

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING REGULATIONS &c. (AMENDMENT) REGULATIONS 2015**  
**2015 No. 767**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 This instrument amends the Building Regulations 2010 (S.I. 2010/2214), as amended by S.I. 2011/1515, S.I. 2012/718, S.I. 2012/3119, S.I. 2013/181, S.I. 2013/1105, S.I. 2013/1959, S.I. 2014/579 and S.I. 2014/2362) (“the Building Regulations”) in relation to new dwellings, by adding a new requirement concerning security and by providing for optional requirements in relation to access and to water efficiency, that apply only when compliance with them is a condition of planning permission. It makes corresponding amendments to the Building (Approved Inspectors etc.) Regulations 2010 (S.I. 2010/2215 as amended by S.I. 2012/3119, S.I. 2013/1959, and S.I. 2014/579) (“the Approved Inspectors Regulations”). It also revises the authorisation in the Building Regulations of various persons to certify their own work as compliant with building regulations made under the Building Act 1984 (c.55).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The provisions revising the authorisation of persons to certify their own work as compliant with building regulations will come into force 21 days after the laying of this instrument, but after the dissolution of Parliament. Clearance for this timetable was given by the Cabinet Home Affairs and Reducing Regulation Committees.

**4. Legislative Context**

4.1 This instrument is the first use of the powers in new section 2B of the Building Act 1984, inserted by the Deregulation Bill 2015 (c.20) to make optional requirements in building regulations, which are requirements that apply only when compliance with them is a condition of planning permission.

**5. Territorial Extent and Application**

5.1 This instrument applies to England, and to excepted energy buildings, as defined in the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019), in Wales.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *General housing standards policy*

7.1.1 The Government conducted the Housing Standards Review to look at the wide range of different technical and performance standards currently applied to new housing by local planning authorities. The aim was to remove duplication and contradiction in technical standard setting, and to rationalise the many standards so they are simpler and fit for purpose. For example, the Review found that there were over 60 different internal space standards operating across England, and thirty different wheelchair housing guides. Aside from being unnecessarily complex (e.g. access needs do not differ between authorities) this results in excessive cost burdens and bureaucracy imposed on developers, particularly smaller developers.

7.1.2 The Review has led to the following actions, intended to replace the multiplicity of standards required at present by different local authorities with a limited number of national standards, to be applied in accordance with local needs. This instrument amends the Building Regulations to introduce the new security requirement and the optional access and water efficiency requirements described below. Outside the Building Regulations an optional planning standard for internal space has been developed.. It is envisaged that the optional building regulations requirements will only be included in planning permissions in accordance with planning policy set out in a local plan. The same will apply in relation to the space standard To include such a policy, authorities will have to demonstrate a local need, and show that imposing an optional requirement or the space standard will not adversely affect the viability of development. This reflects the existing National Planning Policy Framework which requires authorities to ensure that all new policies do not, cumulatively, render new development uneconomic.

### *New security requirement*

7.1.3 The Housing Standards Review identified that local authorities are increasingly imposing security requirements for new dwellings. This can add unnecessary costs for home builders. Whilst there is evidence that these requirements reduce the incidence of burglary, they are often criticised for being disproportionate and costly in their application.

7.1.4 The policy objective is to introduce a simplified single mandatory security standard to provide protection from burglary for all new homes. A single requirement, consistently applied through the building regulations, will eliminate uncertainty and delay and reduce

administrative costs associated with locally imposed standards. The new requirement uses the most cost effective elements of existing standards.

7.1.5 Regulation 2(11)(c) introduces a new requirement Q1 (Security- unauthorised access) into Schedule 1 to the Building Regulations. This will reduce the burglary risk in all new homes while significantly reducing the build and process costs associated with security standards as currently applied.

7.1.6 Regulation 2(4)(b) and (c) makes consequential amendments to regulation 6 (requirements relating to material change of use) of the Building Regulations so that requirement Q1 applies to a dwelling formed by a material change of use of a building.

*Optional requirements: Access and water efficiency*

7.1.7 Part M (access to and use of buildings) of Schedule 1 to the Building Regulations currently sets functional requirements to ensure that reasonable provision is made to enable a wide range of people to have access to and use buildings and their facilities.

7.1.8 The Housing Standards Review identified that local authorities are increasingly setting accessibility standards in new dwellings that are higher than the minimum requirements in Part M in order to address local needs. Most commonly this includes requirements to meet the Lifetime Homes Standard<sup>1</sup>, which sets out a range of features to make properties more accessible and adaptable in meeting occupiers' changing needs over time. Some local authorities also require that a proportion of dwellings be built to standards intended to meet the needs of households which include wheelchair users.

