

## **Explanatory Memorandum to The Building Regulations (Amendment) (Wales) (No.2) Regulations 2022**

This Explanatory Memorandum has been prepared by Planning Directorate and is laid before Senedd Cymru 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 (Amendment) (Wales) (No.2) Regulations 2022. I am satisfied that the benefits justify the likely costs.

**Julie James MS,  
Minister for Climate Change**

**28 September 2022**

## **PART 1**

### **1. Description**

- 1.1 The Building Regulations (Amendment) (Wales) (No.2) Regulations 2022 (“the instrument”) amend the Building Regulations 2010 (“the Building Regulations”) to set requirements relating to on-site electricity generation systems and provide for the commissioning of on-site electricity in non-domestic buildings and to make transitional provision. The instrument also makes amendments to the transitional provisions of the Building Regulations (Amendment) (Wales) Regulations 2022 (2022 Amendment Regulations), by correcting minor errors and excluding Parts 2 and 3 of the 2022 Amendment regulations from applying to sites falling under certain previous transitional provisions. The SI Registrar has been consulted and the instrument is being issued free of charge to the recipients of the 2022 Amendment Regulations.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 Regulations 2 and 4 will come into force 6 months after the regulations are made. This is to allow industry adequate time to prepare for the new requirements.

### **3. Legislative background**

- 3.1 Section 1 of the Building Act 1984 Act (the 1984 Act) provides a power to make building regulations for a number of purposes with respect to the design and construction of buildings and the services, fittings and equipment provided in or in connection with buildings. These purposes include securing the health, safety, welfare and convenience of persons in and about buildings, furthering the conservation of fuel and power, preventing waste, undue consumption, misuse or contamination of water, furthering the protection or enhancement of the environment and facilitating sustainable development.
- 3.2 The 2010 Regulations have, in part, been made pursuant to these powers. The 2010 Regulations impose requirements on people carrying out building work and are supported by Approved Documents, approved and issued under section 6 of the 1984 Act, which set out detailed practical guidance on compliance. The 1984 Act and the 2010 Regulations set out procedures for the supervision and control of building work.
- 3.3 Most of the Secretary of State’s functions conferred by or under the 1984 Act were, so far as exercisable in relation to Wales, transferred to Welsh Ministers on 31st December 2011, by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (the 2009 Order), and in relation to

excepted energy buildings in Wales, by section 54 of the Wales Act 2017 (c.4)

- 3.4 These Regulations are being made under the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

- 4.1 Welsh Government is committed to meeting its target of net zero emissions by 2050. Improving the energy efficiency of buildings (through Building Regulations) represents a significant opportunity to reduce carbon emissions and support the Government in reaching its target, whilst keeping energy costs down for consumers now and in the future.
- 4.2 The Government has committed to making changes to the Building Regulations and the associated Approved Documents in 2025. The package of legislative and non-legislative changes being introduced at this time provide a meaningful and achievable increase in standards for buildings, and support industry to prepare and position itself for the new standards from 2025.
- 4.3 The package of changes is being delivered partially through this instrument and partially through changes to the Approved Documents and the approved national calculation methodology.
- 4.4 This instrument provides for the regulation of on-site electricity generation to be applied to non-domestic buildings. When the instrument comes into effect, any on-site electricity generation and associated electrical output must be appropriately sized for the site and available infrastructure; have effective controls; and must be commissioned by testing and adjusting as necessary to ensure that it produces the maximum electricity that is reasonable in the circumstances. A notice confirming the commissioning must be provided to the local authority (or building inspector) and information about the on-site generation system must be given to the building owner. Alternatively, a tradesperson registered with a Competent Person Scheme can certify that their work installing on-site electricity generation is compliant with Building Regulations.
- 4.5 The changes also amend the transitional provisions for domestic buildings made earlier this year in the 2022 Amendment Regulations (No. 564 (W. 130)). The change is to ensure sites that have complied with previous transitional provisions (such as those contained in the Building (Amendment) (Wales) Regulations 2014 (SI 2014/110)) are excluded from the new requirements contained in part 2 and 3 of the 2022 Amendment regulations. In addition, they correct a minor error to ensure that the transitional provisions only apply to building regulation applications received prior to the coming into force date and are not applicable to regulations 14 and regulation 17 which update the company names of

authorised competent person scheme operators and pressure testing for the air tightness of buildings.

