

# Building Regulations (Amendment) Act (Northern Ireland) 2009

## 2009 CHAPTER 4

An Act to amend the Building Regulations (Northern Ireland) Order 1979. [2nd March 2009]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Building regulations**

1.—(1) In Article 2 of the principal Order (interpretation) after paragraph (3) add—

“(4) For the purposes of this Order “low or zero carbon system” means any system used for the generation of electricity or the production of heat which, in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in paragraph (5).

(5) Those sources of energy and technologies are—

- (a) biomass;
- (b) biofuels;
- (c) fuel cells;
- (d) photovoltaics;
- (e) water (including waves and tides);
- (f) wind;

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*Changes to legislation: There are currently no known outstanding effects for the Building Regulations (Amendment) Act (Northern Ireland) 2009. (See end of Document for details)*

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- (g) solar power;
- (h) geothermal sources;
- (i) combined heat and power systems;
- (j) other sources of energy and technologies for the generation of electricity or the production of heat, the use of which would, in the opinion of the Department, cut emissions of carbon dioxide and other greenhouse gases.

(6) In paragraph (5)(j) “other greenhouse gases” means—

- (a) methane;
- (b) nitrous oxide;
- (c) hydrofluorocarbons;
- (d) perfluorocarbons;
- (e) sulphur hexafluoride.”.

(2) In Schedule 1 to the principal Order (matters which may be included in building regulations)—

(a) for paragraph 2, substitute—

“**2.** Suitability, durability, use, reuse and recycling of materials and components (including surface finishes) and the life cycle of materials and components.

**2A.** Measures requiring the use of reused or recycled materials.”;

(b) in paragraph 13, after “heat exchangers” insert “ , low or zero carbon systems, heat networks ”;

(c) for paragraph 17 substitute—

“**17.** Standards and performance of heating, mechanical ventilation and air conditioning.

**17A.** Standards of artificial lighting and provision of power outlets.

**17B.** Measures relating to the security of buildings.

**17C.** Measures to prevent pollution and nuisance.

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**17D.** Measures affecting the use of fuel or power (including the amount of fuel or power to be derived from a particular source or sources).

**17E.** Measures affecting the sustainable use of water (including equipment for monitoring and measuring supplies of water).”.

### **Protected buildings**

2. After Article 3 of the principal Order insert—

#### **“Protected buildings**

**3A.**—(1) In carrying out any of its functions under building regulations a district council shall take account of the desirability of preserving the character of protected buildings.

(2) In this Article “protected buildings” means—

- (a) listed buildings within the meaning of the Planning (Northern Ireland) Order 1991; and
- (b) buildings situated in conservation areas within the meaning of that Order.”.

### **Building Regulations Advisory Committee**

3. In Article 4 of the principal Order (Building Regulations Advisory Committee), in paragraph (2) for “bodies” substitute “ persons ”.

### **Further provisions as to the making of building regulations, etc.**

4. In Article 5 of the principal Order (further provisions as to the making of building regulations, etc.)—

- (a) in paragraph (1), sub-paragraph (b) ceases to have effect;
- (b) in paragraph (1), in sub-paragraph (c)—
  - (i) for “a document” substitute “ guidance ”;
  - (ii) for the words from “by or on behalf of the Department or any other person” to the end of that sub-paragraph substitute “ by the Department in accordance with Article 5A; ”;
- (c) in paragraph (5) for the words from “having regard to” to the end of that paragraph substitute “having regard to the need to—

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- (a) secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings;
- (b) further the conservation of fuel and power;
- (c) further the protection and enhancement of the environment; and
- (d) promote sustainable development.”.

**Commencement Information**

- I1** S. 4 partly in operation; s. 4 not in operation at Royal Assent see s. 15; s. 4(c) in operation at 31.8.2009 by S.R. 2009/272, art. 2
- I2** S. 4(a) in operation at 31.10.2012 by S.R. 2012/186, art. 3
- I3** S. 4(b) in operation at 15.5.2012 by S.R. 2012/186, art. 2

**Guidance documents**

5.—(1) After Article 5 of the principal Order insert—

**“Guidance for purposes of building regulations**

**5A.**—(1) The Department may prepare guidance with respect to the requirements of any provision of building regulations.

(2) After preparing a draft of the guidance the Department—

- (a) shall send a copy of the draft to such persons as it thinks are representative of those having an interest in building regulations;
- (b) shall consider any representations made to it about the draft by such persons;
- (c) may amend the draft accordingly.

(3) After the Department has proceeded under paragraph (2) it shall publish the guidance in such manner as it thinks appropriate.

(4) The Department shall from time to time review the guidance and if it thinks it appropriate—

- (a) revise the guidance; or
- (b) withdraw the guidance.

(5) Paragraphs (1) to (3) apply to a revision of the guidance as they apply to its preparation.

