

EXECUTIVE NOTE

THE ENERGY PERFORMANCE OF BUILDINGS (SCOTLAND) AMENDMENT REGULATIONS 2012

SSI 2012/190

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

2. This instrument is the first of two planned amendments to current regulations implementing the EU Energy Performance of Buildings Directive. This Directive, which promotes the improvement of the energy performance of buildings, was recast in May 2010 as Directive 2010/31/EU on the Energy Performance of Buildings and it is available on Eurlex at:-

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0013:01:EN:HTML>

The recast Directive sets requirements for Member States to have:

- a methodology for calculating the energy performance of buildings;
- the application of minimum requirements for the energy performance of new buildings, existing buildings and building elements that are subject to major renovation, and the replacement or retrofitting of building elements or services which have a significant impact on the energy performance of a building;
- a system of energy certification of buildings;
- regular inspection of heating and air-conditioning systems in buildings;
- independent control systems for energy performance certificates and inspection reports; and
- national plans for increasing the number of nearly zero-energy buildings;

3. This instrument begins the Scottish Government's transposition of the recast Directive. A second instrument will be laid by the end of June 2012 which will transpose the remaining provisions in the recast Directive. The specific amendments being made in this instrument are to :

- References to lodging of data for the Energy Performance certificate (EPC) register rather than the lodging of actual documents. EPCs will be generated from this data by the register. This is intended to make it easier to examine and analyse the information held on the Register.
- Requirement for an EPC to be accompanied by a recommendations report, to improve the information provided to building owners and tenants.

4. The UK Green Deal Framework Regulations will include a definition for a "disclosure document". For Scotland, this term will be defined to include both an energy performance certificate and a recommendations report. This requires an amendment to be made to the Scottish Regulations on the Energy Performance of Buildings in order that they include a reference to a "recommendations report." It is for this reason that this instrument requires to be made in advance of the more detailed transposing Scottish Regulations which will be laid by the end of June 2012.

Consultation

5. A consultation on proposed action in response to the recast Directive took place between 7 October 2011 and 23 January 2012. The consultation received 46 responses and helped shape the Government response to the provisions of the Directive which must be implemented by Member states.

6. A summary analysis of consultation responses was published on 30 April 2012. This was followed on 6 June 2012 by the full consultation report including the Scottish Government response and a list of actions, including amendment to regulations. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website at: <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubconsult>

Impact Assessments

7. An equality impact assessment on action proposed in response to the recast Directive, including the subject of this amendment to regulations, is available at: <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch/Directive2010-31-EU>. There are no equality impact issues.

8. A screening exercise was carried out to determine if action proposed in response to the recast Directive, including the subject of this amendment to regulations, would require a Strategic Environmental Assessment. This determined that proposals will result in 'no or minimum environmental effects' and that a Strategic Environmental Assessment is not required. This assessment can be viewed at: <http://www.scotland.gov.uk/seag/seagDocs/PRE-00386/11351.pdf>

Financial Effects

9. A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is available at: <http://www.scotland.gov.uk/Resource/Doc/217736/0121637.pdf>. A more detailed assessment of costs and benefits will be provided within the final BRIA which will be submitted along with second set of amending regulations at the end of June 2012. The impact of the changes made by this instrument on business is considered minimal. The principle costs are associated with changes in the scope of the Directive (increasing the number of public buildings requiring an EPC) and enhancement to processes and quality assurance for the production of certification which will be transposed by the second set of amending regulations.

**Scottish Government
Communities and Local Government Directorate
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