

No. 1786

MINISTRY FOR PUBLIC WORKS AND PLANNING

Energy Performance of Buildings (Amendment) Regulations, 2023

*Explanatory Notes**(for the purposes of article 3(2)(c) of Chapter 512 of the Laws of Malta)***1. Introduction**

Title of Legal Notice	Energy Performance of Buildings (Amendment) Regulations, 2023
Activity to be regulated	The building and construction industry
Responsible entity	Building and Construction Authority

2. Summary and background*2.1 Aims and Objectives of the legislation*

The Energy Performance of Buildings (Amendment) Regulations, 2023 (immediately hereafter referred to as the “amending regulations”) in part seek to provide additional clarity and detail to specific aspects outlined in the Energy Performance of Buildings Regulations (immediately hereafter referred to as the principal regulations) (S.L. 623.01). This initiative aligns with the implementation of Directive (EU) 2018/844 of the European Parliament and the Council, dated 30 May 2018, which introduced amendments to Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency. Furthermore, the regulations aim to offer further clarification on certain provisions of Directive 2010/31/EU of the European Parliament and the Council, dated 19 May 2010, pertaining to the energy performance of buildings (recast). Additionally, the regulations are designed to elaborate on specific provisions within the primary regulations, S.L. 623.01, particularly with an emphasis on enforcement objectives.

The amending regulations also look to implement new minimum energy performance and building envelope requirements and technical building system requirements for buildings being built or renovated as from 1 July 2024. This serves several vital objectives. Firstly, it aims to enhance energy efficiency by setting specific performance targets, reducing energy consumption and waste, resulting in significant cost savings for building owners and occupants over time, while also lessening the environmental impact. Secondly, these requirements promote environmental sustainability by encouraging the use of renewable energy sources and reducing dependence on fossil fuels, contributing to carbon emission reduction, and aligning with broader sustainability goals. They also play a crucial role in mitigating climate change by minimising greenhouse gas emissions from buildings. Cost savings are another key benefit, as reduced energy consumption leads to lower utility bills, creating economic incentives for energy-efficient measures and improving indoor environmental quality for occupants. Additionally, these requirements enhance energy security, encourage market transformation, and drive innovation, fostering technological advancements and economic growth. Finally, the regulatory framework provided by these requirements ensures consistent implementation and enforcement, promoting compliance and accountability in the construction industry.

2.2 Public Consultation

The Building and Construction Authority invited the general public including interested parties to provide feedback on the new minimum energy performance requirements for new and renovated buildings. Submissions were requested via email at consultation.construction@gov.mt, between 14 June and 26 July 2023. Submissions were received among others from the Chamber of Engineers, the Malta Energy Efficiency and Renewable Energies Association, the Malta Chamber of Construction Management, and the Malta Developers Association. This public consultation served as a crucial step in transparent decision-making, inclusive stakeholder engagement, and well-informed policy development.

An inter-Ministerial and public entity consultation was also undertaken. Submissions were received among others from the Environment and Resources Authority (ERA), Water Services Corporation (WSC), Housing Authority, Energy and Water Agency (EWA), INDIS Malta Ltd. and the Ministry for Finance and Employment.

Although there were different opinions on the technical specifications, the new minimum energy performance requirements were widely welcomed, and the salient points raised during the inter-Ministerial, public entity and public consultations were taking into consideration in the Requirements being enacted at law.

3. Overview of the structure of the instrument

The amending regulations consist of twelve (12) regulations

Regulation 1 sets out the name of the amending regulations. It sets out the scope of the new law, i.e. to further transpose the Energy Performance for Buildings Directive. It also sets out the commencement date of 1 July 2024 for regulations 2-4, related to the new minimum energy performance requirements, which will apply to permit applications for construction and renovation with the Planning Authority.

Regulation 2 substitutes the definition for 'compliance certificate' and introduces a definition for 'Technical Document F (2023)' in regulation 2 of the principal regulations.

Regulation 3 amends regulation 5 of the principal regulations and provides for new minimum energy performance and building envelope requirements, as well as technical building system requirements, contained in Technical Document F (2023) Parts 1-3.

Regulation 4 amends regulation 9 of the principal regulations and provides new technical building system requirements in Technical Document F (2023) Part 3 for the proper installation, the appropriate dimensioning, adjustment, control, new, replacement, upgrading and certification of technical building systems.

Regulation 5 amends regulation 23 of the principal regulations and adds provisions to make clear that registered Energy Performance Certificates (EPCs) and registered inspection reports for heating or air-conditioning systems may not be altered or amended, and should this be required a separate EPC or inspection report is to be registered.

Regulations 6 and 7 amend regulations 25 and 26 of the principal regulations, respectively, and clarify the possibility of appeal if the registration of an EPC assessor or a heating or air-conditioning inspector is suspended or terminated.