(6) Where the Department withdraws guidance under paragraph (4)(b) it shall publish notice of that fact in such manner as it thinks appropriate.

(7) A failure on the part of a person to comply with guidance published under this Article does not of itself render that person liable to any civil

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or criminal proceedings; but the guidance is admissible in evidence in such proceedings and a court may take account of any failure to act in accordance with it in deciding any question in the proceedings.”.

(2) In Article 21 (penalties), in paragraph (1), for “Any person” substitute “Subject to Article 5A(7), any person”.

**Commencement Information**

**I4** S. 5 in operation at 15.5.2012 by S.R. 2012/186, art. 2

**Type approval**

**6.—(1)** In Article 8 of the principal Order (power of Department to approve types of building, etc.)—

- (a) for the heading substitute “ Power of district councils to approve types of building, etc. ”;
- (b) in paragraph (1) for “the Department, either on an application made to it or of its own accord” substitute “ a district council, on an application made to it ”;
- (c) after paragraph (3) insert—

“(3A) Before approving a type of building matter as complying with particular requirements of building regulations, either generally or in any class of case, a district council shall consult with such persons as may be prescribed.”;
- (d) in paragraph (4)—
  - (i) for “the Department” substitute “ a district council ”;
  - (ii) for “may” substitute “ shall ”;
- (e) for paragraph (7) substitute—

“(7) A district council may vary a certificate issued by it under this Article either on an application made to it or of its own accord and, except where it varies the certificate on the application of the person who applied for the certificate under paragraph (1), shall before varying it give that person reasonable notice that it proposes to do so.”;
- (f) paragraphs (8), (9) and (13) are omitted;
- (g) in paragraph (10)—
  - (i) for “the Department” substitute “ a district council ”;
  - (ii) the words “or revokes” are omitted;
  - (iii) for “manner as it thinks fit” substitute “ manner as may be prescribed ”;

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- (h) in paragraph (11) the words “or revoked” are omitted;
  - (i) in paragraph (12) for “in any way that the Department thinks fit” substitute “in such manner as may be prescribed”.
- (2) In Article 17 of the principal Order (appeals to the Department)—
- (a) after paragraph (2) insert—
    - “(2A) Where, on an application made to it under paragraph (1) of Article 8, a district council does not, within such period as may be prescribed, approve any particular type of building matter as complying with particular requirements of building regulations, the applicant may, by notice in writing, appeal to the Department within such period as may be prescribed.”;
  - (b) in paragraph (4) for “paragraph (1)” substitute “this Article”;
  - (c) in paragraph (5) after sub-paragraph (a), omit “and” and insert—
    - “(aa) may, in the case of an appeal under paragraph (2A), approve any particular type of building matter as complying with particular requirements of building regulations; and”.

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**Commencement Information**

**I5** S. 6 in operation at 15.5.2012 by 2009 c. 4 (N.I.), s. 15(1)

**Power to require or carry out tests**

**7.** In Article 12 of the principal Order (power to require or carry out tests for conformity with building regulations)—

- (a) in paragraph (2)—
  - (i) in sub-paragraph (a) for “such reasonable tests of or in connection with the work as may be” substitute “any prescribed tests which are”;
  - (ii) in sub-paragraph (b) for “reasonable” substitute “prescribed”;
- (b) in paragraph (3), for “the matters with respect to which tests may be required or carried out” substitute “the tests which may be prescribed”;
- (c) in paragraph (4)(a) for “such reasonable tests as may be” substitute “any prescribed tests which are”;
- (d) in paragraph (6)(a) for “any test specified in a requirement” substitute “any requirement”.

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**Commencement Information**

**I6** S. 7 in operation at 15.5.2012 by 2009 c. 4 (N.I.), s. 15(2)

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### **Contravention notices**

8. In Article 18 of the principal Order (contravention notices)—
- (a) in paragraph (5) for the words from “after the expiration of” to the end of that paragraph substitute “ after such period (not being a period of more than 12 months from the date of completion of the work in question or such other works as may be prescribed) as may be prescribed. ”;
  - (b) in paragraph (6) for “18 months from the completion of the work” substitute “ the period mentioned in paragraph (5) ”.

#### **Commencement Information**

I7 S. 8 in operation at 15.5.2012 by S.R. 2012/186, art. 2

PROSPECTIVE

### **Registers of information and documents to be kept by district councils**

9. After Article 19 of the principal Order insert—

#### **“Registers to be kept by district councils**

**19A.**—(1) A district council shall keep in a register such information and documents as may be prescribed in connection with its functions, powers and duties conferred or imposed by or under this Order.

(2) The information and documents that may be prescribed for the purposes of paragraph (1) include, in particular—

- (a) documents that are given or issued to, or deposited with, a district council in accordance with provision made by or under this Order, or copies of such documents;
- (b) copies of documents that are given, made or issued by a district council in accordance with provision so made;
- (c) information with respect to documents of the kind mentioned in sub-paragraph (a) or (b);
- (d) information with respect to matters to which such documents relate.

