

EXPLANATORY MEMORANDUM TO

THE HOME INFORMATION PACK (AMENDMENT) (NO.3) REGULATIONS 2008

2008 No. 3107

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Home Information Pack (No.2) Regulations 2007 (“the principal Regulations”).

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

3.1 None

4. Legislative Context

4.1 The background to the principal Regulations was covered in detail in the Explanatory Memorandum that accompanied them.

4.2 Under Part 5 of the Housing Act 2004 (“the Act”) a “responsible person” (i.e. a seller and/or an estate agent) is required to have in their possession or control a home information pack (“HIP”) when marketing a residential property for sale with vacant possession (see sections 151 to 153 of the Act). The HIP must comply with the requirements of the principal Regulations (by virtue of section 155) and a responsible person is required to provide a copy of the HIP to a potential buyer on request (under section 156). Part 5 of the Act was brought into force on a phased basis by a series of commencement orders.

4.3 The content of HIPs is prescribed by the principal Regulations.

4.4 The amendments made by these regulations:

- Provide for a new required document to be included in the HIP. The Property Information Questionnaire (PIQ) will be completed by sellers and will contain basic information about the property that is likely to be of assistance to potential buyers.
- Amend Schedule 5 of the principal Regulations to provide that documents (apart from a copy of the lease itself) currently required to be included in HIPs in the case of leasehold sales, are instead authorised for inclusion in HIPs, with effect from 1 January 2009.
- Further extend the temporary application of the first day marketing provisions in regulation 34 of the principal Regulations.
- Further extend the temporary period in paragraph 4(a) of Schedule 6 of the principal Regulations during which information gaps in personal searches may be covered by insurance where local authorities have refused access to the relevant records
- Amend regulation 30 so that the exception of portfolios of properties from the requirement to provide a HIP applies where some of the properties in the portfolio do not have vacant possession.

5. Territorial Extent and Application

5.1 These Regulations apply to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Department's overall policy objectives, and the expected benefits of HIPs, are covered in more detail as part of the explanatory memorandum to the principal Regulations. This memorandum draws particular attention to the changes given effect by the amendments contained in these Regulations and why they have been made at this time.

7.2 A statement from the Housing Minister on 8 May 2008 announced plans to focus action to improve the home buying and selling process in three areas; the quality and flow of information provided to consumers; the standard of services provided by property professionals; and enforcement and redress arrangements. The package of measures being brought forward through these amending regulations is intended to address the first – ensuring the HIP is 'fit for purpose' and gives consumers a better product.

The Property Information Questionnaire – Regulation 9

7.3 Although HIPs are playing an important part in achieving a fair and efficient home buying and selling process, we know from the HIP Area Trials¹ and other consumer research that the ease of use of the pack can be improved. On 8 May 2008, the Housing Minister (Caroline Flint) announced action to improve the content and quality of the HIP and set out final arrangements for the implementation and operation of HIPs. A key step in this process is the introduction of a new Property Information Questionnaire (PIQ) as a mandatory document in the HIP. This proposal was consulted on over the summer of 2008. A copy of the consultation paper is available on the Communities and Local Government website at <http://www.communities.gov.uk/documents/housing/pdf/hipconsumerconsultation>.

7.4 The Department's view is that the PIQ will improve the content and accessibility of the HIP by providing buyers with the type of information they want to know during their first steps in a transaction and before they invest financially and emotionally in a particular property. It is not intended to replace the work of conveyancers and other property professionals, which will continue to be required as the transaction is finalised. The new form is therefore complementary to the Law Society's standard form, "*the Sellers Property Information Form*", that is used in most residential conveyancing transactions.

7.5 The drafting of the PIQ was informed by comments made in the consultation. For example, the inclusion of questions relating to flooding, in line with recommendations made in Sir Michael Pitt's recent review '*Lessons learned from the 2007 floods*' and additional questions on gas and electrical safety. Following comments from the house building industry we have

¹ Prior to the national launch of HIPs, Communities and Local Government undertook eight Area Trials of HIPs. The purpose of the Trials was to help test and improve the HIP product and processes, and to inform policy (See *Home Information Pack Area Trials – Research Report* at <http://www.communities.gov.uk/archived/publications/housing/hipareatrials>)

also introduced a separate version of the form specifically covering new build properties. This is intended to ensure that buyers of both new and previously-owned homes benefit from useful information up front.

