

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3745 of 26 November, 2009

LEGAL NOTICE NO. 77 OF 2009.

PUBLIC HEALTH ACT

BUILDING (AMENDMENT) RULES 2009

In exercise of the powers conferred on him by sections 44, 45 and 46 of the Public Health Act, and all other enabling powers, the Governor has made the following rules—

Title.

1. These rules may be cited as the Building (Amendment) Rules 2009.

Amendments to the Building Rules 2007.

2. The Building Rules 2007 are amended in accordance with the provisions of these rules.

Amendments to Arrangement of Rules.

3. The Arrangement of Rules is amended—

- (a) by inserting after A2—

“A2a Requirements relating to building work;

A2b Requirements relating to thermal elements;

A2c Requirements relating to a change to energy status”.

- (b) by adding to the heading of Part B “and workmanship” and replacing B1 by “B1 Materials and workmanship”;

- (c) by replacing Part F with the following—

“Part F Energy Performance of Buildings.

- F1. Methodology of calculation and expression of energy performance.
- F2. Minimum energy performance requirements for buildings.
- F3. New buildings.
- F4. Consequential improvements to energy performance.
- F5. Energy performance Certificates.
- F6. Energy assessors.
- F7. Related Party disclosures.
- F8. Duty of Care.
- F9. Right to copy documents.
- F10. Interpretation.
- F11. Testing of building work.
- F12. Sampling of material.
- F13. Air tightness testing.
- F14. Commissioning.
- F15. CO2 emission rate calculations”.

(d) by replacing “Schedule 11 with the following–

“Schedule 11 Conservation of fuel and power.”

Amendments to Part A.

4. After rule A2, insert–

A2a Requirements relating to building works.

(1) Subject to paragraph (2) building work shall be carried out so that—

- (a) it complies with the applicable requirements contained in the Schedules and Approved Documents; and
- (b) in complying with any such requirement there is no failure to comply with any other such requirement.

(2) Where—

- (a) building work is work required in relation to thermal elements or a change in energy status and
- (b) the carrying out of that work does not constitute a material alteration,

that work need only comply with the applicable requirements of Part F of Schedule 11.

(3) Building work shall be carried out so that, after it has been completed—

- (a) any building which is extended or to which a material alteration is made; or
- (b) any building in, or in connection with, which a controlled service or fitting is provided, extended or materially altered; or
- (c) any controlled service or fitting,

complies with the applicable requirements of the Schedules and Approved Documents or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out.

(4) In this rule “Approved Documents” means the documents approved for the purpose by the Minister for the Environment.

A2b Requirements relating to thermal elements.

- (1) Where a person intends to renovate a thermal element, such work shall be carried out as is necessary to ensure that the whole thermal element complies with the requirements of paragraph F1(a)(i) of Schedule 11.
- (2) Where a thermal element is replaced, the new thermal element shall comply with the requirements of paragraph F1(a)(i) of Schedule 11.

A2c Requirements relating to a change to energy status.

- (1) Where there is a change to a building's energy status, such work, if any, shall be carried out as is necessary to ensure that the building complies with the applicable requirements of Part F of Schedule 11.
- (2) In this rule "building" means the building as a whole or parts of it that have been designed or altered to be used separately.;"

and in rule A9, in Case D, and rule A13, after "Part F" delete "Thermal insulation" and insert "Energy Performance of Buildings".

Amendments to Part B.

5. Part B is amended—

- (a) by adding to the heading "and workmanship" and replacing the heading to B1 with "Materials and workmanship";
- (b) by adding the following after paragraph (2) of Rule B1—

“(3) Building works shall be carried out—

 - (a) with adequate and proper materials which—
 - (i) are appropriate for the circumstances in which they are used,

(ii) are adequately mixed or prepared, and

(iii) are applied, used or fixed so as adequately to perform the functions for which they are designed; and

(b) in a workmanlike manner.

Amendments to Part F.

6. Part F is replaced by the following—

“Part F Energy Performance of Buildings.

Methodology of calculation and expression of energy performance.

Fl.(1) The Government shall approve—

(a) a methodology of calculation of the energy performance of buildings, including methods for calculating asset ratings and operational ratings of buildings; and

(b) ways in which the energy performance of buildings, as calculated in accordance with the methodology, shall be expressed.

(2) In this rule—

“asset rating” means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building; and

“operational rating” means a numerical indicator of the amount of energy consumed during the occupation of a building over a period of time.

Minimum energy performance requirements for buildings.

F2. The Government shall approve minimum energy performance requirements for new buildings, in the form of target CO2 emission rates, which shall be based upon the methodology approved pursuant to rule F1.

New buildings.

