

2013 No. 12

EUROPEAN COMMUNITIES

The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013

Made - - - - *21st January 2013*

Coming into operation - *18th February 2013*

The Department of Finance and Personnel, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the environment and in exercise of the powers conferred by section 2(2) of the said Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2013 and shall come into operation on 18th February 2013.

Interpretation

2. In these Regulations “the Principal Regulations” means the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008(c).

Amendments to Regulation 2 (Interpretation) of the Principal Regulations

3. Regulation 2(1) of the Principal Regulations is amended as follows—

(a) For the definition of “building” substitute—

““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 building unit;”.

(b) After the definition of “building” insert—

““building envelope” means the integrated elements of a building which separate its interior from the outdoor environment;

“building unit” means a section, floor or apartment within a building which is designed or altered to be used separately;

“commercial media” means any material produced specific to a building, on any medium, with the intention of advertising the building for sale or rent;”.

(a) S.I. 2008 No. 301

(b) 1972 c. 68

(c) S.R. 2008 No. 170, as amended by S.R. 2008 No. 241 and S.R. 2009 No. 369

- (c) In the definition of “energy performance certificate” after “8” insert “and includes a recommendation report”.
- (d) After the definition of “energy performance certificate” insert—
 - ““excluded building” means a building owned, occupied or used from time to time by or for the purposes of—
 - (a) national security;
 - (b) any of the armed forces;
 - (c) the Royal Family;
 - (d) a prison; or
 - (e) a young offenders institution;”.
- (e) After the definition of “inspection report” insert—
 - ““issued” means entered onto the relevant register of documents in accordance with regulation 25(2);
 - “major renovation” means the renovation of a building where more than 25% of the surface of the building envelope undergoes renovation;”.
- (f) After the definition of “operational rating” insert—
 - ““opt-out” means—
 - (a) the owner or occupier of a building to which a document relates has notified the keeper of the register that the data is not to be disclosed;
 - (b) the notice was given in writing, or by electronic communication sent to an address or location specified by the keeper of the register for the purpose of the receipt of such notices; and
 - (c) the notice has not been withdrawn by the owner or occupier (by the means referred to in paragraph (b));”.
- (g) For the definition of “recommendation report” substitute—
 - ““recommendation report” means a report included in the energy performance certificate that contains recommendations for the cost-effective improvement of the energy performance of the building;”.
- (h) After the definition of “relevant person” insert—
 - ““technical building system” means technical equipment for the heating, cooling, ventilation, hot water, lighting or for a combination thereof, of a building;” and
 - “total useful floor area” means the total area of all enclosed spaces measured to the inside face of the external walls, that is, the gross floor area, and in the case of sloping surfaces such as staircases, galleries, raked auditoria and tiered terraces shall be taken as their area on plan but shall exclude areas that are not enclosed such as open floors, covered ways and balconies.”.

Amendments to Regulation 4 (Application of Part 2) of the Principal Regulations

4.—(1) In regulation 4(1)(a) of the Principal Regulations for “buildings that are used primarily or solely as places of worship;” substitute “buildings used as places of worship and for religious activities;”.

- (2) In regulation 4(1)(b) delete “planned”.
- (3) In regulation 4(1)(c) after “demand” delete “and”.
- (4) In regulation 4(1)(d) for “.” substitute “; and”.
- (5) After regulation 4(1)(d) insert—
 - “(e) non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance.”.

Amendments to Regulation 5 (Energy performance certificates on sale and rent) of the Principal Regulations

5.—(1) After regulation 5(1) insert—

“(1A) Before a building is made available for sale or rent, the relevant person shall ensure that an energy performance certificate is issued for the building.”.

(2) For regulation 5(2) substitute—

“(2) The relevant person or a person acting on his behalf shall show, free of charge, a valid energy performance certificate to any prospective buyer or tenant when the prospective buyer or tenant first makes an enquiry about a building.”.

(3) For regulation 5(4) substitute—

“(4) This regulation does not apply in relation to a building that is to be sold or rented out where the relevant person can show that following the sale or rental, the building is to be demolished or subject to a major renovation or he believes on reasonable grounds that the prospective buyer or tenant of the building intends to demolish the building or undertake a major renovation of the building.”.

(4) After regulation 5 insert—

“Energy performance indicator on marketing

5A.—(1) This regulation applies where a building is offered for sale or rent.

