

EXPLANATORY MEMORANDUM TO
THE ENERGY PERFORMANCE OF BUILDINGS (CERTIFICATES AND
INSPECTIONS) (ENGLAND AND WALES) (AMENDMENT)
REGULATIONS 2012

2012 No. 809

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.

2. **Purpose of the instrument**

2.1 These Regulations amend the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 ('the 2007 Regulations') by:

- permitting the data contained in Energy Performance Certificates (EPCs), Display Energy Certificates (DECs) and Air-Conditioning Inspection Reports (ACIRs) to be made publicly available subject to certain conditions;
- providing that the underlying data collected to produce the EPC, DEC or ACIR, rather than the actual document, is lodged on the central Register.
- providing an exemption, where the building may be demolished, to the requirement to provide an EPC;
- clarifying when the address may be omitted from an EPC and
- making a minor amendment to Regulation 11 to reflect changes made to the content and format of EPCs used for domestic buildings.

2.2 The 2007 Regulations implemented Article 7 of the Energy Performance of Buildings Directive (OJ No L 1, 4.1.2004) ('the Directive')¹. In particular, as far as the amendments brought about by this instrument are concerned, Article 7 of the Directive relates to EPCs and DECs and Article 9 relates to the inspection of air-conditioning systems.

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

3.1 None.

4. **Legislative Context**

4.1 The background to the 2007 Regulations was covered fully in the Explanatory Memorandum which accompanied them.

¹ Directive 2002/91/EC.

4.2 A copy of the Directive can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:001:0065:0071:EN:PDF>

4.3 The 2007 Regulations (as amended) so far as they are relevant to the amendments in these Regulations:

- a) require EPCs and DECAs to be lodged on a register (regulation 31);
- b) prohibit the disclosure of EPCs and DECAs that have been lodged on the register to the public with some disclosure permitted under certain circumstances, primarily relating to the sale, rental or construction of a property, or for the purpose of ensuring compliance (Regulations 14 and 33 – 37);
- c) require an EPC to be commissioned before marketing is commenced and obtained within 28 days of the property being put on the market (Regulation 5A);
- d) require an EPC to be attached to the written particulars of the property (Regulation 6); or
- e) specify the information that must be included in an EPC (Regulation 11).

4.4 The amendments made by these Regulations are designed to improve various practical aspects of the functioning of the provisions outlined above. The effects of the amendments are as follows:

a) To make publicly available, subject to certain conditions, the data contained in EPCs, DECAs and ACIRs. This data will include the:

- address of the building;
- its energy efficiency rating;
- any recommended energy efficiency measures and
- details of any Green Deal finance attached to the property.

b) To provide that the underlying data that has been used to produce the EPC, DEC or ACIR, rather than the actual document, is lodged on the central Register.

c) To enable the relevant person or a person acting on their behalf to attach an EPC from which the address has been omitted by the keeper of the register, where the building is not residential property and the address has been omitted from the written particulars.

d) to provide an exemption to the requirement

- i. to commission and obtain an EPC when putting a building on the market and

- ii. to attach an EPC to the written particulars

where a non-domestic building may be demolished after it is sold or rented out.

- e) minor amendments to Regulation 11 to reflect changes made to the content and format of EPCs used for domestic buildings.

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The data contained in EPCs, DECAs and ACIRs will be made publicly available. It will be available free of charge to the general public subject to certain conditions regarding the way in which a request for the data must be made. The data will also be made available in bulk to authorised recipients who have a legitimate need to process and analyse all of or part of the entire data set. Authorised recipients will be charged for the cost of supplying the data, and the disclosure of data to them will be subject to conditions intended to protect certain types of information, and to restrict the handling of any personal data that might be included. Authorised recipients will include:

- universities and other research bodies;
- organisations involved in the Green Deal so that they can market their services to existing EPC holders;
- Local Authorities;
- Government Departments and
- Charities whose purpose includes the promotion of energy efficiency in buildings or research into the Earth's climate or environment.

7.2 The EPC Register contains over 7 million EPCs and over 100,000 DECAs. The number of EPCs on the Register is increasing by about 1.2 million per year.

7.3 This data is being made publicly available because it will:

- enable Green Deal providers and others and to market their services at those households and businesses that already have an

EPC and may therefore have an interest in making energy efficiency improvements to their building;

- give organisations that market or promote energy efficiency measures a better understanding of the potential market;
- facilitate research and analysis, including opportunities to monitor reduced carbon emissions from buildings and
- increase public awareness of the impact that buildings have on levels of CO₂ emissions which could in turn lead to action by building owners and occupiers to reduce emissions from their building.

