

2007 No. 991

BUILDING AND BUILDINGS, ENGLAND AND WALES

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

Made - - - - - *23rd March 2007*

Laid before Parliament *29th March 2007*

Coming into force in accordance with regulation 1(4)

CONTENTS

PART 1

Introductory

1.	Citation, application, extent and commencement	3
2.	Interpretation	3
3.	Meaning of “prospective buyer or tenant”	4

PART 2

Duties relating to energy performance certificates

4.	Application of Part 2	5
5.	Energy performance certificates on sale and rent	5
6.	Providing energy information with particulars	5
7.	Buildings to be demolished	6
8.	Amendments relating to energy performance certificates on construction	6
9.	Construction of Crown and statutory undertakers’ buildings	7
10.	Recommendation reports	7
11.	Energy performance certificates	7
12.	Production of copies of energy performance certificates	8
13.	Electronic production of energy performance certificates	8
14.	Purposes for which certificates and recommendation reports may be disclosed	8

PART 3

Display Energy Certificates

15.	Interpretation of Part 3	9
16.	Duties relating to display energy certificates and advisory reports	9
17.	Display energy certificates	10
18.	Changes in occupier etc	10

19.	Advisory reports	11
-----	------------------	----

PART 4

Inspection of air-conditioning systems

20.	Application and interpretation of Part 4	11
21.	Inspections of air-conditioning systems	11
22.	Reports	11
23.	Keeping of records etc	12
24.	Changes of relevant person	12

PART 5

Energy Assessors

25.	Accreditation schemes	12
26.	Related party disclosures	13
27.	Duty of care	13
28.	Right to copy documents	13
29.	Meaning of energy assessment	13

PART 6

Register of certificates, recommendation reports and advisory reports

30.	Interpretation of Part 6	13
31.	Registration of certificates etc	14
32.	Fees for entering onto register	14
33.	Disclosures generally	14
34.	Disclosures with reference number	14
35.	Disclosures to approved accreditation schemes	14
36.	Disclosures to enforcement authorities	14
37.	Disclosures to the Secretary of State	15

PART 7

Enforcement

38.	Enforcement authorities	15
39.	Power to require production of documents	15
40.	Penalty charge notices	15
41.	Penalties under Housing Act 2004	16
42.	Defence where energy performance certificate unobtainable	16
43.	Penalty amount	17
44.	Reviews	18
45.	Appeal to the county court	18
46.	Recovery of penalty charges	18
47.	Service of documents	19
48.	Offences relating to enforcement officers	19

PART 8

Miscellaneous

49.	Application to the Crown	19
50.	Duty to cooperate	19

SCHEDULE 1	— Commencement	20
SCHEDULE 2	— Amendments relating to energy performance certificates on construction	21

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 measures relating to the energy performance of buildings.

In accordance with section 14(3) of the Building Act 1984(c) she has consulted the Building Regulations Advisory Committee and such other bodies as appear to her to be representative of the interests concerned.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 1(1), 8(6), 35 and 47 of, and paragraphs 1, 2, 4, 7, 8 and 10 of Schedule 1 to, the Building Act 1984(d).

PART 1

Introductory

Citation, application, extent and commencement

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

(2) Subject to regulation 4, and notwithstanding section 4 of the Building Act 1984(e), these Regulations, other than regulation 8, apply to all buildings including buildings which are exempt from building regulations by virtue of that section.

(3) These Regulations extend to England and Wales.

(4) Each provision of these Regulations mentioned in column 3 of the Table in Schedule 1 shall come into force on the date mentioned in column 2 of that Table, for the purposes mentioned in column 4.

Interpretation

2.—(1) In these Regulations—

“accreditation scheme” means a scheme approved by the Secretary of State in accordance with—

(a) S.I. 2004/3328.

(b) 1972 c.68.

(c) 1984 c. 55.

(d) Section 1(1) was amended by the Sustainable and Secure Buildings Act 2004 (c.22), section 1(1) and (2); section 47 was amended by section 8(2) of that Act and S.I. 1996/1905; paragraph 7 of Schedule 1 was amended by section 3(1) and (5) of that Act, there are other amendments to that paragraph but none is relevant; paragraph 8 of Schedule 1 was amended by section 3(1) and (7) of that Act.

(e) Section 4(1)(a)(i) to (iv) was substituted by the Education Act 1996 (c.56), Schedule 37, paragraph 59; section 4(1)(a)(ii) was substituted (in relation to England) by the Education Act 2002 (c.32), Schedule 21, paragraph 6; section 4(1)(a)(iii) and (iv) were repealed by the School Standards Framework Act 1998 (c.31), Schedule 31; section 4(1)(b) was amended by the Airports Act 1986 (c.31), Schedule 6; section 4(1)(c) was inserted by S.I. 2001/4050; there are other amending Acts but these are not relevant to these Regulations.

(a) regulation 25; or

(b) regulation 17F of the Building Regulations 2000(a);

“advisory report” means a report issued by an energy assessor pursuant to regulation 19;

“air-conditioning system” means a combination of all the components required to provide a form of air treatment in which the temperature is controlled or can be lowered, and includes systems which combine such air treatment with the control of ventilation, humidity and air cleanliness;

“asset rating” means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of a building, calculated according to the methodology approved by the Secretary of State pursuant to regulation 17A of the Building Regulations 2000(b);

“building” means a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of building which has been designed or altered to be used separately;

“display energy certificate” means a certificate which complies with regulation 17;

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“energy assessor” means an individual who is a member of an accreditation scheme;

“energy performance certificate” means a certificate which complies with regulation 11(1) of these Regulations or regulation 17E of the Building Regulations 2000(c);

“home information pack” means a home information pack in relation to a building obtained for the purpose of complying with section 155(1) or 159(2) of the Housing Act 2004(d);

“inspection report” means a report issued by an energy assessor in accordance with regulation 22(1);

“penalty charge notice” means a notice given pursuant to regulation 40;

“recommendation report” means the recommendation report required by regulation 10, and includes a report issued by an energy assessor for the purposes of regulation 17E(4) of the Building Regulations 2000 or regulation 12(4) of the Building (Approved Inspectors etc.) Regulations 2000(e);

“relevant person” means—

(a) in relation to a building which is to be sold, the seller;

(b) in relation to a building which is to be rented out, the prospective landlord;

(c) in relation to a building in circumstances where regulation 9 applies, the person responsible for carrying out the construction work; and

(d) in relation to an air-conditioning system, the person who has control of the operation of the system.

