

2022 No. 984

BUILDING AND BUILDINGS, ENGLAND

**The Building etc. (Amendment) (England) (No. 2) Regulations
2022**

<i>Made</i>	- - - -	<i>23rd September 2022</i>
<i>Laid before Parliament</i>		<i>26th September 2022</i>
<i>Coming into force</i>	- -	<i>26th December 2022</i>

The Secretary of State has consulted the Building Regulations Advisory Committee for England, and such other bodies as appear to be representative of the interests concerned, in accordance with section 14(3) of the Building Act 1984(a).

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1, 3(1), 34, 47(1) and (5), 50(4), 51A(2), 54 and 126 of, paragraphs 2, 7, 8 and 10 of Schedule 1 to, and paragraph 2(2) of Schedule 4 to, that Act(b).

Citation, extent, application and commencement

1.—(1) These Regulations may be cited as the Building etc. (Amendment) (England) (No. 2) Regulations 2022.

(2) These Regulations extend to England and Wales.

(3) These Regulations apply in relation to England.

(4) These Regulations come into force on 26th December 2022.

Amendments to building regulations

2.—(1) The Building Regulations 2010(c) are amended in accordance with Part 1 of the Schedule.

(2) The Building (Approved Inspectors etc.) Regulations 2010(d) are amended in accordance with Part 2 of the Schedule.

(a) 1984 c. 55. Section 14(3) was amended by S.I. 2009/3019.

(b) Section 1 was amended by section 1(1) to (3) of the Sustainable and Secure Buildings Act 2004 (c. 22). Section 47(1) was amended by S.I. 1996/1905 and by section 8(2) of that Act; section 47(1)(c) was omitted by section 48(2)(a) of the Building Safety Act 2022 (c. 30). Section 51A was inserted by S.I. 1996/1905. Section 126 is cited for the definition of “prescribed”. There are other amendments of the provisions cited but none is relevant to this instrument.

(c) S.I. 2010/2214, as amended, in relation to buildings in England, by S.I. 2011/1515, S.I. 2011/3058, S.I. 2012/809, S.I. 2012/3118, S.I. 2012/3119, S.I. 2013/10, S.I. 2013/181, S.I. 2013/1105, S.I. 2013/1959, S.I. 2014/579, S.I. 2014/1638, S.I. 2014/2362, S.I. 2015/767, S.I. 2016/285, S.I. 2016/490, S.I. 2016/1101, S.I. 2017/856, S.I. 2018/1230, S.I. 2021/1391, S.I. 2021/1392 and S.I. 2022/603. There are other amendments which do not apply in relation to buildings in England.

(d) S.I. 2010/2215, as amended, in relation to buildings in England, by S.I. 2012/3119, S.I. 2013/1959, S.I. 2014/579, S.I. 2015/767, S.I. 2016/285, S.I. 2021/1391, S.I. 2021/1392 and S.I. 2022/718. There are other amendments which do not apply in relation to buildings in England.

Transitional provision

3.—(1) The amendments made by paragraphs 2 to 6 and 8 and 9 of the Schedule do not apply in relation to previously notified work if it—

- (a) has started before the day on which these Regulations come into force, or
- (b) is started within the period of 12 months beginning with that day.

(2) In paragraph (1) “previously notified work” means building work in respect of which—

- (a) a building notice or an initial notice has been given to a local authority before the day on which these Regulations come into force, or
- (b) full plans have been deposited with a local authority before that day.

(3) In paragraph (2), “building notice”, “building work”, “full plans” and “initial notice” each has the same meaning as in the Building Regulations 2010.

23rd September 2022

Julia Lopez
Minister of State
Department for Digital, Culture, Media & Sport

SCHEDULE

Regulation 2

PART 1

Amendments to Building Regulations 2010

1. The Building Regulations 2010 are amended as follows.

2. In regulation 13 (particulars and plans where a building notice given)(a), after paragraph (2) insert—

“(2A) In the case of the erection of a dwelling, or a building that is to contain one or more dwellings, a building notice shall be accompanied by—

- (a) particulars of any public electronic communications network in relation to which a connection is to be provided,
- (b) if an exemption in regulation 44ZB is proposed to be relied on, evidence in support of the exemption, and
- (c) if regulation 44ZC is proposed to be relied on—
 - (i) evidence of the matters mentioned in regulation 44ZC(6)(a) and (b), and
 - (ii) if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C) is likely to be installed, in a location relevant for the purposes of paragraph RA(1)(c), within the period of 2 years beginning with the day on which the notice is given.”.

3. In regulation 14 (full plans)(b), in paragraph (3)(a), for “and (2)” substitute “, (2) and (2A)”.

4. For the heading to Part 9A(c) substitute “Infrastructure for electronic communications”.

(a) Regulation 13 was amended, in relation to buildings in England, by S.I. 2015/767.

