

EXPLANATORY MEMORANDUM TO
THE HOME INFORMATION PACK (AMENDMENT) REGULATIONS 2007

2007 No. 3301

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

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

2. **Description**

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

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

- 3.1 None

4. **Legislative Background**

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

- 4.2 Under Part 5 of the Housing Act 2004 a “responsible person” (a seller and/or estate agent) is required to have in their possession a home information pack when marketing a property for sale with vacant possession (see sections 151 to 153 of the Act). The home information pack must comply with the requirements of the principal Regulations (by virtue of section 155) and a responsible person will be required to provide a copy of the home information pack to a potential buyer on request (under section 156). Part 5 of the Act is being brought into force on a phased basis by a series of commencement orders, described further in section 7 below.

- 2.2 The principal Regulations prescribe the content of home information packs among other related matters.

- 4.3 The amendments made by these regulations extend the temporary measures relating to the first day marketing in the principal Regulations. They are necessary because of the later than expected commencement of Part 5 of the Housing Act 2004 and in response to delays in the production of guidance to local authorities dealing with access to and charging for search information. The amendments also make further temporary provision dealing with leasehold information and make minor amendments relating to the transfer of functions from the National Assembly for Wales to Welsh Ministers.

4.4 The amendments are required to ensure a smooth roll out of Home Information Packs to all properties, for both industry and consumers, by extending the temporary provisions allowing marketing without a pack, providing the required documents have been requested.

5. Territorial Extent and Application

This instrument applies in England and Wales. Under section 250(3) of the 2004 Act, the Secretary of State must consult Welsh Ministers before making any regulations under Part 5 which relate to residential properties in Wales, and has done so.

6. European Convention on Human Rights

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

7. Policy background

7.1 Detail of the Department's policy objectives and expected benefits for HIPs are covered in more detail as part of the explanatory memorandum to the Home Information Pack (No.2) Regulations 2007. This memorandum draws particular attention to the changes given effect by these amendments and why they have been made at this time.

Phased introduction of home information packs

7.2 In order to ensure the smooth introduction of HIPs, Part 5 of the Housing Act is being commenced on a phased basis, according to the size of the property, measured by the number of bedrooms.

7.3 The Government set out three criteria for the roll out of HIPs to all properties as part of the 11 June Implementation Update:

a) whether sufficient home inspectors (HIs) and domestic energy assessors (DEAs) have been certificated or accredited to meet demand;

b) whether the regional distribution of HIs and DEAs will ensure an adequate supply of EPCs; and

c) in assessing a) and b), taking account of the lessons learned from the operation of HIPs.

7.4 The Housing Act 2004 (Commencement No. 8) (England and Wales) Order 2007 (SI 2007/1668) commenced Home Information Packs for those properties with four or more bedrooms from 1 August 2007. Commencement of HIPs for properties with three bedrooms from 10 September 2007 was announced once we met each of the criteria and was given effect in the Housing Act 2004 (Commencement No. 9) (England and Wales) Order 2007 (SI 2007/2471).

- 7.5 There are now enough DEAs both nationally and regionally to carry out EPCs for all properties. We are now satisfied that it will be possible to roll out HIPs to 1 and 2 bedroom properties having taken account of the lessons learnt from earlier roll outs.
- 7.6 A commencement order will be made following these Regulations, commencing the HIP duties for all existing properties from 14th December.

Extending the temporary first day marketing provision

- 7.7 Regulation 34 of the principal Regulations allows for marketing to begin without a HIP where all those documents required for inclusion in the HIP have been commissioned and are expected to arrive within 28 days.
- 7.8 This temporary measure was introduced to ensure that capacity issues surrounding domestic energy assessors at the time, did not impact unduly on the introduction of the HIP. It also served the purpose of allowing industry and consumers a period to 'bed in' the HIP duties.
- 7.9 The commencement of the next phase of HIPs for those properties with fewer than 3 bedrooms (other than those to which Regulation 17C of the Building Regulations applies) will occur on 14th December 2007. In order to provide a sufficient bedding in period for the industry and consumers involved in transactions with those properties, the decision was made to extend the temporary period until 1 June 2008.

Introducing a temporary provision on leasehold

- 7.10 Regulation 8(h) and Schedule 5(1) and (2) of the principle Regulations require a number of leasehold documents to be included in the Home Information Pack.
- 7.11 These documents were included in the HIP to help reduce failure rates in leasehold sales and reduce the impact on the chain of delays in obtaining leasehold information by requiring the information to be provided up front. However, a number of concerns have been expressed over the delays and additional cost in obtaining leasehold documents, particularly those from managing agents and landlords. Recent evidence suggests that there may be some issues with obtaining some leasehold documents for the HIP. However, more work is needed before we can verify the extent of any problem around costs.
- 7.12 For a temporary period until 1 June 2008 the lease will be retained as a required document and all other leasehold documents required by the regulations will become authorised for inclusion in the pack.
- 7.13 The intention of these amendments is to enable the leasehold documents to be included in the pack where they are readily available while removing the risk of excessive cost being levied on the seller.

