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STATUTORY INSTRUMENTS

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**2008 No. 2363**

**BUILDING AND BUILDINGS,  
ENGLAND AND WALES**

**The Energy Performance of Buildings  
(Certificates and Inspections) (England and  
Wales) (Amendment No.2) Regulations 2008**

*Made* - - - - *4th September 2008*  
*Laid before Parliament* *9th September 2008*  
*Coming into force* - - *1st October 2008*

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to matters relating to the energy performance of buildings.

Before making these Regulations, the Secretary of State consulted the Welsh Ministers in relation to residential properties in Wales in accordance with section 250(3) of the Housing Act 2004<sup>(3)</sup>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, by sections 1(1), 35 and 47 of, and paragraphs 1, 2, 4, 4A, 7, 8 and 10 of Schedule 1 to, the Building Act 1984<sup>(4)</sup>, and by section 163(9) of the Housing Act 2004.

**Citation, extent and commencement**

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No.2) Regulations 2008.

(2) These Regulations extend to England and Wales.

(3) These Regulations shall come into force on 1st October 2008.

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(1) [S.I. 2004/3328](#).

(2) [1972 c.68](#).

(3) [2004 c.34](#).

(4) [1984 c.55](#). Section 1(1) was amended by section 1(1) and (2) of the Sustainable and Secure Buildings Act [2004 \(c.22\)](#); section 47 was amended by section 8(2) of that Act and [S.I. 1996/1905](#); paragraph 4A of Schedule 1 was inserted by section 8(1) of that Act; paragraph 7 was amended by section 3(1) and (5) of that Act (there are other amendments to that paragraph, but none is relevant to these Regulations); paragraph 8 was amended by section 3(1), (6) and (7) of that Act.

## **Amendments to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007**

2.—(1) The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(5) are amended as follows.

(2) In regulation 11(4) (energy performance certificates) for “twelve months” substitute “3 years”.

(3) In regulation 14(2) (purposes for which certificates and recommendation reports may be disclosed)—

(a) after sub-paragraph (d) insert the following sub-paragraphs—

“(dd) where the disclosure is by or to an energy assessor for a purpose legitimately connected to the assessment of the dwelling concerned;

(de) where the disclosure is of the address and the asset rating only, by or to the Energy Saving Trust Limited in respect of any dwelling—

(i) for the purpose of the provision to the occupier of that dwelling of information on financial support available for the improvement of its energy performance, or

(ii) for statistical or research purposes,

provided in the latter case that no particular property is identifiable from the information disclosed;”;

(b) after sub-paragraph (ee) insert the following sub-paragraph—

“(ef) where the disclosure is by or to an approved inspector for a purpose legitimately connected with the functions of an approved inspector under Part 2 of the Building Act 1984;”.

(4) In regulation 17(1)(e)(iii) (display energy certificates) omit “an estimate of”.

(5) In regulation 31 (registration of certificates etc.) for paragraph (2) substitute—

“(2) An energy assessor who issues any of the documents referred to in paragraph (1) must ensure that the document, and the data which, in accordance with the methodology of calculation of the energy performance of buildings approved by the Secretary of State under regulation 17A of the Building Regulations 2000, was used to calculate any asset rating or operational rating, and to produce the document, is entered onto the relevant register before the assessor gives the document to the person who requested that it be issued.”.

(6) After regulation 34 (disclosures with reference number) insert the following regulation—

### **“Disclosures whether an energy performance certificate for a building other than a dwelling has been entered on the register**

**34A.** The keeper of the register may disclose to any person, in response to a request made by that person in relation to a specified building other than a dwelling—

(a) whether an energy performance certificate is entered on the register for the building in question; and

(b) the date on which any such certificate was issued.”.

(7) After regulation 35 (disclosures to approved accreditation schemes) insert the following regulations—

#### **“Disclosures to energy assessors in relation to dwellings**

**35A.** The keeper of the register may disclose any document or data concerning a dwelling to an energy assessor—

- (a) for the purpose of the assessment of the dwelling concerned; or
- (b) for any other purpose undertaken on behalf of the owner or tenant of the dwelling concerned.

#### **Disclosures to the Energy Saving Trust Limited**

**35B.**—(1) The keeper of the register may disclose to the Energy Saving Trust Limited for the purposes set out in paragraph (2) the address of any dwelling in respect of which an energy performance certificate showing an asset rating in a category specified in a request by that company has been entered on the register.

(2) The purposes referred to in paragraph (1) are-

- (a) the provision to the occupier of that dwelling of information on financial support available for the improvement of its energy performance; and
- (b) statistical or research purposes,

provided that in any use for the latter purpose no particular property is identifiable.”.

