

2012 No. 315

BUILDING AND BUILDINGS

**The Energy Performance of Buildings (Scotland) Amendment
(No. 3) Regulations 2012**

Made - - - - 20th November 2012

Laid before the Scottish Parliament 22nd November 2012

Coming into force - - 21st December 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 75 of the Energy Act 2011(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 and come into force on 21st December 2012.

Amendment of the Energy Performance of Buildings (Scotland) Regulations 2008

2. The Energy Performance of Buildings (Scotland) Regulations 2008(c) are amended in accordance with regulations 3 to 8.

Interpretation

3. In regulation 2(1) (interpretation)—

(a) after the definition of “asset rating” insert—

““authorised recipient” means a person or body specified in Part 1 of Schedule 1;”;

(b) after the definition of “dwelling” insert—

““electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(d);”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 2011 c.16.

(c) S.S.I. 2008/309 as amended by S.S.I. 2008/389, 2012/190 and 2012/208.

(d) 2000 c.7 as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

- (c) after the definition of “enforcement authority” insert—
- ““excluded building” means—
- (a) a building owned, occupied or used from time to time by any of the naval, military or air forces of the Crown, the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the Royal Family; or
 - (b) used for the purpose of a prison or a young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989^(a));
- “Framework Regulations” means the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012^(b);
- “green deal plan” has the same meaning as in section 1 of the Energy Act 2011^(c);
- “green deal relevant person” means—
- (a) a person who is authorised to act as a green deal provider by virtue of the Framework Regulations;
 - (b) a body specified or authorised for the purposes of section 3(1)(a) of the Energy Act 2011; or
 - (c) a person who operates a scheme for the purposes of assessing whether persons are qualified to act as advisors in relation to green deal plans;”;
- (d) after the definition of “reference value” insert—
- ““report reference number” means the unique reference under which the energy performance data relating to an energy performance certificate for a building or building unit is entered onto the register;”.

Assessment of energy performance

4. For regulation 7 (assessment of energy performance) substitute—

“Assessment of energy performance

7. The Scottish Ministers must approve—
- (a) a methodology of calculation of the energy performance of buildings or building units, including methods for calculating asset ratings of buildings or building units, based on the general framework set out in Annex 1 to Directive 2010/31/EU of the European Parliament and of the Council; and
 - (b) ways in which the energy performance of buildings or building units, as calculated in accordance with the methodology, must be expressed.”.

Disclosure of general access data

5. For regulation 12 (disclosure to approved organisation) substitute—

“Disclosure of documents

- 12.—(1) The keeper of a register may disclose—
- (a) the energy performance certificate; and
 - (b) the recommendations report,
- for a building or building unit to any person if the conditions in paragraph (2) are met.

(a) 1989 c.45 as amended by section 23(1) of the Criminal Justice (Scotland) Act 2003 (asp 7).
 (b) S.I. 2012/2079.
 (c) 2011 c.16.

- (2) The conditions are that—
 - (a) a request for disclosure of the document to the person has been made by means of a website operated by the keeper; and
 - (b) the request includes the report reference number for the energy performance data relating to the document.

Disclosure of data relating to a particular building or building unit

12A.—(1) The keeper of a register may disclose energy performance data relating to a particular building or building unit to an authorised recipient if all of the conditions in paragraph (2) are met.

- (2) The conditions are that—
 - (a) a request for disclosure of the data to the authorised recipient is made—
 - (i) by means of a website operated by the keeper; or
 - (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
 - (b) the request includes—
 - (i) the full address (excluding the postcode) of the particular building or building unit to which the data relates;
 - (ii) the full postcode of that building or building unit; or
 - (iii) the report reference number for the energy performance data relating to the building or building unit;
 - (c) the disclosure is made subject to—
 - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
 - (ii) the conditions set out in Part 3 of Schedule 1; and
 - (d) the particular building or building unit to which the data relates is not an excluded building.

(3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.

(4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(c).

