



Home Information Packs
Guidance for Enforcement Officers



Home Information Packs
Guidance for Enforcement Officers

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© Crown Copyright, 2009

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence.
Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: licensing@opsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 030 0123 1124
Fax: 030 0123 1125

Email: communities@capita.co.uk
Online via the Communities and Local Government website: www.communities.gov.uk

April 2009

Product Code: 08HBS05844

ISBN: 978 1 4098 1338 5

Contents

Part 1	5
Introduction, Legislation and Background	
Summary of main provisions	5
Policy background	6
The Housing Act 2004	7
The Home Information Pack (No. 2) Regulations 2007	7
HIP Commencement Orders	8
HIP Amendment Orders	8
The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007	9
Extent of Home Information Pack legislation	9
Part 2	10
Enforcement	
Summary of enforcement provisions	10
Amount of penalty charge	11
Exclusion of penalty charges for contents of pack documents	11
Duties of enforcement authorities	12
Power to require documents	12
Power to serve penalty charge notices	13
Offence to obstruct or impersonate enforcement officers	13
Role of Office of Fair Trading	13
The penalty charge notice	14
Enforcement checklist	15
Part 3	18
General Effects of the Housing Act 2004 and Regulations	
When the Home Information Pack duties apply	18
The responsible person – “acting as an estate agent”	20
Defining who is responsible for marketing	21
The responsibility of a person acting as estate agent	21
The responsibility of the seller	21
The first point of marketing	22
Part 4	23
The Home Information Pack Duties	
The duty to have a Home Information Pack	23
The duty to provide a copy of the Home Information Pack on request	23
The duty to ensure authenticity of documents	25
Other duties of person acting as estate agent	26
The duty for estate agents to belong to approved redress scheme	26
The duty to provide energy information with written particulars	27

Part 5	28
Exceptions from the Home Information Pack Duties	
Residential properties not available with vacant possession	28
Further exceptions from the Home Information Pack Duties	28
Part 6	35
Content of the Home Information Pack	
Part 1: General conditions concerning documents	35
Part 2: The documents	37
– Required pack documents	37
– Authorised pack documents	40
Part 7	41
Assembly of Home Information Packs	
Order of pack documents	41
Time at which pack documents are to be included	41
Age of pack documents when first included	43
Energy information unobtainable before or at the first point of marketing	43
Documents required within 28 days of the first point of marketing	44
Requests for documents	45
Delivery of documents	46
Required documents which are completely unobtainable	47
Part 8	49
Accuracy of Home Information Packs	
Updating of required pack documents	49
Updating of energy performance information	49
Updating of authorised pack documents	50
Seller’s check of the home information pack	50
Part 9	51
Home Condition Reports: Approved Certification Schemes and the Home Condition Report Register	
Role of Certification Schemes	51
Approved Certification Schemes	52
Access to Register	52
Access to the register for enforcement authorities	53
Part 10	54
New Homes	
Energy information for sale of new homes	54
Property Information Questionnaire (PIQ)	55
Sustainability information for new homes	55
Evidence of title and searches	56

Part 1

Introduction, Legislation and Background

This part summarises the main features of the Home Information Pack scheme, which requires those responsible for the marketing of residential properties to have a Home Information Pack and provide copies to potential buyers. It also describes the relevant legislation and guidance available.

1. This guidance on the Home Information Pack duties in the Housing Act 2004 and secondary legislation made under the Act is aimed primarily at those who have responsibility for enforcing the duties under the Act, ie local authority trading standards officers and the Office of Fair Trading. The guidance also provides a commentary on the requirement to include energy efficiency information in estate agents' and other written particulars that are contained in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

Summary of main provisions

2. The principal features of the scheme are listed below:
 - the main effect of the legislation is to require those responsible for the marketing of residential properties in England and Wales to have a valid Home Information Pack (HIP) when they are marketing a property and to make a copy available on request to a potential buyer or enforcement officer
 - when the scheme commenced on 1 August 2007, it only applied to homes that were marketed as having four bedrooms or more. Homes with three bedrooms were included from 10 September 2007 and those with two bedrooms or less from 14 December 2007. In each of these cases, new homes built under the 2006 Building Regulations were excluded from the scope of the commencement orders. These properties were brought within the scheme on 6 April 2008
 - for a temporary period ending on 5 April 2009, sellers who would otherwise be subject to the HIP duties are able to market their homes without a HIP, provided all the required (ie compulsory) documents have been requested. In these cases, the duty to have a pack will only arise once the responsible person obtains an energy performance certificate (EPC)

- all residential properties put on the market on or after 6 April 2009 will require a valid “basic” HIP before marketing can start. Certain documents may be omitted from the HIP at this stage, however, where there are delays in obtaining them
- there are some exceptions from the general right for potential buyers to obtain a copy of the HIP
- the duties do not apply to properties already on the market when they come within the scope of the scheme (eg 1 August for sales of four bedroom properties) but further regulations may be made that will have the effect of requiring all properties on the market to have a pack (sometimes referred to as a “drop-dead” date)
- the duties apply to whoever is responsible for marketing. This will be an estate agent in most cases but will also apply to people marketing their own homes
- estate agents marketing with HIPs must belong to an approved redress scheme
- the HIP duties apply to most sales of residential properties but there are some exceptions
- the HIP must include documents that are “required” and may include documents that are “authorised” under the regulations
- documents that are neither required nor authorised must not be included in the HIP and there is also a general prohibition on including advertising material
- the HIP documents should be presented in a prescribed order when a copy of the pack is provided
- the required documents in HIPs must conform with the appropriate terms and conditions set out in the regulations – but sellers or their agents will not usually be responsible for the accuracy of information contained in documents provided by others

Policy background

3. The Home Information Pack provisions in Part 5 of the Housing Act 2004 Act derive from the Government’s manifesto commitments to improve the home buying and selling process for consumers by ensuring that information that buyers and sellers need in order to make informed decisions is made available at the beginning of the process. This is intended to make the home buying and selling process more transparent and reduce delays and transaction failures.
4. The inclusion of energy efficiency information in the Pack will contribute towards the Government’s target to cut carbon emissions from homes.

The Housing Act 2004

5. Part 5 of the Housing Act 2004 (“the Act”) contains the primary legislation and imposes a duty on persons to have under their possession or control a Home Information Pack which complies with the requirements of regulations made under the Act. The duties apply to whoever is deemed to be the “responsible person” and relate to the marketing of a residential property for sale.
6. The duties include a duty to provide a copy of a pack to a potential buyer on request, a duty to ensure the authenticity of documents, and a duty on estate agents to have a pack where the property is not yet on the market but they are somehow communicating that a property may become available for sale with a view to marketing it. These are collectively described in this guidance as the “Home Information Pack duties” and are described in more detail in Part 4 of this Guidance.
7. The Explanatory Notes on Part 5 of the Housing Act 2004, together with the Act itself, are available from the legislation section of the Office of Public Sector Information’s website at http://www.opsi.gov.uk/acts/acts2004/ukpga_20040034_en_1

The Home Information Pack (No. 2) Regulations 2007 (S.I 2007/1667)

8. The Home Information Pack Regulations 2007 (“the Regulations”) describe the “required” and “authorised” content of Home Information Packs. They also provide for exceptions from the Home Information Pack duties, make provision for the approval of certification schemes in connection with home condition reports and set out general provisions on the assembly and accuracy of Pack documents.
9. The Regulations also specify the level of penalty charge that may be levied for a breach of the Home Information Pack duties, and make transitional provision for homes already on the market when the Home Information Pack duties come into force.
10. The Home Information Pack (No. 2) Regulations 2007 (2007 No.1667) and other regulations below with the accompanied detailed procedural guidance on the Regulations is also available on the Communities and Local Government website at <http://www.communities.gov.uk/housing/buyingselling/homeinformation/publicationsabout/>

HIP Commencement Orders (Numbers 8-11)

The Housing Act 2004 (Commencement No.8) (England and Wales) Order 2007 (S.I. 2007/1668)

11. This commencement order brings into force the Home Information Pack provisions in the Housing Act from 1 August 2007 in relation to sales of residential properties with four bedrooms or more, other than new homes to which regulation 17C of the Building Regulations 2000 applies.

The Housing Act 2004 (Commencement No.9) (England and Wales) Order 2007 (S.I. 2007/2471)

12. This commencement order provides that the HIP duties apply from 10 September 2007 in relation to the marketing of homes that have three bedrooms, other than new homes to which regulation 17C of the Building Regulations 2000 applies.

The Housing Act 2004 (Commencement No.10) (England and Wales) Order 2007 (S.I. 2007/3308)

13. This commencement order provides that the HIP duties apply from 14 December 2007 in relation to the marketing of homes that have two bedrooms or fewer, other than new homes to which regulation 17C of the Building Regulations 2000 applies.

The Housing Act 2004 (Commencement No.11) (England and Wales) Order 2008 (S.I. 2008/898)

14. This commencement order provides that the HIP duties apply from 6 April 2008 in relation to the marketing of new homes to which regulation 17C of the Building Regulations 2000 apply.

HIP Amendment Orders

The Home Information Pack (Amendment) Regulations 2007 (S.I. 2007/3301)

15. These amended the principal regulations from 14 December 2007 to provide that leasehold documents, apart from the lease itself, are authorised documents for a temporary period ending on 31 May 2008. They also extended until the same date the period during which marketing may start without a pack provided one has been requested.

The Home Information Pack (Amendment) Regulations 2008 (S.I. 2008/572)

16. These amended the principal regulations to extend the temporary period during which insurance may be included in personal searches until 31 December 2008. The regulations also add sustainability information for new homes to the required components of the HIP.

The Home Information Pack (Amendment) (No.2) Regulations 2008 (S.I. 2008/1266)

17. These amended the principal regulations to further extend the temporary provisions relating to leasehold property sales and the temporary provisions on first day marketing until 31 December 2008.

The Home Information Pack (Amendment) (No.3) Regulations 2008 (S.I. 2008/3107)

18. These made the temporary provisions on leasehold information in HIPs permanent from 1 January 2009. They also amended the Portfolio exception in regulation 30 to remove an anomaly affecting mixed sales of occupied and unoccupied dwellings. The temporary provisions on 1st day marketing and insurance arrangements for private searches were further (and finally) extended until 5 April 2009. The regulations also set out the new duty to include a Property Information Questionnaire (PIQ) in the HIP for homes marketed on or after 6 April 2009.

The Home Information Pack (Amendment) Regulations 2009 (S.I. 2008/34)

19. These made a further amendment to the principal regulations to provide that the PIQ forms part of the “basic” HIP from 6 April 2009.

