



# Home Information Packs: a short history

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Home Information Packs (HIPS) were introduced by the previous Labour Government in response to research that identified specific problems with the conveyancing process in England and Wales. Specifically, the process was found to be slow by international standards with a high level of failed transactions. By introducing HIPS it was hoped that the provision of more information at the start of the process would reduce the time between making an offer and completing a sale.

Legislation to enable the provision of HIPS was included in the *2004 Housing Act* but the full implementation of HIPS did not take place until April 2009. Even at this point, the exclusion of Home Condition Reports from packs had led some previously supportive consumer organisations to dismiss their usefulness.

On taking power the Coalition Government acted quickly to suspend the need to have a HIP before marketing a property. Provisions to achieve the “outright abolition of Home Information Packs” are expected in the forthcoming *Decentralisation and Localism Bill*.

This paper provides background information on the introduction of HIPS and a chronology of key developments during their long implementation period up to their suspension in May 2010

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## Summary

Prior to forming a Government in 1997 the Labour Party expressed an interest in reforming the home buying process. A pre-election consultation paper had argued for the abolition of gazumping. Once in power, the focus shifted when it was recognised that gazumping affected less than 1% of transactions. The then Government set in motion a root and branch review of the whole buying and selling process to identify problem areas and develop solutions. Research was commissioned covering more than 2,000 consumers and professionals.

The main problem identified by the research was that important information needed to inform buyers' decisions only became available after terms had been negotiated and agreed. The ultimate outcome was a decision to introduce Home Information Packs (HIPs, originally referred to as Seller's Packs). The rationale behind HIPs was that the provision of more information at the start of the house buying/selling process would speed things up and reduce the window of opportunity for gazumping (where a seller accepts a higher offer very close to exchange of contracts) or gazundering (where a buyer demands a reduction in price very close to exchange of contracts).

HIPs, as originally conceived, were to be made up of a pack of documents including standard searches, evidence of title, a Home Condition Report (HCR), an Energy Performance Certificate (EPC) and, for leasehold properties, a copy of the lease. Sellers had to have a HIP prepared before marketing a property which would be made available to prospective buyers. Most of the documents in the HIP would have been produced at some point during the conveyancing process – the new system brought forward the point at which they were produced and placed the responsibility for commissioning (and paying for) certain documents on the seller.

Measures to provide for HIPs were originally contained in Part 1 of the *Homes Bill 2000-01*. The Bill made progress but fell for lack of time before the 2001 General Election. Information on issues raised during consideration of the *Homes Bill* can be found in a Library note, *Seller's packs: issues raised during debates on The Homes Bill 2000-01*.

In the 2002 Queen's Speech the then Government announced that a draft Housing Bill would be published to "introduce sellers' packs to the home buying and selling process, so that the information needed by a potential purchaser is available when the property is marketed." The draft Bill was published in March 2003 and was subject to pre-legislative scrutiny by the Office of the Deputy Prime Minister (ODPM): Housing, Planning, Local Government and the Regions Select Committee. Measures to introduce HIPs were then included in Part 5 of the *Housing Bill 2003-04*.

The *Housing Act 2004* received Royal Assent on 18 November 2004. HIPs were due to become mandatory from 1 June 2007 but in the event they were phased in for different property sizes from 1 August 2007. They were extended to apply to all properties from 14 December 2007. The phased introduction was a response to the lack of trained energy assessors in post on 1 August 2007.

Aside from the phased introduction, some significant changes to the nature and implementation of HIPs were made in the period between November 2004 and April 2009. Significantly, the requirement to include a Home Condition Report (HCR) in the HIP was dropped in July 2006. It was decided that HCRs would be phased in on a market-led basis "in order to ensure a smooth implementation with clear benefits for consumers". Dropping HCRs as a mandatory part of the packs resulted in some consumer organisations withdrawing their support for HIPs.

Between August 2007 and 6 April 2009 a “first day marketing” concession meant that prospective sellers could market their homes as long as they had commissioned a HIP; they did not have to have a HIP in their possession at the time of marketing. The removal of this concession on 6 April 2009 marked the completion of the phased introduction. Ten years had elapsed since the Government’s initial publication of proposals to legislate in this area.

Throughout the implementation period HIPs came under attack from a variety of bodies and attracted some extremely negative press coverage. The research on which they were based, particularly the Bristol Pilot Scheme, was criticised for being incomplete and misleading. They were viewed as representing poor value for money and were also blamed for exacerbating the housing market downturn. Questions were raised around whether buyers were using HIPs for the purpose intended. The Conservatives in opposition called for HIPs to be made voluntary and made various attempts to amend the legislation. The Party’s 2010 Election Manifesto contained a clear commitment to abolish HIPs. The Liberal Democrat’s 2010 Manifesto also included a commitment to “scrap burdensome Home Information Packs, retaining the requirement for homes to have an energy performance certificate.”

The Labour Government defended HIPs throughout their difficult implementation period, consistently arguing that the provision of more up-front information for prospective buyers would speed up the process and help buyers make more informed decisions in regard to what is, for most people, the most significant financial commitment they will ever make. By early 2010 the Government was referring to survey evidence showing an average reduction of 6 days in transaction time where a HIP was used.

After the 2010 General Election the Coalition Government moved swiftly to suspend the requirement to commission a HIP from 21 May 2010. The requirement on sellers to obtain an Energy Performance Certificate remains in place.

In the Queen’s Speech of 25 May 2010 it was announced that provisions to achieve the “outright abolition of Home Information Packs” would be included in a forthcoming *Decentralisation and Localism Bill*.

Although the suspension of HIPs was met with majority support from professionals within the industry, those who had paid for training and set up businesses based on the provision of HIPs were less enthusiastic. Questions were raised around the lack of consultation prior to suspension; the Merits of Statutory Instruments Committee expressed concern over the “precipitate” way the Government had acted to suspend HIPs.

The suspension and forthcoming abolition of HIPs means that problems identified with the house buying and selling process in England in the 1998 research remain largely unresolved. Developments such as electronic conveyancing have certainly helped to speed up the process but it would appear that many buyers are still failing to obtain important information about their homes before agreeing to buy them.

This paper provides background information on the introduction of HIPs and a chronology of key developments during their long implementation period up to their suspension in May 2010.

## 1 What are HIPs?

Before marketing a residential property for sale the seller was required to prepare a HIP which was then made available to potential buyers.<sup>1</sup> HIPs were made up of certain compulsory and authorised (optional) documents. The compulsory documents included:

For freehold properties

- Home Information Pack Index
- a Property Information Questionnaire (PIQ) (as of 6 April 2009)
- Energy Performance Certificate (EPC) or Predicted Energy Assessment (PEA)<sup>2</sup>
- sustainability information (required for newly built homes)
- sale statement
- evidence of title
- standard searches (local authority and drainage and water)

For leasehold properties:

- all the compulsory documents set out above; and
- a copy of the lease

The optional items included a Home Condition Report; legal summary; home use/contents form; and certain specialist searches. There was no set format for a HIP.

Most of the documents listed above have always had to be made available during the conveyancing process. The introduction of HIPs simply brought forward the point at which this information was provided.

The seller was responsible for paying for the preparation of the HIP. They had to be made available to potential buyers free of charge but a reasonable charge could be levied to cover photocopying and postage costs. Sellers could compile the HIP themselves or could ask an estate agent, solicitor or HIP provider to provide one on their behalf.

Certain transactions did not require a HIP, such as where there was no marketing (a sale to a family member), properties not sold with vacant possession and properties limited to use as holiday accommodation.

Local weights and measures authorities had primary responsibility for enforcing the requirement to have a valid HIP but the Office of Fair Trading (OFT) also had a role where the breach of duty was committed by an Estate Agent. Enforcement officers had several options at their disposal ranging from providing help and guidance to issuing a penalty charge of £200.

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<sup>1</sup> The requirement to have prepared a HIP before marketing a property came into force on 6 April 2009. Prior to this sellers had to have commissioned a HIP before marketing could begin.

<sup>2</sup> The requirement to prepare EPCs has its roots in the *Directive on the energy performance of buildings*, (EPBD) Directive 2002/91/EC – EU Member States were required to implement the Directive by 4 January 2006.

## 2 Why were HIPS introduced?

It was believed that providing a package of standard information at the beginning of the house buying and selling process would result in sales progressing more quickly and reduce the rate of failed transactions. Recent figures produced by the Office of Fair Trading show that around 20% of transactions fail between offer and exchange.<sup>3</sup> Failed transactions can be costly, particularly for buyers, depending on the stage at which the purchase falls through.

In England and Wales, an offer to buy a home and acceptance of that offer are made "subject to contract." Such an offer and its acceptance do not constitute a legally binding agreement, this is usually only achieved following exchange of contracts. Between agreeing terms and exchanging contracts, both the buyer and seller do a number of things. For the seller, this includes:

- obtaining the title deeds to the property;
- establishing title and producing Land Registry office copy entries<sup>4</sup> where the property is registered;
- replying to pre-contract enquiries;
- preparing a draft contract.

The buyer will:

- conduct local land charge searches; and
- commission a survey of the property if required.

Prior to the introduction of HIPS, these documents and this information normally became available only after terms had been agreed "subject to contract". It was, and still is, the case that the buyer or the seller can withdraw from the process without incurring a penalty at any time prior to exchange of contracts.

Research commissioned by the then Department of Environment, Transport and the Regions (DETR) identified the following key issues with the house buying and selling process in England and Wales:

- Home buying and selling in England and Wales is cheap but slow by international standards.
- It typically takes eight weeks from acceptance of an offer on a property to exchange of contract. The majority of problems and delays arise during this period.
- The more prepared a buyer or seller is, the shorter and less prone to problems the period prior to exchange of contracts is.
- The typical cost to buyers of a transaction is £1,060. The costs for sellers are higher, at around £1,400.
- The process is inefficient, with professionals waiting to hear from other professionals, agencies or the consumers before they take action.

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<sup>3</sup> OFT, *Home buying and selling – A Market Study*, 2010

<sup>4</sup> This involves obtaining a print out of the title sheet from the Land Registry known as an office copy entry.

- Buyers, sellers and the professionals all agree that sellers should provide surveys/valuations on the property or offer more information up front.<sup>5</sup>

The report concluded that the housing transaction process in England and Wales was inefficient:

The housing transaction process does not seem to be designed with the interests of the consumer in mind. While the role of the professionals is felt to be satisfactory, there is a general dissatisfaction with the process as a whole.

There is a need to spread the risks of the transaction process more evenly between buyers and sellers. At present it is the buyer who runs most financial risk if the transaction fails or if problems arise with the property after exchange of contracts. Currently the seller has no incentive or requirement to be pro-active in the provision of information about the property.

