EXPLANATORY MEMORANDUM TO

THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2021

2021 No. 439

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Energy Performance of Buildings (England and Wales) Regulations 2012[1] ("the 2012 Regulations"), which came into force on 9th January 2013. An amendment is being made to regulation 28 of the 2012 Regulations, to allow new fees to be set for entering data onto the register, which is required to be maintained by the Secretary of State under regulation 27 of the 2012 Regulations.

Explanations

What did any relevant EU law do before exit day?

2.2 The 2012 Regulations implemented Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings[2], which established requirements concerning the assessment and certification of the energy performance of buildings, including the production of energy performance certificates, display energy certificates, air conditioning inspection reports and recommendation reports. The 2012 Regulations also provide for the establishment and maintenance of a register of the data used to produce certificates and reports and provide for the charging of fees for entering data onto that register.

Why is it being changed?

2.3 Fees for entering data onto the register are reviewed regularly so that their levels are set to cover the cost of operating the register. The level of fees will ensure that the full cost of operating the register will be recovered from the fees that are charged. The latest review concluded that government investment in new, cloud-based digital systems had reduced the operating costs of the register. This instrument does not implement any new obligations but sets revised fees that may be charged for lodging data to the register.

What will it now do?

2.4 This instrument amends the domestic and non-domestic lodgement fees as follows:

(a) the fee for entering data from which an Energy Performance Certificate which relates to a dwelling may be produced, is reduced from £1.86 to £1.64;

[1] S.I. 2012/3118
[2] OJ L 153, 18.6.2010

(b) the fee for entering data from which an Energy Performance Certificate which relates to a building other than a dwelling; a Display Energy Certificate or an Air Conditioning Inspection Report may be produced, is reduced from £9.84 to £1.89.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Under paragraph 12(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, this instrument may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament. It was approved by the House of Commons on 8 March 2021 and by the House of Lords on 24 March 2021.

3.2 In error, a previous version of this instrument was signed by Minister of State Christopher Pincher on 23 March 2021, registered and published on the legislation.gov.uk website as S.I. 2021/370. Because the instrument was signed before its approval by the House of Lords that instrument was a nullity and has no effect. This instrument is therefore being issued free of charge to all known recipients of the instrument registered as S.I. 2021/370.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 The instrument does not have any minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.5 The Department has reached this view in relation to Northern Ireland because it considers that the purpose of the instrument is the conservation of energy which is within the devolved legislative competence of the Northern Ireland Assembly. The instrument does not relate to an excepted or reserved matter at Schedules 2 and 3 respectively of the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act). The Department has reached this view in relation to Scotland because it considers that the purpose of the instrument is the conservation of energy which is within the devolved legislative competence of the Scottish Parliament. The instrument does not relate to a reserved matter in Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

5.1 The Rt Hon Christopher Pincher MP has made the following statement regarding Human Rights:

"In my view the provisions of The Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2012 Regulations implemented Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings, which established requirements concerning the assessment and certification of the energy performance of buildings, including the production of energy performance certificates, display energy certificates, air conditioning inspection reports and recommendation reports. The 2012 Regulations also provided for the establishment and maintenance of a register of the data used to produce certificates and reports. This instrument amends the fees that can be charged for entering data onto that register. Domestic legislation that was derived from European Union law, as it had effect in domestic law immediately before exit day, was saved by the European Union (Withdrawal) Act 2018 and continues to have effect in domestic law as retained EU law. Paragraph 7(2) of Schedule 4 of that Act provides authority to make regulations altering the fees to be charged under regulations that form part of retained EU law.

7. Policy background

What is being done and why?

7.1 The fees for entering data onto the register are reviewed regularly so that their levels are set to cover the cost of operating the register. The level of fees will ensure that the full cost of operating the register will be recovered from the fees that are charged. The latest review concluded that government investment in new, cloud-based digital systems had reduced the operating costs of the register. This means that the domestic and non-domestic lodgement fees should be amended to the following level: (a) the fee for entering data from which an Energy Performance Certificate which relates to a dwelling may be produced, is reduced from £1.86 to £1.64; (b) the fee for entering data from which an Energy Performance Certificate which relates to a building other than a dwelling; a Display Energy Certificate or an Air Conditioning Inspection Report, is reduced from £9.84 to £1.89.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Ministry of Housing, Communities and Local Government has no current plans to consolidate the 2012 Regulations.

10. Consultation outcome

10.1 This instrument does not implement any new obligations. The regulatory changes are considered to be limited and either technical or administrative in nature. The

department has engaged with principal stakeholders on the changes including members of the property energy profession and officials from the Welsh administration.

11. Guidance

11.1 Guidance on Energy Performance Certificates (EPCs) is available at https://www.gov.uk/buy-sell-your-home/energy-performance-certificates and on the Government's EPC Action Plan at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922660/EPC_Action_Plan.pdf

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the effect of this instrument is to set revised fees at a level that meets cost of service; there is no or no significant impact on business, charities, voluntary bodies or the public sector and department analysts have determined it to be out of scope of the Better Regulation system.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the department has committed to further engage the property energy profession in good time before this instrument comes into effect so that revised fees can be reflected in planning and invoicing activity.

14. Monitoring & review

14.1 This instrument contains no provision for review, review provision being included already in the 2012 Regulations.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Richard Inman at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2307 or email: richard.inman@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Williams-Phelan, Deputy Director for Energy Performance of Buildings, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Christopher Pincher MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.