



FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

**IMPLEMENTATION OF EU DIRECTIVE 2010/31/EU ON THE ENERGY
PERFORMANCE OF BUILDINGS (RECAST)**

2011/19

Note:

Final Business and Regulatory Impact Assessment 2011/0026 is also appended in support of regulation 12 of The Energy Performance of Building (Scotland) Amendment No. 2 Regulations 2012. This addresses one issue - the introduction of a fee for lodgement of data to the register of Energy Performance Certificates.

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1.0 TITLE OF PROPOSAL

Implementation of Directive 2010/31/EU on the Energy Performance of Buildings Directive (recast).

2.0 PURPOSE AND INTENDED EFFECT

2.1 Background

[Directive 2002/91/EC on the Energy Performance of Buildings](#) came into force on 4 January 2003. The objective of the Directive is to promote improvement of the energy performance of buildings and to reduce the amount of carbon they produce.

Implementation of the Directive in Scotland has been taken forward primarily through Building Standards legislation and The Energy Performance of Buildings (Scotland) Regulations 2008, made through the European Communities Act 1972.

The Directive set out several key issues, namely:

- to establish methodologies for calculating the integrated energy performance of buildings;
- the application of minimum energy standards
- that an Energy Performance Certificate (EPC) be provided by the building owner free of charge for all buildings (domestic and non-domestic) when they are built, sold or rented out;
- the display of an EPC in large public buildings, over 1,000 m²;
- regular inspections of, and recommendations about improving, the energy performance of Air Conditioning installations over 12 kW;
- the regular inspection of boilers above a certain size or the provision of advice to users.

In 2006, a public consultation was issued on transposition of the Directive, with full compliance in Scotland being achieved on 4 January 2009.

2.2 Objective

Buildings account for 40% of the total energy consumption in the European Union. The sector is expanding, and as a result an increase in energy consumption inevitable. Therefore, reducing energy consumption and using energy from renewable sources are of paramount importance in reducing EU energy dependency and greenhouse gas emissions.

This has been reflected in the recast, [Directive 2010/31/EU](#) which was published on 19 May 2010. In essence, the recast has been extended to strengthen and clarify provisions contained within the original Directive.

The main aspects of the recast are as follows:

- minimum energy performance requirements set for buildings, building units or building elements are to be set with a view to achieving at least cost-optimal levels, with these levels calculated in accordance with the comparative methodology framework published by Europe;

- energy use of technical building systems (heating, hot water, air-conditioning and large ventilation systems) to be optimised by setting requirements for overall energy performance, installation, sizing, commissioning and control of systems;
- from 2020, all new buildings to be nearly zero energy buildings, with an earlier target date of 2018 for new buildings owned and occupied by public authorities;
- Member States to take measures to stimulate the transformation of buildings that are refurbished into nearly zero-energy buildings;
- property advertisements to include the energy performance indicator of the energy performance certificate;
- Member States to provide details of the fiscal incentives in place which could be used to improve the energy efficiency of their buildings;
- content of EPCs to be more specific to the particular building and including more detailed information on the cost-effectiveness of recommendations, along with the steps to be taken to implement those recommendations;
- EPCs to be issued and displayed in buildings larger than 500 m² (current threshold is 1,000 m²) that are occupied by a public authority and frequently visited by the public. This threshold will fall to 250 m² after five years;
- EPCs to be displayed in commercial premises larger than 500 m² that are frequently visited by the public and where an EPC has previously been issued; and
- a statistically significant percentage of EPCs and Air Conditioning Reports to be checked by independent experts for quality assurance purposes.

2.3 Rationale for Government intervention

All Member States are required to comply with the Directive as outlined in Article 28. Whilst the UK is a Member State in this respect, responsibility for transposition of this Directive is devolved to Scotland due primarily to initial implementation through the building standards system.

As a European Directive, implementation, through regulation by Member States, is mandatory. Accordingly, the Scottish Government has developed proposals in response to the requirements identified within the recast Directive. Improper or non-implementation of a directive will lead to infraction (or infringement) proceedings. The failure to properly transpose the Directive can lead to a fine of £350,000 per day, approximately £127 million per year. Scotland would be required to pay a percentage of any UK fine if the infraction related to a devolved matter as in this case.

3.0 CONSULTATION

3.1 Within Government

Building Standards Division have been in discussion with counterparts within the Department for Communities and Local Government (who have responsibility to ensure UK compliance with the Directive), and the Department of Energy and Climate Change, colleagues within Scottish Government who have responsibility for Housing, both public and private

sector, Energy Efficiency, Renewables, Climate Change, Procurement and the Directorate for Legal Services have also been consulted. In addition, Article 21 of the recast Directive directs Member States to consult stakeholders involved, including “local and regional authorities” to ensure effective implementation of the Directive.

