spent a significant amount of money. In many cases problems can and are dealt with by a re-negotiation between the buyer and the seller, often facilitated by the estate agent. However, evidence from the HIP Baseline Research suggests that over two fifths of failed transactions that fall through between an offer being accepted and contracts being signed, may be related to a survey or the condition of the property. Where a transaction does fall through, the buyer's expenditure is wasted as the survey is not usually made available to subsequent purchasers.
38. Home Condition Reports are designed to address these issues to the benefit of both buyers and sellers. In particular they can:
- enable buyers to make properly informed bids;
  - by providing information up front, reduce the chances of late surprises leading to re-negotiations and, potentially, the breakdown of the transaction.
  - cut the wasted costs when a transaction fails as the survey can be made available to a subsequent bidder who can rely on it as if it had been commissioned for them.
  - from a seller's point of view, minimise the risk of being asked to accept a price reduction at a late stage in a transaction due to something being discovered in a survey carried out for the buyer. Often a seller can be put under pressure to accept a reduction much larger than the cost of the works required to rectify the fault discovered.
39. The Home Condition Report has also been designed so that it can provide data that can be fed directly into lenders' automated valuation models - thereby avoiding the cost of a separate lenders' valuation survey in a substantial number of cases.
40. The Government is keen to promote market-led take up of Home Condition Reports. A key objective of the Area Trials is to understand how we can maximise the benefits for both buyers and sellers and encourage them to add an HCR to their pack. Ipsos MORI's independent research into the Area Trials will identify the reasons sellers choose to take-up HCRs and the barriers to doing so, it will also seek to identify any difference the HCR makes to the overall home buying experience.

## *Consumer Redress*

41. Establishing robust redress arrangements for consumers is a key part of the Government's strategy for reforming the home buying and selling process. The current patchwork of statutory and voluntary redress arrangements across the home buying and selling market lack transparency and can be difficult for consumers to negotiate. Consumers may not be aware whether the businesses with whom they are dealing offer any form of redress or how to access advice and information if they wish to pursue a complaint.
42. Under Home Information Packs legislation<sup>14</sup>, and for the first time, all estate agents in England and Wales who market a home with a Pack will have to belong to an approved independent redress scheme (for HIP-related complaints). On 1 March it was announced that the Ombudsman for Estate Agents (OEA) application to run a HIPs redress scheme had been approved.
43. At present, around 70 per cent of estate agents belong to the OEA's Sales scheme on a voluntary basis. From summer 2006 all estate agents who are members of the National Association of Estate Agents (NAEA) have been required by the terms of their membership to belong to the OEA's Sales scheme. Members of the OEA's wider Sales scheme will automatically belong to the OEA's HIPs redress scheme. Thus there will be an additional cost for those who do not currently belong to an approved redress scheme when Home Information Packs become mandatory in June 2007. The DTI has consulted with industry on the impact of this proposal and the probable costs. The DTI published a separate regulatory impact assessment to accompany the HIPs (Redress Scheme) Order 2007 when it was laid on 1 March<sup>15</sup>.
44. Refusal to join a redress scheme will be treated as if it were an undesirable practice under the Estate Agents Act 1979 and may lead to penalty charges being applied by trading standards officers. Continued refusal to join a scheme could lead to the Office of Fair Trading considering the fitness of the estate agent to continue operating, after which a banning order could be applied.
45. The provision of independent redress schemes will help to:
  - secure consumer confidence;
  - improve standards of service; and
  - protect home buyers and sellers from unscrupulous agents<sup>16</sup>.
46. It is expected that a single point of access will be in place by 1 June 2007 to support consumers interested in redress for any features of the home buying and selling process - including specific Home Information Pack concerns. For the purposes of the HIPs Area Trials this service is being provided on a temporary basis by Consumer Direct, the consumer advice service supported by the Office of Fair Trading.

