EXPLANATORY MEMORANDUM TO

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

2007 No. 1669

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 ("the principal regulations"). Those Regulations implemented Articles 7, 9 and 10 of the Energy Performance of Buildings Directive ("the Directive"), which relate to energy performance certificates ("EPCs") on the sale, renting out and construction of buildings.

2.2 The majority of these amendments are made in order to maintain the alignment of certain provisions of the principal regulations relating to EPCs to be provided on sales of dwellings with the operation of requirements concerning EPCs and home information packs (HIPs) in the Home Information Packs (No. 2) Regulations 2007[1] ("the revised HIPs regulations"), which replace the Home Information Pack Regulations 2007[2] (which have been revoked) and which have been laid contemporaneously with these Regulations. They also make some related changes to the coming into force of EPCs on construction in respect of newly constructed dwellings. These Regulations also make some minor drafting clarifications and corrections.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The background to the principal regulations was covered fully in the Explanatory Memorandum which accompanied them. The requirement for the amendments made by these Regulations to the requirements for EPCs on sales of dwellings flows from the making of the revised HIPs regulations and the legislative background to those regulations is set out in the explanatory memorandum which relates to those regulations and which is laid contemporaneously with this memorandum. EPCs on construction were

[1] S.I. 2007/1667.
[2] S.I. 2007/992.

intended to come into force on 1st October 2007. They will now effectively be phased in for properties that require a HIP. All new build dwellings will be required to have an EPC from 1st January 2008 whether or not they have a HIP.

4.2 A copy of the Directive can be found at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_001/l_00120030104en00650071.pdf

4.3 The transposition note for the Directive is attached in a revised form, showing the amendments made by these Regulations.

4.4 The principal regulations, so far as relevant to these amendments:

a. require that an energy performance certificate ("EPC"), and a report providing recommendations as to how the energy efficiency of the building can be improved is made available to a prospective buyer on the sale or rent of a building (regulations 5 and 10);

b. prescribe the contents of EPCs, including that:

(i) they must contain the address of the property (regulation 11(1)(d)(ii);

(ii) they must contain an asset rating, which is a numerical indicator of the estimated amount of energy which would be needed for a standardised use of the building (regulation 11(1)(a));

(iii) they must not contain any information from which a living person can be identified (other than the assessor or his employer) (regulation 11(6));

c. require that, where a building is sold or rented out in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty to provide a home information pack ("HIP") and written particulars are prepared to inform prospective purchasers, either the EPC must be attached to the particulars or the asset rating must be included in the particulars (regulation 6);

d. amend the Building Regulations 2000[3] to revoke the previous regulations which required an energy rating (in practice, a SAP rating) to be calculated wherever new dwellings are created, and replace them with regulations requiring that an EPC and recommendation report be produced for all new buildings once construction work is complete;

e. specify that EPCs will have a validity of 10 years, except in cases where a building is sold, or rented under a long lease, in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty to provide a HIP (regulation 11(4));

[3] S.I. 2000/2531, as amended by S.I. 2006/652.

f. provide for a phased commencement of the duty to provide an EPC on sale or rent, with the first phases relating to cases where a building is sold or rented on a long lease in circumstances where section 155(1) or 159(2) of the Housing Act 2004 imposes a duty to provide a HIP (regulation 1(4) and Schedule 1);

g. provide for certain public buildings to display a display energy certificate ("DEC") and specify the contents of a DEC (regulation 16);

h. require that EPCs and DECs are issued by accredited energy assessors (regulations 11(1)(c) and 17(1)(d));

i. provide for the creation of a register of EPCs and DECs and state that where an energy assessor issues any EPC or DEC, he must ensure that it, and the data that were collected to produce it, is entered onto the relevant register (regulation 31).

4.5 The main purpose of the amendments is to align requirements in the principal regulations to changes made by the revised HIPs regulations concerning the implementation of the requirements of Part 5 of the Housing Act 2004 for HIPs and to the postponement of the commencement[4] of that Part and to make some consequential changes.

4.6 The policy is that HIPS and EPCs should be implemented on a phased basis commencing with properties of four or more bedrooms, from 1st August 2007 (except those which were built to the standards contained in part L of the Building Regulations 2000 as it applied with effect from 6th April 2006[5]) . The excepted category will also be subject to phasing, commencing from a later date than 1st August 2007. To enable a smooth transition sellers will until 31 December be allowed to market their properties as soon as they have commissioned a pack. For a transitional period EPCs can be up to 12 months old when a property is put up for sale: the Government will consult further on long-term arrangements. The implementation of EPCs on newly constructed dwellings will effectively be phased where the requirement to have a HIP applies. Properties built to the more stringent requirements of the 2006 Building Regulations require a different form of EPC, and the requirement to produce a HIP for these properties will be brought into force with a Commencement Order.Where there is no requirement for a HIP - for example for new homes built for a social landlord - an EPC will have to be produced from 1 January 2008. The following amendments have therefore been made:

a. regulation 3(6)(a) amends Schedule 1 to the principal regulations to apply a transitional exception from the duty in regulation 5 of the principal

[4] Commencement is now expected to be phased, with the first phase relating to properties with four bedrooms commenced on 1st August 2007.

