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STATUTORY INSTRUMENTS

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**2006 No. 1503**

**HOUSING, ENGLAND AND WALES**

**The Home Information Pack Regulations 2006**

<i>Made</i>	- - - -	<i>9th June 2006</i>
<i>Laid before Parliament</i>		<i>14th June 2006</i>
<i>Coming into force</i>		
	<i>for the purposes of Part 7</i>	<i>6th July 2006</i>
	<i>for all other purposes</i>	<i>1st June 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 161, 163, 164 and 250(2) of and paragraphs 2 and 11(b) of Schedule 8 to the Housing Act 2004<sup>(1)</sup>.

Under section 250(3) of that Act, the Secretary of State has consulted the National Assembly for Wales in relation to residential properties in Wales.

**PART 1**

**CITATION, COMMENCEMENT AND INTERPRETATION**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Home Information Pack Regulations 2006.

(2) These Regulations shall come into force for the purposes of Part 7 on 6th July 2006 and for all other purposes on 1st June 2007.

**Interpretation – general provisions**

2.—(1) In these Regulations—

“the 2004 Act” means the Housing Act 2004;

“appropriate local land charges register” means the register described in section 4 of the Local Land Charges Act 1975<sup>(2)</sup>;

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(1) 2004 c. 34.

(2) 1975 c. 76. Section 4 was amended by section 25(1) of and Schedule 3 to the Interpretation Act 1978 (c. 30).

“approved certification scheme” means a certification scheme approved by the Secretary of State under regulation 33 of these Regulations and from which such approval has not been withdrawn under regulation 35;

“the Chief Land Registrar” means the person appointed by the Lord Chancellor under section 99(3) of the Land Registration Act 2002(3);

“conservation area consent” means the consent described in section 74(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990(4);

“developer” means a person who has built, converted, or is building or converting the property;

“edited information document” means, where the Chief Land Registrar has designated a document an exempt information document, the edited copy of that document lodged under rule 136(2)(b) or 138(4) of the Land Registration Rules 2003(5);

“energy performance certificate” means the certificate required by Council Directive 2002/91/EC(6) whose form and content complies with any enactment which implements that Directive;

“exempt information document” means the original and copies of a document so designated under rule 136(3) of the Land Registration Rules 2003;

“first point of marketing” must be construed in accordance with regulation 3;

“home information pack” in relation to a property, means—

- (a) where a duty arises under section 155(1) of the 2004 Act, the home information pack intended by the responsible person(7) to be the one required by that subsection; and
- (b) where a duty arises under section 159(2) of that Act, the home information pack intended by the person to whom that section applies to be the one required by that subsection;

“home information pack index” means the document required by regulation 8(a);

“home inspector” means a person who is a member of an approved certification scheme;

“individual register” means the register so named in rule 2 of the Land Registration Rules 2003, the contents and arrangement of which are described in rules 3 and 4 of those Rules;

“lease” means a long lease except in regulation 8(g), regulation 23(b)(i), paragraph 3(1) of Schedule 3 and paragraph 3(a) of Schedule 4(8);

“listed building consent” means a consent under section 8(1), (2) or (3) of the Planning (Listed Buildings and Conservation Areas) Act 1990(9);

“occupant” includes a potential occupant;

“pack document” means a document (or part of a document) required or authorised by these Regulations to be included in the home information pack;

“planning permission” means a permission (granted or deemed to be granted) under Part 3 of the Town and Country Planning Act 1990(10);

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(3) 2002 c. 9.

(4) 1990 c. 9.

(5) S.I.2003/1417.

(6) OJNo. L1, 4.1.03, p 65. The Directive relates to the energy performance of buildings and article 7 requires Member States to ensure that when any buildings are constructed, sold or rented out, an energy performance certificate is made available to the owner or by the owner to the prospective buyer or tenant. “Energy performance certificate of a building” is defined in the Directive as “a certificate recognised by the Member State or a legal person designated by it, which includes the energy performance of a building calculated according to a methodology based on the general framework set out in the Annex”. Article 7 is to be implemented by the UK. Articles 3 to 6 of the Directive were implemented by amendments made to the Building Regulations 2000 (S.I. 2000/2531) and the Building (Approved Inspectors etc) Regulations 2000 (S.I. 2000/2532) by the Building and Approved Inspectors (Amendment) Regulations 2006 (S.I. 2006/652).

(7) The circumstances in which a person becomes and ceases to be a “responsible person” are described in sections 151, 152 and 153 of the 2004 Act.

(8) “Long lease” is defined in section 177(1) of the 2004 Act.

(9) Subsection (2) was amended by article 2 of the Authorisation of Works (Listed Buildings) (England) Order 2001 (S.I. 2001/24).

(10) 1990 c. 8.

“premises” includes buildings and land;

“property” means the residential property in respect of which a duty arises under section 155(1) or 159(2) of the 2004 Act<sup>(11)</sup>;

“property interest” means the freehold interest (including a freehold estate in commonhold land) or the leasehold interest in the property that the seller is proposing to sell<sup>(12)</sup>;

“records” includes documents, registers, files and archives, kept in any form;

“register of title” means the register kept by the Chief Land Registrar pursuant to section 1 of the Land Registration Act 2002;

“registered estate” means a legal estate the title to which is entered in the register of title, other than a charge the title to which is entered in that register;

“sale”, includes the potential sale of a property interest<sup>(13)</sup>;

“sale statement” means the document required by regulation 8(b);

“search” means an inspection or investigation (whether manual or electronic) of records;

“service charge” has the same meaning as in section 18 of the Landlord and Tenant Act 1985<sup>(14)</sup>; and

“title plan” means the plan so named in rule 5(a) of the Land Registration Rules 2003.

(2) In these Regulations, any expression relating to commonhold land must be construed in accordance with—

(a) Part 1 of the Commonhold and Leasehold Reform Act 2002<sup>(15)</sup> if it is also used in that Act; or

(b) the Commonhold Regulations 2004<sup>(16)</sup> where those Regulations further define or elaborate upon an expression used in Part 1 of that Act,

and in relation to commonhold land, references to common parts are to those that relate to the property and the commonhold of which the property forms part.

(3) For the purposes of these Regulations—

(a) the property is physically complete if its building or its conversion for residential purposes has been completed; and

(b) where a question arises as to whether the property is physically complete, it must be considered physically complete if it—

(i) is wind and weather proof;

(ii) is safe and sanitary in relation to its occupants or visitors;

(iii) has facilities for the supply of space heating, hot and cold water and electricity; and

(iv) has washing and drainage facilities.

(4) In these Regulations, references to the amendment or revision of a document include its modification or variation.

(5) In these Regulations, references to a number of days or months are to a consecutive period of such days or months.

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<sup>(11)</sup> “Residential property” is defined in section 148(1) of the 2004 Act.

<sup>(12)</sup> “Seller” is defined in section 177(1) of the 2004 Act.

<sup>(13)</sup> “Sale” is defined in section 177(1) of the 2004 Act.

<sup>(14)</sup> 1985 c. 70. Section 18 was amended by paragraph 1 of Schedule 2 to the Landlord and Tenant Act 1987 (c. 31) and paragraph 7 of Schedule 9 to the Commonhold and Leasehold Reform Act 2002 (c. 15).

<sup>(15)</sup> 2002 c. 15.

<sup>(16)</sup> S.I. 2004/1829.

### **Interpretation – first point of marketing**

3.—(1) Subject to the provisions specified in paragraph (2), a reference in these Regulations to the “first point of marketing” is to the first time a duty arises under section 155(1) or 159(2) of the 2004 Act in relation to the sale of the property interest.

(2) The provisions referred to in paragraph (1) are—

- (a) regulations 15(3), 18(3) and 20(3); and
- (b) the following paragraphs of this regulation.

(3) The first point of marketing remains the time identified in paragraph (1) where the property is taken off the market for 28 days or less before being put back on the market.

(4) Except in the circumstances described in paragraph (5), where the property is taken off the market for more than 28 days before being put back on the market—

- (a) a further first point of marketing arises in relation to the sale; and
- (b) that first point of marketing is the time at which it is put back on the market.

(5) The first point of marketing remains the time identified in paragraph (1) where the property—

- (a) is taken off the market for any period of time because the seller accepts an offer to buy the property; and
- (b) is then put back on the market within 28 days of that offer being withdrawn or its acceptance repudiated.

## **PART 2**

### **HOME INFORMATION PACK - GENERAL PROVISIONS**

#### **Required, authorised and excluded documents**

4.—(1) Under these Regulations, a home information pack—

(a) must include—

- (i) the documents required under regulation 8 (including that regulation as modified by regulation 10); and
- (ii) the particular information so required to be included in a pack document; and

(b) may include—

- (i) the documents authorised under regulation 9 (including that regulation as modified by regulation 10); or
- (ii) the particular information so authorised to be included in a pack document.

(2) A home information must not include any other documents or information in a document.

(3) A copy of a home information pack, or of a pack document provided to a potential buyer pursuant to section 156(1) of the 2004 Act, must be separated and clearly distinguished by the responsible person from documents or information which are—

- (a) provided to a potential buyer in close proximity to the pack or pack document; and
- (b) neither required nor authorised by these Regulations to be included in the pack.

### **The home information pack**

5.—(1) Except where an official copy of a document is required or authorised by these Regulations to be included in the home information pack, the pack must be composed of original documents or true copies of them<sup>(17)</sup>.

(2) For the purposes of these Regulations, a copy of a document containing a map, plan or drawing—

(a) which is in the seller's possession, under his control, or to which he has reasonable access; and

(b) in which colours are used to mark boundaries or other features,

is a true copy if those colours are reproduced with sufficient accuracy to enable them to be identified.

### **Copies of a home information pack**

6. The copies of a home information pack or pack document provided or produced under section 156 or 167 of the 2004 Act must be—

(a) true copies of the home information pack or pack document; or

(b) where a pack document is an official copy, a true copy of it or another official copy.

### **Comprehension of documents**

7.—(1) Subject to paragraph (2), pack documents and true copies of documents made in accordance with regulation 6—

(a) must be legible; or

(b) in the case of maps, plans or drawings, must be clear.

(2) Paragraph (1) does not apply where, despite all reasonable efforts and enquiries by the responsible person—

(a) the only version of a pack document available is one which is illegible or unclear (either in whole or in part); and

(b) that document is to be included under any of the following provisions—

(i) regulation 8(d)(ii);

(ii) regulation 9(f);

(iii) regulation 8(e) or 9(g); or

(iv) regulation 8(f) or 9(h).

(3) Pack documents must be in—

(a) English, where the property is in England; or

(b) English, Welsh or a combination of English and Welsh, where the property is in Wales.

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<sup>(17)</sup> Under section 155 of the 2004 Act a responsible person must have in his possession, or under his control, a home information pack which complies with the requirements of these Regulations. Under section 156, a responsible person must provide a potential buyer with a copy of the pack (rather than the original version). Under subsection (8) of section 156, a reasonable sum may be charged for the cost of making and sending a paper copy of the home information pack.

## PART 3

### CONTENTS OF HOME INFORMATION PACKS

#### Required pack documents

8. Subject to regulations 10, 11, 12 and Part 4, the home information pack must include the following—

- (a) an index to the home information pack complying with Schedule 1 (the home information pack index);
- (b) a document complying with Schedule 2 (the sale statement);
- (c) if the property interest is or includes the whole or part of a registered estate—
  - (i) an official copy of the individual register relating to that estate; and
  - (ii) an official copy of the title plan relating to that estate;
- (d) if the property interest is or includes the whole or part of an estate, the title to which is not entered in the register of title—
  - (i) a certificate of an official search of the index map issued under rule 145(4) of the Land Registration Rules 2003 in relation to the parcel of land to which the property interest relates; and
  - (ii) such other documents on which the seller can reasonably be expected to rely in order to deduce title to that estate for the purposes of its sale;
- (e) if the property interest is or includes the whole or part of a freehold estate in commonhold land—
  - (i) the documents described in paragraph 1 of Schedule 3; and
  - (ii) documents consisting of or containing information about the matters described in paragraph 2 of that Schedule;
- (f) if the property interest is or includes the whole or part of a leasehold interest—
  - (i) the documents described in paragraph 1 of Schedule 4; and
  - (ii) documents consisting of or containing information about the matters described in paragraph 2 of that Schedule;
- (g) if the property interest is or includes the whole or part of an interest in dwelling-houses to which Part 5 of the 2004 Act applies by virtue of section 171(2) of that Act, such leases or licences—
  - (i) to which the dwelling-houses are subject or are expected to be subject at the time of, or following completion of the sale of the property interest<sup>(18)</sup>; and
  - (ii) as have not been included in the pack under paragraph (f) of this regulation;
- (h) if the property is physically complete on or before the first point of marketing, either or both of the following—
  - (i) a home condition report which complies with Schedule 5; or
  - (ii) the terms of a new homes warranty which has not commenced, which otherwise complies with Schedule 6 and to which the property is expected to be subject, together with the document described in paragraph 4 of that Schedule (cover note);

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(18) Under section 160 of the Housing Act 2004, the duties under sections 155 to 159 do not apply to a residential property at any time when it is not available for sale with vacant possession. However, under section 171(2) of the Housing Act 2004, Part 5 applies where two or more dwellings in sub-divided building are marketed for sale (with any ancillary land) as a single property and one or more is not available for sale as a separate property but is available with vacant possession.

- (i) a new homes warranty which complies with Schedule 6—
  - (i) where the property is the subject of such a warranty; and
  - (ii) it has not expired at the first point of marketing;
- (j) such other home condition reports complying with Schedule 5 as have been completed in respect of the property within the 12 months preceding the first point of marketing;
- (k) if the property is physically complete before the first point of marketing, the energy performance certificate for the property where—
  - (i) a home condition report complying with Schedule 5 is not included in the pack under paragraph (h)(i) or (j) of this regulation; or
  - (ii) such a certificate is obtained in addition to such a report which is so included and is dated later than such a report;
- (l) if the property is not physically complete before the first point of marketing, a document complying with Schedule 7 (report on a home not physically complete);
- (m) a search report which relates to the property and which records the results of a search of all parts of the appropriate local land charges register—
  - (i) in the form of an official search certificate, in the case of an official search made pursuant to section 9 of the Local Land Charges Act 1975(19); or
  - (ii) in any other form but which complies with Parts 1 and 2 of Schedule 8 in the case of a personal search made pursuant to section 8 of that Act(20);
- (n) a search report which—
  - (i) complies with Parts 1 and 2 of Schedule 8 and with Schedule 9; and
  - (ii) records the results of a search of records held by or derived from a local authority (local enquiries); and
- (o) a search report which complies with Parts 1 and 2 of Schedule 8 and with Schedule 10 (drainage and water enquiries).

