

Insights and Commentary from Dentons

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THE ENERGY (SOLAR WATER HEATING) REGULATIONS, 2012



Introduction

The Energy Act mandates the Cabinet Secretary in charge of Energy (the “Cabinet Secretary”) to promote development and use of renewable energy technologies in Kenya. In accordance with this law, the Cabinet Secretary enacted the Energy (Solar Water Heating) Regulations, 2012 (the “Regulations”) which came into operation on the 25th day of May 2017.

Notable Requirements

The Regulations require all premises with hot water requirements of a capacity exceeding one hundred litres per day, to install and use solar water heating systems. All premises (both residential and commercial) are required to contribute at least an annual solar contribution of 60% to the premises’ hot water demand.

How does one determine their premises’ hot water demand?

The Regulations provide a formula for calculating each premises’ hot water demand. The minimum hot water demand threshold for compliance includes;

	Premises	Minimum daily demand
1.	Domestic residential houses	3 bedrooms
2.	Educational institutions such as colleges and boarding schools	20 students
3.	Health institutions such as Hospitals, Health centres, clinics and similar medical facilities	2 Beds
4.	Hotels, Hostels, Lodges and similar premises providing boarding services	4 beds
5.	Restaurants, Cafeterias and similar eating places	20 meals
6.	Laundries	20 Kilograms of clothes

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THE ENERGY (SOLAR WATER HEATING) REGULATIONS, 2012 (CONTINUED)



Who does it apply to?

Developers, architects and engineers of housing estates are now required to ensure solar water heating systems are included in the design or construction of the premises.

Owners of premises are also required to ensure solar water heating systems are installed in all new premises designs and extensions or alterations to existing premises.

The Regulations also require occupants or owners of premises with existing solar water heating system to carry out the necessary operational maintenance and repairs needed to keep the installation in good and efficient working condition.

Penalties in the event of failure to comply

Failure to comply with the Regulations amounts to an offence which attracts a fine not exceeding one million shillings, or imprisonment for a term not exceeding one year, or both.

The Regulations also mandate electric power distributors or suppliers (e.g. the Kenya Power and Lighting Company) not to provide electricity supply to premises where a solar water heating system has not been installed in accordance with the Regulations.

Who can install a solar water heating system?

All solar water heating system installations should be installed by licensed technicians or contractors. The licensed technicians or contractors are required to subsequently issue an installation certificate to the person procuring the installation.

Which premises are exempted from these Regulations?

For a premises to be exempt from the Regulations, one must make an application for exemption to Energy Regulatory Commission (the "ERC") in the prescribed form. The ERC may exempt from the Regulations:

- (i) premises with technical limitations;
- (ii) premises incapable of incorporating solar heating systems due to their special circumstances;
- (iii) premises supplied with hot water from a cogeneration plant in or proximate to the premises;
- (iv) premises utilising electricity generated from renewable energy and the excess is used to heat water as a dump load; or
- (v) such other premises as the ERC may determine.

The ERC shall process an application for exemption within 45 days of receipt and communicate its decision to the applicant as well as to the relevant county government.

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