

**EXPLANATORY MEMORANDUM TO
THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2015**

2015 No. 609

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 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 and to regulation 33 for obtaining data from 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 amends Schedule 2 to this instrument regarding data packs available to authorised recipients, removing small and medium packs, and defining the contents of regular packs.

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

3.1 None

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 further amendments to them since they came into force. Following a fees review the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2014³ amended the Principal Regulations in April 2014, to set new fees for entering data onto the register. The fees are subject to annual review, and fees set in these Regulations replace those set in the 2014 Regulations and follow from a further review completed in early 2015.

¹ S.I. 2012/3118

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

³ S.I. 2014/880

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 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 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 Energy Performance of Buildings Directive.

7.2 Regulation 11 of the Principal Regulations requires a building or building unit offered for sale or rent on or after 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. These Regulations make an amendment to regulation 11 to specify that it is the responsibility of the relevant person, or, where applicable, a person acting on their behalf, to ensure that any advertisement of a building or building unit for sale or rent in commercial media contains the energy performance indicator.

7.3 Regulation 18 of the Principal Regulations requires that the air-conditioning system is inspected by an energy assessor. These Regulations make an amendment to regulation 18 to clarify that the accessible parts of the system should be inspected. This is a copy out of text directly from the Energy Performance of Buildings Directive.

7.4 Regulation 19 of the Principal Regulations requires that appropriate advice on possible improvements to the air-conditioning system is provided in the inspection report. These Regulations make an amendment to regulation 19 to make clear that the inspection report should include recommendations for cost-effective improvement to the energy performance of the system identified as part of the assessment of the system.

7.5 Regulation 27 of the Principal Regulations requires the Secretary of State to maintain a register of data from which energy performance certificates, display energy certificates and air-conditioning inspection reports may be produced. The register is maintained on the Secretary of State's behalf

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

by a register operator, with whom the Department for Communities and Local government has entered into contracts for the operation of the register. Regulation 28 sets out the fees that are charged for entering energy performance certificates, display energy certificates and air-conditioning inspection reports 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.

7.6 The fees for entering data onto the register are reviewed regularly in order that the fee levels are set to cover the cost of operating the register. The latest review concluded that fees need to be amended to the following levels from April 6 2015:

- (a) for entering data from which an energy performance certificate which relates to a dwelling may be produced, a fee of £1.27;
- (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 £11.66.

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

7.7 Schedule 2 of the Principal Regulations defines meaning and contents of data packs for energy performance certificates, non-domestic energy performance certificates, display energy certificates, and air-conditioning inspection reports available to authorised recipients of data.

7.8 These Regulations make changes to these packs and their contents. The contents of small and medium packs under the Principal Regulations are merged to form a regular pack. CO₂ information is removed from the large data for non-domestic EPC data and included in the regular data pack to bring it into line with the equivalent domestic pack. All personal data is removed from the packs of data regarding air-conditioning inspections, and references to “regions” are removed from all data packs.

7.9 Regulation 33 of the Principal Regulations sets the fees that must be paid for the disclosure of bulk access data from the register. These Regulations delete the fees for small and medium data packs and introduce a fee of two pence (2p) for a regular pack and reduce the fee for a large data pack to four pence (4p).

7.10 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 amendments to the fees for lodging documents on the registers, which have been approved by HM Treasury. The Department for Energy and Climate Change have a significant interest in this policy area. They have confirmed that they are content with the amendments proposed in this instrument. There is therefore no requirement to consult further.

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 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.

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 energy performance certificate only applies when a property is constructed, sold or rented out.

12. Monitoring and 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 2016.

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.