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STATUTORY INSTRUMENTS

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**2007 No. 991**

**The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007**

**PART 7**

**Enforcement**

**Enforcement authorities**

**38.**—(1) Every local weights and measures authority is an enforcement authority for the purposes of this Part.

(2) It is the duty of each enforcement authority to enforce in their area the duties under regulations 5(2), 5(5), 6(2), 9(2), 10, 16(2), 21(1), 23, 24 and 39(4).

**Power to require production of documents**

**39.**—(1) An authorised officer of an enforcement authority may require a person who appears to him to be or to have been subject to any of the duties under regulation 5, 9(2), 10, 16(2), 21(1), or 23 to produce for inspection a copy of—

- (a) a valid energy performance certificate and recommendation report;
- (b) an advisory report; and
- (c) an inspection report.

(2) The power conferred by paragraph (1) includes power to take copies of any document produced for inspection.

(3) A requirement under this regulation may not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

(4) It is the duty of a person subject to such a requirement to comply with it within the period of seven days beginning with the day after that on which it is imposed.

(5) A person is not required to comply with such a requirement if he has a reasonable excuse for not complying with the requirement.

**Penalty charge notices**

**40.**—(1) An authorised officer of an enforcement authority may, if he believes that a person has committed a breach of any duty under regulation 5(2), 5(5), 6(2), 9(2), 10, 16(2), 21(1), 23, 24 or 39(4) give a penalty charge notice to that person.

(2) A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed.

(3) A penalty charge notice must—

- (a) state the officer's belief that the person has committed a breach of duty;

- (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
  - (c) require that person, within a period specified in the notice—
    - (i) to pay a penalty charge specified in the notice; or
    - (ii) to give notice to the enforcement authority that he wishes the authority to review the notice;
  - (d) state the effect of regulation 46;
  - (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
  - (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).
- (4) The period specified under regulation 40(3)(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.
- (5) The enforcement authority may extend the period for complying in any particular case if they consider it appropriate to do so.
- (6) The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.
- (7) The enforcement authority must withdraw a penalty charge notice where the recipient can demonstrate that—
- (a) he took all reasonable steps and exercised all due diligence to avoid breaching the duty; or
  - (b) regulation 41 or 42 applies.

#### **Penalties under Housing Act 2004**

**41.**—(1) This regulation applies where, at the time the relevant person is subject to the duty in regulation 5, he is also subject to a duty under Part 5 of the Housing Act 2004 (“a Housing Act duty”) in relation to the same building.

(2) A relevant person shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 in circumstances where—

- (a) a penalty charge notice has been given to him under section 168 of the Housing Act 2004—
  - (i) in relation to a breach of a Housing Act duty; and
  - (ii) that breach relates to or includes a failure to make available a valid energy performance certificate or recommendation report; and
- (b) the penalty charge notice has not been withdrawn or quashed in accordance with the provisions of Schedule 8 to that Act.

#### **Defence where energy performance certificate unobtainable**

**42.**—(1) A relevant person shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 where he can demonstrate that—

- (a) he made a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
- (b) in the case of a failure to make available an energy performance certificate to a prospective tenant—

- (i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant's urgent relocation;
- (ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
- (iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and
- (iv) the relevant person has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out the building.

(2) In paragraph (1)(a) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide an energy performance certificate for the category of building in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an energy performance certificate.

(3) In this regulation "relevant time" means the point in time by which the relevant person is required to have made an energy performance certificate available to a prospective buyer or tenant by virtue of regulation 5(2).

### **Penalty amount**

**43.**—(1) The penalty charge specified in the notice shall be—

- (a) in relation to a breach of a duty under regulation 5(2), 5(5), 6(2), 9(2) or 10—
  - (i) where the building is a dwelling, £200;
  - (ii) where the building is not a dwelling, calculated in accordance with the formula in paragraph (2);
- (b) in relation to a breach of a duty under regulation 16(2)(a), £1000;
- (c) in relation to a breach of a duty under regulation 16(2)(b), £500;
- (d) in relation to a breach of a duty under regulation 21(1), 23(1), 23(2) or 24, £300; and
- (e) in relation to a breach of a duty under regulation 39(4), £200.

