L.N. 305 of 2023

BUILDING AND CONSTRUCTION AUTHORITY ACT (CAP. 623)

Energy Performance of Buildings (Amendment) Regulations, 2023

IN EXERCISE of the powers conferred by article 17(2) of the Building and Construction Act, the Minister responsible for the construction authority, after consultation with the Building and Construction Authority Board, has made the following regulations:-

Citation, scope, applicability and commencement.

S.L. 623.01.

1. (1) The title of these regulations is the Energy Performance of Buildings (Amendment) Regulations, 2023 and these regulations shall be read and construed as one with the Energy Performance of Buildings Regulations, hereinafter referred to as the "principal regulations".

(2) The scope of these regulations is to further transpose 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 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast).

(3) Regulations 2, 3 and 4 shall come into force on 1st July 2024:

Provided that the said regulations shall for all intents and purposes be deemed applicable to any buildings, building units or building units in a building the application for construction or renovation of which has been submitted to the Planning Authority on, or after the 1st July 2024.

Amends regulation 2 of the principal regulations.

2. Sub-regulation (2) of regulation 2 of the principal regulations shall be amended as follows:

(a) the definition "compliance certificate" shall be substituted by the following new definition:

"compliance certificate" means a certificate issued by a competent person in certifying that the completed building is compliant with these regulations and with Technical Document F (2023) Part 1 Dwellings Minimum Energy Performance and

Building Envelope Requirements, Part 2 Non-Dwellings Minimum Energy Performance and Building Envelope Requirements, and Part 3 Technical Building Systems, as the case may be, and any other instructions issued by the Building and Construction Authority;";

(b) immediately after the definition "technical building system" there shall be added the following new definition:

" "Technical Document F" means the minimum energy performance requirements and technical building systems in force at the time in accordance with sub-regulation (1) of regulation 5, as may from time to time be amended, as the Building and Construction Authority shall determine, which shall also be made available on the Authority's website. Wherever minimum energy performance requirements are mentioned the said requirements shall refer to Technical Document F.".

Amends regulation 5 of the principal regulations.

3. Sub-regulation (1) of regulation 5 of the principal regulations shall be substituted by the following new sub-regulation:

"(1) The Building and Construction Authority shall take the necessary measures to establish minimum energy performance requirements for buildings and building units with a view to achieving cost-optimal levels. The energy performance shall be calculated in accordance with the methodology referred to in regulation 4. Cost-optimal levels shall be calculated in accordance with the comparative methodology framework referred to in regulation 6. The design of buildings, the construction, the renovation and the technical building systems shall be compliant with Technical Document F (2023) Part 1 Dwellings Minimum Energy Performance and Building Envelope Requirements, Part 2 Non-Dwellings Minimum Energy Performance and Building Envelope Requirements, and Part 3 Technical Building Systems, as the case may be, and as may from time to time be amended, as the Building and Construction Authority shall determine. Technical Document F (2023) shall be made available on the Authority's website.".

Amends regulation 9 of the principal regulations.

4. Regulation 9 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof shall be substituted by the following new sub-regulation:

"(1) For the purpose of optimising the energy use of technical building systems, establishing system requirements in respect of the overall energy performance, the proper

installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings, the system designer shall follow Technical Document F (2023) Part 3 Technical Building Systems, as updated and approved from time to time by the Building and Construction Authority.";

(b) sub-regulation (2) thereof shall be substituted by the following new sub-regulation:

"(2) System requirements are established for new, replacement and upgrading of technical building systems and shall be applied in so far as they are technically, economically and functionally feasible, in accordance with Technical Document F (2023) Part 3 Technical Building Systems, as updated and approved from time to time by the Building and Construction Authority.";

(c) sub-regulation (5) thereof shall be substituted by the following new sub-regulation:

"(5) When new building services are installed in buildings, the owner has to provide the Building and Construction Authority with a certificate, issued by a warranted engineer, declaring compliance with the applicable minimum energy performance requirements as set in Technical Document F (2023) Part 3 Technical Building Systems.".

5. Regulation 23 of the principal regulations shall be amended as follows:

Amends regulation 23 of the principal regulations.

