

## EXECUTIVE NOTE

### THE BUILDING (SCOTLAND) AMENDMENT REGULATIONS 2012

#### SSI 2012/209

1. The above instrument is made in exercise of the powers conferred by sections 1, 2 and 54 of the Building (Scotland) Act 2003. 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 Energy Performance of Buildings (Scotland) (Amendment) Regulations (No. 2) 2012 and the earlier S.S.I. 2012/190 completes 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. The two provisions made in this SSI under the Building (Scotland) Act 2003 are as follows:

- Transposing the new requirement introduced by Article 16 of the Directive, regulation 2(2) amends regulation 17 of the Building (Scotland) Regulations 2004 to secure the provision of information, in the form of a report, to building owners and tenants following the inspection of an air conditioning system; such inspections being a requirement under Article 15 of the Directive.
- Regulation 2(3) amends the limitations to paragraph 6.9 to schedule 5 of the Building (Scotland) Regulations. Paragraph 6.9 is the mandatory requirement to affix/display an energy performance certificate on construction of a new building. This amendment introduces a broader requirement for the display of energy performance certificates in buildings frequented by the public, to ensure that this provision is addressed on completion of a new building. This requirement applies to all buildings over 500m<sup>2</sup> in

area which are frequently visited by the public and transpose Articles 12(1)(b) and 13 of the Directive.

## **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>

## **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. 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>.

10. Detailed assessment of costs and benefits are provided within the final BRIA which will be published online at: <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full>. A copy of this 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 certification which are transposed by this and the Energy Performance of Buildings (Scotland) (Amendment) Regulations (No. 2) 2012

**Scottish Government**  
**Communities and Local Government Directorate**  
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