7.14 The lease should be readily available from the Land Registry (where properties are registered) and therefore is therefore not subject to the same concerns over cost. This will therefore be retained as a required document.

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

7.15 The Select Committee on the Merits of Statutory Instruments has three times reported on the policy issues raised by these Regulations:

- In its 24th Report of Session 2006-07, the Committee drew the Home Information Pack Regulations (No.2) 2007 to the special attention of the House on the ground that they may imperfectly achieve their policy objective.
- In its 18th Report of Session 2006-07, the Committee drew the Home Information Pack Regulations 2007 to the special attention of the House on the ground that they may imperfectly achieve their policy objective. Before doing so, the Committee heard oral evidence from Departmental officials.
- In its 39th Report of Session 2005-06, the Statutory Instruments Merits Committee drew the Home Information Pack Regulations 2006 Regulations to the special attention of the House on the ground that they gave rise to issues of public policy likely to be of interest to the House.

7.16 In relation to the 24th Report of Session 2006-07, the Committee recognised that the department had responded to the concerns expressed both in and outside of Parliament in revoking and relaying the regulations. They also welcomed the decision to consult further on the age of the Energy Performance Certificate. This consultation will be published shortly. Further information on the regulations was provided in a letter from Baroness Andrews to the Committee and published as part of the 24th report.

Consultation

7.17 Full details of the Department's consultation on home information pack policy is given in the explanatory memorandum to the Home Information Packs (No.2) Regulations 2007.

7.18 The latest amendments to the regulations extend the temporary provisions set out in regulation 34 and Paragraph 4 of Schedule 6 of the principal Regulations. These provisions are intended to remain temporary, so do not represent a policy change and therefore no further formal consultation has taken place.

7.19 Informal consultation has continued with industry, including in relation to first day marketing and searches. This has been used to inform our decisions on the amendments made in these regulations.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

9. Contact

Steven Daniels at the Department of Communities and Local Government Tel: 0207 944 4168 or e-mail: steven.daniels@communities.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Home Information Pack (Amendment)	
Stage: Final	Version: 1	Date: 21 November
Related Publications: Home Information Pack (Amendment) Regulations 2007		

Available to view or download at:

<http://www.homeinformationpacks.gov.uk>

Contact for enquiries: James Wiltshire

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

This Impact Assessment considers two temporary amendments to the Home Information Pack (No. 2) Regulations 2007:

- Extending the end of the temporary "First Day Marketing" period from 1 January 2008 to 1 June 2008.
- Introducing a temporary provision through which all required leasehold documents save for the lease will no longer be required. These same documents will become, for this same limited period, authorised for inclusion in the pack.

To ensure a smooth introduction HIPs are being commenced on a phased basis, according to the size of the property, measured by the number of bedrooms. To further enable both industry and consumers to adapt to the new duties, the Home Information Pack (No. 2) Regulations 2007 also contain a number of transitional arrangements.

HIPs were introduced for homes with 4 or more bedrooms on 1 August 2007 and were extended to 3 bedroom properties on 10 September 2007. The Department has been monitoring consumer reaction and the market effect of these initial phases of roll out. As a consequence of the unusual and unexpected financial market over recent months it has been even more important to make sure that systems are working before extending the HIPs duties to other homes.

HIPs will apply to other homes (excluding newly built properties) from 14 December 2007. However, in order to ensure the continued smooth operation of Home Information Packs, transitional arrangements are being put in place for a bedding-in period until 1 June 2008.

What are the policy objectives and the intended effects?

The transitional measures considered in this Impact Assessment have two purposes:

- to continue to ensure the smooth introduction of Home Information Packs.
- to provide a period of flexibility in respect of the requirement of leasehold information whilst current concerns over the availability and costs of certain leasehold information are assessed.

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

Two options are considered:

- Do nothing (reference case)
- Extend existing transitional arrangements

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

The Department has been monitoring the introduction of HIPs carefully and will continue to do so. The Government will carry out an assessment of how well HIPs are working and to determine what, if any, further action is required to maximise the impact of the packs.

Ministerial Sign-off:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Yvette Cooper
November 2007

Date: 22nd

Summary: Analysis & Evidence

Policy Option: Amend	Description: Transitional Arrangements
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COSTS	ANNUAL COSTS		Description and scale of key non-monetised costs by 'main affected groups' Where buyers place an offer before a HIP has been compiled, they will miss out on the benefits of up-front information on which to base their decision to purchase. However, this information will still be available earlier in the transaction process than at present and so should still help reduce delays.
	One-off (Transition)	Yrs	
	£ n/a	0.5	
	Average Annual Cost (excluding one-off)		
	£		
Total Cost (PV)		£	

BENEFITS	ANNUAL BENEFITS		Description and scale of key non-monetised benefits by 'main affected groups' The temporary measures will ensure smooth implementation of HIPs to remaining properties, allowing consumers and industry to adapt to the new duties.
	One-off (Transition)	Yrs	
	£ n/a	0.5	
	Average Annual Benefit (excluding one-off)		
	£		
Total Benefit (PV)		£	

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	Trading Standards
What is the total annual cost of enforcement for these	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	
Will the proposal have a significant impact on competition?	