There is a need to reduce the 'period of uncertainty' that accompanies most transactions. Measures are needed to reduce the overall time in which things can go wrong.<sup>6</sup>

Thus when the then Government published proposals in December 1998 aimed at making the house buying and selling process quicker, easier and more efficient, it focused on the need to reduce the time between making an offer and completing a sale. The consultation document, *The key to easier home buying and selling*, said:

Everyone who has his or her offer on a home accepted worries in case someone makes a better offer (gazumping). Sellers worry that they will be forced to sell at a lower price (gazundering). In fact, these problems are rare – they happen on average in fewer than one in fifty transactions.

Some people have suggested that gazumping should be made illegal but sometimes a seller may be justified in accepting another offer. We think it would be more useful to speed up the whole process and so reduce the time when gazumping and gazundering can happen.<sup>7</sup>

The main proposal contained in the consultation paper was the provision of a seller's information pack. According to the then Government, a seller's information pack would:

... make anyone who wanted to put a home on the market responsible for having a standard set of information and paperwork ready for would-be buyers right at the start. This would cost sellers money up front but would save some money if they were also buying a property.<sup>8</sup>

In addition, the then Government confirmed that it would expect buyers to improve their preparation by obtaining 'in principle' mortgage offers and that targets for the provision of title deeds and the carrying out of searches would have to be met by lenders and local authorities.

The Government published an analysis of the 919 responses it received to *The key to easier home buying and selling* in September 1999; a summary is reproduced below:

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<sup>5</sup> Lord Chancellor's Department, Department of Trade and Industry and DETR, *Key research on easier home buying and selling: Main report*, December 1998

<sup>6</sup> *ibid*

<sup>7</sup> DETR, *The key to easier home buying and selling*, December 1998

<sup>8</sup> *ibid*

Issue	Response
Our objectives	Majority agreement with the objectives of the exercise
Seller's information pack	Strong support for a seller's information pack
Including a property survey report in the seller's pack	<ul style="list-style-type: none"> <li>• Support for a survey report is divided – just over half against</li> <li>• Most concern surrounds the buyer's reliance on the survey</li> </ul>
Voluntary or compulsory?	Strong support for legislation to compel sellers to provide a pack
Buyer preparation	Strongly agree that professionals should encourage 'in principle' mortgage offers
Speeding up requests for title deeds and searches	Strong agreement with proposals
Electronic conveyancing	Agreement that Government should take steps to facilitate electronic conveyancing
Speeding up targets for lenders	Agree that lenders should adopt the target of dealing with 80% of mortgage applications within 2 days of receiving the necessary information <sup>9</sup>

On 11 October 1999 the Government announced that it would be proceeding with 'a package of complementary measures aimed at making the home buying and selling process in England and Wales faster, more transparent and consumer-friendly'.<sup>10</sup> The key measure would be the introduction of a legal requirement on sellers to create a pack of standard information for prospective buyers. The Consumers Association and the professions were asked to work with the Government on the detail of these proposals.

### ***The Scottish system***

A frequently asked question is why the Government did not simply adopt the Scottish system of conveyancing. The key difference between the English and Scottish systems of conveyancing is that in Scotland the contract (which takes the form of a series of letters known as 'missives' that are signed by the parties' solicitors) is entered into at a much earlier stage of the process. Once an offer has been accepted on all points a legally binding contract exists and neither party can withdraw without potentially being held liable for consequent losses of the other party. By entering into a legally binding contract at an early stage of the process the opportunity for 'gazumping'<sup>11</sup> is reduced.

The DETR's research, *The key to easier home buying and selling*, rejected this option:

The Scottish system works well in Scotland where the volume of transactions is lower than in England and Wales. It is doubtful, however, whether it would be as effective if applied to more active housing markets in England and Wales where there would be a much higher incidence of failed bids and abortive costs. Also, there is a tradition in Scotland for sellers to move into temporary accommodation to take out bridging loans

<sup>9</sup> DETR, *An analysis of the responses to "The key to easier home buying and selling" consultation paper*, 1999

<sup>10</sup> DETR press release 940/99, 11 October 1999

<sup>11</sup> This occurs when a seller accepts a higher price for the property after having already agreed an offer 'subject to contract'. The person whose offer is 'gazumped' may have spent money on solicitor's fees and/or a survey but has no redress against the seller.

so that sales are not held up. It would be difficult and probably unpopular to adopt this tradition in England and Wales where it currently does not exist.<sup>12</sup>

It was argued that adoption of the Scottish system of conveyancing in England and Wales would make gazumping illegal. This is not the case; in fact, prior to the market downturn there were reports of gazumping taking place in Scottish property ‘hotspots’. Gazumping is still possible in Scotland if sellers/buyers withdraw from the process before the missives have been signed.

Since 1 December 2008 houses for sale in Scotland have had to be marketed with a Home Report. This is a pack of three documents: a Single Survey, an Energy Report and a Property Questionnaire. The Home Report is made available on request to prospective buyers. Recent reports indicate that the introduction of mandatory Home Reports (commissioned by sellers) in Scotland since December 2008 has encouraged owners to carry out improvements to their homes before putting them up for sale:

A review has suggested the reports may also help close the gap between the asking and selling price, indicating a move away from the “offers over” system.<sup>13</sup>

More information can be found on the [website](#) of the Scottish Government.

### 3 The evidence base for HIPs (pre-2000)

In addition to the research published in December 1998, a pilot study to test HIPs on 250 home sellers in Bristol ran from December 1999 to July 2000. The Government also commissioned research on how HIPs might operate in areas of low housing demand and their potential impact on small businesses. Other research considered how countries with a HIP-type arrangement in place fared in practice. The following sections 3.1 - 3.5 summarise the findings from these studies.

#### 3.1 The Bristol pilot scheme

As noted above, the Bristol pilot aimed to test HIPs among 250 sellers. A panel of estate agents, surveyors and conveyancers was recruited to deal with transactions in the pilot; there was no restriction on which lenders the buyers could use when seeking a mortgage. The cost of compiling the pack was met by the Government, except that the Government asked lenders to waive deeds release fees for properties being sold under the pilot. Both conveyancers and estate agents contributed to the compilation of HIPs.

The key findings from the Bristol pilot are reproduced below. At the time of the pilot it was proposed that Home Condition Reports (HCRs, based on a survey of the properties concerned) would be a mandatory part of the packs. HCRs were later dropped as a mandatory element of HIPs:<sup>14</sup>

**Transparency.** The pack gave buyers a clearer understanding of the property they are purchasing. Information on the condition of the home was much more easily understood by consumers compared to the legal documentation in the pack, the content and significance of which generally requires legal advice. Nearly two-thirds of buyers consulted the Home Condition Report (HCR) prior to making an offer, and over 90 per cent consulted the HCR at some stage in the process. By contrast very few buyers read the legal documentation at any stage in the process.

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<sup>12</sup> *ibid*

<sup>13</sup> *The Scotsman*, “Home reports encourage renovations”, 2 October 2010

<sup>14</sup> Discussed in section 4.4 of this paper

**Certainty.** The pack helped to identify and resolve any potential problems with the sale much earlier in the process. The pack increased certainty because there were fewer transaction threatening problems after an offer has been made, there was more consumer confidence that the transaction will proceed successfully to completion.

**Satisfaction.** Approval for the system of buying and selling with a pack was high amongst consumers, particularly with buyers. In the Bristol pilot, one in 20 buyers were dissatisfied with the process overall compared to two in five buyers nationally under the current system (DETR, 1998).

**Pack Assembly.** Packs were assembled in an average of 11 working days. 50 per cent of packs were assembled in nine days or less. Half of all packs that took over two weeks to assemble were leasehold properties.

**Conveyancing.** Conveyancers believed the process of assembling legal information was more efficient under a seller's pack compared to the current system. This was because much of the crucial preparatory legal work took place in a matter of days, rather than being spread out over several weeks with time being wasted waiting for someone else to do something before progress can be made.

**Estate Agency and Marketing.** Views among estate agents were mixed. Some agents, who saw clear benefits in the seller's information pack, had invested greater time in understanding the potential advantages for the consumer, and consequently spent more time advising clients about the purpose and nature of the pack. Other agents believed assembling the pack delayed the marketing of the property and, under a voluntary scheme such as the Bristol Pilot, this could mean clients missing out on prospective purchasers particularly in a fast moving market.

**Home Condition Report.** The HCR is well received by buyers, over half preferring it to other types of survey. Over 90% consulted the HCR at some stage and half took a copy home to consult. Most of the sellers were also satisfied, though it should be borne in mind that in the pilot they did not have to pay for the report. Surveyors were content with the level of inspection for the HCR, but their main concern was about the amount of detail to be included in the HCR. They were also concerned about being exposed to professional indemnity claims which could arise if sufficient explanatory narrative is not included to support opinion about the condition of different elements of the property. Both surveyors and estate agents' thought the HCR used in the pilot does not provide sufficient detail when compared to a similar mid-range report such as a Homebuyers Survey and Valuation (HSV).

**Improvements.** Whilst the research has shown the pack delivers a range of benefits for both consumers and professionals, it is clear the potential benefits could be improved further. In particular, the Home Condition and Energy Efficiency Reports, although warmly received by consumers, were felt to need further work on layout and content. Some conveyancers also believed their role could be extended to include summarising and decoding the legal elements of the pack in a consumer friendly format.<sup>15</sup>

The findings of the Bristol pilot scheme came under fire during the Second Reading debate on the *Homes Bill*. Nigel Waterson, for the Conservatives, referred to the poor take-up of the scheme and the distorting effect of sellers not having to pay for the compilation of their packs:

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<sup>15</sup> [Evaluation of a Pilot Seller's Information Pack: the Bristol scheme](#), December 2002, pp8-9

The pilot scheme originally aimed to have a sample of 250. In the event, only 189 participated. Only 90 properties were completed on under the scheme, of which a third--30--were new properties, which would not count for the purposes of the seller's pack proposals. I understand that those were Beazer homes. They were all new and did not require a home condition report in the pack in any event. They were all sales exchanging within a short period of 28 days, rather than properties sold and marketed in the usual way. One can only speculate on how those quick transactions managed to skew the findings of the pilot scheme on the speed of concluding transactions.<sup>16</sup>

[...]