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991 as amended by S.I. 2007/1669)

20. These regulations implement (in England and Wales) parts of the Energy Performance of Buildings Directive. The Directive lays down requirements for the energy performance certificates when buildings are constructed, sold or rented out. Regulation 6 provides that where the Home Information Pack duties apply to a sale, the written particulars must include energy performance information.
21. The Regulations are available from the Office of Public Sector Information website. They are also available from the Communities and Local Government website together with guidance (see <http://www.communities.gov.uk/epbd>)

Extent of Home Information Pack legislation

22. The Home Information Pack duties only apply to homes marketed for sale in England and Wales (this includes the Isle of Scilly but excludes the Channel Islands and the Isle of Man). The provisions do not therefore apply in Scotland or Northern Ireland.

Part 2

Enforcement

This Part describes the arrangements for the enforcement of the HIP duties. Local weights and measures authorities have primary responsibility but the Office of Fair Trading (OFT) also has a role where the breach of duty is committed by an estate Agent. Enforcement officers have a number of options, ranging between providing help and guidance to issuing a penalty charge of £200. The enforcement powers apply to whoever is responsible for marketing (referred to as the “responsible person”). They will be chiefly used against estate agents but will also apply to private individuals who choose to market their own homes. Estate agents are under a duty to ensure that the documents in the HIP are the correct documents and are not out of date but where they have reasonable grounds to believe the content complies with the Regulations, a penalty charge should not be issued. The penalty charge notice must comply with Schedule 8 to the Housing Act, which contains information on the appeals process.

Summary of enforcement provisions

1. The main features of the enforcement provisions are as follows:
 - it is the duty of every local weights and measures authority to enforce the HIP duties
 - they have powers to require the production of HIPs for inspection
 - where a breach of duties is believed to have taken place, a penalty charge notice *may* be given ie enforcement officers have discretion as to whether to impose a penalty charge
 - the penalty charge has been set at £200 and this can be repeated if the breach is repeated or continues
 - appeals against the notice are considered by the County Court
 - the amount of the penalty charge is recoverable as a debt
 - a person who obstructs an enforcement officer, or purports to act as one, commits a criminal offence and is liable to a fine (not exceeding level 5) on conviction

- enforcement authorities *may* inform the OFT of any suspected breach of the duties and *must* inform the OFT when a penalty charge is issued
- a breach of the HIP duties is treated as an undesirable practice under the Estate Agents Act 1979 and the OFT could decide to take action, including the issue of a banning order
- enforcement officers are not expected to check the accuracy of documents within a pack in detail – the legislation provides that penalty charges do not apply where the responsible person has reasonable grounds to believe that the content of a document complies with the legislation
- enforcement officers should check that the index and sale statement are in order, however, and that all the documents which are required for the property are either in the pack or have been requested

Amount of penalty charge (Regulation 35)

2. Section 168 of the 2004 Act provides that where an authorised officer of an enforcement authority believes that a responsible person has committed a breach of the home information pack duties, he may issue a penalty charge notice. Schedule 8 to the 2004 Act provides that the penalty charge specified in the notice shall be prescribed by regulations and shall not exceed £500.
3. Regulation 35 sets the penalty charge at £200 initially. It should be noted that payment of this penalty charge does not entitle the person to continue marketing the property in breach of the duties. To do so could make that person liable to further penalty charge notices. If the person is an estate agent, it also amounts to an “undesirable practice” for the purposes of section 3(1)(d) of the Estate Agents Act 1979, and would make 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 (see section 175 of the 2004 Act).

Exclusion of penalty charges for contents of pack documents (Regulation 36)

4. Regulation 36 recognises that the content of many of the documents required to be included in a home information pack is determined by people other than the seller, or a person acting as estate agent for the seller. For example, the content of an energy performance certificate is determined by a Domestic Energy Assessor or Home Inspector who is a member of a certification scheme approved by the Secretary of State and search information may be provided by a local authority responsible for maintaining public registers containing that information.

5. It is not intended that the seller or the seller's estate agent should be held responsible for the accuracy of the information contained in such documents included in the pack. Accordingly, regulation 32 provides that the penalty provisions contained in section 168(1)(a) of the 2004 Act shall not apply to a breach of the duties to the extent that the content of a document (other than the home information pack index and the sale statement) fails to comply with the requirements of the regulations. This applies so long as the seller or the seller's estate agent has reasonable cause to believe that the document does comply with the regulations. It follows that agents can be held liable where they know that a document in the HIP does not comply with the regulations but go ahead with marketing the property in any case.

NB: This does not mean that trading standards officers (TSOs) have no power to investigate complaints about incorrect HIP documents that are not the fault of the responsible person. TSOs have other powers to investigate such complaints – eg the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277).

Duties of enforcement authorities

6. Sections 166 to 169, section 175 and Schedule 8 of the Housing Act 2004 contain the provisions relating to the enforcement of the home information pack duties by local weights and measures authorities and the Office of Fair Trading.
7. **Section 166** places a duty on local weights and measures authorities to enforce the home information pack duties in their areas.

Power to require documents

8. **Section 167** sets out the powers of the enforcement authority to require the production of any document included in a home information pack for inspection and to take copies if they wish to. The section provides that the duty should be complied with within the period of seven days following the date of the request, unless there is a reasonable excuse for not doing so. This allows for the possibility that the documents may not be in the responsible person's possession (eg are in a different office) or the person may be on holiday at the time the request is made.
9. The section also provides that the requirement to produce a document cannot be made more than six months after the last day on which the person concerned was under a duty to have a pack available for inspection. The home information pack duties apply whilst the property remains on the market and cease when marketing stops.

Power to serve penalty charge notices

10. **Section 168** gives enforcement officers a power to issue penalty charge notices to persons whom they believe have failed to comply with any of the duties.
11. The section provides that a penalty charge notice may only be given within the six-month period following the date on which the breach of duty occurred (or the date of the last day of a continuing breach). It also introduces Schedule 8, which makes further provisions for fixed penalties.
12. Enforcement officers have a number of options other than giving a penalty charge notice when they believe that a breach has occurred. Enforcement officers will want to assess each case individually and take into account whether the HIP is being deliberately avoided when deciding the appropriate measure to take – these range from advice and warnings to a (repeatable) £200 penalty charge.
13. The amount of the penalty charge is specified in the regulations but cannot exceed £500 (Paragraph 2 of Schedule 8 refers). The regulations provide that the penalty charge is initially set at £200.

Offence to obstruct or impersonate enforcement officers

14. **Section 169** provides that it is an offence to obstruct or impersonate an enforcement officer. Upon conviction, a person guilty of an offence under this section is liable to a fine not exceeding level 5 (currently £5,000 maximum).

Role of Office of Fair Trading

15. **Section 175** deals with the role of the Office of Fair Trading. Subsection (1) provides that any breach of the home information pack duties by a person acting as an estate agent *may* be notified to the Office of Fair Trading (OFT). Subsection (2) requires that the OFT *must* be notified where a penalty charge notice has either been given, confirmed or withdrawn and be notified of the outcome of any appeal against the confirmation of a notice.
16. Under the Estate Agents Act 1979 (the 1979 Act), the OFT has powers to issue warnings and to ultimately prohibit unfit persons from undertaking estate agency work altogether. In deciding whether to make a prohibition order, the OFT must be satisfied that one of the events specified in section 3(1) of the 1979 Act has occurred. Subsection (3) provides that a breach of any duty under this Part of this Act (such as failure to market property with a home information pack or failure to belong to a redress scheme) amounts to an “undesirable practice” for the purposes of section 3(1)(d) of the Estate Agents Act 1979.

The penalty charge notice

17. **Schedule 8** deals with penalty charge notices given under section 168. A penalty charge notice may be given where it is believed that a person is committing, or has committed, a breach of duty under sections 155 to 159, 167(4) and 172(1). The penalty charge notice must specify a number of things, including a description of the alleged breach; the amount of the penalty; the name and address of the person to whom the penalty should be paid (and to whom any representations may be made); the method or methods of payment; the period for paying the penalty and the consequences of not paying the penalty within the period specified (paragraph 1).

NB: A suggested form of the penalty notice has been produced and is available on the Communities and Local Government website and on the LACORS website at <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=26D82C5&id=17461> (Note: access to this website is restricted)

18. A penalty charge notice may be served on a person if it is left at his address or delivered by post to that address. Paragraph 10 makes further provision on the service of notices to bodies corporate and partnerships.
19. The amount of the penalty charge is prescribed in regulations made by the Secretary of State but cannot exceed £500. The period for paying the penalty cannot be less than 28 days and may be extended by the enforcement authority if it wishes to do so (paragraphs 2 and 3).
20. If the recipient of a penalty charge notice requests a review within the period specified in the notice (or any extended period), the enforcement authority must consider the recipient's representations, decide whether to confirm or withdraw the notice and notify the person of their decision.
21. If the enforcement authority decides to confirm the penalty charge, they must inform the recipient of his rights to appeal at the same time that they notify him of this decision. The recipient then has 28 days to appeal to the County Court against the penalty charge although the courts have power to extend this period (paragraphs 5(2) and 6(1) and (2)).
22. The enforcement authority has the discretion to withdraw a penalty charge notice at any time, but must withdraw the notice if they believe:
- that there was no breach of the duty specified in the notice; or
 - the procedural requirements relating to the notice were not properly observed; or
 - that it would be appropriate to do so in the circumstances of the case (paragraphs 4 and 5(1))

23. If a penalty charge notice is withdrawn, the enforcement authority must refund any charge already paid (paragraph 7).
24. If a penalty charge has been confirmed, an appeal can be made on one or more of the following grounds:
 - the recipient did not commit the breach of duty specified in the penalty charge notice; or
 - the notice was not given within the period specified, or did not comply with some other requirement of the Schedule; or
 - it was inappropriate for the notice to be given in the circumstances of the recipient's case (paragraph 6(3))
25. Where an appeal is considered by the County Court, the court may either uphold the penalty charge or quash it. Where it is quashed, the enforcement authority must refund any charge already paid (paragraph 7).
26. A penalty charge that is not paid, withdrawn or quashed is recoverable as a debt through the courts by the enforcement authority. The initial penalty charge notice and any notice confirming a charge must state this fact (paragraph 1, 5(2), and 8). Paragraph 8 prescribes when an enforcement authority can seek to recover any penalty charge debt and paragraph 9 concerns the evidence to be used by an authority in recovery proceedings.
27. The Secretary of State may by regulations make further supplementary or incidental provision on penalty charge notices. These regulations may also prescribe the circumstances in which fixed penalty notices may not be served, the form of the notice and methods of payment (paragraph 11).

