

*The Home Information Pack
Regulations 2006:
Procedural Guidance*

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The Home Information Pack Regulations 2006: Procedural Guidance

This guidance provides a commentary on The Home Information Pack Regulations 2006 (“the Regulations”). The guidance is intended to assist those compiling home information packs in accordance with the requirements of the Regulations, and, in particular, to assist those under a duty to have a home information pack and to provide a copy to a potential buyer on request.

The guidance does not form part of the Regulations and it should be read in conjunction with them. Where a provision in the Regulations does not seem to require any explanation or comment, none is given.

Compilers of home information packs and those marketing homes with home information packs might also find it helpful to read the Explanatory Notes on Part 5 of the Housing Act 2004 (“the 2004 Act”). The Act and its Explanatory Notes are available from the legislation section of the Office of Public Sector Information’s (formerly Her Majesty’s Stationery Office) website: www.opsi.gov.uk/legislation/index.htm. They are also available at www.communities.gov.uk/homeinformationpacks.

Further information about the home information pack programme is available at: www.homeinformationpacks.gov.uk

Part 1

Citation, Commencement and Interpretation

REGULATION 1: CITATION AND COMMENCEMENT

1 – This regulation provides that the Home Information Pack Regulations 2006 will mostly come into force in England and Wales on 1 June 2007. This is when the duties to have a home information pack and to provide a copy to potential buyers on request (in sections 155(1) and 159(2) of the 2004 Act) will apply. They will be brought into force by a commencement order to be made under section 270(6) of the 2004 Act. The purpose of making the Regulations in advance of bringing the duties into force is to inform the general public and to give businesses enough time to prepare for home information packs.

The Regulations come into force “for the purposes of” Part 7 (approved certification schemes) on 6th July 2006. This means that Part 7 comes into force on that day together with the provisions on regulation 2 (interpretation – general provisions) that are relevant to Part 7. This means that the Secretary of State can approve certification schemes before implementation of HIPs on 1 June 2007, enabling home inspectors to start producing home condition reports as part of the dry-run.

The “responsible person”

The duties to have a home information pack apply to the “responsible person” as defined by Part 5 of the 2004 Act (rather than these Regulations). The requirements to have or produce a pack occur when a property is first put on the market, or the fact that the property is on the market is made public (including to a section of the public). “On the market” is defined under section 149 of the 2004 Act.

There are two categories of people who will be responsible where a property is on the market and therefore subject to the duties concerning the availability of a home information pack – the seller of that property or someone acting as an estate agent for the seller as defined in section 150 of the 2004 Act. Section 152 of the 2004 Act sets out the responsibilities that apply to estate agents and when responsibility ceases. Section 153 describes the responsibilities of sellers who market their property without an estate agent. If a seller instructs an estate agent who has a place of business in England and Wales to put his property on the market, the estate agent (and not the seller) will be considered responsible.

Additional duties to have a home information pack apply to estate agents, even where the property is not yet on the market, but the agent is nevertheless attempting to market the property (see section 159 of the 2004 Act).

REGULATION 2: INTERPRETATION

2(1), (2) These provisions set out the meaning of some of the expressions used in the Regulations. In some cases, where a definition is relevant to only one regulation it is defined at the point it appears. The definitions found in Part 5 of the 2004 Act apply to the Regulations and as such are not repeated in them. Some of those definitions can be found in sections 148 to 150 and 177 to 178 of the 2004 Act (such as the definition of “residential property”, “acting as estate agent”, “sale”, “ancillary land” and “long lease”).

Some common rules of statutory interpretation and construction can be found in the Interpretation Act 1978 which will generally apply to these Regulations (for example the use of “he” also includes “she” and words in the singular include the plural and vice versa). Some definitions of words and expressions can also be found in Schedule 1 to the Interpretation Act 1978, such as the definition of “England” and “Wales” and the meaning of “person” (which includes a body of persons corporate or unincorporate).

The definition of “property interest”

“Property interest” is used throughout the Regulations to describe the legal interest that the seller is proposing to sell. It is distinct from references to the property itself. The legal interest will be either a freehold or a leasehold interest, (an interest in a commonhold is a type of freehold interest). Putting a residential property on the market for sale will usually attract the duty to have a home information pack and a “sale” is defined (in section 177 of the 2004 Act) by reference to various freehold or leasehold interests. “Residential property” is defined (in section 148 of the 2004 Act) as meaning “premises in England and Wales consisting of a single dwelling-house including any ancillary land”. Therefore, a home information pack will be required for each dwelling that is on the market providing that the duties in the 2004 Act apply.

2(3) This contains interpretation of the term “physically complete” where used in relation to a residential property. Where there is a question as to whether a property is physically complete, one which has basic living amenities will be considered complete. This is relevant when determining whether a home condition report or a report on a property not physically complete should be included in the pack (see the commentary on regulations 8(h) and 8(k) below).

REGULATION 3: INTERPRETATION – FIRST POINT OF MARKETING

The first point of marketing is defined in regulation 3(1) as the point at which a duty to have a home information pack first arises. This will usually happen where a person becomes a “responsible person” under section 155(1) of the 2004 Act (sections 151 to 153 describe when a person becomes responsible, and see box on page 6) and where an estate agent undertakes a “qualifying action” under section 159(2) of the Act (that is, where the property is not on the market but the estate agent is undertaking direct marketing).

However, if the property is taken off the market for more than 28 days, the first point of marketing starts again and becomes the day the property is put back on the market. Given that regulation 14(3) provides that most documents included in a home information pack must be those that are up to date at the first point of marketing, the practical significance of this is that if the property is taken off the market for a period of more than 28 days, some of the documents required to be included in the pack (in particular, copies of the individual register and title plan, the home condition report and searches) may no longer be current for the purposes of regulation 14(1)-(3) and may need to be replaced before the property is put back on the market. If the property is taken off the market for a period of less than 28 days no further first point of marketing occurs and the documents that have already been collated will still be current for the purposes of the pack and will not need to be replaced when the property is put back on the market.

Regulation 3(5) provides for a situation where there is a gap in marketing where the property is taken off the market because the seller has accepted an offer to buy the property, but unfortunately the sale does not proceed and the property is put back on the market. So long as the property is put back on the market within 28 days of the offer or its acceptance being withdrawn, the first point of marketing remains the point at which marketing originally started. Pack documents do not need to be refreshed in these circumstances. The reason for this is to avoid encouraging sellers to keep a property on the market once an offer has been accepted and to avoid any consequent gazumping.

Regulation 15(3) indicates that where pack documents are added to the pack later, the first point of marketing in relation to an added document is the point at which the particular document is included. A point in time for a particular document is necessary to determine which is the most current version of the document, particularly where the requirement is to produce versions of documents that were received within a particular timeframe – for example, for leasehold properties paragraph 1(1)(i) of Schedule 4 requires the inclusion of the most recent requests for payment of service charges and other specified matters relating to the 12 months preceding the first point of marketing.

Regulation 18(3) provides that where a required document in the pack is amended or a further version is included, the time it is amended or a further version included shall become the first point of marketing for that document.

Part 2

Home Information Pack – General Provisions

REGULATION 4: REQUIRED, AUTHORISED AND EXCLUDED DOCUMENTS

Section 163 of the 2004 Act provides for the Secretary of State to make regulations prescribing documents which are required or authorised to be included in home information packs. The Regulations are made principally in exercise of this power. This regulation provides that packs **must** include “required” documents, **may** include “authorised” documents and **must not** include any other form of documents.

The difference between “required” and “authorised” documents: compulsory and optional documents

Only documents that are prescribed as either required or authorised may be included in home information packs. Documents which are not mentioned in the Regulations should not be included (see the guidance on regulation 4 below).

Required documents or information must be included in all cases except in certain limited circumstances where they are unavailable or unobtainable and regulations 15 or 17 apply. Authorised documents or information do not have to be included. However, it is strongly recommended that these documents are included where they are available and are relevant to the property and/or its sale and are likely to be of interest to a potential buyer.

Where a document which is neither required nor authorised to be included in a home information pack is provided to a potential buyer in close proximity to a pack or pack document, it must be separated and clearly distinguished from the pack or pack document. The intention behind this provision is two-fold. Firstly, to distinguish the “official” pack documents from others, to avoid consumers being confused or misled into believing that prohibited documents form part of the pack. Secondly, to ensure that consumers know the difference between pack documents and, for example, advertising or marketing information about other services that they might otherwise feel pressured to accept (see guidance on regulation 12 regarding the exclusion of information advertising or marketing goods and services). This provision does not prevent anyone from giving additional information to a potential buyer providing that the nature of it is made clear and distinct from pack documents.

REGULATION 5: THE HOME INFORMATION PACK

Under section 155(1) of the 2004 Act it is the duty of a responsible person to have a home information pack which complies with these Regulations. Regulation 5 requires that the home information pack must be composed of original documents or true copies of them. “True copy” is not defined in the Regulations, but it can be interpreted as meaning that a true copy does not have to be an exact copy, but should be reproduced with sufficient accuracy to enable the copy to be understood, and the meaning of the document should be unaffected in the copy. In the case of a map, plan or drawing in which colours mark boundaries or other features, those colours must be reproduced accurately (e.g. green must be green) but some variation in colour tone is acceptable provided this does not affect the comprehension of the document. This is necessary to allow for variability in the reproduction of colours by photocopying machines and printers etc. Similarly, enlarged or reduced copies of documents (for example an A4 copy of an A3 document) are acceptable so long as they are clear and legible and do not affect the meaning.

There is no requirement to supply the original home information pack or pack document to a potential buyer under these Regulations or the 2004 Act. Instead, section 156(1) of the 2004 Act provides that copies of the pack or pack documents must be provided to a potential buyer on request (see also the commentary on regulation 6 below).

REGULATION 6: COPIES OF A HOME INFORMATION PACK

This regulation requires that copies of a pack or pack document which must be provided to a potential buyer (or an officer of an enforcement authority under section 167 of the 2004 Act) must be a true copy of the pack or pack document (see guidance on regulation 5 above regarding “true copy”). A copy can do no more than replicate the original. There is no requirement for a copy to improve the clarity of the original.

Under regulation 8 (see the commentary below), official copies of certain documents held by Land Registry must be included in the home information pack. Regulation 6 allows such official copies to be copied, but also allows further official copies to be obtained and included in a “copy” pack. Please also see the commentary on regulation 8(c) below on “Relying on official copies”.

Under section 156 of the 2004 Act, a responsible person (as defined by the Act) must, on request, and provided that the exceptions in 156(4) do not apply, provide a potential buyer with a copy of the pack and may charge a reasonable sum for the cost of making a paper copy and, if requested, sending it to a potential buyer. The 2004 Act does not define “reasonable”. This will vary depending on particular circumstances. It is expected that copies of packs will normally be provided electronically where the potential buyer is able to receive it in that form and consents to receiving it in that form (see section 156(11) of the 2004 Act). There is no provision in the 2004 Act for charging for electronic copies of pack documents.

REGULATION 7: COMPREHENSION OF DOCUMENTS

7(1) and (2) – provide that information in copies of documents included in packs must be legible and clear. However, if despite a responsible person’s reasonable efforts and enquiries, the only available version of a certain document is one which is illegible or unclear, it may be included. This exception applies to the documents required to be produced for deducing title to unregistered properties, to official copies of documents referred to in the individual register kept by Land Registry (e.g. historic conveyances) and to commonhold and leasehold information (e.g. leases or regulations made by a landlord or requests for service charges).

7(3) – If the property is situated in England the information set out in the documents must be in English. If the property is in Wales, the information must be provided in English or Welsh or a combination of both languages. This does not prevent information being provided *in addition*, in other languages (see guidance on regulation 9(a) below). **These provisions do not authorise any unlawful act of discrimination and do not confer any authority to refuse to provide a pack or sell a residential property to those who only speak a particular language.**

See also the commentary on regulation 9(b), below, which allows packs to include additional versions of pack documents in alternative forms, such as Braille or large print.

Part 3

Contents of Home Information Packs

Home information pack forms

Suggested standard forms for use in providing certain required and authorised documents and information in home information packs are available at www.communities.gov.uk/homeinformationpacks. These are:

Home information pack index form – see guidance on regulation 8(a) below

Sale statement form – see guidance on regulation 8(b) below

Report on a home not physically complete – see guidance on regulation 8(l) below

Home contents form – see guidance on regulation 9(n) and Schedule 11 below

Home use form – see guidance on regulation 9(n) and Schedule 11 below

These forms are being tested as part of the dry-run of home information packs. Subject to the outcome of that testing, these forms may be prescribed in future regulations as documents required to be included in home information packs. The Department for Communities and Local Government authorises the copying and other use of these forms for the purposes of the dry-run.

No forms have been prescribed or suggested for searches, but Schedule 9 and Schedule 10 set out the required content of local enquiries and drainage and water enquiries. See also guidance on regulations 8(m)-(o), 9(k)-(m) and Schedule 8.

REGULATION 8: REQUIRED PACK DOCUMENTS

8(a) – a home information pack *index*. This should list all documents contained in the pack. It provides a helpful checklist for sellers, estate agents and enforcement authorities to ensure that no required documents are missing from the pack. The index must comply with Schedule 1 to the Regulations. The index may indicate, for example by document and page numbering, where particular documents may be found in the pack.

In circumstances where certain documents required to be included in the pack are unavailable or unobtainable and regulations 15 or 17 apply, the index must indicate that the document is missing from the pack and the reason it is missing and also, if the document is unavailable, indicate what steps are being taken to obtain it for insertion into the pack. Regulation 15 (described further below) requires that if documents are later added to or removed from the pack, the index must be revised or amended accordingly.

The suggested form for a home information pack index is available at www.communities.gov.uk/homeinformationpacks. However, if the requirements described above are met, the index may take another form.

8(b) – a *sale statement*. This will provide a brief summary of the nature of the interest in the property being offered for sale. This statement must comply with Schedule 2 to the Regulations and include matters such as the address, the nature of the legal interest being sold, whether the property is registered or unregistered, the name of the seller and whether the property is being sold with vacant possession (see also guidance on regulation 8(g)).

The suggested form for a sale statement is available at www.communities.gov.uk/homeinformationpacks. However, if the requirements described above are met, the sale statement may take another form.

8(c) – The documents described in this regulation and in regulation 8(d) are required to provide satisfactory *evidence of title to the property*. Regulation 8(c) describes documents, official copies of which are available on request from Land Registry and which must be included in the pack where the whole or part of the property interest is registered with Land Registry. These documents provide an up-to-date official record of who owns the land, so no further evidence of title should be needed. These documents should comprise:

- official copies of the “individual register” (made up of a property register, proprietorship register and typically a charges register); and
- an official copy of the title plan.

In the case of a commonhold interest, official copies of the register and title plan should be produced for both the unit and common parts (see the guidance on regulation 8(e) below for further details on commonhold land).

There may be other documents referred to and dated in the individual register (for example, a right of way) and in some instances these documents are summarised or extracted in the register. If a potential buyer has concerns about the implications of such documents, it is often possible to apply to Land Registry for official copies of the documents referred to (known as “filed copies”). Alternatively, he can seek professional advice. A seller can choose to include such documents in the home information pack (see the guidance on regulation 9(f) below).

Relying on official copies

The right to rely on official copies is found in the Land Registration Act 2002. Under section 67(1) and (2) of that Act, a Land Registry official copy has the same legal effect as an original and a person who relies on an official copy in which there is a mistake is not liable for loss suffered by another person by reason of the mistake. Paragraph 1(d) of Schedule 8 of the Land Registration Act 2002 entitles a person to be indemnified by the Chief Land Registrar if he suffers a loss resulting from a mistake in an official copy.

Land Registry official copies were previously known as “office copies”. There is no statutory definition in the Land Registration Act 2002 of “official copy”. In practice a hard copy of an official copy is one prepared by Land Registry on watermarked paper or a printed version of an electronic official copy (providing that the electronic file has not been modified or corrupted). It is generally considered that a photocopy of an official copy is not an official copy itself. For more information on official copies and how to apply for them, see Land Registry Practice Guide 11.¹

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8(d) – This regulation applies to unregistered land, that is, where the property interest or part of it is not registered with Land Registry and where therefore the title to the estate, including its past history, needs to be examined in order to deduce title. In such cases, the documents required to be included in the pack are a copy of a certificate of an official search of the index map (this is obtained from Land Registry) and of such other documents as the seller intends to rely on to provide evidence of his or her title to the property and hence their right to sell it. These documents would normally comprise a bundle of title documents held by the seller or by the seller’s lender or solicitor. Usually, there are two ways of deducing title to unregistered land:

1. A “good root of title” together with an “abstract” of title. A good root of title will be a document at least 15 years old which records a transaction with the entire legal and equitable estate in the property, and which does not reveal any potential problems with the title or raise any suspicions about its validity. An “abstract” of title will be a record of every transaction affecting the property dated after the good root of title and summaries of all the documents; or
2. A good root of title together with an “epitome” of title (effectively an index) and full copies of every subsequent transaction.

8(e) – This regulation applies where the property is or includes land registered at Land Registry as a *freehold estate in commonhold land*. By its nature a freehold estate in commonhold land does not exist unless its title is registered at Land Registry, so there can be no such interest in unregistered land. Commonhold is a form of freehold ownership, created by the Commonhold and Leasehold Reform Act 2002,

¹ Dated October 2005 and available at <http://www.landregistry.gov.uk/assets/library/documents/lrpg011.pdf>.

which provides a framework for freehold ownership of a part of a multi-occupied development (for example, a flat in a block of flats). Individual title is held in a “unit” and title to the common parts is held by a commonhold association which is a company limited by guarantee. The commonhold community statement sets out the rights and obligations of unit-holders and the commonhold association. The Commonhold Regulations 2004² provide for a model commonhold community statement to be used.

