

EXPLANATORY MEMORANDUM TO
THE BUILDING REGULATIONS &C. (AMENDMENT) REGULATIONS 2016
2016 No. 285

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends provisions in the Building Regulations 2010 (“the principal Regulations”) concerning the energy performance of buildings, revoking provisions concerning energy performance certificates, that are being consolidated elsewhere, and clarifying provisions concerning minimum energy efficiency requirements. It also updates the schedule of persons entitled to certificate the compliance of their own work with building regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument amends the implementation of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings (recast) (“Directive 2010/31/EU”). It revokes provisions concerning energy performance certificates for newly constructed buildings, that are being consolidated, with certain amendments, in the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2016 (S.I. 2016/284) (“S.I. 2016/284”), and clarifies provisions in respect of minimum energy efficiency requirements.
- 4.2 In addition, the list of persons entitled to certificate the compliance of their own work with building regulations under national provisions is updated.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is to England, and, but only in relation to “excepted energy buildings”, to Wales.
- 5.3 “Excepted energy building” is defined in the Schedule to the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019), and essentially means a building forming part of energy infrastructure.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 This instrument makes a number of changes to the energy efficiency provisions in Part 6 of the principal Regulations. In particular, they clarify that energy performance must be calculated and expressed in accordance with the methodologies approved under Regulation 24 of the principal Regulations, and they amend and supplement definitions concerning the energy performance of buildings to clarify the manner in which they implement that concept in Directive 2010/31/EU. These amendments do not however make any change to the policy intention behind the provisions amended, or to their application by persons carrying out building work, building owners or building control bodies.
- 7.2 The opportunity has also been taken to remove from the Building Regulations 2010 the requirements concerning energy performance certificates on the construction of buildings and to consolidate them alongside the requirements for energy performance certificates on the sale or rental of buildings in amendments being made to the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118, as amended by S.I. 2013/10; S.I. 2013/181; S.I. 2013/603; S.I. 2014/880; S.I. 2015/609; S.I. 2015/1681; and S.I. 2016/284.) This consolidation should make the energy performance certificate regime easier to understand, and simplify future amendments. The requirement to provide an energy performance certificate on construction of new buildings or after certain conversions is otherwise largely unchanged, except for amendments made in S.I. 2016/284 excluding certain buildings from the registration of certificates for reasons of security, and the correction of an error concerning enforcement.
- 7.3 Consequential amendments in relation to energy performance certificates are also made to the Building (Approved Inspectors etc.) Regulations 2010 (S.I. 2010/2215, as amended by S.I. 2012/3119; S.I. 2013/1959; S.I. 2014/579 and S.I. 2015/767), which provide for the supervision of building work by approved inspectors, who undertake building control functions with the approval of a body designated by the Secretary of State, rather than by local authorities.
- 7.4 Unrelated to the above amendments, Schedule 3 to the principal Regulations, which lists persons entitled to certificate the compliance of their own work with building regulations under national provisions, is also updated.

Consolidation

- 7.5 The Department periodically carries out a consolidation of building regulations, although there are no immediate plans for the consolidation of principal Regulations. The amendments made by this instrument will be included the next time there is a consolidation of building regulations.

8. Consultation outcome

- 8.1 There has been no formal consultation on the amendments as they have been made only to improve the clarity and accuracy of the wording, and make no change to

application of the requirements by those carrying out building work, building owners or building control bodies.

9. Guidance

- 9.1 There will be minor amendments to Approved Document L, the statutory guidance on compliance with the energy efficiency requirements of the principal Regulations, to reflect the changes of wording in some of the statutory provisions.
- 9.2 Guidance for building control bodies (local authorities and approved inspectors) on the application of the amendments made by this instrument and on the statutory guidance will be given by a circular letter issued by the Department and available to the public.

10. Impact

- 10.1 Minimal impact, or no impact, is foreseen on business, charities or voluntary bodies
- 10.2 Minimal impact, or no impact, is foreseen on public sector bodies.
- 10.3 No impact assessment has been undertaken for the amendments made in this instrument.

11. Regulating small business

- 11.1 The amendments made in this instrument apply to activities that are undertaken by small businesses.
- 11.2 The EU obligations to which provisions made in this instrument relate make no provision for different application to small businesses.
- 11.3 The updating of Schedule 3 to the principal Regulations imposes no additional burden on business.

12. Monitoring & review

- 12.1 There is no provision made for review of the amendments being made by this instrument to the principal Regulations, on the basis that they involve technical amendments and consolidation only and it would be disproportionate to the economic impact of the amendments to require their review.

13. Contact

- 13.1 Ian Drummond at the Department for Communities and Local Government (telephone: 0303 444 1791 or email: ian1.drummond@communities.gsi.gov.uk) can answer any queries regarding the instrument.