

EXPLANATORY MEMORANDUM TO
THE BUILDING (AMENDMENT) (ENGLAND) REGULATIONS 2024

2024 No. 645

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. Declaration

- 2.1 Lee Rowley MP, Minister of State for Housing, Planning and Building Safety at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 John Palmer, Deputy Director for Building Performance, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 James Halpin at the Department for Levelling Up, Housing and Communities. Email: james.halpin@levellingup.gov.uk can be contacted with any queries regarding the Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This legislation amends the Building Regulations 2010 to ensure provision is made for specific types of toilet accommodation in all new buildings other than dwellings and a small number of exemptions (set out in section 6.5).¹

Where does the legislation extend to, and apply?

- 4.2 The extent of this Instrument (that is, the jurisdiction(s) which the Instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this Instrument (that is, where the Instrument produces a practical effect) is England.

¹ The Building Regulations 2010: <https://www.legislation.gov.uk/uksi/2010/2214/content>

5. Policy Context

What is being done and why?

- 5.1 The government published a technical call for evidence on toilet provision for men and women in October 2020.² This followed concerns that increasing numbers of publicly accessible toilets were being converted into ‘gender neutral’ facilities with shared waiting and hand-washing facilities, causing safety and privacy concerns, especially for women. Women need safe spaces considering their biological, health and sanitary needs (for example, women who are menstruating, pregnant or menopausal, may need to use the toilet more often). Women are also less likely to feel comfortable using mixed sex facilities.
- 5.2 Government received 17,589 responses to the initial call for evidence, generally calling for greater consideration in the range of toilets and to preserve safety, privacy and dignity for all. Eighty-six per cent of responses cited safety concerns for identified groups of people using toilets. Seventy-nine per cent of responses mentioned safety for trans/non-binary people and seventy-five per cent mentioned safety concerns for women. More than 12,000 responses raised issues with each of the following regarding current provision of toilets: menstruation, family use, disabled use and medical conditions.
- 5.3 Following this, in July 2022, the government announced via a written ministerial statement that it aimed to ensure separate toilets for men and women continue to be provided by amending the Building Regulations and publishing new statutory guidance, that the provision of universal toilets is encouraged where space allows, and where universal toilets are provided, that privacy is ensured.³
- 5.4 A technical consultation ran from 13 August 2023 to 8 October 2023, which sought views on the government’s aims and policy objective, as well as responses to the proposed changes to the Building Regulations.⁴ The policy objective of the legislation is to ensure the safety, privacy and dignity for members of society when using toilets, through the provision of specific types of toilet accommodation. Eighty-one per cent agreed with the intention for separate single-sex toilet facilities and eighty-two per cent agreed with the intention to provide universal toilets where space allows.
- 5.5 By amending the Building Regulations, buildings other than dwellings will be built with provision for specific types of toilet accommodation. This means women, who may need to use toilet facilities more often because of pregnancy and/or sanitary needs, will now be guaranteed appropriate facilities through, for example, a separate single-sex toilet, with shared or individual hand-washing facilities, or through a fully enclosed universal toilet where space precludes single-sex toilets from being provided. A universal toilet, which is a fully enclosed room which contains a water-closet, washbasin and hand-drying facilities, and is intended for individual use by persons of either sex, will also maximise safety, privacy and dignity.
- 5.6 The Minister of State for Housing, Planning and Building Safety, Lee Rowley MP, has had due regard to the Public Sector Equality Duty throughout the policy making process.

² Call for evidence regarding toilet provision for men and women: <https://www.gov.uk/government/calls-for-evidence/toilet-provision-for-men-and-women-call-for-evidence>

³ Written ministerial statement by the Minister of State for Local Government, Faith and Communities, Kemi Badenoch MP: [Building Regulations: Public Toilet Provision - Hansard - UK Parliament](#)

⁴ Consultation regarding toilet provision in buildings other than dwellings: [Toilet provision in buildings other than dwellings: technical consultation - GOV.UK \(www.gov.uk\)](#)

What was the previous policy, how is this different?