See guidance on **Schedule 3** below which deals with all the additional documents required or authorised to be included in a home information pack for commonhold property interests.

8(f) – This regulation applies where the interest in the property being offered for sale, or any part of it, is *leasehold*.

See guidance on **Schedule 4** below which deals with all the additional documents required or authorised to be included in a home information pack for leasehold property interests.

8(g) – A home information pack is not required where the property is not being offered for sale with vacant possession under section 160 of the 2004 Act. However, this is subject to section 171(2) of the 2004 Act which provides that *where two or more dwellings in a sub-divided building are marketed for sale as a single property* and at least one of those dwellings is available with vacant possession, a home information pack is still required notwithstanding that some element of the single property is not available with vacant possession. An example would be a house with a “granny flat” where the flat is let separately from the remainder of the house, but where the freehold interest to the house and flat are sold together in order to preserve the integrity of the property as a whole. In such circumstances, this regulation requires that the pack must include a copy of the leases and/or tenancies to which the property is, or is expected to be, subject after the sale has been completed (see guidance on Part 5 for more detail on exceptions to the requirement to provide a home information pack).

8(h) – This regulation applies to properties that are physically complete and concerns the information to be provided about the physical condition of the property. Regulation 8(n) (see below) deals with incomplete properties.

Regulation 2(3) (interpretation – general provisions) provides that “physically complete” refers to the construction or completion of a property or its conversion for residential purposes. Where there is a question as to whether a property is indeed “physically complete”, regulation 2(3) specifies that a property which has basic living facilities shall be considered physically complete (i.e. it is wind and weather proof, safe and sanitary and has heating, water, electricity, washing and drainage facilities).

There are two ways of providing information about the condition of a home where it is physically complete. A person must include one or both of the options described in 8(h)(i) and (ii):

2 Statutory Instrument No. 2004/1829.

8(h)(i) – A home condition report. This will be a report giving the buyer, seller and mortgage lender important information on the physical condition of the property and its energy performance. The guidance on Schedule 5 gives further details about home condition reports, but briefly, they will be the equivalent of current mid-range surveys and are to be completed by a person (a “home inspector”) who is a member of an approved certification scheme. The role of a certification scheme is to ensure that home inspectors are fit and proper persons who are properly qualified and insured to produce home condition reports (see guidance on Part 7 for more information about certification schemes).

Home inspectors will work in a variety of ways, varying from sole traders to employees of substantial corporate enterprises. However, all home inspectors will be individual members of a certification scheme and must follow the scheme’s rules and requirements. Although consumers may directly contact the home inspector to obtain a home condition report it is likely that, in many cases, estate agents or other providers of home information packs will engage the home inspector on the consumer’s behalf. Certification schemes will hold public registers of their members to enable consumers to find an inspector in their area.

The cost of providing the home condition report will not be set by regulations and is likely to be determined by the market, with regard to such matters as the length and complexity of the task for a particular property. The amount and timing of payment of home inspectors’ fees will be a matter for the contract under which they are engaged, although as described in the guidance on Schedule 5 below, the Regulations prescribe certain minimum terms for the contract under which a home condition report is prepared.

8(h)(ii) – A copy of the terms of a new homes warranty plus confirmation that the warranty will apply, in the form of a cover note issued by the warranty provider.

Most newly built or converted homes are covered by such warranties, which generally serve two purposes:

- to guarantee that the home has been or will be constructed to a particular standard; and
- to ensure that redress is available to the owner if the construction falls short of that standard.

This regulation provides an exception from the requirement to provide a home condition report in the pack if the home is covered by a new homes warranty which is about to start. This provision only applies to warranties which meet the minimum criteria set out in Schedule 6 which the Secretary of State believes provide appropriate consumer protection to home owners, based on a broad equivalence with the home condition report. These criteria are designed solely to provide an exception from the home condition report requirement, and do not set a minimum standard for warranty products generally (see guidance on Schedule 6 for more information about the standards for such warranties). The Department for Communities and Local Government (DCLG) intends in due course to provide an informal view on which warranty products it believes meet the criteria set out in Schedule 6.

The home information pack must provide evidence that warranty cover will be available. For the purposes of these Regulations, a warranty provider must issue a cover note when a property is physically complete, confirming that it meets the requirements for cover under its warranty scheme. This must be included in the pack as evidence that a warranty is offered, along with a document setting out the terms of the warranty.

For the purposes of these Regulations, the warranty providing the home condition report exception itself must not commence until the sale is complete or afterwards. Many new homes warranties are only offered to an owner who intends to take possession of the property. A home condition report will be required if the warranty has commenced at the point of first marketing, so even if a warranty can substitute for a home condition report during a particular sale, a home condition report is likely to be required for subsequent sales (even if the warranty has not yet expired).

If the warranty does not meet the minimum criteria set out in Schedule 6, then a home condition report is required even where the warranty has not commenced (see guidance on Schedule 6).

8(i) provides that where the home is subject to a new homes warranty which complies with Schedule 6, but this has already commenced and has not yet expired, it must be included in the pack. Typically a new homes warranty lasts ten years, and transfers to a new owner within that period, so the effect of this Regulation would be that the warranty should be included in a pack if the first point of marketing occurs within that ten year period. However, because the warranty has already commenced, a home condition report must also be included in the pack, because even where the warranty is still in place, alterations to the property may have taken place which would not be covered by the warranty as they were not in existence at the time the warranty was originally provided. A potential buyer is likely to want to know about anything which has affected the physical condition of the property since then, and a home condition report is therefore required.

8(j) – This regulation provides that all home condition reports commissioned for the home in the past 12 months must be included in the pack. The purpose of this requirement is to ensure transparency by requiring that a potential buyer can see all of the home condition reports prepared by or on behalf of the seller or an estate agent acting for him. For example, if the seller has undertaken repair work to rectify defects identified in a home condition report and then commissions a further report, having both reports in the pack will identify for a buyer both the original defects and the work carried out. This should also reveal whether a seller has tried to “shop around” for a more favourable home condition report.

The minimum terms under which home condition reports are prepared must include terms allowing home condition reports to be copied and included in the pack (see Schedule 5, paragraph 2 (c) and (d)).

It should be noted that under regulation 11, a home condition report must not be included if it was not prepared for the current sale. This means a report prepared on behalf of a former seller or his estate agent cannot be included in the pack (even if it was prepared within the last 12 months). The reason for this is that the home inspector's indemnity insurance is unlikely to cover reports prepared for a previous sale. If such a report was included in the pack, and it turned out to be inaccurate, a buyer who seeks legal redress against a home inspector for any losses incurred is likely to find it difficult to obtain compensation from the inspector even if the claim is successful. Therefore this regulation seeks to exclude from a pack these uninsured reports.

8(k) – This regulation applies to “physically complete” properties (see definition in Regulation 2(3)). The EU Directive on the energy performance of buildings (2002/91/EC, Official Journal No. L1, 4.1.03, p 65) will require that when any buildings are constructed, sold or rented out, an energy performance certificate is made available to the owner or by the owner to the prospective buyer or tenant. The home information pack will be the primary vehicle by which energy performance certificates are produced for marketed sales of residential properties (to which these Regulations apply).

The home condition report will contain an energy performance certificate (see guidance on Schedule 5, paragraph 6(r) for more information). The UK has not yet implemented the provisions of the Directive on the form and content of certificates, but it is intended that the energy performance certificate contained in a home condition report will comply with the requirements of the UK legislation implementing the EU Directive. Although energy performance certificates can last for 10 years under the Directive, a new certificate will be made every time a new home condition report is prepared. This will ensure that the buyer has up-to-date information about the energy performance of the home and improvements that could be made. It is expected to be cost-effective to undertake an energy inspection while the home inspector is on site preparing the home condition report, enabling an up-to-date energy performance certificate to be provided at minimal extra cost.

Regulation 8(k)(i) requires that where a home condition report is not included in a pack, because a new homes warranty is provided instead, then a stand-alone energy performance certificate must be provided. Additionally, 8(k)(ii) requires that if a stand-alone energy performance certificate is obtained after the home condition report is prepared, that must be included in the home information pack along with the home condition report, irrespective of the fact that the home condition report already includes an energy performance certificate. This is because it is expected that the UK's implementation of the Directive will provide that only one certificate can be current for a property (i.e. the most recent one, providing it has not expired). This provision therefore ensures that the valid one is included in the pack.

It is expected that consumers will also be able to obtain a stand-alone energy performance certificate from home inspectors. It is also envisaged that other inspectors will become qualified to prepare stand-alone energy reports which will also be needed for other types of property transactions e.g. commercial properties or sales of residential properties which are not marketed. DCLG will provide further information in due course.

8(l) – This regulation applies in cases where the property is **not** physically complete at the first point of marketing. Where there is a question as to whether a property is indeed “physically complete”, regulation 2(3) specifies that a property which has basic living facilities shall be considered physically complete – i.e. it is wind and weather proof, safe and sanitary and has heating, water, electricity, washing and drainage facilities.

Where a property is not physically complete, it is not possible to assess its condition, and therefore a home condition report cannot be provided. Instead, the home information pack must include a different report, which provides the buyer with important information about the dimensions, lay-out and construction intended for the property. The form of this report, entitled “Report on a home not physically complete”, is prescribed in Schedule 7 and may be completed by the seller, or the seller’s architect or builder for example. It should state the name and qualifications of the person monitoring the construction, completion or conversion of the property (see guidance on Schedule 7 for more information).

If a property becomes physically complete during marketing, the responsible person must update the pack to include a home condition report, or a new homes warranty and stand-alone energy performance certificate. See guidance on regulation 19 for further details.

The suggested form for a report on a home not physically complete is available at www.communities.gov.uk/homeinformationpacks. However, if the requirements described above and in Schedule 7 are met, the report may take another form.

8(m) – This requires a home information pack to include a search report that records the results of a search of the appropriate local land charges register that relates to the property being sold. The search report may be an “official search certificate” (found in Form C of Schedule 1 to the Local Land Charges Rules 1977) or a report recording the results of a “personal search” under the Local Land Charges Act 1975. In the case of a report recording the results of a personal search, the search report must comply with the general conditions on searches described in Parts 1 and 2 of Schedule 8 to these Regulations.

8(n) – A search report that records the results of a search of records that are either held by or derived from a local authority and which complies with Schedules 8 and 9. Schedule 9 specifies the enquiries that must be included in a search report recording the result of “local enquiries”, as they are known in the Regulations. Schedule 8 sets out general provisions on searches and search reports and the responses to local enquiries that must be included under this Schedule.

8(o) – A search report relating to drainage and water matters which complies with Schedules 8 and 10. Schedule 8 sets out general provision on searches and search reports. Schedule 10 specifies the enquiries, responses and information that must be included in a search report recording the result of these “drainage and water enquiries”.

Searches – CON 29 Part 1 and CON 29 DW

The local enquiries and drainage and water enquiries set out in Parts 2 of Schedules 9 and 10 are based on the 2002 editions of The Law Society of England and Wales forms “CON 29 Part 1 Standard Enquiries of Local Authority” and “CON 29 DW Standard Drainage and Water Enquiries”. Both of these forms are commonly used by conveyancing solicitors.

The CON 29 Part 1 has been adapted slightly to produce the local enquiries in Part 2 of Schedule 9 and this guidance contains suggested standard replies to the enquiries. The CON 29 DW has been adapted to produce the drainage and water enquiries in Part 2 of Schedule 10 with the addition of model responses.

REGULATION 9: AUTHORISED PACK DOCUMENTS

The Regulations prescribe documents which are authorised to be included in home information packs.

Authorised documents contain information that is likely to be of particular interest to potential buyers but which at this time is not considered to be information which should be compulsory in every case. This may be for a variety of reasons – for example, because the information is not always readily available in a reliable, easily understood and cost-effective form; because products providing the information are relatively new and as yet are not fully tested; because the information is not relevant to all home sales; because the information is provided as part of the present process on a discretionary basis; or because the information, while required at a later stage of the transaction process, is not key to the initial decisions that sellers and buyers need to make.

Authorised documents and information do not have to be provided in home information packs. However, it is strongly recommended that these documents are included in the pack where they are relevant to the property and/or its sale and are likely to be of interest to potential buyers. In particular, it is strongly recommended that home contents and home use information are included. Suggested standard forms for use when providing this information are available at www.communities.gov.uk/homeinformationpacks.

Authorised documents or information may be added to the pack at any time (see guidance on regulation 13), but it is recommended that where available they are included from the outset. This is important because failure to include in the pack authorised documents where they are relevant and available could delay the sale of the property and prevent the seller and potential buyer achieving the full benefits of marketing homes with a home information pack.

Under regulation 9, the home information pack may include documents consisting of or containing the information specified. Authorised information may therefore be added to required documents included under regulation 8.

As with required documents, authorised documents included in home information packs must be in English where the property is in England and in English and/or Welsh where the property is in Wales. **Regulation 9(a)** provides that, in addition, home information packs may include an accurate translation in any language of any document required or authorised by the Regulations, and **9(b)** authorises the inclusion of additional versions of pack documents in other formats such as Braille or large print.

Note that whenever documents are added to or removed from the pack, the index must be updated accordingly (see Schedule 1).

Other documents and information authorised to be included in home information packs are prescribed in regulation 9(c) to (n) and Schedules 3, 4 and 5 to the Regulations. These are as follows:

9(c) – A summary or explanation of any pack document.

9(d) – Information identifying the property, for example a map, plan or drawing.

9(e) – Information about the source or supply of any pack document, and redress procedures relating to pack documents and information. This will help provide authoritative information to consumers about who provided documents and to whom they should direct any complaints or requests for redress.

9(f) – This allows people to include extra title information obtained from Land Registry in the form of official copies of documents referred to in the individual register (also known as “filed copies”, see the guidance on regulation 8(e) above).

9(g) – This applies where the property is or includes a freehold estate in **commonhold** land. See guidance on **Schedule 3** below which deals with all the additional documents required or authorised to be included in a home information pack for commonhold property interests.

9(h) – This applies where the property is **leasehold**. See guidance on **Schedule 4** below which deals with all the additional documents required or authorised to be included in a home information pack for leasehold property interests.

9(i) – Once the home condition report is obtained, the seller may choose to undertake works to remedy any defects identified in the report. This allows the seller to include in the home information pack documentary evidence of any such work that has been done, such as receipts or guarantees.

9(j) – This regulation allows the seller to include in the pack any warranties, insurance policies or guarantees which exist for the property. These might include, for example, warranties that don’t comply with Schedule 6, but which will be given or transferred to a new owner, and so are of interest to potential buyers.

9(k) – This authorises the inclusion in the pack of searches that relate to the property being sold. These searches are not required to be included in the home information pack but sellers may consider it advantageous to include them where appropriate. It is standard practice to obtain a mining search in areas where coal mining has taken place for example. Similarly, a flood risk search is important where the property is situated in an area prone to flooding. Sellers will save time if they provide these searches where appropriate, in the pack. All these authorised search reports must comply with the general conditions on searches described in Part 1 of Schedule 8 of these Regulations. The regulation specifies the matters that may be covered in an authorised search. These are searches:

- relating to records held by or obtained from a local authority and dealing with matters other than those contained in a search report required by regulation 8(n);
(e.g. Supplementary enquiries on matters not covered by the “local enquiries” described in Schedule 9 are sometimes made of local authorities using the Law Society form CON 29 Part 2 (Optional enquiries of Local Authority).)
- relating to common land;
(e.g. A “commons registration search” is often made where a residential property is near to land which is common land or a town or village green.)
- relating to rights of access to, over or affecting the property interest;
(e.g. The “optional enquiries form” referred to above includes a question on rights of way. This information is often requested by buyer’s conveyancers, particularly in rural areas.)
- relating to ground stability, the effects of mining or extractions, or the effects of natural subsidence;
(e.g. A coal mining search will indicate whether the property is in the vicinity of workings and similar reports are available covering other mining activities such as Tin (affecting Cornwall, Devon and parts of Somerset), Salt (Cheshire), Limestone (West Midlands), China Clay (Devon, Dorset and Cornwall). The British Geological Survey produce a report on natural subsidence.)
- relating to actual or potential environmental hazards, including the risks of flooding or contamination from radon gas or any other substance.
(e.g. The Environment Agency and others provide search reports that include information on flood risk, proximity to landfill sites, industrial processes, radioactive materials etc. Commercially available environmental reports provide a view on whether land is potentially contaminated and might require further investigation. Information on whether the property is within an area known to be affected by Radon gas is included in replies to form CON 29 Part 1 (Standard enquiries of local authorities). There are also commercially available radon gas reports on the market.)
- relating to telecommunications services;
(e.g. British Telecom and other telecommunication companies provide search reports on matters affecting the property. These include the existence of wayleaves and services that are connected to the property.)

- relating to utility services;
(e.g. Electricity companies provide search reports on wayleaves, electricity equipment, electricity supply and other matters affecting the property. Gas companies provide information on the location of pipes etc. and whether the property can be connected to the gas supply.)
- relating to the potential or actual effects of transport services, including roads, waterways, trams and underground or over-ground railways;
(e.g. The Highways Agency, Port of London Authority, London Transport and others provide search reports on matters affecting transport infrastructure that may be of interest to home buyers.)
- relating to liabilities to repair or maintain buildings or land outside the property interest;
(e.g. A Chancel Repair search will reveal whether there is a liability to contribute towards repairs at the local parish church.)
- relating to information about any other matter connected with the property that would be of interest to its potential buyers;
(e.g. Search reports on other relevant matters not specified here may be included in the home information pack provided they comply with the general conditions described in Schedule 8.)

