

2012 No. 208

BUILDING AND BUILDINGS

**The Energy Performance of Buildings (Scotland) Amendment
(No. 2) Regulations 2012**

Made - - - - - *26th June 2012*

Laid before the Scottish Parliament *28th June 2012*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012, and other than regulations 6, 11, 16, 18 and 20, come into force on 1st October 2012.

(2) Regulations 6, 11, 16 and 18 come into force on 9th January 2013.

(3) Regulation 20 comes into force on 30th September 2012.

Amendment of the Energy Performance of Buildings (Scotland) Regulations 2008

2. Subject to regulation 19, the Energy Performance of Buildings (Scotland) Regulations 2008(b) are amended in accordance with regulations 3 to 18.

Interpretation

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “asset rating” after “building” insert “or building unit”;

(ii) before the definition of “enforcement authority” insert—

““energy performance indicator” means an indication of the energy efficiency or performance rating of a building or building unit calculated using the methodology approved in accordance with regulation 7 and expressed on a scale of A to G (with G representing the lowest rating);”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”). Schedule 8, paragraph 15(3) was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2008/309 as amended by S.S.I. 2008/389 and S.S.I. 2012/190.

- (iii) after the definition of “enforcement authority” insert—
 - ““house” has the same meaning as in regulation 2 of the Building (Scotland) Regulations 2004(a)”;
 - (iv) in the definition of “owner” after “building”, in both places where it appears, insert “or building unit”;
 - (v) in the definition of “reference value” after “building” insert “or building unit”; and
 - (vi) omit the definition of “verifier”; and
- (b) in paragraph (2) for “2002/91/EC” substitute “2010/31/EU”.

Meaning of prospective buyer or prospective tenant

4. In regulation 3 (meaning of prospective buyer or prospective tenant) after “building”, in all places where it appears, insert “or building unit”.

Energy performance certificates on sale or rent

5. For regulation 5 (energy performance certificates on sale or rent) substitute—

“5.—(1) Where a building or building unit is to be sold or let the owner must make a copy of a valid energy performance certificate for the building or building unit and of the related recommendations report available for inspection free of charge to a prospective buyer or a prospective tenant.

(2) Where a building or building unit is sold or let the owner must provide a copy of a valid energy performance certificate and of the related recommendations report free of charge to the buyer or tenant.

(3) The energy performance certificate to be made available for inspection under paragraph (1) or provided under paragraph (2) is the most recent valid certificate obtained in respect of the building or building unit.

(4) Any reference in this regulation to the letting of a building or building unit does not include the renewal of an existing lease with the same tenant.

(5) This regulation does not apply at any time before the construction of a building or building unit has been completed.”.

Advertisement for sale or let of a building or building unit

6. After regulation 5 (energy performance certificates on sale or rent) insert—

“Advertisement for sale or let of a building or building unit

5A.—(1) Subject to paragraph (2), where a building or building unit is offered for sale or let, the owner of the building or building unit must ensure that any advertisement in commercial media offering the building or building unit for sale or let, as the case may be, states the energy performance indicator for that building or building unit.

(2) Where—

(a) a building unit is offered for sale or let; and

(b) the energy performance certificate for that building unit is based on certification in accordance with regulation 6(4),

the advertisement in commercial media may state the energy performance indicator included in that certificate.

(a) S.S.I. 2004/406, to which there are amendments not relevant to these Regulations.

(3) In this regulation “advertisement in commercial media” means any of the following:—

- (a) an advertisement in a newspaper or a magazine;
- (b) an advertisement transmitted electronically, including by means of the internet; or
- (c) an advertisement by way of written particulars of a building or building unit.

(4) In this regulation “written particulars” means—

- (a) in relation to a building or building unit to be sold, any written description of the property which includes at least two of the following—
 - (i) a photograph of the building or building unit or any room in the building or building unit;
 - (ii) a floor plan of the building or building unit;
 - (iii) the size of the rooms in the building or building unit; or
 - (iv) the measured area of the building or building unit; and
- (b) in relation to a building or building unit to be let, any written description of the property which includes at least two of the following—
 - (i) a photograph of the building or building unit or any room in the building or building unit;
 - (ii) a floor plan of the building or building unit;
 - (iii) the size of the rooms in the building or building unit; or
 - (iv) the proposed rent,

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

Energy performance certificates

7. In regulation 6 (energy performance certificates)—

- (a) in paragraph (1)(a) after “building” insert “or building unit”;
- (b) after paragraph (1)(b) insert—
 - “(ba) include an energy performance indicator;
 - “(bb) include an indicator, expressed numerically, of primary energy use;”;
- (c) for paragraph (1)(c) substitute—
 - “(c) contain cost effective and technically feasible recommendations for improving the energy performance of the building or building unit including—
 - (i) measures in connection with a major renovation of the building envelope or technical building systems; and
 - (ii) measures for individual building elements independent of a major renovation of the building envelope or technical building systems;
 - (ca) include a statement indicating that—
 - (i) more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate; and
 - (ii) the steps to be taken to implement those recommendations, are contained in the recommendations report;”;
- (d) in paragraph (1)(d)(i) after “building” insert “or building unit”;
- (e) for paragraph (1)(e) substitute—
 - “(e) be issued by a qualified member of an approved organisation for that category of building or building unit.”;
- (f) in paragraph (2) after the word “building” insert “or building unit”;

- (g) for paragraph (4) substitute—
- “(4) Certification for a building unit may be based—
- (a) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building; or
 - (b) on a common certification of the whole building in which the building unit is located.”; and
- (h) after paragraph (5) insert—
- “(6) Certification for a house may be based on the assessment of another representative house where—
- (a) the representative house is of similar design, size and actual energy performance quality; and
 - (b) the member of the approved organisation issuing the energy performance certificate has confirmed in writing that this is the case.”.