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<sup>14</sup> The Home Information Pack (Redress Scheme) Order 2007 can be accessed at:  
[http://www.opsi.gov.uk/si/si2007/uksi\\_20070560\\_en.pdf](http://www.opsi.gov.uk/si/si2007/uksi_20070560_en.pdf)

<sup>15</sup> Available from: <http://www.dti.gov.uk/consumers/business/estate-agents/index.html>

<sup>16</sup> Other voluntary, industry-led redress schemes will be set up to cover those marketing HIPs

### *E-conveyancing*

47. E-conveyancing will transform the current manual conveyancing process and deliver a new web-based system through which:
- authorised parties involved in a conveyancing transaction can exchange information quickly, securely and reliably with each other and the Land Registry, thus removing the postal delays and the risk of documents “going missing” that is a feature of the current system;
  - registration will be confirmed immediately on completion, thus eliminating the “registration gap” between completion and registration, during which problems can arise;
  - up-to-date and accurate information is available on the progress of all linked conveyancing transactions (the “chain matrix”), thus introducing much needed transparency into the system and enabling those involved in the chain to see what stage everyone else has reached;
  - funds can be transferred immediately electronically through a system that is secure and reliable. The present system is wasteful and inefficient and causes enormous stress at completion.
  - all financial obligations, including Stamp Duty Land Tax and Land Registry fees, as well as payments between buyers, sellers, lenders and conveyancers, will be settled electronically. With the help of e-technologies, the amounts of Stamp Duty Land Tax and Land Registry fees will be correct in virtually all cases. This will contrast with the present high incidence of errors.

### *Home Information Packs as a catalyst for market-led developments*

48. The Government-led initiatives described so far in this section will both deliver real short and medium-term benefits and create a climate in which there is scope for market-led change.
49. There are already plenty of signs that the home buying and selling market is ripe for change. There are new entrants into the market with large supermarkets setting up estate agency businesses. The number of personal search companies has risen sharply. Key parts of the information chain are now available on line such as the services provided by the Land Registry. Use of the internet to advertise homes for sale as well as to sell them is also increasing. And in some cases decisions on mortgages can be made in minutes rather than the weeks it has taken in the past.
50. Against this backdrop, Home Information Packs have the potential to act as a catalyst to drive change. By bringing information together at the start of the process, Home Information Packs will change the way in which the market works. It will make it very clear to consumers what it costs to collect the information needed and how long this takes, increasing competition and putting pressure on suppliers to improve their performance and reduce costs.

51. With better information, particularly where a Home Condition Report is provided, buyers will be able to make well-informed offers. The expectation should increasingly be that once made, offers are not re-opened and that transactions will move quickly from the acceptance of an offer to the signature of contracts. E-conveyancing will also help substantially here, creating pressure on all those involved in a chain to act quickly to avoid holding others up. This may lead to further streamlining of processes at this stage of the process.
52. Already new businesses are being set up to service the new market place. And the more innovative organisations are not satisfied with simply providing the packs or supporting other aspects of the new transaction process: they are looking for ways in which they can build on HIPs to provide better services to buyers and sellers, streamlining the process, speeding it up and cutting costs. The Government is keen to see such developments occur and to ensure that they benefit consumers.



## Sectors and Groups Affected

### **Consumers**

53. Most of the information included in the Pack is currently provided in the existing home buying and selling process. In the majority of cases, where an individual who is selling one property is also looking to buy another property, the introduction of Home Information Packs will simply realign the current process. However, the Home Information Pack proposals will have the benefit of ensuring that important information is made available at the start of the process, rather than once a sale has been agreed. First time buyers will benefit in particular from these new arrangements.

### *Estate Agents and Others Marketing Property for Sale*

54. Estate Agents and others who market properties for sale will need to make changes to the way they operate, as they will no longer be able to market a property for sale until a Home Information Pack has been assembled. The changes required to their systems, business processes and any additional staff training required would mean additional expense in the short term.

55. However, the proposals create new opportunities, as well as reducing the wasted cost of failed and aborted transactions for these businesses. In particular, the requirement to provide a Home Information Pack is expected to deter those 'sellers' who only wish to test the market or who market 'spontaneously' without thinking their decision through fully. The reduction in non-serious listings will reduce marketing costs to estate agents, savings which are expected to be passed onto consumers.

