

EXPLANATORY MEMORANDUM TO
THE BUILDING REGULATIONS &c. (AMENDMENT) (No. 2)
REGULATIONS 2013

2013 No. 1959

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 These Regulations amend the Building Regulations 2010 (S.I. No 2214), the Building (Approved Inspectors etc) Regulations 2010 (S.I. No 2215) and the Croydon Corporation Act 1960.

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

3.1 None.

4. Legislative Context

4.1 Section 1 of the Building Act 1984 (“the 1984 Act”) confers on the Secretary of State power to make building regulations with respect to the design and construction of buildings and the services, fittings and equipment provided in or in connection with buildings for a number of purposes. These purposes include securing the health, safety, welfare and convenience of persons in and about buildings, furthering the conservation of fuel and power, preventing waste, undue consumption, misuse or contamination of water, furthering the protection or enhancement of the environment and facilitating sustainable development and furthering the prevention or detection of crime. There are further powers conferred by other sections of the 1984 Act, in particular in Part 2, which includes provisions relating to approved inspectors.

4.2 The Building Regulations 2010 and the Building (Approved Inspectors) Regulations 2010 have been made pursuant to powers in the 1984 Act. Parts 2 and 3 of these Regulations amend both sets of the 2010 Regulations cited at paragraph 2 above to include a requirement that new dwellings should not exceed a target fabric energy efficiency rate.

4.3 Section 1(1) of, and paragraphs 10 and 11(1)(c) of Schedule 1 to, the Building 1984 Act, also enable the Secretary of State to make building regulations that repeal certain Local Acts provisions, if it appears to the Secretary of State that any provision of a Local Act (passed before 3 November 1994, being the day on which the Deregulation and Contracting Out Act 1994 was passed) is inconsistent with, or is unnecessary or requires

alteration in consequence of, any provision contained in or made under any enactment relating to building regulations.

4.4 These Regulations repeal parts of the Croydon Act 1960 because Part B of Schedule 1 to the Building Regulations 2010 sets out national provisions for fire safety protection in buildings including car parks, large storage buildings (over 7000 cubic metres) and tall buildings (over 30metres). Part B is accompanied by statutory guidance. The parts of the Croydon Act 1960 repealed by these Regulations are considered by the Secretary of State unnecessary as they impose additional fire protection, construction, maintenance and administrative cost burdens for car parks, large storage buildings and high buildings, beyond the national requirements in the Building Regulations 2010 which provide reasonable standards of life safety in the event of a fire.

5. Territorial Extent and Application

5.1 This instrument applies to England and to certain types of buildings in Wales.

5.2 In respect of Wales, certain functions under the 1984 Act were transferred from the Secretary of State to the National Assembly for Wales constituted under the Government of Wales Act 1998. The transfer was effected by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). In May 2007, the functions were transferred to the Welsh Ministers by the Government of Wales Act 2006 (Schedule 11, paragraph 30). These earlier transferred functions related largely to the resolution of disputes under the 1984 Act.

5.3 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. The following functions under the 1984 Act remain with the Secretary of State: functions relating to certain types of energy infrastructure building; functions exercisable by the Secretary of State as a Crown authority (section 44(5)) and power to appoint a day for modification to cease to have effect or for a provision to come into force (sections 42(7) and 134(1)).

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

7.1.1 Part 6 of and Part L of Schedule 1 to the Building Regulations 2010, as amended, set out the energy efficiency requirements on the construction, renovation or extension of buildings and for the provision of controlled

services or fittings in or in connection with a building. It is the Government's policy to require continuous improvements to the energy efficiency of new buildings so as to reduce CO₂ emissions and thus help the United Kingdom achieve its overall carbon reduction targets and also to help reduce people's fuel bills.

7.1.2 Parts 2 and 3 of these Regulations introduce a new requirement that new dwellings should not exceed a target fabric energy efficiency rate. The target will be set through the use and updating of the current approved national method for the calculation of the energy performance of buildings in regulation 24 of the Building Regulations 2010. The outcome of the new requirement will be that the fabric of new dwellings will have to be more energy efficient than if the new requirement had not been introduced.

