

Regulation on the consumption-based billing of energy and hot water costs of 20th January 1989 (Federal Law Gazette I, page 115 following)

**Section 1
Scope of Application**

(1) This regulation applies to the allocation of

1. operating costs for both central heating/cooling and hot water supply systems,
2. costs for commercial supplies by third parties of energy and hot water, also from systems according to No. 1 (energy supply, hot water supply).

The building owner allocates these costs to the users of the units supplied with energy or hot water.

(2) An equal status to the proprietor have the following:

1. the party/operator entitled to permit the use in his own name and for his own account,
2. the operator/third party assigned with the operation of systems as defined by section 1 subsection 1 No. 1 and therefore entitled to be compensated by the user,
3. the community of property owners in relation to the individual share, in case of renting of one or more units the individual owner in relation to the tenant.

(3) This regulation is also valid for the allocation of energy and hot water supply to the users of individual units as long as the supplier bills the users directly according to their proportions on the total consumption and not according to registered consumption. In these cases the rights and obligations of the proprietor arising from this regulation are applicable by the supplier.

(4) This regulation is also valid for tenancies of price-controlled living space unless differently provided.

**Section 2
Priority over Legal Provisions**

Apart from buildings with no more than two flats of which one is occupied by the landlord, this regulation has priority over provisions of legal transactions.

**Section 3
Application to Residential Property**

This regulation is applicable to residential property regardless of different agreements or resolutions by the proprietors on the allocation of costs for the supply of energy and hot water.

Section 3 (continuance) Application to Residential Property

As to the installation and choice of devices according to sections 4 and 5, the allocation of costs and other decisions of the building owner according to sections 6 – 9b and 11, the regulations are applicable concerning the administration of common property stipulated in the corresponding property law (Wohnungseigentumsgesetz) or as per agreement of the proprietors. The installation costs for the equipment shall be allocated in accordance with the regulations on administrative expenses provided therein.

Section 4 Obligation to Register Consumption

- (1) The building owner shall register the proportional consumption of the users concerning energy and hot water.
- (2) He shall fit the individual units with devices to register consumption; the users shall accept this. If the building owner intends to lease the devices to register consumption or to procure any other way of use, he shall inform the users in advance stating the costs. This measure is inadmissible if the majority of users opposes the notification within a month after receipt. The proprietor can choose the equipment within the scope of section 5.
- (3) Commonly used areas are exempted from the obligation to register consumption. This does however not apply to commonly used areas necessitating a high energy or hot water consumption, i.e. swimming pools or saunas.
- (4) The user is entitled to demand the proprietor to meet these obligations.

Section 5 Devices to Register Consumption

- (1) Energy meters or energy cost allocators shall be used to register the proportional energy consumption. Hot water meters or other suitable devices shall be used to register the proportional hot water consumption. If legal provisions on calibration shall not be applied, only such devices to register consumption may be used for which notified bodies have confirmed that they correspond to the recognized standards or that their suitability was proven in another way. Authorities are only considered as notified bodies if the authority responsible according to Land law confirmed their suitability in consultation with the Physikalisch-Technische Bundesanstalt (PTB). The devices have to be suitable for the respective energy supply system and shall be installed in such a way to guarantee their perfect technical functioning.

Section 5 (continuance) Devices to Register Consumption

- (2) If the consumption of users supplied with a system as defined by section 1, subsection 1 is not registered with the same devices, the share on the total consumption of each group of users whose consumption is registered with the same devices shall be registered initially. The building owner may also register in advance by groups of users in case of different kinds of use or different types of buildings or because of other appropriate reasons.

Comment

The following shall be applied in the new Länder according to the Treaty of Unification:

As far as and as long as, according to Land law, the competent authorities of the area mentioned in clause 3 of the Treaty have not yet appointed notified bodies according to section 5 subsection 1 clauses 2 and 3 of the regulation, those devices to register consumption may be used for which authorisation was granted as defined in section 5 subsection 1 clause 2 by a notified body of the area in which the regulation has already been in force before unification.

Section 6 Obligation to Allocate Costs Consumption-based

- (1) The building owner shall allocate the costs of supply with energy and hot water to the individual users on the basis of the registered consumption according to sections 7 to 9.
- (2) In the cases of section 5 subsection 2, at least to 50 per cent of the costs shall be allocated first to the groups of users according to the proportion of the registered shares of total consumption. If the entire costs are not to be allocated proportionally to the registered shares of total consumption,
1. the remaining costs for the supply of energy shall be allocated to the individual groups of users according to the living space or the usable floor space or the enclosed area. The living space or the usable floor space or the enclosed area of the heated rooms may also be taken as a basis.
 2. the remaining costs for the supply of hot water shall be allocated to the individual groups of users according to the living space or the usable floor space.