[5] The revised standards set out in Part L of the Building Regulations 2000 (S.I. 2000/2531) as specified by amendment in April 2006 (S.I. 2006/652) only apply where the application for building regulation consent was made after they came into force, so many houses in the course of construction are being built to the earlier standards.

regulations to make an EPC available, which operates in cases where a duty is imposed by section 155(1) or 159(2) of the Housing Act 2004 to provide a HIP. So far as relevant to these Regulations, regulation 34 of the revised HIP regulations operates to prevent, for a temporary period, the duty to provide a HIP from applying until an EPC is available. The minor textual amendments in regulation 3(6)(a) ensure that where regulation 34 of the revised HIP regulations applies, the duty to provide an EPC under the principal regulations is similarly disapplied. The temporary period will terminate on the 1st January 2008.

b. regulation 3(6)(b) postpones until 1st January 2008 the coming into force of the provisions of regulation 8 and Schedule 2, which implement the requirement for an EPC in respect of newly constructed dwellings . Where such buildings are marketed the phased introduction of HIPs will bring in the obligation to have an EPC at an earlier date.

c. regulation 3(4)(a) amends regulation 11(4), with the effect that an EPC is valid if it is not more than 12 months old (in substitution for 3 months) at the point of first marketing, in cases where the duty to have a HIP imposed by section 155(1) or 159(2) of the Housing Act 2004 applies;

d. regulation 3(3) amends regulation 6(1)(a) of the principal regulations, so that regulation 6 (requirement to provide energy information in written particulars) does not apply where, as a result of the application of the transitional provision in regulation 34 of the revised HIP regulations, a property is marketed without a HIP, until the duty to provide a HIP applies[6];

e. regulation 4 provides that where, but for the effect of regulation 34 of the revised HIP regulations, both the duty imposed by section 155(1) or 159(2) of the Housing Act 2004 to have a HIP and a duty to make an EPC available under regulation 5 of the principal regulations would apply, an EPC and a recommendation report must nevertheless be provided to the prospective purchaser before a contract is entered into.

4.7 These regulations also make certain minor drafting clarifications and corrections in the principal regulations. These include:

a. regulation 3(4)(c) clarifies regulation 11(6), in order to make it clear that it does not override the requirement in regulation 11(1)(d)(i) to include in an EPC the address of the building to which it relates;

b. regulation 3(5) corrects regulation 31(2) of the principal regulations to limit the data which needs to be placed on the register to accompany an EPC and a DEC. The requirement has been limited to the data which was inputted into the relevant software to produce the EPC or DEC. Thus there will not be, for example, a need to place the design plans for the building on the register.

[6] To the extent relevant to these regulations, the duty to provide a pack will apply once an energy performance certificate is available, provided the building is still on the market at that date.

4.8 The Regulations are made under section 2(2) of the European Communities Act 1972, and in relation to regulation 3(6)(b), sections 1(1), 8(6), 35 and 47 of, and paragraphs 1, 2, 4, 7, 8 and 10 of Schedule 1 to, the Building Act 1984.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Introduction

7.1 The policy background to these Regulations and the link to the implementation of the revised HIP regulations is summarised below. This memorandum then draws particular attention to the changes given effect by these amendments and why they have been made at this time.

The Directive and climate change policy

7.2 The Government has recognised the threat posed by Climate Change and is pursuing its Climate Change Programme[7]. The Government has robustly supported the Kyoto Protocol and the most recent reports in February 2007 from the International Panel on Climate Change. Nearly 50% of the UK's carbon emissions arise from the way in which energy is consumed in its 25 million buildings[8]. It is therefore a key policy objective to reduce the energy consumption attributable to buildings.

7.3 The implementation of the Directive is a key part of meeting the national policy objective. The objective of the Directive is to promote the improvement of the energy performance of buildings within the European Community.

