EXPLANATORY MEMORANDUM TO

THE BUILDING AND APPROVED INSPECTORS (AMENDMENT) REGULATIONS 2007

2007 No. 3384

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. Description

2.1 These Regulations amend the Building Regulations 2000 ("the Building Regulations") and the Building (Approved Inspectors etc) Regulations 2000 ("the Approved Inspectors Regulations) for the purposes of:

- 2.1.1 amending the circumstances in which persons carrying out work to fixed building services must notify local authorities and approved inspectors that those services have been commissioned in accordance with building regulations.
- 2.1.2 clarifying the energy efficiency requirements for fixed building services in paragraph L1 of Schedule 1 to the Building Regulations.
- 2.1.3 amending Schedule 2A to the Building Regulations, which lists categories of work covered by, and the operators of, self-certification schemes, membership of which exempts persons carrying out relevant work from the requirement to notify an intention to carry out the work.
- 2.1.4 amending Schedule 2B to the Building Regulations to extend the descriptions of building work for which a person carrying out the work does not need to notify the local authority.
- 2.1.5 amending the time limit provisions for notifying an approved inspector that fixed building services have been commissioned in accordance with building regulations.

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

3.1 None.

4. Legislative Background

4.1 Section 1 of the Building Act 1984, as amended by the Sustainable and Secure Buildings Act 2004, enables building regulations to be 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, and the various specific matters set out in Part 1 of and Schedule 1 to the Act. The Building Regulations and the Approved Inspectors Regulations have been made pursuant to these powers.

4.3 The Building Regulations impose various procedural and general functional requirements for building work carried out in England and Wales. They are supported by technical guidance in the form of Approved Documents, which set out detailed practical guidance on ways of complying with the Building Regulations.

4.4 The Approved Inspectors Regulations, in conjunction with Part 2 of the Building Act, make provision for a private sector building control system as an alternative to that offered by local authorities.

4.5 The amendments to the Building Regulations made by this instrument fall within the following categories:

a. amending regulation 20C, which was inserted into the Building Regulations as part of the amendments made by SI 2006/652, to restrict the requirement to notify the local authority that new or altered fixed building services have been tested and adjusted in accordance with an approved procedure to circumstances where such commissioning is possible and could affect the energy efficiency of the fixed building service;

b. amending paragraph (b) of Part L1 (conservation of fuel and power) of Schedule 1 to clarify the energy efficiency requirements for new and altered fixed building services by listing the three components separately;

c. amending the registration category for self-certification schemes for specified oil-fired installations, in column 2 of paragraph 3 of Schedule 2A, from 'individual' to 'person';

d. adding two new schemes to the list of schemes in Schedule 2A, membership of which entitles persons to self-certify that their work complies with the Building Regulations;

e. amending column 1 of paragraph 4 of Schedule 2A to increase the maximum heat output (from 50 kilowatts to 100 kilowatts) of a solid fuel burning combustion appliance which can be installed under a self-certification scheme; and

f. amending paragraphs (f) and (g), and adding a new paragraph (j), to Schedule 2B to alter, and to extend, the categories of building work for which notification to the local authority is not required.

4.6 The amendments to the Approved Inspectors Regulations made by this instrument fall within the following categories:

a. amending regulation 12C, which was inserted into the Approved Inspectors Regulations as part of the amendments made by SI 2006/652, to restrict the requirement to notify the approved inspector that new or altered fixed building services have been tested and adjusted in accordance with an approved procedure to circumstances where such commissioning is possible and could affect the energy efficiency of the fixed building service;

b. amending the provisions in relation to the time limit for giving the notice required by regulation 12C in two ways. First, where regulation 11A applies

(i.e. where work has been carried out under a self-certification scheme), by requiring the notice to be given not more than 30 days after completion of the self-certified work (which is the time limit given in regulation 11A), instead of not later than 5 days after completion of the work to which the initial notice relates (i.e. all work included in the notice). Secondly, by providing that where regulation 18 (which sets out the events that cause an initial notice to cease to be in force) applies the notice must be given on or before the date an initial notice ceases to be in force.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Building and Approved Inspectors (Amendment) Regulations 2006 (SI 2006/652) included a number of amendments to the Building Regulations 2000 for the purposes of increasing the energy efficiency of buildings and the services and fixtures installed in them. One of the purposes of these amendment Regulations is to clarify and amend two areas of the 2006 amendments to ensure the energy efficiency provisions of the Building Regulations work more effectively.

7.2 First, experience of the operation of the 2006 amendments has shown that the provisions relating to the commissioning of fixed building services (i.e. the testing and adjustment of services and their control systems) after installations were completed were not well understood. From an energy efficiency point of view it is very important that services and their control systems are tested and adjusted, where possible and necessary, so that they operate in use at optimal energy efficiency. The current amendments therefore have amended paragraph (b) of Part L of Schedule 1 to the Building Regulations to set out the components of commissioning.

