

POLICY NOTE

The Building (Energy Performance of Buildings) (Scotland) Amendment Regulations 2016

SSI 2016/71

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

2. This instrument addresses two specific elements within the EU Energy Performance of Buildings Directive. This Directive, which promotes the improvement of the energy performance of buildings, was recast in May 2010 as Directive 2010/31/EU on the Energy Performance of Buildings. It is available on Eurlex at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0031>

3. Action in response to this European Directive forms part of the obligation of the UK as a Member State to make national regulations in response to EU legislation. Action to improve the energy efficiency of new buildings and of larger air conditioning systems within all buildings also contributes to Scottish Ministers' action to reduce carbon dioxide emissions and energy use, as part of the Scottish Government's Climate Change Programme. This contributes to the Scottish Government's Greener Strategic Objective. In particular, it will impact on the National Outcome "We reduce the local and global environmental impact of our consumption and production".

4. The recast Directive sets out a number of requirements for Member States to address which include to:

- To ensure that all new buildings are 'nearly zero energy' buildings to a timetable prescribed within Article 9(1) of the Directive; and
- To undertake regular inspection of air-conditioning systems in buildings, under Article 15 of the Directive.

5. Transposition of Directive 2010/31/EU was delivered by The Energy Performance of Buildings (Scotland) Amendment Regulations 2012¹, The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012² and The Building (Scotland) Amendment Regulations 2012³.

6. Since the initial Transposition, the European Commission has identified two issues that are considered to result in an incomplete transposition of the Directive and which can be addressed by the inclusion of specific provisions within the relevant legislation, the Building (Scotland) Regulations) 2004 ('the regulations').

7. Action under the instrument is summarised as follows:

- Regulation 1(3) identifies the date of application of regulation 2(2) in respect of inspection of air conditioning systems

¹ 2012 No. 190 - <http://www.legislation.gov.uk/ssi/2012/190/contents/made>

² 2012 No. 208 - <http://www.legislation.gov.uk/ssi/2012/208/contents/made>

³ 2012 No. 208 - <http://www.legislation.gov.uk/ssi/2012/209/contents/made>

- Regulation 1(2) identifies the dates by which, under regulation 2(3), new buildings must be ‘nearly zero energy buildings’ in accordance with Article 9 of the Directive.
- Regulation 2(2) amends regulation 17 of the regulations to provide that inspection of air conditioning systems should include ‘all accessible parts’ and that the maximum period between inspections should not exceed five years. Both of these provisions are already established in practice through guidance cited in support of regulation 17 of the regulations.
- Regulation 2(3) provides the requirement that buildings subject to the provisions of paragraph 6.1 to schedule 5 of the regulations (standard 6.1 – carbon dioxide emissions) should be ‘nearly zero energy buildings’. The introduction of this provision does not affect current emission targets for new buildings, as introduced on 1 October 2015 as part of changes made under regulation 2 of The Building (Scotland) Amendment Regulations 2014⁴ and regulation 3 of The Building (Scotland) Amendment Regulations 2015⁵.
- Interpretation of the standard (6.1) provides the definitions of ‘nearly zero energy building’ and “energy from renewable sources” cited in Article 2 of the Directive.

8. In respect of provisions within regulation 1(2)(b), which identify the date for all new buildings to be nearly zero energy new buildings in accordance with Directive 2010/31/EU, Scottish Ministers may consult and bring forward further legislation on such matters in advance of this date.

Consultation

9. The subject of this instrument introduces no change to what is required of parties affected by the regulations. The proposed amendments are an administrative exercise which results in no effect on those subject to the current regulations. They therefore do not present a topic that permits effective consultation. Accordingly, no consultation was undertaken.

10. As no consultation has taken place in respect of these changes, regulation making powers under the Building (Scotland) Act 2003 are not available since it is a requirement under section 1(2) of that Act to consult “persons as appear to Ministers to be representative of the interests concerned”. In this light, and given that the instrument is made in response to a European Directive, the instrument is made using powers under section 2(2) of the European Communities Act 1972 rather than powers under the Building (Scotland) Act 2003.

11. In respect of regulation 2(3) and requirements for all new buildings to be ‘nearly zero energy’ buildings from the specified dates, any further change to current regulatory provision or published guidance which will change what is required of parties affected by the Regulations will be subject to public consultation.

Impact Assessments

12. The subject of this instrument introduces no change to what is required of parties affected by the regulations. No assessment of impact is required.

⁴ 2014 No.219 - <http://www.legislation.gov.uk/ssi/2014/219/contents/made>

⁵ 2015 No.218 - <http://www.legislation.gov.uk/ssi/2015/218/contents/made>

13. In respect of regulation 2(3) and requirements for all new buildings to be ‘nearly zero energy’ buildings from the dates specified under regulation 1(2), any further change to current regulatory provision or published guidance which will change what is required of parties affected by the Regulations will be subject to a Equality Impact Assessment, Strategic Environmental Assessment, Privacy Impact Assessment and Child Rights and Wellbeing Impact Assessment.

Financial Effects

14. The subject of this instrument introduces no change and has no financial effect on parties affected by the regulations.

15. In respect of regulation 2(3) and requirements for all new buildings to be ‘nearly zero energy’ buildings from the specified dates, any further change to current regulatory provision or published guidance which will change what is required of parties affected by the Regulations will be subject to a Business and Regulatory Impact Assessment.

Scottish Government
Directorate for Local Government and Communities
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