

2022 No. 136

BUILDING AND BUILDINGS

The Building (Scotland) Amendment Regulations 2022

Made - - - - *20th April 2022*

Laid before the Scottish Parliament *22nd April 2022*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1 and 54(2) and schedule 1 of the Building (Scotland) Act 2003(a), and all other powers enabling them to do so.

In accordance with section 1(2) of that Act they have consulted with such persons as appear to them to be representative of the interests concerned.

PART 1

Citation and commencement

Citation and commencement

1.—(1) These Regulations may be cited as the Building (Scotland) Amendment Regulations 2022.

(2) These Regulations (other than Part 3) come into force on 1 June 2022.

(3) Part 3 comes into force on 1 October 2022.

PART 2

Amendment of the Building (Scotland) Regulations 2004 on 1 June 2022

Amendment of the Building (Scotland) Regulations 2004 – 1 June 2022

2. Subject to regulation 6, the Building (Scotland) Regulations 2004(b) are amended in accordance with regulations 3 to 5.

(a) 2003 asp 8. Section 1 was amended by section 6(2) of the Public Services Reform (Scotland) Act 2010 (asp 8). Paragraph 5(2) of schedule 1 was amended by S.S.I. 2014/364.

(b) S.S.I. 2004/406: relevant amending instrument is S.S.I. 2006/534.

Amendment of regulation 8 – fitness and durability of materials and workmanship

3. In regulation 8 (fitness and durability of materials and workmanship), after paragraph (2) insert—

“(3) Subject to paragraph (4), work must be carried out so that materials which form part of an external wall cladding system, or specified attachment, of a relevant building are of European Classification A2-s1, d0 or A1, classified in accordance with BS EN 13501-1:2018 entitled “Fire classification of construction products and building elements. Classification using testing data from reaction to fire tests” published by the British Standards Institution.

(4) Paragraph (3) does not apply to materials which form part of—

- (a) cavity trays,
- (b) cavity vents,
- (c) a roof (other than a roof pitched at an angle 70 degrees or more to the horizontal) if that part is connected to an external wall,
- (d) door frames and doors,
- (e) insulation and water proofing materials used below the ground and up to 300 mm above the ground,
- (f) intumescent and fire stopping materials, fire barriers and cavity barriers where the inclusion of the materials is necessary to meet the requirements in section 2 (fire) of schedule 5 (building standards applicable to design and construction),
- (g) membranes,
- (h) seals, gaskets, fixings, sealants and backer rods,
- (i) thermal break materials,
- (j) window frames and glass.

(5) Work must be carried out so that an external wall cladding system or internal lining does not comprise of highly combustible metal composite material.

(6) In this regulation—

“highly combustible metal composite material” means any panel or sheet, having a thickness of no more than 10 mm, which consists of a number of layers, two or more of which are made of metal, alloy, or metal compound and one or more substantial layer of which is made of material having a gross calorific value of more than 35 MJ/kg when tested in accordance with BS EN ISO 1716:2018 entitled “Reaction to fire tests for products – Determination of the gross heat of combustion (calorific value)” published by the British Standards Institution,

“relevant building” means a building having a storey, or creating a storey (not including roof-top plant areas or any storey consisting exclusively of plant rooms) at a height of 11 metres or more above the ground and which contains—

- (a) a dwelling,
- (b) a building used as a place of assembly, or as a place of entertainment or recreation,
- (c) a hospital,
- (d) a residential care building or sheltered housing complex,
- (e) a shared multi-occupancy residential building,

“specified attachment” means—

- (a) a balcony,
- (b) solar shading,
- (c) a solar panel,

attached to an external wall,

“substantial layer” means a layer is one which is at least 1 mm thick or has a mass per unit area of at least 1 kg per m².”.