It is fundamental to any serious analysis of the pilot scheme that the participants were given their packs, including surveys, by the Government. That may explain the substantial satisfaction of those involved in the scheme when asked about it. Perhaps it is even more significant that one third of those who were involved in the pilot still insisted on their own survey, quite separate from the home condition report.<sup>17</sup>

### 3.2 HIPs in “low demand” areas

The DETR sponsored research into how HIPs might operate in areas where demand for housing and house values, were low. Case studies were conducted in Burnely and Bradford - the research concluded:

Overall, the markets in both areas were characterised by severe distrust of all parties involved. While this is present in the housing market in general, in low demand, low value areas it has become exaggerated. The pack was seen by all as a means of addressing this problem, and creating a better functioning market. Buyers saw the advantages quickly, while the seller focused on the costs. Most sellers would become buyers, so the cost issue was, to a degree, mitigated in the mind of the focus group participants. The professionals hoped it would alter the culture of buying and selling a house in England and Wales. They saw both opportunities and certain threats as this new way of working rolled out. The advantages were seen to offset the disadvantages as long as the cost of the pack, and the point of payment are more clearly thought through.<sup>18</sup>

### 3.3 Impact of HIPs on small businesses

Further Government research was carried out to test the potential impact of the proposals on small businesses operating in the home buying and selling industry. Research was undertaken with a number of estate agents, conveyancers and surveyors.<sup>19</sup>

This research found:

- There was a strong belief that small businesses could compete in the reformed market conditions by placing emphasis on quality of service, greater flexibility and developing links with other sectors. Smaller agents were concerned that corporate businesses might be in a better position to respond to new market conditions once the pack was introduced.

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<sup>16</sup> HC Deb 8 January 2001 cc731-2

<sup>17</sup> *ibid*

<sup>18</sup> DETR, Housing Research Summary 130, *Sellers Packs in Low Demand, Low Value Areas*, 2000

<sup>19</sup> DETR, Housing Research Summary 134, *Home Buying and Selling Reforms: Litmus Test of Impact of Regulations on Small Businesses*, 2000.

- Home sellers were likely to want to have some or all of their fees deferred until the property sold. The extent to which this preference would be met would depend on the business strategy adopted by pack providers. Many of the pack costs were already borne within the existing system, while some costs were met up front by the buyer. The pack should only increase costs for transactions where the buyer would not normally commission an independent survey.<sup>20</sup>
- The need for conveyancers and surveyors to form links with agents was considered important for all the parties. Linkages within and across sectors were recognised as important in the post reform environment and so too would be a product or service that differentiates a business from others in the market.
- A common concern of estate agents was the belief that the pack would reduce the number of sellers coming to the market leading to a fall in revenue in the industry. It was acknowledged that this would be offset, at least in part, by lower fall out rates and fewer failed transactions.
- The new process could present opportunities for conveyancers to increase their business but the pack, coupled with electronic conveyancing, could be a threat to some traditional firms who were not gearing up to incorporate new technology into their business processes.
- There was a strong belief that all surveyors, regardless of size, would see a substantial increase in their workload. Volume of work was likely to mean an emphasis on maximising business rather than protecting market share from competition from new entrants to the market by cutting prices.<sup>21</sup>

### 3.4 International comparisons

The DETR commissioned a comparison of the home buying and selling processes in a number of other countries with a HIP type arrangement. A short investigation of the processes in both New South Wales<sup>22</sup> (NSW) and Denmark<sup>23</sup> was undertaken. In NSW, the seller is legally obliged to have a HIP before a property is placed on the market. In Denmark, the seller is required to include a property condition report in the pre-marketing information pack.

Danish practitioners believe that their system of survey reports has been a success although this was introduced to address the previous position where, until 1997, sellers were liable for 20 years for any defects not disclosed to the buyer in the contract for sale. The NSW system is based on *caveat vendor*<sup>24</sup> with a HIP being assembled prior to sale. Overall, there was universal support for these systems which involve vendor (seller) disclosure and warranty.

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<sup>20</sup> It was estimated that only a quarter to a third of buyers pay for their own survey; the remainder rely on the lender's valuation report.

<sup>21</sup> DETR, Housing Research Summary 134, *Home Buying and Selling Reforms: Litmus Test of Impact of Regulations on Small Businesses*, 2000

<sup>22</sup> New South Wales, Randolph & Wood, 1999

<sup>23</sup> Denmark, Nuttall, 1999

<sup>24</sup> Where the seller takes responsibility for the information provided.

### 3.5 Other Government research

Government commissioned research into a number of industry led initiatives designed to speed up the home buying and selling process was published at the end of March 2000.<sup>25</sup> This research included a detailed examination of the content, mode of operation, and success of a range of pre-sale initiatives, including HIP type arrangements, that were on offer in the marketplace at that time. There were three main types of initiatives - Survey Packs, Legal Packs and combined Survey/Legal packs. The key findings are reproduced below:

Advantages to consumers of HIP type arrangements:

- A faster transaction, or a smooth, seamless, stress free process - one month could be saved on a traditional three month selling period.
- Buyers feel the pack reduces the prospect of gazumping.
- First time buyers feel it makes the process easier as others are doing the work for them.
- A seller's survey could negate the need for a valuation inspection by the lender.
- Problems, such as structural defects, are known about earlier; this might help in the agreement of a realistic final selling price earlier in the process.
- All the legal information is together in one place with less paperwork and chasing of professionals, therefore fewer opportunities for delays.

Buyers' and Sellers' Views:

- Seller's packs should be made compulsory.
- Surveys should be included in packs and include details of any necessary repairs; these repairs should be costed.
- Buyers want greater choice of mortgage products in closed vertical schemes.<sup>26</sup>
- Buyers want a greater choice of independent legal advisers.

Disadvantages of HIPs to consumers:

- Sellers do not expect to pay for items traditionally paid for by buyers.
- Sellers do not understand packs and what they are for - an educational awareness programme may be needed.
- Packs may not be popular in a buoyant market where properties may get to offer stage quickly.
- Buyers may be suspicious of the independence of a survey commissioned by the seller, even with guarantees.
- There could still be hold-ups in chains if not all members are using HIPs.<sup>27</sup>

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<sup>25</sup> DETR, Housing Research Summary 108, *Monitoring Industry Initiatives to Improve the Home Buying and Selling Process*, March 2000

<sup>26</sup> A vertical integration scheme is where several companies agree to work together on a formal basis and share the profits of the operation. They are likely to have a commercial link and in most cases consumers are given little or no choice of practitioner, ie the consumer will be offered only one name at each stage of the transaction. Vertical schemes are often referred to as 'one stop shops'.

<sup>27</sup> DETR, Housing Research Summary 108, *Monitoring Industry Initiatives to Improve the Home Buying and Selling Process*, March 2000

## 4 From legislation to suspension: a chronology of events

The following sections 4.1-4.19 focus on key developments during the implementation phase of HIPs up to their suspension in May 2010. Between the *2004 Housing Act* gaining Royal Assent and the full implementation of HIPs in April 2009 the original concept was substantially watered down. The then Government brought in a series of amending Regulations “in order to lessen the burden which the requirement for a HIP placed on those marketing a residential property.”<sup>28</sup>

The most significant changes included the phasing in of HIPs to properties of different sizes, the removal of the Home Condition Report as a compulsory document in the HIP and the “first day marketing” provision, which allowed sellers to have commissioned a HIP prior to marketing their homes rather than having a HIP already prepared.

The “events” tend to focus on consideration of the Regulations which specified the detail of the HIP scheme and the various amendments made to the scheme during the long implementation phase.

### 4.1 Scrutiny of the draft Housing Bill

The draft Housing Bill, *Housing Bill – Consultation on draft legislation*<sup>29</sup> was published in March 2003. Part 5 contained provisions relating to Home Information Packs (previously called Seller’s Packs).

Two complementary consultation papers were published alongside the draft Bill: one invited views on the documents and information to be included in the packs while the second sought views on options for addressing any problems that the packs might cause for sellers of low value homes in areas of low demand.

The draft Bill’s HIP provisions were very similar in content to the seller’s pack provisions in the *Homes Bill* except that a failure to observe the HIP requirements would now be enforced by civil rather than criminal sanctions. Criminal sanctions had been an aspect of the *Homes Bill* that attracted substantial criticism.<sup>30</sup>

After the draft Bill was published, the Office of the Deputy Prime Minister: Planning and Local Government Committee (the ODPM Committee) carried out an inquiry which it completed in July 2003.<sup>31</sup> On HIPs, the Committee received conflicting evidence. Consumer bodies were generally supportive of the proposals: they were of the opinion that HIPs would assist potential purchasers to reach an *informed* decision over what is the largest financial commitment that most people will make. Others, such as the Royal Institute of Chartered Surveyors (RICS), supported the objective behind HIPs but felt that there were still issues of detail that needed to be addressed.

Several witnesses rejected the validity of the Bristol pilot project while others argued that the successful implementation of HIP type arrangements in other countries should not be relied upon because of the different nature and legislative basis of the UK housing market. Some witnesses were of the opinion that technological advances in the conveyancing process would speed up the process and make HIPs unnecessary.<sup>32</sup>

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<sup>28</sup> [HL Paper 24 of 2007-08](#)

<sup>29</sup> Cm 5793

<sup>30</sup> ODPM press release, 134/02, 28 November 2002

<sup>31</sup> HC 751-1 2002-03

<sup>32</sup> *ibid* para 89

The Committee recommended that HIPs should be introduced nationally “only when further research and extensive pilot testing has been carried out in different parts of the country.” It was of the view that there was a need to establish the extent to which HIPs “may have adverse effects in different types of markets.” The Committee concluded that “at this stage” it could not recommend that HIPs should be made compulsory.<sup>33</sup>

The Government’s response to this part of the Committee’s report is reproduced in full below:

Home information packs enjoy strong consumer support. International experience and UK research points to the likelihood that home information packs will not have a detrimental effect on supply. The introduction of similar changes in Denmark and New South Wales have had a barely discernible effect on the supply of homes to the market and are widely accepted as having improved significantly the efficiency of the home buying and selling process. Industry expectations suggest that in many cases all or some of the up-front costs will be deferred. Moreover, a national survey carried out by Countrywide Assured Group plc, the UK’s largest estate agency group, found that even if sellers had to pay up front for the pack, 87 per cent would still offer their home for sale. The study concluded that the pack would only take out of the market people who were not serious about selling anyway. A housebuyers survey published by Yorkshire Bank in January this year revealed that the majority of the 2,500 people questioned for the survey believed that the introduction of home information packs could go some way to easing the buying process. There is no reason why home information packs should cause house prices to rise. Indeed, the inclusion in the pack of a home condition report will ensure that prices reflect the genuine condition of the property.

Local pilot studies are useful for testing the mechanics of operating home information packs and getting consumer reactions. The Government is currently testing home condition reports in this way in different areas and markets. But voluntary local pilots cannot replicate a compulsory national scheme and are unlikely to add significantly to the existing knowledge of the impact of home information packs on the market, for a number of reasons:

- a. the reforms involve a step change in culture for everyone involved in the process. This cannot be generated or tested by local pilot studies;
- b. the market will not adapt (e.g. deferment of costs and utilisation of home condition reports by lenders) for localised studies; and
- c. employing, training and regulating prospective home inspectors has to be organised on a national basis. Local pilots cannot replicate this nor provide the required degree of consumer confidence.

