

Privacy Impact Assessment

Access to Energy Performance Certificates (EPCs), Display Energy Certificates (DECs), Air Conditioning Reports (ACRs) and data

1. The proposal

1. The policy proposal is to make EPCs, DECs and ACRs (containing information on the energy efficiency of domestic, commercial and/or public buildings) more widely available and more easily accessible and to allow certain organisations access to the data in bulk.

2. EPCs, DECs and some ACRs of buildings in England and Wales are lodged on the Domestic and Non-Domestic EPC Registers (the Registers) controlled by a Register Administrator (Landmark) on behalf of Government. At present, the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (Regulations) specify that data in the registers can only be disclosed to a prescribed list of recipients¹.

3. It is proposed to give everyone the right to access all EPCs, DECs and ACRs (subject to certain safeguards to ensure adherence to the requirements and principles of the Data Protection Act 1998 (DPA)). The EPC contains the address of a property, its energy rating, recommendations to improve its energy efficiency and details of the energy assessor who produced the assessment. In the future, it is planned for it also to contain details of any Green Deal finance attached to the property.

4. In addition it is proposed to allow certain organisations (including accredited Green Deal Providers², organisations which provide energy efficiency advice, government departments, local authorities and researchers) access to data records in bulk (again, subject to safeguards).

5. The Government would need to intervene to make this change because it can only be achieved through amendments to regulations. Provision in the Energy Security and Green Economy Bill (the Bill) will give the Secretary of State powers to make regulations in order to permit wider and easier access to the data.

¹ In summary, under the Regulations, data may only be disclosed to:

- a person is already in possession of the unique reference number assigned to the document of which they are seeking disclosure;
- the operator of an approved accreditation scheme of which the energy assessor who prepared the particular certificate and report was a member;
- an authorised officer of an enforcement authority; or
- an officer of the Secretary of State for Communities and Local Government provided that no particular property is identifiable.

² As defined in the Energy Security and Green Economy Bill

2. Justification

6. The Registers represent an extremely valuable source of information about the energy efficiency of buildings, and the benefits of making use of the data, subject to rules on careful handling, have made it desirable to widen access. In no particular order, these benefits have been identified as:

- It would increase access for the general public to useful environmental data and should increase awareness among the general public of the energy efficiency of homes and commercial buildings. It would also enable individuals to check the energy efficiency of individual buildings.
- It would enable home owners, business proprietors, tenants and landlords to make better informed choices. People need to be able to make them in an environment where many features, noticed and unnoticed, are on hand to influence their decisions.
- It would provide an impetus for remedial action and make it easier to take the correct remedial action. In the context of EPCs, knowing that, for example, their property has a lower energy efficiency rating than other comparable buildings may “nudge” individuals to make (or, in the case of tenants, request) improvements to their home or business. Ultimately, it is expected that this approach would create a virtuous circle whereby action by some individuals to improve their home would persuade others to make similar improvements. That in turn, it is anticipated, would result in a general ratcheting up of the energy performance of the housing stock.
- It would give organisations which market or promote energy efficiency measures, a better understanding of the market. In addition, giving accredited Green Deal Providers access to address-level data would enable them to market their services more precisely and effectively - by targeting those households and businesses with the most to gain by investing in remedial measures and enabling Green Deal providers to offer advice and solutions to property owners that are directly relevant to their needs. Better understanding of the energy performance profile of a place will also help to resolve any logistical and supply problems.
- The Climate Change Act 2008 commits the UK to a statutory target to reduce its emissions (from all sources) by 80 per cent by 2050 from a 1990 baseline. Buildings account for approximately 40 per cent of the UK’s carbon emissions. Ultimately, it is expected that these effects of enabling wider and easier access to EPCs and data will result in more building owners improving the energy efficiency of their buildings, reducing fuel costs and carbon emissions. Assuming that greater access to energy performance data increases the scope and opportunity for saving energy, then this also indirectly benefits the environment, helps to improve thermal comfort and health, lowers fuel bills and contributes to energy security.

- It could be used to facilitate research and analysis from a wider pool of research and statisticians, which may be used to inform Government and local policy. There has been growing demand for this data for research and statistical analysis. In addition, it will improve opportunities for monitoring carbon reduction in the UK and support the Government's transparency agenda.
- It would provide a stop gap if the EPC is not made available to prospective buyers and tenants and could assist in monitoring of compliance.

7. We will work with Landmark and Green Deal providers to evaluate the impact of making this data publicly available. The evaluation is likely to include: monitoring the number of hits received by the website, number of energy rating searches carried out, the extent to which the data was used by Green Deal providers to market their services, the proportion of traffic generated through direct marketing as a result of having EPC data for specific properties and the market value of having EPC data by place.