F3.(1) Where a new building is erected, it shall not exceed the target CO2 emission rate for the building that has been approved pursuant to rule F2.

(2) In this rule—

“new building” means—

- (a) the construction of a building which requires a permit under section 17 of the Town Planning Act 1999, for which energy is used to condition the indoor climate; and
- (b) the alteration of an existing building so as to constitute 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 and the Building (Amendment) Rules 2009.”.

Consequential improvements to energy performance.

F4.(1) Paragraph (2) applies to an existing building with a total useful floor area over 1,000m² where the proposed building work consists of or includes—

- (a) an extension;
- (b) the initial provision of any fixed building services; or

- (c) an increase to the installed capacity of any fixed building services.
- (2) Subject to paragraph (3), where this paragraph applies, such work, if any, shall be carried out as is necessary to ensure that the building complies with the requirements of Part F of Schedule 11.
- (3) Nothing in paragraph (2) requires work to be carried out if it is not technically, functionally and economically feasible.

Energy performance Certificates.

F5.(1) This rule applies where—

- (a) a building is erected; or
 - (b) a building is modified so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation.
- (2) The person carrying out the work shall—
- (a) give an energy performance certificate for the building to the owner of the building; and
 - (b) give to the Government notice to that effect, including the reference number under which the energy performance certificate has been registered in accordance with rule F6(4).
- (3) The energy performance certificate and notice shall be given not later than five days after the work has been completed.
- (4) The energy performance certificate must be accompanied by a recommendation report containing recommendations for the improvement of the energy performance of the building, issued

by the energy assessor who issued the energy performance certificate.

- (5) An energy performance certificate must—
- (a) express the asset rating of the building in a way approved by the Government under rule F1;
 - (b) include a reference value such as a current legal standard or benchmark;
 - (c) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and
 - (d) include the following information—
 - (i) the reference number under which the certificate has been registered in accordance with rule F6(4);
 - (ii) the address of the building;
 - (iii) an estimate of the total useful floor area of the building;
 - (iv) the name of the energy assessor who issued it;
 - (v) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address;
 - (vi) the date on which it was issued; and
 - (vii) the name of the approved accreditation scheme of which the energy assessor is a member.
- (6) Certification for apartments or units designed or altered for separate use in blocks may be based—

- (a) except in the case of a dwelling, on a common certification of the whole building for blocks with a common heating system; or
 - (b) on the assessment of another representative apartment or unit in the same block.
- (7) Where—
- (a) a block with a common heating system is divided into parts designed or altered for separate use; and
 - (b) one or more, but not all, of the parts are dwellings,
- certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings.

Energy assessors.

- F6.(1) An energy assessor must be a member of an accreditation scheme approved by the Government.
- (2) The terms of approval of any accreditation scheme may be limited in relation to the categories of building for which members may produce certificates.
 - (3) Before approving an accreditation scheme the Government must be satisfied that the scheme contains adequate provision—
 - (a) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner;
 - (b) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments;
 - (c) for requiring members of the scheme to prepare energy performance certificates and recommendation

reports using a standard form for each type of document;

- (d) for ensuring the production and publication of a code as regards the conduct required of its members;
 - (e) for indemnity arrangements in relation to owners and prospective or actual buyers or tenants;
 - (f) for facilitating the resolution of complaints against members of the scheme;
 - (g) for requiring energy performance certificates and recommendation reports produced by members of the scheme to be entered on the relevant register referred to in paragraph (4); and
 - (h) for the keeping of a register of the members of the scheme.
- (4) Where an energy assessor issues an energy performance certificate and recommendation report he must ensure they are entered onto the relevant register kept by the Energy Conservation Officer before he gives them to the person who requested that he issue them.

Related Party disclosures.

F7.(1) An energy assessor must include in an energy performance certificate a declaration of any personal or business relationship (other than in relation to producing the certificate) that he has with—

- (a) the person who commissioned the certificate; and
- (b) any person who he believes—
 - (i) has or may have a personal or business relationship with the person who commissioned the certificate; or
 - (ii) has or may have an interest in the building.]

Duty of Care.

- F8.(1) Energy assessors must carry out energy assessments with reasonable care and skill.
- (2) The duty imposed by paragraph (1) shall be enforceable by the following persons—
- (a) the owner; and
 - (b) any prospective or actual buyer or tenant of the building during the period of validity of the certificate.

Right to copy documents.

- F9. Any person may, for the purpose of complying with any duty imposed by these Rules copy or issue a copy of any document produced by an energy assessor.

Interpretation.

