

**IMPLEMENTATION OF THE EU DIRECTIVE
2010/21/EU ON THE ENERGY PERFORMANCE
OF BUILDINGS
(EPBD2)**

**AMENDMENTS TO THE ENERGY
PERFORMANCE OF BUILDINGS
(CERTIFICATES AND INSPECTIONS)
REGULATIONS (NI) 2008**

CONSULTATION 2012

**Energy Performance Unit
20 July 2012**

CONSULTATION ARRANGEMENTS

This consultation outlines the Department's proposals to amend The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 (as amended) to ensure compliance with the obligations of Articles 4(2), 11, 12, 13 and 27 of the recast Energy Performance of Buildings Directive (2010/31/EU) of 19 May 2010 (EPBD2).

We look forward to receiving your comments and views concerning any of the proposals contained in this document. In order to assist our analysis of responses please use the Response Form available to download from the consultation page of the EPB website (www.epb.dfpni.gov) and submit your reply electronically to noeleen.o'neill@dfpni.gov.uk

Alternatively your response may be posted or faxed to –

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The Department will consider all responses to this consultation received on or before the closing date, which is 4.00 pm on Friday 12 October 2012.

Submissions made after this date cannot be considered.

Code of practice on consultations

In light of the requirements of the Code of Practice on Access to Government and the Freedom of Information Act, responses may be made available to the public on request. We may also wish to make responses to this consultation available to the Northern Ireland Assembly and for public inspection either at the Energy Performance Unit office or on the website.

You have the option of indicating that you wish your response to remain confidential and the Department will generally respect your request. Should it be decided that the public interest must override your request, the Department will contact you before disclosure and, if appropriate, provide you with an opportunity for your response to be withdrawn.

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1. INTRODUCTION

The EU Directive on the Energy Performance of Buildings (2002/91/EC) (EPBD) came into force on 16 December 2002. The objective of the Directive is to promote the improvement of the energy performance of buildings within the European Union taking into account outdoor climatic and local conditions as well as indoor climate requirements and cost-effectiveness. Buildings account for 40% of total energy consumption in the European Union, so improved energy performance contributes to reducing energy use and emissions, thus helping achieve European and national targets.

A recast of EPBD, 2010/31/EU (EPBD2), came into force on 19 May 2010. The purpose of the recast is to extend the scope of the original Directive, strengthen certain provisions, and clarify other aspects. It also gives the public sector a lead role in improving the energy efficiency of its building stock. The new obligations placed on Member States by the recast need to be brought into operation on a phased basis between January 2013 and July 2015.

This consultation document outlines the actions taken in Northern Ireland to implement EPBD and identifies proposals to amend the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008, No.170 (as amended)¹ (the 2008 Regulations) to comply with the obligations of Articles 4(2), 11, 12, 13 and 27 of EPBD2.

We are seeking your views on any of the proposals covered in this consultation and in particular your comments on specific elements covered by consultation proposals in relevant sections. A full list of the consultation questions is available in the Response Form included with this consultation pack.

¹ As amended by S.R. 2008 No. 241 and S.R. 2009 No. 369

2. BACKGROUND

EPBD

In the United Kingdom, transposition of the EPBD was taken forward on a regional basis, as a significant part of compliance required an amendment to building regulations which is a devolved responsibility. England and Wales, Scotland and Northern Ireland each set their own building regulations.

The obligations placed by Articles 3-6 of the EPBD to:

- set energy performance requirements for new and refurbished buildings;
- upgrade the energy performance of buildings which have a useful floor area greater than 1000m² when they are undergoing a major refurbishment where it is technically, functionally and economically feasible to do so;
- consider before construction commences, the technical, environmental and economic feasibility of alternative energy systems for new buildings where the useful floor area of the proposed building is greater than 1000m²; and
- calculate the energy performance of a building using a methodology set at a national or regional level,

were implemented in Northern Ireland by an amendment to building regulations, namely The Building (Amendment) Regulations (Northern Ireland) 2006².

