

EPCs and data protection – background notes.

Energy Performance Certificates (EPCs)

A building owner requires to provide an EPC where a building is constructed, sold or let to a new tenant. Owners of larger buildings frequently visited by the public are also required to obtain and display an EPC in a position where it can be viewed by the public. Examples of EPC format and content can be found at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/enerperfor/epcguidance>

This requirement to provide an EPC on sale or rental lies under regulation 5 of the Energy Performance of Buildings (Scotland) Regulations 2008 (EPB regulations), as amended, which implement provisions in Article 12 of EU Directive 2010/31/EU on the Energy Performance of Buildings.

There are therefore defined circumstances under which EPC data must be made available and the responsibility for making the data available rests with the building owner (data subject).

EPCs are also used in support of other initiatives such as the GB Green Deal the UK Feed-in Tariff Initiative and the renewable Heat Incentive, though EPC data placed on the Scottish register is subject only to the EPB regulations.

Access to EPCs and underlying data - Previously...

Prior to October 2012, EPCs were used almost exclusively to meet the requirements of the EU Directive. As such access to data was limited to those with a role in this.

Pre October 2012, the notice on the 'old' domestic (RdSAP) EPC had, what was intended as a 'fair processing' notice, which said simply – *"Information from this EPC may be given to the Energy Saving Trust to provide advice to householders on financial help available to improve home energy efficiency"*.

These were the only type of EPC lodged to register prior to January this year, when we started to capture EPCs for non-domestic buildings. RdSAP capture changed from documents to data from 1 October 2012.

Under the original 2008 regulations, (regs 2 & 13), the Keeper of the register could only disclose data to Approved Organisations, enforcement authorities and Scottish Ministers. The extent to which the keeper and Scottish Ministers could use data was set out under regulation 14.

- 14.** The Scottish Ministers and, where the Scottish Ministers are not the keeper of the register, the keeper of the register may use any energy performance certificate or associated data entered onto the register–
- (a) for statistical or research purposes; or
 - (b) for providing advice or guidance on the energy performance of buildings, provided that for the purposes of paragraph (a) no building is identifiable from the energy performance certificate or associated data disclosed.

Prior to 1 October 2012, data lodged to the register would be procured on this basis.

Access to EPCs and underlying data - Currently...

Regulations applicable from 21/12/13 opened out access to the register – schedule 1 identifies the conditions applicable to access to data by authorised recipients. In migrating previous EPC data to the new register, we automatically opted each record out to ensure that it could not be used as a means for authorised recipients to contact building owners – something not anticipated under the previous regulations where EST would act as the single contact point.

The conditions for use set out in schedule 1 include a requirement for persons accessing the data to meet requirements as a data controller, together with further specific safeguards to prevent misuse of the data.

We had progressed on the basis that application of the safeguards within the schedule in the new regs was adequate to maintain the level of privacy present in the register prior to the 2012 changes.

A revised 'fair processing' notice is present on all EPCs produced from data lodged to the new register systems and accessible to authorised recipients under the current regulations. This notes "*This Certificate and Recommendations Report will be available to view online by any party with access to the report reference number (RRN) and to organisations delivering energy efficiency and carbon reduction initiatives on behalf of the Scottish and UK Governments. If you are the current owner or occupier of this building and do not wish this data to be used by these organisations to contact you in relation to such initiatives, please opt out by visiting www.scottishepcregister.org.uk and your data will be restricted accordingly. Further information on this and on Energy Performance Certificates in general can be found at www.scotland.gov.uk/epc.*

The website where the opt out is available also enables the public to access single EPCs where they are in possession of the report reference number (RRN) - a unique serial number. The primary intent here is to provide a means whereby people being provided with an EPC as part of a property transaction can check that the certificate is correct and valid.

Status of energy performance data under the DPA.

The Scottish Government have previously asserted that, as an EPC or the data which enables generation of an EPC should be considered as personal data as it will relate to an individual or organisation – the building owner.

EPB regs specifically prohibit the identification of living individuals within EPC data but we understand that that alone does not enable the data to be classified as not 'personal data' under the DPA. There is therefore no practical facility to distinguish between a building owner who is an individual and one who is an organisation, both because information is not recorded and because the owner status can change frequently.

As was the thoughts of colleagues in DCLG, who's EPB regulations and systems are very similar to ours. We understand, per DCLG's 2012 PIA, that:

“the Information Commissioners Office has produced guidance which makes it clear that ‘personal data’ means any information that can be linked to a particular individual, directly or indirectly. In the case of Energy Performance Certificate data, the document includes the address of the building to which it relates, although not the name of the occupier. However, it is a very straightforward process to match individuals with a particular property, for example, by comparing the address on an Energy Performance Certificate with data on the Electoral Register. Therefore, Energy Performance Certificate data should, in accordance with the Information Commissioner’s Office guidance, be treated as personal data”.

The principle area of concern over uncontrolled access to data is one of consumer protection. At present, all parties authorised to access data are doing so for specific reason and are directly accountable for managing their use of the data under the EPB regulations. Without these safeguards, there is the potential for any party using the data as a means of targeting unsolicited offers of goods and services on the owners of poorly performing buildings, without any accountability or control. Given the ongoing energy efficiency agenda and the increasing awareness of the benefits of such improvement work, this is a significant concern.

Recognising that release of energy performance data in a form that addresses consumer protection concerns is in the public interest, we do intend to publish the EPC register dataset in a form which can be interrogated but to limit address data to the extent that individual buildings, and therefore individuals are not identifiable. This work is planned for later in 2013 once more critical aspects of register development work is complete and is intended to meet our duty under the Environmental Information Regulations.

Summary – intent

Discussion with the ICO to clarify whether the view of the Scottish Government is correct - that energy performance certificates and their underlying data can continue to be considered personal data under the DPA and processed accordingly.

[Redacted] Scottish Government
Building Standards Division
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