

	Committee Report
Date:	26 February 2008
Subject:	Housing Act 2004 Delegations

Summary

This report sets out a proposal to delegate authority to the Director of Community Protection to enforce certain provisions of the Housing Act 2004 ("HA 2004"). The HA 2004 places a duty on the local weights and measures authority to enforce the provision of the legislation in relation to Home Information Packs (HIPs).

Recommendation

That the Director of Community Protection be delegated the authority to enforce the provisions of Part 5 of the HA 2004, these being sections 148 to 178, inclusive.



City of Westminster

General Purposes Committee Report

Date:	26 February 2008
Classification:	For General Release
Title of Report:	Housing Act 2004 Delegations
Report of:	Director of Community Protection
Wards involved:	All
Policy context:	To ensure that vendors or their estate agents produce the required HIP for any property being marketed, which can be passed to prospective purchasers.
Financial summary:	Met within current budget
Report Author:	Chuma Akpom, Trading Standards
Contact details	020 7641 2474 cakpom@westminster.gov.uk

1. Background Information

- 1.1 Part 5 of the Housing Act 2004 (HA 2004), allowed for the introduction of the requirement to produce Home information Packs (HIPs) when marketing a property. The Act allows for the introduction of Regulations which has led to the Home Information Pack (No.2) Regulations 2007 and the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007. The legislation has met much resistance during its passage through parliament and its introduction has been delayed due to changes to the legislation. It remains controversial and has attracted a great deal of media attention.
- 1.2 The Act places a duty on vendors, or their estate agents where commissioned, to obtain a HIP for any property being marketed, copies of which must be given to prospective purchasers. The contents of the HIP are prescribed by the regulations with certain documents being compulsory whilst certain others are allowed. The compulsory documents are currently :
- An energy performance certificate
 - A statement summarising the terms of sale
 - Evidence of title
 - Standard searches
 - Common hold or leasehold information (if appropriate)
- 1.3 Home Condition Reports are optional information.
- 1.4 Energy Performance Certificates (EPCs) contain information regarding the energy efficiency of a home and uses a grading system from A-G, similar to the system already being used on domestic appliances such as washing machines. EPCs will also contain recommendations as to cost effective improvements that could potentially reduce fuel bills and carbon emissions. It is anticipated that EPCs will be produced by Domestic Energy Assessors (Home Inspectors) who are members of a government approved certification scheme. It is also anticipated that EPCs will eventually extend to most buildings.

2. Detail

- 2.1 The HA 2004 places a duty on the local weights and measures authority to enforce the provisions of Part 5 of the HA 2004, in relation to HIPs. Should a vendor or an estate agent breach their duty to produce a HIP in the required form, they will be liable to a penalty charge notice, which currently has been set at £200. Should the vendor or estate agent fail to pay the penalty then it can be recovered via civil action.
- 2.2 Legislation previously required Home Information Packs to be produced from 1 June 2007, however this was deferred to 1 August 2007 to allow more time for industry to prepare itself and as a response to the lack of qualified inspectors.

- 2.3 HIPs and EPCs are being introduced on a phased basis to ensure a smooth transition in the housing market, and to begin the process of transforming the home buying and selling process in the interests of consumers and the environment at the earliest opportunity.
- 2.4 From 1 August 2007 HIPS including Energy Performance Certificates will be required for the sale of 4 bedroom properties and larger. HIPs and EPCs will be rolled out to three bedroom properties from 10 September 2007. Dates for other properties have yet to be announced by the government.
- 2.5 Until the end of 2007, properties can be marketed as soon as a pack is commissioned and Energy Performance Certificates can be up to 12 months old when a property is put up for sale.
- 2.6 As at 12 February 2008, Hips are now required for residential properties first marketed from 14 December 2007, which was the date subsequently announced by the government for properties with 2 bedrooms or fewer. Hips are not required for: properties with 4 or more bedrooms first marketed before 1 August 2007, properties with 3 bedrooms first marketed before 10 September 2007, and properties with 2 or fewer bedrooms first marketed before 14 December 2007.
- 2.7 Certain types of properties are exempt from the requirement to produce HIPs. These include, non residential properties, seasonal/holiday accommodation, mixed sales e.g. the sale of a flat with a shop, right to buy properties, non vacant properties and park homes.

3. Financial Implications

- 3.1 There will be a cost to enforcing this legislation. Government has provided monies as a result of the 2004 spending review, via the 2005/6 (and onwards) formula grant paid to local authorities. This was confirmed in a letter from the Department of Communities and Local Government to the Local Authorities Coordinators of Regulatory Services (LACORS) dated 12 July 2007.

It is unlikely that any enforcement costs will be significant, given that this is highly unlikely to be seen as a priority for Trading Standards. It is anticipated that any enforcement work would be reactive as a result of incoming complaints. Since the introduction of HIPs on 1 August 2007, Westminster's Trading Standards Service has not received any such complaints or enquiries supporting the view that future complaints or enquiries will be few in number.

