



# *Delivering Property Searches*

*Good practice guidance for Local  
Authorities & Personal Searchers*

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A consultation paper



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A consultation paper

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## Foreword

In September 2005 the Office of Fair Trading (OFT) published “Property Searches – A Market Study” which explored the working of the market for property searches and how this was serving consumers. In the response published in December of that year the Government accepted the recommendations made in the OFT’s study.

This consultation document seeks your views on draft guidance. Your attention is drawn to the two following recommendations in the OFT report which the Government has accepted.

- *Extent of available information* – “We recommend that, by 2007, Local Authorities make available all the unrefined information they hold that is needed to compile a property search for inclusion in a Home Information Pack to all those who ask”.
- *Terms of availability* – “We recommend that Local Authorities make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.”

This guidance would replace the existing guidance issued by the Office of the Deputy Prime Minister in 2005.

A Partial Regulatory Impact Assessment is included with this consultation and comments on this are also invited.

We look forward to hearing your views.

Yvette Cooper MP  
Minister for Housing & Planning

# 1 Introduction

## Purpose of Consultation

- 1.1 This consultation seeks views on best practice guidance relating to the delivery of property searches to consumers by local authorities (LAs) and the personal search sector.
- 1.2 We welcome responses to the specific questions posed in this document as well as any general comments that you may have. Please ensure that responses to the specific questions posed clearly identify the question number to assist with the compilation and analysis of responses. It would also be helpful if responses were submitted electronically, as well as any hard copies that may be sent. This will help reduce the time needed to compile and analyse the comments received.
- 1.3 Responses and comments, to be received **by 26 June 2007**, should be sent to:

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Department for Communities & Local Government  
HIPs Implementation Team  
Floor 2, Zone J9  
Eland House  
Bressenden Place  
London SW1E 5DU

Email: [len.britton@communities.gsi.gov.uk](mailto:len.britton@communities.gsi.gov.uk)

Tel: 0207 944 6212

We will analyse the responses and produce a feedback document which summarises them and record what changes have or have not been made to the guidance as a result.

Please note that responses, including the names and addresses of respondents will be made available to anyone who asks for them unless confidentiality is specifically requested or disclosure would prejudice third parties.

## The consultation criteria

- 1.4 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations consisting of a document in electronic or printed form.
  - i. Consult widely throughout the process, allowing a minimum of 12 weeks (but see paragraph 2.12 below) for written consultation at least once during the development of the policy;
  - ii. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses;

- iii. Ensure your consultation is clear, concise and widely accessible;
  - iv. Give feedback regarding the responses received and how the consultation process influenced the policy;
  - v. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator;
  - vi. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- 1.5 The code does not have legal force but is regarded as binding on UK departments and their agencies unless Ministers conclude that exceptional circumstances require a departure from it. The full consultation code may be viewed at:  
[http://www.cabinetoffice.gov.uk/regulation/consultation/consultation\\_guidance/index.asp#codeofpractice](http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/index.asp#codeofpractice)
- 1.6 If you are not satisfied that this consultation has followed the above criteria or you have any other observations about ways of improving the consultation process, then please contact:

Albert Joyce  
Communities and Local Government Consultation Co-ordinator  
Floor 6, Zone H10  
Eland House  
Bressenden Place  
London SW1E 5DU

Email: [albert.joyce@communities.gsi.gov.uk](mailto:albert.joyce@communities.gsi.gov.uk)

## 2. Consultation Background

2.1 Making the delivery of property searches cheaper and faster is a key part of the Government's strategy to reform the home buying and selling process. The speed and price at which searches are provided has a direct impact on both how quickly a home can be marketed and the cost of a Home Information Pack (HIP).

### OFT market study

2.2 In September 2005 the Office of Fair Trading (OFT) produced its report 'Property Searches – A Market Study'. In summary the OFT found that:

*“1.2 Some aspects of the supply of property searches are working well. Many suppliers offer a good service, quickly providing the information that consumers need, and relatively few consumers claim to experience problems with property searches.*

*1.3 However, our study identified concerns about:*

- limits on the availability of some property information*
- the potential for competition concerns in the retailing of property searches in the future, and*
- the level of consumer awareness about property searches.*

*1.4 To address these concerns, we make a number of recommendations to ensure that this rapidly evolving market works well for consumers in the future. These include:*

- changes to how much property information LAs make available, and clearer guidance on how they should charge for it*
- removing restrictions on the retailing of property searches, and*
- information campaigns to improve consumers' understanding of property searches.”*

2.3 The report had nine recommendations (see Annex 1). There are two key recommendations related to access to, and charging for, data to produce property searches, these were:

- **Extent of available information** – “We recommend that, by 2007, LAs make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask”.
- **Terms of availability** – “We recommend that LAs make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.”

In addition the report made the following recommendation on LA's charging for data.

- **Price transparency** – “Central government should provide clear guidance for LAs on how they should recover the costs of providing property information in compiled and unrefined forms and, if LAs are to set their own prices for these two services, how they should set charges to avoid distorting competition in the supply of local property services”.

- 2.4 The Government produced its response in December 2005 and accepted all of the OFT’s recommendations.
- 2.5 This draft guidance document does not address the recommendation on price transparency and this consultation does not therefore invite comments on this aspect of the property searches market. However, this is an integral part of the “level playing field approach” envisaged by the OFT report and therefore it is intended that the issue of LA charging will be subject to a further consultation exercise later this year.

## Home Information Packs

- 2.6 From 1 June 2007 all home owners in England and Wales will need to have a Home Information Pack prepared before putting their homes up for sale. The Packs must contain a number of required documents. Three of these documents are searches:
- An official search of the Local Land Charges Register (LLCR) – form LLC1;
  - local enquiries relating to the specific property – form CON29;
  - drainage and water enquiries.
- 2.7 This consultation is concerned predominantly with the local enquiries searches. While it addresses issues that also relate to searches of the LLCR this has been subject to a separate consultation paper by the Department of Constitutional Affairs (DCA) in October 2006 and subsequent guidance.<sup>1</sup> This consultation does not cover issues relating to drainage and water searches.

## Government’s aims

- 2.8 The Government has two key aims relating to property searches. These are to create a level playing field in the provision of searches to:
- i. ensure the smooth and effective working of the property searches market for the introduction of HIPs on 1 June 2007 and beyond; and
  - ii. implement the recommendations contained in the OFT market study.

