

POLICY NOTE

The Building (Scotland) Amendment Regulations 2016

SSI 2016/70

1. The above instrument is made in exercise of the powers conferred by sections 1 and 54(2) of, and Schedule 1 to, the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Policy Objectives

2. Article 8 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 communication networks is seeking to make new buildings and major renovations to existing buildings ready to receive high-speed electronic communication. It is looking for infrastructure to be formed within buildings that allow the passage of cables and fibre, when the building owner or occupant chooses to install superfast broadband.

3. The principle aim of the instrument is to transpose this European legislation into Scottish building regulations. However, indirectly it also supports the government's strategic objectives of a wealthier and fairer; safer and stronger; smarter; greener and healthier Scotland.

4. Regulation 1 meets the coming into force date of 1 July 2016, and the date, 1 January 2017, from which the regulations apply to new buildings and major renovations to physical infrastructure in existing buildings. Both of these dates are set by the Directive and the latter one is applied by the trigger of a building warrant application (building permit application, as the Directive refers).

5. Regulation 2(2) amends the Building (Scotland) Regulations 2004 and sets a new standard in Scottish building regulations '4.14 In-building physical infrastructure for high-speed electronic communications networks'. The standard transposes Article 8(1) & (2). 4.14(a) provides for in-building physical infrastructure (usually ducts in buildings, ready to receive fibre or cables for broadband) at the end user's location for single and multiple occupancy buildings. 4.14(b) provides for in-building physical infrastructure in the form of a common access point for multiple occupancy buildings. Limitation (a) exempts work to existing buildings that are being altered or extended, provided renovation work to existing infrastructure is not major. Limitation (b) exempts small domestic buildings such as, garden huts, summerhouses and garages.

6. There are some defined terms, most of them follow the definitions that apply to Article 8 and are in Article 2 of the Directive and these are also being adopted by the rest of the UK. 'Building unit' has been adopted for use in Scotland and helps to establish the end-user's location in terms of multi-occupancy buildings, for example, individual flats and shop-units in malls. 'Network termination point' is a UK-wide definition that will assist in providing a consistent approach to transposition and implementation.

7. Regulation 2(3) covers how a conversion (change of use) is to be treated with regard to this standard. It applies in a way that minimises its impact on conversions where no building work is necessary.

Consultation

8. From early 2015 the Building Standards Division (BSD) of Scottish Government has been involved in discussions with the two Whitehall Departments responsible for the implementation of Directive 2014/61/EU, the Department for Culture, Media and Sport (DCMS) and the Department for Communities and Local Government (DCLG). The main transposition of the Directive (all Articles except Article 8) is being dealt with at a UK level by DCMS and was the subject of a separate consultation.

9. Article 8 of the Directive is being transposed independently by the UK government and devolved administrations into each of the four national sets of building regulations. So that parity is achieved where practical, BSD has been in discussion with DCLG as well as representatives from the Northern Irish and Welsh governments.

10. The BSD has an extensive database of names of individuals and organisations that have expressed a specific interest in building standards and regulations. Stakeholders on the BSD list are directly alerted to any forthcoming consultation in areas that they have expressed an interest in. As well as directly contacting stakeholders with a known interest, forthcoming consultation exercises are also promoted on the BSD homepage of the Scottish Government website and in the BSD electronic newsletter/newsflash issued to approximately 1800 stakeholders.

11. The full consultation package was published (and remains available) in different formats on the Scottish Government website (<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubconsult>). The consultation period, which ran for 6 weeks, commenced on 30 September 2015 and closed on 11 November 2015. There were 35 responses to the consultation with significant support for the proposals.

12. Proposals to introduce new mandatory building standards and associated guidance issued under the Building (Scotland) Regulations 2004 require to be notified to the European Commission under the provisions of Technical Standards & Regulations Directive 98/34/EC. This Directive seeks to prevent technical barriers to trade and lays down a procedure for the provision of information in the field of technical standards and regulations. The standstill period on further technical development imposed by the Directive ended on 1 January 2016. No barriers to trade have been identified from this process.

Impact Assessments

13. A pre-screening notification was undertaken for the Strategic Environmental Assessment. This established that the policy will result in 'no or minimum environmental effects' and that under section 7 of the Environmental Assessment (Scotland) Act 2005, no further assessment is required.

14. The need for both an Equality Impact Assessment and Children's Rights and Welfare Impact Assessment was considered. However, as this policy only covers the in-building

infrastructure to support future installation of broadband, no equality or children's rights and welfare impact issues were identified. Consequently, these impact assessments are not necessary.

Financial Effects

15. The subject of this instrument has a material financial impact on those who elect to carry out new building work and on those who decide to do major refurbishment of existing in-building infrastructure. Some or all of the cost of the work may be passed on to those procuring a new building or requesting a refurbishment. However, the in-building infrastructure is a relatively insignificant cost when viewed in terms of the overall capital cost of construction for buildings.

16. An assessment of the overall costs and benefits associated with implementation of this instrument (Option 2 - introduce a new mandatory standard, together with new supporting guidance within the Technical Handbooks) is provided within the final Business and Regulatory Impact Assessment, published at: <http://www.gov.scot/bsd>. This identifies both the costs and the benefits of the approach taken.

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