

Subsidiary Legislation made under s.18(c).

Environment (Energy Performance of Buildings) Regulations 2012

LN.2012/131

<i>Commencement (rr. 1-3, 11, 19, 21-22, 24-27)</i>	4.10.2012
<i>(rr. 4, 10, 12-14¹, 18, 20, 23)</i>	9.1.2013
<i>(rr. 5-9, 15-17)</i>	9.1.2013²

Amending enactments	Relevant current provisions	Commencement date
LN. 2016/100	rr. 2(1), 4-5, 8-10, 14-18, 20, 23	27.4.2016
Act. 2018-19	r. 2	26.9.2019
LN. 2020/099	rr. 2(1), 8(5), 9(7)-(16), 11(3), (3A)-(3B), 15-16, 21(2), (2A), Sch. 1, 2	10.3.2020
2021/424	rr. 2(1), 3(4), 6(2)-(5), 9(12)(c), 10(3), (4)(c), (6), 11(2)(b)-(c), Sch. 1	1.1.2021

Transposing:

Directive 2010/31/EU

Directive (EU) 2018/844

¹ 13(1) to (4) shall not apply to single buildings which are rented out until 31 December 2015.

² See r.1(4)(a) & (b)

2005-27

Environment

2012/131

**Environment (Energy Performance of Buildings)
Regulations 2012**

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SCHEDULE 1

Common general framework for the calculation of energy performance of buildings

SCHEDULE 2

Independent control systems for energy performance certificates and inspection reports

In exercise of the powers conferred on it by section 18(c) of the Environment Act 2005 and in order to transpose into the law of Gibraltar Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, the Government has made the following Regulations—

Title and commencement.

1.(1) These Regulations may be cited as the Environment (Energy Performance of Buildings) Regulations 2012.

(2) These Regulations, subject to subregulations (3), (4) and (5), shall come into operation on the day of publication.

(3) Regulations 4, 10, 12, 13, 14, 18, 20 and 23 shall come into operation on 9 January 2013.

(4) Regulations 5, 6, 7, 8, 9, 15, 16 and 17 shall come into operation—

(a) in respect of buildings occupied by public authorities, on 9 January 2013; and

(b) in respect of other buildings, on 9 July 2013.

(5) Regulation 13(1) to (4) shall not apply to single buildings which are rented out until 31 December 2015.

Interpretation.

2.(1) In these Regulations and unless the context otherwise requires—

“air-conditioning system” means a combination of the components required to provide a form of indoor air treatment, by which temperature is controlled or can be lowered;

“boiler” means the combined boiler body-burner unit, designed to transmit to fluids the heat released from burning;

“building” means a roofed construction having walls, for which energy is used to condition the indoor climate;

“building automation and control system” means a system comprising all products, software and engineering services that can support energy efficient, economical and safe operation of technical building systems through automatic controls and by facilitating the manual management of those technical building systems;

“building element” means a technical building system or an element of the building envelope;

“building envelope” means the integrated elements of a building which separate its interior from the outdoor environment;

“building unit” means a section, floor or apartment within a building which is designed or altered to be used separately;

“cogeneration” means simultaneous generation in one process of thermal energy and electrical or mechanical energy or both electrical and mechanical energy;

“competent authority” means the Department of Environment of the Government;

“cost-optimal level” means the energy performance level which leads to the lowest cost during the estimated economic lifecycle, where—

(a) the lowest cost is determined taking into account energy-related investment costs, maintenance and operating costs (including energy costs and savings, the category of building concerned, earnings from energy produced), where applicable, and disposal costs, where applicable; and

(b) the estimated economic lifecycle is determined by the competent authority;

“Directive” means Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, as the same may be amended from time to time;

“district heating” or “district cooling” means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings or sites, for the use of space or process heating or cooling;

“effective rated output” means the maximum calorific output, expressed in kW, specified and guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;

“energy assessor” shall be understood within the meaning of regulation 18(1);

“energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

“energy performance certificate” means a certificate recognised by the competent authority, which indicates the energy performance of a building or building unit, calculated according to a methodology adopted in accordance with regulation 4;

“energy performance contracting” means energy performance contracting as defined in the Environmental Protection (Energy End-Use Efficiency) Act 2009;

“energy performance of a building” means the calculated or measured amount of energy needed to meet the energy demand associated with a typical use of the building, which includes, inter alia, energy used for heating, cooling, ventilation, hot water and lighting;

“European standard” means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;

“heat generator” means the part of a heating system that generates useful heat using one or more of the following processes-

- (a) the combustion of fuels in, for example, a boiler;
- (b) the Joule effect, taking place in the heating elements of an electric resistance heating system; and
- (c) capturing heat from ambient air, ventilation exhaust air, or a water or ground heat source using a heat pump;

“heat pump” means a machine, a device or installation that transfers heat from natural surroundings such as air, water or ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature and for reversible heat pumps, it may also move heat from the building to the natural surroundings;

“heating system” means a combination of the components required to provide a form of indoor air treatment, by which the temperature is increased;

“major renovation” means the renovation of a building where—

- (a) the total cost of the renovation relating to the building envelope or the technical building systems is higher than 25% of the value of the building, excluding the value of the land upon which the building is situated; or
- (b) more than 25% of the surface of the building envelope undergoes renovation;

