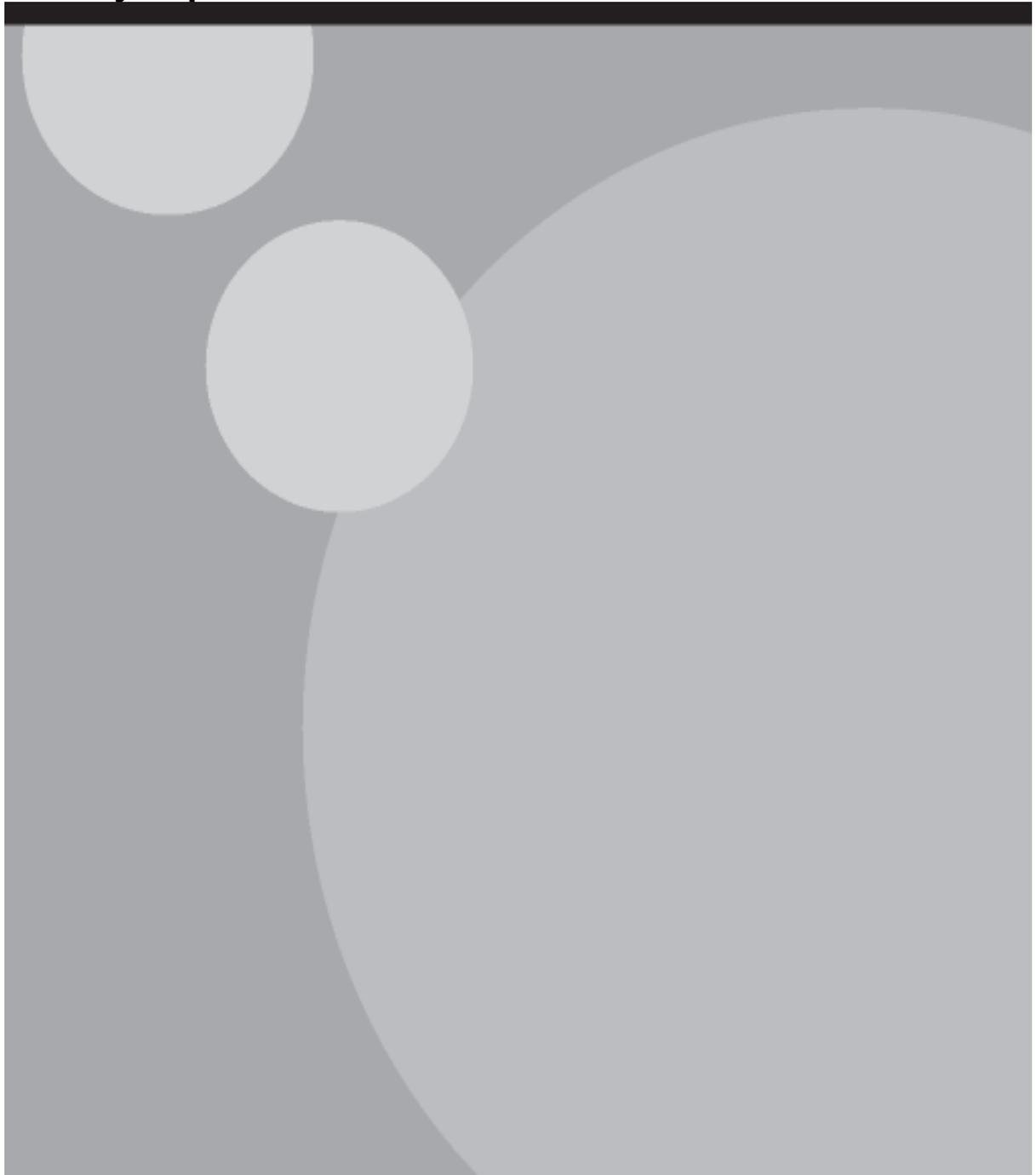




Making energy performance certificate and related data publicly available

Privacy impact assessment





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April 2012
Department for Communities and Local Government