(3) Information and documents that are required to be kept in a register under paragraph (1) shall be so kept for the prescribed period.

(4) A district council—

- (a) shall maintain the register referred to in paragraph (1) in such manner and form as may be prescribed;

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- (b) shall ensure that the register is available for inspection by members of the public during prescribed periods;
  - (c) shall, in prescribed circumstances, provide to members of the public, on request, copies of information and documents kept in the register;
  - (d) may, in prescribed circumstances, charge a member of the public to whom it provides such copies a fee calculated in the prescribed manner.
- (5) In this Article “documents” includes notices, certificates, orders, consents, demands and plans.”.

### **False or misleading statements**

**10.** In Article 21 of the principal Order (penalties) after paragraph (1) insert—

“(1A) Any person who—

- (a) gives a notice or certificate or makes an application that—
  - (i) purports to comply with the requirements of this Order or of any provision contained in building regulations; and
  - (ii) contains a statement that that person knows to be false or misleading in a material particular; or
- (b) recklessly gives a notice or certificate or makes an application that—
  - (i) purports to comply with those requirements; and
  - (ii) contains a statement that is false or misleading in a material particular,

is guilty of an offence under this Order.”.

### **Application of building regulations to the Crown**

**11.** In Article 22 of the principal Order (application of building regulations to the Crown)—

- (a) paragraph (3) is omitted;
- (b) in paragraph (5)—
  - (i) in The definition of “Crown building” for “in which there is a Crown interest” substitute “ occupied by the Crown ”;
  - (ii) the definition of “Crown interest” is omitted.

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#### **Commencement Information**

**I8** S. 11 in operation at 31.10.2012 by 2009 c. 4 (N.I.), s. 15(3)



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## Interpretation

12. In this Act—

“the principal Order” means the Building Regulations (Northern Ireland) Order 1979 (NI 16);

“the Department” means the Department of Finance and Personnel;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

## Minor amendment

13. In Article 2 of the principal Order (interpretation), in paragraph (2), The definition of “rack rent” ceases to have effect.

### Commencement Information

**I9** S. 13 in operation at 15.5.2012 by S.R. 2012/186, art. 2

## Repeals

14. Subject to any transitional or saving provision made under section 15(4), the statutory provisions mentioned in the Schedule are repealed to the extent specified therein.

### Commencement Information

**I10** S. 14 in operation at 31.10.2012 by S.R. 2012/186, art. 3 (The repeals schedule to which this governing section relates comes into operation for s. 6 and s. 13 repeals at the earlier date of 15.5.2012)

## Commencement

15.—(1) Section 6 and the repeals relating to Article 8 of the principal Order set out in the Schedule to this Order shall come into operation on such day as Article 8 of the principal Order comes into operation.

(2) Section 7 shall come into operation on such day as Article 12 of the principal Order comes into operation.

(3) Section 11 and the repeals relating to Article 22 of the principal Order set out in the Schedule to this Order shall come into operation on such day as Article 22 of the principal Order comes into operation.

(4) The remaining provisions of this Act, apart from this section and sections 12 and 16, shall come into operation on such day or days as the Department may by order appoint.

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(5) An order under subsection (4) may contain such transitional or saving provisions as appear to the Department to be necessary or expedient.

**Subordinate Legislation Made**

**P1** [S. 15\(4\)](#) power partly exercised: 31.8.2009 appointed for specified provisions by [S.R. 2009/272, art. 2](#)

**Short title**

**16.** This Act may be cited as the Building Regulations (Amendment) Act (Northern Ireland) 2009.

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SCHEDULE

Section 14.

REPEALS

**Commencement Information**

- I11** Sch. in operation at 15.5.2012 for specified purposes by [2009 c. 4 \(N.I.\)](#), [s. 15\(1\)](#) and S.R. 2012/187, art. 2
- I12** Sch. in operation at 31.10.2012 for specified purposes by [2009 c. 4 \(N.I.\)](#), [art. 15\(3\)](#) and S.R. 2012/187, art. 3
- I13** Sch. in operation at 31.10.2012 by s. 14 of this Act and [S.R. 2012/186](#), [art. 3](#)

**Short Title**

The Building Regulations (Northern Ireland) Order 1979 (NI 16).

**Extent of repeal**

In Article 2(2), the definition of “rack rent”.

Article 5(1)(b).

In Article 8, paragraphs (8), (9) and (13).

In Article 8, in paragraph (10) the words “or revokes”.

In Article 8, in paragraph (11) the words “or revoked”.

In Article 17, after paragraph (5)(a), the word “and”.

In Article 22, paragraph (3).

In Article 22(5), the definition of “Crown interest”.

**Status:**

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**Changes to legislation:**

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