

POLICY NOTE

THE ENERGY PERFORMANCE OF BUILDINGS (SCOTLAND) AMENDMENT (No. 3) REGULATIONS 2012

SSI 2012/315

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 75 of the Energy Act 2011. The instrument is subject to negative procedure.

Policy Objectives

2. Under regulation 10 of the Energy Performance of Buildings (Scotland) Regulations 2008, made under section 2(2) of the European Communities Act 1972, a register or registers or energy performance data is maintained to support delivery of Directive 2010/31/EU on the Energy Performance of Buildings. As matters stand, access to that data is limited approved organisations (members of which produce Energy Performance Certificates, enforcement authorities (local authorities), the keeper of the register and the Scottish Ministers.

3. Energy performance data used to produce Energy Performance Certificates is now used in a range of domestic policies and initiatives such as the Green Deal, Energy Company Obligation, Feed-in Tariffs and the Renewable Heat Incentive. Section 75 (access to register of energy performance certificates etc: Scotland) of the Energy Act 2011 confers powers on the Scottish Ministers to make regulations to authorise or require the keeper of the register to disclose documents or data held on the register.

4. This instrument supports the delivery of UK carbon and energy reduction policies by amending regulations 11 to 14 of the Energy Performance of Buildings (Scotland) Regulations 2008 to enable access, by wider range of authorised parties, to energy performance data held on the Scottish EPC register. In doing so, it introduces a schedule (Schedule 1¹) which lists such parties, the purposes for which energy performance data can be sought and the conditions applicable to access to, and use of, the data.

5. Regulation 4 of this instrument also corrects a minor error in the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 (SSI 2012 No. 208).

6. The provisions made in this SSI are as follows:

- Regulation 3 adds further definitions needed to support the amended regulations
- Regulation 4 substitutes regulation 7 of the 2008 Regulation to clarify that regulation in accordance with an undertaking given to Parliament (24.08.2012). The undertaking was given in response to questions raised by the Subordinate Legislation Committee regarding the insertion of the term “or building unit” into regulation 7 of the 2008 Regulations by regulation 9 of the Energy Performance of Buildings (Scotland) Amendment (No.2) Regulations 2012 (SSI 2012 No. 208).

¹ Although this schedule is currently the only schedule to the 2008 Regulations it is numbered as Schedule 1 in anticipation of the addition of a further schedule or schedules in relation to disclosure of information regarding the Green Deal. Section 10 of the Energy Act 2011 enables regulations to be made to amend the 2008 Regulations for this purpose.

- Regulations 5 to 7 amend previous provisions applicable to disclosure of information, where held on a register of energy performance data as defined by regulations 12-14 of the 2008 regulations.
- Regulation 5 replaces regulation 12 of the 2008 regulations and introduces a new regulation 12A. This enables disclosure of:
 - an Energy Performance Certificate and related recommendations report where the report reference number for that document is known (e.g. by a member of the public).
 - energy performance data relating to a particular building to an authorised recipient and the conditions applicable to such disclosure.
- Regulation 6 replaces regulation 13 of the 2008 regulations and enables disclosure of energy performance data relating to multiple buildings to an authorised recipient and the conditions applicable to such disclosure.
- Regulation 7 replaces regulation 14 of the 2008 regulations and defines other requirements for disclosure of energy performance data in support of regulatory or legal process and provisions for disclosure of data by Scottish Ministers for defined purposes.
- Regulation 8 introduces the schedule within which the following are defined:
 - Part 1 sets out persons or bodies which are authorised recipients of energy performance data
 - Part 2 sets out purposes for which energy performance data may be disclosed
 - Part 3 sets out conditions applicable to the use of such data
 This is identified as Schedule 1 in anticipation of a further schedule being introduced as part of planned further amendment of the regulations.
- Regulations 9 and 10 set out revocation and amendment to changes introduced by previous amendment to the original 2008 regulations as a consequence of this instrument

Consultation

7. Consultations on proposed action in response to the recast Directive took place between 7 October 2011 and 23 January 2012. Whilst the subject of this instrument was not a material issue for consultation, the need to widen access to energy performance data in support of the delivery of a range of Government carbon and energy saving policies was noted in broader consultations, published at: <http://www.scotland.gov.uk/Resource/0039/00396545.pdf> (action in response to the recast Directive) and <http://www.scotland.gov.uk/Resource/0039/00391756.pdf> (introduction of EPC lodgement fee) respectively.

Impact Assessments

8. There are no equality impact issues associated with the subject of this instrument. An equality impact assessment on general action taken under the recast Directive is available at: <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch/Directive2010-31-EU>.

9. A screening exercise was carried out to determine if action proposed in response to the recast Directive, including the introduction of a central register for energy performance data, would require a Strategic Environmental Assessment. This determined that proposals will result in 'no or minimum environmental effects' and that a Strategic Environmental Assessment is not required. This assessment can be viewed at: <http://www.scotland.gov.uk/seag/seagDocs/PRE-00386/11351.pdf>

Financial Effects

10. The subject of this instrument was not a material issue and no costs are identified against the specific provisions of this instrument, as an enabling mechanism for delivery of related carbon and energy policies. This will, however, reduce administrative costs and remove barriers to the successful implementation of such policies. In introduction of an EPC lodgement fee, account has been taken of the additional revenue which will be derived from lodgement of EPCs in support of these related carbon and energy policies. Costs arising from operation of the EPC register will be offset by lodgement fee revenue. An assessment of overall costs and benefits is provided within the final BRIA (EPC lodgement fee) which is published online at <http://www.scotland.gov.uk/Resource/0039/00398126.pdf>

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