Chains of transactions extend beyond local or even regional boundaries. Home information packs will only be fully effective if all the transactions in the chain have one. About 60% of transactions involve chains. Industry estimates suggest the average chain has four transactions. In a chain of transactions, a single property marketed without a home information pack could negate the benefits of the packs provided for other transactions.

Research shows that problems with the present process apply to all areas and all markets. For special cases, the draft Bill provides a power for the Secretary of State to make different provisions for different areas and property types. Where necessary, this will allow special provision to be made for applying the pack to particular types of property and in particular areas. For example, it is proposed that first sales of new

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<sup>33</sup> *ibid* para 93

homes covered by an approved housing warranty scheme should not be required to include a home condition report in the home information pack; and the Government is considering the case for special arrangements for very low-value homes in areas of low demand.

The power to make different provisions for different areas could also be used to facilitate a phased introduction of compulsory home information packs as part of a rollout across England and Wales, if this were found to be practicable and advantageous.

The Government is discussing further options with consumer and industry stakeholders for implementing home information packs. The Government is also encouraging the rollout of voluntary home information packs to help pave the way for a compulsory national scheme.<sup>34</sup>

Other issues raised by the witnesses to the Committee and on which the Committee made recommendations included:

- The “shelf-life” of HIPs;
- The impact of HIPs in areas of low housing demand;
- The standard of training of Home Inspectors, particularly in relation to the reliance to be placed on Home Condition Reports (HCRs);
- Insurance arrangements for Home Inspectors;
- Third party reliance on HCRs; and
- The resources available to Trading Standards Departments for enforcement work.

#### **4.2 Part 5 of the 2004 Housing Act**

The *Housing Bill* was introduced in the Commons on 8 December 2003 and received Royal Assent on 18 November 2004. Part 5 of the Act contains measures relating to Home Information Packs. The packs were due to become mandatory from 1 June 2007 but in July 2006 the Government announced new proposals to phase in the contents of mandatory HIPs “in the light of the plans for testing and concerns about the readiness of industry”.<sup>35</sup>

#### **4.3 Merits of Statutory Instruments Committee 39<sup>th</sup> Report of 2005-06**

This House of Lords Select Committee considered the *Home Information Pack Regulations 2006* (SI 2006/1503) which prescribed the documents to be included in HIPs, exempt properties and enforcement provisions. The Regulations also provided for the approval of certification schemes in connection with HCRs.<sup>36</sup>

The Committee acknowledged the work carried out to consult over HIPs and efforts to permit those involved in the home-buying and selling industry to prepare for the introduction of HIPs; however, the Committee doubted that enough Home Inspectors would be trained up by the June 2007 implementation date:

It will be a major organisational challenge, for the Government and for others concerned, to ensure that there are enough qualified Home Inspectors by that date. The Government must publicise the new regime effectively, to ensure that buyers and sellers of property understand the changes in good time. We expect the Government to monitor the preparations being made, notably in the context of the “dry run”, and to

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<sup>34</sup> Cm 6000, para 37

<sup>35</sup> DCLG Press Release, 2006/0061, 18 July 2006

<sup>36</sup> Home Inspectors were required to be “certificated” before they could carry out Home Condition Inspections and issue HCRs.

keep under review whether full implementation of the HIP scheme should go ahead in June 2007.<sup>37</sup>

#### 4.4 The removal of Home Condition Reports – July 2006

On 18 July 2006 the Government announced that HIPs would still be mandatory from 1 June 2007 (this subsequently changed, see section 4.6 below) but said that the only mandatory documents required in HIPs would be certain specified legal documents and Energy Performance Certificates. Significantly, the Government announced that HIPs would not have to include a Home Condition Report (HCR); these were to be phased in on a market-led basis “in order to ensure a smooth implementation with clear benefits for consumers”.<sup>38</sup> Baroness Andrews, then Parliamentary Under-Secretary of State at the Department for Communities and Local Government (CLG), set out the reasons for this change in approach in a Lords debate on HIPs on 11 October 2006:

The change announced in July does not in any way imply a loss of faith in the value of home condition reports—far from it. Why should it be easier to get an MoT on a car than it is to get a comprehensive account of the state of one’s prospective home, especially since only 30 per cent of people get a mid-range survey? Our position regarding June [*the removal of HCRs from HIPs*] was nothing to do with the value that we place on the home condition report but was to do with our obligation to the consumer to have the best possible product that would bring the most effective benefits. Three elements in combination affected our decision. They have been touched on but I should like to enlarge on them a little.

The first element was the timing, which was dictated by the fact that when we did the dry run collecting evidence, no matter how expansive the reconnaissance, the real-world impact of home condition reports proved to be very difficult. There were 15,000 voluntary packs in operation, only 250 of which had a home condition element. None of them had a home condition report and we could not test or trial them because the home inspectors were not in place. It became clear that we had to test them in a real world environment. At the same time, we thought that a mandatory test—and we were well advised on this—would be deeply unpopular and flawed not least because people who moved from one area to another would end up by paying twice. In June, we therefore took the decision that we had to have proper, independently evaluated trials which would be conducted by home inspectors.

The second element, which was made clear to us, was that despite its best efforts, the lending industry did not have its automated valuation systems in place to the extent that the information generated by the HCR could be used to make mortgage evaluations a simpler desktop process—which is where the lending industry wants to go in many respects.

Thirdly, I come to the point about home inspectors. We were confident about the numbers and in the summer we gave the figure of 7,500. But as the training went through, it became clear from the pace of qualification that we could not predict with certainty that we would have that number of qualified home inspectors in place by next June. People were coming into the scheme either from the surveying profession or, as was the case of the brother of the noble Lord, Lord Addington, from scratch. They were progressing at their own pace and were therefore qualifying at different rates. Taking all those concerns together, to have pushed ahead with all aspects of the home information packs as well as home condition reports in one big bang on a single day

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<sup>37</sup> [HL Paper 214 of 2005-06](#)

<sup>38</sup> DCLG Press Release, 2006/0061, 18 July 2006

next June would have been irresponsible. We could not take that risk on behalf of the consumer.<sup>39</sup>

The *Home Information Pack (No.2) Regulations 2007* (SI 2007/1667) provided for HCRs to be a non-mandatory part of HIPs.

The July 2006 announcement prompted substantial press comment, much of which focused on the impact on people who had started training courses to become Home Inspectors in preparation for the need for mandatory Home Condition Reports from June 2007; this press comment continued in the wake of the May 2007 announcement (see below). Critics of HIPs welcomed the announcement as the removal of an unnecessary additional burden on house sellers, while consumer groups condemned the development. *Which?* withdrew its support for the HIP scheme in its “diluted” form.<sup>40</sup>

#### 4.5 Merits of Statutory Instruments Committee 18<sup>th</sup> Report 2006-07

The Committee considered *The Home Information Pack Regulations 2007* (SI 2007/992) and the *Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007* (SI 2007/991) which would have implemented HIPs from 1 June 2007. In this report, published on 1 May 2007, the Committee decided to draw the attention of the House to the HIP Regulations on the ground that “they may imperfectly achieve their policy objective,” and the Energy Performance of Buildings Regulations on the ground that “they may inappropriately implement European Union legislation.”<sup>41</sup>

The Committee invited written evidence from members of the Home Information Pack Components Project Board<sup>42</sup> and from the Local Authorities Co-ordinators of Regulatory Services (LACORS). Evidence was also taken from CLG. The Committee recognised the Government’s reasons for introducing HIPs but said it could not “overlook the doubts that have been widely expressed about the benefits identified by the Government”:

.... Home Condition Reports (HCRs) will not now be a mandatory element of HIPs, and yet HCRs were conceived as a means of tackling a prime cause of transaction failures in the home-buying process. Ministers hope to see significant voluntary take-up of HCRs, and yet the Government acknowledge that voluntary change is not powerful enough to bring about real improvements in the housing market. We question therefore whether the HIP Regulations will effectively achieve their policy objective.

34. EPCs may well prove persuasive in alerting actual and potential homeowners to the energy efficiency of their properties. The Government accept that linking EPCs to HIPs as proposed will mean that many EPCs have to be updated more often than the frequency of 10 years specified in the Directive. We cannot say that the Government have presented a rationale for this approach which refutes all the criticisms voiced; and we question therefore whether the EPB Regulations appropriately implement the European Directive.

35. The Government have presented their proposals as a limited regulatory intervention intended to stimulate a more extensive market response. The comments on these proposals which we have received from organisations representing key interest groups in the housing market show at best scepticism, and at worst hostility.

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<sup>39</sup> HL Deb 11 October 2006 cc334-8

<sup>40</sup> “Home information packs: the U-turn”, *The Observer*, 23 July 2006

<sup>41</sup> [HL Paper 92 of 2006-07](#)

<sup>42</sup> This included RICS, *Which?*, The Law Society, Council of Mortgage Lenders and NAEA.

We cannot but conclude that the Government have not been able to convince the principal stakeholders in the housing market that their proposals as they now stand are sensible or worthwhile, or are likely to be effective for their declared purposes; and that they need to do more if the market is to respond positively to this intervention.<sup>43</sup>

The then Minister for Housing reportedly gave a robust response to the criticism of Energy Performance Certificates:

Yvette Cooper, the housing minister, was unrepentant in her response to the report, saying: "The government is pursuing the policy of HIPs because it will cut carbon emissions and improve the flow of timely information to consumers."

"Our approach on EPCs has been widely welcomed by green groups and we make no apology for going further than European requirements and stating there should be a new EPC every time a property is bought or sold. We do not believe consumers will act on an EPC which could be 10 years out of date."<sup>44</sup>

#### 4.6 Judicial Review & the May 2007 announcement

In mid-May 2007 the Royal Institute of Chartered Surveyors (RICS) commenced Judicial Review proceedings against CLG for "its failure to carry out proper consultation prior to implementing new legislation to bring in Home Information Packs." RICS also claimed that there were not enough trained inspectors to provide the required EPCs to make the 1 June start date viable. An interim order was issued against the Department which would have prevented the introduction of EPCs on 1 June 2007 pending consideration of RICS's case.