“Minister” means the Minister for the Environment;

“nearly zero-energy building” means a building that has a very high energy performance, as determined in accordance with Schedule 1 and the nearly zero or very low amount of energy required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby;

“new building” means a building (as defined in these Regulations)–

- (a) the construction of which requires full planning permission under the Town Planning Act 2018; or
- (b) (in the case of an existing building) the alteration of which constitutes a material change of use which requires full planning permission under the Town Planning Act 2018;

“owner” where he is not in occupation of the building or building unit shall include the occupier;

“primary energy” means energy from renewable and non-renewable sources which has not undergone any conversion or transformation process;

“recharging point” means a recharging point as defined in the Environment (Deployment of Alternative Fuels Infrastructure) Regulations 2016;

“SBEM-GI” means the Simplified Building Energy Model developed by the Building Research Establishment for the UK Department for Communities and Local Government tailored specifically for Gibraltar, as amended from time to time;

“technical building system” means technical equipment for the heating, cooling, ventilation, hot water, lighting or for a combination thereof, of a building or building unit.

“technical building system” means technical equipment for space heating, space cooling, ventilation, domestic hot water, built-in lighting, building automation and control, on-site electricity generation, or a combination thereof, including those systems using energy from renewable sources, of a building or a building unit;

(2) Paragraph (b) in the definition of “cost-optimal level” refers to the remaining estimated economic lifecycle of a building where energy performance requirements are set for the building as a whole, or to the estimated economic lifecycle of a building element where energy performance requirements are set for building elements.

(3) The cost-optimal level shall lie within the range of performance levels where the cost benefit analysis calculated over the estimated economic lifecycle is positive.

(4) In applying the definition “major renovation” to any particular case, the competent authority may choose to apply either paragraph (a) or (b) of that definition, as it deems fit.

Subject matter of these Regulations.

3.(1) These Regulations seek to promote the improvement of the energy performance of buildings, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness.

(2) These Regulations lay down requirements as regards—

- (a) the common general framework for a methodology for calculating the integrated energy performance of buildings and building units;
- (b) the application of minimum requirements to the energy performance of new buildings and new building units;
- (c) the application of minimum requirements to the energy performance of—
 - (i) existing buildings, building units and building elements that are subject to major renovation;
 - (ii) building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are retrofitted or replaced; and
 - (iii) technical building systems whenever they are installed, replaced or upgraded;

- (d) Gibraltar's plans for increasing the number of nearly zero-energy buildings;
 - (e) energy certification of buildings or building units;
 - (f) regular inspection of heating and air-conditioning systems in buildings; and
 - (g) independent control systems for energy performance certificates and inspection reports.
- (3) The requirements referred to in subregulation (2)–
- (a) are minimum requirements; and
 - (b) shall not prevent the Government from maintaining or introducing more stringent measures.
- (4) Where more stringent measures are implemented in accordance with subregulation (3)(b) such measures shall be subject to the condition that the measures adopted under that subregulation must be compatible with retained EU law.

Adoption of a methodology for calculating the energy performance of buildings.

4.(1) In accordance with the common general framework set out in Schedule 1, the energy performance of buildings shall be calculated by applying the SBEM-GI methodology.

(2) The competent authority shall ensure that the SBEM-GI methodology referred to in subregulation (1) is published on its website.

Setting of minimum energy performance requirements.

5.(1) The Minister shall prescribe, by notice in the Gazette, minimum energy performance requirements for buildings or building units with a view to achieving cost-optimal levels and shall publish such requirements on its website.

(2) The energy performance shall be calculated in accordance with the methodology referred to in regulation 4.

(3) Cost-optimal levels shall be calculated in accordance with the comparative methodology framework referred to in regulation 6, once the framework is in place.

(4) The competent authority shall, by issuing guidance, prescribe minimum energy performance requirements for building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels and shall publish such requirements on its website.

(5) When prescribing the requirements under subregulations (1) and (4), the competent authority may differentiate between new and existing buildings and between different categories of buildings.

(6) The requirements set under these Regulations—

- (a) shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building; and
- (b) shall be reviewed at regular intervals which shall not be longer than 5 years and, if necessary, shall be updated in order to reflect technical progress in the building sector.

(7) The competent authority shall not be required to set minimum energy performance requirements which are not cost-effective over the estimated economic lifecycle.

(8) The Minister may, in his discretion, direct the competent authority not to set or apply the requirements referred to in subregulation (1) for the following categories of buildings—

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings used as places of worship and for religious activities;
- (c) temporary buildings with a time of use of 2 years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a sectoral agreement on energy performance;
- (d) residential buildings which are used or intended to be used for either less than 4 months of the year or, alternatively, for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use; and

- (e) stand-alone buildings with a total useful floor area of less than 50m².

Calculation of cost-optimal levels of minimum energy performance requirements.

6.(1) The competent authority shall calculate cost-optimal levels of minimum energy performance requirements using the comparative methodology framework established in accordance with Article 5(1) of the Directive and relevant parameters, such as climatic conditions and the practical accessibility of energy infrastructure, and compare the results of this calculation with the minimum energy performance requirements in force.