<sup>1</sup> Local Land Charges Fees: Guidance for Registering Authorities on Setting Fees for Local Land Charge Services in England. CM 7026

## **Communities and Local Government's Property Searches Working Group (PSWG)**

- 2.9 To help progress the implementation of the OFT's recommendations in the run up to the introduction of HIPs, the PSWG was established comprising members from the searches sector, LAs and Government Departments. The best practice guidance in this document has been developed with the support of the PSWG and its successor the Conveyancing & Property Searches Working Group.
- 2.10 The guidance in this consultation builds on existing legal requirements and good practice – it does not reflect new duties on either LAs or personal search companies. It's aim is to help those who deliver property searches to work together to deliver an effective service to the consumer.
- 2.11 It is important that the issue of access to data is resolved quickly. The OFT recommended open access in September 2005 and, given the advent of HIPs on 1 June 2007, if consumers are to benefit from lower search prices, quicker turnaround times and choice of search provider and products full open access to information needs to be achieved.
- 2.12 Given the factors set out in paragraphs 2.9 -2.11 an 8 week consultation period has been agreed.

Communities & Local Government  
April 2007

## 3. Access Guidance

### Background

- 3.1 In March 2005 the Office of the Deputy Prime Minister (ODPM) published 'Personal searches: Guidance for local authorities and personal searchers'. This guidance sought to set out and promote good practice for LA staff and personal searchers in conducting personal searches. In particular it was intended to:
- help foster a better understanding of the respective roles of personal search businesses and LA local land charges staff;
  - assist LAs to accommodate personal searches in a way which provided access to the Local Land Charges Register and other records open to public inspection while avoiding unnecessary disruption of the work of staff managing those records;
  - promote good practice and good working relations among LA staff and personal searchers.
- 3.2 Following the OFT's report and recommendations the Property Searches Working Group established a specific sub group to update and revise the ODPM document with the aim of bringing it up to date and relaunching it to ensure that LAs and PSCs were made fully aware of its importance. The resulting revised draft guidance is at Annex 2.

### Specific issues

- 3.3 One of the key issues which the draft guidance seeks to address is access to **all** the unrefined information necessary to complete the local searches commonly carried out in the residential conveyancing process using the CON 29 (Pts I & II) forms to complete these enquiries.
- 3.4 There is a complex legal framework relating to the information require to complete the CON 29 Parts 1 and 2. In some cases there is a statutory right of public inspection (and for some this is specified to be a right of free inspection), in others access to the information is granted at a local authority's discretion and fees for access are also charged at an authority's discretion.<sup>2</sup>

### Improving access

- 4.1 Following complaints made under the Competition Act (1998) the Office of Fair Trading published a report "Property Searches – A Market Study" in September 2005. This study found that there were three specific areas of concern with regards to the current workings of the property search market which acted against the interest of consumers:
- a) The time taken by LAs in turning around searches;
  - b) The time taken in providing PSCs with access to LA information;
  - c) Enabling PSCs access to the all the information required to complete searches.

<sup>2</sup> See paragraphs 1.4. and 1.5 of Annex E to the OFT study.

- 4.2 The OFT study found that “the availability of unrefined information affects the ability of PSCs to compete with LAs in the supply of compiled searches which in turn would be expected to influence the prices paid by consumers” and that “some consumers may be paying too much for LA compiled local property searches. Without such competition the incentive on LAs to price their searches competitively would be reduced”.
- 4.3 The ability of PSCs to provide an alternative service to that of LAs relies on authorities allowing timely access to the data that it holds. The speed at which access to this data is made available is crucial in opening up the property search market to competition. However, this access is often delayed by LA appointment booking systems and other restrictions such as limits on the number searches PSCs can perform per appointment. Without effective competition consumers may face significant delays in marketing their properties.

## Partial RIA (Annex 3)

- 5.1 In accordance with the code of practice on consultations, a Partial Regulatory Impact Assessment is at Annex 3. This sets out the background to the subject, describes why the guidance is necessary, what other options have been considered and the costs and benefits of each of these options.

## Questions

- 6.1 While general comments are invited on the guidance, we would welcome responses to the following questions set out in this consultation paper:
- Q1 Are the aims of the guidance clear? (Paragraphs 1.1 – 1.3 of the guidance)
  - Q2 The guidance says that local authorities must act reasonably in allowing access to records open to public inspection (paragraph 2.2 of the guidance). Is it clear what is meant by reasonable in this context?
  - Q3 The OFT report makes it clear that local authorities should make their unrefined information available to third parties on terms that do not advantage their own compiling activities over competing compilers. Is this covered adequately in the guidance (paragraph 2.3 of the guidance)?
  - Q4 Does the guidance make clear what information it applies to (Paragraphs 2.4 – 3.2 of the guidance and Annex)?
  - Q5 Is the good practice guidance directed to local authorities (paragraphs 6 and 7 of the guidance) clear, helpful, reasonable and achievable?
  - Q6 Are the sections relating to good practice for searchers (paragraphs 10.1 – 10.6) covering advance notice, appointments, payment, assistance from local authority staff and attribution clear, helpful reasonable and achievable?

## **Annex 1 – Recommendations made by the Office of Fair Trading (September 2005)**

### **Extent of available information**

- (1) “We recommend that, by 2007, LAs make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask”.

### **Terms of availability**

- (2) “We recommend that LAs make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.”

### **Price transparency**

- (3) “Central government should provide clear guidance for LAs on how they should recover the costs of providing property information in compiled and unrefined forms and, if LAs are to set their own prices for these two services, how they should set charges to avoid distorting competition in the supply of local property services”.

### **Turnaround times**

- (4) “We recommend that LAs and ODPM agree a revised BVPI that encompasses requests for unrefined property information and ensures that LAs do not favour their own needs for unrefined information to compile searches. The Welsh Assembly should include a similar target in the framework for LAs in Wales.”

### **Retailing of property searches**

- (5) “We recommend that LGIH remove all the exclusivity provisions contained in the hub and channel licences as soon as is practicable, and in any case for any hub and channel licences that are issued after the current set expire. In future LGIH should help LAs and the NLIS hub set objective criteria that are necessary to enable new electronic connections to be established, without unnecessarily limiting competition”.
- (6) “We recommend that LGIH should assign the fourth channel licence as soon as is practicable, and should explore the possibility of awarding additional channel licences.
- (7) In future LGIH should remove the limits on the number of hub and channel licences. It should seek to set objective criteria for all potential licensees to ensure adequate consumer protection without otherwise limiting the number of licences awarded.”

