

## **EXECUTIVE NOTE**

### **The Energy Performance of Buildings (Scotland) Regulations 2008 SSI/2008/ 309**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

#### **Background**

The European Directive 2002/91/EC on the energy performance of buildings has been implemented primarily through the Building (Scotland) Act 2003. Articles 3, 4, 5, 6 and 9 and part of Article 7 have been introduced through amendments to the Building (Scotland) Regulations 2004. These Articles involve the adoption of a calculation methodology for energy performance, applying energy standards to new buildings and work on existing buildings, energy performance certificates for buildings and inspection of air-conditioning systems. A building standards system for enforcement is also required.

#### **Policy Objectives**

The Energy Performance of Buildings (Scotland) Regulations 2008 fully complement and strengthen implementation. They improve accessibility to energy performance certificates and place obligations on building owners to provide an energy performance certificate when buildings are to be sold or rented out. Obligations are placed on Scottish Ministers for the selection of approved organisations whose members carry out energy performance certificate work. Enforcement procedures are self-financing. A requirement to issue EPC data to a register has also been introduced.

#### **Consultation**

The principles and procedures underlying the Energy Performance of Buildings (Scotland) Regulations 2008 have already been subject to extensive public consultation between 15 May and 11 August 2006.

#### **Financial Effects**

A Regulatory Impact Assessment has been completed and is attached.

Directorate of the Built Environment  
Scottish Government

**FINAL REGULATORY IMPACT ASSESSMENT**

**REGULATORY IMPACT ASSESSMENT ON IMPLEMENTATION OF ARTICLES 7, 8 AND 9 OF THE EU DIRECTIVE 2002/91/EC ON THE ENERGY PERFORMANCE OF BUILDINGS WITH THE PROVISION OF A REGISTER HAVING NATIONAL COVERAGE**

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# FINAL REGULATORY IMPACT ASSESSMENT ON IMPLEMENTATION OF ARTICLES 7, 8 AND 9 OF THE EU DIRECTIVE 2002/91/EC ON THE ENERGY PERFORMANCE OF BUILDINGS WITH THE PROVISION OF A REGISTER HAVING NATIONAL COVERAGE

## 1.0 PURPOSE AND INTENDED EFFECT

### 1.1 Objectives

This Regulatory Impact Assessment (RIA) provides updated information in relation to the proposals contained in the Intermediate RIA which accompanied the consultation document on the implementation of EU Directive 2002/91/EC issued in 2006. The principal aim of the Directive is to promote the improvement of the energy performance of buildings within the European Community, taking into account outdoor climatic and local conditions, as well as indoor climatic requirements and cost-effectiveness.

All the procedural proposals are set out in Annex A.

### 1.2 Background

It has been established for many years that carbon dioxide contributes to climate change. Buildings in use, account for more than 40% of the UK energy related CO<sub>2</sub> emissions. The situation is similar within the rest of Europe. There are European commitments under the Kyoto Protocol to reduce greenhouse gas emissions to 8% below 1990 emission levels. The UK Government have set a target for reducing the UK's CO<sub>2</sub> emission levels by 60% in the middle of this century, with significant progress being made by 2020. The Scottish Government issued a consultation document on 29 January 2008 which sets out proposals for Scottish targets which exceed the current UK CO<sub>2</sub> emission targets.

The Directive sets out common strategies for the individual Member States to follow, but stops short of specifying the amount of energy or carbon dioxide levels to be saved by these measures. Consequently, it is for each Member State or region of the Member State to interpret and implement the Directive in a way that aligns best with their current (or proposed) building legislation.

The following list outlines the Directive's key strategies:

- Article 3 Adopt a methodology to express the energy performance of buildings as a single figure or indicator. A methodology takes all the measures that affect energy use into account in a calculation procedure – usually involving computer software. Examples of the energy affecting measures are boiler efficiency and thermal insulation, but household appliances and industrial plant is excluded.
- Article 4 Use the methodology to set energy standards for buildings and review these standards every five years.
- Article 5 Have a building standards system in place in order that new buildings meet the energy standards which have been set. Also there is a need for new buildings to have consideration given to the installation of building-integrated, low or zero carbon producing energy generating technologies such as, photovoltaics, micro-wind turbines, combined heat and power, community heating and heat pumps. This can be done as a one-off study.

