

THE ENERGY PERFORMANCE OF BUILDINGS  
(CERTIFICATES AND INSPECTIONS) (ENGLAND  
AND WALES) REGULATIONS 2007

THE BUILDING ACT 1984

- Commencement dates
- Duties to produce energy performance certificates
- Duties relating to the display of energy certificates and advisory reports
- Regular inspection of air-conditioning systems and ongoing control
- Energy assessors and accreditation schemes
- Register of certificates, recommendation reports and advisory reports
- Enforcement and penalties
- Application to the Crown
- Amendments to the Building Regulations 2000
- Amendments to the Building Regulations 2000 and Building (Approved Inspectors) Regulations 2000

## **INTRODUCTION**

1. I am directed by the Secretary of State to draw your attention to The Energy Performance of Buildings (Certificates And Inspections) (England And Wales) Regulations 2007 (the “Energy Performance Regulations”) which were made on 29 March 2007 and come into force over the period from 19 April 2007 to 1 October 2008. These Regulations implement Articles 7, 9 and 10 of the Energy Performance of Buildings Directive 2002/91/EC (EPBD) in England and Wales. The other substantive articles, Articles 3-6, were implemented on 6 April 2006 by the Building and Approved Inspectors (Amendment) Regulations 2006 (SI 2006/652).
2. The EPBD came into force on 4th January 2003. The objective of the EPBD is to promote the improvement of the energy performance of buildings within the European Community. Implementing the EPBD will encourage owners and tenants to choose energy efficient buildings when seeking new accommodation and to improve the performance of buildings they occupy. Implementation of the Directive is seen as an important contribution to reducing carbon dioxide emissions as part of the UK climate change programme.
3. In accordance with section 14(3) of the Building Act 1984, these Regulations were made after consultation with the Building Regulations Advisory Committee and with other bodies representative of the interests concerned.
4. The purpose of this Circular is to draw the attention of Trading Standards Departments and Building Control Departments to:
  - The Energy Performance of Buildings (Certificates And Inspections) (England And Wales) Regulations 2007;
  - The amendments and the changes they make to the Building Regulations 2000 (the “Building Regulations”) and the Building (Approved Inspectors etc.) Regulations 2000 (the “AI Regulations”); and
  - The Department’s publications giving guidance on ways of complying with these new Regulations.

### **Interpretation of these Regulations**

5. Your attention is drawn to the definitions given in the Energy Performance of Buildings (Certificates And Inspections) (England And Wales) Regulations 2007:
  - in Regulation 2,
  - in Regulation 3,
  - in Regulation 6,
  - in Regulation 7,
  - in Regulation 15,

- in Regulation 20,
- in Regulation 21,
- in Regulation 29,
- in Regulation 30, and
- in Regulation 43(4).

## **THE ENERGY PERFORMANCE OF BUILDINGS (CERTIFICATES AND INSPECTIONS) (ENGLAND AND WALES) REGULATIONS 2007**

### **Introduction**

6. These Regulations implement in England and Wales Articles 7, 9 and 10 of the EPBD:
  - Article 7 requires the production of energy performance certificates (EPCs), recommendation and advisory reports when buildings are constructed, sold or rented out and display energy certificates (DECs) in large buildings occupied by public authorities and certain public institutions;
  - Article 9 requires regular inspection and reporting on the energy performance of air-conditioning systems; and
  - Article 10 requires the use of qualified and/or accredited energy assessors to carry out this work in an independent manner.
7. Note that Article 8 of the EPBD requires Member States to introduce inspection regimes or equivalent provision of advice and information in relation to the energy performance of boilers and heating systems. The Government has chosen the second of these routes, and therefore these Regulations make no provision for Article 8.

### **Part 2 – Duties to produce Energy Performance Certificates**

#### **Energy Performance Certificates**

8. Regulation 4 provides exceptions to the duty to provide an EPC on construction, sale or rent. The exceptions are:
  - Places of worship;
  - Temporary buildings with a planned time of use of 2 years or less;
  - Particular buildings with low energy demand (e.g. as identified in Approved Document L2A 2006); and
  - Stand-alone buildings of less than 50 square metres (except for dwellings).