(2) Unless otherwise defined in these Regulations, terms used in these Regulations have the same meaning as in European Parliament and Council Directive 2002/91/EC on the energy performance of buildings(f).

Meaning of “prospective buyer or tenant”

3. A person becomes a prospective buyer or tenant in relation to a building when he—

(a) S.I. 2000/2531; regulation 17F is inserted by regulation 8 of, and paragraph 1(8) of Schedule 2 to, these Regulations.

(b) Inserted by S.I. 2006/652, and amended by regulation 8 of, and paragraph 1(7) of Schedule 2 to, these Regulations.

(c) Inserted by S.I. 2006/652, and substituted by regulation 8 of, and paragraph 1(8) of Schedule 2 to, of these Regulations.

(d) 2004 c. 34.

(e) S.I. 2000/2352; regulation 12 is substituted by paragraph 2 of Schedule 2 to these Regulations.

(f) OJ No L 1, 4.1.2003, p65.

- (a) requests any information about the building from the relevant person or his agent for the purpose of deciding whether to buy or rent the building;
- (b) makes a request to view the building for the purpose of deciding whether to buy or rent the building; or
- (c) makes an offer, whether oral or written, to buy or rent the building.

PART 2

Duties relating to energy performance certificates

Application of Part 2

4.—(1) This Part does not apply to—

- (a) buildings which are used primarily or solely as places of worship;
- (b) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand;
- (c) stand-alone buildings with a total useful floor area of less than 50m² which are not dwellings.

(2) Nothing in this Part requires an energy performance certificate to be given or made available to a prospective buyer or tenant at any time before the construction of the building has been completed.

Energy performance certificates on sale and rent

5.—(1) Subject to regulation 7, this regulation applies where a building is to be sold or rented out.

(2) The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant—

- (a) at the earliest opportunity; and
- (b) in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of—
 - (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or
 - (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.

(3) Paragraph (2) does not apply if the relevant person believes on reasonable grounds that the prospective buyer or tenant—

- (a) is unlikely to have sufficient means to buy or rent the building;
- (b) is not genuinely interested in buying or renting a building of a general description which applies to the building; or
- (c) is not a person to whom the relevant person is likely to be prepared to sell or rent out the building.

(4) Nothing in paragraph (3) authorises the doing of anything which constitutes an unlawful act of discrimination.

(5) The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant.

Providing energy information with particulars

6.—(1) Subject to regulation 7, this regulation applies where—

- (a) a building is to be sold or rented out in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty on any person in relation to that building;
 - (b) written particulars about the building are prepared for the purpose of providing information about the building to persons who may be interested in buying or renting the building; and
 - (c) the written particulars are given to such a person by—
 - (i) the relevant person; or
 - (ii) another person on his behalf.
- (2) The person giving the particulars must ensure that—
- (a) the particulars include the asset rating of the building expressed in the way required by regulation 11(1)(a); or
 - (b) a copy of an energy performance certificate for the building is attached to the particulars.
- (3) In this regulation—
- “written particulars” means any written description of the property which includes at least two of the following—
- (a) a photograph of the building or any room in the building;
 - (b) a floor plan of the building; or
 - (c) a description of the size of the rooms in the building,
- and a reference to giving particulars includes a reference to giving or making available particulars electronically.

Buildings to be demolished

- 7.—(1) Regulations 5 and 6 do not apply in relation to a dwelling which is to be sold or rented out where the relevant person can demonstrate that—
- (a) the dwelling is suitable for demolition;
 - (b) the resulting site is suitable for redevelopment;
 - (c) all the relevant planning permissions, listed building consents, and conservation area consents exist in relation to the demolition; and
 - (d) in relation to the redevelopment—
 - (i) either outline planning permission or planning permission exists, or both; and
 - (ii) where relevant, listed building consent exists.
- (2) Regulation 5 does not apply in relation to any prospective buyer or tenant of a building other than a dwelling which is to be sold or rented out where—
- (a) the relevant person can demonstrate that—
 - (i) the building is to be sold or rented out with vacant possession;
 - (ii) the building is suitable for demolition; and
 - (iii) the resulting site is suitable for redevelopment; and
 - (b) the relevant person believes on reasonable grounds that the prospective buyer or tenant intends to demolish the building.
- (3) In this regulation, “outline planning permission” has the same meaning as in article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995(a).

Amendments relating to energy performance certificates on construction

8. The enactments referred to in Schedule 2 are amended in accordance with that Schedule.

(a) S.I. 1995/419, there are amendments not relevant to these Regulations.

Construction of Crown and statutory undertakers' buildings

9.—(1) Paragraph (2) applies to all buildings in relation to which the Building Regulations 2000 do not apply, other than—

- (a) buildings which are exempt from those Regulations by virtue of regulation 9(a) of those Regulations;
- (b) buildings which are used primarily or solely as places of worship;
- (c) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; and
- (d) stand-alone buildings with a total useful floor area of less than 50m² which are not dwellings.

(2) When a building is constructed the relevant person shall, no later than five days after the construction work has been completed, give to the owner of the building an energy performance certificate for the building.

Recommendation reports

10.—(1) Where a relevant person is under a duty under regulation 5(2), 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report.

(2) A recommendation report is a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate.

Energy performance certificates

11.—(1) An energy performance certificate must—

- (a) express the asset rating of the building in a way approved by the Secretary of State under regulation 17A of the Building Regulations 2000;
- (b) include a reference value such as a current legal standard or benchmark;
- (c) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and
- (d) include the following information—
 - (i) the reference number under which the certificate has been registered in accordance with regulation 31;
 - (ii) the address of the building;
 - (iii) an estimate of the total useful floor area of the building;
 - (iv) the name of the energy assessor who issued it;
 - (v) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address;
 - (vi) the date on which it was issued; and
 - (vii) the name of the approved accreditation scheme of which the energy assessor is a member.

(2) A certificate which complies with regulation 17E of the Building Regulations 2000 is also an energy performance certificate.

