
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 309

BUILDING AND BUILDINGS

The Energy Performance of Buildings
(Scotland) Regulations 2008

Made - - - - 16th September 2008
*Laid before the Scottish
Parliament* - - - - 18th September 2008
Coming into force - - 4th January 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ^{MI} and all other powers enabling them to do so.

Modifications etc. (not altering text)

C1 Regulations: power to amend conferred (22.6.2012) by [Energy Act 2011 \(c. 16\)](#), **ss. 10(2)**, 121(1) (with [ss. 40, 41](#)); [S.S.I. 2012/191](#), [art. 2\(1\)\(2\)\(a\)](#)

Marginal Citations

M1 [1972 c. 68](#). Section 2(2) was amended by the [Scotland Act 1998 \(c. 46\)](#), [Schedule 8](#), paragraph 15(3) and section 27 of the [Regulatory and Legislative Reform Act 2006 \(c. 51\)](#).. The functions conferred upon the Minister of the Crown under section 2(2) of the European Community Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Scotland) Regulations 2008 and come into force on 4th January 2009.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“approved organisation” has the meaning given in regulation 8(1);

“asset rating” means a numerical indicator of the estimated amount of—

(a) energy consumed; and

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

(b) carbon dioxide emitted,

to meet the different needs associated with a standardised use of the building [^{F1}or building unit], such estimate being made in accordance with a method of calculation approved under regulation 7(a);

[^{F2}“authorised recipient” means a person or body specified in Part 1 of Schedule 1;]

^{F3} ...

“dwelling” has the same meaning as regulation 2 of the Building (Scotland) Regulations 2004 ^{M2},

[^{F4}“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000;]

“energy performance certificate” means a certificate which complies with regulation 6;

[^{F5}“energy performance data” means information needed to produce an energy performance certificate or a recommendations report;]

[^{F6}“energy performance indicator” means an indication of the energy efficiency or performance rating of a building or building unit calculated using the methodology approved in accordance with regulation 7 and expressed on a scale of A to G (with G representing the lowest rating);]

“enforcement authority” has the meaning given in regulation 15(1);

[^{F7}“excluded building” means—

- (a) a building owned, occupied or used from time to time by any of the naval, military or air forces of the Crown, the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the Royal Family; or
- (b) used for the purpose of a prison or a young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989);]

[^{F7}“Framework Regulations” means the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012;]

[^{F7}“green deal plan” has the same meaning as in section 1 of the Energy Act 2011;]

[^{F7}“green deal relevant person” means—

- (a) a person who is authorised to act as a green deal provider by virtue of the Framework Regulations;
- (b) a body specified or authorised for the purposes of section 3(1)(a) of the Energy Act 2011; or
- (c) a person who operates a scheme for the purposes of assessing whether persons are qualified to act as advisors in relation to green deal plans;”]

[^{F8}“house” has the same meaning as in regulation 2 of the Building (Scotland) Regulations 2004]

“local authority” means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 ^{M3};

“keeper” means the Scottish Ministers or a person appointed by the Scottish Ministers to keep a register on their behalf in accordance with regulation 10;

“owner”, other than in regulation 9, means—

- (a) in relation to a building [^{F9}or building unit] which is to be sold, the seller; and
- (b) in relation to a building [^{F9}or building unit] which is to be let, the prospective landlord;

“prospective buyer” and “prospective tenant” have the meaning given in regulation 3;

[^{F10}“recommendations report” has the meaning given in regulation 6A;]

“reference value” means such current legal standard or benchmark which makes it possible to compare and assess the energy performance of the building [^{F11}or building unit]; and

[^{F12}“report reference number” means the unique reference under which the energy performance data relating to an energy performance certificate for a building or building unit is entered onto the register;]

^{F13}
...

(2) Unless otherwise defined in these Regulations, terms used in these Regulations have the same meaning as in Directive [^{F14}2010/31/EU] of the European Parliament and of the Council on the energy performance of buildings ^{M4}.