- 7.6 The consultation also included a proposal to simplify requirements in the HIP for providing information relating to leasehold properties, by including a summary of key information together with a copy of the lease. The summary, which forms part of the PIQ, includes the type of information particular to a leasehold property that is most useful to a prospective buyer, e.g. current ground rent and service charge and any potential restrictions on use of the property. This approach, developed with consumer and industry representatives, will avoid sellers having to provide large volumes of leasehold information before they begin marketing. As a result, responsible persons should be able to assemble HIPs more quickly, easily and at less cost, increasing benefits for both sellers and buyers.

Ending the temporary provision on leasehold – Regulations 3, 4 and 7

- 7.7 Regulation 8(h) and Schedule 5(1) and (2) of the principal Regulations require a number of leasehold documents to be included in the HIP. Regulation 4 of the principal Regulations provides that the HIP must include the documents that are “required” under the terms of regulation 8 and may include documents and information that are “authorised” under regulation 9 and Schedule 10.
- 7.8 However, the rules were modified for a temporary period following concerns over the delays and additional cost in obtaining certain leasehold documents. The Home Information Pack (Amendment) Regulations 2007 (S.I. 2007/3301) amended the principal Regulations to provide that until 31 May 2008, the lease was retained as a required document but all other leasehold documents required by the principal Regulations were authorised for inclusion in the pack. The lease itself was retained as a required document as it is often available from the Land Registry and is therefore not subject to the same concerns over availability and cost.
- 7.9 In the interim, the then Deputy Chief Executive of the Land Registry (Ted Beardsall) completed a short study which confirmed that problems exist around the speed and cost of providing leasehold information and that further work was needed to consider how to address and resolve these. The report was published on 12 June 2008 and is available on the Communities and Local Government website at <http://www.communities.gov.uk/publications/housing/propertysearchesleasehold>.
- 7.10 The Home Information Pack (Amendment) (No.2) Regulations 2008 (S.I. 2008/1266) extended the temporary period during which the lease is the only mandatory (“required”) leasehold document from 1 June 2008 to 1 January 2009. This extension allowed the establishment of a working group of consumer and industry representatives, led by Ted Beardsall, to develop practical solutions to take forward the proposals set out in his report and move to a final position on the leasehold requirements in HIPs.
- 7.11 The working group proposed that a summary of information on the cost (e.g. ground rent, service charges) and restrictions on the use of a property, together with the lease, would provide buyers with the key information they needed to know about a leasehold property at the beginning of the purchasing process. The Government consulted over the summer on making this package the requirement for leasehold properties, with the summary of key leasehold information to be included in the proposed new PIQ. A majority of respondents supported this overall approach and agreed that the summary should form part of the PIQ.
- 7.12 Regulation 7 will amend the principal Regulations to provide that documents currently required for leasehold sales will become authorised with effect from 1 January 2009, apart from a copy of the lease which will remain a required part of the pack for leasehold sales. The new PIQ will include a section to be completed by sellers of leasehold homes and will become a required document of the HIP from 6 April 2009.

Further extending the temporary provision for insurance in private searches – Regulation 5(iii)

- 7.13 The principal Regulations permit private search providers, in limited specified circumstances, to use insurance to cover missing data if a local authority has a policy of restricting access to that data. This provision was necessary to ensure that the private sector would not be excluded from the market as a result of a local authority's decision to restrict access to data. The temporary provision applied to homes put on the market before 1 April 2007 under paragraph 4 of Schedule 6 to the Home Information Pack (No.2) Regulations 2007 (S.I 2007/1667). The period was extended until 1 January 2009 by the Home Information Pack (Amendment) (No 2) Regulations 2008 and will be further extended until 5 April 2009 by this regulation.
- 7.14 To address the problems around access to information held by local authorities, CLG is working to reform the property searches market in line with recommendations made by the Office of Fair Trading. Regulations dealing with access and charging were laid on 13 November - The Local Authorities (England) (Charges for Property Searches) Regulations 2008 which are subject to affirmative procedure. A short period will be needed for local authorities and private search companies to adjust their systems to comply with the requirements of the new Regulations.
- 7.15 The insurance provision has affected the quality of private sector searches in some cases and in some circumstances led to additional costs to consumers. However, the private sector does have legitimate concerns about access to data that our reforms of the market will address. To allow time for these reforms to be completed in England and Wales (the Welsh Assembly is developing separate Charges Regulations) and to ensure the private sector is not excluded from the market in the meantime, it is considered prudent to provide for a short extension of the insurance provision to 5 April 2009.

