



Hips Update: Towards 1 June

Summary of consultation responses



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Introduction

1. The Government is introducing Home Information Packs (HIPs) as part of wider reforms to cut carbon emissions from homes and to improve home buying and selling. The purpose of HIPs is to provide consumers with better information at the right time in order to improve the speed and certainty of transactions and reduce wasted costs. HIPs will also help improve competition in the home buying and selling market and support wider action to tackle climate change.
2. The HIP Update document, published on 25 January 2007, was the latest in a series of consultation exercises in relation to the HIP Regulations. The paper had three main aims:
 - update our analysis of how the housing market is currently working, using the latest findings from the HIP Baseline Research;
 - set out the role of the Home Information Pack in the action to cut carbon emissions and the wider reform of the home buying and selling process; and
 - explain how we intend to ensure the smooth introduction of HIPs on 1 June 2007 and take account of information from the area trials, the Baseline Research and discussions with stakeholders.
3. Views were sought on the proposals outlined in the paper by 21 February. This deadline was subsequently extended to 22 February. A total of 280 responses were received. These included 65 from Search organisations, 40 conveyancers/solicitors, 39 local authorities, 29 from estate agencies, 17 from energy and water suppliers/organisations, 10 from HIP providers and 5 responses were received from the mortgage lending industry. 48 people responded in an individual capacity. We also held a number of sub-sector consultative groups during the consultation period. The views of these groups have also been incorporated into this summary.

Summary of Consultation Responses

4. The HIP Update put forward 18 separate proposals aimed at ensuring a smooth introduction of HIPs from 1 June 2007. Views were sought on each of these proposals, as well as three further suggestions for longer term changes to HIPs. A summary of the responses to these proposals is included below.

(a) Energy Performance Certificates

5. Two specific proposals were put forward to ensure the important information contained in the EPC was clearly visible to potential purchasers:
 - i. requiring that the EPC is the first document in the pack**
 - ii. requiring that the EPC is attached to the estate agent's particulars**

The majority of responses relating to the EPC focused on the proposal to attach the EPC to the estate agents particulars. There was a mixed response to the proposal from respondents.

The majority felt that attaching the whole certificate, plus recommendations report would be an excessive burden on estate agents and dramatically increase the amount of paper used. A large number of respondents felt that attaching the charts from the front cover of the EPC, depicting energy efficiency and carbon dioxide ratings, would convey much of this information to prospective buyers in a more cost effective way.

Some responses questioned the provision of any energy efficiency information at all on particulars and the likelihood that buyers would look at the information contained in them, while others stated that such information was very important so that purchasers will consider the energy rating of a property in their overall first impression.

The positioning of the EPC at the front of the pack drew a smaller response, most of which sought clarification that the EPC should not be in front of the index.

We accept the views put forward by a number of respondents that attaching the EPC plus a recommendation report to estate agents particulars would not be practical. However, we consider it important that energy efficiency information is made available to potential buyers as soon as possible, for it to form part of their considerations. It will therefore be a requirement that, as a minimum, the two graphs from the EPC must be contained in or provided with particulars, leaving it up to estate agents how they do it;

In addition, we will encourage but not require the display of EPC ratings on advertisements.

It will be a requirement that the EPC is the first document in the pack following the index.

6. The document also proposed to go further and give home buyers greater encouragement to act on the advice they will get in EPCs on how to improve their homes:
 - iii. talking to the Energy Savings Trust about strengthening their role as an impartial provider of energy advice to consumers, and ensuring their details are prominently displayed on the EPC**
 - iv. exploring the possibility of linking EPCs more closely to financial help already available to improve energy efficiency**
 - v. discussing with the financial services industry the potential for encouraging more provision of “green mortgages”, linked to the take up of recommendations in the EPC**

Although there were a significant number of responses relating to the EPC, very few focused on these proposals. Some respondents questioned the likelihood of home buyers acting on the information that they receive about the energy efficiency of a particular property. Others encouraged the focus given to energy efficiency and the further work being done by the Government in this area.

The focus on linking EPCs to wider financial incentives beyond green mortgages was also encouraged, and including information about financial help already available received support.

We will continue to pursue these additional measures to encourage home owners to act on the information contained in the EPC.