The Principal Regulations

7.4 The principal regulations implement in England and Wales, three Articles of the Directive. In particular, with relevance to this memorandum, the Regulations include the requirement for:

[7] The UK Climate Change Programme – Defra 2006

[8] http://www.communities.gov.uk/pub/173/BuildingaGreenerFutureTowardsZeroCarbonDevelopment_id1505173.pdf

(a) energy performance certificates ("EPCs") and recommendations for improvement of the energy performance of the building to be produced when all types of buildings are sold or rented out;
(b) the energy assessors producing the certificates or carrying out the inspections to be accredited.

Link to Home Information Packs

7.5 The principal regulations have been developed alongside the Home Information Pack regulations.

(a) The Housing Act 2004 requires that, in most circumstances, when a dwelling is marketed for sale, a HIP is made available on request to potential homebuyers.
(b) The Directive requires Member States to ensure that an EPC is made available to prospective buyers.

7.6 In order to minimise the additional burdens on home sellers, and to provide greater simplicity for home buyers collating information about a property, EPCs and HIPs have been developed jointly. EPCs for homes placed on the market for sale are therefore required, under the revised HIP regulations, to be included in HIPs

7.7 The substantive duties to provide EPCs in the principal regulations come into operation in stages, and the first duties to come into force are those that apply where a HIP (which provides key information about the property) is required.

7.8 The revised HIP regulations make a number of changes to the implementation of the scheme as set out in previous regulations. These changes were outlined to Parliament by the Secretary of State for Communities and Local Government on 22 May. The Explanatory Memorandum to the revised HIP regulations provides a summary of the current position, including these changes. In particular:

(a) the delayed start of the implementation of HIPs and hence EPCs on 1st August 2007 (amended from 1st June 2007); and
(b) the Department's intention to formally consult this summer on the maximum age of EPCs within a HIP.

7.9 A number of the changes to the implementation of HIPs require changes to the principal regulations in order to align the implementation of EPCs with that of HIPs.

Changes given effect by amendments to the principal regulations

Phased introduction of EPCs and provision of EPCs on new build

7.10 The Department has now changed the planned implementation date for HIPs to 1st August 2007. This implementation will be phased and will begin

with larger properties and be extended to smaller properties when the Department is confident that the numbers of accredited energy assessors is sufficient to meet demand. The phasing will also include buildings which meet the pre-2006 building regulations standards. The principal regulations have been amended so that the requirement to provide an EPC on sale under those regulations is similarly phased.

7.11 The Energy Performance of Buildings Directive requires EPCs to be produced for properties when they are constructed even if they are not marketed at that time. The 2006 amendments to the Building Regulations introduced more stringent requirements for the energy efficiency of newly built dwellings. Properties built to these regulations require a different form of EPC. The original timetable for the introduction of HIPS provided that this different form of EPC would be required in HIPs from 1 October 2007. This period of time was intended to allow time for new software to be adapted and tested, for energy assessors to be accredited and for arrangements to be made for registering EPCs.

7.12 These arrangements will now be revised to reflect the new, phased timetable for the introduction of HIPs, with the requirement to produce a HIP (with an EPC) being extended to properties built to the 2006 Building Regulations being brought into force with a Commencement Order. In line with this, the Directive's requirement that an EPC is produced for all dwellings when they are constructed will now be introduced from 1 January 2008. .

Age of EPCs in the HIP

7.13 The revised HIP regulations extend the validity of EPCs included in HIPs from the original three month validity period to twelve months. This is intended to be a transitional arrangement and provides time for the consultation to take place and the regulations to be further amended if necessary. The corresponding provisions of the principal regulations accordingly require amendment to maintain alignment with the revised HIP regulations

First day marketing of Home Information Packs

7.14 An exception in the revised HIP regulations allows for the marketing of homes without HIPs. for a transitional period until 1 January 2008. A slight amendment to the coming into force provisions in the principal regulations is necessary to allow for the operation of this exception.

7.15 The duties under the revised HIP regulations will not bite if the property is taken off the market before a HIP has been provided and in such cases the EPC may have not been provided to the potential buyer by that time. An amendment to the principal regulations ensures that during this transitional period, in these cases, an EPC is provided to the potential buyer prior to contract exchange.

Energy ratings with written particulars

7.16 The principal regulations require that, either the EPC must be attached to estate agents' particulars for the sale of dwellings which require a HIP, or, as a minimum, those particulars must contain the asset rating extracted from the EPC. This may now not be feasible at the start of the marketing process as, during the transitional period, an EPC does not need to be provided at the first point of marketing. Instead, the principal regulations have been amended to require that during the transitional period, the asset rating to only be included in or with written particulars once it is available. This will require the amendment of written particulars if further copies are given out after that date. If the EPC is not available until after the property has been taken off the market, it will not be necessary to amend the particulars.