In addition, under Regulation 7 in certain limited circumstances buildings which are to be demolished are exempt from the duty to produce an EPC on sale.

9. Note that an EPC is not required for any (off-plan) sales or lettings before the construction of the building has been completed, but other requirements imposed by the Home Information Pack Regulations 2007 (“the HIP regulations”) will apply as follows:

- Predicted Energy Assessments will be required from 1 June 2007 until further notice for all dwellings being marketed prior to physical completion, and
- Interim Energy Assessments will be required between 1 June and 30 September 2007 for physically complete new dwellings built to 2006 energy efficiency standards being offered for sale. With effect from 1 October 2007, full EPCs and recommendations reports produced by accredited energy assessors will be required on construction under the Building Regulations, and on sale where the HIP regulations apply.

Anyone (not just accredited energy assessors) can produce Predicted or Interim Energy Assessments, and they do not have to be lodged in the register for EPCs.

10. Regulation 10 requires that the EPC be accompanied by a recommendation report which provides recommendations for the improvement of the energy performance of the building.
11. Regulation 11 sets out the requirements for EPCs. An EPC provides information about the energy performance of the building. The EPC must show the “asset rating” of the building, which is a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building. On EPCs for dwellings, the asset rating will be expressed in two ways: (i) showing the energy efficiency of the building and (ii) showing the environmental impact of the building in terms of carbon dioxide emissions. These are expressed graphically on an A-G scale. Asset ratings are calculated using the methods approved pursuant to regulation 17A of the Building Regulations, taking into account the energy performance of the building’s fabric and its services (i.e. heating, cooling, hot water, ventilation and lighting).
12. EPCs must be no more than 10 years old, except in circumstances where the Housing Act 2004 requires a HIP, in which case a certificate is only valid if it was issued no more than three months before the first day of marketing. The HIP Regulations (in Regulation 4, 17(3), 22(3) and 23(5)) set out when the first day of marketing arises in any particular case.
13. Regulation 11 also sets out how EPCs for apartments or separate units within a building may be based on the assessment of a representative unit. Furthermore, for buildings that are not dwellings, where there is a common heating system the whole building can be certified as one.
14. Regulation 11(5) makes unlawful the identification on EPCs of living persons other than the energy assessor or his employer. Regulation 14 imposes restrictions on the circumstances in which certificates and recommendations reports may be disclosed by recipients and creates a criminal offence for unlawful disclosure. This protects owners and occupiers of any property that may not wish information to be disclosed to third parties, particularly for marketing or other commercial purposes.

## **Sales and rentals of buildings**

15. Regulation 5 requires sellers and prospective landlords to make available an EPC of the property to prospective buyers and tenants at the earliest opportunity. This does not have to be done where the seller or prospective landlord has reasonable grounds to believe that the prospective buyer or tenant cannot afford or is not serious about the transaction. In cases where the EPCs have been made available in ways which did not involve giving out a copy of the EPC, the seller or prospective landlord must ensure that a copy is provided to the ultimate buyer or tenant.
16. Regulation 6 only applies where the Housing Act 2004 imposes a duty on sellers or their agents to have a HIP – in those cases anyone providing written particulars of the property must ensure that the asset ratings of the building, expressed on the A-G scale, is included in the particulars. This can be achieved either by attaching the EPC to the particulars or simply including the graphical A-G ratings by themselves in the particulars. In either case, the recommendations report is not required to be attached to the particulars.
17. Regulation 7 sets out how the requirements to provide EPCs do not apply in certain circumstances where a building is to be demolished.
18. Regulation 12 allows sellers and landlords to produce copies of EPCs as well as originals. Regulation 13 allows electronic copies of EPCs to be produced if the recipient consents.

