

Small scale Privacy Impact Assessment

Privacy of personal data - screening criteria

- Consultation on the application of existing personal data to a new purpose.
- The consultation may also lead to the drafting of legislative amendments authorising the collection, use or disclosure of personal data.

Decision

- The definition of 'personal data' has a wide coverage. Someone is identifiable if their identity can be ascertained from the information held plus the results of reasonable inquiries, whether made by the controller or another. The Information Commissioner's guidance on this issue refers to the EU Directive and states that whether or not the individual is identifiable or not will depend on 'all the means likely or reasonably likely to be used either by the controller or by any other person to identify the person'. In our view, the combination of the address in the certificate and the availability of the electoral roll, which includes names and addresses, are sufficient to enable individuals to be identified.
- However it is worth pointing out that the issue of whether or not this data is personal data is not clear cut. The information of course relates to a building not a person and is limited to the energy rating of that building and to recommendations for improving its energy efficiency. It is because a cross-check with other public records against the address on the Energy Performance Certificate (EPC) could easily reveal the name of the occupant that the data becomes personal.
- The certificate itself concentrates very much on the house and talks in very general terms about its energy efficiency. On the other hand, we think it is significant that the sharing of EPCs will allow the recipient organisations to take certain action in relation to a particular individual i.e. they will put the EPC together with other information to decide that the house needs energy improvements and so the individual should be contacted. On balance by far the safest course of action is to treat the un-anonymised EPC as personal data.
- This level of protection would also need to be applied to DEC's which relate to sole traders as they could be working from home and the information in the DEC would therefore relate to their home address which together with their name would be classed as personal information.

Preliminary and preparatory phases

- The Energy Performance of Buildings Directive 2002/91/EC (EPBD) came into force in the UK on the 1st August 2007 and was initially implemented by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991).

- One outcome of the EPBD has been the collection of data on the energy performance of over 4.3 million domestic and non-domestic buildings in England and Wales which has been captured in EPCs, Display Energy Certificates (DECs) and Air Conditioning Reports (ACRs) since 2008. Details of EPCs and DECs for properties in England and Wales are stored in the England and Wales domestic and non-domestic EPC registers on behalf of the Secretary of State for Communities and Local Government (CLG).
- Access to this data is tightly controlled by Part 6 of the Energy Performance of Buildings ((Certificates and Inspections) England and Wales) Regulations 2007 as amended, restricting it to CLG, Local Weights and Measures Authorities and Trading Standards Officers (TSOs). In August 2009 we amended the regulations to give the Energy Saving Trust (EST) access to the EPCs of properties with poor energy ratings (F&G) to allow them to give tailored advice and support to households to improve their energy efficiency, fulfilling a previous Ministerial commitment, made by the Prime Minister on the 19th November 2007.
- Currently EST make contact with occupiers of dwellings that have received low energy-efficiency ratings to provide information on the measures to improve the energy performance of the dwellings and about financial assistance for such measures that may be available to them. EST only have access to those EPCs produced which contain a notice advising of the disclosure of such data to EST.
- There is a growing demand, from both other Government departments and external organisations, to gain access to this information as it is considered a useful tool in supporting efforts to tackle climate change, whether through research or programmes to support practical change. For example, it can be used to determine trends in the energy efficiency of different types of buildings and the most effective ways to improve energy efficiency. More specifically, EPC data can be used to provide tailored advice and support to building owners on how they can improve energy efficiency.
- Recent Government consultations, *The Next Steps: EPCs and the establishment of the Green Homes Service* consultation paper (June 2008) and *The Heat and Energy Savings Strategy* consultation (2009) have also indicated widespread support for increasing access to the information.
- We made a commitment in the Low Carbon Transition Plan July 2009 to 'consult on extending access to EPC information for all homes so government departments, local authorities (LAs) and relevant agencies are able to target offers of support' to improve energy efficiency.
- On the 2nd March a consultation paper 'Making better use of Energy Performance Certificates (EPC) data' was launched. The consultation period will run until the 25th May 2010.