(5) For the purposes of this regulation, regulation 13 and Schedule 1, an opt-out is in effect in respect of data relating to a building or building unit where—

- (a) the owner or occupier of the building or building unit has notified the keeper that the data is not to be disclosed so as to enable contact to be made with the owner or occupier by a person to whom data is disclosed;
- (b) the notice to the keeper was given in writing, or by electronic communication sent to an address or location specified by the keeper 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 sub-paragraph (b)).”.

Disclosure of bulk access data

6. For regulation 13 (disclosure to enforcement authorities and/or the Scottish Ministers) substitute—

“Disclosure of bulk access data

13.—(1) The keeper of a register may disclose energy performance data to an authorised recipient if all of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) the authorised recipient has made a request for one or more specific descriptions of data to the keeper;
- (b) the request is made—
 - (i) by means of a website operated by the keeper; or
 - (ii) by electronic communication sent to an address or location specified by the keeper for the purpose of the receipt of such requests;
- (c) the data does not include any information revealing the location of an excluded building (or any information from which the location of such a building can be deduced);
- (d) the disclosure is made subject to—
 - (i) the condition that the data is to be used by the recipient solely for one or more of the purposes described in Part 2 of Schedule 1; and
 - (ii) the conditions set out in Part 3 of Schedule 1; and
- (e) the data does not relate only to a particular building or building unit.

(3) Where an opt-out is in effect in respect of data relating to the building or building unit, the keeper must, when disclosing information under paragraph (1), inform the authorised recipient that an opt-out is in effect.

(4) The keeper may refuse to disclose information under paragraph (1) where the person who requests the disclosure has previously failed to comply with a condition of the kind referred to in paragraph (2)(d).”.

Disclosure of energy performance data

7. For regulation 14 (use of information by the Scottish Ministers and/or the keeper of the register) substitute—

“Disclosure of data

14.—(1) The keeper of a register must when requested to do so disclose energy performance data—

- (a) to an enforcement authority for the purposes of their duty to enforce these Regulations; or
- (b) where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) The keeper may disclose energy performance data to the Scottish Ministers for the purpose of enabling the Scottish Ministers to carry out any function under or in connection with these Regulations, or for statistical or research purposes.”.

Disclosure of data: purposes and conditions

8. Insert the Schedule contained in the Schedule to these Regulations as Schedule 1 to the Regulations.

Amendment of the Energy Performance of Buildings (Scotland) Amendment Regulations 2012

9.—(1) The Energy Performance of Buildings (Scotland) Amendment Regulations 2012(a) are amended in accordance with paragraph (2).

(2) Regulations 9 (disclosures to approved organisations), 10 (disclosures to enforcement authorities and/or the Scottish Ministers) and 11 (use of information by the Scottish Ministers and/or the keeper of the register) are revoked.

Amendment of the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012

10.—(1) The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012(b) are amended in accordance with paragraph (2).

(2) Regulations 9 (assessment of energy performance) and 13 (use of information by the Scottish Ministers and/or the keeper of the register) are revoked.

St Andrew's House,
Edinburgh
20th November 2012

DEREK MACKAY
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2012/190.
(b) S.S.I. 2012/208.

SCHEDULE

Regulation 8

“SCHEDULE 1 Regulations 2, 12A(2)(c) and
13(2)(d)

Disclosure of data

PART 1

The following persons or bodies are authorised recipients—

- (a) the Scottish Parliament;
- (b) the Scottish Ministers;
- (c) either House of Parliament;
- (d) any department of the Government of the United Kingdom;
- (e) the Welsh Ministers;
- (f) the National Assembly for Wales;
- (g) the Northern Ireland Assembly or a Northern Ireland department;
- (h) an enforcement authority;
- (i) an approved organisation;
- (j) a green deal relevant person;
- (k) the holder of a licence under section 6(1)(c) or (d) of the Electricity Act 1989^(a) (distribution and supply licences) which has been modified by the Secretary of State under section 41(1) of the Energy Act 2008^(b) (power to amend licence conditions etc: feed-in tariffs).