Other obligations (Articles 7, 9 and 10) to: -

- make available an energy performance certificate and recommendations for the cost effective improvement of the energy performance of a building to the owner of the building, or by the owner to a prospective buyer or tenant, when the building is constructed, to be sold or to be rented out;
- display the energy performance certificate in a prominent place (so that it is clearly visible to the public) in buildings over 1000m² that are occupied by public authorities, or by institutions providing public services to a large number of persons and frequently visited by those persons; and
- have air-conditioning systems with an effective rated output of more than 12 kW inspected for efficiency and sizing compared to the cooling requirements of the building and to provide advice to the user on possible improvement or replacement of the system,

were implemented in Northern Ireland by the 2008 Regulations.

² S.R. 2006 No. 355 and No. 440

The main requirements, duties and responsibilities in the 2008 Regulations are:

- an energy performance certificate (EPC) must be produced whenever a building is constructed or being sold or rented out. The EPC shows the energy efficiency rating of a building and is valid for 10 years. It is to be accompanied by a report containing recommendations for the cost-effective improvement of the energy performance of the building;
- a display energy certificate (DEC) must be produced every year for public buildings larger than 1,000m² which are visited frequently by members of the public to access a service. The DEC shows the operational energy efficiency rating of the building and must be displayed in a prominent place. It must also be accompanied by an advisory report, valid for 7 years, which indicates how the energy performance of the building may be cost-effectively improved;
- air-conditioning installations with an effective rated output greater than 12kW must be inspected at least every five years and a written report on the inspection given to the person who has control of the operation of the system;
- it is the responsibility of the seller or the prospective landlord to obtain and make available the EPC to a purchaser or tenant respectively of an existing building. A developer or person responsible for having construction undertaken has this duty in relation to new construction, and for an air-conditioning system it is the person who controls its operation;
- production of an EPC, DEC or air-conditioning inspection report must be undertaken by an energy assessor who is a member of an approved Accreditation Scheme;
- EPCs and DEC's must be lodged on a Register and are valid only when so lodged and are given a unique 20 digit reference number;
- each district council enforces the requirements in their own district and the Department enforces the requirements in relation to district councils' own buildings;
- non-compliance with the requirements, including obstructing an enforcement authority, may lead to the issue of a penalty charge notice (PCN); the penalty amount varies depending on the breach; and
- a review of a decision to issue a PCN is provided for, as is an appeal to the county court.

3. AMENDMENTS PROPOSED

A recast of EPBD (EPBD2) came into force on 19 May 2010 and must be implemented by Member States on a phased basis. The key provisions in EPBD2 which require amendments to the 2008 Regulations are: -

- allow an EPC to be produced for a dwelling based on the assessment of another representative building of a similar design and size and with a similar energy performance (*Article 11(7)*);
- advertisements in commercial media for sale or rent of properties are to include details of the energy performance indicator (*Article 12*) and a penalty for a breach of this requirement to be introduced (*Article 27*).
- an EPC is to be issued for buildings larger than 500m² (current threshold is 1,000m²) that are occupied by a public authority and frequently visited by the public³ by January 2013. This threshold will fall to 250m² in July 2015 (*Article 12*). The EPC is to be displayed in a prominent place clearly visible to the public (*Article 13*);
- where an EPC is issued for a non-domestic building larger than 500m² and that building is frequently visited by the public (retail outlets, banks, restaurants, cinemas etc.), the EPC is to be displayed in the building in a prominent place (*Article 13*), and a penalty for a breach of this requirement is to be introduced (*Article 27*).

A summary of all Articles in EPBD2 is available on www.epb.dfpni.gov.uk and includes a reference to how these have been, or are being, implemented.

To further enhance compliance with EPBD relating to EPCs, air-conditioning inspections and related reports and penalties for non-compliance, the Department is proposing to amend the 2008 Regulations to: -

- simplify and clarify a number of the existing requirements;
- extend the use and disclosure of information and data from EPCs held on the Northern Ireland Register;
- require the lodgement of air-conditioning inspection reports on the Register;
- require landlords in the non-domestic sector to provide energy use data; and
- revise penalty provisions.

