

EXPLANATORY MEMORANDUM TO

THE ENERGY PERFORMANCE OF BUILDINGS (CERTIFICATES AND INSPECTIONS) (ENGLAND AND WALES) (AMENDMENT No.2) REGULATIONS 2008

2008 No. 2363

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. Description

2.1 This instrument makes a number of detailed amendments to the provisions of instruments which implement in England and Wales the obligations of the United Kingdom under the Energy Performance of Buildings Directive (Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002) (“the Directive”). The instruments in question are the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (“the principal regulations”), the Building Regulations 2000 (S.I. 2000/2531) (“the building regulations”), the Building and Approved Inspectors Regulations 2000 (S.I. 2000/2532) (“the approved inspectors regulations”), and the Home Information Pack (No.2) Regulations 2007 (S.I. 2007/1667) (“the HIP regulations”).

2.2 The amendments concern the age of energy performance certificates (“EPCs”) included in home information packs (“HIPs”), the disclosure of information from registers of EPCs, the data to be entered alongside the EPC and related documents on the register, transitional arrangements for EPC requirements on sale or rental of buildings other than dwellings, and the providing in relation to new buildings of EPCs and of notices concerning providing of EPCs and compliance with target CO₂ emission rates. A minor drafting error in the principal regulations is also corrected.

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

3.1 The provisions in this instrument are made using powers in the following statutes. Amendments to the principal regulations are made under the European Communities Act 1972 (1972 c.68), to the building regulations and to the approved inspectors regulations under the Building Act 1984 (1984 c.55), and to the HIP regulations under the Housing Act 2004 (2004 c.34). An amended transposition note for the Directive is available from the Department for Communities and Local Government.

4. Legislative Background

4.1 The principal regulations, so far as is relevant to these amendments, provide for:

- a) the maximum age of the EPC which must be made available when a building, which includes a part of a building designed or altered to be used separately, is to be sold or rented out. This is ten years in all cases other than EPCs for dwellings marketed for sale that are included in HIPs, which have a shorter validity period (regulation 11(3) and (4));
- b) the issuing of EPCs only by energy assessors (“EAs”) belonging to accreditation schemes approved by the Secretary of State (regulation 11(1)(c));
- c) the registration by the EA of any EPC and its accompanying recommendation report, and of any display energy certificate or connected advisory report, and data supporting such documents on a register maintained by or on behalf of the Secretary of State (regulation 31(2));
- d) the persons to whom and the circumstances in which disclosures of documents and data held on the registers of EPCs and related documents maintained on behalf of the Secretary of State may be made by the keeper of the register (regulations 33 to 37); and
- e) the prohibition of the disclosure of EPCs and accompanying documents and data by any other person having possession or control of such documents or data other than by or to prescribed persons and in prescribed circumstances (regulation 14).

4.2 The building regulations, so far as is relevant to these amendments, provide for:

- a) a target CO₂ emission rate for a newly-erected building which that building must not exceed (regulation 17C);
- b) the giving to the local authority at the end of construction by the person responsible for carrying out the work of a notice specifying the target CO₂ emission rate, and the calculated CO₂ emission rate for the building as constructed (regulation 20D(1));
- c) the acceptance by the local authority of a certificate by a person of a given description as evidence that the target CO₂ emission rate would not be exceeded if a building were to be constructed in accordance with an accompanying list of specifications (regulation 20D(3));
- d) where such a certificate has been given, the giving to the local authority of a notice stating whether the building has been built in accordance with those specifications and listing any changes made to them in the building as constructed, rather than the notice referred to in (b) above (regulation 20D(4)); and
- e) the giving of an EPC to the owner of a newly constructed building or unit by the person responsible for carrying out the work, and for notice to the local authority that this has been done (regulation 17E).

4.3 The approved inspectors regulations are complementary to the building regulations and provide for those cases where building control functions are exercised by an approved inspector rather than by a local authority, after the giving to the local authority of an initial notice pursuant to section 47 of the Building Act 1984. Provision similar to that described in paragraph 4.2 is made for cases where an initial notice has been served (regulations 12 and 12D).

4.4 The HIP regulations specify that an EPC is a required document in a home information pack, and give a maximum age for the EPC at the time of its inclusion in the pack, which needs to

be consistent with that specified in the principal regulations for marketed sales of homes (regulation 15(2)(a)).

4.5 The amendments are designed to improve in various respects the functioning of the provisions outlined above. In relation to the principal regulations:

- a) regulation 2(2) extends the validity period of the EPC in regulation 11(4) for homes marketed for sale and therefore subject to HIPs requirements from twelve months to three years, and regulation 5 makes the corresponding amendment to the HIPs regulations, so that the maximum age of the EPC on inclusion in the pack is three years. The validity period has hitherto been fixed at twelve months, pending consultation, which has now taken place;
- b) regulation 2(3) inserts provisions in regulation 14(2) to allow that EPCs and accompanying documents and data may be disclosed by any person having possession or control of them other than a register keeper to:
 - (i) an energy assessor for purposes connected to the assessment of the dwelling concerned, thus facilitating the retrieval of data that may not be readily obtainable by other means for the purposes of a subsequent assessment of the dwelling,
 - (ii) to an approved inspector in connection with building control functions, thus correcting an oversight in providing for disclosure to building control bodies, and
 - (iii) to the Energy Saving Trust Limited of the address and energy performance rating only of a dwelling for the purpose of providing information to the occupier on financial assistance available for improving its energy performance, or for anonymised use for statistical or research purposes;
- c) regulation 2(4) corrects a minor drafting error in regulation 17(1)(e)(iii)
- d) regulation 2(5) amends regulation 31(2) to make more precise the definition of the data that is to be entered on the register of EPCs alongside the EPC and related documents, by providing that it should be the data used in accordance with the methodology of calculation of the energy performance of buildings approved under regulation 17A of the building regulations for calculating any asset rating or operational rating in it and for producing the document;
- e) regulation 2(6) inserts a new regulation 34A which provides for disclosure by the register keeper to any person, in response to a request relating to a non-dwelling, of whether or not an energy performance certificate for it is on the register, and when the certificate was issued. This assists landlords of commercial buildings, for which tenants may have commissioned a newer EPC, invalidating any earlier EPC held by the landlord, without the landlord knowing. It also enables prospective buyers and tenants to ascertain at once whether a building that interests them has an EPC, though not to obtain the EPC from the register;
- f) regulation 2(7) inserts new regulations 35A and 35B, which provide for disclosure by the register keeper:
 - (i) to an energy assessor of any document or data, for the purpose of assessment of a dwelling, or for any purpose on behalf of the owner or tenant of a dwelling. This facilitates the retrieval of data that may not be readily obtainable in a subsequent assessment of the dwelling, and can assist an owner or tenant who no longer has the EPC or its reference number to obtain a new copy of a valid existing EPC, which requires production of the reference number under existing provisions (regulation 35A), and
 - (ii) to the Energy Saving Trust Limited of the address of any dwelling in a specified category of energy performance, for the purpose of providing information to the occupier on financial assistance available for improving its energy performance, or for anonymised use for statistical or research purposes (regulation 35B);

- g) regulation 2(8) inserts a new regulation 36A to provide for disclosure by the register keeper of any document or data held on the register to an approved inspector in connection with building control functions, thus correcting an oversight when provision was made for disclosure to enforcement authorities in regulation 36 of the principal regulations, and for disclosure to local authorities as bodies with both enforcement and building control functions by amendment to regulation 36 in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008 (S.I. 2008/647) regulation 2(4); and
- h) regulation 2(9) extends until 4th January 2009 for non-domestic buildings the transitional arrangements in regulation 51 which allow a seller or a prospective landlord to commission an EPC other than for a marketed sale of a home only after exchange of contracts with a buyer or new tenant, whereas that person would otherwise have had to make the EPC available at the outset of the marketing process in compliance with regulation 5(2).