### **Local Authorities**

56. The OFT report *Property Searches – A Market Study*, published in September 2005 highlights a number of problems with the current search market. In particular:

- it is not always easy for private search companies to access the information they need to complete searches, and;
- local authority search charges range from around £50 to £270, with no obvious justification for such a large price differential.

57. The principal recommendation in the report is that local authorities should make available the unrefined data used to compile search replies on terms that do not put private search companies at a disadvantage.

58. Local authority trading standard officers will also be responsible for enforcing the HIP legislation. They will have a number of enforcement options, ranging between providing

help and advice to issuing fixed penalty notices for serious breaches of the rules. The costs of this additional burden have been reflected in the Local Government settlement.

### ***Private Search Companies***

59. Under the regulations, personal search companies will be able to provide search information for inclusion in a Home Information Pack. This will consolidate and widen the market opportunities for these companies, who already provide a significant proportion of searches under the current system. However, the regulations will regulate the current system by specifying minimum standards for searches and search providers to ensure adequate consumer protection (e.g. compulsory insurance cover).
60. Because searches for inclusion in the Home Information Pack will need to be produced at the start of the marketing period there will be an increased focus on speed of delivery for search products. This will affect both local authorities and private search companies.

### ***Conveyancers***

61. All the legal documents that are required by the Home Information Pack regulations are produced under the current system. The introduction of the Packs will therefore have a broadly neutral impact for conveyancers. Having most of the information made available at one time, rather than piecemeal over a number of weeks or months, should provide significant scope for efficiency savings.

### ***Home Information Pack Providers***

62. Home Information Pack providers are a new group of firms who aim to specialise in compiling the documents for inclusion in the Home Information Pack and supplying their services to estate agents and individual sellers of homes. A representative body, the Association of Home Information Pack Providers (AHIPP) has been set up and has produced a code of conduct and agreed minimum standards that members must adhere to.
63. Many firms that are already involved in the home buying and selling industry have identified competitive benefits from streamlining their processes and providing complete packs in addition to their core market.

### ***Longer-Term Impacts***

64. It is likely that the proposals will increase the linkages across the various sectors within the industry and encourage new entrants. Sellers and their agents will be keen to market the property as soon as possible so there will be pressure to assemble the legal documents efficiently and quickly. This will be facilitated by the increased use of new technology and greater coordination and cooperation between those who provide documents for the pack.
65. Home Information Packs may also encourage alternative ways to buy and sell homes. For example, conveyancers offering Pack provision services could offer a potential alternative to estate agents as a first point of contact for sellers. This arrangement is quite usual in Scotland and could become a more common feature of the English/Welsh market. In these and others ways the traditional roles of a number of the key players in the market is likely to change as part of the longer-term market-driven changes that HIPs and complementary reforms such as e-conveyancing will bring about.

## Competition assessment

66. A competition assessment has been undertaken, following the revised competition filter guidance published for consultation by OFT on 19 February 2007. This supplements the findings from the competition assessment that was undertaken in June 2006 on the basis of the previous OFT guidance.

67. The four questions in the revised competition filter are as follows:

In any affected market, would the proposal:

- Directly limit the number or range of suppliers?
- Indirectly limit the number or range of suppliers?
- Limit the ability of suppliers to compete?
- Reduce suppliers' incentives to compete vigorously?

68. The competition assessment found that the introduction of the Home Information Pack will have some impact on competition within the housing industry. However, it should not limit the ability of businesses to compete or their incentives to do so; in fact it creates new opportunities for businesses and will encourage competition.

### *Direct limits on the number or range of suppliers*

69. A number of approved certification schemes will compete to license Home Inspectors for the production of Home Condition Reports. As set out elsewhere in this document, Home Condition Reports will be an authorised document that sellers can choose to add to their packs but will not be mandatory. The Department believes that there is benefit in allowing the market to develop in response to consumers and that consumers will see benefits in topping up their HIPs to include an HCR.