Consultation and analysis phase(s)

- In the consultation 'Making better use of Energy Performance Certificates (EPC) data' we have considered the best approach for responding to the requests for access to the data. We have been mindful of the data protection and legal considerations which govern the use of data in general and energy performance data in particular. The main issues for consideration are:
 - a) data must only be used to promote and improve energy efficiency in buildings (in line with the EPBD 2002/91/EC under which the 2007 Regulations are made);
 - b) data may only be used for analysis and research to directly support Government policy; monitoring of Government targets; and/or to undertake Government-funded or endorsed activity/programmes to provide impartial information and advice to owners or occupiers of dwellings or commercial or public buildings with an EPC or DEC to improve the energy efficiency of the building;
 - c) data may not be used for commercial or profitable gain; and
 - d) there would be no obligation on building owner to take action (either in responding to information or in undertaking energy efficiency works).
- There is a need to be clear at the outset as to what data is to be shared for what purpose and with whom. Accordingly, EPCs will need to contain a 'fair processing notice' which informs people with whom and for what purpose their EPC will be shared.
- The consultation 'Making better use of Energy Performance Certificate (EPC) data' March 2010 contains the following proposal:
 - a) to provide the Secretary of State with the power to grant access to address data to specified organisations including LAs for approved purposes. In such cases arrangements would be governed by a letter of agreement between CLG and the organisation in receipt of the data which would incorporate various safeguards to address the principles of data protection. Should any breach of these conditions be identified, the Secretary of State could withdraw permission for both access to and use of the data. Criminal sanctions could apply if provisions in the DPA 1998 are infringed.
- There is a growing demand from Government departments, agencies and external organisations to gain access to this information, as it is considered a useful tool in supporting efforts to tackle climate change.
- The agreement would cover a range of safeguards including the following as a minimum:

- the purposes for which the data will be used;
- the level of the data required and the access granted;
- terms of disclosure and sanctions for misuse;
- who within the organisation may have access to the data, including whether or not data may be shared with third parties (in exceptional and defined circumstances only);
- processes and standards for secure data transfer from the England and Wales domestic and non-domestic EPC registers;
- technical procedures for how the data will be kept securely, and
- processes and standards for data loading, storage and maintenance including periodic data removal and disposal; and the nature and detail of contract with individual addresses, including assurances regarding the accuracy and impartiality of information and advice to be given.

b) to provide the Secretary of State with the power to give access to anonymised³ data.

- In determining such decisions on access to the data the Secretary of State would be guided by the following:
 - Level 1: Access to data including address level data – other organisations on application to the Secretary of State for purposes of research and policy development. This will include address level data which we consider to be personal information; there will be no retrospective access. If we were to grant this access we would need to inform individuals so that they are aware of where their information is going to be disclosed and for what purpose. Where access is granted such access would be conditioned as specified in a letter of agreement.
 - Level 2: Access to address level data – LAs for purpose of developing targeted local Carbon Frameworks. All LAs would need to enter into a letter of agreement.
 - Level 3: Access to anonymised¹ data either as published reports or by the provision of ad hoc reports to meet bespoke requests to allow more sophisticated analysis for research purposes – for example other Government Departments and agencies and research and academic institutes.
 - Level 4: Access to individual EPCs by those with the specific reference number, in line with the current 2007 Regulations.
 - DECAs: Public access to individual DECAs and aggregated data reports to show general statistics and trends.

¹ Anonymisation means the effectively permanent removal of personal identifiers from personal data.