(2) *Omitted*

(3) *Omitted*

(4) *Omitted*

(5) If the result of the comparison performed in accordance with subregulation (1) shows that the minimum energy performance requirements in force are significantly less energy efficient than cost-optimal levels of minimum energy performance requirements, the competent authority shall establish a plan outlining appropriate steps to significantly reduce the gap by the next review of the energy performance requirements as referred to in regulation 5(1).

New buildings.

7.(1) A person who constructs a new building shall ensure that the new building constructed under his ownership meets the minimum energy performance requirements set in accordance with regulation 5.

(2) A person who constructs a new building shall ensure that before the construction starts, the technical, environmental and economic feasibility of high-efficiency alternative systems, such as those listed below, if available, is considered and taken into account—

- (a) decentralised energy supply systems based on energy from renewable sources;
- (b) cogeneration;
- (c) district or block heating or cooling, particularly where it is based entirely or partially on energy from renewable sources; and
- (d) heat pumps.

(3) A person who constructs a new building shall ensure that the analysis of alternative systems referred to in subregulation (2) is documented and available for verification purposes.

(4) The analysis of alternative systems referred to in subregulation (3) may be carried out for individual buildings, for groups of similar buildings or for common typologies of buildings in the same area and as far as collective heating and cooling systems are concerned, the analysis may be carried out for all buildings connected to the system in the same area.

Existing buildings.

8.(1) When buildings undergo major renovation, the owner of the existing building shall ensure that the energy performance of the building or the renovated part thereof is upgraded in order to meet minimum energy performance requirements set in accordance with regulation 5 in so far as this is technically, functionally and economically feasible having regard to what is reasonably practicable in all the circumstances.

(2) The requirements referred to in subregulation (1) shall be applied to the renovated building or building unit as a whole and additionally or alternatively, requirements may be applied to the renovated building elements.

(3) The owner of the existing building shall, in addition, take the necessary measures to ensure that when a building element that forms part of the building envelope and has a significant impact on the energy performance of the building envelope, is retrofitted or replaced, the energy performance of the building element meets minimum energy performance requirements in so far as this is technically, functionally and economically feasible having regard to what is reasonably practicable in all the circumstances.

(4) The competent authority shall determine the minimum energy performance requirements in accordance with regulation 5.

(5) The competent authority shall encourage, in relation to buildings undergoing major renovation, the consideration and taking into account of high-efficiency alternative systems, as referred to in regulation 7(2), in so far as this is technically, functionally and economically feasible, and shall address issues of-

- (a) healthy indoor climate conditions;
- (b) fire safety; and
- (c) risks related to intense seismic activity.

(6) The competent authority shall issue guidance on measures which are reasonably expected from owners in relation to this regulation and what is meant by “technically, functionally and economically feasible” in the circumstances, and shall publish such guidance on its website.

Technical building systems, electromobility and smart readiness indicator.

9.(1) The competent authority shall apply the technical building system requirements set out in the Domestic and Non-Domestic Building Services Compliance Guides in respect of the overall performance, the proper installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings.

(2) The competent authority may also apply the system requirements referred to in subregulation (1) to new buildings.

(3) System requirements shall be—

- (a) set for new, replacement and upgrading of technical building systems; and
- (b) applied in so far as they are technically, economically and functionally feasible.

(3A) The competent authority shall issue guidance on measures which are reasonably expected from owners in relation to subregulation (3)(b) and what is meant by “technically, functionally and economically feasible” in the circumstances, and shall publish such guidance on its website.

(4) The system requirements shall cover at least the following —

- (a) heating systems;
- (b) hot water systems;
- (c) air-conditioning systems;
- (d) large ventilation systems,

or a combination of such systems.

(5) The competent authority—

- (a) shall encourage the introduction of intelligent metering systems whenever a building is constructed or undergoes major renovation; and
- (b) may furthermore encourage, where appropriate, the installation of active control systems such as automation, control and monitoring systems that aim to save energy.

(6) In subregulation (1), “Domestic and Non-Domestic Building Services Compliance Guides” means the United Kingdom Domestic Building Services Compliance Guide and Non-Domestic Building Services Compliance Guide, as amended from time to time, which shall apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances in Gibraltar may require.

(7) A person who constructs a new building shall take the necessary measures to ensure that the building is equipped with self-regulating devices for the separate regulation of the temperature in each room or, where justified, in a designated heated zone of the building unit, in so far as this is technically, functionally and economically feasible having regard to what is reasonably practical in all the circumstances.;

(8) The owner of an existing building shall take the necessary measures to install self-regulating devices for the separate regulation of the temperature in each room or, where justified, in a designated heated zone of the building unit when heat generators are replaced, in so far as this is technically, functionally and economically feasible having regard to what is reasonably practical in all the circumstances.;

(9) Where new non residential buildings and non residential buildings undergoing major renovations which have more than ten parking spaces and-

- (a) the car park is located inside the building, and, for major renovations, renovation measures include the car park or the electrical infrastructure of the building; or
- (b) the car park is physically adjacent to the building, and, for major renovations, renovation measures include the car park or the electrical infrastructure of the car park,

the competent authority shall require the owner of the building to install at least one recharging point and ducting infrastructure for at least one in every five parking spaces to enable the installation of recharging points for electric vehicles.