³ In the EPB Regulations, EPCs issued for buildings occupied by a public authority and frequently visited by the public are known as Display Energy Certificates (DECs).

4. AMENDMENTS TO IMPLEMENT EPBD2 REQUIREMENTS

4.1 Clarifying the meaning of terms in the 2008 Regulations to align with EPBD2 terms

4.1.1 Redefining an exemption from the requirement to produce an EPC

Regulation 4 of the 2008 Regulations lists a number of exemptions from the duty to produce an EPC. One of these relates to buildings that are used primarily or solely as places of worship.

The Department is proposing rewording “buildings that are used primarily or solely as places of worship” to “buildings used as places of worship and for religious activities” to reflect the change in wording of Article 4 in EPBD2.

The Department is proposing to amend the wording of Regulation 4(1)(a) of the 2008 Regulations from “buildings that are used primarily or solely as places of worship” to “buildings used as places of worship and for religious activities”.

4.1.2 Redefining ‘advisory report’ and ‘recommendation report’.

The Department is proposing to amend the terms “advisory report” and “recommendation report” to align with the updated references to these terms in Article 11 of EPBD2, to achieve consistency in interpretation.

The Department is proposing to:

- **define an advisory report as “a report issued by an energy assessor, after his energy assessment of the building, which contains recommendations for the cost-effective improvement of the energy performance of the building or building unit”; and**
- **define a recommendation report to mean “a report included in the energy performance certificate that contains recommendations for the cost-effective improvement of the energy performance of the building or building unit”.**

4.2 Extension of sampling and multiple certification techniques to include single-family dwellings

Currently the 2008 Regulations provide that certification for a flat, apartment or unit within a building may be based on the assessment of another representative unit in the same block, an approach known as sampling and multiple certification (Regulation 8(4)). This was permitted under EPBD.

Article 11 (7) of EPBD2 extends this provision to cover single-family dwellings and provides that certification for such properties may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate. Applying sampling and multiple certification techniques to dwellings is likely to be particularly useful for new housing developments and landlords with large numbers of similar housing stock, e.g. social landlords, and will therefore help to reduce their costs.

The Department is proposing to amend Regulation 8 of the 2008 Regulations to extend sampling and multiple certification to single-family dwellings where the assessment is based on another representative building of similar design and size with a similar actual energy performance quality, if such correspondence can be guaranteed by the expert issuing the energy performance certificate.

4.3 All commercial media produced for a building must state the energy performance indicator from the EPC

Article 12 (4) of EPBD2 requires that where buildings “are offered for sale or for rent, the energy performance indicator of the energy performance certificate of the building or the building unit, as applicable, is stated in the advertisements in commercial media”.

In proposing to introduce this requirement the Department has considered:

- what is an energy performance indicator?
- what is commercial media?
- what format should the energy performance indicator take in commercial media? and
- who is responsible for ensuring the energy performance indicator is included in commercial media?

4.3.1 What is an energy performance indicator?

The energy performance indicator is the rating on an A-G scale of a building's energy performance (buildings awarded an A rating being the most energy efficient) combined with the corresponding numerical asset rating score eg A92.

4.3.2 What is commercial media?

The Department is proposing to interpret commercial media to mean property brochures and advertisements for sale or rent for a specific building. Generic signage that is not specific to any building, i.e. an agent's for sale sign displaying only the agents name and contact details (even where it also identifies a building's address) would not require a rating.

4.3.3 What format should the energy performance indicator take in commercial media?

Having explained that the energy performance indicator is the rating on an A-G scale of a building's performance combined with a numerical figure, its inclusion in commercial media must be effective and meaningful to the customer in conveying the energy efficiency of the building.