Enforcement checklist

28. The following checklist is designed to help enforcement officers carry out their duties:
 - If a person is claiming the property was on the market before HIPs were commenced for that type of property, and they are not required to have a HIP, was the property genuinely on the market, was marketing reasonably sustained or was it a "nominal" marketing?
 - Is the estate agent a member of an approved redress scheme?
 - Was the property misdescribed (eg a four bedroom home as "3 bedrooms and a study") to avoid the HIP obligations? If so, consider powers under the Property Misdescriptions Act.

- Is the responsible person claiming the property is exempt? If so, consider whether this is correct, consulting the exemptions guidance below and the more detailed guidance in the procedural guidance to the Regulations.
- Who is the responsible person and if there is more than one estate agent instructed, do they all have a HIP?
- In relation to properties marketed before 6 April 2009, were all the required documents requested before the property was put on the market and does the responsible person have adequate proof of the request?
- For homes put on the market from 6 April 2009, are the relevant documents that are required to be in the pack by the first point of marketing there?
- for homes put on the market from 6 April 2009, personal searches in the HIP should answer all relevant questions and cannot use insurance as a substitute for information
- Is the PIQ the correct version (when this becomes mandatory on 6 April there will be a separate version of the form for sales of new homes)?
- Where required documents are missing from the HIP, are they expected to arrive within 28 days, does the responsible person have proof they have been requested and either paid for or a commitment to pay for them been made?
- Has the index been appropriately annotated where documents are missing?
- Are those remaining documents actually added within 28 days and the index updated? If there is any delay, is the responsible person using all reasonable efforts to get hold of the document?
- Have the index and sale statement been correctly filled in and are the documents in the right order ie index followed by the PIQ (for homes marketed after 5 April 2009), then energy and sustainability information followed by the remaining documents in any order?
- Were documents in date at the first point of marketing? ie official copies from Land Registry and required searches should be no older than 3 months at this point and the energy information no older than 3 years.
- If the responsible person is claiming certain documents are completely unobtainable, is this correct/does it seem reasonable?
- Is the energy rating from the energy performance certificate (EPC) included in the estate agent's written particulars, or the certificate attached to them as a separate document?
- Is the EPC authentic ie registered on the databank? TSOs have a right of access to the databank to check.
- Has the responsible person unjustifiably refused to provide a copy of the HIP to a potential buyer or taken longer than allowed (usually 14 days)?

- Has the responsible person taken longer than allowed to produce the HIP to the enforcement officer without a reasonable excuse (7 days)?
- Is it more than 6 months since the person ceased to be responsible (in which case the enforcement officer can't require the production of the HIP)?
- Has the responsible person imposed any unreasonable conditions on the potential buyer seeing the HIP or made an unjustifiable charge for providing a copy?
- Has the responsible person refused to comply with the seller's right to have a copy of the HIP or made any charge for providing a copy?
- Is a sanction other than a Penalty Charge Notice more appropriate to facilitate the exercise of enforcement functions in this particular case eg a warning?
- If a Penalty Charge Notice has been given, has the OFT been notified?

Part 3

General Effect of the Housing Act 2004 and Regulations

This Part describes when and how the HIP duties apply. They apply to most residential property sales where the property is put on the market for sale to the public or a section of the public. The duties apply until the property is taken off the market or sold. The duties apply to the “responsible person”, usually an estate agent. The duties usually start when a person becomes a responsible person ie when the property is put on the market or any action is taken making public that the property is on the market. They also apply where an estate agent is undertaking marketing activities but the property is not yet on the market.

However, under temporary arrangements ending on 5 April 2009, the pack need not be complete when marketing starts. Certain documents must be included before or at the first point of marketing, whereas others may be included within 28 days of the first point of marketing. As a general rule, the “first point of marketing” is when the duties first start to apply. The “first point of marketing” also helps identify when the document should have been created where there are rules as to the age of a document and whether a HIP can be re-used if there is a break in marketing.

When the Home Information Pack duties apply

1. The Home Information Pack duties apply to most sales of residential properties located in England or Wales. They do not cover sales where no marketing activity takes place – eg private sales between friends or relatives.
2. A **residential property** is defined as a single dwelling-house together with any associated land (eg a garden) that is, or is meant to be, sold with the dwelling. A dwelling-house means a building or part of a building intended to be occupied as a separate dwelling. The definition includes homes that are not yet built and so the duties described later in this guidance also apply to new homes being sold “off-plan”. However, the duties do not apply to the sale of land with planning permission to build a dwelling on the land. Certain types of residential property are exempt from the duties.

3. The **Home Information Pack** is defined as a collection of documents relating to the property being sold, or the terms on which it is being offered for sale. The Home Information Pack duties apply to a **“responsible person”** and a person usually becomes responsible when he puts a property **“on the market”** or makes public the fact that the property is on the market.
4. References to **“the market”** are to the residential property market in England and Wales. A property is put on the market when its availability, or possible availability, for sale is advertised or otherwise made known to the public or a section of the public in England and Wales. There should be an intention to market the property, so the duties do not apply where information about the sale of a property is made public unintentionally or inadvertently.

NB: Following the end of the first day marketing concession, estate agents will need to consider the mechanism and timing by which the marketing of a particular property can begin. Where, following a new instruction, an agent makes known to prospective buyers that a property potentially meeting their requirements will be marketed shortly once the HIP is available, the agent is in the view of Communities and Local Government, unlikely to be in breach of the HIP duties so long as the particular property is not identified. An example could be a general description of a property giving details such as the number of bedrooms and reception rooms and the area, in which the property is situated.

5. A property is considered to remain on the market until it is taken off the market or is sold. The phrase **“taken off the market”** is not defined in the Act and carries its ordinary meaning. If some marketing activity has been taking place, for example, a **“for sale”** sign has been erected or an advert placed in a shop window, it would be necessary to take steps to discontinue that marketing activity – by taking down the **“for sale”** sign or removing the advert from the shop window.
6. The expression **“section of the public”** is not defined in the Act either but has been used in other legislation. Case law indicates that **“the public”** relates to the public at large. A **“section of the public”** indicates a more restricted group. Thus, for example, the placing of an advertisement in a national newspaper could be described as marketing to the public but placing it in a local shop window would only be marketing to a section of the public.
7. Family members, individuals or groups of friends are unlikely to be considered a section of the public for these purposes. Marketing which is limited to such people is unlikely to count as putting the property on the market. The Home Information Pack duties are therefore unlikely to apply to marketing of this kind (although they may apply if the seller also uses an estate agent to market the home – see below). Generally speaking, the seller would know these people in a private capacity and the property would therefore not be available for sale on the open market.

The responsible person – “acting as an estate agent”

8. A person acting as an estate agent for a seller of residential property will usually be a “responsible person” for the purposes of the HIP duties. Generally speaking, a person may only be considered to be acting as an estate agent if his business is carried on in whole or part, in England and Wales, and he acts under “marketing instructions” from the seller.
9. “Marketing instructions,” mean instructions to carry out any activities with a view to introducing a potential buyer to the seller, or to sell the property by auction or tender. The definition of “acting as an estate agent” is therefore similar to the definition of “estate agency work” used in section 1 of the Estate Agents Act 1979.
10. The Estate Agents Act 1979 does not apply to the publication of advertisements or the dissemination of information by a person who does no other acts that fall within paragraph 9 above. So printing firms, websites and newspapers that carry a “for sale” list or advertisements would not be acting as an estate agent provided they do nothing more than merely provide that information.
11. It is not a requirement for these purposes that the agent receives a fee from the seller. Arrangements under which a potential buyer pays a fee to an intermediary to find a potential seller would also meet this definition. It is not relevant for these purposes whether or not the person describes himself as an estate agent, so another professional (eg a solicitor) or a person acting as part of a business would also be covered if he or she undertook these activities.
12. In order for the HIP duties to apply, the estate agent’s business must be located in England or Wales. It does not matter if that place is not used exclusively or mainly for business purposes, eg it is the person’s home. Nor does it matter if only part of the estate agent’s business is located in England or Wales.
13. If a home located in England or Wales is marketed only by an agent from another country who does not have a business in England or Wales, he cannot be regarded as the responsible person. In these circumstances, the seller would be considered to be the responsible person for the purposes of the legislation, regardless of his place of residence.

NB: The definition of estate agency work is a difficult area that has not yet been tested in court – advice from the Office of Fair Trading suggests that almost anything that is done with a view to facilitating the introduction of buyers to property sellers could be construed as estate agency work for the purposes of the Estate Agents Act. The OFT website includes more detailed advice on this at http://www.offt.gov.uk/advice_and_resources/resource_base/legal/estate-agents-act.

Defining who is responsible for marketing

14. There are only two categories of people who can be “responsible persons”. These are the seller himself or someone who is acting as the seller’s estate agent. The seller is not required to have a Home Information Pack in his possession where he has employed an estate agent and has good reason to believe that this person has a Home Information Pack that meets the requirements of the regulations.

The responsibility of a person acting as estate agent

15. A person acting as an estate agent (see above) becomes responsible when he puts the property on the market or, if it is already on the market (eg it has been put on the market by another estate agent), makes public the fact that it is on the market.
16. The responsibility of an estate agent ceases when his contract with the seller is terminated and he stops taking an action which makes public the fact that the property is on the market. The responsibility also ceases if the property is sold or is otherwise taken off the market, even if this occurs before the contract is terminated or marketing actions have stopped.

The responsibility of the seller

17. A seller becomes responsible when he first puts the property on the market or, if it is already on the market, makes public the fact that it is on the market. The latter situation could arise if, for example, the property was already being marketed by an estate agent when the seller decided to market it himself.
18. The seller’s responsibility ends when he engages an estate agent to market the property on his behalf and stops taking any action designed to market the property himself. The seller’s responsibility also ceases when any marketing actions taken on his behalf stop, other than those taken by his estate agent, and when the property is sold or is otherwise taken off the market – even if this occurs while marketing activities are still taking place (eg an advertisement is still appearing in the local paper).
19. Individuals who market their own homes without the services of an estate agent will be responsible under the Act for their own actions. A casual acquaintance or friend of the seller who helps with the marketing cannot become a responsible person for these purposes, even though they might be acting on the seller’s behalf, unless the marketing is done in the course of a business. As noted above, the seller will also be responsible himself if he instructs an estate agent whose place of business is located outside England or Wales.

20. A “seller” is defined as a person contemplating disposing of a freehold or leasehold interest or an option for a freehold or leasehold interest. The seller will not necessarily be the owner of the property interest, so, for instance, someone dealing with a deceased person’s estate would be treated as the seller.