(2) The relevant person, or where a person is acting on his behalf that person, shall ensure that the energy performance indicator of the building as expressed in the energy performance certificate is stated in any advertisement for sale or rent of the building in commercial media.

(3) The energy performance indicator shall be in a form approved by the Department.”.

Amendments to Regulation 6 (Energy performance certificates on construction) of the Principal Regulations

6.—(1) In regulation 6(1) for “2000(a)” substitute “2012(a)” and for “A5(1)(b) and (c)” substitute “4(2)(b) and (c)”.

(2) In regulation 6(1)(a) after “;” delete “or”.

(3) After regulation 6(1)(a) insert “(aa) a building has undergone a major renovation and was exempt under regulation 5(4); or”.

Amendment to Regulation 7 (Recommendation reports) of the Principal Regulations

7. Regulation 7 shall be deleted.

Amendments to Regulation 8 (Energy performance certificates) of the Principal Regulations

8.—(1) After regulation 8(5) insert—

“(6) Certificates for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the energy assessor issuing the energy performance certificate.”.

(2) After regulation 8 insert—

(a) S.R. 2012 No. 192 as amended by S.R. 2012 No. 375

“Display of energy performance certificates

8A.—(1) This regulation applies from 18th February 2013 to a building, other than a dwelling, which satisfies the following requirements—

- (a) it has a total useful floor area of more than 500m²; and
- (b) it is frequently visited by the public.

(2) Where a valid energy performance certificate has been issued pursuant to regulation 5 for a building to which this regulation applies, the occupier shall ensure that the certificate shall be displayed in the building in a prominent place clearly visible to the public who visit the building.”.

Amendments to Regulation 9 (Production of copies of energy performance certificates) of the Principal Regulations

9. On each occasion where it occurs, for “make available” substitute “show”.

Amendments to Regulation 10 (Purposes for which certificates and recommendation reports may be disclosed) of the Principal Regulations

10.—(1) In regulation 10(2)(h)(iii) after “legal rights;” delete “or”.

(2) In regulation 10(2)(h)(iv) for “.” substitute “; or”.

(3) After regulation 10(2)(h)(iv) insert—

- “(v) providing any document or data to an accredited energy assessor solely where he has been engaged by a relevant person for a purpose legitimately connected with the assessment of the energy performance of a building.”.

Amendment to Regulation 11 (Duties relating to display energy certificates and advisory reports) of the Principal Regulations

11. For regulation 11 substitute—

“**11.**—(1) This regulation applies from the specified date to buildings occupied by public authorities and frequently visited by the public.

(2) In this regulation the specified date is—

- (a) for buildings with a total useful floor area over 500m², 18th February 2013; and
- (b) for buildings with a total useful floor area over 250m², 9th July 2015.

(3) The occupier of any building to which this regulation applies shall—

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

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

(5) An advisory report is valid for a period of 7 years beginning on the date it is issued.

(6) An advisory report shall be issued no longer than 28 days following the date of assessment by an energy assessor.”.

Amendments to Regulation 16 (Inspection reports) of the Principal Regulations

12.—(1) In regulation 16(3) after “shall” insert “be in a form and shall”.

(2) After regulation 16(3)(a) insert—

- “(aa) the unique reference number under which the certificate has been registered in accordance with regulation 25”.

Amendments to Regulation 25 (Registration of certificates etc.) of the Principal Regulations

13. In regulation 25—

- (a) subparagraph (1)(b) delete “and”;
- (b) subparagraph (1)(c) for “.” substitute “; and”; and
- (c) after subparagraph (1)(c) insert—
 - “(d) inspection reports.”.

Amendment to Regulation 27 (Disclosures with reference number) of the Principal Regulations

14. After regulation 27 insert—

“Disclosures with address

27A.—(1) The keeper of the register may disclose a document to any person if the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) a request for disclosure of the document has been made by means of a website operated by the keeper;
- (b) the request includes—
 - (i) the full postal address (excluding the postcode) of the particular building to which the document relates;
 - (ii) the full postcode of that building; or
 - (iii) the name of the road or street on which, and the name of the city, town, village or townland in which, the building is located;
- (c) where the request is for a document other than a display energy certificate, there is no opt-out in effect in respect of the document;
- (d) the particular building to which the document relates is not an excluded building; and
- (e) the person requesting the document has not reached such limit for searches as may be imposed by the Department.

