

EXECUTIVE NOTE

THE ENERGY PERFORMANCE OF BUILDINGS (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2012

SSI 2012/208

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 partially implements 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, along with the Building (Scotland) Amendment Regulations 2012 (laid at the same time as this instrument) and the earlier S.S.I. 2012/190, complete the Scottish Government's transposition of the recast Directive in respect of regulation required to enable changes to the current implementation of the Directive. Changes to regulations will be supported by amendment to published guidance and codes of practice defining the processes which deliver the Energy Performance of Buildings Directive in Scotland.

4. In addition to general update of reference to the recast Directive 2010/31/EU and clarification that provisions apply both to buildings and to building units, the provisions made in this SSI are as follows:

- Regulation 3 amends and adds further definitions relevant to transposition of the Directive through these regulations.
- Regulation 5 amends the duty to provide information prior to marketing and after the sale or rental of a building, transposing the requirement in Article 12 of the Directive.
- Regulation 6 introduces a new duty to include specific information from energy performance certificates within advertisements in commercial media, transposing the new requirement in Article 12(4) of the Directive. This provision does not cover all forms of advertising properties for sale e.g. for sale / for let signboards.

- Regulation 7 introduces amended provisions for the content and production of energy performance certificates, transposing the requirements set out in Article 11 and the need to apply a methodology for calculating the energy performance of buildings in Article 3 and Annex 1 of the Directive.
- Regulation 8 updates requirements in respect of provision of a recommendations report which must accompany an energy performance certificate, transposing Article 11(4) of the Directive.
- Regulation 11 amends and introduces further provisions for the display of energy performance certificates in buildings frequented by the public, transposing Articles 12(1)(b) and 13 of the Directive. It applies to all buildings over 500m² which are frequently visited by the public. Such buildings occupied by a public authority are required to display an EPCs whereas other buildings which meet this criteria are only required to display an EPC where a certificate has been issued.
- Regulation 12 introduces the power to charge a fee for lodging data to the energy performance certificate register and specifies the initial fee.
- Regulation 16 provides enforcement powers in support of the duty to include specific information from energy performance certificates within advertisements (regulation 6 of this instrument) provisions for the display of energy performance certificates in buildings (regulation 11 of this instrument). These provisions are in support of Article 27 of the Directive which requires that penalties set for infringement of the Directive must be effective, proportionate and dissuasive.
- Regulation 18 defines circumstances where a defence exists for failure to include specific information from energy performance certificates within advertisements.
- Regulation 19 defines saving provisions applicable to the production of energy performance certificates associated with building warrants applied for prior to these amended regulations coming into force.
- Regulation 20 deletes regulations 4, 5 and 6 of the Energy Performance of Buildings (Scotland) Amendment Regulations 2012 (S.S.I. 2012/190) before they come into force. This is due to these regulations requiring to be further amended to implement the Directive. The update provisions are contained in regulation 5, 7 and 8 of this instrument.

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 25 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>.

7. This instrument includes, under regulation 12, the introduction of a fee for submission of data to the EPC register. A separate consultation on proposals in this respect took place between 18 November 2011 and 13 January 2012 and received 23 responses. The full

consultation report and Scottish Government response was published on 18 April 2012. published on the Scottish Government website at:
<http://www.scotland.gov.uk/Resource/0039/00391756.pdf>.

Impact Assessments

8. 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.

9. 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

10. The interim Business and Regulatory Impact Assessment (BRIA) has been completed and is available at: <http://www.scotland.gov.uk/Resource/Doc/217736/0121637.pdf>. A separate interim BRIA for the single issue of introducing a register lodgement fee is included in the consultation proposals published at:
<http://www.scotland.gov.uk/Resource/Doc/362790/0122848.pdf>.

11. Detailed assessment of costs and benefits are provided within the final BRIAs which will be published online at: <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full>. A copy of each BRIA is provided in support of this note. 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 energy performance certificates.

Scottish Government
Communities and Local Government Directorate
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