

Legal framework on energy performance of buildings amended

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Introduction

The recently introduced Decree-Law 194/2015 made a number of changes to Decree-Law 118/2013 and Decree-Law 53/2014.

Decree-Law 118/2013 provides the legal framework for the energy performance of buildings. It was enacted to transpose EU Energy Performance Directive (2010/31/EC) into national law and implemented the National System for the Energy Certification of Buildings, which is divided into the Regulation on Energy Performance of Residential Buildings and the Regulation on Energy Performance of Non-Residential Buildings.

Decree-Law 53/2014 provides a transitory regime that applies to the restoration of buildings or apartments built over 30 years ago or located in areas of urban renewal that are used mainly for housing.

Main changes

The changes that Decree-Law 194/2015 introduced were motivated by the need to improve energy efficiency, specifically the energy performance of buildings, and the need to update Decree-Law 118/2013.

The changes aim to increase the demand for energy efficiency, which may prove crucial to achieving the 2020 national energy efficiency targets. Further, the changes aim to reflect the international community's guidelines and best practice in accordance with up-to-date technology and know-how in the energy efficiency and thermal comfort sectors as well as World Health Organisation reference values.

Scope of Decree-Law 118/2013

Previously, the scope of Decree-Law 118/2013 excluded industrial, agricultural or livestock facilities and buildings used as warehouses, car parking or workshops. However, pursuant to the changes introduced by Decree-Law 194/2015, the criteria for such exclusions are stricter. Exclusions for such cases under Decree-Law 118/2013 now cover only:

- non-residential industrial, agricultural or livestock facilities which have reduced energy needs or are used in an activity already subject to a sectorial agreement on energy performance; and
- buildings used as warehouses, car parking or workshops with a human presence of not more than two hours per day.

AUTHORS

[Catarina Brito Ferreira](#)



[Martim Vaz da Silva](#)



Scope of energy performance regulations

The scope of the Regulation on Energy Performance of Residential Buildings and the Regulation on Energy Performance of Non-Residential Buildings was widened by restricting exemptions. Monuments and buildings that are classified, awaiting classification or of special architectural or historic interest are exempt from these regulations only if compliance with certain minimum energy performance requirements could alter their character or appearance in an unacceptable way.

The legislature's aim to reduce the number of exemptions is clear, but the law provides no definition of what constitutes an unacceptable change to a building's character or appearance, which may pose some difficulties regarding enforcement.

Technical, functional or economic unfeasibility

Under the changes introduced by Decree-Law 194/2015, an existing building that undergoes major renovations may be exempt from the energy and thermal efficiency requirements of Decree-Law 118/2013 only for reasons of technical, functional or economic unfeasibility, as recognised by the General Directorate for Energy and Geology (which manages the National Energy Certification System).

If the directorate recognises an instance of technical, functional or economic unfeasibility, the technical author of the project may implement alternative solutions for the building or area in question, provided that it can prove the unfeasibility of compliance with Decree-Law 118/2013 and that the alternative solutions proposed will not aggravate the building's energy performance, circumstances which must be documented in the building's energy performance certificates.

For further information on this topic please contact [Catarina Brito Ferreira](#) or [Martim Vaz da Silva](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 74 57) or email (cbferreira@mlgts.pt or mvsilva@mlgts.pt). The [Morais Leitão Galvão Teles Soares da Silva & Associados](#) website can be accessed at www.mlgts.pt.

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