Textual Amendments

- F1** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(i) (with reg. 19)
- F2** Words in reg. 2(1) inserted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, **3(a)**
- F3** Words in reg. 2(1) omitted (1.10.2012) by virtue of [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(S.S.I. 2012/190\)](#), regs. 1, **3(a)**
- F4** Words in reg. 2(1) inserted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, **3(b)**
- F5** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(S.S.I. 2012/190\)](#), regs. 1, **3(b)**
- F6** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(ii) (with reg. 19)
- F7** Words in reg. 2(1) inserted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, **3(c)**
- F8** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(ii) (with reg. 19)
- F9** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(iii) (with reg. 19)
- F10** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(S.S.I. 2012/190\)](#), regs. 1, **3(c)**
- F11** Words in reg. 2(1) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(iv) (with reg. 19)
- F12** Words in reg. 2(1) inserted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, **3(d)**
- F13** Words in reg. 2(1) omitted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), **regs. 1(1)**, 3(a)(iv) (with reg. 19)
- F14** Word in reg. 2(2) substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **3(b)** (with reg. 19)

Marginal Citations

- M2** [S.S.I. 2004/406](#) as amended by [S.S.I. 2006/534](#) and [S.S.I. 2007/166](#).
- M3** 1994 c. 39.
- M4** O.J. No. L 1, 4.1.2003, p.65.

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Meaning of prospective buyer or prospective tenant

3. A person becomes a prospective buyer or prospective tenant in relation to a building [^{F15} or building unit] on the earliest of the dates when that person—

- (a) requests any information about the building [^{F15} or building unit] from the owner for the purpose of deciding whether to buy or lease the building [^{F15} or building unit];
- (b) makes a request to view the building for the purpose of deciding whether to buy or lease the building [^{F15} or building unit]; or
- (c) makes an offer, whether oral or written, to buy or lease the building [^{F15} or building unit].

Textual Amendments

F15 Words in reg. 3 inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), 4 (with reg. 19)

Application of Regulations

4. These Regulations do not apply to—

- (a) temporary buildings with a planned time of use of two years or less, workshops and non-residential agricultural buildings with low energy demand; and
- (b) stand-alone buildings with a total useful floor area of less than 50m² which are not dwellings.

Energy performance certificates on sale or rent

[^{F16}5.—(1) Where a building or building unit is to be sold or let the owner must make a copy of a valid energy performance certificate for the building or building unit and of the related recommendations report available for inspection free of charge to a prospective buyer or a prospective tenant.

(2) Where a building or building unit is sold or let the owner must provide a copy of a valid energy performance certificate and of the related recommendations report free of charge to the buyer or tenant.

(3) The energy performance certificate to be made available for inspection under paragraph (1) or provided under paragraph (2) is the most recent valid certificate obtained in respect of the building or building unit.

(4) Any reference in this regulation to the letting of a building or building unit does not include the renewal of an existing lease with the same tenant.

(5) This regulation does not apply at any time before the construction of a building or building unit has been completed.]

Textual Amendments

F16 Reg. 5 substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), 5 (with reg. 19)

[^{F17} **Advertisement for sale or let of a building or building unit**

5A.—(1) Subject to paragraph (2), where a building or building unit is offered for sale or let, the owner of the building or building unit must ensure that any advertisement in commercial media offering the building or building unit for sale or let, as the case may be, states the energy performance indicator for that building or building unit.

(2) Where—

- (a) a building unit is offered for sale or let; and
- (b) the energy performance certificate for that building unit is based on certification in accordance with regulation 6(4),

the advertisement in commercial media may state the energy performance indicator included in that certificate.

(3) In this regulation “advertisement in commercial media” means any of the following:—

- (a) an advertisement in a newspaper or a magazine;
- (b) an advertisement transmitted electronically, including by means of the internet; or
- (c) an advertisement by way of written particulars of a building or building unit.

(4) In this regulation “written particulars” means—

- (a) in relation to a building or building unit to be sold, any written description of the property which includes at least two of the following—
 - (i) a photograph of the building or building unit or any room in the building or building unit;
 - (ii) a floor plan of the building or building unit;
 - (iii) the size of the rooms in the building or building unit; or
 - (iv) the measured area of the building or building unit; and
- (b) in relation to a building or building unit to be let, any written description of the property which includes at least two of the following—
 - (i) a photograph of the building or building unit or any room in the building or building unit;
 - (ii) a floor plan of the building or building unit;
 - (iii) the size of the rooms in the building or building unit; or
 - (iv) the proposed rent,

and reference to written particulars or a written description includes particulars or a description given or made available electronically.]

