

**EXPLANATORY MEMORANDUM TO
THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2014**

2014 No. 880

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 Principal Regulations”), which came into force on 9th January 2013.

- 2.2 This instrument makes an amendment to regulation 28 of the Principal Regulations, to set new fees for entering data onto the register, which is required to be maintained by the Secretary of State under regulation 27 of the Principal Regulations.

- 2.3 The instrument also makes amendments to regulation 32 of the Principal Regulations to allow the keeper of the register to disclose general access or bulk access data, from the register, to additional persons and for additional purposes than those already provided in regulation 32.

- 2.4 This instrument also makes amendments to the enforcement provisions in Part 7 of the Principal Regulations to introduce an enforcement mechanism for regulations 10 and 11 of the Principal Regulations, which contain duties which were not previously enforceable, due to a drafting oversight.

- 2.5 Finally, the instrument makes a number of minor amendments to correct drafting errors in the Principal Regulations.

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

- 3.1 The Department regrets that the 21 day rule may need to be breached in order to ensure that these Regulations come into force on 6th April. This is because it was not possible to secure cross-government agreement to make the Regulations earlier, following work with the register operator to determine revised fee levels for entering data onto the register. The Department is keen

¹ S.I. 2012/3118

to ensure that the benefit of reduced fees can be passed on to energy assessors (who are responsible for lodging documents onto the register) as soon as possible, rather than waiting until the next Common Commencement Date of 1st October, to implement revised fees. The Department has written to the accreditation schemes to which energy assessors belong, to advise them of the revised fees.

4. Legislative Context

4.1 The Principal Regulations enacted the requirements of the recast Energy Performance of Buildings Directive², as well as consolidating the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the 2007 Regulations”) with subsequent amendments to them since they came into force. The Energy Performance of Buildings (England and Wales) (Amendment) (Fees) Regulations 2013³ amended the Principal Regulations in April 2013, to set new fees for entering data onto the register, following a fee review. A further fee review was undertaken in early 2014 and the fees set in these Regulations replace the fees set in the 2013 Regulations.

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 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 2007 Regulations, 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 Principal Regulations, which also implemented the recast EPB Directive.

7.2 Regulation 27 of the Principal 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

² Directive 2010/31/EU (OJ No L153, 18.6.2010)

³ S.I. 2013/603

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

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, DEC's 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 are reviewed regularly in order that the levels of the fees are set to cover the cost of operating the register. The latest review concluded that an increase in the actual and projected level of lodgements means that fees need to reduce to the following levels from 6 April 2014:

- (a) for entering data from which an energy performance certificate which relates to a dwelling may be produced, a fee of £1.30;
 - (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 £9.73.
- The level of the fees will ensure that the full cost of operating the register will be recovered from the fees that are charged.

7.4 Regulation 10 of the Principal Regulations requires buildings with total useful floor area of more than 500 square metres, which are frequently visited by the public, to have a valid energy performance certificate displayed in a prominent place, clearly visible to members of the public who visit the building, where such a certificate has been made available. Regulation 11 of the Principal Regulations requires a building or building unit offered for sale or rent on or after the 9 January 2013, to show the energy performance indicator of the building (as expressed in the energy performance certificate) on any advertisement of the sale or rental in commercial media.

7.5 These Regulations make amendments to regulations 34, 36 and 38 of the Principal Regulations to ensure that the duties in regulations 10 and 11 can be effectively enforced. Regulation 34 imposes a duty on local weights and measures authorities to enforce in their area duties relating to energy performance certificates. Regulation 36 empowers enforcement authorities to issue penalty charge notices for any breach of the duties set out in the Regulations and regulation 38 specifies the penalty amount charged for breach of regulations 10 and 11. These Regulations introduce a £500 penalty for breach of the duty under regulation 10(2) (failure to display an EPC) and a £200 penalty for breach of the duty under regulation 11(2) (failure to state energy performance indicator in an advertisement).

7.6 These Regulations also make amendments to regulation 32 of the Principal Regulations to allow the keeper of the register to disclose data from the register to specified persons for particular purposes. Firstly, an amendment is being made to allow the keeper of the register to disclose documents or data to the operator of the accreditation scheme through which the energy assessor entered the documents or data onto the register. This

should assist accreditation schemes with monitoring and quality assurance. Secondly, an amendment is being made to set out that where the keeper of the register discloses bulk access data to the Secretary of State for certain research and statistical purposes, relating to energy, the Secretary of State may publish such bulk access data in anonymised form. This amendment is being used to facilitate the publication of an anonymised dataset by the Department of Energy and Climate Change (“DECC”), which links energy performance certificate data with other data relating to energy consumption and energy efficiency measures installed in households; this work is known as the National Energy Efficiency Data-Framework (“NEED”).