- 5.7 There was no previous policy or regulation in place for the provision of specific types of toilet accommodation, including single-sex and universal toilet accommodation, in non-domestic buildings.
- 5.8 Regulations on the access to and use of buildings is separate from Part T and features in Part M of the Building Regulations. Corresponding to Part M, there is separate statutory guidance on the design of a wheelchair-accessible unisex toilet and a WC cubicle for ambulant disabled people in Section 5 of Approved Document M, Volume 2.⁵ Statutory guidance on the provision for baby changing and Changing Places toilets is also provided in Section 5 of this Approved Document. Part M will remain unchanged.
- 5.9 General sanitary provisions in the workplace are set out in regulation 20 of the Workplace (Health, Safety and Welfare) Regulations 1992.⁶ This Instrument sets a requirement for the provision of specific types of toilet accommodation that should be provided in addition to regulation 20. Additionally, some of the exemptions to the new regulation are covered by existing legislation supported by specialist guidance. For example, in schools where existing legislation makes provision for separate toilet facilities for boys and girls aged 8 years or over, except where the toilet facility is provided in a room that can be secured from the inside and that is intended for use by one pupil at a time.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This Instrument makes an amendment to Schedule 1 of the Building Regulations 2010 by adding a new Part T and the requirement, T1. Part T states that provision must be made for specific types of toilet accommodation in buildings other than dwellings.
- 6.2 Legislation is required as the Building Regulations do not currently prescribe the specific provision of single-sex or universal toilets. Developers are therefore not sufficiently incentivised to provide provision of specific types of toilet accommodation, as any potential benefits (the safety, privacy and dignity of members of society whilst using toilet accommodation) would not accrue to the developers directly. There are also potential economic costs to developers (see section 9). The government outlined a policy goal in a written ministerial statement to Parliament in July 2022 of amending the Building Regulations to ensure separate toilets for men and women continue to be provided.
- 6.3 A consequential amendment to regulation 3 (3) of the Building Regulations 2010 is required as requirement T1 is applicable when a material alteration is carried out.
- 6.4 A consequential amendment to regulation 6 (1)(a) of the Building Regulations 2010 is required as requirement T1 is applicable when buildings are subject to a material change of use.
- 6.5 Requirement T1 does not apply to the following: en-suite facilities in individual rooms for residential purposes; residential rooms in care homes (as defined in section 3 of the Care Standards Act 2000); schools (as defined in section 4 of the Education

⁵ Access to and use of buildings, Approved Document M: <https://www.gov.uk/government/publications/access-to-and-use-of-buildings-approved-document-m>

⁶ The Workplace (Health, Safety and Welfare) Regulations 1992: <https://www.legislation.gov.uk/uksi/1992/3004/contents>

Act 1996); premises, or part of any premises, used wholly or mainly for early years provision within the meaning of section 20 of the Childcare Act 2006 by an early years provider to whom section 40 of the Childcare Act 2006 (duty to implement Early Years Foundation Stage) applies; and cellular accommodation in custodial facilities.^{7, 8, 9} The regulation does not require toilets to be retrospectively changed in existing non-domestic buildings, unless there is a material change of use (as defined in regulation 5 of the Building Regulations 2010) or building work (as defined in regulation 3 of the Building Regulations 2010) takes place.

- 6.6 A transitional period is included to ensure there is minimal impact on the construction of new, non-domestic buildings, allowing time for industry to prepare for the changes. The legislation will come into force six months after the legislation is laid, on 1 October 2024. The new requirement will not apply in relation to building work on a particular building where a building notice, an initial notice or an application for building control approval with full plans, has been given to the relevant authority in respect of that building before the day the new regulations come into force (1 October 2024) and either the building work to which it relates is sufficiently progressed before that day or is sufficiently progressed within the period of six months beginning on that day and ending on 1 April 2025.

Why was this approach taken to change the law?

