

STATUTORY RULES OF NORTHERN IRELAND

2008 No. 170

The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008

PART 7 N.I.

ENFORCEMENT

Enforcement authorities N.I.

- 31.**—^{F1}(1) The enforcement authority for the purposes of these Regulations shall be—
- (a) except in relation to duties under these Regulations enforceable against a district council, a district council within its district;
 - (b) in relation to duties under these Regulations enforceable against a district council, the Department.]
- (2) It is the duty of the enforcement authority to enforce the duties under regulation 5(2), 5(3), ^{F2}5A(2),] 6(2), ^{F3}... [^{F4}8A(2), 11(3), 11(6),] 15(1), [^{F5}15(2),] 17, 18^{F6},]32(4)^{F7}... [^{F8} and 42(2)(c).] ^{F9}(3)

Textual Amendments

- F1** Reg. 31(1) substituted (3.12.2009) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/369), regs. 1, **3(b)**
- F2** Word in reg. 31(2) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(a)**
- F3** Words in reg. 31(2) deleted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(b)**
- F4** Words in reg. 31(2) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(b)**
- F5** Word in reg. 31(2) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(c)**
- F6** Reg. 31(2): comma substituted for word (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(d)**
- F7** Full stop in Reg. 31(2) deleted by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(e)**
- F8** Words in reg. 31(2) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **16(e)**
- F9** Reg. 31(3) omitted (3.12.2009) by virtue of The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/369), regs. 1, **3(c)**

Commencement Information

I1 Reg. 31 in operation at 30.6.2008, see **reg. 1(3)**

Power to require production of documents **N.I.**

32.—(1) An authorised officer of an enforcement authority may require a person who appears to him to be or to have been subject to any of the duties under regulation 5(2), 5(3), [^{F10}5A(2),] 6(2), ^{F11}... [^{F12}8A(2), 11(3), 11(6),] 15(1), [^{F13}15(2),] 17, 18[^{F14},3]2(4) [^{F15}or 42(2)(c)] to produce for inspection a copy of—

(a) a valid energy performance certificate and recommendation report;

(b) a valid advisory report;^{F16}...

(c) the most recent inspection report [^{F17}; and]

[^{F18}(d) evidence that the data has been provided to the occupier as required by regulation 42(2)(c).]

(2) The power conferred by paragraph (1) includes power to take copies of any document produced for inspection.

(3) A requirement under this regulation shall not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

(4) It is the duty of a person subject to the requirements of this regulation to comply with it within the period of seven days beginning with the day after that on which it was imposed.

(5) A person is not required to comply with paragraph 4 provided he has reasonable grounds for not doing so.

Textual Amendments

F10 Word in reg. 32(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(a)**

F11 Words in reg. 32(1) deleted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(b)**

F12 Words in reg. 32(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(b)**

F13 Word in reg. 32(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(c)**

F14 Reg. 32(1): comma substituted for word (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(d)**

F15 Words in reg. 32(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(1)(e)**

F16 Word in reg. 32(1)(b) deleted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(2)**

F17 Word in reg. 32(1)(c) substituted for full stop (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(3)**

F18 Reg. 32(1)(d) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **17(4)**

Commencement Information

I2 Reg. 32 in operation at 30.6.2008, see **reg. 1(3)**

Penalty charge notices **N.I.**

33.—(1) An authorised officer of an enforcement authority may, if he believes that a person has committed a breach of any duty under regulation 5(2), [F19]5A(2),] 5(3), 6(2)^{F20} ..., [F21]8A(2), 11(3), 11(6),] 15(1), [F22]15(2),] 17, 18^{F23} ... 32(4) [F24] or 42(2)(c),] give a penalty charge notice to that person.

(2) A penalty charge notice shall not be given after the end of the period of six months beginning with the day (or, in the case of a continuing breach, the last day) on which the breach of duty was committed.