3.2 Outwith Government

Before making or amending building regulations, Scottish Ministers are required to consult the public and industry stakeholders who may have a view on the matters under consideration. The public consultation was issued on 7 October 2011. Views and opinions on the proposals were sought from over 500 key stakeholders. This included public, private and third sector organisations, Non-Departmental Public Bodies and individuals, who received a notification of the consultation by letter and details on how to obtain the documentation on the Scottish Government website. An email notification providing details of the consultation was also issued to approximately 2,000 organisations and individuals who have registered to receive the Building Standards Division electronic newsletter. The consultation closed on 20 January 2012.

The consultation document package, and Scottish Government response, is published in both PDF and RTF format on the Scottish Government website at: <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubconsult>. The consultation period began on 7 October and closed on Friday 20 January 2012. A total of 45 responses were submitted, which can be categorised as:

	No.	%
Local Authority	14	31
Other	8	18
Professional Organisations	6	13
Commercial Organisation	5	11
NDPB/Agency	3	7
Industry Association/Manufacturer	2	5
Advisory Body/Committee	2	5
Contractor/Developer	1	2
Academic Body	1	2
Designer/Consultant	1	2
Sub Total	43	96
Individual	2	4
Total	45	100%

3.3 Business consultation

A consultation exercise in support of the Scottish Firms Impact Test was undertaken during the public consultation period. See item 5.0.

4.0 OPTIONS

4.1 Options

Option 1 - Do nothing.

The Directive recast instructs Member States on a number of Articles, most of which will require amendment or introduction of legislation, amendment of current established process and the issue of supporting guidance documents. EPCs will have to be introduced for more public buildings, quality assurance processes formalised and independent experts identified. Failure to transpose will lead to potential infraction proceedings and fines as outlined at paragraph 2.3.

'Do nothing' is therefore not an option.

Option 2 – Amend legislation and guidance to meet the requirements set out by the recast Directive.

Transposition of the recast Directive will require changes to current legislation, guidance and practice.

It is Government policy that compliance with European legislation should not go beyond the minimum requirements, except in exceptional circumstances. We will maintain this approach, however, it should be noted there are areas of common interest between the recast Directive and both Scottish and UK carbon and energy efficiency policy. These include the promotion of quality and consistency of energy assessments, development of national calculation tools to support more representative assessment of buildings and central lodgement of assessments to provide a resource not only for building owners but for Government in delivery of policy.

Effectively, matters related directly to the recast of the Directive are as follows;

- Review and implementation of revised practice in the operation of Approved Organisations; amendment to working practice of assessors / cost of EPCs
- Changes in the area threshold for public buildings requiring an EPC
- Amendment in the procedure for delivery of newbuild EPCs
- Introduction of quality assurance measures – sample checking of EPCs and Air conditioning inspection reports.

In addition, the following actions are proposed in support of both the recast Directive and domestic energy efficiency and emissions reduction initiatives:

- Review of National Calculation Methodologies and development of supporting software tools
- Amendments to registration practice for EPCs; development of a non-domestic database.

4.2 Sectors and groups affected

Option 2 has impact for the following sectors and groups:

- all owners of dwellings and non-domestic properties which are to be sold or rented out.

- owners and occupiers of non-domestic properties are defined as public buildings with a total useful floor area of 250 m² or more.
- the public at large.
- Approved/Protocol Organisations
- local authorities
- software providers

The general principles of adopting a methodology, provision of an Energy Performance Certificate on sale or rental and inspection of air-conditioning systems over 12 kW all remain. The processes currently in place will be retained with some minor amendments.

The recast places a greater responsibility on two groups:

- On the public sector within each Member State. They have been identified to lead the way in the field of energy performance of buildings, and therefore the national plans should set more ambitious targets for the buildings occupied by public authorities. However, with the exception of changes to the minimum size of public building which must have and display an Energy Performance Certificate, the Directive does not mandate action by public bodies.
- On Approved Organisations in the accreditation of their members and quality assurance of the output of assessments. Provisions in this respect are being developed in partnership with assessor organisations and with the knowledge of similar developments underway elsewhere in the UK.

The recast of the Directive will continue to impact on building owners selling or renting out buildings, those who undertake certification and inspections. The impact should be minimal and it is anticipated that action under the recast will deliver improvement in the quality and consistency of information they are required to obtain in support of such transactions.

4.3 Benefits – Option 1

No benefits are identified.

Benefits – Option 2

The direct benefit from Option 2 is that Scotland will continue to meet requirements set by the European Directive. In addition to this, proposals such as the introduction of more formal inspection regimes and provision of additional advice and information to building owners will promote the issue of energy efficiency.