(3) Subject to paragraph (4), an energy performance certificate is only valid for the purposes of this Part if—

- (a) it was issued no more than 10 years before the date on which it is made available; and

(a) Amended by S.I. 2004/3210 and 2006/652.

(b) no other energy performance certificate for the building has since been obtained by or provided to the relevant person.

(4) If a building is to be sold or rented out in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty on any person in relation to that building, an energy performance certificate for the building is only valid for the purposes of this Part if it was issued no earlier than the date that falls three months before the first point of marketing of the building.

(5) For the purposes of paragraph (4) “first point of marketing” shall be construed in accordance with regulations 4, 17(3), 22(3) and 23(5) of the Home Information Pack Regulations 2007(a).

(6) An energy performance certificate must not contain any information or data from which a living individual (other than the energy assessor or his employer) can be identified.

(7) Certification for apartments or units designed or altered for separate use in blocks may be based—

(a) except in the case of a dwelling, on a common certification of the whole building for blocks with a common heating system; or

(b) on the assessment of another representative apartment or unit in the same block.

(8) Where—

(a) a block with a common heating system is divided into parts designed or altered for separate use; and

(b) one or more, but not all, of the parts are dwellings,

certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings.

Production of copies of energy performance certificates

12. Where this Part requires a relevant person to give or make available a valid energy performance certificate to any person, it is sufficient for the relevant person to give or make available a copy of a valid certificate.

Electronic production of energy performance certificates

13. Where regulation 5(2), 5(5) or 9(2) requires a valid energy performance certificate to be given or made available to any person, the certificate may be given or made available electronically if the intended recipient consents to receiving the certificate electronically.

Purposes for which certificates and recommendation reports may be disclosed

14.—(1) Where any person has in his possession or control a document to which this regulation applies, it is an offence for that person to disclose, or permit the disclosure of, the document or any information derived from it except in the circumstances specified in paragraph (2).

(2) Those circumstances are—

(a) where the disclosure is necessary to comply with—

(i) any duty imposed by these Regulations; or

(ii) any duty imposed by Part 5 of the Housing Act 2004 or any regulations made under that Part;

(b) where the disclosure is authorised by Part 7;

(c) where the disclosure is for a purpose legitimately connected with a prospective buyer’s or tenant’s decision whether to buy or rent the building;

(d) where the disclosure is by or to an accreditation scheme operator for a purpose legitimately connected to its accreditation functions;

(a) S.I. 2007/992.

- (e) where the disclosure is by or to an enforcement authority for a purpose legitimately connected to their duty under regulation 38(2);
- (f) where the disclosure is by or to the Secretary of State for—
 - (i) the purpose of enabling her to monitor the application and enforcement of, and compliance with, the duties imposed by these Regulations; or
 - (ii) statistical or research purposes,
 provided that no particular property is identifiable from the information disclosed;
- (g) where the disclosure is for the purpose of—
 - (i) preventing or detecting crime;
 - (ii) apprehending or prosecuting offenders;
 - (iii) establishing, exercising or defending legal rights; or
 - (iv) complying with an order of a court.

(3) Paragraph (1) does not apply to any disclosure of a document or any information derived from it by any person who, at the time of the disclosure, is, or is acting on behalf of, an owner or tenant of the building to which the document relates.

(4) This regulation applies to the following documents—

- (a) an energy performance certificate or a copy of such a certificate; and
- (b) a recommendation report or a copy of such a report,

and any data collected by an energy assessor for the purposes of preparing such a document shall be treated as part of that document for the purposes of this regulation.

(5) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 3

Display Energy Certificates

Interpretation of Part 3

15. In this Part—

“nominated date”, in relation to a display energy certificate, means a date no later than three months after the end of the period over which the operational rating is calculated, which is nominated by the energy assessor who issued the certificate; and

“operational rating” means a numeric indicator of the amount of energy consumed during the occupation of the building over a period of 12 months (unless regulation 18(4) applies) ending no earlier than three months before the nominated date, calculated according to the methodology approved by the Secretary of State for the purposes of regulation 17A of the Building Regulations 2000.

Duties relating to display energy certificates and advisory reports

16.—(1) This regulation applies to buildings with a total useful floor area over 1,000m² occupied by public authorities and by institutions providing public services to a large number of persons and therefore frequently visited by those persons.

(2) Except where regulation 18(3) applies, on and after 6 April 2008 every occupier of any building to which this regulation applies must—

- (a) have in its possession or control at all times a valid advisory report; and
- (b) display at all times a valid display energy certificate in a prominent place clearly visible to the public.

(3) A display energy certificate is valid for a period of 12 months beginning with the nominated date.

(4) An advisory report is valid for a period of seven years beginning with the date it is issued.

Display energy certificates

17.—(1) A display energy certificate must—

- (a) subject to regulation 18, express—
 - (i) the operational rating; and
 - (ii) the asset rating,of the building in ways approved by the Secretary of State under regulation 17A of the Building Regulations 2000;
- (b) show the operational ratings for the building which were expressed in any certificates displayed by the occupier during the two years before the nominated date;
- (c) include a reference value such as a current legal standard or benchmark;
- (d) be issued by an energy assessor who is accredited to produce display energy certificates for that category of building;
- (e) include the following information—
 - (i) the reference number under which the certificate has been registered in accordance with regulation 31;
 - (ii) the address of the building;
 - (iii) an estimate of the total useful floor area of the building;
 - (iv) the name of the energy assessor who issued it;
 - (v) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address;
 - (vi) the date on which it was issued;
 - (vii) the nominated date; and
 - (viii) the name of the approved accreditation scheme of which the energy assessor is a member.

Changes in occupier etc

18.—(1) Subject to paragraph (4), regulation 17(1)(a)(i) does not apply in relation to a display energy certificate which is displayed by an occupier of a building at any time before it has been in occupation of the building for 15 months.

(2) Regulation 17(1)(a)(ii) does not apply in relation to a display energy certificate which is displayed by an occupier who—

- (a) entered into occupation of the building before 6th April 2008; or
- (b) entered into occupation on or after that date but did not have an energy performance certificate complying with regulation 11 made available or given to it.

(3) In the period up to and including 3rd January 2009, where neither regulation 17(1)(a)(i) nor (ii) applies in relation to a display energy certificate, the duties in regulation 16(2) do not apply.