- Article 6 Require altered components of large buildings to meet the energy standards derived from the standards set for new buildings.
- Article 7 Ensure that when buildings are constructed, sold or rented out, that energy performance certificates (EPCs) are made available to prospective purchasers and tenants by the current owners. Also these certificates should be displayed at all times in large public buildings. This certification aspect only needs to be introduced when there are sufficient independent experts.
- Article 8 Ensure that larger boilers in buildings are inspected from an energy efficiency point of view. This inspection aspect only needs to be introduced when there are sufficient independent experts. Alternatively, ensure the provision of advice to users of boilers on how to make improvements to the efficiency of their system.
- Article 9 Ensure that larger air-conditioning systems in buildings are inspected from an energy efficiency point of view. This inspection aspect only needs to be introduced when there are sufficient independent experts.

### **Implementation drafting**

In broad terms, there are two approaches to the format that any implementation drafting may take, namely:

- Copy-out; or
- Elaboration.

Copy-out is as the name suggests. The implementing legislation adopts the same, or mirrors as closely as possible the original wording of the Directive, it is also possible to cross-refer to the Directive provision. Elaboration means coming down on one side or the other of choosing a particular meaning, in accordance with the traditional approach in UK legislation, according to what the draftsman believes the provision to mean. In effect, it aims to work a provision into something clearer.

Much of the text of the EPBD has a degree of ambiguity and in view of this, a drafting approach that follows the elaboration concept was considered to be most appropriate.

### **Articles 3, 4, 5 and 6**

Application of Articles 3, 4, 5 and 6 fell to the traditional domain of the Energy standards in Scottish building regulations. The timetable for reviewing these standards did not align with the timetable for Directive implementation. In view of this, implementation was done initially without raising standards, through a process of:

- reverse engineering of existing energy standards to the methodologies that were adopted; and
- where appropriate, by commissioning research.

Implementation was therefore achieved without the need for neither new primary nor secondary legislation, however with subsequent changes to standards, the Directive requirements must remain permanently embedded in regulation and associated guidance. This was reflected in the amendments to the energy standards in Scottish building regulations which were introduced on 1 May 2007.

### **Articles 7, 8 and 9**

This left the transposition of Articles 7, 8 and 9, which could be done through either the Building (Scotland) Act 2003 or the European Communities Act 1972 (ECA) to form the secondary legislation. Following consultation, implementation through Scottish building legislation was considered to be the most robust option with regulations allowing substantial transposition of the Directive being introduced on 1 May 2007 with some additional measures introduced through regulations which use the ECA. This RIA focuses on the provision of a register in connection with the implementation of these specific Articles.

### **1.3 Rationale for Government Intervention**

Article 17 of this Directive states “This Directive is addressed to the Member States”. In view of this, the Government must intervene, non-compliance with any part of the Directive was and still is, not an option.

### **1.4 The Risks to be addressed**

The risks associated with Directive implementation fell broadly into the legal categories of under-implementation and over-implementation.

The risks associated with both under and over implementation are identified and summarised as follows:

Under-implementation:

- failure to fully implement the Directive could lead to infraction proceedings being taken by the EU Commission; and
- this could result in cautious measures being taken, which lead to over-implementation.

Over-implementation:

- extending the scope, adding in some way to the substantive requirement, or
- substituting wider UK legal terms for those used in the directive; or
- not taking full advantage of any derogations which keep requirements to a minimum; or
- providing sanctions and enforcement mechanisms which go beyond the minimum needed in that area; or
- implementing early, before the date given in the directive; or
- ‘double-banking’ – where Directive legislation covers the same ground as existing domestic legislation (to prevent this, the aim is to achieve as much consolidation of regulations as possible).

