

**London Boroughs of Brent & Harrow
Trading Standards Joint Advisory Board
22 November 2018
Report from the Senior Service Manager**

FOR INFORMATION

**REPORT REGARDING THE ENERGY PERFORMANCE OF BUILDINGS
REGULATIONS**

Wards Affected:	N/A
Key or Non-Key Decision:	N/A
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Simon Legg Senior Service Manager Simon.legg@brent.gov.uk 0208 937 5522

1.0 Purpose of the Report

- 1.1 This report informs Joint Advisory Board Members of the statutory requirement for Trading Standards to delegate to another authority, the enforcement provisions of the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended by the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015 (the regulations).
- 1.2 This delegation would apply to another local authority, in relation to certain buildings owned by either the London Borough of Brent or the London Borough of Harrow where we would be required to potentially enforce the regulations against ourselves.
- 1.3 It is proposed that the London Borough of Brent will take responsibility for enforcement of the regulations in relation to buildings owned by the London Borough of Harrow and a reciprocal arrangement will exist whereby the London Borough of Harrow, will take responsibility for enforcement of the regulations in relation to buildings owned by the London Borough of Brent.

2.0 Recommendations

- 2.1 That Joint Advisory Board Members:

- 2.1.1 Consider the contents of the report and note this as a new area of Trading Standards duties.
- 2.1.2 Note the intention to seek delegation of authority with the London Borough of Brent, to the Strategic Director of Regeneration & Environment in consultation with the relevant Portfolio Holder, to enter reciprocal arrangements with other local authorities for the purposes of satisfying the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended.
- 2.1.3 Note the intention to seek delegation of authority with the London Borough of Harrow to the Divisional Director of Commissioning & Commercial Services in consultation with the relevant Portfolio Holder, to enter reciprocal arrangements with other local authorities for the purposes of satisfying the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended.

3.0 Detail

- 3.1 The regulations require energy performance certificates (EPCs), which indicate the energy efficiency of buildings, to be produced when a property is built, significantly altered or sold or let.
- 3.2 An EPC must be displayed in commercial premises larger than 500m² which are visited frequently by the public if it has one. There is no need to specifically obtain one for this purpose.
- 3.3 Buildings measuring over 250m² occupied by public authorities and visited frequently by the public, must display a Display Energy Certificate (DEC) showing the energy usage of that building in the previous year.
- 3.4 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.
- 3.5 When a building has an air conditioning system installed which requires 12kW or more power, the person who has control of the system, must retain reports detailing improvements that could be made or recommendations for replacement which need to be kept for inspection.
- 3.6 The Energy Performance of Buildings (England and Wales) Regulations 2012, were subsequently amended by the Energy Performance of Buildings (England and Wales) (Amendment) (No. 2) Regulations 2015. This requires each local Weights and Measures Authority (the legal term used in legislation when referring to Trading Standards) to agree in writing, with another local Weights and Measures Authority, for them to be responsible for enforcing these regulations in respect of local authority buildings with the our own respective London Boroughs.

- 3.7 In the absence of such an arrangement, we would find ourselves having to regulate and potentially take enforcement actions, against our own authority.
- 3.8 The Regulations implement the European Energy Performance of Buildings Directive which was intended to increase the energy efficiency of buildings, reduce their carbon emissions and lessen the impact of climate change.
- 3.9 Trading Standards are required to enforce amongst others, the following breaches of the regulations:
- Failure to provide an EPC free of charge, to a prospective buyer or tenant and to the ultimate buyer or tenant of a property.
 - Failure to obtain an EPC a building is put on the market before (subject to timetables within the regulations).
 - Failure for a building larger than 250m² occupied by a public authority to hold a valid advisory report highlighting recommendations to improve the energy performance of the building and displays a DEC.
 - Failure for a person who has control of an air conditioning systems with an output greater than 12kW for not having an inspection report available for inspection.
 - Failure to provide the owner of a new building with an EPC no later than 5 days after construction.
- 3.10 Where there has been a breach of the regulations, an officer of a local Weights and Measures Authority, may issue a penalty charge notice to the person or organisation responsible for the breach. The penalty charge amounts are set out with the regulations starting at £200, with the maximum penalty charge being £5,000. Any charge not paid, has to be recovered as a debt owed to the Authority.
- 3.11 Within the regulations are obligations for us to follow when issuing a penalty charge notice which includes the need to consider any representations made by the recipient of such a notice. There is also a right for the recipient to make an appeal to the county court should they be dissatisfied with the notice imposed.
- 3.12 We intend to embark on a staged program of advice and follow up to raise standards and awareness of these regulations, starting with publically owned school buildings. By staging the advice and follow up, we can schedule this work over a 12-18 month period thereby reducing the burden of trying to regulate and bring every building into compliance over a shorter period of time.
- 3.13 This method also brings publically owned buildings into compliance before we start to regulate noncompliance in the private sector.
- 3.14 It should be noted that there has been only one complaint received by the Service on the subject of energy performance since 1 April 2016. Accordingly, whilst this

is a statutory duty, it will be treated as a very low priority area of our work as there is no extra resource available to us for the purposes of carrying out these duties.