The first point of marketing (Regulation 3)

21. The first point of marketing is defined as the point at which the duty to have a home information pack first arises. This will happen where a person becomes a “responsible person” (see above) or where an estate agent starts marketing the property, even though it has not yet been fully put on the market. Since the rules allow certain documents to be added to the pack after marketing has begun, or documents to be replaced once marketing is underway, the first point of marketing can vary for a particular document within the Pack and this could be relevant in determining whether the document is up to date ie the correct age at the time it is added.
22. Regulations 16(3), 17(3), 21(3), 22(3) and 23(3) provide for cases where required or authorised documents are added to the Pack, or superseded by a later version, after the first point of marketing. In these cases, the date when the document is added to the Pack is treated as the first point of marketing for that particular document (*but note that regulation 34(5) makes different provision where the exception for first day marketing during a temporary period applies*). This is particularly important for time sensitive documents that are subject to time limitations when marketing begins.
23. Regulation 3(3) provides that where a property is taken off the market, and then remarketed by the same person within one year, the date of the original first point of marketing is unchanged. In these circumstances, the seller will not be under a duty to renew the Pack or any part of it. *In other words, Packs do not have to be renewed if marketing stops and then restarts within a year of first being put on the market.*
24. Regulation 3(4) confirms that, unless regulation 3(5) applies (see below), where a property is remarketed for the same seller more than 12 months after the original first point of marketing, a new first point of marketing is created. That date will be the date on which remarketing starts and the time sensitive contents of the Pack will need to be reassessed with this date in mind and renewed if necessary (see guidance on regulation 15).

Regulation 3(5) provides that if the property is taken off the market because the seller has accepted an offer to buy it, the first point of marketing remains the point at which marketing originally started if the sale falls through and the property is put back on the market. This applies so long as the property is put back on the market within 28 days of the offer, or its acceptance, being withdrawn. Regulation 3(5) applies whether or not these events occur within 12 months of the property first being marketed.

Part 4

The Home Information Pack Duties

This Part describes the various duties that apply to the responsible person. These are the duty to have a pack, to provide a copy on request and to ensure that pack documents are authentic. It also describes the duties that apply only to estate agents, including the duty to belong to an approved redress scheme.

The duty to have a Home Information Pack

1. **Section 155** of the Act provides that the “responsible person” must have a home information pack in his possession or under his control that complies with regulations made under section 163. The duty does not apply to sellers in cases where an estate agent is responsible for marketing the property and where the seller has good reason to believe that the estate agent has a home information pack that complies with the regulations in his possession or under his control.

The duty to provide a copy of the Home Information Pack on request

2. **Section 156** of the Act requires the responsible person to provide a copy of the home information pack to a potential buyer where he makes a request for one. No charge should be made for the copy itself, although a reasonable charge may be made to cover copying and postage costs. There is a similar provision in regulation 24 which gives sellers the right to have a copy of the pack in order to ensure its accuracy but this regulation makes no provision regarding charging for a copy.
3. The duty is to provide a copy of the pack, or any part of it, within the “permitted period”. In most cases this period is 14 days from the date of the request. The seller may apply either of the conditions described in section 157 before providing a copy, however, and, where he does, the permitted period starts from when these conditions are complied with.
4. The copy to be provided is a copy of the home information pack, or of the requested document from the pack, as it stands at the time when it is provided. In other words, the copy must be a copy from the pack, not some other similar document and must

be the latest version of the document. Copies should be provided in paper form, unless the potential buyer agrees to them being made available in electronic form.

5. There are three circumstances in which the responsible person may turn down a request for a copy of the home information pack without breaching any duty. These are as follows:
 - where there are reasonable grounds to believe that the person making the request cannot afford the property. For example, the agent might know the financial circumstances of the person in question, or the seller may want to exclude people who cannot demonstrate that they have arranged an “in principle” mortgage. However, this should not be used as a device to require someone to make an offer before they can be provided with a copy of the HIP. This would undo the main purpose of HIPs – which are intended to inform a buyer’s decisions *before* an offer is made
 - where the responsible person believes that the person making the request is not really interested in buying this particular property or one like it. An example of this might be a journalist posing as a buyer in order to see the home information pack relating to a celebrity’s home. Another example might be a request for a copy from someone who the estate agent knows to be a habitual time waster
 - where it is believed that the potential buyer is not a person to whom the seller would wish to sell the property. There are human rights implications here and this right of refusal reflects the current position where someone can refuse to deal with a particular person if he wishes to, providing they are not committing an act of unlawful discrimination (eg racial, religious or sexual discrimination)

6. *Subsection (5) provides that the exceptions described above do not apply and a person may not refuse to provide a copy of a pack in cases where the responsible person knows or suspects that the person making the request for a copy of the home information pack is an officer of an enforcement authority.*

7. **Section 157** permits a seller to decline to provide a copy of the home information pack if the potential buyer has failed to comply with one or both of the following conditions:
 - the payment of a reasonable charge for making a copy of the pack and sending it
 - the acceptance of any specified terms relating to the use and onward disclosure of copies of home information pack documents (***NB: an estate agent acting for a seller cannot impose these terms on a potential buyer unless they result from the seller’s instructions***)

8. The seller will only avoid being in breach of the duty to provide copies of documents requested if the potential buyer is informed of the conditions before the end of the 14 day period following his request for a copy of the pack.
9. Where one or both conditions are applied the “permitted period” will be the period of 14 days following the day on which the potential buyer complies with it or them. In this respect, the potential buyer would comply by:
 - making the payment demanded or
 - reaching an agreement on the use or disclosure of copies
10. There are no restrictions on the conditions that can be imposed on a potential buyer concerning the onward disclosure of pack information.

The duty to ensure authenticity of documents

11. **Section 158** provides that where a responsible person provides a potential buyer with a copy of the home information pack it must be an “authentic” copy. A document is not authentic unless it is a copy of the home information pack for the property and complies with the regulations.
12. This section is complementary to **Section 156**, which provides that where a responsible person complies with a request for a copy of the home information pack, the copy supplied must comply with the requirements of the regulations. The similar duty imposed by this section covers other situations where the potential buyer sees or receives a copy of the pack – otherwise than by exercising his rights to a copy. For example, he may be shown the copy without actually asking for it.

NB: But see also note on regulation 36 below which provides that a penalty charge notice should not be issued because of inaccurate information contained in documents provided by others if the responsible person has reasonable grounds to believe that the document does comply. For example, the responsible person should ensure that the HIP contains a search which complies with Schedule 6 of the regulations. If he has reasonable grounds to believe it does comply with the regulations, eg it appears to have appropriate insurance cover for third party contractual rights from a body regulated by the Financial Services Authority, a penalty charge should not be imposed on the responsible person if he has been misled, and the insurance is not appropriate.

Other duties of person acting as estate agent

13. **Section 159** imposes a separate duty that only applies where a property is being marketed by an estate agent in a way that is too limited to trigger the HIP duties.
14. The duty under this section will apply in cases where, when the estate agent undertakes the marketing activity (the “qualifying action”), the property is either not on the market at all, or is on the market but the agent is not a responsible person within the meaning of the Act.
15. This provision is described more fully, with practical examples, in the procedural guidance to the Home Information Pack Regulations, available at <http://www.communities.gov.uk/publications/housing/hipregulations>.

The duty for estate agents to belong to approved redress scheme

16. **Section 172** gives the Secretary of State (for the Department of Business, Enterprise and Regulatory Reform) the power to make an order requiring estate agents marketing homes with home information packs to belong to an approved redress scheme, which provides for complaints to be investigated by an independent person.
17. Every person who engages in estate agency work in the United Kingdom in relation to residential property is required to be a member of an approved redress scheme for the purpose of complaints relating to that work. This was brought about by the Estate Agent (Redress Scheme) Order 2008. The Order is available at http://www.opsi.gov.uk/si/si2008/uksi_20081712_en_1
18. A failure to comply with the terms of the Order is treated as a breach of duty under Part 5 of the Act. The Order only applies to those engaged in estate agency work as defined in section 1 of the Estate Agents Act 1979 and does not therefore apply to solicitors who also act as estate agents. These individuals are already subject to the remit of the Legal Services Ombudsman.
19. Details of all approved redress schemes are available on the Department for Business, Enterprise and Regulatory Reform Website. Two schemes have been approved so far:
 - Ombudsman for Estate Agents (OEA), and
 - RICS’ Surveyors Ombudsman Scheme (SOS)

The duty to provide energy information with written particulars

20. Regulation 6 of Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 provides that where the Home Information Pack duties apply to a sale, the written particulars relating to the sale must include energy performance information. This may take the form of the asset rating graph from the Energy Performance Certificate (EPC) or a copy of the certificate itself. The duty to include this information in written particulars applies when the responsible person obtains a copy of the EPC. Written particulars produced whilst the HIP is on order (ie during the temporary period provided for in regulation 34 when marketing is allowed to start without a HIP) do not therefore have to include the information.
21. In this context, “written particulars” must include at least two of the following:
 - (a) a photograph of the building or any room in it
 - (b) a floor plan of the building
 - (c) a description of the size of all the rooms in the building

If the advertisement only includes one of these items of information, it is not treated as written particulars for these purposes and does not therefore have to include the energy performance information. These requirements apply to electronic written particulars as well as paper ones.

Part 5

Exceptions from the Home Information Pack Duties

This Part describes the exceptions from the Home Information Pack duties. Most sales of residential property will be subject to the duties but there are some exceptions. These are set out in the Housing Act 2004 and Part 6 of the Regulations and are described below. They are intended to ensure that sales that are not part of the “standard” housing market are unaffected by the HIP duties and that properties that are already on the market when the duties commence do not require a pack. There is also a temporary exemption (until 6 April 2009) from the duty to have a pack before marketing begins but only where the required documents have been requested.

NB: Even though they do not require a HIP, most of these transactions will be affected by the separate duty to provide an EPC that applies under the terms of the EPB regulations from 1 October 2008.

Residential properties not available with vacant possession

1. Where a residential property is not available for sale with vacant possession, Section 160 of the Act provides that the HIP duties will not apply. A property that is being sold subject to a tenancy does not therefore have to be marketed with a HIP. However, this exception does not apply where two or more dwellings in a sub-divided building are being marketed as a single property and one or more is not available with vacant possession eg a “granny-flat” or similar being sold subject to occupation. For these purposes, a property is presumed to be available with vacant possession unless the manner in which it is being marketed suggests otherwise.

Further exceptions from the Home Information Pack Duties

2. The Home Information Pack duties are only intended to cover the sale of properties that will, or could, be used as a permanent residential dwelling by the owner without any adaptation. There are likely to be instances where a residential property is being sold, but the circumstances of the sale indicate that it is not to be used as

a permanent residential dwelling. Thus, a number of exceptions from the home information pack duties have been made. These exceptions are set out in regulations 25 to 32 of the Home Information Pack Regulations 2007 and are described below.

