EXPLANATORY MEMORANDUM TO

THE BUILDING AND APPROVED INSPECTORS (AMENDMENT No. 2) REGULATIONS

2009 No. 2465

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 postpones the coming into force of a number of amendments to the Building Regulations 2000 ("the Building Regulations") and the Building and Approved Inspectors Regulations 2000 ("the Approved Inspectors Regulations") from 1st October 2009 to 6th April 2010.

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

3.1 None.

4. Legislative Context

4.1 The Building Act 1984 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 Building Regulations and the Approved Inspectors Regulations have been made pursuant to these powers. The Building Regulations establish general functional requirements for buildings when constructed, and are supported by Approved Documents, issued under section 6 of the Building Act, which set out detailed practical guidance on compliance. The Building Regulations also set out procedures for the control of building work by local authorities. The Approved Inspectors Regulations, in conjunction with Part 2 of the Building Act 1984, make provision for a private sector building control system as an alternative to that offered by local authorities.

4.3 This instrument postpones from 1st October 2009 to 6th April 2010 the coming into force dates and the associated transitional provisions of amendments to the Building Regulations and to the Approved Inspectors Regulations that were made in the Building and Approved Inspectors (Amendment) Regulations 2009 (S.I. 2009/1219) and the Building

(Amendment No.2) Regulations 2009 (S.I. 2009/2397). The amendments in those instruments concern sanitation, hot water safety and water efficiency.

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 Building and Approved Inspectors (Amendment) Regulations 2009 and the Building (Amendment No.2) Regulations 2009 were made in order to introduce important changes to the provisions of the Building Regulations and the Approved Inspectors Regulations concerning water. They replace Part G of the Building Regulations, that deals with water supply, sanitation, and hot water safety with new provisions, that also contain a requirement to make reasonable provision for the prevention of undue consumption of water by fittings and appliances in new dwellings. They also insert into the Building Regulations and the Approved Inspectors Regulations a new minimum water efficiency standard for new dwellings. Numerous ancillary and administrative provisions are made in addition to the principal provisions, including complex transitional provisions for building projects that commence before the new provisions come into force and have reached different stages of progress. The changes were intended to be introduced together on 1st October 2009, alongside a new version of the Approved Document that offers guidance on compliance with water requirements in the Building Regulations.

7.2 The Department has become aware at a late stage in the process of introducing these new requirements that a question has arisen in relation to the new provisions in the area of hot water supply and systems and Community law. The requirements in Part G set objectives expressed in terms of principle to be aimed at. The Approved Document recommends concrete methods of achieving them that also benefit from an evidential presumption, though not a conclusive one, of compliance in the event of enforcement action. The guidance given in relation to hot water systems provides detailed descriptions of the technical specifications by which systems will achieve compliance. The concern that has arisen is that these go beyond what is required by the Community directives that govern gas-burning appliances and pressure equipment. In doing so, it is suggested that they contravene the specific requirement in each of those directives that national measures should not restrict the placing on the market of appliances that comply with the requirements of the directive concerned. It is to investigate this possibility,

and, if necessary, work on the Approved Document, that a postponement is made.

7.3 These important regulatory changes have been arranged to come into force at the same time for the convenience of stakeholders, with a single Approved Document to deal with them all. The Department considers that it would be advantageous for all stakeholders, in particular those constructing buildings and building control bodies with their supervisory functions, for it to continue with the policy of introducing the changes and the new guidance in a single package.

- ***Consolidation***

7.4 As these Regulations make no provision other than to postpone amendments that would otherwise have come into force, no need to consider the question of consolidation arises.

8. Consultation outcome

8.1 The Department is required under the Building Act 1984 to consult only on substantive requirements in building regulations. This instrument is accordingly not subject to a consultation requirement. A consultation exercise on delaying the introduction of these provisions has in any case not been possible in the limited time available. However, in taking a decision to delay, the Department has been mindful of previous representations from users of the building control system that have suggested that certainty and clear guidance are necessary for it to operate efficiently. The new provisions have moreover been presented hitherto as a whole, dealing with all water-related requirements in the Building Regulations. It is for these reasons that the Department has come to the conclusion that the new provisions should still be introduced as a single package once adequate guidance can be put in place to support all of the legislative requirements.

9. Guidance

9.1 The Department plans to use various media to provide advice on this postponement to those with an interest. This will include: a circular letter to key stakeholders; a news release; making information available on the Department for Communities and Local Government websites, including www.planningportal.gov.uk; and direct communication with trade associations, professional bodies and specialist publications.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 The impact on the public sector is minimal.

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

11. Regulating small business

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

12. Monitoring & review

12.1 The Department will continue to work on the review of policy and of technical requirements for which this postponement is made, while seeking to identify and understand stakeholder concerns. It will endeavour to reflect the views expressed during focussed consultation that is to take place on these topics.

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.

8th September 2009