

# Report

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Report to:	<b>Community Resources Committee</b>
Date of Meeting:	<b>16 June 2009</b>
Report by:	<b>Executive Director (Community Resources)</b>

Subject:	<b>The Energy Performance of Buildings (Scotland) Regulations 2008</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ to advise Committee of the obligations on local authorities to enforce the provisions of the Energy Performance of Buildings (Scotland) Regulations 2008
- ◆ to seek formal approval for Council services (Consumer & Trading Standards, Environmental Health) to undertake local authority enforcement functions relevant to the new statute.

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the new requirement placed on local authorities to enforce aspects of Energy Performance of Buildings (Scotland) Regulations 2008 be noted;
- (2) that the respective responsibilities for officers within the Consumer and Trading Standards and Environmental Health Services as outlined in section 4 of the report in respect of the above regulations be approved; and
- (3) that authority be delegated to the Executive Director (Community Resources) to enable the Council to undertake these new enforcement functions.

## 3. Background

- 3.1. The Energy Performance of Buildings (Scotland) Regulations 2008 implements the European Directive 2002/91/EC on Energy Performance of Buildings and takes into account the recommendations of the Sullivan Report "Low Carbon Building Standards Strategy". The Regulations came into effect on 4 January 2009.
- 3.2. The Energy Performance of Buildings Directive was one of the European Union's key measures for driving reductions in energy consumption. The buildings sector is estimated to account for 40% of the EU's total energy use. Transposition of the Directive into legislative frameworks of member states is seen as being key to achieving its climate change goals.

- 3.3. The 2008 Regulations expand upon existing requirements in terms of building standards and consumer protection and create an all encompassing obligation for the production of energy performance certificates (EPC's) when buildings are to be sold or rented. The Regulations also require EPC's to be displayed within buildings occupied by a public authority or institutions providing public services where the floor area is more than 1000m<sup>2</sup>.
- 3.4. The Regulations do not apply to stand-alone buildings with a total useful floor area of less than 50 m<sup>2</sup> which are not dwellings, temporary buildings with a planned time of use of two years or less, workshops and non residential agricultural buildings with low energy demand.
- 3.5. Regulation 5 requires that where a building is to be sold or let the owner must make a copy of the most recent valid energy performance certificate for the building available free of charge to a prospective buyer or prospective tenant.
- 3.6. Regulation 6 requires that the energy performance certificate contains information on the buildings "asset rating", the energy consumption and its carbon dioxide emitted and makes recommendations for the cost-effective improvement of the energy performance. A standardised methodology for the calculation of the asset rating has been agreed by Scottish Ministers. Only approved organisations can produce EPC's.
- 3.7. Regulation 10 requires the owner or, where the owner is not the occupier, the occupier, of a public building whose floor area exceeds 1000m<sup>2</sup> to ensure that an EPC for that building is displayed within the building in a prominent place clearly visible to visiting members of the public.
- 3.8. Scottish Ministers are required to keep a register of all EPCs issued. The responsibility for maintaining the register has been delegated to the Energy Savings Trust which maintains the national home energy efficiency database (HEED). Access to the database for enforcement purposes has been agreed for relevant South Lanarkshire Officers. The database will provide an overview of the energy efficiency of property covered by the Regulations in Scotland.
- 3.9. Enforcement Authorities have the power to require owners of buildings to produce a copy of their Energy Performance Certificate to ensure compliance with the Regulations.
- 3.10. Where there has been a failure to supply an appropriate certificate, the local authority may issue a Penalty Charge Notice. For a dwelling the charge is presently £500 and £1000 for any other building type. The Regulation stipulates that any charge levied will be retained by the Authority.

#### **4. Enforcement responsibilities with the Council**

- 4.1. Consumer and Trading Standards already undertake an enforcement role in terms of the Energy Report under the Housing (Scotland) Act 2006. An obvious extension of these activities would be the enforcement role covering all estate agency practices including the letting, leasing and rental of domestic and commercial property.
- 4.2. Environmental Health currently undertakes inspection of many commercial premises, such as office, retail and industrial premises in respect food safety and health and safety legislation. It is therefore anticipated that Environmental Health will be the enforcing authority within this sector in terms of Regulation 5 and Regulation 16.

4.3. Building Standards Services in terms of existing delegated powers will enforce the provisions of the new Act with respect to newly built property. It is proposed that a report will be submitted to the Enterprise Resources Committee in due course.

4.4. If approved these arrangements would encompass the full range of local authority enforcement duties set out in the Regulations.

## **5. Employee Implications**

5.1. There will be no additional Employee Implications save for some additional officer training as enforcement will be undertaken along with existing statutory duties.

## **6. Financial Implications**

6.1. The new enforcement burdens may result in additional investigations however these operations will be managed within existing financial resources.

## **7. Other Implications**

7.1. Energy Performance Certificates are intended to make householders and the proprietors of public buildings more aware of energy consumption and cost-effective action that they can take to reduce it. It is a key aspect of EU, UK, and Scottish action to meet climate change targets.

7.2. It should be noted that the EU and Scottish Government are considering various options for extending the scope and impact of EPCs for example, the possibility that some cost-effective energy efficiency improvements may become compulsory within a defined period. There may well be additional burdens on the services involved in future years.

7.3. As well as the enforcement functions referred to in the report, the Council and many of its community planning partners also have other duties under Regulations to provide EPCs or display them in public buildings over 1000m<sup>2</sup>.

## **8. Equality Impact Assessment and Consultation Arrangements**

8.1. Although this report recommends a change to existing functions, this has been screened for equalities issues and is not relevant to the Council's equalities duties and, therefore, no impact assessment is required.

8.2. Building Standards Services of Enterprise Resources have been involved in drafting the details of the report and have agreed a coordinated approach to enforcement.

**Norrie Anderson**  
**Executive Director (Community Resources)**

20 May 2009

**Link(s) to Council Objectives and Values**

- ◆ Sustainable Development

**Previous References**

- ◆ Home Reports Committee Report – January 2009

**List of Background Papers**

- ◆ A Low Carbon Building Standards Strategy for Scotland (The Sullivan Report)

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

Peter Sherry, Consumer and Trading Standards Manager

Ext: 812 6133 (Tel: 01698 476133)

E-mail: [peter.sherry@southlanarkshire.gov.uk](mailto:peter.sherry@southlanarkshire.gov.uk)