Combined with proposals under initiatives such as section 63 of the Climate Change (Scotland) Act 2009 and the GB 'Green Deal' (the latter offering front-funding for specified measures and improvements), this will increase the number of building owners considering and undertaking energy efficiency measures.

Research earlier this year by Consumer Focus¹ records that only 17% of those who have received an EPC have acted on the recommendations. Whilst there continues to be no requirement under the Directive that action to improve be undertaken following an assessment, it is held that review of the form and content of the certificates and reports produced in response to the requirements of the Directive will encourage a greater level of uptake of recommendations. Similarly, working with current approved organisations to standardise operating requirements for assessors will deliver improved information to those considering assessment and greater consistency in assessment process.

4.4 Costs – Option 1

This could lead to infraction and the possibility of fines as described at para 2.3.

Costs – Option 2

Following consultation, the following areas are identified where amendment to legislation, guidance and process to address the requirements of the Directive may raise attendant costs.

- *Review and implementation of revised practice in the operation of Approved Organisations; Amendment to working practice of assessors/cost of EPCs.*

Formalisation of current expectations. Work with Approved Organisations to build on current processes and minimise administrative burdens. In developing proposals, we will provide an assessment of the approximate overall administrative cost of such changes to Approved Organisations and related parties in Scotland. The cost per unit for obtaining an EPC is lower now than on introduction of the Directive in 2009. Given that EPCs are offered in a competitive market, it is not anticipated that cost of EPC will increase significantly as a direct result of the recast Directive but it is anticipated that such fees will rise as a result of enhancements required by the recast Directive and that this revenue will support the operation and development of Approved Organisations. Whilst such costs cannot be quantified at this point, an analysis of the impact on the operation of these organisations will be sought as part of ongoing audit of schemes.

An illustration of potential impact of all changes can be given by suggesting that EPC costs to the consumer may increase by 3% as a direct result of work needed to strengthen operational requirements of assessors and Approved Organisations. Based upon current lodgement figures, this would add a sum of £630,000 to transaction costs.

- *Changes in the area threshold for public buildings requiring an EPC.*
Cost of assessment for a defined number of public buildings with a useful floor area of between 500 m² and 1,000 m². Recent research estimates

¹ 'Room for Improvement' (Consumer Focus, February 2011) - <http://www.consumerfocus.org.uk/publications/room-for-improvement-the-impact-of-epcs-on-consumer-decision-making>

that the initial change in area threshold would require capture of around 1,000 additional non-domestic buildings owned by public bodies in Scotland. Assuming an average cost per EPC of £150-300, this would introduce a cost around £300,000 borne by the owners or occupiers of such buildings. Under the Directive, such certificates would remain valid for ten years. This cost is unavoidable.

- *Display of EPC in buildings frequented by the Public where an EPC exists.*
No cost assigned as Directive does not mandate provision of EPCs where none exist.
- *Amendment in the procedure for delivery of new build EPCs.*
A move to require accredited assessor for new buildings would incur cost - through training and accreditation of assessors in use of full SAP and, potentially, an additional cost of services to customers where certification currently forms part of an overall design service. An assessment of the implications of will be developed subject to views expressed by consultees but it is anticipated that training costs averaging around £500 per SAP assessor are possible, subject to the route chosen. Assuming that 500 design professionals chose to up skill, this would introduce a cost of in the region of £250,000. However, we recognise the potential for such development to occur as part of currently established accreditation schemes, which would reduce any financial impact.

In addition, there is the potential cost to customers should EPC production not be integrated into building design services. This could add a charge of, for example, £50 per dwelling or between £150-500 per non-domestic building. On the basis of a notional annual build of 20,000 new homes and 1,000 qualifying non-domestic buildings, this could result in an annual cost in the region of £1.3m. It is anticipated that the majority of this cost will, however, be absorbed within existing design fees.

- *Provision of energy efficiency indicator in all commercial media.*
No cost assigned. Assertion is minimal impact on form and content of advertisements, with minimum provision being short descriptive text entry.
- *Publication of information by Assessor bodies.*
No costs assigned. This is considered a formalisation of current practice, with the majority of assessor organisations already maintaining a body of public information on assessor services.
- *Introduction of quality assurance measures – sample checking of EPCs.*
In producing guidance, we will provide an assessment of the approximate overall administrative cost of such changes to approved organisations and related parties in Scotland. It is anticipated that an independent control mechanism cannot be developed and implemented without attendant costs to approved organisations. We would propose checking at the rate of 2%, which would initially be anticipated to add administrative costs equivalent to an additional 2% of overall EPC fee charges. Based on a

notional annual certification of 179,000 domestic EPCs and 37,500 non-domestic EPCs (costed as above) this would add an administrative cost, borne ultimately by building owners and tenants through EPC fees, of in the region of £420,000.