- 3.2 Little, if any, income is expected from the issuing of fixed penalty notices.
- 3.3 Enforcement will initially take the form of business advice if required, with a view to working with vendors and agents in order to achieve compliance where complaints have been received or advice sought. Penalty notices will only be used where all reasonable actions to achieve compliance have been exhausted.

4. Legal Implications

- 4.1 Sections 161, 163 and 164 of the HA 2004 allow for Regulations to be made regarding HIPs and the HIPs (No. 2) Regulations 2007 and the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007, are currently in existence.
- 4.2 Section 166 of the HA 2004 places a duty on a weights and measures authority to enforce Sections 155, 156, 157, 158, 159 and 167(4) and any duty under section 172(1).
- (a) Section 155 places a duty on the responsible person to have a HIP in their possession or control.
 - (b) Section 156 places a duty on the responsible person to provide a copy of the HIP to a potential buyer at no charge other than copying or postage costs. If on reasonable grounds the responsible person believes the buyer, can not afford the property, or is not really interested in purchasing or is not a person to whom the seller wishes to sell, then they need not supply a HIP.
 - (c) Section 157 allows the seller the right to decline to provide a copy of the HIP if the buyer fails to comply with the requirement to pay for the copying of the pack or postage costs, or the buyer fails to accept specified terms re the use or onward disclosure of copies of the HIP.
 - (d) Section 158 requires any copy of a HIP provided to be an authentic copy.
 - (e) Section 159 deals with situations where there are only limited marketing activities by the agent.
 - (f) Section 167(4) requires a responsible person to produce a copy of a HIP to an authorised officer within seven days of an officer's request.
 - (g) Section 172 (1) allows the Secretary of State to require estate agents to be members of an approved redress scheme by passing an order. Such an order has been passed, namely the HIP (Redress Scheme) No2 Order 2007.
- 4.3 Section 168 confers a power for officers to issue a Penalty Charge Notice for breaches of the enforceable sections (currently set at £200.00).
- 4.4 Section 169 creates offences for obstruction of officers and for non authorised persons purporting to be and acting as authorised officers. This section imposes a fine on summary conviction not exceeding level 5 on the standard scale (currently £5000.00).

5. Staffing Implications

- 5.1 Enforcement of these provisions may be met within current staffing levels.

6. Business Plan Implications

- 6.1 Enforcement of HIPs and EPCs will support Westminster City's Partnership Priorities in terms of improving the economic, social and environmental well being of the area. It will also support the Corporate priority under the 'Go Green' banner in relation to air quality. Furthermore it will support Trading Standards priorities in terms of reactive work and high risk traders.

7. Outstanding Issues

- 7.1 None.

8. Consultation

- 8.1 This is not ward specific.

9. Crime and Disorder Act 1998

- 9.1 No Crime and disorder issues

10. Health and Safety Issues

- 10.1 Health and safety is covered by existing departmental procedures.
There are no new health and safety issues that arise from HIPs enforcement work.

11. Human Rights Act 1998

- 11.1 There are very little human rights implications with Part 5 of the HA 2004. Under schedule 8 of the HA 2004 any person issued a Penalty Charge Notice has at least 28 days to pay it and may request a review of the notice and if not happy with the outcome of the review may appeal to a county court, supporting the individual's right to a fair trial.

12. Reason(s) for Decision(s)

- 12.1 There is a duty on the City of Westminster, being the local weights and measures authority, to enforce sections 155, 156, 157, 158, 159 and 167(4) and any duty under section 172(1) of the HA 2004. Where legislation places a duty on a local Weights and Measures Authority to enforce it, this duty is usually delegated to the Trading Standards Service. The general public would typically contact their Trading Standards Service as a first point of call. If the duty is not delegated to Trading Standards then the Trading Standards Service would be unable to respond to complaints and enquiries promptly, which could lead to reduced customer satisfaction figures, which in turn could affect national indicator results.

If you have any queries about this report or wish to inspect one of the background papers please contact Chuma Akpom on 020 7641 2474, fax 020 7641 1702, email cakpom@westminster.gov.uk.

Background Papers

Housing Act 2004 and Regulations and Orders made under this Act.
Letter from the Department of Communities and Local Government to the Local Authorities Coordinators of Regulatory Services (LACORS) dated 12 July 2007.

Housing Act 2004
Home Information Pack (No.2) Regulations 2007
Energy Performance of Buildings (Certificates and Inspections) Regulations 2007
Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2007
HIP (Redress Scheme) No2 Order 2007
Home Information Packs: Guidance For Enforcement Officers
Letter from the Department of Communities and Local Government to the Local Authorities Coordinators of Regulatory Services (LACORS) dated 12 July 2007.