

EXPLANATORY MEMORANDUM TO
The Energy Performance of Buildings (Certificates and Inspections)
(Amendment) Regulations (Northern Ireland) 2013

2013 No. 12

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations amend the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (as amended to implement the requirements in Articles 4(2), 11, 12, 13, 16 and 27 of the recast Energy Performance of Buildings Directive 2010/31/EU (EPBD2). Simultaneously the opportunity is being taken to clarify and extend some of the existing requirements to improve compliance.
- 2.2. EPBD2 includes all of the requirements which were in the first EPBD, extends the scope of the original Directive, strengthens certain provisions, and clarifies other aspects, to ensure buildings continue to improve in terms of energy performance, to encourage the use of renewable energy where possible to meet the higher standards, to use energy more efficiently and also to reduce emissions.

3. Background

- 3.1. The (original) EPBD came into force in December 2002, with the objective of promoting the improvement of the energy performance of buildings within the European Community. Buildings account for 40% of total energy consumption in the European Union, so better energy performance contributes to reducing energy use and emissions, thus helping achieve European and national targets.
- 3.2. EPBD was implemented in Northern Ireland by amendments to the Building Regulations (Northern Ireland) 2000 and by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (as amended) (the 2008 Regulations).
- 3.3. This Impact Assessment relates only to the further amendments to the 2008 Regulations to implement new requirements in EPBD2 and amendments to improve compliance
- 3.4. The key changes introduced are to:- (a) allow an EPC to be produced for a dwelling based on the assessment of another representative building of a similar design and size and with a similar energy performance; (b) require advertisements for the sale or rental of properties in commercial media to

include details of the energy performance indicator for buildings so advertised; extend the scope of the 2008 Regulations to require, from July 2013, the issue of EPCs for buildings larger than 500m² (current threshold is 1,000m²) that are occupied by a public authority and frequently visited by the public (threshold reduces to 250m² in July 2015); require that such EPCs are displayed in a prominent place clearly visible to the public; (d) require that where EPCs are issued in relation to buildings constructed, sold or rented out, and the building is frequently visited by the public (i.e. buildings such as retail outlets, banks, restaurants etc) the EPC is to be displayed in the building in a prominent place; (e) clarify existing requirements as to the point in time when an EPC should be issued and made available; (f) extend the use and disclosure of information and data from EPCs held on the Northern Ireland Register; (g) require the lodgement of air-conditioning inspection reports on the Register; (h) require landlords in the non-domestic sector to provide energy use data to energy assessors; and (i) penalty provisions as required.

4. Consultation

- 4.1. Public consultation took place between 20 July and 12 October 2012. Outcomes were evaluated and where appropriate changes were made to the amending regulations. The Department contacted almost 300 consultees and received 40 responses (the majority of which were from district councils).
- 4.2. Where consultation comments required consideration or revision of a proposal the Department has responded as follows:- (a) clarified in guidance that for a place of worship to be exempt the building must be used 'primarily as a place of worship'; (b) proceeded with the proposal to allow dwellings of similar size and design to be assessed on the basis of a sample as assessors are qualified experts and should be able to stand over decisions as to what constitutes 'similar', and that there will be a cost saving; (c) require a Display Energy Certificate (DEC) to be produced on the basis of energy actually used in operating the building, renewable annually, with an advisory report valid for 7 years, as this more accurately reflects energy usage in specific buildings, is more in keeping with the spirit of EPBD2 and would demonstrate the public sector taking a leadership role in energy performance (DFP considers that any increased enforcement burden in this respect will be offset by a reduced burden relating to EPC enforcement as marketing materials will be required to include the energy performance indicator, see below); (d) require lodgements on the Register within 28 days (instead of 3 months as proposed) to ensure there is sufficient time for district councils to effect further enforcement; and (e) place conditions, including limitations, on access to data on the Register to discourage its exploitation for commercial or malicious purposes.

5. Equality Impact

- 5.1. It is considered that the amendments apply equally to all sections of the community and to businesses where they are involved in property transactions, and as such do not give rise to any equality or good relations issues.

6. Regulatory Impact

- 6.1. The main costs identified impact on the public sector, because of the requirement for smaller public buildings to display energy certificates. Against these costs are potential savings as a result of exempting a slightly wider range of buildings and allowing certification of dwellings based on a sample where such dwellings are very similar. Further savings may be realised if the recommendations in reports accompanying energy certificates are implemented. Finally in this regard EU infraction proceedings and the potential for large financial penalties will be avoided. The European Commission has been active in monitoring compliance with this Directive.

7. Financial Implications

- 7.1. Additional costs to the Northern Ireland public sector are estimated at £125k to comply with the January 2013 requirement in relation to displaying certificates in relevant public buildings >500m², and a further £130k to comply with the July 2015 requirement in relation to relevant public buildings >250m².
- 7.2. Other costs relate to including the energy performance indicator in graph form in commercial media produced to market properties, estimated at a total initial cost of £5,175, plus an additional £4 per classified ad, and fees of £15 per lodgement on the official Register of air-conditioning inspection reports.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. Further to Equality and Regulatory Impact Assessments, as these Regulations implement, largely, revisions to an EU Directive, they do not interfere with rights under European Community law and the Human Rights Convention.