The proportionate costs of the groups of users shall then be allocated to the individual users according to subsection 1.

**Section 6 (continuance)
Obligation to Allocate Costs Consumption-based**

- (3) In the cases of section 4 subsection 3 clause 2, the costs shall be allocated to the commonly used rooms and the general utility areas proportionally to the registered shares of the total consumption. The allocation of proportionate costs for commonly used areas is effected as per legal provisions.
- (4) The billing standards according to subsection 2 as well as sections 7 to 9 may be chosen by the building owner. He may change them once for future billing periods by declaration to the users
 1. until the end of three billing periods after their first determination,
 2. when introducing an advance registration according to groups of users
 3. after carrying through construction measures to realize lasting heat energy savings.

Fixing and changing of billing standards are only permitted at the beginning of a billing period.

**Section 7
Cost Allocation for the Supply of Energy**

- (1) At least 50 per cent and no more than 70 per cent of the operating costs of the central heating/cooling system shall be allocated according to the registered energy consumption of the users. The remaining costs shall be allocated according to the living space or usable floor space or the enclosed area. The living space or the usable floor space or the enclosed area of the heated rooms may also be taken as a basis.
- (2) The operating costs of the central heating/cooling system including the exhaust system comprise the costs for consumed fuels and their supply, costs for electricity, costs for service, supervision and maintenance of the system, costs for regular controls of its working and safety conditions including necessary adjustments by an expert, costs for cleaning the system and the heating room, costs for measurements according to the Bundes-Emmissions-schutzgesetz (Federal Air Pollution Law), costs for leasing or other usage of equipment to register consumption including the costs for billing and allocation.
- (3) Subsection 1 applies accordingly to the allocation of costs for energy supply.
- (4) The costs for energy supply include the payment for the supply as well as the operating costs for the building's own system according to subsection 2.

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Section 8 Cost Allocation for the Supply of Hot Water

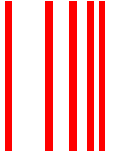
- (1) At least 50 per cent and no more than 70 per cent of the operating costs of a central hot water supply system shall be allocated according to the registered hot water consumption. The remaining costs shall be allocated according to living space or usable floor space.
- (2) The operating costs of the central hot water supply system include the costs for water supply, if these are not separately billed, and the costs for water heating in accordance with section 7 subsection 2. The costs of water supply comprise the costs of water consumption, the basic fees and leasing costs for meters, the use of intermediate meters, operating costs for the building's own water supply system and those for water treatment including treatment materials.
- (3) Subsection 1 applies accordingly to the allocation of hot water supply costs.
- (4) The costs of hot water supply include the payment for hot water supply and the operating costs for the building's own system according to section 7 subsection 2.

Section 9 Cost Allocation for the Supply of Energy and Hot Water in Combined Systems

- (1) If the central system of energy supply is combined with the central hot water supply system, the entire operating costs shall be divided. The shares in the over head operating costs shall be determined by the shares in energy consumption (fuel or energy consumption). Costs not incurred by the combined system shall be added to the share of the common operating costs. The share of the central energy supply system is determined by the total consumption after deducting the consumption of the central hot water supply system. The share of the central hot water supply system in the fuel consumption shall be determined according to subsection 2, the share in the energy consumption according to subsection 3.

$$B = \frac{2,5 \cdot V \cdot (t_w - 10)}{H_u}$$

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**Section 9 (continuance)
Cost Allocation for the Supply of Energy and Hot Water in Combined Systems**

The basis is the following:

1. the volume of the consumed hot water (V) measured in cubic metres;
2. the average hot water temperature (t_w) measured or estimated in degrees centigrade;
3. the calorific value of the consumed fuel (H_u) in kilowatt hours (kWh) per liter (l), cubic metre (m³) or kilogram (kg). It can be used as H_u values for:

heating oil	10	kWh/l
Town gas	4.5	kWh/m ³
L Natural gas	9	kWh/m ³
H Natural gas	10.5	kWh/m ³
Broken coke	8	kWh/kg

Comment

The following shall be applicable to the new Länder according to the Unification Treaty:
The basis for calorific values of the consumed fuels (H_u) according to section 9 subsection 2 clause 3 may also be the following:

<i>Brown coal briquette</i>	<i>5.5 kWh/kg</i>
<i>Brown coal</i>	
<i>high temperature coke</i>	<i>8.0 kWh/kg</i>

If the billing documents of the energy supplier contain H_u values, these shall be used. The fuel consumption of the central hot water supply system can also be calculated according to the recognized standards. If the volume of the consumed hot water cannot be measured, an 18 % share of the total fuel consumption shall be taken as a basis for the central hot water supply system.

