

FENSA SCHEME RULES

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INTRODUCTION

These are the Rules of the Competent Person Self-Certification Scheme for the installation of replacement windows, rooflights, roof windows and doors in existing dwellings in England and Wales operated by FENSA Limited ("FENSA") in compliance with Building Regulations. FENSA is a subsidiary company of the Helix Group Limited. Please note: Registered Businesses are not shareholders in FENSA Limited.

The FENSA Scheme is based on criteria set out by Statutory Instrument 2010 No. 2214 entitled the Building Regulations 2010 and the Conditions of Authorisation for Competent Person Self-Certification Schemes issued by the Department for Communities and Local Government on 6 June 2012.

The statutory instrument under which FENSA operates is available from http://www.legislation.gov.uk/uksi/2010/2214/pdfs/uksi_20102214_en.pdf

FENSA is required to establish and maintain procedures for registering businesses to self-certify installations. It is also required to set up procedures for maintaining records of such self-certified installations, advise local authorities of such self-certified installations, produce certificates of compliance for consumers, carry out inspections and other measures to ensure the compliance of a Registered Business' work.

These Rules constitute a binding agreement between FENSA and each Registered Business.

DEFINITIONS

In these Rules the following terms shall have the following meanings:

"Data" means the Registered Business Data and Third Party Data collected by FENSA from the Registered Business;

"DCLG": the Department for Communities and Local Government (and any successor body thereto performing similar functions);

"DECC": the Department of Energy and Climate Change (and any successor body thereto performing similar functions);

"DPA": the Data Protection Act 1998, including all amendments and secondary legislation related thereto and codes of practice issued by the Information Commissioner from time to time;

"FENSA Logo": the logo to be used by Registered Businesses to indicate their registration under the FENSA Scheme, as notified to Registered Businesses from time to time;

"FENSA Scheme": the Self-Certification Scheme for the installation of replacement windows, rooflights, roof windows or doors in existing dwellings in England and Wales operated by FENSA Ltd;

"Glazing Notifications Data": has the meaning given in Rule 8.6.1;

"Group Company": any member of FENSA's group, which means its subsidiaries, its ultimate holding company and its subsidiaries, as defined in section 1159 of the Companies Act 2006;

"Housing Association": either (a) a housing association or registered social landlord registered in accordance with the Housing and Regeneration Act 2008 or (b) such other company or body as is (i) a company or body approved by the Homes and Communities Agency ("**HCA**") and so that references to HCA shall include any successor or replacement body) as a qualified recipient of social housing grant and (ii) subject to HCA control in respect of affordable housing;

"Installation": the installation of any replacement windows, rooflights, roof windows or doors in an existing dwelling in England and Wales;

"MTC" has the meaning given in Rule 7.1;

"NEED": DECC's National Energy Efficiency Data-Framework;

"Obligatory Information": updates and information regarding the Building Regulations and any other relevant regulations or laws which the Registered Business is obliged to receive as a condition of registration with FENSA;

"PAYG Registered Business": a Registered Business which has chosen to be inspected under the Pay as You Go surveillance route operated by FENSA from time to time;

"Registered Business": a business which is registered under the FENSA Scheme;

"Registered Business Data": has the meaning given in Rule 8.2.1;

"Sites": www.fensaonline.com and www.fensa.org.uk; and

"Third Party Data": has the meaning given in Rule 8.3.1.

1. APPLICATIONS, CONTINUING OBLIGATIONS AND FEES

1.1 Initial Registration and Application Procedure

Registration with FENSA shall be open to any business (whether a limited company, partnership, firm or other unincorporated body), which meets the eligibility criteria set out in these Rules. To be eligible for registration with FENSA the business must:

- 1.1.1. carry on a trade of installation of replacement windows, rooflights, roof windows and/or doors in dwellings in England and Wales;
- 1.1.2. not be listed on the Competent Persons Scheme Register as a result of non-compliance with Building Regulations or having breached the rules of any other Competent Person Scheme;
- 1.1.3. meet FENSA's requirements from time to time in relation to Minimum Technical Competences, the details of which as at the date of publication of these Rules are set out in Annex A;
- 1.1.4. agree to be bound by these Rules and sign a declaration in such form as FENSA shall require (a copy of which signed declaration may be submitted electronically to FENSA);
- 1.1.5. submit to FENSA a written application (in either electronic or hard copy) for registration using the Application Form specified by FENSA from time to time;
- 1.1.6. provide FENSA with details of the bank account(s) of the business and authorise FENSA to obtain bank references as required, in order to satisfy FENSA as to the continued ability of the business to meet its financial obligations to FENSA under these Rules;
- 1.1.7. establish a direct debit in favour of FENSA in relation to its financial obligations to FENSA under these Rules;
- 1.1.8. save where the Registered Business is a PAYG Registered Business, register with an insurance provider approved by FENSA in connection with the provision of an Insurance Backed Guarantee policy as referred to in Rules 1.2.15 and 1.2.16;

- 1.1.9. have in place adequate employer's liability and public liability insurance, at such levels as prescribed from time to time by FENSA.

