



HOUSE OF LORDS

Merits of Statutory Instruments Committee

18th Report of Session 2006-07

Drawing special attention to:
Home Information Pack Regulations 2007

**Energy Performance of Buildings
(Certificates and Inspections) (England
and Wales) Regulations 2007**

Report with Evidence

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The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
 - (a) Orders in Council, and draft Orders in Council, under paragraph 1 of the Schedule to the Northern Ireland Act 2000;
 - (b) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (c) draft orders (including draft subordinate provisions orders) under section 1 of the Regulatory Reform Act 2001, subordinate provisions orders under that Act and proposals in the form of a draft order under that Act;
 - (d) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Current Membership

The Members of the Committee are:

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Lord Armstrong of Ilminster	Lord Filkin (<i>Chairman</i>)	Baroness Thomas of Winchester
Viscount Colville of Culross	Lord James of Blackheath	Lord Tunnicliffe
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Publications

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Contacts

If you have any queries about the Committee and its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; facsimile 020-7219 2571; email merits@parliament.uk. The Committee's website, www.parliament.uk, has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

Eighteenth Report

INSTRUMENTS REPORTED

The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.

Home Information Packs Regulations 2007 (SI 2007/992)

Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991)

Summary: The Home Information Pack Regulations 2007 prescribe the contents of Home Information Packs (HIPs) which will be required for sales of residential properties from 1 June 2007, including information about energy efficiency and other provisions relating to HIP duties.

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 require the production of Energy Performance Certificates (EPCs) and recommendations for the improvement of the energy performance of buildings when the latter are constructed, sold or rented out. EPCs are to be included in HIPs. As a consequence, some properties could be required to have updated EPCs more frequently than every 10 years, going beyond the requirements of the relevant European Directive.

The HIP Regulations reflect the change of policy in July 2006, when the Government announced that HIPs would not after all have to include Home Condition Reports. In the period since the change was announced, a number of interested parties have voiced concerns about the impact and effectiveness of HIPs as now proposed.

We sought limited written evidence, and also questioned officials from the Department for Communities and Local Government, on whether HIPs would make the home-buying process significantly easier or more transparent, which was the policy objective underlying the relevant provisions of the Housing Act 2004. We also questioned them on the implementation of the relevant European Directive in the detailed requirements for EPCs.

The Government present 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 interested parties show at best scepticism, and at worst hostility. 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 they need to do more if the market is to respond positively to this intervention.

The Home Information Pack Regulations 2007 are drawn to the special attention of the House on the ground that they may imperfectly achieve their policy objective.

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 are drawn to the special

attention of the House on the ground that they may inappropriately implement European Union legislation.

Scrutiny of Statutory Instruments

1. We think it appropriate to remind the House of the wider context in which the Merits Committee fulfils its role of scrutinising statutory instruments. This context has most recently been described in the November 2006 report on “Conventions of the UK Parliament” by the Joint Committee on Conventions (HL Paper 265, Session 2005-06). At paragraph 227, under “Conclusions”, the Joint Committee said: “On the basis of the evidence, we conclude **that the House of Lords should not regularly reject Statutory Instruments, but that in exceptional circumstances it may be appropriate for it to do so.** This is consistent with past practice, and represents a convention recognised by the opposition parties.”
2. There are a number of reasons why it should be exceptional for this House to reject statutory instruments, but among them is the fact that such instruments are made under powers provided in primary legislation which has itself previously been agreed by Parliament.
3. Against this background, the Merits Committee conducts its policy consideration of statutory instruments in order to inform the House’s scrutiny process, and not in order to guide the House towards either approval or rejection of statutory instruments.
4. In the case of these Regulations, the House will recognise that Part 5 of the Housing Act 2004 imposed duties on people marketing residential properties in England and Wales, requiring them to have an HIP available for prospective buyers. Section 163 of the 2004 Act gave the Secretary of State the power to make Regulations prescribing documents to be included in HIPs.
5. The Committee’s consideration of the Regulations has taken as its starting-point that the Government will use the powers to introduce HIPs which were provided by Parliament’s approval of the 2004 Act. We do not seek to re-open the principle of introducing HIPs. We have however been concerned to establish whether the Regulations seem likely to implement this principle effectively, and this is the basis for the comments which we offer to the House.
6. In reaching our conclusions, we think it appropriate for us to take account of views on the Regulations which have been voiced by interested parties. We have no doubt that it is ultimately for Government to determine the final shape of the implementation of legislation, after listening to relevant views expressed, and subject of course to the appropriate processes of Parliamentary scrutiny and approval. None the less, we see it as inherent in our role of informing the House about the statutory instruments that we should refer to significant expressions of concern, such as have been made in relation to these Regulations.

The Regulations

7. The Department of Communities and Local Government (DCLG) have made the Home Information Pack Regulations 2007 (SI 2007/992: “the

2007 HIP Regulations”).¹ In parallel, they have made the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991: “the 2007 EPB Regulations”).² An Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA) have been provided for both sets of Regulations. In addition, a Transposition Note accompanies the 2007 EPB Regulations.

8. The two sets of Regulations are closely related, and the Government have identified two main aims in bringing them forward: to make the home-buying process more transparent, quicker, less expensive, less uncertain, and less stressful; and to reduce the current level of 27% of UK carbon emissions that come from homes. The Committee has taken evidence on the Regulations from DCLG representatives; a transcript is published as Appendix 2.

History of Policy

9. Policy on Home Information Packs (HIPs) has been formulated over a long period of time. Government consultation was initiated with a paper published in 1998. Subsequent consideration resulted in the inclusion of relevant provisions in the Housing Act 2004 (“the 2004 Act”).
10. In June 2006, DCLG made the Home Information Pack Regulations 2006 (SI 2006/1503: “the 2006 HIP Regulations”), setting out detailed requirements for HIPs which would take effect in June 2007; Home Condition Reports (HCRs) were prescribed as a mandatory element of HIPs. In June 2006, we drew the 2006 HIP Regulations to the special attention of the House.³ We commented that we did not under-estimate the difficulties involved in making such an important change to long-standing arrangements for the buying and selling of property. We stressed that it would be a major organisational challenge to ensure that there were enough qualified Home Inspectors to meet the likely demand for HCRs.
11. In July 2006, a month after the 2006 HIP Regulations were laid, the Minister for Housing announced that HCRs would not after all be mandatory. The EM to the 2007 HIP Regulations states that the laying of the 2006 HIP Regulations and the publication of the RIA led to renewed debate and representations to the Department about HIPs. It explains that “it became apparent that, despite the Department’s firm intention to implement home information packs from 1 June 2007, many mortgage lenders would still require buyers to pay for costly valuation inspections in addition to Home Condition Reports as they would not be ready to implement automated valuation models from that date. This meant that consumers were likely to face duplicate costs if the mandatory requirement for Home Condition Reports had remained as it was.”

Effect of 2007 HIP Regulations and of 2007 EPB Regulations

12. The 2007 HIP Regulations revoke the 2006 HIP Regulations, but the EM to the former says that they have broadly the same purposes as the revoked

¹ Under sections 161, 163, 164, 165 and 250(2) of, and paragraphs 2 and 11(b) of Schedule 8 to, the Housing Act 2004.

² Under section 2(2) of the European Communities Act 1972 and sections 1(1), 8(6), 35 and 47 of, and paragraphs 1, 2, 4, 7, 8 and 10 of Schedule 1 to, the Building Act 1984.

³ In the 39th Report of 2005-06 (HL Paper 214).

Regulations, including prescribing the contents of HIPs which will be required for marketed sales of residential properties from 1 June 2007, including information about energy efficiency. The EM to the 2007 HIP Regulations also identifies changes now proposed:

- the Home Condition Report (HCR) will no longer be a mandatory element of HIPs;
 - HIPs will not necessarily have to include information from local authority searches, or about leaseholds;
 - Energy Performance Certificates (EPCs) will be required for dwellings in use once marketed, but energy performance information (i.e., not EPCs) will be required for properties marketed while under construction;
 - such information, or EPCs, will be the first document in the pack after the index;
 - for properties put on the market before June 2007, the transitional period during which they will not need an HIP is extended from 31 October to 31 December 2007.
13. The EM to the 2007 EPB Regulations states that, in implementing obligations under the Energy Performance of Buildings Directive (“the Directive”), they contain the following requirements of relevance to HIPs:
- EPCs and recommendations for improvement of the energy performance of the building are to be produced when buildings are constructed, sold or rented out; and
 - energy assessors producing the certificates or carrying out the inspections are to be accredited.
14. The EM to the 2007 HIP Regulations sets out DCLG’s view “that the introduction of home information packs should have the benefit of increasing awareness among the general public about energy efficiency matters relating to their properties. Energy Performance Certificates and energy improvement recommendations will be required under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 for marketed sales of residential properties. The Department believes that placing the certificate in the home information pack will enhance its value by providing important energy efficiency information to the buyer at the start of the home buying process and increasing the likelihood that the certificate will be read and recommendations implemented.”

Concerns Expressed about Policy Development

15. Before the 2006 HIP Regulations were laid, the Government took advice from the Home Information Pack Components Project Board, which was made up of representative organisations including the Council of Mortgage Lenders (CML), the Law Society, the National Association of Estate Agents (NAEA), the Royal Institution of Chartered Surveyors (RICS), and Which? (formerly the Consumers Association). The EM to the 2006 HIP Regulations made it clear that, over a period of more than a year before the laying of the 2006 HIP Regulations, the Project Board had been involved in the drafting process and had been consulted on successive drafts.

16. In order to inform our consideration of the latest Regulations, we invited these organisations to offer us written comments on them. Their comments are reproduced as Appendix 1. It is the general practice of the Committee to consider the handling by Government Departments of consultation not only on proposed policy developments, but also on the embodiment of policy proposals in drafts of statutory instruments. The written comments that we have received raise questions about the Government's approach to consultation on the latest proposals. While some of these organisations clearly represent members who are involved in current arrangements for property transactions and may therefore be expected to take a cautious view of proposed changes, they were brought in as partners in the initial development of these proposals by the Government itself.
17. Which? drew our attention to a letter they sent to the Secretary of State for Communities and Local Government in response to the July 2006 announcement about HCRs and HIPs, which contained the following: "I am writing to express our disappointment with your decision to withdraw the Home Condition Report from HIPs and our intention to no longer support their introduction. The Home Condition Report was an essential part of the HIP ... This half-baked compromise will result in something that is of little value but of real expense to consumers and Which? cannot therefore continue to provide support."
18. The Law Society expressed their view that the decision to remove the mandatory HCR had undermined the whole concept of the HIP; that it was inappropriate to link EPCs to HIPs; and that HIPs "will, in fact, make the process more difficult, much more expensive and remove existing transparency from the market place."
19. The NAEA expressed a number of concerns, and asked us "to seriously consider the facts and to come to the conclusion that the regulations, as now published, will not make the home-buying and selling process easier. HIPs are now purely an administrative burden to the process."
20. The RICS stressed their concern that the introduction of HIPs in June 2007 will have a detrimental impact on the market and the economy. They questioned the Government's decision to require an EPC to be produced every time that a residential property is marketed, and said that "it is RICS' view that Article 7 of Directive 2002/91/EC on Energy Performance of Buildings is being gold plated and used to prop up the HIP, an ailing domestic policy."
21. We are aware that the same concern was expressed by the Better Regulation Commission (BRC), in comments published in February 2007. The BRC's comments include the statement that DCLG's proposals for residential properties "go beyond the requirements of the Directive in requiring a new EPC to be produced every time a property is put on the market for sale, and by requiring its production before the property can go on the market. Yet it has provided no supporting evidence to justify this 'gold-plating'."⁴
22. The CML did not submit further evidence, but they drew our attention to comments that they had made to DCLG in February of this year, and in particular to their view that the Government had not provided sufficient information about the likely impact of HIPs. Their comments included a

⁴ See BRC press release dated 26 February 2007: <http://www.brc.gov.uk/news/2007/070226.asp>

“call on the Government to postpone the introduction of HIPs until the trials are complete, the outcomes reviewed, and the issues [we raise] resolved.”

