

## Responses to EPBD/HIPs Regulations Queries from Lisa Dores, NES

Please find our guidance in response to your queries below. Please note that this represents CLG's informal views. The interpretation of legislation is ultimately a matter for the courts and the Department's opinions cannot therefore be regarded as authoritative. This note should be read in conjunction with the legislation itself and CLG's detailed procedural guidance on the legislation.

### 1. Introduction

There are some general principles that can be applied in terms of what is required and when.

- a) If part of a building is designed or altered to be used as a separate dwelling, then a separate EPC will be required under the EPB regulations – we have assumed therefore that the terms granny flat and keeper's cottage refer to a separate dwelling.
- b) An annex could either be considered as:
  - i. a separate dwelling (if it satisfied the criteria in 1c). This would require its own EPC or;
  - ii. as part of the main dwelling ( e.g. extra rooms used as an office or a one-room workshop). 1 EPC would be required for the main dwelling including the extra rooms.
- c) In our view, a dwelling is a self-contained unit designed to accommodate a single household. By contrast a "room for residential purposes" is a room or suite of rooms to live or sleep in (including hotels, hostels and boarding houses) and these could be arranged together or separated by a lockable door. Evidence that may be relevant as to whether part of a building constitutes a separate dwelling include: separate provision of cooking and washing facilities, separate access to the accommodation, separate provision of heating and ventilation or shared heating and ventilation but with separate energy metering and the ability by the occupier to independently control those services.
- d) Buildings materially altered or changed would **not** be classified as a new build, and would not be covered by Regulation 17C which requires a SAP rating. However building regulation 17D may require that the building is brought up to current part L standards. For material alterations, Regulation 17E may require an EPC when construction is finished if the 'building is modified so that it has a greater or fewer number of parts designed for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation'. These changes to the Building Regs come into force from 6 April 2008.
- e) At the time of writing, only properties with 3 or more bedrooms require a HIP. For situations where a HIP is required, if the property comprises two separate dwellings this would normally require 2 HIP/EPCs, although it could be exempt from HIP requirements if it amounts to a portfolio sale under regulation 30 of the HIP regulations – see below. However, until HIPs apply to all dwellings, the number of bedrooms in each dwelling should be

considered separately (i.e. if a Granny Flat with 1 bedroom is to be sold with a 3 bedroom house, the Granny Flat would not require a HIP/EPC, but the 3+ bedroom house in the sale would).

- f) Portfolio sales are excluded from the requirement to have a HIP under regulation 30 of the HIP regulations. The portfolio exception applies where two or more dwellings are sold together with vacant possession, the seller does not intend to accept separate offers for the dwellings (i.e. they are to be sold jointly) and that this is apparent from the way the properties are marketed.
- g) However, the portfolio exception does not cover a dwelling sold with one or more other dwellings, where those other dwellings are "ancillary" to it - e.g. a large house with two cottages in the grounds. It also does not cover the type of sales described in section 171 of the Housing Act. This applies where two or more dwellings in a sub-divided building (i.e. a building originally constructed as a single dwelling that has subsequently been divided into two or more separate dwellings) are being sold as a single property and where at least one of the dwellings is being sold with vacant possession,
- h) Under the EPB regulations, sales and lettings of dwellings not requiring HIPs e.g. portfolio sales, non-marketed sales and rentals, will eventually require an EPC from 1<sup>st</sup> October 2008. Each separate dwelling will require an EPC.
- i) Under the Housing Act, the HIP requirements apply to each "residential property" which is defined as a "single dwelling". A person would therefore be required to have a valid HIP for each dwelling for which he is responsible, regardless of whether the dwellings are located in the same building or plot (unless the portfolio exception applies). In practice, there is nothing preventing the content of a HIP (except for the EPC) from being reused for the other dwellings included in the sale. However, we would advise that searches or title information should be commissioned separately where there is a possibility that the content of these documents may be different for each dwelling.