In the case of a refusal to register any applicant under the FENSA Scheme, the applicant may appeal to the Appeals Committee (see Rule 5).

A successful application to register with FENSA does not confer on the applicant any form of membership of the Glass and Glazing Federation or any other Trade Organisation associated with FENSA. Please note that there is no additional requirement for a Registered Business to be a member of the Glass and Glazing Federation.

1.2 Continuing Obligations

Registered Businesses must comply with the following obligations:

- 1.2.1. To continue to meet the eligibility criteria set out in Rule 1.1.
- 1.2.2. To ensure that all building works and all Installations carried out by or on behalf of the Registered Business are compliant with Building Regulations, are carried out with reasonable care and skill and that all products supplied are of satisfactory quality.
- 1.2.3. To comply with FENSA's requirements in respect of Minimum Technical Competence as amended from time to time, (the current version of which requirements as at the date of publication of these Rules are set out at Annex A) and all such other requirements relating to self-certification of compliance with Building Regulations as are notified by FENSA from time to time;
- 1.2.4. To ensure that any arrangements to subcontract any part of an Installation to any third party shall include requirements that the sub-contractor is compliant with all aspects of the relevant Building Regulations and to ensure that a written contract is entered into with any sub-contractor to ensure documented evidence is available to confirm compliance with relevant Building Regulations and these Rules.
- 1.2.5. To accept responsibility for compliance with all requirements of the Building Regulations in respect of all work carried out under a sub-contract.
- 1.2.6. To assess the respective skills and competence of operatives assigned to the installation tasks required for each Installation and to ensure that any sub-

- contractors are competent to carry out the work they are sub-contracted to perform.
- 1.2.7. To pay by direct debit the registration fees, transaction processing charges, inspection charges and any other charges levied by FENSA from time to time as notified by FENSA to the Registered Business. The current fees and charges can be found on the FENSA website and will be provided in writing on request.
 - 1.2.8. To certify compliance with Building Regulations upon completion of any Installation.
 - 1.2.9. To provide to FENSA information related to each Installation carried out by or on behalf of the Registered Business including customer name and address and required installation details within such time of completion as FENSA may require from time to time, and in a form acceptable to FENSA. **For the purposes of compliance with data protection laws, it is the Registered Business' responsibility to obtain the customer's permission for their details to be forwarded to FENSA and those entities which process data on its behalf and for such details to be used in the manner set out from time to time by FENSA.**
 - 1.2.10. To agree to a sample of Installations being inspected by FENSA inspectors and to promptly (and in any event within such period as shall be reasonably specified by FENSA) rectify any failure to comply with relevant Building Regulations revealed by such inspections as referred to in any improvement notice issued by FENSA prior to re-inspection. Where the Registered Business is a PAYG Registered Business it agrees to up to 100% of Installations being inspected by FENSA inspectors.
 - 1.2.11. In the event of any doubt as to whether any Installation complies with Building Regulations, to provide such written evidence of compliance as FENSA shall require.
 - 1.2.12. To provide such information as FENSA may require from time to time in order to substantiate statements made on initial application, and to demonstrate that the Registered Business is continuing to comply with them and its obligations under these Rules.
 - 1.2.13. To provide each customer with a guarantee conforming to the requirements laid down by FENSA from time to time which shall include the rectification of any defect in the building works or products supplied in connection with each

Installation and whether relating to failure to comply with Building Regulations or otherwise.

- 1.2.14. Save where the Registered Business is a PAYG Registered Business, to provide each customer (other than a Local Authority or Housing Association) with an Insurance Backed Guarantee policy (conforming to requirements laid down from time to time by FENSA) to provide cover to the customer should the Registered Business, for whatever reason, cease to trade.
- 1.2.15. Save where the Registered Business is a PAYG Registered Business, to offer to provide to each customer being a Local Authority or Housing Association an Insurance Backed Guarantee policy (conforming to requirements laid down from time to time by FENSA) to provide cover to the customer should the Registered Business, for whatever reason, cease to trade.
- 1.2.16. Where deposits are taken, to ensure that indemnity insurance (conforming to requirements laid down from time to time by FENSA) is in place.
- 1.2.17. To comply with all applicable laws and regulations in force including without limitation applicable health and safety and waste disposal requirements.
- 1.2.18. To maintain adequate employer's liability and public liability insurance, at levels to be prescribed from time to time by FENSA.
- 1.2.19. To notify FENSA immediately in writing if the Registered Business ceases to trade for any reason including, without limitation, through bankruptcy, insolvency or any similar process.
- 1.2.20. To notify FENSA immediately in writing if any change occurs to the Registered Business (including changes to its ownership, management, services, resources or staff) which may affect its ability to comply with these Rules or FENSA's requirements in relation to Minimum Technical Competence.
- 1.2.21. Not to be or become registered with, or a member of, any other Competent Persons Scheme relating to the replacement of windows, rooflights, roof windows or doors in existing dwellings in England and Wales whilst the Registered Business is registered with the FENSA Scheme.
- 1.2.22. To provide each customer with a written contract in relation to any Installation.