23. We also invited comments from the Local Authorities Co-ordinators of Regulatory Services (LACORS), since the Trading Standards Officers (TSOs) whom they represent will have important enforcement responsibilities in relation to HIPs. LACORS voiced particular concern to us about the enforcement provisions. They explained that they had argued for breaches of the Regulations to be a criminal offence, and for the use of fixed penalty charges which could be enforced in the Magistrates Courts: “this was rejected and instead local authorities are left with the only enforcement tool being a £200 penalty that is only enforceable through the civil courts. We feel this level of penalty is very low to provide an incentive for compliance.” We would point out that provision for a civil penalty rather than a criminal offence was made in the 2004 Act itself, although it is the Regulations which specify the level for the penalty.

Evidence from DCLG witnesses

24. We asked DCLG’s representatives to describe the benefits which they expected to flow from the introduction of HIPs as now proposed. We were told that “Ministers believe that the mandatory pack as it currently stands will have benefits itself, both in establishing the principle of information being provided up front and providing a means of speeding up transactions, reducing wasted costs and helping to reduce the implications of failed transactions, but also by providing a new basis on which the market can build ... What we have here is a situation where there is an initiative that is having immediate benefits but at the same time is likely to prompt change in the market situation and encourage innovation and thus the market to move forward in the way that other retail markets have moved forward over the last ten, 15, 20 years.” (Q8)
25. DCLG told us that the decision in July 2006 that HCRs should not be mandatory was driven by a desire to avoid a duplication of costs to consumers, as well as by a recognition that there might be too few inspectors to meet the demand for HCRs. In addition, however, “Ministers were keen to create a situation in which the market could lead the take-up of Home Condition Reports in which they did not necessarily need to be imposed as a regulatory requirement.” (Q3) We pointed out that the Government had argued that the prime cause of transaction failures in the housing market was house condition issues, and that the Government’s wish to reduce the incidence of failures provided an argument for making HCRs compulsory, as the Government had originally proposed. DCLG agreed that to do so would have the benefit that transaction failures would be further reduced. (Q26)
26. We pointed out that in 2006 the Government had advocated mandatory HCRs as part of mandatory HIPs, but that in 2007 it favoured voluntary HCRs while HIPs remained mandatory; we asked whether it would now make sense to encourage HIPs as a voluntary initiative. DCLG said that “the evidence of the last 20-30 years does suggest that voluntary change is unlikely to bring about an improvement” (Q19); but stressed that “what the Government has done is make the HCRs voluntary, not abandon them, and press forward with a small mandatory pack ... The real issue is how big a regulatory intervention is required in order to stimulate change which

Ministers believe would be better market-led than taken forward as a regulatory imposition.” (Q20)

27. We asked DCLG’s representatives to explain why the organisations that had been members of their HIP Components Project Board had all now become critical of, or opposed to, the latest proposals for HIPs. DCLG said that “there has been a range of reasons given and they are all slightly different. What we are talking about is something that will lead to a significant shake-up in the home buying and selling market in this country. It is perfectly understandable that that is not greatly welcomed by those who work in the current regime.” (Q14). We pressed the question of whether such a shake-up would lead to improvements. DCLG said: “We start from a situation where the average transaction takes of the order of six and a half months, where there is a failure rate of one in four between offer and exchange and where the cost in terms of average expenditure on fees is of the order of £5,000, so a process that is slow, expensive and uncertain in a sector that does not seem to have responded to consumers in improved effectiveness and efficiency in the way that many other sectors have. There is a belief that by making the changes that are proposed significant improvement can be brought about.” (Q17)
28. We raised the issue of the Government’s approach to implementing the Directive and the decision to link the preparation of EPCs for residential properties to the production of HIPs, so that an updated EPC will have to be prepared for such properties every time an HIP is produced. The Directive requires an EPC to be prepared every 10 years. Under the Government’s approach, an EPC for a house might have to be updated several times during a 10-year period if that house is sold several times. DCLG explained the basis for this approach: “The judgment is about how much notice buyers would take of a survey that was up to ten years old when energy prices will have changed significantly in the meantime so that the figures will be out of date; when the technology that is available to increase efficiency and reduce emissions will have changed. It is the Department’s view that buyers are much more likely to take account of an up-to-date document and that is why Ministers have concluded that for each sale there should be a newly produced Energy Performance Certificate.” (Q45)
29. We referred to the criticism made by the Better Regulation Commission (BRC) that the Government had offered no evidence that going beyond the Directive’s requirements would lead to improved outcomes. DCLG said that they had offered a briefing to the BRC, but that the offer had not been taken up: “How they were able to conclude that we had no evidence without discussing our evidence with us is something that is beyond me ... We clearly have evidence. A Regulatory Impact Assessment has been published.” (Q57, Q58) We would comment that we did not consider that the RIAs submitted by DCLG contained a full and easily understandable account of the costs and benefits to users of HIPs and EPCs. (Q33, Q34) DCLG undertook to send us more extensive information about these aspects. Since the evidence session, DCLG have said that they will provide this information after publication of the Report, alongside a response to the Report which the Government intend to offer.
30. We put to DCLG the view expressed by the RICS that the Government’s decision to link EPCs to HIPs was motivated by a wish to prop up an ailing domestic policy. DCLG concurred with the suggestion that the RICS’ view

was wrong (Q67); they stressed that the inclusion of EPCs in HIPs was a long-standing aspect of the policy (Q46); and they said that, despite some negative media reporting, “when people experience the use of Energy Performance Certificates in practice they will see their benefit, and certainly the evidence from the area trials is that the majority of sellers, when they get their Energy Performance Certificate, find it simple and easy to understand and they recognise that it is a good thing.” (Q66)

31. We also pressed DCLG to clarify what would be the role of trading standards officers (TSOs) in the enforcement of HIP duties, and questioned whether this would include any qualitative assessment of EPCs. DCLG said that the role would include “checking that the HIP has been provided and that it has the documents it needs to have in it, and the trading standards officer will be able to confirm that there is an Energy Performance Certificate in a pack produced by an estate agent ... What the trading standards officer is not required to do, and neither is the estate agent, is to check that the energy assessor has prepared the Energy Performance Certificate to an appropriate standard.” (Q77) DCLG explained that the latter role would be fulfilled by accreditation schemes under which, for example, repeat inspections would be carried out to check that EPCs were producing reliable results.

Conclusions

32. We recognise that, for the best part of a decade, the Government have sought to make progress on their commitment to improve the process of buying and selling homes, and that they have brought forward these Regulations on Home Information Packs (HIPs) and Energy Performance Certificates (EPCs) as an important contribution to delivering that commitment, as well as to the aim of reducing carbon emissions from homes. These are important issues: over one million residential properties are sold each year; and there is a failure rate of one in four between offer and exchange in house sale transactions. The Government foresee immediate benefits from the introduction of HIPs, from the “up front” provision of information needed to progress home-buying, which may in their view reduce costs to consumers. They also look to HIPs to stimulate further innovations in the housing market, albeit that evidence of the costs and benefits of such innovations seems limited.
33. However, we cannot 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. 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.

APPENDIX 1: WRITTEN EVIDENCE

Letter from Mark McLaren, Public Affairs, Which ?

We are grateful for the opportunity to comment on the Home Information Pack (HIP) regulations as summarised in your e-mail. Given the very short timescale ... I hope that this brief letter will suffice for our response for Committee members. I am content for this response to be published if appropriate.

Though we were involved with DCLG in developing their HIPs policy, we withdrew that support as a result of the July 2006 Government announcement that Home Condition Reports (HCR) will not be a mandatory part of HIPs. Since then, we have not taken an active role, as outlined in the attached letter dated 18 July 2006 to Rt Hon Ruth Kelly MP, DCLG Secretary of State ... We have thus not made detailed comments on the draft regulations issued since then.

We now await the results of the pilot studies commissioned by the DCLG to see whether partial HIPs with voluntary HCRs will work as the Government hope. Which? remains of the view that a mandatory HCR is an essential component of a HIP and that its absence may render the pack an expensive waste of time for consumers.

Which? does however remain committed to reforming the house buying and selling process for the benefit of consumers; for example we are currently working closely with MPs and Peers on the Consumers, Estate Agents and Redress bill currently before Parliament.

Among other measures, this bill will require estate agents to belong to an OFT approved complaints scheme and keep better records. However we are also promoting an amendment, not currently supported by Government, to establish a low cost positive licensing scheme for estate agents. This would allow the OFT to monitor and enforce the proposed legislation.

17 April 2007

Letter from Nick Stace, Director of Campaigns and Communications, Which ?, to Rt Hon. Ruth Kelly MP, Secretary of State for Communities and Local Government

I am writing to express our disappointment with your decision to withdraw the Home Condition Report from HIPS and our intention to no longer support their introduction.

The Home Condition Report was an essential part of the HIP. It seems extraordinary that the first major decision by your new Department is to reduce the consumer benefits of a flagship policy because you have come under pressure from the industry, including estate agents.

Which? has worked with your Department and the industry to ensure that the implementation of HIPS would be a success and we viewed the proposed pilots as key to ironing out any problems. Clearly your concern over misinformed headlines has led you to conclude that other interests should dominate.

This half-baked compromise will result in something that is of little value but of real expense to consumers and Which? cannot therefore continue to provide support. For interest, estate agents are the second least trusted profession after politicians. After this U-turn, it is perhaps not surprising.

Which? will continue to argue strongly for home buying reforms particularly the creation of proper redress mechanisms for consumers.

18 July 2006

Letter from Paul Marsh, Law Society Deputy Vice-President and member of the Law Society HIPs Taskforce

We do not consider that the Home Information Packs Regulations 2007 serve in any way the government's aim of making the home buying process easier and more transparent. They will, in fact, make the process more difficult, much more expensive and remove existing transparency from the market place. The government has refused on numerous occasions to take any account of the concerns expressed by the Law Society about HIPs.

The whole idea of a mandatory HCR was misconceived from the beginning. By removing the mandatory HCR in the way it did, the government has undermined the whole concept of the HIP.

There is no evidence that EPC's will reduce carbon emissions from homes. If they do they should be supported. It is wholly inappropriate to link EPC's to HIPs. There were several methods by which EPC;s could have been promoted in a far more cost effective and efficient manner. The government has persistently refused to listen to reasoned and informed argument from major stakeholder in the industry on this issue.

18 April 2007

Letter from Peter Bolton King FNAEA FRICS, Chief Executive, National Association of Estate Agents

The National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, representing the interests of approximately 10,000 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer and auctioneering.

The National Association of Estate Agents is dedicated to the goal of professionalism within high street estate agency. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service in both sales and lettings. Each NAEA member is bound by a vigorously enforced Code of Practice and adheres to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Association.

The National Association of Estate Agents welcomes the fact that the House of Lords Select Committee on the Merits of Statutory Instruments is to debate the Home Information Pack Regulations.

We are grateful for the opportunity to make comment and have set out below brief answers to the questions sent to us. As time is of the essence these are not written in great detail. If further elaboration is required then please let us know.

The Home Information Pack Regulations 2007 revoke and replace the Home Information Pack Regulations 2006 (of June 2006). We understand that you took part in the HIP Components Project Board which DCLG consulted in preparing the 2006 Regulations. Did you consider that the 2006 Regulations effectively served the Government's aim of making the home-buying process easier and more transparent?

The NAEA did sit on the HIP Components Project Board and has made numerous written submissions and briefing documents throughout the legislative process. We have consistently stated that the Government's, and our, desire to improve the Home Buying and Selling Process will not be improved by the introduction of HIPs. As we have mentioned to the Minister, more than once, if HIPs were really going to achieve this, thus reducing our members' costs and increase their profits, members would have been 100% in favour of them. Instead the vast majority believe that this is an added cost to the process which will adversely affect the market.