## **Newly constructed buildings**

19. Regulation 8 and Schedule 2 require EPCs on construction of buildings by amending the Building Regulations (see paragraph 46 onwards). Regulation 9 makes specific provision for EPCs to be produced for Crown buildings and buildings exempt from the Building Regulations by virtue of section 4 of the Building Act 1984, to ensure that the Directive is implemented in relation to all buildings in England and Wales bar the exemptions identified in paragraph 8 above.

## **Part 3 – Display Energy Certificates**

20. A DEC also provides information about the energy performance of the building. A key contrast from the EPC is that the DEC includes a numeric indicator of the amount of energy consumed during the occupation of the building over a 12 month period. These “operational” ratings are to be derived from meter readings. DECs are intended to show the public how well the building is performing. The DEC must also show the asset rating of the building where an EPC has been provided to the occupier.
21. Regulation 16 requires DECs to be displayed by the occupiers of buildings with a total useful floor area over 1,000m<sup>2</sup>, where the occupier is either: (i) a public authority, or (ii) an institution which provides public services to a large number of persons and is frequently visited by those persons. The former will include, for example, buildings occupied by central Government Departments or their agencies. The latter would include, for example, public museums and swimming pools but would exclude hotels and retail outlets. Guidance in establishing whether a DEC is required will be published shortly. The certificate must be displayed prominently in a place that it is clearly visible to members of the public. In addition, Regulation 16 requires occupiers to have in their possession (but not display) an advisory report containing recommendations for the

improvement of the energy performance of the building. Its purpose is to inform occupiers of what improvements could be made so that these can be included in building maintenance and refurbishment programmes which can extend several years into the future.

22. Regulation 16 specifies that the certificates are valid for 12 months, and must be replaced annually. The advisory reports are valid for 7 years.
23. Regulation 17 sets out the requirements for DEC. A DEC must include: (i) the operational rating of the building, on an A-G scale, (ii) the asset rating of the building (if an EPC was provided to the occupier), and (iii) a reference value.
24. Regulation 18 provides alternatives for new occupiers who do not have 12 months' worth of data which is otherwise necessary to produce an operational rating:
  - The operational rating does not have to be included on the DEC during the occupier's first 15 months of occupation;
  - The asset rating does not have to be included where no EPC was provided to the occupier;
  - Until 4 January 2009, where neither the operational rating nor the asset rating can be included in the DEC as set out above, the duty to display the DEC and obtain an advisory report does not apply at all; and
  - On 4 January 2009, where an occupier has been in occupation for less than 15 months and they do not have an EPC, the operational rating for the DEC may be calculated over the period in which they have been in occupation.

#### **Part 4 – Inspection of air-conditioning systems**

25. This Part requires the person who has control of the operation of any air-conditioning systems in a building that have a collective cooling capacity larger than 12kW to ensure the overall system is inspected by an accredited energy assessor at regular intervals not exceeding 5 years. Energy assessors will produce a written inspection report and advice on how to improve the efficiency of the system, the sizing of the system compared to the coding requirements, possible improvement or replacement of the system and possible alternative solutions. This report will be given to the person who has operational control of the air-conditioning system who must keep it and pass it on to new occupiers.
26. Regulation 21 requires the relevant person to ensure that inspections on such systems take place at regular intervals no greater than 5 years, and sets out the phased implementation for this requirement.
27. Regulation 22 sets out the minimum requirements of the written report. Regulation 23 requires the relevant person to keep the most recent report.
28. Regulation 24 requires that from 4th January 2011, if there is a change of responsibility for a system, a new occupier who is not given a report upon handover must ensure an inspection is carried out within three months of arrival.

