

EXPLANATORY MEMORANDUM TO
THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2016

2016 No. 284

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government (DCLG) and is laid before Parliament by Command of Her Majesty.
- 1.2 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 2012 (“the principal regulations”) to increase the fees currently charged for lodging energy performance of buildings data on the national registers and changes the existing arrangements for access to energy performance of buildings data held on the national registers, enabling increased free access to relevant data. It also makes a number of technical changes to the principal regulations, including to existing arrangements for the handling of data concerning buildings in relation to which security considerations arise. It clarifies a number of matters concerning the calculation of the energy performance of buildings, and consolidates requirements concerning energy performance certificates to be provided on construction.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 **Fee increase** - The fees for entering data onto the relevant energy performance of buildings register are reviewed regularly in order that the level of fees are set to cover the cost of operating the registers. The review forecasts levels of demand for certificates in the property and rental markets, taking into account the potential effect of any changes in government policy. The projected level of lodgements is forecast to decrease for the year starting April 6th 2016, resulting in the following increases which are above the rate of inflation:
- (a) the fee for lodging data from which an energy performance certificate which relates to a dwelling may be produced, is increased from £1.27 to £2.07;
 - (b) the fee for entering data from which the following documents may be produced is increased from £11.66 to £12.82—
 - (i) an energy performance certificate which relates to a building other than a dwelling,
 - (ii) a display energy certificate,
 - (iii) an inspection report.

The level of the fees ensures that the full cost of operating the registers is recovered from the fees that are charged.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Principal Regulations enact the requirements concerning the inspection and certification the energy performance of buildings of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) (“the Directive”), which replaced Directive 2002/92/EC on the energy performance of buildings (“the original Directive”). The principal regulations also consolidate the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the 2007 Regulations”) which had implemented the original Directive.
- 4.2 The Directive is designed to increase the energy efficiency of buildings, reduce their carbon emissions and lessen the impact of climate change. This complements the Climate Change Act 2008 which requires a reduction in UK carbon emissions by 80% on 1990 levels by 2050. The principal regulations contain measures which give effect to requirements of the Directive. These include:
- the requirement for energy performance certificates (“EPCs”) to be produced when a building is constructed, sold or rented out. The EPC shows the energy performance of a property and includes recommendations on how it can be improved;
 - the requirement for an EPC showing the energy performance of a building to be produced and clearly displayed in public buildings with a useful floor area above the prescribed threshold. Under the original Directive the threshold was 1000m² but under the re-cast Directive the threshold was lowered to 500m² with effect from 9th January 2013 and to 250m² with effect from 1st July 2015 and
 - the requirement that large air conditioning units must be inspected regularly.
- 4.3 The principal regulations require that certificate data are lodged on the energy performance of buildings registers (“the registers”). The registers are operated on behalf of the Secretary of State by a third party, referred to in the principal regulations as “the keeper of the register” (see the definition in regulation 2(1)). The principal regulations also include provision setting out who can access EPCs and other related data held on the registers and for what purposes, and the processes for accessing such data.
- 4.4 The requirements of the Directive concerning energy performance certificates on construction were implemented in the Building Regulations 2010 (S.I. 2010/2214 as amended by S.I. 2011/1515; S.I. 2011/3058; S.I. 2012/809; S.I. 2012/3119; S.I. 2013/10; S.I. 2013/181; S.I. 2013/1105; S.I. 2013/1959; S.I. 2014/579 and S.I. 2015/767), but this instrument consolidates them in the principal regulations. This change is made under the powers in section 2(2) of the European Communities Act 1972 (c.68), and is made without prejudice to the operation of the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019), which transfers most functions to make building regulations under the Building Act 1984 (c.55) to the Welsh Ministers.

- 4.5 These regulations do not implement any new EU obligations but make a number of technical and clarificatory changes to the principal regulations, consolidate existing requirements as described above, and make amendments to the existing domestic arrangements and processes for lodging and accessing energy performance of buildings data on the registers.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
5.2 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

What is being done and why

Technical and clarificatory amendments and consolidation

- 7.1 These regulations introduce the following amendments:
- they clarify that energy performance must be calculated and expressed in accordance with the methodologies approved under Regulation 24 of the Building Regulations 2010;
 - amend and supplement definitions concerning the energy performance of buildings to clarify the manner in which they implement that concept in the Directive;
 - consolidate in the principal regulations the implementation of the Directive requirements concerning EPCs on construction, previously in the Building Regulations 2010, and correct an error concerning the enforcement of these requirements.

Changes to the lodgement fee

- 7.2 These regulations amend the current fee for lodging energy performance of buildings data on the registers as detailed at paragraph 3.1 above.