- 6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The department conducted a public consultation on changes proposed to the Building Regulations related to the provision of specific types of toilet accommodation. The duration covered 8 weeks from 13 August 2023 to 8 October 2023. This consultation sought views on the proposals to amend the Building Regulations and statutory guidance in a new Approved Document T. A full consultation response has been prepared and published on GOV.UK.¹⁰
- 7.2 The consultation received 1096 responses from a range of stakeholders, including access consultants, architects, building control approved inspectors, building occupiers/residents, campaign groups, charities, construction professionals, designers/engineers/surveyors, higher education representatives, local authorities, property managers/housing associations/landlords, tenant representative organisations and individual members of the public. Responses were received online and via email.
- 7.3 The department has consulted the Building Safety Regulator in accordance with section 120B of the Building Act 1984.¹¹ The Building Advisory Committee also provided advice as part of this process.
- 7.4 The consultation complied with section 120B of the Building Act 1984 to undertake appropriate consultation for proposed changes to the Building Regulations.

⁷ Care Standards Act 2000: <https://www.legislation.gov.uk/ukpga/2000/14/contents>

⁸ Education Act 1996: <https://www.legislation.gov.uk/ukpga/1996/56/contents>

⁹ Childcare Act 2006: <https://www.legislation.gov.uk/ukpga/2006/21>

¹⁰ Government's response to a consultation regarding toilet provision in buildings other than dwellings: <https://www.gov.uk/government/consultations/toilet-provision-in-buildings-other-than-dwellings-technical-consultation>

¹¹ Building Act 1984: <https://www.legislation.gov.uk/ukpga/1984/55>

7.5 Responses showed overall support for government’s proposed policy. Most respondents agreed with the intent for separate single-sex toilet facilities, as well as the provision of universal toilets where space allows. Most also agreed with the proposed new functional requirement, T1. However, it was evident that respondents had understood T1 in different ways, leading to some misunderstanding. Wording in T1 has been revised to ensure clarity, but the original policy intent remains the same. Most respondents agreed with the proposed exemptions to T1 and the transitional arrangements; both the proposed exemptions and transitional arrangements have been retained in the final policy.

8. Applicable Guidance

- 8.1 The department publishes statutory guidance called ‘Approved Documents’ on how to meet the requirements in the Building Regulations for common building situations.
- 8.2 New statutory guidance, Approved Document T, has been published on GOV.UK to support industry in complying with the new regulation.¹² Approved Document T describes the size, layout, fittings and equipment of four types of toilet accommodation that are suitable for meeting the new requirement.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.¹³

Impact on businesses, charities and voluntary bodies

- 9.2 Modelling indicates that the total cost over a 10-year appraisal period is £40.9 million in the central scenario, and the EANDCB (Equivalent Annual Net Direct Cost to Business) is £4.8 million in the central scenario. The first order impact of these costs¹⁴ are assumed to fall on the private sector, as they are borne by developers. A proportion of these costs may be passed onto government or local authorities, for example through the cost of purchasing the building, however the direct cost in the analysis has been assumed to be incurred by business.
- 9.3 Developments of non-domestic buildings are normally undertaken by large businesses. However, small businesses in the food and drink industry undertaking material alterations (as defined in regulation 3 of the Building Regulations 2010 under building work) could still be disproportionately impacted by the policy. This is because, in the event that the policy requires an increase in the space allocated to toilet accommodation, this could imply a reduction in areas previously allocated to dining, drinking or socialising.
- 9.4 The policy has been designed in a way to reduce the impact on small and micro businesses. Fully enclosed universal toilets can be provided where space precludes

¹² Approved Document T: <https://www.gov.uk/government/publications/toilet-accommodation-approved-document-t>

¹³ The Building (Amendment) (England) Regulations 2024 Impact Assessment: <https://www.gov.uk/government/consultations/toilet-provision-in-buildings-other-than-dwellings-technical-consultation>

¹⁴ Excluding 50% of building control officers familiarisation cost, which is equal to £7,500 out of £150,000 total familiarisation cost (in 2019 prices and 2020 present value).

single-sex toilets from being provided. This has been included to ensure the impact on smaller businesses, who have relatively less space/area overall, is reduced.