- 3.15 The London Borough of Brent is able to carry out its own DEC assessments and even sells this service as a commercial activity as part of the Civic Enterprise. We will work with the Council's Energy Analyst and Projects Officer who is part of the Finance directorate, to identify noncompliant buildings and encourage the relevant person to engage his services to produce the required reports.
- 3.16 At the time of writing this report, we have scheduled a meeting with the London Borough of Harrow's Energy Manager, to engage and make them aware of our role enforcing this legislation.
- 3.17 At present, there are few London authorities who have entered such reciprocal arrangements so it may be the case that either the London Borough of Brent or the London Borough of Harrow, are approached by other authorities requesting to enter such arrangements.
- 3.18 It is for this reason, we propose seeking delegated authority for the Strategic Director of Regeneration & Environment in the London Borough of Brent and for the Divisional Director of Commissioning & Commercial Services within the London Borough of Harrow to enter such arrangements as necessary.
- 3.19 Each local weights and measures authority must report on their enforcement of these regulations each financial year to the Secretary of State. The statutory returns are coordinated by the Ministry of Housing, Communities and Local Government.

4.0 Financial Implications

- 4.1 The resource required to train staff, implement procedures, prepare advisory materials and to commence a program of staged compliance checks, will be met from within Trading Standards base budgets.
- 4.2 Any penalty fines received as a result of formal action will be used to offset the overall cost of the enforcement activity for the team involved. When a recipient of a penalty charge does not pay, steps will need to be taken to enforce the debt which will incur additional costs from the relevant team's budget. These will need assessing on a case by case basis.

5.0 Legal Implications

- 5.1 It is a statutory duty for the local authority to carry out the function of an 'Enforcement Authority'. Regulation 34 of the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended, states (1) Every local

weights and measures authority is an enforcement authority for the purpose of this Part.

- 5.2 Regulation 34A of the Energy Performance of Buildings (England and Wales) Regulations 2012 as amended, addresses obligations which arise in relation local authority buildings. This provision specifically deals with circumstances where the parent local authority of an enforcement authority is subject to a statutory duty under one or more of the provisions of the 2012 Regulations.
- 5.3 In cases where the scenario in 5.2 above applies, regulation 34A sets out the responsibility of the local weights and measures authority in those circumstances to transfer enforcement responsibility to another local authority. In other words, an enforcement authority is relieved of the responsibility of taking enforcement action against its own authority. Regulation 34A (2) stipulates that this transfer of enforcement responsibilities is done by way of written agreement between the relevant enforcement authorities.
- 5.4 The reciprocal arrangements proposed in this report in respect of the two boroughs (the London Borough of Brent and the London Borough of Harrow), concurs with the provisions of section 34A of 2012 Regulations.
- 5.5 It is necessary to notify the Ministry of Housing, Communities and Local Government of any transfer agreements made with other local authorities as soon as reasonably practicable thereafter.

6.0 Equality Implications

- 6.1 The proposals in this report have been screened to assess their relevance to equality. The contents concerns statutory responsibilities and were found to have no equality implications.

7.0 Human Resources Implications

- 7.1 There will be some staffing implications proving training on the regulations and officer resource will be required to commence the compliance checks. However, as detailed within this report, it is intended that this area of work will be a low priority for us and as such, can be managed within our base budget.

Background Papers

The Department for Communities and Local Government 'Improving the energy efficiency of our buildings. Local Weights and Measures Authority guidance for the enforcement of the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended)', can be accessed via the following web link;

<https://www.gov.uk/government/publications/local-weights-and-measures-guidance-for-energy-certificates-and-air-conditioning-inspections-for-buildings>

Contact Officer

Any person wishing to obtain more information should contact Simon Legg, Senior Regulatory Service Manager, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ. Telephone: (020) 8937 5522, simon.legg@brent.gov.uk

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