

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4703 GIBRALTAR Thursday 30th April 2020

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LEGAL NOTICE NO. 164 OF 2020

## INTERPRETATION AND GENERAL CLAUSES ACT

### ENVIRONMENTAL PROTECTION (ENERGY END-USE EFFICIENCY) ACT 2009 (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to transpose into the Law of Gibraltar Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/ EU on energy efficiency and parts of Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31 EU on the energy performance of buildings in respect of long term renovation strategies for buildings, the Government has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the Environmental Protection (Energy End-Use Efficiency) Act 2009 (Amendment) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on the date of publication save for regulations 9,10,11 and 16 which come into operation on the 25 October 2020.

#### **Amendment to Act.**

3. The Environmental Protection (Energy End-Use Efficiency) Act 2009 (the “Act”) is amended in accordance with the provisions of these Regulations.

#### **Amendment of Section 2.**

4. In section 2-

(a) replace subsection (1)(a) with-

“(a) ensure the achievement of the European Union’s 2020 20% and 2030 32,5% headline targets on energy efficiency”;

(b) replace subsection (2) with-

“(2) This Act provides for the establishment of indicative energy efficiency targets for 2020 and 2030 and contributes to the implementation of the energy efficiency first principle.”.

**Amendment of Section 3.**

5. In section 3(1)-

- (a) in the definition of “efficient heating and cooling”, replace the word “Directive” with “Act”;
- (b) in the definition of “obligated party”, replace the reference to “section 9” with “section 9A;”.

**Amendment of Section 5.**

6. In section 5-

- (a) in subsection (3), immediately after the words “final energy consumption in 2020” insert “and 2030”;
- (b) in subsection (4)(a), at the end, include the words “and 1,273 Mtoe of primary energy or no more than 956 Mtoe of final energy for 2030.”

**Amendment of Section 6.**

7. In section 6-

(a) replace subsection (1) with-

“(1) The competent authority must establish a long-term strategy for mobilising investment in the renovation of the stock of residential and commercial buildings in Gibraltar, both public and private, into a highly energy efficient and decarbonised building stock by 2050, facilitating the cost-effective transformation of existing buildings into nearly zero-energy buildings (as defined in the Environment (Energy Performance of Buildings) Regulations 2012).”;

(b) in subsection (2)-

- (i) in paragraph (a), at the end insert the words “and expected share of renovated buildings in 2020;”;
- (ii) in paragraph (b), at the end insert the words “considering potential relevant trigger points, where applicable, in the life cycle of the building;”;

- (iii) in paragraph (c), at the end insert the words “and to support targeted cost-effective measures and renovation for example by introducing an optional scheme for building renovation passports;”;
  - (iv) replace paragraph (d) in its entirety with–
    - “(d) policies and actions to target the worst performing segments of Gibraltar’s building stock split-incentive dilemmas and market failures, and an outline of actions that contribute to the alleviation of energy poverty;”;
  - (v) in paragraph (e), at the end insert the words “such as those related to health, safety and air quality;” and remove the “and”;
- (c) after paragraph (e), insert the following new paragraphs–
- “(f) policies and actions to target all public building;
  - (g) initiatives to promote smart technologies and well-connected buildings as well as skills and education in the construction and energy efficiency sectors;
  - (h) fire safety and risks related to intense seismic activity affecting energy efficiency renovations and the lifetime of buildings; and
  - (i) the modalities for inclusive public consultation as referred to in subsection (3)(d) in respect of the long term strategy.”;
- (d) in subsection (3), after paragraph (c), replace the “.” with “; and” and insert the following new paragraph (d)-
- “(d) the competent authority shall carry out a public consultation (the results of which must be annexed to the strategy referred to in subsection (1)) before submitting the strategy to the European Commission.”;
- (e) after subsection 6(3) insert the following new subsections-
- “(4) In addition to the provisions of subsection (3), the strategy under subsection (1) shall set out a roadmap which –
    - (a) shall include measures and measurable progress indicators with a view to the 2050 goal of reducing greenhouse gas emissions in the European Union by 80-95% compared to 1990;
    - (b) ensures a highly energy efficient and decarbonised building stock;