### **Authorised pack documents**

9. Subject to regulations 10, 11, 12 and Part 4, the home information pack may include documents consisting of or containing any of the following—

- (a) an accurate translation in any language of any pack document;
- (b) an additional version of any pack document in another format, such as Braille or large print;
- (c) a summary or explanation of any pack document;
- (d) information identifying the property including a description, photograph, map, plan or drawing of the property;
- (e) information about a pack document, about information contained within a pack document or about the home information pack, relating to—
  - (i) its source or supply; or
  - (ii) complaints or redress procedures arising from it;

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(19) 1975 c. 76. Section 9 is amended by section 15 of and Schedule 4 to the Constitutional Reform Act 2005 (c. 4) in relation to fees in England and Wales. This amendment is not yet in force. Sub-section (2) is repealed by sections 158 and 194 of and Schedule 12 to the Local Government and Housing Act 1989 (c. 42). This repeal is not yet in force.

(20) Section 8 is amended by section 34 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30).

- (f) if the property interest is or includes the whole or part of a registered estate, official copies of any documents referred to in the individual register, including any edited information documents derived from such exempt information documents as are referred to in the register<sup>(21)</sup>;
- (g) if the property interest is or includes the whole or part of a freehold estate in commonhold land, information which—
  - (i) relates to one or more of the matters described in paragraph 3 of Schedule 3; and
  - (ii) would be of interest to potential buyers of the property interest;
- (h) if the property interest is or includes the whole or part of a leasehold interest, information which—
  - (i) relates to one or more of the matters described in paragraph 3 of Schedule 4; and
  - (ii) would be of interest to potential buyers of the property interest;
- (i) documentary evidence of such safety, building, repair or maintenance work as has been carried out in relation to the property since the date of any home condition report included in the pack under regulation 8(h)(i) or 8(j);
- (j) any warranty, policy or guarantee for defects in the design, building, or completion of the property, or its conversion for residential purposes;
- (k) one or more of the following search reports, which comply with Parts 1 and 3 of Schedule 8, which record the results of a search relating to the property and which relate to any of the following matters—
  - (i) information held by or derived from a local authority, and dealing with matters supplementary to those contained in the search reports required by regulation 8(m) or 8(n);
  - (ii) common land;
  - (iii) rights of access to, over or affecting the property interest;
  - (iv) ground stability, the effects of mining or extractions or the effects of natural subsidence;
  - (v) actual or potential environmental hazards, including the risks of flooding or contamination from radon gas or any other substance;
  - (vi) telecommunications services;
  - (vii) sewerage, drainage, water, gas or electrical services;
  - (viii) the potential or actual effects of transport services, including roads, waterways, trams and underground or over-ground railways; or
  - (ix) liabilities to repair or maintain buildings or land not within the property interest;
- (l) where it would be of interest to potential buyers of the property interest, a document which—
  - (i) records the results of a search relating to other premises in the vicinity of the property; and
  - (ii) would otherwise be a report of the type required by regulation 8(m), 8(n) or 8(o) or authorised by paragraph (k) of this regulation, if references in those provisions and

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(21) Part 13 of the Land Registration Rules 2003 describes the nature and effect of exempt information and edited information documents. Under rule 136(1), a person may apply to the Chief Land Registrar for a document to be designated an exempt information document on the basis that it contains “prejudicial information”. This is defined in rule 131 as information that if disclosed would cause substantial unwarranted damage or distress to someone, or would prejudice the commercial interests of the applicant. Under rule 136(2)(b), an application for designation must be accompanied by a version of the document that excludes the prejudicial information (an edited information document).



in Schedules 8, 9 and 10 to “property”, “land” and “land on which the property is or will be situated” were references to those other premises;

- (m) any documents referred to in a search report included in the pack under regulation 8(m), 8(n), 8(o) (subject to paragraph 2(4)(b) of Schedule 10) or paragraphs (k) or (l) of this regulation; and
- (n) information which—
  - (i) relates to one or more of the matters described in Schedule 11; and
  - (ii) would be of interest to potential buyers of the property interest.

### **Creation of interests**

**10.**—(1) Subject to regulation 12 and Part 4, where the sale involves<sup>(22)</sup>—

- (a) the whole or part of a commonhold unit, which at the first point of marketing has not been registered by the Chief Land Registrar as a freehold estate in commonhold land; or
  - (b) a leasehold property interest, which at the first point of marketing has not yet been created,
- regulations 8 and 9 apply as respects that freehold estate or leasehold interest, as modified by this regulation.

(2) Where paragraph (1)(a) applies—

- (a) the sale statement must be completed as if the freehold estate had been registered by the Chief Land Registrar;
- (b) regulations 8(c), 8(d) and 9(f) apply as if for “is or includes” in each paragraph, there were substituted “to be registered as a freehold estate in commonhold land arises from”;
- (c) paragraphs 1 and 2 of Schedule 3 do not apply;
- (d) regulation 9(g) and paragraph 3 of Schedule 3 must be construed by reference to the information expected to be relevant to the interest to be registered as a freehold estate in commonhold land; and
- (e) the home information pack must include documents consisting of or containing information which relates to the matters described in paragraph 4 of Schedule 3.

(3) Where paragraph (1)(b) applies—

- (a) the sale statement must be completed as if the leasehold interest had been created;
- (b) regulations 8(c), 8(d) and 9(f) apply as if for “is or includes” in each paragraph, there were substituted “is to be created from”;
- (c) paragraphs 1 and 2 of Schedule 4 do not apply;
- (d) regulation 9(h) and paragraph 3 of Schedule 4 must be construed by reference to the information expected to be relevant to the interest to be created; and
- (e) the home information pack must include documents consisting of or containing information which relates to the matters described in paragraph 4 of Schedule 4.

### **Prohibitions relating to home condition reports**

**11.**—(1) A home condition report complying with Schedule 5 must not be included in the home information pack if it was not completed for the purposes of the sale by the seller of the property interest.

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(22) Under section 177(2) of the 2004 Act, any reference in the definition of “sale” to the disposal of an interest includes a reference to the creation of such an interest.

(2) No pack document may be described as a “home condition report” unless it complies with Schedule 5.

#### **Exclusion of advertising information**

**12.—**(1) Information advertising or marketing goods or services must not be included in a pack document—

- (a) by a responsible person;
- (b) at his request; or
- (c) with his permission.

(2) In paragraph (1), “information advertising or marketing goods or services” does not include—

- (a) trade names used to describe the materials used in the building of any premises;
- (b) the information described in paragraph 1(h) of Schedule 8 (description of how relevant search documents can be obtained); or
- (c) the information described in paragraphs 12, 19 and 20 of Schedule 10 (names of sewerage and water undertakers and those billing for sewerage and water services).

## **PART 4**

### **ASSEMBLY AND ACCURACY OF HOME INFORMATION PACKS**

#### **Time at which pack documents are to be included**

**13.—**(1) Subject to regulations 15 and 17, the documents required by these Regulations to be included in the home information pack under regulation 8 (including that regulation as modified by regulation 10) must be included before the first point of marketing.

(2) The pack documents authorised by these Regulations to be included in the home information pack under regulation 9 (including that regulation as modified by regulation 10) may be included at any time.

#### **Age of pack documents when first included**

**14.—**(1) The following pack documents must be dated no earlier than three months preceding the first point of marketing—

- (a) official copies included in the home information pack under regulation 8(c), 8(e) and 8(f); and
- (b) a certificate of an official search of the index map included in the pack under regulation 8(d)(i).

(2) The pack documents included under regulation 8(h)(i), 8(m), 8(n) and 8(o), (home condition reports and search reports) must be completed no earlier than three months preceding the first point of marketing.

(3) All other pack documents—

- (a) may be completed or dated earlier than three months preceding the first point of marketing; and
- (b) with the exception of home condition reports included under regulation 8(j), must be such versions of the documents as can reasonably be assumed to be the most recent to the first point of marketing.

- (4) Where—
- (a) a pack document has been amended at any time before its inclusion in the home information pack; and
  - (b) the amendment is not incorporated in the document,
- that amendment must be included in the pack.

**Required pack documents which are unavailable before the first point of marketing**

- 15.**—(1) This regulation applies—
- (a) where regulation 17 does not apply; and
  - (b) to the pack documents required to be included in the home information pack under any of paragraphs (d)(ii) to (o) of regulation 8, except paragraph (l) (report on a home not physically complete).
- (2) If, despite all reasonable efforts and enquiries by the responsible person, a pack document to which this regulation applies cannot be obtained by him before the first point of marketing, but he believes on reasonable grounds that it is likely to become available afterwards—
- (a) the home information pack complies with the requirements of these Regulations where—
    - (i) he continues to use all reasonable efforts to obtain the document; and
    - (ii) the first point of marketing occurs no earlier than the end of the period of 14 days starting with the day a request for the document is delivered; and
  - (b) the document must be included in the home information pack as soon as reasonably practicable.
- (3) The time the document is included under paragraph (2)(b) becomes the first point of marketing for that document—
- (a) for the purposes of any provision of these Regulations that requires the age or currency of a pack document to be determined by reference to a period preceding the first point of marketing; and
  - (b) until such time (if any) as a further first point of marketing arises in relation to the sale under regulation 3(4).
- (4) In paragraph (2)(a)(ii)—
- (a) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide such a document, and which is—
    - (i) made in such form;
    - (ii) contains all such information; and
    - (iii) includes such payment or an undertaking to make such payment, as is usually necessary to obtain that document; and
  - (b) the reference to the day a request for a document is delivered shall be construed in accordance with regulation 16.

**Delivery of documents under regulation 15**

- 16.**—(1) Subject to paragraphs (2) and (3), the day a request for the document is delivered is for the purposes of regulation 15(2)(a)(ii), depending on the method of delivery—
- (a) the day the request is served personally on the intended recipient;
  - (b) the day it would be delivered to the intended recipient's address in the ordinary course of post or (if sooner), the day on which it is proved to have been actually delivered;

- (c) the day it is left at the intended recipient's address;
  - (d) the second day after it is left at the document exchange of the person making the request or (if sooner), the day on which it is proved to have been actually delivered; or
  - (e) the day it is sent by fax or electronic communication to the intended recipient's address or (if later), the day on which it is proved to have been actually delivered.
- (2) Subject to paragraph (3), where a request for a document is delivered to the Chief Land Registrar, the day the request is delivered is for the purposes of regulation 15(2)(a)(ii), the day it is delivered in accordance with, or under, the Land Registration Act 2002(23)—
- (a) personally;
  - (b) by post, and is the day it would be delivered to the Chief Land Registrar in the ordinary course of post or (if sooner), the day on which it is proved to have been actually delivered;
  - (c) by document exchange, and is the second day after it is left at the document exchange of the person making the request or (if sooner), the day on which it is proved to have been actually delivered;
  - (d) orally; or
  - (e) by telephone, fax or other electronic method.
- (3) Where a request for a document—
- (a) is made in parts, the day the request is delivered is the day the last part is delivered;
  - (b) is delivered more than once, the day the request is delivered is the first day on which a request is delivered; and
  - (c) is delivered using more than one method of delivery, the day the request is delivered is the first day on which a request is delivered.
- (4) In paragraph (1)(a), a document is served personally—
- (a) on an individual by leaving it with that individual;
  - (b) on a business by leaving it with an employee or owner of the business; and
  - (c) on any other body of persons corporate or unincorporate by leaving it with an employee or member of that body.
- (5) References to a recipient's address—
- (a) in paragraphs (1)(b) and (c) are if the intended recipient is an individual—
    - (i) to his usual or last known residence; or
    - (ii) if his usual or last known residence is the property, to that address and an address (if any) at which it can reasonably be assumed he will be contacted;
  - (b) in paragraph (1)(b) and (c), are if the intended recipient is a business or other body, to any principal or last known place of business from which the document requested is usually or likely to be provided; and
  - (c) in paragraph (1)(e), is to any electronic address, identification or number published or provided by the intended recipient for the purposes of supplying the document requested.

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(23) An application for an official copy of an individual register, for an official copy of any title plan referred to in an individual register, for an official copy of a document referred to in the register and kept by the Chief Land Registrar and for an official copy of an exempt information document made under Part 13 of the Land Registration Rules 2003 may be delivered by post, document exchange or personal delivery to the proper office of the Land Registry as designated by the Land Registration (Proper Office) Order 2003 (S.I.2003/2040) (as amended by the Land Registration (Proper Office) Order 2005 (S.I.2005/1765)). Under rule 132 of the Land Registration Rules 2003, an application for an official copy under Part 13 of those Rules may also be delivered by any other means of communication during the currency of a relevant notice given under Schedule 2 to the Land Registration Rules 2003, and subject to and in accordance with the limitations contained in that notice. Current notices provide for oral delivery and delivery by telephone, fax and on-line.

### **Required pack documents which are unobtainable**

17.—(1) The provisions of regulation 8 specified in paragraph (2) do not apply where, after making all reasonable efforts and enquiries, the responsible person believes on reasonable grounds that the document in question—

- (a) no longer exists in any form; or
- (b) cannot be obtained from or created by any person.

(2) The provisions of regulation 8 referred to in paragraph (1) are paragraphs (d)(ii), (e), (f), (g) or (i).

### **Updating of required pack documents**

18.—(1) This regulation applies to any document included in a home information pack under regulation 8 (including that regulation as modified by regulation 10).