(8) After regulation 36 (disclosures to enforcement authorities) add the following regulation—

#### **“Disclosures to approved inspectors**

**36A.** The keeper of the register may disclose any document or data to an approved inspector in connection with functions under Part 2 of the Building Act 1984 in relation to the building to which the document or data relates.”.

(9) In regulation 51 (transitional arrangements – property on market at commencement)—

(a) in paragraph (7)—

(i) at the end of sub-paragraph (b) add the words “for any dwelling; or”, and

(ii) after sub-paragraph (b) insert—

“(c) on 4th January 2009 for any building other than a dwelling.”;

(b) for paragraph (9) substitute—

“(9) Notwithstanding paragraph 7(b) and (c), where a contract for the sale or rent of a building to which this regulation applies has been entered into before—

(a) 1st October 2008 in a case where paragraph 7(b) applies, or

(b) 4th January 2009 in a case where paragraph 7(c) applies,

paragraph (5) shall continue to apply in relation to that transaction.”.

#### **Amendments to the Building Regulations 2000**

**3.**—(1) The Building Regulations 2000(6) are amended as follows.

(2) In regulation 17E (energy performance certificates)—

- (a) in paragraph (2)(b) after the words “to that effect” add “, including the reference number under which the energy performance certificate has been registered in accordance with regulation 17F(4)”;

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(6) [S.I. 2000/2531](#), amended by [S.I. 2006/652](#) and [S.I. 2007/991](#). There are other amending instruments not relevant to these Regulations.

- (b) for paragraph (3) substitute—
  - “(3) The energy performance certificate and notice shall be given not later than five days after the work has been completed.”.
- (3) In regulation 20D (CO<sub>2</sub> emission rate calculations)—
  - (a) in paragraph (2) for “the date on which the notice required by regulation 20B is required to be given” substitute “five days after the work has been completed”;
  - (b) for paragraph (3) substitute—
    - “(3) A local authority is authorised to accept, as evidence that the requirements of regulation 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by an energy assessor as defined in regulation 17J who is accredited to produce such certificates for that category of building.”;
  - (c) in paragraph (4)(b) for “the date on which the notice required by regulation 20B is required to be given” substitute “five days after the work has been completed”.

#### **Amendments to the Building (Approved Inspectors etc.) Regulations 2000**

- 4.—(1) The Building (Approved Inspectors etc.) Regulations 2000(7) are amended as follows.
- (2) In regulation 12 (energy performance certificates)—
  - (a) in paragraph (2)(b) after the words “to that effect” insert “, including the reference number under which the energy performance certificate has been registered in accordance with regulation 17F(4) of the principal regulations.”;
  - (b) for paragraph (3) substitute—
    - “(3) The energy performance certificate and notice shall be given no later than—
      - (a) five days after the work has been completed; or
      - (b) the date on which, in accordance with regulation 18, the initial notice ceases to be in force,
 whichever is the earlier.”.
- (3) In regulation 12D (CO<sub>2</sub> emission rate calculations)—
  - (a) for paragraph (2) substitute—
    - “(2) The notice shall be given to the approved inspector no later than—
      - (a) five days after the work has been completed; or
      - (b) the date on which, in accordance with regulation 18, the initial notice ceases to be in force,
 whichever is the earlier.”;
  - (b) for paragraph (3) substitute—
    - “(3) An approved inspector is authorised to accept, as evidence that the requirements of regulation 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by an energy assessor as defined in regulation 17J of the principal regulations who is accredited to produce such certificates for that category of building.”;
  - (c) in paragraph (4)(b) for “the date on which the notice required by regulation 20B is required to be given” substitute “five days after the work has been completed, or the date on which,

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(7) [S.I. 2000/2532](#), amended by [S.I. 2006/652](#) and [S.I. 2007/991](#). There are other amending instruments not relevant to these Regulations.

in accordance with regulation 18, the initial notice ceases to be in force, whichever is the earlier.”.

**Consequential amendment to the Home Information Pack (No. 2) Regulations 2007**

5. In the Home Information Pack (No. 2) Regulations 2007(8), in regulation 15(2) (age of pack documents when first included) for “twelve months” substitute “3 years”.