(4) Where on 4th January 2009—

- (a) the occupier of a building has been in occupation for less than 15 months; and
- (b) by virtue of paragraph (2) regulation 17(1)(a)(ii) does not apply,

the operational rating specified for the purposes of regulation 17(1)(a)(i) may be calculated over the period in which the occupier has been in occupation.

Advisory reports

19. An advisory report is a report issued by an energy assessor after his assessment of the building, which contains recommendations for improvement of the energy performance of the building.

PART 4

Inspection of air-conditioning systems

Application and interpretation of Part 4

20.—(1) This Part applies to air-conditioning systems with an effective rated output of more than 12kW.

(2) Where the relevant person has the power to control the temperature of more than one individual air-conditioning unit in a building, each unit shall be considered to be a component of a single air-conditioning system for the purposes of paragraph (1).

(3) In this Part “effective rated output” means the maximum calorific output specified and guaranteed by the manufacturer of the system as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer.

Inspections of air-conditioning systems

21.—(1) It is the duty of the relevant person in relation to an air-conditioning system to which this Part applies to ensure that the system is inspected by an energy assessor at regular intervals not exceeding five years.

(2) The first inspection of the system must take place before the relevant date.

(3) In this regulation “the relevant date”—

- (a) where the system is first put into service on or after 1st January 2008, means the last day of the period of five years beginning with the date on which the system is first put into service; and
- (b) where paragraph (a) does not apply—
 - (i) in the case of a system with an effective rated output of more than 250kW, means 4th January 2009; or
 - (ii) in the case of a system with an effective rated output of more than 12kW, means 4th January 2011.

Reports

22.—(1) Where an energy assessor undertakes an inspection of the system he must make a written report of the inspection and give it to the relevant person as soon as practicable after completing the inspection.

(2) The inspection report must include an assessment of the air-conditioning efficiency and the sizing of the system compared to the cooling requirements of the building, and contain appropriate advice on possible improvements to the system, replacement of the system and alternative solutions.

(3) The inspection report must include the following information—

- (a) the address of the building in which the system is located;
- (b) the name of the energy assessor;
- (c) the name and address of the energy assessor’s employer, or, if he is self-employed, the name under which he trades and his address;
- (d) the date on which the inspection occurred; and

- (e) the name of the approved accreditation scheme of which the energy assessor is a member.

Keeping of records etc

23.—(1) The relevant person must keep the most recent inspection report made by an energy assessor pursuant to regulation 22.

(2) Where the relevant person changes, the previous relevant person must give to the new relevant person any inspection report kept by him under this regulation.

Changes of relevant person

24. Where on or after 4th January 2011—

- (a) the relevant person changes; and
- (b) the new relevant person is not given any inspection report,

the new relevant person must ensure that the system is inspected within three months of the day on which he becomes the relevant person.

PART 5

Energy Assessors

Accreditation schemes

25.—(1) An energy assessor must be a member of an accreditation scheme approved by the Secretary of State.

(2) The terms of approval of any accreditation scheme may be limited in relation to—

- (a) the categories of building for which members may produce certificates; and
- (b) the types of air-conditioning systems members may inspect.

(3) Before approving an accreditation scheme the Secretary of State must be satisfied that the scheme contains adequate provision—

- (a) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner;
- (b) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments;
- (c) for requiring members of the scheme to prepare energy performance certificates, recommendation reports, display energy certificates and advisory reports using a standard form for each type of document;
- (d) for ensuring that a code is produced and published as regards the conduct required of its members;
- (e) for indemnity arrangements in relation to relevant persons and prospective or actual buyers or tenants;
- (f) for facilitating the resolution of complaints against members of the scheme;
- (g) for requiring energy performance certificates, recommendation reports, display energy certificates and advisory reports produced by members of the scheme to be entered on the relevant register maintained by the Secretary of State pursuant to regulation 31; and
- (h) for the keeping of a register of the members of the scheme.

Related party disclosures

26. An energy assessor must include in an energy performance certificate a declaration of any personal or business relationship (other than in relation to producing the certificate) that he has with—

- (a) the person who commissioned the certificate;
- (b) any person on whose behalf the certificate was commissioned; and
- (c) any person who he believes—
 - (i) has or may have a personal or business relationship with a person referred to in paragraph (a) or (b); or
 - (ii) has or may have an interest in the building.

Duty of care

27.—(1) Energy assessors must carry out energy assessments with reasonable care and skill.

(2) The duty imposed by paragraph (1) shall be enforceable by the following persons—

- (a) the relevant person;
- (b) in the case of an energy performance certificate and recommendation report, any prospective or actual buyer or tenant during the period of validity of the certificate; and
- (c) in the case of a display energy certificate and advisory report, the occupier of the building.

(3) Any cause of action arising in relation to the duty imposed by paragraph (1) is deemed not to be an action founded on tort for the purposes of the Limitation Act 1980(a).

Right to copy documents

28. Any person may, for the purpose of complying with any duty imposed by these Regulations, copy or issue a copy of any document produced by an energy assessor.

Meaning of energy assessment

29. In this Part, a reference to “energy assessment” includes a reference to—

- (a) the preparation and issuing of energy performance certificates;
- (b) the preparation and issuing of recommendation reports;
- (c) the preparation and issuing of display energy certificates;
- (d) the preparation and issuing of advisory reports;
- (e) the preparation and issuing of inspection reports;
- (f) the carrying out of any inspections undertaken for the purposes of preparing any of the documents referred to in paragraphs (a) to (e).

PART 6

Register of certificates, recommendation reports and advisory reports

Interpretation of Part 6

30. In this Part “keeper of the register” means the Secretary of State or the person keeping a register on the Secretary of State’s behalf.

(a) 1980 c.58.

Registration of certificates etc

31.—(1) The Secretary of State shall maintain one or more registers of the following documents—

- (a) energy performance certificates and recommendation reports;
- (b) display energy certificates; and
- (c) advisory reports.

(2) Where an energy assessor issues any of the documents referred to in paragraph (1) he must ensure that it, and the data that was collected to produce it, is entered onto the relevant register before he gives it to the person who requested that he issue it.

(3) Each document entered onto the register—

- (a) shall be registered under a unique reference number; and
- (b) shall not be altered once registered.

(4) Any document or data entered onto the register must be kept on the register for a period of at least 20 years beginning on the date on which it is entered onto the register.