- F10.(1) In this Part—

“building” means the building as a whole or parts of it that have been designed or altered to be used separately;

“dwelling” means a dwelling-house or a flat but “dwelling-house” does not include a flat or a building containing a flat;

“energy conservation officer” means the person so appointed by the Minister for the Environment;

“energy assessor” means an individual who is a member of an accreditation scheme approved by the Government in accordance with rule F6; and

“recommendation report” means the report required by rule F5(4).

- (2) In this Part a reference to “energy assessment” includes a reference to—
- (a) the preparation and issuing of energy performance certificates;
 - (b) the preparation and issuing of recommendation reports; and
 - (c) the carrying out of any inspections undertaken for the purposes of preparing energy performance certificates or recommendation reports.

Testing of building work.

F11. The Building Inspector may make such tests of any building work as may be necessary to establish whether it complies with rule B1 or any of the applicable requirements contained in the Schedules.

Sampling of material.

F12. The Building Inspector may take such samples of the material to be used in the carrying out of building work as may be necessary to enable him to ascertain whether such materials comply with the provisions of these Rules.

Air tightness testing.

F13.(1) This rule applies to the erection of a building in relation to which paragraph F1(a)(i) of Schedule 11 imposes a requirement.

- (2) Where this regulation applies, the person carrying out the work shall, for the purpose of ensuring compliance with rule F3 and paragraph F1(a)(i) of Schedule 11—
- (a) ensure that—
 - (i) air tightness testing is carried out in such circumstances as are approved by the Government; and

- (ii) the testing is carried out in accordance with a procedure approved by the Government; and
 - (b) subject to paragraph (5), give notice of the results of the testing to the Government .
- (3) The notice referred to in paragraph (2)(b) shall—
 - (a) record the results and the data upon which they are based in a manner approved by the Government ; and
 - (b) be given to the Government not later than seven days after the final test is carried out.
- (4) The Government may accept, as evidence that the requirements of paragraph (2)(a)(ii) have been satisfied, a certificate to that effect by a person who is approved by the Government in respect of pressure testing for the air tightness of buildings.
- (5) Where such a certificate contains the information required by paragraph (3)(a), paragraph (2)(b) does not apply.

Commissioning.

- F14.(1) This rule applies to building work in relation to which paragraph F1(b) of Schedule 11 imposes a requirement, but does not apply to the provision or extension of any fixed building service where testing and adjustment is not possible or would not affect the energy efficiency of that fixed building service.
- (2) Where this rule applies the person carrying out the work shall, for the purpose of ensuring compliance with paragraph F1(b) of Schedule 11, give to the Government a notice confirming that the fixed building services have been commissioned in accordance with a procedure approved by the Government .
 - (3) The notice shall be given to the Government—
 - (a) not more than five days after that work has been completed by the person, who was required to give a

building notice or deposit full plans and who was carrying out building work; or

- (b) where (a) does not apply, not more than 30 days after completion of the work.

CO2 emission rate calculations.

F15.(1) Subject to paragraph (4), where rule F3 applies the person carrying out the work shall give the Government a notice which specifies—

- (a) the target CO2 emission rate for the building; and
- (b) the calculated CO2 emission rate for the building as constructed.

(2) The notice shall be given to the Government not later than five days after the work has been completed.

(3) The Government is authorised to accept, as evidence that the requirements of rule F3 would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by an energy assessor as defined in regulation F10 who is accredited to produce such certificates for that category of building.

(4) Where such a certificate is given to the Government—

- (a) paragraph (1) does not apply; and
- (b) the person carrying out the work shall provide to the Government not later than five days after the work has been completed a notice which—
 - (i) states whether the building has been constructed in accordance with the list of specifications which accompanied the certificate; and
 - (ii) if it has not, lists any changes to the specifications to which the building has been constructed.

Amendments to Schedule 11.

7. Schedule 11 is replaced by the following—

“SCHEDULE 11

Conservation of fuel and power.

F1 Reasonable provision shall be made for the conservation of fuel and power in buildings by—

- (a) limiting heat gains and losses—
 - (i) through thermal elements and other parts of the building fabric; and
 - (ii) from pipes, ducts and vessels used for space heating, space cooling and hot water services;
- (b) providing fixed building services which—
 - (i) are energy efficient;
 - (ii) have effective controls; and
 - (iii) are commissioned by testing and adjusting as necessary to ensure they use no more fuel and power than is reasonable in the circumstances; and
- (c) providing to the owner sufficient information about the building, the fixed building services and their maintenance requirements so that the building can be operated in such a manner as to use no more fuel and power than is reasonable in the circumstances.”.

Dated 26th November, 2009.

ADRIAN JOHNS,
Governor.

EXPLANATORY MEMORANDUM

These regulations amend the Building Regulations 2007 to provide for energy efficient performance of buildings.