3. Consultation

8. The consultation paper *'Making Better Use of Energy Performance Certificates and Data'* was published by the previous Government on 2 March 2010.

9. Views were sought, among other things, on proposals to widen access to EPC data. The consultation proposed to allow different levels of access to different groups. It was proposed to provide the Secretary of State with the power to grant access to:

- address level data to specified organisations including local authorities for approved purposes; and
- anonymised data.

10. Responses were received from a wide variety of interests (mostly organisations but also some individuals). The table below shows the number of responses to the proposals on EPC data, and how many respondents were in favour.

Proposal	No. of responses	No. of respondents in favour of the proposal	% of respondents in favour of the proposal
On sharing address level data	73	59	81
On sharing anonymised data	73	61	84
On safeguards relating to the sharing of address level data	55	41	75

11. Of the respondents who opposed the approach to sharing address level data, some did so, on the grounds that the proposal did not go far enough and that there should be wider access to the data than that proposed. Also, although the majority agreed with the proposed safeguards, a significant number of respondents considered the restrictions and safeguards to be too restrictive and unnecessary. Those respondents felt that access to the EPC database should be available to all to help encourage the uptake of energy efficiency measures.

12. Of those who raised concerns, their comments were:

- there should be a condition that the name of the occupier of residential properties was not disclosed
- landlords should not be discouraged from obtaining EPCs
- there should be safeguards against pressure selling
- there should be a quality assurance regime in place
- data protection legislation should be used to protect consumers.

4. Energy Security and Green Economy Bill

13. We are now proposing to remove unnecessary restrictions so that we can make data more widely available than was proposed in the consultation, in line with the Government's transparency agenda and to realise the benefits outlined above.

14. Enabling clauses will be included in the Bill to:

- allow an individual to see the latest EPC (where one exists) for a property
- enable bulk address level data to be supplied to organisations (eg Green Deal providers, researchers and public authorities)
- put safeguards in place.

5. Safeguards

15. There is a risk that greater transparency of energy performance data and EPCs would result in reduced privacy, with the potential to bring about negative impacts in some cases, unless safeguards are not applied, as follows:

- It may increase the scope (eg through data mining) for direct marketing and thereby intrude on private life and infringe on legal rights
- Some people may not be aware of the safeguards and have concerns that their personal data is at risk
- It may open up a new niche for pressure selling techniques which could impact disproportionately on vulnerable sectors

- Some people may not wish to receive direct marketing material and they would be required to take action to opt out

16. It is recognised that there will need to be safeguards to ensure that access to data on the registers is not misused and that the requirements and principles of the DPA are taken into account. The safeguards are to be addressed in one or more of the following ways:

- Utilising safeguards which already exist at law such as ensuring compliance with the DPA and other statutory regimes. For example, it could be made a prerequisite of access to the register by anyone accessing it that they agree to comply with the provisions of the DPA, so that anyone found to have either abused the DPA or any other conditions/requirements in respect of access would be precluded from access in future. In addition, they may also be subject to enforcement action by the ICO.
- Safeguards will be introduced through software design to prevent data mining, i.e. collection of large amounts of data from the registers for the purpose, for example, of sending advertising material to those who have been issued an EPC, DEC or ACR. The software will be designed to have a facility to impose a limit on the number of searches of the registers that can be carried out by a user in any 24 hours. In the case of those who are permitted access to large amounts of data for marketing purposes this restriction will not apply or arrangements will be made to supply this information separately.
- Advising consumers of potential use of data and enabling them to opt out.
 - A comprehensive communications strategy that could involve a Press Notice followed by an information campaign to inform holders of existing EPCs how their data will be used by research organisations, Government, and by commercial organisations to promote their services; and will inform them how they can prevent their data from being used in these ways;
 - A notice will be put on the Department for Communities and Local Government (DCLG) website drawing attention to the fact that EPC data will be made publicly available and advising how people can opt out of having their data made available in this way;
 - Primary legislation will be required to make this data available and a clause has been included in the Green Economy and Energy Security Bill. Debate in Parliament as the Bill goes through its various stages will draw attention to the fact that we intend to make EPC data publicly available.
 - Future EPCs would contain a 'fair processing notice' which informs people with whom and for what purpose the EPC would be shared.

- It is not proposed to have an opt out on the EPC itself as the person commissioning the EPC at the point of sale or rent (which is the trigger for requiring an EPC) is unlikely to still be the occupant by the time a Green Deal provider contacts the occupier to market their services.
- Conditions would be placed on the use to which the data can be put by Green Deal Providers and others. The following examples of the type of conditions envisaged include requirements to:
 - make clear in any marketing material that the recipient can request their details are removed from the Green Deal Provider's marketing list;
 - remove from their marketing list the details of anyone whose data was obtained from the registers where that person or organisation has failed to respond to the marketing offers after a specified number of offers have been dispatched;
 - make it a condition of receiving the data that it is only used to inform householders or small businesses about the energy efficiency improvements they could make;
 - inform the consumer how their address details were obtained; and
 - prohibit the Green Deal providers from merging with personal data and/or passing the information on to others.
- Quality Assurance arrangements for Green Deal providers are being developed by the Department for Energy and Climate Change. However, it is likely that, in addition to any enforcement action by the ICO, failure to adhere to these conditions would result in sanctions such as suspension or revocation of their access to the data and/or accreditation.

