

To Lord Filkin
Chairman
Select Committee on the Merits of Statutory Instruments
House of Lords
London SW1A 0PW

Note to the members of the House of Lords Select Committee on the Merits of Statutory Instruments.

This note sets out the views of Friends of the Earth on the Home Information Pack (No. 2) Regulations 2007 (SI 2007/1667) and Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2007 (SI 2007/1669).

Friends of the Earth welcomes this opportunity to give our views on the above instruments.

Firstly it is important to point out that Friends of the Earth does not have a position on Home Information Packs (HIPS) beyond their role as a vehicle for Energy Performance Certificates (EPCs).

Friends of the Earth strongly rejects the charge of 'gold-plating' levelled at the proposed model of implementation of EPCs by the Better Regulation Commission (BRC), The Conservative Party, RICS and others. We think the Government's chosen model of implementation represents a sensible one designed to maximise the environmental effectiveness of the certificates. If anything the Government has been much too cautious in its refutation of the 'gold-plating' charge.

Specifically those alleging 'gold-plating' typically make three claims:

- 1 That the Directive stipulates that EPCs have a ten year lifespan rather than a new one being required each time a home is sold.
- 2 That EPCs could be produced at any point during the home buying process.
- 3 That the Directive does not require them to come in until 2009.

Friends of the Earth disagrees with each point.

Firstly Article 7 of the Energy Performance of Buildings Directive states that "The validity of the certificate shall not exceed 10 years" it does not state that the lifespan must be 10 years.

More importantly, going for the maximum 10 year lifespan would make it very difficult to fulfil the second section of that article which states that: "The energy performance certificate for buildings shall include reference values such as current legal standards and benchmarks in order to make it possible for consumers to compare and assess the energy performance of the building.

The certificate shall be accompanied by recommendations for cost-effective improvement of the energy performance.”

Ten year old information on the cost of cavity wall insulation or the most efficient boiler would be entirely useless. It would be worth the Committee imagining what a ten year old EPC received today might look like. Not only would all the costs of measures be ten years out of date but it would be highly unlikely to have either an email or web address for more information, and any phone numbers would more than likely be wrong. Indeed it could be argued that the Government is not actually going beyond the minimum implementation of the Directive at all, merely constructing a model implementation which allows both parts of Article 7 to be met.

On their second ‘gold-plating’ accusation it is correct that the directive does not require EPCs to be provided at the first point of marketing but there are strong arguments why bringing it forward in the process is a sensible move. Firstly making energy performance one of the first pieces of information that potential buyers see about a property will increase its relative importance, encouraging sellers to make changes before going to market and buyers to act. Secondly it will maximize the length of time a buyer has to arrange for work to take place on the property to significantly raise the energy performance before they move in (research shows that the period when a property is empty is when homeowners are most likely to undertake more major work such as solid wall insulation). Prospective buyers will be able to take the EPC to mortgage lenders who may be able to use the information to offer them access to new ‘green’ mortgages (to improve the property) as these are developed or other financial products.

Thirdly the suggestion by the BRC that just because the EPC could wait until 2009 to come in, it therefore should, is ludicrous. Everything we learnt from the Stern Review and the UN work on climate change shows that urgent action is needed now and the economic cost of acting immediate is lower than the cost of waiting to take action. The recent UN IPCC report on climate change mitigation measures identified energy efficiency measures as having the potential to considerably reduce CO2 emissions while having net economic benefits and positive social welfare impacts.

Not only is the charge of ‘gold-plating’ misplaced but Friends of the Earth believes the term itself is unhelpful and inaccurate. This is a pejorative term which implies that any environmental regulation that goes beyond the absolute minimum is an unnecessary burden and to be accepted only under extreme circumstances.

Friends of the Earth believes that if the UK wants to show leadership in tackling climate change we should be seeking to have the best and most ambitious environmental regulation in Europe rather than the weakest.

Lord Davidson stated in his recent report on the implementation of EU directives that *“it is sometimes beneficial for the UK economy to set or maintain regulatory standards which exceed the minimum requirements of*

European legislation. The EU may not always set the most appropriate level of regulation. The decision to introduce or maintain higher standards or stricter regulatory regimes than is required by EU directives could bring benefits as well as costs”.

We agree with Yvette Cooper when she told the House of Commons on 16 May: “we are going beyond the minimum requirements for energy performance certificates set out in the EU directive. However, that is not gold-plating; it is green-plating, and we make no apology for that.”

Comments on the interim measures:

Friends of the Earth strongly supports the Government’s chosen model of implementation of EPCs, however we have concerns about the interim measures contained in the Statutory Instruments being considered.

Under the circumstances where there was such a significant shortfall in the numbers of accredited Energy Assessors being available for the 1 June launch we believe the Government had no choice but to take some form action.

The government has stated that rather than setting firm dates for the roll out of EPCs to homes beyond those with 4 bedrooms it will wait for the DEAs to become available. This seems a perverse logic and could actually serve to slow the rate at which Energy Assessors become accredited rather than increase it. Setting firm dates would have made it clear to DEAs in training that the demand will exist for their skills once they are accredited whereas the existing plan gives little certainty. This has not been helped by statements by the Secretary of State for Communities and Local Government which failed to give a firm guarantee that EPCs would be required on all homes even by the end of the year.

We also disagree with the decision to allow sellers to commission EPCs at the point of marketing but not provide them until exchange of contracts. It is important during the first days of EPCs for consumers to become familiar with the certificates as they are going to exist in the future (after the rules revert to an obligation to provide an EPC at the first point of marketing) so that the advantages of the certificates for potential buyers become clear.

The decision to delay by two months and phase in by bedrooms and suspend the requirement to provide an EPC upfront has served to create further confusion.

Friends of the Earth thinks that a simple short delay plus a decision to meet the accreditation costs of trained by unaccredited DEAs would have indicated that the Government was not being blown off course and that it was firm in its choice of model of implementation.

We believe the interim measures are an over-reaction to both the RICS legal challenge and the shortage of accredited DEAs. While the problems with the

interim arrangements should be pointed out and the Government deserves criticism for its handling of the introduction of these measures, we seen no value in further compounding the confusion and uncertainty buy rejecting the interim measures in the absence of firm evidence that they are failing (or even hindering) to bring forward the accreditation of the required numbers of energy assessors.

Friends of the Earth continues to believe that EPCs are a crucial policy for tackling the contribution to climate change from our homes and will continue to push for their rapid introduction in a manner that maximizes their environmental effectiveness.

I hope these comments are useful and I hope you are able to consider them despite their late arrival. Please do not hesitate to contact me if you are any further questions.

Yours sincerely

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