Amendment of schedule 3 – descriptions of building and work, including the provision of services, fittings and equipment, not requiring a warrant

4. In schedule 3 (descriptions of buildings and work, including the provision of services, fittings and equipment, not requiring a warrant)—

- (a) in paragraph 17 for “thermal insulating material to the outer surface of an external wall” substitute “an external wall cladding system that consists of thermal insulating material”,
- (b) in paragraph 25 omit “cladding”,
- (c) after paragraph 25 insert—

“25A. Replacement of part of an external wall cladding system when the replacement is to make a minor repair.”.

Amendment of schedule 5 – building standards applicable to design and construction

5. In schedule 5 (building standards applicable to design and construction), in paragraph 2.7 (spread on external walls) after “way” insert “, having regard to the height, use and position of the building,”.

Transitional provision

6. The amendments made by Part 2 of these Regulations do not apply to work, which by virtue of regulation 5 and schedule 3 of the Building (Scotland) Regulations 2004, does not require a building warrant if that work is—

- (a) completed before 1 June 2022, or
- (b) not completed before that date and—
 - (i) the contract for the work is entered into before 1 June 2022, and
 - (ii) the work is completed on or before 30 September 2022.

PART 3

Amendment of the Building (Scotland) Regulations 2004 on 1 October 2022

Amendment of the Building (Scotland) Regulations 2004 – 1 October 2022

7. Subject to regulation 11, the Building (Scotland) Regulations 2004(a) are amended in accordance with regulations 8 to 10.

Amendment of regulation 2 – interpretation

8. In regulation 2 (interpretation)—

- (a) after the definition of “different occupation” insert—

““direct emission heating system”, in relation to a building, means a system (other than a heat network) by which the building is heated or is cooled, or by which hot water is made available in the building, which uses thermal energy produced by a source of production which—

- (a) is located within the building, or curtilage of the building, and

(a) S.S.I. 2004/406: relevant amending instruments are S.S.I. 2006/534, S.S.I. 2010/32, S.S.I. 2013/143, S.S.I. 2016/70 and S.S.I. 2016/71.

- (b) during normal operation produces greenhouse gas emissions at the point of production of that thermal energy,”
- (b) after the definition of “flat” insert—
 - ““greenhouse gas” has the same meaning as in section 10 of the Climate Change (Scotland) Act 2009(a),
 - “heat network” and “thermal energy” have the same meaning as in section 1 of the Heat Networks (Scotland) Act 2021(b).”

Amendment of schedule 5 – building standards applicable to design and construction

9. In schedule 5—

- (a) after paragraph 3.27 (water efficiency) insert—

“3.28 Overheating risk

Every building must be designed and constructed in such a way that the risk to the health of the occupants from overheating is reduced.

Limitation

This standard applies only to—

- (a) a unit of residential accommodation occupied by an individual, or individuals, living together as a family or as a single household,
- (b) a shared multi-occupancy residential building,”
- (b) in paragraph 6.1 (carbon dioxide emissions)—
 - (i) for the heading substitute “Energy demand and carbon dioxide emissions”,
 - (ii) at the end of sub-paragraph (b) omit “and”,
 - (iii) after sub-paragraph (c) insert—
 - “(d) it is capable of reducing the energy demand of the building.”,
 - (iv) in the limitation to the standard—
 - (aa) for “This standard does not apply to—” substitute—
 - “(1) Standard 6.1(b) only applies in respect of a building which is heated or cooled, or in which hot water is made available, by means of a direct emissions heating system.
 - (2) This standard does not apply to—”
 - (bb) at the end of sub-paragraph (d) of the new paragraph (2) omit “or”,
- (c) in paragraph 6.7 (commissioning building services)—
 - (i) after “energy supply systems” insert “, control systems”,
 - (ii) after “achieve” insert “effective operation and”.

Amendment of schedule 6 – building standards applicable to conversions

10. In schedule 6, in paragraph 2(c) after “3.19” insert “, 3.28”.

(a) 2009 asp 12.
 (b) 2021 asp 9.