## Information and redress

- (8) “We recommend that information about the financial cover offered, such as indemnity insurance and whom to contact in the event of a problem should be included with the searches in the HIP, and PIP if introduced. The guidance material for the HIP should also make it clear that financial redress may be available for searches that are authorized but not required to be included in a HIP.
- (9) “We recommend that a consumer information campaign on the different property search options be included as one element in the launch of the HIP, and PIP in Scotland if it is introduced. This should also include how property searches can be conducted, what they cover and what information they provide.”

## Annex 2

Draft

### *Personal Searches of the Local Land Charges Register & Inspection of Other Records Held by Local Authorities*

*Good practice guidance for local authorities  
& personal searchers*

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# Good practice guidance for local authorities and personal searchers

## This guidance adopts the following definitions:

**Local Search:** A search including local information prescribed either by legislation or conveyancing practice, as amended from time to time. (The current information required to complete a local search is contained in Annex A)

**Personal Search:** A search of the Local Land Charges Register in accordance with the Local Land Charges Act 1975 and the Local Land Charges Rules 1977.

**Searcher:** A person undertaking a search of the Local Land Charges Register and/or inspection of other records required for inclusion in a local search.

**Unrefined:** all of a local authority's registers and records requiring inspection to answer the local search questions.

**Compiled:** the answers provided in either a local authority or personal search report.

## 1. Aim of the Guidance

- 1.1 The local search is an important and long-established feature of the home buying and selling process and can be undertaken by a local authority, a property search company (PSC) or a member of the public. The authoritative information required to compile a local search is mostly held by local authorities.
- 1.2 This guidance sets out good practice for local authorities and searchers on the conduct of a personal search of the Local Land Charges Register and the inspection of other records held by local authorities for inclusion in a local search.
- 1.3 In particular, this guidance is intended to:
  - Address the Office of Fair Trading recommendation that local authorities make available all the unrefined information they hold that is needed to compile a local search and that this is done on terms that do not advantage an authority's own local search activities over other searchers;
  - Promote good practice and good working relations among local authority staff and searchers;
  - Confirm that all the information ought to be made available to searchers wanting to complete a local search;

- Assist local authorities in providing access for searchers to both the Local Land Charges Register and other records, while at the same time allowing staff to manage and update those records;
- Provide an overview of the legislation which applies to searches and the duties of local authorities in facilitating these searches;
- Ensure that local authorities are fully aware of their duties in other legislation such as the Competition Act 1998.

## Office of Fair Trading Market Study

1.4 During 2005, the Office of Fair Trading (OFT) carried out a study, “Property searches – A market study” of the property search industry to see how well the market was serving consumers, following a series of complaints from searchers that local authorities were unfairly restricting access to information required for local searches. While the OFT found that some aspects of the supply of property searches were working well with many suppliers offering a good service with relatively few consumer complaints, the OFT’s study did identify concerns about:

- limits on the availability of some property information;
- the introduction of the HIP could possibly eliminate private sector competition in the compilation of local property searches if searchers do not have access to all the necessary information;
- the potential for restrictions in the sale of property searches. LAs should offer searchers access to information on comparable terms to those that LAs adopt themselves when they compile searches;
- the level of consumer awareness about property searches.

1.5 To address the restrictions on the inspection of data and to ensure that searchers have access to all the required information for inclusion in local property searches, the OFT made the following recommendations which were accepted by the Government in the response published by DTI.<sup>3</sup>

### **Access to data**

*That by 2007, local authorities make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask.*

### **Terms of availability**

*That local authorities make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers*

<sup>3</sup> (Property Searches: Government Response to Office of Fair Trading (OFT) Property Searches Market Study, December 2005).

## Charges

Central government should provide clear guidance for local authorities on how they should recover the costs of providing property information in compiled and unrefined forms and, if local authorities are to set their own prices for these two services, how they should set these charges to avoid distorting competition in the supply of local property searches.

- 1.6 The OFT report stated that, central government should consider the case for legislative change if a best practice approach failed.
- 1.7 This guidance has been prepared by a Working Group comprising representatives of local government, property search companies, home information pack providers and central government.

## Implementation date

- 1.8 This guidance replaces the previous guidance, “Personal searches; Guidance for local authorities and personal searchers” issued by the Office of the Deputy Prime Minister in March 2005. Therefore local authorities and personal searchers should adopt these good practice guidelines with immediate effect.

## 2. Access to information (requirements to act reasonably)

- 2.1 Searchers could access all the information required for a local search by:
  - Undertaking a personal search of the Local Land Charges Register, and
  - Inspecting other records held by local authorities.
- 2.2 A local authority must act reasonably in fulfilling its duty to allow access to records open for public inspection. It must not act in a way that inhibits or prevents reasonable access. This reasonable access should also extend to all information required to complete a local search. In some cases legislation contains specific requirements. In the case of the planning register, for example, the requirement is for authorities to make the register available for inspection by the public at all reasonable hours. This means that, subject to any reasonable management system put in place by the authority, members of the public at large, including personal search businesses, have the right to inspect these records during the authority’s normal working hours.
- 2.3 A local authority should provide access to information on terms which are the same as those adopted by the authority when producing its own local search services. This would include, for example, allowing access to all the same records examined by a local authority when compiling a local search.

## Search of the Local Land Charges Register

- 2.4 A searcher can either undertake a personal search of the Local Land Charges Register or obtain an official search (Form LLC1) from the local authority. The following paragraphs provide an overview of how a personal search should be carried out.
- 2.5 Local authorities are required by section 8 of the Local Land Charges Act 1975 to allow a member of the public or their representative to search in the Local Land Charges Register on payment of the prescribed fee.
- 2.6 The personal searcher must comply with Rule 11 of the Local Land Charges Rules 1977 by giving, where required by the local authority, his name and address or that of the search company name and address. They should also be prepared to identify the parcel of land against which they wish to search.
- 2.7 Where an authority uses Rule 7 of the LLC Rules and particulars of a planning or other charges are entered in another record open for public inspection, a reference may be made in or on the LLC register to that effect. The reference will include details of where that other record can be readily traced.
- 2.8 Neither a Local Land Charges Register nor an index need be kept in documentary form. The Local Land Charges Act 1975 Section 8(1A) states that “if a local land charges register is kept otherwise than in documentary form (e.g. a computerised register) the entitlement of a person to search in it is satisfied if the registering authority makes the portion of it which he wishes to examine available to inspection in visible and legible form”.
- 2.9 In practice therefore, a person conducting a personal search may have to obtain Local Land Charge information from any of the following sources, plus any others by examining:
  - an index to the Register (kept in books, on cards or plans);
  - a written Register;
  - related manual registers or inspecting plans as allowed for by Rule 7 of the Local Land Charges Rules 1977 (which provide that an entry in the Register may consist of a reference to an entry in any existing record required to be maintained by statute which contains the necessary particulars and is open to public inspection);
  - the Register contained in an electronic format via a computer terminal;
  - a pre-printed extract from the Register, the purchase of which is available.