4.6 Regulations 3 and 4 make amendments to the building regulations and to the approved inspectors regulations respectively as follows:

- a) regulation 3(2) amends regulation 17E to provide:
 - (i) that notification to a local authority that an EPC has been given to the owner of a newly constructed building or unit should include the reference number for the EPC as registered, thus making it simpler to authenticate, and
 - (ii) that the EPC should be given to the owner, and notice given to the local authority that this has been done, no later than five days after the end of the work, simplifying the time limit;
- b) regulation 4(2) makes similar amendments to the provisions corresponding to the above in regulation 12 of the approved inspectors regulations, with the additional provision that the time limit is no later than five days after the end of the work, or the date when the initial notice ceases to be in force by virtue of regulation 18 (events causing initial notice to cease to be in force) of those regulations, whichever is the earlier;
- c) regulation 3(3) amends regulation 20D to provide:
 - (i) that notice to the local authority to show compliance of a newly-erected building with the target CO₂ emission rate should be given to the owner no later than five days after the end of the work, simplifying the time limit,
 - (ii) that the certificate to be accepted by the local authority as evidence that the target CO₂ emission rate would not be exceeded if a building is constructed in accordance with an accompanying list of specifications must be issued by an energy assessor, simplifying compliance by ensuring that the same person can prepare both the certificate and the EPC, and
 - (iii) that a notice to the local authority showing construction in accordance with those specifications be given no later than five days after the end of the work, again simplifying the time limit; and
- d) regulation 4(3) makes similar amendments to the provisions corresponding to the above in regulation 12D of the approved inspectors regulations, with the additional provision that the time limits are no later than five days after the end of the work, or the date when the initial notice ceases to be in force by virtue of regulation 18 (events causing initial notice to cease to be in force) of those regulations, whichever is the earlier.

5. Territorial Extent and Application

5.1 This instrument applies to 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

Validity Period for Energy Performance Certificates

7.1 In summer 2007 the Royal Institution of Chartered Surveyors, (RICS) sought leave for judicial review of the Department's implementation of home information packs. The proceedings were stayed by agreement on conditions, including one that the Department would consult on the maximum age of an EPC when it was included in a HIP. Under the Directive an EPC can be valid for up to ten years.

7.2 The principal regulations had originally provided that an EPC to be included in a HIP should be no more than three months old, the maximum age that had been stipulated for a home condition report, in which the EPC would have been included. The Department took the view that such a recent EPC and its accompanying recommendations report would have maximum credibility, and be most likely to be acted upon, and the period was left unaltered when the home condition report became a voluntary inclusion in the HIP. RICS cited a validity of less than ten years as gold-plating, and submitted that there was no evidence to support the greater effectiveness of the period chosen. In July 2007 this period was extended to twelve months to allow time for consultation, as part of the conditions agreed with RICS.

7.3 The Department consulted from December 2007 to 9 March 2008. The consultation set out a range of scenarios, modelling validity periods of 1, 3, 5, and 7 years against a base case of 10 years. Following analysis of the 23 responses, including representations from RICS, the Government has decided that there should be a 3 year validity period. Evidence will continue to be gathered to inform future decisions on the appropriate validity period.

Access to the Domestic Energy Performance Certificate Register for the Energy Saving Trust

7.4 The Energy Saving Trust Limited ("EST") works with citizens to tackle climate change. Established by Government initiative, and funded by Government and the private sector, EST is a private, not-for-profit limited company. EST's purpose is to help reduce carbon dioxide emissions by promoting energy efficiency and renewable sources of energy in the home, on the road and in communities. On 19 November 2007 the Prime Minister announced the Green Homes Project which consists of an upgraded advice and service network. This encompasses a number of green initiatives, including EST's existing energy efficiency advice network. A new commitment in connection with that work is one to contact occupiers of homes that have received low energy-efficiency ratings (i.e. properties which received F or G-rated EPCs) to provide information on financial assistance that is available for improving their energy efficiency. In order for EST to fulfil this Government commitment, it needs access to EPC data so that it can identify the households concerned.

7.5 EST will receive disclosures from the Register for use as follows. EST will ask the register keeper for the addresses of dwellings for which an EPC showing an F or G rating has been registered, and contact the occupiers via direct mail with targeted messages on financial assistance available nationally and locally for improving the energy efficiency of their homes. The only other use of the data so disclosed would be to load it into EST's Home Energy Efficiency Database

(HEED). This would be done on a fully anonymised basis, and will enhance EST's knowledge of the UK's housing stock, enabling it to deliver work on behalf of the government more effectively.

Building floor areas shown on display energy certificates

7.6. Regulation 17(1)(e)(iii) of the principal regulations has hitherto required a display energy certificate to display 'an estimate of the total useful floor area' of the building concerned. The certificate however is, by virtue regulation 17(1)(a), produced according to the methodology approved for expressing the asset and operational ratings in it. The methodology already requires the assessment of the floor area of the building in order to calculate those ratings. The use of 'estimate' in regulation 17(1)(e)(iii) has misled some, and to avoid future confusion the words "an estimate of" have been deleted. The remaining words, along with guidance to be given, will make it clear that the assessment of the floor area used in applying the approved methodology is the figure to be given for the total floor area in compliance with regulation 17(1)(e)(iii).

Lodging of data collected for EPCs and display energy certificates onto the register

7.7. The principal regulations contained a requirement to ensure that the data collected to produce an EPC or a display energy certificate was lodged onto the register alongside it. The definition in regulation 31(2) of the data in question was amended in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2007 (S.I. 2007/1669) regulation 3(5), and is now further amended. The intention in lodging this data is twofold: to enable quality assurance checks on the data collection, and to enable an energy assessor to access the data used to create an earlier certificate and use this data as appropriate in producing a new one. One problem that has arisen has been the lodgement of data other than the input data immediately necessary to populate the software calculation. A second is that the need to lodge output data for future quality assurance purposes has not been clear. The effect has been the lodgement of unnecessarily large files and of inconsistent data. The amendment addresses these two issues by referring to data used to calculate ratings and data used to produce the document. These correspond to the input data and the output data. These requirements will be described in more detail in an update to the National Calculation Methodology for the energy performance of buildings, which is approved by the Secretary of State in accordance with regulation 17A of the building regulations.

Disclosure from the register of EPCs whether a non-dwelling has an EPC

7.8. The inclusion of this provision follows representations from building owners and landlords in the non-domestic sector. There is concern that tenants and sub-tenants would, legitimately, be obtaining EPCs for the purposes of sub-letting buildings. If a landlord was not aware of this, and there is no requirement to make him aware, he might subsequently market the building or part of the building using an earlier EPC, which by virtue of regulation 11(3)(b) would be invalid. A further advantage of the provision is that anyone interested in a commercial building to buy or let can consult the register at once to know if an EPC is in place for that building. The new regulation 34A however limits the keeper of the register to disclosing whether an EPC is entered on the register for the building in question and the date of that certificate. No other disclosure is permitted under this regulation and it is limited to EPCs for non-dwellings.

Disclosure from the register to energy assessors in relation to EPCs for dwellings

7.9. The inclusion in the principal regulations of the new regulation 35A allows an accredited energy assessor, who is making an assessment of a dwelling, to obtain from the register the data used to create earlier EPCs. The amendments made (described above) concerning lodging of data should ensure that the input and output data are lodged. This should result in a reduction in time and effort in producing new EPCs when existing data has recently been obtained, and may assist in ensuring accuracy. This amendment should be seen alongside the 3 year validity period allowed for most domestic EPCs on sale. It is unlikely that major changes to a dwelling in this timescale

would not be picked up from a shortened survey, thereby allowing the assessor to rely on much of the data previously collected.

