

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 3 – Other Provisions

Chapter 1 - Sustainability certificates

General

798. This Chapter provides for the introduction of mandatory sustainability rating for new homes in England and Wales. This will be information in the form of either a certificate showing the results of assessment against sustainability standards, or a statement that there is no certificate because no assessment has been made. Sustainability standards already exist in the Code for Sustainable Homes (“the Code”). Since April 2007, the Code has operated on a voluntary basis in England only. The purpose of sustainability standards is to improve the sustainability of new homes during both the construction and the lifetime of the home.
799. The Chapter includes provision for extension of the provisions to conversions of existing buildings and to non-residential properties, although there are no present proposals to use those powers.
800. The Chapter applies to England and Wales. Any power to make delegated legislation under the Chapter is to be exercised by the appropriate national authority: the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

Section 279 - Certificates for new homes

801. This section places a duty on a person selling a newly constructed residential property to give the purchaser of the property information about the sustainability of the new property free of charge before the sale is agreed. This information is in the form of either a sustainability certificate or a statement that there is no sustainability certificate for the property (*subsections (1), (2), (4) and (9)*).
802. The sustainability certificate can be given as either an interim certificate (if the property has not been completed yet) or a final certificate (available after the property has been built and assessed). Where an interim certificate is given before sale, the final certificate must be given at a later point to be prescribed in regulations, which may be after the sale is completed (*subsections (3), (10) and (11)*).
803. The section provides for powers to make regulations to bring forward the point at which a sustainability certificate or statement of non-assessment must be supplied, to make exceptions to the duties under the section, and to provide for alternative duties where such exceptions apply (*subsections (5), (6) and (7)*). There is a defence of reasonable excuse for not complying with any of duties in this section (*subsection (8)*).

Section 280 - Meaning of sustainability

804. This section defines the sustainability of a residential property in relation to the materials used in the property, other aspects of its design and construction, and any services, fittings and equipment provided in or in connection with the property (as well as related demolition and off site activities). Sustainability is the extent to which prescribed sustainability standards are met in these respects (*subsections (1) and (4)*).
805. Sustainability standards will be prescribed in regulations by the appropriate national authority for ensuring or furthering the following listed purposes (*subsection (2)*):
- health, safety, welfare and convenience of people in or about the property, and others who may be affected by it;
 - efficient management of the property and of its construction;
 - energy efficiency;
 - water efficiency and minimising flood risk;
 - efficient waste management;
 - protecting or enhancing the environment; and
 - preventing or detecting crime.
806. The appropriate national authority can by regulations amend this list of purposes from time to time by adding to, removing or altering the items listed (*subsection (3)*).

Section 281 - Authorised assessors

807. This section ensures that assessments of sustainability for residential properties are carried out only by authorised assessors. The appropriate national authority must by regulations specify who are to be authorised assessors, and may make further provision about them (*subsections (1), (2) and (3)*).
808. Regulations may specify that authorised assessors be accredited under an accreditation scheme established or approved by the appropriate national authority, and may provide for the charging of fees under accreditation schemes (*subsections (4), (5) and (6)*).
809. Regulations concerning accreditation schemes must require the appropriate national authority to be satisfied that any scheme approved contains adequate provision for -
- ensuring that members of the scheme are fit and proper persons who are qualified to carry out assessments;
 - ensuring that a code of conduct for members of the scheme is maintained and published;
 - ensuring that members of the scheme have suitable indemnity insurance;
 - facilitating the resolution of complaints against members;
 - requiring certificates issued by members to be entered into the register of certificates (see paragraph on Section 282)
 - keeping a public register of members of the scheme; and
 - such other purposes as may be specified in the regulations (*subsections (7) and (8)*).
810. Regulations may also provide for accreditation schemes to contain provision about certificates and other documents within the scope of the scheme including the terms on which they may be provided (*subsection (9)*).

Section 282 - Register of certificates

811. This Section empowers the appropriate national authority to make regulations about a register of sustainability certificates (*subsection (1)*). Regulations may also provide for interim certificates and other documents to be included on the register (*subsections (9) and (10)*).
812. The regulations under *subsection (1)* may provide in particular (*subsection (2)*) for:
- the register to be kept by or on behalf of the appropriate national authority or by such other person as the regulations may specify (*subsection (3)*);
 - the payment of a fee to enter a document onto the register (*subsection (4)*); and
 - preventing the disclosure of the register or documents or information in it except in accordance with the regulations (*subsection (5)*);
 - the circumstances in or purposes for which the register may, on payment of any fee, be inspected, documents or information may be copied or given, and disclosure made of anything so obtained (*subsections (6) and (7)*).
813. Contravention of a prohibition on disclosure from the register is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (8)*).

