

# CONSULTATION RESPONSE



The repeal of the Property Misdescriptions Act 1991

5 April 2011

## **Introduction**

The Home Builders Federation is the principal trade association representing private sector home builders in England and Wales. Our members range from large national companies active in all regions to regionally-based and smaller, local companies. Between them our members are responsible for about 80% of the new homes built annually.

The Federation welcomes the opportunity to comment on the Government's proposals. The views in our submission are based on discussions with our members, including company legal advisers familiar with the commercial and legal issues in this field.

## **HBF views on the Government's proposal**

While the Federation understands the Government's reasons for proposing the repeal of the Property Misdescriptions Act 1991 (PMA), we do not favour this course.

Our members consider there is a strong business case for retaining the PMA in view of the general familiarity of the industry, consumers and trading standards officers with its provisions and case law.

At a time of considerable difficulty for the home building industry, the uncertainty and additional costs – for example, in retraining sales and other customer-facing staff, reprinting guidance material and changing websites - that would be entailed in adjusting to the removal of the PMA and reliance instead purely on the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) would not be welcome to the industry. By contrast, relevant and specific case law under the CPAs is lacking.

The reasons for our members' concerns are effectively touched on in paragraph 2.5 of the consultation document in which it is mentioned that the PMA "is generally valued as a useful piece of consumer legislation because of its specific nature".

We think this is an important consideration. The sale of residential properties is a specialised field in which reference to established guidance and case law on the application of the PMA is helpful in providing clarity to industry practitioners and their customers.

We note the Government's view that the CPRs may in certain cases give a wider range of protection. The industry has taken account of this in its own Consumer Code which incorporates appropriate reference to both the PMA and CPRs. This in no sense detracts, however, from the advantages deriving from the PMA's greater specificity to residential property sales transactions.

Paragraph 6.11 of the consultation document states that it "is not possible to directly map the provisions of the PMA to those of the CPRs". Consistent with this statement, paragraph 6.21 concludes the comparative analysis of the PMA and CPRs by saying "we think that in the majority of cases it is likely that an offence under the PMA would also be an offence under the CPRs".

Although the overall conclusion drawn by BIS is that there would not be a negative impact on consumer protection in the property sector if the PMA is repealed, the statements quoted above do suggest that there will be uncertainty about whether currently clearly understood guidance on what is and is not acceptable under the PMA will necessarily apply under the CPRs. This uncertainty is in practice increased by the differences between the tests applied under the PMA and CPRs.

Our members' view is that in the residential property market consumers' primary concern and chief protection relates to ensuring they are not misled over a property's description. The PMA deals specifically with these requirements in a way that consumers understand. The CPRs do not.

For home builders the PMA provides welcome clarity that enables companies to structure their advertising with confidence and to ensure the right information is shared between their technical and sales teams. This clarity on specifics is essential for effective business operations. Its loss would therefore result in a loss of operational efficiency and so higher average costs per sales transaction.

Bearing these considerations in mind, a default response on the part of developers, estate agents, consumers and trading standards officers might be – for the avoidance of doubt – to continue to apply the tests under the PMA even if this legislation was repealed. In this case there would not necessarily be any cost savings for business in repealing the PMA. On the other hand, the need to print and issue new guidance on the position following repeal, to

change websites and to train customer-facing staff on the new position would add to business costs as well as leading to uncertainty.

In summary, while we understand and support the Government's wish to be deregulatory in general, we do not think the repeal of the PMA would in this case achieve the deregulatory benefit hoped for or indeed the best operational outcome for our members, their customers or trading standards officers.

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