- 9.5 It is assumed that a number of constrained material alterations will be able to apply the ‘non-worsening’ principle (as set out in regulation 4(3) of the Building Regulations 2010). This might arise for instance where the structure of the building does not reasonably allow toilet accommodation to be reconfigured to accommodate the new toilet designs, without significant structural alterations. Where businesses can demonstrate that it is not reasonably possible to meet the new design but the toilet accommodation will be no worse compared with the Building Regulations at the time of construction, the principle applies. In such events they will not be required to make changes. This will also reduce the impact of the policy on small and medium businesses.
- 9.6 Therefore, due to the relatively small-scale cost impact of the policy, the considerations that have been made in light of the expected impacts of the policy on smaller business conducting material alterations, and the limitations that removing small and micro businesses would place on the policy achieving its desired outcomes and the benefits that might arise, no businesses will be exempt from the amendments to the Building Regulations accept the limitations set out in the requirement as detailed at section 6.5 above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through engagement with local authority building control and relevant authorities by the department and the Building Safety Regulator. As part of the Building Safety Regulator’s governance structures, the Building Advisory Committee (a high-level steering group comprised of members from different parts of industry and underpinned by separate working groups) provides advice and information on new and emerging issues across the built environment. Meetings of the steering group take place on at least four occasions per annum. While the Building Safety Regulator continually reviews the suite of Approved Documents to ensure the statutory guidance remains relevant. With the support of the Building Advisory Committee, the Building Safety Regulator will be considering the ongoing effectiveness of Building Regulations in use. The department retains responsibility for the stewardship of the regulatory system and policy decisions on the scope and effect of the Building Regulations. As set out in the Building Safety Act, the department may seek advice from the Building Safety Regulator on these matters.¹⁵
- 10.2 The Instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lee Rowley MP, the Minister of State for Housing, Planning and Building Safety, has made the following statement:
- “The regulatory measures in this Instrument are within the scope of the periodic review provided for in Section 162 of the Building Safety Act 2022, and it would not be appropriate in the circumstances to make provision for a separate review in this Instrument.”¹⁶

¹⁵ Building Safety Act 2022: <https://www.legislation.gov.uk/ukpga/2022/30/contents>

¹⁶ Small Business, Enterprise and Employment Act 2015: <https://www.legislation.gov.uk/ukpga/2015/26/contents>

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
- 11.2 The Minister of State for Local Government, Faith and Communities, Kemi Badenoch MP, made a written statement to the House of Commons on 4 July 2022.¹⁷ This set out the government’s aim to ensure separate toilets for men and women continue to be provided by amending Building Regulations and publishing new statutory guidance, that the provision of universal toilets is encouraged where space allows, and where universal toilets are provided, that privacy is ensured. This Instrument fulfils this commitment by ensuring provision is made for specific types of toilet accommodation in all new buildings other than dwellings and a small number of exemptions. The exemptions are: en-suite facilities in individual rooms for residential purposes; residential rooms in care homes (as defined in section 3 of the Care Standards Act 2000); schools (as defined in section 4 of the Education Act 1996); premises, or part of any premises, used wholly or mainly for early years provision within the meaning of section 20 of the Childcare Act 2006 by an early years provider to whom section 40 of the Childcare Act 2006 (duty to implement Early Years Foundation Stage) applies; and cellular accommodation in custodial facilities.^{18, 19, 20}

12. European Convention on Human Rights

- 12.1 The Minister of State for Housing, Planning and Building Safety, Lee Rowley MP, has made the following statement regarding Human Rights:
- “In my view the provisions of the Building (Amendment) (England) Regulations 2024 are compatible with the Convention rights.”²¹

13. The Relevant European Union Acts

- 13.1 This Instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

¹⁷ Written ministerial statement by the Minister of State for Local Government, Faith and Communities, Kemi Badenoch MP: [Building Regulations: Public Toilet Provision - Hansard - UK Parliament](#)

¹⁸ Care Standards Act 2000: <https://www.legislation.gov.uk/ukpga/2000/14/contents>

¹⁹ Education Act 1996: <https://www.legislation.gov.uk/ukpga/1996/56/contents>

²⁰ Childcare Act 2006: <https://www.legislation.gov.uk/ukpga/2006/21>

²¹ European Convention on Human Rights: https://www.echr.coe.int/documents/d/echr/convention_eng