In concert with these provisions, a programme of audit of Approved Organisations will be introduced. It is anticipated that the additional operational cost (to Government) in administering these audits will be in the region of £30,000 per annum.

- *Scottish Government undertaking periodical assessment of minimum requirements against cost optimal measures & reporting, via UK, to Europe.*
Development costs undefined but assessment methodology will be developed as a UK resource. Cost of review would be built into future review of standard set through building regulations. Provisional Assessment of review costs is £20,000 every three years. It would be the intent to minimise any such additional cost by integrating this item within other review processes, such as building regulations.
- *Amendment of National Calculation Methodologies (NCMs) and development of software tools.*
No cost assigned. Amendments relevant to Scotland are programmed into ongoing programme costs for delivery of both building regulations and EPBD.
- *EPC Register*
Note that costs associated with review and development of the EPC register are not considered under this consultation which addresses changes in process arising from the recast Directive.

5.0 SCOTTISH FIRMS IMPACT TEST

5.1 Further consultation

A total of six businesses were specifically consulted, this included both small and micro businesses. The businesses contacted comprised of those who produce EPCs for non-domestic buildings, dwellings, a software provider and a solicitor. The impact on the business in terms of costs were of lesser importance than to the procedures which may arise from the recast.

It should be noted that responses to the main consultation included responses from SMEs. All were of the view that additional costs would pose a threat or disadvantage to their business, as most if not all of the additional costs would be re-charged to the customer. Views were similar in this respect, irrespective of business size.

Provisions under the recast will place a greater emphasis on the quality of assessor output and the operating requirements of all Approved and Protocol Organisations. This is likely to result in a modest increase in certification costs which, as those consulted have noted, will be passed onto clients. It should

be noted that the cost of certification to customers is, at present, significantly below the charges anticipated in the original 2009 Impact Assessment. EPC fees are also very often so low that operating costs are barely covered. It is anticipated that this modest increase in assessment fees will benefit all parties concerned in respect of both revenue for the assessor and the provision of improved advice and information for building owners.

A related issue, that of the introduction of lodgement fees for EPCs (subject to a separate consultation), will add a very small amount to the cost of assessments, with fees not much more than £1 for domestic and £5 for non-domestic EPCs. Again this cost will be passed to the customer. The main concern raised by those certifying was on the need to minimise the administrative burden that the introduction of lodgement fees might impose. It is the intent to minimise this burden through automatic collection of such fees via online electronic transactions.

5.1 Competition Assessment

The recast is simply strengthening existing processes and procedures. There are no significant areas where competition, restriction or imbalance should arise.

5.2 Test run of business forms

No new business forms will be produced as a result of proposals. There will be amendment to forms associated with building standards procedures and the warrant application process, requiring applicants and their agents to record decisions made in developing design proposals in defined circumstances. Full guidance on this process to applicants and local authorities will be provided.

6.0 LEGAL AID IMPACT TEST

It is not envisaged that there will be any significant impact on the legal aid fund. Neither is it considered that there will be any effect on individuals' right of access to justice through availability of expenditure from the legal aid fund.

7.0 ENFORCEMENT, SANCTIONS AND MONITORING

7.1 Background

As is currently the case, enforcement of legislative provisions made under the Directive will be through the Building (Scotland) Regulations 2004 (as amended) for EPCs for new buildings and for inspection of air conditioning systems and the Energy Performance of Buildings (Scotland) Regulations 2008 (as amended) for EPCs for all other buildings and in definition of the roles and responsibilities of parties involved. Scottish local authorities are the enforcing body under both these items of legislation.

7.2 Enforcement and sanctions.

Proposals under the Directive seek, amongst other aims, to enable better enforcement of actions required under the Directive and the Scottish Government will continue to work in partnership with both local authorities and assessor organisations to support this aim.

Article 27 of the recast Directive introduces an explicit requirement for penalties “applicable to infringements of the national provisions adopted pursuant to this Directive”. Penalties are currently prescribed within regulation for non-compliance and the consultation process has identified the need for future review of those applicable to non-domestic buildings.

7.3 Monitoring

Action under Option 2 introduces provisions for the monitoring of both assessor output under the directive and audit of Approved and Protocol Organisations. This action will support monitoring of the effectiveness of the provisions implemented as part of this review. The directive also requires evaluation of the effectiveness of energy standards set by Member States against a cost-optimal framework. Reporting on this matter will be undertaken following development of a standardised UK Methodology for such assessment.

