

EXPLANATORY MEMORANDUM TO
THE BUILDING ETC. (AMENDMENT) (ENGLAND) REGULATIONS 2022
2022 No. 603

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends and refines the ban on combustible materials that was introduced by the Building (Amendment) Regulations 2018 (S.I. 2018/1230). It also introduces a ban on the use of certain metal composite materials in the external walls of all buildings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales only.
4.2 The territorial application of this 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 were made under powers in section 1 of the Building Act 1984 and section 2(2) of the European Communities Act 1972. The particular regulations that this instrument amends were made under powers in the Building Act 1984.
6.2 This instrument largely amends insertions into the Building Regulations 2010 made by the Building (Amendment) Regulations 2018 (S.I. 2018/1230). These introduced a ban on combustible materials within external walls and certain attachments for residential buildings of 18m or over (the ‘Combustible Materials Ban’). The Department committed to reviewing the Combustible Materials Ban annually and this instrument introduces changes arising from that review. The instrument also bans the use of certain metal composite materials in the external walls of all buildings.

7. Policy background

What is being done and why?

- 7.1 On 11 June 2018, during a statement on the Government’s response to the Grenfell Tower fire to Parliament, the then Secretary of State reaffirmed the Department’s intention “to ban the use of combustible materials on the external walls of high-rise resident buildings, subject to consultation”.
- 7.2 The priority was to improve public safety by removing the flexibility previously given to designers and builders in how they met the relevant fire safety requirements of the Building Regulations 2010 and making the route to compliance clearer.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 The Combustible Materials Ban amended the Building Regulations 2010 by restricting the use of materials in an external wall and certain attachments to those achieving the classifications for the least flammable materials, namely Class A2-s1, d0 or Class A1 in accordance with British Standard EN 13501-1:2007+A1:2009. This restriction applied to building work including the erection of new buildings and material changes of use. It only applied to buildings with a storey at least 18 metres above ground level that contained one or more dwellings, an institution, or room for residential purposes. It excluded hostels, hotels and boarding houses.

Why is it being changed?

- 7.4 A review of the Combustible Materials Ban was undertaken in the autumn of 2019. This included liaison with the Building Regulations Advisory Committee (BRAC) and a survey of stakeholders on the effectiveness and impact of the ban. That survey is available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857493/Adroit_Ban_Survey_Analysis.pdf
- 7.5 Following the completion of the review the Department launched a consultation proposing a number of amendments to the Building Regulations 2010. The proposed changes focused on broadening the scope of the Combustible Materials Ban, updating the performance requirements and amending the lists of specified attachments and exemptions. It also proposed banning certain metal composite materials on all buildings.

What will it now do?

- 7.6 This instrument makes the following amendments to the Building Regulations 2010:
- It brings hotels, hostels and boarding houses within the scope of the Combustible Materials Ban from which they were initially excluded.
 - It bans the use of certain metal composite materials from use in the external walls and specified attachments of all buildings.
 - It includes within the scope of the Combustible Materials Ban elements of solar shading devices whose primary function is to provide shade or deflect sunlight. This reverses the effect of the judgment of the High Court in the case of R (on the application of the British Blind and Shutter Association v the Secretary of State for Housing, Communities and Local Government [2019])

EWHC 3162 after which all solar shading devices were excluded from the ban. Solar shading devices attached to the wall at a height of no more than 4.5m above ground level will remain outside the ban.

- It amends the list of materials exempted from the Combustible Materials Ban to include fibre optic cables and insulation up to 300mm from ground level.
- It updates the reaction to fire classification that materials must meet to comply with the Combustible Materials Ban to the current version of the British Standard and allows the top layer of a balcony floor to meet the required standard using the horizontal-testing equivalent of the existing standard (which requires materials to be tested vertically). It changes the height at which a building must comply with the relevant standard on external fire spread on walls where there is a material change of use of the building from 15 to 11 metres.
- The instrument also inserts definitions of “building” and “building work” into the Building Regulations etc. (Amendment) (England) Regulations 2021 and the Building Regulations etc. (Amendment) (England) (No. 2) Regulations 2021.

8. European Union Withdrawal and Future Relationship

- 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 Department for Levelling Up, Housing and Communities do not intend to consolidate any legislation alongside this statutory instrument.

10. Consultation outcome

- 10.1 The consultation ran for 18 weeks from 20 January 2020 to 25 May 2020. The consultation documents were available online at GOV.UK (<https://www.gov.uk/government/consultations/review-of-the-ban-on-the-use-of-combustible-materials-in-and-on-the-external-walls-of-buildings>) and responses could be returned by email or post to the Ministry of Housing, Communities and Local Government, or through an online survey.
- 10.2 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.
- 10.3 There were 854 responses to the consultation, 376 of which were received from individuals and 299 from organisation representatives. 179 respondents declared as both individuals and organisation representatives.
- 10.4 The consultation covered all of the following areas:
- Buildings in scope of the ban including changing the building types and height threshold,
 - Metal composite materials,
 - Specified attachments,
 - Exemptions including materials below ground level, and,

- Performance requirements including floor testing and an update of BS EN 13501-1.

10.5 The outcome of the consultation is summarised below by themes relevant to this Statutory Instrument. The full details of the consultation and the Government response to this consultation including an analysis of the responses to the consultation will be published on the GOV.UK website.

Scope

10.6 The consultation proposed to include hotels, hostels and boarding houses within scope of the ban. A significant proportion of respondents agreed with this proposal (38% agree, 21 % disagree, 41% don't know). The Department has therefore decided to move forward with the proposed increase of the scope by including hotels, hostels and boarding houses within the scope of the Combustible Materials Ban.