### **3. Inspection of other information required for a local search**

- 3.1 In addition to undertaking a search of the Local Land Charges Register, the OFT recommended that a searcher should have the right to inspect all the records held by a local authority which contain information required for a local search and which are used by local authorities when compiling their own local searches. Some of this information can by law be inspected free of charge, for example, the register of enforcement notices, stop notices and breach of condition notices (sections 69 and 188 of the Town and Country Planning Act 1990), together with the register of adopted streets (section 36 of the Highways Act 1980).
- 3.2 In addition to information which can be inspected free of charge on a public register, the OFT recommended that a local authority should make available all other data they hold which is required to complete a local search. A local authority may charge for providing access to this data where a statutory power exists. In circumstances where charges are applicable they must not seek to distort competition in the supply of local property searches.

### **4. Competition Act 1998**

- 4.1 Attention is drawn for the need for local authorities to ensure that they fully comply with other legislation such as the Competition Act. In particular they will need to ensure that competition is not prevented, restricted or distorted (Chapter 1, Part1) and should be aware of the provisions of the Act regarding the abuse of a dominant market position (Chapter 2 Part 1).

### **5. Good practice**

- 5.1 To ensure an efficient and best value service to the consumer there needs to be good co-operation between local authority staff and searchers. This is key to securing smooth working relationships and a fair and even balance between those who need access either for inspecting information and/or the maintenance of these records.
- 5.2 The following guidance on good practice by local authorities and searchers is designed to provide a solid foundation upon which mutually satisfactory working arrangements should be based.

## **Good practice guidance for local authorities**

### **6. Advice and information**

- 6.1 Local authorities should provide searchers with an information note setting out the authority's arrangements for accommodating personal searches of the Local Land Charges Register and access to local authority information for the local search. This information note should include the following:
- a schedule which sets out what information for the local search is available at each relevant local authority department, their location and opening hours;

- details about how the Local Land Charges Register is held, for example, in paper or electronic format;
  - any requirements for advance notice, including providing address details and plans;
  - any appointment requirements (including details for a specific officer and telephone number);
  - charges for access to information and copies of documents, with reference to the statutory or other power allowing the authority to make the charge, together with information about methods of payment;
  - the name and address of an officer of the authority to whom comments, suggestions and complaints about the service provided to searchers should be made;
  - details of information for local enquiries which are not held by the authority and for which a searcher should direct their enquiries to another organisation, together with an address and contact telephone number for that organisation
- 6.2 Where practicable and requested to do so, a local authority should provide the personal searcher with sight of the register entry (i.e. the actual entry on the register). Where the register is blank, the local authority should provide written confirmation of this fact.
- 6.3 Copies of this information note should be supplied to searchers known to use the authority's facilities, and copies made available more generally to searchers on request and on the authority's website.

## 7. Appointments

- 7.1 Where an appointment system is operated for inspection of local authority information:
- appointments should generally be available on a 'first come, first served' basis. All requests should receive fair and equal treatment;
  - where local authority records are located in more than one department of the authority, those departments should operate common hours of access for public inspection;
  - appointments to inspect all the data required for a local search should allow searchers access to local authority records no later than the next working day. Where this is not practicable, due to high demand or other exceptional circumstances searchers should be advised in writing. Where this is not possible, access should be allowed no later than two working days from the date of the initial request;

- appointment systems should be operated as flexibly as possible and should be reviewed on a regular basis.

## 8. Computerised records

8.1 Where the Local Land Charges Register is held electronically, there is a statutory requirement to make the relevant portion of the register available for inspection 'in visible and legible form'. In such cases searchers should:

- be shown how to operate the computer or be provided with simple operating instructions or have the computer operated for them by a member of staff. No charge should be levied for this.
- should not be expected to search a manual record, which is not, and does not form part of, the formal Register or record.

## 9. Copies of record entries

### Local Land Charges Register

9.1 On the written request of any person and on payment of the prescribed fee, the personal searcher shall be supplied with an office copy of any registration or any document, map or plan deposited with or filed by that authority in connection with a registration.

### Other Documents

9.2 Copies of original documents, plans, maps or other items deposited with the local authority may be obtained on payment of the required fee. The fee will cover the authority's reasonable costs in providing the service. Where records are computerised, the copy may take the form of a printout. Where copies are not available at the time of the visit, they should be supplied as soon as is reasonably practicable.

## Good practice guidance for searchers

### 10. Advance notice

10.1 Searchers should, where required, notify the appropriate local authority department as soon as possible in advance of a proposed visit, and provide:

- the name of the person or company who will be carrying out the search
- the address and any other details (including a plan where necessary) to enable accurate identification of the land/property to be searched.

## Appointments

10.2 Where the local authority operates an appointments system, searchers should:

- be prepared to make an appointment;
- recognise that, while every reasonable effort will be made to comply with a request for early access to records open for public inspection held by the local authority (normally no later than the next working day), there may be occasions where, due to high levels of demand or other reasons, this is not practicable. In such cases personal searchers should be advised in writing. Where this is not possible, access should be allowed no later than two working days from the date of the initial request;
- endeavour to keep an appointment and notify the authority as soon as possible in the event that an appointment cannot be kept;
- observe any time restriction that is attached to the appointment.

## Payment

10.3 Searchers should pay the required fee(s) (as set out in the information note), in a manner acceptable to the local authority, at the time the search is carried out.

## Assistance from local authority staff

10.4 Searchers should be prepared to carry out a search and inspection of local authority records, without assistance from local authority staff.

10.5 While authority staff will provide access to the relevant records, it is the responsibility of the person carrying out the search to identify relevant information from those records and make any notes. Local authority staff may offer factual clarification of what is in the record open to public inspection but are under no obligation to answer any supplementary or additional enquiries when a personal search is made.

## Attribution

10.6 Where a searcher carries out a personal search on behalf of a third party, for example a solicitor, conveyancer or his or her clients it should be clear to them that:

- the search information has been compiled by the searcher and not by the local authority. This is necessary to ensure that any queries about the reported results are properly directed to the searcher and not to the authority;
- where the searcher obtains an official LLC1 search from the local authority and supplies this to a third party client together with a local search, it should be clear to the client that only the LLC1 form comprises an official search carried out by the authority. (The official LLC1 search form is prescribed by statute, and must not be altered in any way. Only local authorities are authorised to sign form LLC1).

