

**EXPLANATORY MEMORANDUM TO  
THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)  
REGULATIONS 2012**

**2012 No. 3118**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument (“the consolidated Regulations”) consolidates the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the 2007 Regulations”) with subsequent amendments to them since they came into force. It also enacts where necessary the requirements of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast) (“the EPB Directive”)<sup>1</sup>, and makes two amendments to provisions enacting the original version of the EPB Directive<sup>2</sup> (“the original Directive”), not relevant to the new amendments in the recast EPB Directive.

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

3.1 The consolidated Regulations rely partly on a power in section 74 of the Energy Act 2011, and otherwise rely on section 2(2) of the European Communities Act 1972. In this respect they are different from the 2007 Regulations which they consolidate, which cited Building Act 1984 powers in addition to section 2(2) of the European Communities Act. Those Building Act powers supported amendments which the 2007 Regulations made to the Building Regulations 2000 (later consolidated as the Building Regulations 2010), transposing into the Building Regulations some parts of the original version of the EPB Directive relating to buildings on first construction. However that part of the 2007 Regulations has been revoked, and amendments to the Building Regulations 2010 required by the recast EPB Directive are on this occasion being effected through a separate instrument making these and other amendments to the 2010 Regulations<sup>3</sup>. Citation of the Building Act powers is therefore no longer relevant for the consolidated Regulations.

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<sup>1</sup> The recast Directive can be seen at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0013:0035:EN:PDF>

<sup>2</sup> Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, OJ L 1, 4.1.2003, p. 65.

<sup>3</sup> The Building Regulations etc (Amendment) Regulations 2012/3119.

## 4. Legislative Context

4.1 The 2007 Regulations, which transposed the original EPB Directive, have subsequently been amended by the following instruments –

- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2007, 2007/1669;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No 2) Regulations 2007, 2007/3302;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008, 2008/647;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No 2) Regulations 2008, 2008/2363;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2009, 2009/1900;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010, 2010/1456;
- The Building Regulations 2010, 2010/2214;
- The Building (Amendment) Regulations 2011, 2011/1515;
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2011, 2011/2452; and
- The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2012, 2012/809.

4.2 As a result of consolidation, the 2007 Regulations and most of the instruments which amended them have been revoked in their entirety. Where those instruments included transitional provisions which are now no longer relevant, these have been omitted from the consolidation. In addition, the regulation entitled “Construction of Crown and Statutory Undertakers’ Buildings” (regulation 9 in the 2007 Regulations) has been omitted from these Regulations because the same provision has now been included instead in the Building Regulations 2010, added by the Building Regulations etc (Amendment) Regulations 2012 (as an amendment to regulation 34 of the Building Regulations 2010). Review provisions in regulation 5 of S.I. 2011/2452 and regulation 13 of S.I. 2012/809 are in effect re-enacted within a wider review requirement for the whole consolidated Regulations now contained in regulation 47 of these Regulations.

4.3 The original EPB Directive has now been recast. A transposition table is attached, showing where new text in the consolidated Regulations enacts the recast EPB Directive. A “copy-out” approach has been taken, transposing only the necessary parts of the Directive generally without elaboration. However there are also some amendments which remove provision which went beyond the requirements of the original Directive (“gold-plating”) from the 2007 Regulations. The Government will amend the relevant methodologies at the same time as making these Regulations and will provide non-statutory guidance as needed. Policy reasons for the details of transposition text, including removal of previous gold-plating, and reference to

any changes in methodology and guidance, are set out in the policy section below.

4.4 The majority of the EPB Directive is transposed in the consolidated Regulations, with the remainder being transposed through amendments to the Building Regulations 2010 where they are concerned with duties related to the construction of new buildings or the major refurbishment of existing buildings. So far as enacting the Directive is concerned, therefore, these Regulations should be read together with the Building Regulations 2010.

## **5. Territorial Extent and Application**

5.1 Under the European Communities (Designation) Order 2008, S.I. 2008/301, the Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the environment, but the Welsh Ministers are not. These Regulations are therefore made by the Secretary of State for both England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 The EPB Directive is designed to increase the energy efficiency of buildings, reduce their carbon emissions and lessen the impact of climate change. This complements the 2008 Climate Change Act which requires a reduction in carbon emissions by 80% on 1990 levels by 2050. As emissions from buildings account for 40 - 45% of all carbon emissions in the UK, it is important to ensure that this is mitigated by making existing buildings more energy efficient, and that new buildings are designed and built to a high standard of energy efficiency.

7.2 The original Directive, and the 2007 Regulations which enacted it, introduced the requirement for energy performance certificates (EPCs) to be produced when a building is constructed, sold or rented out. The EPC shows the energy efficiency of a property and includes recommendations on how it can be improved. The original Directive also required energy certificates showing the running costs of a building to be produced and clearly displayed in public buildings larger than 1000m<sup>2</sup>. These were termed Display Energy Certificates (DECs) in the 2007 Regulations. It also required that large air conditioning units must be inspected regularly.

7.3 These regulations introduce the following additional requirements arising from the EPB Directive:

- property advertisements must include details of the EPC rating where available;

- DECs are required in public buildings larger than 500m<sup>2</sup> that are frequently visited by the public;
- an EPC must be displayed in commercial premises larger than 500m<sup>2</sup> that are frequently visited by the public (where an EPC has previously been issued on the sale, rent of construction of that building);
- content of the EPC is to be improved by including a list of energy efficiency improvements that could be carried out as part of a major refurbishment, and signposting consumers to more detailed information about the recommendations and how they can be implemented.