(a) paragraph (a) of sub-regulation (1) thereof shall be substituted by the following new paragraph:

"(a) After an EPC has been registered in the EPC register in accordance with sub-regulation (3a) of regulation 29, no person shall either in writing, drawing or in any other manner alter, cancel, or add anything to the registered EPC, or to any related advisory report, or to a printed copy of a registered EPC, or to any related advisory report or entry made therein.";

(b) immediately after paragraph (a) of sub-regulation (1) thereof, as amended, there shall be added the following new paragraph:

"(aa) A separate new EPC and, or related advisory

report shall be registered in the EPC register in accordance with sub-regulation (3a) of regulation 29 to cater for amendments to an already registered EPC and, or a related advisory report. This may be done by the same or a different assessor, as the case may be. Upon registration of the amending EPC and, or related advisory report, the previously registered EPC, and or related advisory report shall cease to be valid.";

(c) immediately after paragraph (b) of sub-regulation (2) thereof there shall be added the following new paragraph:

"(ba) A separate new inspection report shall be registered in the inspection reports register in accordance with sub-regulation (3b) of regulation 29 for any amendments required to a previously registered inspection report, after the period referred to in paragraph (b) has elapsed. This may be done by the same or a different inspector, as the case may be. Upon the registration of the amending inspection report, the report previously registered shall cease to be valid.".

Amends regulation 25 of the principal regulations.

6. Sub-regulation (11) of regulation 25 of the principal regulations shall be substituted by the following new sub-regulation:

"(11) A person whose registration has been suspended or terminated in accordance with sub-regulation (10) may, within fourteen days from the said suspension or termination, appeal to the Board of the Building and Construction Authority against the decision regarding the suspension or termination taken by the Building and Construction Authority, in accordance with article 12(1) of the Act.".

Amends regulation 26 of the principal regulations.

7. Immediately after paragraph (6) of regulation 26 of the principal regulations there shall be added the following new sub-regulation:

"(6a) A person whose registration has been suspended or terminated in accordance with sub-regulation (6) may, within fourteen days from the said suspension or termination, appeal to the Board of the Building and Construction Authority against the decision regarding the suspension or termination taken by the Building and Construction Authority, in accordance with article 12(1) of the Act.".

Amends regulation 29 of the principal regulations.

8. Regulation 29 of the principal regulations shall be amended as follows:

(a) immediately after sub-regulation (3) thereof there shall be added the following new sub-regulations:

"(3a) In the EPC register, an EPC shall be registered as a single record, together with the related advisory report, with an EPC registration number that for monitoring and verification purposes shall be identifiable to the unique registration number of the EPB assessor who issued and registered that same EPC:

Provided that in accordance with regulation 25, only registered EPB assessors may access the EPC register to calculate, generate and register EPCs and related advisory reports, with the approved calculation methods and software in accordance with regulation 21.

(3b) In the register of inspection reports for heating or air-conditioning systems an inspection report shall be registered as a single record, with an inspection report registration number that for monitoring and verification purposes shall be identifiable to the unique registration number of the inspector of heating or air-conditioning systems who issued and registered that same inspection report:

Provided that in accordance to regulation 26, only registered inspectors of heating or air-conditioning systems may access the register of inspection reports for heating and air-conditioning systems to register inspection reports carried out in accordance with regulation 21.";

(b) sub-regulation (4) thereof shall be amended as follows:

(i) immediately after paragraph (b) thereof there shall be added the following new paragraph:

"(ba) Unrestricted access, without the possibility to modify content of the EPC register and, or to the register of inspection reports for heating and air-conditioning systems, to enable independent control, monitoring and verification of EPCs and, or inspection reports in accordance with Schedule II, shall be granted to the competent authorities or bodies to which the Building and Construction Authority has delegated responsibility, in accordance with sub-regulation (2) of regulation 32, to

implement the independent control systems.";

(ii) paragraph (c) thereof shall be substituted by the following new paragraph:

"(c) other than as provided for in paragraphs (a), (b) and (ba), a data file or other extract from a register relating to an EPC for a particular building or an inspection report for a particular heating or air-conditioning system, shall only be made available to:".

Amends regulation 32 of the principal regulations.