7.10. The new regulation 35A further provides for access to documents and data for any purpose on behalf of the owner or tenant of a building. This is primarily to deal with the situation where an EPC is lost, and the only way to replace under existing provisions is by providing its registration number to the register keeper, which the owner or tenant is unlikely to have in the absence of the EPC itself.

Continuation of transitional arrangements

7.11. The transitional arrangements in regulation 51 of the principal regulations are extended until 4th January 2009 in respect of the sale or rent of buildings which are not dwellings. These arrangements were introduced in Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008 (S.I. 2008/647) regulation 2(5). Their effect is that, during the transitional period, properties already on the market on the date of commencement of EPC requirements for buildings of their description will not require an EPC to be made available until a contract for the sale or rent of the building is entered into. At this point, an EPC must be commissioned as soon as reasonably practicable, if it has not already been done, and given to the purchaser or new tenant. This provision has hitherto benefited, among other descriptions of buildings, non-domestic properties over 10,000m² in area, for which duties commenced on 6th April 2008, and non-domestic properties over 2,500 m², for which duties commenced on 1st July 2008. The provision was to end on 1st October 2008, which is also the commencement date for all remaining descriptions of buildings to which EPC requirements apply, including non-domestic properties under 2,500 m². These last, and the two former categories mentioned, all now benefit from the extension to 4th January 2009, which is the cut-off date for full implementation of the Directive.

7.12. These provisions are intended to help manage the introduction of EPCs in the non-domestic sector. The amendment extends their benefit to the final category of non-dwellings for which EPC duties commence, and brings the transitional arrangements for all non-dwellings requiring an EPC on sale or rent into alignment.

Compliance dates for notices in relation to target emission rates and energy performance certificates for newly constructed buildings

7.13. These Regulations amend provisions in the building regulations and the approved inspectors regulations as to the latest date by which the person carrying out the building work must give—

- (a) the notice demonstrating compliance with regulation 17C on the target emission rate for a newly erected building to the building control body,
- (b) an EPC to the building owner, and
- (c) notice to the building control body that the EPC has been given to the owner.

The amendments simplify the procedures by prescribing the same end date in all cases.

Notices to building control bodies that an energy performance certificate has been given to include the reference number of the certificate

7.14. Building control bodies, that is local authorities or approved inspectors, cannot give completion or final certificates in respect of new buildings until they are satisfied that an energy performance certificate has been given to the owner. To facilitate checking whether a certificate has been given, and its validity, the amendments add a provision that the building control bodies must be given the reference number under which the energy performance certificate has been registered. This will allow an immediate check to be made against the register, and is complementary to other provision for disclosure to building control bodies from the register.

Disclosures of energy performance certificates to approved inspectors

7.15. The amendments also provide for disclosure of energy performance certificates and associated documents and data to approved inspectors for purposes connected with the exercise of their building control functions, by analogy with provision already made for disclosure to local authorities in connection with their building control and enforcement functions in regulation 2(4) of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008 (S.I. 2008/647). This corrects an earlier oversight. Approved inspectors are under a duty to take reasonable steps to ensure compliance with duties in relation, inter alia, to energy performance certificates for newly constructed buildings, and to issue a final certificate in respect of the discharge of their functions. It is in connection principally with this aspect of approved inspectors' functions that provision for disclosure to them is required.

Evidence of compliance with building target CO₂ emission rates

7.16. The Government considers that the measurement of the energy performance of buildings provides a key tool in helping to reduce the level of carbon dioxide emissions. There are two existing provisions in respect of new buildings in the building regulations, requiring the measurement of CO₂ emissions, implementing requirements in Articles 3, 4 and 7 of the Directive.

7.17. The first is regulation 17C which requires that a building's CO₂ emission rate (as built) should not exceed its target emission rate. A notice to this effect must by regulation 20D (regulation 12D in the approved inspectors regulations) be given to the building control body (local authority or approved inspector) at the end of construction work by the person carrying out the work. There is no restriction on who may carry out the calculation of emission rates for this purpose, and no presumption of the accuracy of such a notice. If however under the present provisions a specified body issues a certificate that the finished building will comply with the target emission rate if constructed in accordance with an accompanying list of specifications, the building control body can accept this as evidence of compliance with regulation 17C. A subsequent notice confirming whether the building is built according to those specifications and listing any changes to them is then served in place of the notice showing the target rate calculation of the finished building.

7.18. The second is the requirement in regulation 17E of the building regulations that an energy performance certificate in respect of a new building must be given by the person carrying out the work to the owner of the building. Such certificates can be issued only by energy assessors who are accredited to produce EPCs for the category of building concerned by an accreditation scheme approved by the Secretary of State in accordance with regulation 17F.

7.19. The calculations needed to show the target emission rate and the building's CO₂ emission rate (as constructed), and the calculations necessary to produce an energy performance certificate, must both be carried out using the methodology approved by the Secretary of State under regulation 17A of the building regulations for calculation of the energy performance of buildings. In practice, the two calculations are often carried out by the same person. Hitherto, membership of different schemes has been required for each task: there were two named bodies whose registered members could issue certificates under regulation 20D (which a building control body can treat as evidence of compliance), while energy performance certificates can only be issued by energy assessors belonging to an accreditation scheme. Those carrying out the calculations have on the whole chosen not to join both types of scheme on cost grounds. Builders, building owners and building control bodies will therefore have had the inconvenience, and in many cases the extra cost, of dealing with two persons carrying out calculations instead of one where the person carrying out the building work wishes to have the advantage of the evidential presumption available in respect of the regulation 20D compliance certificates.

7.20. The simplified arrangements for which the Regulations to which this memorandum relates provide will allow all who are in approved energy performance certificate accreditation schemes also to issue the certificates under regulation 20D that can be used as evidence of compliance with regulation 17C. Over a six-month transitional period all existing energy assessors will have to demonstrate that they meet amended accreditation standards to ensure that they are able to do this additional task, at the end of which all accredited energy assessors will be required to be able to issue certificates of both types for the categories of building in respect of which they are accredited. The Government considers that this will greatly reduce the burdens on builders, building owners and building control bodies and in doing so raise the level of compliance with the requirements in the building regulations.

Consultation on the Green Homes Service and EPC disclosure amendments

7.21. The Department consulted a wide range of stakeholders through our stakeholder forums and published the consultation paper on the Department website (*The Next Steps: EPCs and the establishment of the Green Homes Service*). The consultation ran from June 2008 to 1 September 2008. The Department received 45 responses of which 30 were in favour of the proposal for disclosure from the register of energy performance certificates to the Energy Saving Trust Limited, and the other proposed amendments concerning disclosure from the register, and only 6 against. 9 respondents expressed agreement with the proposals without specific comment on any of them. Among those who opposed the proposals, concern was expressed on commercial implications of the singling out of the Energy Saving Trust Limited to receive disclosures, and about data security in relation to such disclosures. The Government considers that these questions do not give grounds for concern. The Energy Saving Trust Limited is a non-profit making body set up at Government behest to promote energy efficiency. By this amendment disclosure will be made of addresses and energy ratings only. The principal use of it allowed is to provide information on funding incentives available to the occupiers to improve their homes' energy efficiency, and the only other permitted use of the disclosed data is for research or statistical purposes and must be anonymised. The narrow definition of the purposes for which disclosure from the register may be made is supported by the complementary provision in the amendment to regulation 14(2) of the principal regulations, restricting disclosure to the Energy Saving Trust Limited by any person, and disclosure made by the Energy Saving Trust Limited, in similar terms to those for disclosure from the register. The consultation document and a summary and analysis of the responses is available on the Department's website www.communities.gov.uk