In implementing this requirement, we have considered the following options:-

- (a) the letter rating on the A-G scale according to the building's energy efficiency calculated by the energy assessor, preceded by "EPC" to give meaning and context to the rating, e.g. EPC A;
- (b) the asset rating, which is the numeric figure corresponding to the energy efficiency rating of the building, preceded by "EPC" to give meaning and context to the figure, e.g. EPC 92;
- (c) a combination of the letter rating and asset ratings, preceded by "EPC" to give meaning and context to the rating and figure e.g. EPC A92;
- (d) the A-G graph extracted from the EPC (see Figure 1 below); or
- (e) where the size and type of advertisement would render option (d) impractical (e.g. a classified advertisement), one of the choices listed at (a) to (c) above would suffice.

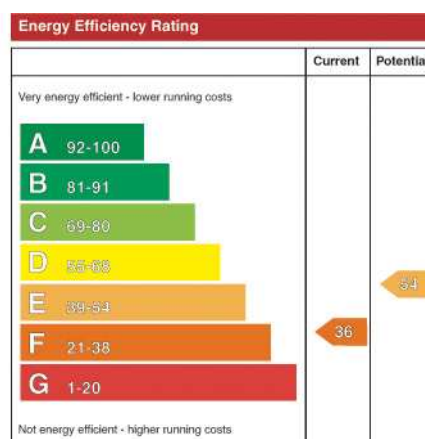


Figure 1

The Department believes the A-G graph (Figure 1) is the most meaningful and effective way to present the energy performance indicator in commercial media and is proposing that it should be used where practicable. Indeed many agents already include this graph in property particulars. However, it is recognised that some advertisements will not be large enough to make this a practical option in all circumstances, eg classified advertisements. Where this is the case it is proposed that the advertisement should contain both the letter and numeric rating, eg EPC A92 (option (c) 3 listed above).

The Department is proposing a new regulation requiring that the A-G graph be used in commercial media except where the size and type of advertisement would render this impractical, in which case a combination of the letter and numeric rating should be used instead, e.g. EPC A92.

The Department is also proposing to define commercial media to mean any material produced specific to a building, on any medium, with the intention of advertising the building for sale or rent.

4.3.4 Who is responsible for ensuring the energy performance indicator is included in the commercial media for a building?

The requirement to produce an EPC will still rest with the relevant person, i.e. the seller, the landlord or in the case of newly constructed buildings, the developer or builder. It is proposed that the responsibility for ensuring the energy performance indicator is included in commercial media will rest with the person marketing the building for sale or rent, i.e. an agent where one has been engaged by the owner or landlord; or, where a landlord, owner, developer or builder is marketing a building, with that person.

The Department is proposing to introduce a new regulation placing a

new duty on the person marketing a building for sale or rent to include the energy performance indicator for the building on all commercial media. This means that:

- **where an estate or letting agent has been engaged by a seller or landlord to act on their behalf, the estate or letting agent will be responsible; or**
- **where a landlord, owner, developer or builder is marketing the building themselves, they will be responsible.**

This proposed amendment will support the proposed clarification of Regulation 5 outlined in section 5.2 as where a building is marketed by an agent the EPC must be provided by the owner, landlord, builder or developer to the agent in order for the energy performance indicator to be used in commercial media to market the building.

4.3.5 Failing to include the energy performance indicator on commercial media

Article 27 of EPBD2 enables Member States to lay down penalties as appropriate for infringement of their domestic Regulations, and the 2008 Regulations contain a number of breaches and associated penalties. A new breach needs to be added where the person responsible for including the energy performance indicator in commercial media for a building fails to do so. The person responsible for complying with this requirement will be the person responsible for marketing the building, i.e. either the relevant person or an agent acting on their behalf. It is proposed a financial penalty will be attributed to a breach of this new requirement.

The Department is proposing to amend Part 7 of the 2008 Regulations, to include a new breach of duty for which a penalty charge notice may be issued in respect of buildings for sale or rent where the relevant person or agent acting on their behalf fails to include the energy performance indicator on the commercial media.

