

2011 No. 2452

BUILDING AND BUILDINGS, ENGLAND AND WALES

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2011

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| <i>Made</i> | - - - - | <i>10th October 2011</i> |
| <i>Laid before Parliament</i> | | <i>13th October 2011</i> |
| <i>Coming into force</i> | - - | <i>6th April 2012</i> |

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act:

Citation, extent and commencement

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2011.

(2) These Regulations extend to England and Wales, and shall come into force on 6th April 2012.

Amendment of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

2.—(1) Parts 1 and 2 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the 2007 Regulations”)^(c) are amended as follows.

(2) In regulation 2(1) (interpretation) omit the definition of “residential property”.

(3) In regulation 5 (energy performance certificates on sale and rent) in paragraph (2)(b), omit “before entering into a contract to sell or rent out the building or, if sooner”.

(4) In regulation 5A (energy performance certificates on marketing)—

- (a) (i) except in sub-paragraph (5)(a), for “property” substitute “building”, and
- (ii) for “seller” substitute “relevant person”,

in each place in which those words appear;

- (b) in paragraph (1)(a), omit “residential” and after “sold” insert “or rented out”;

(a) S.I. 2008/301.

(b) 1972 c.68. Section 2(2) is amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (2006 c. 51), and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (2008 c. 7).

(c) S.I. 2007/991, amended by S.I. 2007/1669, S.I. 2007/3302, S.I. 2008/647, S.I. 2008/2363, S.I. 2010/1456, and S.I. 2011/1515.

(c) in paragraph (4) for “28” substitute “7”;

(d) after paragraph (4) insert—

“(4A) Where any person subject to the duty in paragraph (4) is unable, despite using all reasonable efforts, to secure that a valid energy performance certificate is obtained for the building before the end of the 7 day period specified in that paragraph, the person shall secure that the certificate is obtained before the end of the period of 21 days immediately following the 7 day period.”;

(e) in paragraph (5)—

(i) in sub-paragraphs (a) and (b), omit “residential”, and

(ii) after “sale” insert “or rent”.

(5) In regulation 6 (providing energy information with particulars)—

(a) in paragraph (1)(a) for “residential property” substitute “building” and after “sold” insert “or rented out”;

(b) in paragraph (1)(b) after “buying” insert “or renting”;

(c) in paragraph (2), omit sub-paragraph (a), and in the remaining sub-paragraph, after the words “a copy” insert “of the first page”;

(d) for the definition in paragraph (3) substitute the following—

““written particulars” means—

(a) in relation to a building to be sold, any written description of the property which includes at least two of the following—

(i) a photograph of the building or any room in the building,

(ii) a floor plan of the building,

(iii) the size of the rooms in the building, or

(iv) the measured area of the building;

(b) in relation to a building to be rented out, any written description of the property which includes at least two of the following—

(i) a photograph of the building or any room in the building,

(ii) a floor plan of the building,

(iii) the size of the rooms in the building,

(iv) the measured area of the building, or

(v) the proposed rent;

and reference to written particulars or a written description includes particulars or a description given or made available electronically.”.

(e) after paragraph (3) insert—

“(4) Where written particulars are made available and the address of the building is not included in those particulars, the person mentioned in paragraph (1)(c) may omit the address of the building from the copy of the first page of the energy performance certificate attached to the particulars in accordance with paragraph (2), notwithstanding the requirement to include the address imposed by regulation 11(1)(d)(ii).

(5) Paragraph (4) does not permit the omission of the address of the building from a certificate in any circumstances other than those mentioned in that paragraph.”.

3.—(1) Parts 4, 5, 6 and 7 of the 2007 Regulations are amended as follows.

(2) In regulation 22 (reports) for paragraph (3) substitute—

“(3) The inspection report must be in a form including the following information—

(a) the reference number under which the report has been registered in accordance with regulation 31;

(b) the address of the building in which the system is located;

- (c) the name of the energy assessor;
- (d) the name and address of the energy assessor’s employer, or, if such a person is self-employed, the name under which that person trades and their address;
- (e) the date on which the inspection occurred; and
- (f) the name of the approved accreditation scheme of which the energy assessor is a member.”.

(3) In regulation 25 (accreditation schemes) in sub-paragraphs (c) and (g) of paragraph (3) for “and advisory reports” substitute “, advisory reports and inspection reports”.

(4) In regulation 26 (related party disclosures) after “certificate” in each place insert “or inspection report”.

(5) In regulation 31 (registration of certificates etc.)—

- (a) in paragraph (1), omit “and” at the end of sub-paragraph (b), and after sub-paragraph (c) insert—

“and

- (d) inspection reports.”;

- (b) in paragraph (2), for “paragraph (1)” substitute “paragraph (1)(a), (b) or (c)”;

- (c) after paragraph (2) insert—

“(2A) An energy assessor who issues an inspection report must ensure that it is entered onto the relevant register before the assessor gives the document to the relevant person.”.

(6) In regulation 32 (fees for entering onto register), in paragraph (1), at the end add—

“and

- (e) for entering an inspection report, a fee of £5.36.”.

