
STATUTORY INSTRUMENTS

2007 No. 1667

The Home Information Pack (No. 2) Regulations 2007

PART 6

EXCEPTIONS

Meaning of “non-residential premises”

25.—(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—
 - (i) 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
 - (ii) all the relevant planning permissions and 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 to a dwelling-house⁽¹⁾,

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) as grazing land or woodlands.

Exclusion from meaning of “non-residential premises”

26. 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⁽²⁾; or

(1) 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) in relation to a dwelling-house or a sub-divided building as “any land intended to be occupied and enjoyed together with that dwelling-house or building”.

(2) In this case, “lease” does not only mean a long lease - see regulation 3(1).

- (ii) home working.

Exception for seasonal and holiday accommodation

27. 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

28. 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;
- (c) at the time at which the first point of marketing would have occurred (were sections 155 to 159 of the 2004 Act to apply but for this regulation), 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) the seller’s intention not to accept such an offer is clear from the manner in which the property is marketed.

Exception for dual use of a dwelling-house

29. 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 was most recently used for both residential and non-residential purposes; and
- (b) the manner in which it is marketed suggests that it is suitable for—
 - (i) non-residential use; or
 - (ii) both residential and non-residential use.

Exception for portfolios of properties

30.—(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 the property is to be sold with one or more other dwelling-houses;
- (b) the other dwelling-houses mentioned in sub-paragraph (a)—
 - (i) are available for sale with vacant possession; and
 - (ii) 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 at which the first point of marketing would have occurred (were sections 155 to 159 of the 2004 Act to apply but for this regulation), the seller does not intend to accept an offer to buy any one of those dwelling-houses in isolation from another; and
 - (d) the seller's intention not to accept such an offer is clear from the manner in which the dwelling-houses are marketed.
- (2) Paragraph (1) does not apply where the other dwelling-houses mentioned in sub-paragraph (a) are ancillary to the dwelling-house.

Exception for unsafe properties

- 31.** 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 potential occupants or visitors; and
 - (c) where the manner in which the property is marketed suggests it is unsuitable for occupation in its condition.

Exception for properties to be demolished

- 32.—**(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 planning permissions, listed building consents; and 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” has the same meaning as in article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995(3).

Exception – properties marketed before the commencement date

- 33.—**(1) In this regulation, “commencement date” means the date appointed by the Secretary of State for the coming into force of sections 155(1), 156(1) and 159(2) of the 2004 Act in relation to the property(4).
- (2) This regulation applies in relation to a property where—
- (a) the property is put on the market by or on behalf of the seller before the commencement date;
 - (b) action taken at any time during the period starting with 1st June 2006 and ending before the commencement date by or on behalf of the seller, made public the fact that the property was on the market;

(3) [S. I. 1995/419](#). The definition refers to “reserved matters”, also defined in article 1(2). The definition of “reserved matters” is substituted by [S.I. 2006/1062](#).

(4) In accordance with section 270(6) or (8) of the 2004 Act.

- (c) such action was taken with the intention of selling the property before the commencement date; and
- (d) such action was sustained to a reasonable extent after it was put on the market, during the period starting with 1st June 2006 and ending before the commencement date.

(3) A person is not a responsible person in relation to a property to which this regulation applies, by virtue of action taken on or after the commencement date, by or on behalf of the seller, which makes public the fact that the property is on the market⁽⁵⁾.

(4) The duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property to which this regulation applies, which is put back on the market on or after the commencement date—

- (a) after the seller had accepted an offer to buy the property; and
- (b) within 28 days of that offer being withdrawn or its acceptance repudiated.

Exception – first day marketing during a temporary period

34.—(1) In the circumstances set out in paragraph (2) and subject to paragraph (3), the duties under sections 155 to 159 of the 2004 Act do not apply in relation to a property until the responsible person has in his possession or under his control (where they would otherwise be required by regulation 8)—

- (a) an energy performance certificate relevant to the property and its accompanying recommendation report; or
- (b) a predicted energy assessment relevant to the property complying with Schedule 2.

(2) The circumstances referred to in paragraph (1) are that—

- (a) the property is put on the market by or on behalf of the seller before 1st January 2008;
- (b) requests for all the required documents are delivered before the property is put on the market; and
- (c) those requests comply with regulation 18(1).

(3) The exception described in paragraph (1) does not apply unless the responsible person also satisfies the following conditions—

- (a) that where it is reasonable to expect that the responsible person can obtain a required document before the property is put on the market, he uses all reasonable efforts to obtain the document before then;
- (b) that where he believes on reasonable grounds that he is unlikely to obtain all the required documents by the end of the period of 28 days starting with the date on which the property is put on the market, he uses all reasonable efforts to obtain the documents before then;
- (c) that where sub-paragraphs (a) and (b) do not apply or he cannot obtain all the required documents in accordance with those provisions, he continues to use all reasonable efforts to obtain them.

(4) In this regulation—

- (a) “responsible person” means the person who would be the responsible person if the duties under sections 155 to 159 of the 2004 Act applied;
- (b) “required documents” means the documents that would be required under regulation 8 if sections 155 to 159 of the 2004 Act applied; and
- (c) the day a request for a document is delivered shall be construed in accordance with regulation 19.

(5) See sections 151, 152(1)(b) and 153(1)(b) of the 2004 Act.

(5) Once the duties under sections 155 to 159 of the 2004 Act apply, the point at which the property is put on the market is the first point of marketing for that document—

- (a) for the purposes of regulation 17(1) and (2) (documents required within 28 days of first point of marketing);
- (b) 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
- (c) until such time (if any) as a further first point of marketing arises under regulation 3(4), Part 4 or Part 5.