It is Scottish Government policy not to go beyond the basic requirements of European Directives, unless there are exceptional circumstances, justified by a cost-benefit analysis and extensive consultation with stakeholders. There was one instance in the proposals where this occurs. This related to the proposal to record EPCs on a register that has national coverage. The justification for over-implementation using Article 12 is discussed later in this RIA. Article 12 allows Member States to inform the users of buildings as to the different methods and practices that serve to enhance energy performance. It was considered, that for the

rest of the proposals to implement Articles 7, 8, and 9 of the Directive that the under-implementation and over-implementation matters were suitably addressed.

The final and over-arching risk was and still is that failure to implement the remainder of Articles 7, 8, and 9 would halt progress with complete implementation of EU Directive 2002/91/EC. Infraction proceedings and significant monetary fines from the European Commission being the likely impact.

## **2.0 CONSULTATION**

### **2.1 Development Phase**

Before making or amending the building regulations, Scottish Ministers are required to consult the Building Standards Advisory Committee (BSAC) and such other bodies as are considered necessary to inform on the matters under consideration. This exercise was undertaken during 2005 at the main BSAC meetings. Proposals to introduce standard 6.9 on EPCs and 6.10 on inspection of air-conditioning systems were also presented to the BSAC Working Party on energy standards and subjected to scrutiny in the context of new building work.

In Spring of 2005, a document titled “A circular on how Scotland will implement the EU Directive on the energy performance of buildings” was uploaded onto the Scottish Building Standards Agency website (SBSA). N.B. The Scottish Building Standards Agency was reintegrated into the core Scottish Government on 1 April 2008, but will be referred to throughout this document as SBSA, for continuity purposes. This was not considered to be public consultation as such, but was useful in that feedback was received at an early stage which informed implementation proposals. In addition, SBSA also contributed to seminars and workshops with stakeholders.

### **2.2 Government consultation**

From summer of 2003 SBSA has been involved with the EPBD Implementation Group, facilitated by the lead Whitehall Department for EPBD implementation, the Office of the Deputy Prime Minister (ODPM). This Department was reconstituted as the Department for Communities and Local Government (CLG) but will be referred to as ODPM throughout this document for continuity purposes. Other Government departments and divisions attending these meetings included Department of Environment, Food and Rural Affairs, ODPM Land and Property Division, ODPM Housing Division and the Department of Finance and Personnel for Northern Ireland. Prior to uploading the circular on EPBD implementation onto the SBSA website, views were sought from within the Scottish Executive which became the ‘Scottish Government’ in June 2007. Divisions that were invited to comment include Housing Division (Housing Bill team, fuel poverty and Single-survey team), Office of the Solicitor to the Scottish Executive, Scottish Procurement Directorate, Tourism and Architectural Policy Division, Climate Change Unit, Energy and Telecommunications Division, and Property Advice.

### **2.3 Public consultation and dissemination**

An Intermediate RIA formed part of a package of documents issued for public consultation. SBSA sought general comment on the proposals which were issued to a list of individuals and organisations previously identified as having an interest in building standards. Consultation papers and the list of consultees is available on the web at: <http://www.sbsa.gov.uk/consul.htm> In the winter and spring of 2007, SBSA held seminars for stakeholders and spoke to close on 2,000 building professionals throughout Scotland about EPBD implementation.

## **2.4 Further developments – The Sullivan Report**

In September 2007, Scottish Ministers convened an international expert panel which produced the report “A Low Carbon Building Standards Strategy for Scotland”. This report, referred to as the Sullivan Report, sets out a range of proposals for both new and existing buildings, including housing. One of the workstreams from the report is ‘Energy Performance of Buildings Directive’ which includes recommendations for going beyond the minimum requirements of EPBD. The Sullivan Panel acknowledged the benefits of having an electronic register or database. They appreciated the merits of the Home Energy Efficiency Database (HEED), held by the Energy Saving Trust. They recognised that there was no off-the-shelf equivalent for non-domestic, but they recommended, “that a national electronic database is set up for collecting the information that underpins the Energy Performance Certificate calculation for non-domestic buildings”. Discussions are currently underway to identify a suitable register.

