

2008 No. 647

BUILDING AND BUILDINGS, ENGLAND AND WALES

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008

<i>Made</i>	- - - -	<i>6th March 2008</i>
<i>Laid before Parliament</i>		<i>13th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the energy performance of buildings. She makes the following regulations in exercise of the powers conferred by that section and by section 1(1)(c) of, and paragraphs 8(d) and 10 of Schedule 1 to, the Building Act 1984(e).

Citation, extent and commencement

1.—(1) These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2008.

(2) These Regulations extend to England and Wales.

(3) These Regulations shall come into force on 6th April 2008.

Amendments to the principal regulations

2.—(1) The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(f) are amended as follows.

(2) In regulation 14 (purposes for which certificates and recommendation reports may be disclosed), after paragraph (2)(e), insert—

“(ee) where the disclosure is by or to a local authority for a purpose legitimately connected to their duty under section 91 of the Building Act 1984(g);”.

(3) For regulation 32 (fees for entering documents on the register), substitute—

“**32.**—(1) The keeper of the register may charge the following fees for entering documents on the register—

(a) S.I. 2004/3328.

(b) 1972 c. 68.

(c) Section 1(1) was amended by section 1 of the Sustainable and Secure Buildings Act 2004 (c.22).

(d) Paragraph 8 was amended by section 3(1) (6) and (7) of the Sustainable and Secure Buildings Act 2004.

(e) 1984 c. 55.

(f) S.I. 2007/991, amended by S.I. 2007/1669 and S.I. 2007/3302.

(g) Section 91 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51).

- (a) for entering an energy performance certificate and recommendation report which relate to a dwelling under regulation 31(1)(a), a fee of £1.15;
- (b) for entering an energy performance certificate and recommendation report which relate to any other type of building under regulation 31(1)(a), a fee of £5.36;
- (c) for entering a display energy certificate under regulation 31(1)(b), a fee of £5.36; and
- (d) for entering both a display energy certificate under regulation 31(1)(b) and an advisory report under regulation 31(1)(c), a fee of £5.36.”.

(4) At the end of regulation 36 (disclosures to enforcement authorities), insert “or to an authorised officer of a local authority”.

(5) After regulation 50 (duty to cooperate), insert—

“Transitional arrangements – property on market at commencement

51.—(1) Subject to paragraphs (7) to (9), regulation 5 does not impose any duty in relation to a building to which this regulation applies.

(2) This regulation applies to a building where—

- (a) the building is not one in respect of which a duty under section 155(1) or 159(2) of the Housing Act 2004^(a) applies to any person;
- (b) the building is put on the market by or on behalf of a relevant person before the commencement date;
- (c) action taken at any time before the commencement date by or on behalf of the relevant person, made public the fact that the building was on the market;
- (d) such action was taken with the intention of selling or letting the building before the commencement date;
- (e) such action was sustained to a reasonable extent after it was put on the market and until the commencement date; and
- (f) on the commencement date, the building remains on the market.

(3) A building is put on the market when the fact that the building is or may be available for sale or rent is, with the intention of marketing the building on the property market in England and Wales, first made public in England and Wales by or on behalf of the relevant person.

(4) A fact is made public when it is advertised or otherwise communicated (in whatever form and by whatever means) to the public or to a section of the public.

(5) Where paragraph (1) applies, when contracts are entered into for the sale or rental of the building, the relevant person must, if it has not already been done—

- (a) make a request which complies with regulation 42(2) for an energy performance certificate as soon as reasonably practicable;
- (b) make all reasonable efforts to obtain an energy performance certificate as soon as reasonably practicable; and
- (c) when an energy performance certificate is obtained, ensure that it is given free of charge to the person who has bought or rented the building.

(6) Where paragraph (5) applies, all the provisions of these Regulations, except regulations 5(2) and 5(5) shall have effect in relation to the duty imposed by paragraph (5) as if it were a duty under regulation 5(2) or 5(5).

(7) Subject to paragraphs (8) and (9), this regulation, other than this paragraph, ceases to apply to a building—

- (a) when it is taken off the market, or

(a) 2004 c. 34.

(b) on 1st October 2008,
whichever occurs first.

(8) Notwithstanding paragraph (7)(a), this regulation does apply to a building in cases where, after the building has been taken off the market, it is put back on the market on or after the commencement date—

(a) after the seller or prospective landlord had accepted an offer to buy or rent the building; and

(b) within 28 days of that offer being withdrawn or its acceptance repudiated.

(9) Notwithstanding paragraph (7)(b), where a contract has been entered into for the sale or rent of a building to which this regulation applies before 1st October 2008, paragraph (5) will continue to apply in relation to that transaction.

(10) In this regulation, “commencement date” means the date set out in column 2 of the table in Schedule 1 for the coming into force of regulation 5 in relation to the building.”

(6) In paragraph 13(a) of the table in Schedule 1, for “7(2)”, substitute “7”.

Signed by authority of the Secretary of State for Communities and Local Government

Kay Andrews

Parliamentary Under Secretary of State

Department for Communities and Local Government

6th March 2008

(a) Paragraph 13 was substituted by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No. 2) Regulations 2007 (S.I. 2007/3302).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the principal regulations”) in relation to various requirements related to energy performance certificates and recommendation reports. The principal regulations implement Articles 7 (energy performance certificate), and 10 (independent experts) of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the Energy Performance of Buildings (OJ No L 1 4.1.2003 p.65).

Regulations 2(2) and 2(4) amend regulations 14 and 36 of the principal regulations to provide access to the register of energy performance certificates and associated documents for local authorities and to allow disclosures of the information contained in it by and to those authorities. This is to ensure that local authorities can carry out their duty to enforce those parts of the building regulations which provide for energy performance certificates on construction.

Regulation 2(3) amends regulation 32 of the principal regulations to provide for different fees for entering different types of document on the register.

The principal regulations provide for phased commencement of the requirement to have an energy performance certificate. Regulation 2(5) inserts transitional arrangements which last until a building is taken off the market or until 1st October 2008, whichever occurs first. It provides that, for future phases, no energy performance certificate need be made available for buildings which are on the market at the date of commencement of the requirement for so long as they are continuously marketed. An exemption also applies if buildings are put back on the market following withdrawal or rejection of an offer within 28 days. An energy performance certificate must be requested when contracts are entered into for a sale or rental of such a building and supplied to the new owner when received.

Regulation 2(6) corrects an error made in the previous amending regulations to ensure that paragraphs (1) and (3) of regulation 7 of the principal regulations are ultimately brought into force in respect of all categories of building.

A transposition note setting out how these Regulations implement the Directive and an impact assessment of the effect that these Regulations will have on the costs of business and the public and voluntary sectors are available from the Department for Communities and Local Government website or from the Sustainable Buildings Division of the Department (Tel: 020 7944 8324; Fax: 020 7944 5719; e-mail: enquiries.br@communities.gsi.gov.uk). A copy is also annexed to the explanatory memorandum to these Regulations which is available alongside the Regulations on the OPSI website at www.opsi.gov.uk.

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E2152 3/2008 182152T 19585