Fees for entering onto register

32. The keeper of the register may charge a fee of £1.15 for entering any document on the register.

Disclosures generally

33.—(1) The keeper of the register may only disclose any document or data entered onto the register if authorised by this Part.

(2) In this Part, a reference to the disclosure of a document includes a reference to the disclosure of information derived from a document.

Disclosures with reference number

34.—(1) This regulation applies where any person—

- (a) requests the keeper of the register to disclose a particular document; and
- (b) provides to the keeper of the register the relevant reference number of the document he is seeking to be disclosed.

(2) The keeper of the register may disclose to such a person—

- (a) the document the person requested; and
- (b) any document of the same kind relating to the same building or part of a building as the requested document, which was registered at any time during the period of 10 years ending on the date of the request.

Disclosures to approved accreditation schemes

35. The keeper of the register may disclose to an approved accreditation scheme operator—

- (a) any document which was prepared by an energy assessor who was a member of the scheme at the time the document was entered into the register; and
- (b) any associated data.

Disclosures to enforcement authorities

36. The keeper of the register may disclose any document or data to an authorised officer of an enforcement authority.

Disclosures to the Secretary of State

37. The keeper of the register may disclose any document or data to an officer of the Secretary of State for Communities and Local Government—

- (a) for the purpose of enabling the Secretary of State to monitor the application and enforcement of, and compliance with, the duties imposed by these Regulations; or
- (b) for statistical or research purposes,

provided that no particular property is identifiable from the document or data disclosed.

PART 7

Enforcement

Enforcement authorities

38.—(1) Every local weights and measures authority is an enforcement authority for the purposes of this Part.

(2) It is the duty of each enforcement authority to enforce in their area the duties under regulations 5(2), 5(5), 6(2), 9(2), 10, 16(2), 21(1), 23, 24 and 39(4).

Power to require production of documents

39.—(1) An authorised officer of an enforcement authority may require a person who appears to him to be or to have been subject to any of the duties under regulation 5, 9(2), 10, 16(2), 21(1), or 23 to produce for inspection a copy of—

- (a) a valid energy performance certificate and recommendation report;
- (b) an advisory report; and
- (c) an inspection report.

(2) The power conferred by paragraph (1) includes power to take copies of any document produced for inspection.

(3) A requirement under this regulation may not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

(4) It is the duty of a person subject to such a requirement to comply with it within the period of seven days beginning with the day after that on which it is imposed.

(5) A person is not required to comply with such a requirement if he has a reasonable excuse for not complying with the requirement.

Penalty charge notices

40.—(1) An authorised officer of an enforcement authority may, if he believes that a person has committed a breach of any duty under regulation 5(2), 5(5), 6(2), 9(2), 10, 16(2), 21(1), 23, 24 or 39(4) give a penalty charge notice to that person.

(2) A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed.

(3) A penalty charge notice must—

- (a) state the officer's belief that the person has committed a breach of duty;
- (b) give such particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
- (c) require that person, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice; or

- (ii) to give notice to the enforcement authority that he wishes the authority to review the notice;
 - (d) state the effect of regulation 46;
 - (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
 - (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).
- (4) The period specified under regulation 40(3)(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.
- (5) The enforcement authority may extend the period for complying in any particular case if they consider it appropriate to do so.
- (6) The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.
- (7) The enforcement authority must withdraw a penalty charge notice where the recipient can demonstrate that—
- (a) he took all reasonable steps and exercised all due diligence to avoid breaching the duty; or
 - (b) regulation 41 or 42 applies.

Penalties under Housing Act 2004

41.—(1) This regulation applies where, at the time the relevant person is subject to the duty in regulation 5, he is also subject to a duty under Part 5 of the Housing Act 2004 (“a Housing Act duty”) in relation to the same building.

(2) A relevant person shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 in circumstances where—

- (a) a penalty charge notice has been given to him under section 168 of the Housing Act 2004—
 - (i) in relation to a breach of a Housing Act duty; and
 - (ii) that breach relates to or includes a failure to make available a valid energy performance certificate or recommendation report; and
- (b) the penalty charge notice has not been withdrawn or quashed in accordance with the provisions of Schedule 8 to that Act.

Defence where energy performance certificate unobtainable

42.—(1) A relevant person shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 where he can demonstrate that—

- (a) he made a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
- (b) in the case of a failure to make available an energy performance certificate to a prospective tenant—
 - (i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant’s urgent relocation;
 - (ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
 - (iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and

- (iv) the relevant person has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out the building.

(2) In paragraph (1)(a) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide an energy performance certificate for the category of building in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an energy performance certificate.

(3) In this regulation “relevant time” means the point in time by which the relevant person is required to have made an energy performance certificate available to a prospective buyer or tenant by virtue of regulation 5(2).

Penalty amount

43.—(1) The penalty charge specified in the notice shall be—

- (a) in relation to a breach of a duty under regulation 5(2), 5(5), 6(2), 9(2) or 10—
 - (i) where the building is a dwelling, £200;
 - (ii) where the building is not a dwelling, calculated in accordance with the formula in paragraph (2);
- (b) in relation to a breach of a duty under regulation 16(2)(a), £1000;
- (c) in relation to a breach of a duty under regulation 16(2)(b), £500;
- (d) in relation to a breach of a duty under regulation 21(1), 23(1), 23(2) or 24, £300; and
- (e) in relation to a breach of a duty under regulation 39(4), £200.

(2) Subject to the minimum and maximum penalty charges prescribed by paragraph (3), the penalty charge for the purposes of paragraph (1)(a)(ii) shall be—

- (a) where the building constitutes a hereditament, 12.5% of the rateable value of the hereditament;
- (b) where no other building (other than a building which is exempt from Part 2 by virtue of regulation 4(1)(b) or 4(1)(c)) forms a part of the same hereditament, 12.5% of the rateable value of the hereditament of which the building forms a part;
- (c) where the building comprises more than one hereditament, 12.5% of the sum of the rateable values of each hereditament that comprise the building; and
- (d) where—
 - (i) one or more buildings (other than a building which is exempt from Part 2 by virtue of regulation 4(1)(b) or 4(1)(c)) form part of the same hereditament; or
 - (ii) the building is not, or does not form part of, a hereditament which appears on a local non-domestic rating list at the relevant time,

£750.

