

EXECUTIVE NOTE

The Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 S.S.I. 2008/76

1. The above instrument is being made in exercise of powers conferred by sections 99(2), 104(1) to (3), and 105 of the Housing (Scotland) Act 2006. The instrument is subject to the affirmative resolution procedure.

Policy objectives and background

2. The Housing (Scotland) Act 2006 (“the 2006 Act”) received Royal Assent in January 2006. Part 3 of the Act ‘Provision of Information on Sale of House’ introduces a new requirement for specified information to be provided in prescribed documents when a house is being marketed for sale in Scotland. It gives powers to Ministers to make regulations specifying the prescribed documents and certain other details of the process for preparing and providing them. These regulations prescribe two documents that will form a ‘Home Report’. These two documents are a Single Survey (including an Energy Report) and a Property Questionnaire.
3. The Single Survey is being introduced to address three main objectives identified by the Housing Improvement Task Force in its final report, ‘Stewardship and Responsibility’, published in 2003:
 - provide better information about the condition of properties to house sellers and buyers;
 - remove the need for multiple surveys and valuations; and
 - address the setting of artificially low asking prices.
4. Proposals for the Housing (Scotland) Bill were outlined in the consultation paper ‘Maintaining Houses, Preserving Homes’ which was published in July 2004. Over 70 per cent of respondents to the consultation paper agreed that Ministers should have powers to introduce a Single Survey, with most of these respondents saying that the powers should be used only if the market did not adopt the survey voluntarily.
5. A poor response to a market-led Single Survey pilot gave a clear indication that the market could not deliver a voluntary introduction of the scheme where there were limited incentives for the seller to participate. In March 2005, Ministers from the previous administration decided to conclude the pilot and pursue the introduction of a compulsory system using the powers proposed in the Housing (Scotland) Bill.
6. In February 2007, a consultation paper on draft regulations about the Single Survey and Property Questionnaire was published. A report on responses to the consultation was published by Communities Scotland in August 2007.

Purpose

7. The purpose of this instrument is to make provisions, using the powers in the 2006 Act, to allow the Single Survey to be introduced to the house buying and selling system in Scotland on a compulsory basis. The instrument provides that the two prescribed

documents are a Single Survey (including an Energy Report) and a Property Questionnaire. Sellers or their agents will be required by section 99 of the 2006 Act to provide a Single Survey and a Property Questionnaire to prospective purchasers on request when a house is marketed for sale.

8. Section 99(2) of the 2006 Act allows Scottish Ministers to set the maximum time allowed for compliance with a request by a prospective purchaser for a copy of any or all of the prescribed documents in relation to a house. This instrument provides that this “permitted period” is 9 calendar days.
9. Section 104 of the 2006 Act allows Scottish Ministers to prescribe documents for the purposes of sections 98, 99(1) or 101(2), and to make provision about those documents as they see fit. The Single Survey is specified in Schedule 1 to this instrument and the Property Questionnaire is at Schedule 2.
10. Section 104(3) of the 2006 Act allows the Scottish Ministers to make provision that a prescribed document be prepared by a person of a description to be specified in regulations. The instrument specifies that persons who may prepare the prescribed document set out in Schedule 1 are surveyors registered with or authorised to practice by the Royal Institution of Chartered Surveyors or other persons with similar professional qualifications. Further groups could be added in amending regulations at a later stage. Ministers will assess requests from such groups against published criteria. The person who may prepare the prescribed document set out in Schedule 2 is the seller or a person nominated by the seller.
11. Based on powers in section 104(3), the instrument specifies that the date to which information in a prescribed document relates must be no earlier than 12 weeks before the house was put on the market. This is to prevent the repeated use of an out of date Single Survey or Property Questionnaire. A seller may also withdraw the property from the market and return it to the market within 28 days using the same prescribed documents.
12. Under section 105 of the 2006 Act, the instrument exempts sellers from the duty to have or provide information where the property being marketed falls within one or more of the following categories:
 - portfolio of two or more houses (disregarding ancillary houses such as certain ‘granny flats’ and lodges) as such sales are deemed to be a commercial sale;
 - seasonal and holiday accommodation which is restricted by planning conditions to be occupied for less than 11 months in any 12 month period and to be used only for holiday accommodation;
 - mixed sales where a house is sold with one or more non-residential properties (provided the seller does not intend to accept an offer to buy the residential property in isolation from the non-residential property);
 - dual use of a property where the house is or forms part of a property most recently used for both residential and non-residential purposes;