7.3 The current amendments also amend regulation 20C of the Building Regulations and regulation 12C of the Approved Inspectors Regulations to require notice of commissioning to be given to building control bodies (local authorities or approved inspectors) only where commissioning is possible and could affect the energy efficiency of a fixed building service. The aim is to remove the notification burden on installers in cases where commissioning would have no effect on energy efficiency, while ensuring that commissioning is properly carried out where it will have a positive effect on energy efficiency.

7.4 Second, SI 2006/652 introduced a definition of “fixed building services” and revoked regulation 3(1A), which had restricted the type of work to existing dwellings which was covered by the energy efficiency provisions of the Building Regulations. The intention was to bring within the scope of the energy efficiency provisions a far greater range of work to services than had previously been the case, for the purposes of ensuring it was energy efficient. At the same time the categories of work in Schedule 2B that

would not need to be notified to a building control body were extended to include work where installation, replacement or extension of services and fittings would have no effect on energy efficiency.

7.5 However, experience since the introduction of the 2006 amendments has shown that some of the categories in Schedule 2B were regularly misinterpreted. It also became evident that some categories of relatively minor work had become notifiable to building control bodies although there was no benefit to health, safety or energy efficiency in requiring such notification. The current Regulations therefore amend Schedule 2B, partly to clarify what work can be carried out without the need to notify a building control body, and partly to extend the Schedule to certain other categories of work.

7.6 The current Regulations also make minor changes to Schedule 2A (self-certification schemes) for purposes of consistency, in relation to the registration category for scheme membership and the maximum heat output of combustion appliances which can be installed under such schemes, and to authorise two further self-certification schemes. Schedule 2A lists the self-certification schemes authorised by the Department, which currently apply to 14 types of building work (such as installing a heat-producing gas appliance, installing replacement windows and doors, or electrical installations). In column 1 of the Schedule the type of work is described, and in column 2 of the same row is a description of those who can self-certify work of that type. In practice column 2 lists the bodies which operate self-certification schemes for each type of work. To be able to self-certify work of a particular type a person must be registered with one of the schemes listed in column 2 of the appropriate row. Registration with a self-certification scheme exempts the person carrying out relevant work from the normal building regulations requirement to notify a building control body in advance of carrying out the work. Registration also enables the person to certify that the relevant work complies with building regulations.

7.7 Lastly, the current Regulations amend the time limit for giving the notice required by regulation 12C of the Approved Inspectors Regulations where work has been carried out under a self-certification scheme. This amendment is to bring the provision into line with the time limit in regulation 11A for the notification of work carried out under a self-certification scheme to an approved inspector, and into line with the equivalent provision in regulation 20C of the Building Regulations. The current Regulations also amend regulation 12C to ensure that in all cases the notice must be given on or before the date on which an initial notice ceases to be in force. This is because in certain cases the new time limit of 30 days after completion of the self-certified work (i.e. the time limit in regulation 11A) could extend beyond the date an initial notice ceases to be in force.

7.8 As required by section 14 of the Building Act 1984, the Building Regulations Advisory Committee (“BRAC”) and other representative bodies have been consulted on the proposed amendments. BRAC pointed out that the time limits for giving the notices required by regulation 12C of the Approved Inspectors Regulations were different to those in regulation 20C of the Building Regulations. BRAC also pointed out that in some circumstances the time limits in regulation 12C would mean that an initial notice could cease to be in force before the time where a notice had to be received. The proposals were adjusted to take account of these points and BRAC then agreed the recommendations made to Ministers to proceed with the proposed amendments.

7.9. Other bodies representative of the interests likely to be affected by the proposals (local authorities, approved inspectors, competent person registration scheme operators, commissioning representative bodies) were also consulted. Most responses indicated agreement with the proposals but two substantive points were made:

i. The Chartered Institution of Building Service Engineers were pleased that the provisions on commissioning were made clearer and suggested that more guidance on this be given in the relevant Approved Documents. The relevant Approved Documents are in the process of being revised to meet this suggestion.

ii. One existing oil-fired combustion appliance competent person registration scheme operator expressed concern that the proposed change in the registration category for self-certification schemes for oil-fired installations from 'individual' to 'person' in Schedule 2A might result in a lowering of installation and safety standards. As a result the Department encouraged trade bodies and competent person registration scheme operators in this field, with the help of Summit Skills, to draw up Minimum Technical Competence criteria with associated National Occupational Standards to set minimum installation and safety competence standards. This work has now been completed and it has been agreed by all relevant scheme operators (including the scheme operator which originally expressed concern) that all persons registered with, or applying for registration to, oil-fired installation self-certification schemes will have to meet these competence standards. The requirement to adhere to these standards will ensure that there will be no adverse impact from the change in registration category for self-certification schemes for oil-fired installations.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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