- 1.2.23. To have in place a written customer complaints procedure and to inform all customers of such complaints procedure as well as the FENSA Home Owner Complaints Procedure.
- 1.2.24. In dealing with any customer complaint, to offer the same level of cooperation with local consumer advisers or any other intermediary acting on behalf of a customer when making a complaint as it would to the complainant.
- 1.2.25. To abide by the FENSA Home Owner Complaints Procedure in force from time to time as published by FENSA.
- 1.2.26. To keep written records of all complaints by customers of the Registered Business whether relating to compliance with Building Regulations or otherwise and to make copies of such records available to FENSA on demand.
- 1.2.27. **Not to use registration or notification of an Installation under the FENSA Scheme as leverage for payment of any sums owing by any customer. Registered Businesses shall not refuse to register or notify any Installations or to supply any relevant certifications due to issues with customers regarding payment.**
- 1.2.28. To be responsible for any costs and expenses incurred by FENSA arising directly or indirectly out of any breach by the Registered Business of these Rules.
- 1.2.29. To comply with the requirements of FENSA in relation to certification of the Registered Business under the FENSA Scheme as notified to the Registered Business from time to time including those requirements set out in the document published by FENSA and available at www.fensa.co.uk entitled Registered Business Inspection Cycle.

1.3 Fees and Surcharges

The Registered Business is responsible for any charges related to its registration under the FENSA Scheme and is required to maintain a current and up to date direct debit mandate for the duration of its registration.

The Registered Business will be responsible for all such costs and surcharges at such rates as shall be notified by FENSA from time to time including without limitation the following:

- 1.3.1. Fees for inspections;
- 1.3.2. Fees for the processing of Installation notifications;
- 1.3.3. Any Fees relating to additional inspections which may arise due to failure to comply with relevant Building Regulations or any complaint by a customer; and
- 1.3.4. Administration fees of such reasonable amount as shall be determined by FENSA from time to time relating to the cancellation of any direct debit mandate or any invalid direct debit for which the Registered Business is responsible.

All charges and surcharges are exclusive of VAT which shall be payable in addition. All payments shall be made in full without deduction, set off or withholding for any reason. The fees and surcharges payable under the FENSA Scheme are published on the FENSA website.

If the Registered Business fails to make payment of any sums due to FENSA then without prejudice to any other rights or remedies of FENSA, it shall be entitled to charge interest on the sum outstanding from the due date for payment until payment is received in full by FENSA at the rate applicable from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

2. INSPECTIONS AND SURVEILLANCE

Registered Businesses will be required to submit to routine inspections and performance reviews to ensure that compliance with all relevant Building Regulations and these Rules is maintained. FENSA shall be entitled to engage third parties to carry out any such inspections or performance reviews. Registered Businesses must cooperate with any such inspections and performance reviews and provide all such assistance, information and access to premises as may be reasonably required by FENSA in relation to such inspections and performance reviews. Performance reviews are intended to assist the Registered Businesses with any issues surrounding their registration and will be levied against the Registered Business at such times, as FENSA deems necessary. Registered Businesses will be responsible for paying FENSA's charges in relation to inspections and performance reviews.

2.1 Inspections

- 2.1.1. Registered Businesses will be subjected to routine inspections in order for FENSA to ensure that each Registered Business is complying with Building Regulations and these Rules.
- 2.1.2. The number of inspections will be determined by FENSA in its absolute discretion and the Registered Business will be responsible for any relevant costs. Where the Registered Business is a PAYG Registered Business it agrees to up to 100% of Installations being inspected by FENSA inspectors.
- 2.1.3. The Registered Business acknowledges and agrees that during the installation process customers are entitled to request an inspection on any Installation being carried out by a Registered Business the costs of which shall be borne by the Registered Business.

2.2 Switching between surveillance routes

- 2.2.1 Subject to Rule 2.2.3 a Registered Business shall be entitled to switch from being an Original Registered Business to a PAYG Registered Business by giving not less than 30 days' written notice to FENSA and providing to FENSA such documentation in support of such request as FENSA shall require from time to time.

- 2.2.2 Subject to Rule 2.2.3 a PAYG Registered Business shall be entitled to switch from being a PAYG Registered Business to an Original Registered Business by giving not less than 30 days' written notice to FENSA and providing to FENSA such documentation in support of such request as FENSA shall require from time to time (including a revised declaration relating to MTC compliance).
- 2.2.3 A Registered Business shall not be entitled to switch between being an Original Registered Business and a PAYG Registered Business more than once in any 12 month period.

3. COMPLAINTS

The Registered Business must attempt to resolve any issues raised by their customers in the first instance under the Registered Business' own complaints procedure with a view to avoiding complaints being made to FENSA under the FENSA Home Owner Complaints Procedure. FENSA will investigate any complaint received, which relates to non-compliance with any aspect of relevant Building Regulations. The Registered Business must comply with the provisions of the FENSA Home Owner Complaints Procedure published by FENSA, as amended from time to time.