- unsafe properties where a house is unoccupied, whose condition poses a serious risk to the health or safety of its occupants or visitors;
- new housing which has not previously been used or occupied as a house or as any other premises;
- properties to be demolished where the dwelling-house which is or forms part of the property is suitable for demolition, all the necessary consents have been obtained for demolition and consents have been obtained for redevelopment; and
- premises which have recently been converted to a house.

Consultation

13. A consultation paper “Better Information For House Sales: Consultation on Regulations” was published by Communities Scotland on 20th February 2007. A report on the responses to the consultation titled “Consultation on regulations to give better information for house sales: A report on responses” was published in August 2007. The most significant of the changes suggested was in relation to exemptions from the duty to provide the Single Survey and Property Questionnaire, particularly for new build houses. Consultees also made a range of comments on technical aspects of implementing the Single Survey and Property Questionnaire which do not have a direct bearing on the contents of the regulations themselves.

Financial Effects

Scottish Government

14. In order to inform the public and businesses of the steps that should be taken concerning the introduction of the Single Survey and Property Questionnaire in late 2008, the Scottish Government will establish a communications and publicity programme in advance of the regulations coming into force. Costs in the region of £500,000 are expected to be incurred during 2008/09.

Local Authorities

15. Local authority trading standards departments will face minor costs for investigating and enforcing the new requirements for provision of information to prospective house-buyers. The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) has estimated these as £46,000 per year.

Buyers and sellers of houses in Scotland

16. As the duty introduced by the Housing (Scotland) Act 2006 to possess and provide the prescribed documents rests with house sellers, and as analysis in the Regulatory Impact Assessment shows, they will face an additional average cost of between £360 and £520 per transaction. However, a majority of sellers (estimated at 87% in 2005 of all house transactions) will be moving property and will benefit as a buyer. The Regulatory Impact Assessment concludes that the total transaction cost will increase by between £60 and £310 per property. The additional cost should be balanced against the benefits of the

Single Survey and the Property Questionnaire. It is likely to be the case that in a competitive market, sellers are offered a range of payment options with regard to the survey fee, including paying an upfront fee using a debit or credit card, deferred payment until the property is sold, or a number of consumer finance options.

17. The introduction of the Single Survey should reduce the occurrence of buyers instructing multiple surveys for properties. The Regulatory Impact Assessment estimates that buyers' transaction costs will be reduced by an average of between £210 & £300 although survey costs may vary with the price, age and other property characteristics. First time buyers will get a Single Survey free and will not suffer unnecessary wasted expense on surveys for properties that they have unsuccessfully submitted an offer for. Based on 2005 market share, it is estimated that first time buyers will experience a first-round gross transaction cost saving of between £7.25m and 10.35m.

Surveyors

18. Total demand for residential surveying work will increase and the trend towards offers subject to survey will end with a higher value survey carried out instead. Recent research estimates that the annual spend on surveying fees will rise from between £25m and £40m to between £57.6m and £83.2m.

Solicitors and estate agents

19. There may be additional costs for solicitors and estate agents who have to commission a Single Survey and Property Questionnaire. The Property Questionnaire has been designed to speed up the conveyancing process and will be completed by the seller of the property which means there should be no net cost. It is expected that any net costs for handling the Single Survey, will be passed onto the consumer. It is expected that solicitors and estate agents will be able to pass most, if not all, of any additional costs back to the parties involved in the sale of the house. In a competitive market, some solicitors may decide to absorb a small proportion of the costs.

Mortgage lenders

20. This instrument has no financial implications for mortgage lenders. Lenders will continue to choose which surveyors are considered acceptable to provide mortgage valuations through the continued operation of lenders' panels. The survey information received by lenders in relation to the house will be the same information in the same format as they currently receive. However, the information provided will be of higher quality as it will be based on a more thorough inspection of the property.