EXPLANATORY MEMORANDUM TO

THE BUILDING (AMENDMENT) REGULATIONS 2009

2009 No. 466

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 The Building (Amendment) Regulations 2009 ("the Amending Regulations") amend Schedule 2A to the Building Regulations 2000 ("the Building Regulations"), which lists categories of work covered by, and the operators of, self-certification schemes. Membership of self-certification schemes exempts persons carrying out relevant work from the normal requirement under the Building Regulations to notify the local authority of an intention to carry out the work. The amendments are necessary to reflect the change, with effect from 1st April 2009, in the body responsible for ensuring the safety of gas installations, and changes in one of the bodies which operates a number of the schemes.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Building regulations are made for the purposes of:

a. securing the health, safety and welfare of persons in and about buildings;
b. furthering the conservation of fuel and power;
c. furthering the protection or enhancement of the environment;
d. facilitating sustainable development,

and other purposes not relevant to this Memorandum.

4.2 Building regulations may be made with respect to the design and construction of buildings and the services, fittings and equipment provided in buildings.

4.3 The Building Regulations impose various procedural and general functional requirements for "building work" (as defined in the Building Regulations) carried out in England and Wales. Regulation 12 of the Building Regulations requires a person to give a building notice to, or deposit full plans with, the local authority where that person intends to carry out building work. These requirements do not apply where the work consists only of work described in column 1 of the Table in Schedule 2A if the work is to be carried out by a person described in the corresponding entry in column 2 of that Table. Most of the entries in column 2 refer to a person registered by specified bodies in relation to the type of work specified in column 1. Such a person can self-certify that the work complies with building regulations. These are known as self-certification schemes.

4.4 The amendments to Schedule 2A to the Building Regulations made by the Amending Regulations fall within the following categories:

a. adding the name of Capita Gas Registration and Ancillary Services Limited ("Capita") to those bodies in paragraph 2 of Schedule 2A which are able to register persons for the purposes of self-certification schemes in respect of the installation of a heating or hot water service system connected to a heat-producing gas appliance, or associated controls. This amendment is a consequence of the transfer from CORGI Services Limited to Capita, with effect from 1st April 2009, of responsibility for the safety of gas installations, under the Gas Safety (Installation and Use) Regulations 1998 (S.I. 1998/2451). In order to carry out work to gas appliances from 1st April 2009, persons will need to be approved by Capita, and this amendment allows those persons to self-certify work ancillary to the gas appliance installation work through Capita, rather than having to join another scheme for this purpose;

b. amending entries in column 2 of paragraphs 9, 10 and 11 of the Table in Schedule 2A. These amendments are made to reflect a change in the operating arrangements of a particular body, the Electrical Contractors Association, which operates self-certification schemes in relation to the work covered by those paragraphs. The Electrical Contractors Association formerly ran schemes under three companies which it owned (The Electrical Contractors Association Limited, ELECSA Limited and EC Certification Limited), but has now confirmed that all the relevant schemes are to be run by one of those companies, EC Certification Limited.

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

- ***What is being done and why***

7.1 The Health and Safety Executive (HSE) has responsibility for the approval of bodies to operate a gas safety scheme under the provisions of the Gas Safety (Installation and Use) Regulations 1998 ("the Gas Safety Regulations"). Any person who carries out any work for commercial gain to which the Gas Safety Regulations apply must be registered with the approved operator of the scheme. The current scheme has been in place for 17 years, and is at present operated by CORGI but, following a review in 2006, HSE decided to revise the scheme and to open the operation of the scheme to competition rather than simply reappointing CORGI. The

result of the competition was that Capita were awarded the contract to operate the scheme for five years from 1st April 2009.

7.2 Those installers wishing to continue to install gas appliances from 1 April 2009 will need to be registered with Capita to be able to do so. Registration with CORGI will no longer be a requirement from that date.

7.3 Under paragraphs 2 and 3 of Schedule 2A to the Building Regulations installers registered with CORGI were given the right to self-certify that their installations of heating and hot water systems, or associated controls, connected to heat-producing gas appliances complied with building regulations. Almost all such installations were self-certified in this way as all the installers were registered with CORGI.

7.4 Installers will be required to have at least the same level of competence when registered with Capita as with CORGI. As a result, the Department considers that the right to self-certify should be granted to Capita-registered installers as has been granted to CORGI registered installers.

7.5 From 1st April 2009, most installers registered with CORGI are expected to transfer their registration to Capita. The changes proposed will permit this to happen while allowing them to continue to benefit from the same right to self-certify that they currently enjoy.

7.6 The other changes to the Regulations concern subsidiary companies within the Electrical Contractors' Association (ECA) group. The ECA has decided for internal efficiency reasons that all its schemes authorised in Schedule 2A should be operated by EC Certification Limited, one of its subsidiary companies. The Department has received a written undertaking that all the schemes concerned will continue to abide by the conditions of authorisation agreed at the time the schemes were first authorised. On this basis, the Department is content to recognise the changes within the ECA in Schedule 2A.

- ***Consolidation***

7.7 The Department currently provides on its website an informal consolidated version of the Building Regulations as at 13 April 2007. It intends to update this, to incorporate all recent amendments including those made by this instrument, by 1st May 2009.

8. Consultation outcome

8.1 No consultation was carried out by the Department for Communities and Local Government in the case of this instrument. The decision to change the body responsible for the safety of gas installations was made by the Health and Safety Executive, and was made after consultation. The relevant amendment made by this instrument is to prevent an increase in the burden on installers approved by Capita as a result of the change, by ensuring that they do not have to join to another self-certification scheme in order to self-certify their work. The other amendments are to

reflect the operating arrangements of a scheme operator and consequently consultation would be meaningless.

9. Guidance

9.1 No specific guidance is being issued in respect of this instrument, apart from the Department's standard practice, whenever the Building Regulations are amended, of issuing a circular letter to all local authorities and other relevant stakeholders to notify them of the amendments and what they mean in practice. The Health and Safety Executive's website[1] states that Capita is planning to run an extensive campaign in the months leading up to 1st April 2009 to publicise the change in responsibility for gas safety.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 No action has been taken to minimise the impact of the requirements on firms employing up to 20 people, as no impact on such firms as a result of these amendments is foreseen.

11.3 The basis for the final decision on what action to take to assist small business is that no impact on such firms is foreseen.

12. Monitoring & review

12.1 The outcome of the amendment to add Capita to paragraph 2 of Schedule 2A will be subject to internal review after 12 months. The other amendments will not be reviewed as they are administrative changes needed to reflect decisions made by a private sector company

13. Contact

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

[1] http://www.hse.gov.uk/gas/domestic/newschemecontract.htm