9(l) – This authorises a pack to include a search report that relates to other land or property in the vicinity of the property provided it is of a type that is either required or authorised to be included for the property itself. A person selling a house in a rural or sea-front location with a desirable view, for example, might want to show that there are no plans to develop adjacent land.

9(m) – This authorises a pack to include a document that is referred to in a search report (e.g. a map).

9(n) – This authorises a pack to include additional matters specified in Schedule 11 (see also the guidance on that Schedule). In particular, these provisions authorise the inclusion of the suggested home contents and home use standard forms (available at www.communities.gov.uk/homeinformationpacks), or similar forms.

REGULATION 10: CREATION OF INTERESTS

10 – Under section 177(2) of the 2004 Act, the definition of a “sale” of a property for the purposes of the Act (and consequently the Regulations) includes a reference to the creation of interests. This regulation applies in these circumstances: that is, where the sale would create a new commonhold or leasehold property interest for example, where a commonhold interest is being sold “off-plan” but the legal interest is yet to be registered with Land Registry, or for example a new leasehold interest is to be created by the proposed sale of a newly created flat within a freehold property. The purpose of this regulation is to ensure that, where appropriate, the documents included in the pack provide appropriate information about the new property interest being offered for sale, notwithstanding that the interest has not yet been legally registered or created.

In particular, regulation 10 provides that where a commonhold or leasehold interest has not been registered or created at the first point of marketing the following applies:

- **sale statement** – this must be completed as if the interest has been registered or created;
- **evidence of title** – where the property interest has not yet been created, it will obviously not be possible to prove evidence of title to that interest. Consequently, title should be proved for the interests from which the new interest is being created. If the pre-existing title is registered, official copies and the title plan should be produced and if the pre-existing title is unregistered, an index map search and the other documents deducing title (see the guidance to regulation 8(e) and (f) above);
- **authorised information** – the parts of Schedules 3 and 4 that deal with authorised information should be read as if they relate to the commonhold or leasehold interests not yet registered or created.
- **other required information** – specific provision is made in paragraphs 4 of Schedules 3 and 4 requiring particular documents for the commonhold or leasehold interests not yet registered or created (see further the guidance on those Schedules).

REGULATION 11: PROHIBITIONS RELATING TO HOME CONDITION REPORTS

11(1) – home condition reports must not be included in the home information pack if they are not prepared for the current sale (as defined in section 177(1) of the 2004 Housing Act, and in Regulation 2(1)). This means, for example, reports prepared on behalf of a former seller or his estate agent are prohibited from being included. The reason for this prohibition is that a home inspector's professional indemnity insurance is unlikely to cover previous transactions. If a potential buyer were to see a copy of such a report which was inaccurate, and relied on it to their detriment, it is unlikely that redress would be available. However, insurance and redress is likely to be available in respect of any inaccuracies in reports prepared for or on behalf of the current seller. Third parties have rights in relation to insured home condition reports (see further the guidance on Schedule 5, paragraph 3 below).

11(2) – This regulation determines that only documents complying with the terms in Schedule 5 may be referred to as home condition reports. This assures consumers that the report in their pack is authentic, and of a high standard.

REGULATION 12: EXCLUSION OF ADVERTISING INFORMATION

Regulation 12 reinforces Regulation 4(2) (which requires that a pack must not include any other document or information other than that which is required or authorised under regulations 8 and 9) by specifically providing that advertising information must not be included in the pack. This is to ensure that consumers receive only official information as part of the pack, and do not receive in the pack advertising or marketing information about services that they might believe are officially endorsed, or feel pressured to accept.

12(2) clarifies what would be considered as advertising information; it does not include for example, trade names included in HIP forms, or company names provided in search reports.

Part 4

Assembly and Accuracy of Home Information Packs

REGULATION 13: TIME AT WHICH PACK DOCUMENTS ARE TO BE INCLUDED

13(1) – This regulation provides that all required documents (i.e. those included under regulation 8) must be in the pack before marketing begins. The exceptions to this, are where either regulations 15 or 17 apply (see guidance on these regulations for further information).

13(2) – This regulation provides that all authorised documents (i.e. those included under regulation 9) may be included in the pack at any time, i.e. before or during marketing.

Note that when documents are added or removed from the pack, the index must be updated accordingly, as specified in Schedule 1, paragraph 1(b).

REGULATION 14: AGE OF PACK DOCUMENTS WHEN FIRST INCLUDED

14(1) – Certain pack documents must be dated no earlier than three months preceding the first point of marketing, in order that potential buyers have recent and accurate information on which to make their decisions. These documents include:

- (a) Official copies of:
 - the individual register and title plan (under regulation 8(c))
 - for commonhold properties, the individual register and title plan of the common parts, and the commonhold community statement (under regulation 8(e))
 - for leasehold properties, the lease (under regulation 8(f))
- (b) A certificate of an official search of the index map (under regulation 8(d)(i)).

14(2) – This regulation sets out further documents that must also be no more than three months old at the first point of marketing:

- The home condition report (included under regulation 8(h)(i))
- The search reports included under regulations 8(m), (n) and (o) (local land charges reports, local enquiries and drainage and water enquiries)

Three months is allowed between completion of the home condition report and the start of marketing, to allow the seller to defer marketing, for example to undertake work to remedy defects identified in the home condition report. Three months is considered a reasonable period, as the condition of a property is unlikely to change rapidly during this period, unless there is a significant intervening event. The buyer and his advisers will be able to enquire of the seller whether any such event has occurred.

Once the home condition report is included in the home information pack, the responsible person is not required to update or renew the report, unless the property is taken off the market for more than 28 days, in which case (unless the gap is because the seller has accepted an offer) all the pack documents should be reviewed to see if they are still current according to the Regulations (because a new first point of marketing arises – see the guidance above on regulation 3 “interpretation of the first point of marketing”). However, where a person voluntarily commissions a further home condition report, that must be added to the pack (see Regulation 18). For example, if the responsible person chooses to commission another home condition report, for example following changes or improvements to the property, the new home condition report should be added to the pack. The report must not replace any earlier reports in the home information pack, as may happen with other documents. This is because a home condition report may not be removed, in whole or in part, from the home information pack (unless it becomes clear it is a prohibited document commissioned for a previous seller – see the guidance on regulation 11, above). Therefore, if a new report is commissioned, both the new report and the original report must be included in the pack.

14(3)(a) – All other pack documents may be more than three months old at the time marketing commences, however they must be the most recent versions of these (except the home condition report – see below).

14(3)(b) provides that although all other pack documents must be the most recent versions, this does not apply to home condition reports. The most recent version of the home condition report must be less than three months old at the first point of marketing (under regulation 14(2)), but in addition, previous home condition reports prepared on a property must be retained within the pack (see guidance on regulations 14(2) and 18).

14(4) – For the avoidance of doubt, this provision requires that any separate amendments to documents must be included in the pack if those amendments were made before the pack was first compiled.

REGULATION 15: REQUIRED PACK DOCUMENTS WHICH ARE UNOBTAINABLE BEFORE THE FIRST POINT OF MARKETING.

There will be cases where certain documents are obtainable but where, despite all reasonable efforts of the responsible person (that is, the seller or any person acting as estate agent for the seller), they cannot be obtained within a reasonable timescale. Regulation 15 describes the circumstances in which marketing can take place with a pack that does not include all the documents required under regulation 8. This regulation applies where there is a delay in obtaining documents and does not apply where regulation 17 (required pack documents which are unavailable) is applicable.

Regulation 15(1) provides that the documents in question are:

- those connected with deducing title to an unregistered property (regulation 8(d)(ii));
- those relating to commonhold properties (regulation 8(e));
- those relating to leasehold properties (regulations 8(f) and (g));
- a home condition report or new homes warranty (regulations 8(h) and 8(i));
- previous home condition reports (regulation 8(j));
- an energy performance certificate (regulation 8(k)); and
- local land charges reports, local enquiries and drainage and water enquiries (regulations 8(m), 8(n) and 8(o)).

All other documents required by regulation 8 should be obtainable in all cases and must be included in the pack before the property is marketed for sale.

Regulation 15(2) provides that where despite all reasonable efforts of the seller or any person acting as estate agent for the seller, a document of a description listed above cannot be obtained, a home information pack complies with the Regulations without that document being included in the pack, subject to certain conditions. However, the first point of marketing must occur no earlier than 14 days after the date on which the request for the document is delivered. Regulation 16 describes how this date is established. In practice, this means that the responsible person must wait at least 14 days for the document requested to arrive before marketing occurs.

To satisfy the requirements of this regulation, the responsible person (the seller or any person acting as estate agent for the seller) must have done, and continue to do, everything that could reasonably be expected of them (“all reasonable efforts” would include following up requests and, where necessary and possible, seeking to obtain the document from an alternative source).

Regulation 15(3) provides that where a document is added to the pack later in the marketing process, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned. This will be relevant for time-sensitive documents (e.g. the home condition report) which are subject to age limitations when marketing begins.

Regulation 15(4) provides that the request for the document must have been properly addressed to a person who usually provides or is likely to provide such a document (for example, to a home inspector or employer of home inspectors in the case of a home condition report); and the request must have been made in such form, and containing all such information and payment or undertaking to make such payment, as is usually necessary to obtain that document from that source.

Under Schedule 1, the index must be updated every time a document is added to or removed from the pack.

REGULATION 16: DELIVERY OF DOCUMENTS UNDER REGULATION 15

This regulation supplements regulation 15(2) by describing how the date on which a request for a document is delivered is established. This is important as this date could be relevant for enforcement purposes where there are disputes around whether packs comply with the regulations at a particular time.

Regulation 16(1) provides that the day a request for a document is delivered will depend on the method of delivery, as described in sub-paragraphs (a) to (e). Where a document is served personally or left at an intended recipient's address, the day of delivery is that day. However, where the request is sent by post, it should be presumed to be the day it would be delivered in the ordinary course of post, unless it can be proved to have been delivered sooner [*Note: this is currently not less than one day if sent by first class post and not less than two days if sent by second class post*]. Where a document exchange is used, it should be presumed to be the second day after it has been left at the document exchange of the sender, unless it can be proved to have been delivered sooner. Where sent by fax or electronic communication, it should be presumed to be the day it is sent, unless it can be proved to have been delivered later.

Regulation 16(2) sets out special provisions that apply in relation to requests for documents from Land Registry. Requests must usually be delivered by post, document exchange or personal delivery to a "proper office" of Land Registry. Currently, requests can also be made to Land Registry by oral means, telephone, fax or other electronic method.

Regulation 16(3) makes provision for cases where a request for a document is made in parts (the day of delivery is the day the last part is delivered), delivery more than once (only the first delivery day is relevant) and delivery using more than one method of delivery (again, only the first delivery day is relevant).

Regulation 16(4) provides that a document is served personally on an individual when it is left with that person; with a business when it is left with an employee or the owner of the business, or if the intended recipient is another form of body by leaving it with an employee or member of that body.

Regulation 16(5) provides that the recipient's address is:

- in the case of an individual either his usual or last known residence, or if that is the property being sold and the intended recipient no longer resides there, both that address and any other address from which it can be assumed the person will be contacted; and
- in the case of a business or corporate body, any principal or last known place of business from which the requested document or information is usually or likely to be provided; or
- in the case of an electronic address, the electronic address, identification or number published or provided by the intended recipient for that purpose.

REGULATION 17: REQUIRED DOCUMENTS THAT ARE UNAVAILABLE

Regulation 17 ensures that marketing is not prevented or delayed when there is reasonable cause to believe that a required document is unobtainable. The documents are as follows:

- those connected with deducing title to an unregistered property (regulation 8(d)(ii));
- those relating to commonhold properties (regulation 8(e));
- those relating to leasehold properties (regulations 8(f) and (g)); and
- a new homes warranty (regulation 8(i)).

Where, following all reasonable enquiries and efforts, the responsible person has reasonable cause to believe that the document no longer exists in any form or it cannot be obtained from or created by another person, the requirement to include the document in the pack (and the duties in Part 5 of the Housing Act 2004 that might have applied to that document) ceases to apply. In such circumstances, marketing of the property can commence without that document, though the home information pack index should indicate that the document is missing and the reason why (see guidance on regulation 8(a) and Schedule 1). However where for example a hard copy of a document has been destroyed, but an electronic version exists, it should not be considered that the document no longer exists or cannot be obtained from or created by another person – as a hard copy can be made simply.

REGULATION 18: UPDATING OF REQUIRED PACK DOCUMENTS

There is no requirement in the 2004 Act or in the regulations for the contents of the home information pack to be updated during the marketing of the property. However, in some cases the seller or an agent acting on behalf of the seller might voluntarily obtain or create a further version of a required document in the pack. Regulation 18 provides that in these circumstances the new document must be added to the pack and, except where the document is a home condition report, the responsible person must remove any document that has been wholly superseded by the new document. Where translations or additional versions were included in the pack, they must be updated accordingly.

Regulation 18(3) provides that where a document is amended or superseded later in the marketing process, the date at which it is added will be considered the “first point of marketing” so far as that document is concerned. This will be relevant for time sensitive documents (e.g. the home condition report) which are subject to age limitations when marketing begins.

Regulation 18(4) makes special provision for home condition reports. If the responsible person chooses to commission another home condition report, following changes or improvements to the property for example, the new home condition report should be added to the pack but should not replace any old reports in the home information pack, as may happen with other documents. A home condition report may not be removed, in whole or in part, from the home information pack (unless it is a home condition report prohibited under regulation 11, i.e. not prepared for the current seller; see guidance on that regulation for more information).

REGULATION 19: INCLUSION OF HOME CONDITION REPORTS OR ENERGY PERFORMANCE CERTIFICATES FOLLOWING PHYSICAL COMPLETION

19 – This regulation relates to properties which are not physically complete at the first point of marketing, but become physically complete while still on the market. In such cases, the pack must be updated to include the following documents required of physically complete properties (see the guidance on regulations 8(h) to (k) for further details):

19(1)(a) – either a home condition report, or evidence of a warranty (in the form of terms and a cover note) of a type described in Schedule 6, or both the home condition report and the warranty.

19(1)(b) – where there is no home condition report, a stand-alone energy performance certificate. Where an energy performance certificate is commissioned in addition to the one in the home condition report, this must also be included in the pack.

19(2) – Once the property becomes physically complete, the above documents must be included in the pack within 14 days of the completion date.

19(3) – The above documents will effectively supersede the “report on a home not physically complete”, and the predicted energy performance certificate which are already in the pack (included under regulation 8(l)), and these superseded documents must be removed at the point when the new ones are included. The index must be updated accordingly, as with all changes to the pack (see guidance on Schedule 1).

REGULATION 20: UPDATING OF AUTHORISED PACK DOCUMENTS

Regulation 20 makes provision for the updating of documents which are authorised (rather than required) to be included in home information packs under Regulation 9 and is similar to Regulation 18 above. It provides that where a seller or agent acting on the seller’s behalf wishes to revise or substitute a document authorised to be included in the pack they may do so. Where a document is amended or superseded, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned. Nothing in this regulation authorises the removal or replacement of a home condition report, unless it is a home condition report prohibited under Regulation 11.

The index must be updated whenever a document is added or removed (see Schedule 1).

REGULATION 21: SELLER’S CHECK OF THE HOME INFORMATION PACK

Regulation 21 provides that where the responsible person is not the seller (e.g. he is the seller’s estate agent), he must provide the seller with a copy of pack documents if the seller requests them in order to check their accuracy. This is important both to help ensure that the contents of the pack are accurate and to ensure that the seller has access to documents which concern his property.

Part 5

Exceptions

The home information pack legislation is only intended to cover the sale of properties that will, or could, be used as a permanent residential dwelling by the owner. There are likely to be instances where a residential property is being sold, but the circumstances of the sale indicate that it is not to be used as a permanent residential dwelling. Thus a number of exceptions from the home information pack duties are necessary. These exceptions are set out in regulations 22 to 29. In addition, regulation 30 provides for exceptions in certain circumstances for a short transitional period.

REGULATION 22: MEANING OF “NON-RESIDENTIAL PREMISES”

22(1)(a) – A home information pack is only required when marketing a residential property for sale (by virtue of section 151 of the Housing Act 2004, and “residential property” is defined in sections 148 and 177 of that Act). The duties relating to home information packs in Part 5 of the 2004 Act and these Regulations do not apply to non-residential premises. Where there is doubt, regulation 22 provides clarification on what are “non-residential” premises.

Whether premises are “non-residential” should be determined by its most recent primary use.

“Most recent”

It is the intention that the term “most recent” should refer to:

- if the property is occupied – the current use;
- if the property is vacant – the last use.

For example, if a property was last used as an office, but it is vacant at the time of marketing then it will be non-residential premises and therefore a home information pack would not be required when marketing it for sale, unless it is due to be converted to a dwelling by the time the sale is completed (see also guidance on regulation 23 below).

“Primary”

It is the intention that “primary” should refer to the main use of the property, taking into consideration matters such as:

- the proportion of floor area used for residential and non-residential purposes;
- the effect the non-residential and residential use has on the value of the property;
- the amount of time the property is used for each purpose.