(3) 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 document requested, which was registered at any time during the period of 10 years prior to the date of the request.”.

Amendment to Regulation 30 (Disclosures to the Department) of the Principal Regulations

15. For Regulation 30 substitute—

“30.—(1) The keeper of the register may disclose any document or data to the Department—

- (a) for the purpose of enabling the Department to monitor the application and enforcement of, and compliance with, the duties imposed by these Regulations; and
- (b) in relation to buildings occupied by public authorities, for the purpose of raising awareness of the energy performance of such buildings.

(2) The keeper of the register may disclose any document or data to the Department either for its own use or for the use of other Departments and Public Authorities—

- (a) for statistical or research purposes; or
 - (b) for the purpose of providing impartial advice on improving the energy performance of buildings;
- provided that a property for which an opt-out is in effect or a building that is an excluded building is not identifiable from the data or document disclosed.”.

Amendments to Regulation 31 (Enforcement authorities) of the Principal Regulations

16. In regulation 31(2)—

- (a) after “5(3),” insert “5A(2),”;
- (b) delete “7, 11(2),” and insert “8A(2), 11(3), 11(6),”;
- (c) after “15(1),” insert “15(2),”;
- (d) for “and” substitute “,”; and
- (e) after “32(4)” delete “.” and insert “and 42(2)(c).”.

Amendments to Regulation 32 (Power to require production of documents) of the Principal Regulations

17.—(1) In regulation 32(1)—

- (a) after “5(3),” insert “5A(2),”;
- (b) delete “7, 11(2),” and insert “8A(2), 11(3), 11(6),”;
- (c) after “15(1),” insert “15(2),”
- (d) for “or” substitute “,”; and
- (e) after “32(4)” insert “or 42(2)(c)”.

(2) In regulation 32(1)(b) delete “and”.

(3) In regulation 32(1)(c) for “.” substitute “,”; and”.

(4) After regulation 32(1)(c) insert—

“(d) evidence that the data has been provided to the occupier as required by regulation 42(2)(c).”

Amendments to Regulation 33 (Penalty charge notices) of the Principal Regulations

18. In regulation 33(1)—

- (a) after “5(3),” insert “5A(2),”;
- (b) delete “7, 11(2),” and insert “8A(2), 11(3), 11(6),”;
- (c) after “15(1),” insert “15(2),”;
- (d) for “or” substitute “,”; and
- (e) after “32(4)” insert “or 42(2)(c),”.

Amendments to Regulation 34 (Defence where an energy performance certificate is unobtainable) in the Principal Regulations

19.—(1) In regulation 34(1) after the word “person” insert “or a person acting on his behalf”.

(2) In regulation 34(1)(a) for “he made” substitute “the relevant person made”.

(3) In regulation 34(1)(b) for “make available” substitute “show”.

(4) In regulation 34(1)(b)(iv) after “person” insert “or a person acting on his behalf”.

(5) In regulation 34(3) after the word “person” insert “or person acting on his behalf” and for “made an energy performance certificate available” substitute “shown an energy performance certificate”.

Amendments to Regulation 35 (Penalty amount) of the Principal Regulations

20.—(1) In regulation 35(1)(a) after “regulation” delete “5(2), 5(3), 6(2) or 7” and insert “5(2), 5(3) or 6(2),”.

(2) In regulation 35(1)(b) after “regulation” delete “11(2)(a),” and insert “8A(2), 11(3)(a) or 42(2)(c),”.

(3) In regulation 35(1)(c) after “regulation” delete “11(2)(b),” and insert “11(3)(b) or 11(6),”.

(4) In regulation 35(1)(d) after “15(1),” insert “15(2)”.

(5) In regulation 35(1)(e) after “regulation” insert “5A(2) or”.

Amendments to Regulation 42 (Duty to cooperate) of the Principal Regulations

21.—(1) In regulation 42(1)(a) for “make available” substitute “show”.

(2) In regulation 42(2)(a) delete “and”.

(3) In regulation 42(2)(b) for “.” substitute “; and”.

(4) After regulation 42(2)(b) insert—

“(c) provide the occupier with the data necessary to comply with the duty in regulation 11(3) where the cost of energy is paid by the landlord or a person acting on his behalf and is included in a charge to the occupier.”.

Sealed with the Official Seal of the Department of Finance and Personnel on 21st January 2013.