Consultation on the validity period of Energy Performance Certificates for private marketed sales of dwellings

7.22. The Department consulted on the validity period for domestic Energy Performance Certificates from December 2007 until 9 March 2008 (*Energy Performance Certificates for Private Marketed Sales of Dwellings: Validity Period of Certificates*). The purpose of the consultation was to seek views on the right balance between costs and benefits of EPC validity periods ranging between 1 year and 10 years. The Department received 23 responses. These contained a wide range of views on the appropriate length of the period, from maintaining the provisional status quo of one year, up to allowing the full ten years permissible under the Directive. The Government took these views into account alongside statistical projections. Statistical analysis in the consultation document attempted to show the benefits of the likely take-up of measures to improve the energy efficiency of buildings relative to the costs of producing certificates, modelling validity periods of 1, 3, 5, and 7 years against a base case of 10 years. Further statistical work was then undertaken in the light of the consultation response by the Royal Institution of Chartered Surveyors. Following analysis of the responses and of the original and the later statistical projections, the Government took the decision that the validity period should be 3 years. Given the newness of EPC requirements however, there is so far a lack of empirical data on which to base firm conclusions on the efficacy of any period. Evidence will continue to be gathered to enable future review of the validity period. The consultation document and a summary and analysis of the responses is available on the Department's website www.communities.gov.uk

Consultation on evidence of compliance with CO₂ emission rates, compliance dates for service of notices, and inclusion of EPC reference numbers in notices

7.23. The Department consulted the Building Regulations Advisory Committee and other representative interests on the proposals to amend the building regulations and the approved inspectors regulations (*Simplified arrangements for the production of CO₂ emission rate calculations for new buildings under the Building Regulations 2000*). The Department has received only seventeen responses, perhaps because of the technical nature of the subject of the consultation. Almost all were either from building control bodies or from professional organisations with a particular interest in CO₂ emission rate calculations. All respondents but one fully supported the legislative changes proposed, welcoming them as a necessary simplification of the arrangements which should lead to a higher level of compliance. One local authority respondent stated its opposition to all of the proposals but gave no further explanation why it did not support them. The consultation document also set out draft revised accreditation criteria and National Occupational Standards for energy assessors. A large majority of respondents supported the draft criteria and standards as published; the rest suggested relatively minor changes to make them clearer. The Department accepts these suggested changes and will incorporate them into the standards. The consultation document and a summary and analysis of the responses is available on the Department's website www.communities.gov.uk.

8. Impact

8.1 An impact assessment in respect of the amendments to the building Regulations 2000 and the approved inspectors regulations 2000 is attached to this memorandum.

8.2 A second impact assessment in respect of EPC validity period, transitional arrangements for non-domestic buildings, and disclosures from the register is also attached to this memorandum.

8.3 The only impact of this instrument on the public sector is in respect of the amendments to the building regulations and the approved inspectors regulations. This impact is to reduce the burden of checking on compliance with regulations 17C and 17E of the building regulations and regulation 12 of the approved inspectors regulations. This instrument has no impact on the voluntary sector.

9. Contact

Robert Moore at the Department for Communities and Local Government Tel 020 7944 8324 or email: robert.moore@communities.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of merger of Regulation 17 and EPC CO2 emission calculation schemes	
Stage: Final	Version: final	Date: 4 September 2008
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Ian Drummond

Telephone: 020 7944 4821

What is the problem under consideration? Why is government intervention necessary?

Under existing building regulations there are two separate requirements to carry out CO2 emission rate calculations. These are under (i) regulation 17C of the Building Regulations 2000 and (ii) Regulation 17E implementing Article 7 of the Energy Performance of Buildings Directive, requiring the provision of Energy Performance Certificates. The duplication is not necessary. As this is effectively a weakness of existing Government regulation, only Government has the authority to make this change.

What are the policy objectives and the intended effects?

The objective of the proposal is to eliminate the duplication of calculations and schemes as far as possible, thereby making more efficient use of resources. It is also hoped by achieving these primary objectives, compliance with this area of building regulations would be increased as a result of improved simplicity of the process.

What policy options have been considered? Please justify any preferred option.

- A - Do nothing
- B - Simplify CO2 emission calculation arrangements

The preferred option is option B.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed as part of the broader review of the energy efficiency provisions of the Building Regulations

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Hazel BlearsDate: 4th September 2008

Summary: Analysis & Evidence

Policy Option: B	Description: Simplify CO2 emission calculation arrangements
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£	
	Average Annual Cost (excluding one-off)	
£	Total Cost (PV)	£
<p>Other key non-monetised costs by 'main affected groups'</p> <p>Additional training costs for energy assessors/ inspectors that will have to collect more data than currently. Initial advertising/ guidance provision to inform builders of changes to regulations.</p>		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£	
	Average Annual Benefit (excluding one-off)	
£	Total Benefit (PV)	£
<p>Other key non-monetised benefits by 'main affected groups' Reduced administrative burden on energy assessors/ inspectors as duplication of calculations is eliminated. Overall compliance with CO2 standards raised as a result of simplification of processes. Improved compliance with regulation in this area will improve overall environmental standards.</p>		

Key Assumptions/Sensitivities/Risks

That there is scope for increased compliance (i.e. compliance is currently less than 100%).
 Note: the consultation is aimed at providing evidence to enable us to fill in these boxes further.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	1 October 2008
Which organisation(s) will enforce the policy?	BCBs
What is the total annual cost of enforcement for these organisations?	£ n/a
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ n/a
What is the value of changes in greenhouse gas emissions?	£ n/a
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Summary of problem

Under the current building regulations provisions there are two types of scheme set up for the calculation of CO₂ emission rates in new buildings. One scheme allows its members to certify that the as built emission rate (commonly known as dwelling emission rate for dwellings (DER) or building emission rate for buildings other than dwellings (BER)) does not exceed the target emission rate (TER) and for building control bodies (BCBs) to accept these certificates as evidence of compliance. The other scheme allows its members to produce valid energy performance certificates (EPCs) based on the as built emission rate.

The calculations carried out under each type of scheme are essentially the same ones using the same calculation methodologies with those carrying out the calculations needing to possess the same competences. It does not seem sensible to require those carrying out the calculations to have to join different types of scheme to carry out the same task, nor to expect building owners to have to employ two different persons to do the same work.

Current position

(i) Regulation 17C

The Building and Approved Inspectors (Amendment) Regulations 2006 introduced a provision (regulation 17C) into the Building Regulations 2000 that the actual as built CO₂ emission rate for new buildings (DER/BER) should not exceed the target emission rate (TER). These emission rates must be calculated using approved methodologies – currently the Standard Assessment Procedure (SAP) for new dwellings and the Simplified Building Energy Model (SBEM) or Dynamic Simulation Modelling (DSM) for buildings other than dwellings.

Regulation 20D of the Building Regulations 2000 (regulation 12D in the Building (Approved Inspectors) Regulations 2000) (AI Reg's) requires the person carrying out the construction of a new building to give the building control body (BCB) a notice specifying the TER and the DER to demonstrate compliance with regulation 17C.

Regulation 20D (12D in the AI Reg's) also authorises BCB's to accept as evidence of compliance with Regulation 17C a certificate that the building will be compliant if built according to the listed specifications from persons registered with named bodies, which are commonly known as Regulation 17C competent person schemes. Only two bodies are named in the regulations – FAERO Limited (which has now ceased trading) and BRE Certification Limited.