7.4 Post-implementation review

The Building Standards Division will review the implementation of any changes made to building standards and EPB legislation to monitor the effectiveness of said changes and to ensure that subsequent reviews can be made on an informed basis. Any implemented changes will be subject to a review in line with European legislation and in line with standard policy to review building standards regulations, 5 and 10 year periods.

8.0 IMPLEMENTATION AND DELIVERY PLAN

Amendments will be made to both legislation and guidance to reflect the requirements of the EPBD. The Energy Performance of Buildings (Scotland) 2008 Regulations will be amended to:

- introduce a requirement for Approved Organisations (AO) to implement a quality assurance process in relation to EPCs for new and existing buildings;
- mandate the provision of ‘recommendation reports’ with the EPC.
- reduce the threshold for those public buildings which are frequently visited by the public required to display an EPC (500m² by 2013 and 250m² by 2015);
- include the EPC rating for the building in all commercial media;
- introduce legislation for the extension of representative sampling for EPCs
- provide wider access to the EPC register to allow deliver of other Scottish Government policy areas including Green Deal and FITS.

Guidance documents –

Technical Handbooks, Building Standards

Guidance leaflets and guidance documentation to legislation will also be revised to provide further advice and guidance to support legislation in relation to:

- EPC – calculation methodology, definitions, certificate format and document provision;
- Compliance and enforcement issues;

- Approved Organisation, revision of application process and introduction of an operational framework specifying monitoring and audit processes

Further consideration is being given to

- The creation of a central lodgement system for the inspection reports generated for air-conditioning systems and combination of inspections;
- The need for EPCs in respect of a short term lets.

Legislation will be amended to reflect the timetable imposed by the EU. Full details are set out the Scottish Government response to this consultation.

9.0 SUMMARY AND RECOMMENDATION

9.1 Summary

The was broad support for all of the recommendations outlined in the Scottish Government consultation on the EPBD, and Directive compliance will be made on these lines as this is now a new Directive but revisions to existing policy.

Amendments to legislation have been kept to a minimum, the key focus being an improvement to guidance and information for customers and those providing EPBD services.

9.2 Summary Costs and Benefits Table

Option	Benefits	Costs
Economic, Social & Environmental		
Option 1 – Do Nothing	None. Current implementation of the original Directive will continue.	No implementation costs. However, failure to transpose Directive properly can lead to a fine of £350,000 per day.
Option 2 – Amend legislation and guidance to meet the requirements set out by the recast Directive.	Meets the requirement to implement the recast Directive. Improvements in the quality and consistency of energy assessments required under the Directive; Improved information on energy efficiency to building owners; improved data on building performance for policy analysis.	Suggested that costs will result in a modest increase in baseline costs for energy assessments (+5%). From item 4.4: <ul style="list-style-type: none"> • implement and maintain improved process within accredited organisations: £1.05m per annum (illustrative). • One-off cost for change in size of public buildings requiring an EPC: £300k (valid for 10 years). • Up skill to deliver newbuild EPCs: £250k • Additional cost for production of newbuild EPCs: potential £1.3m per annum. • Administrative costs to Government: £20-30k per annum

9.3 Recommendation

That Option 2 be progressed, to ensure that Scotland remains compliant with the requirements of the recast Directive. A summary of key actions, extracted from the Final consultation report is appended as Annex A.

10.0 DECLARATION AND PUBLICATION

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed by the accountable Minister

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Derek Mackay, Minister for Local Government and Planning

Date: 6 June 2012

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ANNEX A – SUMMARY OF PROPOSED SCOTTISH GOVERNMENT ACTION

Enhanced EPC register:

In support of the general operation of processes under the Directive, we will introduce a combined EPC register on or before the end of 2012. This will enable central lodgement of all EPCs produced from that date and will also accommodate related data in support of other carbon and energy reduction initiatives such as Green Deal.

Requirements for the production of an EPC:

In requiring the production of EPCs, we will:

- maintain the maximum validity period of an EPC at 10 years;
- maintain the current exceptions where an EPC is not required;
- maintain the current triggers on sale or rental to a new tenant;
- amend the requirement for an EPC for public buildings to apply to all such buildings with a total useful floor area over 500 m² from 4 January 2013 (in response to Article 12(1) of the Directive); and
- issue clarification on the requirement to provide an EPC for buildings subject to short-term lets.

EPC format and content:

We will adopt a new format and content of the EPC and recommendations report.