(2) Where the responsible person amends such a document or obtains or creates a further version of it, he must—

- (a) include the amended document or the further version in the pack;
- (b) amend accordingly such translations, additional versions, summaries or explanations as are included in the pack under regulation 9(a), 9(b) or 9(c) or include a further version of such translations, additional versions, summaries or explanations; and
- (c) subject to paragraph (4), remove such documents as have been wholly superseded by a document included under sub-paragraphs (a) or (b).

(3) The time the responsible person amends a document or obtains or creates a further version of it under paragraph (2) becomes the first point of marketing for that document—

- (a) for the purposes of any provision of these Regulations that requires the age or currency of a pack document to be determined by reference to a period preceding the first point of marketing; and
- (b) until such time (if any) as a further first point of marketing arises in relation to the sale under regulation 3(4).

(4) Nothing in paragraph (2)(c) authorises a person to remove from a pack a home condition report complying with Schedule 5 (or any part of such a report), unless it has been included in contravention of regulation 11.

### **Inclusion of home condition reports or energy performance certificates following physical completion**

19.—(1) If the property is not physically complete before the first point of marketing, and becomes so after that time, but before the sale is completed, the responsible person must include in the home information pack—

- (a) either or both of the following—
  - (i) a home condition report which complies with Schedule 5; or
  - (ii) the terms of a new homes warranty which has not commenced, which otherwise complies with Schedule 6 and to which the property is expected to be subject, together with the document described in paragraph 4 of that Schedule (cover note); and

(b) the energy performance certificate for the property where—

- (i) a home condition report complying with Schedule 5 is not included in the home information pack under paragraph (1)(a)(i); or

(ii) such a certificate is obtained in addition to such a report which is so included and is dated later than any such report.

(2) A document required to be included in the pack under paragraph (1)(a) or (b) must be so included within the period of 14 days starting with the day the property becomes physically complete.

(3) Where such documents are included, a document included in the pack under regulation 8(1) (report on a home not physically complete) must be removed.

### **Updating of authorised pack documents**

**20.**—(1) This regulation applies to any document included in a home information pack under regulation 9 (including that regulation as modified by regulation 10).

(2) A responsible person may—

- (a) include an amended document or further version in the pack; and
- (b) subject to paragraph (4), remove such documents as have been wholly superseded by a document or version included under sub-paragraph (a).

(3) The time the responsible person includes the amended document or further version under paragraph (2)(a) becomes the first point of marketing for that document—

- (a) for the purposes of any provision of these Regulations that requires the age or currency of a pack document to be determined by reference to a period preceding the first point of marketing; and
- (b) until such time (if any) as a further first point of marketing arises in relation to the sale under regulation 3(4).

(4) Nothing in paragraph (2)(b) authorises a person to remove from a pack a home condition report complying with Schedule 5 (or any part of such a report), unless it has been included in contravention of regulation 11.

### **Seller’s check of the home information pack**

**21.** If he is not the seller, the responsible person must provide the seller with a copy of any of the pack documents which the seller has requested him to provide for the purposes of ensuring the accuracy of the home information pack.

## **PART 5**

### **EXCEPTIONS**

#### **Meaning of “non-residential premises”**

**22.**—(1) In this Part “non-residential premises” includes—

- (a) premises where the most recent use of the premises, is or was primarily non-residential; and
- (b) any dwelling-house where it is clear from the manner in which it is marketed that it is due to be converted for primarily non-residential use by the time its sale is completed, and all the relevant—
  - (i) planning permissions; and
  - (ii) listed building consents,
 exist in relation to the conversion.

- (2) For the purposes of this Part, where a question arises as to whether premises are—
- (a) non-residential premises; or
  - (b) residential property by virtue of being ancillary land<sup>(24)</sup>,
- the premises may be treated as non-residential premises if the conditions in paragraph (3) are met.
- (3) The conditions referred to in paragraph (2) are that—
- (a) the total area of the land is 5 hectares or more; and
  - (b) the most recent use of the land is or was primarily for one or more of the following purposes—
    - (i) horticulture or cultivation;
    - (ii) the breeding or keeping of animals or livestock; or
    - (iii) the use of land as grazing land or woodlands.

#### **Exclusion from meaning of “non-residential premises”**

- 23.** In this Part, “non-residential premises” do not include—
- (a) premises due to be converted to a dwelling-house by the time the sale of the property interest is complete; or
  - (b) a dwelling-house or a building ancillary to a dwelling-house used for either or both of the following purposes—
    - (i) letting under a lease; or
    - (ii) home working.

#### **Exception for seasonal and holiday accommodation**

- 24.** The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property where—
- (a) the dwelling-house which is or forms part of the property is subject to a condition imposed under section 72(1)(a) of the Town and Country Planning Act 1990 regulating the use of the dwelling-house to either or both of the following—
    - (i) occupation for less than 11 months in any 12 month period; or
    - (ii) use only for holiday accommodation; and
  - (b) that regulation of the use of the dwelling-house is clear from the manner in which the property is marketed.

#### **Exception for mixed sales**

- 25.** The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property where—
- (a) it is to be sold with one or more non-residential premises;
  - (b) the dwelling-house which is or forms part of the property is ancillary to those non-residential premises;

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<sup>(24)</sup> Under section 148(1) of the 2004 Act, “residential property” consists of a single dwelling-house, including any ancillary land. “Ancillary land” is defined in section 177(1) as meaning in relation to a dwelling-house or a sub-divided building “any land intended to be occupied and enjoyed together with that dwelling-house or building”.

- (c) at the time the first point of marketing would have otherwise occurred, the seller does not intend to accept an offer to buy the property in isolation from any one of those non-residential premises; and
- (d) it is clear that he would not do so from the manner in which the property is marketed.

#### **Exception for dual use of a dwelling-house**

**26.** The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property where—

- (a) the dwelling-house which is or forms part of that property was most recently used for both residential and non-residential purposes; and
- (b) the manner in which it is marketed suggests it is suitable for—
  - (i) non-residential use; or
  - (ii) both residential and non-residential use.

#### **Exception for portfolios of properties**

**27.—(1)** Subject to paragraph (2), the duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property where—

- (a) the dwelling-house which is or forms part of that property is to be sold with one or more other dwelling-houses;
- (b) the dwelling-houses mentioned in sub-paragraph (a) are not dwelling-houses to which Part 5 of the 2004 Act applies by virtue of section 171(2) of that Act;
- (c) at the time the first point of marketing would have otherwise occurred, the seller does not intend to accept an offer to buy any one of those dwelling-houses in isolation from another; and
- (d) it is clear that he would not do so from the manner in which the dwelling-houses are marketed.

(2) Paragraph (1) does not apply to one or more dwelling-houses which are ancillary to a principal dwelling-house.

#### **Exception for unsafe properties**

**28.** The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property—

- (a) which is unoccupied;
- (b) whose condition poses a serious risk to the health or safety of its occupants or visitors; and
- (c) where the manner in which the property is marketed suggests it is unsuitable for occupation in that condition.

#### **Exception for properties to be demolished**

**29.—(1)** The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property where—

- (a) it is clear from the manner in which the property is marketed that—
  - (i) the dwelling-house which is or forms part of the property is suitable for demolition; and
  - (ii) the resulting site is suitable for re-development;
- (b) all the relevant—



- (i) planning permissions;
- (ii) listed building consents; and
- (iii) conservation area consents,  
exist in relation to the demolition; and
- (c) in relation to the re-development—
  - (i) either outline planning permission or planning permission exists, or both; and
  - (ii) where relevant, listed building consent exists.

(2) In paragraph (1)(c)(i), “outline planning permission” means a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more of the following matters—

- (a) siting;
- (b) design;
- (c) external appearance;
- (d) means of access; or
- (e) the landscaping of the site.

#### **Exception – 1st June 2007 to 31st October 2007**

**30.**—(1) In this regulation, “transitional period” means the period starting with 1st June 2007 and ending with 31st October 2007.

(2) Subject to paragraph (4), a seller or a person acting as an estate agent for a seller is not a responsible person in relation to a property by virtue of action taken during the transitional period, by him or on his behalf, which makes public the fact that the property is on the market<sup>(25)</sup> where, before that period begins—

- (a) the property was put on the market; and
- (b) further action was taken by him or on his behalf to market the property.

(3) Subject to paragraph (4), the duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property which is put on the market during the transitional period where—

- (a) it was put on the market by or on behalf of the seller before that period begins;
- (b) it remained on the market until it was taken off the market because the seller accepted an offer to buy the property; and
- (c) it is put back on the market within 28 days of that offer being withdrawn or its acceptance repudiated.

(4) Paragraphs (2) and (3) cease to apply at the end of the transitional period.

## **PART 6**

### **ENFORCEMENT**

#### **Amount of penalty charge**

**31.** The amount of a penalty charge specified in a notice given to a person under section 168 of the 2004 Act (penalty charge notices) shall be £200.

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<sup>(25)</sup> See sections 151, 152(1)(b) and 153(1)(b) of the 2004 Act.

### **Exclusion of penalty charges for content of pack documents**

**32.** Section 168(1)(a) of the 2004 Act does not apply to a breach of a duty under section 155(1) or 159(2) of that Act to the extent that—

- (a) the content of a pack document, other than the home information pack index and the sale statement, fails to comply with any requirement of these Regulations; and
- (b) the responsible person believes on reasonable grounds that the document does comply with that requirement.

## **PART 7**

### **APPROVED CERTIFICATION SCHEMES**

#### **Approval of certification schemes**

**33.** The Secretary of State shall approve one or more certification schemes, but before doing so must be satisfied that a scheme contains appropriate provision—

- (a) for ensuring that its members are fit and proper persons who are qualified (by their education, training and experience) to produce home condition reports;
- (b) for ensuring that its members have in force suitable indemnity insurance;
- (c) for facilitating the resolution of complaints against its members;
- (d) for requiring home condition reports made by its members to be entered onto a register kept pursuant to any regulations made under section 165 of the 2004 Act;
- (e) for the keeping of a public register of its members; and
- (f) for requiring all members of all certification schemes as have been approved, to make home condition reports using a standard form for the type of dwelling-house which is or forms part of the property, which—
  - (i) includes the terms prescribed in paragraph 2 of Schedule 5;
  - (ii) includes a statement of the procedures for the resolution of complaints against members;
  - (iii) includes a statement of such procedures as the certification scheme maintains for rectifying inaccuracies in a particular home condition report; and
  - (iv) includes a numerical scale for rating the conditions within the property.

#### **Terms of approved certification schemes**

**34.** An approved certification scheme must contain provision—

- (a) for ensuring that its objects and activities are compatible with protecting, promoting and facilitating the reliability and trustworthiness of home condition reports and home inspectors, with particular reference to potential and actual buyers, sellers and mortgage lenders of residential properties;
- (b) for ensuring that it produces and publishes a code as regards the conduct required of its members;
- (c) for the conduct of inspections of residential properties by its members; and
- (d) for ensuring that its members complete home condition reports complying with Schedule 5 using the standard form described in regulation 33(f).

**Withdrawal of approval from certification schemes**

35. The Secretary of State may withdraw approval from one or more certification schemes—
- (a) with immediate effect; or
  - (b) with written notice—
    - (i) with effect from a date specified in the notice; or
    - (ii) temporarily for a period specified in the notice.

Signed by authority of one of Her Majesty's Principal Secretaries of State

*Yvette Cooper*  
Minister of State  
Department for Communities and Local  
Government

9th June 2006

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## SCHEDULE 1

regulation 8(a)

### Home information pack index

#### Required matters

1. A home information pack index must—
  - (a) consist of a list of all the documents included in the home information pack;
  - (b) be revised whenever a document is included in or removed from the pack;
  - (c) where regulation 15 or 17 applies, indicate—
    - (i) that a document otherwise required by these Regulations is missing from the pack;
    - (ii) specify which document it is; and
    - (iii) the reason why it is missing; and
  - (d) where regulation 15 applies, indicate such steps as are being taken to obtain the document.

#### Authorised matters

2. A home information pack index may indicate where a particular pack document can be found in the home information pack.

## SCHEDULE 2

regulation 8(b)

### Sale statement

A sale statement must state—

- (a) the address or proposed address of the property;
- (b) whether the property interest is—
  - (i) a freehold interest other than a freehold estate in commonhold land;
  - (ii) a freehold estate in commonhold land; or
  - (iii) a leasehold interest;
- (c) whether at the first point of marketing—
  - (i) the property or the land on which the property is or will be situated is a registered estate; or
  - (ii) the title to the property or the land on which the property is or will be situated is not entered in the register of title;
- (d) the name of the seller, and the capacity in which they are selling the property;
- (e) whether the property—
  - (i) is being sold entirely with vacant possession; or
  - (ii) is a property to which Part 5 of the 2004 Act applies by virtue of section 171(2) of that Act; and
- (f) if it is a property to which Part 5 of the 2004 Act applies by virtue of section 171(2) of that Act, the nature of any lack of vacant possession.

### SCHEDULE 3

regulation 8(e), 9(g) and 10(2)

#### Commonhold information

##### **Required commonhold documents**

- 1.—(1) Subject to sub-paragraph (2), the documents referred to in regulation 8(e)(i) are—
- (a) an official copy of such of the following documents, as are kept by the Chief Land Registrar—
    - (i) the individual register and title plan relating to the common parts; and
    - (ii) the commonhold community statement referred to in that register;
  - (b) except where they are described in the commonhold community statement, such regulations or rules as are made for the purposes of managing the commonhold by the—
    - (i) commonhold association;
    - (ii) such managing agents as are appointed, or proposed by the commonhold association to manage the commonhold; or
    - (iii) such other persons as manage or are likely to manage the commonhold, and their predecessors (if any); and
  - (c) the most recent requests for payment or financial contribution where made in respect of the property, relating to the 12 months preceding the first point of marketing, towards such of the following as are relevant to the property—
    - (i) commonhold assessment;
    - (ii) reserve funds;
    - (iii) insurance against damage for the common parts (if made separately to the requests relating to commonhold assessment included under sub-paragraph (i)); and
    - (iv) insurance for any person in respect of personal injury or death caused by or within the common parts (if made separately to the requests relating to commonhold assessment included under sub-paragraph (i)).
- (2) Except for the documents specified in paragraph (a), the documents required by sub-paragraph (1) are only those which are in the seller's possession, under his control or to which he can reasonably be expected to have access, taking into account the enquiries that it would be reasonable to make of—
- (a) the unit-holder (unless the seller is the unit-holder); and
  - (b) the persons described in sub-paragraph (1)(b)(i) to (iii) and their predecessors (if any).