Metal composite material

10.7 The consultation proposed a complete ban of the use of metal composite materials with an unmodified polyethylene core (the type used on Grenfell Tower) in and on the external walls of all buildings, regardless of height or use. There was strong support for this proposal in the consultation responses (48% agree, 18% disagree and 34% don't know). The Department is implementing this proposal. This ban will prohibit certain metal composite materials from being used in building work on all new buildings and all buildings undergoing a refurbishment which affects the external wall.

Specified Attachments

10.8 The Combustible Materials Ban applies to external walls and certain attachments to the wall. The consultation proposed to extend the ban to include solar shading devices, including but not limited to external blinds and shutters. This was supported by the responses to the consultation (38% agree, 24% disagree and 38% don't know).

10.9 Consultation responses highlighted that the ban would prohibit the use of dynamic solar shading devices which are able adapt to changing sunlight conditions and more effective at reducing heat gain when necessary. The responses argued that some small components necessary for this type of device to function cannot be made to achieve the required performance standard. The Department is therefore limiting the scope of the ban to parts of solar shading devices whose primary function is to provide shade or deflect sunlight.

10.10 The consultation proposed an exemption for ground floor awnings and similar sun shading and light deflecting products (49% agree, 13% disagree and 38% don't know). Retractable awnings are often used at ground floor level for shop fronts or similar purposes. The Department considers that the risk posed by these is limited and will therefore introduce the proposed exemption.

Exemptions

10.11 The review of the Combustible Materials Ban raised a practical issue of insulation and water proofing materials needing to reach above ground to prevent moisture penetrating the external walls, which could lead to issues with water ingress and damp.

- 10.12 The Department asked for views on amending the current exemption for water proofing materials and insulation to include material used below and up to 250mm above ground level (67% agree, 5% disagree and 28% don't know). The Department does not believe that such a limited exemption would increase the risk of fire spread along the external wall. However, several respondents highlighted that 250 mm may not be enough to account for sloping sites and a larger allowance would be required.
- 10.13 This instrument will therefore amend the current exemption for water proofing materials and insulation to include such materials used below and up to 300mm above ground level.
- 10.14 The consultation responses also highlighted issues encountered by the telecommunication industry. One issue raised was the need to exempt fibre optic cables. The ban currently exempts electrical installations within the external wall construction such as wiring cables and sockets. However, this does not extend to fibre optic cables as these wires do not carry electric current. It is relatively common for fibre optic cables to be routed through the external walls of buildings when retrofitting them. This instrument exempts fibre optic cables from the Combustible Materials Ban.

Performance requirements

- 10.15 The A2-s1, d0 and A1 classifications apply to materials tested vertically such as a wall. There are alternative classifications (Class A2fl-s1 and A1fl) that are available for materials tested horizontally as a floor. Currently, several products used for balcony floors are only tested to A2fl-s1 or A1fl classification and as such do not meet the requirements of the Combustible Materials Ban. Many respondents to this consultation agreed with our proposal to allow the use of the additional reaction to fire classifications A1fl, and A2fl-s1 (37% agree, 13% disagree and 50% don't know). The classification A2fl-s1 and A1fl require materials to achieve a similar standard to Class A2-s1, d0 or A1 as both must undergo BS EN ISO 1716 testing. Introducing the possibility that the top layer of a balcony floor can meet this alternative standard therefore does not affect the effectiveness of the Combustible Materials Ban.
- 10.16 A majority of respondents agreed with our proposal that that the standard referred to in the legislation should be updated to the latest published version BS EN 13501-1:2018 (49% agree, 6% disagree and 45% don't know). The standard currently referred to in the Building Regulations 2010 has been superseded and withdrawn. An updated version, BS EN 13501-1:2018, was published in January 2019 by the British Standards Institution. (The amendments to the standard did not impact classification A1, A1fl, A2-s1, d0 and A2fl-s1 and therefore have no bearing on the effect of the Combustible Materials Ban.)
- 10.17 The Department has therefore decided to move forward with both proposed amendments to the performance requirements.

11. Guidance

- 11.1 The Department will issue a Departmental Building Regulation Circular to explain the changes in regulations as well as the transition arrangements.
- 11.2 Amended versions of the Approved Documents and other Departmental guidance will be published alongside the change in regulations.

12. Impact

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 The impact on the public sector is similar to that for other sectors, as public buildings are treated no differently from other buildings under these amendments to the Building Regulations. A familiarisation cost will be required for the industry including local building control officers. This has been estimated at £1.4m.
- 12.3 A full Impact Assessment is published with this memorandum alongside the Explanatory Memorandum on the legislation.gov.uk website. It assesses that the proposals in this Statutory Instrument will result in a total net present social value of -£214.0m to -£397.3m over the 10 year appraisal period, with a central estimate of £305.7m.

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 The basis for the final decision on what action to take to assist small businesses is that this would not be consistent with the intended purpose of the instrument.

14. Monitoring & review

- 14.1 In the Explanatory Memorandum to the SI that implemented the Combustible Materials Ban the Department stated its intention to review the ban annually. This Statutory Instrument is the outcome of such a review. It is the Department's intention to review the provisions in this Statutory Instrument alongside the provisions in the Combustible Materials Ban. This will be done through monitoring arrangements and advice from bodies such as the Building Regulations Advisory Committee for England as well as seeking feedback from building control bodies responsible for checking compliance to monitor the operation of the ban.

15. Contact

- 15.1 Charles-Elie Romeyer at the Department for Levelling up, Housing and Communities Telephone: 0303 444 0000 or email: Enquiries.BR@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Victoria Molho, Deputy Director for Building Safety Programme, at the Department for Levelling up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Stuart Andrew at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.