(10) The competent authority shall, by 1st January 2025, determine the requirements for the installation of a minimum number of recharging points for all non residential buildings with more than 20 parking spaces.

(11) Where new residential buildings and residential buildings undergoing major renovations which have more than ten parking spaces and-

- (a) the car park is located inside the building, and, for major renovations, renovation measures include the car park or the electrical infrastructure of the building; or
- (b) the car park is physically adjacent to the building, and, for major renovations, renovation measures include the car park or the electrical infrastructure of the car park,

the competent authority shall require the owner of the building to install the necessary recharging points and ducting infrastructure for every parking space to enable the installation of recharging points for electric vehicles.

(12) The competent authority may decide not to apply the requirements of subregulations 9(9), 9(10) and 9(11) where-

- (a) the buildings referred to in subregulations 9(9) and 9(11) are owned by small and medium sized companies as defined in Title I of the Annex to Commission Recommendation 2003/361/EC;
- (b) building permit applications or equivalent applications have been submitted by 10 March 2021;
- (c) the Gibraltar Electricity Authority determines that the ducting infrastructure required would endanger the stability of the local grid;
- (d) the cost of the recharging and ducting installation exceeds 7% of the total cost of the major renovation of the building;
- (e) a public building is already covered by comparable requirements under the Environment (Deployment of Alternative Fuels Infrastructure) Regulations 2016.

(13) The competent authority, without prejudice to Gibraltar's applicable property and tenancy legislation, shall issue guidelines on measures which will simplify the deployment of recharging points in existing residential and non residential buildings and which shall cover at least the following-

- (a) possible regulatory barriers;
- (b) permitting and approval procedures.

(14) The competent authority shall require that the overall energy performance of an altered part or the complete altered system when a technical building system is installed, replaced or upgraded is assessed.

(15) The results of the assessment described in subregulation 9(14) shall be documented and made available to the owner of the building in respect of which the assessment has been carried out.

(16) The competent authority shall use the results of the assessment in order to-

- (a) verify compliance with the minimum requirements set out in subregulation 9(1);
- (b) decide whether to issue a new energy performance certificate, without prejudice to Regulation 12.

Nearly zero-energy buildings.

10.(1) The competent authority shall ensure that—

- (a) after 31 December 2018, new buildings occupied and owned by public authorities are nearly zero-energy buildings; and
- (b) by 31 December 2020, all new buildings are nearly zero-energy buildings.

(2) The competent authority shall draw up plans for increasing the number of nearly zero-energy buildings and such plans may include targets differentiated according to the category of building.

(3) The competent authority shall furthermore, following the leading example of the public sector and after consulting the Minister, develop policies and take measures such as the setting of targets in order to stimulate the transformation of buildings that are refurbished into nearly zero-energy buildings.

(4) The plans referred to in subregulation (2) shall include, inter alia, the following elements—

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- (a) the competent authority's detailed application in practice of the definition of nearly zero-energy buildings, reflecting the local conditions, and including a numerical indicator of primary energy use expressed in kWh/m² per year;
 - (b) intermediate targets for improving the energy performance of new buildings, by 2015, with a view to preparing the implementation of subregulations (1) and (2);
 - (c) information on the policies and financial or other measures adopted in the context of subregulations (1) to (3) for the promotion of nearly zero-energy buildings, including details of Gibraltar's requirements and measures concerning the use of energy from renewable sources in new buildings and existing buildings undergoing major renovation in the context of regulations 7 and 8 of these Regulations and Article 15(4) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.
- (5) Primary energy factors used for the determination of the primary energy use under subregulation (4)(a) may—
- (a) be based on Gibraltar's yearly average values; and
 - (b) take into account relevant European standards.
- (6) The competent authority may decide not to apply the requirements set out in paragraphs (a) and (b) of subregulation (1) in specific and justifiable cases where the cost-benefit analysis over the economic lifecycle of the building in question is negative.
- (7) The competent authority shall ensure that the plans referred to in subregulation (2) and the policies referred to in subregulation (3)(a) are published on its website and made available to the public for inspection at its offices.

Financial incentives and market barriers.

11.(1) In view of the importance of providing appropriate financing and other instruments to catalyse the energy performance of buildings and the transition to nearly zero-energy buildings, the competent authority shall take appropriate steps to consider the most relevant such instruments in the light of Gibraltar's circumstances.

- (2) The competent authority shall, with the Minister's approval—

- (a) draw up a list of existing and, if appropriate, proposed measures and instruments including those of a financial nature, other than those required by these Regulations, which promote the objectives of these Regulations;
 - (b) update the list by 30 June 2014, and every three years thereafter.
- (3) The competent authority shall link its financial measures for energy efficiency improvements in the renovation of buildings to the targeted or achieved energy savings, as determined by one or more of the following criteria-
- (a) the energy performance of the equipment or material used for the renovation; in which case, the equipment or material used for the renovation is to be installed by a person with the relevant level of certification or qualification;
 - (b) standard values for calculation of energy savings in buildings;
 - (c) the improvement achieved due to such renovation by comparing energy performance certificates issued before and after renovation;
 - (d) the results of an energy audit;
 - (e) the results of another relevant, transparent and proportionate method that shows the improvement in energy performance.
- (3A) The competent authority shall maintain databases for energy performance certificates which shall allow data to be gathered on the measured or calculated energy consumption of the buildings covered, including at least public buildings for which an energy performance certificate, as referred to in Regulation 14, has been issued in accordance with Regulation 13.
- (3B) Subject always to Gibraltar's data protection laws as may apply from time to time, the competent authority shall make available, on request, aggregated and anonymised data for statistical and research purposes.
- (4) The provisions of these Regulations shall not prevent the competent authority from providing incentives for new buildings, renovations or building elements which go beyond the cost-optimal levels.