## **3.0 OPTIONS PROPOSED**

### **3.1 Identify the Options**

**Option 1** – Implement Articles 7, 8 and 9, without a register for energy performance certificates; or

**Option 2** – Implement Articles 7, 8 and 9, using the building standards register for recording EPCs for buildings; or

**Option 3** – Implement Articles 7, 8 and 9, using a register held by a non-public body for recording EPCs for dwellings with no register held for non-domestic buildings; or

**Option 4** – Implement Articles 7, 8 and 9, using the building standards register for recording EPCs for non-domestic buildings and using a register held by a non-public body for recording EPCs for dwellings.

## **4.0 COSTS AND BENEFITS**

### **4.1 Sectors and groups affected**

Sectors and groups affected by a register include:

- a) Persons constructing new buildings or selling or renting out existing ones who may need to bear the extra cost of a register for energy performance certification;
- b) Public bodies who may need to bear the extra cost of any register for energy performance certification;
- c) All those involved with the production of EPCs would have to familiarise themselves with the procedure for a register through training etc;
- d) Software manufacturers may need to take account of any link to a register;
- e) Local authorities would have to train staff in the procedures for any register.

## Benefits

The benefits of implementation of Articles 7, 8 and 9 are difficult to quantify. Clearly, if a large number of owners make energy efficiency upgrades to their buildings as a result of:

- the cost-effective improvement information which accompanies EPCs;
- the boiler advice; and
- the inspection of air-conditioning.

it will be worthwhile in terms of reducing carbon emissions. There is no precedent for this type of regulation in this country, but in Denmark, there has been a system of energy labelling of buildings since the late 1990s. Research<sup>1</sup> found that the owners of 45% of energy-labelled Danish houses introduced energy saving measures within the first year of occupying a house, but the research is also not clear on how many of these improvements can be attributed to the labelling. A conservative scenario for the introduction of EPCs in Scotland could be 15% of owner/occupiers of existing buildings follow the energy advice given in the EPCs, once the arrangements become fully bedded-in, after (say) 3-4 years. On that basis, it is possible that savings of 4,725tc per annum could be achieved. If a follow-up strategy could be implemented with (say) a 1.5 to 2 year time-delay, it may be possible to secure extra carbon savings from a further 5% to 10% of the certificated buildings that are sold, once owners have become familiar with how they perform. A register would support such a strategy in terms of Article 12 and could return carbon savings in the medium term of 1,575tc to 3,150tc. These savings may not be achieved in the early years of certification as there is a learning curve that owners need to undergo to appreciate the usefulness of an EPC. On the other hand, carbon savings are likely to tail-off in the later years, once the 'easy-pickings' in terms of energy efficiency have been achieved.

EPCs for all new buildings were introduced in Scotland on 1 May 2007. Measuring the impact of these certificates at this early stage is difficult. There are good reasons for this:

- the new-build EPCs were introduced at the same time as revised energy standards which should on their own lead to an average reduction in carbon emissions of around 23% for new buildings, as a result of increased thermal insulation and enhanced energy efficiency of building services;
- these energy standards are of such a level that the low-cost improvement measures which are available, tend to be limited; and
- there are still relatively few buildings built to the new standards which have been completed, which hampers assessment.

When considering the options below with regard to the provision of a register, it should be borne in mind that notices served in terms of the Building (Scotland) Act 2003 for either, non-provision of EPCs or, for absence of air-conditioning inspections would always appear on the building standards register (BSR).

