

Making better use of Energy Performance Certificates and data

CLG consultation 2010

Response of The Trading Standards Institute

May 2010

25 May 2010

The Trading Standards Institute welcomes this opportunity to respond to the CLG consultation on making better use of Energy Performance Certificates and data.

The Trading Standards Institute is the UK national professional body for trading standards professionals working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our 3,200 Members are represented at the highest level of government, both nationally and internationally.

TSI provides accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has sought the view of our Lead Officer on Property, Lucia Smeraldi. If you require clarification on any of the points raised in the response, please do not hesitate to contact Lucia at email lproperty@tsi.org.uk or by telephone on 0845 608 9517.

TSI does not regard this response to be confidential and is happy for it to be published.

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General Comments

The Trading Standards Institute is most supportive of initiatives and actions in saving energy and reducing carbon emission.

We are keen to engage with the Government to produce an EPC regime that encourages compliance and supports enforcement in delivering the objectives of the Energy Performance of Buildings Directive.

We do feel, however, that the EPC Regulations need more than a few minor “tweaks” in order to operate successfully.

Please note that this response does not include any comments on the EPC regime for domestic property sales recently created as a result of the suspension of HIPs.

We now turn to the specific questions posed in the consultation document.

Chapter 2: Making better use of energy performance data

Question: Do you agree with our approach to giving access to 1) address level data and 2) anonymised data?

The Trading Standards Institute is concerned by your proposal for the release of level 1 data which could be abused by parties using pressure selling techniques, or scare tactics, to encourage persons in low rated properties to purchase their products in order to improve their ratings. We are agreeable to your proposals regarding the anonymised data.

Question: Are the safeguards relating to the sharing of address data adequate?

The safeguards as outlined do not provide for any checking or auditing of systems, or of what is being done with the details obtained. Without an auditing system in place there is scope for organisations to ‘agree’ to comply, but then abuse the data without discovery.

Question: Do you agree that a list of DEC's (Display Energy Certificates) for public buildings should be published?

Yes. This would be a very helpful tool and, if listed by area, it would make checks easier to conduct and follow-up on.

Chapter 3: Energy performance certificates for houses in multiple occupation

Question: Do you agree that an EPC for a HMO should be required and triggered when a room in an HMO is rented out?

Yes. There is no reason why landlords of such properties should not also be encouraged to improve their energy efficiency, particularly given that many of their tenants will be persons on low incomes who would benefit from such improvements.

Question: Do you agree that EPCs extended to HMOs should have a validity period of 10 years?

Yes. There should be parity in the requirements for EPCs.

Chapter 4: Energy performance certificates for short-term holiday lets

Question: Do you agree that the guidance should be amended to provide that an EPC must be produced when a holiday let is rented out on a short term basis?

Yes. Such accommodation is generally booked 'unseen' and EPCs will assist persons in deciding which accommodation is likely to best suit their needs. If the EPC lasts for 10 years, then this would not place an undue 'burden' on the landlords. Given the variability of the climate, such information may prove very helpful to holiday-makers when booking their breaks.

Question: Do you agree that this should only apply to holiday lets that are rented out for a combined total of four months or more of the year?

TSI would like to know the significance of the 'combined total of four months'. What percentage of holiday lets would this catch? Given that the aim of the EPC

regime is to improve the housing stock as a whole, should there be any exemptions at all?

Question: Do you agree that the EPC should have a validity period of 10 year?

Yes. The requirements for holiday lets should not be more onerous than they are for other rented accommodation.

Chapter 5: Energy performance certificate ratings in property advertisements

Question: Do you agree that advertisements for the sale or rent of domestic and non-domestic property should include details of the EPC rating?

Yes. The Trading Standards Institute agrees that all advertisements should carry details of the EPC rating. In defining 'advertisement' it must be borne in mind that advertisements for domestic and non-domestic properties for sale or rent differ in format and content, so consideration must be given to ensure that none 'escape' requirements to meet legal provisions. Similarly, the full EPC chart should appear in all domestic and non-domestic particulars; but since their formats differ, the definition of particulars will require amendment to something broader to ensure all are caught.

