

## **REQUEST FOR INFORMATION UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 – ENERGY PERFORMANCE CERTIFICATES**

### **Background**

1. Energy Performance Certificates (EPC) were mandated through European legislation – The Energy Performance of Building Directive (EPBD). Further information about EPCs are contained within our guidance leaflet which is attached. <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubepc/epc01>
2. EPCs were introduced for all new construction subject to a building warrant on 1 May 2007, for all other buildings (existing buildings) EPCs were required from 4 January 2009. EPCs for existing dwellings were lodged on the Energy Saving Trust (EST) database, with EST being appointed as “Keeper of the Register”. Access to the register was restricted to Scottish Government, EST, those who produce EPC (Approved Organisations) and to enforcement authorities.
3. Evolving UK and Scottish policies have extended the use of the EPC to other policies and grant schemes. Accordingly, access to EPC data was extended through amendments to The Energy Performance of Building (Scotland) 2008 (key provisions set out in Annex A) and a new database created to facilitate the lodgement of EPCs for non-domestic buildings and for Green Deal documentation. Development work on this database is ongoing, with public access being available from 15 April 2013 which will allow building owners and other informed parties to access the EPC for their building provided they are in possession of the unique report reference number (RRN) for the relevant assessment.

### **Issues**

4. I am aware that colleagues within the Energy Efficiency Directorate, have approached your Unit seeking advice on Data Protection matters. Provision of information to DECC under Green Deal has highlighted the need to produce a 'data sharing agreement', in relation to Section 33 (Exemptions) of the Data Protection Act and the potential need for a Privacy Impact Assessment (PIA). As I have indicated at paragraph 2 this was never considered when the EPB Regulations were introduced in 2008 due to the restrictive nature of data access.
5. In the meantime, Building Standards Division have received a request under the Environmental Information (Scotland) Regulations 2004 from the BBC requesting, “a copy of the Scottish Energy Performance Certificate Register for non-domestic properties. Please export the register as a csv file or an excel spreadsheet.” The same request was submitted to the Department for Communities and Local Government (DCLG), seeking information for England and Wales. Their response was that EPC data (where not used to meet regulatory requirements) is treated as personal data under the DPA. The DCLG response (Annex B) is based upon the information already being available, provided you are prepared to obtain it by input of addresses building by building. This facility is not available through the Scottish Register, where public access will only be available where the unique reference number (RRN) for the EPC is known.
6. With this in mind we are seeking clarification in relation to classification of energy performance data, as provided on an EPC as “personal data” under the DPA. The Energy Performance of Buildings (Scotland) Regulations 2008, set out the legislative requirement for EPCs for existing buildings. Regulation 6 which sets out the requirements for EPCs is attached at Annex C. You will see from the legislation that “(3) An energy performance certificate must not contain any information or data

from which a living individual (other than the person issuing it or that person's employer) can be identified."

7. The Data Protection Act defines "personal data" as

"personal data" means data which relate to a living individual who can be identified -  
(a) from those data, or  
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,  
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

8. Although the EPC does not contain any details of the building owners, by using the address on publically available website such as electoral roles or the Scottish Assessors web portal, building owners can be identified, the purchase price of the building and also the business rates/council tax the building owner is liable for. Therefore any documentation which contains address details alongside other information is, to date, considered as personal data and would be subject to an exemption under Regulation 10 (3) of the EIR? Is this assertion considered valid?

9. The information in question must be made available under specific circumstances - The Energy Performance of Buildings (Scotland) Regulations transpose requirements of Directive 2010/31/EU on the Energy Performance of Buildings which require EPCs to be produced on the construction sale or rental of a building and made available to any prospective owner or tenant. The regulations also require this information to be displayed in larger public buildings.

10. Where there is a regulatory requirement to provide information, this would be done with the consent/knowledge of the data subject (owner of the building) directly or via an appointed representative (e.g. solicitor). However, outwith those circumstances, where such a requirement does not apply, we consider that the default position should be that data should not be made publicly available without the consent of the subject.

11. In England & Wales, the Department for Communities and local Government has progressed systems to enable access to individual EPCs via public search by street, town and postcode. We are not clear precisely how this has been taken forward nor how this is compatible with use of personal data under the DPA. The Scottish Government does not currently propose a similar form of public access to EPC data, only access if in possession of the RRN of an EPC. This will support regulatory use of EPCs for EPBD and for other initiatives where an EPC is required and is based upon the 'consent model' in that the RRN is the 'key' to access to data and is based upon that information being provided in support of a transaction.