7.1.3 Part 4 of these Regulations repeal two provisions in the Croydon Corporation Act 1960 related to the fire safety of buildings. It is Departmental policy to repeal provisions in Local Acts which duplicate those in national building regulations where national building regulations provide an appropriate level of protection. Similar provisions in a number of other Local Acts were repealed in the Building (Repeal of Provisions of Local Acts) Regulations 2012 (S.I. No.3124).

- Consolidation

7.2 The Department periodically carries out a consolidation of the Building Regulations and the amendments made to the Building Regulations by these Amendment Regulations will be consolidated the next time there is a consolidation of the Building Regulations.

8. Consultation outcome

8.1.1 The Department consulted publicly in 2012, including consultation with the Building Regulations Advisory Committee for England, on the changes to the energy efficiency provisions of the Building Regulations, including the introduction of a target fabric energy efficiency rate for new dwellings.

Over 400 responses were received to last year's consultation proposals including broad support for the introduction of a target fabric energy efficiency rate to require cost effective fabric improvements for new dwellings.

The consultation document is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8388/2077834.pdf

The summary of responses is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/38692/2012_BR_SOR.pdf

8.1.2 The Department undertook a general consultation as required by section 14(4) of the Building Act 1984 on the repeal of provision of local acts in the context of the Building (repeal of Provisions of Local Acts) Regulations 2012. A further consultation was carried out on the repeal of sections 93 and 94 of the Croydon Corporation Act 1960. In this case the consultees were the Building Regulations Advisory Committee for England, the London Fire and Rescue Service and the London Borough of Croydon.

9. Guidance

9.1 Technical guidance on the new requirement on fabric energy efficiency will be given in an amended Approved Document L, statutory guidance approved under section 6 of the Building Act 1984. Guidance to building control bodies (local authorities and approved inspectors) on these Amendment Regulations and amended statutory guidance will be by the issue of Departmental Circular Letters to them.

10. Impact

10.1.1 The impact on business, charities or voluntary bodies. The Impact Assessment for changes to Part L of the Building Regulations considers the impact of the new requirement on fabric energy efficiency for new homes and various other changes to be made to the statutory guidance. The total Net Present Benefit is estimated at £379 million. This is explained in the Impact Assessment. Present value benefits in the form of energy and carbon savings for the selected option including the new requirement for fabric energy efficiency for new homes more than make up for the present value incremental costs.

10.1.2 The impact on business, charities or voluntary bodies of the repeal of sections 93 and 94 of the Croydon Corporation Act is deregulatory.

10.2 The impact on the public sector. Public sector buildings are treated no differently from other buildings under these amendments to the Building Regulations.

10.3 The Impact Assessment relating to the changes to Part L of the Building Regulations are attached and will be published alongside the Explanatory Memorandum. The Impact Assessment relating to the repeal of provisions of local acts has already been published and accompanied S.I. No.3124.

11. Regulating small business

11.1 The legislation applies to small business. The construction industry is made up of businesses of all types and sizes working together so applying and policing differing construction standards to some businesses and not to others would be impracticable.

11.2.1 To minimise the impact of the new requirement on fabric energy efficiency for new homes on firms employing up to 20 people, the approach

taken is to provide them, along with other firms, with a period of over six months from the laying of the regulations and publication of the statutory guidance to its coming into force. This period to familiarise themselves with the new requirements will be particularly beneficial to small firms. .

11.2.2 The repeal of the provisions on fire safety in the Croydon Corporation Act is a deregulatory measure and therefore will benefit small firms as well as large ones.

11.3 The basis for the final decision on what action to take to assist small businesses recognises the limited scope there is for making exemptions or putting in place specific measures for smaller businesses. The Department is however collaborating with industry bodies that plan to develop generic model designs for Part L new homes that will be particularly beneficial to small firms.

12. Monitoring & review

12.1 The Building Regulations are periodically and regularly reviewed and the new requirement on fabric energy efficiency will be reviewed as part of a regular review and in time to inform any further changes.

13. Contact

Alison Lockyer at the Department for Communities and Local Government:
tel: 0303 444 3420 or email: alison.lockyer@communities.gsi.gov.uk can answer any queries regarding the instrument.