Regulation 8 amends regulation 29 of the principal regulations and makes clear how EPCs and inspection reports are registered, and who has access to the EPC register and the inspection reports register accordingly.

Regulation 9 amends regulation 32 of the principal regulations and clarifies the actions the Building and Construction Authority may take further to an audit, monitoring and verification (independent control) of EPCs or inspection reports.

Regulation 10 substitutes Schedule II of the principal regulations and clarifies the way audit, monitoring and verification (independent control) is to be conducted.

Regulation 11, in Maltese only, corrects the word 'htigiet' found in the principal regulations, to 'rekwiziti'.

4. Commentary

Regulations 2-4 - The amending regulations provide **new minimum energy performance and building envelope requirements as well as technical building system requirements** by way of Technical Document F (2023). This comprises three documents, each serving specific purposes. Part 1 sets requirements for the overall energy performance and building envelope of new residential buildings and those undergoing renovation. Similarly, Part 2 establishes requirements for the overall energy performance and building envelope of new non-residential buildings and those undergoing renovation. Lastly, Part 3 focuses on requirements for technical building systems in all buildings.

With the introduction of the new requirements, certain non-residential building typologies that previously lacked an overall energy performance requirement will now have one. This inclusion aims to ensure that energy performance considerations are applied across a wider range of buildings. Moreover, the overall energy performance requirements for new residential buildings and major renovation projects have been set at significantly more ambitious levels, further driving energy efficiency improvements.

Recognising the cost-effectiveness of solar renewable energy sources in all buildings, new constructions with solar potential will be mandated to incorporate solar renewables. This approach aims to promote the adoption of clean and sustainable energy sources, thereby reducing emissions and enhancing energy efficiency. It is important to note that buildings without solar potential, while not subject to the specific solar integration measure, are still obligated to meet the specified minimum energy performance requirements. Despite lacking solar potential, these buildings will be held to higher energy performance standards compared to the existing requirements currently in place.

In addition to the overall energy performance enhancements, the requirements for specific building elements have been made stricter. This includes aspects such as insulation, windows, HVAC systems, and other elements that have a direct impact on energy consumption. Strengthening these requirements ensures greater energy efficiency and improved performance of building elements.

Furthermore, improvements have been made to the energy performance of building systems, including boilers, heat pumps, and lighting systems. These enhancements aim to optimise the energy efficiency and functionality of these systems, leading to reduced energy consumption and improved overall building performance.

The new changes introduced in the provisions of the amending regulations are also aimed at making things clearer when it comes to following the rules of the Energy Performance of Buildings Directive (EU) 2018/844 and 2010/31/EU.

Regulation 8(b) - The changes seek to make clear the **traceability of data** inputs in the register for EPCs and the register for inspection report for heating or air-conditioning systems. It is made clear that authorities or bodies, authorised by the BCA to conduct independent controls (audit), will have unrestricted access to the aforementioned registers. This access allows them to independently check, monitor, and verify the accuracy of the EPCs and inspection reports. Importantly, these authorities or bodies cannot change any information in the registers; they can only view it to ensure that everything is done correctly according to the established standards. This measure is part of a system to double-check and ensure the accuracy of the information related to Energy Performance of Buildings.

Regulation 5 - Once an EPC is registered, no one can alter it. If there are corrections or updates needed, a completely new EPC, along with any related advisory report, must be registered separately. This can be done by the same person who initially issued the EPC or someone else. The old EPC is then no longer considered valid. Similarly, for inspection reports on heating or air-conditioning systems, if any changes are needed after a certain period, a new inspection report must be registered separately. Again, this can be done by the original inspector or another registered inspector. The original inspection report becomes invalid once the new one is registered. This process ensures that any updates or corrections are properly recorded, and that the most accurate information is available in the registers.

Regulation 8(a) - When we talk about the EPC register and the register for inspection reports for heating or air-conditioning systems, each entry is a unique and separate record. For the EPC, it includes not just the certificate but also the related advisory report. Each of these entries gets a different number to help track and verify it, and this number is linked to the person (either the Energy Performance of Building (EPB) assessor for EPCs or the inspector for heating or air-conditioning systems) who issued and registered that specific EPC or inspection report. Only registered EPB assessors can access and use the EPC register. Similarly, for the register of inspection reports for heating or air-conditioning systems, only registered inspectors of heating or air-conditioning systems have the authority to access and register inspection reports. This ensures that the people entering information into these registers are qualified professionals, maintaining the accuracy and reliability of the data.