Further extending the temporary first day marketing provision – Regulation 5(i)

- 7.16 Regulation 34 of the principal Regulations enables marketing to begin without a HIP where certain documents required for inclusion in the HIP have been commissioned and have either been paid for or a commitment to pay for them has been made, and they are expected to arrive within 28 days.
- 7.17 This temporary measure was introduced to ensure that capacity issues surrounding Domestic Energy Assessors did not impact unduly on the introduction of the HIP. It also allowed the industry and consumers a "period of grace" in which to accustom themselves to working with the new procedures.
- 7.18 Under the principal Regulations the exemption only applied to homes put on the market before 1 January 2008. This period was extended until 1 June 2008 by the Home Information Pack (Amendment) Regulations 2007 to reflect the fact that the phased introduction of the application of the principal Regulations to sales of homes with two bedrooms or fewer did not commence until 14 December 2007.
- 7.19 The period was further extended until 1 January 2009 by the Home Information Pack (Amendment) (No.2) Regulations 2008. These extensions were intended to provide industry and consumers with an adequate settling-in period for the new arrangements.
- 7.20 However, the ability to market without a HIP creates potential disadvantages for buyers who make an offer before the Pack is compiled and therefore forego the benefit of up-front information on which to base their decisions. Feedback from industry indicates that a basic HIP can now be made available within 3-5 days in most cases so there should be no undue delay for sellers who want to put their home on the market as soon as possible. Sellers will continue to have up to 28 days further to include documents that may sometimes be difficult

to obtain or subject to delays, such as searches and documents proving title for unregistered homes.

7.21 It is the Department's view, therefore, that this temporary exemption is not working in the consumer interest and should end at the earliest opportunity. Taken with other measures to improve the consumer content and quality of HIPs and to give industry and consumers time to prepare, the Government believes that ending the temporary exemption should be synchronised with the introduction of the PIQ on 6 April 2009.

7.22 This further and final extension will enable marketing to continue without a HIP until 5 April 2009, at which point we expect the implementation of HIPs to be complete.

Amendment to exception for portfolios of properties – Regulation 6

7.23 The portfolio exception in regulation 30 of the principal Regulations provides that, in certain circumstances, the HIP duties do not apply to the sale of two or more dwellings being sold together. The HIP requirements are aimed at improving the ordinary home buying and selling process and this exception is intended to exempt sales of homes that are not intended for immediate owner-occupation by the purchaser – e.g. the sale of a block of flats.

7.24 The circumstances in which the exception applies includes the condition that the other homes being sold are also available with vacant possession. Homes that are not being sold with vacant possession are exempt from the HIP duties under section 160 of the Housing Act 2004. The inclusion of this condition in regulation 30, besides being superfluous, may have the unforeseen effect that where portfolios of properties are sold but not all have vacant possession, the exception will not apply. The change to the principal Regulations will apply to the sale of a block of flats where some of the flats were being sold with vacant possession and some with tenants *in situ*. At present, in order to avoid the HIP duties arising in respect of the properties being sold with vacant possession, these would have to be marketed for sale separately. The removal of the vacant possession condition in regulation 30(1) (b)(i) will remove this anomaly.

Previous scrutiny of Home Information Packs - Reports of the Select Committee on the Merits on Statutory Instruments

7.25 The Select Committee on the Merits of Statutory Instruments has reported on the policy issues raised by the HIP Regulations on five occasions:

- In its 15th report of Session 2007-08, the Committee drew the Home Information Pack (Amendment) Regulations 2008 (SI 2008/572) to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House. They welcomed the publication of the final report of the trials of HIPs in pilot areas but expressed concerns that the findings in the report raised questions about the extent to which the scheme had delivered the objectives which were identified for it. Against this background, the Committee considered it important that any additional information included in HIPs, notably about sustainability, is presented in a readily understandable way.
- In its 5th Report of Session 2007-08, the Committee drew the Home Information Pack (Amendment) Regulations 2007 (SI 2007/3301) to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House. They stated that practitioners in the housing market remained split in their response to HIPs and recommended that the Government kept the implementation of the policy under review, providing full information about the practical effects of its introduction.

- In its 24th Report of Session 2006-07, the Committee drew the Home Information Pack Regulations (No.2) 2007 to the special attention of the House on the ground that they may imperfectly achieve their policy objective. However, the Committee did recognise that the Department had responded to the concerns expressed both in and outside of Parliament in revoking and relaying the regulations. They also welcomed the decision to consult further on the age of the Energy Performance Certificate.
- In its 18th Report of Session 2006-07, the Committee drew the Home Information Pack Regulations 2007 to the special attention of the House on the ground that they may imperfectly achieve their policy objective. Before doing so, the Committee heard oral evidence from Departmental officials.
- In its 39th Report of Session 2005-06, the Statutory Instruments Merits Committee drew the Home Information Pack Regulations 2006 Regulations to the special attention of the House on the ground that they gave rise to issues of public policy likely to be of interest to the House.

