

DERBYSHIRE COUNTY COUNCIL

MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES

03 November 2015

Report of the Strategic Director, Health and Communities

ENERGY PERFORMANCE OF BUILDINGS

1. Purpose of Report:

- 1.1. To advise the Cabinet Member, Health and Communities of new duties imposed on the trading standards service by a 2015 amendment to the Energy Performance of Buildings (England and Wales) Regulations 2012.
- 1.2. To seek support of local Members of Parliament for the calling in of the Regulations.

2. Information and Analysis:

- 2.1 The energy performance of buildings was first regulated in 2007. The current regulations are the Energy Performance of Buildings (England and Wales) Regulations 2012. These require:

- Energy Performance Certificates (EPCs) to be produced when a building is constructed, sold, rented out or significantly altered.
- EPCs must include a list of energy efficiency improvements.
- Display Energy Certificates (DECs) must be displayed in public buildings larger than 250m² which are visited frequently by the public.
- An EPC must be displayed in commercial premises larger than 500m² which are visited frequently by the public.
- Large air conditioning units (with an effective rated output of more than 12kW) must be inspected regularly.
- The EPC rating must be included in property advertisements.

The EPC shows the energy efficiency of a property and includes recommendations on how it can be improved. The DEC includes information about the running costs of the building.

- 2.2 The Regulations implement into English law the requirements of the Energy Performance of Buildings Directive (the EPB Directive). The EPB Directive is designed to increase the energy efficiency of buildings, reduce their carbon emissions and lessen the impact of climate change. This complements the Climate Change Act 2008 which requires a reduction in carbon emissions by

80% on 1990 levels by 2050. Emissions from buildings account for 40 - 45% of all carbon emissions in the UK.

2.3 The Regulations impose a duty on local weights and measures authorities (i.e. the Trading Standards Service) to enforce the following provisions:

- That an EPC is given free of charge to a prospective buyer or tenant and to the ultimate buyer or tenant.
- That an EPC is obtained before (or to alternative timetables set out in the Regulations) a building is put on the market.
- That a building larger than 250m² occupied by a public authority has a valid advisory report highlighting recommendations to improve the energy performance of the building and displays a DEC.
- That air conditioning systems with an output greater than 12kW are inspected by an energy assessor at intervals not exceeding five years and the latest report be kept and be available for inspection.
- That the owner of a new building be given an EPC no later than 5 days after construction.

Breaches of the Regulations are punishable by Penalty Charge Notices, with any charge not paid to be recovered as a debt owed to the Authority.

2.4 The 2012 Regulations are due to be amended by the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015. The Regulations were laid on 15th September 2015 and are due to come into force at the expiration of forty days from that date. There has been no consultation about their implementation, and the Regulations can be stopped if MPs call them in for debate (negative resolution procedure).

2.5 The new Regulations impose the follow requirements on the Trading Standards Service:

- To arrange for enforcement of the obligations under the 2012 Regulations in relation to County Council buildings by another local weights and measures authority and report the arrangement to the Secretary of State.
- To collect sufficient information concerning buildings for which it has enforcement responsibilities under the 2012 Regulations to enable the planning of effective enforcement action.
- To record all enforcement activity and report annually to the Secretary of State.

2.6 The requirement to arrange for another weights and measures department to enforce the regulations in relation to buildings occupied by the County Council will involve the setting up of a formal contract, with cost implications, with another authority. Should the Regulations come into effect, a decision would

also have to be made about whether this Authority would take on the enforcement duty for another weights and measures department. This is unnecessarily burdensome on local authorities at a time of austerity, and particularly so bearing in mind that most are likely to have complied with the requirements.

- 2.7 As can be seen from 2.3 above, the duties imposed by these Regulations are wide-ranging and it would be very difficult to collect information about all the buildings for which an enforcement duty would exist. Gathering all the information required would involve contacting estate agents and letting agents throughout the County, as well as visits to determine the number of public buildings, the number of commercial buildings visited frequently by the public, and the number of large air conditioning units. Work would also have to be undertaken to try and establish the number of privately rented properties and the number of holiday lets, and to determine an effective method of communicating the requirements.
- 2.8 Whilst the reduction of carbon emissions is important, enforcement of these Regulations has not been a priority for the Trading Standards Service. The Local Government Association, the Chartered Trading Standards Institute and the Association of Chief Trading Standards Officers have jointly lobbied the Department for Communities and Local Government as it is the general view that the new duties are an unreasonable burden on trading standards services at a time when budgets have been cut by up to 40%. Further, that the Government is committed to deregulation, and that this legislation is a prime example of an area which would be appropriate for self-regulation.
- 2.9 Under the 'Negative Resolution Procedure' MP's can challenge Statutory Instruments up to 40 days after they have been laid before Parliament. The Cabinet Member has written to local MP's to seek an annulment of this new legislation for the reasons set out in this report.

3 Other Considerations:

In preparing this report the relevance of the following factors has been considered; human resources, legal, financial, prevention of crime and disorder, equality of opportunity; environmental, health, human resources, property and transport considerations.

4 Background Papers:

None

5 Key Decision:

No

6 Call-in:

Is it required that call-in be waived for any decision on this report? No

7 Officer's Recommendation:

To note the impact of proposed legislation on the trading standards service in respect of Energy Performance of Buildings and note that the Cabinet Member, Health and Communities has written to local MP's seeking to have the proposed new duty annulled.

**David Lowe
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Health and Communities**