

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3745 of 26 November, 2009

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LEGAL NOTICE NO. 76 OF 2009.

**PUBLIC HEALTH ACT**

**BUILDING (ENERGY PERFORMANCE)  
(AMENDMENT) RULES 2009**

In exercise of the powers conferred on him by sections 45, 46 and 47 of the Public Health Act and section 23 of the Interpretation and General Clauses Act the Governor has made the following Rules—

**Title and commencement.**

1. These Rules may be cited as the Building (Energy Performance) (Amendment) Rules 2009 and come into operation on the date of publication.

**Amendment of the Building (Energy Performance) Rules 2008.**

2.(1) The Building (Energy Performance) Rules 2008 are amended in accordance with this rule.

(2) In rule 2(1) after the definition of “Minister” insert the following definition—

““new building” means a building (as defined in these Rules)—

- (a) the construction of which requires a permit under section 17 of the Town Planning Act 1999; or
- (b) (in the case of an existing building) the alteration of such which constitutes a material change of use which requires a permit under section 17 of the Town Planning Act 1999,

provided that such permit was granted no earlier than one month after the coming into force of the Building (Energy Performance) (Amendment) Rules 2009.”.

(3) By inserting after rule 7 of those Rules the following—

**“Failure to comply with rule 7.**

7A.(1) Subject to sub-rule (2) a person who constructs, sells or rents out a building in contravention of rule 7 (in this rule referred to as “the relevant person”) is guilty of an offence and liable on summary conviction—

- (a) where the building is a dwelling, to a fine fixed at level 2 on the standard scale;
- (b) where the building is not a dwelling, to a maximum fine of 12.5% of the rateable value of the building subject to a minimum fine fixed at level 3 on the standard scale.

(2) A relevant person is not required to comply with rule 7 where he can demonstrate that—

- (a) he made a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time; or
- (b) in the case of a failure to make available an energy performance certificate to a prospective tenant—
  - (i) the prospective tenant was seeking to rent out the building due to an emergency which required the tenant's urgent relocation;
  - (ii) at the relevant time the relevant person did not have in his possession or control a valid energy performance certificate;
  - (iii) there was insufficient time in which the relevant person could reasonably have been expected to obtain a certificate before renting out the building to the prospective tenant; and

- (iv) the relevant person has given a valid energy performance certificate to the tenant as soon as reasonably practicable after renting out the building.

(3) In sub-rule (2) the references to a request are to a request properly addressed to a person who usually provides or is likely to provide an energy performance certificate for the category of building in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an energy performance certificate.

**Power to require production of documents.**

7B.(1) The competent authority may require a person who appears to him to be or to have been subject to any of the duties under rule 7 (in this rule referred to as “the relevant person”) to produce for inspection a copy of a valid energy performance certificate of the building in respect of which the duty relates.

(2) The power conferred by sub-rule (1) includes power to take copies of any document produced for inspection.

(3) A requirement under this rule may not be imposed more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

(4) It is the duty of a person subject to such a requirement to comply with it within the period of seven days beginning with the day after that on which it is imposed.

(5) Subject to sub-rule (6) a person who fails to comply with a request under this Rule is guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

(6) A person is not required to comply with such a requirement where he can demonstrate that he made a request for an energy performance certificate at least 14 days before the relevant time, and despite all reasonable efforts and enquiries by the relevant person, he did not have in his possession or control a valid energy performance certificate at the relevant time.

(7) In sub-rule (6) the reference to a request is to a request properly addressed to a person who usually provides or is likely to provide an energy performance certificate for the category of building in question and which includes such payment or an undertaking to make such payment as is usually necessary to obtain an energy performance certificate.”.

Dated 26th November, 2009.

ADRIAN JOHNS,  
Governor.