(3) A penalty charge notice shall—

- (a) state the officer's opinion that the person has committed a breach of duty;
- (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
- (c) require that person, 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 that he wishes the enforcement authority to review the notice;
- (d) state the effect of regulation 38;
- (e) 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
- (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).

(4) The period specified under regulation 33(3)(c) shall not be less than 28 days beginning with the day after that on which the penalty charge notice was given.

(5) The enforcement authority may extend the period for complying in any particular case if it considers it appropriate to do so.

(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 shall withdraw a penalty charge notice where the recipient can demonstrate that—

- (a) he took all reasonable steps and exercised all due diligence to avoid breaching the duty; or
- (b) regulation 34 applies.

Textual Amendments

- F19** Word in reg. 33(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(a)**
- F20** Words in reg. 33(1) deleted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(b)**
- F21** Words in reg. 33(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(b)**
- F22** Word in reg. 33(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(c)**
- F23** Reg. 33(1): comma substituted for word (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(d)**
- F24** Words in reg. 33(1) inserted (18.2.2013) by *The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013* (S.R. 2013/12), regs. 1, **18(e)**

Commencement Information

I3 Reg. 33 in operation at 30.6.2008, see [reg. 1\(3\)](#)

Defence where an energy performance certificate is unobtainable **N.I.**

34.—(1) The relevant person [^{F25}or a person acting on his behalf] shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 where he can demonstrate that—

- (a) [^{F26}the relevant person made] a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
- (b) in the case of a failure to [^{F27}show] an energy performance certificate to a prospective tenant—
 - (i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant’s urgent relocation;
 - (ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
 - (iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and
 - (iv) the relevant person [^{F28}or a person acting on his behalf] has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out 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 by which the relevant person [^{F29}or person acting on his behalf] is required to have [^{F30}shown an energy performance certificate] to a prospective buyer or tenant under regulation 5(2).

Textual Amendments

- F25** Words in [reg. 34\(1\)](#) inserted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(1)**
- F26** Words in [reg. 34\(1\)\(a\)](#) substituted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(2)**
- F27** Words in [reg. 34\(1\)\(b\)](#) substituted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(3)**
- F28** Words in [reg. 34\(1\)\(b\)\(iv\)](#) inserted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(4)**
- F29** Words in [reg. 34\(3\)](#) inserted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(5)**
- F30** Words in [reg. 34\(3\)](#) substituted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **19(5)**

Commencement Information

I4 Reg. 34 in operation at 30.6.2008, see [reg. 1\(3\)](#)

Penalty amount **N.I.**

35.—(1) The penalty charge specified in the notice shall be—

- (a) in relation to a breach of a duty under regulation ^{F31}... [^{F32}5(2), 5(3) or 6(2),] —
 - (i) where the building is a dwelling, £200;
 - (ii) where the building is not a dwelling, calculated in accordance with the formula in paragraph (2);
- (b) in relation to a breach of duty under regulation ^{F33}... [^{F34}8A(2), 11(3)(a) or 42(2)(c),] £500;
- (c) in relation to a breach of duty under regulation ^{F35}... [^{F36}11(3)(b) or 11(6),] £1000;
- (d) in relation to a breach of duty under regulation 15(1), [^{F37}15(2)] 17(1), 17(2) or 18, £300; and
- (e) in relation to a breach of duty under regulation [^{F38}5A(2) or] 32(4), £200.

(2) Subject to the minimum and maximum penalty charges prescribed by paragraph (3), the penalty charge for the purposes of paragraph (1)(a)(ii) shall be—

- (a) where the building constitutes a hereditament, 12.5% of the net annual value of the hereditament;
- (b) where no other building (other than a building which is exempt from Part 2 under regulation 4(1)(b) or regulation 4(1)(c)) forms a part of the same hereditament, 12.5% of the net annual value of the hereditament of which the building forms a part;
- (c) where the building comprises more than one hereditament, 12.5% of the sum of the rateable values of each hereditament that comprise the building; and
- (d) where—
 - (i) one or more buildings (other than a building which is exempt from Part 2 under regulation 4(1)(b) or regulation 4(1)(c)) form part of the same hereditament; or
 - (ii) the building is not, or does not form part of, a hereditament which appears on the NAV list at the relevant time,

£750.