## **Part 5 – Energy Assessors**

29. Regulation 25 requires that energy assessors who produce EPCs or DECAs or inspect air-conditioning systems must be members of an accreditation scheme approved by the Secretary of State.
30. Regulation 25 also sets out the framework for approving accreditation schemes. The terms on which schemes are approved may limit the categories of building for which members may produce certificates and the types of air-conditioning systems members may inspect. Energy assessors can be members of more than one accreditation scheme if they choose, and accreditation schemes may cover more than one category of building or system.
31. The accreditation scheme is responsible for ensuring that energy assessors are suitably qualified to conduct energy assessments and for ensuring the quality of the assessments and any certificates or reports produced.
32. Regulation 26 requires the energy assessor to declare any personal or business relationship he has with:
  - The person who commissioned the certificate;
  - The person on whose behalf it was commissioned; or
  - Any person with a relationship with either of the people referred to above; or
  - Any person who has an interest in the building itself must also be declared.

This declaration must be included in the EPC.

33. Regulation 27 requires energy assessors to carry out assessments with reasonable care and skill. This is enforceable by the person who commissions the certificate, any prospective or actual owner or tenant, or for DECAs, the occupier of the building.
34. Regulation 28 sets out that any person may make a copy of a document produced by an energy assessor for the purpose of complying with any of the other Regulations.
35. Regulation 29 explains what is covered by the term 'energy assessment'. This includes the preparation of all EPCs and recommendations reports (for dwellings or non-dwellings), DECAs and advisory reports (for public buildings) and inspection reports (for air-conditioning systems). It also covers any inspections carried out in order to produce these certificates.

## **Part 6 – Register of certificates, recommendation reports and advisory reports**

36. Regulation 31 obliges the Secretary of State to maintain one or more register of EPCs, DECAs, recommendations reports and advisory reports. Landmark Solutions have been contracted to operate a register of EPCs and recommendation reports for dwellings. Registers for other EPCs and reports will be established in due course.

37. Regulation 31 also provides that where an energy assessor issues any EPC, recommendation report, DEC or advisory report, he must ensure that it, and the data that was collected to produce it, is entered onto the relevant register. Certificates will have a unique reference number.
38. Regulations 33 to 37 set out the rules controlling disclosure of EPCs and recommendation reports on the register to legitimate interested parties, accreditation schemes, enforcement authorities and officials from Communities and Local Government.

## **Part 7 – Enforcement**

39. Regulation 38 imposes a duty on local weights and measures authorities to enforce the duties relating to EPCs and recommendations reports on sale and rent, DEC and advisory reports, and air-conditioning inspections.
40. Regulation 39 gives authorised officers of an enforcement authority the power to require the production of the relevant documents for inspection and to take copies of any documents produced for inspection. Regulation 40 empowers enforcement authorities to issue penalty charge notices for any breach. Regulation 41 prevents penalty charges being imposed under these Regulations and the HIPs Regulations for the same offence in relation to a particular building. Regulation 42 makes provision for extenuating circumstances, for example where a certificate was ordered in good time but did not turn up or where tenants have to be relocated urgently.
41. Regulation 43 specifies the level of penalties for each type of breach. The penalty for breaches of duties relating to the sale or renting out of a dwelling is £200. The penalty for breaches of duties relating to the sale or renting out of a commercial building is variable depending upon the rateable value of the property, subject to minimum and maximum penalties of £500 and £5,000. The penalty for failing to display a DEC is £500, and for failing to obtain an advisory report is £1,000. The penalty for failing to have an air-conditioning system inspected has been fixed at £300.
42. The requirement to produce EPCs on construction will be enforced through the existing building control procedures which already apply to the construction of new buildings. Regulation 17 of the Building Regulations is amended (by paragraph 1(6) of Schedule 2) so that a local authority will be unable to issue a completion certificate unless they are satisfied an EPC has been produced. Where an approved inspector is the building control body, the approved inspector will be obliged to ensure that the requirements are complied with in the same way as any other requirement in Building Regulations. Where a person fails to comply with the requirement to produce an EPC on construction the approved inspector will be obliged, in accordance with section 52(1)(c) of the Building Act 1984, to cancel the initial notice and control of the building work will revert to the local authority.
43. Regulation 44 sets out procedures for reviews of penalty charge notices. Notices must be withdrawn where the enforcement authority is not satisfied that the recipient committed the breach, that the notice was not issued in the time allowed by Regulation 40, or that in the circumstances of the case it was not appropriate to issue the penalty. Regulation 45 deals with appeals to the county court. The county court can either

uphold or quash the notice. Regulation 46 sets out the procedures by which the enforcement authority will recover penalty charges, and Regulation 47 sets out how penalty charge notices can be served.