7.4 Following consultation with industry bodies and partner organisations, a decision was taken to preserve the confidentiality of certain transactions and an amendment to that effect was included in Energy Performance Certificates (Certificates And Inspections) (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2452) (“the 2011 Regulations”). These Regulations revoke that amendment and replace it with one that ensures that only the keeper of the register may omit the address from an EPC and that an EPC from which the address has been omitted may only be attached to the written particulars of a non-residential property from which the address has been omitted.

7.5 It is important that only the keeper of the register may omit the address from the EPC to ensure that the most up to date EPC is provided from the central EPC Register, to ensure the consistency of redacted EPCs provided and to ensure consumer protection. It is important that this omission of the address from the EPC only applies to non domestic buildings as the overall policy aim is to ensure that a full EPC (including the address) is made available whenever possible; therefore the ability to provide an EPC from which the address has been redacted is only to apply the small proportion of non domestic sales which require commercial confidentiality.

7.6 The 2011 Regulations extended the requirement to obtain or commission an EPC before a property is marketed for sale or rent and the requirement to attach an EPC to the written particulars to all buildings. The requirement had previously only applied to dwellings. These regulations provide an exemption to those requirements where a non-dwelling may be demolished. (An exemption in those circumstances already applies to dwellings.) EPCs include recommendations for the improvement of the energy performance of the building which would not be relevant in cases of demolition.

7.7 A number of changes have been made to the content and format of the EPC for domestic buildings. The purpose of those changes was to make the EPC easier to understand thereby increasing the likelihood of the recommended improvements being implemented. A minor amendment to the Regulations is needed to reflect the changes to the EPC content and format.

7.8 A recast of the Directive (the recast Directive) has now been made and the Government will be implementing further obligations under that Directive in 2013. A new transposition note will be provided when the Directive is transposed.

8. Consultation outcome

8.1 As part of its ongoing obligations under the Directive the Government has been monitoring the enforcement and compliance requirements implemented in the 2007 Regulations in order to determine the effectiveness of that regime. Further to that monitoring process the Government consulted on a wide range of issues in its Consultation paper: 'Making better use of Energy Performance Certificates and data: Consultation'. In particular, views were sought on proposals for:

- making better use of the energy performance data by extending and
- managing access to EPC data held on the England and Wales central Register;
- enabling Local Authorities (LAs) to use EPC data to support development of
- wider purposes such as support of local Carbon Frameworks as set out in the
- Household Energy Management Strategy (HEM) 2010;
- EPCs for houses in multiple occupation (HMOs) when rooms in such
- buildings are rented out;
- EPCs for short-term holiday lets;
- property adverts to show the EPC rating;
- extending the use of DEC's to commercial buildings;
- making lodgement of air conditioning reports on the England and Wales
- central Register mandatory and
- clarifying when EPCs are required for sale or renting out of domestic and
- non domestic properties.

9. Guidance

9.1 Guidance covering these changes will be made available as part of the guidance to be issued which relates to the 2011 Regulations.

10. Impact

10.1 With regards to the amendments concerning when the address may be omitted from an EPC and when there is an exemption from the requirement to commission and provide an EPC, there is no impact on civil society organisations or the public sector and no additional impact on the business sector. Any costs have already been covered in the Impact Assessment that

was produced for the 2011 Regulations. That Impact Assessment can be found here: www.legislation.gov.co.uk

10.2 With regards to the amendments concerning the data contained in EPCs, there will only be an impact on those organisations (whether in the public sector, civil society sector or business sector) that are permitted to access the data in bulk and choose to do so. We estimate that there will be a small positive impact in such circumstances as accessing the data will enable them to expand their potential customer base. The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The opening up of EPC data will only impact on small businesses if they come within one of the categories described at paragraph 7.1 and they choose to access the information.

11.3 The provision on redaction of addresses will impact on small businesses, in this case mainly property agents. The effect is small and will only require changes to their administrative procedures which were accounted for in the Impact Assessment for the 2011 Regulations. The Department will produce guidance to cover these amendments as part of the guidance on the 2011 Regulations and will work with partners to ensure that the amendments are clearly understood across industry.

12. Monitoring & review

12.1 These Regulations are to be included in any review of the 2011 Regulations. An explanation of the review requirements that apply is to be found in the Explanatory Memorandum to the 2011 regulations.

13. Contact

Jonathan Bramhall

Department for Communities and Local Government

0303 444 1803

Jonathan.bramhall@communities.gsi.gov.uk