Transitional provision

11. The amendments made by Part 3 of these Regulations do not apply to work, which by virtue of regulation 5 and schedule 3 of the Building (Scotland) Regulations 2004, does not require a building warrant if that work is—

- (a) completed before 1 October 2022, or
- (b) not completed before that date and—
 - (i) the contract for the work is entered into before 1 October 2022, and
 - (ii) the work is completed on or before 31 January 2023.

St Andrew's House,
Edinburgh
20th April 2022

PATRICK HARVIE
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Building (Scotland) Regulations 2004 (the “2004 Regulations”) and (other than Part 3) come into force on 1 June 2022. Part 3 comes into force on 1 October 2022.

Regulation 3 amends regulation 8 (fitness and durability of materials and workmanship). It adds paragraph (3) which requires work to be carried out so that the materials which form part of an external wall cladding system or specified attachment of a relevant building are classified in accordance with the prescribed standard (subject to certain exclusions set out in paragraph (4)). Paragraph (5) is added which prohibits the use of highly combustible metal composite material in an external wall cladding systems or internal lining. Paragraph (6) sets out definitions of the terms “highly combustible metal composite material”, “relevant building”, “specified attachment” and “substantial layer”.

Regulation 4 amends schedule 3 (descriptions of buildings and work, including the provision of services, fittings and equipment, not requiring a warrant). Regulation 4(a) amends paragraph 17 so that any work associated with the application of an external wall cladding system will require a building warrant. Regulation 4(b) amends paragraph 25 by omitting the word “cladding” from the work type so that, subject to new paragraph 25A inserted by regulation 4(c), any work associated with the replacement, in whole or in part, of cladding, internally or externally, will require a warrant. Regulation 4(c) inserts paragraph 25A to allow the replacement of part of an external wall cladding system without a building warrant only if the replacement is to make a minor repair.

Regulation 5, in Part 2 of these Regulations, amends paragraph 2.7 (spread on external walls) of schedule 5 (building standards applicable to design and construction) to require that regard be taken of the height, use and position of the building in order to comply with the standard.

Regulation 6 is a transitional provision, the effect of which is that the regulations in Part 2 of these Regulations will not apply to work which does not require a building warrant which is completed before 1 June 2022 or not completed before that date where the contract for the work is entered into before 1 June 2022 and the work is completed on or before 30 September 2022. The transitional provision for the regulations in Part 3 of these Regulations is contained in regulation 11, which provides that the regulations in that Part will not apply to work which does not require a building warrant which is completed before 1 October 2022 or not completed before that date where the contract for the work is entered into before 1 October 2022 and the work is completed on or before 31 January 2023.

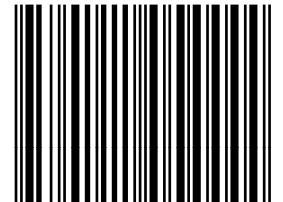
Regulation 9(a), in Part 3 of these Regulations, amends schedule 5 to introduce a new building standard by inserting paragraph 3.28 (overheating risk) to require certain buildings to be designed and constructed in such a way that the risk to the health and safety of the occupants is reduced. Regulation 10 amends paragraph 2(c) of schedule 6 (building standards applicable to conversions) so that in respect of conversions to which the 2004 Regulations apply, the standard in paragraph 3.28 must be met in so far as is reasonably practicable and in no case be worse than before the conversion. Regulation 9(b) amends paragraph 6.1 (carbon emissions) to require the design and construction of a building to be capable of reducing the energy demand of the building and provides that standard 6.1(b) only applies in respect of a building which is heated or cooled, or in which hot water is made available, by means of a direct emissions heating system. “Direct emissions heating system” is a newly defined term inserted in regulation 2 (interpretation) of the 2004 Regulations by regulation 8.

Regulation 9(c) amends paragraph 6.7 (commissioning building services) so that the standard also applies to control systems and requires that energy supply systems, control systems and building services are commissioned to achieve effective operation and optimum energy efficiency.

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