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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

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Privacy Impact Assessment

MAKING ENERGY PERFORMANCE CERTIFICATE AND RELATED DATA PUBLICLY AVAILABLE

1. Introduction

1.1. The Government is making publicly available, from April 2012, Energy Performance Certificates, Display Energy Certificates and Air Conditioning Reports. The data that is made available will comprise an electronic copy of the certificate or report. There will not be a charge for this service. A number of organisations, referred to in this document as “authorised recipients” will be able to access the data in bulk subject to payment of a charge to cover the costs associated with providing the data.

1.2. The requirement for Energy Performance Certificates, Display Energy Certificates and Air Conditioning Reports flows from the Energy Performance of Buildings Directive which is designed to tackle climate change by reducing the amount of carbon produced by buildings. Under the terms of the Directive:

- an Energy Performance Certificate must be produced whenever a building is sold, constructed or rented out. The Energy Performance Certificate shows the energy efficiency of a property and includes recommendations on how it can be improved;
- an Energy Performance Certificate must be produced for public buildings over 1,000m². The Energy Performance Certificate (described as a Display Energy Certificate in England & Wales) shows the actual running costs of the building and must be displayed in a prominent place;
- air conditioning installations above a certain size must be inspected every five years; and
- boiler installations above a certain size must either be inspected regularly¹ or advice must be provided to users.

1.3. Energy Performance Certificates for dwellings must be lodged on the domestic Register while Energy Performance Certificates for non-domestic buildings and Display Energy Certificates must be lodged on the non-domestic Register. Both Registers are maintained by a Register Administrator (currently Landmark Information Group) on behalf of Government. From 6 April 2012, Air Conditioning Reports will also have to be lodged on the non-domestic Register.

¹ See Article 8 of Directive 2002/91/EC

- 1.4. The Directive was transposed into domestic legislation through the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (“the Regulations”) as amended. The Regulations only apply in England & Wales. Separate regulations apply in respect of Scotland and Northern Ireland. This Privacy Impact Assessment is only concerned with making data available in England & Wales.
- 1.5. Under the existing regulations, access to the Energy Performance Certificates and Display Energy Certificates that have been lodged on the Registers is very tightly controlled. The Regulations specify that data may only be disclosed to a prescribed list of recipients, including:
- a person who 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; and
 - the Energy Saving Trust in respect of domestic Energy Performance Certificates for dwellings with an F or G rating .
- 1.6. Public access to all , Energy Performance Certificates, Display Energy Certificates and Air Conditioning Reports (subject to certain safeguards to ensure adherence to the requirements and principles of the Data Protection Act 1998) will commence from 22 April 2012.
- 1.7. Authorised recipients (defined in Statutory Instrument 2012, number 809) will be given access to the data in bulk plus the background data used to produce the document (again, subject to safeguards to ensure compliance with the Data Protection Act 1998).

2. Justification

- 2.1. The Registers represent a very useful source of information about the energy efficiency of buildings in England & Wales. The benefits of making use of the data, subject to rules on careful handling, make it desirable to widen access. These benefits have been identified as:
- 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 Energy Performance Certificates 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;

- facilitating 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;
- in the context of Energy Performance Certificates, knowing that, for example, their property has a lower energy efficiency rating than other comparable buildings may encourage individuals to make (or, in the case of tenants, request) improvements to their home or business. Ultimately, it is expected that this approach could create a virtuous circle whereby action by some individuals to improve their home would persuade others to make similar improvements;
- providing organisations which market or promote energy efficiency measures with 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 locality may also help to resolve any logistical and supply problems;
- increasing access for the general public to useful environmental data 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.