6. Public acceptability of the scheme

17. The majority of respondents to the consultation were in favour of making EPC data more widely available. This supports our current proposals to widen access.

18. Under the current proposals, the only data to be released would be: the address of the property, its energy rating, recommendations to improve its energy efficiency, details of the energy assessor who produced the assessment and (in the future) any Green Deal finance borrowed to improve the energy efficiency of the property. As release of this the energy rating of a property is not sensitive (other than the address, it relates to a property not a person), it is unlikely that widening access will cause most EPC holders concern. However, some may find it undesirable that organisations which are permitted bulk access to data will be able to contact households with targeted marketing material. This will be addressed by allowing individuals to opt out from having the data used in this way.

19. We have considered including the option of enabling opt out when an EPC is first produced. However, the person who commissions the EPC would generally not be the person occupying the property when, for example, information about Green Deal services and products was sent to the address. For example, where a house was being sold, the seller would commission the EPC, but it would be the new owner who was likely to be living at the address when the Green Deal provider made contact. For this reason, we do not believe that an “opt out” in the EPC itself would be a sensible option.

20. The safeguards listed at 5.2 include raising consumers’ awareness of the scheme and their right to opt out (for example, if they do not want their address and the property’s energy rating to be used by Green Deal providers, they will have the right to request that the data is deleted).

7. Data protection issues

21. DCLG regards the address of domestic/residential buildings (referred to as “address level” data) as amounting to personal data as defined under the Data Protection Act (DPA). This is because, in brief, that data can together with other easily accessible data be used to identify the individual owner of the building or flat and/or have an impact on that person.

22. The Information Commissioner’s Office (ICO) has indicated that it expects the sharing of personal information to be justified on the basis that the benefits it would bring, clearly outweigh the risks of negative effects - provided they were supported by safeguards.

23. The potential benefits have been identified above, in section 2.1. The potential negative impacts have been identified above, in section 5.1 although these will be minimised by associated safeguards which are also designed to ensure adherence to the requirements and principles of the DPA.

8. Compliance with the DPA principles

24. The DPA applies to data controllers (which for EPCs and data, would be the DCLG) and regulates whether and how they process personal data. ‘Data’ is defined in section 1 of the Act and includes all automatically processed (i.e. computerised) information and some manual records, and personal data means data relating to an identified or identifiable living individual. A risk assessment has been carried out on adherence to the DPA principles in relation to individual and bulk access to data and. There are eight Data Protection Principles set out in the Schedule 1 to the DPA.

First Principle

25. Under the first Data Protection Principle, personal data is required to be processed ‘fairly’ and ‘lawfully’.

26. Personal data is not to be regarded as being processed fairly unless, at the first time that processing takes place, or very soon afterwards, the

relevant data subject is provided with, or had made readily available to him certain information ('the information requirements'). This information includes:

- the identity of the data controller,
- the purposes for which the data is intended to be processed, and
- any further information that is necessary in order for the processing to be regarded as fair having regard to all the circumstances.

27. EPCs generated after the legislation permitting wider use of the data has effect will contain such information. It will be provided when the owner is first informed that an EPC is to be produced for their property, and would also be repeated on the face of the EPC itself.

28. EPCs issued before the legislation permitting wider use of the data has effect will not contain information advising the holder that the information on the EPC will be disclosed to Green Deal Providers and other organisations. In order to make the processing fair we need to consider how we provide these information requirements to those whose data is already on the database. We are considering some type of publicity campaign in the written or broadcast media in advance of the legislation having effect. In addition, Ministers will use suitable opportunities (including open Parliamentary debate) to increase awareness, explain and justify plans to open up access to data

29. To ensure that it is lawful, we must have the vires to carry out the processing (or the function to which the processing of the data is ancillary). In addition, handling:

- must not be in breach of the law of confidence;
- must not be in breach of any other statute or common law principle;
- must be compliant with the Human Rights Act.
- Must be compliant with the Environmental Information Regulations (which requires public bodies to disseminate environmental information and make available environmental information on request).