4.4 Expanding the requirement to display a DEC to include public buildings with a total useful floor area greater than 500m² from 9 January 2013, decreasing to buildings over 250m² from 9 July 2015.

The 2008 Regulations require a DEC to be produced every year for public buildings with a total useful floor area larger than 1,000m² occupied by public authorities and by institutions providing public services which provide a service to a large number of persons and are therefore

frequently visited by those persons. The DEC shows the operational rating of the building and must be displayed in a prominent place where it can be clearly viewed by visitors. It must also be accompanied by an advisory report that is valid for 7 years indicating how the energy rating may be improved.

The aim of a DEC is to inform the visiting public as to how energy efficiently the building has been used over a 12 month period against a typical rating for that type of building, how much Carbon Dioxide (CO₂) has been emitted and how performance compares to the previous two years where available.

Article 12 (1b) of EPBD2 expands the scope of this requirement to include relevant public authority buildings frequently visited by the public with a total useful floor area over 500m² from 9 January 2013 and to buildings with a total useful floor area over 250m² from 9 July 2015.

The Department is seeking views on alternative methods by which occupiers of buildings with a total useful floor area between 250m² and 1000m² can meet the requirement to display a certificate, as follows:-

- a. a DEC calculated on the operational rating in accordance with regulation 12 of the 2008 Regulations must be displayed. The DEC will be renewed annually and accompanied by an Advisory Report, which will be valid for 7 years, detailing cost effective recommendations for improving the building's energy efficiency; or
- b. an EPC based on the asset rating in accordance with regulation 8 of the 2008 Regulations may be displayed. The EPC will be valid for 10 years and will contain cost-effective recommendations on how to improve the energy efficiency of the building.

Currently, there are no plans to review the arrangements in place for public authority buildings with a total useful floor area greater than 1000m², other than a change in wording from "frequently visited by those persons" to "frequently visited by the public" to reflect a change in wording in EPBD2.

The Department is therefore proposing to amend Part 3 of the 2008 Regulations to introduce from 9 January 2013 the requirement for public buildings with a total useful floor area greater than 500m² and frequently visited by the public to display an energy performance certificate, with the threshold falling to 250m² on 9 July 2015.

The Department is seeking views on alternative means of meeting the requirement, namely

- a. display a DEC , renewed annually and have an Advisory Report which is valid for 7 years; or**

b. display an EPC based on the asset rating, and have a recommendation report, both of which are valid for 10 years.

4.5 Displaying an EPC in buildings over 500m² frequently visited by the public where an EPC has been produced for the purposes of sale, rent or on construction

4.5.1 Displaying an EPC

Article 13 (2) of EPBD2 requires that where an EPC has been issued for a building for the purposes of sale, rent or on construction, and where the building has a total useful floor area greater than 500m² and is frequently visited by members of the public, a copy of the EPC must be **displayed** in a prominent position clearly visible to the public. This requirement extends to **any** building frequently visited by the public that meets these requirements and should not be confused with the separate requirement for public sector buildings to display a DEC. Buildings likely to fall into this category include, but are not limited to, retail premises, banks, restaurants, cinemas and other venues for which a valid EPC has been issued.

It would not be necessary to display the recommendation report that accompanies the EPC, only the certificate itself.

This duty would also apply to a public sector building which is constructed, sold or rented out to a new owner or tenant and which would also be subject to the proposed amendments to DEC requirements outlined in Section 4.4, until such times as a DEC can be produced.

EPBD2 requires that this provision must be introduced no later than 9 January 2013.

The Department is proposing to define the term “total useful floor area” as discussed in section 5.1.

The Department is proposing a new regulation to require that where an EPC is issued for the purposes of the sale, rent or on construction of a non-domestic building with a total useful floor area over 500 m² which is frequently visited by the public, the EPC is displayed in a prominent place clearly visible to the public.

As an alternative to displaying the EPC, it would be equally acceptable to display a DEC where the building occupier chooses to do so.