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<sup>1</sup> 'Danish Experience in Energy Labelling of Buildings' OPET – September 2003

### **Option 1 – no register**

This would do no more than is required by the Directive. Certificates remain the property of the building owner and input data for certificate generation may or may not be retained by the 'Independent Expert'. Without a register there will be no route for a simple check to see if an EPC has been issued. Also part of the Article 8 boiler advice strategy will not come to fruition. There were not perceived to be any benefits from not having a register other than that there are no costs involved.

### **Option 2 – the building standards register (BSR)**

The Building (Scotland) Act 2003 requires databases (registers) to be maintained by each local authority for recording, warrants, notices, etc. The BSR could be extended to cover display of EPCs by way of secondary legislation. The BSR could be used as a useful legislative tool to exempt affixing of EPCs in existing buildings

from the building warrant process. It provides a route to establishing if a non-Directive compliant methodology has been used. It gives Scottish Ministers the greatest degree of control over what is and what is not specified on the registers in terms of EPCs. The strongest point in favour of this option would be that anyone with internet access will be able to view EPCs or information associated with EPCs.

### **Option 3 – a register held by a non-public body**

The Energy Savings Trust (EST) collate and maintain a 'Home Energy Efficiency Database' (HEED). They have populated this database with energy information on dwellings, with a view to building up a picture over the entire country. EST's key interest lies in the input data that underpins the generation of certificates. All EPC documents and underlying data would be stored within their secure IT infrastructure. The information held on the database is not accessible to the general public but is available to Scottish Ministers and local authorities. A local authority receiving a complaint about non-display of an EPC would be in a position to check the database to see if the information underpinning an EPC had been generated. There are several benefits with option 3. The EST would in turn use the information they collect to target specific energy efficiency improvements in certain areas of the country. The Article 8 boiler advice strategy becomes easier to apply to dwellings as a search of only one database is required for the EST as the partnership organisation. The HEED database only covers dwellings and does not store information on non-domestic buildings. It may be considered unwise to rely solely on a register held by a non-public body as a legislative tool to exempt affixing of EPCs in existing buildings from the building warrant process.

### **Option 4 – a hybrid of Options 2 and 3**

Options 2 and 3 described above are not without their issues. To summarise:

- for Option 2, additional costs on top of energy certification; and
- for Option 3, a the lack of coverage for non-domestic buildings and failure of the HEED database could jeopardise the Article 8 boiler advice strategy. It could be considered inappropriate to rely solely on a register held by a non-public body to exempt EPCs in existing buildings from the building warrant process.

To address these issues the following measures could be adopted in Option 4:

- make EPCs only exempt from warrant if the relevant EPC information was sent to the local authority for recording on the BSR and offer an alternative for dwellings to send the information to another register/database; and
- for non-domestic buildings, until there is a non-domestic register held by a non-public body available, the approach would be through the BSR.

The benefits associated with Option 4 are as follows:

- there is the option for a lower-cost register (HEED) to exist for dwellings, alongside the higher-cost one (BSR) which will have a prescribed fee set in statute;
- there would always be the BSR available to support the Article 8 boiler advice strategy.

### 4.3 Costs

#### A scenario of energy performance certification costs

Market forces will dictate the eventual cost of energy certification, but one scenario is presented in the table below for the early years of Directive implementation which has been revised to reflect current estimates. The table is included with this RIA only for the purposes of giving context to the extra costs that could be incurred by a register of EPCs or information associated with EPCs.

Class of building	Number of certificates per annum	Cost per certificate	Total cost per annum
New buildings [Note 1]	25,000	£0.00	£0.00
Sale of existing dwellings with Single Survey [Note 2]	105,000	£50.00	£5,250,000
Rental of existing dwellings (local authority/ registered social landlord) [Note 3]	70,000	£100.00	£7,000,000
Rental and sales of existing dwellings (private landlord & non-Single Survey) [Note 3]	60,000	£150.00	£9,000,000
Non-domestic existing buildings (sale, rental, and public buildings) [Note 4]	20,000	£1,000.00	£20,000,000
Total			£41,250,000