There is no requirement that only members of those bodies named in regulation 20D can carry out the calculations needed to demonstrate compliance with regulations 17C. There are relatively few members of the BRE Certification scheme which means that BCBs are receiving notices of TER's and DER's/BER's from persons who are not members of the BRE Certification scheme and which they cannot automatically treat as sufficient evidence of compliance. They can only take account of them in deciding whether there has been compliance. This places an extra burden on the BCBs in checking the notices. It may also result in some new buildings not complying with regulation 17C as BCBs would not have the time, expertise or all the information to do the necessary calculations themselves.

The above provisions implement Articles 3 to 5 of the Energy Performance of Buildings Directive (2002/91/EC) (EPBD).

(ii). Energy Performance Certificates

Article 7 of the EPBD requires that an energy performance certificate (EPC) must be provided on all buildings on construction, sale and rental. This Impact Assessment concerns only EPCs on construction of new buildings. This Article in respect of new buildings is implemented in England and Wales by amendments made to the Building Regulations 2000 and the Building (Approved Inspectors etc) Regulations 2000 by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, principally regulations 17E and 17F in the Building Regulations and regulation 12 in the Approved Inspectors Regulations. .

In brief, the CO₂ emission rate calculated needed to give a new building an asset rating are calculated using the same approved national methodologies and the same software as are used to undertake the calculations used to demonstrate compliance with regulation 17C of the Building Regulations. Regulation 17F requires that all those producing EPCs must be members of an approved accreditation scheme.

The provisions for EPCs for new buildings will come into force in stages (depending on the type of building) only from 6 April 2008.

Proposals

The principal proposal is to allow BCB's to accept as evidence of compliance the information demonstrating compliance with regulation 17C from anyone accredited for the category of building concerned under an approved EPC accreditation scheme. This will greatly broaden the numbers of those in schemes adjudged as competent to carry out regulation 17C calculations, creating greater certainty for building owners, those carrying out building work and BCB's.

There are a number of subsidiary proposals which are considered desirable to make the principal proposal better achieve its aim:

- All members of EPC accreditation schemes must be able to carry out regulation 17C calculations for the category of building for which they are accredited
- Amendments to the accreditation and National Occupational Standards to encompass regulation 17C requirements
- More flexible last date on which regulation 17C calculations and EPCs must be produced
- More robust arrangements for BCB's to check on the issue of an EPC
- Six month transitional period for existing Energy Assessors to demonstrate competence to carry out regulation 17C calculations

Effect of proposals on stakeholders

(i) BCB's.

As mentioned above there is currently only one authorised body (BRE Certification Limited) from which BCB's can accept certificates of compliance for regulation 17C as sufficient evidence of compliance without further consideration. This scheme has relatively few members (160 as at 30.9.08 who at that date had certified only a handful of buildings for compliance with regulation 17C).

This means that BCB's are receiving notices of TER's and DER's/BER's which they cannot simply accept as evidence of compliance. For each they should be examining the information given and coming to a conclusion on whether the information does demonstrate compliance with regulation 17C. There is a risk that BCB's may accept notices without further checking

because of lack of time, availability of the necessary software, competence to use the software or all the information that would be needed. This would likely mean in some cases that compliance with regulation 17C would not be achieved and buildings would not be as energy efficient as the Regulations require.

There are a limited number of people who have the competences needed to carry out CO₂ emission calculations. Most will wish to join an approved EPC accreditation scheme as scheme membership is a requirement to produce recognised EPCs. If all EPC scheme members are also competent to carry out regulation 17C compliance calculations BCB's would receive certificates which they could rely on for most new buildings, relieving them of much of the need for checking and increasing the likelihood of buildings' compliance with the energy efficiency requirements.

(ii) EPC scheme operators

EPC scheme operators would need to make sure that the energy assessors (EAs) in their schemes are competent to carry out regulation 17C compliance calculations and monitor through quality assurance measures. Most currently developed systems by EPC scheme operators for checking competences and monitoring performance would encompass these additional tasks with at most marginal extra cost and effort.

(iii). Energy assessors

As mentioned above, the calculations for regulation 17C compliance and for an EPC use the same approved methodologies and software and are based on the same information on the building. The National Occupational Standards (NOS) for EAs are being amended to reflect the competences required for regulation 17C compliance but it is likely that most current and prospective EAs already possess the competences needed or would acquire them through the appropriate training, the cost and length of which would not increase.

For those EAs already accredited to produce EPCs for new buildings we are proposing a six month transitional period for them to demonstrate any additional regulation 17C competences not already demonstrated. This period would mean that the existing businesses of any affected energy assessors would not be affected as any extra training etc needed would be marginal.

A significant benefit to energy assessors would be the need to join only one scheme to carry out both regulation 17C and EPC calculations. For those who wished to join both types of scheme this would represent a significant cost saving in registration fees of the order of £350 per year.

(iv). Building owners and those carrying out building work

The proposals will be of benefit to both. They mean that they will have to employ only one energy assessor who has demonstrated competence to carry out both tasks with a saving of one the fees if two different EAs had been employed to carry out the two tasks. Building owners would also have the added assurance that the BCB concerned could accept the regulation 17C calculations as evidence of compliance.

Consultation on the proposals

The Department consulted the Building Regulations Advisory Committee (BRAC) on the proposals and issued a public consultation document. BRAC were content with the proposals.

There was a very low level of response to the public consultation, which is available at <http://www.communities.gov.uk/publications/planningandbuilding/co2calculationsconsultaton>. More than four-fifths of the respondents supported each of the proposals. A number of helpful comments were made which will help with the drafting of the implementing legislation and in clarifying the wording in the accreditation and national Occupational Standards.

The consultation document requested respondents where they were in a position to do so to give the Department quantitative information on the costs and benefits arising from the proposals. Unfortunately none of the respondents did so to help refine the Impact Assessment.

Monetisation of costs and benefits

Regulation 17C of the Building Regulations came into force on 6 April 2006. However, there were extensive transitional provisions in the Building and Approved Inspectors (Amendment) Regulations 2006 which meant that buildings already started or those where full plans, a building notice or initial notice had been given did not have to fulfil the regulation 17C requirement. This means that the need to fulfil the requirement has proceeded relatively slowly and incrementally. It has therefore not been possible to collect any meaningful data on the cost of this requirement to building owners, those carrying out building work and BCB's, or on the benefits that might accrue.

Savings arise from having both the regulation 17C calculations and EPC calculations carried out by the same energy assessor. As we have no information on who has been carrying out the regulation 17C calculations as there is no requirement to be a scheme member to do so, nor on how many buildings regulation 17C calculations have been carried out it is not possible to quantify possible savings. Nevertheless, as mentioned above, there are significant non-monetised benefits to be gained from the proposals for all with only marginal extra costs.

Implementation, enforcement and monitoring

The proposals will be implemented by amendments to the Building Regulations 2000, the Building (Approved Inspectors etc) Regulations 2000 and Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

Enforcement of the assessment standards and competence standards will be for the operators of approved EPC accreditation schemes. Enforcement of the building regulations requirements will reside, as now, with local authorities using the existing enforcement powers in the Building Act 1984.

The changes made by the proposals are to procedural arrangements rather than to technical standards and no discrete monitoring of their effect is proposed. However, the Department is in the process of reviewing all the energy efficiency provisions in the Building Regulations, both the technical standards and how these are complied with. The changes made through these proposals will be included in that review.

Specific Impact tests

Competition Assessment

The proposals will make it considerably easier for more energy assessment schemes and energy assessors to undertake the calculations required by regulation 17C and in that respect will lead to an increase in competition.