2.2. We will 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; and
- the extent to which the data is used by authorised recipients and the purpose of that use

3. The Energy Act 2011

3.1. The Energy Act 2011 provides for regulations to be made enabling this data to be made widely available, in line with the Government's transparency agenda and to realise the benefits outlined above. Those regulations have now been made (Statutory Instrument 2012 No. 809)

4. Safeguards

4.1. We have considered whether there is a risk that making this data publicly available would impact on the privacy of individuals, the result of which could be increased scope (e.g. through data mining techniques) for direct marketing of products and services to owners or occupants of properties with Energy Performance Certificates.

4.2. To address this and minimise the risk of impacting on the privacy of individuals, we have put in place the following safeguards to reduce the risk that the data is abused by:

- technical barriers that will prevent organisations that are not authorised recipients from being able to 'mine' the data and using it to send mailshots to holders of these documents . To help minimise that risk, users will also have to enter a CAPTCHA code prior to every search. CAPTCHA is an acronym that stands for *Completely Automated Public Turing Test To Tell Computers and Humans Apart*. Under a CAPTCHA system, a series of alphanumeric characters are randomly generated by the server and presented in a distorted font which cannot be read by a machine. The user is required to enter the characters exactly as presented on the screen. Failure to do so will prevent them from progressing further. The random generation of characters and use of a distorted font makes it impossible to mine the data through an automated system. CAPTCHA is the industry recognised standard for preventing automated data mining.
- making it a condition of accessing the data by authorised recipients that they comply with the Data Protection Act 1998 and other statutory regimes. Anyone found to have either abused the Act or any other conditions/requirements in respect of access would be penalised. This may include denial of any further access to the data, or removal of their accreditation or certification status (where they are an accredited or certificated organisation)
- advising consumers of potential use of data and/or enabling them to opt out via:
 - public announcement via Press Notice to inform holders of new and existing Energy Performance Certificates how their data will be used by research organisations, Government,

and by commercial organisations to promote their services and informing them how they can prevent their data from being used in these ways;

- a notice on the Department for Communities and Local Government website drawing attention to the fact that Energy Performance Certificate data will be made publicly available and advising how people can opt out of having their data made available in this way;
- A 'fair processing notice' on the Energy Performance Certificate which states that: "a copy of this Energy Performance Certificate has been lodged on a national register. It will be publicly available and some of the underlying data may be shared with others for the purposes of research, compliance and direct mailing of relevant energy efficiency information. The current property owner and/or tenant may opt out of having this information disclosed."
- requiring authorised recipients to agree to a licensing agreement setting out the terms and conditions for using the data. The agreement will be supplemented by a number of statutory conditions which are summarised below:
- The authorised recipient:
 - is a data controller in relation to the information disclosed.
 - must not disclose any personal data contained in or derived from data disclosed to them to any other person without the consent of the person who is the subject of the data;
 - can only use the data to contact an individual for the purpose of marketing or promoting products or services which relate to energy efficiency.
 - shall ensure that if they contact any person whose contact details have been obtained from the data, they
 - advise them how their contact details were obtained;
 - explain that they are entitled to refuse to receive any further communications; and
 - ensure that first contact with the individual is by written communication only, ie it must not be in person or by phone..
- must not make further contact with a person who has informed them they do not wish to receive any further communications
- must not attempt to make any further contact with a person whose contact details were obtained from the data if a response has not been received to three separate written communications and in such

circumstances, must delete the person's contact details from their database.

4.3. We considered including an opt-out on the EPC itself. However, we did not pursue this option because the person commissioning the EPC may not necessarily be the occupant by the time a Green Deal provider contacts the occupier to market their services, nor would they have any interest in whether or not the data is made publicly available.

5. Public acceptability of the scheme

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

5.2. Views were sought, among other things, on proposals to widen access to Energy Performance Certificate 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.

5.3. 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

5.4. The majority of respondents to the consultation were in favour of making EPC data more widely available.

5.5. Of the 14 respondents who opposed the approach to sharing address level data, eight of these 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. While 75% agreed with the proposed safeguards, a further 15% of respondents considered the restrictions and safeguards to be too restrictive and unnecessary. Those respondents

felt that access to the Energy Performance Certificate register should be available to all to help encourage the uptake of energy efficiency measures.