- (c) facilitates the cost-effective transformation of existing buildings into nearly zero-energy buildings (as defined in the Environment (Energy Performance of Buildings) Regulations 2012); and
  - (d) shall include indicative milestones for 2030, 2040 and 2050 specifying how the European Union's energy efficiency targets as laid out in the Directive will be met.
- (5) To support the mobilisation of investments referred to in subsection (1), the competent authority shall facilitate access to appropriate mechanisms for:
- (a) the aggregation of projects, including by investment platforms or groups, and by consortia of SMEs, to enable investor access as well as packaged solutions;
  - (b) the reduction of the perceived risk of energy efficiency operations for investors and the private sector;
  - (c) the use of public funding to leverage additional private sector investment or address specific market failures;
  - (d) guiding investments into an energy efficient public building stock, in line with Eurostat guidance; and
  - (e) accessible and transparent advisory tools for consumers and energy advisory services, as may be determined by the competent authority, on relevant energy efficiency renovations and financing instruments.”.

#### **Amendment of Section 9.**

8. In section 9-

- (a) replace section 9 in its entirety with-

#### **“Energy savings obligation.**

9.(1) The competent authority must ensure that energy distributors or retail energy sales companies operating in Gibraltar that are designated as obligated parties under section 9A(3) or all of them achieve cumulative end-use energy savings at least equivalent to:

- (a) new savings each year from 1 January 2014 to 31 December 2020 of 1.5% of the annual energy sales to final customers of all energy distributors or all retail energy sales companies by volume, averaged over the most recent 3 year period to 1 January 2013 and the sales of

energy, by volume, used in transport may be partially or fully excluded from this calculation;

- (b) new savings each year from 1 January 2021 to 31 December 2030 of 0.8% of the annual energy sales to final customers of all energy distributors or all retail energy sales companies by volume, averaged over the most recent 3 year period to 1 January 2019 and the sales of energy, by volume, used in transport may be partially or fully excluded from this calculation.
- (2) The competent authority may, for the purposes of subsection (1), count energy savings that stem from policy measures that have been introduced by 31 December 2020 or after that date but only if those measures result in new actions that are carried out after 31 December 2020.
  - (3) The competent authority shall ensure that energy distributors or retail energy sales companies operating in Gibraltar achieve new annual savings in accordance with subsection (1)(b) for 10 year periods after 2030.
  - (4) The competent authority must decide how the calculated quantity of new savings referred to in subsections (1)(a) and (b) is to be phased over the period provided that the required total cumulative end-use energy savings have been achieved by the end of each period.
  - (5) Subject to subsection (6), the competent authority may-
    - (a) carry out the calculation required by subsection 1(a) using values of 1% in 2014 and 2015; 1.25% in 2016 and 2017; and 1.5% in 2018, 2019 and 2020;
    - (b) exclude from the calculation all or part of the sales, by volume, of energy used with respect to the obligation period in subsection (1)(a) or final energy consumed in respect of subsection (1)(b), of energy used in industrial activities listed in Schedule 1 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012;
    - (c) allow energy savings achieved in the energy transformation, distribution and transmission sectors including efficient heating and cooling infrastructure, as a result of implementing the requirements set out in section 13B(6), paragraph (b) of section 13B(8) and section 13C(1) to (13), (16) and (17);
    - (d) count energy savings resulting from individual actions newly implemented since 31 December 2008 that continue to have an impact in 2020 and beyond 2020 and that can be measured and verified, towards the amount of energy savings referred to in subsections (1)(a) and (1)(b);

- (e) count energy savings that stem from policy measures provided that it can be demonstrated that those measures result in individual actions carried out from 1 January 2018 to 31 December 2020 which deliver savings after 31 December 2020, towards the amount of energy savings;
  - (f) exclude from the calculation of the amount of required energy savings, 30% of the verifiable amount of energy generated on or in buildings for own use as a result of policy measures promoting new installation of renewable energy technologies; and
  - (g) count energy savings that exceed the energy savings required for the period referred to in subsection (1)(a), provided that those savings result from individual actions carried out under policy measures referred to in sections 9A and 9B.
- (6) The application of subsection (5) shall not lead to a reduction of more than 25% of the amount of energy savings referred to in subsection 1(a) and a reduction of no more than 35% of the amount of energy savings referred to in subsection 1(b).
- (7) The competent authority shall ensure that the calculated net amount of new savings to be achieved in final energy consumption during the period referred to in subsection (1)(b) is not lower than the amount resulting from applying the annual savings rate referred to in that subsection, regardless of whether:
- (a) energy used in transport is fully or partially excluded from the calculation; or
  - (b) any of the options appearing in subsection (5) are used.
- (8) The competent authority must set out the calculation of the amount of energy savings to be achieved over the period referred to in subsection (1)(b) and shall, if relevant, describe how the annual savings rate and calculation baseline were established, and how and to what extent subsection (5) was applied and shall notify the European Commission, as soon as is reasonably practical thereafter.
- (9) Energy savings achieved after 31 December 2020 shall not count towards the amount of required energy savings for the period referred to in subsection (1)(a).
- (10) If an obligated party is permitted to make use of the option referred to in section 9A(7)(b), the competent authority may, for the purposes of subsection (1)(a), count energy savings obtained in any given year after