One of the Government's aims is to speed up the process. If one considers the limited documents that are now included in the HIP it is very unlikely that there will be any gain in time other than perhaps the availability of Leasehold information. This particular information is difficult and increasingly costly to obtain, a fact recognised by the CLG who have now agreed that it does not need to be available at the point of marketing. A similar decision has been reached in respect of local searches given the ongoing difficulty in also obtaining them. The NAEA has constantly mentioned these two problems and remains very concerned about the potential cost implications in respect of the leasehold documentation. We already hear of Management Companies asking for considerable sums when requested for a quicker service.

The Regulations now say, that on Marketing a property, the only documents required are the Title extract, Index, Sellers Form and the Energy Performance Certificate. In our opinion these documents will do little to achieve the Government's second aim of providing upfront information enabling the potential purchaser to make a more informed decision. We believe that almost no sales are lost as a result of the local search and few affected by the title documents. In any case insurance is available for defective title.

With no required legal summary, it is unlikely that potential purchasers will in any case be able to make much of the information provided.

In Scotland, as part of the trial for the Purchaser's Information Pack, the Association is helping the Scottish Executive pilot a "Sellers Questionnaire". This document will potentially provide the majority of the information about a property that will be of interest to a potential purchaser. This type of document should have been considered for England and Wales without the need for searches and title information.

The NAEA supports the principle of Energy Performance Certificates but does not feel they need to be part of the HIP but should be provided before an exchange of contracts. Our general feeling is that they will not, in the vast majority of cases, influence the buyer and we cannot see why this information is required on marketing. The EU Directive refers to the "sale or letting of property" and not the marketing.

In summary, if one looks at other systems around the world, there are many other ways of improving the home buying process but HIPs will not achieve this. In addition we cannot see how it is really going to make the process more transparent. Interestingly the base line research in respect of HIPs appears to show that 79% of those asked were satisfied with the current process.

We are also still convinced that HIPs will actually have an adverse affect on the market. Our independent research indicates that a significant number of potential sellers will think twice before marketing their property if they have to consider paying for a HIP on withdrawal. This was especially so in areas of the country with lower savings. The net result would be a reduction in supply, which is already very tight in some areas, causing continuing price rises. This is not healthy and could lead to unnecessary additional interest rate rises. This in turn would not only harm the housing market but also the whole economy.

In July 2006, DCLG announced that Home Condition Reports would not after all be a mandatory element of HIPs. This is one of the main changes made by the 2007 Regulations. In the light of these changes, how effective do you think that HIPs will be in delivering the same aim?

There is a big argument that says that the only part of the HIP that might have been of use to the Buyer was the Home Condition Report. The Government argues that a considerable number of sales currently fail because of bad surveys. The baseline research says that only 3% of sellers encountered a bad survey. It also states that 20% of the 253 summary forms returned indicated a sale falling through because of a bad survey. However table 3 of the research says that only 114 summary forms were returned, indicating a small and probably insignificant sample. Unfortunately the reason for the sale failure is not tabulated nor do we know how many of these properties, where a transaction failed due to survey, went on to successfully complete with another buyer.

The Association has consistently stated that in our experience, in many cases where a survey shows up a defect, the purchase price is re-negotiated to take this into account and the sale does not collapse.

Clearly whatever one thinks about the whole concept of HIPs, without the HCR they are of very limited use, as discussed above.

The Government believe there will be a good take up of HCRs voluntarily. We believe that is unlikely that more than a small number of people will pay for something they do not need.

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 contain requirements for Energy Performance Certificates (EPCs) which will have to be included in HIPs for residential properties put on the market. DCLG have said that EPCs will serve the aim of helping to reduce carbon emissions from homes, and that an updated EPC will have to be produced every time a residential property is marketed with an HIP. How effective do you think EPCs will be in meeting this aim? Do you consider that it is appropriate to link EPCs with HIPs in the way proposed by the Government?

As mentioned above the NAEA supports the principle of EPCs. The Association is one of the three awarding bodies for the DEA qualification. However we fail to understand what the European Directive has to do with HIPs and it is not appropriate to link the two together.

We do not believe, certainly in the short to medium term, that buyers will be influenced in their choice by the EPC and it is inconceivable that potential sellers will carry out expensive improvements before marketing. The payback period is just too great and any increase in potential price will not reflect the immediate cost.

Clearly it must be a good idea that every home has an EPC and that owners can potentially look at ways of reducing their running costs and thus reduce carbon emissions. The European Directive suggests an EPC every 10 years yet the HIP regulations insist that a new one is provided every time a new seller markets the property. Where no improvements have been carried out since the last sale this is surely a waste of money.

We do not consider that the EPC Directive is being implemented in the best way and there should have been better consultation as to the most effective way of achieving the desired aim of reducing carbon emissions from homes.

Recently a very senior group of Stakeholders including the NAEA, RICS, Law Society, Council of Mortgage Lenders, House Builders Federation and others met to discuss their on-going concerns that HIPs would not achieve the aim of improving the process. A joint letter was sent to the Housing Minister, and subsequently the Secretary of State, requesting a group meeting to explain how the industry could work with Government to really achieve improvements. Unfortunately these requests were ignored.

We would therefore ask the Committee to seriously consider the facts and to come to the conclusion that the regulations, as now published, will not make the home-buying and selling process easier. HIPs are now purely an administrative burden to the process. Perhaps we could also remind the Committee that Lord Rooker himself said that HIPs had to be right as the Housing Market was too important to risk playing with.

We hope that the above is of help to the Committee and would be happy to answer any further questions.

19 April 2007

Letter from Louisa Stevens, Public Affairs Manager UK, Royal Institution of Chartered Surveyors

Home Information Packs

I thought that it would be helpful to set out the Royal Institution of Chartered Surveyors' (RICS) concerns about forthcoming regulations enabling Article 7 of Directive 2002/91/EC on Energy Performance of Buildings and regulations on Home Information Packs.

We understand that the regulations will be laid on 29 March, the day Parliament rises for Easter recess and that they will be subject to negative resolution. CLG intends that they should come into effect on 1 June 2007 so this is the last possible day they could be laid.

RICS has consistently supported the need to improve the home buying and selling process and provide homeowners with information on energy performance, and has worked with the government over a number of years to achieve this, including providing substantial expert advice and support on the development of Home Information Packs. RICS is uniquely well placed to offer its perspective as the leading property professional body, required by its Royal Charter to place the public interest at the core of all its activities and ahead of its members' own interests.

Lack of consultation

During the period leading up to operational implementation of the Home Information Pack, RICS has become increasingly concerned that the approach CLG intends to adopt does not conform with government principles of better regulation. In particular we are concerned about the legislative and consultative aspects of this exercise: despite several major changes to the policy and implementation proposals for achieving the HIP, there has been little or no genuine consultation in recent months on matters of substance despite the major impact that these will have on the property market. This includes the regulations themselves, which, with two months to go before this policy becomes law, we have not seen. Secondly, CLG has not published a regulatory impact assessment setting out any justification for its current proposals, which we believe represent clear gold plating of an EU directive to achieve unrelated policy objectives. We expand on this issue below.

Gold plating

The Directive requires an Energy Performance Certificate to be provided every ten years; however we believe that the regulations will require that a new Energy Performance Certificate is produced every time a property is marketed since it must form part of the Home Information Pack. This requirement is not backed up by any evidence to suggest any beneficial effect and RICS believes that a more flexible approach, within the confines of the Directive, would enable greater efficiency and lower cost through the provision of

an Energy Performance Certificate at any stage of the transaction, for example when a mortgage valuation is prepared.

Moving the Goal Post

The stated objective of the Home Information Pack was to improve the home buying and selling process. In July 2006 the government decided to remove the requirement to provide a Home Condition Report as a component part of the Pack. Furthermore in January 2007, government announced that, at least until January 2008, two other key components of the Home Information Pack, local authority searches and leasehold information, need not be included in the pack as long as they had been requested. As it stands, the Home Information Pack now only contains the Energy Performance Certificate, the title deeds, a sales statement and the pack index. It appears that the main aim of the Home Information Pack is now to reduce carbon emissions rather than to improve the conveyance process. Over the last year the whole policy objective has been changed but no evidence has been published to support the new direction., there has been no adequate trialling and no evidence produced from the inadequate trials;

Market impact

In broad terms, RICS is concerned about the detrimental impact the introduction of Home Information Packs will have on the market and therefore the economy when introduced on 1 June 2007. We are also concerned at the government's cavalier approach to the legislative process. We do not believe that the current implementation approach will work and in particular we envisage a detrimental effect on first time buyers from rising prices, shortage of supply and abortive cost with little discernible benefit if the policy is introduced in its present form. When the regulations are laid later this week we will be urging proper debate in Parliament of these important issues.

28 March 2007

Joint letter from Louisa Stevens, Public Affairs Manager UK, and Gillian Charlesworth, Head of Regulation Policy, Royal Institution of Chartered Surveyors

Further to the submission from RICS on 28 March regarding regulations on Home Information Packs the relevant Statutory Instruments were laid on 29 March. RICS has a number of specific concerns that it would like to bring to the attention of the House of Lords Select Committee on the Merits of Statutory Instruments.

On 29 March 2007 the following regulations and accompanying documents were laid:

- SI 991 Building and Buildings, England and Wales: The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (referred to in this letter as EPB regulations)
- SI 992 Housing, England and Wales: The Home Information Pack Regulations 2007 (referred to in this letter as HIP regulations)

In broad terms and for the purposes of this submission, these regulations require, respectively:

- an energy performance certificate (EPC) to be provided when a commercial or residential property is marketed, sold or rented
- a Home Information Pack for residential marketed sales

Our concerns about the regulations and associated documents are numerous but we set out our key concerns as follows:

- **Timing:** these regulations have been placed before Parliament a mere two months before they come fully into force (in the case of HIP regulations) bringing about large scale changes to the way property is bought and sold in England and Wales. Certain provisions come into force before the Parliamentary process is complete (17 April for domestic energy assessor accreditation schemes).
- **Quality of drafting.** In parts, both sets of regulations are almost impenetrable and they contain a number of provisions that are simply unclear and contradict statements made by the DCLG elsewhere.

For example, Regulation 18 of the HIP regulations allows a property to be marketed without a complete HIP if leasehold and search documentation is not available, as long as these documents have been commissioned. It goes on to stipulate, however, that a property can only be marketed with an incomplete HIP if the missing documents are expected to arrive within 28 days. However, this regulation is unclear on what must happen if the documents have not arrived within 28 days – i.e. whether the property must be taken off the market until the HIP is complete. The DCLG has informed us orally that the intention is that the property can continue to be marketed even if certain documents are still not available for inclusion in the HIP. However, in a document entitled: “HIPs update: Towards 1 June Summary of Consultation Responses” published on 29 March, the following statement is made at paragraph 13: “The 28 day period is intended as a limit”. This regulation is clearly based on hopes and wishes rather than on what is possible or likely.

- **Contradictions between regulations:** We are concerned that the two sets of regulations do not work when taken together, which they must be in the context of HIPs as both sets will apply to the EPC that goes into a HIP.

For example EPB regulation 5 (2) requires an EPC to be made available ‘at the earliest opportunity’ to any prospective buyer or tenant of any building. HIP regulation 9 (b) requires an EPC to be included in a HIP in the context of marketed residential property. We believe there is a big difference between putting an EPC in the HIP - and providing it when asked - and being under a duty to provide it to a range of people “at the earliest opportunity”.

- **Consultation and impact assessment process and timing:** The associated Regulatory Impact Assessment on Home Information Packs (expected in September 2006, but published on 29 March 2007) admits that, on 1 June and beyond, some of the component parts of the Home Information Pack might not be readily available. The regulations reflect this (as described above), demonstrating the government’s own lack of confidence in this initiative. The most notable omission from a large number of HIPs post 1 June is likely to be Local Authority Searches which at present can take up to ten weeks to obtain.