Other changes given effect by the Regulations

7.17 The Regulations also include a small number of consequential changes made as a result of the position outlined above, and some minor corrections to the principal regulations.

Consultations since 22nd May 2007

7.18 The transitional provisions in the current Regulations have been discussed with key stakeholders in a series of bilateral meetings with officials since 22nd May 2007. The meetings included sessions with estate agents, energy assessors, accreditation schemes, home builders, lawyers and environmental interests.

7.19 The Department was acutely aware of the interests of all those who are or could be adversely affected by the Secretary of State's statement of 22nd May. The Department had little choice but to take the action it has taken in deferring the implementation of EPCs in Home Information Packs, but nevertheless has done everything it can do to engage with the stakeholders affected by these Regulations and to warn them of the necessary changes, in the short time available to it. The Department wishes to emphasise that the modifications to the policy given effect by these Regulations are of a transitional nature.

7.20 In the near future—

(a) the Department will consult formally this summer on proposals for the maximum age on first marketing of EPCs in Home Information Packs and on proposals to include in home information packs assessments of the sustainability of newly built homes;

(b) the Department will continue its informal and formal consultations with stakeholders.

(c) the Department will continue to examine the progress of the area trials of home information packs including home condition reports and EPCs as further information emerges from completed sales.

Guidance and publicity

7.21 It is vital to ensure that all of the different stakeholder groups are aware of the new and amended Regulations and how they are affected by them. The Department's intention is to undertake a series of publicity campaigns aimed at each relevant group. The publicity will be split into phases in line with the phased introduction of the measures, and will be aimed at both consumers and providers of energy services. A national consumer-facing publicity campaign to raise public awareness of the obligations will be introduced. Public information leaflets aimed at energy assessors and consumers are already being distributed, and further leaflets for these and other stakeholders are planned. A dedicated helpdesk is already in place, providing support and information to members of the public and industry.

7.22 For each element of the Directive, the intention is that the following guidance will be produced:

- technical manuals to detail the methodology for assessing energy performance;
- guidance for enforcement officers to explain the regulations and the scope of their new duties;
- web pages explaining the legislation and associated measures;
- published criteria for the approval of accreditation schemes; and
- guidance outlining new obligations and providing advice for domestic property owners, occupiers and their agents and non-domestic property owners, occupiers, managers and their agents.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Simon Barnes at Communities and Local Government Tel: 0207-944 5709 or e-mail: simon.barnes@communities.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE FOR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2002/91/EC OF 16 DECEMBER 2002 ON THE ENERGY PERFORMANCE OF BUILDINGS

This transposition note sets out the way in which Articles 7-10 of the Directive are to be implemented through the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) in England and Wales only. These Regulations are now amended by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2007 (S.I. 2007/##). The amendments in question are described in the footnotes to this note.

Scotland, Northern Ireland and Gibraltar are implementing separately.

These Regulations do more than is necessary to implement the Directive in the following areas:

1. **Most, but not all permissible exemptions have been taken up (regulation 4).**
2. **As well as requiring energy performance certificates (EPCs) to be made available to prospective buyers or tenants, the Regulations also require a copy of the EPC to be given to the ultimate buyer or tenant (regulation 5(5)).**
3. **Where the Housing Act 2004 requires the production of a Home Information Pack in relation to the sale of a building-**
    a. **EPCs must be no more than twelve months old at the first point of marketing of the building[9] (as that term is defined in the Home Information Pack Regulations 2007) (regulation 11(4)); and**
    b. **written particulars made available to prospective buyers must have the asset rating included in the particulars or an EPC attached to the particulars (regulation 6).**
4. **EPCs must be accompanied by recommendations for improvement of energy performance which are not limited to recommendations which are cost-effective relating to the fabric of the building and its heating services, but include higher cost measures which will improve performance (regulation 10(2)).**
5. **Energy certificates displayed in public buildings are only valid for 12 months (regulation 16(3)).**
6. **Recommendations for improvement of public buildings are only valid for 7 years (regulation 16(4)).**
7. **A central register of certificates and reports is required to be maintained by the Secretary of State (Part 6).**
8. **Regular air conditioning inspections are required where the aggregate installed cooling capacity of multiple air-conditioning units**

[9] Three months was specified in the original regulations. This is extended by the amendment regulations to twelve months.

