

**2010 No. 1456**

**BUILDING AND BUILDINGS, ENGLAND AND WALES**

**The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010**

<i>Made</i>	- - - -	<i>19th May 2010</i>
<i>Laid before Parliament</i>		<i>20th May 2010</i>
<i>Coming into force</i>	- -	<i>21st May 2010</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 in relation to the environment.

The Secretary of State makes the following Regulations in exercise of the power conferred by section 2(2) of that Act:

**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 2010.

(2) These Regulations extend to England and Wales.

(3) These Regulations shall come into force on 21st May 2010.

**Amendment of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007**

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

(2) In regulation 2 (interpretation), in paragraph (1) after the definition of “relevant person” insert—

““residential property” means premises in England and Wales consisting of a single dwelling, including any ancillary land.”.

(3) After regulation 5 (energy performance certificates on sale and rent) insert—

**“Energy performance certificates on marketing**

5A.—(1) Subject to regulation 7, this regulation applies where—

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(a) S.I. 2008/301.  
(b) 1972 c.68.  
(c) S.I. 2007/991.

- (a) a residential property is to be sold; and
  - (b) no valid energy performance certificate is available for that property.
- (2) Before the property is put on the market, the seller must secure that an energy performance certificate is commissioned for the property.
- (3) Before marketing the property, a person acting on behalf of the seller must be satisfied that an energy performance certificate has been commissioned for the property.
- (4) The seller and a person acting on behalf of the seller must use all reasonable efforts to secure that a valid energy performance certificate is obtained for the property before the end of a period of 28 days starting with the day on which the property was first put on the market.
- (5) In this regulation—
- (a) “the market” means the residential property market in England and Wales;
  - (b) a residential property is put on the market when the fact that it is or may become available for sale is, with the intention of marketing the property, first made public in England and Wales by or on behalf of the seller;
  - (c) 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;
  - (d) an energy performance certificate is commissioned when a request is made—
    - (i) which is properly addressed to an energy assessor who is accredited to produce energy performance certificates for the category of building in question, and
    - (ii) which is in such form, contains all such information and is accompanied by such payment or undertaking to make such payment as is usually necessary to obtain a certificate.”.
- (4) In regulation 6(a) (providing energy information with particulars)—
- (a) in paragraph (1)—
    - (i) for sub-paragraph (a) substitute—
      - “(a) a residential property is to be sold;”;
    - (ii) in sub-paragraph (b) omit “or renting”;
  - (b) in paragraph (2) for “The person” substitute “Once a valid energy performance certificate has been obtained for the building, the person”.
- (5) In regulation 7 (buildings to be demolished), in paragraph (1) after “5” insert “, 5A”.
- (6) In regulation 11(b) (energy performance certificates)—
- (a) in paragraph (3) for “Subject to paragraph (4), an” substitute “An”;
  - (b) omit paragraphs (4) and (5).
- (7) In regulation 14 (purposes for which certificates and recommendation reports may be disclosed), in paragraph (2)(a)—
- (a) omit “or” at the end of paragraph (i);
  - (b) omit paragraph (ii).
- (8) In regulation 38 (enforcement authorities), in paragraph (2) after “5(5),” insert “5A(2), 5A(3), 5A(4),”.
- (9) In regulation 40 (penalty charge notices)—
- (a) in paragraph (1) after “5(5),” insert “5A(2), 5A(3), 5A(4),”;
  - (b) in paragraph (7)(b) omit “41 or”.

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(a) Regulation 6(1)(a) was amended by S.I. 2007/1669.

(b) Regulation 11(4) was amended by S.I. 2008/2363 and regulation 11(5) was substituted by S.I. 2007/1669.

- (10) Omit regulation 41 (penalties under Housing Act 2004).
- (11) In regulation 42 (defence where energy performance certificate unobtainable)—
- (a) in paragraph (1)(a) at the beginning insert “he is not a person to whom the duty under regulation 5A(2) applies and”;
  - (b) after paragraph (1) insert—
    - “(1A) A seller of a residential property shall not be liable to a penalty charge notice for a breach of the duty imposed by regulation 5 where he can demonstrate that—
      - (a) he is a person to whom the duty under regulation 5A(2) applies;
      - (b) he complied with that duty; and
      - (c) despite all reasonable efforts and enquiries by the seller he did not have in his possession or control a valid energy performance certificate at the relevant time.”
- (12) In regulation 43 (penalty amount), in paragraph (1)(a), after “5(5),” insert “5A(2), 5A(3), 5A(4),”.

19th May 2010

*Eric Pickles*  
Secretary of State  
Department for Communities and Local Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations ensure the continued implementation in England and Wales of article 7 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) (“the Directive”). The Directive lays down the requirements for the production of energy performance certificates when buildings are constructed, sold or rented out, display of certificates in large public buildings and regular inspections of air-conditioning systems.

These Regulations make amendments to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (“the 2007 Regulations”) consequent upon the Home Information Packs (Suspension) Order 2010 (S.I.XXXX) (“the 2010 Order”) which suspends the operation of the duties imposed by sections 155 to 159 of the Housing Act 2004 (c.34) relating to the content and provision of home information packs.

The main changes made by these Regulations are as follows.

- A new duty for sellers of residential property in England and Wales to secure the commissioning of an energy performance certificate (“EPC”) before putting the property on the market (new regulation 5A(2) of the 2007 Regulations).
- A new duty for persons such as estate agents acting on behalf of a seller of residential property not to market the property unless satisfied that an EPC has been commissioned (new regulation 5A(3) of the 2007 Regulations).
- Regulation 6 of the 2007 Regulations imposes a duty on persons providing written particulars of a building to include with those particulars either an asset rating of the building or an EPC. This duty is amended. Instead of arising where a duty under section 155(1) or 159(2) of the Housing Act 2004 applies, the duty arises where a residential property is to be sold; and the duty only arises once a valid EPC has been obtained.
- The provision in regulation 11 of the 2007 Regulations for an EPC to be valid for a period of three years in cases where a duty under section 155(1) or 159(2) of the Housing Act 2004 applies is revoked. Under regulation 11 as amended the period of validity of all EPCs is now ten years.
- Consequential amendments are made to the enforcement provisions of the 2007 Regulations.

An impact assessment of the effect of these Regulations and the 2010 Order on the costs of business and the public and voluntary sectors is annexed to the explanatory memorandum to these Regulations which will be placed on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk) and copies have also been placed in the Library of each House of Parliament. A transposition note for the Directive is available on the OPSI website, annexed to the explanatory memorandum to the 2007 Regulations.

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