Textual Amendments

F17 Reg. 5A inserted (9.1.2013) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(2), 6 (with reg. 19)

Energy performance certificates

6.—(1) An energy performance certificate must—

- (a) express the asset rating of the building [^{F18} or building unit] in a way approved by the Scottish Ministers under regulation 7(b);
- (b) include a reference value;

- [^{F19}(ba) include an energy performance indicator;
- (bb) include an indicator, expressed numerically, of primary energy use;]
- [^{F20}(c) contain cost effective and technically feasible recommendations for improving the energy performance of the building or building unit including—
- (i) measures in connection with a major renovation of the building envelope or technical building systems; and
- (ii) measures for individual building elements independent of a major renovation of the building envelope or technical building systems;]
- [^{F20}(ca) include a statement indicating that—
- (i) more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate; and
- (ii) the steps to be taken to implement those recommendations, are contained in the recommendations report;]
- (d) include the following information—
- (i) the address of the building [^{F21}or building unit];
- (ii) where the certificate is issued by a qualified member of an approved organisation, the name of the approved organisation of which the person issuing the certificate is a member; and
- (iii) the date on which it was issued; and
- [^{F22}(e) be issued by a qualified member of an approved organisation for that category of building or building unit.]
- (2) An energy performance certificate for a building [^{F23}or building unit] is valid for a period of 10 years from the date on which it was issued.
- (3) An energy performance certificate must not contain any information or data from which a living individual (other than the person issuing it or that person's employer) can be identified.
- [^{F24}(4) Certification for a building unit may be based—
- (a) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building; or
- (b) on a common certification of the whole building in which the building unit is located.]
- (5) Paragraph (4)(b) does not apply to a unit that is a dwelling.
- [^{F25}(6) Certification for a house may be based on the assessment of another representative house where—
- (a) the representative house is of similar design, size and actual energy performance quality; and
- (b) the member of the approved organisation issuing the energy performance certificate has confirmed in writing that this is the case.]

Textual Amendments

- F18** Words in reg. 6(1)(a) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(a)** (with reg. 19)
- F19** Reg. 6(1)(ba)(bb) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(b)** (with reg. 19)

- F20** Reg. 6(1)(c)(ca) substituted for reg. 6(1)(c) (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(c)** (with reg. 19)
- F21** Words in reg. 6(1)(d)(i) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(d)** (with reg. 19)
- F22** Reg. 6(1)(e) substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(e)** (with reg. 19)
- F23** Words in reg. 6(2) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No.2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(f)** (with reg. 19)
- F24** Reg. 6(4) substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(g)** (with reg. 19)
- F25** Reg. 6(6) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **7(h)** (with reg. 19)

[^{F26}Recommendations report

6A.—(1) A recommendations report is a report which must include—

- (a) more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate to which it relates; and
- (b) the steps to be taken to implement those recommendations.

(2) A recommendations report must not contain any information or data (except for the address of the building or building unit) from which a living individual (other than the person issuing it or that person's employer) can be identified.]

Textual Amendments

- F26** Reg. 6A inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **8** (with reg. 19)

[^{F27}Assessment of energy performance

7. The Scottish Ministers must approve—

- (a) a methodology of calculation of the energy performance of buildings or building units, including methods for calculating asset ratings of buildings or building units, based on the general framework set out in Annex 1 to Directive 2010/31/EU of the European Parliament and of the Council; and
- (b) ways in which the energy performance of buildings or building units, as calculated in accordance with the methodology, must be expressed.]

Textual Amendments

- F27** Reg. 7 substituted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, **4**

Approved organisations

8.—(1) An approved organisation is an organisation approved by the Scottish Ministers in accordance with this regulation as an organisation whose members may issue energy performance certificates.

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

(2) The terms of approval of any organisation may be limited in relation to the categories of building [^{F28}or building unit] for which its members may issue energy performance certificates.

(3) Before approving an organisation the Scottish Ministers must be satisfied that the organisation will—

- (a) ensure that the preparation and issuing of energy performance certificates is carried out in a consistent, accurate and independent manner; and
- (b) ensure that members are fit and proper persons who are qualified by their education, training and experience to carry out the preparation and issuing of energy performance certificates.