(3) The heat quantity (Q) related to the central hot water supply system shall be measured by a heat meter. It can also be calculated in kilowatt hours according to the formula

$$Q = 2,0 \cdot V \cdot (t_w - 10)$$



Section 9 (continuance) Cost Allocation for the Supply of Energy and Hot Water in Combined Systems

The basis is the following:

1. the volume of the consumed hot water (V) measured in cubic metres;
2. the average hot water temperature (tw) measured or estimated in degrees centigrade.

The heat quantity related to the central hot water supply system can also be calculated according to the recognized standards of technology. Can it be neither measured according to clause 1 nor calculated according to clauses 2 to 4, an 18 per cent share of the total consumption of the heat quantity shall be taken as a basis.

- (4) The share of the costs for heat supply shall be allocated in accordance with section 7 subsection 1, the share of the costs for hot water supply shall be allocated in accordance with section 8 subsection 1, unless this regulation provides for otherwise.

Section 9 a Cost Allocation in Special Cases

- (1) If the proportionate energy or hot water Consumption of users cannot be registered properly during a billing period due to failure of devices or for other compelling reasons, the building owner shall determine the consumption of the concerned units on the basis of former billing periods or on the basis of the consumption of comparable units during the respective billing period. The established proportion shall be taken as a basis for the cost allocation.
- (2) If the living space or the usable floor space or the enclosed area related to the registration of consumption according to subsection 1 exceeds 25 per cent of the total living space or usable floor space or enclosed area, the costs shall exclusively be allocated within the standards for the allocation of remaining costs according to section 7 subsection 1 clause 2 and section 8 subsection 1.

Section 9 b Cost Allocation in Case of User Change

- (1) In case of user change within a billing period, the building owner shall effect a meter reading (intermediate reading) of the unit in question.
- (2) The costs to be allocated according to the registered consumption shall be allocated on the basis of the intermediate reading, the remaining costs of the heat consumption on the basis of daily degrees as per recognized standards or time-proportionately. The remaining costs of hot water consumption shall be allocated time-proportionately to the former and present user.

**Section 9 b (continuance)
Cost Allocation in Case of User Change**

- (3) If an intermediate reading is impossible or should for technical reasons at the time of user change a sufficiently accurate determination of the proportionate consumption be impossible, then the total costs shall be allocated according to the standards to be applied for the remaining costs in accordance with subsection 2.
- (4) Provisions of legal transactions differing from subsections 1 to 3 are unaffected.

**Section 10
Exceeding Maximum Rates**

- (1) Legal provisions permitting higher rates than the maximum rate of 70 per cent mentioned in section 7 subsection 1 and section 8 subsection 1 remain unaffected.

**Section 11
Exceptions**

- (1) As far as sections 3 to 7 refer to energy supplies, they shall not be applied

1. to room units

- a) for which the fitting of registering devices for heat consumption or cost allocation of heat consumption is either not possible or only possible involving disproportionately high costs or
- b) which were ready for occupation before 1 July 1981 and where the users are unable to influence their energy consumption;

Comment

The following shall be applicable to the new Länder according to the Unification Treaty: *Section 11 subsection 1 No. 1 letter b) shall be applied on the condition that the date of "1 July 1981" is replaced by the date of "1 January 1991".*

- 2. a) to old people's homes and nursing homes, dormitories for students, apprentices and Trainees
- b) to comparable buildings or building parts whose use is reserved to groups of people with whom the usual tenancy agreements are not concluded due to their special personal circumstances;

Section 11 (Continuance) Exceptions

3. to units in buildings which are mainly supplied
 - a) with energy from heat recovery or heat pump systems or solar systems or
 - b) with energy from cogeneration or waste heat recovery systems if the building's heat consumption is not registered,

if the competent body according to Land law permitted an exception in the interest of both energy savings and the users;

to the operation costs of the building's own systems if these costs are not included in the heat supply costs as per section 1 subsection 3, but separately billed by the building owner;
 5. to particular cases of special circumstances where exemption from the requirements of this regulation was granted by the competent body according to Land law ordinance in order to avoid unreasonable expenses or other undue hardship.
- (2) As long as sections 3 to 6 and section 8 refer to the supply of hot water, subsection 1 applies accordingly.