under the relevant person's control exceeds 12kW (regulation 20(2)). **Transposition of Articles 3-6 of the Directive was notified on 20th March 2006.**			
Main elements of the Directive	**Objective**	**Implementation**	**Responsibility**
Article 3 Adoption of a methodology	Requires the adoption of a methodology of calculation of the energy performance of buildings on the basis of a general framework. The energy performance of a building shall be expressed in a transparent manner and may include a CO_2 emission indicator.	Article 3 was initially implemented by regulation 17A of the Building Regulations 2000. Paragraph 1(7) of Schedule 2 amends regulation 17A to require the Secretary of State to approve: • methods for calculating asset ratings and operational ratings of buildings as part of the methodology for calculating the energy performance of buildings; and • ways in which the energy performance of buildings, as calculated in accordance with the methodology, shall be expressed. The asset rating of a building is defined in regulation 17A(2) as a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building. The operational rating is defined as a numerical indicator of the amount of energy consumed during the occupation of a building over a period of time.	Secretary of State
Article 7	Article 7(1). When buildings are	Part 2 of, and Schedule 2 to, the Regulations implement Articles	Secretary of

Energy Performance Certificates	constructed, sold or rented out an Energy Performance Certificate (EPC), must be made available to the owner or by the owner to the prospective buyer or tenant. The certificate must not be more than ten years old. The following categories of building may be excluded: • buildings and monuments officially protected as part of a designated environment or because of their special architectural or historic merit, where compliance with the requirements would unacceptably alter their character or appearance • buildings used as places of worship and for religious activities • temporary buildings with a planned time of use of two years or less, industrial sites, workshops and agricultural buildings with low energy demand and non-residential	7(1) and (2). Regulation 4 adopts all of the exemptions permitted by Article 7(1) other than: • historic buildings (compliance with the requirement to produce an EPC cannot alter the character or appearance of such buildings); • buildings used as places of worship where that is not their sole or primary use, and buildings used for religious activities; • non-residential agricultural buildings covered by a national sectoral agreement on energy performance (there are no such agreements in England and Wales); • residential buildings which are intended to be used less than four months of the year; • stand-alone dwellings with a total useful floor area of less than $50m^2$. Regulation 5 requires an EPC to be made available free of charge by the seller or landlord to any prospective buyer or tenant. The EPC must be made available at the earliest opportunity and no later than: • the time at which further information about the building is	State

[10] Regulation 11(4), as amended by the amendment regulations, provides that an EPC included in a Home Information Pack required by the Housing Act 2004 shall be no more than twelve months old at the first point of marketing of the dwelling.
[11] See footnote 4 concerning the commencement of Home Information Pack requirements under the Housing Act 2004.

	agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance • residential buildings which are intended to be used less than four months of the year • stand-alone buildings with a total useful floor area of less than 50m^2 Article 7(2). EPCs must include reference values such as current legal standards and benchmarks in order to make it possible for consumers to compare and assess the energy performance of the building. The EPC must be accompanied by recommendations for the cost effective improvement of energy performance.	provided in response to a request from a prospective buyer or tenant for further information; • when a prospective buyer or tenant views the building; or • entering into a contract to sell or rent out the building. Regulation 5(5) requires the seller or landlord to ensure that the ultimate purchaser or tenant has been given an EPC. Regulation 8 and Schedule 2 require EPCs on construction of buildings by amending the Building Regulations 2000. In particular paragraph 1(8) of Schedule 2 inserts Regulation 17E into the Building Regulations 2000, which requires the production of an EPC where a new building is erected or an existing building undergoes major modifications so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed heating, hot water, air conditioning or mechanical ventilation. Paragraph 2 of that Schedule substitutes regulation 12 of the Building (Approved Inspectors etc) Regulations 2000 in similar terms (those regulations apply where an approved inspector has been appointed in respect of the work). Regulation 9 requires EPCs to be produced when buildings are constructed where the Building Regulations 2000 do not apply. Regulation 10 requires that EPCs be accompanied by a	

		recommendations report containing recommendations for the improvement of the energy performance of the building. Regulation 17E(4) of the Building Regulations 2000 and regulation 12(4) of the Building (Approved Inspectors etc) Regulations 2000 require such a report to accompany EPCs on construction. Regulation 11 prescribes the minimum requirements for EPCs, and in particular the EPC must: • express the asset rating of the building in the way approved by the Secretary of State pursuant to regulation 17A of the Building Regulations 2000; • include a reference value such as a current legal standard or benchmark; • be issued by an accredited energy assessor. Regulation 17E(5) of the Building Regulations 2000 imposes the same requirements on EPCs on construction. Regulation 11(3) provides that an EPC is only valid if it is not more than ten years old, and no other EPC has since been produced. Regulation 11(4) makes an exception to paragraph (3), which applies only where regulations under the Housing Act 2004 require EPCs to have a validity period shorter than 10 years[10]. Regulation 6 requires either the asset rating of the building to be	