#### Notes:

1. Certification cost is subsumed by the Scottish building regulations compliance with energy standards.
2. Certification is subject to housing legislation and the cost is based on an estimate of the average time required to do energy survey only – expenses, travelling time, etc., **do not** form part of this figure.
3. Certification is based on the use of rdSAP and a conservative average cost – expenses, travelling time, etc. **do** form part of this figure.
4. Certification is based on use of the Simplified Building Energy Model (SBEM) – large buildings could cost £1000 and smaller ones £300 to produce the certificate. N.B. This has recently been reassessed and current estimates are £2,000 for large buildings and £600 for smaller buildings. Also, it should be noted that since the draft of the intermediate RIA, roll-out of EPCs for public bodies has not occurred in 2007 nor to any significant extent in the early part of 2008 and the above figures have not been amended to reflect this.

#### Option 1 – no register

There are no costs associated with this option, because if adopted, a blanket exemption from building warrant would still be applied with regard to the affixing of EPCs in buildings.

### **Option 2 – the building standards register (BSR)**

This is a medium – high cost option (depending on the quantity and format of the information stored) and raises the cost of certification. The cost to building owners requiring EPCs could be an extra £10 per certificate for local authorities to record an energy rating in the BSR (minimal information). If it is thought necessary that either EPCs are scanned into the BSR or the information which underpins EPCs is recorded (comprehensive information), the cost could increase to £25 or more per certificate. In the context of the scenario of EPC numbers (see table above) this means that for:

- minimal information the annual cost would be in the region of an additional £2.55 million per annum; and
- comprehensive information the annual cost would be in the region of an additional £6.37 million per annum.

### **Option 3 – a register held by a non-public body**

EST have agreed to hold this information and will computerise the data collection process. The cost associated to the Scottish Government are minimal. It is thought that extending the 'HEED' database/register for dwellings would cost the taxpayer a one-off sum of £60,000, plus maintenance of £25,000 per annum. There are no costs to the building owner for this service.

### **Option 4 – a hybrid of Options 2 and 3**

The one-off sum of £60,000, for extending the 'HEED' database, plus maintenance of £25,000 per annum (see Option 3 above) would be supplemented by the cost of putting the non-domestic buildings on the BSR. This is thought to be around £200,000 per annum if minimal information was recorded and £500,000 per annum if more comprehensive information was required. It is thought that if Option 4 was adopted, the numbers of domestic EPCs or information associated with domestic EPCs that would be placed on the BSR would be minimal and the preference would be in most cases to use the lower-cost HEED database option.

## **5.0 SMALL/MICRO FIRMS IMPACT TEST**

### **5.1 Preliminary Impact Test**

Assessment has been based on Options 2, 3 and 4, as Option 1 has no cost implications for small firms, including micro-businesses (those which employ less than 10 full-time employees). Bearing in mind, that non-implementation of the Directive is not an option, it is considered that the proposals to introduce Articles 7, 8 and 9 apply in a proportional and equitable way. Only those firms that choose to either erect buildings, or relocate to new premises will be subject to the energy performance certification requirement. The cost of certification (although left to market forces) should be cheaper for small businesses, which generally occupy smaller premises. Stand-alone accommodation of less than 50m<sup>2</sup> in floor area will be exempt from certification. For most micro-businesses that are operated from the owner's dwelling, there will be no certification costs assigned to the business. For landlords where their business involves letting out property on a regular basis, certification will have an impact, however it is anticipated that the costs will be passed onto tenants through increased rental costs.

Three of the options presented include a register for certificates this means that there would be a cost which is disproportionate. However even in the worst case, this would only have a cost impact of £25, spread over 10 years (£2.50 per annum).

The remaining option to proceed without a register, would not lead to database setup/maintenance costs,. There would, however, be hidden costs in relation to enforcement and potential policy concerns hindering transposition of Article 8 for example.

For small firms the issues of air-conditioning inspection are unlikely to affect them, as many of the buildings that they operate out of are not air-conditioned. Even small buildings e.g. corner-shops that are air-conditioned will only be subject to inspection costs if they have systems over 12kW output.