Textual Amendments

F28 Words in reg. 8(2) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **10** (with reg. 19)

Display of energy performance certificates

[^{F29}9.—(1) Where this paragraph applies, the owner of a building which is frequently visited by the public or, where the owner is not the occupier, the occupier must ensure that an energy performance certificate is displayed within the building in a prominent place clearly visible to visiting members of the public.

(2) Paragraph (1) applies—

- (a) in the case of a building occupied by a public authority—
 - (i) before 9th July 2015, where the floor area of the building is greater than 500 square metres; and
 - (ii) on or after 9th July 2015, where the floor area of the building is greater than 250 square metres;
- (b) in the case of any other building where—
 - (i) the floor area of the building is greater than 500 square metres; and
 - (ii) an energy performance certificate has been issued in relation to that building.

(3) For the purpose of this regulation—

“owner” means a person who has right to the building whether or not that person has completed title, but if, in relation to the building more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right; and

“building which is frequently visited by the public” means a building into which members of the public have an express or implied licence to enter and which is visited by members of the public on at least a weekly basis.]

Textual Amendments

F29 Reg. 9 substituted (9.1.2013) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(2), **11** (with reg. 19)

Registration of certificates

[^{F30}10.—(1) There must be one or more registers of energy performance data from which the following documents may be produced—

- (a) an energy performance certificate; and
 - (b) a recommendations report.
- (2) Each register referred to in paragraph (1) shall be maintained by a keeper.
- (3) A register may be maintained for different purposes or for different classes of buildings or building units.
- (4) Where a member of an approved organisation issues any document referred to in paragraph (1) (a) or (b), that person must ensure that the energy performance data relating to that document is sent to the relevant register before the document is issued.
- (5) Any energy performance data entered onto a register—
- (a) must be registered under a unique reference; and
 - (b) must not be altered once registered.
- (6) Any energy performance data entered onto a register must be kept on the register for a period of at least 10 years beginning on the date on which it is entered onto the register.]

Textual Amendments

F30 Reg. 10 substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(S.S.I. 2012/190\)](#), regs. 1, 7 (as amended by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(3), **20(3)** (with reg. 19))

[^{F31}Fees for entering data onto register

- 10A.** The keeper of a register may charge the following fees for entering data onto the register—
- (a) for entering data from which an energy performance certificate and recommendations report which relate to a dwelling may be produced, a fee of £1.15; and
 - (b) for entering data from which an energy performance certificate and recommendations report which relate to a building or building unit other than a dwelling may be produced, a fee of £5.36.]

Textual Amendments

F31 Reg. 10A inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **12** (with reg. 19)

Disclosures generally

- [^{F32}**11.** The keeper of a register may only disclose any—
- (a) energy performance data;
 - (b) any document produced from that data; and
 - (c) any information derived from that data,
- if authorised by regulation 12 or 13.]

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Textual Amendments

F32 Reg. 11 substituted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2012 \(S.S.I. 2012/190\)](#), regs. 1, 8

[^{F33}Disclosure of documents

12.—(1) The keeper of a register may disclose—

- (a) the energy performance certificate; and
- (b) the recommendations report,

for a building or building unit to any person if the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) a request for disclosure of the document to the person has been made by means of a website operated by the keeper; and
- (b) the request includes the report reference number for the energy performance data relating to the document.]

Textual Amendments

F33 Regs. 12, 12A substituted for reg. 12 (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, 5

[^{F33}Disclosure of data relating to a particular building or building unit

12A.—(1) The keeper of a register may disclose energy performance data relating to a particular building or building unit to an authorised recipient if all of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) a request for disclosure of the data to the authorised recipient is made—
 - (i) by means of a website operated by the keeper; or
 - (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
- (b) the request includes—
 - (i) the full address (excluding the postcode) of the particular building or building unit to which the data relates;
 - (ii) the full postcode of that building or building unit; or
 - (iii) the report reference number for the energy performance data relating to the building or building unit;
- (c) the disclosure is made subject to—
 - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
 - (ii) the conditions set out in Part 3 of Schedule 1; and
- (d) the particular building or building unit to which the data relates is not an excluded building.

(3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.

(4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(c).

(5) For the purposes of this regulation, regulation 13 and Schedule 1, an opt-out is in effect in respect of data relating to a building or building unit where—

- (a) the owner or occupier of the building or building unit has notified the keeper that the data is not to be disclosed so as to enable contact to be made with the owner or occupier by a person to whom data is disclosed;
- (b) the notice to the keeper was given in writing, or by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such notices; and
- (c) the notice has not been withdrawn by the owner or occupier (by the means referred to in sub-paragraph (b)).]