(2) Subject to the minimum and maximum penalty charges prescribed by paragraph (3), the penalty charge for the purposes of paragraph (1)(a)(ii) shall be—

- (a) where the building constitutes a hereditament, 12.5% of the rateable value of the hereditament;
- (b) where no other building (other than a building which is exempt from Part 2 by virtue of regulation 4(1)(b) or 4(1)(c)) forms a part of the same hereditament, 12.5% of the rateable value of the hereditament of which the building forms a part;
- (c) where the building comprises more than one hereditament, 12.5% of the sum of the rateable values of each hereditament that comprise the building; and
- (d) where—
  - (i) one or more buildings (other than a building which is exempt from Part 2 by virtue of regulation 4(1)(b) or 4(1)(c)) form part of the same hereditament; or
  - (ii) the building is not, or does not form part of, a hereditament which appears on a local non-domestic rating list at the relevant time,

£750.

(3) The minimum and maximum penalty charges for the purposes of paragraph (2) are £500 and £5000 respectively.

(4) In this regulation—

“hereditament” means a hereditament which, pursuant to section 42 of the Local Government Finance Act 1988(1), is shown on a local non-domestic rating list in force at the relevant time;

“local non-domestic rating list” means a local non-domestic rating list maintained in accordance with section 41 of the Local Government Finance Act 1988(2);

“rateable value” means the rateable value shown for a hereditament on a local non-domestic rating list at the relevant time; and

“relevant time” means the time at which the penalty charge notice is given.

### Reviews

44.—(1) If, within the period specified under regulation 40(3)(c) (or that period as extended under regulation 40(5)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—

- (a) consider any representations made by the recipient and all other circumstances of the case;
- (b) decide whether to confirm or withdraw the notice; and
- (c) give notice of their decision to the recipient.

(2) A notice confirming the penalty charge notice must also state the effect of regulations 45 and 46.

(3) If the authority are not satisfied that—

- (a) the recipient committed the breach of duty specified in the notice;
- (b) the notice was given within the time allowed by regulation 40(2) and complies with the other requirements imposed by these Regulations; and
- (c) in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,

they shall withdraw the penalty charge notice.

### Appeal to the county court

45.—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under regulation 44(1)(c) is given, appeal to the county court against the penalty charge notice.

(2) The county court may extend the period for appealing against the notice.

(3) Such an appeal must be on one (or more) of the following grounds—

- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
- (b) that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations; or
- (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.

(4) An appeal against a penalty charge notice shall be by way of a rehearing; and the court shall either uphold the notice or quash it.

(5) If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

(1) 1988 c. 41; amended by the Local Government and Housing Act 1989 (c.42), Schedule 5, paragraph 20.

(2) There are amendments but none is relevant to these Regulations.

### **Recovery of penalty charges**

**46.**—(1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless—

- (a) the notice has been withdrawn or quashed; or
- (b) the charge has been paid.

(2) Proceedings for the recovery of the penalty charge notice may not be commenced before the end of the period mentioned in regulation 44(1).

(3) If within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced—

- (a) before the end of the period mentioned in 45(1); and
- (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.

(4) In proceedings for the recovery of the penalty charge, a certificate which—

- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
- (b) states that payment of the penalty charge was or was not received by a date specified in the certificate,

is evidence of the facts stated.

### **Service of documents**

**47.**—(1) A penalty charge notice and any other notice mentioned in this Part may be given by post.

(2) Any such notice may be given—

- (a) in the case of a body corporate, to the secretary or clerk of that body; and
- (b) in the case of a partnership, to any partner or to a person having control or management of the partnership business.

### **Offences relating to enforcement officers**

**48.**—(1) A person who obstructs an officer of an enforcement authority acting in pursuance of regulation 39 is guilty of an offence.

(2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of this Part is guilty of an offence.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.