(3) The minimum and maximum penalty charges for the purposes of paragraph (2) are £500 and £5000 respectively.

(4) In this regulation—

“hereditament”, “NAV list” and “net annual value” have the same meaning as in the Rates (Northern Ireland) Order 1977(1); and

“relevant time” means the time at which the penalty charge notice is given.

Textual Amendments

F31 Words in [reg. 35\(1\)\(a\)](#) deleted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **20(1)**

F32 Words in [reg. 35\(1\)\(a\)](#) inserted (18.2.2013) by [The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/12\)](#), regs. 1, **20(1)**

- F33** Word in reg. 35(1)(b) deleted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(2)**
- F34** Words in reg. 35(1)(b) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(2)**
- F35** Word in reg. 35(1)(c) deleted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(3)**
- F36** Words in reg. 35(1)(c) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(3)**
- F37** Word in reg. 35(1)(d) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(4)**
- F38** Words in reg. 35(1)(e) inserted (18.2.2013) by The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/12), regs. 1, **20(5)**

Commencement Information

- I5** Reg. 35 in operation at 30.6.2008, see **reg. 1(3)**

Reviews **N.I.**

36.—(1) If, within the period specified under regulation 33(3)(c) (or that period as extended under regulation 33(5)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the enforcement authority shall—

- (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) give notice of their decision to the recipient,

within a reasonable period.

(2) A notice confirming the penalty charge notice must also state the effect of regulations 37 and 38.

(3) If the enforcement authority is not satisfied that—

- (a) the recipient committed the breach of duty specified in the notice;
- (b) the notice was given within the time allowed by regulation 33(2) and complies with the other requirements imposed by these Regulations; and
- (c) in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,

it shall withdraw the penalty charge notice.

Commencement Information

- I6** Reg. 36 in operation at 30.6.2008, see **reg. 1(3)**

Appeals to the county court **N.I.**

37.—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under regulation 36(1)(c) is given, appeal to the county court against the penalty charge notice.

(2) The county court may extend the period for appealing against the notice.

(3) Such an appeal shall be on one (or more) of the following grounds—

- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;

- (b) that the notice was not given within the time allowed by regulation 33(2) or does not comply with any other requirement imposed by these Regulations; or
 - (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
- (4) An appeal against a penalty charge notice shall be by way of a rehearing and the court shall either uphold the notice or quash it.
- (5) If the penalty charge notice is withdrawn or quashed, the enforcement authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

Commencement Information

I7 [Reg. 37](#) in operation at 30.6.2008, see [reg. 1\(3\)](#)

Recovery of penalty charges **N.I.**

38.—(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 shall not be commenced before the end of the period referred to in regulation 36(1).

(3) If within that period the recipient of the penalty charge notice gives notice to the enforcement authority that he wishes the enforcement authority to review the penalty charge notice, such proceedings shall not be commenced—

- (a) before the end of the period mentioned in regulation 37(1); and
- (b) 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.

(4) 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.

Commencement Information

I8 [Reg. 38](#) in operation at 30.6.2008, see [reg. 1\(3\)](#)

Service of documents **N.I.**

39.—(1) A penalty charge notice and any other notice referred to in this Part may be given by post.

(2) Any such 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 to any person having control or management of the partnership business.

Changes to legislation: There are currently no known outstanding effects for the *The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008, PART 7. (See end of Document for details)*

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Commencement Information

I9 [Reg. 39](#) in operation at 30.6.2008, see [reg. 1\(3\)](#)

Offences relating to enforcement officers **N.I.**

40.—(1) A person who obstructs an officer of an enforcement authority acting in pursuance of regulation 32 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 this Part 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.

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Commencement Information

I10 [Reg. 40](#) in operation at 30.6.2008, see [reg. 1\(3\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008, PART 7.