

EXPLANATORY MEMORANDUM TO THE BUILDING REGULATIONS &c. (AMENDMENT) (WALES) REGULATIONS 2016

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Building Regulations &c. (Amendment) (Wales) Regulations 2016. I am satisfied the benefits outweigh any costs.

Lesley Griffiths

Cabinet Secretary for Environment and Rural Affairs

27 May 2016

1. Description

- 1.1. These Regulations make amendments to the Building Regulations 2010 (“the 2010 Regulations”) and the Building (Approved Inspectors etc.) Regulations 2010. The amendments concern the energy performance of buildings, revoke provisions concerning energy performance certificates, which are being consolidated elsewhere, and clarify provisions concerning minimum energy efficiency requirements. They also update the schedule of persons entitled to certificate the compliance of their own work with building regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 These Regulations are made partly under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of this Act. In addition to section 2(2), sections 1, 34, 35 and 47 of and Schedule 1 to the Building Act 1984 are used to make these Regulations. This power is subject to the negative procedure. There was no factor indicating the use of affirmative procedure.

3. Legislative background

- 3.1 As outline above the Regulations are made partly under section 2(2) of the European Communities Act 1972 and sections 1, 34, 35 and 47 of and Schedule 1 to the Building Act 1984.
- 3.2 The Welsh Ministers are designated by the European Communities (Designation) Order 2016 (S.I. 2016/161) in relation to the design and construction of buildings, and in relation to services, fittings and equipment provided in or in connection with those buildings. The designation enables the Welsh Ministers to exercise powers under section 2(2) of the European Communities Act 1972 to make legislation, including regulations.
- 3.3 The functions conferred on the Secretary of State by sections 1, 34, 35 and 47(1) of, and paragraphs 1, 2, 4, 4A, 7 and 10 of Schedule 1 to, the Building Act 1984 were, insofar as exercisable in relation to Wales, transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019), subject to articles 3 and 4 of this Order.
- 3.4 These Regulations amend the implementation of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) (“Directive 2010/31/EU”). They also revoke requirements relating to the provision of energy performance certificates for newly constructed buildings, which have been consolidated in amendments to the Energy Performance of Buildings (England and Wales) Regulations 2012, and clarify provisions in respect of minimum energy efficiency requirements.

3.5 In addition, the list of persons entitled to certificate the compliance of their own work with building regulations under national provisions is updated.

3.6 These Regulations are made using the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 These Regulations make a number of changes to the energy efficiency requirements in Part 6 of the 2010 Regulations. In particular, they clarify energy performance must be calculated and expressed in accordance with the methodologies approved under Regulation 24 of the 2010 Regulations, and they amend and supplement definitions concerning the energy performance of buildings to clarify the manner in which they implement the concept in Directive 2010/31/EU. These amendments do not make any change to the policy intention behind the provisions amended, or to their application by persons carrying out building work, building owners or building control bodies.

4.2 The opportunity has also been taken to remove from the 2010 Regulations the requirements concerning energy performance certificates on the construction of buildings and consolidate them alongside the requirements for energy performance certificates on the sale or rental of buildings in amendments made to the Energy Performance of Buildings (England and Wales) Regulations 2012 . This consolidation should make the energy performance certificate regime easier to understand, and simplify future amendments.

4.3 The requirement to provide an energy performance certificate on construction of new buildings or after certain conversions is otherwise largely unchanged, except for amendments made in the Energy Performance of Buildings (England and Wales) Regulations 2016 S.I. 2016/284 excluding certain buildings from the registration of certificates for reasons of security, and the correction of an error concerning enforcement.

4.4 Consequential amendments in relation to energy performance certificates are also made to the Building (Approved Inspectors etc.) Regulations 2010 (S.I. 2010/2215, which provide for the supervision of building work by approved inspectors, who undertake building control functions with the approval of a body designated by the Welsh Ministers, rather than by local authorities.

4.5 Unrelated to the above amendments, Schedule 3 to the 2010 Regulations, which lists persons entitled to certificate the compliance of their own work with building regulations under national provisions, is also updated.

5 Consultation

5.1 These Regulations make no change to the application of the requirements by those carrying out building work, building owners or building control bodies. The Building Act 1984 does not require the Welsh Ministers to consult the Building Regulations Advisory Committee and such other bodies as appear to them to be representative of the interests concerned where the changes made to building regulations are not substantive changes to the requirements. However,

the Building Regulations Advisory Committee for Wales and the Competent Persons Forum have been consulted on, and offered no objections to, the amendments made by this instrument.

6 Regulatory Impact Assessment

- 6.1 No impact assessment has been undertaken for the amendments made in this Instrument, as minimal impact, or no impact, is foreseen on business or public sector bodies.