7.4 The EPB Directive came into force on 8th June 2010, and EU Member States must complete the implementation by 9th January 2013. In line with current Government policy, these regulations transpose only the minimum requirements set out in the Directive.

7.5 The regulations also remove what is referred to as “gold-plating” (meaning going beyond the minimum requirements) from two provisions contained within the original EPB directive. In line with current Government policy, we are removing gold-plating by:

- firstly, extending the list of buildings exempt from the requirement to have an EPC, so that it now includes:
  - buildings and monuments officially protected as part of a designated environment or because of their special architectural or historical merit;
  - buildings which are used for religious activities or as places of worship (removing the requirement that this should be their primary or sole purpose);
  - non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance; and
  - stand-alone dwellings with a total useful floor area of less than 50m<sup>2</sup>;
- secondly, removing the requirement to attach an EPC to an estate agent’s written particulars. This requirement was intended to help ensure potential buyers or tenants are made aware of the existence of a Green Deal on the property, and to improve levels of compliance with the requirement to obtain an EPC. We are removing this requirement because:
  - we believe there are already adequate measures in place to alert buyers and tenants to the existence of a Green Deal on a property; and
  - the new requirement for property advertisements to display EPC ratings will help to ensure compliance.

7.6 A number of gold-plated provisions have been retained because they directly support cross-Governmental policies such as the Green Deal. The provisions that have been retained are:

- domestic and non-domestic EPC Registers;
- EPBD accreditation schemes;
- the requirement for energy assessors to be both accredited and qualified;
- annual updates of DEC's (although this will be subject to a separate public consultation exercise in the New Year); and
- the requirement on estate agents to ensure an EPC has been commissioned.

7.7 The Government introduced the Green Deal in stages from October 2012. It is a financial mechanism through which householders can invest in home energy efficiency improvements, at no upfront cost, that will pay for themselves through energy bill savings. The cost is paid back through the electricity bill, and Green Deal repayments remain an obligation attaching to the property even if the owner/tenant changes. The information on the EPC will tell potential buyers and tenants if a Green Deal has been taken out on a property, before they buy or rent it.

7.8 In line with the Government's commitment to reduce the burden of regulation wherever possible, these consolidated regulations will be reviewed in 2018.

7.9 As noted at paragraph 4.2, regulation 9 of the 2007 Regulations has been omitted from these regulations and included instead in the Building Regulations 2010. This is because that regulation was concerned with duties relating to the construction of Crown and statutory undertakers' buildings. It is more appropriate to include those duties in the Building Regulations as those regulations are primarily concerned with the construction of new buildings.

## **8. Consultation outcome**

8.1 A consultation exercise was carried out on what was then a draft of the EPB directive (recast) in 2009. Ministers decided that a further consultation was unnecessary because:

- the content of the draft that was consulted on did not differ significantly from the final version;
- in line with Government policy, we are only implementing the minimum requirements of the Directive; and
- we wanted to minimise the burden on stakeholders of needing to respond to multiple consultations.

8.2 The 2009 consultation received 75 responses, and a clear majority supported the Government's preferred position. The full summary of responses can be found at

<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/publications/planningandbuilding/energyperformanceconresponse>

## **9. Guidance**

9.1 Four new guidance documents have been published to accompany these regulations, replacing the previous published guidance. They cover EPCs for domestic and non-domestic buildings, DEC's and air conditioning system inspections. The guidance documents are available on the website of the Department for Communities and Local Government.

## **10. Impact**

10.1 The impact on business, charities and voluntary bodies is a net present value benefit of around £130m, equivalent to an average annual net benefit of around £14m. Businesses, charities and voluntary bodies will benefit from cost savings from historic buildings being exempt from requirements to have an Energy Performance Certificate. These benefits will be slightly offset by the costs of meeting EU minimum requirements to consider the feasibility of low carbon energy systems. Overall, these impacts result in a net benefit.

10.2 The impact on the public sector is a net present value benefit of around £129m, equivalent to an average annual net benefit of around £14m. The public sector will benefit from cost savings from historic buildings being exempt from requirements to have an Energy Performance Certificate. These benefits will be slightly offset by the costs of extending the requirement to have Display Energy Certificates to public buildings smaller than 1000m<sup>2</sup> but larger than 500m<sup>2</sup>. Overall, these impacts result in a net benefit.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Transposition Table and Explanatory Memorandum on the Department for Communities and Local Government website.

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 The requirements on firms employing up to 20 people are minimal as the requirement to produce an EPC only applies when a property is constructed, sold or rented out.

11.3 As outlined in section 8, a consultation exercise was carried out in 2009 but no further consultation was considered necessary. This is largely because the decision was taken to implement only the minimum requirements set out in the EPB Directive. For the same reasons described in section 8, it was not considered necessary to consult separately with small businesses on the effects of this regulation.

11.4 These regulations will have a positive impact on many small businesses through the creation of jobs. For example, the extension of DEC's to cover buildings between 500-1000m<sup>2</sup> will result in increased demand for assessments. In addition, the requirement to display EPC ratings in advertisements is expected to result in higher levels of compliance, which will in turn create work in the industry.

## **12. Monitoring & review**

12.1 In accordance with regulation 47 the policy will be reviewed at least every five years, with the first review taking place by January 2018.

## **13. Contact**

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Tel: 030344 41803 or email: [jonathan.bramhall@communities.gsi.gov.uk](mailto:jonathan.bramhall@communities.gsi.gov.uk) can answer any queries regarding the instrument.