Recommendations report

8. After regulation 6 (energy performance certificates) insert—

“Recommendations report

6A.—(1) A recommendations report is a report which must include—

- (a) more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate to which it relates; and
- (b) the steps to be taken to implement those recommendations.

(2) A recommendations report must not contain any information or data (except for the address of the building or building unit) from which a living individual (other than the person issuing it or that person’s employer) can be identified.”.

Assessment of energy performance

9. In regulation 7 (assessment of energy performance)—

- (a) after the word “buildings”, in both places where it appears, insert “or building units”; and
- (b) for “the Annex to Directive 2002/91/EC” substitute “Annex 1 to Directive 2010/31/EU”.

Approved organisations

10. In regulation 8(2) (approved organisations) after “building” insert “or building unit”.

Display of energy performance certificates

11. For regulation 9 (display of energy performance certificates) substitute—

“9.—(1) Where this paragraph applies, the owner of a building which is frequently visited by the public or, where the owner is not the occupier, the occupier must ensure that an energy performance certificate is displayed within the building in a prominent place clearly visible to visiting members of the public.

(2) Paragraph (1) applies—

- (a) in the case of a building occupied by a public authority—
 - (i) before 9th July 2015, where the floor area of the building is greater than 500 square metres; and
 - (ii) on or after 9th July 2015, where the floor area of the building is greater than 250 square metres;

- (b) in the case of any other building where—
 - (i) the floor area of the building is greater than 500 square metres; and
 - (ii) an energy performance certificate has been issued in relation to that building.
- (3) For the purpose of this regulation—

“owner” means a person who has right to the building whether or not that person has completed title, but if, in relation to the building more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right; and

“building which is frequently visited by the public” means a building into which members of the public have an express or implied licence to enter and which is visited by members of the public on at least a weekly basis.”.

Fees for entering data onto register

12. After regulation 10 (registration of certificates) insert—

“Fees for entering data onto register

10A. The keeper of a register may charge the following fees for entering data onto the register—

- (a) for entering data from which an energy performance certificate and recommendations report which relate to a dwelling may be produced, a fee of £1.15; and
- (b) for entering data from which an energy performance certificate and recommendations report which relate to a building or building unit other than a dwelling may be produced, a fee of £5.36.”.

Use of information by the Scottish Ministers and/or the keeper of the register

13. In regulation 14 (use of information by the Scottish Ministers and/or the keeper of the register)—

- (a) after “buildings” insert “or building units”; and
- (b) after “building” insert “or building unit”.

Power to require production of energy performance certificate

14. In regulation 16 (power to require production of energy performance certificate) after “building”, in all places where it appears, insert “or building unit”.

Penalty charge notices

15. In regulation 17(4) (penalty charge notices) after the word “buildings” insert “(or building units)”.

Penalty charge notice for failure to comply with regulation 5A

16. After regulation 17 (penalty charge notices) insert—

“Penalty charge notice for failure to comply with regulation 5A

17A.—(1) An enforcement authority may, if it believes that an owner has breached any duty under regulation 5A, give a penalty charge notice to the owner.

(2) Regulations 17(2)(b), (3) to (7) and 19 to 23 apply in relation to a penalty charge notice given under this regulation as they apply to a penalty charge notice given under regulation 17 subject to the modifications specified in paragraph (3).

(3) The modifications are—

(a) that regulation 17 applies as if—

(i) the reference in paragraph (2)(b) and in paragraph (3)(b) to regulation 5 were a reference to regulation 5A; and

(ii) the reference in paragraph (7) to regulation 18 were a reference to regulation 18A; and

(b) the reference in regulation 20(4)(a) to regulation 5 were a reference to regulation 5A.

(4) Any sum received by a local authority under this regulation shall accrue to that authority.

Penalty charge notice for failure to comply with regulation 9

17B.—(1) An enforcement authority may, if it believes that an owner or occupier has breached any duty under regulation 9, give a penalty charge notice to the owner or occupier, as the case may be.

(2) Regulations 17(2)(b), (3) to (6) and 19 to 23 apply in relation to a penalty charge notice given under this regulation as they apply to a penalty charge notice given under regulation 17 subject to the modifications specified in paragraph (3).

(3) The modifications are—

(a) that regulation 17 applies as if the reference in paragraph (2)(b) and in paragraph (3)(b) to regulation 5 were a reference to regulation 9; and

(b) the reference in regulation 20(4)(a) to regulation 5 were a reference to regulation 9.