On 22 May 2007 the then Secretary of State at CLG, Ruth Kelly, announced that the HIP regulations would be withdrawn and replaced with revised implementation arrangements. She announced that detailed discussions with RICS had taken place in order to prevent lengthy legal delays and that a "pragmatic" way forward had been agreed. It was acknowledged that not enough Home Inspectors/Energy Assessors had been fully accredited for a 1 June implementation date. She announced that the start date for HIPs would be put back to 1 August 2007 and on that date HIPs would only be required in respect of the sale of four-bedroom properties or larger.<sup>45</sup>

Other transitional arrangements included:

- Allowing people to market their properties as soon as they had commissioned a pack rather than having to wait until they had received it.
- Allowing EPCs to be up to 12 months old when a property was put up for sale.
- Inviting councils and housing associations to work on introducing EPCs on a voluntary basis in social housing to provide work for energy assessors.

In effect, the Judicial Review was stayed on terms which required the Government to undertake consultation on the maximum and minimum age of EPCs.

Subsequently *The Home Information Pack (No.2) Regulations 2007* (SI 2007/1667), containing the transitional measures described above and allowing for the phased roll-out of HIPs, together with *The Energy Performance of Buildings (Certificates and Inspections)*

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<sup>43</sup> [HL Paper 92 of 2006-07](#)

<sup>44</sup> "Slimmed down Home Information Packs are criticised by Peers," *Guardian*, 2 May 2007

<sup>45</sup> HC Deb 22 May 2007 c1107-08

*(England and Wales) (Amendment) Regulations 2007* (SI 2007/1669), were laid on 11 June 2007.

The requirement to have commissioned a HIP before marketing a property was extended to 3 bedroom properties on 10 September 2007 and then to all one and two-bedroom properties from 14 December 2007.

#### **4.7 Merits of Statutory Instruments Committee 24<sup>th</sup> Report 2006-07**

The new HIP and EPC regulations (SI 2007/1667 and 2007/1669) were considered by this Committee in June 2007. The Committee concluded that because the HIP regulations would not include a requirement for a Home Condition Report, as per the July 2006 announcement, that they were unlikely “to serve the objective of improving the home-buying process.” On EPCs, the Committee welcomed the transitional arrangements that had been put in place and the Department’s decision to consult further on long term arrangements.<sup>46</sup>

#### **4.8 Motion to revoke the Regulations July 2007**

On 18 July 2007 Baroness Hanham, for the Conservatives, moved a Motion to revoke SI 2007/1667 and the Commencement Order SI 2007/1668. The following arguments were made during the debate on the Motion in support of revoking the regulations:

- The definition of a four bedroom house would enable owners to describe their properties as having three bedrooms and a study in order to avoid the duty to commission a HIP.
- The requirement only to have commissioned a pack before marketing a property raised the possibility of agreements for sale being reached before a HIP is produced, thus buyers might have to commission their own searches and documentation.
- The requirement for an EPC should be detached from HIPs and become a stand alone requirement carried out against the timescale of the European Directive, i.e. once every ten years. It was argued that it would take 15 years to assess the energy rating of the nation’s housing stock using HIPs.
- HIPs were redundant given developments within the industry to speed up conveyancing, such as E-conveyancing.
- HIPs were so far from what was first envisaged that they are ‘a con’.
- Confusion over Criminal Record Bureau checks for domestic energy assessors.<sup>47</sup>

Baroness Hanham’s Motion was agreed by 180 votes to 160. The Government responded with a Written Statement on 20 July 2007:

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Andrews):** Following the motion to revoke the Home Information Pack (No. 2) Regulations 2007, the Government are placing their response on record.

A number of debates have taken place over the past year about home information packs (HIPs). The Merits Committee of the House has reported twice on HIPs regulations. Throughout the parliamentary process, the Government have listened carefully to the arguments put forward and have adapted our plans for the introduction

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<sup>46</sup> [HL Paper 129 of 2006-07](#)

<sup>47</sup> HL Deb 18 July 2007 cc263-5

of HIPs in response to many of the comments made. We have also engaged in long and constructive dialogue with key stakeholders from the industry.

In response to the arguments put forward by Baroness Hanham, Baroness Scott, and Earl Caithness, the Government have made it clear that we remain committed to HIPs, linked with energy performance certificates (EPCs), as a first step in reforming and improving the home-buying process, which is currently wasteful, stressful and opaque. We believe that the process needs to be more transparent and predictable, particularly for first-time buyers and that all consumers need to be able to rely on having key information before they commit to home purchase rather than later in the process. These arguments were supported in debate by Lord Elystan-Morgan, Lord Graham of Edmonton and Lord Redesdale, who also drew attention to the importance of energy performance certificates.

We also believe that the urgency of climate change and the need for consumers to have more information about reducing energy use and energy bills means that introducing EPCs as part of the HIP will achieve this swiftly and reliably.

In recent months and since the regulations were withdrawn on 22 May, everything has been done to ensure a smooth introduction of HIPs and EPCs on 1 August. Our implementation plans, announced on 11 June, have been followed through. There are enough inspectors; the infrastructure is ready; the industry is prepared; and consumers are anticipating the change. There is no reason to delay any further. We will therefore introduce HIPs for the sale of homes with four or more bedrooms on 1 August, and we will roll them out for the remainder of the market as announced. We are confident that they will act as a catalyst for reform of the wider home buying and selling process and make a considerable contribution to cutting carbon emissions. We will, of course, continue to work with stakeholders to make further progress on those agendas.<sup>48</sup>

#### 4.9 Opposition day debate 10 October 2007

Grant Shapps (then Conservative Shadow Minister for Housing) moved a motion to abolish HIPs on 10 October 2007. The debate on this motion focused on issues referred to in the previous section and some new claims in relation to the impact of HIPs since their introduction on 1 August 2007, specifically:

- A RICS survey indicating a fall off in the number of new four bedroom houses coming on to the market.
- That this drop in new properties entering the market was damaging an “already fragile” housing market.
- That there was not enough work for HIP inspectors or Domestic Energy Assessors.

During the debate Mr Shapps stated that the Conservative Party had pledged to scrap HIPs<sup>49</sup>, leading other Members to point out that this would result in large scale job losses and wasted investment.<sup>50</sup>

The then Minister, Yvette Cooper, defended HIPs. She said that predicted delays in preparing HIPs had not arisen, with the average time taken to compile a HIP standing at five

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<sup>48</sup> HL Deb 20 July 2007 WS41-42

<sup>49</sup> HC Deb 10 October 2007 c364

<sup>50</sup> *ibid* c386-7

to seven days.<sup>51</sup> She also said that the average market cost of a HIP was £300 to £350; some commentators had predicted a price of £1,000.

Nick Raynsford questioned the Opposition's interpretation of the RICS survey:

Claiming that HIPs have single-handedly led to a decline in the market is economic nonsense. As I pointed out in an earlier intervention, the Royal Institution of Chartered Surveyors has published a survey showing that new instructions to sell property fell in August for the third consecutive month. Most people who were against HIPs said that there would be a rush to get properties on to the market before their introduction as people would not have to pay for one, and a decline when they were introduced. According to that analysis, there should have been booms in June and July and a fall-away in August. Not a bit of it: the fall began in June and it continued in July and August. There is not a shred of evidence to support the scaremongering from the Opposition.

I regret the Opposition's economic illiteracy. If they did a little more homework and looked at the detailed analysis, they would see that the pattern varied regionally. It was not a uniform pattern; in fact, the RICS said that in August there had been "marginal increases" in instructions in London and Yorkshire and Humberside. Why were there increases in instructions in London and Yorkshire and Humberside following the introduction of HIPs? There was a uniform national introduction of HIPs. Why was there regional variation if HIPs were the entire reason for those decreases? Once again, there is clear evidence that the Opposition's case is completely unfounded and fanciful.<sup>52</sup>

The Opposition motion was defeated on division.

#### **4.10 Delegated Legislation Committee 18 October 2007**

The Delegated Legislation Committee considered three statutory instruments on 18 October 2007, all of which had come into force on an earlier date.<sup>53</sup>

- SI 2007/1667 specified, amongst other things, the contents of HIPs; exceptions to the requirement to commission a HIP; penalty charges for failing to have a HIP; and approval of certification schemes for Home Condition Reports. This SI had come into force on 2 July 2007.
- SI 2007/1668 had brought Part 5 of the 2004 Act into force on 1 August 2007 in relation to properties with 4 or more bedrooms.
- SI 2007/2471 had brought Part 5 of the 2004 Act into force in relation to properties with 3 bedrooms on 10 September 2007.

Mr Shapps opened the debate for the Conservatives by stating that HIPs were unnecessary, quoting a range of professional and industry bodies that had been critical of the scheme. He also attacked the Government for not releasing the results of six area trials for HIPs that had taken place earlier in 2007.

The then Parliamentary Under-Secretary of State for Communities and local Government, Iain Wright, said that the roll-out of HIPs for three and four bedroom houses had been "as

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<sup>51</sup> *ibid* c367

<sup>52</sup> *ibid* c381

<sup>53</sup> *Third Delegated Legislation Committee*, 18 October 2007, SC Deb cc1-18

smooth as can be expected". He said that the area trials had only been completed in April 2007 and that because of the delay between marketing a property and transaction completion, the Department had, so far, only received "preliminary findings". The Minister said he hoped to have a full report by the end of the year.

#### 4.11 The extension to one and two-bedroom properties & housing market analysis

On 22 November 2007, Yvette Cooper confirmed that HIPs would be rolled out further. The requirement to commission a HIP was subsequently extended to cover all one and two bedroom properties marketed on or after 14 December 2007.<sup>54</sup>

On the day of this announcement the CLG also published *Home Information Packs: Housing Market Analysis*.<sup>55</sup> This report contained the findings of research carried out on CLG's behalf by Europe Economics. It examined the likely impact of HIPs on the property market and on house listings, and "the plausibility of suggestions that the introduction of HIPs may lead to significant disruption."<sup>56</sup> The research and resulting analysis was largely completed by 31 July 2007 – i.e. before the introduction of HIPs to the market. The report found:

- There may be an effect of HIPs on vendors not fully committed to selling, whereby they would wait until they had had an offer accepted on another house before putting their own on the market. Alternatively, they may bring forward putting their property on the market to avoid having to commission a HIP.

However:

- The predicted changes would "not be so dramatic as to be outside the normal market variation, except in one or two isolated months".
- Over the next 12 months price variation would be "overwhelmingly driven by the fundamental drivers of supply and demand, including the changing interest rate environment. Fears that HIPs will be the main or key determinant are, in our view, unfounded."<sup>57</sup>

#### 4.12 The Merits of Statutory Instruments Committee 5<sup>th</sup> Report 2007-08

This Committee considered the *Home Information Pack (Amendment) Regulations 2007* (SI 2007/3301) and the *Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No 2) Regulations 2007* (SI 2007/3302) in December 2007. SI 2007/3301 made changes to the *Home Information Pack (No. 2) Regulations 2007* (SI 2007/1667: "the principal Regulations") namely:

- The extension of the temporary "first day marketing" provision until 1 June 2008. Thus allowing a property to be marketed as long as the HIP had been commissioned and would be available within 28 days. This was to "provide a sufficient bedding-in period for the industry and consumers involved in transactions."
- A temporary provision allowing a HIP to be prepared in respect of leasehold dwellings without all the mandatory documents (aside from the lease itself).<sup>58</sup> Research was commissioned to assess how leasehold documents could be provided in an effective way.