7.7 Finally, a further amendment is being made to regulation 32 of the Principal Regulations to allow the keeper of the register to disclose certain bulk access data to the Gas and Electricity Markets Authority (“the Authority”), the Secretary of State or a person acting on behalf of the Authority or Secretary of State, for the purposes of carrying out a function in relation to a scheme established under section 100 of the Energy Act 2008 (a scheme to facilitate and encourage renewable generation of heat). This amendment is needed to facilitate the effective operation of the Domestic Renewable Heat Incentive (“RHI”) scheme, which will be established by the Domestic Renewable Heat Incentive Regulations 2014, which were laid in Parliament on 10th March. The draft instrument is available at www.legislation.gov.uk. This scheme will facilitate and encourage the renewable generation of heat by giving subsidy payments to owners of eligible plants that generate heat from eligible renewable sources for domestic properties. Information from energy performance certificates is required by the Authority to calculate the level of the payments to certain owners as such payments are determined by reference to the energy requirements of the domestic property once certain energy efficiency measures have been installed and to determine whether a dwelling is an eligible property for the purposes of the scheme, including in particular to determine whether required energy efficiency measures have been installed. Although a renewable heat incentive scheme for the non-domestic sectors is already in place, established by the Renewable Heat Incentive Scheme Regulations 2011, it will not be affected by this amendment as energy performance certificate data is not relevant to the functions of the Secretary of State or the Authority under that scheme.

7.8 This instrument also makes a number of minor and consequential amendments to correct drafting errors in the Principal Regulations. These are:

- to amend the provision in regulation 4 setting out validity periods for display energy certificates, to reflect the original policy intent, that reports relating to buildings with a total useful floor area of over 1,000 square metres are valid for seven years and reports relating to any other building are valid for ten years;
- to correct the reference to “building envelope” in regulation 4 to building “element”;
- to change the reference to “apartment” in regulation 9 to “building”, in order to provide consistency;

- to substitute the reference to “asset rating” in regulation 11 with a reference to “energy performance indicator”, which more accurately describes the information that should be stated in an advertisement of a building or building unit in commercial media;
- to amend regulation 14 so that the provision covers buildings of exactly 500 square metres;
- to correct paragraph references in regulations 35, 36 and 38.

7.9 These amendments, including the revised fees, are being brought into force on 6th April, in keeping with Common Commencement Dates.

8. Consultation outcome

8.1 There has not been a consultation on these amendments. This is because the Regulations do not seek to introduce any new regulatory burdens but simply amend the existing regulatory requirements. These regulations also implement a reduction in the fees for lodging documents on the register, following a fees review which indicated an increase in the volume of documents being lodged on the register. There is therefore no requirement to consult and no material regulatory changes on which to consult.

8.2 DECC consulted in November 2013 on their proposals to publish anonymised datasets containing record level data from the NEED⁵. The proposed datasets would contain records for individual households. Data will be anonymised to prevent any individual household or business being identified.

8.3 In summary, the consultation proposed that two anonymised NEED datasets would be released:

- Public use (or training) dataset: Approximately 20,000 records including information on energy consumption, energy efficiency measures installed in properties and property attributes. This dataset would be made available to all.
- End user licence dataset: Approximately four million records including more variables than the public use dataset. It would be published in a slightly more restricted format; all individuals would be required to agree to an end user licence before having access to the data.

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

⁵ The National Energy Efficiency Data-Framework consultation on making data available can be found here: <https://www.gov.uk/government/consultations/national-energy-efficiency-data-framework-making-data-available>

Regulations since the mechanisms for enforcement of the regulations and for charging fees are well established and will not result in any material change to the procedures for doing so.

10. Impact

10.1 These amendments do not seek to introduce any additional regulatory burdens that would adversely impact on businesses or individual households.

10.2 DECC published a Privacy Impact Assessment (“PIA”) for NEED⁶ in March 2013 which has been updated to reflect the proposal to publish anonymised datasets. The Gas and Electricity Markets Authority will be publishing a PIA in due course.

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 next review taking place by January 2015.

12.2 The Principal Regulations will be reviewed at least every five years, with the first review taking place by January 2018.

13. Contact

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can answer any queries regarding the instrument.

⁶The National Energy Efficiency Data-Framework Privacy Impact Assessment can be found here: <https://www.gov.uk/government/publications/national-energy-efficiency-data-framework-privacy-impact-assessment>