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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 170**

**EUROPEAN COMMUNITIES**

**The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008**

*Made - - - - 10th April 2008*

*Coming into operation 30th June 2008*

The Department of Finance and Personnel, being a Department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the energy performance of buildings and in exercise of the powers conferred by section 2(2) of the said Act, hereby makes the following Regulations.

**PART 1**

**INTRODUCTORY**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008.

(2) Subject to regulation 4 and 6(1) and notwithstanding regulation A5 of the Building Regulations (Northern Ireland) 2000<sup>(3)</sup>, these Regulations apply to all buildings including buildings which would otherwise be exempt from building regulations by virtue of regulation A5.

(3) Each provision of these Regulations referred to in column (2) of the Table in the Schedule shall come into operation on the date referred to in column (1) of that Table, for the purposes referred to in column (3).

**Interpretation**

2.—(1) In these Regulations—

“accreditation scheme” means a scheme approved by the Department in accordance with regulation 19;

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(1) S.I. 2004 No. 3328

(2) 1972 c. 68

(3) S.R. 2000 No. 389, as amended by S.R. 2005 No. 295, S.R. 2006 No. 355 and S.R. 2006 No. 440

“advisory report” means a report issued by an energy assessor, after his energy assessment of the building, which contains recommendations for the cost-effective improvement of the energy performance of the building;

“air-conditioning system” means a combination of all the components required to provide a form of air treatment in which the temperature is controlled or can be lowered, and includes systems which combine such air treatment with the control of ventilation, humidity and air cleanliness;

“asset rating” means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of a building, calculated according to a methodology approved by the Department;

“building” means a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of a building which has been designed or altered to be used separately;

“Department” means the Department of Finance and Personnel;

“display energy certificate” means a certificate that complies with regulation 12;

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“effective rated output” means the maximum calorific output (expressed in kilowatts) specified and guaranteed by the manufacturer of the system as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;

“energy assessor” means an individual who is a member of an accreditation scheme in accordance with regulation 19;

“energy performance certificate” means a certificate that complies with regulation 8;

“inspection report” means a report issued by an energy assessor in accordance with regulation 16;

“nominated date” means, in relation to a display energy certificate, a date not more than 3 months after the end of the period over which the operational rating is calculated, which is nominated by the energy assessor who issued the certificate;

“operational rating” means a numeric indicator of the amount of energy consumed during the occupation of the building over a period of 12 months (unless regulation 13(3) applies), ending not earlier than 3 months before the nominated date, calculated according to a methodology approved by the Department;

“recommendation report” means a report that contains recommendations for the cost-effective improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate;

“relevant person” means—

- (a) in relation to a building which is to be sold, the seller;
- (b) in relation to a building which is to be rented out, the prospective landlord;
- (c) in relation to a building in circumstances where regulation 6 applies, the person responsible for having the construction work carried out ; and
- (d) in relation to an air-conditioning system, the person who has control of the operation of the system.

(2) Unless otherwise defined in these Regulations, terms used in these Regulations have the same meaning as in Directive [2002/91/EC](#) of the European Parliament and the Council on the energy performance of buildings<sup>(4)</sup>.

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(4) O.J. No. L1, 4.1.2003, p. 65

### **Prospective buyer or tenant**

3. A person becomes a prospective buyer or tenant in relation to a building when he—
- (a) requests any information about the building from the relevant person or his agent for the purposes of deciding whether to buy or rent the building;
  - (b) makes a request to view the building for the purposes of deciding whether to buy or rent the building; or
  - (c) makes an offer, whether oral or written, to buy or rent the building.

## **PART 2**

### **DUTIES TO PRODUCE ENERGY PERFORMANCE CERTIFICATES**

#### **Application of Part 2**

- 4.—(1) This Part does not apply to—
- (a) buildings that are used primarily or solely as places of worship;
  - (b) temporary buildings with a planned time of use of 2 years or less;
  - (c) industrial sites, workshops and non-residential agricultural buildings with low energy demand; and
  - (d) stand-alone buildings with a total useful floor area of less than 50 m<sup>2</sup> that are not dwellings.
- (2) Nothing in this Part requires an energy performance certificate to be given or made available to an owner, a prospective buyer or tenant at any time before the construction of the building has been completed.