7. It was recognised that as things stood, prospective buyers of new homes bought 'off plan' would not receive important information about the energy efficiency of a property as a full EPC would not be prepared for these properties. In order to resolve this we proposed that:

vi. an "Interim Energy Assessment" should be required for homes that are sold before an EPC can be prepared for them.

Ten responses were received on this issue. The majority sought further information on the proposals. Those opinions provided on the proposal for such an assessment were generally positive. One respondent even suggested that the interim energy assessment should carry equivalent status to the final Energy Performance Certificate and should be a required part of the estate agent's particulars.

Two respondents suggested that a similar assessment is available already as part of the Building Regulation Application SAP rating and Target Energy Rating calculations, and this could be made available in the buyer's information at no additional cost.

We accept that there are a number of existing processes in place under the Building Regulations that determine the expected energy performance of a property. It would not make sense to duplicate these.

It will therefore be a requirement for an energy assessment to be included for new marketed domestic properties that are unable to include an EPC, using the energy rating obtained as part of the Building Regulations process. This will apply to both new homes marketed off-plan and, for a transitional period until 1 October, those under construction that cannot have a full EPC produced for them. These energy assessments should include graphs similar to those found in the EPC.

(b) Reforms to Searches

8. In recognition of some of the issues with obtaining searches in the current system, the Government proposed a number of measures to ensure full access for search companies with prompt access to all the data they need to compile searches:

vii. consult on and publish guidance on access to information

- viii. take measures to identify the least well-performing authorities and work with them to improve performance on turnaround times and the quality of the information provided**
- ix. work with stakeholders to establish mechanisms for monitoring local authority performance on searches**
- x. look at the potential for removing statutory obstacles to improving access across the board**

In all, one hundred and thirty seven of the responses received commented on aspects of the searches proposals, including the transitional measure on insurance covered separately. The vast majority of these responses were provided by search organisations or local authorities. There were a wide variety of polarized views on the current searches system and the changes that need to be made.

The majority of local authority respondents disputed the figures relating to local authority search turnaround times. A large number of personal search companies suggested that there were a considerable number of LAs that deliberately impede or delay access to unrefined data in order to gain a competitive advantage over private search companies.

There was some agreement, however, that the HIP regulations, re-draft of the access guidelines and work on charging, are an opportunity to address the issue of searches to create the level-playing field between local authorities and personal search companies that was envisaged by the Office of Fair Trading in their 2005 market study on property searches.

We will continue to engage with both local authorities and personal search companies to develop a search system based on a level playing field.

9. The Government also proposed two courses of action to provide the strong evidence base needed to inform decisions in relation to local authority charging:

- xi. seek tenders for the production of a final charging methodology and guidance by independent experts**
- xii. carry out a review of the local land charges fees**

Most local authorities questioned the search turnaround times attributed to local authorities and raised concerns over the current charging arrangements they believe restrict the costs that local authorities can recover. A number called for urgent action in this area to enable a level playing field.

We will seek tenders for the production of a final charging methodology and carry out a review of charging for local authority searches.

10. Provision of information to buyers in a form that they understand is of paramount importance to the introduction of HIPs. In order to improve further the clarity of the HIP and its usefulness to the buyer, two additional proposals were put forward:

xiii. produce a “What to look for in your HIP” leaflet to explain what is in a pack and where to look for important pieces of information

xiv. encourage pack providers to produce legal summaries

Four responses were received in relation to the “What to look for in your HIP leaflet”, all broadly positive. Two suggestions were made for information that could be included in this leaflet; on the different searches available and electrical safety information. One respondent suggested that the leaflet should be a required part of the HIP.

Ten respondents commented on the proposal to encourage the inclusion of legal summaries in the HIP. In general, the proposal for these summaries to be authorised but not required was supported although questions were raised over the potential additional cost and bulk of such documents. The issue of potential liability for solicitors producing such reports was also raised.

We have now published a ‘What to look for in your HIP’ leaflet. At this stage there are no plans for more detail on specific searches or electrical safety but we will be reviewing the content of the leaflet on a regular basis.

We note the support for the inclusion of legal summaries as authorised documents and the views of their respondents who raised the potential risks in their inclusion. We will continue to encourage the inclusion of legal summaries in the pack as authorised documents.

