EXPLANATORY MEMORANDUM TO

THE BUILDING (AMENDMENT NO. 2) REGULATIONS 2009

2009 No. 2397

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 This instrument concerns provisions of the Building Regulations 2000 (S.I. 2000/2531) ("the Building Regulations"), primarily those dealing with water. It updates a reference to the methodology to be used for calculating the water efficiency of new dwellings. It adds certain types of work with water and descriptions of persons to the list of work that is exempt from advance notification requirements when carried out by specified persons. A further amendment revokes regulation 22A of the Building Regulations, which relates to time limits for prosecutions, since that provision has become redundant. There is a related saving provision.

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 with respect to the design and construction of buildings and the services, fittings and equipment provided in or in connection with buildings for a number of purposes. These purposes include securing the health, safety, welfare and convenience of persons in and about buildings, preventing waste, undue consumption, misuse or contamination of water, furthering the protection or enhancement of the environment, and facilitating sustainable development.

4.2 The amendments in this instrument make provision ancillary to amendments made to the Building Regulations in the Building and Approved Inspectors (Amendment) Regulations 2009 (S.I. 2009/1219), which come into force on 1st October 2009. Those Regulations introduce a water efficiency requirement for new dwellings, and add certain types of cold water supply to the matters concerning which the Building Regulations impose requirements. The main amendments in the present Regulations, namely the updating of the calculation methodology for water efficiency, and the additions to the list of work exempt from advance notification requirements, concern matters arising out of those two new areas of provision.

4.3 A further amendment revokes regulation 22A of the Building Regulations, which designates certain contraventions as subject to a longer than standard time limit for the bringing of prosecutions. Regulation 22A has become redundant as regards contraventions on or after 22nd September 2008 by virtue of section 317 of the Housing and Regeneration Act 2008 (c.17), which extends the longer time limit to all Buildings Regulations offences.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Water efficiency of new dwellings

7.1 Amendments to the Building Regulations in the Building and Approved Inspectors (Amendment) Regulations 2009 introduce a new regulation 17K, under which new dwellings must meet a requirement for water efficiency. This is expressed as a requirement that the potential consumption of wholesome water by persons occupying the dwelling should not exceed 125 litres per person per day, calculated in accordance with the methodology set out in the document "The Water Efficiency Calculator for New Dwellings", published by the Department. A reference was given in those Regulations to the edition of that document published in May 2009.

7.2 Following publication there have been a number of suggestions and queries regarding the methodology set out in the Water Efficiency Calculator for New Dwellings. The Department has considered these representations and as a result has made a number of minor amendments and additions to the document to ensure that the methodology is robust. These are incorporated in a revised edition published in September 2009. Consequently, the reference in regulation 17K needs to be amended to refer to the September edition of the Water Efficiency Calculator for New Dwellings so that the revised methodology is available for use on the coming into force date of 1st October 2009.

Self-certification schemes

7.3 The Building and Approved Inspectors (Amendment) Regulations 2009 also substitute a new Part G of Schedule 1 to the Building Regulations, dealing with the functional requirements for sanitation, hot water safety, and water efficiency. This introduces new requirements for the provision of a wholesome cold water supply for drinking, washing, and food preparation, and the supply of water of a suitable quality to sanitary conveniences fitted with a flushing device, thereby allowing the use of water from non-wholesome

sources for the latter purpose. Such sources will principally be greywater or rainwater. The Department considers that it would provide both a support for compliance with these new requirements and reduce the burden on dutyholders for self-certification schemes to be authorised for these types of work in accordance with regulation 12(5) of, and Schedule 2A to, the Building Regulations.

7.4 By regulation 12(5) and Schedule 2A, where only work of a type listed in that Schedule is to be carried out, that work is exempt from the advance notification requirements of the Building Regulations if carried out by a person specified in the Schedule in relation to work of that type. That person is required to give a certificate to the occupier, on completion of the work, stating that the work complies with the Building Regulations, and either to notify the building control body (the local authority, or, in cases where building control functions are exercised by an approved inspector by virtue of section 47 of the Building Act 1984, an approved inspector) that this has been done or to copy the certificate to the building control body. A number of self-certification schemes have previously been authorised for related types of plumbing work and a high level of compliance with Building Regulations has been achieved by them.

7.5 The present Regulations add the work referred to in paragraph 7.3 to Schedule 2A provided that it is carried out by a person registered by any of the organisations described in relation to those additions. The organisations that the present Regulations will authorise have all demonstrated a suitable level of competence to operate schemes for the installation of a wholesome cold water supply and the installation of greywater/rainwater systems. Installers will be registered with the schemes only after they have demonstrated appropriate qualifications, knowledge and experience to be able to meet the new requirements.