4.5.2 Failing to display an EPC

Further to the proposal detailed in 4.5.1, the responsibility for obtaining the EPC and handing it over to the tenant or buyer rests with the landlord or seller. However, the responsibility for displaying an EPC will rest with the tenant or buyer as the building occupier. If the occupier fails to display an EPC, this would create a breach which would incur a financial penalty

The Department is proposing to amend Part 7 of the 2008 Regulations to include a new breach for which a penalty charge notice may be issued in respect of buildings with a total useful floor area greater than 500m² and frequently visited by the public where an EPC has been issued for the purposes of sale, rent or on construction and the relevant person has failed to display that EPC in a prominent position.

5. OTHER AMENDMENTS PROPOSED

5.1 Clarifying the meaning of “total useful floor area”

The requirements to display EPCs and DEC reference the term ‘total useful floor area’. To clarify the meaning of “total useful floor area” the Department proposes to use the definition of this term which is included in the Building Regulations (Northern Ireland) 2012.

The Department is proposing to define the term “total useful floor area” in accordance with the Building Regulations (Northern Ireland) 2012⁴ to mean “the total area of all enclosed spaces measured to the inside face of the external walls, that is, the gross floor area, and in the case of sloping surfaces such as staircases, galleries, raked auditoria and tiered terraces shall be taken as their area on plan but shall exclude areas that are not enclosed such as open floors, covered ways and balconies”

5.2 Clarifying terms relating to the issue and availability of EPCs and DECs in the 2008 Regulations

The intent of the 2008 Regulations was that potential buyers or tenants should be provided with energy information for a building and an

⁴ S.R. 2012 No. 192

understanding of how to improve its energy efficiency when considering whether to purchase or rent a building (or a unit or an apartment in a building). As each building is rated on a scale from A-G, a potential buyer or tenant could make an informed judgment and draw comparison on the likely costs of heating a building and consider the potential costs of implementing the recommendations on improving its energy efficiency.

In order for an EPC to be its most effective, it should be provided to the buyer/tenant to consider as early in the sales/rental process as possible. It was the intent of the 2008 Regulations that the EPC should be produced at the commencement of the building marketing phase so it would be available to any interested buyer or tenant as soon as they sought written information on a building or viewed the building.

The requirement for existing dwellings for sale to have an EPC came into effect on 30 June 2008 when many thousands of properties were already on the market. Rather than render all of these dwellings in breach of the 2008 Regulations on that date, the wording of Regulation 5 took this into account, stipulating that an EPC should be made available at the “earliest opportunity” and “in any event before entering into a contract”. However this wording has occasionally been interpreted to mean that the EPC is only required at the contract completion. A potential buyer or tenant may not have had an opportunity to consider the information in the EPC before agreeing to the contract and obtaining an EPC has been viewed as a formality for the sale rather than the use for which it was intended.

This clarification is not as a direct consequence of EPBD2 however it is essential to meet new requirements (*Article 12*) to include an energy performance indicator in commercial media.

The Department is proposing to amend Regulation 5 of the 2008 Regulations to require an EPC to be issued before a building is marketed for sale or rental and that it must be shown to a potential buyer or tenant and handed over to the eventual buyer or tenant.

5.2.1 Defining ‘issued’

The Department also considers it important to define the word “issued” when used in the context of the production of documents. Only an accredited assessor may issue a certificate or report at the end of the assessment process which requires the document to be lodged on the Northern Ireland Register of documents. The issued date for all certificates and reports is therefore the date on which they are lodged on the Register, not the date of the assessment or the date on which the certificate is handed over to a relevant person or their representative. The issued date cannot be amended.

The Department is proposing to interpret “issued” as meaning lodged on the Northern Ireland Register of documents.

5.2.2 Requiring reports to be lodged within 3 months

Currently, DEC's are renewed annually whereas the accompanying advisory report is valid for a period of 7 years. The Department is aware that in some cases there have been delays in the issue of certificates or advisory reports following the energy assessment. This in turn has led to instances where public bodies may be in breach of the requirement to have a valid advisory report in their control at all times.

