

EXPLANATORY MEMORANDUM TO
THE BUILDING REGULATIONS &c. (AMENDMENT) REGULATIONS 2013

2013 No. 181

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 These Regulations amend The Building Regulations &c. (Amendment) Regulations 2012 (S.I. No 3119) (the “Amending Regulations”), The Building Regulations 2010 (S.I. No 2214) (the “2010 Regulations”) and The Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. No 3118) (the “EPB Regulations”). The Amending Regulations amend the 2010 Regulations, the Building (Approved Inspectors etc.) Regulations 2010 (S.I. No 2215) (the “Approved Inspectors Regulations”) and The Building (Local Authority Charges) Regulations 2010 (S.I. No 404).

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

3.1 The 21 day rule has not been observed as there is real urgency in making this instrument. This instrument corrects defects in the Amending Regulations and the EPB Regulations. One of the defects is a failure to cite section 2(2) of the European Communities Act 1972 (“section 2(2)”) as one of the powers relied upon to make the Amending Regulations. The effect of this defect is that certain requirements of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast) (the “Directive”) that should have come into force on 9th January 2013 were unable to commence. Therefore, the Directive’s provisions have not been transposed for the small category of buildings which relied on section 2(2) powers to apply certain provisions in the Amending Regulations to the 2010 Regulations. Postponing the coming into force date to allow the standard time for Parliamentary scrutiny would further lengthen the period of time in which certain requirements of the Directive would not be fully transposed. The purpose and details of this instrument will be communicated to persons affected by the legislation.

4. **Legislative Context**

Why is the instrument being made?

4.1 These Regulations amend certain provisions in the Amending Regulations, the 2010 Regulations and the EPB Regulations. The Amending Regulations needed to rely upon section 2(2) in order to transpose requirements in the Directive by applying the amendments made under regulations 14 to 19 and 22 and 23 of the Amending Regulations to educational buildings and buildings of statutory undertakers; to Crown buildings (together the “relevant buildings”); and to building work carried out or proposed to be carried out by Crown authorities in England and Wales (“relevant building work”). The Amending Regulations could not rely on provisions in the Building Act 1984 (“the 1984 Act”) to apply the amendments made under regulations 14 to 19 and 22 and 23 of the Amending Regulations to relevant buildings and relevant building work for the following reasons, in relation to:

- educational buildings and buildings of statutory undertakers, because section 4(1) of the 1984 Act (exemption of educational buildings and buildings of statutory undertakers) operates to exempt such buildings from building regulation provisions; and
- Crown buildings and building work carried out, or proposed to be carried out by Crown authorities, because section 44 of the 1984 Act (application of building regulations to Crown etc) is yet to be commenced, which means that the Crown is not currently covered by domestic building regulation provisions.

4.2 Whilst the preamble to the Amending Regulations refers to the designation of the Secretary of State for the purposes of section 2(2), section 2(2) is erroneously omitted from the list of powers cited in the third paragraph of the preamble setting out the list of powers the Secretary of State relies upon when making these Regulations. These Regulations restore the intended position regarding amendment of the 2010 Regulations relying on section 2(2), and makes a small number of other amendments.

4.3 Regulation 22 of the Amending Regulations was intended to substitute new wording for regulation 34 of the 2010 Regulations. The purpose of the new wording was to apply the provisions specified in the new regulation to the relevant buildings and relevant building work. However, regulation 22 relied upon section 2(2) and was therefore ineffective and unable to come into force. A new version of regulation 34 of the 2010 Regulations is substituted afresh in regulation 7 of these Regulations.

4.4 These Regulations also amend other errors in the Amending Regulations and the EPB Regulations, which are set out below:

- In the Amending Regulations, the table of commencement dates set out in Schedule 1 repeats regulation 38 and omits regulation 37. Regulation 5 of, and the Schedule to, these Regulations substitutes a revised portion of the commencement table in respect of provisions which come into force after 11th February 2013.
- In Forms 1 and 4 specified in Schedule 1 to the Approved Inspectors Regulations, regulation 41 of the Amending Regulations erroneously

added an incorrect form of wording for the statement to be made by the inspector regarding approval in respect of the work specified in an initial notice (or an initial notice combined with a plans certificate). Regulation 41 of the Amendment Regulations comes into force on 6th April 2013. Regulation 6 of these Regulations now substitutes the correct form of wording for this statement for both forms by amending the relevant provisions of regulation 41 of the Amending Regulations.

- Regulations 9 and 10 of these Regulations amend the EPB Regulations to clarify that (other than in regulations 9(4) and 11 of those regulations) “building” includes “building unit” so that the relevant duties applying in relation to buildings also apply to building units. The definition of “building unit” was added in order to enact requirements of Article 12.4 of the Directive.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

5.2 As a result of the Welsh Ministers (Transfer of Functions) (No 2) Order 2009 (S.I. 2009/3019) most of the Secretary of State’s functions under the 1984 Act and related secondary legislation transferred to the Welsh Ministers on 31st December 2011. However, under the European Communities (Designation) Order 2008 (S.I. 2008/301), the Secretary of State is designated for the purposes of section 2(2) in relation to measures relating to the environment, but the Welsh Ministers are not. Section 2(2) is therefore relied upon to make regulations for England and Wales.

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

7.1 An amendment is being made to the EPB Regulations at regulations 9 and 10. The purpose of the amendment is to clarify that (other than in regulation 9(4) and 11 of the EPB Regulations), the term “building” includes “building units”. The effect of this amendment is that the duties that relate to “buildings” also relate to “building units”. The term “building unit” is defined as meaning “a section, floor or apartment within a building which is designed or altered to be used separately”.

7.2 The wording in regulation 41 of the Amendment Regulations in respect of Forms 1 and 4 of Schedule 1 to the Approved Inspectors Regulations is defective because it adds new wording to the forms referring to whole or part of the work in the initial notice. Form 1 is an initial notice and Form 4 is a combined initial notice and plans certificate, and therefore both forms relate to the whole of the work.

7.3 As these Regulations correct defects in the Amending Regulations and the EPB Regulations there is no change to the policy background, consultation outcome, guidance, impact, regulating small business and monitoring and review as set out in the Explanatory Memorandum to the Amending Regulations and the EPB Regulations.

8. Consultation outcome

See above under para 7.

9. Guidance

See above under para 7.

10. Impact

See above under para 7.

11. Regulating small business

See above under para 7.

12. Monitoring & review

See above under para 7.

13. Contact

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