

Final Business and Regulatory Impact Assessment

Title of Proposal

Review of statutory fees implemented under regulation 10A of The Energy Performance of Buildings (Scotland) Regulations 2008.

Purpose and intended effect

Background

In response to Article 7 of Directive 2002/91/EC on the Energy Performance of buildings, the production of energy performance certificates was introduced for construction of new buildings (from 1 May 2007) and sale or rental of existing buildings and display in larger public buildings (from 4 January 2009).

A public consultation¹ was undertaken in November 2011 asking for views on the introduction of a fee for the lodgement of each energy performance certificate (EPC) to a new, expanded central electronic registry – the SEPCR. The Scottish Government response to the consultation exercise (April 2012) remains available online².

Responses to the consultation were supportive of the proposal and Fees of £1.15 and £5.36 (for dwellings and non-dwellings respectively) introduced on 1 October 2012 via regulation 12 of The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012. This formed part of broader work to implement the regulations and processes needed to transpose Directive 2010/31/EU on the Energy Performance of Buildings.

In responding to the original 2011 consultation, the Scottish Government provided a commitment that a review of the fee rate would be undertaken after a period of at least three years and would be notified via public consultation.

Objective

To set out the current status of the Scottish Energy Performance Certificate Register (SEPCR)³, to advise on pending action to amend the statutory fees payable on lodgement of energy performance data and to seek views on the manner in which the register is funded.

Rationale for Government intervention

The premise established following consultation in 2011/12 was for the creation of a

¹ <http://www.gov.scot/Publications/2011/11/16154018/0>

² <http://www.gov.scot/Resource/0039/00391756.pdf>

³ <https://www.scottishepcregister.org.uk/>

central electronic register for energy performance data which would be funded directly from application of a statutory fee for lodgement of data.

Whilst the estimated operating costs for the register predicted in the 2011 consultation proved to be relatively accurate for the initial operation, this is no longer the case. With the introduction of additional facilities and functions over time, it has become evident that original lodgement income alone is not sufficient to cover operating costs. For the past three years, the shortfall between lodgement revenue and operating costs has been funded directly by the Scottish Government.

Proposals consider amendment of the current statutory fees set in regulations and, going forward, annual review to enable the original intent of register operations being funded solely from lodgement fee revenue.

Consultation

- **Within Government**

Consultation proposals were developed with input from policy areas of the Scottish Government with an interest in the lodgement and use of energy performance data lodged to the Scottish Energy Performance Certificate Register (SEPCR), including Better Homes Division, Housing Directorate & Energy Deployment Division, Directorate for Energy & Climate Change

Notification of the review was also made to the UK, Welsh and Northern Ireland government via officials leading on transposition of Directive 2010/31/EU on the Energy Performance of Buildings.

- **Public Consultation**

An interim version of this document supported a public consultation between 8 May 2017 and 19 June 2017 which set out the current status of the SEPCR, advised on pending action to amend the statutory fees payable on lodgement of energy performance data and sought views on the manner in which the register is funded. 62 responses were received. Consultation indicated support for proposals to continue to fund the operation of SEPCR via the statutory lodgement fee. Responses also signalled a strong case for review of functions, facilities and governance of the register to demonstrate effectiveness and best value. Published responses and the Consultation Report are available at: <https://consult.scotland.gov.uk/local-government-and-communities/scottish-energy-performance-certificate-register/>.

- **Business**

The consultation is the principle means of engagement with building owners. Pre-engagement on the impact of proposed changes in statutory fee was undertaken via dialogue with:

- Scottish Approved Organisations, with a specific focus on response to similar changes applicable elsewhere in the UK during 2013 and 2016; and
- a sample of current EPC Assessors who are the point of contact with clients, including small businesses.

Options

- **Option 1 – do nothing**
Retain current provisions in legislation unchanged.
- **Option 2 – amend statutory fees**
Amend current provisions in legislation to change the statutory fee. Action proposed in consultation is to raise the level of fee.
- **Option 3 – remove statutory fees**
Amend current provisions in legislation to remove the statutory fee

Sectors and groups affected

Ultimately, any change to the manner in which the SEPCR is funded will have an impact, positive or negative, on building owners who seek to obtain an EPC for their property who may be required to bear the cost increase or may benefit from the reduction or removal of said charge.

It will also have an impact on the EPC assessors delivering services who will have to determine whether or not to pass on the change in cost to building owners.

It will also require amendment to limited aspects of the administration of these assessors by Approved Organisations who collect and pass on the statutory fee to the keeper.

Removal of the statutory lodgement fee would result in the cost of the register being met by the Scottish Government and therefore by taxpayers in general, not just users of the service.

Benefits

- **Option 1 – do nothing**
There is no change in current benefits.
- **Option 2 – amend statutory fees**
The SEPCR is returned to the intended cost recovery model proposed on the original 2011 consultation and will operate in line with similar resources elsewhere in the UK. A cost of just under £365,000 to the Scottish Government, and therefore to taxpayers in general, is removed.