3. In addition, regulation 33 provides an exception for properties that are already on the market when the duty to have a HIP applies to them and regulation 34 enables marketing to start without a HIP being in place during a temporary period ending on 5 April 2009.

NB: Many of the exceptions to the home information pack duties depend on whether the property is residential or non-residential. The procedural guidance to the Regulations considers this in some detail and provides practical examples of properties that would be considered residential or non-residential under these regulations. This guidance only provides a summary of the exceptions in regulations 25 to 32 and it is recommended that the procedural guidance is consulted for a fuller explanation of the intention behind these regulations.

4. **Meaning of “non-residential premises” (Regulations 25 and 26)** – A HIP is only required when marketing a residential property for sale and the terms “residential property” and “sale” are defined in sections 148 and 177 of the Act. The HIP duties do not apply to non-residential premises. Regulations 25 and 26 provide clarification on what are, and what are not, “non-residential” premises.
5. **Exception for seasonal and holiday accommodation (Regulation 27)** – There is no requirement to provide a HIP where there is a planning restriction which either limits the occupancy of the property to 11 months or less in a 12 month period, or limits the use of the property to holiday accommodation, and where the marketing material makes it clear that such a restriction applies.
6. **Exception for mixed sales (Regulation 28)** – The duty to have a HIP does not apply to a “mixed sale”. This applies where a residential property is marketed for sale as “ancillary” to (ie is intended to be occupied and enjoyed with) one or more other buildings, or areas of land, used for non-residential purposes (as defined in regulations 25 and 26).
7. Examples of mixed sales include a farm house sold with agricultural land and buildings, or a property consisting of a shop on one floor and a flat above it. The exception for a mixed sale only applies if, at the time of first marketing, the marketing material makes it clear to potential buyers that the seller only intends to accept an offer for the property as one lot.
8. **Exception for dual use of a dwelling-house (Regulation 29)** – The duties do not apply to properties that have a “dual use” and can be used for both residential and non-residential purposes simultaneously. An example of dual use would be where

special adaptations have occurred to make the dwelling suitable for non-residential use as well as residential use (eg a large house where one half is used as a dentist's surgery and the other half is used as the dentist's home).

NB: The dual-use exception does not apply to ordinary homes that are used for home working – eg where a spare bedroom is used as an office.

9. **Exceptions for portfolios of properties (Regulation 30)** – The duties do not apply where one or more residential properties are marketed for sale together if:
 - the seller does not intend to accept an offer for any of the properties in isolation from the others and
 - it is clear from the marketing that offers will only be accepted for the complete portfolio (ie that offers will not be accepted for any one of the properties in isolation from the others)
10. The home information pack duties would therefore not apply when selling a block of flats, a group of holiday homes or an entire new development.
11. The following are *not* considered to be portfolio sales:
 - sales which consist of more than one dwelling-house which is ancillary to a principal dwelling-house (eg a large house with other dwellings for staff)
 - two or more dwelling-houses in a sub-divided building marketed for sale as a single property (for example, a house with a granny flat attached or a house with a basement flat) where one or more is available for sale with vacant possession (see section 171(2) of the Housing Act 2004)
12. **Exception for unsafe properties (Regulation 31)** – A HIP is not required when marketing properties that are considered unsafe. However this exception only applies if the *all* of the following criteria are met:
 - the property is unoccupied
 - the property is not suitable for occupation because its condition poses a serious risk to the health and safety of potential occupants and visitors and
 - the manner in which the property is marketed indicates that it is unsuitable for occupation in its present condition
13. As soon as a property fails to meet all three criteria the exception ceases to apply. For example, if the property was made safe during marketing, or was being marketed on the understanding that it would be made safe prior to completion of the transaction, the exception would cease to apply.

14. **Exception for properties due to be demolished (Regulation 32)** – A home information pack is not required when marketing a property for demolition and redevelopment. However this exception only applies if the marketing makes clear that:
- the residential dwelling is suitable for demolition and the resulting site is suitable for redevelopment
 - all the relevant planning permissions, listed building consents and conservation area consents have been obtained for the demolition
 - outline planning permission or planning permission (or both) exists for the redevelopment together with any necessary listed building consent
15. **Exception – properties marketed before the commencement date (Regulation 33)** – Regulation 33 makes special provision for properties marketed before the HIP duties start to apply to a particular category of property. The date on which the duties start to apply is referred to as the “commencement date”. The exception from the HIP duties in this regulation is intended to prevent the legislation applying retrospectively to homes that are genuinely on the market before the commencement date. The Government may in due course decide to appoint a date at which all properties on the market should be subject to the HIP duties, regardless of when they were first marketed.
16. The “commencement date” is the date appointed by the Secretary of State for the application of the HIP duties to the property. The first such commencement order, the Housing Act 2004 (Commencement No.8) (England and Wales) Order 2007 provides that the duties will apply from 1 August 2007 in relation to the marketing of homes that have four bedrooms or more, except new homes constructed under Part L of the Building Regulations 2006 (the effect of HIPs on sales of new homes is dealt with in Part 10 of this Guidance). The subsequent commencement orders are described in Part 1 of this Guidance.
17. To qualify for the exception, the following conditions must apply:
- that the property was put on the market before the commencement date
 - that marketing activity has taken place at some time between 1 June 2006 and the commencement date; (**Note:** *this means that the exception will not apply where there was some kind of marketing activity before 1 June 2006 that had ceased by that date*)
 - that this marketing activity was genuinely taken with the intention of selling the property before the commencement date and
 - that the marketing activity was sustained to a reasonable extent during the period in question

18. Regulation 33(4) provides that the HIP duties do not apply to a property that is *put back* on the market after the commencement date, provided that:
- it was already on the market before the start of the commencement date and
 - had been taken off the market because the seller had accepted an offer to buy the property and
 - was put back on the market within 28 days of the sale falling through
19. The effect of this is to exempt properties that have been genuinely marketed for sale in the run up to the introduction of the mandatory scheme, and to provide that the exception continues to apply if marketing also continues.

NB: this is not affected by a change in marketing, eg a change of estate agents – provided that marketing is continuous.

20. The exception does not apply to properties that are only nominally “on the market” in order to avoid the home information pack duties. Sham marketing arrangements would not qualify for the exemption and in these circumstances any genuine marketing activity taking place after the commencement date would trigger the duties described earlier.
21. Where the enforcement authorities have reason to believe that a property was either not on the market at all before the commencement date, or was not genuinely on the market, they may legitimately ask for evidence.
22. **Exception – first day marketing during a temporary period (Regulation 34) –** This regulation allows marketing to start without a home information pack for a temporary period providing a number of conditions are satisfied. The regulation is intended to ensure that HIPs are introduced as smoothly as possible with the minimum disruption to the market.
23. Regulation 34(1) provides that, subject to the conditions described in 34(2) and 34(3), the home information pack duties do not arise until the seller has obtained an energy performance certificate and recommendation report (see regulation 8(b)) or a predicted energy assessment (see regulation 8(c)).
24. Regulation 34(2) sets out the circumstances in which the exception applies. These are:
- paragraph (a), the property should have been put on the market before 6 April 2009
 - paragraph (b), requests for all the required documents must have been delivered before the property is put on the market

- paragraph (c), the requests for documents must comply with regulation 18(1). This means that the request must be made in writing to the body or person who usually provides such documents. This could be a specialist pack provider or, if the pack is being self-compiled, to the appropriate source (ie the Land Registry in the case of official copies) and must be accompanied by the appropriate payment or an undertaking to make such a payment
25. In addition to the above, **Regulation 34(3)** provides that the exception does not apply unless the following conditions are also met by the responsible person:
- that where it is reasonable to expect that the required documents can be obtained before marketing starts, reasonable efforts are made to obtain them before then. The exception in regulation 34(1) is only intended to apply where there are likely to be significant delays in assembling a pack
 - that even where it appears that all the required documents are unlikely to be available within 28 days of the date when marketing starts, the responsible person nevertheless makes reasonable efforts to obtain them before then
 - that whether or not it is reasonable to expect that the documents can be obtained before marketing, or within 28 days of the start of marketing, or where the required documents cannot be obtained within those times, the responsible person must continue to use all reasonable efforts to obtain them
26. This exception ceases to apply when an energy performance certificate or predicted energy assessment is obtained. At this point the home information pack duties will apply and the responsible person will need to assemble a pack as soon as it is practicable to do so. At this point the pack should include, as a minimum:
- an index (see regulation 8(a))
 - a PIQ for homes put on the market after 5 April 2009 (see regulations 8(m) and 8(n))
 - an energy performance certificate or predicted energy assessment (see regulations 8(b) and 8(c))
 - sustainability information for new buildings (see regulations 8(ca))
 - a sale statement (see regulation 8(d))
 - for registered properties, official copies of the individual register and title plan (see regulation 8(e))
 - for unregistered properties, a certificate of an official search of the index map (see regulation 8(f)(i))

27. Under the terms of regulation 14(2), other required documents may be added later if regulation 17 applies (documents required within 28 days of marketing) or omitted altogether if they are completely unobtainable and regulation 20 applies.
28. **Regulation 34(5)** provides that, where the duty to have a pack arises under this regulation, the date on which marketing actually started is to be treated as the first point of marketing for the documents in the pack and not the date they were included (*note difference between this regulation and regulation 34(3) described above*). This will be relevant to time sensitive documents such as searches that are subject to age limitations when marketing begins.

Note – *the HIP duties only apply where the property is on the market and therefore cease when the home is taken off the market or sold. In cases where a property subject to the duties is taken off the market because an offer has been accepted, but before the HIP has been obtained, regulation 5(2) of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the EPB Regulations” as amended by Statutory Instrument 2007 No. 1669) applies. This provides that the seller must make available an EPC to the prospective buyer before exchange of contracts.*

There is further information on this in the separate guidance on the enforcement of the EPB Regulations. A downloadable version of this guidance is available at <http://www.communities.gov.uk/publications/planningandbuilding/epbdweightsmeasures>

Part 6

Content of the Home Information Pack

This Part concerns the content of the Home Information Pack. Section 163 of the Housing Act gives the Secretary of State power to prescribe the documents that must be included in the pack (described as “required” documents) and those that may be included (described as “authorised” documents). The documents that are either “required” or “authorised” to go in the pack are described in Part 2 and the general conditions concerning the comprehension of documents, including, the rules on copies and translations into languages other than English, are dealt with in Part 1.