Textual Amendments

F33 Regs. 12, 12A substituted for reg. 12 (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, 5

[^{F34}Disclosure of bulk access data

13.—(1) The keeper of a register may disclose energy performance data to an authorised recipient if all of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) the authorised recipient has made a request for one or more specific descriptions of data to the keeper;
- (b) the request is made—
 - (i) by means of a website operated by the keeper; or
 - (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
- (c) the data does not include any information revealing the location of an excluded building (or any information from which the location of such a building can be deduced);
- (d) the disclosure is made subject to—
 - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
 - (ii) the conditions set out in Part 3 of Schedule 1; and
- (e) the data does not relate only to a particular building or building unit.

(3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.

(4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(d).]

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Textual Amendments

F34 Reg. 13 substituted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, 6

[^{F35}Disclosure of data

14.—(1) The keeper of a register must when requested to do so disclose energy performance data—

- (a) to an enforcement authority for the purposes of their duty to enforce these Regulations; or
- (b) where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) The keeper may disclose energy performance data to the Scottish Ministers for the purpose of enabling the Scottish Ministers to carry out any function under or in connection with these Regulations, or for statistical or research purposes.]

Textual Amendments

F35 Reg. 14 substituted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, 7

Enforcement authorities

15.—(1) Every local authority is an enforcement authority for the purposes of these Regulations.

(2) It is the duty of each enforcement authority to enforce these Regulations in its area.

Power to require production of energy performance certificate

16.—(1) An enforcement authority may require an owner who appears to it to be or to have been subject to the duty under regulation 5 in relation to a building [^{F36} or building unit] to produce for inspection a copy of the energy performance certificate for that building [^{F36} or building unit].

(2) The power conferred by paragraph (1) includes power—

- (a) to require the production in a legible documentary form of any energy performance certificate which is held in electronic form, and
- (b) to take copies of any energy performance certificate produced for inspection.

(3) A requirement under this regulation may not be made more than 6 months after the last day on which the owner concerned appeared to the enforcement authority to be subject to the duty under regulation 5 in relation to the building [^{F36} or building unit].

(4) An owner subject to a requirement under this regulation must comply with it within the period of 7 days beginning with the day after that on which it is made.

(5) An owner is not required to comply with the requirement if the owner has a reasonable excuse for not complying.

Textual Amendments

F36 Words in reg. 16 inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), 14 (with reg. 19)

Penalty charge notices

17.—(1) An enforcement authority may, if it believes that an owner has breached any duty under regulation 5, give a penalty charge notice to that owner.

(2) A penalty charge notice may not be given—

- (a) unless the owner has failed to make an energy performance certificate available to a prospective buyer or tenant within a period of 9 days after a request for such a certificate was made to the owner; and
- (b) after the end of the period of 6 months beginning with the day on which it appeared to the enforcement authority that the duty under regulation 5 was breached.

[^{F37}(2A) In addition to the limitations imposed by paragraph (2), a penalty charge notice may not be given in respect of a breach of any duty under regulation 5 occurring on or before 31st March 2009 where—

- (a) the owner has made a request for an energy performance certificate within a period of 7 days after the relevant time; and
- (b) the owner has made the energy performance certificate available to a prospective buyer or prospective tenant within a period of 9 days after obtaining the certificate.]

(3) A penalty charge notice must—

- (a) be in writing;
- (b) state the enforcement authority's belief that the owner has breached regulation 5;
- (c) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach;
- (d) require that owner, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice; or
 - (ii) to give notice to the enforcement authority requesting the authority to review the notice;
- (e) state the effect of regulation 21(3) (certificate as evidence of facts stated);
- (f) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
- (g) specify the person to whom and the address at which a notice requesting a review may be sent.

(4) The amount payable as a penalty charge is—

- (i) £500 for dwellings or buildings [^{F38}(or building units)] that are ancillary to dwellings; or
- (ii) £1000 in any other case.

(5) The period specified under paragraph (3)(d) must not be less than 28 days beginning with the day after that on which the penalty charge notice is given.

(6) The enforcement authority may, if it considers that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.