## 2. Specific Queries

	<b>Query</b>	<b>HIP required</b>	<b>EPC required</b>	<b>Notes</b>
<b>1</b>	Granny flat attached to a main dwelling, with its own front door, electricity and gas meters and heating system.	A HIP is required for each, 1 for main dwelling and 1 for the Granny flat. Current HIP arrangements (1e above) should be considered.	2 EPCs are required, 1 for main dwelling and 1 for the Granny flat. Current HIP arrangements (1e above) should be considered.	Assumption is that the Granny Flat is designed or altered to be used as a separate dwelling. See 1c). Also that the flat is sold occupied and the sale is of a type described in s. 171 of the Housing Act.
<b>2</b>	Granny flat attached to a main dwelling, with its own front door. Shares meters with the main dwelling but	As in 1	As in 1	Assumption is that the Granny Flat is designed or altered to be used

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	has a separate heating system.			as a separate dwelling. See 1c).
<b>3</b>	Main house with an annex, physically connected through a thermally separated (i.e. ignored in RDSAP) conservatory. The annex has a separate heating system but shares meters with the main house.	1 HIP required for whole dwelling.	1 EPC required for the whole building.	Assumption is that the annex is <b>not</b> designed to be used as a separate dwelling (see 1bii). The conservatory is irrelevant if this is all one building.
<b>4</b>	Main house with an annex, physically connected through a thermally separated (i.e. ignored in RDSAP) conservatory. The annex has a separate heating system and separate meters.	As in 3	As in 3.	Assumption is that the annex is <b>not</b> designed to be used as a separate dwelling (see 1bii). The conservatory is irrelevant if this is all one building.
<b>5</b>	Annex separated from main dwelling with its own heating system but shared meters.	2 HIPs are required, 1 for main dwelling and 1 for the Annex.  If either building is for commercial use and the building marketed as suitable for such use, it could be exempt (please consult Part 6 of the HIP regulations and the related procedural guidance).	2 EPCs are required, 1 for main dwelling and 1 for the Annex.  If the annex is a separate building not used as a dwelling, no EPC is required currently. The commercial part will require an EPC when they are introduced for commercial buildings and residential part in October 2008,	Assumption here is that the annex is designed for separate occupation and if used as a dwelling, is a <b>separate dwelling</b> (see 1bi).
<b>6</b>	Annex separated from main dwelling with its own heating system and its own meters.	As in 5	As in 5.	Assumption here is that the annex is designed for separate occupation and if used as a dwelling, is a <b>separate dwelling</b> (see 1bi).
<b>7</b>	Manor house with grounds keeper's cottage, with separate heating system and meters.	As in 1	As in 1	Assumption is that the Keepers Cottage is a separate dwelling Not subject to the portfolio exception from HIPs – see regulation 30() of

	<b>Query</b>	<b>HIP required</b>	<b>EPC required</b>	<b>Notes</b>
				the HIP regulations.
<b>8</b>	Manor house with grounds keeper's cottage, with separate heating system and gas meter, but shared electricity meter.	As in 1	As in 1	Assumption is that the Keepers Cottage is a separate dwelling.
<b>9</b>	3 flats being sold as single house – originally one house, broken down into 3 separate, self-contained flats, now being sold as one house. With vacant possession, separate leasehold titles, own heating systems.	No HIP required – likely to be portfolio sale exemption.	3 EPCs are required (from October 2008).	Because the building is currently altered for use as separate dwellings, separate EPCs are needed.
<b>10</b>	3 flats being sold as single house – originally one house, broken down into 3 separate, self-contained flats, now being sold as one house. Some flats occupied, separate leasehold titles, own heating systems.	HIPs required for each dwelling. Not subject to the portfolio exception for HIPs (please consult regulation 30(1)(b) of the HIP regulations and related procedural guidance)	3 EPCs are required..	Leasehold arrangements are not relevant to the requirement for a HIP/EPC.
<b>11</b>	3 flats being sold as single house – originally one house, then broken down into 3 separate, self-contained flats, now being sold as one house. All with vacant possession, shared leasehold titles, own heating systems.	No HIP required – portfolio sale exemption and not available with vacant possession. (please consult regulation 30 of the HIP regulations and the related procedural guidance)	From 1 October 2008 3 EPCs are required when sold.	
<b>12</b>	3 flats being sold as single house – originally one house, then broken down into 3 separate, self-contained flats, now being sold as one house. With vacant possession, separate leasehold titles, shared heating systems.	No HIP required – portfolio sale. (please consult regulation 30 of the HIP regulations and the related procedural	3 EPCs are required (from October 2008).	Assumption that they remain separate dwellings.
<b>13</b>	A fully separated flat above a pub, on a separate heating system etc and with a separate entrance with an exterior quality door, let to a residential tenant under	Unlikely that HIP required as it is a mixed sale (please consult regulation 28	2 EPCs required from October 2008).	