		included in any written particulars or that the EPC be attached to the written particulars. This regulation only applies to those sales of dwellings where a Home Information Pack is required under the Housing Act 2004. [11]	
	Article 7(3) requires that buildings with a total useful floor area over 1,000m^2 occupied by public authorities and by institutions providing public services to a large number of persons and therefore frequently visited by these persons have an energy certificate, not older than 10 years, displayed in a prominent place clearly visible to the public.	Part 3 implements Article 7(3). Regulation 16 applies to buildings over 1000m^2 occupied by public authorities or by institutions providing public services to a large number of persons and therefore frequently visited by those persons, and requires the occupiers of such buildings to: • display at all times a display energy certificate ("DEC") in a prominent place clearly visible to the public; and • have in its possession or control at all times an advisory report, no older than seven years, containing recommendations for improvement of the energy performance of the building. Regulation 17 prescribes the minimum requirements for DECs, and in particular the DEC must: • (subject to regulation 18) express the operational rating and the asset rating of the building in the way approved by the Secretary of State pursuant to regulation 17A of the Building Regulations 2000; • include a reference value such as a current legal standard or benchmark; and	Secretary of State

		• be issued by an accredited energy assessor. Regulation 18 makes various alternative provisions as to what rating is expressed on the DEC in cases where, due to changes of occupier, the data necessary to produce an operational rating does not exist, or an EPC was not provided to the occupier upon sale or rent.	
Article 8 Inspection of boilers	Members States are required to either: (a) lay down the necessary measure to establish a regular inspection of certain types of boilers and the one-off inspection of heating systems that are more than 15 years old and served by boilers with an output of more than 20 kW; or (b) take steps to ensure the provision of advice to the users on the replacement of boilers, other modifications to the heating system and on alterative solutions which may include inspections to assess the efficiency and appropriate size or the boiler. The overall impact of this approach should be broadly equivalent to that arising from the provisions set out in (a). Member States that choose this	In England and Wales a decision has been made to adopt the option in Article 8(b). A report to the Commission by January 2008 will be made to demonstrate that the impact of this approach is broadly equivalent to regulating. Accordingly, no provision is made in these regulations.	Secretary of State

	option shall submit a report on the equivalence of their approach to the Commission every two years.		
Article 9 Inspection of air-conditioning systems	Member States are required to lay down the necessary measures to establish a regular inspection of air-conditioning systems of an effective rated output of more than 12kW. The inspection shall include an assessment of the air-conditioning efficiency and the sizing compared to the cooling requirements of the building. Appropriate advice shall be provided to the users of the air-conditioning system on possible improvement or replacement of the air-conditioning system and on alternative solutions.	Part 4 implements Article 9. Regulation 21 requires the person with control of the operation of the air-conditioning system ("the relevant person") to ensure that the system is inspected by an accredited energy assessor at regular intervals not exceeding five years. Systems first put into service on or after 1st January 2008 must be inspected within 5 years of the date of putting into service. In all other cases the first inspection of a system must take place: • in the case of systems with an effective rated output of more than 250kW, by 4th January 2009; and • in the case of smaller systems, by 4th January 2011. Regulation 22 requires energy assessors to produce a written inspection report including an assessment of the efficiency and sizing of the system compared to the cooling requirements of the building, and advice on possible improvements, replacement and alternative solutions. Regulation 23 requires the relevant person to keep the most recent report and, where the relevant person changes, give it to the new relevant person.	Secretary of State

		Regulation 24 requires that a new relevant person who is not given a report by the previous relevant person must ensure an inspection is carried out within three months of arrival.	
Article 10 Independent Experts	Requires that the certification of buildings, the drafting of the accompanying recommendations and the inspection of air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts.	Part 5 and Schedule 2 of the Regulations implement Article 10. Regulation 25: • requires energy assessors to be a member of an accreditation scheme approved by the Secretary of State; and • sets out the matters of which the Secretary of State must be satisfied before approving an accreditation scheme. In particular regulation 25(3) requires the Secretary of State to be satisfied that any scheme contains adequate provision for:- • ensuring members carry out consistent and accurate energy assessments in an independent manner, and • ensuring members are qualified to carry out energy assessments. Regulation 26 requires energy assessors to disclose any personal or business relationship with any person with an interest in the building.	Secretary of State