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<sup>54</sup> CLG press notice, *Home Information Packs update*, 22 November 2007

<sup>55</sup> CLG *Home Information Packs: Housing Market Analysis*, November 2007

<sup>56</sup> *Ibid* p8

<sup>57</sup> *ibid*

<sup>58</sup> [HL Paper 24 of 2007-08](#)

In addition, the Government put back the date on which EPCs had to be provided for newly constructed dwellings from 1 January 2008 to 6 April 2008.

Written evidence was submitted to the Committee by non-government members of the CLG's Stakeholder Advisory Panel. This evidence is reproduced in appendix 1 of the Committee Report. The Committee concluded that views of stakeholders on the merit of the changes in the Regulations and on HIP policy in general "remains divided." Disappointment was expressed over the Government decision to roll-out HIPs nationally before the result of HIP pilots had been presented to Parliament. In the light of responses to the Regulations and the progress of HIP implementation, the Committee concluded "that it will be important for the Government to keep the implementation of this policy under review and to provide full information about the practical effects of its introduction."<sup>59</sup>

#### **4.13 Delegated Legislation Committee 16 January 2008**

This Committee also considered SI 2007/3301 and the *Housing Act 2004 (Commencement No.10) England and Wales Order 2007* (SI 2007/3308) which provided for the extension of HIPs in respect of one and two bedroom properties from 14 December 2007.

Grant Shapps again expressed frustration over the failure of the Government to publish research into the impact of HIPs in the six trial areas before pressing ahead to apply HIPs to the whole market. He queried when the "first day marketing" provision would be removed and when the requirement for full information on leasehold properties would be restored. Iain Wright defended the phasing in of HIPs despite the market downturn on the basis of work carried out by Europe Economics (see section 4.11):

They considered whether changing housing market conditions meant that we should delay the completion of roll-out still further. They concluded that there were strong arguments for rolling out as planned, and that further delays could actually cause greater uncertainties. That was consistent with the advice we were getting from others.<sup>60</sup>

#### **4.14 Home Information Pack Area Trials**

The final report by Ipsos MORI into the HIP area trials was published on 6 March 2008.<sup>61</sup> A key issue identified in the trials was that buyers were not being shown HIPs or were being shown them too late in the process to influence their decisions:

...58% of buyers would have liked the opportunity to see the HIP earlier in the process. However agents were either not showing the packs or providing them too late to consumers to make a difference, according to the findings. Out of the 40% of buyers who saw the HIP last year in the trials, half viewed it after they made an offer on their property.<sup>62</sup>

There were positive findings in regard to EPCs – almost one-third of buyers in the trials intended to improve the energy efficiency of their homes.<sup>63</sup> The then Housing Minister, Caroline Flint, also noted that 72% of sellers in the trials were satisfied with their HIPs.

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<sup>59</sup> *ibid*

<sup>60</sup> Third Delegated Legislation Committee, 16 January 2008

<sup>61</sup> CLG, *Home Information Pack Area Trials - Research Report*, March 2008

<sup>62</sup> CLG Press Release, 6 March 2008

<sup>63</sup> *ibid*

#### 4.15 Merits of Statutory Instruments Committee 15<sup>th</sup> Report of 2007-08

The Committee considered the *Home Information Pack (Amendment) Regulations 2008* (SI 2008/572) which introduced a requirement for HIPs on new homes to include information about sustainability and extended (to 31 December 2008) a provision allowing for insurance to be used to cover gaps in searches data in defined circumstances.

The Committee considered the findings of the area trials and concluded:

...the findings in that report raise questions about the extent to which the secondary legislation on HIPs which has passed through Parliament has delivered the objectives which were identified for it. Against this background, it is important that any additional information that is included in HIPs, notably about sustainability, is presented in a readily understandable way.<sup>64</sup>

#### 4.16 Written Ministerial Statement May 2008

On 8 May 2008 Caroline Flint announced a further extension of the “temporary first day marketing” provision and the temporary requirement for only a lease to be included in a HIP for leasehold properties to 31 December 2008 (from 1 June 2008).<sup>65</sup> She advised that Ted Beardsall, deputy chief executive of the Land Registry, had been asked to assess the nature and scale of the problems associated with gathering information on leasehold properties and to advise on possible solutions. His research, published in June 2008, had confirmed a number of issues in this area and recommended further work to resolve them before lifting the temporary “lease only” requirement.<sup>66</sup> A further working group was convened to report back to the Minister in time to introduce final measures on 1 January 2009.

The Minister outlined some of the positive benefits emerging from HIPs:

lower up-front costs for first time buyers;

greater competition in the property searches market leading to reductions in costs to consumers—over 80 local authorities now set lower searches fees, some by as much as £120;

over 700,000 homes now have energy performance certificates (EPCs);

on average £300 per dwelling saving if their EPC recommendations are implemented; and

over 640,000 HIPs produced, the majority within 7-14 days.<sup>67</sup>

She also acknowledged that more needed to be done “to ensure that consumers realise the full benefits of HIPs.” She referred to further work with the industry to build on the quality of HIPs and ensure that consumers saw HIPs early in the process.

#### 4.17 Improving consumer information & full implementation of HIPs

In July 2008 CLG published a [consultation paper](#) on proposals to simplify the information in HIPs relating to leasehold properties and on the introduction of a Property Information Questionnaire (PIQ) to be included in the packs.<sup>68</sup> A summary of responses to the

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<sup>64</sup> [HL Paper 79 of 2007-08](#), 19 March 2008

<sup>65</sup> HC Deb 8 May 2008 37WS

<sup>66</sup> CLG, [Local Property Searches and Leasehold Information – report to Rt Hon Caroline Flint MP](#), June 2008

<sup>67</sup> HC Deb 8 May 2008 37WS

<sup>68</sup> CLG, [Improving Consumer Information in the Home Information Pack](#), July 2008

consultation exercise was published in December 2008 – it was noted that responses to both proposals were “broadly positive.”<sup>69</sup>

On 8 December 2008 the new Minister for Housing, Margaret Beckett, announced in a Written Statement that the “first day marketing” provision and transitional insurance cover in relation to property searches, which was due to expire on 31 December 2008, would be extended to 6 April 2009.<sup>70</sup> Following on from the consultation exercise, it was decided that from 6 April 2009 HIPs should include a PIQ, and that the PIQ for leasehold properties would replace previous requirements.<sup>71</sup> Thus regulations were laid to provide for the temporary exclusion of information on leasehold properties (other than the lease itself) to become permanent on 1 January 2009.<sup>72</sup>

She announced that the “first day marketing” provision would definitely end on 6 April 2009 – after that date anyone seeking to market a residential property would have to have prepared a basic HIP. Certain information which takes longer to obtain, such as property searches, could be added within 28 days. Transitional insurance cover, to enable the private sector to conduct property searches in authorities where access to relevant data was restricted, was also to end on 6 April 2009:

These changes will make sure that consumers are better protected, and better informed. They will get the vital information they need when they need it, with a copy of the HIP available up-front and a property search which is fit for purpose. This will give them greater value for money, and greater peace of mind. Industry bodies and property professionals will also benefit from greater certainty about how the process should work. The Department will be preparing and communicating advice to help consumers and industry understand and plan for the changes.<sup>73</sup>

The Merits of Statutory Instruments Committee considered the Regulations made to give effect to these measures (SI 2008/3107) in January 2009. The Committee drew attention to the need to ensure that those required to use HIPs would understand the distinction between the PIQ and other conveyancing documents.<sup>74</sup> The Third Delegated Legislation Committee of 2008-09 also considered SI 2008/3107 in January 2009 – on division the motion to consider the Regulations was passed by 9 votes to 6.<sup>75</sup>

Thus from 6 April 2009 everyone seeking to market their home for sale (aside from exempt properties) had to have a HIP in their possession before beginning the marketing process. The phased implementation of HIPs was complete; 10 years had elapsed since the Government’s initial publication of proposals to legislate in this area.

#### **4.18 Suspension of HIPs**

The Conservatives in Opposition had opposed the introduction of HIPs throughout the 2004 Act’s passage through Parliament and at all stages of implementation. Their 2010 Manifesto included a pledge to “Abolish Labour’s expensive and unnecessary Home Information Packs which increase the cost and hassle of selling homes.” The Liberal Democrat’s 2010 Manifesto also included a commitment to “Scrap burdensome Home

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<sup>69</sup> CLG, *Improving Consumer Information in the Home Information Pack: a summary of responses*, December 2008

<sup>70</sup> HC Deb 8 December 2008 32WS

<sup>71</sup> *The Home Information Pack (Amendment) Regulations 2009* (SI 2009/34)

<sup>72</sup> *The Home Information Pack (Amendment) (No.3) Regulations 2008* (SI 2008/3107)

<sup>73</sup> HC Deb 8 December 2008 32WS

<sup>74</sup> Merits of Statutory Instruments Committee 3<sup>rd</sup> Report of 2008-09, HL Paper 14 of 2008-09

<sup>75</sup> Third Delegated Legislation Committee, 26 January 2009

Information Packs, retaining the requirement for homes to have an energy performance certificate.”

On 20 May 2010 Eric Pickles, the new Secretary of State for Communities and Local Government, announced that the requirement to commission a HIP had been suspended with immediate effect. This was achieved by the use of order making powers contained in section 162 of the *2004 Housing Act*.<sup>76</sup> The requirement on sellers to obtain an Energy Performance Certificate remains in place. The longevity of EPCs has been extended from three to ten years.<sup>77</sup>

In the Queen’s Speech of 25 May 2010 it was announced that provisions to achieve the “outright abolition of Home Information Packs” would be included in a forthcoming *Decentralisation and Localism Bill*.