Energy performance certificates.

12.(1) The Government shall establish a system of certification of the energy performance of buildings.

- (2) The energy performance certificate referred to in subregulation (1) shall include—
- (a) the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance; and
 - (b) recommendations for the cost-optimal or cost-effective improvement of the energy performance of a building or building unit, unless there is no reasonable potential for such improvement compared to the energy performance requirements in force.
- (3) The energy performance certificate referred to in subregulation (1) may include additional information such as the annual energy consumption for non-residential buildings and the percentage of energy from renewable sources in the total energy consumption.
- (4) The recommendations included in the energy performance certificate pursuant to subregulation (2)(b) shall cover—
- (a) measures carried out in connection with a major renovation of the building envelope or technical building systems; and
 - (b) measures for individual building elements independent of a major renovation of the building envelope or technical building systems.
- (5) The recommendations included in the energy performance certificate pursuant to subregulation (2)(b) shall—
- (a) be technically feasible for the specific building and may provide an estimate for the range of payback periods or cost-benefits over its economic lifecycle; and
 - (b) provide an indication as to where the owner or tenant can receive more detailed information, including as regards the cost-effectiveness of the recommendations made in the energy performance certificate.
- (6) The evaluation of cost effectiveness shall—
- (a) be based on a set of standard conditions, such as the assessment of energy savings and underlying energy prices and a preliminary cost forecast; and
 - (b) contain information on the steps to be taken to implement the recommendations.

(7) The competent authority may provide any other information on related topics, such as energy audits or incentives of a financial or other nature and financing possibilities to the owner or tenant.

(8) The competent authority shall encourage public authorities to take into account the leading role which they should play in the field of energy performance of buildings, inter alia, by implementing the recommendations included in the energy performance certificate issued for buildings owned by them within its validity period.

(9) Certification for building units may be based—

- (a) on a common certification of the whole building; or
- (b) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building.

(10) Certification for single-family houses 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.

(11) The validity of the energy performance certificate shall not exceed 10 years.

Issue of energy performance certificates.

13.(1) The competent authority shall ensure that an energy performance certificate is issued for—

- (a) buildings or building units which are constructed, sold or rented out to a new tenant; and
- (b) buildings where a total useful floor area over 500m² is occupied by a public authority and frequently visited by the public.

(2) On 9 July 2015, the threshold of 500m² referred to in subregulation (1)(b) shall be lowered to 250m².

(3) The requirement to issue an energy performance certificate under this regulation does not apply where a certificate, issued in accordance with either the Building (Energy Performance) Regulations 2010 or these Regulations, for the building or building unit concerned is available and valid.

(4) A person who constructs, sells or rents out any building or any units of a building must show and hand over an energy performance certificate, or a copy thereof, to the buyer or prospective tenant, as the case may be.

(5) Where a building is sold or rented out in advance of construction, the seller may provide an assessment of its future energy performance to the prospective new tenant or buyer as a derogation from subregulations (1) to (4) and in such case the energy performance certificate shall be issued at the latest once the building has been constructed.

(6) When—

- (a) buildings having an energy performance certificate;
- (b) building units in a building having an energy performance certificate; and
- (c) building units having an energy performance certificate,

are offered for sale or for rent, the person offering the building or the unit of the building shall state the energy performance indicator of the energy performance certificate of the building or the building unit, as applicable, in the advertisements in commercial media.

(7) The provisions of this regulation, except subregulation (5), shall not apply to the categories of buildings referred to in regulation 5(8).

(8) Nothing in this regulation shall be construed as altering any subsisting property rights in relation to joint ownership or common property, whether they arise through statute or otherwise.

Display of energy performance certificates.

14.(1) Where a total useful floor area over 500m² of a building for which an energy performance certificate has been issued in accordance with regulation 13(1) is occupied by public authorities and frequently visited by the public, the owner of the building shall display the energy performance certificate in a prominent place clearly visible to the public.

(2) On 9 July 2015, the threshold of 500m² referred to in subregulation (1) shall be lowered to 250m².

(3) Where a total useful floor area over 500m² of a building for which an energy performance certificate has been issued in accordance with regulation 13(1) is frequently visited by the

public, the owner of the building shall display the energy performance certificate in a prominent place clearly visible to the public.

(4) The provisions of this regulation do not include an obligation to display the recommendations included in the energy performance certificate.

(5) The competent authority shall inspect buildings which fall under the scope of this regulation every six months.

Inspection of heating systems.