3.1 Complaints about Registered Businesses

- 3.1.1. If the Registered Business accepts any complaint, which is notified to it by FENSA under the FENSA Home Owner Complaints Procedure, it will have a period of time in which to confirm this in writing and complete any necessary remedial work, the length of such period being as set out in the FENSA Home Owner Complaints Procedure.
- 3.1.2. Should the Registered Business reject the complaint, fail to respond to FENSA or fail to complete any necessary remedial work within the period of time referred to in Rule 3.1.1, the Installation may be subject to a Building Regulations inspection. The results of that inspection will be made available to both the Registered Business and to the relevant consumer. The Registered Business will be required to carry out at its own cost and expense any work specified in the report resulting from such inspection within such period as FENSA shall specify. If the inspection reveals any non-compliance with Building Regulations, the Registered Business shall reimburse to FENSA the costs of such inspection.

- 3.1.3. Failure to complete any remedial work required as a result of any inspection referred to in Rule 3.1.2 within such period as FENSA shall specify may result in suspension and subsequent termination of registration under the FENSA Scheme in accordance with Rules 4.2 and 4.3.

The Registered Business acknowledges that FENSA is unable to assist with contractual disputes other than those relating to non-compliance with relevant Building Regulations and the FENSA Home Owner Complaints Procedure is only available in relation to complaints relating to compliance with relevant Building Regulations. FENSA cannot, whether by way of any decision under the FENSA Home Owner Complaints Procedure or otherwise, interfere with or overrule any decision of any court.

3.2 Complaints about FENSA

- 3.2.1. Complaints about FENSA or the FENSA Scheme must be submitted in written format including all relevant information to the Managing Director of FENSA.
- 3.2.2. FENSA will work with the complainant to achieve a resolution to the complaint where possible.
- 3.2.3. Complaints regarding FENSA staff will be fully investigated and appropriate action taken.
- 3.2.4. Any complaint made about FENSA, which cannot be resolved between the complainant, and FENSA to the satisfaction of the Registered Business may be referred to the Appeals Committee (see Rule 5).

4. LEAVING FENSA

4.1 Cancellation of Registration by Registered Business

The Registered Business may cancel its registration under the FENSA Scheme at any time by giving to FENSA not less than 30 days' written notice of cancellation. Notwithstanding such cancellation, the Registered Business will remain bound by the following obligations:

- 4.1.1. The Registered Business will remain responsible for any outstanding debts to FENSA including, without limitation, outstanding payments for inspections and any unpaid sums arising out of any cancelled direct debits;

- 4.1.2. The Registered Business must ensure that any outstanding works (whether remedial or otherwise) in respect of any Installation in relation to which any contract with a customer was entered into whilst the Registered Business was registered under the FENSA Scheme is completed to Building Regulations standards and requirements. In respect of any such Installation the Registered Business shall be required to abide by these Rules as if the Registered Business remained registered under the FENSA Scheme;
- 4.1.3. The Registered Business must cease all use of the FENSA name and logo immediately as set out in Rule 4.4.1 and comply in all other respects with such Rule.

Failure to adhere to any of these conditions will be deemed to amount to a breach of the FENSA Rules (notwithstanding the termination of the registration under the FENSA Scheme) and the details of such breach may be made available to other operators of Competent Persons Schemes and other interested parties (including without limitation LABC and relevant Government Departments) and may be entered in the Competent Persons Scheme register.

4.2 Suspension of Registration by FENSA

FENSA may suspend the registration of any Registered Business by giving written notice to the Registered Business for any of the following reasons:

- 4.2.1. the Registered Business fails to notify FENSA of any completed Installation undertaken by or on its behalf in any 12 month period;
- 4.2.2. the Registered Business refuses to carry out remedial work in respect of any Installation undertaken by or on its behalf where such remedial work is required following any inspection as referred to in Rule 2.1 or following any complaint by a customer;
- 4.2.3. the Registered Business has, in the sole opinion of FENSA, an unacceptable record of failure to comply with Building Regulations, having regard to the volume of Installations notified, the number of instances of non-compliance and its record of customer complaints;
- 4.2.4. the Registered Business defaults on any payments related to their registration under the FENSA Scheme;
- 4.2.5. the Registered Business fails to maintain a current and up to date direct debit mandate as required by Rule 1.3;

- 4.2.6. the Registered Business fails to register any Installation as required by Rule 1.2.10;
- 4.2.7. the Registered Business has made any false declaration in connection with its application for registration with the FENSA Scheme;
- 4.2.8. the Registered Business commits any breach of these Rules (whether or not being a material breach);
- 4.2.9. the Registered Business refuses to participate in or comply with any requirements of the FENSA Home Owner Complaints Procedure;
- 4.2.10. save where the Registered Business is a PAYG Registered Business, the Registered Business fails to remain registered with an approved Insurance Backed Guarantee provider as required by Rules 1.1.8, 1.2.15 and 1.2.16;
- 4.2.11. the Registered Business becomes insolvent or has entered into liquidation either compulsory or voluntary (save for the purpose of a bona fide solvent amalgamation or reconstruction) or had an administrative receiver, receiver or administrator appointed in respect of the whole or any part of its assets or made an assignment for the benefit of or composition with its creditors or threatens to do any of these things or if anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Registered Business; or
- 4.2.12. the Registered Business commits any act of bankruptcy or suffer the filing of a petition in bankruptcy or makes any arrangement or composition with creditors or takes or suffers any similar actions in consequence of a debt.