#### **Energy performance certificates on sale and rent**

- 5.—(1) Subject to paragraph (4), this regulation applies where a building is to be sold or rented out.
- (2) The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant—
- (a) at the earliest opportunity; and
  - (b) in any event before entering into a contract to sell or rent out the building or, if sooner, whichever is the earlier of—
    - (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or
    - (ii) in the case of a person who makes a request to view the building, not later than the time at which the person views the building.
- (3) The relevant person shall ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant.
- (4) This regulation does not apply in relation to a building that is to be sold where the relevant person can show that the building is to be demolished or he believes on reasonable grounds that the prospective buyer of the building intends to demolish the building.

### **Energy performance certificates on construction**

6.—(1) This regulation applies to all buildings to which this part applies, including buildings in relation to which the Building Regulations (Northern Ireland) 2000(5) do not apply, other than buildings which are exempt from those Regulations by virtue of regulation A5(1)(b) and (c) of those Regulations, where—

- (a) a building is constructed; or
- (b) a building is so modified that the number of parts designed or altered for separate use is changed and where such modification includes the provision or extension of any fixed services for heating, hot water, air-conditioning and mechanical ventilation.

(2) The relevant person shall give an energy performance certificate for the building to the owner of the building not more than five days after the work has been completed.

### **Recommendation reports**

7. Where a relevant person is required by regulations 5(2) or 6(2) to make available or give an energy performance certificate to any person, the certificate shall be accompanied by a recommendation report.

### **Energy performance certificates**

8.—(1) An energy performance certificate shall—

- (a) be in a form approved by the Department;
- (b) state the asset rating of the building;
- (c) include reference values such as current legal standards and benchmarks;
- (d) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and
- (e) include the following information—
  - (i) the reference number under which the certificate has been registered in accordance with regulation 25;
  - (ii) the address of the building;
  - (iii) the total useful floor area of the building;
  - (iv) the name of the energy assessor who issued it;
  - (v) the name and address of the energy assessor's employer, or if he is self-employed, the name under which he trades and his address;
  - (vi) the date on which it was issued; and
  - (vii) the name of the approved accreditation scheme of which the energy assessor is a member.

(2) An energy performance certificate shall not contain any information or data except for the address of the building from which a living individual (other than the energy assessor or his employer) can be identified.

(3) An energy performance certificate is only valid for the purposes of this Part if—

- (a) the issue date is not more than 10 years old; and
- (b) no other energy performance certificate for the building has since been obtained by or provided to the relevant person.

(4) Certificates for apartments or units designed or altered for separate use in blocks may be based—

- (a) on the assessment of another representative apartment or unit in the same block; or
- (b) except in the case of a dwelling, on a common certification of the whole building for blocks with a common heating system.

(5) Where—

- (a) a block with a common heating system is divided into parts designed or altered for separate use; and
- (b) one or more, but not all, of the parts are dwellings,

certification for those parts that are not dwellings may be based on a common certification of all the parts that are not dwellings.

### **Production of copies of energy performance certificates**

9. Where this Part requires a relevant person to give or make available a valid energy performance certificate it is sufficient for the relevant person to—

- (a) give or make available a copy of a valid certificate; or
- (b) with the consent of the intended recipient, give or make available electronically a read-only certificate.

### **Purposes for which certificates and recommendation reports may be disclosed**

10.—(1) Where any person has in his possession or control a document to which this regulation applies, it is an offence for that person to disclose, or permit the disclosure of, the document or any information derived from it except in the circumstances specified in paragraph (2).

(2) Those circumstances are—

- (a) where the disclosure is necessary to comply with any duty imposed by these Regulations;
- (b) where the disclosure is authorised by Part 6;
- (c) where the disclosure is by or to an enforcement authority for a purpose legitimately connected to their duty under regulation 31(2);
- (d) where the disclosure is for a legitimate purpose connected with a prospective buyer's or tenant's decision whether to buy or rent the building;
- (e) where the disclosure is for a legitimate purpose related to the making of improvements to the energy efficiency of the building;
- (f) where the disclosure is by or to an accreditation scheme operator for a purpose legitimately connected to its accreditation functions;
- (g) where the disclosure is by the Department for—
  - (i) the purpose of enabling it to monitor the application and enforcement of, and compliance with, the duties imposed by these Regulations; or
  - (ii) statistical or research purposes,provided that no particular property is identifiable from the information disclosed; or
- (h) where the disclosure is for the purpose of—
  - (i) preventing or detecting crime;
  - (ii) apprehending or prosecuting offenders;
  - (iii) establishing, exercising or defending legal rights; or

(iv) complying with an order of a court.

