

My ref: p&t/HP

21 December 2005

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Dear Mr Potter

THE HOME INFORMATION PACK DRAFT REGULATIONS

I refer to the Department's consultation paper. As you know from previous contacts with leading members of our Standing Conference on Land Contamination, we have a particular interest in those parts of the proposed Packs which relate to contaminated land. Though this latest consultation is not concerned with the content of packs *per se*, that in respect of this aspect has only lately been settled and it deserves further comment. Those parts are now described in regulation 9 and schedule 12 concerning authorised and obligate content respectively.

As a matter of principle, we have argued before that the obligate content should be as little as possible and that all content should be factual, unambiguous and relate solely to the property concerned. We know that the Department has been lobbied hard to require the inclusion of something much more extensive, along the lines of currently voluntary "environmental searches". While we might have conceded a further question highlighting the probability of as yet undetermined contamination, we have criticised environmental reports and their usefulness and highlighted how they can both mislead intending purchasers, cause sales to fail and add to the burden on local authorities called on to interpret them, all at not inconsiderable cost. The Department has been right to resist.

Those shortcomings will remain nonetheless where such reports are included in packs merely as "authorised" documents. Indeed, they will necessarily gain a certain status from that inclusion. While we note that the view of the Project Board as recently as April of this year was that "*a suitable contaminated land search is [not] yet available*" and that (to paraphrase) only if work to agree appropriate information to be used, together with a set of standards for information providers, resulted in a suitable search would one be authorised, we are surprised to find such searches listed as "authorised" now: we have been directly involved in this work and there has been no agreement to our

knowledge. Though schedule 11 improves the right of redress in respect of wrong information, it provides little to improve accuracy or relevance otherwise. I would appreciate your explanation of this shift in the Department's position but given that purchasers will remain free to commission what additional enquiries they wish, as it were, outside of HIPs, our view must be that such reports are not ready to be endorsed by the regulations in any way.

We have two drafting points to make in addition. First, para 4(m) of schedule 8 requires inspectors to report on "risks to the health and safety...etc" whereas it is asking a lot to expect them to report on other than *visible* risks, and second, several paragraphs under sch.12 (for example, para 15) and elsewhere use the formula "...*must include*" which suggests what follows is not exhaustive; if it is, as we believe it is intended to be, a formula such as "...*shall consist of*" would make that clearer.

We hope these comments assist.

Yours sincerely

Howard Price
Principal Policy Officer