70. Moreover, given that the Home Condition Report is a new document, and its inclusion in a HIP will be voluntary, the requirement for Home Inspectors to belong to an approved certification scheme will not impose a restriction on existing suppliers in the home buying and selling industry. What Government is seeking to achieve through the licensing scheme is to protect the quality of this new product.

71. Only qualified and certified Home Inspectors will be able to produce Home Condition Reports. The requirement for Home Inspectors to belong to an approved certification scheme is a response to fears about the credibility to buyers and mortgage lenders of an inspection report commissioned and paid for by the seller. In the absence of suitable safeguards, a seller would be incentivised to mis-represent the condition of their property in order to extract a higher sale value or to ensure a smooth transaction.

72. Home Inspector certification is one of a number of ways in which the Department has worked to address this concern:

- the Government will set the standards that Home Inspectors must meet when producing Home Condition Reports;
- only Home Inspectors registered with a Certification Scheme approved by the Secretary of State will be able to prepare Home Condition Reports;
- the Certification Schemes will monitor and audit the Home Condition Reports produced by Home Inspectors to ensure that they meet the standard set by the Government;
- Home Inspectors will be required to have suitable insurance to provide redress to buyers, sellers and lenders when necessary;
- if a Home Inspector fails to maintain the standards set by the Government (either by producing a substandard Home Condition Report or by acting unprofessionally) their certification can be removed.

Given these safeguards the Department believes that buyers, sellers and lenders will have every reason to have confidence in the report.

*Indirect limits on the number or range of suppliers*

73. We do not believe that Home Information Packs will impose a significant barrier to entering or exiting the home buying and selling industry, in particular for estate agents. As OFT found in its 2004 report the estate agency market is not highly concentrated with no single estate agency having more than 10 per cent of the national market share<sup>2</sup>. The estate agency sector is characterised by low entry costs with healthy levels of entry and exit and a high proportion of small independent firms.
74. It is not expected that the proposals will have a disproportionate impact on smaller firms (see paragraphs xx to xx). Nor do we expect that large businesses will be able to establish a dominant market position by operating in multiple parts of the industry. The impact of the Home Information Pack is more likely to be determined by the way an individual business responds, for example by joining with other firms and/or using Pack services provided by other organisations.

*Limits on the ability of suppliers to compete*

75. The regulations will specify when a Home Information Pack must be produced as well as the required contents of the product. The price of Pack components will be determined by the market and Government expects that increased competition will drive prices down.
76. Although the Home Information Pack will consist of a standard set of core, required documents, a number of documents such as a Home Condition Report will be authorised for inclusion in the Pack. In addition, other information relevant to the property can, as now, be provided as part of a wider service, for example, local area based information about schools, hospitals and other facilities.
77. The Government will set minimum quality standards for the Home Condition Report. Minimum quality standards are one of the measures that have been taken to ensure the credibility and acceptability of the Home Condition Report to the buyer, as set out above.

78. Given that the Home Condition Report is a voluntary component of the Home Information Pack the existence of minimum quality standards will not restrict the ability of suppliers to compete in the market for HIP provision.

#### *Reduced incentives to compete*

79. The Department believes that Home Information Packs will stimulate competition in the affected markets, and will provide opportunities and incentives for both new entry and innovation.

80. The information failures, lack of transparency and principal agent issues that distort the current home buying and selling experience for consumers are clearly set out elsewhere in this document. These factors combine to prevent effective price competition for estate agency services, searches and conveyancing.

81. OFT's 2004 report into the estate agency market in England and Wales confirmed the lack of price competition among estate agents. Indeed, estate agents' commissions continue to be charged at the same percentage rates as ten years ago even though nominal house prices have trebled in this period. Lack of clarity about the selling process and the seller's focus on the price achieved in a sale tend to reduce the competitive pressures in this market.