Small firms impact test

The proposed changes will affect directly only the approximately 500 energy assessors, some of which work for large firms, some for small. The proposals will not alter this balance and, as the competition assessment states, open the market for more work for both small and large assessors without a bias towards one or the other.

Carbon Assessment

The current arrangements for regulation 17C calculations mean that some buildings may not be as energy efficient as required because of the inability of BCB's to fully check all calculations. The proposals will mean that fewer buildings will fail to meet the energy efficiency requirements. There will thus be a saving in CO₂ emissions although it is not possible to quantify such savings.

Equality Impact Assessment

An equality Impact assessment has been considered and it has been decided that none is required as the proposed technical changes to the Building Regulations would not impact on equality issues.

Other impact tests

These are not relevant as the proposed changes are purely technical ones.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Summary: Intervention & Options

Department /Agency: CLG	Title: Impact Assessment of EPBD (Certificates and Inspections) (England and Wales) (Amendment no.2) Regulations 2008	
Stage: Final	Version: 1	Date: 9 September 2008
Related Publications: RIA: EPBD Articles 7-10; EPCs for private marketed sales of dwellings: validity period of certificates; The Next Steps: EPCs and the establishment of the GHS		

Available to view or download at:

<http://www.communities.gov.uk/publications/planningandbuilding/epcnextstep>

Contact for enquiries: Robert Moore

Telephone: 0207-944-8324

What is the problem under consideration? Why is government intervention necessary?

The objective of the EPBD is to raise awareness that nearly half of carbon emissions are created by buildings, and thereby to encourage behaviour change. Government intervention is necessary to tackle the effects of climate change.

These amendment regulations make a number of changes necessary to the smooth introduction and continued running of the UK's system for implementing the Directive and thereby achieving carbon savings.

What are the policy objectives and the intended effects?

The measures considered in this Impact Assessment are intended to ensure the smooth introduction of EPCs and our remaining obligations under the EPBD.

What policy options have been considered? Please justify any preferred option.

- allow an EPC provided on the sale of a home to remain valid for up to three years, and make corresponding changes in the Home Information Pack regulations;
- allow the Energy Saving Trust access to addresses and ratings contained in EPCs to deliver the Green Homes Service
- make two further changes on access to the registers
- extend the current transitional provisions for the introduction of commercial EPCs on 1 October

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? CLG will start a programme of evaluation and benefits realisation in the autumn, with initial results expected in 2009.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Hazel BlearsDate: 4th September 2008

Summary: Analysis & Evidence

Policy Option: 3-year validity for EPC	Description: EPC to be valid for up to 3 years when a home is sold compared to the current baseline of 1 year.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs saved by home sellers who no longer need to buy a new EPC.	
	One-off (Transition) Yrs		
	£		
	Average Annual Cost (excluding one-off)		
	£ - 11m	Total Cost (PV)	£ -110m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The benefits arise in three areas: consumer investment in energy efficiency measures; better use of energy; and reduction in the promotional costs of CERT. The first two result in carbon savings. Benefits are lower in 3 year case compared to 1 year.	
	One-off Yrs		
	£		
	Average Annual Benefit (excluding one-off)		
	£ -9m - 0m	Total Benefit (PV)	£ -90m - 0m
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks Uncertainty around: extent of behavioural change in response to EPCs; future energy prices; future technological innovation.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 19-110m	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?	1 October 2008				
Which organisation(s) will enforce the policy?	TSOs				
What is the total annual cost of enforcement for these organisations?	£ 3.4m first year				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	Yes				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ - 50 - 0				
Will the proposal have a significant impact on competition?	Yes/No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)	(Increase - Decrease)
Increase of £	Decrease of £
Net Impact £ None	

Key: Annual costs and benefits: Constant Prices

Summary: Analysis & Evidence

Policy Option: Access to Register

Description: Assessment of a suite of measures to improve energy performance certificate registers

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs of £100k to Landmark Information Group for facilitating access to registers; £50k to EST; £50k of allowing public search of but not download from commercial register.
	One-off (Transition)	Yrs	
	£ 200k		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 200k
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The effect of the measures cannot be identified separately from the wider benefits to be gained from the introduction of EPCs, but are recognised as effecting increased take-up of cost-effective energy efficiency improvement measures.
	One-off	Yrs	
	£ unquantifiable		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £ unquantifiable
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks As set out in narrative

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ unquantifiable
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	1 October 2008			
Which organisation(s) will enforce the policy?	CLG; TSOs			
What is the total annual cost of enforcement for these organisations?	£ 3.4m first year			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ see above			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£ none

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

Policy Option:
Transitional
arrangement

Description: Transitional arrangement for commercial properties marketed before 1 October

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' No impact on costs because the number of EPCs issued for commercial properties is unchanged, and they must be provided within the same financial year.
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £ 0
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The effect on carbon savings is negligible since it represents up to three months delay against a thirteen year period. There will be clear but intangible benefits in ensuring that an already sluggish commercial market is not seen to be further hindered.
	One-off	Yrs	
	£ unquantifiable		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £ unquantifiable
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ unquantifiable
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What is the geographic coverage of the policy/option?			England/Wales		
On what date will the policy be implemented?			1 October 2008		
Which organisation(s) will enforce the policy?			TSOs		
What is the total annual cost of enforcement for these organisations?			£ 3.4m first year		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ n/a		
What is the value of changes in greenhouse gas emissions?			£ see above		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of	£	Decrease of	£	Net Impact £ none

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Summary of proposed changes

The objective of this Implementation Stage Impact Assessment (IA) is to make a number of changes necessary to the smooth introduction and continued running of the regulations giving effect to the European Directive on the Energy Performance of Buildings (EPBD).

The changes are:

- i) to allow an Energy Performance Certificate provided on the sale of a home a validity period of up to three years, and to make the corresponding changes to regulations for Home Information Packs;
- ii) to allow the Energy Saving Trust access to addresses and energy ratings contained in EPCs to deliver the Green Homes Service
- iii) to allow energy assessors to search the domestic register by address
- iv) to allow members of the public to see whether an EPC has been produced on a non-domestic property;
- v) to extend the current transitional provisions for the introduction of commercial EPCs on non-domestic buildings already on the market before 1 October to 4 January 2009.

In addition there are a number of minor technical amendments to the regulations:

- clarify the definition of data to be lodged on the register
- clarify the procedure for calculating the total usable floor area for a building.

These restore policy intention as intended in the original impact assessment, and have not been subjected to a separate impact assessment.

Costs and benefits

i) Validity period of an EPC

The Government consulted on a number of scenarios for the appropriate validity period of an EPC during the winter of 2008. The options examined were validity periods of 1, 3, 5, 7 years compared to a baseline of 10 years.

The costs of commissioning an EPC could be calculated with reasonable certainty. However, the benefits were considerably harder to calculate. This was because there was virtually no evidence on likely behavioural change of consumers in response to EPCs, ahead of their introduction.