The Department is therefore proposing to introduce a requirement for advisory reports to be lodged on the Northern Ireland Register no more than 3 months from the date of the assessment. The Department considers this a reasonable period of time to ensure the information is current and valid at the date of lodgment.

The Department is therefore proposing to amend Part 3 of the 2008 Regulations to introduce a new requirement for the advisory report to be issued (i.e. lodged on the Register) not later than 3 months following the date of the energy assessment.

5.3 Disclosures

Access to the Northern Ireland Register (administered by Landmark Information Group on the Department's behalf, where EPCs and DEC's are lodged) is determined by Part 6 of the 2008 Regulations. This Part sets out who may access data, what data they can access and restricts the purposes for which that data may be used. These restrictions were put in place to protect personal data, maintain the integrity of the data and to ensure that any disclosures were made in the public interest.

Access is currently restricted to:

- **The Department**, to monitor the application and enforcement of, and compliance with, the duties imposed by the 2008 Regulations; and for statistical or research purposes provided that no particular building is identifiable from the document or data disclosed;
- **Enforcement authorities** (i.e. District Councils or the Department);
- **Accreditation schemes** to access any document and any associated data entered by an energy assessor who was a member of the scheme at the time the document was entered into the Register; and

- **Any person who provides the unique reference number of a document** to access that document and any document of the same kind relating to that building within the last 10 years.

The Department now considers that it should amend the 2008 Regulations to allow for the release of information in other valid circumstances. The Department is therefore proposing to widen the scope for access to documents and data on the Register as follows:

5.3.1 Search by building address

The 2008 Regulations allow the keeper of the Register to disclose a particular document to any person providing that person provides to the keeper of the Register the relevant reference number of that document.

The Department is considering a new regulation which would also permit the keeper of the Register to disclose documents relating to a particular building to any person using the postal address. Whilst the Department is keen to improve access to information on the Register there are a number of factors which must be taken into consideration before a final decision is made including:

- the Data Protection Act (1998);
- providing an opt-out facility;
- establishing a limit on the number of daily address searches by an individual;
- defining which documents this search should apply to ie. EPCs, DEC's and / or Air-conditioning inspections; and
- the potential for information gathered from such searches to be used for commercial or malicious purposes.

As EPBD2 requires the energy performance indicator for a building to be included on all commercial media and a copy shown to a prospective buyer, much of the information contained within the Register will be more publicly available than before. Continuing to restrict access by reference to the certificate unique reference number would be counter-productive to these other measures. The Department considers a more open Register would encourage greater interest in EPCs and consequently energy efficiency in buildings. The Department also considers this search facility to be of particular benefit to homeowners and landlords enabling them to access their certificate at any time without the need to retain the unique reference number.

The Department is considering a new regulation which would permit the keeper of the Register to release documents to any person using a search by address facility.

5.3.2 Disclosures to the Department for statistical and research purposes or for the purpose of providing impartial energy efficiency advice

The 2008 Regulations allow the keeper of the Register to disclose any document or data to the Department for:

- the purpose of enabling the Department to monitor the application and enforcement of, and compliance with, the duties imposed by the 2008 Regulations; and
- for statistical and research purposes.

The restriction that no particular building is identifiable has limited the usefulness of the data available for statistical or research purposes and the Department is proposing to remove this restriction. In addition, the Department considers that the information held on the Register could be used for the purposes of providing impartial advice on improving a building's energy efficiency.

This would mean removing the proviso from Regulation 30 that no particular building is identifiable from data disclosed. Information would only be released to the Department which, subject to a formal data-sharing agreement and in accordance with the Data Protection Act (1998), would share information with other central Government Departments.

The Department is proposing to amend Part 6 of the 2008 Regulations so that that the keeper of the Register may release any document or data to the Department for the Department's or other Departments' statistical or research purposes and for the purpose of providing impartial advice on improving a building's energy efficiency.