5.6. 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;
- there should be safeguards against pressure selling;
- there should be a quality assurance regime in place; and
- data protection legislation should be used to protect consumers.

5.7. The name of the occupier will not be released. There will be safeguards against pressure selling, and adherence to data protection legislation will be used to protect consumers.

5.8. Release of the energy rating of a residential property or domestic Energy Performance Certificate is already required as matter of law as soon as they have been obtained prior to sale or rent and will, generally, be available over the internet. In any event, it will be freely available from the estate agent who is dealing with the sale or rental. Therefore, widening access in the way proposed should not cause Energy Performance Certificate 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 introducing the safeguards outlined above.

6. Data protection issues

6.1. The Information Commissioners Office has produced guidance² which makes it clear that 'personal data' means any information that can be linked to a particular individual, directly or indirectly. In the case of Energy Performance Certificate data, the document includes the address of the building to which it relates, although not the name of the occupier. However, it is a very straightforward process to match individuals with a particular property, for example, by comparing the address on an Energy Performance Certificate with data on the Electoral Register. Therefore, Energy Performance Certificate data should, in accordance with the Information Commissioner's Office guidance, be treated as personal data.

6.2. The Information Commissioner's Office has indicated that it expects the sharing of personal information to be justified on the basis that the

² See Data Protection Technical Guidance - Determining what is personal data (http://www.ico.gov.uk/upload/documents/determining_what_is_personal_data/whatispersonaldata2.htm#disclosing)

benefits it would bring, clearly outweigh the risks of negative effects - provided they were supported by safeguards.

6.3. The potential benefits have been identified above, in section 2.1. The potential negative impacts have been identified above, in section 4.1 and we have described how these will be minimised by associated safeguards which are also designed to ensure adherence to the requirements and principles of the Data Protection Act.

6.4. The Data Protection Act applies to data controllers, including the Department and bodies to whom it makes bulk Energy Performance Certificate data available, 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 Data Protection Act principles in relation to individual and bulk access to data and the outcome of that assessment is set out below. There are eight Data Protection Principles set out in Schedule 1 to the Data Protection Act.

7. Compliance with the Data Protection Act principles

7.1. First Principle

7.1.1. Under the first Data Protection Principle, personal data is required to be processed 'fairly' and 'lawfully'.

7.1.2. Personal data is generally not to be regarded as being processed fairly unless, at the first time that processing takes place, or as soon as practicable afterwards, the relevant data subject is provided with, or had made readily available to him certain information. 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.

7.1.3. Energy Performance Certificates issued before the legislation permitting wider use of the data has effect will not contain information advising the holder that the information on the Energy Performance Certificate will be made publicly available. In order to make the processing fair we have published a press notice, supported by publicity on the DCLG website. We have also

notified a range of relevant organisations and advised them that the data will be made publicly available.

7.1.4. To ensure that it is lawful, the Government has taken appropriate powers in the Energy Act 2011. In addition, handling of the data must:

- not be in breach of the law of confidence;
- not be in breach of any other statute or common law principle;
- be compliant with the Human Rights Act; and
- be compliant with the Environmental Information Regulations.

7.1.5. It is a particular requirement that at least one of the conditions of Schedule 2 of the Data Protection Act is met. In this case paragraph 5(c) of Schedule 2 is the most relevant condition as it states that the processing must be 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 reduce UK carbon emissions by 80 per cent by 2050. The proposal to make Energy Performance Certificate data publicly available and in particular available in bulk to Green Deal providers and other organisations will, it is expected, result in a number of benefits as described at paragraph 2.1 and is, therefore, expected to assist the Government in fulfilling its obligation to dramatically reduce carbon emissions.

Second Principle

7.1.6. 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 with those purposes.