9. EU Implications

- 9.1. These Regulations introduce the minimum requirements necessary to implement Articles 4(2), 11, 12, 13, 16 and 27 of the recast Energy Performance of Buildings Directive 2010/31/EU and a transposition note has been prepared.

10. Parity or Replicatory Measure

- 10.1. The regulations mirror amendments introduced in England, Wales and Scotland.

11. Additional Information

- 11.1. Not applicable.

TRANSPOSITION NOTE FOR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2010/31/EU OF 19 MAY 2010 ON THE ENERGY PERFORMANCE OF BUILDINGS (RECAST)

This transposition note sets out the way in which Articles 4(2), 11, 12, 13, 16 and 27 of Directive 2010/31/EU (EPBD2) (i.e. which set requirements over and above those contained in the original Energy Performance of Buildings Directive 2002/91/EC (EPBD1)) have been implemented in Northern Ireland by the Department of Finance & Personnel (DFP) through the Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (the 2013 Regulations). These regulations have been implemented under the powers designated to DFP for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the environment.

England and Wales, Scotland and Gibraltar implement separately.

The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (as amended) (the 2008 Regulations) implemented Articles 7, 9 and 10 of EPBD1. Articles 3-6 of EPBD1 were implemented through the Building (Amendment) Regulations (Northern Ireland) 2006, subsequently incorporated into revised Building Regulations (Northern Ireland) 2012.

Main elements of the Directive	Objective	Implementation	Responsibility
<p>Article 4 (2) (b) Setting of minimum energy performance requirements</p>	<p>(2) Member States may decide not to apply the requirements referred to in paragraph 1 to the following categories of buildings: (b) buildings used as places of worship and for religious activities;</p>	<p>Regulation 4 of the 2013 Regulations amends regulation 4 of the 2008 Regulations to match this change in definition and to take account of a number of other minor changes in wording elsewhere in Article 4 of EPBD2.</p>	<p>DFP</p>

<p>Article 11(7) Energy performance certificates</p>	<p>(7) Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.</p>	<p>Regulation 8(1) of the 2013 Regulations amends regulation 8 of the 2008 Regulations to insert this provision.</p>	<p>DFP</p>
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<p>Article 12 Issue of energy performance certificates</p>	<p>1. Member States shall ensure that an energy performance certificate is issued for:</p> <ul style="list-style-type: none"> (a) buildings or building units which are constructed, sold or rented out to a new tenant; and (b) buildings where a total useful floor area over 500 m² is occupied by a public authority and frequently visited by the public. On 9 July 2015, this threshold of 500 m² shall be lowered to 250 m². <p>2. Member States shall require that, when buildings or building units are constructed, sold or rented out, the energy performance certificate or a copy thereof is shown to the prospective new tenant or buyer and handed over to the buyer or new tenant.</p> <p>4. Member States shall require that when:</p> <ul style="list-style-type: none"> — buildings having an energy performance certificate, — building units in a building having an energy performance certificate, and — building units having an energy performance certificate, <p>are offered for sale or for rent, the energy performance indicator of the energy performance certificate of the building or the building unit,</p>	<p>Regulation 2 of the 2013 Regulations inserts definitions of 'building', and 'building unit' into the 2008 Regulations.</p> <p>Regulation 11 of the 2013 Regulations inserts a new regulation 11 into the 2008 Regulations to include these requirements.</p> <p>Regulations 5(2), 9, 19 and 21 of the 2013 Regulations amend regulations 5, 9, 34 and 42 of the 2008 Regulations to substitute 'show' for 'make available'.</p> <p>Regulation 5 of the 2013 Regulations inserts a new regulation 5A into the 2008 Regulations to include this requirement.</p>	<p>DFP</p>
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	as applicable, is stated in the advertisements in commercial media.		
<p>Article 13 Display of energy performance certificates</p>	<p>1. Member States shall take measures to ensure that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is occupied by public authorities and frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public. On 9 July 2015, this threshold of 500 m² shall be lowered to 250 m².</p> <p>2. Member States shall require that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public.</p>	<p>Regulation 11 of the 2013 Regulations inserts a new regulation 11 into the 2008 Regulations to include these requirements.</p> <p>Regulation 8 of the 2013 Regulations inserts a new regulation 8A into the 2008 Regulations to require this.</p>	DFP
<p>Article 16 Reports on the inspection of heating and air-conditioning systems</p>	<p>1. An inspection report shall be issued after each inspection of an ...air-conditioning system.</p>	<p>Regulation 13 of the 2013 Regulations amends regulation 25 of the 2008 Regulations to require this.</p>	DFP

<p>Article 27 Penalties</p>	<p>Penalties Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.</p>	<p>Regulations 16, 17, 18 and 20 of the 2013 Regulations amend regulations 31, 32, 33 and 35 of the 2008 Regulations to add the necessary offences and penalty provisions.</p>	<p>DFP</p>
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