4th September 2008

*Hazel Blears*  
Secretary of State  
Department for Communities and Local  
Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, which implement Articles 7 (energy performance certificate), and 10 (independent experts) of Directive 2002/91/EC of the European Parliament and of the Council of 16th December 2002 on the Energy Performance of Buildings (OJ No. L 1 4.1.2003 p.65) (“the Directive”). The amendments concern various provisions related to energy performance certificates and related documents—

- (a) regulation 2(2) amends regulation 11(4) to extend from twelve months to 3 years the validity of energy performance certificates to be included in a home information pack under Part 5 of the Housing Act 2004, and regulation 5 makes the corresponding consequential amendment to regulation 15(2) of the Home Information Pack (No. 2) Regulations 2007;
- (b) regulation 2(3) amends regulation 14(2) to allow the disclosure by any person in possession or control of an energy performance certificate or accompanying document or data—
  - (i) by or to an energy assessor for the purpose of assessment of a dwelling,
  - (ii) by or to the Energy Saving Trust Limited of the address and energy performance rating only of a dwelling for the purpose of providing information to the occupier on financial support available for improving its energy performance or, on an anonymised basis, for statistical or research purposes, and
  - (iii) by or to an approved inspector for the purpose of functions under Part 2 of the Building Act 1984;
- (c) regulation 2(4) corrects a minor drafting error in regulation 17(1)(e)(iii);
- (d) regulation 2(5) amends the description in regulation 31(2) of the data that is required to be entered by an energy assessor on any register of energy performance certificates and related documents kept pursuant to that regulation;
- (e) regulation 2(6) inserts a new regulation 34A that allows the keeper of the register to disclose to any person whether an energy performance certificate is registered for a specified building other than a dwelling and when any such certificate was issued;
- (f) regulation 2(7) inserts new regulations 35A and 35B that allow the keeper of the register—
  - (i) to disclose to an energy assessor any document or data entered on the register concerning a dwelling for the purpose of assessment of the dwelling concerned or for any other purpose on behalf of its owner or tenant (regulation 35A), and
  - (ii) to disclose to the Energy Saving Trust Limited the address of any dwelling in respect of which an energy performance certificate in a performance category specified by that company has been entered on the register, for the purpose of providing information to the occupier on financial support available for improving its energy performance, or for use on an anonymised basis for statistical or research purposes (regulation 35B);
- (g) regulation 2(8) inserts a new regulation 36A that allows the keeper of the register to disclose any document or data to an approved inspector in connection with functions under Part 2 of the Building Act 1984 in relation to the building concerned; and

- (h) regulation 2(9) extends the transitional arrangements in regulation 51 for property on the market at commencement for a period ending on 4th January 2009 in relation to non-dwellings.

These Regulations also amend the Building Regulations 2000 (“the building regulations”) and the Building (Approved Inspectors etc.) Regulations 2000 (“the approved inspectors regulations”) in relation to their provisions implementing Articles 3 to 6 (adoption of a methodology, setting of energy performance requirements, new buildings, and existing buildings) of the Directive and Article 7 in relation to newly constructed buildings. In particular—

- (a) regulation 3(2) amends regulation 17E of the building regulations to provide that the energy performance certificate given to the building owner at the end of construction, and the notice to the local authority that this has been done, must be given by the person responsible for the work no later than five days after the work has been completed, and that the notice should include the certificate’s reference number in the register of energy performance certificates;
- (b) regulation 4(2) amends regulation 12 of the approved inspectors regulations, which apply to work where an initial notice has been served under section 47 of the Building Act 1984 and the approved inspector assumes building control functions, with corresponding effect, except that the energy performance certificate to the building owner and notice to the approved inspector must be given no later than five days after the work has been completed, or the date on which the initial notice ceases to be in force in consequence of regulation 18 (events causing initial notice to cease to be in force) of those regulations, whichever is the earlier;
- (c) regulation 3(3) amends regulation 20D of the building regulations to provide—
  - (i) that the notice to the local authority to show compliance with the target emission rate for a newly erected building under regulation 17C of those regulations must be given no later than five days after the work has been completed,
  - (ii) that the certificate that the local authority may accept as evidence that the requirements of regulation 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications must be issued by an energy assessor, and
  - (iii) that the notice to the local authority showing construction in accordance with those specifications where such a certificate is given must be given no later than five days after the work has been completed;
- (d) regulation 4(3) amends regulation 12D of the approved inspectors regulations with corresponding effect, except that notice must be given to the approved inspector no later than five days after the work has been completed, or the date on which the initial notice ceases to be in force in consequence of regulation 18 of those regulations, whichever is earlier.

A transposition note setting out how these Regulations implement the Directive and an impact assessment of the effect that these Regulations will have on the costs of business and the public and voluntary sectors are available from the Department for Communities and Local Government website or from the Energy Performance of Buildings Division of the Department (Tel: 020 7944 8324; Fax 020 7944 5719; e-mail: [enquiries.br@communities.gsi.gov.uk](mailto:enquiries.br@communities.gsi.gov.uk)). Copies of both are also annexed to the explanatory memorandum to these Regulations, which is available alongside the Regulations on the OPSI website at [www.opsi.gov.uk](http://www.opsi.gov.uk).