

## EXPLANATORY MEMORANDUM TO

### THE HOUSING (SCOTLAND) ACT 2006 (CONSEQUENTIAL PROVISIONS) ORDER 2008

2008 No. 1889

1. 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Description

2.1 This Order makes provision consequential on the Housing (Scotland) Act 2006 (“the 2006 Act”), an Act of the Scottish Parliament. The aim of the Act is to address concerns about the condition and quality of private sector housing in Scotland.

2.2 Part 3 of the 2006 Act gives Scottish Ministers the power to prescribe by regulations the documents which a seller must make available to prospective buyers. They have used that power to prescribe documents which together are known as the “Home Report”. One of the prescribed documents in the Home Report will be a survey report (the “single survey”) which will contain information on both the physical condition of a house (or flat) and its value. One survey will be commissioned for each house put on the market; this will provide house sellers and buyers with better information on the condition, energy efficiency and value of the house for sale and mitigate the need for prospective buyers to commission numerous surveys.

2.3 For the single survey to work, the buyer must be able to rely on the terms of the survey. The seller is able to do so, having commissioned the survey. As the 2006 Act will not give a right to rely on the terms of the survey, this Order will make provisions to allow buyers to do so. This Order is necessary in consequence of the 2006 Act as consumer protection is a matter reserved to Westminster under Schedule 5 to the Scotland Act 1998.

2.4 Article 3 of the Order establishes the liability of the person who prepared the report on a house towards the buyer of that house. The buyer’s loss for which that person is liable must have resulted from a breach of the prescribed requirements for preparing the report; the courts will determine whether that causal link exists in each case. The buyer’s loss must be the result of a material error in valuation and loss only occurs if the buyer has paid more than market value. The courts will quantify the loss and any damages in each case.

2.5 Article 4 of the Order provides that a person domiciled in any part of the United Kingdom may be sued in Scotland.

2.6 Article 5 of the Order provides that where a claim is to proceed in Scotland, a person may be sued in the part of Scotland where the house is situated.

2.7 The 2006 Act also made provision within devolved competence that changed the name of Rent Assessment Committees to Private Rented Housing Committees. In consequence of the provision made in section 21 of the 2006 Act, this Order will

modify the list of Disqualifying Offices in Part 3 of Schedule 1 to the House of Commons Disqualification Order 1975 to reflect this change.

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

3.1 This Order is made in exercise of the powers conferred by sections 104, 112 (1) and 113(2), (3), (4) and (5) of the Scotland Act 1998 (“the 1998 Act”). The Order is, by virtue of section 115(1) and paragraphs 1, 2 and 3 of Schedule 7 to the Act, subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of an Act of the Scottish Parliament, in this case the 2006 Act.

3.2 This section 104 Order is expedient in consequence of the 2006 Act as the Scottish Parliament does not have the legislative competence to make provisions concerning consumer protection which would allow buyers to rely on the survey commissioned by the seller.

### **4. Legislative Background**

4.1 The 2006 Act was passed by the Scottish Parliament on 24 November 2005 and received Royal Assent on 5 January 2006. The Act lays the foundations for the single survey and provides the Scottish Ministers with the powers to require sellers of houses or their agents to provide specified information to prospective buyers.

4.2 The Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 (the “2008 Regulations”) were passed by the Scottish Parliament on 7 February 2008 and come into force on 1 October 2008. These regulations make provisions within devolved competence to specify the documents which a seller or a selling agent must possess and provide in response to a request from potential buyers. The regulations specify the type of information that must be included in the prescribed documents and the timescales within which they are to be provided to prospective buyers. The regulations also list certain types of property that are exempt from the requirement to commission a single survey. These include new-build, converted properties, properties that are to be demolished and seasonal and holiday accommodation as defined in Town and Country Planning legislation.

4.3 The 2008 regulations come into force on 1 October 2008 and will coincide with the commencement of this Order. The house seller’s obligations under the 2006 Act will commence on 1 December 2008.

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

5.1 Articles 2 and 3 extend to Scotland only, otherwise the Order extends to the whole of the United Kingdom.

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

6.1 The Minister of State at the Scotland Office has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Housing (Scotland) Act 2006 (Consequential Provisions) Order 2008 are compatible with the

Convention rights.

## **7. Policy background**

7.1 In March 2001 the Scottish Executive established the Housing Improvement Task Force (HITF) to look at legal, financial and administrative arrangements that prevented and encouraged improvements in housing stock. The introduction of the Single Survey was one of over 150 recommendations made by the HITF following two years of research and other work on measures that would help to improve the condition of Scotland's privately owned housing. The report included proposals to:

- improve the information for home buyers on property conditions and remove the need for multiple surveys
- ensure that private landlords carry out necessary repairs
- help flat owners work together to ensure that common repairs are done
- modernise the powers available to local authorities to tackle house condition problems

7.2 The existing house buying and selling process in Scotland works very differently from that in England and Wales. The Home Report including the Single Survey has been introduced to address problems specific to the Scottish market. The HITF noted that around one third of the privately owned housing stock in Scotland was in disrepair and that 90% of homebuyers bought their homes using a Mortgage Valuation report which contained relatively little information about the condition of the house. It recommended the introduction of the Single Survey for three main reasons:

- better information on house condition from the Single Survey would act as a market incentive for repair or maintenance works to be carried out;
- to address the problem of multiple valuations and surveys that were prevalent in the Scottish market, particularly in market 'hotspots'; and
- to address the problems created by the practice of setting artificially low asking prices in Scotland, which was felt to be unfair to buyers and damaging to the credibility of the house buying and selling system generally

7.3 The 2006 Act provided a framework for changes to the house buying and selling process based on the HITF recommendations. The 2008 Regulations reflect the detailed policy for making those changes, established after public consultation and careful consideration of changes in the market since the HITF recommendations were made. Sellers will now have detailed information on the condition of their property and a valuation before they market it. Buyers will be provided with this information before they decide to make an offer on a property.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. The Scottish Executive carried out two detailed consultations on the overall policy and the detail of the secondary legislation, each supported by a Regulatory Impact Assessment.

8.2 A research report “The Potential Impact of the Single Survey on the Property Market” published in 2007 by the Scottish Executive found that the increase in demand for surveyor services can be met from within existing capacity of the surveying sector in Scotland.

8.3 The Regulatory Impact Assessment for the regulations for the Single Survey included a small firms impact test and a competition assessment. It concluded that the introduction of the Single Survey may mean a reduction in the number of smaller surveying firms. However, this would be through a process of absorption and agency arrangements and the growth of federal arrangements rather than by the closure of small operations. It also concluded that the introduction of the Single Survey will not necessarily reduce competition, that entry by new businesses could increase competition, and there was no prospect of the growth of monopoly power or dominant positions, nor of the facilitation of anti-competitive behaviour. The Regulatory Impact Assessment was prepared on the assumption that the buyer would be able to rely on the survey in the same way as the seller who commissioned it.

## **9. Contact**

9.1 Adam Pile at the Scotland Office ([adam.pile@scotland.gsi.gov.uk](mailto:adam.pile@scotland.gsi.gov.uk)) can answer any queries regarding the instrument.

Scotland Office  
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