# Annex A – Schedule 8 Home Information Pack Regulations (SI 2007 No 992)

The following provisions for ‘local enquiries’ are required as part of a Home Information Pack. They cover the same information in the CON29 Part 1 form.

## Local enquiries

### PART 1

#### General

#### Interpretation

1.(1) In this Schedule –

“adoption” and “adopted” relate to an agreement made under section 38 of the Highways Act 1980<sup>4</sup>;

“bond” means an indemnity or guarantee which is sought by a local authority as to the financial security of a developer;

“bond waiver” means an agreement that a local authority will not seek a bond from a developer;

“breach of condition notice” means a notice served under section 187A of the Town and Country Planning Act 1990<sup>5</sup>;

“building preservation notice” means a notice served under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>6</sup>;

“building regulations approvals” means –

(a) plans passed under section 16 of the Building Act 1984<sup>7</sup>; or

(b) a certificate given under regulation 21(6) of the Building Regulations 2000<sup>8</sup> (regularisation certificates);

“building regulations completion certificate” means a certificate given under regulation 17(1) of the Building Regulations 2000<sup>9</sup>;

“building regulations” has the same meaning as in section 122 of the Building Act 1984;

<sup>4</sup> Amended by section 22(1) of the New Roads and Street Works Act 1991 (c.22).

<sup>5</sup> Inserted by section 2 of the Planning and Compensation Act 1991 (c.34).

<sup>6</sup> Amended by section 20(4) of and paragraph 25(c) of Schedule 6 to the Local Government (Wales) Act 1994 (c.19).

<sup>7</sup> There are amendments to section 16 which are not relevant to these Regulations.

<sup>8</sup> S.I. 2000/2531. Under this provision, an applicant may apply to a local authority for a regularisation certificate in respect of unauthorised building work.

<sup>9</sup> Regulation 17 is amended by S.I. 2005/1541.

“certificate of lawfulness of existing use or development” means a certificate issued under section 191(4) of the Town and Country Planning Act 1990<sup>10</sup>;

“certificate of lawfulness of proposed use or development” means a certificate issued under section 191(2) of the Town and Country Planning Act 1990<sup>11</sup>;

“competent person self-certification scheme” means a scheme under whose provisions building work which consists only of work of a type described in column 1 of the Table in Schedule 2A to the Building Regulations 2000<sup>12</sup> is carried out by a person who is described in the corresponding entry in column 2 of that Table;

“compulsory purchase order with a direction for minimum compensation” means an order confirmed or made under section 50(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>13</sup>;

“conservation area” means either or both of the following –

(a) an area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990; or

(b) an area so designated before 31st August 1974 by other means;

“contaminated land notice” means a notice given under section 78B(3) of the Environmental Protection Act 1990<sup>14</sup>;

“cycle track” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988<sup>15</sup>) with or without a right of way on foot;

“development plan” must be construed in accordance with section 38 of the Planning and Compulsory Purchase Act 2004<sup>16</sup>;

“direction restricting permitted development” means a direction given under article 4 of the Town and Country Planning (General Permitted Development) Order 1995<sup>17</sup>;

“drainage agreement” means an agreement made under section 22(2) of the Building Act 1984;

“enforcement notice” means a notice issued under section 172 of the Town and Country Planning Act 1990<sup>18</sup>;

<sup>10</sup> Substituted by section 10(1) of the Planning and Compensation Act 1991 (c.34).

<sup>11</sup> Substituted by section 10(1) of the Planning and Compensation Act 1991.

<sup>12</sup> Substituted by S.I. 2006/652.

<sup>13</sup> Amended by section 109(1), paragraph 345 of Schedule 8 to and Schedule 10 to the Courts Act 2003 (c.39).

<sup>14</sup> Inserted by section 57 of the Environment Act 1995.

<sup>15</sup> 1988 c.52.

<sup>16</sup> 2004 c.5.

<sup>17</sup> S.I. 1995/418. Article 4 is amended by S.I. 1996/528.

<sup>18</sup> Substituted by section 5 of the Planning and Compensation Act 1991.

“footpath” means a highway over which the public have a right of way on foot only, not being a footway;

“footway” means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only;

“frontager” means the owner or occupier of premises that abut a road, footway or footpath;

“highway maintainable at public expense” means a highway which by virtue of section 36 of the Highways Act 1980<sup>19</sup> or any other enactment, is a highway which for the purposes of that Act, is a highway maintainable at the public expense;

“improvement” means the doing of any act under powers conferred by Part 5 of the Highways Act 1980 and includes the erection, maintenance, alteration and removal of traffic signs, and the freeing of a highway or road-ferry from tolls;

“land required for public purposes” means land to which paragraphs 5 and 6 of Schedule 13 to the Town and Country Planning Act 1990 relate<sup>20</sup>;

“land to be acquired for road works” means land to be acquired by a public authority under any of sections 239 to 246 of the Highways Act 1980<sup>21</sup>;

“listed building enforcement notice” means a notice issued under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>22</sup>;

“listed building repairs notice” means a notice served under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990;

“mini-roundabout” means a roundabout consisting of a level or raised circular marking of a diameter of four metres or less;

“order requiring discontinuance of use or alteration or removal of buildings or works” means an order made under section 102 of the Town and Country Planning Act 1990<sup>23</sup>;

“order revoking or modifying planning permission” means an order made under section 97 of the Town and Country Planning Act 1990<sup>24</sup>;

<sup>19</sup> 1980 c.66. Section 36 is amended by section 4(1) of and paragraph 47 of Schedule 2 to the Housing (Consequential Provisions) Act 1985 (c.71), sections 64 and 68 of and Part 1 of Schedule 2 to the Transport and Works Act 1992 (c.42), section 4 of and paragraph 45(3) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11), section 57 of, and Part 1 of Schedule 6 to the Countryside and Rights of Way Act 2000 (c.37) and by S.I. 2006/1177. There are further amendments to section 36 which are not relevant to these Regulations.

<sup>20</sup> Paragraph 5 is amended by section 32 of and paragraph 56 of Schedule 7 to the Planning and Compensation Act 1991. Both paragraphs 5 and 6 were amended by section 118(1) of and paragraphs 1 and 18 of Schedule 6 to the Planning and Compulsory Purchase Act 2004.

