

EXPLANATORY MEMORANDUM TO
THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)
(AMENDMENT) (FEES) REGULATIONS 2013

2013 No. 603

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. **Purpose of the instrument**

2.1 This instrument amends the Energy Performance of Buildings (England and Wales) Regulations 2012¹ (“the 2012 Regulations”), which came into force on 9th January 2013. An amendment is being made to regulation 28 of the 2012 Regulations, to allow new fees to be set for entering data onto the register, which is required to be maintained by the Secretary of State under regulation 27 of the 2012 Regulations.

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

3.1 This instrument implements an above inflation fee increase because the fees have not increased since the register was introduced (in 2007 for domestic properties² and 2008 for non-domestic properties).³ The volume of transactions has fallen significantly below those anticipated when the register was introduced and a review of the fees has recently found that the current level of fees is not sufficient to meet the cost of operating the register. The fee increases will therefore ensure that the full cost of operating the register will be recovered from the fees that are charged.

4. **Legislative Context**

4.1 The fees to be charged for entering data on the register are specified in regulation 28 of the 2012 Regulations. An amendment to the fee amounts therefore requires an amendment to these Regulations.

5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

¹ S.I. 2012/3118

² S.I. 2007/991

³ S.I. 2008/647

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 Energy Performance of Buildings (EPB) Directive⁴ is designed to increase the energy efficiency of buildings, reduce their carbon emissions and lessen the impact of climate change. The Directive was enacted into UK law by the Energy Performance of Buildings (Certificates and Inspections) England and Wales Regulations 2007, and introduced the requirement for energy performance certificates (EPCs) to be produced when a building is constructed, sold or rented out. The 2007 Regulations were subsequently amended by a number of statutory instruments, and then consolidated by the 2012 Regulations, which also implemented the recast EPB Directive⁵.

7.2 Regulation 27 of the 2012 Regulations requires the Secretary of State to maintain a register of data from which EPCs, display energy certificates (DECs) and air conditioning inspection reports (ACIRs) may be produced. The register is maintained on the Secretary of State's behalf by a register operator, with whom DCLG has entered into contracts for the operation of the register. Regulation 28 sets out the fees that are charged for entering EPCs, DECs and ACIRs onto the register, with the purpose of ensuring that the full cost of operating the register can be met from the fees that are charged for entering documents onto it.

7.3 The fees for entering data onto the register have not increased since the register was introduced. A review of the fees has recently been conducted and found that the current level of fees is not sufficient to meet the cost of operating the register. This is because the volume of transactions that are intended to generate revenue to cover the cost of operating the register have fallen significantly below those anticipated when the register was introduced and there have also been a number of service enhancements. The review therefore concluded that the fees need to increase to the following levels from April 6 2013:

- (a) for entering data from which an energy performance certificate which relates to a dwelling may be produced, a fee of £1.67;
- (b) for entering data from which—
 - (i) an energy performance certificate which relates to a building other than a dwelling,
 - (ii) a display energy certificate, or
 - (iii) an inspection report,

may be produced, a fee of £11.81.

The increase will ensure that the full cost of operating the register will be recovered from the fees that are charged.

⁴ Directive 2002/91/EC (OJ No L1, 4.1.2003)

⁵ Directive 2010/31/EU (OJ No L153, 18.6.2010)

7.4 The fee increase is being brought into force on 6th April, in keeping with Common Commencement Dates. It was not possible to introduce the fee increase in the 2012 Regulations due to ongoing work with the register operator to determine the revised fee levels.

8. Consultation outcome

8.1 There has not been a consultation on the fee increases. This is because the Regulations do not seek to introduce any new regulatory burdens but amend the existing regulatory requirement relating to the fee that must be paid whenever the data needed to create an EPC, DEC or ACIR is entered onto the register. The amendment is seeking to adjust those fees to a level that ensures they meet the full cost of operating the register, in line with Government policy. There is no realistic scope for seeking any reduction in the level of the fee that needs to be set in order to achieve full cost recovery. Setting lower fees would essentially mean that the taxpayer would be liable for any element of cost not recovered from fees. Therefore, there is no alternative to implementing increased fees that would enable a meaningful consultation exercise to be carried out.

9. Guidance

9.1 The Department for Communities and Local Government does not intend to issue any guidance about the changes being implemented by these Regulations since the mechanism for charging fees is well established and will not result in any change to the procedures for doing so.

10. Impact

10.1 It is estimated that these regulations will impose total additional costs of £1.56m per annum arising from the increased fees of which £0.73m is additional costs to businesses, £0.56m is a cost to individual households and £0.27m is a cost to the public sector. However, the fees are not compulsory in that they are not charged to the population at large, but are charged to Energy Assessors, who are responsible for lodging documents onto the register. The Energy Assessors can decide whether to pass on the costs to consumers through the price they charge for providing an EPC.

10.2 An Impact Assessment is attached to this memorandum and will be published on the Department for Communities and Local Government website (www.gov.uk/dclg). The impact assessment includes a 50% range either way on the number of lodgements made in future years to recognise the uncertainty over the projections that have been used, which means that it is estimated that gross annual costs to business would be between £0.37m and £1.1m.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The requirements on firms employing up to 20 people are minimal as the requirement to produce an EPC only applies when a property is constructed, sold or rented out.

12. Monitoring & review

12.1 In accordance with Government guidance (“Managing Public Money”) the fee levels will be reviewed at least every year, with the first review taking place by January 2014.

13. Contact

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can answer any queries regarding the instrument.