

Committee: **Cabinet**

Date of meeting: **3rd May 2023**

Report Subject: **Enforcement Arrangements for the Energy Performance Of Buildings (England and Wales) Regulations 2012 (as amended).**

Portfolio Holder: **Cllr Helen Cunningham, Deputy Leader/Cabinet Member - Place & Environment**

Report Submitted by: **Team Manager – Trading Standards & Licensing**

Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Governance Audit Committee	Democratic Services Committee	Scrutiny Committee	Cabinet	Council	General Licensing Committee
18.4.23	20.4.23	21.04.23				3.5.23		

1. Purpose of the Report

- 1.1 To seek Cabinet approval of reciprocal arrangements for the enforcement of the Energy Performance of Buildings (England and Wales) Regulations 2012(as amended), in relation to Local Authority owned buildings within Blaenau Gwent and Torfaen Council areas.

2. Scope and Background

- 2.1 As part of the climate Change agenda, initial energy performance legislation introduced in 2008, gave Local Weights and Measures Authorities (Trading Standards) the duty to enforce the requirements of the Regulations within their areas, with the exception of new builds which were then the responsibility of Building Control.
- 2.2 Legislation has been amended and extended over time with a significant amendment to the above Regulations in October 2015. The latter require that Local Weights and Measures Authorities transfer enforcement duties for local authority owned or controlled buildings to another Local Weights and Measures Authority. The Authority is also required to inform the Department for Levelling Up, Housing and Communities of these arrangements (DLUHC) in an annual return.
- 2.3 The principle underlying the above Regulations is to make the energy efficiency of buildings transparent, inform occupiers and users about their building's or systems current energy performance and make recommendations on how to improve energy efficiency. In particular, they require that:
- Energy Performance Certificates (EPC's) and a report providing recommendations as to how the energy efficiency of the building can be

improved is made available to a prospective buyer on the sale or rent of a building (domestic and commercial).

- The same must also be provided for new builds on completion of construction.
 - Such reports have been commissioned before marketing a property and are available within 7 days of first marketing the property.
 - All buildings occupied by a public authority where the total useful floor area is greater than 250m² and frequently visited by the public must obtain and display a Display Energy certificate (DEC).
 - Other inspectional requirements for air conditioning units.
- 2.4 Liaison has been undertaken with relevant Officers within the Regeneration and Community Services Directorate in respect of the Authority's compliance with the legislative requirements as a Corporate Landlord and at this stage, no concerns have been highlighted. The Head of Community Services will report on these matters separately at the appropriate time.

Enforcement

- 2.5 Trading Standards (Local Weights and Measures Authority) have a duty to enforce the Regulations including breaches of the requirements outlined in 2.3 above.
- 2.6 The amendment to the Regulations made in October 2015 set out the responsibility of Local weights and Measures Authorities to transfer enforcement responsibility to another enforcement authority for public buildings over 250m² that they occupy and any other buildings that they sell or rent.
- 2.7 It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate in response to breaches of the regulations. It anticipated that providing advice and information may be sufficient to ensure compliance, if not and the non-compliance continues civil penalties such as penalty charge notices can be issued with a right of appeal to the County Court.
- 2.8 Every local weights and measures authority is required to report on enforcement activity undertaken on an annual basis which will be collated and published by DLUHC and to provide information on their transfer agreements. Enforcement bodies also have responsibility to collect sufficient information on relevant buildings to plan and implement effective enforcement action.
- 2.9 Following discussions with all Gwent Trading Standards Managers, it is proposed that a reciprocal agreement is made between Blaenau Gwent and Torfaen Local Weights and Measures Authorities for enforcement responsibilities within their own local authority areas. Both areas share

similarities in size in order to effectively and equitably meet this obligation. Other Gwent Authorities are seeking to establish similar partnerships.

3. Options for Recommendation

3.1 Option 1 (Preferred Option)

To agree the proposal to provide reciprocal enforcement arrangements with Torfaen County Borough Council, as described in the report.

3.2 Option 2

To reject the proposal.