PART 2

The purposes are—

1. Promoting energy efficiency improvements in relation to buildings.
2. Conducting research into, or developing or analysing policy (or policy proposals) in relation to, the energy efficiency of buildings.
3. Conducting research into the effectiveness or impact of energy efficiency improvements.
4. Identifying geographic areas where the energy efficiency of buildings is low relative to other areas, or conducting research into the extent, causes or consequences of such lower levels of efficiency.
5. Promoting and marketing energy efficiency improvements that may be made pursuant to a green deal plan.
6. Identifying and analysing the impact of carbon emissions on the environment resulting from buildings with low levels of energy efficiency.

(a) 1989 c.29.

(b) 2008 c.32.

7. Determining whether energy efficiency improvements that may be made pursuant to a green deal plan have or have not been made in respect of a particular building or buildings.

PART 3

The conditions are—

1. The authorised recipient is, until the data is deleted from the authorised recipient's records and systems (so that the personal data is no longer accessible by any means by the authorised recipient) a data controller within the meaning of section 1(1) of the Data Protection Act 1998(a) in relation to the information disclosed.

2. The authorised recipient must not—

- (a) disclose any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 to any other person without the consent of the person who is the subject of the data;
- (b) use such personal data in order to contact an individual for the purpose of marketing or promoting products or services which do not relate to energy efficiency;
- (c) use such personal data in order to make contact with an individual where an opt-out is in effect.

3. The authorised recipient must not make contact with any person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 unless—

- (a) the authorised recipient advises that person, at the time contact is first made that—
 - (i) the identity or contact details (or both) of that person have been obtained from the keeper of the register under regulation 12A or 13, as the case may be, and
 - (ii) that person is entitled to refuse to receive any further communications from the authorised recipient; and
- (b) the first contact with that person is made by means of written communication (including electronic communication) only.

4. The authorised recipient must not make further contact with a person if that person has informed the authorised recipient that that person does not wish to receive any further communications from the authorised recipient.

5. If the authorised recipient has on three separate occasions made contact with a person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 and received no response from that person within fourteen days of the date of the third contact, the authorised recipient—

- (a) must not attempt to contact that person again; and
- (b) must, as soon as reasonably practicable (and in any event within fourteen days of the receipt of a request made by or on behalf of that person to do so) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).

6. If a person, whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13, requests the authorised recipient to do so, the authorised recipient must, as soon as

(a) 1998 c.29 as amended by section 68 of and Schedule 8 to the Freedom of Information Act 2000 (c.36) and S.I. 2004/3089.

reasonably practicable (and in any event within fourteen days of the receipt of a request) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).

7. The authorised recipient must ensure that its officers and employees comply with the conditions in paragraphs 1 to 6 above.

Interpretation

8. In this Schedule—

“energy efficiency improvements” has the same meaning as in section 2 of the Energy Act 2011^(a);

“personal data” has the meaning given in section 1(1) of the Data Protection Act 1998^(b).”

(a) 2011 c.16.

(b) 1998 c.29. Section 1(1) has been amended by sections 68 and 86 of and Schedule 8 to the Freedom of Information Act 2000 (c.36).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 amend the Energy Performance of Buildings (Scotland) Regulations 2008 (“the 2008 Regulations”). The 2008 Regulations transposed the provisions of Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings (recast) (OJ L 1, 4.1.2003, p.65) (“the 2002 Directive”).

The 2002 Directive has now been recast by Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (OJ L 153, 18.6.2010 p.13) (“the 2010 Directive”).

The Regulations amend the provisions of the 2008 Regulations relating to disclosure of information held on a register of energy performance data maintained under regulation 10 of the 2008 Regulations. Regulations 5 to 8 introduce new regulations 12, 12A, 13 and 14 into the 2008 Regulations together with the related new Schedule. These provisions enable the keeper of a register to disclose documents or data held on the registers subject to certain limitations and conditions. Regulation 3 introduces new definitions for these purposes into regulation 2 of the 2008 Regulations.

Regulation 4 replaces regulation 7 of the 2008 Regulations. The new regulation 7 refers to both building and building units throughout. Regulations 9 and 10 respectively remove redundant provisions from the Energy Performance of Buildings (Scotland) Amendment Regulations 2012 and Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012.

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