##### **Required commonhold information**

- 2.—(1) Subject to sub-paragraph (2), the matters referred to in regulation 8(e)(ii) are—
- (a) the names and addresses of—
    - (i) such managing agents as are appointed, or proposed by the commonhold association to manage the commonhold; and
    - (ii) such other persons as manage or are likely to manage the commonhold;
  - (b) such amendments as are proposed to the following—
    - (i) the commonhold community statement; and
    - (ii) the regulations or rules described in paragraph 1(1)(b) of this Schedule; and

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- (c) a summary of such works as are being undertaken or proposed, affecting the property or the common parts.
- (2) The information required by sub-paragraph (1) is only that which the seller can reasonably be expected to be aware of, taking into account the enquiries that it would be reasonable to make of—
- (a) the unit-holder (unless the seller is the unit-holder); and
  - (b) the persons described in paragraph 1(1)(b)(i) to (iii) of this Schedule and their predecessors (if any).

### **Authorised commonhold information**

3. The matters referred to in regulation 9(g) are—
- (a) the commonhold community statement;
  - (b) the rights or obligations of the unit-holder under the commonhold community statement or otherwise, including whether the unit-holder has complied with such obligations;
  - (c) the rights or obligations of the commonhold association under the commonhold community statement or otherwise, including whether it has complied with such obligations;
  - (d) the commonhold association and any information that might affect the unit-holder's relationship with it;
  - (e) any agent of the commonhold association or other manager of the property and any information that might affect the unit-holder's relationship with such persons;
  - (f) the membership of the commonhold association;
  - (g) the status or memorandum and articles of association of any company related to the management of the property or the commonhold;
  - (h) any commonhold assessment payable for the property, including whether payments for such assessment are outstanding;
  - (i) any reserve fund levy relating to the property or the commonhold, including whether payments for such levies are outstanding;
  - (j) any planned or recent works relating to the property or the commonhold;
  - (k) responsibility for insuring the property or the commonhold, including the terms of such insurance and whether payments relating to it are outstanding; and
  - (l) any lease or licence of the property.

### **Creation of commonhold interests**

4. The matters referred to in regulation 10(2)(e) are—
- (a) the terms of the commonhold community statement that will or is expected to apply in relation to the property interest once it has been registered as a freehold estate in commonhold land; and
  - (b) estimates of the payment or financial contribution likely to be required of the unit-holder within 12 months of completion of the sale of the interest towards—
    - (i) commonhold assessment;
    - (ii) reserve funds;
    - (iii) insurance against damage for the common parts (if not to be included in contributions towards commonhold assessment); and

- (iv) insurance for any person in respect of personal injury or death caused by or within the common parts (if not to be included in contributions towards commonhold assessment).

#### SCHEDULE 4

regulations 8(f), 9(h) and 10(3)

#### Leasehold information

##### Required leasehold documents

- 1.—(1) Subject to sub-paragraph (2), the documents referred to in regulation 8(f)(i) are—
- (a) the lease in the form of—
    - (i) an official copy;
    - (ii) any other copy; or
    - (iii) an edited information document if, despite all reasonable efforts and enquiries by the responsible person, it can only be obtained by him in that form;
  - (b) such regulations or rules as are made for the purposes of managing the property by—
    - (i) the current lessor or proposed lessor;
    - (ii) such managing agents as are appointed or proposed by the lessor to manage the property; and
    - (iii) such other persons as manage or are likely to manage the property, and their predecessors (if any);
  - (c) statements or summaries of service charges supplied in respect of the property under section 21 of the Landlord and Tenant Act 1985<sup>(26)</sup> or otherwise, and relating to the 36 months preceding the first point of marketing; and
  - (d) the most recent requests for payment or financial contribution where made in respect of the property, relating to the 12 months preceding the first point of marketing, towards such of the following as are relevant to the property—
    - (i) service charges;
    - (ii) ground rent;
    - (iii) insurance against damage for the building in which the property is situated (if made separately to the request relating to service charges included under sub-paragraph (i)); and
    - (iv) insurance for any person in respect of personal injury or death caused by or within the building in which the property is situated (if made separately to the request relating to service charges included under sub-paragraph (i)).
- (2) Except for the documents specified in paragraph (a), the documents required by sub-paragraph (1) are only those which are in the seller's possession, under his control or to which he can reasonably be expected to have access, taking into account the enquiries that it would be reasonable to make of—
- (a) the lessee (unless the seller is the lessee); and
  - (b) the persons described in sub-paragraph (1)(b)(i) to (iii) and their predecessors (if any).

<sup>(26)</sup> 1985 c. 70. At the time these Regulations are made section 152 of the Commonhold and Leasehold Reform Act 2002 which substitutes section 21 of the Landlord and Tenant Act 1985 is not yet fully in force.

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### **Required leasehold information**

- 2.—(1) Subject to sub-paragraph (2), the matters referred to in regulation 8(f)(ii) are—
- (a) the names and addresses of—
    - (i) the current lessor or proposed lessor;
    - (ii) such managing agents as are appointed or proposed by the lessor to manage the property; and
    - (iii) such other persons as manage or are likely to manage the property;
  - (b) such amendments as are proposed to the following—
    - (i) the lease; and
    - (ii) the regulations or rules described in paragraph 1(1)(b) of this Schedule; and
  - (c) a summary of such works as are being undertaken or proposed, affecting the property or the building in which the property is situated.
- (2) The information required by sub-paragraph (1) is only that which the seller can reasonably be expected to be aware of, taking into account the enquiries that it would be reasonable to make of—
- (a) the lessee (unless the seller is the lessee); and
  - (b) the persons described in paragraph 1(1)(b)(i) to (iii) of this Schedule and their predecessors (if any).

### **Authorised leasehold information**

3. The matters referred to in regulation 9(h) are—
- (a) any lease of the property, including those that are superior or inferior to the property interest;
  - (b) any licence of the property;
  - (c) any freehold estate to which the lease relates including any proposals to buy a freehold interest relating to the property;
  - (d) the rights or obligations of the lessee under the lease or otherwise, including whether the lessee has complied with such obligations;
  - (e) the rights or obligations of the lessor under the lease or otherwise, including whether the lessor has complied with such obligations;
  - (f) the lessor of the property and any information that might affect the lessee's relationship with the lessor;
  - (g) any agent of the lessor or other manager of the property and any information that might affect the lessee's relationship with such persons;
  - (h) the membership or existence of any body of persons corporate or unincorporate which manages the property or building in which the property is situated;
  - (i) the status or memorandum and articles of association of any company related to the management of the property or building in which the property is situated;
  - (j) the rent payable for the property, including whether payments for such rent are outstanding;
  - (k) any service charges payable in respect of the property, including whether payments for such charges are outstanding;
  - (l) any reserve fund relating to the property for necessary works to it or the building in which the property is situated, including whether payments to such a fund are outstanding;



- (m) any planned or recent works to the property or the building in which the property is situated; and
- (n) any responsibility for insuring the property or the building in which the property is situated, including the terms of such insurance and whether payments relating to it are outstanding.

#### **Creation of leasehold interests**

4. The matters referred to in regulation 10(3) are—
- (a) the terms of the lease that will or is expected to be granted in order to create the property interest; and
  - (b) estimates of the payment or financial contribution likely to be required of the lessee within 12 months of completion of the sale of the interest towards—
    - (i) service charges;
    - (ii) ground rent;
    - (iii) insurance against damage for the building in which the property is situated (if not to be included in contributions towards service charges); and
    - (iv) insurance for any person in respect of personal injury or death caused by or within the building in which the property is situated (if not to be included in contributions towards service charges).

### SCHEDULE 5

regulation 8(h)(i) and 8(j)

#### Home condition report

#### **Home condition reports**

1. A home condition report—
- (a) must be made by a home inspector following an inspection carried out by him in accordance with the provisions of such approved certification schemes of which he is a member; and
  - (b) must be entered onto a register kept pursuant to any regulations made under section 165 of the 2004 Act.

#### **Terms for the preparation of a home condition report**

2. A home inspector must prepare a home condition report on the following terms without exclusion or limitation—
- (a) that the report will be prepared with reasonable care and skill;
  - (b) that the home inspector will provide in the report an objective opinion about the condition of the property;
  - (c) that such an opinion will be based on his inspection;
  - (d) that the home inspector will identify in the report such conditions within the property as appear to—
    - (i) be defects that are serious or require urgent attention, or both;
    - (ii) give rise to repair or replacement; or
    - (iii) give rise to further investigation;

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- (e) that a responsible person may copy or issue a copy of the report for the purposes of complying with—
  - (i) regulations 5, 6, 8(h)(i), 8(j) and 21; and
  - (ii) section 156(1), (2) and (11) of the 2004 Act; and
- (f) that any person may do one or more of the following for the purposes of a disclosure or other act authorised by regulations made under section 165 of the 2004 Act—
  - (i) copy a report;
  - (ii) issue a copy of a report;
  - (iii) rent or lend a report;
  - (iv) communicate a report; or
  - (v) make an adaptation of a report or do any of the above in relation to an adaptation.

### **Third party contractual rights in relation to home condition reports**

**3.** A home inspector must prepare a home condition report on terms enabling the provisions of the contract under which the report is prepared to be enforced in relation to the terms mentioned in paragraph 2 of this Schedule, by the following persons in their own right (whether or not they are a party to such a contract)—

- (a) the seller;
- (b) a potential or actual buyer of the property interest; and
- (c) a mortgage lender in respect of the property interest.

### **Inclusion of additional or more favourable terms for home condition reports**

**4.** A home inspector may prepare a home condition report on any of the following—

- (a) terms additional to those described in paragraphs 2 and 3 of this Schedule (but without excluding or limiting them); and
- (b) terms more favourable to—
  - (i) the seller;
  - (ii) a potential or actual buyer of the property interest; or
  - (iii) a mortgage lender in respect of the property interest,

than those described in paragraphs 2 and 3 of this Schedule.

### **Less favourable terms**

**5.** Any home condition report which contains terms less favourable to—

- (a) the seller;
- (b) a potential or actual buyer of the property interest; or
- (c) a mortgage lender in respect of the property interest,

than those required by this Schedule does not comply with the requirements of this Schedule.

### **Completion of home condition reports by home inspectors**

**6.** A home condition report must be completed by a home inspector so as to contain his record of the following information—

- (a) his name;

- (b) whether he has or is likely to have any personal or business relationship with any person involved in the sale of the property;
- (c) the reference number or code against which the report is registered under paragraph 1(b) of this Schedule;
- (d) the names of such approved certification schemes as of which he is a member and in which capacity the report is made;
- (e) such membership numbers or codes as have been allocated to him by those schemes;
- (f) the name and address of his employer, or if he is self-employed, the name under which he trades;
- (g) the date of the inspection and the date the report is completed;
- (h) the address of the property;
- (i) the year of building of the property or, if this cannot be ascertained by him, his estimate of the year of building;
- (j) the number of—
  - (i) storeys or levels in the property; and
  - (ii) rooms on each storey or level of the property;
- (k) such provision as has been made for the parking of vehicles relating to occupants of or visitors to the property;
- (l) such utility services as are connected to the property and the condition of their visible parts;
- (m) if the property is situated in a flat or maisonette—
  - (i) the number of storeys or levels of the building in which the flat or maisonette is situated;
  - (ii) the number of flats and maisonettes in that building or, if this cannot be ascertained by him, his estimate of the approximate number of flats and maisonettes;
  - (iii) whether the building contains a passenger lift to the storey or level on which the property is situated;
  - (iv) the general condition of such areas that lead to the property as are common to both it and any neighbouring premises; and
  - (v) the general condition of the building in which the flat or maisonette is situated;
- (n) risks to the health or safety of the property's occupants or visitors, so far as he can ascertain them;
- (o) the condition of the outside parts of the property including such—
  - (i) roof coverings;
  - (ii) rainwater pipes and gutters;
  - (iii) chimney stacks; and
  - (iv) walls, doors and windows,as relate to the property;
- (p) the condition of the inside parts of the property including—
  - (i) roof structures accessible directly from the property;
  - (ii) ceilings and floors;
  - (iii) internal walls; and
  - (iv) kitchen and bathroom fittings,

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and whether their appearance suggests that they have been materially affected by dampness;

- (q) the general condition of such outbuildings as are part of the property;
- (r) the energy performance of the property, including an energy performance certificate;
- (s) whether any parts of the property to which he would normally expect to have access were not accessible to him on the day of the inspection; and
- (t) any other provision required by an approved certification scheme of which he is a member and in which capacity the report is made.

### **Conduct of inspections**

7. Nothing in this Schedule shall be construed as requiring a home inspector to—
- (a) inspect such parts of the property as are not reasonably accessible on the day of the inspection; or
  - (b) move furniture, fittings or personal items at the property during an inspection.

### **Prohibition on personal and security information**

8. A home condition report must not contain any of the following—
- (a) information or data from which another living individual can be identified from the report;
  - (b) any expression of opinion about a living individual; or
  - (c) information about security features at the property and, in particular, burglar alarm systems, safes or locks.