## **5.2 Full Impact Test**

From preliminary work it was considered that in most cases these proposals would not present a significant impact on small businesses in Scotland. In the intermediate RIA, a commitment was given to carry out a full small firms impact test (with a focus on micro-businesses). SBSA interviewed 4 small businesses.

The interviews were held on a face to face basis with a representative from each business. Each of the interviews followed a similar format. The Agency gave background to the EU Directive and provided an explanation of what the options were for a register and how they were likely to affect each of the interviewees. This was followed up with a discussion aimed at ascertaining the impact of the options to each of them as a small business. Although non-implementation of this Directive is not an option, the opportunity was also taken to gauge the impact on small businesses of the introduction of EPCs, boiler advice and air-conditioning inspections.

## **5.3 Summary of findings**

### **Cost of Register**

Although their preference was not to pay a charge for lodging information about an EPC on a public register, none of the businesses interviewed indicated that the cost of £25 pounds was prohibitive for non-domestic buildings. This was mainly because it was only necessary to provide them on sale or rental, and then only if an EPC did not exist or the current one was over ten years old. One business expressed concern if the £25 fee was to be applied to EPC information for all dwellings. It was thought that the sheer numbers of dwellings would elevate the costs nationally, for no significant benefit.

### **Other EPC issues**

If businesses needed to relocate, they envisaged that the information imparted by EPCs would cause them to think about the energy efficiency of their premises. However they considered that other factors such as location/accessibility to clients and markets would probably dictate their ultimate decision. Although most interviewees indicated there were additional costs associated with EPC work some who were interviewed advised that those imposed would be minimal compared with other relocation costs. Those businesses that were in rented accommodation were reassured that EPCs would not be required in the event of a lease renewal. The issues identified in the preliminary assessment were also raised at the discussion held with small businesses. The message that predominated was that their clients would ultimately bear the cost of the EPCs.

### **Boiler advice and Air Conditioning inspection issues**

It was noted that the boiler advice route was being taken by Scottish Government and this would have little or no adverse impact on the small businesses. None of the businesses interviewed had any air-conditioning in their buildings. However it was considered by the interviewees that how 'air-conditioning systems' were defined would be crucial to the impact that the Directive would have. They felt that if assessment was only made of plant that was installed for comfort cooling, then the impact of the directive would be minimal on small businesses.

#### **5.4 Assessment**

From both the preliminary and full impact work it is considered that in most cases the proposals for a register will not present a significant impact on small businesses in Scotland, and in the case of Option 3, no impact as the register will be funded by the public purse. With the mandatory implementation of the EU Directive the consultation with small businesses does not reveal any new findings, i.e. that there will be costs to small businesses. What has been identified from the supplementary findings is that these costs are being kept to a minimum.

#### **6.0 LEGAL AID IMPACT TEST**

As implementation of EPBD is predominately through the existing building standards system in Scotland, it is considered that there will be no increased use of legal processes and therefore no impact on the need for legal aid.

#### **7.0 'TEST RUN' OF BUSINESS FORMS**

No business forms are necessary with any of the options.

#### **8.0 COMPETITION ASSESSMENT**

##### **8.1 Competition**

No significant areas where issues of competition, restriction or imbalance will arise were identified. The requirements of Articles 7, 8 and 9 of the Directive are on the whole new to Scotland. Only in terms of EPCs and energy ratings/report within the context of the 'Scottish Housing Quality Standard' and the Single Survey could it be considered that there is the possibility for overlap. Where such an overlap occurs, there will be alignment and therefore this will not have any significant effect on competition. There are no competition issues whatsoever with regard to the provision of a register for EPCs.

##### **8.2 Manufacture**

Articles 7, 8 and 9 of the Directive are drafted mainly in terms of procedures rather than by prescribing certain levels of energy performance. Consequently, its influence on products or materials is limited. One area that may affect manufacturing is in the exemptions where the cut-off point may affect the sizing of products, causing component manufacturers to alter their production lines. One example of this cut-off point is that air-conditioning systems of 12 kW output or less are not subject to Article 9. There are no manufacturing issues with regard to the provision of a register for EPCs.

