EXPLANATORY MEMORANDUM TO

THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2024

2024 No. 640

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Baroness Kay Swinburne, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 John Palmer, Deputy Director for the Building Performance, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Keeran Jugdoyal at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 0071 or email: epob.regs@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the disclosure provisions in the Energy Performance of Buildings (England and Wales) Regulations 2012 ("the Principal Regulations") to enable greater access to data about the energy performance of buildings including data which is collected during the assessment process, but which is not lodged on the Energy Performance of Buildings Register ("the register"). The instrument also changes the Principal Regulations to increase the range of data that can be published online.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The Principal Regulations establish a framework for producing energy performance certificates ("EPCs") for buildings when constructed, sold or let; display energy

certificates ("DECs") for buildings occupied by public authorities and air conditioning inspection reports ("ACIRs") for air conditioning systems over 12kW. The Principal Regulations describe the circumstances in which EPCs, DECs and ACIRs ("energy certificates") are produced. Energy certificates provide advice to improve energy efficiency and to help reduce running costs and carbon emissions. To produce an energy certificate, a qualified energy assessor will collect data about the building, or about an air conditioning system, and process the data via approved assessment software. In order to produce energy certificates an energy assessor must be a member of an accreditation scheme approved by the Secretary of State.

5.2 The Principal Regulations require that data are lodged on the register operated by the Secretary of State, or a person keeping the register on the Secretary of State's behalf, referred to in the Principal Regulations as "the keeper of the register" (see the definition in regulation 2(1)). Currently, the Secretary of State for the Department of Levelling Up, Housing and Communities is the keeper of the register. The Principal Regulations include provisions setting out who can access the data, for what purpose and the processes for accessing such data. The unauthorised disclosure of data is a criminal offence. The Principal Regulations also established which data the keeper of the register may publish online.

5.3 The policy objective of this instrument is to ensure that data about a building that is entered on to the register and any pre-lodgement data (the data collected by energy assessors during the assessment process but not lodged on the register) can be shared with the owner, landlord or occupier of that building or with a third party with their consent. A change has also been made to increase the range of data that the Secretary of State can publish online.

5.4 The government recognises the benefits of making building data available to those with an interest in the building. Wider dissemination and use of the data supports progress towards net zero by informing decisions about energy efficiency improvements and the retrofitting of both domestic and non-domestic properties. The changes to the Principal Regulations will increase data transparency, providing additional information to owners, landlords and occupiers. It will also allow independent research into issues, such as fuel poverty and climate change mitigation, and enable low performing properties to be easily identified to better manage and target improvements to building stock.

What was the previous policy, how is this different?

5.5 Previously, the Principal Regulations made it an offence to share any data, subject to some exceptions that allow the keeper of the register to share data, to minimise instances of inappropriate data sharing. This meant that owners, landlords and occupiers of buildings were unable to obtain all of the data relating to their own properties that energy assessors gathered in order to produce an energy certificate. We recognise that this information can be useful to those with an interest in the building. It can be particularly beneficial informing management decisions around energy efficiency, and so this instrument changes the Principal Regulations to allow this data to be shared.

5.6 The Principal Regulations also limited the keeper of the register's ability to publish data online. There is further energy efficiency data that would be beneficial to publish and so this instrument removes the limitation. The intention is to publish more energy efficiency data on buildings. That will be useful for those researching energy use and identifying energy efficiency improvements that could be made to building stock. These changes will enable the keeper of the register to publish more data online,

which stakeholders have indicated are useful for research purposes and for improving the energy efficiency of building stock.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends certain provisions of the Principal Regulations related to data sharing. A description of the effect of those changes is provided above. The instrument is made under section 250 of the Energy Act 2023. This is the first use of that power.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 These regulatory changes are considered to be limited in nature: a formal public consultation has not been undertaken. There is no statutory requirement to consult before making these Regulations.

8. Applicable Guidance

8.1 The department has not issue guidance on the regulatory changes to improve data sharing, which are limited in nature. However the department will amend the Scheme Operating Requirements for the production of Energy Certificates guidance (www.easob.co.uk). These are the requirements that accreditation schemes must meet in relation to their functions under the Principal Regulations.

8.2 The publication of additional data items online may require changes to the guidance on the Open Data platform (https://epc.opendatacommunities.org/). This will be updated as and when any further data items are published.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. It is anticipated that the impact will be that more energy performance of buildings data will be made available to the owner, landlord or occupier of the building to inform decisions to improve the energy efficiency of both domestic and non-domestic buildings.

Impact on businesses, charities and voluntary bodies

9.2 There will be a positive economic impact on business, charities and voluntary bodies resulting from improved access to data, providing these organisations with access to more data to actively manage their property portfolios to improve energy efficiency.

9.3 The legislation positively impacts small or micro businesses as 9.2 above.

9.4 The impact on the public sector is the same as the impact identified in 9.2 above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to monitor it when the Principal Regulations are reviewed. A review provision is already included in the Principal Regulations (see regulation 47). For that reason this instrument does not include a statutory review clause (and no statement is required in line with the requirements of the Small Business, Enterprise and Employment Act 2015).

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Under Secretary of State, Baroness Kay Swinburne, has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 Not applicable. This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").