7.1.7. In this case, the purpose, i.e. to support the reduction of carbon emissions from buildings has not changed. However the data will be used in a different way. From 1 April 2012, Energy Performance Certificates will contain a 'fair processing notice' which confirms that it will be publicly available and that some of the underlying data may be shared with others for the purposes of research, compliance and direct mailing of relevant energy efficiency information. It also makes it clear that the current property owner and/or tenant may opt out of having this information disclosed.

7.1.8. We have outlined above the processes we have implemented to inform existing Energy Performance Certificate holders how their

data may be used. We have also noted organisations receiving data in bulk will be required to sign a licensing agreement setting out the terms and conditions under which the data is provided including any sanctions to be applied if they are found to misuse the data.

7.2. Third Principle

7.2.1. 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.

7.2.2. 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. Local authorities, Registered Social Landlords and some research bodies may wish to use Energy Performance Certificate data to obtain information about the energy performance of buildings, therefore identifying those properties that are in need of remedial action to improve their energy performance. 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.

7.3. Fourth Principle

7.3.1. 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. The Department has put in place a number of processes to ensure that the data is correct (e.g. through the use of error traps and robust Quality Assurance requirements).

7.3.2. Where an Energy Performance Certificate is inaccurate, it must be replaced at no charge to the consumer. Energy Performance Certificates are valid for ten years (after which, a new Energy Performance Certificate would be required but only if the property was put up for sale or rent). However, it will be a requirement that an updated Energy Performance Certificate will be produced and lodged following the installation of Green Deal measures, thereby ensuring that the Energy Performance Certificate is always up to date and accurate.

7.4. Fifth Principle

- 7.4.1. 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.
- 7.4.2. Authorised recipients will be required to remove the data from their database and send no further mail shots to a household or business if requested or where the householder does not reply to a maximum of three mail shots. Where a customer chooses to take up the Green Deal offer, then their data would be retained for a time limited period because the Green Deal Provider is likely to want to return to them at some point to check satisfaction and offer further measures.

7.5. Sixth Principle

- 7.5.1. The sixth principle provides that personal data shall be processed in accordance with the rights of data subjects under the Data Protection Act.
- 7.5.2. As now, individuals will have a right to find out what information is being held on them although the Registers do not contain the names of any Energy Performance Certificate holders.
- 7.5.3. The Data Protection Act contains 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. Section 11 is an absolute right while section 10 is subject to a balancing test.
- 7.5.4. 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 having their data made publicly available. In addition, and as noted above, organisations will make clear in their mail shots how customers can opt out of further communications, and will cease sending marketing material if requested or if there is no response from a targeted consumer after they have been contacted three times.

7.6. Seventh Principle

- 7.6.1. The seventh principle requires that appropriate technical and organisational measures shall be taken to prevent unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 7.6.2. As explained at section 4.2, the system will be designed in such a way to prevent automatic data mining. It will incorporate the

online industry standard CAPTCHA program which will only allow access to online Energy Performance Certificates once the enquirer has entered a non machine readable code. This process will prevent the uninterrupted online access usually required for data mining purposes, i.e. because a human being has to read and enter the CAPTCHA code for each enquiry, it will be a time consuming and expensive method for obtaining significant amounts of data. Organisations receiving bulk EPC data will be required to agree to a licensing agreement which, amongst other things, will specify appropriate security arrangements, both technical and administrative, that each party will be required to put in place to safeguard the personal data.

7.7. Eighth Principle

7.7.1. The eighth Data Protection Principle Personal provides that 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. The licencing agreement with bulk data users will make clear that as Data Controllers, they have a responsibility to comply fully with the Data Protection Act 1998, in particular where there is any consideration to transfer any of the data to other organisations.

8. Conclusion

8.1. Making Energy Performance Certificate data publicly available is likely to have a highly beneficial impact on the environment, health and comfort, fuel costs and energy security. We will comply fully with data protection principles and our intention to do so is reflected in the robust safeguards which will be put in place. We will review the data protection, economic and environmental impact five years after implementation.