4.3 Termination of Registration by FENSA

- 4.3.1. FENSA shall be entitled to terminate the registration of the Registered Business with the FENSA Scheme forthwith by giving written notice to the Registered Business if the Registered Business does not lodge a formal appeal as referred to in Rule 4.4.6 in respect of any decision to suspend the Registered Business within 28 days of the Registered Business being notified of such suspension.
- 4.3.2. If the Registered Business lodges a formal appeal within the time limit set out in Rule 4.3.1 the suspension of the Registered Business shall continue until the Appeal process has been completed. If following completion of such Appeal process the decision to suspend is upheld the registration of the Registered Business with the FENSA Scheme shall automatically terminate.

4.4 Consequences of Suspension or Termination of Registration

- 4.4.1 During the period of any suspension of registration and following any termination of registration under the FENSA Scheme, the Registered Business must cease immediately to describe itself as a FENSA registered business, cease any use of the FENSA name or logo (whether on any stationery, promotional materials, vehicles, equipment or otherwise), immediately cease distribution of all items on which the FENSA name or logo is displayed, cease to display the FENSA company registration certificate, cease to make any references to FENSA that might mislead the reader about the status of the business and take such other action as required by FENSA. If so requested by FENSA the Registered Business shall provide confirmation in writing certified by an officer of the Registered Business that it has complied with such requirements.
- 4.4.2 During the period of any suspension of registration and following any termination of registration under the FENSA Scheme, the Registered Business will be removed from the database of FENSA Registered Businesses, will be unable to register any Installation under the FENSA Scheme and will be unable to self-certify any Installation under the FENSA Scheme as being compliant with Building Regulations.
- 4.4.3 For the avoidance of doubt the Registered Business shall not be entitled to any refund of any annual registration fee if its registration is terminated whether pursuant to Rule 4.1 or Rule 4.3.
- 4.4.4 During the period of any suspension of registration and following any termination of registration under the FENSA Scheme, the Registered Business will remain responsible for any outstanding debts to FENSA including, without limitation, outstanding payments for inspections and any unpaid sums arising out of any cancelled direct debits.
- 4.4.5 During the period of any suspension of registration and following any termination of registration under the FENSA Scheme, the Registered Business must ensure that any outstanding works (whether remedial or otherwise) in respect of any Installation in relation to which any contract with a customer was entered into whilst the Registered Business was registered under the FENSA Scheme is completed to Building Regulations standards and requirements. In respect of any such Installation the Registered Business shall be required to abide by these Rules as if the Registered Business remained registered under the FENSA Scheme.

- 4.4.6 In the event of receipt of notice of suspension of the registration of a Registered Business with the FENSA Scheme, the Registered Business will have the right of appeal to an independent Appeals Committee in accordance with Rule 5. Any such appeal must be lodged within 28 days of the Registered Business being notified of such suspension.
- 4.4.7 If the decision to suspend the registration of a Registered Business is revoked pursuant to the Appeals process referred to in Rule 5, the registration of the Registered Business shall be re-activated within 7 days of such revocation and from that time the Registered Business shall continue to be entitled to register Installations under the FENSA Scheme and to self-certify Installations. FENSA shall have no liability to the Registered Business whatsoever or howsoever arising in relation to any decision to suspend the Registered Business irrespective of any decision by the Appeal Committee to revoke any suspension.
- 4.4.8 If the registration of a Registered Business with the FENSA Scheme is terminated for any reason relating to non-compliance with Building Regulations or any breach of these Rules the details of such termination (including the reasons for termination) may be made available to other operators of Competent Persons Schemes and other interested parties (including without limitation LABC and relevant Government Departments) and may be entered in the Competent Persons Scheme register.

5. BREACH OF RULES AND APPEALS

Any breach of the FENSA Rules will be investigated in the first instance by FENSA and the appropriate sanctions as determined by FENSA will be applied which may include suspension pursuant to Rule 4.2.

The Registered Business shall be responsible for any breach of the Rules on the part of any manager, servant or any other person directly or indirectly employed by them or acting on their behalf.

5.1 Appeals

- 5.1.1 The FENSA Managing Director may refer to the Appeals Committee any specific matters on which he feels that further advice would be beneficial.
- 5.1.2 Appeals against decisions of FENSA (including suspensions of registration) shall be heard by the Appeals Committee within a reasonable time of the appeal being lodged.

- 5.1.3 The Appeals Committee is responsible for handling disputes between FENSA and an applicant for registration if their application is rejected and they wish to appeal such rejection.
- 5.1.4 The Appeals Committee is also responsible for handling disputes between FENSA and a Registered Business where such Registered Business is suspended from the FENSA Scheme and it wishes to appeal against such suspension.
- 5.1.5 The Chairman of the Appeals Committee will be appointed by the Board or the FENSA Impartiality Committee. The remaining members of the Appeals Committee shall be appointed by the Chairman of the Appeals Committee having regard to the need to ensure independence and impartiality of the committee members.
- 5.1.6 Rulings of the Appeals Committee shall be binding on Registered Businesses. Decisions of the Appeals Committee shall be issued in writing and notified to the Registered Business and FENSA as soon as reasonably practicable.
- 5.1.7 The rules and procedures governing appeals to the Appeals Committee shall be as determined from time to time by the FENSA Impartiality Committee.