For example, a family home where one room is used for conducting private music lessons should be considered a residential property because:

- a greater amount of the floor space is used for residential purposes as opposed to non-residential purposes;
- it seems likely that the value of the property would be based on its residential use; and
- most of the activity which takes place within the property would reasonably be described as residential.

Although all three factors should be considered there may be an overriding reason as to why a property should be considered residential or non-residential based on just one of the three criteria described above.

22(1)(b) – Under this regulation residential properties due to be converted for non-residential use by the time the sale is complete are considered non-residential premises and are therefore exempt from the home information pack duties. However, to benefit from this exception the sale must meet both the following criteria:

- it is clear from the marketing that the property is due to be converted for non-residential use by the time the sale is complete;
- all the relevant planning permissions and listed building consents have been obtained.

Marketing not only includes the promotional material (e.g. a property's particulars), but also any discussion (e.g. the discussions an agent might have with a potential buyer).

22(2) – Regulation 22(2) provides clarity as to what constitutes non-residential premises where there is a possibility that they may also be considered a residential property. This is dealt with below:

Properties sold with land

22(2) – Often there will be no doubt as to whether land sold with a residential dwelling is part of the residential property because it is ancillary to it (e.g. a garden), or whether it consists of non-residential premises. For example, if the land adjoining a property was used as petrol station then it would be considered non-residential premises. However, if there is a question over the use of the land, say, where a small element of the land is being used for profit e.g. surplus plants or produce are sold from the land or a paddock is used to give occasional riding lessons, regulation 22(2) should be used to determine whether the land is part of the residential property (as ancillary to it) or whether it is non-residential premises.

Land may be considered “non-residential premises” if both the following apply:

22(3)(a) – The land covers five hectares or more. The land does not have to be adjacent to the property or in one area; and

22(3)(b) – The land is used for one or more of the following purposes:

- horticulture or cultivation;
- the breeding or keeping of animals or livestock;
- grazing or woodland.

REGULATION 23: EXCLUSION FROM THE MEANING OF “NON-RESIDENTIAL PREMISES”

23 – Regulation 23 provides further clarification on the boundary between residential properties and non-residential premises.

23(a) – Under regulation 23(a) non-residential premises that are due to be converted for residential use by the time the sale is complete are considered residential, and therefore the home information pack duties apply.

23(b)(i) – Under regulation 23(b) properties used for rental purposes are considered residential, although under section 160 of the 2004 Act, the home information pack duties do not apply to a residential property not available with vacant possession (subject to section 171(2) of the Act – see the guidance on regulation 8(g) above). Therefore a home information pack is required when marketing a vacant property that was, or could be, used for rental purposes. This is because the property could equally be bought for owner occupation. As the seller will not know the identity or the intention of the buyer at the time of marketing, a pack should be provided.

Examples of rental purposes include properties that are used as student accommodation, multiple occupancy tenancies, buy-to-let, short and long term tenancies.

Given that many of the exceptions in Part 5 depend on whether the property is residential or non-residential, the following table provides some examples of residential and non-residential properties under regulations 22 and 23:

Example of property being marketed for sale	Residential or non-residential property?
Vacant property last used as a shop and to continue being used as a shop	Non-residential
Ex-school which has been converted into a home	Residential
Shop due to be converted for residential use by the time the sale is complete	Residential
Property last used as a family home but will be converted into an office by the time the sale is complete	Non-residential

23(b)(ii) – Under this regulation properties used for home-working are considered residential and therefore the home information pack duties apply.

Home-working takes many different forms and ranges from having a study which is sometimes used for work purposes to a home that has been adapted for work purposes. If the primary use of the property is residential (see regulation 22(1)(a) for information about determining “primary” use) it should be considered a residential property. However, as described below in the guidance on regulation 26 (dual use of a dwelling), home-working will necessarily be a question of fact and degree and the intensity of use will be relevant.

To avoid home-working being confused with a non-residential use or non-residential premises, the following provides some examples of home working (the home information pack duties apply in these cases):

Examples of residential properties by virtue of home-working

A house where the loft has been converted into an architect's studio (with no special adaptation) for use by the owner.

A house with a separate garage or shed which has been converted into an office for use by an owner and which is intended to be occupied and enjoyed together with the house.

A house with an out-building used for operating the owner's car cleaning service where the out-building is intended to be occupied and enjoyed together with the house.

A house where a post office/small shop is run by the owner from the front room. Customers gain access via the same route used for accessing the residential part of the property.

A house where one room has been converted into an office and is used by the owner to work from home.

A house where a room has been adapted into a hair salon for use by the owner.

A house where no adaptation has taken place but where one room is used for private music lessons conducted by the owner.

A house where an outbuilding is used by the owner to store gardening or building equipment which they use for work (e.g. as a landscape gardener).

REGULATION 24: EXCEPTION FOR SEASONAL AND HOLIDAY ACCOMMODATION

24 – There is no requirement to provide a home information pack in cases where both the following apply:

24(a) – there is a planning restriction which either limits:

- (i)** the occupancy of the property to 11 months or less in a 12 month period,
or
- (ii)** the use of the property to holiday accommodation;

24(b) – the marketing makes it clear that such a restriction applies.

This exception does not cover properties that are leased or used as holiday homes, but where there is no such planning restriction on the use of the property.

REGULATION 25: EXCEPTION FOR MIXED SALES

25 – The duty to have a home information pack does not apply to a mixed sale.

In this guidance, the term “mixed sale” refers to a sale where **one** residential property is marketed for sale as **ancillary** to (i.e. intended to be occupied and enjoyed with) one or more buildings, or areas of land, used for non-residential purposes (as defined in regulations 22 and 23). Examples of mixed sales include:

- a farm house sold with agricultural land and buildings;
- a property consisting of a shop on one floor and living accommodation on the other;
- a petrol station sold with an adjoining house.

If more than one residential property is sold the exception for portfolios of properties is likely to apply (see regulation 27).

However, the exception for a mixed sale only applies if both the following apply:

- At the time of first marketing, the seller only intends to accept an offer for the properties together (non-residential buildings/land as well as the dwelling) (regulation 25(c)); and
- The marketing makes clear to potential buyers that offers will only be accepted for the properties together (i.e. offers will not be accepted for the residential dwelling alone). For example, if a farm with a house and outbuildings are marketed for sale and the agent/seller makes it explicit that the seller does not intend to sell the farm house independently of the land and buildings (regulation 25(d)).

If during marketing an offer is made on the residential property alone and the seller accepts the offer, the responsible person is not required to prepare a pack, as long as no marketing of the residential dwelling alone has taken place. In this case, it is treated as a private sale, which requires no pack.

However, if the seller changes his marketing approach (i.e. he simply decides to market the property differently) so that the residential dwelling alone is marketed for sale the exception ceases to apply and a pack must be prepared. Additionally, if the seller changes his mind and decides that he would be prepared to accept separate offers for the properties, the exception ceases to apply and a pack must be prepared.

REGULATION 26: EXCEPTION FOR DUAL USE OF A DWELLING-HOUSE

26 – The duty to have a home information pack does not apply to dwelling-houses which have a dual use.

In this guidance the term “dual use” refers to properties which can be used for both residential and non-residential purposes simultaneously. It should be noted that there are likely to be many instances where a use which would otherwise be home-working is in fact “dual use” for the purposes of regulation 26 (see guidance on regulation 23 above). This is likely to occur where the owner is not using the property and hence is not working at home (e.g. a house with a separate garage or shed which has been converted into an office but is leased to another person or business), or because extensive special adaptations have occurred to make the dwelling suitable for non-residential use as well as residential use (e.g. a large house where one half is used as a dentist’s surgery and the other half is used as the dentist’s home). However, whether a use is home-working or dual use will necessarily be a question of fact and degree and the intensity of use will be relevant.

However a property will only be exempt from the home information pack duties if both the following apply:

26(a) – it is currently dual use, or, if unoccupied, was dual use when last occupied

26(b) – the marketing makes clear the property is suitable for only non-residential use, or for dual use.

Guesthouses/B&Bs

There are a number of different circumstances in which guesthouses/B&Bs can be sold. To clarify:

- Guesthouse/B&B with no accommodation for the owner should be considered **non-residential premises**.
- Guesthouse/B&B with living accommodation for the owner within the same building should be considered **dual use i.e. both residential and non-residential use** (and is not in our view home-working given the extent of adaptations usually required to make the property suitable for use as a guesthouse).
- Guesthouse sold together with living accommodation for the owner in a separate building should be considered **non-residential premises sold together with a residential property** (see guidance on regulation 25).
- A residential property in which the owner lives with no special adaptations and one or two rooms that are for paying guests should be considered residential (on the basis that the property is “primarily” **residential** or that there is home working – see guidance on regulations 22 and 23 above).

REGULATION 27: EXCEPTIONS FOR PORTFOLIOS OF PROPERTIES

27 – The home information pack duties do not apply where one or more residential properties are marketed for sale if both the following apply:

- The seller does not intend to accept an offer for any of the properties in isolation from the others (see regulation 27(1)(c)). For example, the home information pack duties would not apply when selling a block of flats, a group of holiday homes or an entire new development; and
- It is clear from the marketing that offers will only be accepted for the complete portfolio (i.e. that offers will not be accepted for any one of the properties in isolation from the others) (see regulation 27(1)(d)).

If, during marketing, an offer is made on just one residential property and the seller decides to accept, no pack will be required. This is because no marketing has taken place for that individual property and therefore it can be treated as a private sale. However, if the seller decides that they would be prepared to accept separate offers, and changes their marketing approach so that a single residential property is marketed for sale, the exception ceases to apply, and a pack must be prepared before marketing of the individual property can commence.

The following should not be considered portfolios:

- **Sales which consist of more than one dwelling-house which is ancillary to a principal dwelling-house** (e.g. a large house with other dwellings for staff). See regulation 27(2).
- **Two or more dwelling-houses in a sub-divided building marketed for sale as a single property** (for example, a house with a granny flat attached or a house with a basement flat) where one or more is available for sale with vacant possession (under section 171(2) of the Housing Act 2004).

REGULATION 28: EXCEPTION FOR UNSAFE PROPERTIES

28 – A home information pack is not required when marketing properties that are considered unsafe. However this exception only applies if all of the following criteria are met:

28(a) – the property is unoccupied;

28(b) – the property is not suitable for occupation because its condition poses a serious risk to the health and safety of potential occupants and visitors; and

28(c) – the manner in which the property is marketed indicates that it is unsuitable for occupation in its present condition.

As soon as a property fails to meet all three criteria the exception ceases to apply. For example, if the property was made safe during marketing or if it was being marketed on the understanding that it would be made safe prior to completion of the transaction, the exception would cease to apply.

REGULATION 29: EXCEPTION FOR PROPERTIES DUE TO BE DEMOLISHED

29 – A home information pack is not required when marketing a property solely for demolition and redevelopment. However this exception only applies if all the following apply:

29(a) – the marketing makes clear that the residential dwelling is suitable for demolition and the resulting site is suitable for redevelopment;

29(b) – all the relevant planning permissions, listed building consents and conservation area consents have been obtained for the demolition; and

29(c) – outline planning permission or planning permission (or both) exists for the re-development together with any necessary listed building consent.

REGULATION 30: EXCEPTION – 1ST JUNE 2007 TO 31ST OCTOBER 2007

This regulation establishes a “transitional period” during which properties already on the market on 1 June 2007 will not be subject to the home information pack duties. The regulation is intended to avoid a potential peak in properties put on the market just before 1st June 2007 and to ensure that properties that are genuinely already on the market at this date cannot continue to be marketed indefinitely without a home information pack.

30(1) – This provides that the transitional period is the period starting with 1 June and ending with 31 October 2007.

30(2) – This provides that a seller or his estate agent is not treated as a “responsible person” within the meaning of section 151 of the Housing Act 2004 (and therefore not subject to the home information pack duties) where marketing activity takes place during the transitional period, provided that:

- the property was put on the market before 1 June 2007, and
- this was followed by further marketing activity – i.e. the property should not be nominally on the market in order to avoid the home information pack duties. Any sham arrangements would not qualify for this exception and in those circumstances, any marketing after 1 June will trigger the home information pack duties.

30(3) – This provides that the home information pack duties do not apply where a property is put on the market during the transitional period provided that:

- it was on the market before the start of the transitional period; and
- had been taken off the market because the seller had accepted an offer to buy it; and
- was returned to the market within 28 days of the offer being withdrawn or its acceptance repudiated.

This is intended to ensure that in situations where the property was on the market before the transitional period (and where the seller had genuinely wished to sell before or during the period), any unexpected failure of the sale should not disadvantage the seller in comparison to others in a similar position but whose sales are successful. Essentially, a property quickly returned to the market during the transitional period should be treated as if it was never taken off the market, and so no pack is required if it was genuinely put on the market before 1 June 2007.

30(4) – This provides that the provisions of paragraphs (2) and (3) above cease to apply once the transitional period has ended. Therefore, from 1 November 2007 a home information pack is required for all properties which are being marketed (providing the 2004 Act applies and no other exception is relevant). This will be regardless of whether the property was put on the market before 1 June 2007.

Part 6

Enforcement

REGULATION 31: AMOUNT OF PENALTY CHARGE

Section 168 of the 2004 Act provides that where an authorised officer of an enforcement authority (that is, a local weights and measures authority) believes that a seller or agent acting on behalf of the seller has committed a breach of the home information pack duties, that officer may give a penalty charge notice. Schedule 8 to the 2004 Act provides that the penalty charge specified in the notice shall be prescribed by regulations and shall not exceed £500.

Regulation 31 sets the penalty charge initially at £200. It should be noted that payment of this penalty charge does not entitle the person to continue marketing the property in breach of the home information pack duties. To do so would render that person liable to further penalty charge notices. If the person is an estate agent, it also amounts to an “undesirable practice” for the purposes of section 3(1)(d) of the Estate Agents Act 1979, and would render them liable to action by the Office of Fair Trading. This could result in a banning order which would prevent them from continuing to trade (see section 175 of the 2004 Act).

REGULATION 32: EXCLUSION OF PENALTY CHARGES FOR CONTENTS OF PACK DOCUMENTS

Paragraph 11(b) of Schedule 8 to the 2004 Act provides that the Secretary of State may by regulations make provision supplementary to Part 5 of the 2004 Act, and in particular prescribing the circumstances in which penalty charge notices may not be given. Regulation 32 recognises that the content of many of the documents required to be included in a home information pack is determined by people other than the seller or a person acting as estate agent for the seller. For example, the content of a home condition report is determined by a home inspector, and searches information may be provided by a local authority responsible for maintaining public registers containing that information.

It is not intended that the seller or the seller’s estate agent should be held responsible for the accuracy of the information contained in such documents included in the pack. Accordingly, regulation 32 provides that the penalty provisions contained in section 168(1)(a) of the 2004 Act shall not apply to a breach of the home information pack duties to the extent that the content of a document other than the home information pack index and the sale statement fails to comply with the requirements of the regulations. This applies so long as the seller or the seller’s estate agent has reasonable cause to believe that the document does comply with the regulations.

Part 7

Approved Certification Schemes

The role of certification schemes will be to ensure that home inspectors are fit and proper persons who are appropriately qualified and insured to prepare home condition reports. All home inspectors will be required to belong to a certification scheme approved by the Secretary of State, and must follow its rules and requirements.

The Secretary of State's current policy is to grant approval to certification schemes which meet the statutory criteria described below, if she is satisfied that a scheme will operate in accordance with standards (to be published by DCLG in June 2006) which expand upon the statutory criteria. These policy standards will define the outcomes that certification schemes are expected to achieve.

REGULATION 33: APPROVAL OF CERTIFICATION SCHEMES

33 – This paragraph provides that before approving a certification scheme, the Secretary of State must be satisfied that it includes a number of safeguards, also set out in Section 164(5) of the Housing Act 2004 (see explanatory notes for 2004 Act). Home condition reports must be made by members of a certification scheme (home inspectors), so that their initial and continuing competence can be assessed and monitored. The Secretary of State must be satisfied that the scheme contains appropriate provision for the following:

33(a) – Undertaking checks to ensure that members are fit and proper, and qualified. This should be done in accordance with the policy standards to be published by DCLG (expected in June 2006). Home inspectors must be qualified to produce home condition reports and DCLG policy standards are likely to require them to demonstrate this by holding a qualification in home inspection that delivers the National Occupational Standards for Home Inspection and is approved by the Qualifications and Curriculum Authority. The Qualifications and Curriculum Authority is a non-departmental public body sponsored by the Department for Education and Skills. Their accreditation of a qualification ensures that it is reliable and robust indicator of an individual's level of attainment in Home Inspection. The qualification that is currently available is the ABBE Diploma in Home Inspection (www.abbeqa.co.uk) but the regulations do not place a restriction on the number of qualifications that may exist, or indeed specify the qualification itself.

DCLG's policy standards will also give details of the checks certification schemes will be required to carry out on home inspectors' backgrounds, including Criminal Records Bureau checks, to ensure they are "fit and proper" persons to carry out inspections.

33(b) – Ensuring members have suitable indemnity insurance. A certification scheme will be required to ensure that home inspectors carry insurance which meets minimum acceptable terms (to be set in the DCLG policy standards published by DCLG in June 2006), so that consumers can obtain redress where they incur a loss owing to a home inspector's negligence.

33(c) – Implementing a system for dealing with complaints about its members. This will ensure that consumers have an avenue for solving any complaints and obtaining redress, if needed.