### **8.3 Implementation**

Article 7, EPCs, will affect any party carrying out work to create a new building or relocating their business. Article 8, boilers, provision of advice will in the long-term be issued to all users of boilers. Article 9, air-conditioning, inspections will affect any party that has a system of air-conditioning in their building, other than small systems. Even with the option of a register for recording EPCs, no disadvantages, existing or emergent, to any party (within their particular category of tenure), were been identified.

### **8.4 Alternatives**

None, as non-implementation of the Directive is not an option.

## **9.0 ENFORCEMENT, SANCTIONS AND MONITORING**

### **9.1 Background**

The proposed implementation measures will be integrated into the Building (Procedure) (Scotland) Regulations 2004 and supported by guidance given by the SBSA. All matters relating to enforcement, sanctions and monitoring will be carried out under the existing processes, which form the building standards system in Scotland, as set out under the Building (Scotland) Act 2003. Parties responsible for operation of this system are the 32 Scottish local authorities and the Scottish Government. Feedback on how any electronic register performs will done through the usual contact with the building and property industry.

### **9.2 Enforcement and sanctions**

Generally, energy performance certification will be subject to the Building (Scotland) Regulations 2004 and the Energy Performance of Buildings (Scotland) Regulations 2008. There are no proposals to require a building warrant before EPC work commences or to have a completion certificate accepted once works are finished. However, where it is identified that such a certificate should have been affixed to a building or otherwise made available and has not, there are enforcement powers under both the Energy Performance of Buildings (Scotland) Regulations 2008 and the Building (Scotland) Act 2003 to ensure compliance.

## **10.0 IMPLEMENTATION AND DELIVERY PLAN**

An implementation and delivery plan is attached at Annex A.

## **11.0 POST-IMPLEMENTATION REVIEW**

SBSA will monitor implementation of these proposals. In line with Scottish Government policy and giving cognisance to EU Directive 2002/91/EC the implemented changes will be subject to a review within a 10 year period. That review will be accompanied by a further RIA.

## **12.0 SUMMARY AND RECOMMENDATION**

### **12.1 Summary of benefits**

As non-implementation of this Directive is not an option, the intention is to determine whether or not additional carbon dioxide reducing measures and improvement in the energy performance of buildings can be delivered through use of a register of EPCs.

- Option 1 (no register) does not offer the scope for any additional carbon savings.
- Options 2, 3 and 4 (different types and permutations of registers) could offer additional savings by adoption of a follow-up strategy with a 1.5 to 2 year time-delay, but only if that information was of a comprehensive nature. The recording of the energy performance indicator alone would not be sufficient.

**Scenario of carbon savings 2011 to 2015 from follow-up strategy using register**

<b>Percentage of existing certificated buildings with follow-up action</b>	<b>Total carbon savings during five years (medium term)</b>	<b>Social cost of carbon saved during five years</b>
<b>5%</b>	23,625 tonnes	£9,804,375
<b>10%</b>	47,250 tonnes	£19,608,750

**12.2 Summary of implementation costs**

<b>Option</b>	<b>Total cost over 5 years</b>
<b>1</b>	Nil
<b>2</b>	£31,850,000
<b>3</b>	£185,000
<b>4</b>	£2,685,000

**12.3 Recommendation**

From the information provided in this RIA, **it is proposed to adopt Option 3** implement Articles 7, 8 and 9, with an electronic register (HEED) held by a non-public body for recording EPCs for existing dwellings with no register held at present for non-domestic buildings. In line with the Sullivan Report, the opportunities for creating a non-domestic database should be explored.

## 13.0 DECLARATION

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed:** .....

**Date:** .....

**Stewart Stevenson**  
**Minister for Transport, Infrastructure and Climate Change**

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