6. FENSA LOGO USE

A guide to the use and reproduction of the FENSA Logo is available to FENSA Registered Businesses on the FENSA website. Registered Businesses are required to comply with such guide.

6.1 Use of the FENSA Logo and the FENSA Certificate

Only Registered Businesses are permitted to use the FENSA Logo, display the FENSA company registration certificate and/or make reference in any way to being FENSA registered. Registered Businesses shall not make use of the FENSA Logo or the FENSA company registration certificate in such manner as to bring FENSA into disrepute and shall not make any statement regarding its registration with the FENSA Scheme which in the opinion of FENSA is misleading, unauthorised or in breach of these Rules.

Any Registered Business failing to follow the provisions of this Rule 6 or the guidance referred to above must comply promptly with any instructions to correct the breach failing which FENSA shall be entitled to suspend or terminate the registration of the Registered Business with the FENSA Scheme.

6.2 No sub-licensing

The right to use the FENSA Logo and the FENSA company registration certificate may not be transferred, sold, sub-licensed, sub-contracted or otherwise disposed of by the Registered Business to any other person.

6.3 Reservation of Rights

Except as provided in these Rules a Registered Business shall have no rights in respect of the FENSA name or FENSA Logo, any intellectual property rights therein or any goodwill associated therewith and the Registered Business shall not acquire any rights in respect thereof. To the extent that any goodwill associated with the FENSA name or FENSA Logo accruing out of or by reason of use by a Registered Business is held by it, it shall be so held as bare trustee for the benefit of FENSA. The Registered Business shall on demand do all acts and execute all documents which may be necessary to confirm the title of FENSA to the same.

FENSA reserves the right to substitute, withdraw or amend the right to use any of the names or logos used in connection with the FENSA Scheme on giving notice to the Registered Business.

FENSA shall not be obliged to bring or defend proceedings whether for infringement or otherwise in relation to the FENSA name or FENSA Logo if it decides in its sole discretion not to do so and the Registered Business shall not be entitled to bring any action for infringement of any registered trademarks relating to the FENSA name or FENSA Logo under section 30 of the Trade Marks Act 1994 regardless of such decision.

7. MISCELLANEOUS PROVISIONS

7.1 Minimum Technical Competences (MTC)

In September 2012 DCLG approved a new measure of competency for installers and surveyors of replacement windows and doors in domestic properties. These are called Minimum Technical Competences (MTC).

All businesses applying for registration under the FENSA Scheme will need to be confirmed as MTC compliant by FENSA in order to be registered under the FENSA Scheme.

Further details relating to MTC compliance are set out in Annex A.

7.2 Interpretation

If in the interpretation of any of these Rules there shall be any dispute or difference of opinion, it shall be referred for resolution to a meeting of the FENSA Impartiality Committee whose decision on such matter shall be final and binding on all concerned.

7.3 Amendments to the Rules

These Rules may be amended by FENSA from time to time by notice given on the FENSA website at www.fensa.co.uk. Any such amendments shall become binding on all Registered Businesses 7 days after such notification taking place. If a Registered Business is unhappy with any such amendment it may terminate its registration under the FENSA Scheme by giving notice to FENSA within such 7 day period. In the event of such termination no refund of any fees shall be made to the Registered Business.

7.4 Confidentiality

Save as may be required to be disclosed by law or to any relevant governmental body or other authority or regulatory body, FENSA shall keep confidential all information received from the Registered Business which is a trade secret or otherwise of a confidential nature and shall not disclose the same to any third party without the prior consent of the Registered Business. The obligation of confidence set out in this Rule 7.4 shall not apply to information which is in the public domain or which enters the public domain (other than as a result of a breach by FENSA) or which was known to FENSA prior to its disclosure by the Registered Business.

7.5 Liability for Installations

Notwithstanding the issue of any certificate of compliance with Building Regulations and any inspections or performance reviews carried out by or on behalf of FENSA, the Registered Business acknowledges and agrees that it shall remain solely liable for any defects in any products or services provided by or on behalf of the Registered Business in respect of any Installation. The Registered Business shall indemnify FENSA from and against any claims, losses, damages, costs or expenses suffered or incurred by FENSA arising out of or in connection with any such products or services.

7.6 Limitation of Liability

Save in respect of death or personal injury caused by the negligence of FENSA or any fraudulent misrepresentation (for which FENSA shall have unlimited liability), FENSA shall have no liability to any Registered Business for any loss of profit (whether direct or indirect), loss of business, contracts or goodwill, loss of or corruption of data or for any indirect, special or consequential loss or damage which arises out of or in connection with the performance or non-performance by FENSA of any of its obligations under these Rules or in connection with the FENSA Scheme.