2010 and before the period referred to in subsection (1)(a) as if those energy savings had instead been obtained after 31 December 2013 and before 1 January 2021.

- (11) The provisions of subsection (10) shall only apply when-
- (a) an energy efficiency obligation scheme was in force at any point between 31 December 2009 and 31 December 2014 and was included in the Energy Efficiency Action Plans referred to in section 14(3);
  - (b) the savings were generated under an energy efficiency obligation scheme;
  - (c) the savings are calculated in accordance with Schedule 8; and
  - (d) the years for which the savings are counted as having been obtained have been reported in the Energy Efficiency Action Plans referred to in sections 14(3) to (5).
- (12) The competent authority must take into consideration, when designing policy measures referred to in this section 9 and to the extent appropriate, the need to alleviate energy poverty by requiring that:
- (a) a share of the energy efficiency measures under energy efficiency obligation schemes;
  - (b) alternative policy measures; or
  - (c) programmes or measures financed under the Energy Efficiency Fund referred to in section 13H(2)(a),
- are implemented among households affected by energy poverty or in social housing.
- (13) The competent authority shall include the details of the outcome of the measures referred to in subsection (12) in the integrated national energy and climate progress reports in accordance with Regulation (EU) 2018/1999.
- (14) The competent authority shall ensure that there is no double counting of energy savings when the impact of policy measures or individual actions overlap.
- (15) The competent authority must calculate the savings resulting from the measures referred to in this section in accordance with the provisions of Schedule 8.”;

(b) after section 9, insert the following new sections-

**“Energy efficiency obligation schemes.**

- 9A.(1) The competent authority must set up an energy efficiency obligation scheme and that scheme must ensure that energy distributors or retail energy sales companies operating in Gibraltar that are designated as obligated parties under subsection (3) achieve, without prejudice to sections 9(5) and 9(6), a cumulative end-use energy savings requirement as set out in section 9(1).
- (2) The competent authority may require that obligated parties fulfil the energy savings referred to in section 9(1), as a contribution, in whole or in part, to the Energy Efficiency Fund.
- (3) The competent authority must, for the purposes of section 9(1), designate, on the basis of objective and non-discriminatory criteria, obligated parties amongst energy distributors or retail energy sales companies operating in Gibraltar or all of them and may include transport fuel distributors or transport fuel retailers operating in Gibraltar.
- (4) The amount of energy savings to fulfil the obligation shall be achieved by the obligated parties among final customers, designated, as appropriate, by the competent authority, independently of the calculation made pursuant to Section 9(1) or, if the competent authority so decides, through certified savings stemming from other parties as described in paragraph (a) of subsection (7).
- (5) Where retail energy sales companies are designated as obligated parties under subsection (3), the competent authority must ensure that, in fulfilling their obligation, retail energy sales companies do not create any barriers that impede consumers from switching from one supplier to another.
- (6) The competent authority must express the amount of energy savings required of each obligated party in terms of either final or primary energy consumption and the method chosen for expressing the required amount of energy savings shall also be used for calculating the savings claimed by obligated parties and the conversion factors in Schedule 7 shall apply.
- (7) The competent authority shall-
- (a) put in place measurement, control and verification systems under which at least a statistically significant proportion and representative sample of the energy efficiency improvement measures put in place by the obligated parties is documented and verified; and



