

PROGRESS

an industry update on Home Information Packs

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FAQs on compliance

We have been receiving feedback that some estate agents have questions about how to interpret the HIP regulations correctly. This issue of PROGRESS looks at frequently asked questions on compliance.

What constitutes marketing, and do 'informal or one-off viewings' trigger the HIP duties?

Section 149 of the Housing Act 2004 provides that a property is put on the market when the fact that it is available for sale is made public. A fact is made public 'when it is advertised or otherwise communicated (in whatever form and by whatever means) to the public or to a section of the public'. Communication of availability for sale by word of mouth or other means is therefore caught, and counts as marketing.



One-to-one sales that do not involve any other person and do not involve marketing to a 'section of the public' are not caught by the legislation. But section 159 of the Housing Act 2004 provides that where someone acting as an estate agent introduces a seller to a buyer as part of a business, that is treated as a 'qualifying action' which triggers the HIP duties.

This means that the HIP duties will usually be triggered where an estate agent, as part of his business, arranges 'informal or one-off viewings' of a property that is available for sale, or communicates this availability by any means to anyone as part of an attempt to sell it.

When should an estate agent show the EPC to a prospective buyer?

At the earliest opportunity.

Regulation 5(2) of the Energy Performance of Buildings Directive (EPBD) regulations requires the relevant person to make the EPC available to a prospective buyer at the 'earliest opportunity'. Therefore an agent who has a HIP (including an EPC) in his possession is under a duty to inform a prospective buyer who shows an interest in the property that the EPC (at least) is available for inspection.

What constitutes requesting or ordering a HIP?

The request must be made in writing† to a person who would normally deal with such requests (e.g. a pack provider company) in order to comply with the HIP regulations. It should be made in the appropriate format together with any payment or commitment to pay that is normally required. There should also be an expectation that the documents will be made available within 28 days of the first point of marketing and all reasonable efforts should be made to obtain the documents before then. Where the documents cannot be obtained within 28 days, the responsible person must continue to make reasonable efforts to obtain them as soon as possible. Therefore, if you are found to order the pack but not make arrangements for payment or make reasonable efforts to ensure it is produced in good time, this would be an example of non-compliance. In such cases, a £200 penalty could be imposed on the estate agent marketing the property and this could, in turn, lead to a banning order from the Office of Fair Trading if there were a number of such breaches.

† Unless it is an oral request made to the Land Registry under Land Registry Rules

To qualify for the exception for properties marketed before HIPs came into force, is it enough simply to have entered into a contract with an estate agent before the commencement date?

No. The exception only applies where the property was actively marketed for sale before the appropriate commencement date (see below) and you may be asked for evidence of this. If it was marketed on or after the following dates and you have not commissioned a HIP, you are not complying with the regulations.

- 1 August 2007 — for sales of homes with four or more bedrooms
- 10 September 2007 — for sales of homes with three bedrooms
- 14 December 2007 — for sales of homes with two bedrooms or fewer (or none).

If I agree to an estate agent showing potential buyer/s my property, even though we don't have a written legal agreement, do I need a HIP?

Yes. Provided the agent is marketing the property on your behalf, a HIP would be required and it would be the responsibility of the agent to ensure this.

Not having a HIP in place or ordered could lead to a £200 penalty for the estate agent marketing the property. This could lead to a banning order from the Office of Fair Trading if there were a number of such breaches.

I receive e-mails about properties from a company that passes on information about homes where the seller wants to sell quickly. Are they required to provide me with a HIP?

Yes. Provided the information is passed to more than one person, that would be marketing to a 'section of the public'. A HIP would be required from whoever is treated as responsible for marketing. This would be the seller himself if the company was not acting as an estate agent on his behalf.

Do EPC graphs need to be included in the estate agents particulars?

Yes. The rules require the Energy Performance Certificate to be attached to the written particulars or, alternatively, for the EPC graphs to be included in them. This applies to electronic copies of particulars posted on websites as well as paper copies.

Example particulars, including the EPC graphs, are available at:
<http://www.home-information.info/doc?id=133>

If a seller instructs multiple estate agents do they all require a copy of the HIP?

Yes. Even if the HIP is ordered through one agent all agents should:

- hold evidence of the HIP being commissioned before marketing begins;
- hold a copy of a compliant HIP and make it available on request to prospective buyers or enforcement officers; and
- include the EPC graphs on particulars.

Failure to comply with these requirements could be treated as a breach of the duties.

If I change estate agent, is the HIP commissioned by the first agent valid for use by the new agent?

Yes. A HIP is valid as long as it complies with the regulations and there has not been a break in marketing. However, whether the vendor can take the HIP with them will depend on the ownership of the HIP and the commercial terms that the vendor agreed with their estate agent or HIP provider.

Common payment options and terms offered in the market include:

- Upfront Payment — If a seller has paid for a pack up front in full they would expect to be able to take the HIP to their new estate agent
- Deferred Payment — i.e. an agreement is made to defer payment for the HIP to a later date. Once the seller has paid for the HIP they should be able to take the HIP with them to a new agent
- A 'free' HIP included in the estate agents fees — Some estate agents offer free HIPs and may retain ownership of the HIP even if the seller decides to change estate agents. Some agents will release the HIP if a withdrawal fee is paid

Bulletin and round-up

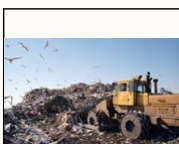
Guide to Financial Support for Improving Energy Efficiency

CLG and the Energy Savings Trust have produced a short guide for householders in England and Wales on ways to cut down on energy bills and the financial support available for implementing energy efficiency measures in their homes. This includes the support available for acting on recommendations in the EPC.

Multiple hardcopies can be ordered free by e-mailing communities@twoten.com quoting product code: EST/HIP/08.

EPCs and climate change

The EPC is an important part of the HIP and underlines the Government's commitment to cut carbon emissions. Here we feature some core facts about energy savings and how EPC recommendations can help cut fuel bills.



Did you know?

Each household in the UK creates around six tonnes of carbon dioxide a year. That's six times the weight of the rubbish an average household throws away in a year. It's also double the carbon dioxide emissions that the average car produces in a year. By following recommendations that come with EPCs, you can cut down the emissions that come from your home and cut your fuel bills.

[Source: Energy Savings Trust]

For more information on EPCs and green issues visit:

<http://www.communities.gov.uk/epbd>
<http://www.energysavingstrust.org.uk>