
STATUTORY INSTRUMENTS

2007 No. 991

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

PART 7

Enforcement

Defence where energy performance certificate unobtainable

42.—(1) A relevant person 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) he 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 make available 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 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 is required to have made an energy performance certificate available to a prospective buyer or tenant by virtue of regulation 5(2).