The publication of a suite of documents running to hundreds of pages including regulations, regulatory impact assessments, explanatory memoranda and consultation responses two months before implementation demonstrates once and for all that the government is rushing through the regulations to meet an arbitrary implementation date that can not be met in an orderly manner. The current implementation model government proposes, which follows a major u-turn last July when the Minister withdrew the requirement to include a Home Condition Report in the HIP, has not been the subject of proper consultation or debate in Parliament.

- **Lack of evidence or understanding of likely outcomes:** the regulatory impact assessments for both HIP and EPB policy are couched in terms such as ‘likely’ ‘potential’ ‘anticipated’, ‘assumed’, ‘expected’. There is very little concrete fact, almost no firm evidence and no analysis. Government’s normal process of evidence based policy decision making has been ignored in this case.
- **Gold plating:** The EU Directive (2002/91/EC) on which EPC policy is based contains a provision for a new EPC every 10 years. For marketed residential sales only, the government requires a new EPC every time the property is marketed. This represents a clear case of gold plating and inconsistency – we question why, if the arguments for a new EPC every time a residential property is marketed are so compelling, they have not also been employed in the context of rented and commercial buildings.

In summary, it is RICS’ view that Article 7 of Directive 2002/91/EC on Energy Performance of Buildings is being gold plated and used to prop up the HIP, an ailing domestic policy.

Please do not hesitate to contact me should require expansion on any of the points above, or those raised in our initial submission. RICS hopes that the Committee will consider RICS’ concerns carefully especially where we have demonstrated that (a) the EU Directive is being gold plated and (b) the regulations will cause confusion and uncertainty, imperfectly achieving government’s policy objectives.

16 April 2007

Submission from Wendy Martin, Director of Policy, Local Authorities Coordinators of Regulatory Services

LACORS is the Local Authorities Coordinators of Regulatory Services. It aims to promote and support quality regulation and related local authority services across the UK. LACORS’ aims and objectives include providing advice and guidance to local authorities in the development and dissemination of good practice, supporting and promoting effective coordination, consistency, co-operation and collaborative arrangements between local authorities. LACORS’ current portfolio of local authority services encompasses trading standards work’ amongst others. Primarily our response focuses on the impact of HIPs and EPCs on local authority trading standards services. We have also made general comments about our perceptions of its impact on consumers and the industry. We have answered your 3 specific questions and added some general comments about enforcement issues.

LACORS has worked continuously with Communities and Local Government throughout the various consultation stages. We felt that the working relationship with the CLG officials has been positive and we were especially pleased that the new burden imposed by these regulations on local authorities was recognised and also that CLG have agreed to work in partnership with LACORS to ensure at least 1 -2 officers per authority are provided with training on HIPs/EPCs free of charge.

Did you consider that the Home Information Packs (HIPs) Regulations effectively served the Government’s aim of making the home-buying process easier and more transparent?

Although LACORS can appreciate the philosophy behind the proposals for HIPs, without amending legislation such as the Law of Property Act 1925, LACORS does not perceive how HIPs will make the home-buying process easier and more transparent. We do not believe that the introduction of HIPs will prevent the process from remaining fragmented as it will always consist of a chain of buying/selling transactions requiring a number of parties working in conjunction to complete transactions successfully.

In particular we feel the enforcement provisions means that the regulations are likely to have limited impact. This is detailed later in our submission.

In July 2006, DCLG announced that Home Condition Reports would not after all be a mandatory element of HIPs. This is one of the main changes made by the 2007 Regulations. In the light of these changes, how effective do you think that HIPs will be in delivering the same aim?

Although LACORS considers that a Home Condition Report (HCR) was a useful element in the pack, we do not believe it would have prevented delays or wasted costs being incurred. Buyers, generally, cannot secure a mortgage until the lender has obtained a valuation. We understand most mortgage companies had not agreed to waive this requirement even if HCRs were available. Many prospective (especially first-time) buyers rely on the valuation, partly through lack of awareness that it does not offer any protection should faults be found later, and partly for financial reasons, because full surveys are expensive. Even though the rights to a HCR made available by the seller can apparently be passed onto the buyer, we feel that the purchase of a home is too large a transaction to convince a buyer to rely on a document that is not a survey has been provided and paid for by the seller. We anticipate that lawyers/conveyancers would always recommend that the buyer instruct their own surveyor in order to protect their interests because the seller's HCR might not be impartial. Likewise, a good lawyer/conveyancer would always recommend that the buyer obtain searches and other documents, some of which become out of date within 3-6 months, prior to completing on a property transaction, in order to ensure that the information the buyer has is up-to-date. Considering that the seller will have paid for the original HCR and searches and the buyer will have to pay for a survey and later searches, LACORS does not understand how this helps the process.

DCLG have said that Energy Performance Certificates (EPCs) will serve the aim of helping to reduce carbon emissions from homes, and that an updated EPC will have to be produced every time a residential property is marketed with an HIP. How effective do you think EPCs will be in meeting this aim? Do you consider that it is appropriate to link EPCs with HIPs in the way proposed by the Government?

LACORS fully appreciates that the Government is aiming to reduce carbon emissions. Under the proposed HIPs regulations CLG has designated Local Authority Trading Standards Services as the enforcer for EPCs for domestic sales. Despite strenuous representations by LACORS, CLG has also designated LA Trading Standards Services to be the enforcer for all sectors except new-build which falls to Local Authority Building Control. LACORS remains unconvinced that trading standards services are the right enforcement agency for the rental and display sectors. Trading standards officers do not have expert knowledge and have no experience in the rental and display sectors where other agencies, such as environmental health and housing officers have greater expertise and experience.

LACORS has reservations about the link between EPCs and HIPs in the way proposed and we would have preferred implementation of EPCs across the sectors to occur at one and the same time.

EPCs will add extra costs to the buying and selling of homes although they may create an angle for price negotiation. However LACORS does not believe that the impact of carbon emissions or cost of fuel bills of their proposed home purchase will be of paramount importance to consumers when compared to other factors such as location and price.

Enforcement Issues

Beyond the problems with the principles behind HIPs and EPCs as outlined above, we also feel the enforcement provisions are problematic and will exacerbate the effectiveness of these regulations in delivering government policy. LACORS strongly lobbied for the

breaches of the regulations to be a criminal offence (in the same way as other consumer protection law, including offences by estate agent for misdescribing property) and to use fixed penalty charges which can be enforced in the Magistrates Courts if people refuse to pay (in the same way as for littering, graffiti, sales of alcohol to children etc). This was rejected and instead local authorities are left with the only enforcement tool being a £200 penalty that is only enforceable through the civil courts. We feel this level of penalty is very low to provide an incentive for compliance. Furthermore we believe it unlikely that local authorities will pursue non-payments of the fines because civil court action is expensive and local authority trading standards staff have no rights of audience in the County Court, whereas they do in the Magistrates Court, meaning they have to pay for lawyers to attend court.

In addition, the HIPs regulation enforcement provisions mean that if a trading standards officer carries out any routine checks or follow up complaints where it is suggested that someone does not have HIP, then that person is not required to produce one immediately and indeed has 7 days to be able to produce one after a request by a local authority. Furthermore, a person is not required to comply with such a request if he has a reasonable excuse for not complying”.

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APPENDIX 2

Minutes of Evidence

TAKEN BEFORE THE MERITS OF STATUTORY INSTRUMENTS COMMITTEE

TUESDAY 24 APRIL 2007

Present	Armstrong of Ilminster, L. Colville of Culross, V. Deech, B. Filkin, L. (Chairman) James of Blackheath, L.	Jopling, L. Maddock, B. Thomas of Winchester, B. Tunncliffe, L.
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Examination of Witnesses

Witnesses: MR NEIL McDONALD, MS CAROL SWEETENHAM and MS NADIA NOOR, Department of Communities and Local Government, examined.

Q1 Chairman: Good afternoon and welcome. My name is Geoffrey Filkin. The Committee members are as you can see. I will not read their names out because you, I am sure, can do that yourselves. I wonder if you could just introduce yourselves and very succinctly say who you are and your role in this respect.

Mr McDonald: My Lord Chairman, I am Neil McDonald. I am the Director at the Communities and Local Government Department responsible for the implementation of the Home Information Pack. I am also the Senior Responsible Officer for the implementation of the Energy Performance of Buildings Directive.

Ms Sweetenham: My name is Carol Sweetenham. I work with Neil McDonald to support him on the implementation of the Home Information Pack and I am also responsible for the implementation of the EPBD.

Ms Noor: My name is Nadia Noor. I am a legal adviser at the Department of Communities and Local Government and I advise on the Home Information Pack programme.

Q2 Chairman: Thank you. We have got about an hour so we will see how time takes us. Do feel free to answer as you wish. If you can answer succinctly that is always a plus but do not be constrained by that excessively. I wonder if I could start by asking questions about the change of policy from the Home Condition Report. Given that you stated in June 2006 that the inclusion of Home Condition Reports in HIPs would address the main causes of failed transactions why then did the Minister announce in July 2006 that they would no longer be a mandatory element?

Mr McDonald: As the Secretary of State made clear when she gave evidence to the Communities and Local Government Select Committee, the decision

was driven principally by what was in the interests of consumers, both buyers and sellers. In particular it had become increasingly clear that many lenders would not be ready to use automated valuation models and would therefore be insisting on a second survey. In those circumstances it was not thought appropriate to require consumers to have a Home Condition Report. Moreover, given the rising importance of tackling climate change, it was felt important to concentrate on introducing Energy Performance Certificates.

Q3 Chairman: Maybe we can come to that later because in a sense it stands separately, does it not? Could I just stay with what you have quoted the Minister as saying? The fact that the mortgage lenders were not ready at that point in time is an argument for deferral rather than abandonment, I would have thought.

Mr McDonald: It was one of a number of factors. There were other factors—concerns about the number of inspectors that would be in place by June this year and the feeling that there was a need for further testing of Home Condition Reports. It is also important to say that ministers were keen to create a situation in which the market could lead the take-up of Home Condition Reports in which they did not necessarily need to be imposed as a regulatory requirement.

Q4 Chairman: The further two points you made about the number of inspectors and the evaluation process of Home Condition Reports are both further examples of giving it more time rather than abandoning Home Condition Reports, are they not?

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Mr McDonald: It could be argued, yes.

Q5 Lord Armstrong of Ilminster: My Lord Chairman, I must declare an interest as a former chairman of a mortgage lender. Is there any reason to suppose that mortgage lenders would change their views on willingness to use the automated valuation reports or is that likely to be a permanent obstacle?

Mr McDonald: The impression we have, my Lord, is that mortgage lenders are gradually bringing in the use of automated valuation models. The advice that we had from the CML at the time was that in the ensuing five years we would not get to more than 40 per cent of transactions being informed by automated valuation models and it was that information that informed the Minister's decision.

Q6 Chairman: That we will not get more than 40 per cent of mortgage lenders prepared to lean on the Home Condition Report?

Mr McDonald: After a five-year period, after the introduction of Home Information Packs.

Q7 Chairman: Let me then stay with that for a second. In a second I will want to give you a further opportunity to put the best gloss you can on this policy change rather than just responding to my questioning, but why then was the policy not abandoned or ceased or put into limbo if it did not appear possible to deliver, through the Home Condition Report and the passporting thereby of mortgage valuations, what had been articulated by the department as some of the prime benefits of HIPs which would address the market failures? Surely by not doing that the argument was to abandon the proposal rather than to continue with it with an empty shell?

Mr McDonald: I think it is important to say that the decision was about the means of implementing Home Condition Reports. It was not a question of ministers taking the view that they were not valuable but taking the view that it would not be appropriate at that stage to require them as a mandatory element in the Home Condition Report. It is the view of ministers that the mandatory elements as they currently stand form a very valuable means of improving both home buying and selling and tackling climate change.

Q8 Chairman: We will come back to that in terms of further questions later in terms of what other stakeholders comment. Let me just give you the best opportunity I possibly can of articulating why you think the revised Government position, post the ministerial statement, was the best place to be in order to make sure I have heard it clearly and can understand it.