82. Home Information Packs will complement other initiatives to increase competition in the market for property searches, a market considered in OFT's 2005 report 'Property Searches – A Market Study'. The OFT's view is that effective competition between Local Authorities and Personal Search Companies, based on non-discriminatory access to the unrefined information held by Local Authorities, will deliver the best results for consumers. In particular, the expectation is that both private and official searches will become cheaper.

83. In summary, the Department believes that by ensuring that key information is provided to consumers early in the home buying and selling process Home Information Packs will make the home buying and selling increase transparency, making it clear what documents are needed and how much they cost to produce.

#### *Market Structure*

84. It is likely that the proposals will increase the linkages across the various areas within the industry (e.g. estate agents working more closely with conveyancers). Sellers and their agents will be keen to market the property as soon as possible so there will be pressure to assemble the legal documents efficiently and quickly. This can be facilitated by greater coordination and cooperation between those who provide documents for the pack.

85. Although competition for consumers is unlikely to change dramatically in the short-term, Home Information Packs may facilitate alternative ways to buy and sell homes. For example, conveyancers offering Pack provision services could offer a potential alternative to

estate agents as a first point of contact for sellers. In this way the traditional roles of a number of the key players in the market could change as part of longer-term market-driven change.

## Small Firms Impact Test

86. Research has been undertaken with a number of estate agents, conveyancers and surveyors to test the potential impact on small businesses of the proposed reforms. Small businesses were divided in their views on the likely impact of the Government's proposed reforms. Those businesses that were opposed to the reforms were also the most concerned about the potential for Home Information Packs to have a negative effect on their business. Those that supported the reforms tended to see it as an opportunity to increase their business in the sector.
87. A common concern for estate agents was the belief that the introduction of the Home Information Pack will reduce the number of sellers coming to market which will, in turn, lead to a fall in revenue within the industry.
88. However only speculative or non-serious 'sellers' are likely be deterred from putting their property on the market, and therefore the overall number of completed transactions is expected to remain constant. Moreover, estate agents will save the wasted costs associated with marketing properties that do not sell.
89. There has been concern that if the market moves towards a "no sale, no fee" approach for Packs then smaller business would not be able to compete with larger firms. However, experience shows that many of the companies that are currently using packs successfully are all small businesses. Small businesses can compete by placing the emphasis on quality of service, greater flexibility and local knowledge, and by developing links with other sectors to share the risks and costs of providing a competitive service.
90. Smaller businesses may have difficulty raising the funds needed to train staff and change their systems in preparation for the Home Information Pack. However, many smaller businesses will be in a better position to adapt, as their infrastructure will be less complex or widespread.
91. The Small Business Service (SBS) in the DTI has been consulted and is content that the potential impact of the proposals on small businesses have been fully considered.



## Other Impacts

### *Race Equality impact assessment*

92. In 2005, COI Strategic Consultancy were commissioned to investigate the impact of Home Information Packs on ethnic and other minority groups<sup>17</sup>. They examined the effect of the Pack and Home Condition Report requirements on a number of groups by talking directly to organisations which represent these communities. The study found that, in general, BME home buying/selling behaviour is consistent with the mainstream community. This suggests that Home Information Packs are unlikely to have any impact on racial equality.

### *Health impact assessment*

93. It is unlikely that Home information Packs will have any specific impacts on health. However, by making the process smoother and more transparent HIPs may remove some of the stress from home buying and selling, thus leading to a small secondary benefit.

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<sup>17</sup> *ODPM Home Information Pack Scoping*, COI Strategic Consultancy, September 2005.

## **Enforcement and Sanctions**

94. The Home Information Pack duties will be enforced by local authority trading standards officers (TSOs) and Communities and Local Government has agreed to meet the additional costs. The arrangements include a new provision for enforcement against private sellers. The enforcement arrangements are risk based and proportionate, and comply with the recommendations of the Hampton review. The emphasis is on enforcement authorities providing information and advice to achieve compliance.
95. However, where TSOs decide that such action is warranted, they will have the option of serving a civil penalty of £200 and referring cases involving estate agents to the Office of Fair Trading, who would consider the fitness of the estate agent to continue operating. OFT has existing powers to issue a banning order on agents engaging in undesirable practices

