
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in England and Wales articles 7 (energy performance certificates), 9 (air-conditioning system inspections) and 10 (energy assessors) of the Energy Performance of Buildings Directive, OJ No L 1, 4.1.2004 (“the Directive”) which lays down requirements for the production of energy performance certificates when buildings are constructed, sold or rented out, display of certificates in large public buildings, and regular inspections of air-conditioning systems.

Part 2 of these Regulations implements articles 7(1) and (2) of the Directive, and requires the production of energy performance certificates when buildings are constructed, sold or rented out. In particular:

(1) Sellers and prospective landlords are required to make available energy performance certificates to prospective buyers and tenants at the earliest opportunity (regulation 5).

(2) Where the Housing Act 2004 imposes a duty on sellers or their agents to have a home information pack, sellers and their agents must ensure that energy performance information is included in any written particulars of the dwelling for sale (regulation 6).

(3) Regulation 8 and Schedule 2 amend the Building Regulations 2000 and the Building (Approved Inspectors etc) Regulations 2000. In addition to various consequential amendments, regulation 17E is inserted into the Building Regulations 2000. It requires energy performance certificates to be produced when buildings are constructed. Paragraph 1(5) of Schedule 2 revokes regulation 16 of those Regulations. Paragraph 2(2) of Schedule 2 substitutes regulation 12 of the Building (Approved Inspectors etc) Regulations 2000. The regulations that are revoked and substituted (which each required an energy rating for new dwellings) are superseded by the requirement to produce an energy performance certificate. Regulation 9 requires certificates for those buildings to which the Building Regulations 2000 do not apply.

(4) Schedule 2 also amends regulation 17A of the Building Regulations 2000, which implemented article 3 of the Directive. The amendment requires the Secretary of State to approve a methodology of calculation of the energy performance of buildings and ways in which the energy performance of a building shall be expressed.

(5) Energy performance certificates must be accompanied by recommendations for the improvement of the energy performance of the building (regulation 10).

(6) Regulation 11 sets out the minimum requirements for energy performance certificates. In particular, certificates must be no more than 10 years old, except in circumstances where the Housing Act 2004 requires a home information pack, in which case a certificate is only valid if it is less than three months old at the first point of marketing, as that term is defined in the Home Information Pack Regulations 2007.

(7) Regulation 14 imposes restrictions on the circumstances in which certificates and recommendations may be disclosed, and creates an offence for unlawful disclosure.

Part 3 implements article 7(3) of the Directive. In particular, occupiers of large buildings occupied by public authorities and by institutions providing public services to a large number of persons must display a display energy certificate, and obtain an advisory report containing recommendations for the improvement of the energy performance of the building (regulation 16).

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

Part 4 implements article 9 of the Directive. In particular, the person who has control of the operation of an air-conditioning system with an “effective rated output” (defined in regulation 20(3)) of at least 12 kW must ensure the system is inspected at regular intervals not exceeding 5 years (regulation 21).

Part 5 implements article 10 of the Directive. Energy assessors who produce certificates or inspect air-conditioning systems must be members of an accreditation scheme approved by the Secretary of State (regulation 25).

Part 6 requires certain documents produced by energy assessors to be entered onto a register maintained by the Secretary of State. Regulations 34 to 37 set out who may access the register.

Part 7 deals with enforcement and makes provision for enforcement by way of civil penalties. Regulation 38 imposes a duty on local weights and measures authorities to enforce the duties relating to certificates and air-conditioning inspections. Regulation 40 empowers enforcement authorities to issue penalty charge notices for any breach.

Regulation 49 makes provision to bind the Crown. Regulation 50 imposes a general duty to co-operate with and allow reasonable access to any person who is under a duty relating to certificates or inspections.

A transposition note setting out how these Regulations implement the Directive, and a full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector, is available from the Department for Communities and Local Government website or from the Sustainable Buildings Division of that Department (Tel: 020 7944 5755; Fax: 020 7944 5719; email: enquiries.br@communities.gsi.gov.uk). Copies are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website at www.opsi.gov.uk.