33(d) – Ensuring that home condition reports are entered onto a register. (See guidance on Schedule 5, paragraph 1(b), for additional information.) The home condition report register will be the subject of further regulations determining who will hold it and who will have access to it.

33(e) – Keeping a register of their members. This will allow certification schemes to monitor their membership, and will be public, which will, for example, help to locate home inspectors in their area.

33(f) – Requiring all members to use the standard form of home condition report including certain prescribed terms. The Secretary of State's current policy is that all certification schemes must use the form developed by DCLG. Having a standard form assures consumers of the quality of reports, and allows them easily to compare reports from different properties (see guidance on Schedule 5 for further details).

REGULATION 34: TERMS OF APPROVED CERTIFICATION SCHEMES

34 – This regulation sets minimum requirements for certification schemes. It is intended to ensure they deliver their key role of ensuring the trustworthiness of home condition reports and home inspectors, allowing consumers and mortgage lenders to have confidence in the report:

34(a) – This regulation contains the underlying purpose of a certification scheme; to protect, promote and facilitate the reliability of home condition reports and home inspectors.

34(b) – Certification schemes must prescribe a code of conduct for home inspectors. This should set out the rules and standards of conduct that are expected of home inspectors, and inform the public of the standards of conduct they can expect from a home inspector. It is intended to promote the best standards of practise by home inspectors and aid confidence in the integrity of them and the home condition report.

34(c) – This provides that a scheme must make provision for the conduct of inspections by its members. The content and quality of the home condition report should be underpinned by standards developed by the scheme (in accordance with DCLG policy standards) which must be followed during the inspection and reporting process. Ensuring that proper standards are prescribed and followed during the inspection will contribute to consumer trust in the accuracy of home condition reports and the consistency between reports prepared by different inspectors.

34(d) – As described above, the Secretary of State's current policy is that all certification schemes must use the standard form developed by DCLG for home condition reports. This is expected to be published by DCLG in June 2006. Certification schemes will be responsible for ensuring that their members all use the standard form of report.

REGULATION 35: WITHDRAWAL OF APPROVAL FROM CERTIFICATION SCHEMES

35 – The Secretary of State reserves the power to withdraw approval of a certification scheme if it fails to perform its specified functions. This paragraph specifies that withdrawal of approval may have immediate effect, may be made with notice, or temporarily.

Schedule 1 – Home Information Pack Index

This Schedule prescribes the required and authorised information that a home information pack index must contain.

It is required to contain a list of all the documents which are actually included in the home information pack, and must be revised whenever a document is added or removed. Where regulations 15 or 17 apply (required documents which are unavailable or unobtainable), the index must state that the document is missing, which one it is, and why. If the document is temporarily unavailable the index should state what steps are being taken to obtain it.

The index is authorised to contain information indicating where the document can be found in the pack e.g. a list of contents with page numbers.

Schedule 2 – Sale Statement

This Schedule prescribes the content of the sale statement that is required to be included in the home information pack. The sale statement is intended to provide a brief summary of the circumstances and nature of the sale.

It should include:

- the address or proposed address of the property;
- whether the property interest is a freehold (including commonhold) or leasehold interest;
- whether it is registered at Land Registry or unregistered;
- the name of the seller, and the capacity in which they are selling the property (e.g. as a representative for a deceased owner or representative of a living owner with the legal authority to sell);
- whether the property is being sold entirely with vacant possession or if there is some element of occupation together with an element of vacant possession (e.g. a “granny-flat” sold with a house – see also guidance on regulation 8(g) above); and
- if there is any element of occupation, the nature of that occupation (e.g. the “granny-flat” is subject to a lease with 5 years left to run).

The suggested form for a sale statement is available at www.communities.gov.uk/homeinformationpacks. However, if the requirements described above are met, the report may take another form.

Schedule 3 – Commonhold Information

This Schedule sets out additional documents and information required or authorised to be included in the home information pack where the property being offered for sale is or includes a freehold estate in commonhold land. See the commentary on regulations 8(e) and 9(g) above.

The commonhold documents and information *required* to be included in the pack are found in paragraphs 1 and 2 of Schedule 3. These include:

- an official copy of the individual register and title plan for the common parts. This is in addition to official copies for the unit (see guidance on regulation 8(e), above).
- an official copy of the commonhold community statement. This can be obtained from Land Registry.

The official copies listed above are the key commonhold documents of interest to potential buyers. Because any amendments to the CCS are not effective for the purposes of commonhold legislation until they are registered with Land Registry, an official copy will be the most definitive version.

Where they are in the seller's possession or else the seller has access to them or can reasonably obtain them (taking into account reasonable enquiries being made of the unit-holder if not the seller, the commonhold association and any managing agents) the following documents are required to be included:

- copies of any regulations or rules that have been made by the commonhold association or by those responsible for managing the commonhold or their predecessors but which are not in the commonhold community statement.
- copies of any requests for payments made in the previous 12 years in respect of commonhold assessment, reserve fund levy and insurance (if not covered by a request for commonhold assessment). Reserve funds can only be used for repair and maintenance.

Where the seller can reasonably be expected to be aware of the following matters, taking into account reasonable enquiries of the unit-holder if not the seller, the commonhold association and any managing agents, the following information is also required to be included in the pack:

- the name and address of any managing agents or other persons appointed or proposed to be appointed by the commonhold association to manage the commonhold.
- any amendments proposed to those regulations or rules or to the commonhold community statement.

- a summary of works affecting the commonhold that are current or proposed.

Under paragraph 3 of Schedule 3 other information relevant to commonhold properties is authorised to be included in the home information pack. This information is intended to supplement the required documents listed in paragraphs 1 and 2 of Schedule 3 with other documents providing similar or related information.

Under paragraph 4 of the Schedule, where the sale involves the creation of a commonhold interest, the home information pack must include (in addition to a sale statement and evidence of title – see guidance on regulation 10(2) above):

- the proposed commonhold community statement.
- an estimate of costs expected of the unit-holder in the first 12 months of new ownership.

Schedule 4 – Leasehold Information

This Schedule sets out additional documents and information required or authorised to be included in the home information pack where the property being offered for sale comprises or includes a leasehold interest. See the commentary on regulations 8(f) and 9(h) above.

The leasehold documents and information *required* to be included in the pack are found in paragraphs 1 and 2 of Schedule 4. These include:

- In all cases, a copy of the lease. The lease contains information of key importance to potential buyers and their legal advisers – for example, the length of the term of the lease, details of obligations with which the buyer would have to comply, any restrictions that the buyer would have to observe, any rights that would apply to the buyer, and obligations falling to the landlord, or management company where one is specified in the lease. The copy of the lease required to be included in the pack can be:
 - an official copy obtained from Land Registry; or
 - any other copy of the lease; or
 - if despite all reasonable efforts the lease can only be obtained in an edited form held by Land Registry, a copy of the lease in that form. Typically a document will be designated an “exempt information document” under Land Registry Rules because someone has applied to it for the full version to be exempt from disclosure on the grounds of commercial or personal confidentiality. An application for exemption must be accompanied by an edited version – “an edited information document”, and this should only be included in a pack where there is no other form of the lease available. A potential buyer’s legal adviser is likely to wish to see the full version of the lease in due course.

Where they are in the seller’s possession or else the seller has access to them or can reasonably obtain them (again taking into account reasonable enquiries of the leaseholder if not the seller, the lessor and any managing agents), the following documents are required to be included:

- any regulations or rules relating to the management of the property made or proposed to be made by the existing or proposed landlord, managing agents or other persons involved with the management of the property and their predecessors (if any). In some cases, the terms of the lease may enable the landlord or management company etc. to make regulations or rules relating to the management of the building. These could be significant to a potential buyer – for example they could cover the provision of services or impose restrictions on leaseholders’ activities;

- statements of account for service charges or summaries of service charges in relation to the property that have been supplied to the leaseholder by the landlord or managing agents and which relate to the past 3 years. These might have been supplied as a result of the leaseholder's rights under section 21 of the Landlord and Tenant Act 1985 or might be contained in some other form of document. These documents should be in the seller's possession. If the seller has requested and received them but not retained them, copies might be available from the landlord or managing agents;
- the most recent request for payment made by or on behalf of the landlord in relation to service charges, ground rent, and building insurance (if not covered by a request for service charge or ground rent). The request for payment required to be included in the pack is that relating to the 12 months preceding the date that the property is put on the market for sale. If the seller has not retained the request for payment, a copy might be available from the landlord or managing agents.

Where the seller can reasonably be expected to be aware of the following matters, taking into account reasonable enquiries of the leaseholder if not the seller, the lessor, and any managing agents, the following information is also required to be included in the pack:

- the name and address of:
 - the current landlord or, if the property is in the process of being built or the landlord is in the process of changing, the proposed landlord;
 - any managing agents appointed or proposed to be appointed by the landlord; and
 - any other persons who manage, or who are likely to manage, the property.

(This contact information will be important if potential buyers or their legal advisers need to make further enquiries.);

- any amendments proposed to the lease, to regulations or rules relating to the management of the property;
- a summary of works affecting the property that are current or proposed.

Under paragraph 3 of Schedule 4, other information relevant to leasehold properties is authorised to be included in the home information pack. This information is intended to supplement the required documents listed in paragraphs 1 and 2 of Schedule 4 with other documents providing similar or related information.

Under paragraph 4 of the Schedule, where the sale involves the creation of a leasehold interest, the home information pack must include (in addition to a sale statement and evidence of title – see guidance on regulation 10(3) above):

- the terms of the proposed lease; and
- an estimate of costs expected of the leaseholder in the first 12 months of new ownership in respect of service charges, ground rent, buildings and third party liability insurance.

Schedule 5 – Home Condition Report

This Schedule provides more detail about the content of the home condition report and the terms on which it is prepared.

The home condition report should be an objective report on the physical condition of a property. Under paragraph 6(r) (see below), it must also include an energy performance certificate complying with the EU Directive on the Energy Performance of Buildings. The purpose of the home condition report is to provide the buyer, seller and mortgage lender with reliable information about the condition and energy performance of a home.

The detailed form and content of home condition reports is not prescribed in regulations because it is envisaged that, over time, it will be necessary to make amendments to reflect changes in building construction and the experience of home inspectors and consumers in using the home condition report. Instead the Secretary of State's current policy is that all certification schemes must use the form developed by DCLG (expected to be published in June 2006). Certification schemes will be required to ensure their members use the standard format so that consumers and lenders can readily use the reports and compare properties (see guidance on regulation 33(f)). The format of the report will adapt electronically to cater to the specific reporting needs of different types of property (e.g. houses and flats).

1 – HOME CONDITION REPORTS

1(a) – Inspections: For the purpose of the Regulations, a home condition report must be prepared by a home inspector following an inspection carried out in accordance with inspection and reporting standards set by the certification scheme of which he is a member. Such a certification scheme may be approved by the Secretary of State under section 164 of the Housing Act 2004 and these Regulations, only if she is satisfied that the scheme contains a number of safeguards for consumers in the way the scheme is run (see the guidance on regulations 33 to 35). A scheme should ensure that the home inspector is competent, insured, and a fit and proper person to carry out the inspection.

1(b) – The register: For the purposes of these Regulations a home condition report is only valid once it is entered onto a central register. Registration will enable consumers and their professional advisers to check the authenticity of reports, and enable other reports to be identified that should be included in the pack (see the guidance above on regulation 8(j), which requires that all home condition reports prepared in the previous 12 months for the current seller on the same property must be included in the home information pack). It will also help the certification schemes to monitor the performance and conduct of their members.

The register of home condition reports will be subject to separate regulations made under section 165 of the 2004 Act, specifying who keeps it and who has access to the reports stored in it, and on what terms.

2 – TERMS FOR THE PREPARATION OF A HOME CONDITION REPORT

To ensure consistency in the preparation of home condition reports, and protection for consumers in the event that details in a report are wrong, they must be prepared under the minimum core terms.

Paragraph 2 specifies the express terms that must be included in the contract under which the home inspector prepares the home condition report. These must all be included without exclusion or limitation (see the commentary on paragraph 4 below), to ensure that reports are prepared under the same fundamental terms as these underpin the content of the home condition report. This also allows consumers to reliably compare different reports.

2(a) – This provides that the report will be prepared with reasonable care and skill and is similar to the term implied in most contracts for the supply of goods or services to consumers.

2(b) and (c) – The home inspector has a duty to provide an objective opinion about the condition of a home based on the inspection he has carried out. To ensure the opinion expressed is objective, a certification scheme will be required to ensure that its members work to inspection and reporting standards, and use preferred text when completing the home condition report, both of which will be prescribed by DCLG in standards that are expected to be published in June 2006. This also helps to ensure consistency between reports, so that consumers are able to compare them.

2(d) – This provision will require a home inspector to identify repairs that need to be made, or serious defects in the property. In the majority of cases, the home inspector should be able to come to a conclusion about the condition of each part of the building, and the inspection and reporting standards required under the terms of approval of a scheme by Secretary of State will require the home inspector to do so. The home inspector is required to allocate numerical ratings to prescribed parts of the home to indicate their condition and provide commentary explaining why the rating has been given. However, in cases where the home inspector is unable to assess properly the condition of an element of the property, for example where access is not available, the inspector may recommend further investigation.

2(e) & (f) – These paragraphs ensure that any copyright in a home condition report does not prevent responsible persons from making copies of home condition reports and including these in the home information pack, without infringing the copyright of the home inspector (or their employer) as author of the report. This protection will also apply to reports obtained from the home condition report register by those granted access to it in the separate regulations that are to be made to address this issue (as described in guidance on Schedule 5, paragraph 1(b), above). However, these users will also be required to abide by rules on the use of data specified in those separate regulations.

It is important to note that the amount and time of payment of the home inspector's fee are not covered by regulations and are entirely a matter for the contract under which the report is prepared.

3 – THIRD PARTY CONTRACTUAL RIGHTS IN RELATION TO HOME CONDITION REPORTS

This ensures that the seller, buyer (potential and actual) and mortgage lender have rights to enforce the contract under which the home condition report is prepared. A home inspector might owe duties under the law of negligence to third parties when preparing the report, but such liability would depend on the individual circumstances of each case. This provision guarantees direct legal rights for sellers, buyers and lenders and ensures that they are able to rely on the home condition report. Not requiring such legal rights would severely restrict the benefit of including the home condition report in the home information pack. This paragraph is also intended to minimise the need for buyers and lenders to seek their own report or survey on a property, which would result in delay to the transaction.

4 – INCLUSION OF ADDITIONAL OR MORE FAVOURABLE TERMS FOR HOME CONDITION REPORTS

A home condition report must be prepared under the terms of paragraph 2 of the Schedule, but these are the minimum terms for a contract, and this paragraph enables other terms to be added. These might, for example, relate to the home inspector's fee and timing of payment. These additional terms must not limit or exclude the effect of the minimum terms. The contract under which the home condition report is prepared may also include different terms if these are more favourable to the seller, buyers, or mortgage lender.

5 – LESS FAVOURABLE TERMS

While the home condition report may be prepared under terms more favourable to the seller, buyers, and the mortgage lender, it may not be made under terms less favourable to these parties. Any such report would not comply with the Regulations, and would therefore not be able to be included in the home information pack.

6 – COMPLETION OF HOME CONDITION REPORTS BY HOME INSPECTORS

This paragraph sets out the core contents of the home condition report. Under subparagraph (t), the certification scheme of which a home inspector is a member may require additional contents.

6(a) – The home inspector will have individual membership of the certification scheme, which will be responsible for prescribing standards and ensuring that these are maintained by its members. The identity of the inspector that prepared the report must be formally disclosed on the report for the information of those relying on the report and the certification scheme of which the inspector is a member.

6(b) – The home condition report must specify any business or personal relationships between the home inspector and anyone involved in the sale, for the purpose of transparency. This will ensure that all parties are made aware of the situation, enabling them to consider whether any such relationship is prejudicial to their interests. A certification scheme is required under regulation 34(1)(b) to publish a code of conduct for its members. This will set out rules covering conflicts of interest and guidance to home inspectors on required standards of behaviour and how they should act in cases where there is an actual or perceived conflict of interest. It should also clarify what sort of business and personal relationships should be disclosed in the home condition report.

6(c) – The individual report is identified through a unique reference number or code. This will aid identification of reports on the home condition report register (mentioned in sections 164(5)(d) and 165 of the 2004 Act). The address and reference numbers could also allow identification of multiple reports for one address, which would aid compliance with regulation 8(j) (the requirement to include previous reports made within the past 12 months). See guidance on paragraph 1(b) of Schedule 5 for more information on the register.

6(d) and (e) – The names of all certification schemes of which the home inspector is a member are included, and the inspector’s membership number(s). In the event of a complaint that is not satisfactorily resolved by the home inspector, the consumer should have recourse to the independent complaints resolution procedures put in place by the certification scheme (under regulation 33(c)).

6(f) – A home inspector could work for a firm or as an individual; the name and address of the firm are therefore included if applicable.

6(g) – The date of inspection is relevant, as the home condition report is a record of the condition of the property at the time of the inspection. Although the condition of a property would not normally change quickly, an intervening event such as a fire or flood could cause a rapid deterioration of condition after the inspection has been made so it is important that those reading the report note the date of the inspection. If there are, for example, particular weather conditions on the day the inspection is carried out, this will be relevant to the home inspector’s inspection of parts of the property, such as the performance of gutters and drainpipes.

Although the home condition report is likely to be written up quickly after an inspection, it can also be good practice to allow for a period of “reflective thought”, for example, and the date of completing the report might be later than the date of the inspection.

