



Energy Performance Certificates – what’s new?

Two new Scottish statutory instruments have been published which make changes to the EPC regime in order to transpose provisions of Directive 2010/31/EU (relating to Energy Performance Certificates) into Scots law.

1. The Energy Performance of Buildings (Scotland) Amendment Regulations 2012 (6 June)

- Recommendations report
Regulations 3 to 6 make amendments providing for a ‘recommendations report’ giving more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate. A copy of the recommendations report is to be made available to the prospective buyer or tenant where the building is to be sold or let. *(These provisions have already been replaced by the second statutory instrument –see below.)*
- Registration
Regulations 7 to 11 make amendments relating to registration of EPCs so that it is now data rather than the actual certificate itself which requires to be registered.

2. The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 (26 June)

- Building units
The term ‘building unit’ is introduced in to the regulations so that the regulations now apply to both buildings and building units. ‘Building unit’ is defined in Article 2 of the 2010 Directive as:

“a section, floor or apartment within a building which is designed or altered to be used separately”
- Actual buyer
Regulation 5 (which replaces regulation 5 of the 2008 Regulations) provides that a copy of the EPC (and recommendation report) must be made available to **both** a prospective buyer or tenant **and** the actual buyer or tenant. Previously the regulations only referred to a prospective buyer or tenant.



- Lease extensions
Regulation 5(4) makes it clear that an EPC is not required for an extension of a lease with the same tenant. However, the regulations remain silent as to whether EPCs are required for assignments.
- Advertisements and energy performance indicators
A definition of 'energy performance indicators' is introduced as an indication of the energy efficiency of the building (or building unit) expressed on a sliding scale of A to G. Regulation 6 inserts a new regulation 5A into the 2008 regulations providing that adverts in commercial media must include the energy performance indicators for the building (or building unit) and provides a definition of what constitutes an 'advertisement in commercial media'. Regulation 16 also introduces a new regulation 17A which provides for the application of penalty charges on the breach of the advertisement requirements.
- Further Information included in EPCs
Regulation 7 amends regulation 6 of the 2008 regulations to require that energy performance indicators and a numerical indicator of primary energy use are included on the EPC. It also provides further detail on the recommendations to be given in the certificate including the proviso that they should be "technically feasible".
- Certificate based on alternative property
Regulation 7 also makes amendments to regulation 6 of the 2008 regulations in respect of the situations in which a certificate for a property can be based on an alternative representative property. An alternative unit in a building can now be used as a basis for a certificate where it shares the same "energy relevant characteristics" as the unit for which the certificate is being obtained (the previous reference to a common heating system has been removed). Specific provision is now also made for the certificate for a house to be based on an alternative house of "similar design, size and actual energy performance quality".
- Recommendations Report
In addition to providing for a recommendations report per the first 2012 regulations (above), the second set of regulations (which replace the first in this respect) provide that the report should include the steps which require to be taken to implement the recommendations.
- Display of Energy Performance Certificates
The 2008 regulations provide that the owner or occupier of a public building of more than 1000m² must display the EPC in a prominent place. From 9th of January 2013 the requirement to display the EPC will apply to public buildings of

more than 500m² and from 9th July 2015 it will apply to public buildings of more than 250m². A new regulation 17B is also introduced into the 2008 regulations to make provision for penalty charges in the case of a breach of the requirement to display certificates.

- Registration fees
Regulation 12 inserts a new regulation 10A into the 2008 regulations which allows the keeper of the register to charge fees relating to entering the data required to produce an EPC and recommendations report (£1.15 for residential and £5.36 for non-residential).
- Existing certificates
In terms of Regulation 19, despite the amendments, EPCs issued before 1 October 2012 will remain valid for 10 years.

The provisions come into force on 1 October 2012 except those relating to advertising and the display of EPCs in public buildings which come into force on the 9 January 2013.

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