(3) Paragraph (1) does not apply to any disclosure of a document or any information derived from it by any person who, at the time of the disclosure, is, or is acting on behalf of, an owner or tenant of the building to which the document relates.

(4) This regulation applies to the following documents—

- (a) an energy performance certificate or a copy of such a certificate; and
- (b) a recommendation report or a copy of such a report,

and any data collected by an energy assessor for the purposes of preparing these documents shall be treated as part of these documents for the purposes of this regulation.

(5) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 3

### DISPLAY ENERGY CERTIFICATES

#### **Duties relating to display energy certificates and advisory reports**

**11.**—(1) This regulation applies to any buildings with a total useful floor area over 1000 m<sup>2</sup> which are occupied by public authorities and by institutions providing public services to a large number of persons and are therefore frequently visited by those persons.

(2) On or after 30th December 2008 the occupier of any building to which this regulation applies shall—

- (a) display at all times a valid display energy certificate in a prominent place clearly visible to the public; and
- (b) have in his possession or control at all times a valid advisory report.

(3) A display energy certificate is valid for a period of 12 months beginning on the nominated date.

(4) An advisory report is valid for a period of 7 years beginning on the date it is issued.

#### **Display energy certificates**

**12.** A display energy certificate shall—

- (a) be in a form approved by the Department;
- (b) subject to regulation 13, express—
  - (i) the operational rating; and
  - (ii) the asset rating,of the building;
- (c) show the operational ratings for the building that were expressed in any certificates displayed by the occupier during the 2 years before the nominated date;
- (d) include reference values such as current legal standards and benchmarks;
- (e) be issued by an energy assessor who under regulation 19 is accredited to produce display energy certificates for that category of building; and
- (f) include the following information—

- (i) the reference number under which the certificate has been registered in accordance with regulation 25;
- (ii) the address of the building;
- (iii) the total useful floor area of the building;
- (iv) the name of the energy assessor who issued it;
- (v) the name and address of the energy assessor's employer, or if he is self-employed, the name under which he trades and his address;
- (vi) the date on which it was issued;
- (vii) the nominated date; and
- (viii) the name of the approved accreditation scheme of which the energy assessor is a member.

#### **First occupier or change of occupier**

**13.**—(1) Subject to paragraph (3), regulation 12(b)(i) shall not apply in relation to a display energy certificate that is displayed by an occupier of a building at any time before he has been in occupation of the building for 15 months.

(2) Regulation 12(b)(ii) does not apply in relation to a display energy certificate which is displayed by an occupier who entered into occupation of the building before 31st December 2008.

(3) Where on 31st December 2008 the occupier of a building has been in occupation for less than 15 months the operational rating specified for the purposes of regulation 12(b)(i) may be calculated over the period in which the occupier has been in occupation.

## **PART 4**

### **INSPECTION OF AIR-CONDITIONING SYSTEMS**

#### **Application of Part 4**

**14.**—(1) This part applies to air-conditioning systems with an effective rated output of more than 12 kW.

(2) Where the relevant person has the power to control the temperature of more than one individual air-conditioning unit in a building, each unit shall be considered to be a component of a single air-conditioning system for the purposes of paragraph (1).

#### **Inspection of air-conditioning systems**

**15.**—(1) It is the duty of the relevant person in relation to an air-conditioning system to which this Part applies to ensure the system is inspected by an energy assessor at regular intervals not exceeding 5 years.

(2) The first inspection of an air-conditioning system shall take place before the relevant date.

(3) In this regulation “the relevant date” is—

(a) where the system is first put into service after 30th December 2008, the expiry of a period of 5 years beginning with the date on which the system was first put into service; and

(b) where paragraph (a) does not apply—

(i) in the case of a system with an effective rated output of more than 250 kW, 4th January 2010; or

- (ii) in the case of a system with an effective rated output of not more than 250 kW, 4th January 2011.

### **Inspection reports**

**16.**—(1) Where an energy assessor undertakes an inspection of an air-conditioning system the assessor shall make a written report of the inspection and give it to the relevant person as soon as practicable after completing the inspection.

(2) The inspection report shall include an assessment of the air-conditioning efficiency and the sizing of the system compared to the cooling requirements of the building, and contain appropriate advice on possible improvements to the system, replacement of the system and alternative solutions.

(3) The inspection report shall include the following information—

- (a) the address of the building in which the air-conditioning system is located;
- (b) the name of the energy assessor;
- (c) the name and address of the energy assessor’s employer, or if he is self-employed, the name under which he trades and his address;
- (d) the date on which the inspection occurred; and
- (e) the name of the approved accreditation scheme of which the energy assessor is a member.