11. Following representations by stakeholders it was proposed to change the current provision whereby, if a property is taken off the market for any reason within the first few months and remains off the market for longer than 28 days a new HIP may be required:

xv. it is proposed that the duty to refresh time sensitive parts of the HIP will not arise where the property is remarketed by the same seller within one year of the original marketing date

There was a mixed response to this proposal. A number of responses welcomed the decision not to require a vendor to renew the pack in cases where the property is off the market for less than a year. Moreover, another response questioned the benefit sellers would derive from having to refresh documents and incur further cost if the property has been on the market a long time without an offer.

A number of responses noted that remarketing obligations should be in the best interests of consumers, both the seller and purchaser. It was noted that while there should not be an unnecessary burden on the seller the buyer must be provided with accurate, reliable, timely and up to date information for searches and surveys.

One respondent felt that allowing the market to determine the appropriate frequency for refreshing documents would mean that enforcement officers, and indeed estate agents, would have no legally defined document age rules to work to. This could make both compliance and enforcement problematic.

We intend to proceed with the proposal as set out in the consultation document and will be considering the implementation and enforcement of these requirements in light of the comments received.

(c) Transitional Measures

12. The HIP Update also identified a number of transitional measures aimed at ensuring a smooth introduction of HIPs from 1 June.

xvi. to allow personal search companies to continue to use insurance for a transitional period until April 2008 for those parts of searches for which private search companies cannot gain access to the authoritative data within 14 days

A significant number of the consultation responses received related to the proposal to allow personal search companies to continue using insurance to cover gaps in property search information, for a transitional period.

A large number of respondents questioned the 14 day delay before being allowed to include a property search with insurance. Many believe that if data is available access should be provided by local authorities to allow data to be used in the search, if not, insurance should be allowed from day one i.e. there is no need to wait 14 days if the data is known not to be available.

Clarification was also requested by a number of respondents on the application of this proposal to drainage and water (D&W) searches. While the provisions were intended to apply only to local authority searches, due to the differences between the two search systems, some personal searchers currently delivering D&W searches have argued that HIPs requiring D&W searches without provision for insurance could create regional monopoly suppliers of information.

We accept the arguments put forward about the proposed 14 day waiting period that the determining factor in the use of insurance for property searches should be accessibility to data. We will therefore allow insurance to be used immediately where the local authority has a policy of not permitting access. However, the search report must state which enquiries will be covered by insurance and the terms and effect of that insurance. We will collect data on which local authorities deny access to what data. These provisions will apply for a transitional year to April 2008.

This concession allows existing practice in the searches market to continue. The majority of the information is already available from local authorities to complete searches. In the main insurance is used to cover gaps in data on building regulations

data, where a minority of authorities deny access. This will change later this year when amendments are made under the Sustainable and Secure Buildings Act 2004 (proposals are currently out for consultation ¹)

We do not propose to change policy on the use of insurance in drainage and water searches, where all enquiries must be answered for the search to be included in the HIP. We do not accept that the position on these searches is comparable with property searches as all the data is available on a commercial basis from private water companies. No legal avenues exist to open up access to this data and as far as we are aware there are no delays in delivering these searches.

13. In order to avoid significant delays until the current difficulties with obtaining searches and leasehold documents in certain circumstances are resolved, an additional transitional measure was proposed:

xvii. sellers should be allowed to market their homes if a pack is produced containing the Energy Performance Certificate, sale statement, evidence of title and index; and evidence that the other documents have been commissioned

A large number of respondents supported the steps taken to allow marketing with these essential documents, alongside evidence that the other required documents have been commissioned.

Some responses, particularly from estate agents, asked for this proposal to go further and that marketing be allowed immediately regardless of the pack documents in the HIP. One response also suggested that the evidence of commissioning some of the required documents could be extended to include all documents in the pack.

The enforcement of these requirements was also a concern for a number of respondents. It was suggested that without further steps the system may be circumvented and that the 28 day rule would be hard to police. One respondent even suggested that whilst the requirement remains, there is the possibility of a “grey market” forming in “pre-HIP completed properties.”

One respondent suggested that the proposals should be a permanent feature of the HIP although the majority agreed that this should be a transitional measure, until the problems identified with searches and leasehold documents were resolved.

We intend to retain the transitional proposal that sellers be allowed to market their homes if a pack is produced containing the Energy Performance Certificate, sale statement, evidence of title and index; and evidence that the other documents have been commissioned.