The consultation therefore constructed a number of scenarios for likely impact given different degrees of behaviour change in response to the certificate. Each of the options was tested under seven different scenarios, illustrated in Table 1 and Fig.1. These scenarios reflect uncertainty around a range of factors, including the extent of behavioural change in response to EPCs, future energy prices, and future technological innovation:

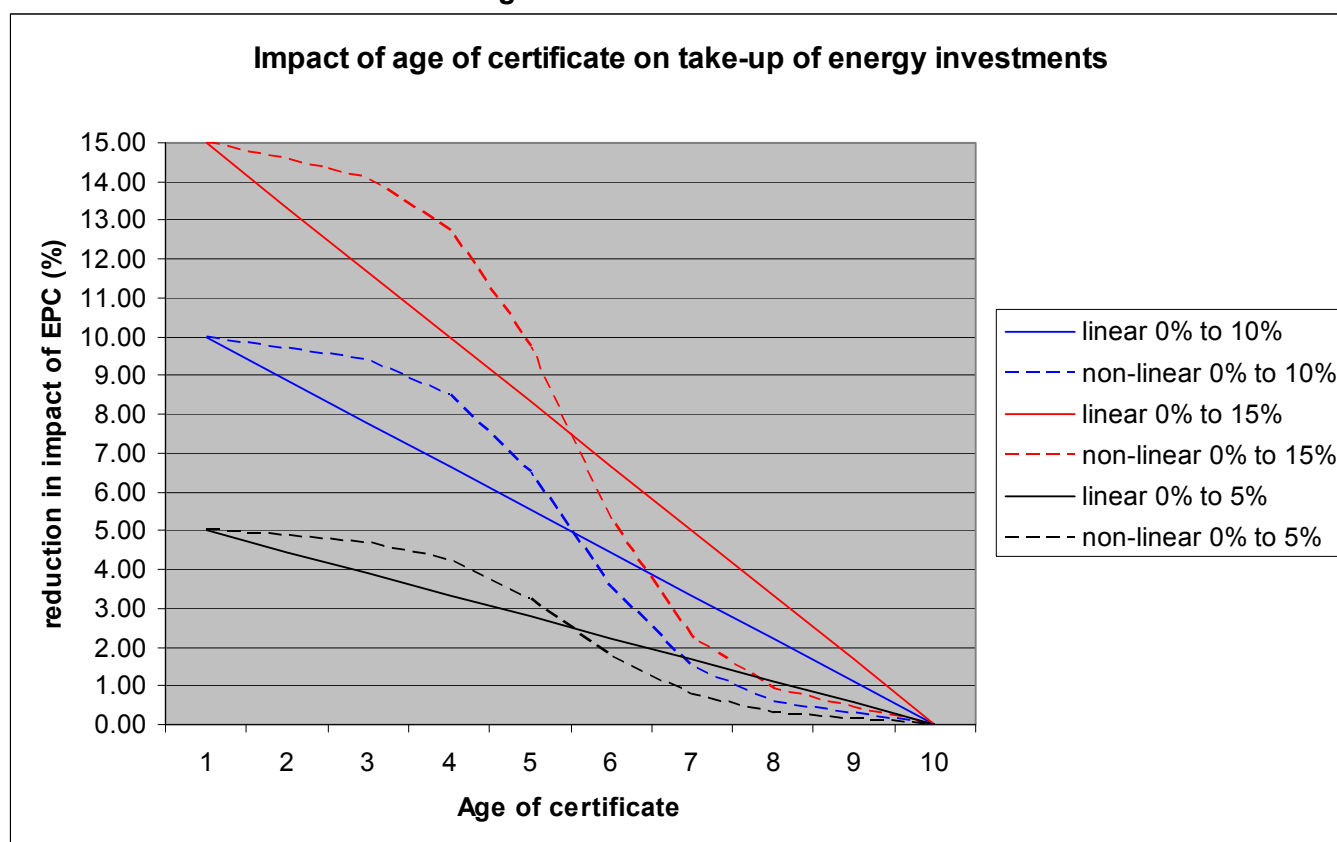
:

Table 1: Scenarios

	Difference in impact on uptake of measures and EEC promotional benefit, between a new EPC and 10 year-old EPC	Difference in impact on behavioural change, between a new EPC and 10 year-old EPC	How impact of EPC diminishes as validity period increases
1	0%	0%	-
2	5%	2.5%	Linear
3	10%	5%	Linear

4	15%	7.5%	Linear
5	5%	2.5%	Non-linear
6	10%	5%	Non-linear
7	15%	7.5%	Non-linear

Fig.1: Illustration of scenarios

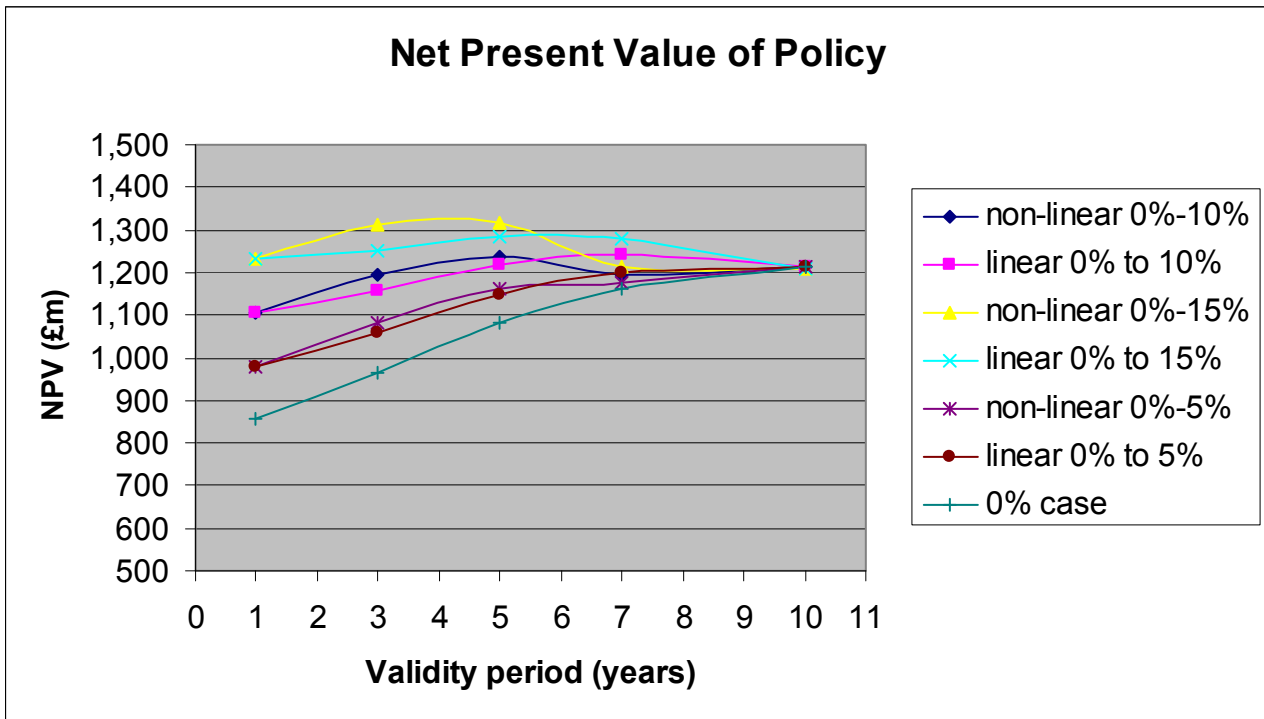


The modelling undertaken suggested that, over a 13-year period, on the basis of net present value the best balance of costs and benefits was likely to lie between five and seven years, as shown in Fig.2. This monetised the CO₂ saved and included it in the NPV calculations for each of the validity options.

The marginal cost per tonne of CO₂ showed a differing profile depending on whether a linear or non-linear approach was adopted. For the non-linear profile, the seven year validity period had a similar cost per tonne of CO₂ saved to a 1 year period, but the latter saved more CO₂. The lowest marginal cost was found for the five year validity case. For the linear profile, the lowest marginal cost of carbon was found for the seven year case.

However, the one year and three year options were both estimated to be socially worthwhile relative to the ten year baseline, under some scenarios. On the basis of a shadow price of carbon of £28.30 per tonne for the period 2007-20, two out of the three scenarios analysed showed a period of 1-3 years validity keeping below the shadow price without a major impact on the amount of CO₂ saved.