### **Keeping of records etc.**

**17.**—(1) The relevant person shall keep the most recent inspection report relating to the system made by an energy assessor in accordance with regulation 16.

(2) Where the relevant person changes, the previous relevant person shall give to the new relevant person any inspection report kept by him under this regulation.

### **Changes of relevant person**

**18.** Where on or after 4th January 2012—

- (a) the relevant person changes; and
- (b) the new relevant person is not given the most recent inspection report,

the new relevant person shall ensure that the air-conditioning system is inspected within 3 months of the date on which he becomes the relevant person.

## **PART 5**

### **ENERGY ASSESSORS**

#### **Accreditation schemes**

**19.**—(1) An energy assessor shall be a member of an accreditation scheme approved by the Department.

(2) The terms of approval of any accreditation scheme may be limited in relation to—

- (a) the categories of building for which members may produce certificates; and
- (b) the types of air-conditioning systems members may inspect.

(3) Before approving an accreditation scheme, the Department shall be satisfied that the scheme contains adequate provision—

- (a) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner;
- (b) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments;
- (c) for requiring members of the scheme to prepare—
  - (i) energy performance certificates and recommendation reports; and
  - (ii) display energy certificates and advisory reports using a standard format for each type of document;
- (d) for ensuring that it produces and publishes a code with regard to the conduct required of its members;
- (e) for indemnity arrangements in relation to relevant persons and prospective or actual buyers or tenants;
- (f) for facilitating the resolution of complaints against members of the scheme;
- (g) for requiring energy performance certificates, recommendation reports, display energy certificates and advisory reports produced by members of the scheme to be entered on the relevant register maintained pursuant to Part 6; and
- (h) for the keeping of a register of the members of the scheme.

#### **Related party disclosures**

**20.** An energy assessor shall include in each energy performance certificate and display energy certificate that he has issued a declaration of any personal or business relationship (other than in relation to producing the certificate) that he has with—

- (a) the person who commissioned the certificate;
- (b) any person on whose behalf the certificate was commissioned; and
- (c) any person whom he believes—
  - (i) has or may have a personal or business relationship with a person referred to in paragraph (a) or (b); or
  - (ii) has or may have an interest in the building.

#### **Duty of care**

- 21.**—(1) Energy assessors shall carry out energy assessments with reasonable care and skill.
- (2) The duty imposed by paragraph (1) shall be enforceable by the following persons—
- (a) the relevant person;
  - (b) in the case of an energy performance certificate and recommendation report, any prospective or actual buyer or tenant during the period of validity of the certificate; and
  - (c) in the case of a display energy certificate and advisory report, the occupier of the building.
- (3) Any cause of action arising in relation to the duty imposed by paragraph (1) is deemed not to be an action founded on tort for the purposes of the Limitation (Northern Ireland) Order 1989(6).

#### **Right to copy documents**

**22.** Any person may, for the purpose of complying with any duty imposed by these Regulations, copy or issue a copy of any document produced by an energy assessor.

### **Meaning of energy assessment**

23. In this Part and in Part 8, a reference to “energy assessment” includes a reference to—
- (a) the preparation and issuing of energy performance certificates;
  - (b) the preparation and issuing of recommendation reports;
  - (c) the preparation and issuing of display energy certificates;
  - (d) the preparation and issuing of advisory reports;
  - (e) the preparation and issuing of inspection reports; and
  - (f) the carrying out of any inspections undertaken for the purposes of issuing any of the documents referred to in paragraphs (a) to (e).

## **PART 6**

### **REGISTER OF DOCUMENTS**

#### **Interpretation of Part 6**

24. In this Part “keeper of the register” means the person nominated by the Department to keep a register on the Department’s behalf.

#### **Registration of certificates etc.**

25.—(1) The keeper of the register shall maintain one or more registers of the following documents—

- (a) energy performance certificates and recommendation reports;
- (b) display energy certificates; and
- (c) advisory reports.

(2) Where an energy assessor issues any of the documents referred to in paragraph (1) he must ensure that it, and the data that was collected to produce it, are entered onto the relevant register before he gives it to the person who requested that he issue it.

(3) Each document entered onto the register—

- (a) shall be registered under a unique reference number; and
- (b) shall not be altered once registered.

(4) Any document or data entered onto the register must be kept on the register for a period of at least 20 years beginning on the date on which it is entered onto the register.