#### **4.19 Merits of Statutory Instruments Committee 1<sup>st</sup> Report of 2010-11**

The Committee noted that it had considered HIPs on six occasions, “more than on any other subject” because of “enduring doubts” around a mismatch between the stated policy objective and the proposed means of delivering that objective. Despite these “enduring doubts” the Committee expressed concern over the “precipitate” way the Government had acted to suspend HIPs:

While not necessarily dissenting from the Government’s objective, the Committee would expect to see a more evidence based consideration of the impacts of removing HIPs than the current explanatory material provides. Simply abolishing HIPs will not solve the well-known problems in the house-buying process, and we encourage CLG to take up the offer to conduct positive discussions with the industry before bringing forward further legislation.<sup>78</sup>

## **5 A short evaluation of HIPs**

In 2006 the Government commissioned BRE and Ipsos MORI to provide baseline research on the buying and selling process before the introduction of HIPs. This *HIP Baseline Research* was published in January 2007. The research confirmed earlier work that had identified consumer dissatisfaction with the overall house buying/selling process, particularly with the time taken to complete the process. The average time taken in the study sample was 81 days from “offer agreed” to “exchange of contracts.” Formal evaluation of the effectiveness of HIPs was to be judged by an update to this research – the previous Government said that a final report was due for publication “later in 2010.”<sup>79</sup>

### ***Making informed decisions***

One of the key drivers behind the introduction of HIPs was the desire that potential buyers should be equipped with detailed property information *before* buying a property. At the outset consumer organisations supported the contribution HIPs would make to buyers making *informed* decisions. Indeed it is difficult to argue against the logic of this, even professional bodies in the industry, such as RICS, initially supported the objective behind HIPs but felt that there were issues of detail that needed to be addressed.

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<sup>76</sup> *The Home Information Pack (Suspension) Order 2010* (SI 2010/1455)

<sup>77</sup> *Energy Performance of Buildings (Certificates and Inspection) (England and Wales) (Amendment) Regulations 2010* (SI 2010/1456)

<sup>78</sup> [HL Paper 7 of 2010-11](#)

<sup>79</sup> HC Deb 21 January 2010 c482W

The decision to remove Home Condition Reports (HCRs) as a mandatory item in HIPs appears to have played a crucial role in undermining the achievement of this objective.<sup>80</sup> Consumer bodies withdrew their support for HIPs as a direct result of this move; the HCR had been viewed as central to tackling the problem of buyers failing to commission a structural survey which is independent of a lender's report on valuation.<sup>81</sup>

In April 2008 GfK NOP published the findings of research conducted in the second half of 2007 into views towards HIPs amongst buyers, sellers and estate agents. They found that awareness, knowledge and understanding of HIPs was "poor" amongst buyers and sellers and that there was a lack of engagement, experience and interest in the HIPs process. A majority of buyers did not ask to see the HIP; many viewed it as a document for the solicitor rather than themselves. Estate agents perceived HIPs to have limited benefits, mainly in relation to leasehold properties.<sup>82</sup>

CLG published research conducted by Ipsos MORI with twelve focus groups made up of buyers and sellers in October 2008, the meetings with the focus groups had taken place in February and March of that year.<sup>83</sup> At that time it appeared that consumers were not using HIPs to inform their purchase decisions:

Few participants had read through a HIP for their property in any level of detail. Most had assumed that their solicitor would alert them to anything they needed to be aware of and so they were not concerned about the information it contained.<sup>84</sup>

There was support amongst the focus groups for the inclusion of HCRs:

Most buyers and sellers said that the inclusion of the HCR would vastly improve perceptions of the HIP overall. Buyers generally thought that making the HCR mandatory might encourage sellers to make improvements to their property prior to putting it on the market.

A small number of buyers and sellers who had had sales fall through in the past because surveys had uncovered structural problems with the property they intended to buy said the presence of an HCR would prevent such problems from occurring and so were keen for the HCR to be made mandatory. Even those who had not experienced such problems tended to agree with this point of view.

Some sellers were concerned that by including an HCR with their HIP they would be taking on the burden of cost compared with the buyer, however the general consensus was that the additional cost to the seller is acceptable if the HCR fully replaces the Home Buyers Survey.

Efforts to encourage the inclusion of HCRs on a voluntary basis did not meet with particular success. None of the estate agents interviewed as part of GfK NOP's research had recommended the inclusion of an HCR as part of the HIP.<sup>85</sup> In January 2010 the then Minister for Housing, John Healey, described the take-up of HCRs as "disappointing;" only 327 such reports had been lodged on the central register since 1 August 2007. He referred to the Working Group on "condition information" in the home buying and selling process established by Margaret Beckett in 2008 "to explore options for ensuring consumers receive

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<sup>80</sup> The reasons for the removal of HCRs from HIPs are set out in section 4.4 of this paper.

<sup>81</sup> The lender is the client in these circumstances – there is no contractual relationship between the prospective buyer and the surveyor and therefore unlikely to be any liability.

<sup>82</sup> GfK NOP, Home Information Packs – a presentation of research findings to CLG, April 2008

<sup>83</sup> CLG, *Home Information Packs: Consumer Focus Groups: Qualitative Research*, October 2008

<sup>84</sup> *Ibid*

<sup>85</sup> GfK NOP, Home Information Packs – a presentation of research findings to CLG, April 2008

appropriate information about a property's condition before they commit to buy, by building on existing products such as the HCR, and creating opportunities for all practitioners, including home inspectors."<sup>86</sup> The Working Group submitted a final report to CLG in December 2009 which was subsequently published by the Coalition Government in September 2010.<sup>87</sup>

The Working Group concluded that there were real benefits for prospective buyers in receiving "up front" condition information but recognised that empowering buyers is not necessarily of benefit to sellers. Ipsos MORI carried out research in June 2009 to assist the Working Group's deliberations. The headline results of that research are reproduced below:

- ninety-six per cent of consumers considered condition information to be an important part of the home buying and selling process
- eighty-seven per cent of buyers and sellers felt that condition information should be available as early as possible in the home buying and selling process
- seventy-one per cent felt that buyers should see the information when viewing a property
- seventy-five per cent of sellers said that they would be comfortable with providing full details about the condition of their property
- seventy per cent found condition information to be useful for informing their decisions about a property regardless of its source
- seventy-eight per cent of respondents agreed they would only trust condition information provided by an independent surveyor who they had appointed themselves<sup>88</sup>

These findings seem to illustrate that although consumers wanted condition information early on in the process, this desire did not translate into demand for Home Condition type reports. Analysis by RICS of the market suggests that only around 20 per cent of those buying a home commission any type of condition information.<sup>89</sup> On publication of the report the Housing Minister, Grant Shapps, said that its findings proved that HIPS "were ignored by the very people they were meant to help."<sup>90</sup>

The limited understanding of buyers and sellers of the use to which HIPs could be put appears to have continued despite the then Government's publicity campaign aimed at raising awareness:

**Margaret Beckett:** In relation to publicity expenditure on Home Information Packs (HIPs) prior to 7 February 2008, I refer the hon. Member to the answer given to the Member for Brentwood and Ongar (Mr. Pickles) on 7 February 2008, *Official Report*, column 1309W.

Since January 2009 the Department has conducted a campaign to meet its duty to inform industry and consumers of forthcoming changes to HIPs and also to promote Government information for those buying or selling homes. The Department's

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<sup>86</sup> HC Deb 13 January 2010 c1001W

<sup>87</sup> CLG, *The Working Group on Condition Information in the Home Buying & Selling Process: Final Report*, September 2010

<sup>88</sup> *Ibid* p3

<sup>89</sup> *Ibid* p4

<sup>90</sup> CLG Press Release, Grant Shapps: Lack of trust condemned HIPs to failure", 10 September 2010

promotional spend has not been split by buyers and sellers and we do not hold information in the format requested. The spend has been broken down by industry and consumers (consumers including both buyers and sellers) and is as follows:

	£
Consumers	847,641
Industry	434,552
Total	1,282,193

The Department expects to spend a further £181,834 as part of this campaign before the end of the financial year 2008-09.<sup>91</sup>

### ***Speeding up the process***

Another key aim of HIPs was to speed up the house buying/selling process by reducing the time between an offer being made and completion. This was to be achieved by placing responsibility for preparing a standard pack of key information on prospective sellers and bringing forward the point at which this key documentation was made available. It was argued that this would result in sales progressing more quickly and reduce the rate of failed transactions.

In early 2010 Ministers referred to the results of a survey of 37,000 transactions by Connells, Britain's third largest estate agency, which reportedly showed that where a HIP was available the period between offer and completion was speeded up:

...a survey of 37,000 transactions showed that when HIP is available, exchanges were completed more quickly. I accept that HIPs were criticised following their introduction in 2007, but we listened to those criticisms and have made major changes to improve the system.<sup>92</sup>

The Connells survey identified an average reduction of six days in the transaction period where HIPs were made available.<sup>93</sup> The Labour Government acknowledged that estate agents had not been ensuring that buyers and sellers were seeing HIPs – the removal of the “first day marketing” concession from 6 April 2009 was aimed at helping “the buyer and seller to know that the HIP is in place and what it delivers.”<sup>94</sup>

An analysis of the impact of HIPs on time spent on the market is complicated by their introduction coinciding with the credit crunch. The Impact Assessment accompanying the *Home Information Pack (Suspension) Order 2010* concluded that “the average time taken to sell is driven by other fundamental factors and it is unlikely the existence or otherwise of HIPs has a significant impact.”

### ***Enforcement***

The apparent lack of enforcement activity for breaches of HIP duties by local weights and measures authorities attracted a good deal of media attention. A snap inspection carried out by Birmingham City Council's (BCC) trading standards officers in 2008 found that five out of six HIPs were unsatisfactory because required information was “inaccurate, incomplete or

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<sup>91</sup> HC Deb 19 March 2009 c1289W

<sup>92</sup> HC Deb 9 March 2010 c146

<sup>93</sup> HL Deb 23 March 2009 c446

<sup>94</sup> HL Deb 23 March 2009 c447

missing.”<sup>95</sup> The penalty for failure to comply with HIP duties took the form of a penalty charge notice (PCN) and the 2004 Act required that where such a notice was served the Office of Fair Trading (OFT) should be notified.<sup>96</sup> By 5 May 2009 OFT had been notified of one PCN that had been issued but which was subsequently withdrawn by the local authority.<sup>97</sup> The then Government emphasised that other enforcement action had been taken:

The OFT is aware that other enforcement action has been taken by local authorities in relation to duties under the HIPs regime but that did not result in PCNs being issued. This information will be held by individual services and has not been formally reported to OFT.<sup>98</sup>

Local Government Regulation (formerly the Local Authorities Coordinators of Regulatory Services, LACORS) is the local government central body responsible for overseeing local authority regulatory and related services in the UK. This body expressed concern about how authorities would enforce HIPs on their introduction in 2007:

It is fair to say we have reservations, some serious, about how local authorities trading standards teams are expected to enforce the Home Information Packs. We are concerned that a £200 fixed penalty charge for non-compliance, when the packs themselves will cost more than that, is not a sufficient deterrent. At the same time councils will have to chase unpaid charges via the civil courts, rather than the magistrates’ courts, which is both time-consuming and costly.<sup>99</sup>

### **Cost**

Placing a duty on an owner wishing to sell their home to pay for the preparation of a HIP prior to marketing meant that, where HIP providers were unwilling to defer the charge for this service, prospective sellers faced a new upfront cost for putting their homes on the market. It was argued that this acted as a deterrent to owners placing their homes up for sale – each stage of the roll-out of HIPs saw reports in the press of a fall in the number of properties coming on to the market based on surveys carried out by RICS and National Association of Estate Agents.<sup>100</sup> Indeed when HIPs were first conceived it was argued that deterring “speculative” sellers from the market would be a *positive* outcome as this would assist in reducing the number of failed transactions.