- (b) conduct that measurement, control and verification independently of the obligated parties.
- (8) Within the energy efficiency obligation scheme, the competent authority may-
  - (a) permit obligated parties to count towards their obligation certified energy savings achieved by energy service providers or other third parties, including when obligated parties promote measures through other State-approved bodies or through public authorities that may or may not involve formal partnerships and may be in combination with other sources of finance;
  - (b) allow obligated parties to count savings obtained in a given year as if they had instead been obtained in any of the 4 previous or 3 following years as long as this is not beyond the end of the obligation periods referred to in section 9(1).
- (9) Where the competent authority so permits pursuant to subsection (8), it must ensure that an approval process is in place which is clear, transparent and open to all market actors, and which aims to minimise the costs of certification.
- (10) The competent authority shall assess and, if appropriate, take measures to minimise the impact of the direct and indirect costs of energy efficiency obligation schemes.
- (11) The competent authority shall publish, on an annual basis, the energy savings achieved by each obligated party, or each sub-category of obligated party, and in total under the scheme.
- (12) The competent authority must calculate the savings resulting from the measures referred to in this section in accordance with the provisions of Schedule 8.

**Alternative policy measures.**

- 9B.(1) The competent authority may opt to achieve the energy savings required under section 9(1) by way of alternative policy measures which must ensure, without prejudice to sections 9(5) and 9(6), that the energy savings required under section 9(1) are achieved among final customers.
- (2) The competent authority shall, if it opts to achieve the energy savings by way of alternative policy measures-
  - (a) put in place measurement, control and verification systems under which at least a statistically significant proportion and representative sample of the energy efficiency improvement

measures put in place by participating or entrusted parties is documented and verified; and

- (b) conduct that measurement, control and verification independently of the participating or entrusted parties.
- (3) The systems referred to in subsection (2) shall apply to all measures other than those relating to taxation.
- (4) The competent authority must calculate the savings resulting from the measures referred to in this section in accordance with the provisions of Schedule 8.”.

### **Amendment of Section 11.**

9. In section 11-

- (a) the title is replaced by the following:  
“Metering for gas and electricity.”;
- (b) in subsection (1), delete the words “district heating, district cooling and domestic hot water”;
- (c) subsections (3), (4), (5), (6) and (7) are deleted in their entirety;
- (d) after section 11, insert the following new sections-

#### **“Metering for heating, cooling and domestic hot water.**

11A.(1) The competent authority must ensure that final customers for district heating, district cooling and domestic hot water are provided with competitively priced meters that accurately reflect the final customer’s actual energy consumption.

- (2) Where heating, cooling or domestic hot water are supplied to a building from a central source that services multiple buildings or from a district heating or district cooling system, a meter shall be installed at the heat exchanger or point of delivery.

#### **Sub-metering and cost allocation for heating, cooling and domestic hot water.**

11B.(1) In multi-apartment and multi-purpose buildings with a central heating or central cooling source or supplied from a district heating or district cooling system, individual consumption meters shall be installed to measure the consumption of heating, cooling or domestic hot water for

each unit where technically feasible and cost-efficient in proportion to the potential energy savings.

- (2) Where the use of individual meters is not technically feasible or not cost efficient, to measure heat consumption in each building unit, individual heat cost allocators shall be used for measuring heat consumption at each radiator, unless it is shown by the competent authority that the installation of such heat cost allocators would not be cost-efficient and in those cases, alternative cost-efficient methods of heat consumption measurement may be considered.
- (3) The competent authority shall set out and publish the criteria, methodology and/or procedure to determine technical non-feasibility and non-cost effectiveness referred to in subsection (2).
- (4) In new multi-apartment buildings and in residential parts of new multi-purpose buildings that are equipped with a central heating source for domestic hot water or are supplied from district heating systems, individual meters, shall be provided for domestic hot water.
- (5) Where multi- apartment or multi-purpose buildings are supplied from district heating or district cooling, or where own common heating or cooling systems for such buildings are prevalent, the competent authority must ensure that transparent, publicly available rules are in place in respect of the allocation of the cost of heating, cooling and domestic hot water consumption in such buildings to ensure transparency and accuracy of accounting for individual consumption.
- (6) Where appropriate, the rules referred to in subsection (5) shall include guidelines on the manner in which to allocate cost for energy that is used as follows:
  - (a) domestic hot water;
  - (b) heat radiated from the building installation and for the purpose of heating the common areas (where staircases and corridors are equipped with radiators); and
  - (c) for the purpose of heating or cooling apartments.

**Remote reading equipment.**

11C.(1) For the purposes of sections 11A and 11B and subject to the conditions of technical feasibility and cost effectiveness as set out in section 11B(a), meters and heat cost allocators installed after 25 October 2020 shall be remotely readable devices.

- (2) Meters and heat cost allocators which are not remotely readable but which have already been installed shall be rendered remotely readable or replaced with remotely readable devices by 1 January 2027, save where it can be shown that it is not cost-effective to do so.”