<sup>21</sup> Section 241 is amended by section 190 of and paragraph 62 of Schedule 25 to the Water Act 1989 (c.15). Section 245A was inserted by section 13 of the Traffic Management Act 2004 (c.18). Section 246 is amended by sections 68(2) and 70 of, and paragraph 26 of Schedule 15 to the Planning and Compensation Act 1991 and section 34 of and paragraph 31 of Schedule 4 to the Acquisition of Land Act 1981 (c.67).

<sup>22</sup> Amended by sections 25 and 84 of and Schedule 3 to the Planning and Compensation Act 1991.

<sup>23</sup> Amended by sections 21 and 32 of, paragraph 6 of Schedule 1 to and paragraph 21 of Schedule 7 to the Planning and Compensation Act 1991.

<sup>24</sup> Amended by sections 21 and 84 of, paragraph 4 of Schedule 1 to, and Schedule 19 to the Planning and Compensation Act 1991.

“planning agreement” means an agreement made under section 106 of the Town and Country Planning Act 1990, as existing at any time before the enactment of the Planning and Compulsory Purchase Act 2004;

“planning contravention notice” means a notice served under section 171C of the Town and Country Planning Act 1990<sup>25</sup>;

“planning contribution” means a contribution to be made pursuant to any regulations made under sections 46 to 48 of the Planning and Compulsory Purchase Act 2004;

“remediation notice” means a notice served under section 78E of the Environmental Protection Act 1990<sup>26</sup>;

“railway” means a system of transport employing parallel rails which –

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),

but does not include a tramway;

“road hump” means an artificial hump in or on the surface of the highway which is designed to control the speed of vehicles, and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump;

“special road” means a highway, or a proposed highway, which is a special road in accordance with section 16 of the Highways Act 1980;

“stop notice” means a notice served under section 183 of the Town and Country Planning Act 1990<sup>27</sup>;

“traffic calming works”, in relation to a highway, means works affecting the movement of vehicular or other traffic for the purpose of –

- (a) promoting safety (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism within the meaning of section 1 of the Terrorism Act 2000<sup>28</sup>); or
- (b) preserving or improving the environment through which the highway runs;

<sup>25</sup> Inserted by section 1 of the Planning and Compensation Act 1991 and amended by S.I. 2003/956 and S.I. 2004/3156.

<sup>26</sup> Inserted by section 57 of the Environment Act 1995 and amended by sections 86 and 105 of the Water Act 2003.

<sup>27</sup> Substituted by section 9(1) of the Planning and Compensation Act 1991.

<sup>28</sup> 2000 c.1.

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which –

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“tree preservation order” means an order made under section 198 of the Town and Country Planning Act 1990<sup>29</sup>; and

“trunk road” means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 of the Highways Act 1980 or by virtue of an order or direction under section 10 of that Act<sup>30</sup> or under any other enactment.

(2) In paragraph 8 “private sewer”, “drain” and “disposal main” have the same meaning as in paragraph 1(1) of Schedule 9.<sup>31</sup>

## Enquiries

2. (1) The search report required by regulation 9(1) must contain the enquiries set out in Part 2.
- (2) Those enquiries must relate to the property.
- (3) The enquiries in paragraphs 6 to 18 relate only to matters which are not entered on the appropriate local land charges register.

<sup>29</sup> Amended by sections 31, 32 and 84 of, paragraph 20 of Schedule 6 to and paragraph 34 of Schedules 7 and 19 to the Planning and Compensation Act 1991. Also amended by section 42(3) of the Planning and Compulsory Purchase Act 2004.

<sup>30</sup> Section 10 is amended by section 22(2) of the New Roads and Street Works Act 1991 (c.22) and section 19 is amended by section 21(1) of that Act.

<sup>31</sup> See paragraph 1(1) of that Schedule.

## PART 2

### Enquiries

#### Planning and building decisions and pending applications

3. Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications—

- (a) a planning permission;
- (b) a listed building consent;
- (c) a conservation area consent;
- (d) a certificate of lawfulness of existing use or development;
- (e) a certificate of lawfulness of proposed use or development;
- (f) building regulations approvals;
- (g) a building regulations completion certificate; and
- (h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme?<sup>32</sup>

#### Planning designations and proposals

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

### Roads

5. Which of the roads, footways and footpaths named in the application for this search are –

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

<sup>32</sup> See regulation 16A of the Buildings Regulations 2000.

## Land required for public purposes

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

## Land to be acquired for road works

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

## Drainage agreements and consents

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

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

## Nearby road schemes

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

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

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

### Nearby railway schemes

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

### Traffic schemes

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

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

## Outstanding notices

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

- (a) building works;
- (b) environment;
- (c) health and safety;
- (d) housing;
- (e) highways; or
- (f) public health?

## Contravention of building regulations

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

## Notices, orders, directions and proceedings under Planning Acts

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

- (a) an enforcement notice;
- (b) a stop notice;
- (c) a listed building enforcement notice;
- (d) a breach of condition notice;
- (e) a planning contravention notice;
- (f) another notice relating to breach of planning control;
- (g) a listed building repairs notice;
- (h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation;
- (i) a building preservation notice;
- (j) a direction restricting permitted development;
- (k) an order revoking or modifying planning permission;

- (l) an order requiring discontinuance of use or alteration or removal of buildings or works;
- (m) a tree preservation order; or
- (n) proceedings to enforce a planning agreement or planning contribution?

## Conservation areas

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

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

## Compulsory purchase

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

## Contaminated land

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

- (a) a contaminated land notice;
- (b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990<sup>33</sup> –
  - (i) a decision to make an entry; or
  - (ii) an entry; or
- (c) consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990<sup>34</sup> before the service of a remediation notice?

## Radon gas

18. Do records indicate that the property is in a “Radon Affected Area” as identified by the Health Protection Agency?<sup>35</sup>

<sup>33</sup> 1990 c.43. Section 78R is inserted by section 57 of the Environment Act 1995.

<sup>34</sup> Section 78G is inserted by section 57 of the Environment Act 1995.

<sup>35</sup> A body established under section 1 of the Health Protection Agency Act 2004 (c.17).

## Annex 3 – Partial Regulatory Impact Assessment (RIA)

### **Title of proposal – good practice guidance for local authorities and personal searchers – personal searches of the local land charges register and inspection of other records held by local authorities**

#### Purpose and intended effect of measure

##### Objective

To improve access to data held by local authorities (LAs) and working relationships between LAs and personal search companies (PSCs).

LAs and private searchers should adopt the guidance with immediate effect.