Part 1: General conditions concerning documents

1. **Required, authorised and excluded documents (Regulation 4)** – This regulation provides that packs must include “required” documents, may include “authorised” documents and must not include any other documents. Thus, only documents that are either required or authorised may be included in home information packs and documents that are not described in the regulations should not be included “in the pack”. The meaning of “in the pack” is not defined but documents that are provided alongside but separate from the pack, for example, would not be considered to be included within it.
2. **The home information pack (Regulation 5)** – Under section 155(1) of the 2004 Act, it is the duty of a responsible person to have a home information pack which complies with the Regulations. Regulation 6 requires that the home information pack must be composed of original documents or true copies of them. “True copy” is not defined in the Regulations but it is understood that a true copy does not have to be an exact copy, but should be a copy reproduced with sufficient accuracy to enable the copy to be understood and the meaning of the document to be unaffected.
3. In the case of a map, plan or drawing in which colours mark boundaries or other features, for example, those colours must be reproduced accurately (eg a green colour used in the original must be identifiable as green in the copy) but some variation in colour tone is acceptable, provided this does not affect the comprehension of the document. Similarly, enlarged or reduced copies of documents

(for example an A4 copy of an A3 document) are acceptable so long as they are clear and legible and the meaning is unaffected by the enlargement or reduction.

4. **Copies of home information pack (Regulation 6)** – This regulation requires that the copies of a pack or pack document which must be provided to a potential buyer (or an officer of an enforcement authority under section 167 of the 2004 Act) must be a “true copy” of the pack or pack document.
5. **Comprehension of documents (Regulation 7)** – This provides that the information contained in copies of the documents included in packs must be legible and clear. However, if despite all reasonable efforts and enquiries, the only available version of a document is illegible or unclear, this may be included. This exception only applies to the following documents:
 - the documents being relied upon to deduce title to unregistered properties and required under regulation 8(f)(ii)
 - official copies of documents referred to in the individual register kept by Land Registry (eg historic conveyances) and authorised for inclusion under regulation 9(j)
 - commonhold and leasehold information (eg leases or regulations made by a landlord or requests for service charges) that is required or authorised for inclusion under regulations 8(g), 8(h), 9(k) and 9(l)
6. If the property is situated in England, the information set out in the documents must be in English. If the property is in Wales (wholly or partially), the information may be provided in English or Welsh or a combination of both languages. This does not prevent information being provided *in addition*, in other languages (see guidance on regulation 9(e) below). **These provisions do not authorise any unlawful act of discrimination and do not confer any authority to refuse to provide a pack or sell a residential property to those who only speak a particular language.**

Note: See also the commentary on regulation 9(f) below, which allows packs to include additional versions of pack documents in alternative forms, such as Braille or large print.

Part 2: The documents

Required pack documents (Regulation 8) – The documents that are required to go into the HIP are as follows:

7. **A home information pack index** (Regulation 8(a)) – This should list all the documents contained in the pack. It provides a helpful checklist for sellers, estate agents and enforcement authorities to ensure that no required documents are missing from the pack. The index has to comply with Schedule 1 to the Regulations.
8. Where documents required to be included in the pack are unavailable, the index must indicate that the document is missing from the pack, the reason why it is missing and what steps are being taken to obtain it. If documents are later added to or removed from the pack, the index must be revised or amended accordingly.
9. A suggested form for a home information pack index has been made available and there is an example of a completed index in the sample HIP at <http://www.communities.gov.uk/publications/housing/samplehomeinformationpack>. However, if the requirements are met, the index may take another form.
10. **Energy performance certificate and recommendation report (EPC)** (Regulation 8(b)) – This provides a rating of both the energy efficiency and environmental impact of a building on a scale from A-G (where A is the most efficient and G the least efficient) in graphical format. It also includes recommended measures to improve the energy performance of the building. The content of certificates and arrangements under which they must be made are prescribed in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.
11. EPCs may either be produced by an Energy Assessor or Home Inspector who has been accredited under a scheme approved by the Secretary of State. The Energy Performance of Buildings regulations require that the recommendations are always produced with the Certificate. The sample HIP includes an example of an EPC.
12. **Predicted energy assessment (PEA)** (Regulation 8(c)) – These are required for homes that are not yet built when marketing starts and are therefore being marketed “off-plan”. It is not possible to produce a full Energy Performance Certificate for a home that has not been physically completed. This is because its energy rating will depend on the final construction details of the property. The PEA does not need to be produced by an accredited assessor. It will usually be produced by the developer, by putting the energy ratings from plans into a template. It does not need to be lodged, and therefore it will not have a report reference number. Where the property is still on the market at the point it becomes physically complete, a full Energy Performance Certificate should be added to the Pack and the predicted energy assessment removed.

13. Schedule 2 of the HIP Regulations contains more information on the content of a predicted energy assessment and there is also a template on the HIP website at http://www.homeinformationpack.gov.uk/pdf/Predicted_Energy_Assessment.xls.
14. **Sustainability Information for new homes** (Regulation 8(ca) and (cb)) – This requires the inclusion of a sustainability certificate for sales of new homes in England (Wales is not affected) in accordance with the Code for Sustainable Homes. This is complementary to the EPC and will enable buyers to take account of other sustainability issues (such as health and safety and efficient waste management and water use). The certificate may take the form of a sustainability certificate or interim certificate where the property is being assessed against the code or a nil rated certificate where it is not.
15. The Code measures the environmental impact of a new home against nine categories ranging from CO2 emissions to the amount of waste generated when building and using the home. The code requirements only apply to those new homes where a local authority has received a building notice, initial notice or full plans application after 1st May 2008.
16. **Sale statement.** (Regulation 8(d)) – This provides a brief summary of the nature of the interest in the property being offered for sale. The statement has to comply with Schedule 3 to the Regulations and includes matters such as the address, the nature of the legal interest being sold, whether the property is registered or unregistered, the name of the seller and whether the property is being sold with vacant possession.
17. A suggested form for a sale statement has been made available (see example in sample HIP). However, if the requirements described above are met, the index may take another form.
18. **Evidence of title** (Regulation 8(e)) – The documents described in this regulation and in regulation 8(f) are required to provide satisfactory evidence of title. Where the property is registered with the Land Registry, the documents required are:
 - official copies of the “individual register” (made up of a property register, proprietorship register and typically a charges register) and
 - an official copy of the title plan
19. Examples of these documents are included in the sample HIP.
20. There are special arrangements for commonhold sales and these are described in the procedural guidance to the regulations.
21. For sales of unregistered land, the documents required to be included in the pack are a copy of a certificate of an official search of the index map (obtained from Land

Registry) and of such other documents as the seller intends to rely on to provide evidence of his or her title to the property and hence their right to sell it. These documents would normally comprise a bundle of title documents held by the seller or by the seller's lender or solicitor (Regulation 8(f)).

22. Regulation 8(g) (together with Schedule 4) sets out the arrangements for **commonhold sales**. Relatively few properties are owned under commonhold agreements and sales of such properties are therefore relatively rare – the requirements are described in more detail in the procedural guidance to the Regulations.
23. Regulation 8(h) applies where the interest in the property being offered for sale, or any part of it, is **leasehold**. The procedural guidance on Schedule 5 to the Regulations provides a detailed explanation of the documents that are now required and authorised for leasehold sales. With effect from 1 January 2009, the only required leasehold document is a copy of the lease itself.
24. A home information pack is not required where all or part of the property is not being offered for sale with vacant possession under section 160 of the 2004 Act. However, this is subject to section 171(2) of the 2004 Act which provides that *where two or more dwellings in a sub-divided building that was built as a single dwelling are marketed for sale as a single property* and at least one of those dwellings is available with vacant possession, a home information pack is still required notwithstanding that a part of the property is not available with vacant possession (Regulation 8(i)). Note that buildings of this type may have more than one EPC in the HIP, as the EPC software may treat it as two units, even though they were being sold as one property.
25. An example would be a house with a "granny flat" where the flat is let separately from the remainder of the house, but where the freehold interest to the house and flat are sold together in order to preserve the integrity of the property as a whole. In such circumstances, this regulation requires that the pack must include a copy of the leases and/or tenancies to which the property is, or is expected to be, subject after the sale has been completed.
26. Regulation 8(j) requires a home information pack to include a search report that records the results of **a search of the local land charges register** that relates to the property being sold. The search report may be an "official search", provided by a local authority, or a report recording the results of a "personal search". The sample HIP includes an "official" search.
27. Regulation 8(k) requires the inclusion of a search report that records the results of a search of records that are held by a local authority and referred to as **"local enquiries"** in the Regulations. The search result may be a personal search or one provided by the local authority. The sample HIP includes a search provided by a local

authority. For homes marketed on or after April 2009, searches are required to provide answers to all of the questions in Schedule 7 of the regulations. It will not be possible for personal search companies to cover missing information with insurance after this date.

28. Regulation 8(l) requires the inclusion of search report relating to **drainage and water** matters. This will usually be provided by the local water company (there is an example of this search in the sample HIP).
29. Regulations 8(m) and 8(n) require a **Property Information Questionnaire (PIQ)** for homes put on the market on or after 6 April 2009. There is a separate PIQ for sales of new homes. The PIQ should normally be completed by the seller and includes basic information about the property that is likely to be of interest to potential buyers. Examples of both types of PIQ are on the Communities and Local Government website at <http://www.communities.gov.uk/publications/housing/propertyinformationquestionnaire>.
30. **Authorised pack documents (Regulation 9)** – This Regulation prescribes the documents and information that are authorised to be included in home information packs. Authorised documents contain information that is likely to be of particular interest to potential buyers, but which is not considered to be information which should be compulsory in every case. Examples include:
 - a home condition report
 - additional leasehold information (see above)
 - a summary or legal interpretation of the contents
 - relevant guarantees and warranties
 - additional searches – eg Mining, Environmental, flood risk etc

Note: *There is a complete list of the information that is authorised for inclusion in HIPs at regulation 9 and Schedule 10 of the regulations and these are fully described in the procedural guidance to the regulations.*

Part 7

Assembly of Home Information Packs

This Part concerns the rules governing the assembly of Home Information Packs and describes the order in which Pack documents should be presented, the time at which documents should be included and the age of documents when they first included. It also covers the special arrangements that allow marketing to start with an incomplete Pack where required documents have been requested (and where the request conforms to the conditions described) or are unobtainable.

Order of pack documents (Regulation 13)

1. This regulation deals with the order in which documents are to be presented when a copy of the Pack is provided to a potential buyer. The index should be the first document in the Pack. The PIQ should be next when it becomes a required part of the HIP for homes marketed on or after 6 April 2009 and this should be followed by the energy performance certificate or predicted energy assessment and sustainability information for new homes. The remaining documents can be presented in any order that the seller wishes.