**Amendment of Section 12.**

10. In section 12-

- (a) the title is replaced by the following:

**“Billing information for gas and electricity.”;**

- (b) in subsection (1) replace the words “all the sectors covered by this Act, including energy distributors, distribution system operators and retail energy sales companies” with “electricity and gas”;
- (c) after section 12, insert the following new section-

**“Billing and consumption information for heating, cooling and domestic hot water.**

12A.(1) Where meters or heat cost allocators are installed, the competent authority must ensure that billing and consumption information is reliable, accurate and based on actual consumption or heat cost allocator readings, in accordance with paragraphs 1 and 2 of Schedule 10A for all final users.

- (2) The final users referred to in subsection (1) shall include-
- (a) natural or legal persons purchasing heating, cooling or domestic hot water for their own end-use; or
- (b) natural or legal persons occupying an individual building or a unit in a multi-apartment or multi-purpose building supplied with heating, cooling or domestic hot water from a central source who has no direct or individual contract with the energy supplier.
- (3) The obligation under subsection (1) may, save in the case of sub-metered consumption based on heat cost allocators under section 11B, be fulfilled by a system of regular self-reading by the final customers or final users whereby they communicate reading from their meter to the energy supplier and only when the final customer or final user has not provided a meter reading for a given billing interval shall billing be based on estimated consumption or a flat rate.
- (4) The competent authority –

- (a) must require that, to the extent that information on the energy billing and historical consumption or heat cost allocators of final users is available, it be made available at the request of the final user, to an energy service provider designated by the final user;
  - (b) must ensure that final customers are offered the option of electronic billing information and bills;
  - (c) must ensure that clear and comprehensible information is provided with the bill to all final users in accordance with paragraph 3 of Schedule 10A;
  - (d) must promote cybersecurity and ensure the privacy and data protection of final users in accordance with applicable European Union and Gibraltar legislation; and
  - (e) may require that, at the request of the final customer, the billing information to be provided shall not be considered to constitute a request for payment.
- (5) In a case falling under subsection (4)(e), the competent authority must ensure that suppliers of energy sources offer flexible arrangements for actual payments.
- (6) The competent authority shall decide who is to be responsible for providing the information referred to in subsections (1) to (4) to final users that do not have a direct or individual contract with an energy supplier.”.

### **Amendment of Section 13.**

11. In section 13-

- (a) the title is replaced by the following-

**“Cost of access to metering, billing and consumption information for electricity, gas, heating, cooling and domestic hot water.”;**

- (b) in subsection 13(2)-

- (i) remove the word “and” between “heating” and “cooling” and insert “,” in its place;
- (ii) add the words “and domestic hot water” after “cooling”;
- (iii) replace the words “section 11(3) to (8) with “section 11B”;

- (ba) in subsection (3) add the words “and final users” after “final customers”.

(c) after subsection (3), insert-

“(4) in order to ensure reasonable costs for sub-metering services as referred to in subsection (3), the competent authority may take appropriate measures promoting the use of interoperable devices and systems facilitating switching between service providers.”.

**Amendment of Section 13B.**

12. In section 13B, in subsection (16), replace the words “that Directive” with “those Regulations.”

**Amendment of Section 13H.**

13. In section 13H-

(a) at the end of subsection (2)(c) remove the word “and”;

(b) at the end of subsection (2)(d) replace “.” With “; and”;

(c) insert the following new paragraphs after paragraph (d) of subsection (2)-

“(e) consider ways to make better use of energy audits under section 10 to influence decision-making; and

(f) make optimal use of the possibilities and tools proposed in the smart finance for smart building initiatives.”;

(d) insert the following new subsection after subsection (2)-

“(3) The competent authority must calculate the savings resulting from the measures referred to in subsection (2)(c) in accordance with the provisions of Schedule 8.”.