Section 12 Right of Reduction, Transitional Rules

- (1) If, contrary to the provisions of this regulation, the costs of supply with heat or hot water are not billed consumption-based, the user has the right to reduce his allotted share by 15% when costs are billed independent of consumption. This does not apply to cases of flat property in relation of each flat owner towards the group of proprietors. In this respect the general provisions apply.
- (2) The requirements of section 5 subsection 1 clause 2 are regarded as fulfilled
 1. for hot water cost allocators to register the proportionate consumption of hot water existing on 1 January 1987 and
 2. for other devices to register consumption already existing on 1 July 1981.

Comment

The following shall be applicable in the new Länder according to the Unification Treaty: *Section 12 subsection 2 shall be applied on the condition that the dates of "1 January 1987" and "1 July 1981" respectively are replaced by the date of "1 January 1991".*

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**Section 12 (Continuance)
Right of Reduction, Transitional Rules**

- (3) In case of price-controlled flats as defined by the “Neubaumieten-verordnung” (New Housing Rental Regulation) of 1970, subsection 2 is applied on the condition that the date of “1 July 1981” is replaced by the date of “1 August 1984”.
- (4) Section 1 subsection 3, section 4 subsection 3 clause 2 and section 6 subsection 3 apply to billing periods beginning after 30 September 1989; legal provisions about an earlier application of these regulations remain unaffected.
- (5) If in cases of section 1 subsection 3 on 30 September 1989 the heat consumption of the individual users is determined by means of devices measuring water quantities, the requirement of section 5 subsection 1 clause 1 is considered fulfilled.

Comment

According to the Unification Treaty the following shall be applied in the new Länder:

The regulation comes into force on 1 January 1991. Until 31 December 1990, rules previously in force in the territory mentioned in article 3 of the Treaty are to be applied.

Units which were ready for occupation before 1 January 1991 and which still did not dispose of the devices to register consumption required by the regulation should be equipped by 31 December 1995 at the latest. The building owner is entitled to install the devices before 31 December 1995.

These regulations on cost allocation are to be applied for the first time to the billing period beginning after the installation of the equipment.

**Section 13
The Berlin Clause**

This regulation is also applicable to the Land Berlin according to section 14 of the “Drittes Überleitungsgesetz” (Third Transitory Act) in connection with section 10 of the “Energieeinsparungsgesetz” (Energy Conservation Act).

**Section 14
Coming into force**

3. Appendix 1.1

Special, respectively interim regulations for the new Länder according to: Encl. I, chapter V, field D, subsection III, No. 10 of the "Unification Treaty" (Federal Law Gazette II, page 1007 dated 28 September 1990)

10. The regulation on the consumption-based billing of heating costs in the version published on 20 January 1989 (Federal Law Gazette I, page 115) is subject to the following provisions:
- a) The regulation comes into force on 1 January 1991. Until 31 December 1990 rules previously in force in the territory mentioned in article 3 of the Treaty.
 - b) Units which were ready for occupation before 1 January 1991 and which still did not dispose of the required devices to register consumption according to the regulation shall be equipped until 31 December 1995 at the latest. The building owner is entitled to install the devices before 31 December 1995.
 - c) As far as and as long as, according to Land law, the competent authorities of the area mentioned in article 3 of the Treaty have not yet appointed notified bodies according to section 5 subsection 1 clauses 2 and 3 of the regulation, those devices to register consumption may be used for which authorization was granted as defined in section 5 subsection 1 clause 2 by a notified body of the area in which the regulation has already been in force before unification.
 - d) The basis for calorific values of consumed fuels (Hu) according to section 9 subsection 2 clause 3 may also be the following:

brown coal briquette	5.5	kWh/kg
Brown coal high temperature coke	8.0	kWh/kg

- e) These regulations on cost allocation are to be applied for the first time to the billing period beginning after the installation of the equipment.
- f) Section 11 subsection 1 No. 1 letter b) shall be applied on the condition that the date of "1 July 1981" is replaced by the date of "1 January 1991".
- g) Section 12 subsection 2 shall be applied on the condition that the dates of "1 January 1987" and "1 July 1981" respectively are replaced by the date of "1 January 1991".