- **Option 3 – remove statutory fees**

The intended cost recovery model proposed on the original 2011 consultation is discontinued and a cost to users of the register (building owners) of approximately £650,000 is removed.

Costs

- **Option 1 – do nothing**

The cost of funding a shortfall between the operating costs of the SEPCR and lodgement income would fall to the Scottish Government.

- **Option 2 – amend statutory fees**

A shortfall between the operating costs of the SEPCR and lodgement income would be removed by a change in the current statutory fees. This would bring the operation of the SEPCR back in line with the original model proposed and supported in the 2011 consultation on the introduction of lodgement fees.

To meet the anticipated annual budget, the statutory fee would need to be increased to £2.60 for domestic EPCs (an increase of £1.45) and £12.10 for non-domestic EPCs (an increase of £6.74). This would provide projected annual revenue of approximately £650,000, an increase of just under £365,000 compared to Option 1. This increase in cost is borne by the users of the register (building owners).

- **Option 3 – remove statutory fees**

The full cost of operating the SEPCR, estimated at £650,000 annually, would be borne by the Scottish Government and therefore by taxpayers in general.

Scottish Firms Impact Test

The impact of proposed change (Option 2) was investigated through dialogue with both EPC Assessors (who are in direct contact with building owners as clients) and Approved Organisations (who gather and deliver the fee to the keeper). This included feedback from the latter on experiences from similar changes to lodgement fees which occurred previously elsewhere in the UK.

The statutory fee for lodgement of energy performance data is built into the overall fee charged to building owners by an EPC assessor for their services. As such, any increase in cost, however small, will either be absorbed by the Assessor (reducing profit) or passed on to the building owner (increasing cost of assessment). Building owners are not generally aware of the lodgement fee as a small, discrete component of assessment costs.

Discussions with organisations and individuals delivering assessments indicated that even a small change in such a fee has implications for existing systems. The change in monetary terms was considered relatively inconsequential by most, but not all, of those contacted. It can, for example, have a greater impact in resourcing terms for owners where assessment of large property portfolios is planned. From an Assessor perspective, it may also impact most readily where existing service delivery contracts were agreed based upon current charges.

Common themes arising in discussions were:

- a preference to avoid change where possible;
- a preference for limiting the number of occasions when a fee is amended;
- where amendment is required, signal this as far in advance as practical; and
- expectation that increased fee should improve the facility provided to users.

These themes were also evident in Consultations responses received

Competition Assessment

Proposals will not have an impact on competition. The topic of review is a statutory fee which is applied to all lodgement of data to the SEPCR. Any party seeking to obtain an EPC and any party submitting such data is subject to the same requirement under legislation. Proposals will not, therefore, limit:

- the number or range of suppliers;
- the ability of suppliers to compete;
- suppliers' incentives to compete vigorously; or
- choices and information available to consumers.

Test run of business forms

No new forms will be introduced as a result of any of the options being consulted upon.

Legal Aid Impact Test

None of the options set out could give rise to increased use of legal processes or create new rights or responsibilities. There will be no possible impacts on the legal aid fund.

Enforcement, sanctions and monitoring

None of the options set out require any change to current procedures for enforcement, sanctions or monitoring of the current regulatory provisions. Any change arising would be administrative and relate to existing functions already undertaken by registered

Assessors, Approved Organisations and the keeper of the register.

Implementation and delivery plan

Amendment of statutory fees requires amendment of the Energy Performance of Buildings (Scotland) Regulations 2008. On approval, this will be actioned and amendment regs laid in Parliament as soon as practical. In response to views expressed in consultation, new fees shall not come into force for a period of three months to enable those affected to prepare for this change.

- **Post-implementation review**

Following the proposed action, a review of the current register provision is also proposed. This may lead to further changes in the manner in which the Scottish EPC Register is funded in the future. Outwith that review, these provisions will be reviewed not later than 10 years after implementation.

Summary and recommendation

It is clear from responses that there remains majority support for the operation of the Scottish Energy Performance Certificate Register (SEPCR) be self-financing, supported primarily by the statutory lodgement fee.

Accordingly, Option 2- 'amend statutory fees' is recommended.

This introduces revised fees for the lodgement of energy performance data to the SEPCR and maintains the original intent that the register be self-financing. In addition to amending fees, a review of the current register provision should also be undertaken, in recognition of the range of supporting comments provided by respondents to the consultation.

- **Summary costs and benefits**

Benefits from this policy are unchanged as a result of each option.
The cost of operation of the Scottish Energy Performance Certificate Register (SEPCR) is estimated at £650,000.
Option 1 – this cost will be shared between users of the SEPCR (£285,000) and the Scottish Government (and therefore taxpayers in general - £365,000)
Option 2 – this cost will be met only by users of the SEPCR (£650,000)
Option 1 – this cost will be met by the Scottish Government (and therefore taxpayers in general - £650,000)

Declaration and publication

I have read the Business and Regulatory 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:

Date:

Minister's name **Kevin Stewart**

Minister's title **Minister for Local Government and Housing**

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