9. Sub-regulation (3) of regulation 32 of the principal regulations shall be substituted by the following new sub-regulation:

"(3) (a) Further to an independent control and the official report issued in accordance with item 6 of Schedule II, on the basis of errors or lack of detail identified in EPCs or inspection reports within the respective samples, the Building and Construction Authority may take the following actions:

(i) revoke the respective EPC or inspection report in accordance with regulation 22;

(ii) a new EPC incorporating amendments necessary shall be registered and issued by the respective assessor in accordance with paragraph (aa) of sub-regulation 1 of regulation 23. Amendments shall be carried out to the satisfaction of the Building and Construction Authority. All expenses related to the new EPC shall be borne by the respective assessor. The new EPC shall be registered within fourteen days. If the assessor does not comply with these requirements within this period, he shall be removed from the list of registered assessors until full compliance with this sub-regulation is achieved;

(iii) impose a fine (*multa*) in accordance with regulation 40;

(iv) suspend or terminate the registration of the relevant EPB assessor in accordance with sub-regulation (9) of regulation 25;

(v) suspend or terminate the registration of the relevant inspector of heating or air-conditioning systems in accordance with sub-regulation (6) of regulation 26;

(b) Decisions of the Building and Construction Authority in accordance with paragraph (a) may be appealed in accordance

with article 12(1) of the Act. These decisions provided under article 12(1) of the Act shall be subject to the right of appeal before the Building and Construction Tribunal in accordance with the provisions of Part VIII of the Act, or the Court of Appeal (Inferior Jurisdiction) in accordance with article 47 of the Act, as the case may be.".

Substitutes Schedule II of the principal regulations.

10. Schedule II of the principal regulations shall be substituted by the following new Schedule:

"Schedule II
(regulation 32)
Independent control systems for energy performance certificates and inspection reports

1. The competent authorities or bodies to which the Building and Construction Authority has delegated the responsibility for implementing the independent control system for inspection reports of heating and air-conditioning systems shall, on a yearly basis, make a random selection of at least a statistically significant percentage of all the inspection reports issued annually and subject those reports to verification.

2. The competent authorities or bodies to which the Building and Construction Authority has delegated the responsibility for implementing the independent control system for EPCs shall, on a yearly basis, make a random selection of all the EPCs issued annually and subject them to verification.

3. (1) The sample shall be of a sufficient size to ensure statistically significant compliance results to a confidence level of 95% and a margin of error of 5%. Temporary files shall not to be considered.

(2) The following equation shall be used to determine the sample size for monitoring and verification purposes:

$$n = N \times \frac{\frac{Z^2 \times p \times (1-p)}{e^2}}{\left[N-1 + \frac{Z^2 \times p \times (1-p)}{e^2} \right]}$$

Where
n = Sample size
N = Total amount of EPCs or inspection reports issued in the year being verified

Z = Critical value of the normal distribution at the required confidence level. For a confidence level of 95%, Z = 1.96

p = Sample proportion

e = Margin of error

4. The sampling plan shall be designed so as the number of EPCs or inspection reports to be monitored and verified are weighted proportionally, to the extent possible, to the number of EPCs or inspection reports issued in the year being verified by every assessor or inspector, as the case may be.

5. The verification shall be based on the following options or on equivalent measures:

(a) a validity check of the input data of the building used to issue the EPC and the results stated in the certificate;

(b) a check of the input data and verification of the results of the EPC, including the recommendations made;

(c) a full check of the input data of the building used to issue the EPC, full verification of the results stated in the certificate, including the recommendations made, and an on-site visit of the building, if possible, to verify consistency between specifications indicated in the EPC and the building certified.

6. The sampling plan, the sample size and the results of the monitoring and verification conducted in implementing the independent control shall be recorded in an official report to be submitted to the Building and Construction Authority. For compliance results to be traceable, the official report shall indicate, for each of the EPCs or inspection reports analysed within the sample, the assessor or inspector's unique registration number, the certificate or report registration number, and the type of error or lack of detail identified.".

General amendment to the principal regulations.

11. In the principal regulations, in the Maltese version only, the word "ħtiġiet" shall be substituted by the word "rekwiżiti", wherever it occurs, and the relative articles shall be substituted accordingly.

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