

Implementation
of Energy
Performance of
Buildings
Directive in
Ireland

DILLON  EUSTACE

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■ IMPLEMENTATION OF ENERGY PERFORMANCE OF BUILDINGS DIRECTIVE IN IRELAND

Background

Energy efficiency has been topping the agenda of most governments in recent years. Following the Kyoto Protocol, a greater impetus has been seen at a European level and by national governments to comply with obligations under the protocol. In late 2000 the European Council, endorsing the European Commission's Action Plan on Energy Efficiency, requested that specific measures be adopted in the building sector, as it has been shown that buildings play a major part in the consumption of energy.

One of the strategies adopted at European level took the form of the EU Energy Performance of Buildings Directive (2002/19/EC). The principal aim of the Directive is to highlight the energy performance of buildings and to promote greater energy savings therein. This update looks at the obligations on owners of commercial buildings under the directive, what they must do to comply with the directive and the timeframes involved in compliance.

Irish Implementation

The date for national implementation of the directive passed on January 4, 2006 (although a grace period of a maximum of three years has been granted for the implementation of certain measures under the directive).

Statutory Instrument ("SI") Articles N 872 of 2005 transposed the directive into Irish law on December 21 2005. This amends Section 3 of the existing Building Control Act 1990 to allow energy saving regulations to be introduced to effect the terms of the directive.

Measures with Effect from July 1 2006

Energy performance requirements

SI N 873 of December 21 2005 introduces new regulations under the Building Control Act, in line with SI 872 of 2005 which came into effect on July 1 2006.

These regulations will now be a concern for builders in the construction of any new building and the alteration or change of use of existing buildings. However, there are, two exceptions to the rule: (i) buildings for which planning permission was granted, pursuant to the Planning and Development Act 2000, on or before June 30, 2006 and where substantial work (external walls fully erected) is completed by June 30, 2008; and (ii) where a notice pursuant to the provisions of Part 8 of the Planning and Development Regulations 2001 (SI N 600 of 2001) was published on or before June 30, 2006 and where substantial work (external walls fully erected) is completed by June 30, 2008.

The purpose of the regulations is to ensure that buildings are now constructed in such a way as to guarantee the energy performance of the building.

The regulations are as follows:

- ▣ Limit heat loss and maximise heat gains through the fabric of the building;
- ▣ Provide energy-efficient space and water heating services, including adequate controls of these services;
- ▣ Ensure that the building is appropriately designed to limit the need for cooling and, where air-conditioning or mechanical ventilation is installed, that installed systems are energy efficient, appropriately sized and adequately controlled;
- ▣ Limit heat loss from pipes, ducts and vessels used for the transport or storage of heated water or air;
- ▣ Limit the heat gains by chilled water and refrigerant vessels, and by pipes and ducts that serve air-conditioning systems; and
- ▣ Provide energy-efficient artificial lighting systems and adequate control of these systems.

Pursuant to General Condition 36 e (ii) of the Law Society Conditions of Sale 2001, a vendor must furnish to the purchaser on closing a certificate or opinion by an architect or engineer confirming that the development of the property has been carried out in compliance with the requirements of the Building Control Act and regulations made thereunder. Consequently, compliance with the regulations set out above shall become necessary in order to obtain the

requisite certificate for any new building or building to which alteration works have been carried out which do not fall under the exceptions set out above.

Measures with Effect from July 1, 2008

From July 1 2008, the remaining articles of the directive will come into effect. This delay in implication is to ensure that member states have qualified individuals in place with the technical and administrative skills required to deal with the issuing of certificates and inspection of boilers and air-conditioning systems. It also ensures that the necessary frameworks are in place. The Building Control Bill 2005 is the first step towards putting these remaining articles on a legislative footing and more detailed provisions are expected in the coming months. Below is a brief outline of the current position in relation to these articles.

Energy Performance Certificate

This much talked about aspect of the directive is the energy performance certificate. All new non-residential buildings (including public service buildings) will require a rating certificate as of July 1, 2008; all existing non-residential and large public service buildings will require the rating certificate as of July 1, 2009. Consequently, as and from these dates, if a building is constructed, sold or rented out, a certificate must be made available by the owner to the prospective buyer or tenant. This requirement will impact on the majority of Irish commercial conveyancing transactions.

The objective of the certificate is to rate a building on its energy performance. It will provide information to any potential consumers on the energy performance of the building in question. It shall include reference values such as current legal standards and benchmarks in order to make it possible for consumers to compare and assess the energy performance of buildings. The certificate, once issued, shall be valid for a period of no longer than 10 years. In Ireland, it is expected that the certificate is to be accompanied by an advisory report containing suggestions on how improvements could be made to the energy performance of the building. However, there will be no legal obligations on vendors or purchasers to carry out the recommended improvement.

All buildings with a floor space of over 1,000 square metres, occupied by public authorities or by institutions providing public services, must place the certificate in a prominent place clearly visible by the public.

The Building Control Bill 2005 has introduced a number of provisions in relation to the remaining articles of the directive. In particular, Section 5 details the requirements for the alternative energy systems of large buildings and the requirements in respect of a building energy rating certificate. It is expected that these provisions will be amended again prior to enactment, however, it is a concerted effort on behalf of the government to comply with its obligations under the directive.

Having regard to the reduction of energy consumption and limiting carbon dioxide emissions, the directive sets obligations on member states either to: (i) establish mandatory inspections of boilers fired by non-renewable liquid or solid fuel of an effective rated output above 20 kilowatts (kW) and heating installations with output of greater than 20kW, and which are older than 15 years; or (ii) provide advice to users on the replacement and modifications of boilers or alternative solutions to the use of boilers. Member states must submit a report to the commission every two years.

Ireland has yet to introduce legislation on these provisions. However, it is believed that the second option will be chosen. If so, owners will not be faced with the onus of having to comply with mandatory boiler inspections. This option transfers the obligations under the directive from the owners of buildings to the government.

Unlike the inspection of boilers, inspection of air-conditioning systems with an output of more than 12 kW will be mandatory. Ireland must set out the necessary measures to establish these regular inspections. Legislation in this regard is imminent.

Comment

In Ireland, as elsewhere, there is increasing awareness of the impact of our actions on the environment. The directive represents a concerted effort on the part of the European Union to target an area in which change can make a real difference. While the directive itself, and the Irish regulations, are only in their infancy, over the coming months and year their full force will be felt throughout the property sector.

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