15.(1) The competent authority shall establish a regular programme of inspection of the accessible parts of heating systems or of systems for combined space heating and ventilation, with an effective rated output of over 70kW and shall publish details of the programme on its website.

(2) The inspection under subregulation (1) shall include an assessment of–

- (a) the efficiency and sizing of the heat generator compared with the heating requirements of the building;
- (b) the capabilities, where relevant, of the heating system or of the system for combined space heating and ventilation to optimise its performance under typical or average operating conditions.

(3) The assessment of the heat generator sizing does not have to be repeated as long as no changes were made to the heating systems or the systems for combined space heating and ventilation of the building in the period since the last inspection.

(4) Technical building systems referred to in this regulation that are covered by–

- (a) an agreed energy performance criterion;
- (b) a contractual arrangement specifying an agreed level of energy efficiency improvement or performance; or
- (c) performance monitoring measures on the system side,

shall be exempt from the requirements of subregulation (1), provided that the overall impact of such an approach is equivalent to that resulting from subregulation (1).

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(5) The competent authority shall ensure that, where technically, functionally and economically feasible, the owners of non residential buildings with an effective rated output for heating systems or for systems for combined space heating and ventilation of over 290kW equip the building with building automation and control systems by 2025.

(6) The building automation and control systems referred to in subregulation (5), shall be capable of-

- (a) continuously monitoring, logging, analysing and allowing for adjusting energy use;
- (b) benchmarking the building's energy efficiency;
- (c) detecting losses in the efficiency of technical building systems;
- (d) providing energy efficiency improvement information;
- (e) allowing communication with connected technical building systems and other appliances inside the building; and
- (f) being interoperable with technical building systems across different types of proprietary technologies, devices and manufacturers.

(7) The competent authority shall ensure that residential buildings are equipped with-

- (a) the functionality of continuous electronic monitoring that measures the efficiency of the systems found therein and informs the owners or managers when it has fallen significantly and when system servicing is necessary; and
- (b) effective control functionalities to ensure optimum generation, distribution, storage and use of energy.

(8) Buildings that comply with subregulations (5) and (7) shall be exempt from the requirements of subregulation (1).

Inspection of air-conditioning systems.

16.(1) The competent authority shall establish a regular programme of inspection of the accessible parts of air conditioning systems or systems for combined air-conditioning and ventilation, with an effective rated output of over 70kW and shall publish details of the programme on its website.

- (2) The inspection under subregulation (1) shall include an assessment of–
- (a) the efficiency and sizing of the air-conditioning system compared with the cooling requirements of the building;
 - (b) the capabilities, where relevant, of the air-conditioning system or of the system for combined air-conditioning and ventilation to optimise its performance under typical or average operating conditions.
- (3) The assessment of the air-conditioning sizing does not have to be repeated as long as no changes were made to the air-conditioning systems or the system for combined air-conditioning and ventilation of the building in the period since the last inspection.
- (4) Technical building systems referred to in this regulation that are covered by–
- (a) an agreed energy performance criterion;
 - (b) a contractual arrangement specifying an agreed level of energy efficiency improvement or performance; or
 - (c) performance monitoring measures on the system side,
- shall be exempt from the requirements of subregulation (1), provided that the overall impact of such an approach is equivalent to that resulting from subregulation (1).
- (5) The competent authority shall ensure that, where technically, functionally and economically feasible, the owners of non residential buildings with an effective rated output for air-conditioning systems or for systems for combined air-conditioning and ventilation of over 290kW equip the building with building automation and control systems by 2025.
- (6) The building automation and control systems referred to in subregulation (5), shall be capable of–
- (a) continuously monitoring, logging, analysing and allowing for adjusting energy use;
 - (b) benchmarking the building's energy efficiency;
 - (c) detecting losses in the efficiency of technical building systems;

- (d) providing energy efficiency improvement information;
 - (e) allowing communication with connected technical building systems and other appliances inside the building; and
 - (f) being interoperable with technical building systems across different types of proprietary technologies, devices and manufacturers.
- (7) The competent authority shall ensure that residential buildings are equipped with-
- (a) the functionality of continuous electronic monitoring that measures the efficiency of the systems found therein and informs the owners or managers when it has fallen significantly and when system servicing is necessary; and
 - (b) effective control functionalities to ensure optimum generation, distribution, storage and use of energy.
- (8) Buildings that comply with subregulations (5) and (7) shall be exempt from the requirements of subregulation (1).

Reports on the inspection of heating and air-conditioning systems.

17.(1) An inspection report shall be issued after each inspection of a heating or air-conditioning system and the inspection report shall contain the result of the inspection performed in accordance with regulation 15 or 16 and include recommendations for the cost-effective improvement of the energy performance of the inspected system.

(2) The recommendations referred to in subregulation (1) may be based on a comparison of the energy performance of the system inspected with that of the best available feasible system and a system of similar type for which all relevant components achieve the level of energy performance required by the applicable legislation.

(3) The inspection report issued under this regulation shall be handed over to the owner or tenant of the building.

(4) The owner of a building must make available to the competent authority any inspection report issued under subregulation (1).

Energy assessors.

18.(1) The competent authority shall ensure that the energy performance certification of buildings and the inspection of heating systems and air-conditioning systems are carried out in an independent manner by qualified or accredited experts who shall be known as energy assessors.

