



HOME INFORMATION PACK

WHAT ARE THE SPECIFIC ISSUES FOR ESTATE AGENTS IN THE HOME INFORMATION PACK REGULATIONS 2007?

Following responses to the consultation *Home Information Pack Update: Towards 1 June*, launched by Communities and Local Government (CLG) in January, a number of changes were made to the earlier Home Information Pack Regulations when these were reissued as the Home Information Pack Regulations 2007 and laid before Parliament on 29 March 2007.

The Energy Performance of Buildings (Certificates and Inspections) Regulations 2007 were also laid before Parliament on this day and contain provisions concerning a new duty to include energy information in estate agents' written particulars.

This leaflet summarises those changes. It has been produced with knowledge of the relevant legislation and Regulations but **is not intended to be a detailed guide to the law. Those wishing to fully understand their legal obligations should familiarise themselves with the Home Information Pack Regulations 2007 and the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007 together with their accompanying guidance.**

Marketing

The documents that will be required to go in the HIP are as follows:

- index
- energy performance information
- evidence of title
- sale statement
- searches
- (where appropriate) leasehold/commonhold documents

In order to avoid unreasonable delays in marketing, searches and leasehold/commonhold documents and documents required to deduce title to unregistered land may be omitted from the HIP when marketing begins, provided that these have been commissioned (and proof of this is included in the pack) and are expected to be provided in 28 days.

Proof that these documents have been commissioned should be a document including the name of the document requested, the day it is requested, the date the agent believes it is likely to become available and confirmation the request is properly addressed and any necessary payment has been made.

If this takes longer than 28 days then the agent will be expected to demonstrate that all reasonable efforts and enquiries are being made to obtain the documents, record the information on the index and include the document in the pack as soon as it is obtained. These transitional arrangements will be reviewed in December 2007 in the light of experience from 1 June 2007.

If an EPC has been commissioned and still has not been obtained within 14 days, the property may be marketed if proof is included in the pack that it has been commissioned. It should be noted however that the estate agents' written particulars must include information derived from the EPC, or the EPC itself, and it follows that these cannot therefore be part of any such marketing strategy. This is dealt with in the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007, not the HIP regulations.

If the property is taken off the market, or if the sale falls through a new HIP will not be required where the property is remarketed by the same seller within one year of the original marketing date. It will be up to the market to determine whether documents that are up to a year old are acceptable, or need to be updated at that stage.

The point at which all properties on the market will require a HIP, regardless of whether they were put on the market before 1 June 2007 (the "drop dead date"), has been extended to 31 December 2007.

Energy Performance Certificates (EPCs)

From 1 June estate agents will be required to attach either the EPC (without the recommendations report) or attach just the energy and environmental rating graphs to written particulars¹ provided to all prospective buyers.

This reinforces the crucial role EPCs will play in raising public awareness and ensuring that home buyers know how to improve the energy efficiency of their homes. More than a quarter of all carbon emissions in the UK are from domestic buildings. Buyers of property are more likely to make changes to their home during the first year, so including EPCs in a HIP is the best way to make them immediately accessible and likely to be acted upon.

¹ In this case 'particulars' means any two of: photographs, floor-plan, size of rooms. These can be provided either in electronic or paper form.

Enforcement

Under the Housing Act 2004, where an authorised officer of an enforcement authority believes that a seller or agent acting on behalf of the seller has committed a breach of the HIP duties, that officer may give a penalty charge notice. The Act provides that the penalty charge specified in the notice shall be prescribed by regulations and shall not exceed £500.

The current Regulations set the penalty charge initially at £200. It should be noted that payment of this penalty charge does not entitle the person to continue marketing the property in breach of the HIP duties. Where the breach is committed by an estate agent, it also amounts to an “undesirable practice” under the Estate Agents Act 1979, and would render them liable to action by the Office of Fair Trading. This could result in a banning order which would prevent them from continuing to trade.

CLG's consultation document suggested there is a case for increasing the fixed penalty for estate agents to £500, whilst leaving the penalty charge for individuals selling their own homes at £200. This would recognise that professionals who break the law should pay a higher penalty than a private individual. The Government will be reconsidering this in light of experience following the introduction of HIPs on 1 June.

Further information

Further information regarding HIPs - including the revised Home Information Pack Regulations, the Explanatory Memorandum, Regulatory Impact Assessment (RIA) and a summary of the responses to the January consultation - can be obtained from the HIPs website at www.homeinformationpacks.gov.uk. Specific information on estate agents' obligations is included in the 'Industry' section. Guidance on the regulations is expected to be available shortly, and will also be made available on the website.

For copies of the relevant legislation:

Housing Act 2004

www.opsi.gov.uk/acts/acts2004/20040034.htm

Energy Performance of Buildings (Certificates and Inspections) Regulations 2007

www.opsi.gov.uk/si/si2007/uksi_20070991_en.pdf