## SCHEDULE 6

regulation 8(h)(ii) and 8(i)

Exception from home condition report for specific new homes warranties

## PART 1

### General

### **Interpretation**

1. In this Schedule—
- “annual increment” means a compound increase occurring each 12 months after the commencement date, the increase being based on the lower of—
- (a) the rate of inflation in re-building residential premises; or
  - (b) a rate of 10%;
- “common parts” means such common parts—
- (a) as relate to the property;
  - (b) as are shared with other premises; and
  - (c) as are built or converted by the developer together with the property;
- “commencement date” means the day the new homes warranty commences;

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“continuous structures” means premises that share common foundations;

“damage” includes water ingress;

“financial compensation” relates to the actual costs incurred in the carrying out of remedial work to the property by a person other than a warranty provider;

“policy-holder” means—

- (a) the owner of the property for the time being; and
- (b) the party to the new homes warranty for the time being (not being a warranty provider);

“structural features” means—

- (a) foundations;
- (b) walls bearing normal residential loads;
- (c) non load-bearing partition walls;
- (d) wet-applied wall plaster;
- (e) external render and vertical tile hanging;
- (f) load-bearing parts of roof;
- (g) tile and slate coverings to pitched roofs;
- (h) ceilings;
- (i) load-bearing parts of floors;
- (j) staircases and internal floor decking and other floor screeds intended to support normal residential loads;
- (k) retaining walls necessary for structural stability of the property;
- (l) double or triple glazed panes to external windows and doors;
- (m) under-ground drainage that the policy-holder is responsible for maintaining; and
- (n) chimneys and flues;

“warranty period” means the period of time during which the new homes warranty exists; and

“warranty provider” is any person who does one or more of the following—

- (a) offers the new homes warranty to an owner or potential owner of the property;
- (b) effects the contract of insurance which is the subject of the new homes warranty;
- (c) carries out such a contract;
- (d) deals with such a contract as an agent;
- (e) makes arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite such a contract;
- (f) makes arrangements with a view to a person who participates in such arrangements buying, selling, subscribing for or underwriting such a contract (whether as principal or agent);
- (g) assists in the administration and performance of such a contract;
- (h) advises a person (in that person’s capacity as a policy-holder or potential policy-holder) on the merits of such a contract; or
- (i) agrees to carry out any of the activities specified in sub-paragraphs (a) to (h), and

where there is more than one warranty provider in relation to a particular new homes warranty, “warranty provider” refers to any of those persons.

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## **New homes warranties – general**

- 2.—(1) A new homes warranty complies with this Schedule if it—
- (a) is made under the arrangements described in Part 2; and
  - (b) contains, as a minimum, the terms described in Part 3, although the term described in paragraph 10 must only be included where the new homes warranty makes provision for a developer’s obligations to the policy-holder.
- (2) Any warranty dealing with any defects in the design, building, or completion of the property, which contains—
- (a) terms additional to those described in Part 3 of this Schedule (without excluding or limiting them); or
  - (b) terms more favourable to the policy-holder than those described in Part 3,
- may be regarded as complying with this Schedule.
- (3) A new homes warranty may be regarded as complying with this Schedule if it contains—
- (a) any of the limits described in Part 4; or
  - (b) any limits of a type described in that Part, but which are more favourable to the policy-holder.
- (4) Any new homes warranty which contains terms less favourable to the policy-holder than those described in Part 4 does not comply with this Schedule.
- (5) The undertakings described in Part 3 of this Schedule must be made in the new homes warranty by a warranty provider.

## **PART 2**

### **Arrangements for entering into specific new homes warranties**

#### **Existence of insurance and regulation of warranty provider**

- 3.—(1) Any liability of any type arising under a new homes warranty which complies with this Schedule must be the subject of a contract of insurance against such risk to be effected by and to be carried out by persons so authorised for the purposes of the Financial Services and Markets Act 2000<sup>(27)</sup>.
- (2) Where a warranty provider—
- (a) effects the contract of insurance which is the subject of the new homes warranty;
  - (b) carries out such a contract;
  - (c) deals with such a contract as an agent;
  - (d) makes arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite such a contract;
  - (e) makes arrangements with a view to a person who participates in such arrangements buying, selling, subscribing for or underwriting such a contract (whether as principal or agent);

(27) 2000 c. 8. Section 33 of that Act defines “authorised persons” for the purposes of the Act. Under section 19 of that Act, no person may carry on a regulated activity in the United Kingdom or purport to do so unless he is an authorised person or an exempt person, and section 31 defines authorised persons. Under section 22(1), an activity is a regulated activity for the purposes of that Act if it is an activity described in an order made by the Treasury and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) was made accordingly. Article 10(2) of that Order provides that carrying out a contract of insurance as a principal is a described kind of activity. Articles 21, 25(1), 25(2), 39A, 53 and 64 specify other relevant activities.

- (f) assists in the administration and performance of such a contract;
  - (g) advises a person (in that person's capacity as a policy-holder or potential policy-holder) on the merits of such a contract; or
  - (h) agrees to carry out the activities specified in sub-paragraphs (a) to (g),
- it must be authorised to do so under the Financial Services and Markets Act 2000.

#### **Cover notes**

4. Prior to the commencement date, a warranty provider must provide the potential policy-holder with a document confirming that—
- (a) it has conducted a final inspection under paragraph 9(a) of this Schedule; and
  - (b) it intends to enter into the new homes warranty with the potential policy-holder.

#### **Commencement date**

5. The commencement date for the new homes warranty must be no earlier than the day the sale of the property is completed.

## **PART 3**

### **Minimum cover for specific new homes warranties**

#### **Warranty period**

6. The warranty period for the new homes warranty must be at least 10 years from the commencement date.

#### **Certificate of cover and copy of new homes warranty**

7. Under the new homes warranty, a warranty provider must provide the policy-holder with—
- (a) a certificate confirming the existence of the new homes warranty and the commencement date; and
  - (b) a document setting out all the terms of the new homes warranty.

#### **Transfer of cover to future owners**

8. The new homes warranty must be capable of being transferred during the warranty period—
- (a) by a current policy-holder to a subsequent owner of the property; and
  - (b) no payment or consideration in kind must be charged to anyone for doing so.

#### **Cover for design and building**

9. Under the new homes warranty, a warranty provider must undertake that—
- (a) it has conducted reasonable checks and inspections during the building or conversion of the property and a final inspection of the property, all for the purposes of ensuring—
    - (i) that the property is physically complete; and
    - (ii) it is designed and finished to a reasonable standard; and
  - (b) the inspections described in sub-paragraph (a) lead a warranty provider to believe that—

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- (i) most of such structural features as exist at the property will withstand normal residential wear and tear for 60 years from the commencement date, if properly maintained; and
- (ii) the building of the property meets all the statutory requirements which apply at the commencement of building work and, in particular, those of the Building Act 1984<sup>(28)</sup> and the Building Regulations 2000<sup>(29)</sup>.

### **Developer cover**

**10.**—(1) This paragraph applies—

- (a) where the new homes warranty makes provision for a developer’s obligations to the policy-holder in respect of the matters described in paragraphs 11(1)(a), 11(1)(b) and 12(2)(a) of this Schedule, or any other any defects or damage to the property; and
  - (b) such a defect is apparent or such damage occurs at any time during the warranty period.
- (2) Under such a new homes warranty, a warranty provider must undertake that—
- (a) a warranty provider will meet all such obligations if the developer fails to do so (or no longer exists and has no successor), or provide financial compensation in respect of the obligations;
  - (b) it will provide a resolution or conciliation service—
    - (i) the aim of which is to resolve any disputes between the policy-holder and the developer relating to such obligations and their timely fulfilment; and
    - (ii) for which no payment or consideration in kind is charged to the policy-holder;
  - (c) if the resolution or conciliation service described in paragraph (b) recommends that remedial work to the property should be conducted by the developer, a warranty provider will use all reasonable endeavours to ensure that the developer carries out such work;
  - (d) if the developer fails to carry out such remedial work (or no longer exists and has no successor), a warranty provider will carry out the work instead, or provide financial compensation for it; and
  - (e) if the resolution or conciliation service described in paragraph (b) does not prove satisfactory to the policy-holder, it will make available to the policy-holder another form of resolution or conciliation service which is independent to that warranty provider.

### **Structural defects cover to property and common parts throughout the new homes warranty**

**11.**—(1) Under the new homes warranty, a warranty provider must undertake that it or the developer will put right, arrange to put right or provide financial compensation for—

- (a) any actual destruction of or damage to the property caused by any defects—
  - (i) of such structural features as exist at the property and common parts; and
  - (ii) occurring during the first 10 years of the warranty period; and
- (b) any conditions caused by defects in the design, workmanship, materials or other components—
  - (i) of such structural features as exist at the property and common parts;

<sup>(28)</sup> c. 29.

<sup>(29)</sup> 2000/2531. The Building Regulations 2000 were amended by the Building and Approved Inspectors (Amendment) Regulations 2006 (S.I. 2006/652), the Building (Amendment) (No. 3) Regulations 2004 (S.I. 2004/3210), the Building (Amendment) Regulations 2004 (S.I. 2004/1465), the Building (Amendment) Regulations 2003 (S.I. 2003/2692), the Building (Amendment) (No. 2) Regulations 2002 (S.I. 2002/2871), the Building (Amendment) Regulations 2002 (S.I. 2002/0440) and the Building (Amendment) Regulations 2001 (S.I. 2001/3335).



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- (ii) which cause an imminent danger of destruction or damage to the property; and
- (iii) which are apparent during the first 10 years of the warranty period.

(2) The carrying out of the obligations described in sub-paragraph (1) may be shared between a warranty provider and the developer.

#### **Additional defects cover for property – first two years**

**12.**—(1) This paragraph applies to such of the following as exist at the property and common parts—

- (a) electrical wiring and connections;
- (b) equipment and fixtures for the collection and distribution of gas, water, heating and ventilation;
- (c) drains;
- (d) other mechanical and electrical apparatus that are intended to be lasting—
  - (i) including boilers; and
  - (ii) excluding lifts;
- (e) wall partitions;
- (f) internal windows;
- (g) plaster applied to walls and ceilings;
- (h) tiling to walls, floors or ceilings;
- (i) other floor coverings that are intended to be lasting;
- (j) internal and external doors;
- (k) finishes to surfaces; and
- (l) fixtures.

(2) Under the new homes warranty, a warranty provider must undertake that it or the developer will put right, arrange to put right or provide financial compensation—

- (a) for any—
  - (i) defect in any of the items described in sub-paragraph (1); and
  - (ii) damage to the property caused by such a defect; and
- (b) where such a defect is apparent or such damage occurs during the first two years of the warranty period.

(3) The carrying out of the obligations described in sub-paragraph (2) may be shared between a warranty provider and the developer.

#### **Cover for costs of alternative accommodation**

**13.** Subject to paragraph 18 of this Schedule, under the new homes warranty, a warranty provider must undertake to pay to the policy-holder (or another person as agreed with the policy-holder) all costs and expenses—

- (a) that are incurred by those normally living at the property for—
  - (i) the removal and storage of belongings; and
  - (ii) securing alternative accommodation; and
- (b) occurring due to the property becoming uninhabitable as a result of any liability on the part of a warranty provider under the new homes warranty or otherwise.

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### **Professional fees**

14. Subject to paragraph 19 of this Schedule, under the new homes warranty, a warranty provider must undertake to pay such professional and other fees—

- (a) as are incurred by the policy-holder relating to the complete or partial re-building of or rectifying work to the property—
  - (i) as a result of any liability on the part of a warranty provider under the new homes warranty or otherwise; and
  - (ii) excluding the actual costs of carrying out such work; and
- (b) for which the prior written permission of a warranty provider is sought by the policy-holder, and given accordingly.

## **PART 4**

### **Limits on cover for specific new homes warranties**

#### **Permitted limits for newly built properties**

15.—(1) This paragraph applies to a property newly built from foundations.

(2) The total amount of any payments, financial compensation or costs of remedial work arising under the new homes warranty may, in relation to the property, be limited to—

- (a) £500,000 plus the annual increment; or
- (b) the value of the property at the time the sale of the property was completed plus the annual increment.

(3) Where the property forms part of a continuous structure, the total amount of any payments, financial compensation or costs of remedial work arising under all the related new homes warranties may be limited to £10,000,000 plus the annual increment in relation to all the premises which form part of the continuous structure.

#### **Permitted limits for converted premises**

16.—(1) This paragraph applies to a property where the most recent use of the premises, is or was a primarily non-residential use, and it is due to be converted to a residential property by the time the sale is completed.

(2) The total amount of any payments, financial compensation or costs of remedial work arising under the new homes warranty may, in relation to the property be limited to—

- (a) £250,000 plus the annual increment; or
- (b) the value of the property at the time the sale of the property was completed plus the annual increment.

(3) Where the property forms part of a continuous structure, the total amount of any payments, financial compensation or remedial work arising under all related new homes warranties may be limited to £5,000,000 plus the annual increment in relation to all the premises which form part of the continuous structure.

#### **Permitted excesses**

17.—(1) Subject to sub-paragraph (2), the new homes warranty may contain either or both of the following terms—

- (a) a term requiring a contribution to be paid by the policy-holder in relation to any claims made under the new homes warranty; or
  - (b) a term requiring a minimum financial value to any claims made by the policy-holder under the warranty.
- (2) The contribution or value required in each of the sub-paragraphs (1)(a) or (b) must be no more than £1,000 plus the annual increment.

#### **Permitted limits on cover for costs of alternative accommodation**

**18.** The costs and expenses payable by a warranty provider under paragraph 13 of this Schedule may be limited to those that are reasonably and necessarily incurred.

#### **Permitted limits on cover for professional fees**

**19.** The fees payable by a warranty provider under paragraph 14 of this Schedule may be limited to either or both of the following—

- (a) those that are reasonably and necessarily incurred; or
- (b) those other than fees incurred by the policy-holder in investigating or preparing a claim under the new homes warranty.

### SCHEDULE 7

regulation 8(l)

#### Report on a home not physically complete

#### **Report**

- 1.** A report on a home not physically complete must consist of—
- (a) a statement of the day or the predicted day on which the property is likely to be physically complete;
  - (b) a statement of whether the property will be—
    - (i) a house;
    - (ii) a bungalow;
    - (iii) a flat; or
    - (iv) a maisonette.
  - (c) if the property will be a house or bungalow, a statement of whether it will be—
    - (i) detached;
    - (ii) semi-detached; or
    - (iii) terraced;
  - (d) if the property will be a flat or maisonette, a statement of—
    - (i) the total number of floors in the building;
    - (ii) the total number of the flats or maisonettes in the building;
    - (iii) whether there will be a lift to the floor on which the entrance to the property will be situated;
  - (e) a statement of the approximate total useable floor area in the property (in square metres);

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- (f) a description of the proposed methods of building (including any trade names for the materials described);
- (g) a description of the materials used or to be used in the outside parts of the property;
- (h) a description of the heating and hot-water systems to be used for the property;
- (i) a description of the standards to which the garden or other land being sold with the property will be finished;
- (j) a statement as to whether any land on the site has been or will be brought up to the level of the surrounding area artificially;
- (k) a statement as to whether a new homes warranty complying with Schedule 6 has been offered for the building, completion or conversion of the property and whether the property will qualify for such a warranty; and
- (l) if the property will not qualify for such a warranty, a statement of the name and qualifications of the person monitoring the building, completion or conversion of the property.