(7) The enforcement authority must withdraw a penalty charge notice where regulation 18 applies.

(8) Any sum received by a local authority under this regulation shall accrue to that authority.

[^{F39}(9) In paragraph (2A)(a)—

- (a) the reference to a request has the same meaning as in regulation 18(2); and
- (b) “the relevant time” has the same meaning as in regulation 18(3).]

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Textual Amendments

- F37** Reg. 17(2A) inserted (31.12.2008) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/389\)](#), regs. 1, **2(2)(a)**
- F38** Words in reg. 17(4) inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **15** (with reg. 19)
- F39** Reg. 17(9) inserted (31.12.2008) by [The Energy Performance of Buildings \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/389\)](#), regs. 1, **2(2)(b)**

[^{F40}Penalty charge notice for failure to comply with regulation 5A

17A.—(1) An enforcement authority may, if it believes that an owner has breached any duty under regulation 5A, give a penalty charge notice to the owner.

(2) Regulations 17(2)(b), (3) to (7) and 19 to 23 apply in relation to a penalty charge notice given under this regulation as they apply to a penalty charge notice given under regulation 17 subject to the modifications specified in paragraph (3).

(3) The modifications are—

(a) that regulation 17 applies as if—

(i) the reference in paragraph (2)(b) and in paragraph (3)(b) to regulation 5 were a reference to regulation 5A; and

(ii) the reference in paragraph (7) to regulation 18 were a reference to regulation 18A; and

(b) the reference in regulation 20(4)(a) to regulation 5 were a reference to regulation 5A.

(4) Any sum received by a local authority under this regulation shall accrue to that authority.]

Textual Amendments

- F40** Regs. 17A, 17B inserted (9.1.2013) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(2), **16** (with reg. 19)

[^{F40}Penalty charge notice for failure to comply with regulation 9

17B.—(1) An enforcement authority may, if it believes that an owner or occupier has breached any duty under regulation 9, give a penalty charge notice to the owner or occupier, as the case may be.

(2) Regulations 17(2)(b), (3) to (6) and 19 to 23 apply in relation to a penalty charge notice given under this regulation as they apply to a penalty charge notice given under regulation 17 subject to the modifications specified in paragraph (3).

(3) The modifications are—

(a) that regulation 17 applies as if the reference in paragraph (2)(b) and in paragraph (3)(b) to regulation 5 were a reference to regulation 9; and

(b) the reference in regulation 20(4)(a) to regulation 5 were a reference to regulation 9.

(4) Any sum received by a local authority under this regulation shall accrue to that authority.]

Textual Amendments

F40 Regs. 17A, 17B inserted (9.1.2013) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(2), **16** (with reg. 19)

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 [^{F41}or building unit] 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 [^{F41}or building unit] 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 [^{F41}or building unit].

(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 [^{F41}or building unit] 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.

Textual Amendments

F41 Words in reg. 18 inserted (1.10.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(1), **17** (with reg. 19)

[^{F42}Defence where failure to comply with regulation 5A

18A. An owner is not liable to a penalty charge for a breach of the duty imposed by regulation 5A if it can be demonstrated that the instructions for the placement of the advertisement offering the building or building unit for sale or let included—

- (a) a requirement that the energy performance indicator for that building or building unit is stated in the advertisement; and
- (b) sufficient information to enable that energy performance indicator to have been stated in the advertisement.]

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Textual Amendments

F42 Reg. 18A inserted (9.1.2013) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 2\) Regulations 2012 \(S.S.I. 2012/208\)](#), regs. 1(2), **18** (with reg. 19)

Reviews

19.—(1) If, within the period specified under regulation 17(3)(d) the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority must—

- (a) consider any representations made by the recipient and all other circumstances of the case;
- (b) decide whether to confirm or withdraw the notice; and
- (c) serve notice of its decision and the reasons for it on the recipient.

(2) A notice under paragraph (1)(c) confirming the penalty charge notice must also state the effect of regulations 20 (appeal to the sheriff court) and 21 (recovery of penalty charges).

(3) If, following a review, the enforcement authority is satisfied that—

- (a) the recipient did not commit the breach of duty specified in the notice; or
- (b) the notice was not given within the time allowed by regulation 17(2)(b); or
- (c) the notice did not comply with any other requirements imposed by these Regulations; or
- (d) in the circumstances of the case it was not reasonable for a penalty charge notice to be given to the recipient,

it must withdraw the penalty charge notice.