### **Way Ahead?**

12. Initially, the key issue for us is obviously clarification on the term "personal data" in relation to EPCs and addresses. This will reconfirm the principle on which data access and publication is developed. Following completion of the register development work, we are considering what information should be provided as part of an overall publication scheme. For example, would an anonymised dataset, based on area postcode providing the information as outlined at Regulation 5 (5) be sufficient? This could be produced on a regular basis and published on the Scottish Government website - it would provide a rich data source which, in our view, would offer all relevant data needed for analysis of the environmental impact of this policy

(other than the facility to assign performance to individual buildings and owners) .  
Limited EPC information is already produced and published:  
<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/enerperfor/epcstats>

Summary:

- ◆ BSD have previously considered that EPCs and related data should be treated as personal data under the DPA and therefore was not publicly releasable - we seek clarification of this position in respect of EIR.
- ◆ Changes to regulation in 2012 provide access to a wider range of 'authorised recipients' of this data who must be registered to access information and must comply with the provisions set out in schedule 1 of the amended regulations.
- ◆ No public access to EPC data is proposed in Scotland. Access by parties other than authorised recipients is by RRN only.
- ◆ SG would propose to develop a publication scheme issuing annual or quarterly anonymised EPC data from the register in support of duties under EIR
- ◆ Is the above generally compatible with provisions under DPA and EIR or would alternative action be recommended.

**Schedule setting out provisions for disclosure and handling of data by  
'authorised recipients'**

<http://www.legislation.gov.uk/ssi/2012/315/contents/made>

“SCHEDULE 1 - Disclosure of data

**PART 1**

The following persons or bodies are authorised recipients—

- (a) the Scottish Parliament;
- (b) the Scottish Ministers;
- (c) either House of Parliament;
- (d) any department of the Government of the United Kingdom;
- (e) the Welsh Ministers;
- (f) the National Assembly for Wales;
- (g) the Northern Ireland Assembly or a Northern Ireland department;
- (h) an enforcement authority;
- (i) an approved organisation;
- (j) a green deal relevant person;
- (k) the holder of a licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences) which has been modified by the Secretary of State under section 41(1) of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs).

**PART 2**

The purposes are—

1. Promoting energy efficiency improvements in relation to buildings.
2. Conducting research into, or developing or analysing policy (or policy proposals) in relation to, the energy efficiency of buildings.
3. Conducting research into the effectiveness or impact of energy efficiency improvements.
4. Identifying geographic areas where the energy efficiency of buildings is low relative to other areas, or conducting research into the extent, causes or consequences of such lower levels of efficiency.
5. Promoting and marketing energy efficiency improvements that may be made pursuant to a green deal plan.
6. Identifying and analysing the impact of carbon emissions on the environment resulting from buildings with low levels of energy efficiency.
7. Determining whether energy efficiency improvements that may be made pursuant to a green deal plan have or have not been made in respect of a particular building or buildings.

**PART 3**

The conditions are—

1. The authorised recipient is, until the data is deleted from the authorised recipient's records and systems (so that the personal data is no longer accessible by any means by the authorised recipient) a data controller within the meaning of section 1(1) of the Data Protection Act 1998 in relation to the information disclosed.
2. The authorised recipient must not—
  - (a) disclose any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 to any other person without the consent of the person who is the subject of the data;

- (b) use such personal data in order to contact an individual for the purpose of marketing or promoting products or services which do not relate to energy efficiency;
  - (c) use such personal data in order to make contact with an individual where an opt-out is in effect.
3. The authorised recipient must not make contact with any person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 unless—
- (a) the authorised recipient advises that person, at the time contact is first made that—
    - (i) the identity or contact details (or both) of that person have been obtained from the keeper of the register under regulation 12A or 13, as the case may be, and
    - (ii) that person is entitled to refuse to receive any further communications from the authorised recipient; and
  - (b) the first contact with that person is made by means of written communication (including electronic communication) only.
4. The authorised recipient must not make further contact with a person if that person has informed the authorised recipient that that person does not wish to receive any further communications from the authorised recipient.
5. If the authorised recipient has on three separate occasions made contact with a person whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13 and received no response from that person within fourteen days of the date of the third contact, the authorised recipient—
- (a) must not attempt to contact that person again; and
  - (b) must, as soon as reasonably practicable (and in any event within fourteen days of the receipt of a request made by or on behalf of that person to do so) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).
6. If a person, whose identity or contact details (or both) have become known to the authorised recipient from data disclosed to the authorised recipient under regulation 12A or 13, requests the authorised recipient to do so, the authorised recipient must, as soon as reasonably practicable (and in any event within fourteen days of the receipt of a request) delete any personal data contained in or derived from data disclosed to the authorised recipient under regulation 12A or 13 from its records and systems (so that the personal data is no longer accessible by any means by the authorised recipient).
7. The authorised recipient must ensure that its officers and employees comply with the conditions in paragraphs 1 to 6 above.