Save in respect of death or personal injury caused by the negligence of FENSA or any fraudulent misrepresentation (for which FENSA shall have unlimited liability) the maximum aggregate liability of FENSA to any Registered Business in contract, tort or otherwise howsoever arising out of or in connection with the performance or non-performance by FENSA of any of its obligations under these Rules or in connection with the FENSA Scheme shall be limited to 150% of the fees paid by such Registered Business to FENSA in the 12 months preceding the event or occurrence giving rise to such liability.

7.7 Force Majeure

FENSA shall have no liability for any delay in or failure to perform its obligations under the FENSA Scheme where the same is caused by any event or occurrence beyond the reasonable control of FENSA.

7.8 Waiver

The waiver or forbearance or failure of FENSA in insisting in any one or more instances upon the performance of any provisions of these Rules shall not be construed as a waiver or relinquishment of its right to future performance of such provision and the Registered Business' obligation in respect of such future performance shall continue in full force and effect.

7.9 Assignment

The Registered Business shall not be entitled to transfer, assign, sub-contract or otherwise dispose of (including by way of declaration of trust) any of its rights or obligations under these Rules.

7.10 Invalidity and Severability

If any provision of these Rules shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Rules which shall remain in full force and effect.

7.11 Notices

All notices given under these Rules may be given by hand or sent by pre-paid first class post, by email or by facsimile transmission, in the case of notice to the Registered Business to the address, email address or facsimile number most recently provided by it to FENSA and, in the case of notice to FENSA to the address, email address or facsimile number given on the FENSA website. Notices given by hand shall be deemed to have been served on the date of delivery and notice served by pre-paid first class post shall be deemed to have been served on the second day after posting save that in either case if such day is not a working day notice shall be deemed served on the next working day thereafter. Notices served by email or facsimile transmission shall be deemed to have been served on the date of transmission provided that a confirmation copy is also sent by pre-paid first class post within 24 hours after transmission.

7.12 Governing law and jurisdiction

These Rules shall be governed by English law. Any dispute arising under or in connection with these Rules shall be subject to the exclusive jurisdiction of the courts of England and Wales.

8. DATA PROTECTION AND PRIVACY

8.1 This Rule 8 (together with the FENSA Website Terms, the FENSA Website Privacy Policy and any other documents referred to in them) sets out the basis on which any personal data FENSA collects from the Registered Business, or that the Registered Business provides to FENSA, will be processed by FENSA. For the purposes of this Rule 8, any reference to FENSA shall include its Group Companies. FENSA's Group Companies may collect, process and use data in accordance with this Rule 8. For the purposes of the DPA, the data controller in relation to any personal data provided by the Registered Business and processed by FENSA is FENSA Limited of Newspaper House, 40 Rushworth Street, London, United Kingdom SE1 0RB.

8.2 Registered Business Data

8.2.1 FENSA may collect and process the following information provided by Registered Businesses:

- i. any information that the Registered Business provides on the FENSA application form (including, amongst others, the name, address, telephone number and email address of the Registered Business, the name of the Registered Business' insurance company provider, the Registered Business' company registration details and membership of trade associations, schemes and/or bodies);
- ii. details of consumer complaints;
- iii. any other information provided by a Registered Business by filling in forms on the Sites (including, but not limited to, information provided at the time of registering to use the Sites, when subscribing to the FENSA service, when posting material or requesting further services, or when reporting a problem with the Sites);
- iv. any correspondence between FENSA and the Registered Business;
- v. details of any transactions the Registered Business carries out through the Sites and of the fulfillment of any orders; and
- vi. details of the Registered Business' visits to the Sites including, but not limited to, traffic data, location data, weblogs and other communication data, whether this is required for FENSA's own billing purposes or otherwise and details of the resources that the Registered Business accesses.

(together, "Registered Business Data")

8.2.2 FENSA may use Registered Business Data in the following circumstances:

- i. where the Registered Business has consented to be contacted for such purposes;
- ii. for the purposes of carrying out FENSA's obligations arising from any contracts entered into between FENSA and the Registered Business;
- iii. to notify the Registered Business about changes to FENSA's service;
- iv. for the processing of financial payments;
- v. for market research, user trend studies, website user improvements and customer services;
- vi. to provide the Registered Business with information, products or services that it requests from FENSA or which FENSA believes may interest it; and

vii. to provide the Registered Business with Obligatory Information.

8.2.3 FENSA may supply Registered Business Data to third parties who undertake services on FENSA's behalf in relation to the operation of the FENSA Scheme to enable them to use Registered Business Data to perform such services.

8.2.4 It is a condition of registration with FENSA that all Registered Businesses receive the Obligatory Information. If a Registered Business does not want to receive the Obligatory Information, it may opt out by ending its registration with FENSA in accordance with Rule 4.1 of these FENSA Rules.