Mr McDonald: Ministers believe that the mandatory pack as it currently stands will have benefits itself, both in establishing the principle of information being provided up front and providing a means of speeding up transactions, reducing wasted costs and helping to reduce the implications of failed transactions, but also by providing a new basis on which the market can build. We have in the housing market a market that has to a large extent stood still for a generation. By introducing Home Information Packs we have created something that will encourage the market to innovate, and there is already evidence that that is happening. For example, there is evidence that local authorities are looking again at how they provide searches and the charges that they make for those, and I can give you three examples of local authorities that have very recently decided to reduce their search fee. For example, Wakefield have reduced their fee from £114 to £40, Brentwood from £209 to £85. These are examples of organisations involved in home buying and selling that are responding to a new competitive environment that has been created, an environment in which there is greater transparency. What we have here is a situation where there is an initiative that is having immediate benefits but at the same time is likely to prompt change in the market situation and encourage innovation and thus the market to move forward in the way that other retail markets have moved forward over the last ten, 15, 20 years.

Q9 Viscount Colville of Culross: I am very glad to hear that some local authorities are reducing their fees. What about the length of time that it takes them to answer, because that is very substantial?

Mr McDonald: That is a matter that is of concern to the department but it is also an area where there is evidence of improvement. We are currently going through a process of collecting data on this and in the first 80-odd returns that we have had I believe there are only two that now say they have taken more than 10 days to return the official search. That is a substantial improvement and, we hope, an indication of improvements to come.

Q10 Chairman: We will come on shortly to the question of why none of the major stakeholders agrees with the position you have articulated but let me just conclude with asking why there was no consultation on what was a very major shift of policy after seven years in gestation.

Mr McDonald: I think, given the history of Home Information Packs, that what you had there was a decision where to announce that the Government was considering a change would have been tantamount to making that change. Given that situation, ministers concluded that the best thing to do was to have a quick, clear announcement as to the

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change in policy. It is also the case that, if there had been a significant period of uncertainty, it would not have been possible to introduce Energy Performance Certificates as part of packs from this June.

Q11 Chairman: Where is the evidence that you think that the market will lead to the take-up of Home Condition Reports as part of Home Information Packs?

Mr McDonald: We have a certain amount of evidence from surveys that have been carried out that show that buyers and sellers believe that they will improve the home buying and selling process and lead to improved transactions. There is evidence from the earlier trials and there is also a certain amount of international evidence.

Q12 Chairman: I thought though that the pilots showed that a relatively small proportion of people took up Home Condition Reports even when they were effectively being given them free. Is that true?

Mr McDonald: There has been a tremendous range of experience in the pilots. It has varied considerably from area to area. We started off with six pilots in different parts of the country and it is very clear that the level of take-up has depended on the attitude and enthusiasm shown by estate agents in the areas concerned. Take-up has varied from nearly 100 per cent to much lower figures. It seems, as I say, dependent on the attitude of the estate agents in the area.

Q13 Baroness Maddock: Now that the Home Condition Report is not mandatory some of the stakeholders have changed their stance on whether they think Home Information Packs will make a difference to buying and selling homes and will help people. The comment we have had from *Which?*, who were very much in favour, of course, to start with, is that it is a “half-baked compromise [and it] will result in something that is of little value but of real expense to consumers”, and the Law Society said, “. . . much more expensive and [will] remove existing transparency from the market place”, and the National Association of Estate Agents said, “HIPs are now purely an administrative burden to the process”. It would be helpful to us if you could try and address those criticisms that have come forward.

Mr McDonald: I will do my best. First, on the point that we are talking about imposing something that is a real expense to consumers, the only new item in the mandatory pack is the Energy Performance Certificate and that should enable buyers to save costs as well as reduce carbon emissions. As regards the searches and the other legal documents, those are documents that are required anyway and we believe that by increasing transparency as far as the basis on which they are provided is concerned, with

consumers knowing up front how much they will be charged for these documents, we will actually see competitive pressures working in the interests of consumers and there is reason to believe that costs will fall. I have cited some examples of what is already happening as far as local authority searches are concerned. We would very much object to the suggestion that we are talking about something that will end up with a significant extra expense. Indeed, the reverse could be the case.

Q14 Chairman: Why do they not agree with you then? Let me put it at its most clear. For our sins we probably scrutinise hundreds of statutory instruments. I cannot think of one where I have seen so many stakeholders strongly critical of the instrument that is being proposed to be enacted.

Mr McDonald: There has been a range of reasons given and they are all slightly different. What we are talking about is something that will lead to a significant shake-up in the home buying and selling market in this country. It is perfectly understandable that that is not greatly welcomed by those who work in the current regime.

Q15 Lord Jopling: That really is not quite good enough, is it? Lady Maddock has referred to what you could call a torrent of criticism which has come to the department for this change of policy last summer. Were you expecting that? Did it surprise you?

Mr McDonald: Certainly some of the reaction was to be expected. *Which?* had been a very passionate advocate of the Home Condition Report and one can understand their disappointment when ministers concluded that, rather than go for a mandatory big bang approach, they would go for an approach that allowed for the Home Condition Report to be brought in on a market-led basis rather than as a regulatory requirement. From that point of view it was not unexpected.

Q16 Lord Jopling: Do you think you have learned anything from the criticism?

Mr McDonald: Undoubtedly. There has been considerable discussion with all of the stakeholders since then and the regulations that have now been made have reflected a range of the comments that have been made in the intervening period.

Q17 Lord Armstrong of Iliminster: You said it was a significant shake-up in your answer before last, but the answer seems to assume that a significant shake-up is a good thing in itself. A significant shake-up is not a good thing in itself; it is only good if it leads to something better afterwards. You have unanimity among the stakeholders saying that it will not lead to something better afterwards; if anything it will lead to

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something more expensive with no better transparency and worse. It appears that the determination to go ahead with it in June is really disregarding that consideration.

Mr McDonald: We start from a situation where the average transaction takes of the order of six and a half months, where there is a failure rate of one in four between offer and exchange and where the cost in terms of average expenditure on fees is of the order of £5,000, so a process that is slow, expensive and uncertain in a sector that does not seem to have responded to consumers in improved effectiveness and efficiency in the way that many other sectors have. There is a belief that by making the changes that are proposed significant improvement can be brought about.

Q18 *Baroness Maddock:* On this point we had quite a large written response from the Council of Mortgage Lenders, and indeed they are in agreement with you about the length of time that you have just talked about, but they had done some research, and I do not know whether the department has done any research, which showed that 75 per cent of all buyers and 70 per cent of sellers were fairly or very satisfied with the buying process as it is and that 57 per cent of buyers and 51 per cent of sellers were fairly or very satisfied with the time that it took. Has the department done any of its own research because this is one of the reasons that the Government gave for introducing it, to try and speed up the process. That was one of the original proposals.

Mr McDonald: There is a range of research that has been done on satisfaction. I am aware that there is some research you referred to that suggests that 70-odd per cent are reasonably happy. There is also research, I think conducted for *Which?*, that suggests that 70-odd per cent are dissatisfied with the service that they receive. I am afraid a lot depends on the way in which the questions are asked and the context in which those questions are asked.

Q19 *Chairman:* Clearly some people think that the current system does not work well—not everyone but clearly some people think there are difficulties in the way in which house purchase is done in England and Wales, but a shake-up will only be of benefit if it is a sensible shake-up. Given that HCRs have been excluded, if ministers did not think that abandoning the policy was the right thing to do why not make the whole HIPs initiative voluntary so that people could have the Home Information Pack if they wanted to, with or without HCRs, but did not have to?

Mr McDonald: The evidence of the last 20 to 30 years does suggest that voluntary change is unlikely to bring about an improvement.

Q20 *Chairman:* Then why abandon HCRs?

Mr McDonald: What the Government has done is make the HCRs voluntary, not abandon them, and press forward with a small mandatory pack. You may recall, and I am afraid I cannot recall the exact date, that the Law Society sought to introduce a voluntary pack that would be available at the beginning of the process and that met with very little success, which seems to suggest that there is a need for some sort of regulatory intervention. The real issue is how big a regulatory intervention is required in order to stimulate change—which ministers believe would be better market-led than taken forward as a regulatory imposition.

Q21 *Chairman:* At heart the Committee is trying to look across and see whether we think an instrument fulfils the objective of its parent Act, and the parent Act was the 2004 Housing Act, was it not?

Mr McDonald: Indeed.

Q22 *Chairman:* Which was directly focused on this issue in part of market failures in terms of house purchase. Do you think this instrument does so?

Mr McDonald: Yes.

Q23 *Chairman:* Now, I mean, not in terms of what might happen in the future. Does it now address that problem?

Mr McDonald: It does address the problem in a number of specific and direct ways, for example, by bringing searches and leasehold documents up front, avoiding the delays that can be caused when, in particular, leasehold documents have to be sought once a chain is complete. It can take many weeks for a seller to obtain leasehold documents from a managing agent and if that is happening at that tense time when a chain is complete with everybody wondering why everybody is not ready to exchange it can cause significant uncertainty, delay and, possibly, be a reason for the chain to fall apart.

Q24 *Chairman:* Those two reasons that you have just given me, correct me if I am wrong, are not the prime cause of transaction failures.

Mr McDonald: They are not by any means the only cause of transaction failure.

Q25 *Chairman:* Of course not. I said they are not the prime cause. The prime cause tends to be house condition issues.

Mr McDonald: Indeed, but by bringing information up front two things are happening as far as transaction failures are concerned. Hopefully, by reducing the potential for surprise at a later stage, the incidence of failures can be reduced, but also, by the documentation being provided by the seller and being the property of the seller, it is available if a

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transaction fails for the next potential purchaser. The money that a seller has invested in collecting together the documentation is not wasted, so the cost of a failure is reduced and that is of benefit to consumers.

Q26 Chairman: That is an argument for making Home Condition Reports compulsory, is it not?

Mr McDonald: That would be a benefit.

Q27 Chairman: Is it not?

Mr McDonald: I hope the Committee understands that ministers support the use of the Home Condition Report but have chosen to promote it on the basis that it should be market-led rather than that it should be a regulatory requirement.

Q28 Chairman: I think we will probably struggle with that. It looks like a bit of window dressing over the abandonment of a policy. What are they going to do to make it happen?

Mr McDonald: We have conducted, indeed are conducting, a series of area trials to test out the Home Condition Report in real live transactions. These are actual people selling and buying houses. We hope that will give clear evidence of the benefits that can then be used to encourage the take-up of Home Condition Reports. There is evidence that those who have experienced the process see value in them and that buyers and sellers understand how they could improve the process.

Q29 Chairman: The logic of your argument is that eventually it will get to 80 per cent or so and the Government then will feel emboldened to make it compulsory. That must be the logic, must it not?

Mr McDonald: There is a question as to whether that would be appropriate at that stage if a market approach had got to that stage.

Q30 Chairman: So presumably there are no timetables or thresholds at which point the Government has decided that it will make it mandatory?

Mr McDonald: No, but it is the case that there are private companies investing in training home inspectors who have continued to invest since the decision last July about a change of approach on Home Condition Reports.

Q31 Lord Tunnicliffe: I believe a key test of the new regulation is proportionality: are the benefits significantly greater than the costs? The proportionality here is, now that the Home Condition Reports are not mandatory will the cost of complying with the new Home Information Pack duties be matched by a commensurate benefit to buyers and sellers?