Fig.2: NPV of policy options under different scenarios



The analysis for the consultation document assumed that the shadow price of carbon remains flat over the 13 year period. It also reflected the cost of an EPC quoted in the original impact assessment rather than the emerging, lower, market price.

The costs, benefits and carbon saved are summarised in the following table, *here calculated against a baseline of 1 year validity*:

Table 2: Cost-benefit and carbon impacts of policy options

Validity period compared to 1-year baseline	3 years	5 years	7 years	10 years
Cost	£ - 110m	£ - 227m	£ - 305m	£ - 360m
Benefit	Min: £ - 90m Middle: £- 45m Max: £0m	Min: £ -178 Middle: £ - 89m Max: £0m	Min: £-334m Middle: £- 167m Max:£0m	Min: £-392m Middle: £ - 196m Max:£0m
Net benefit	Min: £19m Middle: £65m Max: £110m	Min: £49m Middle: £138m Max: £227m	Min: £ -29m Middle: £ 138m Max: £305m	Min: £ -33m Middle: £ 164m Max: £360m
Tonnes CO2 saved	Min: - 2.8m Max: - 1.4m Middle: 0m	Min: - 5.5m Middle: - 2.75m Max: 0m	Min: - 10.6m Middle: - 5.3m Max: 0m	Min: - 12.5m Middle: - 6.25m Max: 0m

What was very clear from the analysis was just how sensitive the outcomes are to the assumptions made. On balance the various scenarios tested pointed to an optimum validity period of between 5 and 7 years. But they were scenarios: they were not and could not be supported by evidence. This reflects the inherent difficulty in introducing a new mechanism where by definition there is little existing evidence to inform decisions. The consultation strongly acknowledged the need for further evidence and invited respondents to submit such material.

23 responses were received to the consultation. The response from the Royal Institute of Chartered Surveyors examined the same scenarios but against a different baseline. If the options were compared successively against each other rather than against a consistent baseline of 10-year validity - thus comparing 7 years with 5, 5 with 3 and 3 with 1 - the marginal cost of carbon saved rose sharply comparing five years to three years, and even more sharply comparing three years to one year.

It was clear from the consultation process that without solid evidence on likely behaviour change, it is hard to justify one option over another. The next step therefore has to be to gather sufficient evidence to

inform a decision. This could be built in as a central element of the evaluation of implementation of the EPBD which is due to start in the autumn of 2008 and would yield initial results in 2009. Three years is the minimum period which would allow enough time to gather evidence, analyse the results and make changes to legislation if those results suggest that a change is justified. Given the responses to the consultation and the continuing lack of robust evidence ahead of a full evaluation of the EPBD, the Government has therefore taken the view that a three-year validity period represents the best balance between likely costs and benefits ahead of the evidence the evaluation of the EPBD will yield.

ii) to allow the EST access to the information contained in EPCs to deliver the Green Homes Service

This central proposal is needed for the operation of the Green Homes Service, announced by the Prime Minister in autumn 2007, intended to target the least energy efficient homes (those with an asset rating of F or G) with information on the financial help available to implement the recommendations attached to EPCs. To facilitate this, the Energy Saving Trust needs access to the EPC register, administered by Landmark Information Group on behalf of the Government, so that they can identify these most energy inefficient of households.

The one-off cost to the Energy Saving Trust of arranging access to the domestic EPC register is an estimated £50k. The benefits, all occurring after the Green Homes Service has been operationalised, depend crucially on the extent to which consumers implement cost-effective energy efficiency improving measures as a result of receiving the information supplied through the Green Homes Service. Those consumers who do implement such measures will make savings on energy bills, and there will be wider benefits to society in terms of CO₂ abatement. There is a further benefit, however. The Energy Saving Trust will feed data from EPCs into their existing database, HEED, where it will be anonymised and aggregated. Over time this will develop into a comprehensive and detailed dataset on the energy performance of the UK housing stock and will be invaluable in developing benchmarks and assessing progress toward meeting CO₂ abatement targets. These benefits are not measured separately from the wider benefits of implementing the Energy Performance of Buildings Directive, but will help achieve its aims.

iii) to allow energy assessors to search the register by address

Government is committed to piloting ways in which an EPC can be updated at lower cost, rather than replaced, subsequent to energy efficiency improving measures being implemented. Extending access to both the domestic and non-domestic registers to make it easier for energy assessors to retrieve previous certificates, by allowing them to search the register by address, will help to make any pilot schemes workable. The cost of implementing this measure is estimated to be £50k. The benefits of this proposal are not measured separately from the wider benefits of implementing the Energy Performance of Buildings Directive, but will help achieve its aims.

iv) to allow members of the public to see whether an EPC has been produced on a property;

Government is keen to ensure that EPCs inform the choices of prospective buyers of commercial buildings. Extending access to the non-domestic register to the general public would allow a search of the database by address. In turn, allowing a prospective buyer to see whether a given commercial building has an EPC - but not to download that EPC - would help ensure that EPCs were considered before the buying process starts. It would also assist landlords with compliance. The one-off cost to Landmark Information Group, who also administer the non-domestic register on behalf of Government, of implementing this measure is estimated to be £50k. The benefits are not measured separately from the wider benefits of implementing the Directive, but will help achieve its aims.

These measures were consulted on during the summer of 2008. The consultation closed on 1 September. The consultation did not yield any new evidence and consultants were happy with the proposals. The analysis of costs and benefits therefore remains unaltered from the Impact Assessment published on 23 June.

v) to extend the current transitional provisions for the introduction of commercial EPCs on non-domestic buildings already on the market before 1 October to 4 January 2009.

This provision, for buildings below 2,500 sq. metres, mirrors existing provisions for the introduction of non-domestic EPCs in April (for buildings up to 10,000 sq. metres) and July (for buildings over 2500 sq. metres). It allows properties already on the market before 1 October, a period of up to 4 January 2009 to acquire an EPC. If they are sold before that date an EPC must be produced and given to the buyer before the sale is concluded. The policy intention is to guard against unintended consequences for the market which might be caused by a large number of buildings simultaneously needing EPCs.

There is no impact on costs because the number of certificates remains the same, and must be provided within the same financial year. The only difference is to allow longer to produce them. The impact on carbon is minimal when set against the 13.5 years of the wider impact assessment. The benefits have not been quantified.

Technical provisions

These clarify and restore the policy intention and have no effect on costs and benefits.

Monitoring and evaluation

The Department will start a programme of evaluation and benefits realisation this autumn, with initial results expected in 2009. This will provide important evidence on behaviour change by consumers in response to EPCs. It will consist of two main elements:

- i) a data strategy to define what data should be collected, how it should be used and how it should be published;
- ii) a full independent policy evaluation. The Department's intention is to let a contract during the autumn so that work can start no later than the end of the year.

The purpose of the review is to establish optimal validity in the light of evidence from the evaluation.

Specific Impact Tests

The specific impact tests were undertaken for the original impact assessment in March 2007 <http://www.communities.gov.uk/publications/planningandbuilding/regulatoryimpactenergyperformance> These measures represent small changes designed to increase the likelihood of the policy meeting the objectives: all have been suggested to stakeholders. They do not affect the outcome of the impact tests undertaken for the original RIA. The March 2007 Impact assessment sets out the result of the specific impact tests.

There is:

- No impact on competition since the existing structure of certification and accreditation is not changed by anything in this assessment
- Some potential adverse impact on small firms of energy assessors because EPCs will be valid for longer
- No Impact on sustainable development or the environment over and above previous IAs
- Some impact on carbon savings, set out in the calculations in Table 2 above
- Unlikely to be a negative impact on health since the environment will be improved
- Unlikely to be any significant impact on equality, legal aid, human rights or rural proofing.

Annexes