Appeal to the sheriff court

20.—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may appeal against the penalty charge notice to the sheriff court of the sheriffdom in which the building is situated.

(2) An appeal against a penalty charge notice must be made within the period of 28 days beginning with the day after that on which the notice under regulation 19(1)(c) is given.

(3) The sheriff may extend the period for appealing against the notice on cause shown.

(4) An appeal must be on one (or more) of the following grounds—

- (a) that the recipient did not commit the breach of regulation 5 specified in the penalty charge notice;
- (b) that the notice was not given within the time allowed by regulation 17(2)(b) or does not comply with any other requirement imposed by these Regulations; or
- (c) that in the circumstances of the case it was not reasonable for the notice to be given to the recipient.

(5) An appeal against a penalty charge notice must be by summary application.

(6) The sheriff must determine an appeal against a penalty charge notice by upholding or quashing the notice.

(7) If the penalty charge notice is withdrawn or quashed, the enforcement authority must repay any amount previously paid as a penalty charge in pursuance of the notice.

(8) The recipient or the enforcement authority may, on a point of law only, appeal to the sheriff principal.

Recovery of penalty charges

21.—(1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the enforcement authority unless—

- (a) the notice has been withdrawn or quashed; or
 - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge notice may not be commenced—
- (a) before the end of the period specified in accordance with regulation 17(3)(d); and
 - (b) if within that period the recipient of the penalty charge notice gives notice to the authority requesting the authority to review the penalty charge notice, such proceedings may not be commenced—
 - (i) before the end of the period mentioned in regulation 20(2); and
 - (ii) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined by the sheriff.
- (3) In proceedings for the recovery of the penalty charge, a certificate which—
- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
 - (b) states that payment of the penalty charge was or was not received by a date specified in the certificate,

is evidence of the facts stated.

Service of documents

- 22.—(1) A penalty charge notice issued under regulation 17(1) must be given by—
- (a) personal service; or
 - (b) first class recorded delivery post.
- (2) Any other notice given under these Regulations—
- (a) must be in writing; and
 - (b) may be given by post.
- (3) Any notice may be given—
- (a) in the case of a body corporate, to the secretary or clerk of that body; and
 - (b) in the case of a partnership, to any partner or a person having control or management of the partnership business.

Offences relating to enforcement officers

23.—(1) A person who obstructs an authorised officer of an enforcement authority acting in pursuance of regulation 16 is guilty of an offence.

(2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of regulation 16 or 17 is guilty of an offence.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

[^{F43}SCHEDULE 1

Regulations 2, 12A(2)(c) and 13(2)(d)

Disclosure of data

Textual Amendments

F43 Sch. 1 inserted (21.12.2012) by [The Energy Performance of Buildings \(Scotland\) Amendment \(No. 3\) Regulations 2012 \(S.S.I. 2012/315\)](#), regs. 1, 8, **sch.**

PART 1

The following persons or bodies are authorised recipients—

- (a) the Scottish Parliament;
- (b) the Scottish Ministers;
- (c) either House of Parliament;
- (d) any department of the Government of the United Kingdom;
- (e) the Welsh Ministers;
- (f) the National Assembly for Wales;
- (g) the Northern Ireland Assembly or a Northern Ireland department;
- (h) an enforcement authority;
- (i) an approved organisation;
- (j) a green deal relevant person;
- (k) the holder of a licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences) which has been modified by the Secretary of State under section 41(1) of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs).

PART 2

The purposes are—

1. Promoting energy efficiency improvements in relation to buildings.
2. Conducting research into, or developing or analysing policy (or policy proposals) in relation to, the energy efficiency of buildings.
3. Conducting research into the effectiveness or impact of energy efficiency improvements.
4. Identifying geographic areas where the energy efficiency of buildings is low relative to other areas, or conducting research into the extent, causes or consequences of such lower levels of efficiency.
5. Promoting and marketing energy efficiency improvements that may be made pursuant to a green deal plan.
6. Identifying and analysing the impact of carbon emissions on the environment resulting from buildings with low levels of energy efficiency.
7. Determining whether energy efficiency improvements that may be made pursuant to a green deal plan have or have not been made in respect of a particular building or buildings.