(2) An energy assessor whether operating in a self-employed capacity or employed by a public body or a private enterprise shall be qualified or accredited in accordance with regulation 19.

(3) The assessors shall be accredited taking into account their competence.

(4) The competent authority shall make publically available a list of qualified or accredited energy assessors and shall publish the list on its website.

Accreditation schemes.

19.(1) An energy assessor shall be a member of an accreditation scheme approved by the Minister.

(2) The terms of approval of any accreditation scheme may be limited in relation to—

- (a) the categories of building for which members may produce certificates; and
- (b) the types of air-conditioning systems members may inspect.

(3) Before approving an accreditation scheme the Minister must be satisfied that the scheme contains adequate provision for—

- (a) preparation and issuing of energy performance certificates;
- (b) preparation and issuing of recommendation reports;
- (c) preparation and issuing of display energy certificates;
- (d) preparation and issuing of inspection reports; and
- (e) carrying out of any inspections undertaken for the purposes of preparing any of the documents referred to in paragraphs (a) to (d).

(4) Every energy assessor shall carry out energy assessments with reasonable care and skill.

- (5) The duty imposed by subregulation (4) shall be enforceable by the following persons—
- (a) preparation and issuing of energy performance certificates;
 - (b) preparation and issuing of recommendation reports;
 - (c) preparation and issuing of display energy certificates;
 - (d) preparation and issuing of inspection reports; and
 - (e) carrying out of any inspections undertaken for the purposes of preparing any of the documents referred to in paragraphs (a) to (d).
- (6) The competent authority shall regularly update the list of—
- (a) qualified energy assessors;
 - (b) accredited energy assessors; and
 - (c) accredited companies which offer the services of such assessors.
- (7) The competent authority shall make available to the public—
- (a) information on training and accreditations of energy assessors; and
 - (b) the lists prepared under subregulation (6).
- (8) In this regulation and regulation 18, a reference to “energy assessment” includes a reference to the—
- (a) preparation and issuing of energy performance certificates;
 - (b) preparation and issuing of recommendation reports;
 - (c) preparation and issuing of display energy certificates;
 - (d) preparation and issuing of inspection reports; and
 - (e) carrying out of any inspections undertaken for the purposes of preparing any of the documents referred to in paragraphs (a) to (d).

Independent control system.

20.(1) The competent authority shall ensure that independent control systems for energy performance certificates and reports on the inspection of heating and air-conditioning systems are established in accordance with Schedule 2 and shall publish the details of such systems on its website.

(2) The competent authority may establish separate systems for the control of energy performance certificates and for the control of reports on the inspection of heating and air-conditioning systems.

(3) The energy performance certificates and the inspection reports referred to in subregulation (1) shall be made available to the competent authority on request.

Information.

21.(1) The competent authority shall take the necessary measures to inform the owners or tenants of buildings or building units of the different methods and practices that serve to enhance energy performance.

(2) The competent authority shall in particular provide information to the owners or tenants of buildings on energy performance certificates and inspection reports, their purpose and objectives, on cost-effective ways to improve the energy performance of the building and, where appropriate, on financial instruments available to improve the energy performance of the building, and on replacing fossil fuel boilers with more sustainable alternatives.

(2A) The competent authority shall provide the information in subregulation (2) through renovation advice, one-stop workshops or other accessible and transparent advisory tools as it may determine.

(3) The competent authority shall ensure that guidance and training are made available for those responsible for implementing these Regulations and such guidance and training shall—

- (a) address the importance of improving energy performance; and
- (b) enable consideration of the optimal combination of improvements in energy efficiency, use of energy from renewable sources and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

Consultation.

22. In order to facilitate the effective implementation of these Regulations, the competent authority shall consult the stakeholders involved, such consultation being of particular importance for the application of regulations 10 and 21.

Offences and penalties.

23.(1) A person who contravenes subregulation (1), (2) or (3) of regulation 7, subregulation (1), (2) or (3) of regulation 8, subregulation (4), (5) or (6) of regulation 13 or subregulation (1) or (3) of regulation 14 commits an offence.

(1A) A person who –

- (a) applies a methodology other than that set out in regulation 4 for the purpose of calculating the energy performance of buildings;
- (b) without reasonable excuse, refuses to conduct an inspection pursuant to regulations 15 or 16; or
- (c) refuses to make an inspection report available to the competent authority in accordance with regulation 17(4),

commits an offence.

(2) A person who commits an offence under subregulation (1) or (1A) is liable on summary conviction–

- (a) if the defendant is a natural person, to a fine not exceeding level 5 on the standard scale; and
- (b) if the defendant is a corporate body, to a maximum fine of 12.5% of the rateable value of the building subject to a minimum fine fixed at level 5 on the standard scale.

Liability of bodies corporate.

24.(1) A corporate body shall be liable for an offence under these Regulations where that offence is committed for its benefit by a person, acting either individually or as part of an organ of the corporate body, who has a leading position within the corporate body.

(2) For the purposes of subregulation (1), a leading position shall be deemed to exist where such a person has—

- (a) a power of representation of the corporate body;
- (b) an authority to take decisions on behalf of the corporate body; or
- (c) an authority to exercise control within the corporate body.