We intend to require that when documents have been commissioned, they will be included in the pack as soon as practicable. The 28 day period is intended as a limit.

¹ www.communities.gov.uk/index.asp?id=1508731

14. The current Regulations allow for properties already on the market on 1 June to continue to market without a HIP if they choose to do so, until 31 October 2007. As a result of the latest evidence from the baseline research and stakeholder feedback it was proposed to extend this:

xviii. Properties already on sale on 1 June would be allowed to continue to be marketed without a HIP until 31 March 2008

12 responses referred to this proposal. There was strong support for the proposal to extend the ‘drop-dead’ date beyond 31 October 2007, and the reasons for the proposal were clearly understood. However, many respondents felt that 31 March 2008 was too late.

A number of responses expressed concern that extending the date out as far would create perverse incentives for both sellers and estate agents and could lead to:

- A rush of properties coming to the market before 1 June 2007 in an attempt to ‘beat’ HIPs.
- Strong additional demand for HIP provision in March 2008 just as the market for new listings is entering into its busiest seasonal period.

Two responses felt that extending the ‘drop-dead’ date out so far would result in unnecessary delay in realising the benefits of EPC. It was felt that it would benefit the image of England and Wales in Europe a great deal if they could “tick the box” for the provision of EPCs on all home sales within the year of 2007.

A number of responses suggested that a sensible approach would be to compromise with a date of 31 December 2007. It was felt that whilst this would not entirely prevent an increase in listings in May, it would dampen it. It would also take the pressure off estate agents from procuring HIPs on properties already listed at a busy time. It was felt that pack providers could comfortably deal with an increase in demand at the end of 2007.

We agree that an extension to the “drop-dead date” is a positive step but accept that the proposed extension to March 2008 could result in additional problems, as respondents have identified. Analysis shows that extending to the end of the year will still retain most of the benefits while also avoiding many of the additional costs that have been identified by respondents. The drop-dead date will therefore be extended to 31 December 2007.

(d) Potential longer term changes to HIPs

15. Emerging findings from the Area Trials and consultations with stakeholders also led to a number of longer term changes to HIPs being proposed. These were not intended for introduction from 1 June but views were sought on the potential for changes at a later date.

xix. Flood and Ground stability searches

Ten responses were received in relation to flood and ground stability searches. Five respondents thought that such information should be included as mandatory documents in the HIP, and agreed that their inclusion be reviewed. There were some words of caution that Government should be confident that there was both the technology and the competitive markets in place to deliver these searches quickly and at a reasonable price for the consumer, before they were made mandatory.

We will continue to explore the potential for mandatory flood and ground stability searches to be included in the HIP.

xx. Penalty charge

Eighteen responses were received. The majority of responses suggested that the proposed penalty charge was too low and should be increased. There should also be additional measures for taking action against those who do not comply.

We will continue to look at the penalty charge in light of the post-implementation experience.

(e) Other issues raised during the consultation

16. The HIP Update document also provided information on a number of further areas either directly or indirectly linked to the work on home information packs. No proposals were put forward. A number of comments were received in relation to these areas:

E-conveyancing

A number of positive responses were received in relation to the prospect of e-conveyancing through the land registry chain matrix. However, some respondents were not convinced of the potential for mutual benefits between e-conveyancing and HIPs and felt that e-conveyancing would deliver the benefits on its own.

Redress

Fifteen respondents commented on consumer redress. The vast majority of respondents were supportive of the steps to strengthen consumer redress although one respondent stated that HIPs should be shelved until Estate Agents were regulated.

HCR

Thirty five responses received mentioned the voluntary HCR. There was a broad spread of opinion on the current status of the HCR. Many respondents agreed with the benefits of the voluntary HCRs to the home buying and selling process and urged the Government to continue to promote their take up. A number of responses

also urged the Government to consider a deadline for mandatory inclusion of the HCR. Other respondents who had previously opposed HIPs because of the mandatory HCR supported HIPs now it is voluntary and called for the market to decide on its uptake.

Forms

The decision to retain the authorised forms received fifteen comments. Again, a broad spread of opinion was received. Generally, the decision to make the forms authorised for inclusion was supported. Three respondents suggested that the forms should be mandatory. Further more detailed points were made about the content of the forms.