(7) In regulation 34A (disclosures whether an energy performance certificate for a building other than a dwelling has been entered on the register)—

- (a) in the heading after “certificate” insert “or inspection report”;

- (b) in paragraph (a) after “certificate” insert “or inspection report”;

- (c) in paragraph (b) after “certificate” insert “or report”.

(8) In regulation 38(2) (enforcement authorities) after “5A(4),” insert “5A(4A),”.

(9) In regulation 39 (power to require production of documents)—

- (a) after paragraph (1), insert—

“(1A) An authorised officer of an enforcement authority may require a person who appears to him to have been subject to the duty under regulation 5A(3) to produce for inspection a copy of any request made in accordance with regulation 5A(5)(d).”; and

- (b) in paragraph (2), for “The power conferred by paragraph (1) includes” substitute “The powers conferred by paragraphs (1) and (1A) include”.

(10) In regulation 40(1) (penalty charge notices) after “5A(4),” insert “5A(4A),”.

(11) In regulation 42(1A) (defence where energy performance certificate unobtainable) for “seller of a residential property” substitute “relevant person” and in sub-paragraph (c) of that paragraph, for “seller” substitute “relevant person”.

(12) In regulation 43(1)(a) (penalty amount) after “5A(4),” insert “5A(4A),”.

Saving provision

4.—(1) In relation to a residential property put on the market before these Regulations come into force, regulations 5 and 5A of the 2007 Regulations shall continue to have effect as though unamended by these Regulations.

(2) In paragraph (1), “residential property” and “put on the market” have the same meaning as is given to those expressions by paragraph (5)(a), (b) and (c) of regulation 5A as unamended by these Regulations.

Review

5.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how “Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings”(a) (of which provisions transposed by means of the 2007 Regulations are amended by these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the amendments in these Regulations to the regulatory system established by the 2007 Regulations,
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force; and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

Signed by authority of the Secretary of State

10th October 2011

A Stunell
Parliamentary Under Secretary of State
Department for Communities and Local Government

(a) OJ No L 1, 04.01.2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations ensure the continued implementation in England and Wales of articles 7 and 9 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (2002/91/EC, OJ No L 1, 4.1.2003, p 65) (“the Directive”). The Directive lays down the requirements for the production of energy performance certificates (“EPCs”) when buildings are constructed, sold or rented out, for display of such certificates in large public buildings, and for regular inspections of air-conditioning systems.

These Regulations make amendments to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991) (“the 2007 Regulations”). The main changes affect the requirements (including enforcement and compliance) for the production of EPCs and the inspection of air-conditioning systems as follows.

Regulation 2(4) extends the application of the duties in regulation 5A (energy performance certificates on marketing) of the 2007 Regulations to a building which is sold or rented out, and substitutes a relevant person (as defined in regulation 2 of the 2007 Regulations) for a seller of residential property, as the person to whom those duties apply. Regulation 5A is also amended to reduce the amount of time that a relevant person and person acting on behalf of such a person is allowed to secure an EPC, from 28 to 7 days. An additional duty is imposed to ensure that where an EPC has not been secured during that period, it must be secured within 21 days of the end of that period. Consequential amendments in relation to enforcement of the new duty are made to regulations 38, 39, 40, 42 and 43 of the 2007 Regulations.

Regulation 2(5) extends the application of the duty in regulation 6 (providing energy information with particulars) of the 2007 Regulations to any building which is sold or rented out. An amendment is made which removes the option to include an asset rating on the written particulars as an alternative to the EPC once the EPC has been obtained. The meaning of ‘written particulars’ is defined differently in relation to particulars for sale and particulars for rent. As an exception to the requirement of regulation 11(1)(d)(ii) of the 2007 Regulations, provision is made to allow the person subject to the duty to provide the written particulars to omit the address of the building from a copy of the first page of the EPC where the address has been omitted from those particulars.

Regulation 3(5) amends regulation 31 (registration of certificates etc) of the 2007 Regulations by requiring the Secretary of State to maintain air-conditioning inspection reports on a register, and imposes a duty on energy assessors to enter such an inspection report on the register. An amendment is made to regulation 32 (fees for entering onto register) so that a fee can be charged for lodging an inspection report on the register. A number of minor consequential amendments are made to the 2007 Regulations to take account of the main changes described in this paragraph.

Regulation 3(11) amends regulation 42(1A) (defence where EPC unobtainable) of the 2007 Regulations to extend the defence to relevant persons, because the duty under regulation 5A(2) of the 2007 Regulations has been extended to such persons.

Regulation 4 makes a saving provision for residential properties marketed before these Regulations come into force so that regulations 5 and 5A of the 2007 Regulations as unamended continue to apply to such properties.

Regulation 5 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, be amended, or be revoked.

A transposition note setting out how the 2007 Regulations implement Articles 7 to 10 of the Directive and an impact assessment of the effect of these Regulations will have on the costs of business and the public and voluntary sectors is available from Climate Change and Sustainable Buildings Division (Tel: 0303 44 41836 Fax: 0303 44 43313: e-mail:

epc.enquiry@communities.gsi.gov.uk) or on the Department's website www.communities.gov.uk. The Explanatory Memorandum to these Regulations is available alongside the Regulations on the OPSI website at www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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