##### Background

- 1 In September 2005 the OFT published its report “Property Searches – A Market Study”. This set out a number of recommendations which were accepted by the Government in “Property Searches – Government Response to Office of Fair Trading (OFT) Property Searches Market Study” December 2005.
- 2 In particular the guidance contributes to implementing the following recommendations:
  - 1) ***“We recommend that, by 2007, LAs make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask”***
  - 2) ***“We recommend that LAs make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.”***
- 3 The market study was launched by OFT on 8 December 2004 in response to complaints investigated under the Competition Act 1998. Amongst other issues, the report identified concerns about limits placed on the availability of some property information by some local authorities.
- 4 The issue of access to this information is particularly important with the introduction of the Home Information Packs from June 2007. The Home Information Pack Regulations 2007 specify the precise information that is required for a search to be valid for inclusion in the Home Information Pack (Schedule 8). The Regulations require answers to all the questions in the schedule.

- 5 Some of the information required by the Regulations is held by local authorities on a statutory basis often with the requirement that this information should be made available to the public free of charge. Other information is however held on a discretionary basis and local authorities can decide whether to make this information available to others and, where this is done, the charge that they make to access this information. The Guidance deals with all the information held by LAs to complete a local search (traditionally captured by forms LLC1 And Con 29 Part 1) and seeks to ensure that they make this information available to private searchers
- 6 In order to promote a level playing field in the provision of searches by LA's and private search companies the OFT report also recommended that:

***“Central government should provide clear guidance for LAs on how they should recover the costs of providing property information in compiled and unrefined forms and, if LAs are to set their own prices for these two services, how they should set charges to avoid distorting competition in the supply of local property services”.***

- 7 This will be the subject of further consultation in Autumn 2007.

## Rationale for Government Intervention

- 8 Government accepted the recommendations set out in OFT report in it's response to the report – December 2005 Property Searches – Government Response to Office of Fair Trading (OFT) Property Searches Market Study. –

*“The Government accepted that Local Authorities should make available all the unrefined information they hold that is needed to compile a property search for inclusion in a home information pack (HIP) to all who ask. If LA's possess information and use it themselves to compile search responses it should be available to personal searchers”.*

- 9 Whilst there is no Government commitment to producing guidance on this issue the draft guidance in this consultation document has been produced in response to section 1.23 of the OFT report which states:

*“LAs could do this voluntarily as a matter of best practice or it could be made mandatory by changing the relevant pieces of legislation. As the former is the simpler approach, central government and the Local Government Association (LGA) should look first to adopt the best practice approach. If this fails, government should consider the case for legislative change.”*

- 10 The Guidance is intended to promote this voluntary approach by setting clear standards of conduct and expected levels of service for both LAs and private searchers.
- 11 If the Government does not intervene in this issue then the existing barriers to competition in the provision of searches highlighted by the OFT; the lack of access to the data necessary to complete a valid property search and extended delays for appointments for PSCs to conduct searches will persist. This would mean a poorer service to consumers.

## Consultation

- 12 The draft guidance has been developed by the Communities and Local Government's Property Searches Working Group comprising key property search stakeholders, including representatives from local authority's and the personal search sector as well as the Department for Constitutional Affairs.
- 13 No prior public consultation has taken place. The draft guidance replaces and updates existing guidance published by Office of the Deputy Prime Minister in March 2005.

## Options

- 14 The Government has already accepted the recommendations of the OFT report on access to data and therefore there is already a commitment to take action in the light of the OFT recommendations.
- 15 **“Do nothing”** option – The “do nothing” option would have potentially highly damaging consequences for the Private Search Industry and does not allow the level playing field approach envisaged in the OFT report. The “Home Information Pack Regulations 2007” prescribes what information must be provided in order for a search to be valid from 1st June 2007. Under these regulations searches must include the full information unless it is unobtainable under any circumstances. Presently private search companies use indemnity insurance where information is unavailable. This will continue to be allowed under the Regulations (where access to information is denied by a LA) for a transitional period to April 2008. After this date PSCs will not be able to continue to provide searches in those instances where LAs denies them access to the full range of information. This in turn would have implications for the delivery of property searches to consumers e.g. competition and its effect on costs and in the timely delivery of searches. There are no existing legal powers to resolve issues around access.

### ***“Voluntary and Statutory Options”***

- 16 The OFT report suggested that central government and the LGA should first look to encourage LAs to adopt the “best practice” approach rather than the “mandatory” approach to providing access to unrefined information. The Guidance has been drafted in response to this recommendation. The Department will review the need for a statutory approach should the best practice approach fail. Communities and Local Government's Conveyancing and Property Searches Working Group is currently considering data sources to monitor the effectiveness of the guidance. A statutory approach would require the amendment of a number of pieces of legislation to remove the discretionary element to information access. This could not be completed quickly and certainly not before the introduction of HIPs from June.

## Costs and Benefits

- 17 **Firms:** If the Guidance is adhered to, Private Search Companies should be able to gain access to the full range of information required to complete a valid search under the HIP regulations. If access is denied PSCs will be unable to compete effectively with LAs in the provision of searches.

- 18 The property search market was estimated to be worth £177m in 2004 by the OFT. Under the Local Authorities (Charges for Land Charges) Regulations 1994, Local Authorities have the discretion to charge for access to information except in those circumstances where there is a statutory duty requiring them to make access to information free of charge. In determining the level of charge authorities are required to have regard to the cost of dealing with enquiries. The guidance does not affect the way that local authorities are able to charge for access to information. However, PSCs may be subject to additional costs for access to data in those limited areas where access was previously denied. The PSC sector contains both large and smaller companies with potential for expansion at all levels.
- 19 **Consumers:** Those affected by the Guidance are:
- home buyers and sellers;
  - from 1 June 2007 anyone compiling a HIP in accordance with the Home Information Pack Regulations 2007;
  - any potential purchaser of a property wishing to conduct a search on the property that they intend to purchase; or
  - anyone acting on their behalf such as a conveyancer or solicitor.
- 20 Unless PSCs are able to have access to the full range of information required to complete a valid search under the HIP Regulations they will effectively be unable to provide searches from April 2008. This would deny consumers a choice of their search provider and LAs would be in a monopoly position with regards to the supply of searches. The expected benefits to the consumer delivered through competition include; a choice of product including value added choices, a reduction of in the cost of searches and improved delivery of searches in the local authority sector.
- 21 The OFT report found that “the availability of unrefined information affects the ability of PSCs to compete with LAs in the supply of compiled searches which in turn would be expected to influence the prices paid by consumers” and that “some consumers may be paying too much for LA compiled local property searches”. Without such competition the incentive on LAs to price their searches competitively would be reduced. The report found a wide variation in the prices for searches compiled by LAs; which ranged from £55 to £269 with an average cost of £119. As the product is standardised, through the CON 29 form, this suggested that some consumers were paying too much for LA searches. Consumers would also be reliant on LA turnaround times for searches which in some areas could have a significant delay in properties being marketed without any viable alternative being available.
- 22 **LAs:** The guidance expects local authorities to make available all the information needed to compile a valid property search for inclusion in a home information pack (HIP) to all who ask in line with the recommendations in the OFT report.