(b) Regulation 14(3)(a) was amended, in relation to buildings in England, by S.I. 2015/767.

(c) Part 9A (regulations 44A to 44C) was inserted, in relation to buildings in England, by S.I. 2016/490.

5. In Part 9A, before regulation 44A insert—

“Exemptions from paragraphs RA1 and RA2 of Schedule 1

44ZB.—(1) The requirements of paragraphs RA1 and RA2 of Schedule 1 (gigabit-ready physical infrastructure and connection to gigabit-capable network) do not apply to buildings—

- (a) to be occupied by the Ministry of Defence or the armed forces of the Crown, or
- (b) to be otherwise occupied for purposes connected to national security.

(2) The requirements of paragraph RA1 of Schedule 1 do not apply in relation to a building if all the following conditions are met—

- (a) the building is situated in an area that is isolated from public electronic communications networks of any of the kinds mentioned in regulation 44ZC(2) or (3),
- (b) paragraph RA2 of that Schedule does not apply because the case falls within regulation 44ZC(4), and
- (c) the prospect of a connection with a network of any of the kinds mentioned in regulation 44ZC(2) or (3) is considered too remote to justify equipping the building with gigabit-ready physical infrastructure or an access point.

Cases in which paragraph RA2 of Schedule 1 modified or excluded

44ZC.—(1) The requirement in paragraph RA2 of Schedule 1 has effect subject to paragraphs (2) to (4).

(2) Where a person carrying out building work of the kind described in the second column of paragraph RA1 of Schedule 1 (“the developer”)—

- (a) is unable to secure the provision of a connection with a gigabit-capable public electronic communications network for a cost not exceeding the cost cap, but
- (b) is able to secure the provision of a connection with a high-speed public electronic communications network for such a cost,

paragraph RA2 of Schedule 1 is to be read as requiring the provision of a connection with a high-speed public electronic communications network.

(3) Where the developer—

- (a) is unable to secure the provision of a connection with a high-speed public electronic communications network for a cost not exceeding the cost cap, but
- (b) is able to secure the provision of a connection with a USO-standard public electronic communications network for such a cost,

paragraph RA2 of Schedule 1 is to be read as requiring the provision of a connection with a USO-standard public electronic communications network.

(4) Where the developer is unable to secure the provision of a connection with a USO-standard public electronic communications network for a cost not exceeding the cost cap, paragraph RA2 of Schedule 1 does not apply.

(5) In paragraphs (2) to (4)—

“high-speed public electronic communications network” means a public electronic communications network that is a high-speed electronic communications network;

“USO-standard public electronic communications network” means a public electronic communications network that provides at least the minimum download speed for the

time being specified by virtue of section 65(2B)(a) of the Communications Act 2003(a) in the universal service order (as defined by section 151(1) of that Act).

(6) The developer is to be treated as being able to secure the provision of a connection mentioned in any of paragraphs (2) to (4) for a cost not exceeding the cost cap unless—

- (a) the developer has invited at least two suitable providers to make, before the end of the 30th day after the date of the invitation, an offer to provide a connection of the kind mentioned in the paragraph in question, and
- (b) none of those providers has before that time offered to provide that connection free of charge or at a cost not exceeding the cost cap.

(7) The cost cap is £2,000 in respect of each dwelling.

(8) In calculating the cost to the developer of securing the provision of a connection—

- (a) there is to be included value added tax;
- (b) there is to be excluded—
 - (i) the cost to the developer of installing gigabit-ready physical infrastructure in accordance with paragraph RA1 of Schedule 1,
 - (ii) administrative costs of the developer, and
 - (iii) the cost to an end-user (as defined by section 151(1) of the Communications Act 2003) of the provision of a public electronic communications service.

(9) In paragraph (6)(a) “suitable provider” means the provider of a public electronic communications network whom the developer reasonably considers to be likely to be able to provide the connection referred to.”.

6.—(1) Regulation 44C (interpretation of Part R of Schedule 1)(b) is amended as follows.

(2) In the heading, after “of”, in the first place where it occurs, insert “Part 9A and of”.

(3) In the opening words, after “In” insert “this Part and in”.

(4) In the definition of “access point”, after “infrastructure” insert “, or as the case requires the gigabit-ready physical infrastructure,”.

(5) After that definition insert—

““gigabit-capable electronic communications network” means an electronic communications network that is capable of delivering broadband access services at download speeds of at least 1,000 Mbps;

“gigabit-capable public electronic communications network” means a public electronic communications network that is a gigabit-capable electronic communications network;

“gigabit-ready physical infrastructure” means physical infrastructure or installations, including elements under joint ownership, intended to host wired or wireless gigabit-capable public electronic communications networks;”.