In relation to the latest report, the Department has kept the implementation of the HIP under review. All evidence to date points to a smooth introduction across the market. The Department has also engaged closely with stakeholders on the implementation of HIPs, including the stakeholder panel on wider home buying and selling. The panel is chaired by the Housing Minister and its membership comprises the Law Society, Council of Mortgage Lenders (CML), Royal Institution of Chartered Surveyors (RICS), National Association of Estate Agents (NAEA), Association of Home Information Pack Providers (AHIPP), Council of Property Search Organisations ((CoPSO), World Wildlife Fund (WWF), Which?, Local Government Association (LGA), Land Registry, and the Department for Business Enterprise & Regulatory Reform (BERR).

- **Consolidation**

7.26 There are no plans to produce a consolidated version of the amended regulations.

8. Consultation outcome

- 8.1 Full details of the Department's consultation on HIP policy are given in the explanatory memorandum to the Home Information Pack (No.2) Regulations 2007.
- 8.2 The consultation paper *Improving Consumer Information in the Home Information Pack*, was published on 29 July 2008 and is available on the Communities and Local Government website at <http://www.communities.gov.uk/documents/housing/pdf/hipconsumerconsultation>. Views were sought by 30 September 2008. The consultation period, at 9 weeks, was therefore less than the 12 week consultation period that is normally expected. However, there was a need to ensure that regulatory changes are in place by 1 January 2009. Furthermore, the leasehold proposals have been the subject of extensive consultation with key stakeholders in the run-up to the launch of the consultation paper. Similarly, the PIQ and its predecessor the Home Use Form (currently an authorised component of the HIP) have also been the subject of consultation and discussions with key stakeholders.
- 8.3 The proposals set out in the consultation paper aimed to provide consumers with the information they need in a form that they can readily relate to and use. Two key changes were proposed to achieve this:

- Simplifying the leasehold requirements in HIPs by requiring the lease plus a summary of key leasehold information become the mandatory documents for inclusion in the pack for leasehold properties, and
 - Introducing a Property Information Questionnaire (PIQ) as a required document within the HIP to provide the type of information that buyers can more easily relate to when considering a property
- 8.4 The Department has published a summary of responses and this is available on the Communities and Local Government website (www.communities.gov.uk). 101 responses were received in total, although not every respondent replied to each individual question. The respondents included 30 conveyancers/solicitors, 13 estate agents, 9 HIP providers, 9 Home Inspectors/Domestic Energy Assessors, 7 property & housing organisations, 6 industry safety organisations and 5 local authorities. 4 people responded in an individual capacity and the remaining 27 responses included consumers groups, building & construction organisations, mortgage providers and surveyors.
- 8.5 The consultation paper asked for responses on the two separate proposals mentioned above. Each of the two proposals had five specific related questions on which views were sought.
- 8.6 Most respondents (74%) agreed that the inclusion of a leasehold summary in the HIP would be a positive step in enhancing the information provided to the consumer. Those against the proposals suggested its inclusion could result in seller confusion, increased costs and the creation of extra delay and an unnecessary burden for sellers. Most of those who responded also agreed with the proposed questions, although some suggested alternative wording to improve clarity and ease of use for sellers. In introducing the summary, developed with stakeholder input, we have taken care to ensure that it only includes information that is simple for the seller to complete without the need to seek further information from others.
- 8.7 The second part of the consultation paper concerned the PIQ. The majority (69%) of those who responded to the question were in favour of the inclusion of the PIQ in the HIP. Some concerns were expressed over duplication of questions asked later in the conveyancing process and the potential liability of the seller. We accept that some duplication of questions may occur. However, the aim of the PIQ is to provide buyers with the type of information they want to know up front as they take their first steps in a property transaction and before they have made any financial or emotional investment in a property. It will also act as a 'trigger' for seeking more information further down the line. The PIQ will include a warning to sellers that incorrect or misleading answers are likely to be exposed later in the conveyancing process and may endanger the sale. However, the PIQ is not intended to be a legal document or to replace the work of conveyancers and other property professionals, which will continue to be required as the transaction is finalised.
- 8.8 Respondents were also asked for comments on the questions in the PIQ. A number of suggestions were received for changes, additions, and deletions to the PIQ. As a result of these comments we have made a number of changes to the form. These include additional questions on flooding, gas and electrical safety, and the removal of questions relating to the title number and boundaries.
- 8.9 In response to comments on the difficulties in completing the existing PIQ for new build properties the Department has also designed a separate new build PIQ.
- 8.10 Most respondents agreed that the leasehold section should be included in the PIQ, suggesting that the proposal was logical and would save time. Those against said that the leasehold section should be separate in order to prevent duplication of information requested and to prevent sellers of freehold properties being confused by questions not relevant to them.

