

Energy Performance Certificates

Enforcement Protocol

between

**the Department of Finance &
Personnel**

and

District Councils

December 2009

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1. INTRODUCTION

The Government's Enforcement Concordat sets out a framework to ensure that enforcement is carried out in an equitable, practical and consistent manner. The basic principles of the Enforcement Concordat are setting clear standards, being open and helpful, acting in a way proportionate to the risk and providing a mechanism for handling complaints. District councils (including Building Control) in Northern Ireland have signed up to the Enforcement Concordat to show their commitment to good enforcement practices.

Enforcement of requirements in relation to the Energy Performance of Buildings (Certificates and Inspections) Regulations (NI) 2008 (as amended) (the EPC Regulations) will be conducted in accordance with the Concordat. District Councils will also adhere to the principles of better regulations ensuring that enforcement is proportionate, consistent, accountable, transparent and targeted in delivering simple and effective regulation in respect of the EPC regulations.

The Department of Finance and Personnel (the Department) currently undertakes the enforcement role in relation to the EPC Regulations. It has been agreed that this enforcement duty will be transferred to district councils for the purposes of enforcing the EPC regulations (see Section 4 for further information).

This enforcement protocol rationalises the transfer and division of this enforcement role from the Department to District Councils. It also sets out how Belfast City Council as the employing authority will undertake its role in co-ordinating EPC enforcement with the other 25 district councils.

The Department will review this Protocol on a regular basis and not later than one year after it first comes into operation. A representative group of Building Control Officers and the Department will meet quarterly to discuss issues arising from operation of the Protocol and for District Councils to inform the Department of the activities that the enforcement officers have undertaken in the previous quarter (see Section 4). The Department will respond to issues raised by this group within one month. If amendments to the Protocol are necessary this will be done in conjunction with and in agreement with Building Control representatives.

2. EPC REGULATIONS - requirements

The EPC Regulations implementing Articles 7, 9 and 10 of the EU Directive on the Energy Performance of Buildings require:-

1. the production of an EPC for all dwellings available for sale from 30th June 2008 (Regulation 5);
2. the production of an EPC for all new build properties from 30th September 2008 (Regulation 6);
3. the production of an EPC for all other buildings sold and all rentals from 30th December 2008 (Regulation 5);
4. the production and display of a Display Energy Certificate (DEC) for larger buildings occupied by public authorities and by institutions providing a service to the public and therefore frequently visited by these persons (Regulation 11); and
5. the regular inspection (at least every 5 years) of relevant air-conditioning systems (Regulation 15) (these requirements commence from 4th January 2010 for larger systems (more than 250 KW) and from 4th January 2011 for all systems with an effective rated output of more than 12 KW).

EPCs are valid for not more than 10 years (Regulation 8 (3)) and must be accompanied by a report that contains recommendations for the cost-effective improvement of the energy performance of the building (Regulation 7).

DECs are valid for not more than 12 months (Regulation 11(3)) and must be accompanied by an advisory report (containing recommendations for cost-effective improvement of the building's energy performance). The advisory report is valid for 7 years (Regulation 11(4)).

EPCs may only be produced by Accredited Energy Assessors (Part 5 of the EPC Regulations).

3. ENFORCING THE REGULATIONS

The Department will be the enforcement authority in relation to all District Council buildings.

Belfast City Council will act as the employing authority in relation to all other enforcement activities of the EPC Regulations. They will work with the other district councils in ensuring the EPC regulations are being properly enforced. In accordance with the mechanisms set out below. However it will be a matter for the relevant District Council to undertake the issuing of penalty change notices within its own area.

Belfast City Council as the employing authority will have an agreed method with the other district councils for dealing with EPC enforcement in a spirit of collaboration ensuring that the requirements of the regulations are being adhered to across all district council areas. Both the employing authority and district councils will work together in continuing to exchange information and raise awareness which will result in the public being fully aware of their responsibilities and the requirements for producing lawful and valid EPCs and associated reports.

The Department has undertaken a range of compliance-based enforcement measures to date. These include press and magazine adverts and editorials; a series of public information seminars (both before and after phase 1 requirements came into operation) for property professionals and professional organisations such as the Construction Employers Federation, the Royal Institution of Chartered Surveyors, the Law Society etc.; mailshots to all estate agents and letting agents advising them of the requirements; follow-up visits to estate agents to provide further material and to gauge compliance by selecting details of properties 'on the market' and writing to the relevant 'owner / landlord' requesting details of the applicable EPC; and a dedicated website (www.epb.dfpni.gov.uk) where detailed information may be accessed online.

With assistance from the Department as appropriate the authorised officers who will be employed by Belfast City Council will adopt a similar compliance based approach to enforcement, particularly during the early period of them undertaking their roles. This will involve helping and encouraging stakeholders to understand the legal requirements; creating opportunities for feedback from stakeholders, publicising what they are doing; and reporting regularly to the Department.

Authorised Officers in liaising with the district councils and the Department will adopt a risk assessment approach to determining how best to target advice and publish information on their enforcement activities and associated standards.