(6) At the end insert—

““public electronic communications network” has the meaning given by section 151(1) of the Communications Act 2003.”.

7. In regulation 55 (review of Part 9A and Part R of Schedule 1)(c), omit paragraph (2).

8.—(1) In Schedule 1 (requirements), Part R (physical infrastructure for high-speed electronic communications networks)(d) is amended as follows.

(2) For the heading substitute “Infrastructure for electronic communications”.

(a) 2003 c. 21. Section 65(2B) was inserted by section 1(4) of the Digital Economy Act 2017 (c. 30) and amended by S.I. 2020/1419.

(b) Regulation 44C was inserted, in relation to buildings in England, by S.I. 2016/490.

(c) Regulation 55 was inserted, in relation to buildings in England, by S.I. 2016/490. Paragraph (2) has as a result of paragraph 9 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) ceased to have substantive effect.

(d) Part R of Schedule 1 was inserted, in relation to buildings in England, by S.I. 2016/490.

(3) Before paragraph R1 insert—

“Gigabit-ready physical infrastructure

RA1.—(1) Building work must be carried out so as to ensure that each dwelling is equipped with gigabit-ready physical infrastructure that extends from a network termination point for gigabit-capable public electronic communications networks and reaches—

- (a) a distribution point, or
- (b) where the person carrying out the building work (“the developer”) has no right to install gigabit-ready physical infrastructure in land in which it would have to be installed if it were to reach a distribution point, as close as is reasonably practicable to a distribution point, or
- (c) where the developer has no such right and requirement RA2 is excluded or modified by regulation 44ZC, and would be so excluded or modified even if the gigabit-ready physical infrastructure were required to reach as close as is reasonably practicable to a distribution point—
 - (i) as close as is reasonably practicable to a location at which a distribution point is likely to be installed within the relevant 2-year period (a “likely future location”), or
 - (ii) where there is no likely future location that is closer to the building than the closest distribution point already installed, an access point for gigabit-capable public electronic communications networks, or
- (d) where the developer has no right to install gigabit-ready physical infrastructure in land beyond the building, an access point for gigabit-capable public electronic communications networks.

(2) Where the work concerns a building containing more than one dwelling, the work must be carried out so as to ensure that the building is equipped in addition with a common access point for gigabit-capable public electronic communications networks.

(3) In this paragraph—

“distribution point” means a distribution point for a gigabit-capable public electronic communications network;

“the relevant 2-year period” means the period of 2 years beginning with the earlier of the

Requirements RA1 and RA2 apply to the erection of a dwelling or of a building that contains one or more dwellings.

following—

(a) the day on which a building notice, initial notice or public body’s notice relating to work to which this paragraph applies is given;

(b) the day on which full plans relating to building work to which this paragraph applies are deposited.

Connection to gigabit-capable network

RA2. Each dwelling must in addition be provided with a connection to a gigabit-capable public electronic communications network.”.

(4) In paragraph R1—

(a) for the heading substitute “High-speed ready in-building physical infrastructure”, and

(b) in the second column, after “work” insert “, other than building work to which paragraph RA1 applies,”.

PART 2

Amendments to Building (Approved Inspectors etc.) Regulations 2010

9.—(1) In the Building (Approved Inspectors etc.) Regulations 2010, Schedule 1 (forms) is amended as follows.

(2) In Form 1 (initial notice)(a), in paragraph 5, after sub-paragraph (c) insert—

“(d) in the case of the erection of a dwelling, or a building that is to contain one or more dwellings—

(i) a statement giving details of any public electronic communications network in relation to which a connection is to be provided,

(ii) if an exemption in regulation 44ZB of the Building Regulations 2010 is proposed to be relied on, a statement giving details in support of the exemption,

(iii) if regulation 44ZC of the Building Regulations 2010 is proposed to be relied on, a statement giving details of the matters mentioned in regulation 44ZC(6)(a) and (b) of those Regulations and, if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 to those Regulations is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C of those Regulations) is likely to be installed, in a location relevant for the purposes of paragraph RA1(1)(c) of that Schedule, within the period of two years beginning with the day on which the notice is given.”.

(3) In Form 2 (amendment notice)(b), in paragraph 4, after sub-paragraph (e) insert—

“(f) in the case of the erection of a dwelling, or a building that is to contain one or more dwellings—

(i) a statement giving details of any public electronic communications network in relation to which a connection is to be provided,

(ii) if an exemption in regulation 44ZB of the Building Regulations 2010 is proposed to be relied on, a statement giving details in support of the exemption, and

(a) Form 1 was substituted, in relation to buildings in England, by Schedule 2 to S.I. 2015/767 and amended by S.I. 2022/718.