7.1.9 Having carefully considered the merits of this approach, the Government has decided that local authorities should continue to be able to require higher standards of accessibility in meeting evidenced local need, but within the framework established by the Housing Standards Review.

7.1.10 To do this, regulation 2(11)(b) substitutes a revised Part M (Access to and use of buildings) of Schedule 1 to the Building Regulations, introducing two new optional requirements for higher levels of accessibility in new dwellings. Existing requirements M1, M2 and M3 as they apply to buildings other than dwellings are unchanged. The existing mandatory requirement on dwellings is renamed "requirement M4(1)– visitable dwellings" and will apply to all new dwellings unless an optional requirement is required in the planning permission for the dwelling. The two new optional requirements are "M4(2) – accessible and adaptable dwellings", which is similar to the Lifetime Homes Standard<sup>1</sup>, and "M4(3) - wheelchair user dwellings", which consolidates current practice in housing design to accommodate wheelchair users.

---

<sup>1</sup> <http://www.lifetimehomes.org.uk/pages/lifetime-homes-design-guide.html>

7.1.11 The revised requirement M4(1) now applies also in relation to the material alteration of a building, which was not previously the case. Accordingly by virtue of regulation 4 of the Building Regulations the building must either comply fully with requirement M4(1), or if it did not do so before, should be no less compliant with the requirement than it was before the work was carried out.

7.1.12 Regulation 2(11)(a) is consequential on the substitution of Part M and amends Part H3(2) (rainwater drainage) of Schedule 1 to the Building Regulations to maintain the current provision that paved areas around buildings that provide access to the building should have adequate drainage.

7.1.13 The Housing Standards review concluded that the various water efficiency targets required by local authorities in England should be rationalised. Regulation 2(8) substitutes a new regulation 36 (water efficiency of new dwellings) of the Building Regulations to introduce a new optional requirement for use by local planning authorities that wish to require a tighter water efficiency limit. This optional requirement is that the potential consumption of wholesome water is no more than 110 litres per person per day. The optional requirement will apply where compliance with it is a condition of the grant of planning permission for a new dwelling. In the absence of such a condition, the national limit of 125 litres per person per day will continue to apply.

7.1.14 Regulation 2(8) also provides for the Secretary of State to approve the methodology used to calculate the potential consumption of wholesome water. This methodology will be published as an appendix to an amended Approved Document G (sanitation, hot water safety, and water efficiency).

7.1.15 Regulation 2(9) substitutes a new regulation 37 (wholesome water calculation) of the Building Regulations to require that the notice specifying the calculated water consumption that must be given to the building control body must specify which water efficiency limit applies to the dwelling to which it relates.

#### *Consequential amendments to building control system*

7.1.16 Building control bodies, which may be the local authority for the area in which the building is situated or an approved inspector engaged by the person carrying out the building work, need, in order to carry out their statutory functions, to know whether or not any optional requirements apply to a new dwelling, and, if so, to satisfy themselves that any applicable optional requirement has been complied with. Accordingly, regulation 2(5) and (6) amend regulations 13 (particulars and plans where a building notice is given) and 14 (full plans) of the Building Regulations to require persons carrying out work involving the erection of new dwellings to tell the local authority, in cases where the local authority is the building control body, whether any optional requirements apply. Similarly, regulation 3(3) replaces Forms 1 to 12 in Schedule 1 (notices etc.) to the Approved Inspectors Regulations, and the new forms will require approved inspectors, and also

public bodies, who are allowed to supervise their own compliance with building regulations, to provide information about optional requirements in the initial notices, amendment notices, plans certificates and final certificates that they give to local authorities.

7.1.17 If an approved inspector's or public body's initial notice, amendment notice, plans certificate or final certificate does not contain all the information required in accordance with Forms 1 to 12 in Schedule 1 to the Approved Inspectors Regulations, the local authority must reject the notice or certificate. Regulation 3(4) to 3(9) amends Schedules 2 to 7 (grounds for rejecting notices etc.) of the Building (Approved Inspectors etc.) Regulations 2010 to provide for failure to provide the required information about any applicable optional requirements to be an additional reason for rejecting the notice or certificate.

