

## 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;

“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

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- (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.

#### **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>(1)</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);
- (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.

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<sup>(1)</sup> 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.

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## 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—
    - (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>(2)</sup> and the Building Regulations 2000<sup>(3)</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.

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(2) c. 29.

(3) 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).

- (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;
  - (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;

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- (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.

#### **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.

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**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.