Time at which pack documents are to be included (Regulation 14)

2. **Regulation 14(1)** – This provides that the following “required” documents must be in the pack when marketing begins (ie the components of the “basic” HIP referred to earlier in this guidance) – unless the provisions of regulations 16, 20 or 34 apply (see below):
 - Home Information Pack Index
 - from 6 April 2009, a Property Information Questionnaire
 - energy performance certificate and recommendation report or
 - predicted energy assessment
 - sustainability information for new homes
 - sale statement
 - evidence of title for registered properties
 - official search of the index map for unregistered properties

3. **Regulation 14(2)** provides that any other required documents should be added within 28 days of the start of marketing. This applies where the conditions set out in regulation 17(2) are met and where regulation 20 does not apply (see below for guidance on these). The documents are:
- for unregistered properties, the documents on which the seller is relying on to demonstrate title for the purposes of the sale (Regulation 8(f)(ii)) (Note – regulation 8(f)(i) provides that the HIP must include a certificate of an official search of the index map for these sales)
 - for commonhold sales, the documents described in Schedule 4 of the Regulations (Regulation 8(g))
 - for leasehold sales, a copy of the lease (Regulation 8(h))
 - if the property is one to which section 171(2) of the Housing Act 2004 applies, any relevant leases or licences which will apply following completion of the sale (Regulation 8(i))
 - a search report which records the results of a search of the local land charges register (Regulation 8(j))
 - a search report which records the results of a search of local authority records (referred to as “local enquiries”) (Regulation 8(k)) and
 - a drainage and water search (Regulation 8(l))
4. Regulation 14(3) provides that documents which are authorised for inclusion under regulation 9 may be included in the pack at any time, ie before or during marketing.

Note – *when documents are added or removed from the pack or there is a delay in obtaining documents, the index must be updated or annotated accordingly (the guidance on paragraph 1(b) of Schedule 1 describes these requirements further). This applies to required **and** authorised documents.*

Age of pack documents when first included (Regulation 15)

5. Certain pack documents must be dated no earlier than the date *three months* preceding the first point of marketing, in order that potential buyers have recent and accurate information on which to make their decisions. The guidance on regulation 3 describes when a further first point of marketing arises. The relevant documents are:
 - official Land Registry copies of:
 - the individual register and title plan (required under regulation 8(e))
 - for commonhold properties, the individual register and title plan of the common parts and the commonhold community statement (required under regulation 8(g) and paragraph 1(a) of Schedule 5)
 - for leasehold properties, the lease (under regulation 8(h) and paragraph 1(1)(a) of Schedule 5, this may be an official Land Registry copy of the lease, the original or a copy of the original or an edited summary if that is all that is available)
 - a certificate of an official search of the index map (required under regulation 8(f) (i) for sales of unregistered land)
 - a search of the local land charges register (required under regulation 8(j))
 - local enquiries (required under regulation 8(k))
 - drainage and water enquiries (required under regulation 8(l))
 - the energy performance certificate and recommendation report (required under regulation 8(b) and a predicted energy assessment (required under regulation 8(c), for new homes marketed before they are physically complete, must be dated no earlier than **three years** preceding the first point of marketing)
6. There are no age restrictions on other pack documents but these should be the most recent versions of the documents. Regulation 15(4) requires that any amendments to documents (that are not included in the document itself) must also be included in the pack

Energy information unobtainable before or at the first point of marketing (Regulation 16)

7. The energy performance information required under regulation 8(b) or 8(c) (ie an Energy Performance Certificate or Predicted Energy Assessment) should be included in the Pack when marketing begins. However, it is recognised that there may be cases where it cannot be obtained within a reasonable timescale. This regulation describes

the circumstances in which marketing can take place with a pack that does not include these documents. These are that:

- the first point of marketing is no earlier than 14 days after the date on which the request for the document is delivered. Regulation 19 describes how this date is established. In practice, this means that the responsible person must wait at least 14 days for the document requested to arrive before marketing can start
 - the responsible person must have done, and continue to do, everything that could reasonably be expected of them to obtain the document and, in particular, to obtain it within 28 days of the date when marketing began (“all reasonable efforts” would include following up requests and, where necessary and possible, seeking to obtain the document from an alternative source).
 - that the document is included in the Pack as soon as possible once it is obtained and
 - written evidence that the missing information has been requested and which complies with regulation 18(2) is included in the Pack
8. Regulation 16(3) provides that where the document is added to the pack later in the marketing process, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned.

Documents required within 28 days of the first point of marketing (Regulation 17)

9. This regulation applies to the required documents omitted from the pack under regulation 14(2). The documents are:
- documents deducing title to unregistered land
 - searches
 - documents relating to leasehold and commonhold sales
10. The regulation sets out the conditions that must be satisfied in order for a property to be marketed with an incomplete pack without the risk of incurring a penalty charge. The conditions are as follows:
- the document must have been requested before the first point of marketing. (Regulation 17(2)(a)). Regulation 19 describes how the delivery date is established

- the responsible person must have reasonable grounds to believe that the document will be obtained within 28 days of first marketing. Such grounds could include, if a specialist pack provider company is used, a guarantee by the provider of a 28 day maximum delivery time. The responsible person must also use all reasonable efforts to make sure that it is obtained by then. (Regulation 17(2)(b))
 - the period of 28 days should be regarded as a maximum, and where it is reasonable to expect the document to be delivered earlier then all reasonable efforts should be made to achieve this (“all reasonable efforts” would include following up requests and, where necessary and possible, seeking to obtain the document from an alternative source) (Regulation 17(2)(c))
 - where, despite all reasonable efforts, the document has not been obtained within 28 days, the responsible person should continue to use all reasonable efforts to obtain it (Regulation 17(2)(d))
 - that the home information pack index is updated to show progress on the actions being taken to obtain the missing documents (Regulation 17(2)(e))
 - that the document is included in the Pack as soon as possible once it is obtained (Regulation 17(2)(f)) and
 - that proof that the document has been requested is included in the Pack. Regulation 18(2) describes what acceptable proof is in this respect (Regulation 17(2)(g))
11. Regulation 17(3) provides that where a document is added to the pack later in the marketing process, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned. This will be relevant for time sensitive document such as searches which are subject to age limitations when marketing begins.

Requests for documents (Regulation 18)

12. Regulation 18(1) provides that the request for a document must have been properly addressed to a person who usually provides or is likely to provide such a document (eg to a specialist pack provider company or, if the pack is being assembled on a DIY basis for example, a Home Inspector or domestic energy assessor in the case of an Energy Performance Certificate and recommendations); and the request must have been made in such form, and containing the information and payment, or an undertaking to make the payment, as is usually necessary to obtain that document from that source.

13. Regulations 16 and 17 require that in certain circumstances, proof that a document has been requested must be included in the Pack. Regulation 18(2) sets out what is acceptable proof. This is a written statement which names the documents that have been requested and also includes:
- the date on which the request was delivered (see guidance on regulation 19)
 - the name of the person to whom the request was delivered
 - the date on which it is expected that the document will be delivered and
 - confirmation that the request complied with regulation 18(1) (see above)

Delivery of documents (Regulation 19)

14. This regulation supplements regulations 16(2)(a) and 17(2)(a) by describing how the date on which a request for a document is delivered is established. *This is important as this date could be relevant for enforcement purposes if there are disputes about whether packs comply with the regulations at a particular time.*
15. **Regulation 19(1)** provides that the day a request for a document is delivered will depend on the method of delivery, as described in sub-paragraphs (a) to (e). Where a document is served personally or left at an intended recipient's address, the day of delivery is that day. However, where the request is sent by post, it should be presumed to be the day it would be delivered in the ordinary course of post (**Note: this is currently not less than one day if sent by first class post and not less than two days if sent by second class post**), unless it can be proved to have been delivered sooner. Where a document exchange is used, it should be presumed to be the second day after it has been left at the document exchange of the sender, unless it can be proved to have been delivered sooner. Where sent by fax or electronic communication, it should be presumed to be the day it is sent, unless it can be proved to have been delivered later.
16. **Regulation 19(2)** sets out special provisions that apply in relation to requests for documents from Land Registry. Requests must usually be delivered by post, document exchange or personal delivery to a "proper office" of Land Registry. At the present time, requests can also be made to Land Registry by oral means, telephone, fax or other electronic method.
17. **Regulation 19(3)** makes provision for cases where a request for a document is made in parts (the day of delivery is the day the last part is delivered), delivery more than once (only the first delivery day is relevant) and delivery using more than one method of delivery (again, only the first delivery day is relevant).

18. **Regulation 19(4)** provides that a document is served personally on an individual when it is left with that person; with a business when it is left with an employee or the owner of the business, or if the intended recipient is another form of body by leaving it with an employee or member of that body.
19. **Regulation 19(5)** provides that the recipient's address is:
- in the case of an individual, either his usual or last known residence, or if that is the property being sold and the intended recipient no longer resides there, both that address and any other address from which it can be assumed the person will be contacted and
 - in the case of a business or corporate body, any principal or last known place of business from which the requested document or information is usually or likely to be provided or
 - in the case of an electronic address, the electronic address, identification or number published or provided by the intended recipient for that purpose.

Required documents which are completely unobtainable (Regulation 20)

20. Regulation 20 ensures that marketing is not prevented or delayed when there is reasonable cause to believe that certain required documents specified in regulation 8 are unobtainable. The documents are as follows:
- a predicted energy assessment (regulation 8(c))
 - those deducing title to an unregistered property (regulation 8(f)(ii))
 - those relating to commonhold properties (regulation 8(g))
 - those relating to leasehold properties (regulation 8(h)) or
 - leases or licences for homes to which section 171(2) of the 2004 Act applies (regulation 8(i))
21. Where, following all reasonable enquiries and efforts, the responsible person has good cause to believe that the document no longer exists in any form, or cannot be obtained from or created by another person, the requirement to include the document in the pack (and the duties in Part 5 of the Housing Act 2004 that might have applied to that document) ceases to apply. In such circumstances, the Pack need not contain the document, although the home information pack index should indicate that the document is missing and the reason why (see guidance on regulation 8(a) and Schedule 1).

Note: *Where a hard copy of a document has been destroyed but an electronic version exists, it should not be considered that the document no longer exists or cannot be obtained from or created by another person – as a hard copy could be made easily in these circumstances.*

Part 8

Accuracy of Home Information Packs

This Part concerns the general duties regarding the accuracy of Packs. Although there is no duty to update pack documents once marketing is underway, Packs should contain the most up to date versions of required documents. Where the seller wishes to replace a required document with an updated version of the document he may do so provided that the old version is removed and the Index is updated. If a new home is marketed with a Pack containing a Predicted Energy Assessment, this should be replaced by a full Energy Performance Certificate if the property is still on the market when the building is completed. Sellers have the right to have the copy of the Pack in order to check its accuracy and this is described in the Part as well.

