

EXPLANATORY MEMORANDUM TO
THE BUILDING ETC. (AMENDMENT) (ENGLAND) REGULATIONS 2023
2023 No. 520

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes minor amendments and a correction to the Building Regulations 2010 (“the Building Regulations”) and an amendment to the transitional provisions of the Building Regulations etc. (Amendment) (England) Regulations 2021 (“the 2021 Regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Because this instrument corrects an error in the Building etc. (Amendment) (England) Regulations 2022 it has been agreed with the SI Registrar that free copies of this instrument will be given to known recipients of that instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument extends to England and Wales.
- 4.2 This instrument applies in relation to 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 2021 Regulations introduced new energy efficiency standards for buildings by amending the Building Regulations. This instrument makes further minor amendments in relation to those changes. It also corrects a typographical error in amendments to the Building Regulations by the Building etc. (Amendment) (England) Regulations 2022.

7. Policy background

Explanation of the amendment relating to fire safety (regulation 2(2))

- 7.1 Regulation 2(2) corrects a typographical error in amendments made to the Building Regulations by the Building etc. (Amendment) (England) Regulations 2022 which contained a letter ‘l’ rather than a number ‘1’ in the description of the European fire

classification A2fl-s1 which is a classification of resistance to fire of a material tested horizontally.

Policy background to the 2021 Regulations

- 7.2 The Government has committed to improving energy efficiency in buildings by making future changes to the Building Regulations and the Approved Documents through the Future Homes Standard (FHS) for new dwellings and the Future Buildings Standard (FBS) for new non-domestic buildings. The intention is for these standards to be introduced from 2025.
- 7.3 In December 2021, the Government introduced an uplift in energy efficiency standards, which came into force in June 2022 (the 2021 Regulations). The uplift delivers a meaningful reduction in carbon emissions with new homes now expected to deliver around 30% fewer CO₂ emissions compared to homes built to the previous standards and new non-domestic buildings expected to produce 27% fewer CO₂ emissions. As well as improving the energy efficiency of new buildings in the short term, the 2021 uplift ensures that construction professionals and supply chains are working to higher specifications in readiness for the proposed introduction of the FHS and FBS from 2025.

Explanation of amendments relating to energy efficiency at regulations 2(3) and 2(4)

- 7.4 The amendment at regulation 2(3) will ensure that a local authority must be satisfied that the new target primary energy rate is met before issuing a completion certificate. The amendment at regulation 2(4) means that where an initial notice, an amendment notice or a public body's notice is in place (when the work is not being supervised by a local authority), the requirements under regulations 27A and 27C of the Building Regulations to give the local authority information about fabric energy rate calculations and primary energy rate calculations do not apply. This follows the approach taken to CO₂ emission rate calculations.

Explanation of the amendment to the transitional provisions of the 2021 Regulations (regulation 3)

- 7.5 When changes are made to the Building Regulations, transitional arrangements are normally put in place setting out when a building can be built to the previous standards, and therefore be exempt from the new standards. The arrangements make sure that work which is already in progress can be completed without major disruption.
- 7.6 In 2013 when changes to the energy efficiency standards in the Building Regulations were last made, the transitional arrangements allowed an entire building site to be built to the previous standards if a developer submitted an initial notice, a building notice or full plans application to the local authority prior to the new regulations coming into force, providing work then started on site within 12 months of the regulations coming into force. Following the consultation carried out on the changes made by the 2021 Regulations, the Government committed to a 12-month transitional period, provided a developer submitted an initial notice, a building notice, or full plans prior to 15th June 2022 and commenced work within 12 months. For the 2021 regulations, those transitional arrangements apply to individual buildings rather than an entire site. This differs from the transitional arrangements for the 2013 amendments to the Building Regulations and means work must be commenced on each individual building to benefit from any exemptions from the new standards.

7.7 The amendment at regulation 3 will make the transitional arrangements clearer. It will clarify that building sites which fell under the 2013 transitional arrangements will be entirely exempted from the 2021 standards, whilst all developments where work commenced after the transitional period for the 2013 amendments concluded will need to meet the criteria for transitional provisions on a building-by-building basis. This reflects a commitment made in the Government's consultation for the 2021 uplift that developments which fell under the 2013 transitional arrangements would not be impacted by the new approach. Making this amendment will therefore create consistency between the legislation and the expectations of industry and the public.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This is not a consolidation. The Government periodically carries out a consolidation of building regulations, the amendments made by this instrument will be included the next time there is a consolidation of building regulations.

10. Consultation outcome

10.1 Prior to the 2021 Regulations being laid, the Government held an online two-stage consultation on proposed changes to the Building Regulations and the accompanying statutory guidance. The first stage of the consultation, the Future Homes Standard consultation, was launched in 2019 and the Government response was published in January 2021. The second stage of the consultation, the Future Buildings Standard consultation, was launched in January 2021 and the Government response was published in December 2021.

10.2 The Government response to the first stage of the consultation is available online through the following link:

<https://www.gov.uk/government/consultations/the-future-homes-standard-changes-to-part-l-and-part-f-of-the-building-regulations-for-new-dwellings>

The Government response to the second stage of the consultation is available online through the following link:

<https://www.gov.uk/government/consultations/the-future-buildings-standard>

10.3 Both consultations set out proposals relating to transitional arrangements for new dwellings and non-domestic buildings.

10.4 Prior to the Building etc. (Amendment) (England) Regulations 2022 being laid, the Government carried out a consultation. The Government response to that consultation is available online through the following link:

<https://www.gov.uk/government/consultations/review-of-the-ban-on-the-use-of-combustible-materials-in-and-on-the-external-walls-of-buildings/outcome/government-response-review-of-the-ban-on-the-use-of-combustible-materials-in-and-on-the-external-walls-of-buildings>

11. Guidance

11.1 These regulations do not require guidance being issued.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An impact assessment has not been prepared for this instrument because there is little or no impact on business.
- 12.4 Impact Assessments covering the changes made by the 2021 Regulations (as well as associated non-legislative amendments) have been published which include an assessment of the impact of the transitional arrangements. These documents are available online through the following link:

<https://www.gov.uk/government/publications/2021-uplift-to-energy-efficiency-standards-improved-ventilation-and-new-overheating-requirement>

- 12.5 This instrument does not make any changes to the 2021 impact assessments.
- 12.6 An impact assessment of the changes brought about by the Building etc. (Amendment) (England) Regulations 2022 is available online through the following link:

<https://www.gov.uk/government/consultations/review-of-the-ban-on-the-use-of-combustible-materials-in-and-on-the-external-walls-of-buildings/outcome/impact-assessment-review-of-the-ban-on-the-use-of-combustible-materials-in-and-on-the-external-walls-of-buildings>

13. Regulating small business

- 13.1 The legislation is unlikely to be relevant to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Lee Rowley has made the following statement:

“A statutory review clause to monitor and evaluate the impacts of the policy after 5 years has not been included in the instrument since the energy efficiency standards in the Building Regulations are due to be monitored and reviewed in advance of that as part of the stakeholder engagement and technical consultations on the 2025 Future Homes and Buildings Standards.”

15. Contact

- 15.1 Elena Lynch at the Department for Levelling Up, Housing and Communities Telephone: 07458 052 231 or email: Elena.Lynch@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Palmer, Deputy Director for Energy Performance of Buildings at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Lee Rowley at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.