(4) Any sum received by a local authority under this regulation shall accrue to that authority.”.

Defence where energy performance certificate unobtainable

17. In regulation 18 (defence where energy performance certificate unobtainable) after the word “building” in all places where it appears, insert “or building unit”.

Defence where failure to comply with regulation 5A

18. After regulation 18 (defence where energy performance certificate unobtainable) insert—

“Defence where failure to comply with regulation 5A

18A. An owner is not liable to a penalty charge for a breach of the duty imposed by regulation 5A if it can be demonstrated that the instructions for the placement of the advertisement offering the building or building unit for sale or let included—

- (a) a requirement that the energy performance indicator for that building or building unit is stated in the advertisement; and
- (b) sufficient information to enable that energy performance indicator to have been stated in the advertisement.”.

Saving provision

19.—(1) Nothing in these Regulations affects the validity of any energy performance certificate issued before 1st October 2012.

(2) Despite the amendment of regulations 2(1) and 6(1)(e) of the Energy Performance of Buildings (Scotland) Regulations 2008(a) by regulations 3(a)(vi) and 7(e), regulation 6(1)(e) (and the definition of “verifier”) continues to apply as it had effect immediately before 1st October 2012 as regards a relevant completion certificate.

(3) In this regulation “relevant completion certificate” means a completion certificate relating to a building warrant granted pursuant to an application for a building warrant made before 9th January 2013.

Amendment of the Energy Performance of Buildings (Scotland) Amendment Regulations 2012

20.—(1) The Energy Performance of Buildings (Scotland) Amendment Regulations 2012(b) are amended in accordance with paragraphs (2) and (3).

(2) Regulations 4 (energy performance certificates on sale or rent), 5 (energy performance certificates) and 6 (recommendations report) are omitted.

(3) In regulation 7 (registration of certificates), in the new regulation 10 (registration of energy performance data) to be substituted by regulation 7, in paragraph (3) after “buildings” insert “or building units”.

DEREK MACKAY

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
26th June 2012

(a) S.S.I. 2008/309 as amended by S.S.I. 2008/389 and S.S.I. 2012/190.
(b) S.S.I. 2012/190.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 amend the Energy Performance of Buildings (Scotland) Regulations 2008 (“the 2008 Regulations”). The 2008 Regulations transposed the provisions of Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings (OJ L 1, 04.01.2003, p.65) (“the 2002 Directive”).

The 2002 Directive has now been recast by Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (OJ L 153, 18.06.2010 p.13) (“the 2010 Directive”). The Energy Performance of Buildings (Scotland) Amendment Regulations 2012 (“the 2012 Regulations”) partially transposed Article 11 of the 2010 Directive. These Regulations transpose the further provisions of the 2010 Directive that require legislative changes to the 2008 Regulations.

The Directive lays down the requirements for energy performance certificates, including their contents and when a certificate is required to be issued and displayed. The 2010 Directive refers to both buildings and building units so the 2008 Regulations have been amended to refer to both terms. The term “building” and “building unit” is defined in Article 2 of the 2010 Directive.

Regulation 5 replaces regulation 5 of the 2008 Regulations to provide that an energy performance certificate is to be shown to a prospective new tenant or buyer and provided to an actual buyer or tenant.

Regulation 6 introduces new regulation 5A which places a requirement on owners to ensure that any advertisement for selling or letting a property includes its energy performance indicator. Regulation 16 introduces new regulation 17A which provides a power to give a penalty charge notice for a failure to meet this advertisement duty and new regulation 18A, introduced by regulation 18, sets out the defence to such a notice.

Regulation 7 amends regulation 6 of the 2008 Regulations by adding further information that is to be included in an energy performance certificate in order to meet the requirements of Article 11 of the 2010 Directive. This regulation also sets out the circumstances where an energy performance certificate does not have to be based on an assessment of the specific property that the certificate is being issued for.

Regulation 11 substitutes a new regulation 9 into the 2008 Regulations to provide for the circumstances when an energy performance certificate must be displayed in a prominent place in a public building. A power to give a penalty notice charge for failure to do so is introduced by regulation 16.

Regulation 12 introduces new regulation 10A which enables the keeper of the register to charge certain fees for entering data onto the register.

Regulation 19(1) ensures that although changes have been made to the matters to be included in an energy performance certificate by these regulations, any certificate issued before 1st October 2012 remains valid for the period of 10 years from its issue. Regulation 19(2) and (3) also enable the procedure for energy performance certificates to be accepted by a verifier to continue in relation to buildings where a building warrant application was made before 9th January 2013.

Regulation 20 of these Regulations makes changes to the 2012 Regulations before they are due to come into force on 1st October 2012. Regulations 4 to 6 are revoked as the changes made by those provisions are replaced by regulations 5, 7(c) and 8 of these Regulations. Regulation 10(3) to be introduced by regulation 7 of the 2012 Regulations is amended to include a reference to “building units”.

SCOTTISH STATUTORY INSTRUMENTS

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