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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 389**

**BUILDING AND BUILDINGS**

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

*Made* - - - - 25th November 2008  
*Laid before the Scottish  
Parliament* - - - - 26th November 2008  
*Coming into force* - - 31st December 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Energy Performance of Buildings (Scotland) Amendment Regulations 2008 and come into force on 31st December 2008.

**Amendment of Regulations**

2.—(1) The Energy Performance of Buildings (Scotland) Regulations 2008<sup>(2)</sup> are amended in accordance with paragraph (2).

(2) In regulation 17 (penalty charge notices)—

(a) after paragraph (2) insert—

“(2A) In addition to the limitations imposed by paragraph (2), a penalty charge notice may not be given in respect of a breach of any duty under regulation 5 occurring on or before 31st March 2009 where—

(a) the owner has made a request for an energy performance certificate within a period of 7 days after the relevant time; and

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3) and section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) S.S.I. 2008/309; which further transposed Articles 4(3) and 7 of Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings, and comes into force on 4th January 2009.

- (b) the owner has made the energy performance certificate available to a prospective buyer or prospective tenant within a period of 9 days after obtaining the certificate.”; and
- (b) after paragraph (8) insert–
  - “(9) In paragraph (2A)(a)–
    - (a) the reference to a request has the same meaning as in regulation 18(2); and
    - (b) “the relevant time” has the same meaning as in regulation 18(3).”.

St Andrew’s House,  
Edinburgh  
25th November 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations amend the Energy Performance of Buildings (Scotland) Regulations 2008 (“the 2008 Regulations”). Regulation 2 inserts provision into regulation 17 of the 2008 Regulations to prevent a penalty charge notice being given where—

- (a) the owner has requested an energy performance certificate no later than 7 days after a person becomes a prospective buyer or prospective tenant; and
- (b) the owner has made the energy performance certificate available to a prospective buyer or prospective tenant within 9 days of obtaining the certificate.