7.1.18 Regulation 4 of the Building Regulations establishes the duty to comply with the requirements of those Regulations when building work is carried out. Regulation 2(3) amends regulation 4 to provide for compliance also with any applicable optional requirement.

#### *Competent person schemes*

7.1.19 Regulation 43 (4) (pressure testing) of the Building Regulations authorises local authorities to accept certificates from persons registered with a body named in the regulation as evidence that air pressure testing has been carried out in accordance with the procedure currently approved by the Secretary of State. Regulation 2(10)(a) authorises a new registration body with effect twenty one days after the laying of this instrument, in accordance with regulation 1(4)(a) (commencement), and regulation 2(10)(b) removes the name of another that no longer wishes to operate this type of registration scheme with effect from 31st December in accordance with regulation 1(4)(c).

7.1.20 Schedule 3 (self-certification schemes and exemptions from requirement to give building notice or deposit full plans) to the Building Regulations lists all the bodies that have been authorised to operate competent person self-certification schemes for various types of work. Installers who are registered with these schemes are authorised to certify their own work as compliant with the Building Regulations without having it checked by a building control body. Regulation 2(12) replaces the table in the current Schedule 3 with the table in Schedule 1 to this instrument. This authorises some new scheme operators for existing types of work by adding their names to the appropriate paragraphs, and removes the names of certain scheme operators from a number of paragraphs where they no longer wished to operate a scheme for a particular type of work.

- Consolidation

7.2 There are no present plans to consolidate the Building Regulations or the Approved Inspectors Regulations.

## **8. Consultation outcome**

### *Housing Standards Review*

8.1.1 The Housing Standards Review process included two consultations. The first, during the summer of 2013, considered the broad options and principles for reorganising and rationalising the imposition in relation to new housing of technical standards additional to those required by the Building Regulations. The general view of respondents was that as far as possible technical standards should be included in the Building Regulations. There was also support for the creation of a new category of optional requirements in the Building Regulations to accommodate particular circumstances but which it would not be appropriate to require in all cases.

8.1.2 The second consultation took place in the autumn of 2014. This was mainly focused on the content of the new optional requirements in the Building Regulations, the planning space standard, and the new security requirement in the Building Regulations. The consultation attracted nearly 600 responses, with the majority of these in support of the new arrangements.

### *Competent person self-certification schemes*

8.1.3 The Department consulted the Building Regulations Advisory Committee for England and other representative interests on the new and extended competent person schemes. None objected to the Department's proposals.

## **9. Guidance**

9.1 The Department for Communities and Local Government) is publishing new Approved Documents G (Sanitation, hot water safety and water efficiency) and M (Access to and use of buildings) to provide statutory guidance to support the changes made by this instrument.

9.2 The Department will also issue a Circular Letter to building control bodies, local authorities and approved inspectors, giving guidance on how they may carry out their building control functions in respect of the changes made by this instrument.

## **10. Impact**

10.1.1 The Housing Standards Review was supported by two separate impact assessments, covering the initial consultation and the final technical consultation. The final impact assessment estimates that savings to business of an annual net benefit of £96m are possible.

10.1.2 The impact on business, charities and voluntary bodies of the proposals for new and extended competent person schemes is deregulatory. The impact assessment estimates an annual net benefit of £0.8m per annum.

10.2.1 The introduction of the new mandatory security standard and the optional requirements will mean that local planning authorities will no longer need to check that any planning conditions imposed in relation to these topics have been complied with, as this task will now fall to the relevant building control bodies. This should mean a reduced burden on local authority planning resources.

10.2.2 The impact on the public sector for new and extended competent person schemes is that local authorities will be less building work to check, freeing time to concentrate on work involving greater risk.

10.3 Three impact assessments are attached to this memorandum and are published alongside this Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website:

RPC14-CLG-2252: Housing Standards Review Implementation

RPC14-CLG-2276: Housing Standards Review – Security Final Implementation

RPC14 –FT-CLG-2311: Authorisation of New and Extended Competent Person Schemes

## **11. Regulating small business**

11.1 The legislation applies to small business. Business of all sizes will benefit from the reduction in costs as set out in the attached impact assessments.

## **12. Monitoring & review**

12.1 The Department will monitor the implementation and ongoing use of the changes made to building regulations by this instrument.

## **13. Contact**

Ian Drummond at the Department of Communities and Local Government Tel: 0303 444 1791 or email: [ian1.drummond@communities.gsi.gov.uk](mailto:ian1.drummond@communities.gsi.gov.uk) can answer any queries regarding the instrument.