(3) The minimum and maximum penalty charges for the purposes of paragraph (2) are £500 and £5000 respectively.

(4) In this regulation—

“hereditament” means a hereditament which, pursuant to section 42 of the Local Government Finance Act 1988(a), is shown on a local non-domestic rating list in force at the relevant time;

“local non-domestic rating list” means a local non-domestic rating list maintained in accordance with section 41 of the Local Government Finance Act 1988(b);

“rateable value” means the rateable value shown for a hereditament on a local non-domestic rating list at the relevant time; and

“relevant time” means the time at which the penalty charge notice is given.

(a) 1988 c. 41; amended by the Local Government and Housing Act 1989 (c.42), Schedule 5, paragraph 20.

(b) There are amendments but none is relevant to these Regulations.

Reviews

44.—(1) If, within the period specified under regulation 40(3)(c) (or that period as extended under regulation 40(5)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—

- (a) consider any representations made by the recipient and all other circumstances of the case;
- (b) decide whether to confirm or withdraw the notice; and
- (c) give notice of their decision to the recipient.

(2) A notice confirming the penalty charge notice must also state the effect of regulations 45 and 46.

(3) If the authority are not satisfied that—

- (a) the recipient committed the breach of duty specified in the notice;
- (b) the notice was given within the time allowed by regulation 40(2) and complies with the other requirements imposed by these Regulations; and
- (c) in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,

they shall withdraw the penalty charge notice.

Appeal to the county court

45.—(1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under regulation 44(1)(c) is given, appeal to the county court against the penalty charge notice.

(2) The county court may extend the period for appealing against the notice.

(3) Such an appeal must be on one (or more) of the following grounds—

- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
- (b) that the notice was not given within the time allowed by regulation 40(2) or does not comply with any other requirement imposed by these Regulations; or
- (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.

(4) An appeal against a penalty charge notice shall be by way of a rehearing; and the court shall either uphold the notice or quash it.

(5) If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

Recovery of penalty charges

46.—(1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless—

- (a) the notice has been withdrawn or quashed; or
- (b) the charge has been paid.

(2) Proceedings for the recovery of the penalty charge notice may not be commenced before the end of the period mentioned in regulation 44(1).

(3) If within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced—

- (a) before the end of the period mentioned in 45(1); and

- (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.
- (4) In proceedings for the recovery of the penalty charge, a certificate which—
- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
 - (b) states that payment of the penalty charge was or was not received by a date specified in the certificate,
- is evidence of the facts stated.

Service of documents

47.—(1) A penalty charge notice and any other notice mentioned in this Part may be given by post.

(2) Any such notice may be given—

- (a) in the case of a body corporate, to the secretary or clerk of that body; and
- (b) in the case of a partnership, to any partner or to a person having control or management of the partnership business.

Offences relating to enforcement officers

48.—(1) A person who obstructs an officer of an enforcement authority acting in pursuance of regulation 39 is guilty of an offence.

(2) A person who, not being an authorised officer of an enforcement authority, purports to act as such in pursuance of this Part is guilty of an offence.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 8

Miscellaneous

Application to the Crown

49.—(1) Subject to paragraph (2), these Regulations, other than regulations 8 and 50(2)(a), bind the Crown.

(2) No act or omission by or on behalf of the Crown shall constitute an offence or make the Crown liable to a penalty charge notice under these Regulations, but the High Court may, on the application of an enforcement authority, declare unlawful any act or omission of the Crown which constitutes a contravention of these Regulations.

Duty to cooperate

50.—(1) This regulation applies where these Regulations impose a duty on a person to—

- (a) make available, give or display an energy performance certificate or a display energy certificate in relation to a building; or
- (b) ensure an air-conditioning system is inspected.

(2) It shall be the duty of every person with an interest in, or in occupation of, the building to—

- (a) allow such access to any energy assessor appointed by the person referred to in paragraph (1) (“the responsible person”) as is reasonably necessary to inspect the building for the purposes of—
 - (i) preparing an energy performance certificate and recommendation report;

- (ii) preparing a display energy certificate or advisory report; or
- (iii) inspecting an air-conditioning system; and
- (b) cooperate with the responsible person so far as is reasonably necessary to enable him to comply with the duty referred to in paragraph (1).

Ruth Kelly
Secretary of State

23rd March 2007

Department for Communities and Local Government

SCHEDULE 1

Regulation 1(4)

Commencement

	<i>Date on which the provision comes into force</i>	<i>Provision</i>	<i>Purpose for which the provision comes into force</i>
1.	19th April 2007	Regulations 1, 2, 3, 4, 10, 11, 12, 13, 14, 15 to 19 (Part 3), 25 to 29 (Part 5), 30 to 37 (Part 6), 49 and 50, Schedule 1 and paragraph 1(7) of Schedule 2.	All purposes.
2.	19th April 2007	Paragraph 1(1) of Schedule 2.	So far as it relates to— (a) paragraph 1(7); and (b) paragraph 1(8), so far as that paragraph inserts regulations 17F to 17J, of that Schedule.
3.	19th April 2007	Paragraph 1(8) of Schedule 2.	So far as it inserts regulations 17F to 17J.
4.	19th April 2007	Regulation 8.	So far as it relates to paragraphs 1 to 3 of this Table.
5.	1st June 2007	Regulations 5, 7(1), and 7(3).	So far as each provision relates to any building which is to be sold or rented out in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty on any person in relation to that building, other than a building which was constructed at a time when regulation 17C of the Building Regulations 2000(a) applied to the work.

(a) Inserted by S.I. 2006/652; Part 5 of those Regulations contains transitional provisions setting out the circumstances in which the amendments made by those Regulations (including regulation 17C) do not apply.