5.3.3 Disclosures to accredited energy assessors

Currently, energy assessors may access limited information on documents lodged for a particular building including whether or not a valid document is lodged on the Register for that building. The Department is considering a new regulation to permit the keeper of the Register to disclose any document or data to an accredited energy assessor, including whether or not the building has a valid document, only where the energy assessor has been engaged by a relevant person for a purpose legitimately connected with the assessment of the building concerned.

This will enable assessors to view previous data on a building for the purpose of re-assessing the building either upon expiry of a previous certificate or at the request of the homeowner or landlord. Ensuring access is restricted for the purposes legitimately associated with the

building will ensure that information from the Register may not be used to identify potential business opportunities.

The Department is considering amending Regulation 10 of the 2008 Regulations to permit the keeper of the Register to disclose any document or data to an accredited energy assessor solely where they have been engaged by a relevant person for a purpose legitimately connected with the assessment of that building.

5.3.4 Disclosures of information relating to public buildings

The purpose of DEC's is to inform the public on how energy efficiently public buildings providing a service to them are being used. The information in DEC's is intended for public use and is freely accessible to any visitor to a relevant building. With this in mind, it does not seem practical or relevant to make DEC's accessible only by means of the unique reference number. It is the Department's intention therefore to publish annually a list of public buildings and their DEC ratings. In any case a forthcoming EU Energy Efficiency Directive will propose that such information should be established and published to demonstrate public sector leadership in raising awareness. However the 2008 Regulations do not currently permit the release of this information.

The Department is therefore proposing to amend Part 6 of the 2008 Regulations to permit the keeper of the Register to disclose to the Department for the purpose of raising awareness of the energy performance ratings of public buildings any document or data on public buildings.

5.4 Lodgement of air-conditioning inspection reports on the Northern Ireland Register

The 2008 Regulations introduced a requirement for air-conditioning systems with an effective rated output greater than 12kW to be inspected regularly at intervals not exceeding 5 years and for a report to be produced and retained by the relevant person. Unlike EPCs and DEC's, there is no requirement in the 2008 Regulations to lodge inspection reports on the Register of documents.

Creating a Register for inspection reports would be consistent with the process for EPCs and DEC's, provide assurance to the relevant person that their document is valid and allow them to access their document at any time, ensure uniformity in the style and content of inspection reports and enable the Department and Enforcement Authority to measure lodgments and compliance.

The Department is proposing to amend Part 4 of the 2008 Regulations to require that all air-conditioning inspection reports must be lodged on The Northern Ireland Register.

5.5 Mandating the provision of energy data

Experience in implementing the 2008 Regulations has revealed that landlords in the non-domestic sector do not always make energy use data available to the energy assessor, thus hindering accurate assessments of energy performance. To improve the quality of assessments the Department is proposing to require such landlords to provide energy data for the purposes of completing energy performance assessments.

The Department is proposing to amend the 2008 Regulations to require landlords in the non-domestic sector to provide accurate energy use data to energy assessors.

5.6 Further amendments to clarify the 2008 Regulations

5.6.1 Adding a breach to incur a penalty

The Department is proposing to add failure to comply with the requirement to carry out the first inspection of an air-conditioning system by the due date as set out in Regulation 15 as a breach of duty for which a penalty charge may be issued.

The Department is proposing to amend Part 7 of the 2008 Regulations to include failure to carry out a first air-conditioning inspection by the relevant date as a breach of duty.

5.6.2 Reviewing the penalty charge for failing to have an inspection of an air-conditioning system

The Department recognises that the penalty charge amount of £300 for failing to have an inspection of an air-conditioning system or a report may appear to be too low, although continued failure to ensure an inspection is carried out or a report made available can attract additional penalty charge notices until compliance is achieved.

The Department is seeking views on whether or not there would be a more effective deterrent for failing to have an air-conditioning system inspected or a copy of the report.