In making it a requirement for EPC rating to appear in advertisements, there needs to be a duty created for agents to be responsible for putting ratings into the advertisements, together with the ability for officers to impose a penalty charge notice on agents themselves for failure to do so. A good model would be for responsibility to pass from the 'relevant person' (owner or landlord) to the agent upon instruction to market the property. This should overcome the present situation where agents have no incentive to encourage their clients to commission an EPC at an early stage as there is no recourse against the agent.

Agents, upon instruction, should also be made responsible for including EPC charts, etc, in property particulars; again, subject to a penalty charge notice for failure to do so.

Officers must be given specific powers to inspect EPCs at the premises of an agent, and a duty created for agents to produce EPCs, evidence of their commission, property particulars, etc, at the request of an officer. These should be produced at the time of the request being made, since they should be in place (or at least commissioned we assume) at the time of marketing. The waste of officer resources

in carrying out unnecessary repeat visits would be thus avoided. Provision should also be created for the issue of penalty charge notices if agents do not comply with requests or obstruct officers in their duties.

If property owners/landlords continue to be 'relevant persons' with responsibilities for EPC provision, even when an agent has been instructed, then a specific duty must be created for agents to provide officers with the names, addresses and appropriate contact details for them on request. At present there is no such duty and officers cannot request the information because these are 'civil breaches' not 'crimes', for which they do have powers of access. Again, provision should also be created for the issue of penalty charge notices if agents do not comply with such requests for information or obstruct officers in their duties.

The sections of the EPC Regulations relating to penalty charge notices need to be amended to allow officers to impose penalty charges of 12.5% of the rateable value of commercial properties on relevant persons and/or agents for failure to comply with EPC requirements, under all circumstances. At present, the wording is such that this level of penalty can only be levied following a complaint, not as a result of proactive work undertaken by officers.

Question: Do you agree that the scheme should be made compulsory by implementing the relevant provision in EPBD2 at an early opportunity?

Yes. The scheme should be made compulsory as soon as possible by implementing this provision of EPBD2 early. It should also be a requirement that ratings/charts should appear in advertisements and particulars on day one of marketing in order to remove any ambiguity or scope for system abuse, as EPCs can be commissioned and turned around in quite a short time.

Question: Do you agree with the proposed coverage of all properties advertised for sale and rent including social rented dwellings marketed through choice-based lettings?

Yes. TSI agrees with the proposal that all properties advertised for sale and rent should be covered by these requirements, as this will highlight to Councils the poorer performing social housing in their areas and may enable them to improve standards / encourage the improvement of standards so that occupants are not disadvantaged in comparison to tenants of non-social accommodation.

Chapter 6: Extending display energy certificates to commercial buildings

Question: Do you agree that the requirements to produce DEC's should be extended to commercial properties?

Yes. There should be parity between commercial and public buildings.

Question: Do you agree that DEC's in commercial buildings should be updated every year and Advisory Reports updated every seven years in line with the current requirements for buildings occupied by public authorities?

TSI is not in a position to comment on the suitability of these frequencies for updating DEC's and Advisory Reports, but we support parity for the regimes for public and commercial buildings. We are curious about the claim that updating a DEC saves money and carbon, as DEC's are expensive and savings will only be achieved if the owners/landlords can afford to make changes. Renewing the DEC does not, of itself, make savings.

Chapter 7: Mandatory lodgement of air conditioning reports

Question: Do you agree that the 2007 Regulations should be amended to make it mandatory to lodge ACR's on the England and Wales non-domestic EPC register?

In order to enforce the Regulations for ACR's they do need to be lodged centrally on a register. Further, we suggest that there should be a database of all existing air-conditioning systems, including information such as their capacity and the relevant person so that the two databases may be compared to check compliance.

We would suggest that the ACR regime works in a similar way to that of television licensing, in that all new systems must be registered by engineers on installation. Similarly, any repairs/installation of new parts or servicing would also trigger the requirement to register system information on the central register. This would serve to identify any systems that had slipped through unrecorded.

We do not believe that Trading Standards Officers are the appropriate enforcement body for ACR's. Compliance should be enforced by an entirely separate independent body, with the technically qualified officers, who can conduct random checks on systems, etc.

We also believe that it should be made a requirement that a copy of the ACR be kept at the premises, available for inspection, in addition to that held by the relevant person.

Question: What information would you consider should be recorded on standardised ACRs?

