

Industry briefing note

Changes to Home Information Packs (HIPs)

From 6 April 2009, if you are involved in buying or selling homes in England or Wales, there are three key changes to HIPs you need to know about:

1. The temporary first day marketing exemption will be removed, which means that a HIP must be available on the first day a property is marketed
2. A Property Information Questionnaire, completed by the seller, must be included in the HIP, and
3. The end of the use of insurance to cover missing data in personal searches.

These changes have important implications for industry practice in the marketing of residential properties for sale and the advice given to clients.

Ending of temporary first day marketing exemption

On 6 April 2009 the temporary first day marketing exemption will expire, meaning that from this date it will be unlawful for the marketing of a property to begin unless a HIP is available.

Therefore from 6 April 2009 marketing of a property cannot begin until the HIP is available and all the required HIP documents are commissioned and paid for, or arrangements for payment made. The following documents are a minimum requirement before marketing can begin:

- Index
- Property Information Questionnaire
- Energy Performance Certificate or Predicted Energy Assessment
- Sustainability Certificate (new homes only)
- Sale Statement
- Land Registry Documents.

All other required documents e.g. local property searches, lease (where applicable) should be added to the HIP as soon as they are available and must be included in the Pack within 28 days of the first point of marketing.

The order of the Pack documents must now follow the list above up to the Sustainability Certificate (if applicable) from which point the documents can be placed in any sequence.

So what does this mean for estate agents?

Estate agents need to think now about the impact of these changes on their day to day working practices and systems, particularly the mechanism, e.g. the use of property particulars, and timing by which the marketing of a particular property can begin.

What can you do?

Where on receipt of a new instruction an agent informs 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.

What can't you do?

Under the new rules, the agent cannot use information to start marketing the particular property until a HIP meeting the minimum requirements is available. This includes the erection of sale boards, newspaper advertising and the automated daily uplift of information about properties coming on the market from estate agent databases to their websites and on-line property portals, which identify the property and the location.

Estate agents are therefore strongly advised to review their administrative processes and use of software to ensure they achieve compliance.

What does this mean for pack providers?

Agents who want marketing to begin at the earliest opportunity may request that pack providers provide HIPs with the minimum required documents (see above) and include the remaining required documents as soon as they become available. Pack providers will need to consider how to adapt their current working practices to respond to these likely changes.

Estate agents are reminded that where HIPs are incomplete it is their responsibility to ensure that the Index states which documents are missing and what steps are being taken to obtain them.

What about the new Property Information Questionnaire?

The Property Information Questionnaire (PIQ) is being introduced as a mandatory requirement in HIPs for residential properties marketed for sale on or after 6 April 2009. The PIQ should be completed by the seller and must be included in the pack before marketing of a property begins.

The intention of the PIQ is to provide the buyer with a helpful checklist of information as they walk round the property. It is not intended as a replacement for enquiries made during the conveyancing process but should help reduce the opportunity for surprises coming to light further down the line as part of this process.

Estate agents will wish to ensure that sellers have access to the PIQ and are encouraged to complete it as soon as possible. The PIQ is downloadable from www.businesslink.gov.uk/homeselling

What responsibility does the estate agent have for the PIQ?

The estate agent will be responsible for ensuring that a completed PIQ is in the HIP. It is important to note that the inclusion of a blank PIQ will not comply with the HIP duties.

Agents will have no liability under either the HIP Regulations or the Property Misdescriptions Act 1991 for the information contained in the PIQ, provided that the form is completed solely by the seller and the agent has no reason to believe the answers are wrong. However, if an agent does help the seller to complete the PIQ, for example where the seller is not the occupier of the property, then the provisions of the Property Misdescriptions Act 1991 may apply.

What about the changes to the provision of property searches?

From 6 April 2009, every property search in a HIP must be complete – insurance can no longer be provided to cover any missing data. Agents will want to assure themselves that those producing their HIPs therefore provide complete searches.

All HIP and search providers should be aware that from 6 April they must provide complete searches to comply with the HIPs Regulations

What about properties on the market before 6 April 2009?

Where a property is on the market before 6 April 2009 and the seller changes agents after this date, there is no requirement to update the existing documents in the HIP or for the PIQ to be included. However, the new agent will continue to be responsible for ensuring that the Pack complies with the HIP regulations.

Consumer Contract Regulations

Agents should be aware of the effect of the *Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008* on certain contracts made with sellers outside the agent's office. The Regulations could apply to a contract concerning the provision of a HIP (either from the agent himself or a third party) and would mean that, in cases where a HIP is ordered during the statutory cancellation period with the seller's written agreement (i.e. the seven day period following the date of the contract), and the seller then cancels the contract during this period, the seller can only be charged for any costs actually incurred by the cancellation date. Further information on these

regulations is available on the Department for Business, Enterprise and Regulatory Reform website at www.berr.gov.uk/whatwedo/consumers/buying-selling/Doorstep-selling/index.html.

Where can I go for further information?

For more information, go to www.businesslink.gov.uk/homeselling

March 2009

Home Buying and Selling Team, Communities and Local Government