Mr McDonald: I think I need to respond on the two aspects of that, first the question of the costs, and then on the benefits. I have already alluded to the fact that the only new item is the Energy Performance Certificate, so for somebody who is a buyer as well as a seller that is the incremental element. We expect Energy Performance Certificates will cost in the order of £100. It has been estimated by the Energy Savings Trust that implementing the benefits could result in savings of the order of £300 a year on a continuing basis, so it is something that could save the buyer money. We also believe that, by increasing transparency, we will have a situation in which the cost of collecting together these documents will be very clear up front to the seller rather than these documents being disbursements that are charged to a buyer by a solicitor or conveyancer acting for that buyer—and the evidence I have already cited about the reduction in search costs does tend to suggest that we could well see a significant reduction there. By having a process where pack providers bring these documents together there is also scope for streamlining and for those pack providers to apply pressure to the people who provide the various components to increase efficiency, reduce costs and improve quality. On the costs side, frankly, it is highly debatable whether there will be an increase in costs. In fact, there are good reasons to believe that in net terms there could be a reduction. In terms of the benefits, we have a situation where there are significant wasted costs at present and a process that is slow and stressful. By creating a sufficiently large regulatory intervention to stimulate market-led change there is ample scope for the benefits to be very much larger than the modest costs involved, and there is already evidence beyond the reference to searches that I have made that other people involved in pack provision are looking at how they can develop beyond the basic pack, how they can link it to conveyancing services, how they can provide simple legal summaries and how they might go beyond that to effectively provide a potential purchaser with a pack containing a simple summary that tells them all they need to know so that they are then in a position to move very quickly to exchange of contracts, having had their offer accepted. If we can move from a situation where our research suggests that the average time between offer and exchange is 81 days, which is of the order of 12 weeks, to one where we can get that period down very substantially it would be of enormous benefit.

Q32 Lord Tunnicliffe: Could I just disaggregate your answer? You seemed to hint at the beginning that the Home Information Pack was a necessary vehicle for the implementation of the European Energy Performance of Buildings Certificate, et cetera. You are surely not arguing that, because they could be

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introduced in a free-standing way and all the benefits would accrue if they came in in a free-standing way, so we are agreed on that.

Mr McDonald: Yes.

Q33 Lord Tunnicliffe: Therefore the costs and benefits relate to the pack, excluding the energy bit. You are saying they are positive. Your evidence to prove they are positive is on pages 43 and 44 of the Regulatory Impact Assessment, I think. As the Chairman has said, we see about 1,200 statutory instruments a year and about 500 RIAs, and this must be the most data-free RIA I have ever seen. If you look at page 43, the additional costs and savings benefits, there are no assumed figures in there at all and at the end of the day it comes out with two or three per cent being the benefit. That is nothing like the margin I would normally look to, given the fact that all change tends to have unintended consequences. Given the hostility from the professionals, given the thinness of the evidence, it is difficult to see that your statement that there will be benefits is justified.

Mr McDonald: The comment I would make on that is that the assumptions that have gone into this have been fairly cautious and have looked at the fairly immediate benefits that are likely to flow.

Q34 Lord Tunnicliffe: And, you would also agree, opaque, i.e., none of the assumptions is set out?

Mr McDonald: I certainly agree that the full workings and assumptions are not set out here. I understand that the current practice is to produce shorter regulatory impact assessments with less of the detail. I can assure you that there is plenty of modelling that sits behind this.

Chairman: Not data-free ones.

Q35 Lord Tunnicliffe: Do go on.

Mr McDonald: For example, the assumptions that have been made on searches are much more modest than the reductions in search costs that are already occurring, the figures for which I have given the Committee.

Q36 Lord Tunnicliffe: But that is two boroughs, is it not?

Mr McDonald: That is three who have already decided to respond at this stage. The issue has to be how many others will respond and where others do not respond the extent to which the market for the provision of searches will move from official searches to private searches that are provided by private sector companies on a competitive basis.

Q37 Lord Tunnicliffe: In here one of the assumptions is the level of HCR take-up, and you say that the reduction in rates of transaction will depend on that.

You should at least know what the guess was to give you some clue. If the guess is that it is going to be 90 per cent to yield this benefit that is one outcome. If the guess is 10 per cent that is another outcome.

Mr McDonald: The assumption made here is that there will be only a limited take-up rate. I am not sure off-hand that I can tell you what the figure is. I do not know whether a colleague can provide that figure.

Q38 Chairman: Rather than do that now, I have not tested this against current office guidance on RIAs but I would be surprised if it met that standard. Could the Committee be sent in writing the assumptions and the full data that underpinned this RIA which, as Lord Tunnicliffe has made absolutely clear, is completely opaque at present?

Mr McDonald: I would be delighted. The RIA was discussed with the Better Regulation Executive and they were content for us to publish it.

Q39 Baroness Deech: Could I ask a supplementary? If we are getting a written answer what I have not seen here is the actual cost to the would-be seller of an HCR and an HIP set against what the buyer is going to have to pay for his lender's valuation. In other words, we know that a valuation is very likely going to have to be paid for in relation to the mortgage. How much extra will this whole pack add at the moment of sale, which is already a great burden, especially to young sellers and first-time buyers; in other words the actual broken-down costs of these packs?

Mr McDonald: If I could briefly comment, one of the big benefits is that there will be information provided to first-time buyers free of charge, so it will reduce the costs to them of entering the housing market and that is a significant benefit. As far as the overall costs are concerned, Government is not setting prices for Home Information Packs. It really depends what the market decides. There are estate agents who have concluded that they are going to provide packs free of charge and thereby effectively include them in their fees. There are others that are providing packs on a no-sale, no-fee basis so that there is not a cost liability if somebody markets their property and the sale does not proceed. It could be anything from nothing to several hundred pounds. The market will decide what the price is.

Q40 Lord Armstrong of Ilminster: You said there will be a reduction in net costs but there will surely be a significant transfer of costs from the buyer to the seller as compared to the present system. That seems to fly in the face of the *caveat emptor* principle. Do you accept that that is the effect of it and is that a desired effect?

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Mr McDonald: There will be a transfer of costs from the buyer to the seller and that can have advantages. In particular the situation we have at present is that a buyer makes a bid for a property with very little information and then may instruct solicitors to carry out searches and a surveyor to conduct surveys and then the transaction can fall apart—and our survey suggests that when this happens at a sufficiently late stage a typical cost in terms of wasted fees to the buyer is around £1,000. If those documents have been provided by the seller, if the transaction falls apart, the seller is able to provide those to the next bidder for the property and that expenditure is not wasted, and that is a significant benefit.

Q41 Chairman: I would like just to give you one last opportunity to see if there is anything further the Committee can hear. Let me attempt to sum up at least what is in my head. First, this instrument matters a lot because it will affect approximately two million sales or first lettings each year, so a lot of people are going to be affected by it. Second, it seems open to doubt, to put it gently, that the instrument will powerfully address the market failure issue that was the objective of the primary Act because it cannot address in its current form transaction failures as a consequence of surveys which the Home Condition Report is not part of. Thirdly, you have not yet got—or at least you have not published—the results of the evaluation of the pilots, so you may be cited on it but certainly the House is not cited on it. Fourthly, it is remarkable to see all of the property specialist professions or financiers, such as the Association of Mortgage Lenders, so universally saying that you are wrong. Here is your last chance to give us the best defence as to why it is sensible to proceed now in this situation even if everybody else is saying that you are wrong.

Mr McDonald: Home Information Packs, sellers' packs, have been something that the Government has worked on with stakeholders since the current Government came to power, so we are talking about a period of nearly 10 years. There has been an awful lot of discussion, there have been different views about different aspects and it is the case that the particular route chosen is not in all respects liked by many of the trade associations involved in this process. The Government's view is that what we have here is something that will bring real benefits in itself, will stimulate market-led intervention, encouraging this market to move forward in a way that other retail markets have moved forward (but, strangely, this one has not), and as a result of that will deliver very substantial benefits to consumers.

Q42 Lord Armstrong of Ilminster: As you say, the policy was first enunciated in the manifesto of 1997, I think, and 10 years has passed since then. We have

what *Which?* has called “a half-baked compromise [that] will result in something that is of little value but of real expense to consumers”, and we have been discussing that. The department appears to be determined to go ahead with it despite these criticisms. I wonder whether if the department is under instruction to do so in order to improve the content of the Prime Minister's legacy.

Mr McDonald: The department is taking Home Information Packs forward for two reasons: to improve home buying and selling for consumers and to reduce carbon emissions from homes as part of the Government's strategy for tackling climate change.

Q43 Lord Jopling: Listening to all this I get the feeling that the department's policy making is equivalent to somebody lost on a very foggy night. You start off wanting to have HCRs within the package and then, as you said to me earlier, knowing that all the professionals were going to gang up against you and criticise you, you then go and change it. In the RIA, paragraph 40, you say that the Government is keen to promote market-led take-up of Home Condition Reports. You have said already to us that you accept that with a voluntary scheme there will be a slower take-up, and so you seem to be content to have a slower take-up. What are you going to do in the future to try and regain, if I might say so, some sort of respectability for this policy? Are you going at some time in the future to put down another instrument recoupling HCRs to the package? What is going to govern your attitude to that? Is it if HCRs are shown to be very popular on a voluntary basis, although you have told us you do not think they would be, or would it be that HCRs have a very slow take-up and therefore you are going to have to say, “We have got to do something about this. We had better change the policy again”? You must forgive us for getting the feeling that you really do not know where you are going.

Mr McDonald: What the department has done is decide to go for a smaller regulatory intervention in the expectation that this will deliver real improvements for consumers. The issue as to whether or not there is a case for going back to mandatory HCRs is something that was covered in the July statement and was covered by the Secretary of State when she gave her evidence to the departmental select committee. On that occasion she made it very clear to the Committee that decisions on that would be guided by what is in the best interests of consumers and that the department was clearly committed to the voluntary take-up of Home Condition Reports.

Chairman: Thank you. Let us go on to the European Energy Performance of Buildings Directive.

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Q44 Baroness Deech: Clearly one must favour the reduction of carbon emissions; there can be no doubt about that. The question is, how is it being done and why is it being linked to the Home Information Pack? We note that the European directive only requires such a survey once every 10 years and yet here it is being linked to the Home Information Pack. One wonders whether the Home Information Pack is piggy-backing onto the energy certificate or whether it is the other way round. Could you explain to us how people will be motivated to reduce carbon emissions and get the proper information if it is only going to happen when the property is marketed? Some properties may not be marketed for 20, 30, 40 years. Others may be marketed very frequently. I am additionally concerned if I am to believe the report in one of the Sunday papers just a few days ago that armies of not very well qualified people are being rushed through a quick course on this in the expectation, if I may use the vernacular, that they will earn a quick buck by having a quick go at a house. In other words, I need to be persuaded that the carbon emissions policy will be forwarded by this and I really do not understand why it is being tied to the HIP and to marketing rather than being treated as the European directive would have done, once every 10 years.

Mr McDonald: Can I start by explaining that having an energy certificate as part of the Home Information Pack has been the Government's policy since before the Energy Performance of Buildings Directive became European law. It has been a consistent part of government policy. What the Energy Performance Certificate will do is provide buyers and sellers with clear, simple information about the energy efficiency, or should I say the energy inefficiency, of homes by providing a rating in a form akin to a fridge rating, something that buyers and sellers have not hitherto had. It will also explain why the energy performance of a property is as poor as it is and, crucially, what can be done to improve that. Few buyers these days would look in the loft and realise that there is not enough insulation there, would think about whether or not the cavity is filled and may not give the boiler a second glance when it may be grossly inefficient and cost effective to replace. What the EPC will do is draw that to their attention, and it will draw that to their attention at a sensible time. There is evidence that a significant proportion of the investment that is made in homes is made by buyers relatively quickly after they move in, so providing this information when people are thinking about what they are going to do to their new home will give them a list of things they can do that will both reduce carbon emissions and help them save money on fuel bills. Many of these things will pay back in a relatively short period so it is important that that information is brought to the attention of home buyers at that stage. Finally, the

reason why this is important is that homes account for more than a quarter of carbon emissions. The Government have a range of policies that will improve the energy efficiency of new homes. In particular improvements made under Part L of the Buildings Regulations last April had the effect of improving energy efficiency by more than 40 per cent compared with just over four years earlier and the Government has signalled a desire to move in the direction of zero carbon homes. That will make a big impact on new homes. There is a need to do something similar to existing homes and this is an effective way of doing that.