This will include:

- the retention of cost-effective measures for the improvement of the energy performance of the building. These will remain set on a UK basis;
- the addition of a primary energy indicator on the EPC (in response to Article 3 of the Directive);
- improvements in the presentation of information and content; clarification of content and simplification of language; and
- additional information on other Government initiatives to support improvement in energy performance (such as Green Deal).

New build EPCs:

In response to Articles 18 & 27 of the Directive, current process within the building standards system will be amended to require that new build EPCs submitted on completion of a building are produced by members of an Approved Organisation. These will be subject to the same requirements for the competence of assessors and quality assurance of assessment as all other EPCs. Detailed proposals, including the date from which this new process will be applied will be published by October 2012.

Requirements for the display of an EPC:

We will:

- amend the requirement for display of an EPC in public buildings to apply to all such buildings with a total useful floor area over 500 m² from 9 January 2013 (in response to Article 13(1) of the Directive)
- introduce the requirement that, from 9 January 2013, a building with a total useful floor area over 500 m² which is frequently visited by the public has an EPC, that EPC must be displayed in a prominent position (in response to Article 12(2) of the Directive).

Provision of information where an EPC is required:

We will amend regulations and published guidance to reinforce that, where an EPC is required, it must be shown to any prospective buyer or tenant (in response to Article

12(2) of the Directive) and introduce a requirement for the inclusion of the energy performance indicator of the EPC in all advertisements in commercial media (in response to Article 12(4) of the Directive). We will issue guidance on what form the indicator must take and what forms of advertisement this requirement will apply to.

Production of EPCs for dwellings:

We will:

- enable the use of both RdSAP and SAP for the lodgement of EPCs for existing dwellings. Prior to this, we will publish advice on the use of SAP in such situations.
- provide detailed guidance on the circumstances under which representative assessment may be used to produce EPCs, with robust checks on both production and subsequent quality assurance of such data.

Approved Organisations & Protocol Organisations:

We will

- introduce an enhanced application and assessment process for organisations wishing to become Approved Organisations or Protocol Organisations, so that revised operation requirements for such organisations can be achieved (in support of Article 17 of the Directive)
- have in place a revised operational framework for all Approved Organisations and Protocol Organisations to support consistency and quality in the production and delivery of EPCs and air conditioning inspection reports (in support of Article 17 of the Directive)
- require quality assurance of EPCs and air conditioning inspection reports and prescribe requirements for this within the revised operational framework (in response to Article 18 of the Directive)
- implement a system of audit for all AO and Protocol Organisations, as a means of establishing that ongoing standards and the requirements of the revised operational framework are met (in support of Articles 17 & 20 of the Directive).

Air conditioning systems – inspection and reporting:

During 2012, we will work with Protocol Organisations to develop proposals for the possible central lodgement of air conditioning inspection reports. There will be no change to process in this respect during 2012.

Inspection of Air-conditioning Systems over 12 kW:

- We will consider the introduction of a central 'lodgement' process for inspection reports; and
- Work with the industry to identify specific areas where inspections can be combined in order to reduce the administrative burden and costs to building owners.

Enforcement and penalties for non-compliance:

- We will work with local authorities to develop a standard model for inquiry and enforcement of the provisions of the recast Directive.
- We will investigate how the role of the local authority in enforcing legislation can be supported by the Scottish Government and the assessor community.
- In support of effective enforcement, we will investigate means of simplifying the process by which penalties for non-compliance can be levied. This will include considering wider options for the use of penalty charge notices.

Addendum:

The following Final Business and Regulatory Impact Assessment 2011/0026 is in support of regulation 12 of The Energy Performance of Building (Scotland) Amendment No. 2 Regulations 2012. This addresses the introduction of a fee for lodgement of data to the register of Energy Performance Certificates.



FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1) Introduction of an Energy Performance Certificate lodgement transaction fee, upon the creation of a database for Non-Domestic Buildings

and

2) Introduction of a transaction fee for the lodgement of Energy Performance Certificates for Dwellings on the Home Energy Efficiency Database (HEED)

2011/0026

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1.0 TITLE OF PROPOSAL

- 1) Introduction of an Energy Performance Certificate lodgement transaction fee, upon the creation of a database for Non-Domestic Buildings; and
- 2) Introduction of a transaction fee for the lodgement of Energy Performance Certificates for Dwellings on the Home Energy Efficiency Database (HEED).