## **5. Consultation**

- 5.1 The Welsh Government held a three-stage online consultation on proposed changes to the Building Regulations and the accompanying statutory guidance. Changes for non-domestic buildings were set out in the second stage of the consultation (25 November 2020 to 17 Feb 2021) covering changes to align with the Energy Performance of Buildings Directive (EU 2018/844) and the third stage of the consultation (25 October 2021 to 17 January 2022) relating to new and existing non-domestic buildings.
- 5.2 In general, there was broad agreement to the majority of the proposals in the consultations. There have been some amendments to the proposals following the feedback to the consultations.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

- 6.1 A suite of legislative and non-legislative changes are being brought in together. The impact of the changes has been assessed collectively as the changes together represent the 'steppingstone' to the 2025 amendments. The figures and analysis provided below are therefore not solely a result of those changes set out in this instrument.
- 6.2 The Net Present Value (using a 70 year appraisal period) of the changes is -£51.529m for New Buildings, £0.798m for existing buildings, £0.428m for extensions and -£1.955m for aligning with relevant requirements from the EPBD. There are also transition costs of £0.218m.
- 6.3 The majority of the costs are incurred by developers (through increased capital costs), and the benefits of greater energy savings will be experienced by the occupants, whilst reduced carbon emissions and improved air quality are societal benefits.
- 6.4 On site electricity generation is not considered to generate a specific or identifiable cost in these wider figures. Currently when a fixed building service has been installed, replaced or altered it should be commissioned to ensure that the whole system uses no more fuel and power than is reasonable in the circumstances. The costs of including on-site electricity is considered to fall within this existing requirement.
- 6.5 A full Impact Assessment, which assess the impact of this instrument and changes to the statutory guidance (the Approved Documents) are published on the website ( <https://gov.wales/building-regulations-part-l-and-f-review-stage-2b> ) alongside the Government response to the consultation.

### **Small firms impact test**

- 6.6 Most of the impacts of the policy should affect all contractors broadly equally, whether large or small.
- 6.7 Small businesses in the building sector principally comprise builders, installers, architects, engineers and other technical specialists. The impacts of a change in building standards are likely to be most significant for builders as any change in costs will affect their cost of business. For other parties, impacts are most likely to comprise a short term need to understand and revise practices to reflect the new requirements, however this is unlikely to be above the level that would be typically expected as part of ongoing professional development.

### **Environmental impact assessment**

The total package of changes will result in -£34.023m Carbon costs, and -£11.686M Air quality costs, with 0.358 million tonnes of carbon saved over the lifetime of the policy.

### **Social impact assessment**

- 6.8 Some health benefits are likely to derive from reduced energy use. Health and economic benefits are expected to derive from reduced overheating.
- 6.9 There are improvements in indoor air quality, and consequently occupant's health and well-being, from the proposed changes to Part F. Improved indoor air quality arises as a result of better air distribution between rooms and simplified guidance should deliver greater compliance and reduce the risk of under-ventilation.
- 6.10 There are also potentially beneficial improvements in health and quality of life from the effect of increased energy efficiency on thermal comfort.

### **Rural impact assessment**

- 6.11 Assessing rural impacts means determining whether the impacts on rural areas will be different to those for urban areas, and whether there are specific local or regional effects. The principal markets affected by this 2021 policy are the markets for the development of new non-domestic buildings and the refurbishment of existing non-domestic buildings. These markets are smaller within rural areas, however the effect of the changes does not impact upon supply chains, or disproportionately effect smaller business who are likely to operate there, therefore no specific rural impacts are identified.

### **Diversity, inclusion and human rights**

- 6.12 It is not envisaged that the proposals will have any negative impact on human rights. It is not envisaged that the proposal will have any negative impact on equality in Wales (including equality issues concerning age, disability, faith, gender, race, sexual orientation or transgender), or a negative impact on diversity, social inclusion or human rights, including the rights of children.

### **Children's Rights Impact Assessment**

6.13 It is envisaged that the proposals will have no impact on the rights of children.

### **Welsh language**

6.14 It is not envisaged that the proposals will have an impact on the Welsh language.

### **Privacy Impact Assessment**

6.15 It is envisaged that the proposals will have no impact on privacy.

### **Post implementation review**

6.16 The Welsh Government has committed to review the Part L regulations with a new standard in 2025. That review will include an analysis of the effect of the amendments made by this subordinate legislation.