
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 309

**The Energy Performance of Buildings
(Scotland) Regulations 2008**

Defence where energy performance certificate unobtainable

18.—(1) An owner is not liable to a penalty charge for a breach of the duty imposed by regulation 5 if it can be demonstrated that—

- (a) a request for an energy performance certificate was made at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the owner, the owner did not have possession or control of 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 lease the building due to an emergency which required the tenant's urgent relocation;
 - (ii) at the relevant time the owner did not have possession or control of a valid energy performance certificate;
 - (iii) there was insufficient time in which the owner could reasonably have been expected to obtain a certificate before letting the building to the prospective tenant; and
 - (iv) the owner made a valid energy performance certificate available to the tenant as soon as reasonably practicable after letting 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 at which one of the events specified in paragraphs (a) to (c) of regulation 3 first occurs.