2.0 PURPOSE AND INTENDED EFFECT

2.1 Background

[Directive 2002/91/EC on the Energy Performance of Buildings](#) (EPBD) came into force on 4 January 2003. The objective of the Directive is to promote improvement of the energy performance of buildings and to reduce the amount of carbon they produce. This Directive introduced the need for building owners to provide prospective buyers or tenants with an Energy Performance Certificate (EPC) for all buildings on construction, sale or rental. Following a public consultation in 2006 it was agreed that EPCs for new construction should be retained by the Local Authority (Verifier). Certificates for existing dwellings are retained on the Home Energy Efficiency Database (HEED), a database operated and maintained by the Energy Saving Trust (EST) funded through Government. Unlike other parts of the UK, a levy to lodge the EPC was not been introduced at this time. As part of improving EPBD implementation in response to the recast of the Directive of 19 May 2010 as [Directive 2010/31/EU on the energy performance of buildings](#), work has begun to create a non-domestic database.

2.2 Objective

The delivery of a number of Government policies at European, UK and Scottish level are currently being delivered based on the EPC methodology and data. The information gathered as part of the EPC production process is essential to these. However, with future data requirements the current database for domestic properties is no longer fit for purpose in its current state and IT changes to accommodate policy delivery are required. The cost of this work will be met by Scottish Government initially, however, the costs for the continued use and maintenance will also have to be met. Similarly for the non-domestic database the Scottish Government will fund the build of the database. However, as with the domestic database, it is considered appropriate that development and ongoing maintenance costs should be self-financing. The funding required will be raised through the introduction of a small levy for every EPC lodged. This will come into force from the beginning of October 2012.

2.3 Rationale for Government intervention

The need for a database is considered essential for the successful transposition of the Directive and delivery of domestic policies. The introduction of a lodgement fee means that only these users would contribute towards the future development and maintenance costs. It is considered that this approach is equitable. If funding were to be provided centrally by Government, the result would be that the public purse (and in effect everyone) would bear the burden. This aligns with the Scottish Government's Greener Strategic Objective and Sustainable Places Policy.

3.0 CONSULTATION

Building Standards Division had discussions with colleagues from the Department of Energy and Climate Change and the Scottish Government Energy Efficiency Division. The EPC has been identified as a key component in the delivery of GB 'Green Deal' proposals and, in this respect, the Scottish Government made a significant contribution to the development of UK Energy Act which received Royal Assent last year.

3.1 Within Government

Feedback on both this consultation and the recast of the Energy Performance of Buildings Directive (EPBD) indicate support for this policy. The development of register facilities is viewed as being a useful aid to quality assurance and enforcement as well as supporting the forthcoming Green Deal.

3.2 Outwith Government

A public consultation seeking views on this subject ran from 18 November 2011 – 13 January 2012. The consultation package which includes the Scottish Government response can be found at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubconsult/consultepcfee>.

3.3 Business consultation

A consultation exercise in support of the Scottish Firms Impact Test was undertaken during the public consultation period. See item 5.0.

4.0 OPTIONS

4.1 Options

Option 1 - Do nothing.

Delivery of a number of Government policies and reporting obligations rely on the data used to produce EPCs. This requires amendments to the domestic database and creation of a non-domestic database, without which successful delivery of these policies is unlikely to occur. Not introducing a lodgement fee would require the cost of register facilities to be funded from the central purse (see item 2.3).

Option 2 – Introduction of a lodgement fee.

The introduction of a lodgement fee will ensure a dedicated income stream for the future maintenance and development work for the database without recourse to Government funds, ensuring that the cost of supporting these services is borne only by parties using the services..

4.2 Sectors and groups affected

Changes in the process by which energy performance data is lodged to register has the potential to impact for the following sectors and groups:

- owners of properties which are constructed, sold or rented, where an EPC is required under the Directive;

- owners of properties where an EPC is required in support of other Scottish or UK policies;
- members of Approved Organisations;
- software providers; and
- Energy Saving Trust (as proposed keeper of the register).

4.3 Benefits – Option 1

It could be said by some that no change to the current arrangements are a benefit (no additional cost to those seeking an EPC), but as the additional cost of maintaining improved register facilities will still apply, no benefits have been identified.

Benefits – Option 2

The principal benefit in the introduction of a lodgement fee is that the cost of maintaining registry facilities will be borne solely by those parties using the services. This is deemed to be more equitable than central funding from the public purse.

4.4 Costs – Option 1

It is anticipated that the running costs of current and improved registry services will be in the region of £300,000 - 400,000 per annum. Costs to business will not change with this option, with these costs borne by the Scottish Government.

Costs – Option 2

Based on the current fee defined in English legislation and on the number of anticipated EPC lodgements, our forecast of lodgement costs are as follows:

EPC Lodgements	Cost per EPC (exc VAT)	Annual No. of EPCs	Total Annual Income
Domestic	£ 1.15	179,000	£ 205,850
Non-Domestic	£ 5.36	37,500	£ 201,000
Total			£ 406,850

These figures include estimated numbers for EPCs produced on sale, rental, public buildings (500m²) and also those being produced for other policy areas e.g. FITS, Green Deal. To minimise the financial impact on those affected by the introduction of a lodgement fee, fees would be reviewed periodically to ensure that revenue does not significantly exceed operational costs.