(b) Form 2 was substituted, in relation to buildings in England, by Schedule 2 to S.I. 2015/767, and amended by S.I. 2022/718.

- (iii) if regulation 44ZC of the Building Regulations 2010 is proposed to be relied on, a statement giving details of the matters mentioned in regulation 44ZC(6)(a) and (b) of those Regulations and, if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 to those Regulations is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C of those Regulations) is likely to be installed, in a location relevant for the purposes of paragraph RA1(1)(c) of that Schedule, within the relevant 2-year period (as defined by paragraph RA1(3) of that Schedule).”

(4) In Form 4 (combined initial notice and plans certificate)(a), in paragraph 5, after sub-paragraph (c) insert—

“(d) in the case of the erection of a dwelling, or a building that is to contain one or more dwellings—

- (i) a statement giving details of any public electronic communications network in relation to which a connection is to be provided,
- (ii) if an exemption in regulation 44ZB of the Building Regulations 2010 is proposed to be relied on, a statement giving details in support of the exemption, and
- (iii) if regulation 44ZC of the Building Regulations 2010 is proposed to be relied on, a statement giving details of the matters mentioned in regulation 44ZC(6)(a) and (b) of those Regulations and, if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 to those Regulations is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C of those Regulations) is likely to be installed, in a location relevant for the purposes of paragraph RA1(1)(c), within the period of two years beginning with the day on which the notice is given.”

(5) In Form 9 (public body’s notice)(b), in paragraph 4, after sub-paragraph (c) insert—

“(d) in the case of the erection of a dwelling, or a building that is to contain one or more dwellings—

- (i) a statement giving details of any public electronic communications network in relation to which a connection is to be provided,
- (ii) if an exemption in regulation 44ZB of the Building Regulations 2010 is proposed to be relied on, a statement giving details in support of the exemption, and
- (iii) if regulation 44ZC of the Building Regulations 2010 is proposed to be relied on, a statement giving details of the matters mentioned in regulation 44ZC(6)(a) and (b) of those Regulations and, if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 to those Regulations is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C of those Regulations) is likely to be installed, in a location relevant for the purposes of paragraph RA1(1)(c) of that Schedule, within the period of two years beginning with the day on which the notice is given.”

(6) In Form 11 (combined public body’s notice and plans certificate)(c), in paragraph 4, after sub-paragraph (c) insert—

“(d) in the case of the erection of a dwelling, or a building that is to contain one or more dwellings—

(a) Form 4 was substituted, in relation to buildings in England, by Schedule 2 to S.I. 2015/767, and amended by S.I. 2022/718.
(b) Form 9 was substituted, in relation to buildings in England, by Schedule 2 to S.I. 2015/767.
(c) Form 11 was substituted, in relation to buildings in England, by Schedule 2 to S.I. 2015/767.

- (i) a statement giving details of any public electronic communications network in relation to which a connection is to be provided,
- (ii) if an exemption in regulation 44ZB of the Building Regulations 2010 is proposed to be relied on, a statement giving details in support of the exemption, and
- (iii) if regulation 44ZC of the Building Regulations 2010 is proposed to be relied on, a statement giving details of the matters mentioned in regulation 44ZC(6)(a) and (b) of those Regulations and, if paragraph RA1(1)(c)(i) or (ii) of Schedule 1 to those Regulations is also proposed to be relied on, evidence of the steps taken to establish whether, and if so where, it is reasonable to expect that a distribution point for a gigabit-capable public electronic communications network (as defined by regulation 44C of those Regulations) is likely to be installed, in a location relevant for the purposes of paragraph RA1(1)(c) of that Schedule, within the period of two years beginning with the day on which the notice is given.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations introduces the Schedule. Part 1 of the Schedule amends the Building Regulations 2010 (S.I. 2010/2214), as they apply in England, so as to impose (in the new paragraphs RA1 and RA2 inserted in Schedule 1 to those Regulations by paragraph 8 of the Schedule) new requirements relating to the provision, in relation to newly built dwellings, of “gigabit-ready physical infrastructure” and a connection to a “gigabit-capable public electronic communications network” (those terms being defined in regulation 44C of those Regulations as amended by paragraph 6 of the Schedule).

Paragraph 5 of the Schedule inserts in those Regulations new regulations 44ZB and 44ZC, which modify or exclude the new requirements in certain cases.

Part 2 of the Schedule contains related amendments to the Building (Approved Inspectors etc.) Regulations 2010 (S.I. 2010/2215), as they apply in England.

Regulation 3 makes transitional provision under which the new requirements do not apply in certain cases.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector or community bodies is foreseen.

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