8.11 Finally respondents were also asked to comment on the best way for the seller to complete and provide the form as part of the HIP. There was general agreement that the form should be capable of being provided and completed electronically but should also be available in hard copy for those without internet access

9. Guidance

9.1 The current procedural guidance on the Regulations will be amended to take account of these changes.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The HIPs programme will be evaluated in 2010 by updating the HIPs baseline study.

13. Contact

Denis Purshouse at the Department of Communities and Local Government Tel: 0207 944 3407 or e-mail: denis.purshouse@communities.gsi.gov.uk can answer queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of Improving Consumer Content of HIPs and addressing transitional measures	
Stage: Final	Version: 1	Date: 4 December 2008
Related Publications:		

Available to view or download at:

<http://www.communities.gov.uk/housing/buyingselling/>

Contact for enquiries: Steve Kelly

Telephone: 0207 944 2596

What is the problem under consideration? Why is government intervention necessary?

HIPs have made a start in providing important information up-front in the home buying and selling process, but consumers want additional and better quality information that is accessible and more relevant to their needs. We also know that consumers are not seeing the HIP and therefore do not benefit from the information before they make an offer, leading to frustration and delay later in the conveyancing process and failed transactions.

What are the policy objectives and the intended effects?

To improve the quality and flow of information in the home buying and selling process, by making the HIP more consumer friendly and 'fit for purpose'. To create greater certainty about operation of HIPs by finalising implementation and taking final decisions on transitional arrangements

What policy options have been considered? Please justify any preferred option.

1. Do nothing – retain an authorised Home Use Form in the HIP and allow transitional measures to expire on 31 December 2008.
2. Redesign Home Use Form to create a mandatory Property Information Questionnaire (PIQ) ; simplify leasehold requirements in HIP and extend for transitional arrangements for first day marketing and insurance cover for personal searches

Option 2 would at minimal cost provide buyers with a more complete picture of the property before making an offer, enabling a more informed decision. Any short term consumer disbenefits from extending transitional arrangements for a final period will be outweighed when the measures expire and buyers benefit from the improved content of the HIP.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The effectiveness of this package of measures will be assessed as part of the evaluation of the HIPs programme which we plan to undertake in 2010 by updating the HIPs baseline study.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I am satisfied that (a) this Impact Assessment represents a fair and reasonable view of the expected costs, benefits and impact of the proposed policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Margaret BeckettDate:4th December 2008

Summary: Analysis & Evidence

Policy Option: A	Description: Introduce the mandatory Property Information Questionnaire; simplify leasehold requirements in the HIP and extend for transitional arrangements for first day marketing and insurance cover personal searches
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 8.65m		One off cost of extending insurance cover for personal searches for 3 months.
	Average Annual Cost (excluding one-off)		Cost of filling in PIQ (calculated from value of non-work time). This figure is a maximum as baseline costs not fully taken into account.
£ 1.5m	10		
Total Cost (PV)			£ 20.8m
<p>Other key non-monetised costs by 'main affected groups'</p> <p>Extending first day marketing means that buyers placing an offer before a HIP has been compiled, lose out on benefits of up-front information about the property on which to base their decision to purchase.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£7.55m		Extending insurance cover for personal searches - reduction in loss to PSC business in transition period ; additional revenue to LA. There will be reduced transaction failure resulting from mandating the PIQ.
	Average Annual Benefit (excluding one-off)		
£ 1.83m	10	Total Benefit (PV) £ 22.51m	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>The PIQ form can be filled in without professional help - reducing time taken - and as mandatory, will provide buyer with necessary information. Simplifying leasehold requirements by making Lease only mandatory and making other documentation voluntary will minimise burden on sellers by reducing time and cost of assembling pack. Both will speed up and improve home buying</p> <p>Extending first day marketing for a final period will allow development and introduction of better quality, more consumer focussed information in the HIP and give buyers certainty that they will see and therefore can act on and benefit from the information.</p>			

Key Assumptions/Sensitivities/Risks

Key assumptions listed in evidence base.

The range of costs of benefits are based on different assumptions listed below.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £1.68m
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What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	6 April 2009
Which organisation(s) will enforce the policy?	Local Weights and Measures Authorities
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No

What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£	

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value

The measures are being introduced to help to realise the true potential of HIPs in improving the home buying and selling process. They will ensure that consumers are better informed by giving them the kind of information they want to know about a property in a simple form. It will mean that sellers get what they pay for – a copy of their HIP and a fit-for-purpose property search, and provide buyers with certainty that a HIP will be available for them to see and use. Overall the package will provide better value for money and greater certainty.