#### **Disclosures generally**

26.—(1) The keeper of the register may only disclose any document or data entered onto the register if authorised by this Part.

(2) In this Part, a reference to the disclosure of a document includes a reference to the disclosure of information derived from a document.

#### **Disclosures with reference number**

27.—(1) This regulation applies where any person—

- (a) requests the keeper of the register to disclose a particular document; and

- (b) provides to the keeper of the register the relevant reference number of the document he is seeking to be disclosed.
- (2) The keeper of the register may disclose to such a person—
  - (a) the document the person requested; and
  - (b) any document of the same kind relating to the same building or part of a building as the requested document which was registered at any time during the period of 10 years ending on the date of the request.

#### **Disclosures to approved accreditation schemes**

- 28. The keeper of the register may disclose to an approved accreditation scheme operator—
  - (a) any document which was prepared by an energy assessor who was a member of the scheme at the time the document was entered into the register; and
  - (b) any associated data.

#### **Disclosures to enforcement authorities**

29. The keeper of the register may disclose any document or data to an authorised officer of an enforcement authority.

#### **Disclosures to the Department**

- 30. The keeper of the register may disclose any document or data to the Department—
  - (a) for the purpose of enabling the Department to monitor the application and enforcement of, and compliance with, the duties imposed by these Regulations; and
  - (b) for statistical or research purposes,provided that no particular property is identifiable from the document or data disclosed.

## **PART 7**

### **ENFORCEMENT**

#### **Enforcement authorities**

- 31.—(1) The enforcement authority for the purposes of this Part shall be
  - (a) the Department; or
  - (b) as regards any local government district designated by the Department, a person authorised in writing by the Department.
- (2) It is the duty of the enforcement authority to enforce the duties under regulation 5(2), 5(3), 6(2), 7, 11(2), 15(1), 17, 18 and 32(4).
- (3) In this regulation “local government district” has the same meaning as in section 1 of the Local Government Act (Northern Ireland) 1972(7).

### **Power to require production of documents**

**32.**—(1) An authorised officer of an enforcement authority may require a person who appears to him to be or to have been subject to any of the duties under regulation 5(2), 5(3), 6(2), 7, 11(2), 15(1), 17, 18 or 32(4) to produce for inspection a copy of—

- (a) a valid energy performance certificate and recommendation report;
- (b) a valid advisory report; and
- (c) the most recent inspection report.

(2) The power conferred by paragraph (1) includes power to take copies of any document produced for inspection.

(3) A requirement under this regulation shall not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

(4) It is the duty of a person subject to the requirements of this regulation to comply with it within the period of seven days beginning with the day after that on which it was imposed.

(5) A person is not required to comply with paragraph 4 provided he has reasonable grounds for not doing so.

### **Penalty charge notices**

**33.**—(1) An authorised officer of an enforcement authority may, if he believes that a person has committed a breach of any duty under regulation 5(2), 5(3), 6(2), 7, 11(2), 15(1), 17, 18 or 32(4) give a penalty charge notice to that person.

(2) A penalty charge notice shall not be given after the end of the period of six months beginning with the day (or, in the case of a continuing breach, the last day) on which the breach of duty was committed.

(3) A penalty charge notice shall—

- (a) state the officer's opinion that the person has committed a breach of duty;
- (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
- (c) require that person, within a period specified in the notice—
  - (i) to pay a penalty charge specified in the notice; or
  - (ii) to give notice to the enforcement authority that he wishes the enforcement authority to review the notice;
- (d) state the effect of regulation 38;
- (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
- (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).

(4) The period specified under regulation 33(3)(c) shall not be less than 28 days beginning with the day after that on which the penalty charge notice was given.

(5) The enforcement authority may extend the period for complying in any particular case if it considers it appropriate to do so.

(6) The enforcement authority may, if it considers that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.

(7) The enforcement authority shall withdraw a penalty charge notice where the recipient can demonstrate that—

- (a) he took all reasonable steps and exercised all due diligence to avoid breaching the duty; or
- (b) regulation 34 applies.

### **Defence where an energy performance certificate is unobtainable**

**34.**—(1) The relevant person shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 where he can demonstrate that—

- (a) he made a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
- (b) in the case of a failure to make available an energy performance certificate to a prospective tenant—
  - (i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant’s urgent relocation;
  - (ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
  - (iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and
  - (iv) the relevant person has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out the building.

(2) In paragraph (1)(a) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide an energy performance certificate for the category of building in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an energy performance certificate.