## **Review, Monitoring and Evaluation**

96. A series of monitoring and evaluation exercises will be conducted subsequent to the implementation of the Home Information Pack regulations on 1 June 2007. These are intended to:
- Measure the impact of Home Information Packs against the key performance indicators;
  - Monitor and evaluate the impact that HIPs has on the housing market.
97. In particular, it is envisaged that the approach used in the 2006 HIP Baseline Research will be repeated to give an interim evaluation in autumn 2008, and a full evaluation in autumn 2010. By using the same methodology it will be possible to compare directly the results from these post-implementation studies with the pre-implementation picture obtained from the 2006 Baseline study. It is expected that by 2010 market-led innovations will be serving to reinforce the direct benefits of Home Information Packs.

## Implementation and Delivery Plan

98. The proposed implementation plan showing key deliverables is given in the table below:

### *Proposed implementation Plan*

<b>Key deliverable</b>	<b>Actual or planned implementation date</b>
Area Trials in 6 regions: Newcastle, Northampton, Huddersfield, Southampton, Cambridge, Bath	6 November 2006
Area trials in 2 additional regions: Southwark North West Wales	12 February 2007 19 February 2007
Home Information Pack Regulations laid	29 March 2007
Regulations come into force	19 April 2007
Go-live	1 June 2007
Early Operations Monitoring: 1 <sup>st</sup> report due 2 <sup>nd</sup> report due 3 <sup>rd</sup> report due	31 June 2007 31 July 2007 31 August 2007
Pre Go-live baseline research	May/June 2006
Post Go-live research: Interim evaluation Final evaluation	Autumn 2008 Autumn 2010

## Conclusions and Recommendations

99. This document has set out the case for the introduction of Home Information Packs and for wider reform of the home buying and selling process. This RIA has focussed on the lighter-touch option, which transfers the responsibility from buyer to seller for producing documents that are already required under the current system, but does not introduce any new requirement, such as the Home Condition Report.

### Conclusions of Cost-Benefit Analysis

100. The table below sets out the costs and benefits that have been included in the modelling work to support this RIA.

#### *Costs and Benefits included in cost model*

<b>Additional Costs</b>	<b>Cost savings / Benefits</b>
Cost of producing packs for homes that are listed but not sold	Reduction in cost of searches (through increased competition)
Searches that go out of date ( <i>typical</i> marketing – completion takes ~5 months. Search validity is between 3-6 months)	Reduction in <i>rate</i> of transaction failure (by preventing nasty surprises – dependent on level of HCR take-up)
Private searches that are rejected by buyers' conveyancers	Reduction in <i>cost</i> of transaction failure (sellers can re-use searches etc.)
	Reduced costs to estate agents of marketing properties that are listed speculatively

101. A number of non-monetary benefits have not been quantified. These include:

- increased transparency;
- greater certainty;
- reduced transaction times, and;
- reduced stress

102. It is expected that these benefits will be significant and will be the real key to delivering consumers an improved home buying and selling process.

103. The results of the cost-benefit analysis are set out below:

*Summary of Costs and Benefits for Home Information Packs*

<b>Scenario</b>	<b>Total Cost (£ millions)</b>	<b>% increase above Base Case</b>	<b>Total cost per successful transaction</b>	<b>% increase above Base Case</b>	<b>Average cost of a transaction without a failure</b>	<b>% increase above Base Case</b>
Option 1 - Do nothing	£3,060	0%	£2,635	0%	£2,235	0%
Option 2 - HIP without HCR	£3,010	-2%	£2,589	-2%	£2,163	-3%
Option 3 - HIP with HCR	£3,090	1%	£2,668	1%	£2,252	1%

104. In view of the overall benefits of Option 2 - mandatory Home Information Pack, it is recommended that this policy is taken forward.

## Declaration and Publication

**I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs**

*Signed .....Ruth Kelly.....*

**Ruth Kelly**

**Secretary of State for Communities and Local Government**

**Date: 26th March 2007**

**Contact: James Wiltshire**

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