## **Attachments**

- 2. A report on a home not physically complete must attach—
  - (a) a plan (to a scale of not less than 1:1250) showing the location and actual or approximate boundaries of the property (with the length of the boundaries indicated in metres) as it will be once it is completed, and marking—
    - (i) neighbouring buildings and structures, and surrounding land; and
    - (ii) the roads, public highways and footpaths that serve or will serve the property;
  - (b) a plan (to a scale of not less than 1:100) showing the layout and actual or approximate height, width and length (in metres) of each of the proposed rooms in the property; and
  - (c) a predicted energy performance certificate for the property.

## SCHEDULE 8

regulations 8(m)(ii), 8(n) 8(o), 9(k) and 9(l)

General provision on searches and search reports

## PART 1

All search reports (other than official search certificate of the local land charges register)

### **General requirements**

- 1. A search report complying with this Schedule must contain the following information—
  - (a) the address of the premises in respect of which the search is conducted;
  - (b) a statement of whether the following persons have, or are likely to have, any personal or business relationship with any person involved in the sale of the property—
    - (i) a person who conducted the search; and
    - (ii) a person who prepared the search report;

- (c) subject to Schedules 9 and 10, such enquiries as formed the basis of the search and the information sought;
- (d) subject to paragraph 3 of this Schedule, the results of the search;
- (e) the date the search was completed;
- (f) a description of the records searched, and who they are held by;
- (g) if the records searched are derived from other records, a description of those other records and whom those other records are held by;
- (h) a description of how relevant documents can be obtained (if they are not included in the home information pack);
- (i) the names and addresses of the parties to the arrangements—
  - (i) under which the search was conducted; and
  - (ii) if different, under which the search report was prepared;
- (j) the name of the persons liable in each of the following events—
  - (i) any negligent or incorrect entry in the records searched;
  - (ii) any negligent or incorrect interpretation of the records searched; and
  - (iii) any negligent or incorrect recording of that interpretation in the search report;
- (k) a description of such complaints or redress procedures as exist in relation to the report; and
- (l) the terms on which the report is made, including—
  - (i) the terms described in paragraphs 4, 5 and 6 of this Schedule; and
  - (ii) the names of the persons who are liable to make the payments described in paragraph 6(b) and 6(c) of this Schedule.

### **Additional search information**

**2.** A search report complying with this Schedule may contain or be accompanied by documents containing all or any of the following information—

- (a) information which identifies the search or the search report;
- (b) information which explains the results of the search, the search report or the enquiries or matters to which the results of the search relate; and
- (c) information which identifies services or features local to the property, but not including any advertising or marketing information about them.

### **Unavailable search results**

**3.** The results of the search included in a search report under paragraph 1(d) of this Schedule must not fail to answer such enquiries as formed the basis of the search, nor fail to give the information originally sought, unless—

- (a) a record from which the answer or result could be deduced is not held by or obtainable under any circumstances from—
  - (i) a local authority in the case of a search report required by regulation 8(m)(ii) or 8(n), or authorised by regulation 9(k)(i); or
  - (ii) any person in the case of any other search report, and
- (b) a statement is also included in the search report indicating—
  - (i) that a particular result is not included; and
  - (ii) the reason under sub-paragraph (a) for failing to include the result.

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## PART 2

### Specific required search reports

#### **Terms for the preparation of required searches**

4. Any person may prepare a report required by regulation 8(m)(ii), 8(n) or 8(o), but must do so on the following terms without exclusion or limitation—

- (a) that the search report will be prepared with reasonable care and skill; and
- (b) that a responsible person may copy or issue a copy of the report for the purposes of complying with any of the following provisions—
  - (i) regulations 5, 6, 8(m)(ii), 8(n), 8(o) and 21; and
  - (ii) section 156(1), (2) and (11) of the 2004 Act.

#### **Third party contractual rights in relation to search reports**

5. The person preparing a search report required by regulation 8(m)(ii), 8(n) or 8(o) must do so on terms enabling the provisions of the contract under which the report is prepared—

- (a) to be enforced in relation to the terms mentioned in paragraph 4 of this Schedule, by—
  - (i) the seller;
  - (ii) a potential or actual buyer of the property interest; and
  - (iii) a mortgage lender in respect of the property interest; and
- (b) to be enforced by such persons in their own right, whether or not they are a party to such a contract.

#### **Insurance cover for third party contractual rights**

6. The person preparing the search reports required by regulation 8(n) or 8(o) must do so on terms ensuring that—

- (a) any liability of any type arising under paragraph 5 of this Schedule is the subject of a contract of insurance against such risk effected by, and to be carried out by persons so authorised for the purposes of the Financial Services and Markets Act 2000;
- (b) any liability for financial loss arising under paragraph 5 of this Schedule will be met by financial compensation to be paid by a person (other than the persons described in paragraph 5(a)(i) to (iii) of this Schedule) who is—
  - (i) a party to the contract of insurance; or
  - (ii) another person involved in the sale of the property; and
- (c) such financial compensation is paid by a person mentioned in sub-paragraph (a), if any person mentioned in sub-paragraph (b) fails to pay it (or no longer exists and has no successor).

#### **Permitted limit on liability for financial loss**

7. The amount of the financial compensation referred to in paragraph 6(b) of this Schedule may be limited to the amount the potential or actual buyer reasonably believed to be the value of the property interest—

- (a) at the time the search report was completed; and
- (b) as used for residential purposes.

### **Inclusion of additional or more favourable terms for required search reports**

8. A person may prepare the search reports required by regulation 8(m)(ii), 8(n) or 8(o) on any of the following terms—

- (a) terms additional to those described in paragraphs 4, 5 and 6 of this Schedule (without excluding or limiting them); and
- (b) terms more favourable to—
  - (i) the seller;
  - (ii) a potential or actual buyer of the property interest; or
  - (iii) a mortgage lender in respect of the property interest,than those described in paragraphs 4, 5 and 6 of this Schedule.

### **Less favourable terms**

9. Any search report which contains terms less favourable to—

- (a) the seller;
- (b) a potential or actual buyer of the property interest; or
- (c) a mortgage lender in respect of the property interest,

than those required by this Part of this Schedule does not comply with the requirements of this Schedule.

### **Required searches by another name**

10. Paragraph 4 of this Schedule applies to pack documents which contain the enquiries required (or enquiries to like effect) to be contained in a search report which would be included under regulation 8(m)(ii), 8(n) or 8(o), regardless of whether one or more of the following has occurred—

- (a) they are included under regulation 9(k), Schedule 11 or another provision of these Regulations; or
- (b) they are described as a local land charges search, local enquiries or drainage and water enquiries, or given similar descriptions.

## **PART 3**

### **Authorised search reports**

#### **Terms for the preparation of authorised search reports**

11. The search reports authorised by regulation 9(k) and 9(l) may be made on any terms, which, in particular, may include the terms described in Parts 1 and 2 of this Schedule.

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SCHEDULE 9

regulation 8(n)

Local enquiries

PART 1

General

**Interpretation**

1.—(1) In this Schedule—

“adoption” and related expressions mean an agreement made under section 38 of the Highways Act 1980**(30)**;

“bond” means an indemnity or guarantee which is sought by a local authority as to the financial security of a developer of land;

“bond waiver” means an agreement that a local authority will not seek a bond from a developer of land;

“breach of condition notice” means a notice served under section 187A of the Town and Country Planning Act 1990**(31)**;

“building preservation notice” means a notice served under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990**(32)**;

“building regulations approvals” means—

(a) plans passed under section 16 of the Building Act 1984**(33)**; or

(b) a certificate given under regulation 21(6) of the Building Regulations 2000**(34)** (regularisation certificates);

“building regulations completion certificate” means a certificate given under regulation 17(1) of the Building Regulations 2000**(35)**;

“building regulations” has the same meaning as in section 122 of the Building Act 1984;

“certificate of lawfulness of existing use or development” means a certificate issued under section 191(4) of the Town and Country Planning Act 1990**(36)**;

“certificate of lawfulness of proposed use or development” means a certificate issued under section 191(2) of the Town and Country Planning Act 1990**(37)**;

“compulsory purchase order with a direction for minimum compensation” means an order confirmed or made under section 50(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990**(38)**;

“conservation area” means either or both of the following—

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**(30)** Amended by section 22(1) of the New Roads and Street Works Act 1991 (c. 22).

**(31)** Inserted by section 2 of the Planning and Compensation Act 1991 (c. 34).

**(32)** Amended by section 20(4) of and paragraph 25(2) of Schedule 6 to the Local Government (Wales) Act 1994 (c. 19).

**(33)** There are amendments to section 16 which are not relevant to these Regulations.

**(34)** S.I. 2000/2531. Under this provision, an applicant may apply to a local authority for a regularisation certificate in respect of unauthorised building work.

**(35)** Regulation 17 is to be amended by article 53(1) of and paragraph 6 of Schedule 3 to the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541).

**(36)** Substituted by section 10(1) of the Planning and Compensation Act 1991 (c. 34).

**(37)** Substituted by section 10(1) of the Planning and Compensation Act 1991.

**(38)** Amended by section 109(1), paragraph 345 of Schedule 8 to and Schedule 10 to the Courts Act 2003 (c. 39).



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(a) an area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990; or

(b) an area so designated before 31st August 1974 by other means;

“contaminated land notice” means a notice given under section 78B(3) of the Environmental Protection Act 1990(39);

“cycle track” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(40)) with or without a right of way on foot;

“development plan” must be construed in accordance with section 38 of the Planning and Compulsory Purchase Act 2004(41);

“direction restricting permitted development” means a direction given under article 4 of the Town and Country Planning (General Permitted Development) Order 1995(42);

“drainage agreement” means an agreement made under section 22(2) of the Building Act 1984;

“enforcement notice” means a notice issued under section 172 of the Town and Country Planning Act 1990(43);

“footpath” means a highway over which the public have a right of way on foot only, not being a footway;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

“frontager” means the owner or occupier of premises that abut a road, footway or footpath;

“highway maintainable at public expense” means a highway which by virtue of section 36 of the Highways Act 1980(44) or of any other enactment is a highway which for the purposes of that Act is a highway maintainable at the public expense;

“improvement” means the doing of any act under powers conferred by Part 5 of the Highways Act 1980 and includes the erection, maintenance, alteration and removal of traffic signs, and the freeing of a highway or road-ferry from tolls;

“land required for public purposes” means land to which paragraphs 5 and 6 of Schedule 13 to the Town and Country Planning Act 1990 relate(45);

“land to be acquired for road works” means land to be acquired by a public authority under any of sections 239 to 246 of the Highways Act 1980(46);

“listed building enforcement notice” means a notice issued under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990(47);

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(39) Inserted by section 57 of the Environment Act 1995.

(40) 1988 c. 52.

(41) 2004 c. 5.

(42) S.I. 1995/418. Article 4 was amended by article 2(c) of the Town and Country Planning (General Permitted Development) (Amendment) Order 1996.

(43) Substituted by section 5 of the Planning and Compensation Act 1991.

(44) 1980 c. 66. Section 36 was amended by section 4(1) of and paragraph 47 of Schedule 2 to the Housing (Consequential Provisions) Act 1985 (c. 71), sections 64 and 68 of and Part 1 of Schedule 2 to the Transport and Works Act 1992 (c. 42), section 4 of and paragraph 45(3) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and section 57 of and Part 1 of Schedule 6 to the Countryside and Rights of Way Act 2000 (c. 37). There are further amendments to section 36 which are not relevant to these Regulations.

(45) Paragraph 5 was amended by sections 32 and paragraph 56 of Schedule 7 to the Planning and Compensation Act 1991. Both paragraphs 5 and 6 were amended by section 118(1) of and paragraphs 1 and 18 of Schedule 6 to the Planning and Compulsory Purchase Act 2004.

(46) Section 245A was inserted by section 13 of the Traffic Management Act 2004 (c. 18). At the time these Regulations are made, the amendment is not yet in force in relation to Wales.

(47) Amended by sections 25 and 84 of and Schedule 3 to the Planning and Compensation Act 1991.

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“listed building repairs notice” means a notice served under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990;

“mini-roundabout” means a roundabout consisting of a level or raised circular marking of a diameter of four metres or less;

“order requiring discontinuance of use or alteration or removal of buildings or works” means an order made under section 102 of the Town and Country Planning Act 1990**(48)**;

“order revoking or modifying planning permission” means an order made under section 97 of the Town and Country Planning Act 1990**(49)**;

“planning agreement” means an agreement made under section 106 of the Town and Country Planning Act 1990, as existing at any time before the enactment of the Planning and Compulsory Purchase Act 2004**(50)**;

“planning contravention notice” means a notice served under section 171C of the Town and Country Planning Act 1990**(51)**;

“planning contribution” means a contribution to be made pursuant to any regulations made under sections 46 to 48 of the Planning and Compulsory Purchase Act 2004**(52)**;

“remediation notice” means a notice served under section 78E of the Environmental Protection Act 1990**(53)**;

“railway” means a system of transport employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels; and
  - (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),
- but does not include a tramway;

“road hump” means an artificial hump in or on the surface of the highway which is designed to control the speed of vehicles, and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump;

“special road” means a highway, or a proposed highway, which is a special road in accordance with section 16 of the Highways Act 1980;

“stop notice” means a notice served under section 183 of the Town and Country Planning Act 1990**(54)**;

“traffic calming works”, in relation to a highway, means works affecting the movement of vehicular or other traffic for the purpose of—

- (a) promoting safety (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000**(55)**);
- or
- (b) preserving or improving the environment through which the highway runs;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

**(48)** Amended by sections 21 and 32, paragraph 6 of Schedule 1 to and paragraph 21 of Schedule 7 to the Planning and Compensation Act 1991.

