

**EXPLANATORY MEMORANDUM TO**  
**THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)**  
**(AMENDMENT) REGULATIONS 2018**

**2018 No. 362**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty

**2. Purpose of the instrument**

- 2.1 This instrument sets revised fees for entering data on the register of certificates and reports which is maintained by the Secretary of State under regulation 27 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (the principal regulations). It also adds to the lists of data items from the register that may be published on a website and clarifies when the keeper of the register may transfer data to a person acting on behalf of the Secretary of State. It removes a definition in regulation 2 of the principal regulations that is no longer required.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The principal regulations implement Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) (“the Directive”), which establishes requirements concerning the assessment and certification of the energy performance of buildings, including the production of energy performance certificates, display energy certificates, air conditioning inspection reports and recommendation reports.
- 4.2 The principal regulations provide additionally for the establishment and maintenance of a register of the data used to produce certificates and reports and for the disclosure of data from the register. This instrument does not implement any new EU obligations but sets revised fees, adds to the list of data items that may be published and makes other technical and clarification changes to the principal regulations.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## 6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

### *What is being done and why*

- 7.1 The principal regulations implement Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) (“the Directive”), which establishes requirements concerning the assessment and certification of the energy performance of buildings, including the production of energy performance certificates, display energy certificates, air conditioning inspection reports and recommendation reports.
- 7.2 The principal regulations provide additionally for the establishment and maintenance of a register of the data used to produce certificates and reports and for the disclosure of data from the register.
- 7.3 The fees for entering data onto the register are reviewed regularly in order that the levels of the fees are set to cover the cost of operating the register. The latest review concluded that there was likely to be a slight decrease in the projected levels of Energy Performance Certificates for domestic buildings in the year starting 6 April 2018. This means that the domestic lodgement fee should be amended to the following level from 6 April 2018:
- (a) the fee for entering data from which an Energy Performance Certificate which relates to a dwelling may be produced, is increased from £1.82 to £1.86;
- 7.4 The projected levels of Energy Performance Certificates for non-domestic buildings, Display Energy Certificates and Air Conditioning Inspection Reports are forecast to increase for the year starting 6 April 2018. This means that the non-domestic lodgement fee should be amended to the following level from 6 April 2018:
- (b) the fee for entering data from which the following documents may be produced is reduced from £10.12 to £9.84 –
    - an Energy Performance Certificate which relates to a building other than a dwelling;
    - a Display Energy Certificate or
    - an Air Conditioning Inspection Report.

The level of the fees will ensure that the full cost of operating the register will be recovered from the fees that are charged.

- 7.5 This instrument does not implement any new EU obligations but sets revised fees, adds to the list of data items that may be published, to make it clear that data may be disclosed to third parties by any keeper of the register to enable the Secretary of State to carry out a function under or in connection with the principal regulations, or for

statistical or research purposes, and makes a technical and clarification change to the principal regulations.

### ***Consolidation***

- 7.6 Ministry of Housing, Communities and Local Government has no current plans to consolidate the principal regulations.

## **8. Consultation outcome**

- 8.1 This instrument does not implement any new EU obligations. The regulatory changes are considered to be limited and either technical or administrative in nature. It broadens the scope of publication of that data in line with existing policy. Accordingly no consultation has been undertaken.

## **9. Guidance**

- 9.1 Guidance about the online publication of energy performance of buildings bulk access data will be available to the public at [www.opendatacommunities.org](http://www.opendatacommunities.org)

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is that additional energy performance of buildings data will be made available online and free of charge. This adds to an initial data release, following a consultation on making data more publicly accessible, which has been very well received.
- 10.2 The impact on the public sector is as that above in 10.1.
- 10.3 A privacy impact assessment regarding the opening up of access to data held on the registers was laid with the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2016 (S.I. 2016/284) and is published on [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 10.4 An impact assessment has not been prepared for the other amendments made in this instrument as it is considered that there will be minimal impact, or no impact, on business, charities or voluntary bodies and public sector bodies

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses, but imposes no new requirements on those businesses.
- 11.2 The fees for entering data on the registers are reviewed annually and the businesses which are affected are aware of the need to take account of this in their plans and fee structures.

## **12. Monitoring & review**

- 12.1 This instrument will not be reviewed; a requirement to review this instrument is already included in the principal regulations.

## **13. Contact**

- 13.1 Katherine Higley at the Department for Communities and Local Government Telephone: 030 3444 1793 or e-mail: [katherine.higley@communities.gsi.gov.uk](mailto:katherine.higley@communities.gsi.gov.uk) can answer any queries regarding the instrument.