

POLICY NOTE

THE BUILDING (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/136

The above instrument was made in exercise of the powers conferred by sections 1 and 54(2) and schedule 1 of the Building (Scotland) Act 2003. The instrument is subject to negative parliamentary procedure.

Purpose of the instrument.

These Regulations amend the Building (Scotland) Regulations 2004 which set out mandatory standards for buildings and building work. The purpose of this instrument is to introduce new requirements within those regulations to improve fire safety in buildings by addressing provisions applicable to external wall cladding systems, to improve the energy and emission performance of buildings and to address overheating risk in new residential buildings.

Policy Objectives

Section 1 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations (building regulations) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings for purposes including securing the health, safety, welfare and convenience of persons in or about buildings, furthering the conservation of fuel and power, and furthering the achievement of sustainable development.

The policy objectives, where building work is undertaken, are to improve fire safety in buildings, improve the emission and energy performance of buildings and to reduce the risk to health from overheating in new residential buildings. This is achieved through amendment of The Building (Scotland) Regulations 2004 (the Regulations), made under the Act, which set minimum standards for the function and performance of buildings and building work. The mandatory standards applicable to building design and construction are set out in regulation 9 and schedule 5 of the Regulations.

In respect of fire safety, Part 2 of this instrument (which comes into force on 1st June 2022) amends regulation 8 of the Regulations to introduce new requirements applicable to external wall cladding systems to prevent the use of high risk materials; amends schedule 3 so that work to an external wall cladding system (other than a minor repair) will require a building warrant and to meet the mandatory standards; and clarifies that compliance with the standard which addresses fire spread on external walls (standard 2.7) requires that regard should be taken of the height, use and position of the building.

In respect of energy performance and overheating risk, Part 3 of this instrument (which comes into force on 1 October 2022) introduces a new requirement (standard 3.28) to address overheating risk in certain types of residential building; amends standard 6.1 to require that the design and construction of certain buildings is capable of reducing the energy demand of the building; and provides that the emissions target in standard 6.1, which requires that the energy performance of the building is capable of reducing carbon dioxide emissions, only applies to buildings which are heated or cooled by a “direct emissions heating system” (the

definition of which is provided in regulation 8 of the amendment regulations). These amendment regulations also amend the requirements for commissioning of building systems (standard 6.7).

Consultation

To comply with section 1(2) of the Building (Scotland) Act 2003, consultation with interested persons has been carried out.

The amendments made by this SSI in respect of fire safety matters were subject to a public consultation that ran from 16 July to 11 October 2021. A total of 76 responses to the consultation were received. The consultation, responses and the consultation analysis report is published online at <https://consult.gov.scot/building-standards/building-regulations-fire-ews-review/>. A separate targeted consultation exercise was carried with key stakeholders on proposed changes to schedule 3 in relation to replacement cladding systems. A survey of 32 local authorities was completed and bespoke meetings with industry carried out to gauge opinion on proposals. More detailed information is provided in the Business and Regulatory Impact Assessment.

The amendments made by this SSI in respect of energy performance and overheating risk were the subject of a public consultation that ran from 26 July to 28 November 2021. A series of 7 online discussion sessions were held in support of the consultation. A total of 176 responses to the consultation were received. The consultation, responses and the consultation analysis report is published online at <https://consult.gov.scot/local-government-and-communities/building-regulations-energy-standards-review/>.

As a result of that consultation, proposals were reviewed, evidence to support or amend proposals, including where options for implementation were presented, were considered and agreed and elements of proposals amended to reflect specific concerns or opportunities identified in responses.

Impact Assessments

Pre-screening notifications were undertaken for the Strategic Environmental Assessment. For Fire safety provisions (reference PRE/01150) and for energy performance and overheating provisions (reference PRE/01149). These established that each policy will result in 'no or minimum environmental effects' and that under section 7 of the Environmental Assessment (Scotland) Act 2005, no further assessment is required. Both notifications are available via <https://www.strategicenvironmentalassessment.gov.scot/>

An Equalities Impact assessment was undertaken for each of the two review topics and the results of each review published. Links to each results document are provided on the consultation webpages via the links above.

An Island Communities Impact Assessment was undertaken for each of the two review topics and the results of each review published. Links to each document are provided on the consultation webpages via the links above.

A screening exercise was carried out for Child Rights and Wellbeing Impact Assessment, Data Protection Impact Assessment and Fairer Scotland Duty Assessment. For both review topics, it was determined that no further assessment was needed.

Financial Effects

The amendments in Part 2 of this instrument, which relate to fire safety, are considered to have a material impact on the cost of delivering new buildings and new building work. Accordingly, an assessment of the overall costs and benefits associated with this instrument and associated amendments to published guidance is provided within the final Business and Regulatory Impact Assessment (Fire) published alongside this instrument. A copy of the final assessment is also available via the consultation webpage via the link above.

The amendments in Part 3 of this instrument, which relate to energy performance and overheating risk, are considered to have a material impact on the cost of delivering new buildings and new building work. Accordingly, an assessment of the overall costs and benefits associated with this instrument and associated amendments to published guidance is provided within the final Business and Regulatory Impact Assessment (Energy) published alongside this instrument. A copy of the final assessment is also available via the consultation webpage via the link above.

Scottish Government
Local Government and Housing Directorate

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