**(49)** Amended by sections 21 and 84 of, paragraph 4 of Schedule 1 to, and Schedule 19 to the Planning and Compensation Act 1991.

**(50)** At the time these Regulations are made, section 106 is yet to be repealed by sections 118(1) and 120, paragraphs 1 and 5 of Schedule 6 to and Schedule 9 to the Planning and Compulsory Purchase Act 2004.

**(51)** Inserted by section 1 of the Planning and Compensation Act 1991 and amended by article 5(a) of the Town and Country Planning (Electronic Communications) (England) Order 2003 (S.I. 2003/956) and article 5(a) of Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004 (S.I. 2004/3156).

**(52)** At the time these Regulations are made no regulations have yet been made under these provisions.

**(53)** Inserted by section 57 of the Environment Act 1995 and amended by sections 86 and 105 of the Water Act 2003.

**(54)** Substituted by section 9(1) of the Planning and Compensation Act 1991.

**(55)** 2000 (c. 1).

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- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“tree preservation order” means an order made under section 198 of the Town and Country Planning Act 1990<sup>(56)</sup>; and

“trunk road” means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 of the Highways Act 1980 or by virtue of an order or direction under section 10 of that Act<sup>(57)</sup> or under any other enactment.

(2) In paragraph 8 “private sewer”, “drain” and “disposal main” have the same meaning as in paragraph 1(1) of Schedule 10.

### **Enquiries**

2.—(1) The search report required by regulation 8(n) must contain the enquiries set out in Part 2 of this Schedule.

(2) Those enquiries must relate to the property.

(3) The enquiries in paragraphs 6 to 18 relate only to matters which are not entered on the appropriate local land charges register.

## **PART 2**

### **Enquiries**

#### **Planning and building decisions and pending applications**

3. What applications for any of the following relating to the property have been given, approved or rejected or are pending a decision—

- (a) a planning permission;
- (b) a listed building consent;
- (c) a conservation area consent;
- (d) a certificate of lawfulness of existing use or development;
- (e) a certificate of lawfulness of proposed use or development;
- (f) building regulations approvals; and
- (g) a building regulations completion certificate?

#### **Planning designations and proposals**

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

#### **Roads**

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

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<sup>(56)</sup> Amended by sections 31, 32 and 84, paragraph 20 of Schedule 6 to, paragraph 34 of Schedules 7 and 19 to the Planning and Compensation Act 1991. Also amended by section 42(3) of the Planning and Compulsory Purchase Act 2004.

<sup>(57)</sup> Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991 (c. 22) and section 19 was amended by section 21(1) of that Act.

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

**Land required for public purposes**

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

**Land to be acquired for road works**

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

**Drainage agreements and consents**

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

**Nearby road schemes**

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

- (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation?

#### **Nearby railway schemes**

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

#### **Traffic schemes**

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

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

#### **Outstanding notices**

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

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

#### **Contravention of building regulations**

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

#### **Notices, orders, directions and proceedings under Planning Acts**

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

- (a) an enforcement notice;
- (b) a stop notice;

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

#### **Conservation areas**

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

- (a) a decision to make the area a conservation area before 31<sup>st</sup> August 1974; or
- (b) an unimplemented decision to designate the area a conservation area?

#### **Compulsory purchase**

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

#### **Contaminated land**

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

- (a) a contaminated land notice;
- (b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990<sup>(58)</sup>—
  - (i) a decision to make an entry; or
  - (ii) an entry; or
- (c) consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990<sup>(59)</sup> before the service of a remediation notice?

#### **Radon gas**

**18.** Do records indicate that the property is in a “Radon Affected Area” as identified by the Health Protection Agency<sup>(60)</sup>?

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<sup>(58)</sup> 1990 c. 43. Section 78R was inserted by section 57 of the Environment Act 1995.

<sup>(59)</sup> Section 78G was inserted by section 57 of the Environment Act 1995.

<sup>(60)</sup> A body established under section 1 of the Health Protection Agency Act 2004 (c. 17).

SCHEDULE 10

regulation 8(o)

Drainage and water enquiries

PART 1

General

**Interpretation**

1.—(1) In this Schedule—

“the 1991 Act” means the Water Industry Act 1991**(61)**;

“the 2000 Regulations” means the Water Supply (Water Quality) Regulations 2000**(62)**;

“the 2001 Regulations” means the Water Supply (Water Quality) Regulations 2001**(63)**;

“adoption agreement” means an agreement made or to be made under section 51A(1) or 104(1) of the 1991 Act**(64)**;

“bond” means a surety granted by a developer who is a party to an adoption agreement;

“bond waiver” means an agreement with a developer for the provision of a form of financial security as a substitute for a bond;

“calendar year” means the twelve months ending with 31st December;

“discharge pipe” means a pipe from which discharges are made or are to be made under section 165(1) of the 1991 Act;

“disposal main” means (subject to section 219(2) of the 1991 Act) any outfall pipe or other pipe which—

(a) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and

(b) is not a public sewer;

“drain” means (subject to section 219(2) of the 1991 Act) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“financial year” means the twelve months ending with 31st March;

“lateral drain” means—

(a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or

(b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 of the 1991 Act or in an agreement made under section 104 of that Act**(65)**;

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**(61)** 1991 c. 56.

**(62)** S.I. 2000/3184. These Regulations apply in relation to England.

**(63)** S.I. 2001/3911. These Regulations apply in relation to Wales.

**(64)** Section 51A was inserted by section 92(2) of the Water Act 2003 (c. 37). Section 104(1) was amended by section 96(4) of that Act.

**(65)** Various amendments have been made to sections 102 and 104 by section 96 of the Water Act 2003.

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“licensed water supplier” means a company which is the holder for the time being of a water supply licence under section 17A(1) of the 1991 Act<sup>(66)</sup>;

“maintenance period” means the period so specified in an adoption agreement as a period of time—

(a) from the date of issue of a certificate by a sewerage undertaker to the effect that a developer has built (or substantially built) a private sewer or lateral drain to that undertaker’s satisfaction; and

(b) until the date that private sewer or lateral drain is vested in the sewerage undertaker;

“map of waterworks” means the map made available under section 198(3) of the 1991 Act <sup>(67)</sup> in relation to the information specified in subsection (1A);

“private sewer” means a pipe or pipes which drain foul or surface water, or both, from premises, and are not vested in a sewerage undertaker;

“public sewer” means, subject to section 106(1A) of the 1991 Act<sup>(68)</sup>, a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker—

(a) by virtue of a scheme under Schedule 2 to the Water Act 1989<sup>(69)</sup>;

(b) by virtue of a scheme under Schedule 2 to the 1991 Act<sup>(70)</sup>;

(c) under section 179 of the 1991 Act<sup>(71)</sup>; or

(d) otherwise;

“public sewer map” means the map made available under section 199(5) of the 1991 Act<sup>(72)</sup>;

“resource main” means (subject to section 219(2) of the 1991 Act) any pipe, not being a trunk main, which is or is to be used for the purpose of—

(a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or

(b) giving or taking a supply of water in bulk;

“sewerage services” includes the collection and disposal of foul and surface water and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions;

“sewerage undertaker” means the company appointed to be the sewerage undertaker under section 6(1) of the 1991 Act for the area in which the property is or will be situated;

“surface water” includes water from roofs and other impermeable surfaces within the curtilage of the property;

“water main” means (subject to section 219(2) of the 1991 Act) any pipe, not being a pipe for the time being vested in a person other than the water undertaker, which is used or to be used by a water undertaker or licensed water supplier for the purpose of making a general supply of water available to customers or potential customers of the undertaker or supplier, as distinct from for the purpose of providing a supply to particular customers;

“water meter” means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from any premises;

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<sup>(66)</sup> Inserted by section 56 of and Schedule 4 to the Water Act 2003.

<sup>(67)</sup> Subsection (1A) was inserted by section 92(5) of the Water Act 2003.

<sup>(68)</sup> Section 106(1A) was inserted by section 99 of the Water Act 2003.

<sup>(69)</sup> 1989 c. 15.

<sup>(70)</sup> To which there are various amendments made by section 101(1) of and Schedule 8 to the Water Act 2003.

<sup>(71)</sup> To which there are various amendments made by section 101(1) of and Schedule 8 to the Water Act 2003.

<sup>(72)</sup> Section 199 was amended by section 97(1) and (8) of the Water Act 2003.



“water supplier” means the company supplying water in the water supply zone, whether a water undertaker or licensed water supplier;

“water supply zone” means the names and areas designated by a water undertaker within its area of supply that are to be its water supply zones for that year; and

“water undertaker” means the company appointed to be the water undertaker under section 6(1) of the 1991 Act for the area in which the property is or will be situated.

(2) In this Schedule, references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe.

### **Enquiries and responses**

2.—(1) The search report required by regulation 8(o) must contain—

- (a) the enquiries set out in sub-paragraph (1) of each paragraph of Part 2 of this Schedule; and
- (b) in relation to each such enquiry, a response set out in sub-paragraph (2) of each such paragraph, which must be the appropriate response in respect of the property.

(2) Where sub-paragraph (2) of each such paragraph includes alternative responses, only one of those responses may be the appropriate response.

(3) Where the search report is made using a document which reproduces all of the enquiries and responses set out in Part 2 of this Schedule, the person preparing the report must delete or strike out such of those responses as are not appropriate.

(4) Where a response set out in sub-paragraph (2) of each paragraph of Part 2 of this Schedule—

- (a) includes words highlighted in italics which request the giving of information about specified matters—
  - (i) the appropriate response or the search report must include the information to which those matters refer; and
  - (ii) where information is so included and the search report is made using a document which reproduces that response, the person preparing the report may delete or strike out the words in italics; and
- (b) refers to an additional document being included, that document must accompany the search report required by regulation 8(o).

## **PART 2**

### **Enquiries and responses**

#### **Public sewer map**

3.—(1) Where relevant, please include a copy of an extract from the public sewer map.

- (a) (2) (a) A copy of an extract from the public sewer map is included in which the location of the property is identified;
- (b) A copy of an extract of the public sewer map is included, showing the public sewers, disposal mains and lateral drains in the vicinity of the property; or
- (c) No map is included, as there are no public sewers in the vicinity of the property.

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### **Foul water**

- 4.—(1) Does foul water from the property drain to a public sewer?
- (a) (2) (a) Records indicate that foul water from the property drains to a public sewer;
  - (b) Records indicate that foul water from the property does not drain to a public sewer; or
  - (c) This enquiry appears to relate to a plot of land or a recently built property. It is recommended that drainage proposals are checked with the developer.

### **Surface water**

- 5.—(1) Does surface water from the property drain to a public sewer?
- (a) (2) (a) Records indicate that surface water from the property does drain to a public sewer;
  - (b) Records indicate that surface water from the property does not drain to a public sewer; or
  - (c) This enquiry appears to relate to a plot of land or a recently built property. It is recommended that drainage proposals are checked with the developer.

### **Public adoption of sewers and lateral drains**

- 6.—(1) Are any sewers or lateral drains serving or which are proposed to serve the property the subject of an existing adoption agreement or an application for such an agreement?
- (a) (2) (a) Records indicate that in relation to sewers and lateral drains serving the development of which the property forms part—
    - (i) an adoption agreement is currently in preparation;
    - (ii) an adoption agreement exists and the sewers and lateral drains are not yet vested in the sewerage undertaker, although the maintenance period has commenced;
    - (iii) an adoption agreement exists and the sewers and lateral drains are not yet vested in the sewerage undertaker and the maintenance period has not yet commenced;
    - (iv) an adoption agreement exists and is supported by a bond;
    - (v) an adoption agreement exists and is the subject of a bond waiver; or
    - (vi) an adoption agreement exists and is not supported by a bond or by a bond waiver; or
  - (b) Records confirm that sewers serving the development, of which the property forms part are not the subject of an existing adoption agreement or an application for such an agreement; or
  - (c) The property is part of an established development and is not subject to an adoption agreement.

### **Public sewers within the boundaries of the property**

- 7.—(1) Does the public sewer map indicate any public sewer, disposal main or lateral drain within the boundaries of the property?
- (a) (2) (a) The public sewer map included indicates that there is a public sewer, disposal main or lateral drain within the boundaries of the property;
  - (b) The public sewer map indicates that there are private sewers or lateral drains subject to an existing adoption agreement within the boundaries of the property; or
  - (c) The public sewer map indicates that there are no public sewers, disposal mains or lateral drains within the boundaries of the property. However, it has not always been a requirement for such public sewers, disposal mains or lateral drains to be recorded on the public sewer

map. It is therefore possible for unidentified sewers, disposal mains or lateral drains to exist within the boundaries of the property.

### **Public sewers near to the property**

**8.—(1)** Does the public sewer map indicate any public sewer within 30.48 metres (100 feet) of any buildings within the property?

- (a) (2) (a) The public sewer map included indicates that there is a public sewer within 30.48 metres (100 feet) of a building within the property;
- (b) The public sewer map indicates that there is a public sewer or lateral drain subject to an existing adoption agreement within 30.48 metres (100 feet) of a building within the property; or
- (c) The public sewer map indicates that there are no public sewers within 30.48 metres (100 feet) of a building within the property. However, it has not always been a requirement for such public sewers to be recorded on the public sewer map. It is therefore possible for unidentified sewers or public sewers to exist within the boundaries of the property.

### **Building over a public sewer, disposal main or drain**

**9.—(1)** Has a sewerage undertaker approved or been consulted about any plans to erect a building or extension on the property over or in the vicinity of a public sewer, disposal main or drain?

- (a) (2) (a) Records indicate that a sewerage undertaker has approved or has been consulted about plans to erect a building or extension on the property over or in the vicinity of a public sewer, disposal main or drain;
- (b) Records indicate that a sewerage undertaker has rejected plans to erect a building or extension on the property over or in the vicinity of a public sewer, disposal main or drain; or
- (c) There are no records in relation to any approval or consultation about plans to erect a building or extension on the property over or in the vicinity of a public sewer, disposal main or drain. However, the sewerage undertaker might not be aware of a building or extension on the property over or in the vicinity of a public sewer, disposal main or drain.