#### Interpretation

8. In this Schedule—
- “energy efficiency improvements” has the same meaning as in section 2 of the Energy Act 2011;
  - “personal data” has the meaning given in section 1(1) of the Data Protection Act 1998.”

## Annex B

Climate Change and  
Building Standards  
Eland House  
Bressenden Place  
London  
SE1E 5DU

T[redacted]  
[redacted]@communities.  
gsi.gov.uk  
[www.gov.uk/dclg](http://www.gov.uk/dclg)

[Redacted]  
Freedom of Information Researcher  
BBC Floor 6  
4 Millbank  
London  
SW1P 3JQ

Ref E0006496

6 February 2013

Dear [Redacted]

I am writing in response to your email of 9 January 2013, requesting information from the Non Domestic Energy Performance Register. Your clarified request was received in the Department on 11 January. Your request has been considered under the Environmental Information Regulations 2004 (EIRs).

Your request asked for the following:

Please provide a copy of the Non Domestic Energy Performance Register.  
Please export the register as a csv file or an excel spreadsheet.

I can confirm that information falling within the terms of your request is held by this Department for the purposes of the EIRs. It is not physically held by the Department itself as the Non Domestic Energy Performance Register is managed on behalf of the Department by Landmark Information Group.

Under regulation 5 of the EIRs a public authority that holds environmental information shall make that information available on request. However, by virtue of the provisions in regulation 6(1)(b), the Department, in this case, is not obliged to provide you with the information you requested, and in the format that you have requested, as it is already publicly available and easily accessible in another form or format.

You can access the information you have requested by going to the following URL: <https://www.ndepcregister.com/> where you can access options to return full Energy Performance Certificates (EPCs) for properties for which an EPC exist and where the street and town or postcode is submitted. You should be aware that, where a holder of an EPC has opted out of their EPC being made

publicly available, these properties will not be displayed by the Landmark system. In these cases the EPC will only be displayed if the 24 digit Report Reference Number is submitted instead of post code or street and town.

I should point out, notwithstanding the fact that regulation 6(1)(b) alone removes the obligation to make the information that you have requested available to you in the format you have requested, that we have additionally concluded that your request to export the register as a csv file or an excel spreadsheet would place an unreasonable cost burden on the Department as, we estimate, this could only be done at an approximate cost of £55,000.

Given these costs and the fact that EPC Register is freely accessible as described above, the Department is unable to meet your request.

As an organisation, the Department for Communities and Local Government aims to be as helpful as possible in the way it deals with requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. If, however, you are not satisfied with the way in which your request has been handled or the outcome, you may request an internal review within two calendar months of the date of this letter by contacting [foirequests@communities.gsi.gov.uk](mailto:foirequests@communities.gsi.gov.uk)

In the event that you remain dissatisfied following the Department's review you have the right to apply directly to the [Information Commissioner](#) (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the Internal Review procedure provided by the Department.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications about this request.

Yours sincerely,

**[Redacted]**  
Senior Policy Officer

**Energy Performance of Buildings (Scotland) Regulations 2008, as amended.**

Energy performance certificates

6.—(1) An energy performance certificate must—

(a) express the asset rating of the building or building unit in a way approved by the Scottish Ministers under regulation 7(b);

(b) include a reference value;

(ba) include an energy performance indicator;

(bb) include an indicator, expressed numerically, of primary energy use;

(c) contain cost effective and technically feasible recommendations for improving the energy performance of the building or building unit including—

(i) measures in connection with a major renovation of the building envelope or technical building systems; and

(ii) measures for individual building elements independent of a major renovation of the building envelope or technical building systems;

(ca) include a statement indicating that—

(i) more detailed information on the cost effectiveness of the recommendations made in the energy performance certificate; and

(ii) the steps to be taken to implement those recommendations, are contained in the recommendations report;”;

(d) include the following information—

(i) the address of the building or building unit;

(ii) where the certificate is issued by a qualified member of an approved organisation, the name of the approved organisation of which the person issuing the certificate is a member; and

(iii) the date on which it was issued; and

(e) be issued by a qualified member of an approved organisation for that category of building or building unit

(2) An energy performance certificate for a building or building unit is valid for a period of 10 years from the date on which it was issued

**(3) An energy performance certificate must not contain any information or data from which a living individual (other than the person issuing it or that person’s employer) can be identified.**

(4) Certification for a building unit may be based—

(a) on the assessment of another representative building unit with the same energy relevant characteristics in the same building; or

(b) on a common certification of the whole building in which the building unit is located and

(5) Paragraph (4)(b) does not apply to a unit that is a dwelling.

(6) Certification for a house may be based on the assessment of another representative house where—

(a) the representative house is of similar design, size and actual energy performance quality; and

(b) the member of the approved organisation issuing the energy performance certificate has confirmed in writing that this is the case.