

# DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

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*Communities and Local Government Circular 06/2008*  
*Department for Communities and Local Government*  
*Eland House, Bressenden Place, London SW1E 5DU*

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4 September 2008

THE EUROPEAN COMMUNITIES ACT 1972

THE BUILDING ACT 1984

THE BUILDING REGULATIONS 2000

THE BUILDING (APPROVED INSPECTORS ETC)  
REGULATIONS 2000

THE ENERGY PERFORMANCE OF BUILDINGS  
REGULATIONS (CERTIFICATES AND  
INSPECTIONS) (ENGLAND AND WALES)  
REGULATIONS 2007

THE HOME INFORMATION PACK (NO.2)  
REGULATIONS 2007

**ADDITIONAL PROVISIONS IN THE ENERGY PERFORMANCE OF BUILDINGS REGULATIONS REGARDING ACCESS TO THE REGISTER**

**AMENDED PROVISION IN THE ENERGY PERFORMANCE OF BUILDINGS REGULATIONS REGARDING THE VALIDITY PERIOD OF AN ENERGY PERFORMANCE CERTIFICATE FOR MARKETED DWELLINGS**

**CONSEQUENTIAL AMENDMENT TO THE HOME INFORMATION PACK REGULATIONS**

**AMENDED PROVISIONS ON EVIDENCE TO SHOW COMPLIANCE WITH REGULATION 17C OF THE BUILDING REGULATIONS 2000 THAT THE BUILDING AS BUILT CO<sub>2</sub> EMISSION RATE DOES NOT EXCEED THE TARGET EMISSION RATE**

**CHANGES TO THE LATEST DATE BY WHICH NOTICE TO SHOW COMPLIANCE WITH REGULATION 17C MUST BE RECEIVED BY THE BUILDING CONTROL BODY**

**NEW REQUIREMENT THAT NOTICE TO BUILDING CONTROL BODIES THAT AN ENERGY PERFORMANCE CERTIFICATE FOR NEW BUILDINGS HAS BEEN GIVEN TO THE OWNER MUST INCLUDE THE REGISTER REFERENCE NUMBER OF THE CERTIFICATE**

**EXTENSION ENDING 4 JANUARY 2009 OF TRANSITIONAL RELIEF FOR PROVISION OF ENERGY PERFORMANCE CERTIFICATES ON SALE OR RENT OF NON-DOMESTIC BUILDINGS**

**INTRODUCTION**

1. I am directed by the Secretary of State to draw your attention to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment No.2) Regulations 2008 (S.I. 2008/2363) which were made on 4 September 2008. The provisions will come into force on 1 October 2008, subject to the transitional provisions referred to in paragraph 18 and 19 below.
2. In accordance with section 14(3) of the Building Act 1984 these Amendment Regulations, in so far as they amend the Building Regulations 2000 (S.I. 2000/2531) or the Building (Approved Inspectors etc) Regulations 2000 (S.I. 2000/2532) were made after consultation with the Building Regulations Advisory Committee and with other bodies representative of the interests concerned.
3. The purpose of this Circular is to:
  - Draw attention to the Amendment Regulations and the changes they make to the Building Regulations 2000, the Building (Approved Inspectors etc) Regulations 2000, the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and the Home Information Pack (No. 2) Regulations 2007;

- Draw attention to the changes made to the Accreditation Standards for the approval of Energy Assessors Accreditation Schemes and to the changes in the National Occupational Standards for energy assessors; and
  - Explain the transitional provisions and arrangements.
4. This Circular does not give technical advice on the carrying out of CO<sub>2</sub> emission rate calculations. Such advice is given in Approved Documents L1A and L2A in respect of new buildings.