The HIP process shifted the responsibility for paying for certain items which would always have had to be produced during the conveyancing process, such as searches, to the seller. Of course, where someone was selling and also buying the expectation was that this cost would be offset.

In May 2009 the then Minister for Housing, Margaret Beckett, reported a fall in the average cost of a HIP:

The cost of a home information pack is set by the market and the Government have no role in this. However, industry feedback indicates that the average cost of a HIP has

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<sup>95</sup> BCC Press Release 10880, 30 September 2008

<sup>96</sup> OFT has a duty as the national regulator to consider the fitness of a person to be allowed to operate as an estate agent. Receipt of a PCN would act as a trigger for investigation.

<sup>97</sup> HC Deb 5 May 2009 c55W

<sup>98</sup> *Ibid*

<sup>99</sup> LACORS Press Release, “HIPs: common sense enforcement will target serial offenders”, 7 August 2007

<sup>100</sup> *Independent on Sunday*, ‘HIP effect’, 9 September 2007; *The Guardian*, ‘Sales packs blamed as 4-bed homes market shrinks’, 11 September 2007

fallen from £300-£350 (excluding VAT) following their introduction in 2007 to £200-£300 (excluding VAT).<sup>101</sup>

Research by *Which?* into the cost of HIPs (reported in early 2010) found wide variations between different HIP suppliers.<sup>102</sup>

HIPs were attributed with contributing to a fall in the cost of local authority searches by an average of £30.<sup>103</sup>

### ***Impact on the housing market***

Throughout their short life HIPs were frequently attributed with exacerbating the housing market downturn. A RICS survey in 2007 noted a fall off in the number of four bedroom houses coming onto the market. RICS argued that HIPs were damaging an “already fragile” housing market. The interpretation of this survey was discussed during a debate in the House.<sup>104</sup>

The Impact Assessment accompanying the *Home Information Pack (Suspension) Order 2010* rejected the assertion that HIPs depressed the housing market:

Evidence suggests there was little effect on listings in the second half of 2007 when HIPs were introduced. There were lower levels of listings in 2008 which was likely to be due to falling house prices. The trough in house prices occurred around February 2009. In February 2009, prices started to rise again but listings remained low for the rest of the year. This is likely to be due to a combined effect of credit rationing (not only did potential buyers struggle to finance a transaction but sellers struggled to obtain a mortgage for the house they were buying too) and still relatively low house prices.

Although initial signs from 2010 suggest confidence amongst sellers may be returning with higher levels of listings, they are still down on figures seen in 2006 and 2007. This is not surprising as the main house price indices suggest prices are still 8-15% down on their peak levels in 2007.

This suggests that it is other factors that drive levels of listings and, since the introduction of HIPs seems to have had little effect on listings, we do not think that the removal of HIPs will have a significant effect either. If there were a delay in the removal of HIPs, e.g. due to a consultation period, then there could be a slight fall in the number of listings for a few months. This could have an impact on transactions and house prices however this fall would only be transitory so would have no major impact in the medium or long run.

## **6 Impact of, and responses to, suspension**

As noted previously in this paper, the new Coalition Government acted quickly to suspend the requirement to commission a HIP with effect from 21 May 2010. Measures to abolish the HIP provisions in Part 5 of the *2004 Housing Act* will be included in the forthcoming *Decentralisation and Localism Bill*.

The Explanatory Memorandum to the *Home Information Pack (Suspension) Order 2010* (SI 2010/1455) set out the policy background to the decision to suspend HIPs:

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<sup>101</sup> HC Deb 5 May 2009 c129W

<sup>102</sup> Consumer Association, *HIPs estate agent rip off*, February 2010

<sup>103</sup> Oral evidence to the Communities and Local Government Select Committee by Richard McCarthy (CLG) on 13 October 2008

<sup>104</sup> HC Deb 10 October 2007 c381 (see also pages 18-19 of this paper)

7.1 Both members of the new coalition Government opposed the introduction of HIPs and made their abolition a Manifesto commitment, whilst retaining the EPC. This commitment was confirmed in the coalition agreement document published on 12 May. The Government opposed the introduction of HIPs whilst in opposition and has consistently promised to abolish them.

7.2 The Government believes that HIPs are an expensive and unnecessary burden and that they have not achieved their objective to improve the home buying and selling process for consumers. The Government believes that HIPs have acted as a deterrent to people wishing to sell their homes and that their abolition will help aid the recovery of the housing market.<sup>105</sup>

The Merits of Statutory Instruments Committee, when considering SI 2010/1455, referred to its “enduring doubts” over HIPs but also expressed concern over the “precipitate” way the Government had acted to suspend HIPs.<sup>106</sup> The Government defended the speed of its actions with reference to the need to “avoid uncertainty in the housing market.” Given its longstanding opposition to HIPs and “a clear manifesto commitment,” the view was taken that no further consultation was needed.<sup>107</sup>

The suspension of HIPs was met with majority support from professionals within the industry. A surge in properties coming on to the market was widely reported in the immediate weeks following suspension.<sup>108</sup> This increase was predicted in the Impact Assessment accompanying SI 2010/1455:

Although the removal of HIPs could see an increase in sellers, a large proportion of these additional listings may only be speculative sellers. These are just “testing the waters” and just gauging interest in their property. These are likely to reject offers on the property and so will remain on the market for an amount of time which is greater than the average. This may result in an increase in the average time on the market.<sup>109</sup>

Those people who had specifically trained as Home Inspectors and the companies established to supply HIPs were less enthusiastic about the suspension of HIPs. The Impact Assessment referred to these “affected groups”:

The industry that was created to compile the packs is likely to suffer losses. HIP providers will lose revenue because they will not be able to charge for bringing together information in a mandatory pack. Some HIP providers will continue to offer searches (and EPCs) so impact may be mitigated. Domestic Energy Assessors are likely to suffer a loss as the need to provide an EPC will increase from 3 years to 10 years, so fewer EPCs will be purchased.<sup>110</sup>

Several parliamentary questions were tabled concerning the number of jobs that would be lost as a result of the decision to scrap HIPs:

**Chris Leslie:** To ask the Secretary of State for Communities and Local Government what estimate he has made of the number of jobs likely to be lost as a result of the ending of the requirement to use home information packs.

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<sup>105</sup> [Explanatory Memorandum](#) to the *Home Information Pack (Suspension) Order 2010*

<sup>106</sup> [HL Paper 7 of 2010-11](#)

<sup>107</sup> [Explanatory Memorandum](#) to the *Home Information Pack (Suspension) Order 2010*, para 8.1

<sup>108</sup> *The Guardian*, “Homes flood on to market a week after HIPs are scrapped,” 29 May 2010 & *Financial Times*, “Number of homes for sale soars as HIPs end,” 31 May 2010

<sup>109</sup> [Explanatory Memorandum](#) to the *Home Information Pack (Suspension) Order 2010*

<sup>110</sup> *ibid*

**Andrew Stunell** [*holding answer 7 June 2010*]: It is difficult to make such an estimate. Although HIP providers will be most affected, many may continue to offer other services such as conveyancing, local search provision and the preparation of energy performance certificates.

Our impact assessment of this, however, estimates that sellers of homes will save over £870 million over a 10 year period.<sup>111</sup>

The Impact Assessment refers to an estimate produced by the Association of Home Information Pack Providers of between 3,000 to 10,000 individuals “whose livelihoods are either directly or indirectly dependent on HIPs.”

The question of compensation for HIP providers and Home Inspectors was raised – CLG dealt with this in a Q&A page on their [website](#):

**Q: I am a HIP provider – will I get compensation?**

No. The present Government (Conservatives and Liberal Democrats) have consistently opposed the introduction of HIPs and promised to abolish them in their respective manifestos.

Important to note that only the requirement to provide a HIP is suspended. Sellers are free to choose to provide information to buyers on a voluntary basis and HIP providers can offer such products.

**Q: Will the Government compensate Home Inspectors?**

We appreciate that abolition of HIPs would remove the option of compulsory Home Condition Reports. However, when the Government was in opposition they made it clear that they opposed HIPs and set out in their manifestos plans to abolish them if elected.

**Q: Thousands of people involved in the production of HIPs will now lose their jobs?**

It is not good enough to carry on with a policy that is both unnecessary and costly, purely on the basis of providing job security. HIPs are not providing value for money for sellers or for buyers, so we should not continue to burden the market with this extra layer of bureaucracy.

HIP providers could still have a part to play in the housing market as buyers and sellers will still require Energy Performance Certificates (EPCs), evidence of title and local searches.

**Q: I am a Home Inspector and abolishing HIPs means that there is no possibility of using my qualifications?**

There is work available to Home Inspectors who are accredited energy assessors in producing domestic EPCs which continue to be required for rental properties and properties marketed for sale.<sup>112</sup>

The suspension of HIPs has had a distributional impact by shifting costs from sellers, particularly those who are not buying a property, to buyers. The Impact Assessment notes

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<sup>111</sup> HC Deb 15 June 2010 c370W

<sup>112</sup> <http://www.communities.gov.uk/housing/homeownership/homeinfopackquestions/>

that where transactions fail, more searches will be carried out (at a cost to buyers) as the search no longer stays with the property.

Commentators have pointed out that the suspension and forthcoming abolition of HIPs means that problems identified with the house buying and selling process in England in 1998 remain largely unresolved. Developments such as electronic conveyancing have helped to speed up the process but it is still the case that relatively few buyers invest in at least a mid-range survey before entering into a substantial financial commitment.

The Office of Fair Trading's 2010 report, *Home buying and selling – A Market Study*, found that around 20% of transactions fail between offer and exchange; 67% of buyers who experienced failed transactions had incurred costs compared to 37% of sellers. Participants in the study criticised the cost of HIPs and the need to have one in place (at that time) before marketing a property, but 33% of buyers said that the HIP had had some, or a lot of, influence over the decision to make an offer on the property. The report concluded that HIPs had had no *significant* positive or negative impact but by making more information available to prospective buyers early in the process, and where buyers found this information useful in the decision making process, "it could be argued that HIPs in their current form have a positive impact."