30. In addition to the general requirements that the processing be 'fair' and 'lawful', it is a particular requirement that at least one of the conditions of Schedule 2 of the DPA is met. In this case paragraph 5(c) of Schedule 2 is the most relevant condition as it states that the processing is necessary for the exercise of any functions of the Crown, a Minister of the Crown or government department. The Climate Change Act 2008 places a duty on the Secretary of State to ensure that the net UK carbon account for the year 2050 is at 80% lower than the 1990 baseline. The proposals in the Bill are intended to assist the Government in fulfilling that duty.

Second Principle

31. The Second Principle provides that personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible those purposes.

32. The purpose, to support the reduction carbon emissions from buildings has not changed. However the data will be used in a different way. Future EPCs will contain a 'fair processing notice' which informs people with whom and for what purpose the EPC will be shared. We will also set out in legislation the uses to which the data from the EPC register may be put by the organisations receiving data in bulk. Software design will prevent those who are not permitted bulk access from data mining.

Third Principle

33. The third principle provides that personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

34. The purpose of providing open access to the Register is to encourage individuals and businesses to improve the energy efficiency of their homes and premises thereby reducing their energy bills. In addition, access to bulk data by Green Deal Providers and other organisations promoting energy efficiency will enable them to proactively market their services to people who may be more likely to take up such services because they already have an independently produced certificate showing their building's energy rating. As a result, there is an increased likelihood that the energy performance of more properties will be improved than would otherwise have been the case. This should increase the likelihood that Government will meet its demanding targets to reduce CO2 emissions under the Climate Change Act 2008.

Fourth Principle

35. The fourth Data Protection Principle provides that personal data shall be accurate and where necessary kept up to date. This does not mean that corroboration is always required but that the data controller must not be positively reckless in the matter of accuracy. DCLG is working with Landmark to ensure that the data is correct (eg by checking existing data and having error traps on the system). In addition, individuals can complain to the accreditation scheme in the first instance, if they believe the EPC to be inaccurate. EPCs are valid for ten years (after which, a new EPC would be required but only if the property was put up for sale or rent). However, it will be a requirement that an updated EPC will be produced and lodged following the installation of Green Deal measures, thereby ensuring that the EPC is up to date and accurate.

Fifth Principle

36. The fifth data protection principle provides that personal data processed for any purpose shall not be kept longer than is necessary for that purpose. This means that there must be a clear policy of disposal of data at the conclusion of the last purpose. A requirement to this effect would be included in the agreement with the organisations to whom we propose to give unlimited access.

37. These organisations will be required to remove the data from their database and send no further mail shots to a household or business if requested or if there is no reply to mail shots after a specified number of attempts. Where a customer chooses to take up the Green Deal offer, then their data would be retained because the Green Deal Provider is likely to want to return to them at some point to check satisfaction and offer further measures. DCLG will specify as part of the licence conditions how often the Green Deal Provider can return to the customer. At this stage it is thought that this will be limited to one occasion and that this must be within 12 months of the work having been carried out. If the householder or business does not respond or requests no further contact then the Green Deal Provider would have to destroy their data. Similarly, it should be destroyed after 12 months if the Green Deal Provider has not had any contact with the consumer.

Sixth Principle

38. The sixth principle provides that personal data shall be processed in accordance with the rights of data subjects under the DPA 1998.

39. As now, individuals will have a right to find out what information is being held on them although the Registers themselves do not contain details of named individuals. Nor is it expected that the data will be used to evaluate an individual.

40. However, the DPA does contain two distinct rights to prevent processing. Section 11 provides individuals with a specific right to prevent processing for the purposes of marketing and section 10 affords a more general right of objection. The circumstances in which these can apply are limited and section 11 is an absolute right while section 10 is subject to a balancing test.

41. Under section 11 an individual is entitled to prevent his personal data being used for the purpose of 'direct marketing'. To address this, individuals will be able to opt out of receiving information from Green Deal Providers and other organisations. As mentioned above, organisations will make clear in mail shots that customers can opt out of further communications, and will cease sending marketing material if requested or if there is no response from a consumer. In addition, on future EPCs there will be a fair processing notice indicating that the information contained in it has been placed on the Register and explaining the purpose of sharing that data.

Seventh Principle

42. The seventh principle relates to technical and organisation measures. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

43. Systems to prevent data mining will be robust and the licensing agreement with organisations receiving bulk data will specify appropriate security arrangements both technical and administrative that each party will put in place.

Eighth Principle

44. The eighth Data Protection Principle provides that personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. There is no intention of transferring EPC data outside of the EEA and this will also form one of the prerequisites for access. Landmark will prevent any server located outside the EEA having access to the Register.

9. Conclusion

45. In conclusion, the proposal to enable wider and easier access to EPCs and data is justified on the basis of the beneficial impact this could have on the environment, health and comfort, fuel costs and energy security. There is a clear intention to comply with data protection principles and this is reflected in the safeguards which will be put in place. It is planned to review the data protection, economic and environmental impact following implementation.