6(h) identifies the property by address.

6(i) to (q) – Key elements of the property for the buyer, seller and mortgage lender to know about are listed in these paragraphs:

- (i) requires the year the property was constructed, or an estimate where the exact year cannot be determined;
- (j) requires the number of storeys in the home, and rooms on each storey;

- (k) requires information about parking for vehicles;
- (l) requires information about utility services that are connected to the property. This would include a condition rating (for more information about condition ratings, see guidance on paragraph 2(b) of Schedule 5);
- (m) is concerned with the building that contains a flat or maisonette, and requires details about the number of storeys in that building, other flats in the same building and any lift facilities. As with existing surveys of flats, it is not cost-efficient for the home inspector to report in detail on the external condition of the whole building, because that could be a substantial and costly task. Therefore the home inspector will report on the general condition of the outside of the building containing the flat, and will report specifically on only the external parts of the flat itself. Similarly, inside, the home inspector will report on the condition of the roof structure only if it is accessed directly from the flat itself, and he will only report on common areas leading to the flat, not all common areas in the building;
- (n) requires a general assessment of health and safety to identify whether any of the risks specified in a list prescribed in the inspection and reporting standards, is present at the property. This will not include a condition rating;
- (o) is an assessment of the condition of the outside parts of the building such as roof coverings, rainwater pipes and gutters, chimney stacks, walls, doors and windows. These will require a condition rating;
- (p) is an assessment of the condition of the inside parts of the property, such as roof structures, ceilings, floors, walls, and kitchen and bathroom fittings. They will also be assessed for dampness. These will require a condition rating;
- (q) is an assessment of the general condition of outbuildings, which will not include a condition rating.

6(r) –The purpose of the energy performance certificate is to provide consumers with information about the energy efficiency of the property and to give information about ways that this can be improved. A valid certificate will need to comply with legislation implementing the EU Directive on the energy performance of buildings.

The certificate should be prepared using a Government approved methodology to be specified in the implementing legislation; for the majority of homes the methodology is likely to be reduced data Standard Assessment Procedure (rdSAP), but for larger (over 450 square metres) or more unusual homes the alternative methodology Simplified Building Energy Model (SBEM) may be used. Details of these methods are available online:

- <http://projects.bre.co.uk/sap2005/> (see appendix S of the SAP 2005 specification for rdSAP)
- <http://www.faero.org.uk/documents/RDSAPversion1.pdf> (for rdSAP)
- <http://www.ncm.bre.co.uk/> (for SBEM)

The energy rating of the home is likely to be calculated by computer software from data collected at the property by the inspector, following the procedures prescribed in the methodology. Much of this data would already have been collected by the home inspector when preparing the other parts of the home condition report and only a limited further inspection would be needed to calculate the energy rating when the two parts of the report are prepared at the same time.

6(s) – When the inspection is carried out, there may be parts of the property that would normally be inspected, but which the inspector is not able to see, for example where there is no access to the roof space. In such cases, the home inspector should make a statement in the report, identifying the part of the building that was not inspected. He might be able to draw conclusions about the condition from his observations of the parts that can be seen, and could recommend further investigations where appropriate.

6(t) – This allows the certification scheme to add to the matters that the home inspector must comment on in the home condition report, subject to the scheme's approval by the Secretary of State (see guidance on paragraph 1(a) of Schedule 5, and on Part 7, above).

7 – CONDUCT OF INSPECTIONS

A scheme must make provision for the conduct of inspections by its members, based on the policy standards to be published by DCLG which are likely to form the basis of an approval of a certification scheme by the Secretary of State (see guidance on Part 7 above). These standards should be followed during the inspection and reporting process. In common with existing surveys, home inspectors will not be required to inspect areas of the property not accessible on the day of inspection, or to move furniture, fittings or personal items during the inspection (see guidance on paragraph 6(s) above for further information).

8 – PROHIBITION ON PERSONAL AND SECURITY INFORMATION

Certain information must not be included in the home condition report. To protect the privacy of individuals, there must be nothing in the report identifying or expressing an opinion on an individual (sub-paragraphs (a) and (b)). This is equivalent to the definition of “personal data” in section 1 of the Data Protection Act 1998 and consequently, home condition reports must not contain personal data and that Act is unlikely to apply. Part (c) prohibits the inclusion of information about the security of the property that potentially could be misused.

Schedule 6 – Exception From Home Condition Report For Specific New Homes Warranties

This Schedule sets out the conditions for an exception to the requirement to include a home condition report in a home information pack (see guidance on regulation 8(h) for more information, including what documents must be included in the pack).

Regulation 8(h) provides an exception from the requirement to provide a home condition report if the home is covered by a new homes warranty which is about to start. This Schedule therefore sets out the minimum criteria such a warranty must meet in order to provide this exception. These criteria are intended to provide a broad equivalence with the information provided by a home condition report. The consumer, therefore, should not be disadvantaged by not having the home condition report.

It is important to note that these standards relate solely to the home condition report exception. They are **not** intended to set a minimum standard for new homes warranties generally, and warranties may need to provide different elements of cover not included in Schedule 6 for other purposes, such as obtaining a mortgage.

It is expected that warranty providers will publicise which of their products will provide an exception from the home condition report. Before doing so, warranty providers must be satisfied that the product meets the minimum criteria set out in Schedule 6. A warranty which does not meet the minimum criteria in Schedule 6 does not provide an exception from the duty to provide a home condition report.

In addition to this Schedule, DCLG intends to publish an informal view on its website listing the warranty products that meet these minimum criteria, which will provide a simple reference for consumers and those putting together home information packs.

Part 1 – General

1 – INTERPRETATION

This sets out the interpretation of terms used in this Schedule, further to those defined in Regulation 1, including the definition of a “warranty provider”, “structural features” and “annual increment”.

2 – NEW HOMES WARRANTIES – GENERAL

This requires a new homes warranty which provides the exception from the duty to provide a home condition report to meet the minimum terms set out in Schedule 6. A warranty may also contain further terms in addition to those in the Schedule, or terms or financial limits which are more favourable to consumers, as long as these do not exclude or limit the minimum terms. Warranties with terms less favourable to consumers than those set out in the Schedule will not provide the home condition report exception.

Part 2 – Arrangements for entering into specific new homes warranties

3 – EXISTENCE OF INSURANCE AND REGULATION OF WARRANTY PROVIDER

This requires warranty providers whose product provides the home condition report exception to be registered with the Financial Services Authority. Under paragraph 2(5) the undertakings in the warranty must be made by a such a warranty provider.

4 – COVER NOTES

Warranty providers whose product provides the home condition report exception must have in place arrangements to provide cover notes confirming that cover is offered on the property. This will need to be included in the home information pack under regulation 8(h)(ii).

5 – COMMENCEMENT DATE

The warranty providing the home condition report exception must not commence before completion of the sale. A warranty which has already commenced will not provide the exception from the home condition report requirement. The reason for this is that if the warranty commences before the new owner completes the sale, there is potential for the condition of the property to have changed in the interim. If the warranty does not commence until legal completion, the new owner has protection for any defects or damage that become apparent.

Part 3 – Minimum cover for specific new homes warranties

This part of Schedule 6 sets out the minimum cover required of new homes warranties which will provide the home condition report exception, however, as specified in paragraph 2, additional terms, or those which are more favourable to the policy-holder may be included.

6 – WARRANTY PERIOD

The cover period for warranties providing the home condition report exception must be at least 10 years, commencing not before legal completion of the sale (see guidance on paragraph 5).

7 – CERTIFICATE OF COVER AND COPY OF NEW HOMES WARRANTY

The warranty provider whose product will provide the home condition report exception must have in place arrangements to provide the new owner with a certificate confirming the existence of the warranty, including the commencement date, and a document which sets out the terms of the warranty.

8 – TRANSFER OF COVER TO FUTURE OWNERS

This requires that the cover for the warranty providing the home condition report exception will be passed over to future owners, at no cost.

9 – COVER FOR DESIGN AND BUILDING

This sets out the processes that a warranty provider must undertake on the building. These are carried out by the warranty provider to minimise its own risk in relation to paying for repairs, but are also good practice, to minimise the likelihood of unexpected defects or damage arising.

The warranty provider must ensure that checks are carried out to ensure the property is physically complete, and finished to a reasonable standard. Such checks must also assure the warranty provider that there is at least a 60-year design life on the main structure of the building (if reasonable maintenance is undertaken), and that the building work meets statutory building regulations, which ensure the standard and safety of work.

10 – DEVELOPER COVER

Some warranty products include a period (usually the first two years) during which the developer is responsible for remedying defects or damage. This paragraph (together with paragraph 2(1)(b)) does not require such a period of cover, but makes provision for the standards of cover during such a period, where it does exist.

Where the warranty deals with the developer's obligations in respect of the structural and other defects described in paragraphs 11 and 12 the warranty provider must undertake in the warranty to:

- (a) meet the developer's obligations, if the developer defaults on its responsibilities;
- (b) provide a free conciliation service to resolve any disputes that arise between the owner and the developer;
- (c) ensure that a developer carries out work recommended by the conciliation service, or
- (d) carry out the work itself if the developer fails to do so;
- (e) make available further methods of resolution if the conciliation service fails to resolve the owner's concerns.

11 – STRUCTURAL DEFECTS COVER TO PROPERTY AND COMMON PARTS THROUGHOUT THE NEW HOMES WARRANTY

This paragraph sets out the cover for the structural aspects of the property and common parts, which must continue throughout the warranty period for products providing the home condition report exception. The requirements relate to structural features, which are defined in paragraph 1 (Interpretation). The cover provided by the warranty must protect the consumer from damage to the property caused by defects in the structural features, and from conditions caused by defects, which could cause damage to the property.

The liability for remedies under this cover may be shared between the warranty provider and developer so that for instance the developer provides them for a limited time and the warranty provider provides them for the remainder. The remedies must involve either the work being carried out or arranged by one of these, or financial compensation for the owner if he arranges the work himself.

12 – ADDITIONAL DEFECTS COVER FOR PROPERTY – FIRST TWO YEARS

This paragraph sets out a level of cover during the first two years of the warranty providing the home condition report exception, additional to that described in paragraph 11. The additional cover required relates to components of the property as specified in paragraphs 12(1)(a) to (l). These components are non-structural elements of the property, which the new owner would expect to be in good condition and working order when the home is sold.

The cover provided for these components, in order to provide the home condition report exception, must be that defects (even where there is no damage) and damage caused by a defect are either put right, arranged to be put right, or financial compensation provided to the owner if he arranges the work himself.

As with cover for structural defects under paragraph 11, the liability for remedies under this cover may be shared between the warranty provider and developer so that for instance the developer provides them for a limited time and the warranty provider provides them for the remainder.

13 – COVER FOR COSTS OF ALTERNATIVE ACCOMMODATION

The warranty providing the home condition report exception must include reasonable cover for costs incurred if the property is uninhabitable as a result of the warranty provider's liability, for example because of a defect or damage, or while work is being undertaken to remedy a defect or damage.

14 – PROFESSIONAL FEES

The warranty providing the home condition report exception must also include reasonable cover for professional fees (other than the costs of repair work which are covered under paragraphs 11 and 12) which may be incurred by the policy-holder, such as surveyors' or engineers' fees. This must provide for the warranty provider's prior written permission before such work is carried out.

Part 4 – Limits on cover for specific new homes warranties

Warranty providers are permitted to specify financial limits on the cover provided by the product which will provide the home condition report exception, but these limits must be reasonable. This part sets out the limits that are considered reasonable. As with part 2 of Schedule 6, these are minimum requirements only, and limits specified by warranty providers may be different, if they are more favourable to the policy-holder (see guidance on paragraph 2 of Schedule 6 for more information).

15 – PERMITTED LIMITS FOR NEWLY BUILT PROPERTIES

This paragraph sets out the financial limits allowed for warranties providing the home condition report exception on brand new homes. These limits are subject to the annual increment (as defined in paragraph 1, Interpretation), which means that they are indexed to increase year-on-year after the first year of the warranty.

Warranty providers are also permitted to specify a limit for continuous structures, which are defined in paragraph 1 of Schedule 6.

16 – PERMITTED LIMITS FOR CONVERTED PREMISES

This paragraph applies to warranties providing the home condition report exception which provide cover for converted properties (i.e. new residential dwellings, converted from buildings which were previously not residential, as set out in 16(1)). The limits for such properties, including where they are continuous structures, are different to those for newly built properties.

17 – PERMITTED EXCESSES

This paragraph sets out the permitted excesses and minimum claim values of warranties providing the home condition report exception, which are indexed (increasing annually by the “annual increment” as defined in paragraph 1 – Interpretation). Under paragraph 2 of Schedule 6, these terms may be different if they are more favourable to the policy-holder.

18 – PERMITTED LIMITS ON COVER FOR COSTS OF ALTERNATIVE ACCOMMODATION

This relates to the requirement in paragraph 13 to provide cover for alternative accommodation if the home is uninhabitable. The warranty provider may place a reasonable limit on this cover in the product providing the home condition report exception.

19 – PERMITTED LIMITS ON COVER FOR PROFESSIONAL FEES

This relates to the requirement in paragraph 14 to provide cover for professional fees other than the costs of repair work. The warranty provider may place a reasonable limit on this cover for the product providing the home condition report exception, and is under no obligation to include in this cover fees incurred by the policy-holder in investigating or preparing a claim under the warranty.

Schedule 7 – Report On A Home Not Physically Complete

This Schedule prescribes the contents of the report on a home not physically complete. This relates to Regulation 8(1) which requires that a form complying with this Schedule is included in the pack for properties that are not physically complete at the first point of marketing. The definition of “physically complete” is set out in Regulation 2(3).

A form complying with Schedule 6 must be included in the pack in place of a home condition report on properties which are not physically complete, because it is not possible to inspect the condition of an incomplete property. The form gives the potential buyer important information about the dimensions, lay-out and construction intended for the property. It is therefore required that the form must be completed before inclusion in the pack. This may be done by the seller, or someone such as the seller’s architect or builder.

Note that if a property becomes physically complete during marketing, the responsible person must update the pack to include a home condition report, or a new homes warranty and freestanding energy performance certificate. They must also remove the Report on a home not physically complete, and the predicted energy certificate from the pack (see guidance on regulation 19 for further details).

The suggested form for a report on a home not physically complete is available at www.communities.gov.uk/homeinformationpacks. However, if the requirements described above are met, the report may take another form.

Schedule 8 – General Provision On Searches And Search Reports

Part 1 – All search reports (other than official search certificate of the local land charges register)

This Part describes general provisions that apply to all search reports included in the home information pack, apart from official search certificates of the local land register. Official searches must conform to the similar conditions that are contained in the Local Land Charges Act 1975 and the Local Land Charges Rules 1977.³

1 – GENERAL REQUIREMENTS

Paragraph 1 describes the information that must be contained in search reports included in home information packs. The information required is as follows:

- 1(a) the address of the property which is the subject of the search;
- 1(b) a statement on whether there is any connection, either personal or financial, between the provider of the search report and any other person involved in the sale of the property, e.g. the seller's estate agent or conveyancer. Any business referral arrangements between the parties should therefore be disclosed;
- 1(c) the questions that were asked to obtain the information contained within the search report;
- 1(d) the results of the search;
- 1(e) the date the search was completed. The information contained within the search report will be treated as though it were current at this point;
- 1(f) a description of the records that were examined to obtain the information contained within the search report and who they are held by;
- 1(g) if the records searched are derived from other records (e.g. they are not derived from the original records) a description of the other records must be included and who they are held by;

³ Statutory Instrument 1977 No. 985.

- 1(i) the name and address of the person responsible under the contract for carrying out the inspection for the search report and, where different, the name and address of the person responsible for preparing the report;
- 1(j) the name of the person who is responsible for any errors in the search report;
- 1(k) a description of the procedures that the search provider has put in place to deal with complaints or claims for redress;⁴
- 1(l) the terms on which the search report is provided, including those that are required by virtue of paragraphs 4, 5 and 6 of Schedule 8, and the names of the persons liable to pay financial compensation as described in paragraph 6 of this Schedule.

2 – ADDITIONAL SEARCH INFORMATION

This provides that search reports may include additional information that helps explain or identify the search results but which is not required under these Regulations. This additional information may include information identifying the search or the property, or those involved in providing the report, information indexing or explaining the results or information identifying local features. The latter could include an aerial photograph of the property and information on local facilities such as local schools, leisure facilities and shops (although the inclusion of advertising or marketing material for particular companies is prohibited).

3 – UNAVAILABLE SEARCH RESULTS

This provides that the search report must provide all the information sought except in cases where the information cannot be obtained *under any circumstances* from a local authority in the case of a search report dealing with local land charges, local enquiries or additional enquiries of a local authority, or any other person for any other search report (e.g. a water company in the case of the water and drainage search). That there is a charge for information should not therefore prevent the search provider from including it. Where information is missing from the search report for this reason, the report must include a statement to this effect.

⁴ This guidance takes account of the Office of Fair Trading report “*Property searches – a market study*” OFT810 September 2005. The report recommends that information concerning consumer redress and indemnity insurance should be included within any search reports in home information packs. The report also included recommendations on access to information and regulation of the searches market which are not dealt with in these regulations.

Part 2 – Specific required search reports

This Part describes the terms that must form part of a required search (other than an official certificate of the local land charges register).