Revocation of regulation 22A of the Building Regulations 2000

7.6 The Climate Change and Sustainable Energy Act 2006 (c.19) inserted section 35A of the Building Act 1984, by which there was introduced a power to designate contraventions of building regulations to which a two-year limitation period for prosecution should apply rather than the usual six months applicable to summary offences. In the exercise of this power, regulation 22A, which was inserted into the Building Regulations by the Building (Amendment) Regulations 2008 (S.I. 2008/671), and came into force on 6th April 2008, designated certain contraventions for this purpose,. Subsequently, section 317 of the Housing and Regeneration Act extended the two-year limitation period to all offences against building regulations, with a commencement date of 22nd September 2008. Thus regulation 22A has become redundant except in relation to certain contraventions occurring in the period beginning on 6th April 2008 and ending on 21st September 2008. Regulation 22A is accordingly revoked by the present Regulations, with a saving for contraventions during that period.

- ***Consolidation***

7.7 This statutory instrument amends the Building Regulations. A consolidated text of the Regulations will be available on the Planning Portal website when this instrument comes into force in order to assist dutyholders understand the cumulative effect of the Regulations and their subsequent amendments, though the consolidated version will not have formal status for the purpose of compliance.

8. Consultation outcome

8.1 As required by section 14(3) of the Building Act 1984, consultation has taken place with the Buildings Regulations Advisory Committee and such other bodies as appear to be representative of the interests concerned.

8.2 As mentioned in paragraph 7.2, the changes to the Water Efficiency Calculator for New Dwellings have been made in response to comments and suggestions made by stakeholders since the publication of the previous edition. The calculator is used both for Building Regulations purposes and for measuring performance in relation to the Code for Sustainable Homes. The technical changes made have subsequently been seen by members of the technical working group on the Code for Sustainable Homes as well as the member of the Building Regulations Advisory Committee on that working group, and the final draft document has been submitted to the members of the Building Regulations Advisory Committee.

8.3 Separate consultation took place on the authorisation of self-certification schemes. Two members of the Building Regulations Advisory Committee expressed concerns about one of the bodies to be authorised. However, these concerns related to an unrelated issue for which the body no longer has responsibilities. As the body concerned has been operating a successful scheme dealing with plumbing work it was considered that these unrelated concerns should not prevent its authorisation. No other concerns were expressed.

8.4 No consultation was needed or took place on the revocation of regulation 22A of the Building Regulations 2000.

9. Guidance

9.1 Guidance on the Building Regulations' requirements concerning water, as they apply from 1st October 2009, including those concerning water efficiency, can be found in the Approved Document for Part G requirements, which is available on the Department for Communities and Local Government website www.planningportal.gov.uk .

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. The authorisation of self-certification schemes for the installation of a wholesome cold water supply and the installation of non-wholesome water supply to sanitary conveniences will mean that, in cases where the installer is registered with a scheme and only work covered by such a scheme is being carried out, it will not be necessary to notify the work in advance to a local authority, thus saving building control charges.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared specifically for this instrument but the matters addressed in it are dealt with in the Impact Assessments published for the Building and Approved Inspectors (Amendment) Regulations 2009 (S.I. 2009/1219). They are attached to the explanatory memorandum to those Regulations, which can be accessed alongside the Regulations on the Office of Public Sector Information website at www.opsi.gov.uk/stat .

11. Regulating small business

11.1 The legislation applies to small business. The provisions are not of such a sort as to provide scope for different provision in respect of small businesses, or for firms employing less than twenty people.

11.2 Businesses which undertake the installation of a wholesome cold water supply or the installation of a non-wholesome water supply to sanitary conveniences will have the opportunity to register with a self-certification scheme (if they are competent to do so) and, if registered, will avoid the need to pay building control charges. This opportunity applies equally to all sizes of business.

12. Monitoring & review

12.1 The criteria for success of this instrument will be the achievement of a reduced level of water consumption in new homes, and a high level of compliance with the Building Regulations for work to which the new self-certification provisions apply.

12.2 Self-certification schemes are reviewed periodically to ensure that they are achieving compliance with the Building Regulations and operating within their conditions of authorisation. Scheme operators must monitor the performance of their registered installers through random annual inspections of a representative sample of completed work to make sure the work complies fully with the requirements of the Building Regulations.

12.3 More generally, it is the Department's practice to monitor how new policy is working within a reasonable timeframe (usually about 3 years after implementation) and we intend to do this for the broader provisions on water efficiency and Part G of the Building Regulations that this statutory instrument

is associated with. The Department also has an ongoing dialogue with users of the building control system and will monitor informally how the changes are working in practice prior to a more formal evaluation.

13. Contact

Ian Drummond at the Department for Communities and Local Government Tel: 020 7944 4821 or email: ian1.drummond@communities.gsi.gov.uk can answer any queries regarding the instrument.

2nd September 2009