Changing the home buying and selling process: Consumer Information

The home buying and selling process is opaque and confusing for the consumer. Information failures for both buyers and sellers mean that the buyer often places an offer with very little information about a property. This can lead to delays and wasted costs for both buyers and sellers, will often lead to re-negotiation and can even cause transactions to fail. HIPs baseline search² found that 23% of buyers had previously experienced a failed transaction and reported an average of £442 for abortive costs.

It is important that the right information is provided to the consumer early on in the process and in a user-friendly format to enable them to make an informed decision about the property they are looking to buy before they have invested financially and emotionally.

Home Information Packs (HIPs) were introduced to help improve this process by providing consumers with key property information upfront, enabling them to make a more informed and rational decision as to whether to put in an offer. It is clear that there is an opportunity to build on the existing HIP to provide simple but essential information about a property to prospective buyers.

The Housing Minister set out on 8 May plans to focus action in three key areas to achieve a more fair and efficient home buying and selling process: improving quality and flow of information provided to consumers; standard of services provided by property professionals; and enforcement and redress arrangements for consumers. The package of measures brought forward through the changes to the HIP regulations delivers the commitment to improve the content and accessibility of HIPs and ensuring consumers can have greater certainty about the operation of HIPs by finalising implementation.

Improving consumer information in the HIP

A consultation on proposals to improve the consumer content of the HIP and simplify requirements for leasehold properties closed on 30 September. A copy of the consultation paper is available at <http://www.communities.gov.uk/publications/housing/improvingconsumerinformation>

The Property Information Questionnaire

The consultation proposed to redesign the existing Home Use Form, authorised for inclusion in the HIP, to create a new mandatory document – the Property Information Questionnaire (PIQ). The PIQ is not intended to replace the work of conveyancers and other property professionals, which will continue to be required as the transaction is finalised. Instead it is intended to provide important information to the buyer that might otherwise be missed as part of the first viewing of a property and act as a ‘trigger’ for further enquiries. The PIQ will provide a simple summary of information to prospective buyers, to help inform their decision to buy.

² HIP Baseline Research : Main Report – *Communities and Local Government, January 2007*

As the form is downloaded or requested by the seller and completed by the seller this should involve minimal changes to the systems of HIP Providers. It is also expected to have the knock-on, but unquantifiable benefit, of engaging the seller more closely in the production and potential value of the HIP.

The time taken to complete a PIQ is estimated at 15 minutes. Assuming an average of 1.2 million transactions³ are completed per year and values of non-working time (£ per hour, 2008) are £5.02, this gives an upper end cost estimate of implementing the mandatory PIQ at £1.5million per year. This figure is at the upper end as it does not take account of the cost involved in completing the current Home Use Form (which is voluntary and takes slightly more time to complete) ; anecdotal evidence suggests that these are not often completed, although evidence on how many are completed is not available. A comparison of the Home Use Form and Property Information Questionnaire is set out in table 1.

Table 1: Comparison of the Home Use Form and Property Information Questionnaire

	Home Use Form	Property Information Questionnaire
Length of the form (pages)	7	7
Information Included	<ul style="list-style-type: none"> - Access arrangements - Utilities/ services - Council Tax band - Boundaries - Changes to the property - Common hold Information - Leasehold information 	<ul style="list-style-type: none"> - Access arrangements - Utilities/ services and details of provider - Council Tax band - Boundaries - Changes to the property - Parking arrangements - Damage to the property - Leasehold information
Completed by	The seller/ representative or professional	The seller/ representative
Estimated time to complete	20 mins depending on need for specialist information	15 mins
Can form be completed by seller?	Some questions may need specialist knowledge	Yes. No specialist knowledge required.
Available from	Downloadable from web HIP providers	Downloadable from web HIP providers
Status in the HIP	Authorised	Mandatory

Benefits - The introduction of the PIQ will improve the quality and flow of information provided to consumers, improving the utility and value for money of the HIP. Providing buyers with simple but useful information at the beginning of the process, the PIQ will lead to more and better informed decisions helping to reduce delays and failed transactions. Assuming a 1.5% reduction in the approx 23% of buyers experiencing a transaction failure with average abortive costs⁴ of £442 this gives a lower end benefit of introducing the PIQ of £1.83m per year.