Regulation 10 - The focus on how **independent control systems**, i.e. audits, monitoring and verification, will be used to check Energy Performance Certificates (EPC) and inspection reports on heating or air-conditioning systems, is to guarantee their accuracy and reliability. Each year, the authorities designated by the BCA randomly select a statistically significant percentage of all inspection reports and EPCs issued for verification. The sample size is determined using a formula to ensure statistically significant results with 95% confidence and a 5% margin of error. To ensure fairness, the sampling plan considers the number of reports issued by each assessor or inspector. The verification process includes options such as checking input

data, reviewing EPC results, and, when possible, conducting on-site visits to ensure buildings match the EPC specifications. The outcomes, along with the sample size and verification details, are documented in an official report provided to the Authority. This transparent reporting system links any identified errors or issues to specific assessors or inspectors, ensuring accountability in the process. The independent control system for EPCs and inspection reports operates as a random check mechanism to guarantee the accuracy and reliability of these documents.

Regulation 9 - The authority of the **BCA to take action or impose penalties based on independent control (audit)** reports is now further clarified in these amending regulations. In simple terms, if, after an independent check and an official report, mistakes or missing details are found in EPCs or inspection reports, the Building and Construction Authority can take various actions:

Revocation: The Authority may revoke the existing EPC or inspection report;

New EPC/ inspection report: A corrected EPC/ inspection report needs to be registered and issued by the assessor/ inspector, fixing the identified errors. The assessor must cover all expenses related to this new EPC/inspection report. If not done within fourteen days, the assessor/inspector could be temporarily removed from the registered list of assessors/ inspectors until compliance is achieved;

Fine (*multa*): The Authority may impose a financial penalty;

Suspension/Termination of Registration: The registration of the EPB assessor or the inspector of heating or air-conditioning systems may be suspended or terminated.

Any actions taken by the BCA, as outlined above, may be appealed.

5. Concluding Section

Regulations 2, 3 and 4 of the amending regulations shall come into force on 1 July, 2024 whilst the rest of these regulations shall come into force upon their publication in the Gazette.

The Building and Construction Authority may be contacted on 8004900 or (info@bca.org.mt).

N.B: These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

22nd December, 2023

Annex Transposition Notes

Item	Article No 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 and Directive 2012/27/EU on energy efficiency; AND/OR Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast)	Related Regulation in the amending regulations
Setting of minimum energy performance requirements	Article 4(1) first paragraph of Directive 2010/31/EU	Regulation 5(1) of S.L.623.01 as substituted by regulation 3 of the amending regulations

Technical building systems	Article 8(1) first paragraph of Directive (EU) 2018/844	Regulation 9(1) of S.L.623.01 as substituted by regulation 4(a) of the amending regulations
	Article 8(1) second paragraph of Directive (EU) 2018/844	Regulation 9(2) of S.L.623.01 as substituted by regulation 4(b) of the amending regulations
	Article 8(9) of Directive (EU) 2018/844	Regulation 9(5) of S.L.623.01 as substituted by regulation 4(c) of the amending regulations
Independent Control Systems	Article 18(3) of Directive 2010/31/EU	Regulation 29(4)(ba) of S.L. 623.01, as added by regulation 8(b)(i) of the amending regulations
	Point 1, first paragraph of Annex II to Directive 2010/31/EU, as replaced by point 3(a) of the Annex to Directive (EU) 2018/844	Paragraphs 2,3,4 and 6 of Schedule II of S.L. 623.01 as substituted by regulation 10 of the amending regulations
	Point 1, second paragraph of Annex II to Directive 2010/31/EU	Paragraph 5 of Schedule II of S.L. 623.01 as substituted by regulation 10 of the amending regulations
	Point 2 of Annex II to Directive 2010/31/EU	Paragraph 1,3,4,5 and 6 of Schedule II of S.L. 623.01 as substituted by regulation 10 of the amending regulations
	Point 3 of Annex II to Directive 2010/31/EU, as replaced by point 3(b) of the Annex to Directive (EU) 2018/844	Regulation 23(1)(a) of S.L. 623.01 as substituted by regulation 5(a) of the amending regulations
		Regulation 23(1)(aa) of S.L. 623.01 as added by regulation 5(b) of the amending regulations
		Regulation 23(2)(ba) of S.L. 623.01 as added by regulation 5(c) of the amending regulations
		Regulation 29(3a) and 29(3b) of S.L. 623.01 as added by regulation 8(a) of the amending regulations
		Paragraphs 6 of Schedule II of S.L. 623.01 as substituted by regulation 10 of the amending regulations
Penalties	Article 27 of Directive 2010/31/EU	Regulation 25(11) of S.L. 623.01 as substituted by regulation 6 of the amending regulations
		Regulation 26(6a) of S.L. 623.01 as substituted by regulation 7 of the amending regulations
		Regulation 32(3) of S.L. 623.01, as added by regulation 9 of the amending regulations