Q45 Baroness Deech: I have not received an answer in what you said—and obviously one supports reductions in carbon emissions—as to why this is going to happen when a property is marketed and not once every 10 years. Some evidence suggests that at a time when houses are being bought and sold the decisions then will be based on location, value and other things, and one of the least important things on the buyer's mind will be carbon emissions. Whereas a certificate that will have to be attended to every 10 years when one is *in situ* might be much more effective, especially, as I said, if this comes at the moment of marketing and a survey is carried out by somebody in a hurry who may not appear to be very well qualified and this is attached to a marketing venture; it would seem to be less likely to be successful. Why are we going beyond the presumably well-thought-out European directive which says every 10 years?

Mr McDonald: Let me address that point and then come back to the question of the qualification of energy assessors. The judgment is about how much notice buyers would take of a survey that was up to 10 years old when energy prices will have changed significantly in the meantime so that the figures will be out of date; when the technology that is available to increase efficiency and reduce emissions will have changed. It is the department's view that buyers are much more likely to take account of an up-to-date document and that is why Ministers have concluded that for each sale there should be a newly produced Energy Performance Certificate. Energy Performance Certificates are going to be produced by energy assessors who will have to be appropriately trained and accredited. A national occupational standard has been developed and approved by the Qualifications and Curriculum Authority for energy assessors and qualifications have been developed within that, so what we have done has been based on the professional advice of those responsible for setting standards and putting in place qualifications. We then have accreditation schemes which will be monitoring the performance of Energy Performance Certificates, which will be checking in various ways

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that their work is up to standard and which will have the power to intervene and, if necessary, remove an assessor's approval if they fail to produce sufficiently reliable Energy Performance Certificates. Sadly, the information that appeared in the press was, frankly, woefully inaccurate. The full picture is as I have set out. We have gone to considerable care to make sure that we have got a system which will produce reliable Energy Performance Certificates that buyers and sellers can have confidence in.

Q46 Baroness Deech: I am glad to hear that. Have you consulted on this over-implementation, in other words, alluding to the energy certificate every time the house is sold rather than every 10 years? What happens if a house is not sold, as many are not, for 20, 30, 40 years?

Mr McDonald: The Energy Performance Certificate has been an integral part of the Home Information Pack—I was going to say for years. It certainly was clearly there when we consulted in 2003 in advance of what became the Housing Act 2004. There has been plenty of opportunity to discuss the merits of the approach that has been taken and Ministers have listened carefully to what has been said and their view is that buyers will take much more notice of something that is newly produced rather than something that is up to 10 years old. You are right: the requirement to produce an Energy Performance Certificate only applies when a property is sold or when it is let. It could be, certainly in the case of sales, that a property remains in the ownership of a particular householder for 20, 30, 40 years. What you are suggesting is that there might a case to go even further beyond what the directive requires and requiring householders to have an Energy Performance Certificate after 10 years if the property has not changed in that period, and obviously that suggestion ought to be considered.

Baroness Deech: On the contrary, I think it will be more efficient to stick with the European directive, but if we are getting any more written information from your department I think we might be interested to see what were the particular responses from consultees on this alleged over-implementation of the European directive in that particular area.

Q47 Chairman: Essentially, if I have your argument, the surface reason for including the Energy Performance Certificate in the Home Information Pack is that you believe in some way that it will lead to a market stimulus for people to do something about the energy inefficiency of their dwellings. That is what I sought to progress from what your argument is. Where is the evidence for that?

Mr McDonald: There is a certain amount of evidence that the European Union produced to support the directive. We have also looked at the whole question

of the levels of take-up that would be necessary in order to justify this and the conclusion is that the kinds of levels of take-up that would justify the costs in terms of the benefits of reducing carbon are entirely plausible.

Q48 Chairman: If the thrust of the policy was because there was a hope that including Energy Performance Certificates in Home Information Packs would lead by the application of market forces to energy efficiency of dwellings, which is I think your argument at heart, then surely the logic of that is that you would have applied a similar requirement to all other property transactions, in other words that the same requirement would have applied to marketing of rented properties, to marketing of commercial properties, which, from what you have said, form nearly three-quarters of the contribution to global warming as a consequence of dwellings. As you have just said to us that nearly one-quarter is from homes, by definition the rest must be nearly three-quarters. Why have you not done it for the rest?

Mr McDonald: Just on a point of detail, I believe the figures are that buildings account for something like 45 per cent of carbon emissions. There are other things, such as transport, which account for the rest of the emissions.

Q49 Chairman: And of that what is the proportion between residential and other property?

Mr McDonald: Twenty-seven per cent of total emissions are related to dwellings and the balance of the 45 per cent to commercial buildings.

Q50 Chairman: So it is 18 per cent of the rest, if I have the sums right?

Mr McDonald: It is of that order. The 45 per cent may not be a completely accurate figure.

Q51 Chairman: So it is more residential but it is still substantial for non-residential?

Mr McDonald: It is still substantial.

Q52 Chairman: So why not the lot?

Mr McDonald: The question, as I understand it, is about the difference in treatment between rental property and property that is offered for sale.

Q53 Chairman: And commercial and industrial property.

Mr McDonald: Commercial property is being treated in a different way and, if I may, I will invite Carol Sweetenham, who heads the Energy Performance of Buildings Directive team, to explain the position there. As far as the difference between rental property and property that is bought and sold is concerned, the view is that the new owner of a property is very much more likely to act on the basis of an Energy

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Performance Certificate, to invest in that property, than somebody who is just taking out a short lease on that property. What is their incentive to fill the cavity or increase the insulation in the loft? That is much less likely to happen, so it is more important that they have up-to-date information, information that they are more likely to act upon.

Q54 Baroness Thomas of Winchester: My Lord Chairman, may I intervene briefly about the situation in the area I live in? For anyone with loft insulation it would probably count against them in selling their house because everyone wants to put another room in their loft. That is a curious fact, that I have got very good loft insulation but if I sell my house that is going to count against me. The next person will probably want another room and they will have to remove it all because that in certain areas is more important to buyers than very good insulation. Has that been taken into account in any way?

Mr McDonald: An off-the-cuff response would be that you would benefit from demonstrating that your property was energy efficient and likely to cost less to heat. Should somebody wish to convert the loft, removing insulation is a relatively simple thing to do, and effectively what you need to do in those circumstances is move the insulation from above the first floor up into the roof space, and obviously there is technology to do that.

Q55 Chairman: I have one final question on this limb before we move on to another one. The House takes a great interest in implementation of European regulations and the avoidance of gold-plating. The Government is entitled to go beyond the European regulation and directive if it thinks there is a good public policy reason for doing so, but the BRE in this case have said that the Government has offered no evidence that going beyond the directive's requirements will lead to improved outcomes. That is a devastating criticism, is it not, of your policy position?

Mr McDonald: I think you are referring to the Better Regulation Commission here, not the Better Regulation Executive. The two are distinct.

Q56 Chairman: Indeed; thank you.

Mr McDonald: I have to say that we were surprised to see that report.

Q57 Chairman: I am sure.

Mr McDonald: The department offered the Better Regulation Commission a briefing on our policy. They decided not to take up that opportunity and then, without offering us an opportunity to comment on the factual accuracy of their report, produced a report asserting that we had no evidence. How they were able to conclude that we had no evidence

without discussing our evidence with us is something that is beyond me.

Q58 Chairman: I see, so they were wrong?

Mr McDonald: We clearly have evidence. A Regulatory Impact Assessment has been published.

Q59 Lord Armstrong of Ilminster: The RIA states that the requirement for EPCs to be produced for residential properties means that there will be a net cost and that the costs of producing the EPCs are higher than the benefits to the economy from the energy savings. Why is the department going ahead with this if the costs of producing the EPCs are greater than the benefits?

Mr McDonald: The department is going ahead with the introduction of Energy Performance Certificates on the basis that the costs in terms of the costs per tonne of carbon reduced are within the range that the Government sets the so-called social cost of carbon at and it is on that basis that it is a worthwhile thing to do. Perhaps I could invite Carol Sweetenham to explain rather more fully.

Q60 Lord Armstrong of Ilminster: I find that difficult to relate to what is in the RIA but perhaps that is my fault.

Mr McDonald: Could you possibly draw our attention to the particular part of the RIA that you are referring to, my Lord?

Q61 Chairman: If you turn to page 15 as submitted, it is the second last paragraph on that page.

Ms Sweetenham: Is that the HIPs RIA?

Q62 Chairman: No. This is the RIA to the Energy Performance Regulation.

Mr McDonald: And you are referring to which paragraph number?

Q63 Chairman: There is no paragraph number. The page is numbered 15 and it is the second last paragraph on that page.

Mr McDonald: We appear to have a different version.

Q64 Chairman: Ah, this is excellent. Given that you have already offered to provide us with further information and you have got the clear gist of Lord Armstrong's report, would you be happy to unpack that and send us a note as soon as is possible?

Mr McDonald: Yes.

Q65 Baroness Maddock: Most people are in favour of trying to reduce carbon, so there has not been much criticism of the attempts to try and do that, but there has been huge criticism of the Home Condition Report. Given that including the Energy Performance Certificate in the Home Condition

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Report was expected to reduce the cost of the EPCs and given my opening comments, was there not a case for uncoupling the Energy Performance Certificates from the Home Information Packs when the Home Condition Reports cease to be mandatory?

Mr McDonald: In theory there might have been a possibility for doing them at a different time. The view that Ministers took was that the information that an Energy Performance Certificate provides is information that prospective purchasers should have at the time they compare properties and that needs to be available from the beginning of the marketing of the property and it therefore makes sense to include that information in the Home Information Pack, which is, after all, a bundle of information prepared and provided at that point.

Q66 Baroness Maddock: Do you think though, given the controversy that we have over the Home Condition Reports, that this will rub off on the Energy Performance Certificates which most people are in favour of and feel more comfortable with? Is there a danger that the controversy will have an effect?

Mr McDonald: There has to be a danger if people are influenced by the negative comments that are made. I believe, however, that when people experience the use of Energy Performance Certificates in practice they will see their benefit, and certainly the evidence from the area trials is that the majority of sellers, when they get their Energy Performance Certificate, find it simple and easy to understand and they recognise that it is a good thing. It is when people see the thing for real rather than read about it in the media accounts that are frankly not always by any means even-handed.

Q67 Chairman: So in short the RICS are wrong when they criticise the inclusion of Energy Performance Certificates, with the consequential over-implementation of the directive, in Home Information Packs as just being a smokescreen to cover the fact that Home Information Packs will have their heart ripped out by no longer having Home Condition Reports?

Mr McDonald: Yes.

Lord Jopling: My Lord Chairman, I think it is very unfortunate that our witnesses have not been able to answer Lord Armstrong's question.

Chairman: They will have a chance.

Lord Jopling: I wonder if I could pass them the bit of paper if they do not have the particular piece of paper and allow them to answer that because I think it is an absolutely critical question.

Q68 Chairman: They are going to have a good opportunity to do so in terms of their written note back to us, are they not, Lord Jopling? Let us move

on to Baroness Thomas. I am moving on at this point because we are tight for time.

Mr McDonald: It would be possible to respond fairly briefly to that.

Chairman: Okay; then in a minute we will come back to that.

Q69 Baroness Thomas of Winchester: We touched on the pilots in the very first question that the Chairman asked but can I return to them? I wonder if you could tell us something about the area trials, what lessons have been learned so far and when will MORI complete their assessment of the trials in view of the fact that the Council of Mortgage Lenders have called on the Government to postpone the introduction of HIPs until the trials are complete, the outcomes reviewed and the issues resolved. The other thing is that people think they should run the trials for a longer period and I wonder if you could give us some information about them so far.