6.	1st June 2007	Regulation 6 and regulations 38 to 48 (Part 7).	All purposes.
7.	1st October 2007	Regulations 5, 7(1), and 7(3).	So far as each provision relates to any building which was constructed at a time when regulation 17C of the Building Regulations 2000 applied to the work, which is to be sold or rented out in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty on any person in relation to that building.
8.	1st October 2007	Paragraphs 1(2)(b), 1(5), 1(9)(a) and 1(10)(a) of Schedule 2.	All purposes.
9.	1st October 2007	Regulation 8 and 9 and paragraphs 1(1), 1(2)(a), 1(3), 1(4), 1(6), 1(8), 1(9)(b), 1(10)(b) and 2 of Schedule 2.	So far as each provision relates to any dwelling.
10.	1st January 2008	Regulations 20 to 24 (Part 4).	All purposes.
11.	6th April 2008	Regulations 5, and 7(2).	So far as each provision relates to any building with a total useful floor area over 500m ² , other than a dwelling.
12.	6th April 2008	Regulations 8 and 9 and paragraphs 1(1), 1(2)(a), 1(3), 1(4), 1(6), 1(8), 1(9)(b), 1(10)(b) and 2 of Schedule 2.	For all remaining purposes.
13.	1st October 2008	Regulations 5 and 7.	For all remaining purposes.

SCHEDULE 2

Regulation 8

Amendments relating to energy performance certificates on construction

Amendments to the Building Regulations 2000

1.—(1) The Building Regulations 2000 are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of “energy efficiency requirements”(a) for “and 17D” substitute “, 17D and 17E”; and

(b) omit the definition of “energy rating”.

(3) In regulation 10(2) (the Metropolitan Police Authority), after “compliance with these Regulations” insert “, other than regulation 17E,”.

(4) In regulation 11(3)(a)(b) (power to dispense with or relax requirements) after “regulation 17C” insert “or 17E”.

(5) Omit regulation 16 (energy rating).

(a) Inserted by S.I. 2006/652.

(b) Amended by S.I. 2006/652.

(6) In regulation 17(3)(b)(a) (completion certificates) for “regulation 17C” substitute “regulations 17C and 17E”.

(7) For regulation 17A (methodology of calculation of the energy performance of building) substitute—

“Methodology of calculation and expression of energy performance

17A.—(1) The Secretary of State shall approve—

- (a) a methodology of calculation of the energy performance of buildings, including methods for calculating asset ratings and operational ratings of buildings; and
- (b) ways in which the energy performance of buildings, as calculated in accordance with the methodology, shall be expressed.

(2) In this regulation—

“asset rating” means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building; and

“operational rating” means a numerical indicator of the amount of energy consumed during the occupation of a building over a period of time.”.

(8) For regulation 17E(b) substitute—

“Energy performance certificates

17E.—(1) This regulation applies where—

- (a) a building is erected; or
- (b) a building is modified so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation.

(2) The person carrying out the work shall—

- (a) give an energy performance certificate for the building to the owner of the building; and
- (b) give to the local authority notice to that effect.

(3) The energy performance certificate shall be given not later than—

- (a) the date on which the notice required by regulation 20B(c) is required to be given to the local authority, where that regulation applies; or
- (b) in any other case, not later than five days after the work has been completed.

(4) The energy performance certificate must be accompanied by a recommendation report containing recommendations for the improvement of the energy performance of the building, issued by the energy assessor who issued the energy performance certificate.

(5) An energy performance certificate must—

- (a) express the asset rating of the building in a way approved by the Secretary of State under regulation 17A;
- (b) include a reference value such as a current legal standard or benchmark;
- (c) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and
- (d) include the following information—

(a) Amended by S.I. 2006/3318.

(b) Inserted by S.I. 2006/652.

(c) Inserted by S.I. 2006/652.

- (i) the reference number under which the certificate has been registered in accordance with regulation 17F(4);
- (ii) the address of the building;
- (iii) an estimate of the total useful floor area of the building;
- (iv) the name of the energy assessor who issued it;
- (v) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address;
- (vi) the date on which it was issued; and
- (vii) the name of the approved accreditation scheme of which the energy assessor is a member.

(6) Certification for apartments or units designed or altered for separate use in blocks may be based—

- (a) except in the case of a dwelling, on a common certification of the whole building for blocks with a common heating system; or
- (b) on the assessment of another representative apartment or unit in the same block.

(7) Where —

- (a) a block with a common heating system is divided into parts designed or altered for separate use; and
- (b) one or more, but not all, of the parts are dwellings,

certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings.

Energy assessors

17F.—(1) An energy assessor must be a member of an accreditation scheme approved by the Secretary of State.

(2) The terms of approval of any accreditation scheme may be limited in relation to the categories of building for which members may produce certificates.

(3) Before approving an accreditation scheme the Secretary of State must be satisfied that the scheme contains adequate provision—

- (a) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner;
- (b) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments;
- (c) for requiring members of the scheme to prepare energy performance certificates and recommendation reports using a standard form for each type of document;
- (d) for ensuring the production and publication of a code as regards the conduct required of its members;
- (e) for indemnity arrangements in relation to owners and prospective or actual buyers or tenants;
- (f) for facilitating the resolution of complaints against members of the scheme;
- (g) for requiring energy performance certificates and recommendation reports produced by members of the scheme to be entered on the relevant register referred to in paragraph (4); and
- (h) for the keeping of a register of the members of the scheme.

(4) Where an energy assessor issues an energy performance certificate and recommendation report he must ensure they are entered onto the relevant register maintained by the Secretary of State in accordance with regulation 31 of the Energy

Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 before he gives them to the person who requested that he issue them.

Related party disclosures

17G.—(1) An energy assessor must include in an energy performance certificate a declaration of any personal or business relationship (other than in relation to producing the certificate) that he has with—

- (a) the person who commissioned the certificate; and
- (b) any person who he believes—
 - (i) has or may have a personal or business relationship with the person who commissioned the certificate; or
 - (ii) has or may have an interest in the building.

Duty of care

17H.—(1) Energy assessors must carry out energy assessments with reasonable care and skill.

(2) The duty imposed by paragraph (1) shall be enforceable by the following persons—

- (a) the owner; and
- (b) any prospective or actual buyer or tenant of the building during the period of validity of the certificate.

(3) Any cause of action arising in relation to the duty imposed by paragraph (1) is deemed not to be an action founded on tort for the purposes of the Limitation Act 1980(a).

Right to copy documents

17I. Any person may, for the purpose of complying with any duty imposed by these Regulations or the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, copy or issue a copy of any document produced by an energy assessor.

Interpretation

17J.—(1) In this Part—

“building” means the building as a whole or parts of it that have been designed or altered to be used separately.