### **Map of waterworks**

**10.—(1)** Where relevant, please include a copy of an extract from the map of waterworks.

- (a) (2) (a) A copy of an extract from the map of waterworks is included in which the location of the property is identified;
- (b) A copy of an extract of the map of waterworks is included, showing water mains, resource mains or discharge pipes in the vicinity of the property; or
- (c) No map is included, as there are no water mains, resource mains or discharge pipes in the vicinity of the property.

### **Adoption of water mains and service pipes**

**11.—(1)** Is any water main or service pipe serving or which is proposed to serve the property the subject of an existing adoption agreement or an application for such an agreement?

- (a) (2) (a) Records confirm that in relation to water mains and service pipes serving the development, of which the property forms part—
  - (i) an adoption agreement is currently in preparation;

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- (ii) an adoption agreement exists and the water mains or service pipes are not yet vested in the water undertaker;
  - (iii) an adoption agreement exists and is supported by a bond; or
  - (iv) an adoption agreement exists and is not supported by a bond; or
- (b) Records confirm that water mains or service pipes serving the property are not the subject of an existing adoption agreement or an application for such an agreement.

### **Sewerage and water undertakers**

**12.—**(1) Who are the sewerage and water undertakers for the area?

(2) *Give company name and address* is the sewerage undertaker for the area, and *give company name and address* is the water undertaker for the area.

### **Connection to mains water supply**

**13.—**(1) Is the property connected to mains water supply?

- (a) (2) (a) Records indicate that the property is connected to mains water supply;
- (b) Records indicate that the property is not connected to mains water supply and water is therefore likely to be provided by virtue of a private supply; or
- (c) This enquiry relates to a plot of land or a recently built property. It is recommended that the water supply proposals are checked with the developer.

### **Water mains, resource mains or discharge pipes**

**14.—**(1) Are there any water mains, resource mains or discharge pipes within the boundaries of the property?

- (a) (2) (a) The map of waterworks indicates that there are water mains, resource mains or discharge pipes within the boundaries of the property;
- (b) The map of waterworks does not indicate any water mains, resource mains or discharge pipes within the boundaries of the property; or
- (c) The map of waterworks indicates that there is a water main subject to an existing adoption agreement within the boundaries of the property.

### **Current basis for sewerage and water charges**

**15.—**(1) What is the current basis for charging for sewerage and water services at the property?

- (a) (2) (a) The charges are based on actual volumes of water measured through a water meter (“metered supply”);
- (b) The charges are based on the rateable value of the property of £ *give rateable value* and the charge for the current financial year is £ *give amount of charge*;
- (c) The charges are made on a basis other than rateable value or metered supply. They are based on *give basis for charges* and are £ *give amount of charge* for each financial year.
- (d) Records indicate that this enquiry relates to a plot of land or a recently built property.

### **Charges following change of occupation**

**16.—**(1) Will the basis for charging for sewerage and water services at the property change as a consequence of a change of occupation?

- (a) (2) (a) The basis for the charges will change and will be based on an unmeasured supply;
- (b) The basis for the charges will change and will be based on a metered supply;
- (c) The basis for the charges will change and will be based on *give basis for charges*;
- (d) The basis for the charges will change and will be based on rateable value;
- (e) There will be no change in the current charging arrangements as a consequence of a change of occupation; or
- (f) Records indicate that this enquiry relates to a plot of land or a recently built property. It is recommended that the charging proposals are checked with the developer.

### **Surface water drainage charges**

17.—(1) Is a surface water drainage charge payable?

- (a) (2) (a) Records confirm that a surface water drainage charge is payable for the property at £ *give level of charge* for each financial year; or
- (b) Records confirm that a surface water drainage charge is not payable for the property.

### **Water meters**

18.—(1) Please include details of the location of any water meter serving the property.

- (a) (2) (a) Records indicate that the property is not served by a water meter; or
- (b) Records indicate that the property is served by a water meter, which is located—
  - (i) within the dwelling-house which is or forms part of the property, and in particular is located at *give details of location*; or
  - (ii) is not within the dwelling-house which is or forms part of the property, and in particular is located at *give details of location*.

### **Sewerage bills**

19.—(1) Who bills the property for sewerage services?

- (a) (2) (a) The property is billed for sewerage services by *give company name, billing address, enquiry telephone number and website address*; or
- (b) The property is not billed for sewerage services.

### **Water bills**

20.—(1) Who bills the property for water services?

- (a) (2) (a) The property is billed for water services by *give company name, billing address, enquiry telephone number and website address*; or
- (b) The property is not billed for water services.

### **Risk of flooding due to overloaded public sewers**

21.—(1) Is the dwelling-house which is or forms part of the property at risk of internal flooding due to overloaded public sewers?

- (a) (2) (a) Records confirm that the property is at risk of internal flooding due to overloaded public sewers (following an actual flooding event or otherwise) and a report is included describing—

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- (i) this and the action proposed by the sewerage undertaker to remove the risk;
  - (ii) who will undertake this action and when; and
  - (iii) whether mitigation measures have been installed to reduce the risk of flooding to the property;
- (b) An investigation is currently being carried out by the sewerage undertaker to determine if the property should be recorded on a register as being at risk of internal flooding due to overloaded public sewers, and a report is included describing—
- (i) the action proposed by the water undertaker to remove the risk; and
  - (ii) who will undertake the action and when; or
- (c) The property is not recorded as being at risk of internal flooding due to overloaded public sewers.

#### **Risk of low water pressure or flow**

**22.**—(1) Is the property at risk of receiving low water pressure or flow?

- (a) (2) (a) Records confirm that the property is recorded on a register kept by the water undertaker as being at risk of receiving low water pressure or flow, and a report is included describing—
- (i) the action proposed by the water undertaker to remove the risk; and
  - (ii) who will undertake the action and when;
- (b) An investigation is currently being carried out by the water undertaker to determine if the property should be recorded on a register as being at risk of receiving low water pressure or flow, and a report is included describing—
- (i) the action proposed by the water undertaker to remove the risk; and
  - (ii) who will undertake the action and when; or
- (c) Records confirm that the property is not recorded on a register kept by the water undertaker as being at risk of receiving low water pressure or flow.

#### **Water quality analysis**

**23.**—(1) Please include details of a water quality analysis made by the water undertaker for the water supply zone in respect of the most recent calendar year.

- (a) (2) (a) The analysis confirmed that all tests met the standards prescribed by the 2000 Regulations or the 2001 Regulations; or
- (b) The analysis confirmed that tests met the standards prescribed by the 2000 Regulations or the 2001 Regulations, except that *give number* tests of *give total number* tests failed to meet the standard for nitrate;
- (c) The analysis confirmed that tests met the standards prescribed by the 2000 Regulations or the 2001 Regulations, except that *give number* tests of *give total number* tests failed to meet the standard for lead;
- (d) The analysis confirmed that tests failed to meet the standards of the 2000 Regulations or the 2001 Regulations in relation to both nitrate and lead, and these are *give further details of such tests*; or
- (e) The analysis records confirmed that tests failed to meet the standards of the 2000 Regulations or the 2001 Regulations in relation to another substance or substances, and these are *include further details*.

### Authorised departures from water quality standards

24.—(1) Please include details of any departures—

- (a) authorised by the Secretary of State under Part 6 of the 2000 Regulations from the provisions of Part 3 of those Regulations; or
  - (b) authorised by the National Assembly for Wales under Part 6 of the 2001 Regulations from the provisions of Part 3 of those Regulations.
- (a) (2) (a) There are no such authorised departures for the water supply zone; or
- (b) The Secretary of State or the National Assembly for Wales has authorised a departure from the standards prescribed by the 2000 Regulations or the 2001 Regulations, in the water supply zone, and—
    - (i) the departure permits the water undertaker or water supplier to supply water that does not meet the standard for *give substance* whilst remedial action to restore normal water quality is taken;
    - (ii) the maximum permitted departure is up to *give number* micrograms per litre; and
    - (iii) the measures taken to restore normal water quality are due to be completed by *give approximate month and year*.

### Sewage treatment works

25.—(1) Please confirm the distance from the property to the nearest boundary of the nearest sewage treatment works.

(2) The nearest sewage treatment works is *give distance in kilometres or miles* to the *give direction* of the property. The name of the nearest sewage treatment works is *give name*.

## SCHEDULE 11

regulation 9(n)

### Additional relevant information

The matters referred to in regulation 9(n)(ii) are—

- (a) the property's contents, fixtures or fittings;
- (b) any information provided by the Chief Land Registrar relating to the property;
- (c) equitable interests in the property;
- (d) rights of access to or over—
  - (i) the property (not including any ancillary land); or
  - (ii) land outside the property;
- (e) rights of access to or over any ancillary land to the property including—
  - (i) obligations to maintain such land; or
  - (ii) whether any payments for maintaining such land are outstanding;
- (f) obligations to maintain the boundaries of the property;
- (g) communications from any public authority or person with statutory functions, that affect or might affect the property, including whether any request made by them (under any enactment or otherwise) has been complied with;
- (h) acquisition of any land by a public authority or person with statutory functions that affects or might affect the property;

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- (i) standards of safety, building, repair or maintenance to which the property, its contents or the building in which it is situated ought to comply, and whether such standards have been complied with;
- (j) the property’s suitability or potential suitability for occupancy by a disabled person;
- (k) the energy performance of the property;
- (l) alterations or other works relating to the property and whether—
  - (i) any necessary permissions for such alterations or works have been obtained; and
  - (ii) relevant consultations have been conducted;
- (m) use or occupation of the property or use or occupation of other premises which affects or might affect the property;
- (n) insurance policies, warranties, certificates or guarantees for the property or its contents;
- (o) utility services connected to the property;
- (p) potential or actual environmental hazards that might affect the property or its occupants; and
- (q) taxes, levies or charges relating to the property.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The main purpose of these Regulations is to prescribe the documents to be included in home information packs and the circumstances in which they are included (Parts 1 to 4 of the Regulations). The duties to have a home information pack which complies with these Regulations are found in sections 155 to 159 of the Housing Act 2004 (“the home information pack duties”). In general, the duties apply to a “responsible person” as described in sections 151 to 153 of the Housing Act 2004.

The Regulations make a distinction between “required” documents which must be included in home information packs and “authorised” documents which may be included. A pack must not include any documents not required or authorised (regulation 4) and advertising information must not be included in pack documents in the circumstances described in regulation 12. Part 2 of the Regulations makes provision about the source and clarity of documents included in an original home information pack, and in copies of a pack.

Regulations 8, 9 and 10 are the regulations that set out which documents are required and authorised to be included in packs. The required documents specified in regulation 8 include an index, a sale statement, title information, additional information for commonhold and leasehold properties, information about the physical condition and energy efficiency of the property and property searches. Schedules 1 to 10 to the Regulations make further provision about these documents, and in some cases prescribe minimum terms for the documents or the terms on which they must be provided in order to comply with the Regulations. Not all documents are required in every case, and regulation 8 further describes the circumstances in which a document is required.

Regulation 9 describes the information authorised to be included in a home information pack. This information may be included in a separate document or within a required document. Authorised information includes translations, Braille versions, summaries or explanations of pack documents,



additional title information or information relating to commonhold and leasehold properties and additional information about physical condition. It includes further property searches and searches relating to other premises may be included. Schedule 11 to the Regulations specifies additional relevant information which may be included. Regulation 10 deals with the required information for new properties where the legal commonhold or leasehold interest being sold has not yet been registered or created.

Part 4 of the Regulations deals with the assembly and accuracy of home information packs. Required documents must be included before the first point of marketing which is defined in regulation 3 as the time a duty under sections 155(1) or 159(2) of the Housing Act 2004 first arises. Certain title information, home condition reports and required property searches should be no older than 3 months at the first point of marketing (regulation 14). Regulation 3(3) and 3(5) describe the circumstances in which putting the property back on the market will not result in a new first point of marketing. Regulations 15 and 17 deal with the event that certain required documents are unavailable or unobtainable before the first point of marketing. Regulation 15(2) provides that a home information pack complies with the Regulations if a responsible person continues to use all reasonable efforts to obtain a document and the first point of marketing does not occur 14 days before the day a request for a document is first delivered.

Regulations 18 to 20 deal with the circumstances in which the pack or pack documents must or may be updated, and the effect of regulation 21 is that a responsible person must provide a seller with a copy of any pack documents requested by him for the purposes of checking their accuracy.

Part 5 of the Regulations makes exceptions from the home information pack duties. These exceptions relate to seasonal accommodation, sales mixed with sales of non-residential premises, dwelling houses used for both residential and non-residential purposes, portfolios of residential properties, unsafe properties and properties to be demolished. The exception under regulation 30 deals with a transitional period starting on 1st June 2007 and ending on 31st October 2007. It ensures that where a responsible person makes public that a property is on the market during the transitional period, a person does not become a responsible person if it was put on the market before the period, providing further action was taken to market the property. It also deals with the circumstances where the home information pack duties do not arise by putting the property on the market during the transitional period, providing the property was first put on the market before the period and an offer to buy the property was withdrawn (or its acceptance repudiated).

Part 6 of the Regulations specifies that the level of penalty charge for penalty charge notices which may be given by enforcement authorities is £200 (for a breach of a home information pack duty). Regulation 32 specifies that penalty charge notices do not apply where the content of a pack document fails to comply with these Regulations, but a responsible person believes on reasonable grounds that it does.

Additionally, the Regulations require home condition reports (which must be included in home information packs in the circumstances described in regulation 8(h)) to be made by members of a certification scheme (home inspectors) approved by the Secretary of State under Part 7. Before approving a scheme, the Secretary of State must be satisfied that a scheme contains appropriate provision for the matters described in regulation 33.

A full regulatory impact assessment of the effect that this instrument will have on businesses has been prepared and placed in the libraries of both Houses of Parliament. Copies of the regulatory impact assessment and guidance related to these Regulations are available at the Department for Communities and Local Government's website and or from its Home Buying and Selling Reform Division (telephone: 020 7944 19342, fax: 020 7944 3408 and e-mail: [homeinfopacks@communities.gsi.gov.uk](mailto:homeinfopacks@communities.gsi.gov.uk)).