

EXPLANATORY MEMORANDUM TO
THE HOME INFORMATION PACK (REDRESS SCHEME) (No. 2) ORDER
2007 No. 1946

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The Order requires estate agents in England and Wales to belong to an approved redress scheme that will deal with complaints related to Home Information Packs (HIPs). The requirement to belong to an approved redress scheme will only apply to estate agents that undertake ‘estate agency work’, as this term is defined in the Estate Agents Act 1979, and who market properties requiring a HIP.

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

None.

4. **Legislative Background**

4.1 Section 172(1) of the Housing Act 2004 (the Act) provides that the Secretary of State may make an Order requiring every estate agent in England and Wales to be a member of an approved redress scheme for the purpose of HIP-related complaints. The Order gives effect to that requirement in respect of properties for which a HIP will be required from 1st August 2007 under Part 5 of the Act as that Part is brought into force from time to time in respect of different types of property.

4.2 This Order effectively replaces the Home Information Pack (Redress Scheme) Order 2007 (S.I. 2007/560) which was revoked by the Home Information Pack (Redress Scheme) (Revocation) Order 2007 (S.I. 2007/1536). This revocation took effect on 1st June 2007.

5. **Territorial Extent and Application**

This instrument applies to England and Wales.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

7.1 Sections 155 and 159 in Part 5 of the Act impose a duty on the persons to whom those sections apply to have a HIP which complies with the requirements of any regulations made under section 163 of the Act. From 1st August 2007, this duty will apply in respect of residential properties with 4 or more bedrooms and are marketed as such. It is then expected to be extended to other properties on a phased basis. In the majority of cases the person marketing the property will be an estate agent, and under section 172 of the Act they may be required to belong to a redress scheme, under which complaints relating to HIPs can be referred to an ombudsman.

7.2 Section 172(3) of the Act provides that before making the Order, the Secretary of State must be satisfied that he has approved a redress scheme (pursuant to section 173 of the Act). The Secretary of State has approved a scheme submitted by the Ombudsman for Estate Agents for this purpose, and is currently considering a further two applications submitted by the Royal Institution of Chartered Surveyors and the IDRS. Details of the schemes are available on the BERR website.

7.3 The Act provides that an Order may exclude estate agents of a prescribed description from the duty to belong to an approved scheme or limit any duty so that it only applies in relation to relevant complaints of a prescribed description (section 172(3)). The Order makes it clear that only estate agents who are doing estate agency work as defined in section 1 of the Estate Agents Act 1979 will be required to join a redress scheme. This will mean that those who are excluded from the 1979 Act, such as solicitors who might also market properties as part of their business, will not have to join a redress scheme, as they are already subject to controls at least as rigorous as those that will be imposed on estate agents.

7.4 Section 172(2) states that acting in contravention of the Order will be regarded as a breach of duty under Part 5 of the Act. Breach of the duty to belong to an approved scheme will be punishable by a penalty charge notice issued by a local Trading Standards Officer (section 168(1)(b) (this has been set at £200 under the Home Information Pack (No.2) Regulations 2007). In addition, section 175(3) states that this breach will be regarded as if it were an undesirable practice under section 3(1)(d) of the Estate Agents Act 1979. This means that the OFT will be able to consider the fitness of an agent to practise, and ultimately ban an agent if he is deemed to be unfit.

7.5 This Order will ensure that sellers and potential buyers of residential property in England and Wales have access to free independent redress for complaints against estate agents, which relate to HIPs.

7.6 Hansard references to the provisions in this Order: 14/06/06 – Off. Report - c58-60WS and c17-9WS; 22/07/04 – Off. Report – cWS61; 13/09/04 - Off. Report - 1004; 16/09/04 – Off. Report – c1295-7; 19/10/04 – Off. Report – c689-90, 692 and 706; 20/10/04 – Off. Report - 880; 08/11/04 – Off. Report – c646; 18/11/05 – Off. Report - c1352-4; 30/03/06 – Off. Report - c144WA; 10/01/07 - Off. Report - c99GC.

8. Impact

8.1 A separate Regulatory Impact Assessment has not been prepared in respect of this Order as the impact assessment has been reflected in the Regulatory Impact Assessment made in respect of the Home Information Pack (No.2) Regulations 2007, a copy of which can be obtained from the Department for Communities and Local Government or from its website at www.communities.gov.uk.

9. Contact

Natasha Chopra at the Department for Business, Enterprise and Regulatory Reform: Tel: 020 7215 1106 or e-mail: Natasha.Chopra@berr.gsi.gov.uk can answer any queries regarding the instrument.