- 23 In order to do so local authorities may incur additional expense in making the full range of information available. However, as now, local authorities may be able to make charges with regard to the costs of dealing with enquiries under The Local Authorities (Charges for Land Searches) Regulation 1994. The question of LA charging will be the subject of further consultation in Autumn 2007 in line with the recommendations in the OFT report.
- 24 The ability of PSCs to access data currently denied to them may have the effect of making private searches a more attractive proposition to consumers especially where a PSC is able to provide a quicker or cheaper service than the LA. (Although the extent of this is unclear as PSCs currently use insurance indemnities to cover missing data). The acceptability of private searches to lenders is also a key the future of the private search market this would be enhanced if PSCs had full access to the data needed to compile valid property searches. Some Local Authorities have experienced a reduction in income from local searches where they are not competitive in terms of turnaround times or price compared with private search companies
- 25 **Other Impacts:** There is nothing in the guidance that will impact on other groups such a voluntary organizations and charities, employees, or the rural economy. The need for a Race Equality Assessment and Health Impact Assessment has been considered but there are no issues emanating from the guidance that would have specific impacts on these groups.

## Economic, Environmental and Social Costs and Benefits of Options

### *Option 1: Do nothing*

- 26 If the do nothing option was chosen consumers would be denied the benefits which come from competition in this sector ie lower search prices, quicker turnaround times and choice of search provider and products. The do nothing option could also “potentially eliminate private sector competition in the compilation of local authority searches” under HIPs. (OFT Report Page 5).
- 27 The consequences of this would vary between local authority areas. In those areas where the local authority search service is efficient and reasonably priced and the local authority has the capacity to deal with additional enquiries the impact in consumers may not be noticeable as the local authority service would meet the needs of consumers. However in cases where the LA service is poor consumers may be faced with a substantial wait, perhaps of a month or more before they are able to market their property (this assumes that some LA performances remain poor). This would obviously have an impact on individual households, both sellers and buyers, but also possibly on local economies if the attractiveness of an area as a place to move to is affected or ability to move to an area quickly is compromised. This may have local economic, social and environmental costs if the deterrent effect is strong enough to persuade potential home buyers to look elsewhere for the purchase of their property.
- 28 The financial impact on consumers would also vary from council to council with the OFT report finding a range of charges for local authority land searches of £55 to £269. Without the benefit of private sector competition consumers would have no alternative but to pay the local authority search charge. The OFT report found that the wide variation in costs suggested that some consumers “may be paying too much for

LA compiled local property searches” and that many LAs “set prices taking little account of costs, instead using income targets or other LA prices as a guide.

- 29 The OFT report estimated that that the Search market was worth £177m in 2004 and that approximately 40% of searches were provided by private search companies. The size of the total search market may be increased by the introduction of HIPs from 1.4 m searches to 1.9m searches. Under the “do nothing” option the bulk of these searches would probably be carried out by LAs.

### ***Option 2: Voluntary and Statutory Options***

- 30 The economic, environmental and social costs and benefits of these two options would be the same: as they would allow private sector companies to compete with LA on the provision of searches. The statutory option would provide greater certainty for PSCs and local authorities. However this would require changes to primary legislation and could not therefore be delivered over the short term. The voluntary approach opportunity for local authorities to improve their performance without the need for regulation and is the preferred initial way forward identified in the OFT report.
- 31 Consumers would benefit from the competition provided by a choice of search provider. The OFT report recognised that this would act as a driver to improve LA turnaround times and reduce LA search charges if there was a level playing field in terms of access to search information for both the public and private search sectors.
- 32 This should ensure that sellers are able to market their property in the shortest possible time; increasing the choice for buyers. The size of the total search market is likely to remain the same under each of the options considered. The main change would be in the percentage of searches provided through the public and private sectors. The OFT report suggested that 40% of searches were conducted by PSCs; under the Guidance this figure would increase or decrease depending on consumer choice and the ability and willingness for LAs to compete with PSCs on turnaround times, price and added value that they could provide in HIP packs.

### ***Small Firms Impact Test (SFIT)***

- 33 The proposals would mainly affect PSCs and commercial purchasers of their services. The proposal does not place additional burdens or costs on firms but is intended to facilitate a more dynamic property search market. By opening up access to data which may have been previously withheld by local authorities PSCs will be able to compete with local authorities and other PSCs for the provision of searches. Reducing restrictions on the number of searches that be may made on any visit and on the numbers and times of appointments will also enable PSCs generally the opportunity to gain a wider share of the search market. The heart of the search industry lies with the relationship between individual LA search departments and personal searchers and the guidance would apply to all searchers and LAs equally.
- 34 Additionally smaller firms should be aided by reducing the restrictions placed on PSCs by local authorities as will this result in their being greater flexibility in viewing times. Increasing the number of appointments available may also allow smaller companies to make searches where previously the appointment times were dominated by larger companies with greater resources dedicated to obtaining the limited times available.

- 35 The guidance was developed through a working group which included representatives of:
- The Association of Independent Personal Search Agents (IPSA) a trade organisation that represents smaller and medium sized search companies, 75% of their 140 members being sole traders.
  - The Council of Property Search Organisations which represents small, medium and larger private search companies including sole traders.
- 36 We have consulted the Small Business Service, who agree with our approach and findings.

### ***Competition assessment***

- 37 The guidance is intended to allow equal competition in the property search market by ensuring that PSC's have access to the information required for property searches on an equal footing with local authority search departments. More discussion on the need for competition in the property searches market and how this might be achieved can be found in the OFT report.<sup>36</sup>

### ***Enforcement sanctions and Monitoring***

- 38 The good practice guidance is not enforceable by law but has been developed by a working group including private and public sector interests and therefore should be acceptable to both sides of the industry. As the section on the voluntary and statutory options states Government will keep this issue under review and will consider a statutory approach should the voluntary approach embodied in the guidance fail. However, this would require legislative change.

<sup>36</sup> Office of Fair Trading: Property searches – A market study, September 2005, Chapter 4.