“energy assessor” means an individual who is a member of an accreditation scheme approved by the Secretary of State in accordance with regulation 17F; and

“recommendation report” means the report required by regulation 17E(4).

(2) In this Part a reference to “energy assessment” includes a reference to—

- (a) the preparation and issuing of energy performance certificates;
- (b) the preparation and issuing of recommendation reports; and
- (c) the carrying out of any inspections undertaken for the purposes of preparing energy performance certificates or recommendation reports.”.

(9) In regulation 20(b) (supervision of building work other than by local authorities)—

- (a) omit “16,”; and
- (b) after “17,” insert “17E”.

(a) 1980 c. 58.

(b) There are amendments not relevant to these Regulations.

- (10) In regulation 22(a) (contravention of certain regulations not to be an offence)—
- (a) omit “16,”; and
 - (b) after “17,” insert “17E”.

Amendment to the Building (Approved Inspectors etc) Regulations 2000

- 2.—(1) The Building (Approved Inspectors etc) Regulations 2000(b) are amended as follows.
- (2) For regulation 12 (energy rating) substitute—

“Energy performance certificates

12.—(1) This regulation applies where—

- (a) a building is erected; or
- (b) a building is altered so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation,

and the building work in question is the subject of an initial notice.

(2) The person carrying out the work shall—

- (a) give an energy performance certificate for the building to the owner of the building; and
- (b) give notice to that effect to the approved inspector who gave the initial notice.

(3) The energy performance certificate shall be given not later than—

- (a) the date on which the notice required by regulation 12B is required to be given to the approved inspector, where that regulation applies; or
- (b) in any other case, not later than five days after the work has been completed.

(4) The energy performance certificate must be accompanied by a recommendation report.

(5) In this regulation—

“energy performance certificate” means a certificate complying with regulation 17E(5) of the Principal Regulations; and

“recommendation report” means a report complying with regulation 17E(4) of those Regulations.”.

(a) There are amendments not relevant to these Regulations.
(b) S.I. 2000/2532; there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in England and Wales articles 7 (energy performance certificates), 9 (air-conditioning system inspections) and 10 (energy assessors) of the Energy Performance of Buildings Directive, OJ No L 1, 4.1.2004 (“the Directive”) which lays down requirements for the production of energy performance certificates when buildings are constructed, sold or rented out, display of certificates in large public buildings, and regular inspections of air-conditioning systems.

Part 2 of these Regulations implements articles 7(1) and (2) of the Directive, and requires the production of energy performance certificates when buildings are constructed, sold or rented out. In particular:

(1) Sellers and prospective landlords are required to make available energy performance certificates to prospective buyers and tenants at the earliest opportunity (regulation 5).

(2) Where the Housing Act 2004 imposes a duty on sellers or their agents to have a home information pack, sellers and their agents must ensure that energy performance information is included in any written particulars of the dwelling for sale (regulation 6).

(3) Regulation 8 and Schedule 2 amend the Building Regulations 2000 and the Building (Approved Inspectors etc) Regulations 2000. In addition to various consequential amendments, regulation 17E is inserted into the Building Regulations 2000. It requires energy performance certificates to be produced when buildings are constructed. Paragraph 1(5) of Schedule 2 revokes regulation 16 of those Regulations. Paragraph 2(2) of Schedule 2 substitutes regulation 12 of the Building (Approved Inspectors etc) Regulations 2000. The regulations that are revoked and substituted (which each required an energy rating for new dwellings) are superseded by the requirement to produce an energy performance certificate. Regulation 9 requires certificates for those buildings to which the Building Regulations 2000 do not apply.

(4) Schedule 2 also amends regulation 17A of the Building Regulations 2000, which implemented article 3 of the Directive. The amendment requires the Secretary of State to approve a methodology of calculation of the energy performance of buildings and ways in which the energy performance of a building shall be expressed.

(5) Energy performance certificates must be accompanied by recommendations for the improvement of the energy performance of the building (regulation 10).

(6) Regulation 11 sets out the minimum requirements for energy performance certificates. In particular, certificates must be no more than 10 years old, except in circumstances where the Housing Act 2004 requires a home information pack, in which case a certificate is only valid if it is less than three months old at the first point of marketing, as that term is defined in the Home Information Pack Regulations 2007.

(7) Regulation 14 imposes restrictions on the circumstances in which certificates and recommendations may be disclosed, and creates an offence for unlawful disclosure.

Part 3 implements article 7(3) of the Directive. In particular, occupiers of large buildings occupied by public authorities and by institutions providing public services to a large number of persons must display a display energy certificate, and obtain an advisory report containing recommendations for the improvement of the energy performance of the building (regulation 16).

Part 4 implements article 9 of the Directive. In particular, the person who has control of the operation of an air-conditioning system with an “effective rated output” (defined in regulation 20(3)) of at least 12 kW must ensure the system is inspected at regular intervals not exceeding 5 years (regulation 21).

Part 5 implements article 10 of the Directive. Energy assessors who produce certificates or inspect air-conditioning systems must be members of an accreditation scheme approved by the Secretary of State (regulation 25).

Part 6 requires certain documents produced by energy assessors to be entered onto a register maintained by the Secretary of State. Regulations 34 to 37 set out who may access the register.

Part 7 deals with enforcement and makes provision for enforcement by way of civil penalties. Regulation 38 imposes a duty on local weights and measures authorities to enforce the duties relating to certificates and air-conditioning inspections. Regulation 40 empowers enforcement authorities to issue penalty charge notices for any breach.

Regulation 49 makes provision to bind the Crown. Regulation 50 imposes a general duty to co-operate with and allow reasonable access to any person who is under a duty relating to certificates or inspections.

A transposition note setting out how these Regulations implement the Directive, and a full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector, is available from the Department for Communities and Local Government website or from the Sustainable Buildings Division of that Department (Tel: 020 7944 5755; Fax: 020 7944 5719; [email: enquiries.br@communities.gsi.gov.uk](mailto:enquiries.br@communities.gsi.gov.uk)). Copies are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website at www.opsi.gov.uk.

2007 No. 991

BUILDING AND BUILDINGS, ENGLAND AND WALES

**The Energy Performance of Buildings (Certificates and
Inspections) (England and Wales) Regulations 2007**

£4.50

© Crown copyright 2007

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0543 3/2007 170543T 19585