

## **Explanatory Memorandum To**

### **The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (S.R. 2008 No. 170)**

#### **1. Background**

- 1.1 This explanatory memorandum has been prepared by the Department of Finance and Personnel (“the Department”).
- 1.2 This memorandum contains information for the Departmental Committee.

#### **2. Powers and Assembly control**

- 2.1 These Regulations are made under Article 2(2) of the European Communities Act 1972 and are subject to negative resolution procedure before the Assembly.

#### **3. Commencement Date**

- 3.1 These Regulations were made on 10 April 2008, coming into effect for sales of existing dwellings on 30 June 2008, for new buildings on 30 September 2008 and for the rental sector and for sales of non-domestic buildings on 31 December 2008. Display Energy Certificates will also be required from 31 December 2008 for public buildings over 1000m<sup>2</sup> and institutions that provide a public service and are therefore frequented by members of the public.
- 3.2 The commencement date for air-conditioning systems depends on when the system was first put into service with a five year period for systems put in place after 30 December 2008 and for systems put in place before 30 December 2008 either 4 January 2010 (rated output more than 250 kW) or 4 January 2012 (rated output not more than 250 kW).

## **4 Policy Background**

- 4.1 The EU Directive on the Energy Performance of Buildings (2002/91/EC) was brought into force on 16 December 2002. The objective is to promote the energy performance of buildings within the European Community taking into account outdoor climatic and local conditions as well as indoor climate requirements and cost-effectiveness.
- 4.2 Each Member State is required to transpose the provisions into national law by 4 January 2006. However, the Directive permits a derogation of three years (up to 4 January 2009) where a Member State has identified a lack of qualified and/or accredited experts to carry out energy assessments and to produce energy performance certificates (EPCs) according to the provisions of Articles 7,8 and 9.
- 4.3 The Regulations will implement Articles 7 (energy performance certificate), 9 (inspection of air-conditioning systems) and 10 (independent experts) of the Directive. Article 8 (inspection of boilers) will be implemented, as permitted by Article 8(b) of the Directive, by the provision of professional advice.
- 4.4 All Member States are required to make implementing legislation to satisfy the requirements of the Directive. Accordingly, the Department has requested and received Executive approval not to hold further public consultation.

## **5 Description of Provisions**

- 5.1 The Regulations establish the requirement for the production of EPCs when buildings are constructed, sold or rented out, display of display energy certificates (DECs) in large public buildings providing a public service, and regular inspections of air-conditioning systems.

- 5.2 Part 2 of these Regulations implements Articles 7(1) and (2) of the Directive, and requires that EPCs are made available to prospective buyers and tenants at the earliest opportunity when buildings are constructed, sold or rented out.
- 5.3 Regulation 6 requires a person responsible for having construction work carried out, when a building is constructed or modified, to make available an EPC to the owner of the building not more than five days after the work has been completed.
- 5.4 EPCs shall be accompanied by recommendation reports for the improvement of the energy performance of the building (regulation 7) and shall be no more than 10 years old (regulation 8).
- 5.5 Regulation 10 imposes restrictions on the circumstances in which certificates and recommendation reports may be disclosed, and creates an offence for unlawful disclosure.
- 5.6 Part 3 implements Article 7(3) of the Directive to require the display of display energy certificates (DECs) by public authorities. Regulation 11 requires that these institutions must also obtain an advisory report containing recommendations for the improvement of the energy performance of the building. The advisory report is valid for a period of 7 years from the date it was issued. The DEC shall be no more than 12 months old (regulation 12).
- 5.7 Part 4 implements Article 9 of the Directive to require that the person who has control of the operation of an air-conditioning system ensures that inspections are conducted at regular intervals not exceeding 5 years (regulation 15). Regulations 16 and 17 set out the minimum requirements for inspection reports and the keeping of these reports.
- 5.8 Part 5 implements Article 10 of the Directive. Energy assessors who produce EPCs, DECs or who inspect air-conditioning systems shall be members of an accreditation scheme approved by the Department (regulation 19).

- 5.9 Regulation 20 imposes a duty on an energy assessor to make any related party disclosures and regulation 21 imposes a duty of care on these assessors.
- 6.0 Part 6 deals with the register of documents and establishes the duties relating to disclosure of the documents held on the register.
- 6.1 Part 7 deals with enforcement and makes provision for enforcement by way of civil penalties.
- 6.2 Regulation 31 imposes a duty on the enforcement authority to enforce the duties relating to certificates and air-conditioning inspections and regulation 33 empowers the enforcement authority to issue penalty charge notices for any breach.
- 6.3 Regulation 34 and regulations 36 through to 38 establish the rights of the person who has been given a penalty charge notice.
- 6.4 Part 8 deals with miscellaneous matters. Regulation 41 binds the Crown. Regulation 42 imposes a general duty to cooperate with and allow reasonable access to any person who is under a duty relating to certificates or inspections. Regulation 43 amends the Building Regulations (Northern Ireland) 2000 replacing the requirement to produce an energy rating notice for new dwellings with a requirement to produce an EPC.

## **7. Equality Impact**

- 7.1 These Regulations were screened out of the Equality Impact Programme as they apply to all owners and occupiers of buildings regardless of their Section 75 status.

## **8. Regulatory Impact**

- 8.1 A Regulatory impact assessment was carried out for these Regulations, which may be downloaded from our web site ([www.buildingregulationsni.gov.uk](http://www.buildingregulationsni.gov.uk)).

## **9 Financial Implications**

- 9.1 Costs have been based on estimates produced by GB's Department of Communities and Local Government (DCLG). For example, an EPC for a new dwelling will cost £28 rising to £95 for the sale or rental of an existing dwelling. EPC's for non-dwellings (commercial) range from £50 (new build) up to £2,000 (for large buildings). DEC's will cost £325-474 rising to £1,125-2,075 for a certificate and recommendation report. Costs for the training of accredited assessors (based on courses for a Domestic Energy Assessor) would be approximately £2,500.

## **10 Human Rights**

- 10.1 It is the view of the Department that the provisions of the Regulations are compatible with the Human Rights Act 1998.

## **11 Contact**

- 11.1 Philip Irwin at the Building Standards Branch of the Department of Finance and Personnel can answer any questions regarding these Regulations.
- 11.2 Contact details - telephone: 9051 8341; e-mail: [philip.irwin@dfpni.gov.uk](mailto:philip.irwin@dfpni.gov.uk).