Amendments relating to EPCs etc. issued in respect of excluded buildings

- 7.3 These regulations amend existing arrangements for data registration in relation to security sensitive buildings (referred to in the regulations as ‘excluded buildings’). The existing provisions allow excluded buildings to be taken out of routine data access arrangements, but following discussions with affected bodies amendments are being made which will instead enable these bodies, e.g. the armed forces, the option to request the energy assessor not to lodge any data relating to the excluded building on the registers. This will ensure that only persons with the appropriate level of security clearance have access to information about such buildings.

Amendments to the arrangements for accessing EPCs and other data on the registers

- 7.4 Currently certificate data on the registers can be freely accessed at an individual certificate level through the register search facility by inputting the address of the building or the report reference number into the search function. The existing regulations also provide for a bulk data service (i.e. multiple records provided in a spreadsheet format) which can be accessed by a defined list of bodies set out in the regulations. Bulk data records for non-domestic records are also publicly available online, having been released in 2015 under the Environmental Information Regulations 2004: <http://opendatacommunities.org/data/building-standards-and-sustainability/energy-efficiency-and-performance/dec-and-non-domestic-epc>
- 7.5 More open access to appropriate data will support national climate change objectives by enabling more research and technological innovation; better management of building stock; low performing properties to be more easily identified and upgraded. Public awareness of the energy efficiency of buildings will be enhanced through enabling more extensive use of EPC data to enable potential buyers or tenants to compare available properties to find the most energy efficient. DCLG will therefore be changing access arrangements to enable greater free access to appropriate data on the registers in bulk form. This new online access is intended to replace the current bulk data service in the principal regulations after a period of transition. Any requests for data not covered by the free-to-access data release will be considered under the provisions of the Environmental Information Regulations 2004. These amending regulations therefore:
- revoke the existing provisions in the principal regulations which relate to the bulk data service with effect from 1st October 2016;
 - amend the principal regulations with effect from 1st June to enable the keeper of the register to publish, in bulk format, specified energy performance of buildings data relating to any building on the register.

The Government has made a commitment to greater transparency of information held by public authorities and the planned revised access arrangements for EPC data will take this objective forwards. It is important to note that EPC data does not include any sensitive personal data and the decision about which data items to publish reflects a privacy impact assessment carried out by DCLG. The data is also being released subject to a copyright notice / licence provided by Royal Mail Group Ltd which reflects the fact that address level energy performance of buildings data contains Royal Mail Group Limited's intellectual property rights. The copyright notice / licence places some limitations on the purposes for which the data can be used so as to safeguard the Royal Mail's rights. Individual property owners or occupiers can currently opt-out of having their EPC made publicly available and the ability to opt out also applies to the new arrangements set out above. DCLG will be appropriately publicising the intended changes in order that individuals can again decide whether to opt-out before changes are implemented.

Consolidation

- 7.6 DCLG has no plans to consolidate the Regulations at this time.

8. Consultation outcome

- 8.1 As these regulatory changes are considered to be limited and either technical or administrative in nature a formal public consultation has not been undertaken. Planned

changes to data access processes provided for in these regulations will be implemented later in 2016 following appropriate publicity and allowing further opportunity for individuals to consider whether they wish to use the opt-out facility.

9. Guidance

- 9.1 Guidance will be available to the public about the data on www.opendatacommunities.gov.uk

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is that more energy performance of buildings data will be made available online and free of charge. Other requests for data not available via the website will be considered under the provisions of the Environmental Information Regulations 2004.
- 10.2 The impact on the public sector is as that above in 10.1.
- 10.3 A Privacy Impact Assessment regarding the opening up of access to data held on the registers will be laid with the statutory instrument and this explanatory memorandum and published separately on www.legislation.gov.uk
- 10.4 No impact assessment has been undertaken for the other amendments made in this instrument, as it is considered that there will be minimal impact, or no impact, on business, charities or voluntary bodies and public sector bodies.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The fees for lodging data on the registers are reviewed annually and the businesses which are affected are aware of the need to factor this into their plans and fee structures. The impacts of the other changes which are being made to the regulations on these businesses are minimal.
- 11.3 All energy assessors must be members of an approved accreditation scheme and the Department notifies energy assessors of changes in the lodgement fees via schemes.

12. Monitoring & review

- 12.1 This instrument contains no provision for review, review provision already being included in the principal regulations.

13. Contact

- 13.1 Katherine Higley at the Department of Communities and Local Government
Telephone: 0303 444 1793 or email: Katherine.higley@communities.gsi.gov.uk can answer any queries regarding the instrument.