- We have developed these different levels of access with a view to restricting potential access to personal information only to those who require it for a specified function.
- In practice the Secretary of State would decide on whether to allow access to the data based on an assessment of the merits of each application. In addition, we also propose to give LAs access to address level data for dwellings with EPCs in their area. This would provide the opportunity for LAs to identify properties with low energy efficiency, to the occupiers of which they may then offer advice and support on energy efficiency.
- We propose handling data relating to DECAs differently to EPCs, as they are already publicly accessible documents under the current 2007 Regulations, albeit in a fairly constrained way. We propose to publish a list of currently available DECAs. We are considering where this information will be hosted and how it will be presented to the public. One possibility is that the information would be published on the England and Wales non-domestic EPC register. We propose that the proposals should apply to all EPCs, DECAs and ACR.
- A Summary of Responses to the consultation paper will be available on the Department's website.
- The Department has consulted the Information Commissioner on the question of disclosures from the register of energy performance certificates generally and the Commissioner's view was that the information to be disclosed was not prima facie personal data. We are currently consulting with the Ministry of Justice in relation to the proposal. The Ministry of Justice have approved the approach taken in relation to the processing of personal data. We have chosen to treat this material as personal data and take the appropriate steps to comply with the Data Protection Act 1998 (DPA 1998) requirements for the handling of personal data.
- Under the first Data Protection Principle, personal data are required to be processed 'fairly' and 'lawfully'. This means that we must have the vires to carry out the processing (or the function to which the processing of the data is ancillary); that the processing is not in breach of the law of confidence; that the processing is not in breach of any other statute or common law principle and that it is compliant with the Human Rights Act (Article 8 of the ECHR in particular).
- For data that is anonymised (i.e. no specific address or individual can be anonymised), there are fewer legislative constraints and the DPA 1998 would not apply; this provides us with greater scope to make the data available.
- In relation to rights under Article 8 of the European Convention on Human Rights it was considered that any interference would be proportionate in

that it is necessary in relation to a legitimate aim and includes adequate safeguards. Disclosure of an individual's personal data engages in particular rights under Article 8(1) of the European Convention on Human Rights (ECHR). We need to ensure that the proposal to share data does not interfere with an individual's right to respect for his private and family life, his home and his correspondence. While this is not an absolute right, any interference must be justified in accordance with the law, proportionate, in pursuit of a legitimate aim and necessary in a democratic society.

- There are a several reasons for widening access to the data including additional requests from Government departments and their agencies to have access to the data to support efforts to tackle climate change, growing demand for research and better targeted energy efficiency support and a drive for greater access to government-held data.
- Energy performance data can play a vital role in delivering the Government's heat and energy savings objectives because it provides key information about a building's carbon emissions and the types of improvements that can be made to increase buildings energy efficiency. This information is both valuable as a basis for encouraging and incentivising people to improve the energy efficiency of buildings and for supporting the policy developments and actions the public, private and voluntary community sectors.
- In August 2009 revised Regulations came into force to allow us to share EPCs and accompanying recommendation reports relating to sales of dwellings, and that show a low energy efficiency (F or G) rating, to the Energy Savings Trust (EST). This data allows EST to provide owners and occupiers of those dwellings with information on measures that may be taken to improve the energy performance of the dwelling and on any financial assistance that may be available for such measures, as part of a Government-funded Green Homes initiative.
- We have also considered the common law obligations of confidence. Our view is that any interference with Convention Rights as a result of these proposals is justified given the benefits which would result provided we put in place safeguards to ensure that those with whom the data is shared adhere to the principles set out in the DPA 1998. In relation to confidentiality, insofar as the proposal could be taken to involve any use of confidential material it was considered that just cause and public interest would be established on the basis of the policy aims and in relation to the narrow scope of the information and safeguards surrounding its disclosure.

Documentation phase

- The ICO Privacy Impact Assessment Handbook states that 'the purpose of the documentation phase is to document the process and the outcomes. The deliverable is a PIA report. Depending on the context, this might be a relatively brief 'note to file', with copies to relevant parties; but circumstances

may justify a more carefully-prepared document.' In this instance this document will be placed on file.

Review and audit phase

- The ICO Privacy Impact Assessment Handbook states that 'the purpose of this section is to ensure that the design features arising from the PIA are implemented and are effective. The deliverable is a review report. Once again, in some contexts a 'note to file', with copies distributed to relevant parties, might be sufficient to achieve this requirement. In other cases, considerably greater investment may be warranted.'
- All the necessary steps have been taken to implement the design features arising from the PIA.