## **AMENDMENTS RELATING TO THE DISCLOSURE OF INFORMATION ON ENERGY PERFORMANCE CERTIFICATES**

5. Amendment regulation 2(3) inserts provisions in regulation 14(2) to allow that EPCs and accompanying documents and data may be disclosed by any person having possession or control of them other than a register keeper to:
- (i) an energy assessor for purposes connected to the assessment of the dwelling concerned, thus facilitating the retrieval of data that may not be readily obtainable by other means for the purposes of a subsequent assessment of the dwelling,
  - (ii) to an approved inspector in connection with building control functions, thus correcting an oversight in providing for disclosure to building control bodies, and
  - (iii) to the Energy Saving Trust Limited of the address and energy performance rating only of a dwelling for the purpose of providing information to the occupier on financial assistance available for improving its energy performance, or for anonymised use for statistical or research purposes.
6. Amendment regulation 2(6) inserts a new regulation 34A which provides for disclosure by the register keeper to any person, in response to a request relating to a non-dwelling, of whether or not an energy performance certificate for it is on the register, and when the certificate was issued. This assists landlords of commercial buildings, for which tenants may have commissioned a newer EPC, thus invalidating any earlier EPC held by the landlord, without the landlord knowing. It also enables prospective buyers and tenants to ascertain at once whether a building that interests them has an EPC, though not to obtain the EPC from the register.
7. Amendment regulation 2(7) inserts new regulations 35A and 35B, which provide for disclosure by the register keeper:
- (i) to an energy assessor of any document or data, for the purpose of assessment of a dwelling, or for any purpose on behalf of the owner or tenant of a dwelling. This facilitates the retrieval of data that may not be readily obtainable in a subsequent assessment of the dwelling, and can assist an owner or tenant who no longer has the EPC or its reference number to obtain a new copy of a valid existing EPC, which requires production of the reference number under existing provisions (regulation 35A), and

- (ii) to the Energy Saving Trust Limited of the address of any dwelling in a specified category of energy performance, for the purpose of providing information to the occupier on financial assistance available for improving its energy performance, or for anonymised use for statistical or research purposes (regulation 35B).
8. Amendment regulation 2(8) inserts a new regulation 36A to provide for disclosure by the register keeper of any document or data held on the register to an approved inspector in connection with building control functions, thus correcting an oversight when provision was made for disclosure to enforcement authorities in regulation 36 of the principal regulations, and for disclosure to local authorities as bodies with both enforcement and building control functions by subsequent amendment.

#### **AMENDMENTS RELATED TO THE LENGTH OF VALIDITY OF AN ENERGY PERFORMANCE CERTIFICATE**

9. Amendment regulation 2(2) extends the validity period of the EPC in EPB regulation 11(4) for homes marketed for sale and therefore subject to HIPs requirements from twelve months to three years, and regulation 5 makes the corresponding amendment to the HIPs regulations, so that the maximum age of the EPC on inclusion in the pack is three years. The validity period has hitherto been fixed at twelve months, pending consultation, which has now taken place.

#### **AMENDMENTS RELATING TO A MINOR DRAFTING ERROR IN THE ORIGINAL EPB REGULATIONS**

10. Amendment regulation 2(4) corrects a minor drafting error in EPB regulation 17(1)(e)(iii) the effect of which is to delete the word “estimate” to ensure that energy assessors are clear that they must undertake a proper assessment of the total useful floor area in accordance with the national calculation methodology.

#### **AMENDMENTS RELATING TO THE DATA TO BE LODGED IN THE REGISTER**

11. Amendment regulation 2(5) amends EPB regulation 31(2) to make more precise the definition of the data that is to be entered on the register of EPCs alongside the EPC and related documents, by providing that it should be the data used in accordance with the methodology of calculation of the energy performance of buildings approved under regulation 17A of the Building Regulations for calculating any asset rating or operational rating in it and for producing the document. More information is provided in the Notice of Approval.

#### **AMENDMENTS TO THE BUILDING REGULATIONS AND BUILDING (APPROVED INSPECTORS ETC) REGULATIONS RELATING TO THE GIVING OF ENERGY PERFORMANCE CERTIFICATES**

12. Amendment regulations 3(2)(a) and 4(2)(a) amend regulation 17E(2)(b) of the Building Regulations 2000 and regulation 12(2)(b) in the Building (Approved Inspectors etc) Regulations 2000 to require local authorities and approved inspectors to be given the registered reference number of an energy performance certificate as part of the notice that an energy performance certificate has been given. This will enable local authorities and approved inspectors more easily to check the validity of the notice that a certificate has been given.

13. Amendment regulations 3(2)(b) and 4(2)(b) amend the latest date by which an energy performance certificate must be given in regulation 17E(3) of the Building Regulations 2000 to be not later than five days after the completion of work in all cases, and provide that notice to the local authority must also be given by then. There is a similar amendment to regulation 12(3) of the Building (Approved Inspectors etc) Regulations 2000 amending the latest date for the giving of an energy performance certificate to not later than five days after the completion of work, with the exception that where regulation 18 of those Regulations applies (building is occupied before the completion of work), the latest date is not later than the date on which the initial notice expires or, if earlier, five days after the completion of work. Again, provision is made that notice to the approved inspector must also be given by those dates.

