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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 315**

**The Energy Performance of Buildings (Scotland)  
Amendment (No. 3) Regulations 2012**

**Citation and commencement**

1. These Regulations may be cited as the Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 and come into force on 21st December 2012.

**Amendment of the Energy Performance of Buildings (Scotland) Regulations 2008**

2. The Energy Performance of Buildings (Scotland) Regulations 2008(1) are amended in accordance with regulations 3 to 8.

**Interpretation**

3. In regulation 2(1) (interpretation)—

(a) after the definition of “asset rating” insert—

““authorised recipient” means a person or body specified in Part 1 of Schedule 1;”;

(b) after the definition of “dwelling” insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(2);”;

(c) after the definition of “enforcement authority” insert—

““excluded building” means—

(a) a building owned, occupied or used from time to time by any of the naval, military or air forces of the Crown, the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the Royal Family;  
or

(b) used for the purpose of a prison or a young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989(3));

“Framework Regulations” means the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012(4);

“green deal plan” has the same meaning as in section 1 of the Energy Act 2011(5);

“green deal relevant person” means—

(a) a person who is authorised to act as a green deal provider by virtue of the Framework Regulations;

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(1) S.S.I. 2008/309 as amended by S.S.I. 2008/389, 2012/190 and 2012/208.

(2) 2000 c.7 as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(3) 1989 c.45 as amended by section 23(1) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(4) S.I. 2012/2079.

(5) 2011 c.16.

- (b) a body specified or authorised for the purposes of section 3(1)(a) of the Energy Act 2011; or
- (c) a person who operates a scheme for the purposes of assessing whether persons are qualified to act as advisors in relation to green deal plans;””; and
- (d) after the definition of “reference value” insert—
  - ““report reference number” means the unique reference under which the energy performance data relating to an energy performance certificate for a building or building unit is entered onto the register;”.

#### **Assessment of energy performance**

4. For regulation 7 (assessment of energy performance) substitute—

##### **“Assessment of energy performance**

7. The Scottish Ministers must approve—
- (a) a methodology of calculation of the energy performance of buildings or building units, including methods for calculating asset ratings of buildings or building units, based on the general framework set out in Annex 1 to Directive 2010/31/EU of the European Parliament and of the Council; and
  - (b) ways in which the energy performance of buildings or building units, as calculated in accordance with the methodology, must be expressed.”.

#### **Disclosure of general access data**

5. For regulation 12 (disclosure to approved organisation) substitute—

##### **“Disclosure of documents**

- 12.—(1) The keeper of a register may disclose—

- (a) the energy performance certificate; and
- (b) the recommendations report,

for a building or building unit to any person if the conditions in paragraph (2) are met.

- (2) The conditions are that—

- (a) a request for disclosure of the document to the person has been made by means of a website operated by the keeper; and
- (b) the request includes the report reference number for the energy performance data relating to the document.

##### **Disclosure of data relating to a particular building or building unit**

12A.—(1) The keeper of a register may disclose energy performance data relating to a particular building or building unit to an authorised recipient if all of the conditions in paragraph (2) are met.

- (2) The conditions are that—

- (a) a request for disclosure of the data to the authorised recipient is made—
  - (i) by means of a website operated by the keeper; or

- (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
  - (b) the request includes—
    - (i) the full address (excluding the postcode) of the particular building or building unit to which the data relates;
    - (ii) the full postcode of that building or building unit; or
    - (iii) the report reference number for the energy performance data relating to the building or building unit;
  - (c) the disclosure is made subject to—
    - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
    - (ii) the conditions set out in Part 3 of Schedule 1; and
  - (d) the particular building or building unit to which the data relates is not an excluded building.
- (3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.
- (4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(c).
- (5) For the purposes of this regulation, regulation 13 and Schedule 1, an opt-out is in effect in respect of data relating to a building or building unit where—
- (a) the owner or occupier of the building or building unit has notified the keeper that the data is not to be disclosed so as to enable contact to be made with the owner or occupier by a person to whom data is disclosed;
  - (b) the notice to the keeper was given in writing, or by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such notices; and
  - (c) the notice has not been withdrawn by the owner or occupier (by the means referred to in sub-paragraph (b)).”.

### **Disclosure of bulk access data**

6. For regulation 13 (disclosure to enforcement authorities and/or the Scottish Ministers) substitute—

#### **“Disclosure of bulk access data**

**13.**—(1) The keeper of a register may disclose energy performance data to an authorised recipient if all of the conditions in paragraph (2) are met.

- (2) The conditions are that—
  - (a) the authorised recipient has made a request for one or more specific descriptions of data to the keeper;
  - (b) the request is made—
    - (i) by means of a website operated by the keeper; or

- (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
  - (c) the data does not include any information revealing the location of an excluded building (or any information from which the location of such a building can be deduced);
  - (d) the disclosure is made subject to—
    - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
    - (ii) the conditions set out in Part 3 of Schedule 1; and
  - (e) the data does not relate only to a particular building or building unit.
- (3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.
- (4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(d).”.

### **Disclosure of energy performance data**

7. For regulation 14 (use of information by the Scottish Ministers and/or the keeper of the register) substitute—

#### **“Disclosure of data**

- 14.—(1) The keeper of a register must when requested to do so disclose energy performance data—
- (a) to an enforcement authority for the purposes of their duty to enforce these Regulations; or
  - (b) where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.
- (2) The keeper may disclose energy performance data to the Scottish Ministers for the purpose of enabling the Scottish Ministers to carry out any function under or in connection with these Regulations, or for statistical or research purposes.”.

### **Disclosure of data: purposes and conditions**

8. Insert the Schedule contained in the Schedule to these Regulations as Schedule 1 to the Regulations.

### **Amendment of the Energy Performance of Buildings (Scotland) Amendment Regulations 2012**

- 9.—(1) The Energy Performance of Buildings (Scotland) Amendment Regulations 2012(6) are amended in accordance with paragraph (2).
- (2) Regulations 9 (disclosures to approved organisations), 10 (disclosures to enforcement authorities and/or the Scottish Ministers) and 11 (use of information by the Scottish Ministers and/or the keeper of the register) are revoked.

**Amendment of the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012**

**10.**—(1) The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012<sup>(7)</sup> are amended in accordance with paragraph (2).

(2) Regulations 9 (assessment of energy performance) and 13 (use of information by the Scottish Ministers and/or the keeper of the register) are revoked.

St Andrew's House,  
Edinburgh  
20th November 2012

*DEREK MACKAY*  
Authorised to sign by the Scottish Ministers