Updating of required pack documents (Regulation 21)

1. There is no requirement for the contents of the home information pack to be updated during the marketing of the property, except where the responsible person obtains or creates a further version of a required document that is already in the pack. Regulation 21 provides that in these circumstances the new document must be added to the pack and the responsible person must remove any document that has been wholly superseded by the new document. Where translations or additional versions of that document were included in the pack, they must be updated accordingly.
2. Regulation 21(3) provides that where a document is amended or superseded later in the marketing process, the date at which it is added will be considered to be the "first point of marketing" so far as that document is concerned. This will be relevant for time sensitive documents (eg required searches) which are subject to age limitations when marketing begins.

Updating of energy performance information (Regulation 22)

3. This regulation concerns the duty to update the energy efficiency information in the Pack in two sets of circumstances.

4. The first is dealt with in regulation 22(1) and applies to properties that are not physically complete at the first point of marketing, but which become physically complete while still on the market. In these cases, the pack must be updated to replace the predicted energy assessment with an energy performance certificate and recommendation report of a type described in regulation 8(b) (see the guidance on regulations 8(b) and 8(c) for further details).
5. **Regulation 22(2)(a)** – Once the property becomes physically complete, the energy performance certificate and recommendation report must be included in the pack within 14 days if marketing is still taking place.
6. **Regulation 22(2)(b)** – The energy performance certificate and recommendation report will effectively supersede the predicted energy assessment which is already in the pack (included under regulation 8(c)) and this superseded document must be removed when the new one is included.
7. **Regulation 22(3)** – The time at which a document is replaced under 22(2) becomes the first point of marketing for that document in relation to regulation 15(2). This regulation provides that the EPC must be no more than three years old at the first point of marketing

Updating of authorised pack documents (Regulation 23)

8. Regulation 23 makes provision for the updating of documents which are authorised (rather than required) for inclusion in the pack. It provides that where a responsible person wishes to revise or substitute a document authorised to be included in the pack they *may* do so if they wish (in contrast to the duty to replace documents under regulation 21). Where a document is amended or superseded, the date at which it is added will be treated as the “first point of marketing” so far as that document is concerned.

Seller’s check of the home information pack (Regulation 24)

9. Regulation 24 provides that where the responsible person is not the seller (eg he is the seller’s estate agent), he must provide the seller with a copy of pack documents if the seller requests them in order to check their accuracy. This is important both to help ensure that the contents of the pack are accurate and to ensure that the seller has access to documents which concern his property. It does not deal with any contractual arrangements that might exist preventing a seller from using the pack in a subsequent sale or in the event that the seller employs another estate agent. There is no provision in the regulations for sellers to be charged for receiving a copy of the HIP on their own home.

Part 9

Home Condition Reports: Approved Certification Schemes and the Home Condition Report Register

This Part concerns Home Condition Reports, the arrangements for their certification and the lodgement of reports on a “register” (an electronic database). Part 8 of the HIP Regulations deals with approved certification schemes for Home Inspectors and Part 9 deals with the arrangements for the Home Condition Report Register. There are similar provisions in the EPB Regulations concerning the accreditation of Domestic Energy Assessors (DEAs) and the lodgement of EPCs. Enforcement authorities will be given access to the register where they wish to check whether a report has been produced, the date of production or the authenticity of reports.

Role of Certification Schemes

1. The role of the certification schemes is to ensure that Home Inspectors are fit and proper persons who are properly qualified and insured to prepare home condition reports. All Home Inspectors will be required to belong to a certification scheme approved by the Secretary of State, and must follow its rules and requirements.
2. The Secretary of State’s policy is to grant approval to certification schemes which meet published statutory criteria. These standards define the outcomes that certification schemes are expected to achieve.

Approved Certification Schemes

3. The Secretary of State has approved three certification schemes so far. These are:
 - BRE (Buildings Research Establishment)
www.breinspector.co.uk
01923 664 000
 - RICS (Royal Institution of Chartered Surveyors)
www.rics.org/hips
0870 333 1600
 - SAVA (Surveyors and Valuers Accreditation Ltd)
www.sava-cs.org.uk
01908 442277

Access to Register

4. Before approving a certification scheme, the Secretary of State must be satisfied that the scheme contains appropriate provision for requiring home condition reports made by its members (ie Home Inspectors) to be entered on to a register kept pursuant to section 165 of the Housing Act 2004 and any regulations made under this section. These are contained in Part 9 of the Home Information Pack Regulations.
5. The Register is an archive of all home condition reports produced by Home Inspectors. The intention is that it should provide an independent means for potential buyers (and those acting on their behalf, including lenders) who are given reports to check that the home condition report provided in a home information pack is authentic and has not been altered since it was produced by a Home Inspector. Access to the register, as set out in Part 9 of the Regulations, is therefore strictly limited to those involved in the sale, to those who require access to monitor the work of Home Inspectors and to enforcement authorities.
6. Under section 165(7) of the 2004 Act, any disclosure of a home condition report from the register, which is not permitted by these Regulations is a criminal offence not exceeding level 5 on the standard scale (currently £5,000)
7. Part 9 of the Regulations sets out the various duties and obligations of the parties involved **but local authority trading standards officers will not have any responsibility for enforcement in this area.** Enforcement authorities may occasionally need to check the status of a home condition report and this is provided for in regulations 56 and 57.
8. Schedule 9 of the Regulations provides more detail about the content of the home condition report and the terms on which it is prepared.

9. The form and content of home condition reports is not prescribed in Regulations because it is envisaged that, over time, it will be necessary to make amendments to reflect changes in building construction and the experience of Home Inspectors and consumers in using the home condition report. Instead the Secretary of State's current policy is that all certification schemes must use the form developed by the Department and available on the website at:
<http://www.communities.gov.uk/homeinformationpacks>.

Access to the register for enforcement authorities

10. If you need to check the authenticity of an Energy Performance Certificate or Home Condition Report or verify that the person who produced it is properly qualified and accredited, go to the Energy Performance Certificate and Home Condition Report Register website (www.hcrregister.com).
11. Further functionality to allow enforcement officers to search for a report by property address is currently being piloted (March 2009) and should be made available to all TSOs in due course.

NB: Part 5 and Part 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (the EPB regulations) contain similar provisions for the accreditation of Domestic Energy Assessors (DEAs) and the lodgement of Energy Performance Certificates (EPCs) on a register. There is further information on this in the separate guidance on the enforcement of these regulations.

Part 10

New Homes

This Part deals with the special arrangements that apply to the sale of new homes. Sellers of new homes will have to provide a Pack for potential buyers. In many cases, new homes are marketed “off-plan” and, as a consequence, certain required pack documents may be different to those provided for sales of second hand homes. The documents in question are energy performance information, evidence of title and searches. New homes built under Part L of the Building Regulations 2006 were exempted from the HIP duties at introduction and brought in by a separate commencement order from 6 April 2008.

Energy information for sale of new homes

1. Where a home is marketed “off-plan” before it is physically complete, it will need a HIP (subject to the HIPs phased implementation) but it will not be possible to assess its energy performance and produce an EPC. Instead, the HIP will contain a **Predicted Energy Assessment**. This will look similar to the graphs from a full EPC and will be produced from the design plans for the building rather than a physical inspection. There is no specified form for the predicted energy assessment but there is a template which can be used to create one on the Communities and Local Government website at http://www.homeinformationpack.gov.uk/pdf/Predicted_Energy_Assessment.xls
2. Sales of homes built to the most recent Building Regulations (Regulation 17C, Part L, 2006) were exempt from the need to have a Pack under the first three HIP commencement orders. This was because the software used to produce EPCs for these buildings was still in development. These homes were brought within the scope of the scheme through a separate commencement order from 6 April 2008.
3. Sales of homes built to previous Building Regulations (ie pre 2006) were not excluded from the duty to Pack and EPC (or Predicted Energy Assessment) if they were properties to which the duties would otherwise apply.
4. The EPC for these properties will be produced using the currently available RdSAP software. From April 2008, all new homes, regardless of which Buildings Regulations they were constructed under, need to have a SAP based EPC produced as part of the Building Regulations sign off process.

5. The developer or builder should know which building regulations applied if there is any doubt about whether a HIP is required for a particular property.

Property Information Questionnaire (PIQ)

6. The HIP for homes marketed on or after 6 April will have to include a PIQ. The new form contains simple information about a property (eg flood risk, compliance with building regulations and electrical safety) that potential buyers are interested in at the beginning of the process which can be provided easily by sellers without the need for professional advice. A separate PIQ is available for sales of new homes.

Sustainability information for new homes

7. For new homes in England (this does not apply to homes located in Wales), a home information pack must include information about the sustainability of the property. For new homes that are “finished”, this information must be a “sustainability certificate” or a “nil-rated certificate”. For new homes that are not finished, this must be an “interim sustainability certificate” or a nil-rated certificate. A sustainability certificate or interim sustainability certificate must be based on an assessment as to the sustainability of the property in accordance with the Code for Sustainable Homes.
8. “Sustainability” relates to the extent to which the materials, design and components of the property further the “sustainable design principles”, which are set out in the new Schedule 2A and which cover:
 - the health and safety, welfare and convenience of people in or about the property
 - furthering the efficient management of the property and its construction
 - furthering energy efficiency
 - furthering efficient use of water and minimising flood risk
 - furthering efficient waste management
 - furthering the protection and enhancement of the environment
 - furthering the prevention or detection of crime
9. The certificate may take the form of a sustainability certificate or interim certificate where the property is being assessed against the code or a nil rated certificate where it is not. Certificates must be issued by an approved Code assessor trained and licensed under the terms of the contract between Communities and Local Government and the Building Research Establishment (BRE). Under this contract,

Government has granted BRE a licence to train and accredit assessors and BRE must grant sub-licenses to other organisations to enable them to provide Code services also.

10. A new home is defined as a home that is being designed or constructed or that has been constructed but that has never been occupied. The definition does not extend to converted properties. These provisions only apply to new homes where a local authority receives a building notice, initial notice or full plans application after 1 May 2008.

Evidence of title and searches

11. As most new homes are sold “off plan” before they’re built, there might be differences between Packs for these sales and Packs provided for properties sold as completed dwellings. In these circumstances, there might be logical reasons why a “whole development” search would be appropriate and this would continue to meet the requirements of the regulations rather than requiring individual property searches. For example, the searches may cover a wider area if the property has not yet been allocated an address and individual titles have not yet been created. If that is all that can be provided when marketing begins, our advice has therefore been that a search covering the whole development site would meet the requirements of the regulations. This position recognises that the purpose of a search is to warn prospective purchasers as to the conditions/restrictions currently in existence and any that are in the pipe line to enable informed decisions to be taken. However we would still expect that an individual search is provided where this is practicable and might show up something materially different to other properties on the site.

ISBN: 978 1 4098 1338 5

ISBN 978-1409813385



9 781409 813385