4. MONITORING COMPLIANCE

District councils will report quarterly to the Department on the following:-

- Awareness raising activities undertaken;
- Stakeholder feedback;
- Numbers of incidents when EPCs have not been provided, and related information;
- Action taken when EPCs have not been provided;
- District council conformity with the requirements of the regulations in relation to DEC's; and
- Monitoring of inspection regimes for air-conditioning systems (from January 2010) for which Building Regulations applications have been deposited.

The full list of monitoring information is at Appendix A attached. Belfast City Council will co-ordinate the responses from other district councils, and submit the relevant information electronically in a format to be agreed by the Department.

Additionally, Belfast City Council will establish cross-Council benchmarking information and progress actions to correct gaps in performance highlighted and to share ideas on best practice, and will report regularly on its enforcement activities as employing authority and will collate information from the other district councils and report them back to the Department.

The Department will include EPC enforcement work in the list of auditable functions which its own Internal Audit unit may scrutinise periodically, and may raise issues for discussion at the quarterly meetings with district councils representatives.

5. INFRINGEMENTS OF THE EPC REGULATIONS

Infringements of the EPC Regulations will come to the attention of the authorised officers and the district councils in a number of ways. These include:-

- As part of the final inspection process where building regulations apply;
- Complaints;
- Referrals from, for example, the Department, Trading Standards Officers, etc;
- Through targeted investigations by the authorised officers; and
- Where district councils have reason to believe a breach of duty has been committed.

All reported infringements of the regulations will be investigated and appropriate and reasonable action will be taken in accordance with the agreed Enforcement Protocol and the EPC Regulations.

6. ENFORCEMENT ACTIONS

Where an authorised officer is advised of a situation which **may** result in a future breach of the legislation (for example someone indicates that they will not be providing an EPC), it will deal with this either by visiting the potential or prospective perpetrator to provide advice or by providing advice in writing.

In cases where Belfast City Council is advised that the Regulations **have been** breached it will investigate formally and based on the outcome decide on the future course of action.

In cases where a breach has been established, Belfast City Council will make recommendations to the relevant district council (which may include consideration of the issue a Penalty Charge Notice according to the provisions in Part 7 of the Regulations).

It will be for the relevant district council to determine if the issue of a Penalty Charge Notice is the correct course of action. If so, it will be for that council to issue the Penalty Charge Notice.

It will be for the relevant district council to review issue of the Penalty Charge Notice if requested and confirm or withdraw it (Regulation 36), to progress the Penalty Charge Notice and to respond to any appeals to the County Court in accordance with the provisions of Regulation 37.

7. FINANCING EPC PILOT SCHEME

The Department has agreed to fund 4 Building Control Officers to undertake the EPC enforcement duties. Belfast City Council shall be the employing authority for these Officers, and all other district councils will authorise the Officers to carry out enforcement duties on their behalf within each council area, within the limits described in paragraph 4. The funding package will be paid to Belfast City Council and will include an amount for promotional work and will not exceed [£x] in 2009/10.

Belfast City Council will submit quarterly bills with all relevant supporting documentation completed by the Head of Building Control and confirmed by the Chief Financial Officer to the Department in respect of the costs for operating as the employing authority.

The Department has agreed to underwrite the cost of prosecutions progressed by district councils on the understanding that the Department is made aware in advance of each case.

Departmental officials, including from its Internal Audit, will be given access to all relevant documentation to facilitate random verification spot-checks on the work being undertaken across Northern Ireland by the appointed EPC enforcement officers.

District councils will be entitled to retain the income from Penalty Charge Notices solely to resource enforcement duties in this regard, and shall detail this income on the pro-forma attached at Appendix B.

Appendix A

MONITORING INFORMATION

1. Awareness raising activities undertaken, split by:-
 - type (and where appropriate, District Council location) of activity (adverts, leaflets, website material, visits, surveys, workshops, etc);
 - number of stakeholders targeted; and
 - type of stakeholder (estate agents, solicitors, individuals).

2. Stakeholder feedback routes by:-
 - type (e.g. newsletters, seminars, open meetings, new fora created, existing fora used (LSPs, Landlords Forum), advice helpline, single point of contact for EPC-related queries, etc.);
 - frequency of contact; and
 - nature of information communicated.

3. Number of certificates scrutinised, by property type and District Council area and how quickly dealt with.

4. Outcome of targeted monitoring of inspection regimes for relevant air-conditioning systems

5. Numbers of complaints by:-
 - type and District Council area: (non - provision of valid EPCs, failure to display a valid DEC etc); and
 - action taken by type of action.

6. Numbers of Penalty Charge Notices issued by type of offence and associated income (to be provided on form at Appendix B).

All authorised officers may wish to refer to the Enforcement Concordat Good Practice Guide for further information.

PENALTY CHARGE INCOME NOTIFICATION

Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (as amended)

District Council.....

Penalty Charge Notice (PCN) Income quarter ended.....

Date Notice Served	Brief detail on case	Income received (date & amount)

Completed by.....
(Head of Building Control)

Confirmed by.....
(District Council Chief Financial Officer)

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