44. Regulation 48 makes it a criminal offence to obstruct an enforcement officer going about their duty.

#### **Part 8 – Miscellaneous**

45. 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.

#### **AMENDMENTS RELATING TO THE BUILDING REGULATIONS 2000 AND THE BUILDING (APPROVED INSPECTORS ETC) REGULATIONS 2000**

46. Schedule 2 amends the Building Regulations with the following effect. Regulation 17A, which implements Article 3 of the Directive, is amended to require the Secretary of State to approve methods of calculating asset ratings and operational ratings of buildings as part of the methodology of calculation of the energy performance of buildings, and ways in which the energy performance of a building shall be expressed. The Secretary of State's approvals will be conveyed by a separate Departmental publication that will replace Annex I to DCLG Circular 02/2006.
47. Regulation 17E is inserted into the Building Regulations, which requires EPCs to be produced when a building is erected or an existing building undergoes major modifications so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification involves the provision or extension of any of the fixed heating, hot water, air-conditioning or mechanical ventilation. Regulations 17F to 17J are inserted to mirror the equivalent provisions in the Energy Performance Regulations dealing with the content of EPCs, energy assessors, and the approval of accreditation schemes.
48. Regulation 16 is revoked as it is superseded by the requirement to produce an EPC.
49. Regulation 12 of the AI Regulations is substituted by the requirement to produce an EPC.

#### **COMMENCEMENT**

50. The Regulations come into force over the period from 19th April 2007 to 1 October 2008 in stages as specified in Schedule 1.
51. The new duties will start to apply on the following dates:

1 June 2007	EPCs required for the sale of existing dwellings where a HIP is required under the Housing Act 2004 (other than dwellings built to 2006 standards)
1 October 2007	EPCs required on construction for all dwellings EPCs required on the sale of dwellings built to 2006 standards.
6 April 2008	EPCs required for the sale or rent of buildings other than dwellings with a floor area over 500 m <sup>2</sup> EPCs required on construction for all non-dwellings Display certificates required for all public buildings >1,000 m <sup>2</sup>
1 October 2008	EPCs required on the sale or rent of all remaining dwellings EPCs required on the sale or rent of all remaining buildings other than dwellings.
4 January 2009	First inspection of all existing systems over 250 kW must have occurred by this date.
4 January 2011	First inspection of all remaining systems over 12 kW must have occurred by this date.

### **TRANSITIONAL PROVISIONS**

52. The Regulations (including the requirement to produce an EPC on construction) apply from the relevant date as set out above regardless of when construction work commenced or plans were approved.
53. Regulation 18 sets out the transitional provision relating to the display of DEC's. In the period up to 3 January 2009, where the occupier does not have an EPC and has been in occupation of the building for less than 15 months, the duty to display a DEC does not apply. On and after 4 January 2009, if the occupier still has not been in occupation for more than 15 months, they must display a DEC which shows the operational rating for the building calculated over the period in which they have been in occupation.

### **GUIDANCE DOCUMENTS**

54. The Department is preparing guidance documents to assist duty holders and enforcers in the discharge of their duties. This will include:
  - Guidance and criteria for accreditation schemes, technical guidance on methodologies, advice on boiler use, and guidance for enforcement agencies;
  - General information on the Directive and its application and purpose in different sectors, through the Communities and Local Government website; and
  - Public information leaflets (as part of a wider publicity campaign) for all those with duties under EPBD, including homeowners, landlords and tenants, commercial building owners and occupiers, air-conditioning system operators and boiler users.

## **ENQUIRIES**

All enquiries on matters covered by this Circular should be addressed to:

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Signed

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