**Amendment to Section 18.**

14. In subsection (3), insert the word “authority” after “competent”.

**Amendment to Schedule 7.**

15. In Schedule 7 –

(a) substitute the words “Sections 9(8) and (20) and 13I” with “Sections 9A(6) and 13I”;

(b) footnote (3) is replaced by the following-

- “(3) Applicable when energy savings are calculated in primary energy terms using a bottom-up approach based on final energy consumption. For savings in kWh electricity, the competent authority shall apply a coefficient established through a transparent methodology on the basis of circumstances affecting primary energy consumption in Gibraltar, in order to ensure a precise calculation of real savings. Those circumstances shall be substantiated, verifiable and based on objective and non-discriminatory criteria. For savings in kWh electricity, the competent authority may apply a default coefficient of 2,1 or use the discretion to define a different coefficient, provided that the competent authority can justify it. When doing so, the competent authority shall take into account the energy mix included in its integrated national energy and climate plans to be notified to the Commission in accordance with Regulation (EU) 2018/1999.”.

### **Amendment of Schedule 8.**

16. Replace Schedule 8 in its entirety with-

#### **“SCHEDULE 8**

Sections 9(11)(c) and (15), 9A(12),9B(4) and 13H(3).

#### **Common methods and principles for calculating the impact of energy efficiency obligation schemes or other policy measures under sections 9(11)(c) and (15), 9A(12),9B(4) and 13H(c).**

1. Methods for calculating energy savings other than those arising from taxation measures for the purposes of sections 9(11)(c) and (15), 9A(12), 9B(4) and 13H(c).

Obligated, participating or entrusted parties, or implementing public authorities, may use the following methods for calculating energy savings:

- (a) deemed savings, by reference to the results of previous independently monitored energy improvements in similar installations. The generic approach is termed “*ex ante*”;
- (b) metered savings, whereby the savings from the installation of a measure, or package of measures, are determined by recording the actual reduction in energy use, taking due account of factors such as additionality, occupancy, production levels and the weather which may affect consumption. The generic approach is termed “*ex post*”;
- (c) scaled savings, whereby engineering estimates of savings are used. This approach may be used only where establishing robust measured data for a specific installation is difficult or disproportionately expensive, e.g. replacing a compressor or electric motor with a different kWh rating from

that for which independent information about savings has been measured, or where those estimates are carried out on the basis of nationally established methodologies and benchmarks by qualified or accredited experts that are independent of the obligated, participating or entrusted parties involved;

- (d) surveyed savings, where consumers' response to advice, information campaigns, labelling or certification schemes or smart metering is determined. This approach may be used only for savings resulting from changes in consumer behaviour. It shall not be used for savings resulting from the installation of physical measures.
2. In determining the energy savings for an energy efficiency measure for the purposes of sections 9(11)(c) and (15), 9A(12), 9B(4) and 13H(c), the following principles apply:
- (a) the savings shall be shown to be additional to those that would have occurred in any event without the activity of the obligated, participating or entrusted parties, or implementing public authorities. To determine the savings that can be claimed as additional, the competent authority shall have regard to how energy use and demand would evolve in the absence of the policy measure in question by taking into account at least the following factors: energy consumption trends, changes in consumer behaviour, technological progress and changes caused by other measures implemented in the European Union and Gibraltar.
  - (b) savings resulting from the implementation of mandatory Union law shall be considered to be savings that would have occurred in any event, and thus shall not be claimed as energy savings for the purpose of section 9(1). By way of derogation from that requirement, savings related to the renovation of existing buildings may be claimed as energy savings for the purpose of section 9(1), provided that the materiality criterion referred to in point 3(h) of this Schedule is ensured. Savings resulting from the implementation of national minimum requirements established for new buildings prior to the coming into force of the Environment (Energy Performance of Buildings) Regulations 2012 can be claimed as energy savings for the purpose of point (a) of section 9(1), provided that the materiality criterion referred to in point 3(h) of this Schedule is ensured and those savings have been notified by the competent authority in its Energy Efficiency Action Plans in accordance with the relevant provisions of section 14.
  - (c) credit may be given only for savings exceeding the following levels:
    - (i) Union emission performance standards for new passenger cars and new light commercial vehicles following the implementation of Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for



new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles and Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles, respectively;