		National Occupational Standards are being developed for the various categories of energy assessment.	
Article 12 Information	Member States may take measures to inform the users of buildings as to the different measures and practices that serve to enhance energy performance.	Marketing campaigns are planned: • To inform stakeholders about the new requirements and changes in the law, and provide them with the information they need to comply • To raise awareness of the impact of buildings on emissions • To encourage individuals and organisations to improve their buildings' energy ratings where possible and use energy for lighting, heating, hot water and air conditioning more effectively and efficiently. Each campaign will have two parts: general awareness of the need for energy assessment and certificates and their obligations prior to the relevant coming into force dates; and energy aware campaigns to improve building performance and adopt more effective and efficient energy management. Five campaigns are planned: • Domestic properties (campaign already underway for the need for an EPC on sale from 1 June 2007). Further waves planned for construction and rental. • Commercial properties (including recruitment of assessors) • Display certification (including the raising of awareness of the need to start data collection at least a year before the requirement to certify comes into effect.	Secretary of State

		• Air conditioning inspections (including recruitment of inspectors) • Boilers (sustained campaigns for domestic and non-domestic property owners and the heating maintenance insurance and contracting industries as part of the implementation of Art. 8)		
Article 15 Transposition	Article 15(1) requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive at the latest on 4 January 2006 and to forthwith notify the Commission thereof. Article 15(2) allows for an additional 3 years to apply fully the provisions of Articles 7, 8 & 9 if there is a lack of qualified inspectors.	Articles 3, 4, 5 & 6 were implemented in another instrument, the Building and Approved Inspectors (Amendment) Regulations 2006, which came into force on 6th April 2006, subject to certain transitional provisions. This was notified to the Commission on 20 March 2006 These Regulations come into force gradually over the period up to 1 October 2008, at which point the Regulations will be fully in force. The substantive duties imposed by these regulations come into operation as set out below:		Secretary of State
		1 June 2007[12]	EPCs required for the sale of existing dwellings where a Home Information Pack is required under the Housing Act 2004 (other than dwellings built to 2006 standards)	

[12] The effective date for this is 1st August 2007, when the Housing Act requirements in question commence in respect of a first class of dwellings. In addition, an exception in the regulations governing home information packs permits the marketing of a dwelling without an EPC where an EPC is not obtainable by all reasonable efforts. Regulation 4 of the amending regulations provides that, even where this exception applies, if the Regulations would otherwise require that an EPC be made available then an EPC shall nonetheless be given to the prospective buyer or tenant before a contract for sale or letting out is entered into.

		1 October 2007[13]	EPCs required on the sale of dwellings built to 2006 standards.	
		1 January 2008[14]	EPCs required on construction for all dwellings	
		6 April 2008	EPCs required for the sale or rent of buildings other than dwellings with a floor area over 500m²	
			EPCs required on construction for all buildings other than dwellings.	
			Display certificates required for all buildings >1,000 m² occupied by public authorities and public institutions providing public services to a large number of persons and therefore frequently visited by these persons.	
		1 October 2008	EPCs required on the sale or rent of all remaining dwellings.	
			EPCs required on the sale or rent of all remaining buildings other than dwellings.	

[13] The effective date for this will be determined by the commencement of the Housing Act requirements in question.
[14] This date was postponed from 1st October 2007 to 1st. January 2008 by the amending regulations.

		4 January 2009	First inspection of all existing air-conditioning systems over 250 kW must have occurred by this date.	
		4 January 2011	First inspection of all remaining air-conditioning systems over 12 kW must have occurred by this date.	

Communities and Local Government

Regulatory Impact Assessment

Energy Performance of Buildings Directive

Articles 7 - 10

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

Purpose and Intended Effect of Measure

1. The objective of this RIA is to estimate the impact of the amendment to the Energy Performance of Buildings Regulations 2007 necessary to align with changes to the implementation of Home Information Packs (HIPs) as announced on 22 May 2007. It should be read in conjunction with the RIA for these HIP changes, which explain the context and reasoning.

2. The main change is:

   - To extend the 3 month age limit and allow EPCs to be up to 12 months old when a property is put up for sale. This change is being made pending a consultation during the summer on the long-term arrangements for the validity of EPCs in HIPs.

   Additional transitional changes to smooth implementation are:

   - HIPs and EPCs to be implemented on a phased basis commencing with properties having 4 bedrooms or more from 1 August 2007. This is to be extended to properties with less than 4 bedrooms as sufficient energy assessors become available.
   - For a transitional period until 31 December 2007, to allow people to market their properties as soon as they have commissioned a pack - rather than making them wait until they have received them.