4. Evidence of how this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan

- 4.1 The statutory requirements of the Energy Performance legislation broadly contribute to the Well-being Goals as set out in Well Being Plan 2018-2023 [Well-beingPlan\(Layout\)-D8.pdf \(blaenau-gwent.gov.uk\)](#) and Corporate Plan 2022/27 [final-corporate-plan-2022.pdf \(blaenau-gwent.gov.uk\)](#) to Respond to the nature and climate crisis and enable connected communities. The legislation seeks to enable potential purchasers and tenants to establish the energy costs of buildings they wish to buy or rent and encourages energy efficiency generally in all buildings including public buildings and new builds. Energy efficiency measures protect the environment, reduce energy costs long term and reduce the depletion of limited resources. Reciprocal arrangements for enforcement in local authority owned buildings increases transparency and standardisation of approach and the independence and objectivity of enforcement decisions.

5. Implications Against Each Option

- 5.1 Budgetary implications – These are considered to be minimal in respect of the preferred option outlined above. Energy performance requirements have been in place for many years and so local authorities should already be aware of their duties and be compliant with the legislation. It is not intended that authorities subject to the agreement would carry out inspections of each other's premises but they would investigate any complaints or intelligence received about non-compliance in that authority area if the matter was not resolved by the Authority concerned.
- 5.2 Reputational risk – The Regulations stipulate requirements for businesses and the Local Authority while placing duties on the Local Weights and Measures Authority to enforce. Risks to reputation could feasibly arise if the Authority is failing in respect of any of these issues or failing to meet Corporate Performance Indicators.

5.3 Legal implications – The Authority risks failing to meet its statutory obligations if the Regulations are unenforced. Enforcement activity, including whether reciprocal arrangements are in place, are a matter of annual Statutory Return as outlined in 2.2 above.

5.4 Resources – Enforcement activity in respect of these Regulations will need to be resourced within the departmental budget and based on an intelligence led operating model.

6. **Supporting Evidence**

6.1 ***Performance Information and Data***

There is no supporting evidence with this report.

6.2 **Expected outcome for the public**

The preferred Option will provide an assurance that compliance with the Regulations in respect of Local Authority Buildings is independently enforced by a separate Local Authority enforcement team.

6.3 **Involvement (consultation, engagement, participation)**

Consultation has been unnecessary on this legal requirement.

6.4 **Thinking for the Long term (forward planning)**

The preferred Option will provide an independent enforcement regime for Local Authority owned buildings as required by the Regulations.

6.5 **Preventative Focus**

The preferred Option seeks to improve compliance of Local Authority owned buildings with the relevant regulations.

6.6 **Collaboration / Partnership Working**

The Draft Agreement proposed has been overseen by the Council's Legal Officers and creates a reciprocal partnership arrangement with Torfaen County Borough Council.

6.7 **Integration (across service areas)**

Liaison with Officers across the Regeneration and Community Services Directorate has been carried out and this will continue in order that obligations of the Authority as Corporate Landlord are in compliance with the relevant regulations covered in this report.

6.8 **Decarbonisation and Reducing Carbon Emissions**

Energy efficiency measures protect the environment, reduce energy costs long term and reduce the depletion of limited resources. Reciprocal arrangements for enforcement in local authority owned buildings increases transparency and standardisation of approach and the independence and objectivity of enforcement decisions.

6.9 ***Integrated Impact Assessment (IAA)***

An Integrated Impact Assessment (IAA) is provided with this report.

7. **Monitoring Arrangements**

7.1 Monitoring of enforcement activity under these Regulation will be undertaken as part of the normal departmental management of the Service and reported annually as mentioned in 2.2 to the Secretary of State for the Department for Levelling Up, Housing and Communities.

7.2 Additionally, a compliance status report will be provided by the Head of Community Services annually to Trading Standards, to assist in monitoring compliance levels of Blaenau Gwent Council Buildings.

Background Documents /Electronic Links

Appendix 1 - Draft agreement proposed with Torfaen County Borough Council.

Appendix 2 – Integrated Impact Assessment

[DCLG Guidance – Improving the energy efficiency of our buildings March 2016.](#)