

EXPLANATORY MEMORANDUM TO

The Building (Amendment) Regulations (Northern Ireland) 2016

2016 No.412

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Finance to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972, Articles 3, 5(1), 5(2), 5(3), 5A(1) and 8 of, and paragraphs 6, 9, 13, 14, 17, 17A, 17C, 17D, 18, 19 and 22 of Schedule 1 to the Building Regulations (Northern Ireland) Order 1979 (as amended) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of this Statutory Rule is to amend the Building Regulations (Northern Ireland) 2012 (as amended) (“the principal Regulations”). It transposes Article 8 (In-building physical infrastructure) and provides definitions from Article 2 (Definitions) of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks. It also clarifies aspects of Articles 3 (Adoption of a methodology for calculating the energy performance of buildings), 4 (Setting of minimum energy performance requirements) and 9 (Nearly zero-energy buildings) of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast). The following Parts of the principal Regulations are therefore amended as follows —
- 2.2. Part A – Regulation 5(1) inserts a new abbreviation of ‘Mbps’ for ‘Megabits per second’ into the table in paragraph (7) in Regulation 2 of the principal Regulations. Regulation 5(2) amends Regulation 4 of the principal Regulations to apply the new Part M (Physical infrastructure for high-speed electronic communications networks) requirements to all buildings belonging to statutory undertakers and to certain buildings controlled under other legislation which would otherwise be exempt from building regulations. Regulation 5(3) amends Regulation 5 of the principal Regulations to apply the new Part M requirements to the erection of buildings. Regulation 5(4) amends Regulation 7 of the principal Regulations to apply the new Part M requirements to alterations and extensions (although this is restricted to major renovation works, in the new Regulation 77A(1) within the new Part M). Regulation 5(5) amends the Table to Regulation 8 of the principal Regulations to clarify that the new Part M is not applicable to any case of material change of use. Regulation 5(6) amends Regulation 11 of the principal Regulations by including in-building physical infrastructure as a site specific matter in relation to an application for a type approval certificate.

- 2.3. Part F – Regulation 6(1) amends Regulation 40 of the principal Regulations to clarify that the national calculation methodology must be used for all calculations of the carbon dioxide emission rates of buildings. This is to demonstrate full accordance with Articles 3 and 4 of Directive 2010/31/EU. Regulation 6(2) amends Regulation 43B of the principal Regulations to clarify that a requirement arising from Article 9 of Directive 2010/31/EU relates to all new buildings occupied and owned by public authorities.
- 2.4. Part M – Regulation 7 inserts the new Part M (Physical infrastructure for high-speed electronic communications networks) after Part L of the principal Regulations. Regulation 77A in the new Part M restricts the application of the requirements to building work which is either the erection of a building or major renovation works to a building. It provides definitions, including the requisite definitions from Article 2 of Directive 2014/61/EU. In line with provisions for exemptions set in Article 8(4) of Directive 2014/61/EU, it also outlines certain cases where the requirements of Regulation 77B do not apply. Regulation 77B(1) in the new Part M transposes the requirements of Article 8(1) of Directive 2014/61/EU to require buildings to be adequately equipped with in-building physical infrastructure. Regulation 77B(2) in the new Part M transposes the requirements of Article 8(2) for a multi-dwelling building to be adequately equipped with a common access point. Transitional provisions have been included in Regulation 3 of this Statutory Rule to ensure that the new Part M requirements do not apply to applications or work completed before 1st January 2017.
- 2.5. Schedule 2 – Regulation 8 amends paragraph (a) in Class 1 in Schedule 2 (Classes of exempted buildings) by updating the reference to the relevant legislation for buildings in which explosives are manufactured or stored under licence.
- 2.6. Schedule 3 – Regulation 9(1) amends Schedule 3, Part A (Giving of notices and deposit of plans), requiring that provisions made in the building for in-building physical infrastructure are to be shown on plans deposited for the building. Regulation 9(2) amends Schedule 3, Part C (Particulars to be given with an application for a type approval certificate), requiring that provisions are made for in-building physical infrastructure to be deposited in relation to an application for a type approval certificate.

3. Background

- 3.1. The Department of Finance has responsibility for maintaining the Building Regulations in Northern Ireland.
- 3.2. The Building Regulations apply to most building work and are made generally to ensure the health, safety, welfare and convenience of people in and about buildings, to further the conservation of fuel and power, to protect and enhance the environment and to promote sustainable development. The current Building Regulations came into operation on 31st October 2012 through S.R. 2014 No. 192 and were later amended through S.R. 2012 No. 375 and S.R. 2014 No. 44.
- 3.3. The Energy Performance of Buildings Directive 2010/31/EU requires Member States to transpose its requirements into national law. It is intended to ensure buildings continue to improve in terms of energy performance, to encourage the use of renewable energy where possible to meet the higher standards, to use energy more efficiently and to reduce emissions.

3.4. The Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks requires Member States to transpose its requirements into national law. Article 8 of this Directive requires in-building physical infrastructure from the building's access point, from which service providers gain access to the in-building infrastructure, to the network termination point, at which a future subscriber can connect to a broadband communications network. Multi-dwelling buildings must be equipped with a common access point.

4. Consultation

4.1. There is a statutory duty to consult the Northern Ireland Building Regulations Advisory Committee (NIBRAC) and such other bodies as appear to the Department to be representative of the interests concerned.

4.2. NIBRAC was consulted on the development of these amendments to the principal Regulations.

4.3. Public consultation on this amendment took place from 15th August 2016 to 7th October 2016.

5. Equality Impact

5.1. A screening test indicated that there was no adverse impact on equality of opportunity or the needs of rural customers therefore a full Equality Impact Assessment was not considered necessary.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has been completed which indicated total costs of £67,000 for the first year and £20,000 per annum thereafter to industry and District Council enforcement.

7. Financial Implications

7.1. The amendments apply to all relevant buildings and therefore have an affect on all sectors, businesses, building owners, developers etc. The amendments impose some additional burdens on designers, builders and developers who will have to meet additional requirements.

8. Section 24 of the Northern Ireland Act 1998

8.1. It is the view of the Department that these Regulations are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The amendments imposed by this Statutory Rule on the principal Regulations transpose Article 8 and provide definitions from Article 2 of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks. This Statutory Rule also clarifies aspects of Articles 3, 4 and 9 of the European Parliament and Council Directive 2010/31/EU of 19 May 2010 on the energy performance of buildings.

10. Parity or Replicatory Measure

10.1. The amendments imposed by this Statutory Rule harmonise standards in Northern Ireland with those operating elsewhere in the UK.

11. Additional Information

11.1. Not applicable

12. “21 Day Rule”

12.1. To mitigate the risk of the European Court of Justice imposing financial penalties, the amendments imposed by this Statutory Rule are required to come into operation on or before 28th November 2016. To achieve this requires setting aside the “21 day laying rule”.