First Day Marketing

The “First Day Marketing” principle

1. First Day Marketing is a transitional arrangement which allows homeowners to market their property without a HIP until an EPC can be obtained. The seller is obliged to obtain an EPC as soon as possible.

Costs and Benefits of Extending the First Day Marketing Provision

2. The First Day Marketing measure is designed to allow both industry and consumers to adapt to the HIPs duties and to ensure that no homeowner is prevented from marketing their property under the new system until the arrangements are fully operational and have settled.
3. Early evidence from the introduction of HIPs for 3 bedroom properties and larger suggests that, in most cases, packs are being produced in 7 to 10 working days and the majority are prepared in under 15 days.
4. This evidence indicates that the first two phases of roll-out have been smooth and there is no reason to expect this to be different when the HIP duties are applied to smaller properties. Nonetheless, the Government is keen to extend the transitional arrangements for a further 6 months so that sellers of 1 and 2 bedroom properties can benefit from this ‘bedding-in’ period and to ensure that, should any teething problems arise, they do not cause disruption to the housing market.
5. As a result of first day marketing, it is likely that some potential buyers will not have access to a Home Information Pack when viewing a property which they are interesting in buying.
6. In a limited number of cases, they may decide to place an offer before the HIP has been produced in order to avoid missing out on the potential purchase. To the extent that this is the case, first day marketing will undermine the principle of providing potential home buyers with more information on which to base their purchasing decision.
7. The Baseline research, carried out in 2006, found that, typically, a property is on the market for 55 days before an offer is accepted¹. Recently published data from RightMove show Time on the Market at 85 days², reflecting a slower market in the light of a number of interest rate rises since the Baseline study was carried out, as well as recent uncertainty in the financial markets.
8. These data suggest that, while some home buyers will not benefit fully from the information contained in the pack when deciding when to place an offer

¹ HIP Baseline Research, pp29

² Rightmove House Price Index, October 2007

on a property, in view of the average time a property is on the market, particularly given current market conditions, the number of consumers affected is likely to be minimal.

9. Moreover, the evidence strongly suggests that in all cases the full pack should be available much earlier in the transaction process than the comparable information would have been prepared under the pre-HIPs system, meaning that all consumers should benefit from the quicker conveyancing process that HIPs is expected to deliver.

Leasehold

10. Regulation 8 (h) and Schedule 5 (1) and (2) of the Home Information Pack (no.2) Regulations require a number of leasehold documents to be included in the Home Information Pack.
11. The inclusion of these in the HIP is intended to provide up front information on leasehold to buyers and so to help reduce failure rates in leasehold sales.
12. The Area Trials revealed that there can be delays in compiling this documentation. In order to prevent delays in preparing Home Information Packs and to ensure that consumers benefit from the information provided by the other pack components, Regulation 17 allows up to 28-days for leasehold to be provided.
13. In addition to the concern about delay, a concern has been expressed that, for some leaseholders, leasehold documents are proving hard to obtain and high charges are being requested – in extreme cases up to £250. These problems apply in the current market even without HIPs in place. However, more work needs to be carried out on the extent of the problem and how it will interact with HIPs.

Temporary Leasehold Provision

14. In order to ensure smooth implementation and carry out further work we propose to allow a period of flexibility in respect of leasehold information required in HIPs. For a temporary 6 month period until 1 June 2008 the lease will be a required component of the Packs for all leasehold properties. The remaining documents specified in the principal Regulations will become, for this same limited period, authorised for inclusion in the pack. The lease is readily available from the Land Registry and not subject to the same concerns over cost. This will allow HIPs for one and two bedroom properties to bed down while further work is done.

Costs and Benefits of Temporary Leasehold Provision

15. Transactions involving leasehold properties are often held up by delays in obtaining leasehold information. Providing this information in a HIP is intended to eliminate these delays and also help reduce the number of transactions that fall through because of information regarding the lease coming to light at a late stage. It is recognised that where this information is not included up front, these benefits will not be maximised during the time that the temporary provision is in force.

16. However, the temporary provision is intended to protect owners of leasehold properties from facing additional and unreasonable costs, while additional evidence is collected into the extent of this problem.

Conclusion

17. As set out in the preceding analysis the impact arising from the short-term extensions to the transitional First Day Marketing arrangement is estimated to be minimal.
18. It is not possible to accurately quantify the costs and benefits deriving from the temporary leasehold arrangements, in view of the need for improving evidence in this area. However, the measures adopted will ensure that HIPs preparation will not be unduly delayed and that consumers would not face potentially high charges for leasehold documents, and they will reinforce the extension to the First Day Marketing in ensuring the smooth introduction of HIPs for smaller properties.
19. Other costs and benefits associated with Home Information Packs, as set out in the Impact Assessment that accompanied the Home Information Pack (No.2) regulations are not affected by these amendments.