3. The Energy Performance of Buildings Directive requires that EPCs are produced for <u>all</u> new homes when they are built, even if they are not put on the market - for example, if a home is built for a social landlord. For homes that are marketed the requirement to produce an EPC for new-built properties will apply when the size of property in question becomes liable to have a HIP as part of the phased roll out of HIPs. The 2006 Building Regulations introduced more stringent requirements for the energy efficiency of dwellings. Properties built to these Regulations require a different form of EPC. The original timetable for the introduction of HIPs provided that this different form of EPC would be required in HIPs from 1 October 2007. These arrangements will now be revised to reflect the new, phased timetable for the introduction of HIPs: the extension of the requirement to produce a HIP (with an EPC) to properties built to the 2006 Regulations will be brought into force with a Commencement Order. In line with this the Directive's requirement that an EPC is produced for all dwellings when they are constructed will now be introduced from 1 January 2008. A

4. This document is supplementary to and to be read in conjunction with the main final RIA for the Energy Performance of Buildings Regulations 2007 published on 29 March 2007.

Costs and Benefits

5. <u>Extending EPC validity to 12 months</u>: The number of EPCs, derived from the Survey of English Housing and HM land Registry resale data, that could potentially be reused in the first year is less than 4,000. When compared to the number of EPCs required for some 1.9 million market listings per annum, this is negligible. For the purposes of this amendment, it is therefore considered that the impact of the change from 3 months to 12 months upon the costs and benefits set out in the main RIA is negligible.

6. A full public consultation will be carried out this summer on the maximum age of an EPC to be included within a HIP in the longer term. This will be accompanied by an RIA.

7. <u>Phased Implementation of EPCs in HIPs</u>: EPCs in HIPs for properties having 4 bedrooms or more will commence from 1 August 2007 with the requirement being extended to properties with fewer than 4 bedrooms as rapidly as possible.

8. Taken over the 13.5 year (162 month) assessment period for residential marketed sales as set out in the main RIA, a short delay represents only a marginal reduction in the order of 2% in costs and benefits for this sector. This equates to a cost saving of around

£2.8 million and loss of around 0.02 million tonnes of carbon savings per annum by 2020 for this sector.

9. Marketing without a HIP: As a consequence of allowing marketing to start without a HIP for a transitional period, an offer may be made and accepted before a HIP is obtained. Once marketing stops the HIP duties cease to apply and it will not be possible to enforce the duty to obtain an EPC under the HIPs legislation.

10. The EPBD regulations have however been amended to ensure that an EPC is made available no later than exchange of contracts.

11. The impact of this is assessed as being negligible as seller will be under a duty to obtain an EPC as soon as practicable.In most cases this is expected to be in a matter of days.

12. The consequence of having to update estate agents' particulars with energy rating charts once the EPC is available is again assessed as being negligible. Templates have been made available to do this and the additional impact will be limited to minor reprographics costs only.

13. Delayed Implementation for EPCs required upon construction of homes: The combined effect of the revised HIPs regulations and the amending EPBD regulations for EPCs on construction of homes is that EPCs will be included in the phasing in of HIPs for buildings which meet the pre-2006 standards. EPCs for homes to which the more stringent standards set out in Part L 2006 apply (and which therefore meet high standards of energy efficiency)will be brought in through a Commencement Order as part of the requirement to produce a HIP for those properties a. There may not be any delay at all compared with the previously intended date (1 October 2007) and any delay will be at most 3 months. EPCs on construction for homes that are not marketed will now be required from 1 January 2008 (rather than 1 October 2007).

14. Taken over the 13 year assessment period for EPCs for construction of new homes as set out in the main RIA, this short delay represents only a marginal reduction incosts and benefits for this sector.

15. The cost ofgeneratingEPCs for construction is smaller than the cost of EPCs for existing buildings as it is based on calculations already carried out for compliance with building regulations. The benefits of EPCs for construction are also much smaller as the Code for Sustainable Homes and improvements to energy efficiency standards in building regulations are recognised as being the primary influencing factor in the design of new homes.

16. The impact of this short term arrangement is therefore assessed as being negligible.

Conclusion

17. From the above, it can be seen that the estimated impact arising from this amendment to the Energy Performance of Buildings Regulations 2007 is considered to make no significant difference to the costs and benefits in the main RIA published on 29 March 2007.

18. The dates for requirement of EPCs for non-domestic buildings, domestic rentals, display energy certificates and air-conditioning inspections are not affected by this amendment and all other aspects of the main RIA remain extant.

Declaration

I have read the Regulatory Impact Assessment contained in this document, and I am satisfied that the balance of cost and benefit is the right one in the circumstances.

Signed by the responsible minister _
_*Kay Andrews*_____

Baroness Andrews MP

Parliamentary Under Secretary of State
Communities and Local Government

Date ____11.6.07_____

Copies of this RIA are available online via the Communities and Local Government website: www.communities.gov.uk