

EXPLANATORY MEMORANDUM TO
THE BUILDING (AMENDMENT) REGULATIONS 2018
2018 No. 1230

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Ministry of Housing, Communities & Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Following consultation this instrument amends the Building Regulations 2010 to prohibit the use of combustible materials within the external walls, and certain attachments to the external walls, of any building with a storey at least 18 metres in height where:
- The building contains at least one dwelling;
 - The building contains certain residential accommodation for the treatment, care or maintenance of persons;
 - The building contains certain rooms used for residential purposes, including student accommodation and school dormitories.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The Territorial extent of the instrument is England and Wales only.
4.2 The Territorial application of the instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Building Regulations 2010 have been made pursuant to powers in the Building Act 1984. This Instrument amends the Building Regulations 2010 to restrict the

materials that may become part of an external wall, or certain attachments to an external wall, of particular buildings.

7. Policy background

What is being done and why?

- 7.1 Following the fire at Grenfell Tower on the 14th June 2017, which saw the greatest loss of life in a residential fire since the Second World War, Dame Judith Hackitt was commissioned by government to complete an independent review of Building Regulations and Fire Safety.
- 7.2 Dame Judith Hackitt released her final report, ‘Independent Review of Building Regulations and Fire Safety’ on 17 May 2018. In response to the report the Secretary of State for Housing, Communities and Local Government on 11 June 2018 reaffirmed that Government’s intention was “to ban the use of combustible materials on the external walls of high rise residential buildings, subject to consultation”.
- 7.3 A consultation on proposals to introduce a ban was launched on 18 June 2018.
- 7.4 The Building Regulations 2010 have been made pursuant to powers in the Building Act 1984. In relation to Part B (Fire Safety), requirements are made to secure reasonable standards of health and safety for persons in and around the building (and any others who may be affected by buildings, or matters connected with buildings). The Building Regulations require that external walls on all buildings adequately resist the spread of fire over the walls and from one building to another (paragraph B4 of Schedule 1). Statutory guidance in Approved Document B on Fire Safety Volume 2 (Buildings other than Dwelling Houses) sets out two ways that a building with a storey over 18m above ground, may meet the Building Regulations requirement for resisting fire spread over the external walls:
- The first is that any insulation product, filler material (not including gaskets, sealants and similar) etc. used in the external wall construction should be of limited combustibility.
 - The second is to meet the performance criteria given in BR135 for cladding systems using full scale test data from BS8414.
- 7.5 The ban will remove for buildings in scope the discretion for duty holders to use either of these approaches to demonstrate compliance. It will leave no room for doubt as to what is suitable for use on external walls of buildings 18m or more in height. The ban, by default, will also remove the option of undertaking an assessment of the performance of an external wall system in lieu of tests for buildings in scope.
- 7.6 In response to comments raised in the consultation, the ban will apply to new high rise residential buildings 18 metres or more in height. The ban will also apply to these other new buildings 18 metres or more in height: hospitals, residential care homes, student accommodation and dormitory buildings for boarding schools.
- ## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Ministry of Housing, Communities and Local Government do not intend to consolidate any legislation alongside this statutory instrument.

10. Consultation outcome

- 10.1 The consultation ran for eight weeks from 18 June 2018 to 14 August 2018. A total of 460 responses were received.
- 10.2 The consultation documents were available on the GOV.UK website and responses could be returned to the Ministry of Housing, Communities and Local Government by electronic survey, email or post.
- 10.3 The consultation complied with the duty on the Secretary of State in section 14 of the Building Act 1984 to consult with the Building Regulations Advisory Committee for England and other representative interests on proposed changes to the substantive requirements in the Building Regulations.
- 10.4 Of these 460 responses, a clear majority (69%) supported the ban. Better compliance will ensure that fire safety risks are better identified and managed by developers, so reducing risks.
- 10.5 The consultation proposed that the ban would apply to blocks of flats as these present the greatest risk to life. The consultation also asked respondents if other buildings should be covered by the ban. There was strong support for the policy to be extended (80%) and a smaller majority (64%) felt that it should cover all types of building.
- 10.6 On balance, the Government has decided to extend the scope of the ban to buildings where the normal strategy for evacuation tends to be delayed and where the occupants of the building are most vulnerable. The ban will therefore also apply to building work carried out to buildings with a storey at least 18m in height and containing dormitories for boarding schools, student accommodation, a residential care home or a hospital.
- 10.7 The consultation sought views on transitional provisions. A majority (66%) thought that the ban should extend to projects that have been notified before the ban takes effect, but work had not begun on site.
- 10.8 The Government has decided therefore to adopt a more stringent approach than is normal for building regulations and the ban will apply to any building works unless the works have started on site or an initial notice, building notice or full plans has been deposited and work has started on site within a period of two months. This aligns with the statutory time period for full plans approvals under s16(12) of the Building Act 1984.
- 10.9 The consultation documents and the Government response to this consultation can be found on the GOV.UK website at www.gov.uk/government/consultations/banning-the-use-of-combustible-materials-in-the-external-walls-of-high-rise-residential-buildings.

11. Guidance

- 11.1 The Department will issue a Department Circular to explain the change in regulations as well as the transition arrangements.

11.2 Amended versions of the Approved Documents and other Departmental guidance will be published as soon as practical in response to the change in regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is set out in 12.3.

12.2 The impact on the public sector is set out in 12.3 below.

12.3 The impact assessment, which is published alongside this instrument, states that the organisations outlined in Paras 12.1 and 12.2 will be directly affected and will incur an equivalent annual cost of £24.9m-£33.7m. The total equivalent annual cost to society is £18.5m-£25.3m.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses.

13.3 No mitigating action is proposed as exempting small and micro businesses would not be consistent with the intended purpose of the instrument.

14. Monitoring & review

14.1 The Department will seek feedback from building control bodies responsible for checking compliance to monitor the operation of the ban. The Department will also use bodies such as the Building Regulations Advisory Committee for England to advise on the impacts of the ban.

14.2 The Department intends to keep the ban under review annually through monitoring arrangements and advice from bodies such as Building Regulations Advisory Committee for England. In particular, the operation of the lists of materials which are exempted from the ban (see Regulation 7(3)). Changes in technology, means that the Department expects that the exemption list will need to be considered more regularly and with more flexibility than the recommended five-year review period required in the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Brian Martin at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 0000 or email: buildingregsteam@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Bob Ledsome, Deputy Director for Technical Policy Division, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.