Mr McDonald: A range of things has already come from the area trials and I think it is only fair to say that some of the lessons that we expect to learn from the area trials will not be available until we have a significant volume of transactions that have gone right the way through to completion. I have already referred to the average transaction time of around six months. We have now over 3,500 properties that have had Home Information Packs subsidised through the area trials. We need to wait until a significant proportion of those have gone through to exchange and completion before we will be able to assess the full benefits, particularly of the Home Condition Reports, and it is this need to wait until the full benefits of the Home Condition Reports have been evaluated through the area trials that was one of the factors that led Ministers to conclude that, in advance of that testing, it would be inappropriate to require Home Condition Reports to be a mandatory component of the pack. As to what we have already learned, there has been a range of practical lessons that have come from the area trials, including clear evidence that it was taking longer than we had hoped to gather together searches and leasehold documents. That was one of the reasons why the change that was announced in January and has now been implemented in the regulations that have now been made will enable people to proceed to market their property provided they have commissioned their search without requiring them to wait until the search has been returned. The desire is to enable the market to continue to work freely. Another issue that surfaced from the trials was the question of the extent to which buyers were aware of the information that was contained in the Energy Performance Certificate. If it was just one document buried deep in a pack it would not necessarily come to the attention of buyers as quickly as it might and that led to the conclusion

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first that the so-called fridge ratings should be included in estate agents' particulars or attached to those particulars. (Those are the little bar charts that set out the energy efficiency rating and the environmental impact, the little rainbow-coloured charts that tell you whether it is an A, B, C, D, E, F or G rated property.)

Q70 Baroness Thomas of Winchester: Oh, I see, those.

Mr McDonald: The reason for putting those in particulars is so that as soon as somebody looks at a property they immediately get told how energy efficient or inefficient it is. We also concluded that the EPC should be the first document in the pack after the index.

Q71 Viscount Colville of Culross: Could I ask about enforcement, and I am going to confine myself to the Energy Performance Certificate because that after all is the directive that we are primarily concerned with, although we have tacked a lot of other things on. First of all, it is to be done by the trading standards officers. Are you satisfied that there are going to be enough of them to carry out these duties on very large numbers of transactions? They are already extremely hard-pressed. What does the Trading Standards Institute say about this? I know what you say LACORS says. What is it they are going to enforce? Are they going to enforce the fact that there has been a certificate issued or are they going to see whether it is a proper certificate and accurately deals with all the issues that it should? How is the training of these trading standards officers going ahead in order to deal with that because I assume that is what they are going to do? I wonder if you could comment rather more fully on the enforcement process that you have had so far.

Mr McDonald: If I may, my Lord, I will ask Carol Sweetenham to respond to that.

Ms Sweetenham: On the training point, we have made some money available for training trading standards officers and that training is just getting under way now. We have been talking to local authorities for some time and we are confident that the training should leave trading standards officers in a position to be able to enforce this. We will want to talk more to trading standards officers about how that enforcement should work and the kinds of mechanisms that they might look at. We are expecting that, in the first instance, they will want to take a fairly light touch. They may also wish to respond to complaints if complaints are received.

Q72 Viscount Colville of Culross: But what are they enforcing? Are they enforcing the accuracy of the certificate?

Ms Sweetenham: They will be enforcing the fact that a HIP has been provided by the transaction as laid down in the legislation.

Q73 Viscount Colville of Culross: There is a whole row of things in 991 Regulation 40 which you have to comply with. Does that mean to say that they are going to see whether these pieces of information have been delivered or whether they are accurate? It makes quite a difference.

Ms Sweetenham: We will ask them to see that the pieces of information have been delivered. I think we would want to talk to them about whether they would like to look at the accuracy of some of that information, perhaps on a kind of spot-check basis and, as I said, we would also expect that in some cases issues might be raised about the quality and we would ask trading standards officers to look at those.

Mr McDonald: Could I add to that answer by making the point that each Energy Performance Certificate has to be lodged with a register and part of the purpose of that is to enable quality assurance to be undertaken by the accreditation bodies. We would expect them to sample the Energy Performance Certificates that are produced and to check that they have been produced to an appropriate standard and that they are sufficiently accurate. That professional job of checking the competence of the energy assessor will fall to the accreditation body rather than the trading standards officer.

Q74 Viscount Colville of Culross: What is the trading standards officer to do then? Is he to see whether they have been checked on the register? Is he to see whether they are accurate?

Mr McDonald: These will in effect be separate and parallel processes. The trading standards officer will want to be sure that there is an Energy Performance Certificate there and that it is a proper Energy Performance Certificate, and that they can do by checking that it is lodged in the register as it should be. It is then for the accreditation body to carry out appropriate checks to check that each energy assessor is doing the job properly and they will have various sampling techniques in order to do that.

Ms Sweetenham: For example, if an accreditation scheme receives a significant number of complaints about an energy assessor working in a particular area we have built into the accreditation standards various mechanisms for picking up on that and ensuring that the assessor gets additional training and, at worst, ceases to be an assessor.

Q75 Viscount Colville of Culross: I perfectly understand that the assessor has to do his job, but is the trading standards officer second-guessing what the assessor says? What is the job of the trading standards officer by way of enforcement?

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Mr McDonald: The job is to make sure that the HIP is produced and has the documents in it that it should have. We would not expect the trading standards officer to express a professional judgment on whether the Energy Performance Certificate had been prepared to an appropriate standard. That is the role of the accreditation body that the assessor has to belong to. The accreditation body is a body approved by the Secretary of State and she has approved those bodies on the basis that they have various mechanisms that will maintain standards on an ongoing basis.

Q76 Viscount Colville of Culross: I do not understand this. The trading standards officer is authorised to deal with breaches of duties under a whole row of regulations. There can then be a penalty charge notice?

Mr McDonald: Yes.

Q77 Viscount Colville of Culross: It is nothing to do with the assessor. If it is for the trading standards officer he has got to find out whether the certificate is accurate or not; otherwise it can hardly lead to a penalty charge, surely.

Mr McDonald: There are broadly two roles here. There is checking that the HIP has been provided and that it has the documents it needs to have in it, and the trading standards officer will be able to confirm that there is an Energy Performance Certificate in a pack produced by an estate agent. If there is not the estate agent has committed an offence. If the document that is in there is not an Energy Performance Certificate, ie, a document that is lodged with the register and can be checked by the trading standards officers as having been duly lodged, there has also been a failure to comply with the requirements of the Act, and in that case a penalty charge can be levied. What the trading standards officer is not required to do, and neither is the estate agent, is to check that the energy assessor has prepared the Energy Performance Certificate to an appropriate standard. That is something that requires technical expertise that it is not reasonable to expect either an estate agent or a trading standards officer to have, and that is why we have accreditation schemes which will, for example, carry out a number of repeat inspections to check that Energy Performance Certificates are producing reliable results and to take action against any assessor who fails to produce the certificate.

Q78 Viscount Colville of Culross: There has got to be one extra trading standards officer per trading standards authority in order to carry out this exercise. It does not appear to me that he is going to have to do anything that a clerk could not do in order to see that there is a certificate with the

documentation, in other words not whether it is a good certificate, an adequate certificate, but simply whether there is a certificate. Why would this fall on the trading standards department?

Mr McDonald: This kind of enforcement role is the kind of role that trading standards officers carry out. There has been a discussion with them about the extent of the role and under the new provision local authorities have been funded for this role. If you are suggesting that the role has been exaggerated that is obviously something that we will want to take into account.

Q79 Lord Armstrong of Ilminster: You say that you are preparing a scheme of publicity on this. I wonder what is the timing of that and how it is being carried out and how you will monitor it.

Mr McDonald: There has been advertising in the trade press and in regional papers for some time. We started our national consumer advertising on 25 March with full-page advertisements in some of the Sunday papers. You may well have seen the multi-coloured terraced houses. That campaign is continuing to run in national media and will be developed over the coming weeks to June and beyond. There is a range of other things that are happening as well. For example, we have recently revamped the Home Information Pack website. A much improved website has been produced which deals separately with those involved in the home buying and selling industry and consumers and helps to provide in simple, attractive, easy terms the kind of information that the different groups require. We are doing other things to increase awareness. For example, we have already sent two mail shots to estate agents giving them basic information about home buying and selling. We have co-operated with other organisations in producing simple guides and there is more that we are doing there. We are monitoring the impact of our media advertising through our PR agency and they provide us with feedback which we will be using to refine the programme in order to make sure that we have the necessary impact in terms of both telling people about what is going on and what their legal requirements are and explaining the benefits.

Q80 Lord James of Blackheath: Given the comprehensive nature of what you have here, is there a possible trap for the fairly innocent and inexperienced house buyer, perhaps somebody who is either a first-time buyer or of that ilk, who will take this to be a significant demonstration of having everything thought through for him that he would normally want to ask himself innocently, and is it likely that he might fall into the trap of thinking everything has been asked and done for him and he might not ask some very critical questions that he

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should ask about the area into which he is going that are relevant to his expectations? Is there anything missing from this which you think ought to be here for the complete and absolute understanding of a buyer moving into an area?

Mr McDonald: The thing to say on that is that we are still expecting a buyer to employ their own legal adviser. What we are doing is providing the key information up front so that there is not a delay whilst that information is collected and so that that information can be available to the buyer when they make an offer and they do not find out about various things at a later stage. We would expect the legal adviser to help the buyer to understand the information that they have been provided with, possibly to suggest that there are supplementary searches that ought to be carried out or further inquiries that the buyer ought to make.

Q81 Lord James of Blackheath: Not everything might get disclosed by a survey. For example, what about the imminence of the erection of mobile telephone masts or the introduction of new municipal waste dumps in the territory, which might not even be on the Land Registry at that time?

Mr McDonald: It is that sort of thing that a good local solicitor or conveyancer would be aware of and could advise the buyer to make supplementary enquiries.

Lord James of Blackheath: Sounds trappy. You are placing a dependence upon the efficiency of a local adviser when, in fact, somebody coming into the territory for the first time might not have the ability to find such a good adviser who will deal with the questions. This book is so comprehensive that you might expect it to cover it.

Q82 Chairman: Noted the answer that we have got. Do you have anything further to add?

Mr McDonald: I was simply going to say that the position the buyer will be in will be significantly better than the position they are in at present because they will have a certain amount of information available before they make their offer. At present a buyer is even more dependent on what their legal adviser suggests they need to enquire into.

Q83 Lord James of Blackheath: My final point, is there any one area at all you regret not having included which you think would have been helpful in this context?

Mr McDonald: As we made clear in our consultation in January, we are considering whether or not ground stability and flood searches should be added and that is something that is subject to further discussion with stakeholders.

Q84 Chairman: Lord Jopling, we can now get the answer to your question about the RIA.

Mr McDonald: Yes, the note here talks about the costs being higher than the benefits to the economy from energy savings. Subject to correction by colleagues, an example of the sort of situation you are talking about here is where it might cost a certain amount to improve, say, the boiler in a house and that the payback from that may not be sufficient to recoup the cost, so there is a net cost involved, but that net cost compared with the reduction in carbon emissions produces a cost per tonne of carbon reduced that is a worthwhile cost to pay in terms of contributing to reducing the impact of carbon emissions on carbon change.

Q85 Chairman: We will look at that and in the light of looking at that if we want further information we will come back to you. Can I also signal, Mr McDonald, that we will be most grateful for the further information you have offered or agreed to provide in response. If you can liaise with Paul Bristow because you recognise that our time period is very tight indeed, thank you for that.

Mr McDonald: Absolutely.

Q86 Chairman: Could I also thank you for the help you have given the Committee in our inquiry. You have not had an easy task, for reasons we understand, you have been most helpful.

Mr McDonald: Thank you very much.

Lord Armstrong of Ilminster: My Lord Chairman, as the only Member of the Committee who has appeared on the other side of the table at a Select Committee, could I convey my appreciation over Mr McDonald's stout performance.

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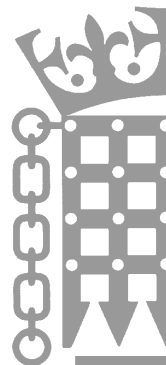
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