4 – TERMS FOR THE PREPARATION OF REQUIRED SEARCHES

Paragraphs 4, 5 and 6 specify the express terms that must form part of the contract under which a required search report is provided. They do not apply to authorised searches (see the commentary on paragraph 11 below). These are necessary to give consumers, their legal representatives and mortgage lenders the assurance that search reports required to form part of the home information pack are reliable. The specified terms in paragraph 4 provide that:

- 4(a) – the search report will be prepared with reasonable care and skill. This makes express the term that is implied into contracts for the supply of goods or services to consumers;
- 4(b) – this ensures that any copyright in a search report does not prevent responsible persons from making copies of home condition reports and including these in home information packs. The use of Ordnance Survey mapping or data within the home information pack will need to be licensed via the originating source of any report or search used. All mapping within reports and searches should therefore be from authorised and easily identifiable sources.

5 – THIRD PARTY CONTRACTUAL RIGHTS IN RELATION TO SEARCH REPORTS

The specified terms in paragraph 5 provide that the seller, buyer and mortgage lender have rights to enforce the contract under which the home condition report is prepared. A person providing inaccurate information might owe duties under the law of negligence to third parties when preparing the report, but such liability would depend on the individual circumstances of each case. This provision guarantees direct legal rights for sellers, buyers and lenders (whether or not they are a party to the contract) and ensures that they are able to rely on required searches.

6 – INSURANCE COVER FOR THIRD PARTY CONTRACTUAL RIGHTS

The specified terms in paragraph 6 provide that the liability arising under the contract must result in financial compensation. The paragraph also guarantees that in the event that a party to the contract cannot, does not or will not meet the liability (e.g. because it is unwilling to or has gone out of business), it will be met through insurance.

Suitable insurance arrangements must be in place with an insurer authorised under the Financial Services and Markets Act 2000 to cover the terms mentioned in paragraph 5 (including “run-off” cover).

If the insurance company goes out of business, compensation might be available from the Financial Services Compensation Scheme (FSCS). The Financial Ombudsman Service may also provide help in resolving disputes involving insurance companies.

7 – PERMITTED LIMIT ON LIABILITY FOR FINANCIAL LOSS

This provides that the amount of financial compensation referred to in paragraph 6 may be limited to the value a potential or actual buyer reasonably believed to be the value of the property (e.g. the value had a search report been properly prepared), but may also exceed this amount. In this context, the “value” is the value of the property as a residential property and does not include, for example, the value put on any commercial development potential of the property.

8 – INCLUSION OF ADDITIONAL OR MORE FAVOURABLE TERMS FOR REQUIRED SEARCH REPORTS

This provides that additional terms may be included in the contract under which search reports are prepared. Those listed in paragraph 4 must not be excluded or limited in any way but may be enhanced to provide greater protection.

9 – LESS FAVOURABLE TERMS

This makes it clear that that a search that contains terms less favourable than those described in Part 2 of the Schedule does not comply with the requirements of Schedule 8.

10 – REQUIRED SEARCHES BY ANOTHER NAME

Paragraph 10 provides that the requirements of paragraph 4 apply to any documents in the home information pack that contain the information prescribed in regulations 8(m)(ii), 8(n) or 8(o). The effect of this is to ensure that the terms and conditions in paragraph 4 apply to all required searches in the pack even where they are given a different name to that used in the regulations or purport to be included in the home information pack under a different provision of the regulations, for example, Schedule 11.

Part 3 – Authorised search reports

This Part deals with the terms attached to authorised search reports

11 – TERMS FOR THE PREPARATION OF AUTHORISED SEARCH REPORTS

Paragraph 11 provides that searches that are authorised for inclusion in the home information pack may be made on any terms including the terms described in paragraph 4 but are not required to do so.

Schedule 9 – Local Enquiries

Regulation 8(n) provides that the home information pack must include a search report that records the results of a search of records that are either held by or derived from a local authority and which complies with Parts 1 and 2 of Schedule 8 (General provision on searches and search reports) and Schedule 9. This Schedule specifies the information that must be included in a search report recording the result of local enquiries.

Part 1 – General

1 – INTERPRETATION

Paragraph 1 contains definitions of terms and expressions used in Part 2 of the Schedule.

2 – ENQUIRIES

Paragraph 2 provides that a search will only comply with the requirements of regulation 8(n) if it contains the enquiries set out in Part 2 of this Schedule. Under paragraph 1(d) of Schedule 8, the results of those enquiries must also be included. The enquiries must relate to the property in question and, for the avoidance of doubt, the enquiries in paragraphs 6 to 18 do not relate to matters covered by the appropriate local land charges register.

Part 2 of Schedule 9 describes the local enquiries. The information is information that is currently provided in most property transactions in response to an application to a local authority using the Law Society form CON 29 Part 1 (standard enquiries of local authority) or similar searches by private search companies (who typically compile the information themselves). The enquiries set out in Part 2 of this Schedule broadly reproduce the questions, and the order of questions, used in Form CON 29 Part 1.

No standard forms have been prescribed or suggested for local enquiries and results. Although it should be noted that while the appearance of the local enquiries and additional authorised or required information may vary, the content of the enquiries themselves may not.

The following guidance also includes suggested standard answers to enquiries and provides further notes on them. There is no requirement for search providers to use these standard answers but, for the sake of consistency, it is **strongly recommended** that they do so.

Part 2 – Enquiries

PLANNING DECISIONS AND PENDING APPLICATIONS

3. What applications for any of the following have been approved or rejected by a local authority, or are pending such a decision –

- (a) a planning permission;
- (b) a listed building consent;
- (c) a conservation area consent;
- (d) a certificate of lawfulness of existing use or development;
- (e) a certificate of lawfulness of proposed use or development;
- (f) building regulations approvals; and
- (g) a building regulations completion certificate?

Suggested answer

(a) A list of the relevant documents is included and copies may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy; or

(b) None.

Notes: *This question asks the local authority to provide a list of approvals, refusals, certificates and pending applications relating to the property in respect of planning matters and building regulations.*

The reply, except where there are no such matters, should comprise a list which includes the nature of the document, its date and reference, and the description of development or use (as set out in the document itself). The reply should also say how copies of documents can be obtained, including contact details and fees.

Where the local authority's records of a particular type of document do not extend back before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council's records of [specify the type of document] do not extend back before [insert date] and this reply covers only the period since that date”.

Where a computer system is used to reply to the enquiries but the computerisation does not include records before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council's computerised records of [specify the type of document] do not extend back before [insert date] and this reply covers only the period since that date. Prior records would have to be searched manually at additional cost.”

Where the practice of issuing the particular type of document does not extend back before a certain date, it is recommended that the reply to the relevant part of the question should include the statement:

“Informative: The Council did not issue [specify the type of document] before [insert date].”

If building control for the property is currently being administered by an outside body (e.g. the NHBC for a new residential development in the course of construction) it is recommended that this should be stated in the reply, and in that case (but not where the council is administering building control or already holds copies of all consents and certificates) adding the statement:

“Informative: The seller or developer should be asked to provide evidence of compliance with building regulations”.

Item 1(1)(g) on Form CON 29 Part 1 has been omitted from these enquiries. This question concerns “self-certified” glazing work carried out, without building regulation approval, by a person who is registered under the Fenestration Self-Assessment Scheme (FENSA) by the Glass and Glazing Federation.

From 1 April 2002 the installation of a replacement window, rooflight or roof window or specified type of glazed door must either have building regulation approval or be carried out and certified by a person who is registered under the Fenestration Self-Assessment Scheme by the Glass and Glazing Federation. Copies of these certificates must be sent to the relevant local authority. There is currently no requirement for local authorities to store these documents but those who do should provide details of any which relate to the property.

The DCLG is currently discussing with stakeholders how information on the various self-certification schemes can be made available in the home information pack. These schemes include the installation of:

- *heat producing gas appliances;*
- *oil-fired combustion devices, oil storage tanks and heating and hot water services systems connected to them;*
- *certain solid fuel burning appliances and heating and hot water service systems connected to them;*
- *air conditioning or ventilation systems;*
- *lighting or electric heating systems;*
- *certain electrical installations;*
- *sanitary ware or washing facilities.*

PLANNING DESIGNATIONS AND PROPOSALS

4. What designations of land use for the property or the area, and what specific proposals for the property, are contained in any existing or proposed development plan?

Suggested answer

(a) The [*insert name*] plan indicates that the designations or proposals are [*insert description of designations or proposals*] and copies may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) None.

Notes: This question requires the inspection of plans to reveal the primary use indicated for the area in which the property is situated (e.g. “residential”, “industrial” etc. (these matters are dealt with in question 1.2 of form CON 29).

In relation to these matters, the search report should either:

- *Describe the land use or uses indicated by the adopted or proposed Structure Plan, Local Plan or non-statutory plan, or*
- *Include a statement that the adopted or proposed Structure Plan, Local Plan or non-statutory plan contains no specific proposals for the property, or, if there is such a proposal, a description of the proposal.*

The search report should also indicate where copies of the documents containing more details of the proposals can be obtained from and the fee for obtaining copies of documents.

ROADS

5. Which of the roads, footways and footpaths on which the property is or will be situated are –

- (a) highways maintainable at public expense;
- (b) subject to adoption and supported by a bond or bond waiver;
- (c) to be constructed by a local authority who will reclaim the cost from the frontagers; or
- (d) to be adopted by a local authority without reclaiming the cost from the frontagers?

Suggested answer

(a) [*insert name or location of road, footway or footpath*] is a highway maintainable at public expense; or

(b) *[insert name or location of road, footway or footpath]* is to be adopted as a highway maintainable at public expense under an agreement dated *[insert date of agreement]*, subject to the agreement being fully performed. That agreement is supported by a bond or a bond waiver; or

(c) *[insert name or location of road, footway or footpath]* is to be constructed by a local authority who will reclaim the cost from the frontagers, and will then become a highway maintainable at public expense; *[insert name or location of road, footway or footpath]* is to be adopted by a local authority without reclaiming the cost from the frontagers and will then become a highway maintainable at public expense; or

(d) *[insert name or location of road, footway or footpath]* is private or otherwise not maintainable at public expense, and is not subject to any agreement or decision under which it would become a highway maintainable at public expense.

Notes: *This question requires the inspection of records to reveal whether roads adjoining the property are “adopted” and maintainable at public expense or are subject to an application to become maintainable at public expense. If any roads are not adopted but subject to planned works by the local authority, the search report should state whether the householders will be charged for the work and if so how much, or whether the local authority may adopt the road and complete the works at no cost to the householder (these matters are dealt with in question 2 of form CON 29).*

LAND REQUIRED FOR PUBLIC PURPOSES

6. Is the property included in land required for public purposes?

Suggested answer

(a) Yes *[Insert details of matter and add: Copies of relevant documents may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy];* or

(b) No.

Notes: *This question requires the inspection of records to reveal whether the property, or a part of the property, is affected by planning provisions that provide for the land to be protected from development in the interests of the future needs of a public body or statutory undertaker, e.g. gas, water, sewage, electricity, telecommunications etc. (this matter is dealt with in question 3.1 of form CON 29).*

LAND TO BE ACQUIRED FOR ROAD WORKS

7. Is the property included in land to be acquired for road works?

Suggested answer

(a) Yes *[Insert details of matter and add: Copies of relevant documents may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy];* or

(b) No.

Notes: *This question requires the inspection of records to reveal whether the property, or a part of the property, is affected by road proposals approved by the local authority or notified to it by the Secretary of State and which might involve the compulsory purchase of the property or part of the property (this matter is dealt with in question 3.2 of form CON 29).*

DRAINAGE AGREEMENTS AND CONSENTS

8. Do either of the following exist in relation to the property –

- (a) an agreement to drain buildings in combination into an existing sewer by means of a private sewer; or
- (b) an agreement or consent for a building, or extension to a building on the property to be built over, or in the vicinity of a drain, sewer or disposal main?

Suggested answer

(a) Yes [*Insert details of matter and add: Copies of relevant documents may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy*]; or

(b) No.

Notes: *This question requires the inspection of records to reveal whether there is a consent or agreement for building over or near a drain, sewer or disposal main. Although drainage matters are now dealt with by water companies (see paragraph 8 of Schedule 10 of these Regulations), local authorities may have records on these matters dating from before the privatisation of the water industry and which are not held by the current sewerage undertaker (this matter is dealt with in question 3.3 of form CON 29).*

NEARBY ROAD SCHEMES

9. Is the property (or will it be) within 200 metres of any of the following –

- (a) the centre line of a new trunk road or special road specified in any order, draft order or scheme;
- (b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway;
- (c) the outer limits of construction works for a proposed alteration or improvement to an existing road, involving –
 - (i) construction of a roundabout (other than a mini-roundabout); or
 - (ii) widening by construction of one or more additional traffic lanes;

- (d) the outer limits of –
 - (i) construction of a new road to be built by a local authority;
 - (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; or
 - (iii) construction of a roundabout (other than a mini-roundabout) or widening by construction of one or more additional traffic lanes;
- (e) the centre line of the proposed route of a new road under proposals published for public consultation; or
- (f) the outer limits of –
 - (i) construction of a possible alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway;
 - (ii) construction of a roundabout (other than a mini-roundabout); or
 - (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: *This question requires the inspection of records to reveal whether there are any proposals to construct new roads, or to alter or improve existing roads, in the vicinity of the property that would not necessarily involve the acquisition of the property or any part of it. (This matter is dealt with in question 3.4 of form CON 29).*

NEARBY RAILWAY SCHEMES

10. Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: *This question requires the inspection of records to reveal whether the property lies within 200 metres of a proposed railway, tramway, light railway or monorail (this matter is dealt with in question 3.5 in form CON 29).*

TRAFFIC SCHEMES

11. Has a local authority approved but not yet implemented any of the following for roads, footways and footpaths which abut the boundaries of the property –

- a) permanent stopping up or diversion;
- b) waiting or loading restrictions;
- c) one way driving;
- d) prohibition of driving;
- e) pedestrianisation;
- f) vehicle width or weight restriction;
- g) traffic calming works including road humps;
- h) residents parking controls;
- i) minor road widening or improvement;
- j) pedestrian crossings;
- k) cycle tracks; or
- l) bridge building?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: *This question requires the inspection of records to reveal whether certain changes have been approved by the local authority, but not yet implemented, which affect roads within 200 metres of the property (this matter is dealt with in question 3.6 in form CON 29).*

OUTSTANDING NOTICES

12. Do any statutory notices which relate to the following matters exist in relation to the property other than those revealed in a response to any other enquiry in this Schedule –

- (a) building works;
- (b) environment;
- (c) health and safety;

- (d) housing;
- (e) highways; or
- (f) public health?

Suggested answer

(a) Yes, the relevant proposals are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert the level of fee*] per copy; or

(b) Not so far as is known.

Notes: This question requires the inspection of records to reveal whether there are any current statutory notices under legislation relating to the above matters, other than those covered elsewhere in Part 2 of these Regulations. (This matter is dealt with in question 3.7 in form CON 29).

CONTRAVENTION OF BUILDING REGULATIONS

13. Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in building regulations?

Suggested answer

(a) Yes; or

(b) No

Notes: This question requires the inspection of records to reveal whether the local authority has authorised proceedings for infringement of the building regulations in respect of the property (this matter is dealt with in question 3.8 of form CON 29).

NOTICES, ORDERS, DIRECTIONS AND PROCEEDINGS UNDER PLANNING ACTS

14. Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following –

- (a) an enforcement notice;
- (b) a stop notice;
- (c) a listed building enforcement notice;
- (d) a breach of condition notice;
- (e) a planning contravention notice;
- (f) another notice relating to breach of planning control;
- (g) a listed building repairs notice;

- (h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation;
- (i) a building preservation notice;
- (j) a direction restricting permitted development;
- (k) an order revoking or modifying planning permission;
- (l) an order requiring discontinuance of use or alteration or removal of buildings or works;
- (m) a tree preservation order; or
- (n) proceedings to enforce a planning agreement or planning contribution?

Suggested answer

(a) Yes, the relevant matters are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) No.

Notes: This question requires the inspection of records to reveal action taken or proposed to be taken by the local authority in respect of breaches of planning control affecting the property. The question is intended to reveal subsisting matters so any matter that is defunct or not capable of being enforced can be disregarded (this matter is dealt with in question 3.9 of form CON 29).

CONSERVATION AREAS

15. Do the following apply in relation to the property –

- (a) decision to make the area a conservation area before 31st August 1974; or
- (b) an unimplemented decision to designate the area a conservation area?

Suggested answer

(a) Yes, a decision was taken on [*insert date*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) No

Notes: *This question requires the inspection of records to reveal details of whether the property is within an area designated as a conservation area before 31 August 1974 and therefore subject to any applications and decisions in respect of conservation area consents. Conservation areas designated after this date are local land charges and revealed in the search of the local land charge register that is required under regulation 8(m) of the Regulations. The question also requires the inspection of records to reveal whether the property is within an area that has been designated by resolution of the local authority as a conservation area but not yet registered as a local land charge (these matters are dealt with in questions 3.10 of form CON 29).*

COMPULSORY PURCHASE

16. Has any enforceable order or decision been made to compulsorily purchase or acquire the property?

Suggested answer

(a) Yes, a decision was taken on [insert date] and copies of relevant documents may be obtained from [insert names and addresses of the relevant bodies] at a fee of £[insert level of fee] per copy; or

(b) Not so far as is known.

