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## EXPLANATORY NOTE

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

The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 amend the Energy Performance of Buildings (Scotland) Regulations 2008 (“the 2008 Regulations”). The 2008 Regulations transposed the provisions of Directive [2002/91/EC](#) of the European Parliament and of the Council on the energy performance of buildings (OJ L 1, 04.01.2003, p.65) (“the 2002 Directive”).

The 2002 Directive has now been recast by Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (OJ L 153, 18.06.2010 p.13) (“the 2010 Directive”). The Energy Performance of Buildings (Scotland) Amendment Regulations 2012 (“the 2012 Regulations”) partially transposed Article 11 of the 2010 Directive. These Regulations transpose the further provisions of the 2010 Directive that require legislative changes to the 2008 Regulations.

The Directive lays down the requirements for energy performance certificates, including their contents and when a certificate is required to be issued and displayed. The 2010 Directive refers to both buildings and building units so the 2008 Regulations have been amended to refer to both terms. The term “building” and “building unit” is defined in Article 2 of the 2010 Directive.

Regulation 5 replaces regulation 5 of the 2008 Regulations to provide that an energy performance certificate is to be shown to a prospective new tenant or buyer and provided to an actual buyer or tenant.

Regulation 6 introduces new regulation 5A which places a requirement on owners to ensure that any advertisement for selling or letting a property includes its energy performance indicator. Regulation 16 introduces new regulation 17A which provides a power to give a penalty charge notice for a failure to meet this advertisement duty and new regulation 18A, introduced by regulation 18, sets out the defence to such a notice.

Regulation 7 amends regulation 6 of the 2008 Regulations by adding further information that is to be included in an energy performance certificate in order to meet the requirements of Article 11 of the 2010 Directive. This regulation also sets out the circumstances where an energy performance certificate does not have to be based on an assessment of the specific property that the certificate is being issued for.

Regulation 11 substitutes a new regulation 9 into the 2008 Regulations to provide for the circumstances when an energy performance certificate must be displayed in a prominent place in a public building. A power to give a penalty notice charge for failure to do so is introduced by regulation 16.

Regulation 12 introduces new regulation 10A which enables the keeper of the register to charge certain fees for entering data onto the register.

Regulation 19(1) ensures that although changes have been made to the matters to be included in an energy performance certificate by these regulations, any certificate issued before 1st October 2012 remains valid for the period of 10 years from its issue. Regulation 19(2) and (3) also enable the procedure for energy performance certificates to be accepted by a verifier to continue in relation to buildings where a building warrant application was made before 9th January 2013.

Regulation 20 of these Regulations makes changes to the 2012 Regulations before they are due to come into force on 1st October 2012. Regulations 4 to 6 are revoked as the changes made by those provisions are replaced by regulations 5, 7(c) and 8 of these Regulations. Regulation 10(3) to be

**Status:** *This is the original version (as it was originally made).*

introduced by regulation 7 of the 2012 Regulations is amended to include a reference to “building units”.