PART 3

The conditions are—

1. The authorised recipient is, until the data is deleted from the authorised recipient's records and systems (so that the personal data is no longer accessible by any means by the authorised recipient) a data controller within the meaning of section 1(1) of the Data Protection Act 1998 in relation to the information disclosed.

2. The authorised recipient must not—

- (a) disclose any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 to any other person without the consent of the person who is the subject of the data;
- (b) use such personal data in order to contact an individual for the purpose of marketing or promoting products or services which do not relate to energy efficiency;
- (c) use such personal data in order to make contact with an individual where an opt-out is in effect.

3. The authorised recipient must not make contact with any person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 unless—

- (a) the authorised recipient advises that person, at the time contact is first made that—
 - (i) the identity or contact details (or both) of that person have been obtained from the keeper of the register under regulation 12A or 13, as the case may be, and
 - (ii) that person is entitled to refuse to receive any further communications from the authorised recipient; and
- (b) the first contact with that person is made by means of written communication (including electronic communication) only.

4. The authorised recipient must not make further contact with a person if that person has informed the authorised recipient that that person does not wish to receive any further communications from the authorised recipient.

5. If the authorised recipient has on three separate occasions made contact with a person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 and received no response from that person within fourteen days of the date of the third contact, the authorised recipient—

- (a) must not attempt to contact that person again; and
- (b) must, as soon as reasonably practicable (and in any event within fourteen days of the receipt of a request made by or on behalf of that person to do so) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).

6. If a person, whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13, requests the authorised recipient to do so, the authorised recipient must, as soon as reasonably practicable (and in any event within fourteen days of the receipt of a request) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).

7. The authorised recipient must ensure that its officers and employees comply with the conditions in paragraphs 1 to 6 above.

Status: Point in time view as at 09/01/2013.

Changes to legislation: There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008. (See end of Document for details)

Interpretation

8. In this Schedule—

“energy efficiency improvements” has the same meaning as in section 2 of the Energy Act 2011;

“personal data” has the meaning given in section 1(1) of the Data Protection Act 1998.]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further transpose Article 7 (energy performance certificates), Article 3 (adoption of a methodology) and partially transpose Article 4(3) of Directive 2002/91/EC of the European Parliament and of the Council (“the Directive”) in Scotland. The Directive lays down requirements for the production of energy performance certificates when buildings are to be sold or rented out. The Regulations also provide for the display of certificates in public buildings. The term “building” is defined in Article 2 of the Directive.

Regulation 5 imposes a duty on the owner of a building to make an energy performance certificate available to prospective buyers or tenants where the building is to be sold or let. The requirements of an energy performance certificate are set out in regulation 6.

The Scottish Ministers must approve a method of calculation of the energy performance of buildings and may approve organisations whose members may issue energy performance certificates (regulations 7 and 8).

The owner or occupier of a public building is required, under regulation 9, to ensure that an energy performance certificate is displayed within the building in a place clearly visible to members of the public.

Regulation 10 provides that the Scottish Ministers or a person appointed by them must maintain one or more registers of energy performance certificates, which must be sent to the relevant register before being issued. Regulations 11 to 14 regulate the disclosure of information contained in the register.

Local authorities have powers under regulation 15(2) to enforce the Regulations and under regulation 16 to require production of energy performance certificates. Under regulation 17 a penalty charge notice may be served on owners of buildings who contravene the requirement to make an energy performance certificate available. The penalty is—

- (a) £500 for dwellings or buildings ancillary to dwellings; and
- (b) £1,000 in any other case.

Regulations 18 and 19 deal with defences to and review of penalty charge notices. Regulation 20 deals with appeals to the sheriff.

Regulation 21 deals with recovery of penalty charges.

Regulation 22 deals with service of documents.

Regulation 23 makes it an offence to obstruct an authorised officer of an enforcement authority or to purport to act as an authorised officer.

A Transposition Note setting out how these Regulations transpose the Directive and a Regulatory Impact Assessment have been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Building Standards Division, Directorate for the Built Environment, Ground Floor, Denholm House, Almondvale Business Park, Almondvale Way, Livingston, West Lothian, EH54 6GA.

Status:

Point in time view as at 09/01/2013.

Changes to legislation:

There are currently no known outstanding effects for the The Energy Performance of Buildings (Scotland) Regulations 2008.