TSI is not in a position to comment on this.

Question: Do you agree that the fee for lodging ACRs on the England and Wales non-domestic EPC register should remain the same as for lodging non-domestic EPCs? If not, how do you think the fee should be structured?

Again, TSI is not in a position to comment on fee structures. We are, however, concerned that whilst this consultation makes reference to what appear to be low cost 'lodgement fees' for EPCs - £1.15 for domestic and £5.36 for non-domestic DEC's and now ACRs – TSI has heard that accreditation schemes charge their inspectors substantially higher fees to actually lodge these EPCs on the central register. If this is the case, then it would presumably also happen with ACRs, thus making this 'fee consultation' somewhat redundant. Perhaps this is an area that should be looked into further?

Chapter 8: Clarifying when an energy performance certificate is required on the sale or letting of buildings

Question: Do you agree that the 2007 Regulations should be amended as proposed to clarify when an EPC is required during the process of selling or renting out a non-domestic building?

Yes. The 2007 Regulations need to be amended. The present problem is that the Regulations allow the EPCs to be provided to the prospective purchaser/tenant at a number of different points in time. This needs to be reduced to one precisely defined time for both domestic and non-domestic properties. The phrase 'the earliest opportunity' is also nebulous and open to interpretation.

A second failing of the Regulations is that they refer to the 'relevant person' (owner/landlord) providing information to prospective purchasers/tenants. This misses the point that most relevant persons do not do this. In most cases estate/lettings/commercial agents provide such information, which is why many EPCs are not provided until exchange/signing of contracts. Agents are not 'relevant

people', nor are they subject to penalty charge notices, so there is no incentive for them to ensure compliance.

Question: Do you agree that the option to defer making an EPC available until exchange of contracts should be removed?

Yes. This option should be removed. If EPCs are to truly serve the purpose of enabling prospective purchasers/tenants to make an informed choice; then EPCs should be in place at the time that a property is first placed on the market. Advertisements should carry a minimum of a rating letter, but preferably an EPC chart – see response to Chapter 5 questions. If properties are to be marketed without an EPC in place, then EPCs should be in place no more than 14 days after first day of marketing, as EPCs can be turned around in a very short time.

EPCs should be given to prospective purchaser/tenants when they request particulars for the property and/or view it. It should be noted that particulars for commercial properties differ to those of domestic ones, so the present definition of 'particulars' will have to be changed to avoid many particulars being caught. The unique reference number for the EPC should also be provided, so that it can be checked against the database.

Chapter 9: EPC online tool

Whilst the online tool, as outlined, is a step in the right direction what is required is advice which is specific to particular types of building and their construction, rather than a one size fits all approach. Further, people need to be able to source advice on how best use their buildings in an efficient manner given the construction and how they themselves use the building in terms of the business they operate, or the composition of their family and lifestyle patterns.

Further issues to be addressed

One further point concerns the provision of a 'due diligence defence' in the 2007 Regulations. This is a defence that is traditionally associated with criminal law offences that carry Level 5 penalties or possible imprisonment on conviction for the offences involved. The inclusion of this defence in relation to civil breaches with penalty charge notices of some £200 is entirely inappropriate and excessive. There

is a more than adequate appeals process provided for in the legislation and this should suffice.

To conclude, there are no 'quick fixes' to improve compliance under the present EPC regime. Whilst requiring EPC information in advertisements and specifying the point at which EPCs must be provided to prospective purchasers and tenants will help, many other elements of the Regulations must also be amended, as outlined above, in order to support the changes, or the overall situation will not improve. The present Regulations do not provide the tools with which to do the job.

In support of Hampton principles, officer authorisation to enforce should be extended to all local authorities. In this way duties could be allocated to officers within those functions who interact with the relevant people and/or their agents on a regular basis. This would serve to both the reduce the burden on business and save local authority resources by allowing checks to be incorporated into existing work programmes.

Similarly, some fundamental work must be carried out centrally before work on compliance within the ACR regime can be started. It needs to be enforced by officers with technical knowledge of air-conditioning systems and how they work. Moreover, these officers need to have access to databases that show where air-conditioning systems are located with their capacities, etc and when and by whom they were last inspected, together with a copy of that report.

Trading Standards Institute – May 2010
