

SCHEDULE 6

General provision about searches and search reports

PART 2

Specific required search reports

Access to local authority records

4. The results of the search included in the search report required by regulation 8(k) (local enquiries) may fail to answer the enquiries set out in Part 2 of Schedule 7, in the following circumstances—

- (a) the first point of marketing falls before 1st April 2008 (except where a further first point of marketing arises under regulation 3(4) or Part 5);
- (b) a record from which the answer or result could be deduced is held by a local authority;
- (c) that local authority has a policy of not allowing other persons to inspect such records;
- (d) a local authority is not requested to provide the search report;
- (e) any enquiries not answered are the subject of a contract of insurance against the liabilities that if they had been answered, they would have affected—
 - (i) an actual buyer's decision to buy the property; or
 - (ii) the price an actual or potential buyer would be prepared to pay for it,and result in financial loss;
- (f) such a contract of insurance is effected by, and to be carried out by persons so authorised for the purposes of the Financial Services and Markets Act 2000;
- (g) any liability for financial loss arising under paragraph (e) will be met by financial compensation to be paid by a person (other than the persons described in paragraph 6(a)(i) to (iii)) who is—
 - (i) a party to the contract of insurance; or
 - (ii) another person involved in the sale of the property; and
- (h) such financial compensation is paid by a person mentioned in sub-paragraph (f) if any person mentioned in sub-paragraph (g) fails to pay it (or no longer exists and has no successor); and
- (i) the search report—
 - (i) contains a description of the terms and effect of the insurance described in this paragraph; and
 - (ii) identifies which enquiries have not been answered and in respect of which the insurance has been obtained.

Terms for the preparation of required searches

5. Any person may prepare a report required by regulation 8(j)(ii) (personal search of the local land charges register), 8(k) (local enquiries) or 8(l) (drainage and water enquiries), 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

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- (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(j)(ii), 8(k), 8(l) and 24; and
 - (ii) section 156(1), (2) and (11) of the 2004 Act.

Third party contractual rights in relation to search reports

6. The person preparing a search report required by regulation 8(j)(ii) (personal search of the local land charges register), 8(k) (local enquiries) or 8(l) (drainage and water enquiries) 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 5, 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

7. The person preparing the search reports required by regulation 8(k) (local enquiries) or 8(l) (drainage and water enquiries) must do so on terms ensuring that—

- (a) any liability of any type arising under paragraph 6 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 6 will be met by financial compensation to be paid by a person (other than the persons described in paragraph 6(a) (i) to (iii)) 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

8. The amount of the financial compensation referred to in paragraphs 4(g) and 7(b) 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) for the purposes of residential use.

Inclusion of additional or more favourable terms for required search reports

9. A person may prepare the search reports required by regulation 8(j)(ii) (personal search of the local land charges register), 8(k) (local enquiries) or 8(l) (drainage and water enquiries) on any of the following terms—

- (a) terms additional to those described in paragraphs 5, 6 and 7 (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 5, 6 and 7.

Less favourable terms

- 10.** 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 is not made in accordance with this Schedule.

Required searches by another name

11. This Schedule applies in relation 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(j)(ii), 8(k) or 8(l), regardless of whether one or more of the following has occurred—

- (a) they are included under regulation 9(m), Schedule 10 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.