

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING (AMENDMENT) REGULATIONS 2012**  
**2012 No. 718**

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 make minor amendments to the Building Regulations 2010 (S.I. 2010/2214) (“the 2010 Regulations”). They insert a definition of “excepted energy building” by reference to the meaning given in the Schedule to The Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019) (“the 2009 Order”). This is relevant to the scope of the 2010 Regulations as functions under the Building Act 1984 relating to such buildings in Wales were not transferred to Welsh Ministers by the 2009 Order which came into force on 31st December 2011, and thus remain with the Secretary of State.

2.2 These Regulations also amend Schedule 3 (self- certification schemes and exemptions from requirement to give building notice or deposit full plans) to the 2010 Regulations, making changes to some of the scheme operators listed in column 2 of Schedule 3. The changes comprise the substitution of the name of one scheme operator which is now registered under a new company name, and restrictions to the types of work for which another operator is able to register persons for the purposes of self certification schemes.

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

3.1 None.

4. **Legislative Context**

4.1 Section 1 of the Building Act 1984 (c.55) enables building regulations to be made for England and Wales for a number of purposes with respect to the design and construction of buildings and the services, fittings and equipment provided in or in connection with buildings. 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.

4.2 The 2010 Regulations have been made pursuant to these powers. The Regulations establish general functional requirements for buildings when constructed, and are supported by Approved Documents, approved and issued

under section 6 of the Building Act, which set out detailed practical guidance on compliance. The 2010 Regulations also set out procedures for the control of building work by local authorities.

4.3 Most of the Secretary of State's functions under the Building Act in relation to the making of building regulations in Wales were transferred to Welsh Ministers on 31st December 2011, under the 2009 Order.

4.4 The amendments made by these Regulations are to regulation 2 (interpretation) of and to Schedule 3 (self-certification schemes and exemptions from requirement to give building notice or deposit full plans) to the 2010 Regulations as follows:

4.4.1 adding a definition of "excepted energy building" to reflect the fact that functions under the Building Act in relation to energy excepted buildings in Wales have not been transferred to the Welsh Ministers under the 2009 Order (such buildings being those meeting the conditions in the Schedule to the 2009 Order);

4.4.2 substituting the name of one of the operators in column 2 of Schedule 3, to reflect the new registered name of the scheme operator (as applicable to England and excepted energy buildings in Wales);

4.4.3 restricting the authorisation to carry out some of the types of work in column 1 of Schedule 3 by one of the bodies specified in column 2 (as applicable to England and excepted energy buildings in Wales), to reflect the reduction in types of work that body is currently undertaking within the competent person schemes.

## **5. Territorial Extent and Application**

5.1 This instrument applies in relation to England and to excepted energy buildings in Wales. The functions of the Secretary of State under the Building Act 1984 in relation to the making of building regulations were, so far as exercisable in relation to Wales, transferred to the Welsh Ministers from 31 December 2011 with the exception of making building regulations in respect of excepted energy buildings in 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 The Building Act 1984 is the primary legislation under which building regulations are made. The policy objectives of the Building Act 1984 are to provide that mechanisms are in place to ensure the health, safety, welfare and convenience of those in and around buildings and the conservation of fuel and power. These objectives are achieved through the provisions of the Building

Act and through the Building Regulations and the Approved Documents which demonstrate how compliance can be achieved under them. The 2010 Regulations ensure that buildings are safe, healthy, accessible and sustainable for current and future generations.

7.2 The 2009 Order provides for the transfer to Welsh Ministers of most of the functions given to the Secretary of State in the Building Act 1984 which had not been previously transferred to the old National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). However, the Order reflects Government policy not to devolve the power to make building regulations in respect of excepted energy buildings in Wales and therefore this instrument will apply to such buildings. Regulation 2 of the 2010 Regulations is amended to include a definition of “excepted energy buildings” in order to make the application of the 2010 Regulations clear, and the application is set out in respect of the amendments made to Schedule 3.

7.3 The policy behind the Schedule 3 self certification schemes is a continuing part of the Government’s policy of deregulation. When work is carried out by an installer assessed as competent for a type of work and registered as a scheme member, there is no need to involve a building control body before work commences or to pay a building control charge. This reduces costs for both installers and building owners. These amendments make the changes necessary to the 2010 Regulations to ensure they correctly represent the current position regarding authorised schemes and the types of work scheme operators and their members may carry out.

## **8. Consultation outcome**

8.1 Under the Building Act 1984 the Department is not obliged to consult where the changes made to building regulations are not substantive changes to the requirements. However, the Building Regulations Advisory Committee for England, representatives of those bodies affected and the Welsh Assembly Government have all been informed of the amendments made by this instrument.

## **9. Guidance**

9.1 The Department will issue a Departmental Circular to explain how the 2010 Regulations have been amended. This will be published on the Department’s website.

## **10. Impact**

10.1 The amendments to the 2010 Regulations made by this instrument are technical changes required to accurately reflect the current position on authorisation, and legal changes consequential on the transfer of functions to Welsh Ministers. There are no costs and no benefits in respect of the bodies concerned and thus no impact is anticipated.

10.2 An impact assessment has not been prepared for this instrument as no impact on business or the voluntary sector is anticipated.

## **11. Regulating small business**

11.1 These amending regulations are out of scope of the micro business moratorium as they impose no burden.

11.2 The changes made to the 2010 Regulations are minimal, but we will ensure that those most affected are aware. A Departmental Circular will lay out the changes and they will be displayed on our website. Also both the Building Regulations Advisory Committee for England and the Competent Persons Forum are advised of the changes to the 2010 Regulations.

## **12. Monitoring & review**

12.1 We have considered the need for a sunset clause in this statutory instrument. Although the Building Regulations overall may impose a burden, the amendments made in this statutory instrument do not.

12.2 We are not proposing a formal review of these amendments to the 2010 Regulations as they do not introduce any significant changes to the substantive requirements. There are periodic reviews of the requirements in Building Regulations, generally at three-yearly intervals, and the Department would expect any problems or benefits to be picked up in these.

12.3 Similarly, we conduct periodic reviews of the operation of self-certification schemes to ensure that they are delivering compliance with the requirements of the Building Regulations. Such reviews are normally held at three yearly intervals but can be held after a shorter period if it appears that one or more schemes are failing to achieve compliance with the Regulations. The Department would expect any problems or benefits to be picked up in these.

## **13. Contact**

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Tel: 0303 444 1791 or email: [ian1.drummond@communities.gsi.gov.uk](mailto:ian1.drummond@communities.gsi.gov.uk) can answer any queries regarding the instrument.