Enforcement

Section 283 - Enforcement authorities

814. This section provides for every local weights and measures authority to enforce the duties in section 279 in its area.

Section 284 - Power to require production of certificates or statements

815. This section empowers officers of an enforcement authority to require a seller of a newly constructed residential property to produce for inspection (or to provide a hard copy) of the sustainability certificate or statement of non-assessment (*subsections (1) to (3)*). The request may be made up to six months after the last day on which the person concerned could have complied with the duty under section 279, and must be complied with within 7 days (*subsections (4) and (6)*). The duty in this section is subject to a defence of reasonable excuse for not complying with it (*subsection (5)*).

Section 285 - Penalty charge notices

This section provides for enforcement officers to give a penalty charge notice to a person the officer believes has committed a breach of the duties set out in section 279 or section 284. The notice may be given up to six months from the commission of the breach (*subsections (1) and (2)*). Schedule 10 has effect in relation to penalty charge notices (*subsection (3)*).

Section 286 - Offences relating to enforcement officers

816. This section provides for offences of obstructing an enforcement officer acting in pursuance of his duties under the Chapter (*subsection (1)*), and of impersonating an enforcement officer by purporting to act as one in pursuance of either section 284 or section 285 (*subsection (2)*). Both are punishable on summary conviction with a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (3)*).

Supplementary

Section 287 - Grants

817. This section allows the appropriate national authority to make grants towards the development and subsequent operation of a register under section 282 (*subsection (1) (a)*). Grants may also be made towards the development and operation of accreditation schemes or any other provision to be made in regulations under the Chapter (*subsection (1)(b)*). Such a grant may be subject to conditions including conditions for the purposes for which it may be used, and for full or partial repayment of it in specified circumstances (*subsection (2)*).

Section 288 - Suspension of duties

818. This section allows the appropriate national authority, by regulations, to suspend and revive the operation of any duty imposed by section 279 (*subsection (1)*). Suspension may be for a specified time only, and a duty that has been revived may be suspended again (*subsections (2) and (3)*).

Section 289 - Disclosure of certificates

819. This section empowers the appropriate national authority to make regulations about the disclosure of sustainability and interim certificates, statements of non-assessment, any information derived from such documents, and any information collected by an authorised assessor in preparing a certificate (*subsection (1)*). The disclosure without reasonable excuse of anything whose disclosure is prohibited by regulations under *subsection (1)* is a summary offence punishable by a fine not exceeding level 5 on the standard scale, currently £5,000 (*subsection (2)*).

Section 290 – General powers to make regulations

820. This section allows the appropriate national authority to make provision for the general purposes, or any particular purpose of the Chapter, or in consequence of any provision made under the Chapter or for giving full effect to it (*subsection (1)*). Such regulations may in particular provide for:

- the form and content of certificates and statements of non-assessment, or for the form and content of such documents to be such as the appropriate national authority may approve;
- ways in which sustainability standards can be met;
- the issue of guidance; and
- any interaction between provision under the Chapter with provision made by other enactments in relation to home information packs or energy performance certificates (*subsections (2) to (4)*).

Section 291 - Powers to extend Chapter

821. This section allows the appropriate national authority to extend the provisions of the Chapter to:

- non-residential buildings;
- newly converted buildings, both residential and non-residential; or
- prescribed descriptions of properties within any of these categories (*subsections (1), (2) and (5)*).

822. A property is newly converted for the purposes of the Chapter if it has been converted but not yet used for its intended purpose, is being converted, or its conversion is being

designed (*subsection (3)*), and regulations may provide for the circumstances in which a building is to be treated as converted (*subsection (4)*).

823. The section further allows for the appropriate national authority to broaden by regulations the definition of a purchaser in section 292(1) so as to include descriptions of persons who are taking steps with a view to deciding whether to purchase residential properties (*subsections (6) and (7)*).

Section 292 - Chapter 1: interpretation etc.

824. This section provides for definitions of terms and phrases used in the Chapter (*subsections (1) to (7)*). *Subsection (1)* defines a purchaser as a person who has made an offer to purchase a property or has purchased it. Non-compliance with any requirement of the Chapter does not invalidate a sale or purchase of a property (*subsection (8)*).

Section 293 – Index of defined expressions: Chapter 1

825. This section sets out the definitions of key terms used in the Chapter.