Following a period of consultation, the majority of respondents (69%) supported the proposals to introduce the PIQ. Suggestions were also made for ways to clarify or build on the questions in the form, some of which have been adopted in the final version. A summary of responses has

³ HIPs Baseline Research– Main Report *Communities and Local Government, January 2007*

⁴ HIPs Baseline Research– Main Report *Communities and Local Government, January 2007*

been published on the Communities and Local Government website at www.communities.gsi.gov.uk/publications/housing/improvingconsumerinformation

Simplification of Leasehold requirement

The consultation also set out proposals to simplify leasehold requirement in HIPs, proposing the inclusion of a summary of key information about cost and use of a leasehold property. The summary would form a part of the PIQ and cover information that would represent a minimum requirement for sellers which can be completed without the need for professional assistance. This will remove the need for leaseholders to provide large volumes of documents and information before marketing their property, enabling HIPs to be assembled easier, quicker and cheaper. Buyers will benefit from useful information, answering many of the questions they want to know about a property in a format they find useful.

Therefore the consultation proposed that the summary of leasehold information together with a copy of the Lease, should form the permanent mandatory requirement for the HIP and the transitional measure be removed. However, sellers should continue to have the right to include additional information if they wish (already authorised for inclusion in the HIP) which they believe would be useful to a prospective buyer.

A majority of consultation responses 74% supported the proposal to introduce a summary of leasehold information and 64% supported the proposition that the summary plus a copy of the Lease should form the permanent requirement for HIPs.

Finalising implementation of HIPs

Improving the content and quality of the HIP for consumers is central to ensuring it is 'fit for purpose'. But to realise its full benefits, the HIP needs to be available for consumers to use at the start of the home buying and selling process. To achieve this HIPs need to be placed on a more stable and permanent footing and final decisions taken on the transitional arrangements for insurance cover for personal searches and first day marketing due to expire on 31 December.

Insurance cover for personal searches

Property searches are required in HIPs. Local Authorities (LAs) hold all the necessary data but searches can be produced by Private Search Companies (PSCs) or LAs. PSCs therefore need access to LA data to produce searches. However, some LAs currently restrict access to the necessary data. In these circumstances the HIP Regulations permit PSCs to use insurance to cover missing data if a LA has a policy of restricting access to it. This provision is temporary and will expire on 31 December 2008 unless the HIP Regulations are amended.

Without this insurance dispensation there is a risk that PSCs may find it difficult to trade in those areas where LAs do not make all of the information available. CLG is working to deliver reforms of the property searches market based on recommendations by the Office of Fair Trading to deliver a level playing field for competition. These reforms will improve access to data and resolve issues around LA charging arrangements. Once complete there should be no further need for the insurance provision.

In practice the insurance provision has introduced market distortions. Many LAs claim they already make data available but PSCs do not obtain it so as to save costs and gain market advantage by using insurance instead. This in turn gives rise to "duplicated searches" which occur when a buyer's legal representative refuses to accept a PSC search provided in a HIP because the data is incomplete. Therefore a second search, usually by the LA, is commissioned adding additional costs for consumers.

Key Assumptions: Assumptions⁵ made are that:

- the legislation on charging (Regulations were laid on 13 November) and the related non-statutory guidance are in place;
- PSCs have 65% (780k searches per year) of the searches market;
- 67% of LAs are currently providing full access⁶;
- Price of the necessary search data from LAs is on average £33;
- 56% proportion of PSCs using insurance;
- 25% of PSC searches using insurance are duplicated.

Extend insurance provision to 5 April 2009

There are benefits from extending the insurance provisions for 3 months:

- Extending the provision would provide time for LAs and PSCs to adopt the new charging regime (expected in force in Jan 2009) and adjust accordingly Charges Regulations. It would also provide a further three months to deliver: the necessary access to the private sector on the back of the Regulations; clarification that insurance will end; and, the conclusion of Ministry of Justice's related work (expected in due course). These benefits are unquantifiable;
- PSCs and LAs would continue be able to compete for the provision of property searches in all LA areas. This removes the risk of PSCs finding it difficult to trade in those areas where LAs do not make all of the information available – the estimated cost of loss of business to PSCs if there was no extension is estimated at £5.3m (based on the assumption that there are 64k searches in those 33% of areas (780k x 33% x 25% (3 months)) where full access is not available which cost £85 on average for PSCs).
- LA access arrangements will improve in response to the completion of the work set out in the first indent;
- Revenue to LAs from providing 'duplicate' searches - estimated revenue of up to £2.25m based on estimate of 25% of PSC's searches with insurance being duplicated.

Costs of extending for 3 months:

- LAs may not realise revenue from charges if PSCs avoid paying for available data and use insurance instead – estimated up to £6.4m (£33 for the necessary data x 780k searches x 25%);
- Consumers might have to pay for 'duplicate' searches - estimated up to £2.25m based on estimate of 25% of PSC's searches with insurance being duplicated.