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	landlord and tenant legislation.	and Part 6 of the HIP regulations)		
<b>14</b>	A separate flat above a pub, occupied by a member of staff working in the pub below - not let under landlord and tenant legislation but as part of an employment contract.	Unlikely that HIP required as it is a mixed sale (please consult regulation 28 and Part 6 of the HIP regulations)	2 EPCs required from October 2008	Assumption that flat sold together with the pub.  Employment contract irrelevant for these purposes.
<b>15</b>	Must an EPC replace a PEA for a property which is sold off plan? I think this is the intention - but I need to know where (if anywhere) this is described in the Regs. If it's not entirely clear then this may be a loophole. CLG have not been able to provide a conclusive answer.	Dealt with expressly in reg 22. Requires updating if property still on market when physically completed.	EPC required to be given to ultimate purchaser under EPC reg 5(5).	Note that HIPs and EPCs not yet commenced for properties built to 2006 building regulations standards. Please see guidance provided to the new build forum. CLG are aware of the forum members on this point and are reviewing.
<b>16</b>	Where a refurbishment includes a Material Change of Use and a SAP rating is already required as part of Building Regs (L1B). The original building has drawings. Would this mean that the property should be classed as newbuild? Could the L1B rating be used to produce an EPC?	HIP required if being marketed to public or section of the public for sale.	EPC required if HIP required.  If no HIP is required, an EPC will be required when EPCs have commenced for new construction if the modification has more or less parts – see 1d).	A SAP rating will not be required by building regs when EPCs for homes on construction commence (Regulation 16 is superseded by EPBD regs). The provisions in ADL1B should be followed instead. Not classified as new build.  HIPs and EPCs not yet commenced for properties built to 2006 building regulations standards.
<b>17</b>	Where a refurbishment includes a Material Change of Use and a SAP rating is already required as part of Building Regs (L1B). The original building does not have drawings.	HIP required if being marketed to public or section of the public for sale.	EPC required if HIP required.  If no HIP is required, an EPC will be required when EPCs have	A SAP rating will not be required by building regs when EPCs for homes on construction commence (Regulation 16 is

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	SAP/RDSAP? Would additional monitoring be required to allow the L1B rating to be included in an EPC?		commenced for new construction if the modification has more or less parts – see 1d).	<p>superseded by EPBD regs). The provisions in ADL1B should be followed instead. Not classified as new build.</p> <p>HIPs and EPCs not yet commenced for properties built to 2006 building regulations standards.</p> <p>RdSAP is required to produce the EPC(s) for all existing buildings.</p>
<b>18</b>	Where a refurbishment does not include a Material Change of Use (e.g. major repairs after fire damage). SAP/RDSAP? RDSAP PEA? How extensive does the refurbishment have to be to warrant a SAP assessment?	HIP required if being marketed to public or section of the public for sale.	<p>If the building is demolished and the ground levelled, then it will be classified as a new build = EPC when constructed.</p> <p>The only refurbishments that would warrant an EPC would be those buildings modified to have more or less parts – see 1d)</p>	