(3) In this regulation “relevant time” means the point in time by which the relevant person is required to have made an energy performance certificate available to a prospective buyer or tenant under regulation 5(2).

### **Penalty amount**

**35.**—(1) The penalty charge specified in the notice shall be—

- (a) in relation to a breach of a duty under regulation 5(2), 5(3), 6(2) or 7—
  - (i) where the building is a dwelling, £200;
  - (ii) where the building is not a dwelling, calculated in accordance with the formula in paragraph (2);
- (b) in relation to a breach of duty under regulation 11(2)(a), £500;
- (c) in relation to a breach of duty under regulation 11(2)(b), £1000;
- (d) in relation to a breach of duty under regulation 15(1), 17(1), 17(2) or 18, £300; and
- (e) in relation to a breach of duty under regulation 32(4), £200.

(2) Subject to the minimum and maximum penalty charges prescribed by paragraph (3), the penalty charge for the purposes of paragraph (1)(a)(ii) shall be—

- (a) where the building constitutes a hereditament, 12.5% of the net annual value of the hereditament;
- (b) where no other building (other than a building which is exempt from Part 2 under regulation 4(1)(b) or regulation 4(1)(c)) forms a part of the same hereditament, 12.5% of the net annual value of the hereditament of which the building forms a part;

- (c) where the building comprises more than one hereditament, 12.5% of the sum of the rateable values of each hereditament that comprise the building; and
- (d) where—
  - (i) one or more buildings (other than a building which is exempt from Part 2 under regulation 4(1)(b) or regulation 4(1)(c)) form part of the same hereditament; or
  - (ii) the building is not, or does not form part of, a hereditament which appears on the NAV list at the relevant time,

£750.

(3) The minimum and maximum penalty charges for the purposes of paragraph (2) are £500 and £5000 respectively.

(4) In this regulation—

“hereditament”, “NAV list” and “net annual value” have the same meaning as in the Rates (Northern Ireland) Order 1977(8); and

“relevant time” means the time at which the penalty charge notice is given.

## Reviews

**36.**—(1) If, within the period specified under regulation 33(3)(c) (or that period as extended under regulation 33(5)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the enforcement authority shall—

- (a) consider any representations made by the recipient and all other circumstances of the case;
- (b) decide whether to confirm or withdraw the notice; and
- (c) give notice of their decision to the recipient,

within a reasonable period.

(2) A notice confirming the penalty charge notice must also state the effect of regulations 37 and 38.

(3) If the enforcement authority is not satisfied that—

- (a) the recipient committed the breach of duty specified in the notice;
- (b) the notice was given within the time allowed by regulation 33(2) and complies with the other requirements imposed by these Regulations; and
- (c) in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,

it shall withdraw the penalty charge notice.

## Appeals to the county court

**37.**—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under regulation 36(1)(c) is given, appeal to the county court against the penalty charge notice.

(2) The county court may extend the period for appealing against the notice.

(3) Such an appeal shall be on one (or more) of the following grounds—

- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
- (b) that the notice was not given within the time allowed by regulation 33(2) or does not comply with any other requirement imposed by these Regulations; or

- (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
- (4) An appeal against a penalty charge notice shall be by way of a rehearing and the court shall either uphold the notice or quash it.
- (5) If the penalty charge notice is withdrawn or quashed, the enforcement authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

### **Recovery of penalty charges**

**38.**—(1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the enforcement authority unless—

- (a) the notice has been withdrawn or quashed; or
- (b) the charge has been paid.

(2) Proceedings for the recovery of the penalty charge shall not be commenced before the end of the period referred to in regulation 36(1).

(3) If within that period the recipient of the penalty charge notice gives notice to the enforcement authority that he wishes the enforcement authority to review the penalty charge notice, such proceedings shall not be commenced—

- (a) before the end of the period mentioned in regulation 37(1); and
- (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.

(4) In proceedings for the recovery of the penalty charge, a certificate which—

- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
- (b) states that payment of the penalty charge was or was not received by a date specified in the certificate,

is evidence of the facts stated.

### **Service of documents**

**39.**—(1) A penalty charge notice and any other notice referred to in this Part may be given by post.

(2) Any such notice may be given—

- (a) in the case of a body corporate, to the secretary or clerk of that body; and
- (b) in the case of a partnership, to any partner or to any person having control or management of the partnership business.

### **Offences relating to enforcement officers**

**40.**—(1) A person who obstructs an officer of an enforcement authority acting in pursuance of regulation 32 is guilty of an offence.