#### **AMENDMENTS TO THE BUILDING REGULATIONS AND BUILDING (APPROVED INSPECTORS ETC) REGULATIONS RELATING TO THE CERTIFICATION OF CO<sub>2</sub> EMISSION RATE CALCULATIONS NEW BUILDINGS FOR THE PURPOSES OF COMPLIANCE WITH REGULATION 17C OF THE BUILDING REGULATIONS 2000**

14. Amendment regulations 3(3)(b) and 4(3)(b) amend regulation 20D(3) of the Building Regulations 2000 and regulation 12D(3) in the Building (Approved Inspectors etc) Regulations 2000 to allow local authorities and approved inspectors to accept as evidence of compliance with regulation 17C of the Building Regulations 2000 (calculation of CO<sub>2</sub> emission rates of new buildings) a certificate from a person who is an accredited energy assessor as defined by regulation 17J of the Building Regulations 2000. The certificate will state that the building will meet its target emission rate if it is constructed in accordance with an accompanying list of specifications.
15. Amendment regulations 3(3)(a) and (c) and 4(3) (a) and (c) amend the latest date by which the notice required by regulation 20D(1) specifying the target and calculated CO<sub>2</sub> emission rates of new buildings or the notice under regulation 20D(4) of the Building Regulations 2000 that the building has been constructed in accordance with the specifications in a certificate issued under regulation 20D(3), must be given to a local authority to be not later than five days after the completion of work in all cases. There are similar amendments to the corresponding provisions in regulation 12D of the Building (Approved Inspectors etc) Regulations 2000 amending the date by which the notice required by regulation 12D(1) or a notice under regulation 12D(4) must be given to the approved inspector to be not later than five days after the completion of work, with the exception that where regulation 18 of those Regulations applies (building is occupied before the completion of work), the latest date is not later than the date on which the initial notice expires or, if earlier, five days after the completion of work.

#### **ACCREDITATION STANDARDS**

16. The accreditation standards for the approval of Energy Assessor Accreditation Schemes for new buildings under regulation 17F of the Building Regulations 2000 have been amended to include standards relating to the production of the calculations needed to demonstrate compliance with regulation 17C of the Building Regulations 2000. The amended standards are available on the Department for Communities and Local Government website [www.communities.gov.uk](http://www.communities.gov.uk).

## **NATIONAL OCCUPATIONAL STANDARDS**

17. The National Occupational Standards are the competence standards that energy assessors must meet in order to be accredited under an approved energy assessor accreditation scheme. The standards have been amended to include the competences necessary to carry out the CO<sub>2</sub> emission rate calculations for the purposes of demonstrating compliance with regulation 17C of the Building Regulations 2000. The amended standards are available on the Department for Communities and Local Government website [www.communities.gov.uk](http://www.communities.gov.uk).

## **TRANSITIONAL ARRANGEMENTS**

18. Regulation 2(9) extends until 4th January 2009 for non-domestic buildings the transitional arrangements in EPB regulation 51 which allow a seller or a prospective landlord to commission an EPC other than for a marketed sale of a home only after exchange of contracts with a buyer or new tenant. This provision has hitherto benefited, among other descriptions of buildings, non-domestic properties over 10,000m<sup>2</sup> in area, for which duties commenced on 6th April 2008, and non-domestic properties over 2,500m<sup>2</sup>, for which duties commenced on 1st July 2008. The provision was to end on 1st October 2008, which is also the commencement date for non-domestic properties under 2,500m<sup>2</sup>. All non-domestic sales and rentals now benefit from the extension to 4th January 2009, which is the cut-off date for full implementation of the Directive.
19. These amendment regulations come fully into force on 1 October 2008 and there are no other transitional provisions in respect of the coming into force of regulatory requirements. There are however transitional arrangements in place for energy assessor accreditation to meet the new requirements. All energy assessor accreditation schemes seeking approval and all energy assessors seeking accreditation on or after 1 October 2008 will need to meet the amended accreditation standards and National Occupational Standards. However, schemes approved and energy assessors accredited before that date will be allowed six months to demonstrate compliance with the amended standards.

## **ENQUIRIES**

20. All enquiries on matters covered by this Circular should be addressed to:

Department for Communities and Local Government  
Sustainable Buildings Division  
Eland House, Bressenden Place  
London SW1E 5DU

Tel: 020 7944 4400

Fax: 020 7944 5719

E-mail: [enquiries.br@communities.gsi.gov.uk](mailto:enquiries.br@communities.gsi.gov.uk)

Signed:

Jessica Matthew

An Assistant Secretary in the Department for Communities and Local Government

File references: CI/43/1/22

## ANNEX A

### The Energy Performance of Buildings (Certificates and Inspections (England and Wales) (Amendment No.2) Regulations 2008 (S.I. 2008/2363)

The following table lists all the changes made by S.I. 2008/2363 to the Building Regulations 2000 (S.I. 2000/2531):