Notes: *This question requires the inspection of records to reveal whether the local authority has made an enforceable compulsory purchase order or has passed a resolution to make such an order in respect of the property or any part of it (this matter is dealt with in question 3.11 of form CON 29).*

CONTAMINATED LAND

17. Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property) –

- (a) a contaminated land notice;
- (b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990⁽⁵⁾ –
 - (i) a decision to make an entry; or
 - (ii) an entry; or
- (c) consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990⁽⁶⁾ before the service of a remediation notice?

⁽⁵⁾ 1990 c. 43. Section 78R was inserted by section 57 of the Environment Act 1995.

⁽⁶⁾ Section 78G was inserted by section 57 of the Environment Act 1995.

Suggested answer

(a) Yes, the relevant matters are [*insert details*] and copies of relevant documents may be obtained from [*insert names and addresses of the relevant bodies*] at a fee of £[*insert level of fee*] per copy; or

(b) No.

Notes: *This question requires the inspection of the registers of contaminated land and notices in respect of the remediation of contaminated land. The reply should include the following statement – “A negative reply does not imply that the property is free from contamination or from risk of it, and the reply may not disclose steps taken by another council in whose are adjacent or adjoining land is situated.” (This matter is dealt with in question 3.12 of form CON 29).*

RADON GAS

18. Do records indicate that the property is in a “Radon Affected Area” as identified by the Health Protection Agency(7)?

Suggested answer

(a) Yes, it is in an area where 1% or more of homes are estimated to be at or above the Action Level. See the informative paragraph below for further information that sellers are recommended to provide.

(b) No. It is an area where less than 1% of homes are estimated to be at or above the Action Level.

Informative: “Radon Affected Area” means a part of the country with a 1% probability or more of present or future homes being above the Action Level. Such areas are designated by the Health Protection Agency which also advises Government on the numerical value of the “Radon Action Level” (the recommended maximum radon concentration for present homes expressed as an annual average concentration in the home. Radon concentrations above the Action Level should be reduced below it and become as low as reasonably practicable).

The areas are identified from radiological evidence and are periodically reviewed by the Health Protection Agency or its predecessor the National Radiation Protection Board. Existing homes in Affected Areas should have radon measurements. The present owner should say whether the radon concentration has been measured in the property; whether the result was at or above the Action Level and if so whether remedial measures were installed and whether the radon concentration was re-tested to assess the effectiveness of the remedy.

(7) A body established under section 1 of the Health Protection Agency Act 2004 (c. 17).

Radon preventative measures are required for new buildings in higher risk areas. For new properties the builder and/or the owners of properties built after 1988 should say whether protective measures were incorporated in the construction of the property.

Further information on radon, including an indicative version of the radon Affected Areas map, the associated health risks and common questions and answers is available on the Health Protection Agency (HPA) web site (<http://www.hpa.org.uk/radiation/radon/index.htm>). Alternatively information can be requested from HPA by telephone (0800 614529 (24h) or 01235 822622 (D/T)) or by writing to Radon Studies, Health Protection Agency, Radiation Protection Division, Chilton, Didcot, Oxon, OX11 0RQ.

Schedule 10 - Drainage And Water Enquiries

Regulation 8(o) provides that the home information pack must include a search report which complies with both Schedule 8 (General provision on searches and search reports) and Schedule 10, which concerns enquiries on drainage and water matters.

The information described in this Schedule is currently provided in property transactions in response to an application by a buyer's conveyancer to the appropriate company providing water and drainage services using the Law Society application form CON 29 DW (standard drainage and water enquiries).

As with local enquiries, no standard forms have been prescribed or suggested for drainage and water enquiries and responses. Although it should be noted that while the appearance of the drainage and water enquiries and additional authorised or required information may vary, the content of the drainage and water enquiries and responses themselves may not.

Part 1 - General

1 - INTERPRETATION

This contains definitions of terms and expressions used in Part 2 of the Schedule.

2 - ENQUIRIES AND RESPONSES

This provides that a search will only comply with the requirements of regulation 8(o) if it contains the enquiries and the appropriate responses set out in Part 2 of this Schedule. Where the search report reproduces all the enquiries and possible responses, the person preparing the report should delete or strike out the responses that are not appropriate. In some cases, the appropriate response includes words in italics which indicate the information that should be included. In these cases the information in the question must be included but the words in italics may be deleted. Where a response refers to an additional document being included, the document must be attached to the search report.

Part 2 – Enquiries and responses

3 – PUBLIC SEWER MAP

This requires the search report to include an extract of the actual public sewer map unless there are no public sewers in the vicinity of the property, in which case the report should include a statement to this effect. Public sewers are defined as those for which the Water Company holds statutory responsibility under the Water Industry Act 1991. Where a map is provided it should show the location (or expected location if it has not yet been built) of the property and the location of public sewers, disposal mains and lateral drains within the boundaries of the property (*this matter is dealt with in question 1.1 of form CON 29 DW*).

4 – FOUL WATER

This requires the inspection of records to reveal whether or not foul drainage water drains, or will drain, from the property to a public sewer. (*This matter is dealt with in question 1.2 of form CON 29 DW*).

Notes: *Water companies are not responsible for any private drains and sewers that connect the property to the public sewerage system, and do not hold details of these. The property owner will normally have sole responsibility for private drains serving the property and may have shared responsibility, with other users, if the property is served by a private sewer which also serves other properties. These may pass through land outside of the control of the seller and the buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal.*

If foul water does not drain to the public sewerage system the property may have private facilities in the form of a cesspit, septic tank or other type of treatment plant.

5 – SURFACE WATER

This requires the inspection of records to reveal whether or not surface drainage water drains, or will drain, from the property to a public sewer (*this matter is dealt with in question 1.3 of form CON 29 DW*).

Notes: *Water companies are not responsible for private drains and sewers that connect the property to the public sewerage system and do not hold details of these. The property owner will normally have sole responsibility for private drains serving the property and may have shared responsibility with other users, if the property is served by a private sewer which also serves other properties. These may pass through land outside of the control of the seller and the buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal.*

In some cases, water company records do not distinguish between foul and surface water connections to the public sewerage system. If on inspection the buyer finds that the property is not connected for surface water drainage, the property may be eligible for a rebate of the surface water drainage charge. Details can be obtained from the company. If surface water does not drain to the public sewerage system the property may have private facilities in the form of a soakaway or private connection to a watercourse.

6 – PUBLIC ADOPTION OF SEWERS AND LATERAL DRAINS

This requires that records are inspected to reveal whether any sewers or lateral drains serving the property are or will be adopted (*this matter is dealt with in question 1.4 of form CON 29 DW*).

Notes: *This enquiry is of interest to purchasers of new homes who will want to know whether or not the property will be linked to a public sewer. Where the property is part of a very recent or ongoing development and the sewers are not the subject of an adoption application, buyers should consult with the developer to ascertain the extent of private drains and sewers for which they will hold maintenance and renewal liabilities. Final adoption is subject to the developer complying with the terms of the adoption agreement under Section 104 of the Water Industry Act 1991.*

7 – PUBLIC SEWERS WITHIN THE BOUNDARY OF THE PROPERTY

This requires that the public sewer map is inspected to reveal whether any public sewer, disposal main or lateral drain is within the boundaries of the property (*this matter is dealt with in question 2.1 of form CON 29 DW*).

Notes: *The presence of a public sewer within the boundary of the property may restrict further development. The water company has a statutory right of access to carry out work on its assets, subject to notice. This may result in employees of the water company or its contractors needing to enter the property to carry out work.*

Sewers indicated on the extract of the public sewer map as being subject to an agreement under section 104 of the Water Industry Act 1991 are not an “as constructed” record. It is recommended that these details are checked with the developer.

8 – PUBLIC SEWERS NEAR TO THE PROPERTY

This requires that the public sewer map is inspected to reveal whether there is a public sewer within 30.48 metres (or 100 feet) of any buildings within the property (*this matter is dealt with in question 2.2 of form CON 29 DW*).

Notes: *The presence of a public sewer within 30.48 metres (100 feet) of the building(s) within the property can result in the local authority requiring a property to be connected to the public sewer. The measure is estimated from the Ordnance Survey record, between the building(s) within the boundary of the property and the nearest public sewer.*

Sewers indicated on the extract of the public sewer map as being subject to an agreement under section 104 of the Water Industry Act 1991 are not an “as constructed” record. It is recommended that these details are checked with the developer.

9 – BUILDING OVER A PUBLIC SEWER, DISPOSAL MAIN OR DRAIN

This requires an inspection of records to determine whether the sewerage undertaker has approved (by legal agreement or otherwise) or been consulted about any plans to build over or near a public sewer, disposal main or drain (*this matter is dealt with in question 2.3 of form CON 29 DW*).

Notes: *Buildings or extensions erected over a sewer in contravention of building controls may have to be removed or altered. See also paragraph 8 of Schedule 9 to this Schedule in connection with agreements and consents by local authorities.*

10 – MAP OF WATERWORKS

Paragraph 10 requires a copy of an extract from the map of waterworks where relevant. Where such a map is provided it should show where the property is, or will be, situated and the location of any water mains, resource mains or discharge pipes within the property (*this matter is dealt with in question 3.1 of form CON 29 DW*).

Notes: *The “water mains” in this context are those which are vested in and maintainable by the water company under statute. Water companies are not responsible for private supply pipes connecting the property to the public water main and do not hold details of these. These may pass through land outside of the control of the seller, or may be shared with adjacent properties. The buyer may wish to investigate whether separate rights or easements are needed for their inspection, repair or renewal. If an extract of the map of waterworks is provided it will show known public water mains in the vicinity of the property. It should be possible to estimate the likely length and route of any private water supply pipe connecting the property to the public water network.*

11 – ADOPTION OF WATER MAINS AND SERVICE PIPES

Paragraph 11 requires an inspection of records to determine whether any water main or service pipe serving or proposed to serve the property has been or will be adopted (*this matter is not currently dealt with in form CON 29 DW*).

Notes: *This enquiry is of interest to purchasers of new homes who will want to know whether or not the property will be linked to the mains water supply.*

12 – SEWERAGE AND WATER UNDERTAKERS

Paragraph 12 requires the report to state the names and addresses of the companies responsible for sewerage and water supply (*this matter is currently dealt with in question 3.2 in form CON 29 DW*).

13 – CONNECTION TO MAINS WATER SUPPLY

Paragraph 13 requires an inspection of records to determine whether the property is connected to the mains water supply and, if so, the name and address of the water company that provides the water supply (*this matter is currently dealt with in question 3.3 in form CON 29 DW*).

14 – WATER MAINS, RESOURCE MAINS OR DISCHARGE PIPES

Paragraph 14 requires an inspection of the map of waterworks to determine whether there are any water mains, resource mains or discharge pipes within the boundaries of the property (*this matter is currently dealt with in question 3.4 in form CON 29 DW*).

Notes: *The presence of a public water main within the boundary of the property may restrict further development within it. Water companies have a statutory right of access to carry out work on their assets, subject to notice. This may result in employees of the company or its contractors needing to enter the property to carry out work.*

15 – CURRENT BASIS FOR SEWERAGE AND WATER CHARGES

Paragraph 15 requires an inspection of records to determine the current basis for charging for sewerage and water services (*this matter is currently dealt with in question 4.1 in form CON 29 DW*).

16 – CHARGES FOLLOWING CHANGE OF OCCUPATION

Paragraph 16 requires an inspection of records to determine whether the charging arrangements for sewerage and water services will change as a consequence of a change in occupation (*this matter is not currently dealt with in form CON 29 DW*).

Notes: *This is a new question and is designed to reveal whether, for example, the water company intends to change to a metered supply following a change in occupation.*

17 – SURFACE WATER DRAINAGE CHARGES

Paragraph 17 requires the inspection of records to determine whether or not surface water charges are, or will be, payable for the property (*this matter is currently dealt with in question 4.2 in form CON 29 DW*).

Notes: *Where surface water from a property does not drain to the public sewerage system no surface water drainage charges are payable. Where surface water charges are payable but upon inspection the property owner believes that surface water does not drain to the public sewerage system, application can be made to the water company to end surface water charges.*

18 – WATER METERS

Paragraph 18 requires the inspection of records to reveal whether the property is fitted with a water meter and if so where the meter is or will be located (*this matter is currently dealt with in question 4.3 in form CON 29 DW*).

19 – SEWERAGE BILLS

Paragraph 19 requires the report to provide details of the company responsible for charging for sewerage services or, where appropriate, that the property is not billed for sewerage services (*this matter is currently dealt with in question 4.4 in form CON 29 DW*).

20 – WATER BILLS

This requires the report to provide details of the company responsible for charging for water services or, where appropriate, that the property is not billed for water services (*this matter is currently dealt with in question 4.4 in form CON 29 DW*).

Notes: *The preceding two questions are dealt with together in CON 29 DW but separately in these Regulations. The company supplying water or sewerage services may arrange billing via an alternative company under some circumstances.*

21 – RISK OF FLOODING DUE TO OVERLOADED PUBLIC SEWERS

Paragraph 21 requires the inspection of records to reveal whether the property is at risk of flooding as a result of an overloaded public sewer, has flooded as a result of an overloaded public sewer or is not recorded as being at risk of flooding for this reason (*this matter is currently dealt with in questions 5.1 and 5.2 in form CON 29 DW*).

Notes: *A sewer is “overloaded” when the flow from a storm is unable to pass through it due to a permanent problem (e.g. flat gradient, small diameter). Flooding as a result of temporary problems such as blockages, siltation, collapses and equipment or operational failures are excluded.*

“Internal flooding” from public sewers is defined as flooding which enters a building or passes below a suspended floor. For reporting purposes, buildings are restricted to those normally occupied and used for residential, public, commercial, business or industrial purposes.

“At Risk” properties are those that the water company is required to include in the Regulatory Register that is reported annually to the Director General of Water Services. These are defined as properties that have suffered or are likely to suffer internal flooding from public foul, combined or surface water sewers due to overloading of the sewerage system more frequently than the relevant reference period (either once or twice in ten years) as determined by the Company’s reporting procedure.

Flooding as a result of storm events proven to be exceptional and beyond the reference period of one in ten years are not included on the At Risk register. Properties may be at risk of flooding but not included on the Register where flooding incidents have not been reported to the Company.

22 – RISK OF LOW WATER PRESSURE OR FLOW

Paragraph 22 requires the inspection of records to reveal whether the property is at risk of receiving low water pressure or flow. Where there is such a risk, a report should be provided explaining what action has been taken or is proposed. Where there is no recorded risk the reply should say so (*this matter is currently dealt with in questions 6.1 and 6.2 in form CON 29 DW*).

Notes: *“Low water pressure” means water pressure below the regulatory reference level which is the minimum pressure when demand on the system is not abnormal.*

Water Companies are required to include in the Regulatory Register that is reported annually to the Director General of Water Services properties receiving pressure below the reference level, provided that allowable exclusions do not apply (i.e. events which can cause pressure to temporarily fall below the reference level).

23 – WATER QUALITY ANALYSIS

Paragraph 23 requires the inspection of records to reveal details of the most recent water quality analysis made by the water undertaker (*this matter is currently dealt with in question 7.1 in form CON 29 DW*).

Notes: *Water companies have a duty to provide wholesome water that meets the standards of the Water Supply (Water Quality) Regulations 2000. However, the householder is responsible for any deterioration in water quality that is a result of the domestic distribution system (the supply pipe and the plumbing within the property) that results in the standards not being met.*

24 – WATER QUALITY STANDARDS

Paragraph 24 requires the inspection of records to reveal details of any authorised departures from the standards of water supply (*this matter is currently dealt with in question 7.2 in form CON 29 DW*).

Notes: *Authorised departures are not permitted if the extent of the departure from the standard is likely to constitute a potential danger to human health.*

25 – SEWAGE TREATMENT WORKS

Paragraph 25 requires that an inspection of the records is undertaken to reveal the distance between the property and the nearest sewage treatment works (*this matter is currently dealt with in question 8.1 in form CON 29 DW*).

Notes: *The nearest sewage treatment works will not always be the sewage treatment works serving the catchment within which the property is situated.*

Schedule 11 – Additional Relevant Information

Regulation 9 describes the information that is authorised for inclusion in the home information pack. Regulation 9(n) provides that this includes information relating to any matters described in Schedule 11 that would be of interest to a potential buyer. These matters are information on:

- the property's contents, fixtures and fittings;
- communications from Land Registry relating to the property;
- equitable interests in the property;
- rights of access to or over the property, or land outside the property;
- rights of access to or over any ancillary land to the property, including obligations to maintain such land; or whether any payments for maintaining such land are outstanding;
- obligations to maintain the boundaries of the property;
- communications from any public authority or person with statutory functions, that affect or might affect the property, including whether any request made by them (under any enactment or otherwise) has been complied with;
- the acquisition of any land by a public authority or person with statutory functions that affects or might affect the property;
- standards of safety, building, repair or maintenance to which the property, its contents or the building in which it is situated ought to comply, and whether such standards have been complied with;
- the property's suitability or potential suitability for occupancy by a disabled person;
- the energy performance of the property;
- alterations or other works relating to the property and whether any necessary permissions for such alterations or works have been obtained; and relevant consultations have been conducted;
- use or occupation of the property or use or occupation of other premises which affects or might affect the property;
- insurance policies, warranties, certificates or guarantees for the property or its contents;

- utility services connected to the property;
- potential or actual environmental hazards that might affect the property or its occupants; or
- taxes, levies or charges relating to the property.

In particular, these provisions authorise the inclusion of the suggested home contents and home use standard forms (available at www.communities.gov.uk/homeinformationpacks), or similar forms.