(2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of this Part is guilty of an offence.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 8

### MISCELLANEOUS

#### Application to the Crown

**41.**—(1) Subject to paragraph (2) these Regulations, other than regulation 42(2)(a), bind the Crown.

(2) No act or omission by or on behalf of the Crown shall constitute an offence or make the Crown liable to a penalty charge notice under these Regulations, but the High Court may, on the application of the enforcement authority, declare unlawful any act or omission of the Crown which constitutes a contravention of these Regulations.

#### Duty to cooperate

**42.**—(1) This regulation applies where these Regulations impose a duty on the relevant person to—

- (a) make available or give an energy performance certificate or display a display energy certificate in relation to a building; or
  - (b) ensure an air-conditioning system is inspected.
- (2) It shall be the duty of every person with an interest in, or in occupation of, the building to—
- (a) allow such access to any energy assessor appointed by the relevant person as is reasonably necessary to inspect the building for the purpose of undertaking an energy assessment; and
  - (b) cooperate with the relevant person so far as is reasonably necessary to enable him to comply with the duty referred to in paragraph (1).

#### Amendments to the Building Regulations (Northern Ireland) 2000

**43.** The Building Regulations (Northern Ireland) 2000(9) are amended as follows—

- (a) in paragraph (1) of regulation A2 (Interpretation)—
  - (i) after the definition “ENERGY EFFICIENCY REQUIREMENTS” there shall be inserted—
 

“ENERGY PERFORMANCE CERTIFICATE means a certificate that complies with regulation 8 of the Energy Performance of Buildings (Certificates and Inspections) (Northern Ireland) Regulations 2008”;
  - (ii) in the definition “SAP” after the words “2005 edition” there shall be inserted “or any later version of the software approved by the Department”; and
  - (iii) in the definition “SBEM” after the words “2006 edition” there shall be inserted “or any later version of the software approved by the Department”;
- (b) in regulation A11 (Notice of commencement and completion of certain stages of work)—
  - (i) in paragraph (5) for “notice in writing of—” substitute “—”;
  - (ii) before paragraphs (5)(a), (b) and (c) insert “notice in writing of”;
  - (iii) for paragraph (5)(d) there shall be substituted—
 

“subject to paragraph (5)(g) a copy of the energy performance certificate for any completed new building, not more than 5 days after completion;”;
  - (iv) in paragraph (5)(f) for the full stop substitute “;”; and

- (v) after paragraph (5)(f) there shall be inserted—
  - “(g) paragraph (5)(d) does not apply to—
    - (a) buildings that are used primarily or solely as places of worship;
    - (b) temporary buildings with a planned time of use of 2 years or less;
    - (c) industrial sites, workshops and non-residential agricultural buildings with low energy demand; and
    - (d) stand-alone buildings with a total useful floor area of less than 50 m<sup>2</sup> that are not dwellings.”;
- (c) In paragraph (4)(b)(iii) of regulation F1 (Application and interpretation) after the semicolon there shall be inserted “and;”;
- (d) After paragraph (4)(b)(iii) of regulation F1 (Application and interpretation) there shall be inserted—
  - “(iv) any software approved by the Department;”;
- (e) In column (4) of Table F of Schedule 5 for the character “—” opposite the reference in column (1) to “F2 Conservation measures” and against the reference in column (3) to “DFP Technical Booklet F1: 2006” there shall be substituted “AMD4”;
- (f) In column (4) of Table F of Schedule 5 for the character “—” opposite the reference in column (1) to “F2 Conservation measures” and against the reference in column (3) to “DFP Technical Booklet F2: 2006” there shall be substituted “AMD4”.

Sealed with the Official Seal of the Department of Finance and Personnel on 10th April 2008.

*Philip Irwin*  
A senior officer of the  
Department

## SCHEDULE

Regulation 1(3)

## Commencement

<i>Date on which the provision comes into operation</i>	<i>Provision</i>	<i>Purpose for which the provision comes into operation</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
30 June 2008	Regulations 1–3, 19–42 and the Schedule	All purposes
	Regulations 4–10	So far as they relate to the sale of existing dwellings
30 September 2008	Regulation 4–10 & 43	So far as they relate to the construction of new buildings
30 December 2008	Regulations 4–10	So far as they relate to the rental of existing dwellings and to the sale or rent of buildings other than dwellings
	Regulations 11–18	All purposes

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement in Northern Ireland Articles 7 (energy performance certificate), 9 (inspection of air-conditioning systems) and 10 (independent experts) of the Energy Performance of Buildings Directive, O.J. No L1, 4.1.20043 (“the Directive”) which lays down requirements for the production of energy performance certificates when buildings are constructed, sold or rented out, display of display energy certificates in large public buildings providing a public service, and regular inspections of air-conditioning systems.