<b>S.I. 2000/2531 Regulation No.</b>	<b>S.I. 2008/2363 Regulation No.</b>	<b>Action</b>
17E(2)(b)	3(2)(a)	Energy performance certificates. Amendment to require the registered reference number of an energy performance certificate to be given to a local authority as part of the notice that a certificate has been given.
17E(3)	3(2)(b)	Energy performance certificates. Amends the latest date by which a certificate must be given, and provides for notice to the local authority by the same date.
20D(2)	3(3)(a)	CO <sub>2</sub> emission rate calculations. Amends the latest date by which a notice must be given to the local authority.
20D(3)	3(3)(b)	CO <sub>2</sub> emission rate. Amends the bodies from which certificates may be accepted as evidence of compliance with regulation 17C.
20D(4)(b)	3(3)(c)	CO <sub>2</sub> emission rate evidence. Amends the latest date by which notices must be given to the local authority.

## ANNEX B

### The Energy Performance of Buildings (Certificates and Inspections (England and Wales) (Amendment No.2) Regulations 2008 (S.I. 2008/2363)

The following table lists all the changes made by S.I. 2008/2363 to the Building (Approved Inspectors etc) Regulations 2000 (S.I. 2000/2532):

<b>S.I. 2000/2532 Regulation No.</b>	<b>S.I. 2008/2363 Regulation No.</b>	<b>Action</b>
12(2)(b)	4(2)(a)	Energy performance certificates. Amendment to require the registered reference number of an energy performance certificate to be given to an approved inspector as part of the notice that a certificate has been given.
12(3)	4(2)(b)	Energy performance certificates. Amends the latest date by which a certificate must be given, and provides for notice to the local authority by the same date.
12D(2)	4(3)(a)	CO <sub>2</sub> emission rate calculations. Amends the latest date by which a notice must be given to the approved inspector.
12D(3)	4(3)(b)	CO <sub>2</sub> emission rate. Amends the bodies from which certificates may be accepted as evidence of compliance with regulation 17C.
12D(4)(b)	4(3)(c)	CO <sub>2</sub> emission rate evidence. Amends the latest date by which notices must be given to the approved inspector.



## ANNEX C

### The Energy Performance of Buildings (Certificates and Inspections (England and Wales) (Amendment No.2) Regulations 2008 (S.I. 2008/2363)

The following table lists all the changes made by S.I. 2008/2363 to the Energy Performance of Buildings (Certificates and Inspections (England and Wales) Regulations 2007 (S.I. 2007/991)

<b>S.I. 2007/991 Regulation No.</b>	<b>S.I. 2008/2363 Regulation No.</b>	<b>Action</b>
11(4)	2(2)	Energy performance certificates. Extends period of validity of an energy performance certificate where home information pack duties apply.
14(2)	2(3)	Purposes for which certificates and recommendation reports may be disclosed. Defines additional circumstances where such disclosure may be lawfully made.
17(1)(e)(iii)	2(4)	Display energy certificates. Amends the definition of the floor area to be shown on a display energy certificate.
31	2(5)	Registration of certificates etc. Clarifies the nature of the data to be entered on the register.
New regulation 34A	2(6)	Disclosures whether an energy performance certificate for a building other than a dwelling has been entered on the register. Allows the keeper of the register to disclose whether an energy performance certificate has been issued and the date of issue.
New regulation 35A	2(7)	Disclosures to energy assessors in relation to dwellings. Allows the keeper of the register to disclose any document or data on the register to an energy assessor for certain purposes.

continued

New regulation 35B	2(7)	Discloses to the Energy Saving Trust Limited. Allows the keeper of the register to disclose specified information to the Energy Saving Trust Limited for limited purposes.
New regulation 36A	2(8)	Disclosures to approved inspectors. Allows the keeper of the register to disclose any document or data to an approved inspector in connection with the approved inspector's building control functions.
51	2(9)	Transitional arrangements – property on the market at the time of commencement. Amends the transitional arrangements for non-domestic buildings.

## ANNEX D

### The Energy Performance of Buildings (Certificates and Inspections (England and Wales) (Amendment No.2) Regulations 2008 (S.I. 2008/2363)

The following table lists all the changes made by S.I. 2008/2363 to the Home Information Pack (No.2) Regulations 2007 (S.I. 2007/1667 as amended by S.I. 2007/1669)

<b>S.I. 2007/1667 Regulation No.</b>	<b>S.I. 2008/2363 Regulation No.</b>	<b>Action</b>
15(2)	5	Age of pack documents when first included. Extends period of validity of an energy performance certificate included in a home information pack.

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ISBN 978 0 11 754001 9

£6

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ISBN 978-0-11-754001-9