- (ii) Union requirements relating to the removal from the market of certain energy related products following the implementation of implementing measures under Directive 2009/125/EC.
- (d) policies with the purpose of encouraging higher levels of energy efficiency of products, equipment, transport systems, vehicles and fuels, buildings and building elements, processes or markets shall be permitted.
- (e) measures promoting the installation of small-scale renewable energy technologies on or in buildings may be eligible to be taken into account for the fulfilment of energy savings required under section 9(1), provided that they result in verifiable, and measurable or estimable, energy savings. The calculation of energy savings shall comply with the requirements of this Schedule.
- (f) for policies that accelerate the uptake of more efficient products and vehicles, full credit may be claimed, provided that it is shown that such uptake takes place before expiry of the average expected lifetime of the product or vehicle, or before the product or vehicle would usually be replaced, and the savings are claimed only for the period until end of the average expected lifetime of the product or vehicle to be replaced.
- (g) in promoting the uptake of energy efficiency measures, the competent authority must, where relevant, ensure that quality standards for products, services and installation of measures are maintained or introduced where such standards do not exist.
- (h) to account for climatic variations between regions, the competent authority may choose to adjust the savings to a standard value or to accord different energy savings in accordance with temperature variations between regions.
- (i) the calculation of energy savings shall take into account the lifetime of the measures and the rate at which the savings decline over time. That calculation shall count the savings each individual action will achieve during the period from its date of implementation to 31 December 2020 or 31 December 2030 as appropriate. Alternatively, the competent authority may adopt another method that is estimated to achieve at least the same total quantity of savings. When using another method, the competent authority shall ensure that the total amount of energy savings calculated using that method does not exceed the amount of energy

savings that would have been the result of their calculation when counting the savings each individual action will achieve during the period from its date of implementation to 31 December 2020 or 31 December 2030 as appropriate. The competent authority shall describe in detail in its integrated national energy and climate plans under Regulation (EU) 2018/1999 the other method and the provisions made to ensure that the binding calculation requirement is met.

3. The competent authority shall ensure that the following requirements for policy measures taken pursuant to sections 9B and 13H(3) are met:
  - (a) policy measures and individual actions produce verifiable end-use energy savings;
  - (b) the responsibility of each participating party, entrusted party or implementing public authority, as relevant, is clearly defined;
  - (c) the energy savings that are achieved or are to be achieved are determined in a transparent manner;
  - (d) the amount of energy savings required or to be achieved by the policy measure is expressed in either final or primary energy consumption, using the conversion factors set out in Schedule 7;
  - (e) an annual report on the energy savings achieved by entrusted parties, participating parties and implementing public authorities be provided and made publicly available, as well as data on the annual trend of energy savings;
  - (f) monitoring of the results and taking appropriate measures if progress is not satisfactory;
  - (g) the energy savings from an individual action are not claimed by more than one party;
  - (h) the activities of the participating party, entrusted party or implementing public authority are shown to be material to the achievement of the energy savings claimed.
4. In determining the energy saving from taxation related policy measures introduced under section 9B, the following principles shall apply:
  - (a) credit shall be given only for energy savings from taxation measures exceeding the minimum levels of taxation applicable to fuels as required in Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity;

- (b) price elasticities for the calculation of the impact of the (energy) taxation measures shall represent the responsiveness of energy demand to price changes, and shall be estimated on the basis of recent and representative official data sources;
- (c) the energy savings from accompanying taxation policy instruments, including fiscal incentives or payment to a fund, shall be accounted separately.

5. Notification of methodology

The competent authority shall in accordance with Regulation (EU) 2018/1999 of the European Union and of the Council of 11 December 2018 on the governance of the energy union and climate action notify to the Commission its proposed detailed methodology for the operation of the energy efficiency obligation schemes and alternative measures referred to in sections 9A, 9B and 13H. Except in the case of taxation, such notification shall include details of:

- (a) the level of the energy savings required under section 9(1)(b) or savings expected to be achieved over the whole period from 1 January 2021 to 31 December 2030;
- (b) the obligated, participating or entrusted parties, or implementing public authorities;
- (c) target sectors;
- (d) policy measures and individual actions, including the expected total amount of cumulative energy savings for each measure;
- (e) the duration of the obligation period for the energy efficiency obligation scheme;
- (f) the actions provided for by the policy measure;
- (g) the calculation methodology, including how additionality and materiality have been determined and which methodologies and benchmarks are used for deemed and scaled savings;
- (h) the lifetimes of measures, and how they are calculated or what they are based upon;
- (i) the approach taken to address climatic variations within Gibraltar;
- (j) the monitoring and verification systems for measures under sections 9A and 9B and how their independence from the obligated, participating or entrusted parties is ensured;

- (k) in the case of taxation:
  - (i) the target sectors and segment of taxpayers;
  - (ii) the implementing public authority;
  - (iii) the savings expected to be achieved;
  - (iv) the duration of the taxation measure; and
  - (v) the calculation methodology, including the price elasticities used and how they have been established.”.