On balance we believe that there are strong arguments for extending the temporary provision for a short period of 3 months. The work on the reforms of the property searches market will be complete by the end of January 2009 and will deliver improved access to LA held data. Following this, and with absolute clarity that the use of insurance will end on 5 April 2009 and the completion of MoJ's review, we believe that LAs will quickly move to improve access arrangements. By 6 April we expect to see virtually all LAs providing open access to the private sector. If the provision were not extended there would be a risk to PSCs' business model in the 33% of LA areas where access is not currently provided.

⁵ All figures used in this Impact Assessment are from the CLG Impact Assessment to support the Local Authorities (Charges for Property searches) Regulations 2008 – these figures are adjusted to reflect the 3 month extension to arrangements.

⁶ Source: Land Data Aug/Sept 2008 survey of LAs.

Table 2

<u>Extend to 6 April</u>	<u>Benefits</u>	<u>Costs</u>
<u>LAs</u>	Time to adjust to new charging arrangements – unquantifiable Revenue to LAs from providing 'duplicate' searches estimated at £2.25m	LAs may not realise revenue from charges if PSCs avoid paying for available data and use insurance – estimated at £6.4m
<u>PSCs</u>	Removes the risk of PSCs finding it difficult to trade in 33% of LA areas – estimated at £5.3m LA access arrangements will improve – unquantifiable	
<u>Consumers</u>	Competition in searches market continues in all LA areas – unquantifiable	Consumers might have to pay for 'duplicate' searches - £2.25m
<u>Total</u>	<u>£7.55m</u>	<u>£8.65m</u>

First day marketing

Temporary provision allows marketing of a property to begin without a HIP where all required documents have been commissioned and paid for, or arrangement for payment to be made, and are expected to arrive within 28 days. The measure creates disbenefits as sellers do not see the product they pay for and buyers make offers before a HIP has been compiled, and therefore miss out on benefits of up-front information on which to base their decision to purchase.

The Area Trials report that significant numbers of buyers do not see the HIP with anecdotal evidence that first day marketing is a contributory factor. The measure also reduces consumer protection by making enforcement by local trading standards more difficult, as the flexibility to market without a pack is abused to obfuscate on the whereabouts and timing of the HIP.

Feedback from industry reports that documents to form the 'basic' HIP necessary to meet the original requirement of the HIP regulations, are available on average within 3-5 days after commissioning. So the removal of first day marketing would have a minimal impact on a seller in requiring a HIP to be in place before marketing begins.

Therefore there is a benefit to consumers in the removal of first day marketing transitional measure. Unless buyers can access and use the HIP to inform choices and decisions at the outset of the home buying and selling process, they will not realise the benefits from the improved content and quality of the HIP on the introduction of the PIQ on 6 April 2009. The regulations extending the measure for a final period will allow consumers and industry to make

appropriate and adequate preparation for the temporary measure to expire on 5 April at which all buyers will benefit from an improved product.

Competition Assessment

The Office of Fair Trading carried out a study of the property searches market in late 2005. Government endorsed the recommendations in the OFT's report and has been working to implement them. The recommendations rest on two principles (i) equal access for all parties to the necessary local authority held data; and, (ii) a fair and transparent charging regime. These two conditions would deliver a 'level playing field' in the delivery of searches. This would improve competition and deliver consequent benefits to consumers.

To deliver these conditions, CLG has published good practice guidance on access to searches' data in January 2008 and produced Regulations to deliver a fair and transparent charging regime. The resulting Local Authorities (Charges for Property Searches) Regulations were laid in Parliament on 13 November 2008 and are expected to come into force in early 2009. OFT supports the approach set out in the Regulations and believes it will improve competition and deliver the benefits it envisaged.

The temporary insurance provision was included in the HIPs Regulations to allow time for the OFT reforms to be completed. The provision is due to end on 31 December 2008. However, as the Regulations are not yet in place, and to allow time for local authorities and the private sector to adjust to the new requirements the extension to 6 April 2009 is being proposed. Without this intervention, in areas where local authorities continue to restrict access to the necessary data, the private sector would be presented with difficulties in trading which could effectively hand local authorities a monopoly in the market for searches. Our assessment is therefore that the extension is needed for a short period with the expectation that the OFT's envisaged level playing field will be in place by April 2009.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A: Property Information Questionnaire (available at <http://www.communities.gov.uk/housing/buyingselling/homeinformation>)

Annex B: Home Use Form

(available at: www.homeinformationpacks.gov.uk/pdf/Home%20use%20form.doc)