Philip Irwin
A senior officer of the
Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (“the Principal Regulations”). The Principal Regulations implemented the provisions of Articles 7, 9 and 10 of Directive 2002/91/EC of the European Parliament of 16 December 2002 on the energy performance of buildings (“the 2002 Directive”). These Regulations implement new requirements of Articles 4(2), 11, 12, 13, 16 and of 27 of the recast Directive 2010/31/EU of the European Parliament of 19 May 2010 on the energy performance of buildings (“the recast Directive”).

Regulation 3 amends or inserts new definitions to implement new definitions from Article 2 of the recast Directive and to clarify the provisions of the Principal Regulations.

Regulation 4 amends regulation 4 of the Principal Regulations to reflect changes in relation to buildings to which energy performance certificate requirements do not apply, in accordance with requirements in Article 4 of the recast Directive.

Regulation 5 amends regulation 5 of the Principal Regulations to require an energy performance certificate to be lodged on the register before a building is marketed for sale or rent and that it is shown to a prospective buyer or tenant. It extends the exemption for buildings which can be shown to be subject to demolition following sale or rent to include buildings which will be subject to a major renovation. A new regulation 5A is inserted to require the inclusion of the energy performance indicator on all commercial media produced for a building.

Regulation 6 amends regulation 6 of the Principal Regulations to update references to the Building Regulations (Northern Ireland) 2012. Where it has been shown at the time of sale or rent that a building will undergo a major renovation and it is therefore exempt from having an energy performance certificate, once that major renovation has been completed an energy performance certificate must be produced for the building.

Regulation 7 removes regulation 7 from the Principal Regulations.

Regulation 8 amends regulation 8 of the Principal Regulations to update references to provide for the assessment of single family houses based on the assessment of another representative building of similar design and size with a similar energy performance. A new regulation 8A is inserted to require the display of energy performance certificates in buildings (other than dwellings) with a total useful floor area of more than 500m² which are frequently visited by the public where such a certificate has already been issued.

Regulation 9 amends regulation 9 of the Principal Regulations to require the relevant person to show, rather than make available, a copy of the energy performance certificate.

Regulation 10 amends regulation 10 of the Principal Regulations to provide for the keeper of the register to release any document or data to an accredited energy assessor engaged for a purpose legitimately connected with the assessment of the building.

Regulation 11 replaces regulation 11 of the Principal Regulations to extend, to progressively smaller public buildings, the requirement to display a display energy certificate. A requirement to lodge advisory reports on the register within 28 days following assessment of the building is introduced.

Regulation 12 amends regulation 16 of the Principal Regulations to require inspection reports to be in a form and to include the unique reference number.

Regulation 13 amends regulation 25 of the Principal Regulations to require the lodgement of inspection reports on the Northern Ireland Register.

Regulation 14 inserts a new Regulation 27A to permit the keeper of the register to disclose documents on request except where an opt-out is in effect, the building is an excluded building, or where a person has not reached the limit for searches as may be set by the Department.

Regulation 15 replaces regulation 30 of the Principal Regulations to permit the keeper of the register to disclose documents or data to the Department, other Departments and public authorities for certain purposes.

Regulations 16, 17 and 18 amend regulations 31, 32 and 33 respectively of the Principal Regulations to include offences and penalty provisions relating to first air-conditioning inspections (regulation 15(2) of the Principal Regulations); having the energy performance indicator on commercial media (regulation 5A); displaying energy performance certificates (regulation 8A); failure to lodge an advisory report (regulation 11(6)); and failure to provide data under regulation 42(2)(c)

Regulation 19 amends regulation 34 of the Principal Regulations to include a person acting on behalf of a relevant person in the provisions relating to a defence when an energy performance certificate is unavailable.

Regulation 20 amends regulation 35 of the Principal Regulations to define penalty charge amounts for new breaches of duty introduced by these regulations.

Regulation 21 amends regulation 42 of the Principal Regulations to require landlords of buildings occupied by public authorities to provide the energy data necessary to produce a valid display energy certificate, where the energy costs are paid by the landlord and included in an overall service charge for the building.

A Regulatory Impact Assessment and a Transposition Note have been prepared. Copies may be obtained on request from the Energy Performance Unit, Building Standards Branch, Department of Finance and Personnel, Level 5 Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG. Alternatively, copies may be downloaded from www.epb.dfpni.gov.uk.

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