5.0 SCOTTISH FIRMS IMPACT TEST

5.1 Further consultation

A total of six businesses were specifically consulted, including both small and micro businesses. The businesses contacted comprised of those who produce EPCs for non-domestic buildings, dwellings, a software provider and a solicitor. The impact on the business in terms of costs were of lesser importance than the procedures which may arise from the recast.

It should be noted that responses to this consultation included responses from SMEs. All were of the view that additional costs would not pose a threat or disadvantage to their business, as most if not all of the additional costs would be re-charged to the customer. These views were the same respect, irrespective of business size. The need to minimise any additional administrative burden which the introduction of lodgement fees may place on affected organisations was noted.

5.2 Competition Assessment

Using the Office of Fair Trading (OFT) competition filter, it has been established that there are no significant areas where competition, restriction or imbalance should arise through the introduction of a fee for an existing process. Fees proposed are no more than those that exist in other parts of the UK.

5.3 Test run of business forms

No new business forms will be produced as a result of these proposals. There will be minor changes to the software and lodgement process, however, Approved Organisation members are well versed with IT as this is an integral part of the EPC calculation process. No significant adjustments will be required.

6.0 LEGAL AID IMPACT TEST

It is not envisaged that there will be any significant impact on the legal aid fund. Neither is it considered that there will be any effect on individuals' right of access to justice through availability of expenditure from the legal aid fund.

7.0 ENFORCEMENT, SANCTIONS AND MONITORING

7.1 Enforcement and sanctions

The Scottish Government will work with Approved Organisations, software providers and EST to ensure that fees are properly attributed and collected. Failure to pay the lodgement fee would mean that the EPC could not be placed on the databases(s). This would constitute a breach of their Approved Organisation's Code of Conduct and could result in disciplinary proceedings. Ultimately, this could mean that the members could no longer produce EPCs.

7.2 Monitoring

Income will be monitored over a period of three years. An increase in the lodgement fee will not be imposed without consultation and in the unlikely event that there is either an excess or shortfall in the revenue generated the SG will undertake a public consultation. To support the system all income generated will be monitored and it is intended that details will be published on the SG website on an annual basis.

7.3 Post-implementation review

The Building Standards Division will review the fee level and associated administration costs and procedures after 3 years. Any potential changes will be subject to a consultation as outlined at paragraph 7.2.

8.0 IMPLEMENTATION AND DELIVERY PLAN

Amendments will be made to The Energy Performance of Building (Scotland) 2008 regulations and guidance for Approved Organisations to introduce the fee. The technical specification will be sent to the contractor engaged to deliver the new database requesting functionality by October 2012.

Notification of the fee will be issued to key contacts within the private and social rented sector; those identified as having 'public' buildings and all AOs.

In developing a new system it is our intention to keep, as far as practical, the administrative processes to a minimum. We will also work with colleagues in Whitehall to ensure, where possible processes are aligned. An improved reporting facility will be developed with the aim of reporting on a regular basis. Reports will be provided on the SG website.

In support of the development of the registers we will issue a timetable to AOs and software providers. We will also work with AOs and software providers to put in place and/or update SLAs and service provision. It is our intention to have this work completed by October 2012. The establishment of a Technical Steering Group will be revisited in 2013.

9.0 SUMMARY AND RECOMMENDATION

9.1 Summary

The majority of responses to the consultation were supportive of the introduction of a lodgement fee for dwellings (£1.15 + VAT) and non domestic buildings (£5.36 + VAT) respectively. Fees will be collected as part of the EPC lodgement process.

9.2 Summary Costs and Benefits Table

Option	Benefits	Costs
Economic, Social & Environmental		
a. Do Nothing	None. Cost of improvements to register will be borne by Scottish Government.	A funding stream of approximately £ 300-400k is required to support and enhance existing data retention processes, particularly in relation to non-domestic buildings.
b. Introduce a lodgement fee	A dedicated funding stream for the development and maintenance costs of the EPC database, funded by those who use the service.	At £1.15 per dwelling and £5.36 for non-domestic buildings, the annual cost of using the service estimated as being circa £ 406k per annum.

9.3 Recommendation

That option (b) be progressed. To implement the fees as outlined with income being generated by users of the system.

10.0 DECLARATION AND PUBLICATION

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that the business impact has been assessed with the support of businesses in Scotland.

Signed by the accountable Minister

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Derek Mackay, Minister for Local Government and Planning

Date: 26 June 2012

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