8.3 Third Party Data

8.3.1 FENSA may collect and process the following third party information:

- i. any information relating to third parties that the Registered Business provides by filling in forms on the Sites or on the FENSA application form (including, amongst others, the name and address of customers and any information about the Installation); and
- ii. any details relating to third parties provided in correspondence between FENSA and the Registered Business.
(together, "Third Party Data")

8.3.2 Third Party Data is used by FENSA:

- i. to inform local authorities about the notified installation and may be disclosed to local authorities for this purpose; and
- ii. for internal marketing research purposes (e.g. customer satisfaction surveys).

8.3.3 Subject to Rules 8.6.1 and 8.6.2 FENSA does not sell, trade or rent Third Party Data.

8.3.4 If the Registered Business does not want FENSA to use Third Party Data as set out in Rule 8.3.2(ii) above the Registered Business may opt out by writing to FENSA at Newspaper House, 40 Rushworth Street, London SE1 0RB or by email to marketing@fensa.org.uk.

8.3.5 The Registered Business hereby confirms that it has the right to provide the Data to FENSA for the purposes set out in these Rules. The Registered Business confirms that all customers have given their valid written consent and, where required under the DPA, their explicit consent to the provision of the Data by the Registered Business to FENSA and to the processing of the Data by FENSA for such purposes.

8.4 Storage of the Data

- 8.4.1 The Data will be stored on FENSA's secure servers. Where FENSA has given the Registered Business (or where the Registered Business has chosen) a password which enables it to access certain parts of the Sites, the Registered Business is responsible for keeping this password confidential and should not share it with anyone. By submitting the Data, the Registered Business agrees to the transfer, storing and/or processing of the Data as set out in these Rules.
- 8.4.2 FENSA will take all steps reasonably necessary to ensure that the Data is treated securely and in accordance with these Rules. Unfortunately, the transmission of information via the internet is not completely secure and therefore, although FENSA will do its best to protect the Data, it cannot guarantee the security of the Data transmitted to the Sites. Any transmission of Data by the Registered Business is at the Registered Business' own risk. Once FENSA has received the Data, it will use strict procedures and security features to try to prevent unauthorised access.

8.5 IP Addresses

FENSA may collect information about the Registered Business' computer, including, where available, its IP address, operating system and browser type, for system administration and to report aggregate information to FENSA's advertisers. This is statistical data about FENSA's users' browsing actions and patterns and does not identify any individual.

8.6 Disclosure of the Data

- 8.6.1 FENSA may provide access to certain Data, namely energy efficiency data relating to glazing installations at properties ("Glazing Notifications Data"), to DECC solely for the purpose of research and statistical analysis as part of NEED and not for any commercial purpose or for any form of financial exploitation. DECC may publish outputs of the statistical analysis carried out using the Glazing Notifications Data and an anonymised version of NEED incorporating the Glazing Notifications Data, provided that no individual person or property can be identified from such published data, or from the published data when combined with other information to which the person receiving the published data has access.

8.6.2 FENSA may also disclose the Data to third parties:

- i. in the event that FENSA sells or buy any business or assets, in which case it may disclose the Data to the prospective seller or buyer of such business or assets;
- ii. if FENSA or substantially all of its assets are acquired by a third party, in which the Data will be one of the transferred assets; and
- iii. if FENSA is under a duty to disclose Registered Business Data and/or Third Party Data in order to: (a) comply with any legal obligation;(b) enforce or apply its terms of use, privacy policy or these FENSA Rules; or (c) protect the rights, property, or safety of FENSA and its customers. This may include exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction; and
- iv. where such third parties provide any services to FENSA relating to the operation of the FENSA Scheme solely to enable them to use the Data to perform such services.

8.7 Links

The Sites may, from time to time, contain links to and from the websites of FENSA's partner networks, advertisers and affiliates. If the Registered Business follows a link to any of these websites, please note that these websites have their own privacy policies and that FENSA does not accept any responsibility or liability for these policies. The Registered Business should check these policies before it submits any personal data to these websites.

FENSA RULES: ANNEX A - Minimum Technical Competency Requirements

The minimum technical competency requirements, together with the routes for demonstrating compliance, are detailed on the DCLG website <https://www.gov.uk/competent-person-scheme-current-schemes-and-how-schemes-are-authorised#minimum-technical-competence-mtc-requirements-for-competent-person-schemes>

Registered Businesses which register under the FENSA Scheme must be able to demonstrate that they are able to satisfy these competency requirements. The competencies may be held by a number of different persons but shall demonstrate sufficient knowledge within the organisation and sufficient competent resource to adequately supervise others. The Registered Business must ensure a competent person is on site at each Installation throughout the period of the installation work.

At least one operative per fitting team employed by Registered Businesses and all surveyors shall hold an individual competency card and/or qualification for the scope of work that they undertake*. The Registered Business shall make details of these known to FENSA who shall maintain a register of approved surveyors and installers.

*** PAYG Registered Businesses' operatives and surveyors do not need to hold an MTC card or hold qualifications for the scope of the work they undertake. The PAYG Registered Business must provide FENSA with details of how they deem their operatives competent to perform the work carried out by them. A number of years experience in the industry is an acceptable route to demonstrate competence. The management of Competency by the Registered Business, and of the associated operatives, will be evaluated by FENSA against the MTC requirements.**