

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE – 21 APRIL 2009

AUTHORISATION FOR ENFORCEMENT OF PROVISIONS IN THE ENERGY  
PERFORMANCE OF BUILDINGS (SCOTLAND) REGULATIONS 2008

REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES

**ABSTRACT:**

**This report seeks the authorisation of the council for officers to enforce legislation relating to energy performance certificates.**

**1. RECOMMENDATIONS**

1.1 It is recommended that the committee note the additional statutory responsibility on Angus Council to enforce:-

- (I) the Energy Performance of Building (Scotland) Regulations 2008;
- (II) the requirements of two Directions issued by Scottish Ministers under the Building (Scotland) Act 2003.

1.2 It is recommended that the Committee grant authority:-

- (I) to all enforcement officers within the Trading Standards Service of the Environmental and Consumer Protection Division of the Infrastructure Services Department, to enforce all regulations of the Energy Performance of Building (Scotland) Regulations 2008, except regulation 9;
- (II) to the Head of Planning and Transport to enforce regulation 9 of the Energy Performance of Building (Scotland) Regulations 2008;
- (III) To the Head of Planning and Transport to issue notices under Section 25(3) of the Building (Scotland) Act 2003 requiring the display of Energy Performance Certificates in buildings highlighted in the Directions issued by Scottish Ministers.

**2. BACKGROUND**

2.1 The Energy Performance of Building (Scotland) Regulations 2008 further transpose Article 7 (energy performance certificates) and partially transpose Article 4(3) of Directive 2002/91/EC of the European Parliament into Scottish law. The Directive lays down requirements for the production of energy performance certificates when buildings are sold or rented out. The regulations also provide for the display of certificates in Public buildings. The provisions came into force on 04 January 2009.

2.2 The Regulations contain powers to require production of energy performance certificates and a statutory duty for every local authority to enforce the Regulations. It is therefore necessary for enforcement officers to be duly authorised by the Council.

2.3 At present within Angus, Trading Standards Officers already have enforcement powers regulating the provision of Energy Performance Certificates as part of the Housing (Scotland) Act 2006 (Part 3 - enforcement powers in relation to statutory home reports), as the energy performance certificate is part of a home report. This applies only in respect of houses for sale on the domestic property market.

2.4 Regulation 5 of the Energy Performance of Buildings (Scotland) Regulations 2008 require that where a building is sold or let the owner must make a copy of a valid

Energy Performance Certificate for the building available free of charge to a prospective buyer or tenant. In the case of the sale of a property the Energy Performance Certificate is linked to the provision of a home report.

- 2.5 Regulation 9 of the Energy Performance of Buildings (Scotland) Regulations 2008 require that an owner or, where the owner is not the occupier, the occupier, of a public building with a floor area over 1,000 square metres must ensure that an Energy Performance Certificate for that building is displayed within the building in a prominent location.
- 2.6 Scottish Ministers have powers under Section 25 of the Building (Scotland) Act 2003 to make Directions to local authorities where they consider that buildings of any description to which building regulations apply ought to comply with a provision of the regulations. Two Directions have been issued.
- 2.7 The first is the Building (Scotland) Act 2003 Energy Performance Certificate Direction for Existing Public Buildings 2008. This Direction requires that existing buildings with a floor area of more than 1000 square metres and which are occupied by public authorities and institutions providing public services and which can be visited by the public, shall display in a prominent position an Energy Performance Certificate.
- 2.8 The second Direction is the Building (Scotland) Act 2003 Energy Performance Certificate Direction for Existing Buildings 2008. This Direction requires that existing buildings which are to be sold or rented out and which are subject to the Energy Performance of Buildings (Scotland) Regulations 2008, shall have affixed to them an Energy Performance Certificate.
- 2.9 Where non-compliance with the Directions is determined, the local authority must serve a Building Regulations Compliance Notice on the owner in accordance with Section 25(3) of the Building (Scotland) Act 2003.
- 2.10 Building Standards already have powers under the Building Standards (Scotland) Regulations 2004, as amended in 2007 to seek the provision and display of Energy Performance Certificates for all new buildings, which have been the subject of Building Warrant since 1 May 2007.
- 2.11 The enforcement of this legislation is therefore already split between both the Trading Standards and Building Standards services.
- 2.12 The regulation in respect all other circumstances, including domestic rental, and commercial sales and rental properties has not been decided, being left to the local authority to make arrangements for enforcement.
- 2.13 It is agreed by the Head of Planning and Transport and the Acting Senior Service Manager responsible for Trading Standards, that it would be practical for Building Standards Officers to enforce the legislation in respect of new buildings, public buildings and any other circumstances where enforcement is carried out under Building (Scotland) Act only, and, for Trading Standards Officers to enforce in respect of all other properties in relation the provision of certificates on sale or rent. This effectively separates building from trading standards issues in the enforcement. This arrangement will be monitored by both officers and may be changed as experience and volume of work evolves.
- 2.14 Basic training, only in respect of domestic properties, for Angus Trading Standards staff involved in the enforcement has been provided by the Scottish Government during November 2008 as part of the training on home report enforcement under the Housing (Scotland) Act 2006, Part 3.
- 2.15 There is the option for an authorised enforcement officer to issue a penalty charge notice in cases of non compliance. This facility will only be used in accordance with

the Environmental & Consumer Protection Enforcement Policy to ensure a consistent and proportionate approach.

- 2.16 The Committee is therefore asked to grant authority to the Trading Standards Service enforcement officers of the Environmental and Consumer Protection Division and the Building Standards Service of the Planning and Transport Division of the Infrastructure Services Department, to enforce the relevant sections of the Energy Performance of Building (Scotland) Regulations 2008.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 No new resources are being made available for this additional duty. Additional costs in enforcing this legislation cannot be ascertained at present, but it is anticipated that initial costs can be contained within the relevant Divisional revenue budgets. This situation will be monitored and resource implications will be subject to further report if required.
- 3.2 It is not anticipated that any significant income will be generated from the issue of penalty charge notices.
- 3.3 There are therefore no financial implications arising directly as a result of the recommendations contained in this report at this time.

### **4. HUMAN RIGHTS**

- 4.1 There are no human rights implications arising from this report

### **5. EQUALITIES IMPLICATIONS**

- 5.1 The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

### **6. SINGLE OUTCOME AGREEMENT**

- 6.1 This report contributes to the following local outcome(s) contained within the Single Outcome Agreement for Angus.
- The importance and benefits to society of the environment is recognised.
  - Reduction in waste through a sustained increase in recycling and reuse of wastes.

### **6. CONSULTATION**

- 6.1 The Chief Executive, Director of Corporate Services, Head of Law and Administration and Head of Finance have been consulted on the contents of this report.

**Eric S Lowson**  
**Director of Infrastructure Services**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

**E&CP/DS/GK**  
**13/03/2009**