**Amendment of Schedule 10.**

17. In Schedule 10-

- (a) the title is replaced with the following:

**“Minimum requirements for billing and billing information based on actual consumption of electricity and gas.”;**

- (b) the following new schedule is inserted after Schedule 10 –

**“SCHEDULE 10A**

Section 12A

**Minimum requirements for billing and consumption information for heating, cooling and domestic hot water.**

1. Billing based on actual consumption or heat cost allocator readings

In order to enable final users to regulate their own energy consumption, billing shall take place on the basis of actual consumption or heat cost allocator readings at least once per year.

2. Minimum frequency of billing or consumption information

From 25 October 2020, where remotely readable meters or heat cost allocators have been installed, billing or consumption information based on actual consumption or heat cost allocator readings shall be provided to final users at least quarterly upon request or where final customers have opted to receive electronic billing, or else twice a year.

From 1 January 2022, where remotely readable meters or heat cost allocators have been installed, billing or consumption information based on actual

consumption or heat cost allocator readings shall be provided to final users at least monthly. It may also be made available via the internet and be updated as frequently as allowed by the measurement devices and systems used. Heating and cooling may be exempted from that requirement outside the heating/cooling seasons.

3. Minimum information contained in the bill

The competent authority shall ensure that the following information is made available to final users in clear and comprehensible terms in or with their bills where those are based on actual consumption or heat cost allocator readings:

- (a) current actual prices and actual consumption of energy or total heat cost and heat cost allocator readings;
- (b) information about the fuel mix used and the related annual greenhouse gas emissions, including for final users supplied by district heating or district cooling, and a description of the different taxes, levies and tariffs applied. Member States may limit the scope of the requirement to provide information about greenhouse gas emissions to include only supplies from district heating systems with a total rated thermal input exceeding 20 MW;
- (c) comparisons of the final users current energy consumption with consumption for the same period in the previous year, in graphic form, climate corrected for heating and cooling;
- (d) contact information for final customers' organisations, energy agencies or similar bodies, including website addresses, from which information on available energy efficiency improvement measures, comparative end-user profiles and objective technical specifications for energy-using equipment may be obtained;
- (e) information about related complaints procedures, ombudsman services or alternative dispute resolution mechanisms, as applicable in Gibraltar;
- (f) comparisons with an average normalised or benchmarked final user in the same user category. In the case of electronic bills, such comparisons may instead be made available online and signposted to within the bills.

Bills that are not based on actual consumption or heat cost allocator readings shall contain a clear and comprehensible explanation of how the amount set out in the bill was calculated, and at least the information referred to in points (d) and (e).”.

**Amendment of Schedule 12.**

18. Replace point (g) of the fourth paragraph of Part 1 with the following-

“(g) Economic analysis: Inventory of effects

The economic analyses shall take into account all relevant economic effects.

The competent authority may assess, and take into account in their decision-making, costs and energy savings from the increased flexibility in energy supply and from a more optimal operation of the electricity networks, including avoided costs and savings from reduced infrastructure investment, in the analysed scenarios.

The costs and benefits referred to in the first paragraph shall include at least the following:

(i) Benefits

- Value of output to the consumer (heat and electricity)
- External benefits such as environmental, greenhouse gas emissions and health and safety benefits, to the extent possible
- Labour market effects, energy security and competitiveness, to the extent possible;

(ii) Costs

- Capital costs of plants and equipment
- Capital costs of the associated energy networks
- Variable and fixed operating costs
- Energy costs
- Environmental, health and safety costs, to the extent possible
- Labour market costs, energy security and competitiveness, to the extent possible.”.

#### **Amendment of Schedule 15.**

19. In Schedule 15, point (a) of the first paragraph is replaced by the following

“(a) set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections, grid reinforcements and the introduction of new grids, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are

necessary in order to integrate new producers feeding electricity produced from high-efficiency cogeneration into the interconnected grid.”.

Dated: 30<sup>th</sup> April 2020.

PROF. J CORTES,  
for the Government.

### **EXPLANATORY MEMORANDUM**

The Environmental Protection (Energy End-Use Efficiency) Act 2009 (“the Act”) implements Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency (“the Directive”).

These Regulations amend the Act to implement the amendments made to the Directive by Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending the Directive as well as parts of Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31 EU on the energy performance of buildings in respect of long term renovation strategies for buildings (“the Amending Directives”).

The Amending Directives make provision in respect of energy efficiency improvement measures.