(3) A corporate body shall be liable for an offence under these Regulations committed by a person referred to in subregulation (1) where lack of supervision or control by that person has made possible the commission of the offence for the benefit of the corporate body by a person under its authority.

(4) Where a corporate body is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person referred to in subregulation (1), or any person who was purporting to act in any such capacity, that person, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a corporate body are managed by its members, subregulation (4) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

(6) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

Repeal.

25. The Building (Energy Performance) Regulations 2010 are repealed.

Savings and transitional provisions.

26. Any energy performance certificate issued, reports made or actions taken under the Regulations repealed by regulation 24 prior to the coming into operation of these Regulations shall be deemed to have been issued, made or taken under these Regulations.

Monitoring and commencement.

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27.(1) The competent authority shall monitor whether deferral of the commencement of regulation 13(1) to (4) results in fewer certificates being issued than would have been the case under application of the Regulations repealed by regulation 24.

(2) Where, pursuant to subregulation (1) the competent authority has reason to believe that fewer certificates may be issued in the circumstances set out therein, the competent authority shall inform the Minister.

(3) Where the Minister is informed by the competent authority pursuant to subregulation (2) the Minister shall take such steps as are necessary to rectify the matter.

SCHEDULE 1

Regulation 4

Common general framework for the calculation of energy performance of buildings.

1. The energy performance of a building shall be determined on the basis of calculated or actual energy use and shall reflect typical energy use for space heating, space cooling, domestic hot water, ventilation, built-in lighting and other technical building systems.

The energy performance of a building shall be expressed by a numeric indicator of primary energy use in kWh/(m².y) for the purpose of both energy performance certification and compliance with minimum energy performance requirements. The methodology applied for the determination of the energy performance of a building shall be transparent and open to innovation.

The competent authority shall describe its calculation methodology following applicable retained EU law and Gibraltar legislation of the overarching standards.

2. The energy needs for space heating, space cooling, domestic hot water, ventilation, lighting and other technical building systems shall be calculated in order to optimise health, indoor air quality and comfort levels, as may be defined by the competent authority.

The calculation of primary energy shall be based on primary energy factors or weighting factors per energy carrier, which may be based on national, regional or local annual, weighted averages or on more specific information made available.

Primary energy factors or weighting factors shall be defined by the competent authority. In the application of those factors to the calculation of energy performance, the competent authority shall ensure that the optimal energy performance of the building envelope is pursued.

In the calculation of the primary energy factors for the purpose of calculating the energy performance of buildings, the competent authority may take into account renewable energy sources supplied through the energy carrier and renewable energy sources that may be generated and used on-site, provided that it applies on a non-discriminatory basis.”

2A. For the purpose of expressing the energy performance of a building, the competent authority may define additional numeric indicators of total, non-renewable and renewable primary energy use, and of greenhouse gas emission produced in kgCO₂eq/(m².y).

3. The methodology shall be laid down taking into consideration at least the following aspects—

- (a) the following actual thermal characteristics of the building including its internal partitions—
 - (i) thermal capacity;
 - (ii) insulation;
 - (iii) passive heating;
 - (iv) cooling elements; and
 - (v) thermal bridges;
- (b) heating installation and hot water supply, including their insulation characteristics;
- (c) air-conditioning installations;
- (d) natural and mechanical ventilation which may include air-tightness;
- (e) built-in lighting installation (mainly in the non-residential sector);
- (f) the design, positioning and orientation of the building, including outdoor climate;
- (g) passive solar systems and solar protection;
- (h) indoor climatic conditions, including the designed indoor climate;
- (i) internal loads.

4. The positive influence of the following aspects shall be taken into account.

- (a) local solar exposure conditions, active solar systems and other heating and electricity systems based on energy from renewable sources;
- (b) electricity produced by cogeneration;
- (c) district or block heating and cooling systems;

- (d) natural lighting.
5. For the purpose of the calculation, buildings should be adequately classified into the following categories—
- (a) single-family houses of different types;
 - (b) apartment blocks;
 - (c) offices;
 - (d) educational buildings;
 - (e) hospitals;
 - (f) hotels and restaurants;
 - (g) sports facilities;
 - (h) wholesale and retail trade services buildings;
 - (i) other types of energy-consuming buildings.

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SCHEDULE 2

Regulation 20

Independent control systems for energy performance certificates and inspection reports.

1. The competent authority shall make a random selection of all the energy performance certificates issued annually and subject those certificates to verification. The sample shall be of a sufficient size to ensure significant compliance results.

The verification shall be based on the options indicated below or on equivalent measures—

- (a) validity check of the input data of the building used to issue the energy performance certificate and the results stated in the certificate;
 - (b) check of the input data and verification of the results of the energy performance certificate, including the recommendations made;
 - (c) full check of the input data of the building used to issue the energy performance certificate, full verification of the results stated in the certificate, including the recommendations made, and on-site visit of the building, if possible, to check correspondence between specifications given in the energy performance certificate and the building certified.
2. The competent authority shall make a random selection of at least a statistically significant percentage of all the inspection reports issued annually and subject those reports to verification.
3. Where information is added to a database it shall be possible for the competent authority to identify the originator of the addition, for monitoring and verification purposes.