Part 2 of these Regulations implements Articles 7(1) and (2) of the Directive, and requires the production of energy performance certificates when buildings are constructed, sold or rented out. In particular, regulation 5 requires sellers and prospective landlords to make available energy performance certificates to prospective buyers and tenants at the earliest opportunity.

The proposed timetable for energy performance certificates is as follows:

		Commencement Date
	Sale	30 June 2008
Dwellings	New builds	30 September 2008
	Rental	30 December 2008
	Sale	30 December 2008

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	Commencement Date
Buildings other than Dwellings New builds	30 September 2008
Rental	30 December 2008

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Regulation 6 requires a person responsible for having construction work carried out, when a building is constructed or modified, to make available an energy performance certificate to the owner of the building not more than five days after the work has been completed.

Regulation 7 requires that energy performance certificates shall be accompanied by recommendation reports for the improvement of the energy performance of the building.

Regulation 8 sets out the minimum requirements for energy performance certificates. In particular, certificates shall be no more than 10 years old.

Regulation 9 makes provision for a copy of a valid energy performance certificate to be made available or for a valid energy performance certificate to be made available electronically, with the consent of the intended recipient.

Regulation 10 imposes restrictions on the circumstances in which certificates and recommendation reports may be disclosed, and creates an offence for unlawful disclosure.

Part 3 implements Article 7(3) of the Directive. In particular, where large buildings are occupied by public authorities and by institutions providing public services to a large number of persons a display energy certificate must be displayed, and an advisory report containing recommendations for the improvement of the energy performance of the building must be obtained (regulation 11).

Regulation 12 sets out the minimum requirements for display energy certificates. In particular, certificates shall be no more than 12 months old.

Regulation 13 sets out that the operational rating is not required in the display energy certificate displayed by an occupier who has been in occupation for less than 15 months and the asset rating is not required in the display energy certificate displayed by an occupier who entered into occupation of the building before 31st December 2008.

Part 4 implements Article 9 of the Directive. In particular, where this Part applies the person who has control of the operation of an air-conditioning system shall ensure the system is inspected at regular intervals not exceeding 5 years (regulation 15).

Regulations 16, 17 and 18 set out the minimum requirements for air-conditioning inspection reports, the keeping of the inspection reports and changes of the person in control of the operation of the air-conditioning system.

Part 5 implements Article 10 of the Directive. Energy assessors who produce energy performance certificates, display energy certificates or who inspect air-conditioning systems shall be members of an accreditation scheme approved by the Department (regulation 19).

Regulation 20 imposes a duty on an energy assessor to make any related party disclosures.

Regulation 21 imposes a duty of care on energy assessors and regulation 22 makes provision for the copying of documents.

Part 6 deals with the register of documents and establishes the duties relating to disclosure of the documents held on the register.

Part 7 deals with enforcement and makes provision for enforcement by way of civil penalties. Regulation 31 imposes a duty on the enforcement authority to enforce the duties relating to certificates and air-conditioning inspections and regulation 33 empowers the enforcement authority to issue penalty charge notices for any breach.

Regulation 34 and regulations 36 through to 38 establish the rights of the person who has been given a penalty charge notice.

Regulation 40 creates offences relating to enforcement officers.

Part 8 deals with miscellaneous matters.

Regulation 41 binds the Crown.

Regulation 42 imposes a general duty to cooperate with and allow reasonable access to any person who is under a duty relating to certificates or inspections.

Regulation 43 amends the Building Regulations (Northern Ireland) 2000. In addition to various consequential amendments, the amended paragraph 5(d) and new paragraph 5(g) of regulation A11 of the Building Regulations (Northern Ireland) 2000 revokes the requirement to produce an energy rating notice for new dwellings and replaces it with a requirement to produce an energy performance certificate.

A Regulatory Impact Assessment has been prepared. Copies can be obtained on request from Building Standards Branch, Department of Finance and Personnel, 10th Floor River House, 48 High Street, Belfast BT1 2AW. Alternatively, it may be downloaded from [www.buildingregulationsni.gov.uk](http://www.buildingregulationsni.gov.uk).