EXPLANATORY MEMORANDUM TO

THE BUILDING ETC. (AMENDMENT) (ENGLAND) (NO. 2) REGULATIONS 2022

2022 No. 984

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Following consultation this instrument amends the Building Regulations 2010 to make new provision for the installation of gigabit-ready physical infrastructure and a connection to a gigabit-capable public electronic communications network in new dwellings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to England and Wales only.

4.2 The territorial application of this instrument is to England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Building Regulations 2010 have been made pursuant to powers in the Building Act 1984 and section 2(2) of the European Communities Act 1972. The particular regulations that this instrument amends were made under powers in the Building Act 1984.

6.2 Existing requirements in Part 9A and Schedule 1 Part R of the Building Regulations 2010 make provision for in-building infrastructure for high-speed electronic communications networks for new dwellings (commonly known as superfast broadband). These requirements implemented Article 8 (in-building physical infrastructure for high-speed electronic communications networks) of Directive 2014/61/EU of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks ("Directive 2014/61/EU"). The UK is no longer bound by the requirements of this directive.

6.3 This instrument amends the existing requirements in Part 9A and Schedule 1 Part R for new dwellings to make provision for in-building gigabit-ready physical infrastructure and, for the first time, gigabit-ready physical infrastructure which extends beyond the building, together with a connection to a gigabit-capable public electronic communications network.

6.4 It makes consequential amendments to Schedule 1 Part R of the Building Regulations 2010 so that building work falling within Schedule 1 Part RA1 does not fall within Schedule 1 Part R1.

7. Policy background

What is being done and why?

7.1 It is a government priority to deliver gigabit-capable broadband to all parts of the UK. Today, over 70% of premises can access gigabit-capable networks, up from just 6% at the beginning of 2019. By 2025 we are targeting a minimum of 85% gigabit-capable coverage. The Government's Project Gigabit initiatives include £5 billion to support the rollout of gigabit-capable broadband in the most difficult to reach parts of the United Kingdom. It aims to level up the UK by giving hard-to-reach areas access to gigabit-capable internet speeds, focusing on areas that have a high percentage of hard to reach premises and a relatively high proportion of premises without access to an existing superfast connection. More information on Project Gigabit is available on: https://www.gov.uk/guidance/project-gigabit-uk-gigabit-programme.

7.2 An important part of meeting the coverage target is through future-proofed development of new homes with access to the very best connectivity available. Not all homes take account of gigabit connectivity and these legislative measures seek to address this position. The measures will help to prevent the need for disruptive, time-consuming and expensive retrospective works to homes to enable connectivity.

7.3 To support gigabit broadband in new homes, this instrument removes existing in-building high-speed electronic communications networks (superfast broadband) requirements for new homes. These are replaced with requirements for developers to ensure that dwellings are equipped with gigabit-ready physical infrastructure and provided with a connection to a gigabit-capable public electronic communications network (providing the connection can be secured without exceeding a £2,000 per dwelling cost cap).

7.4 To assist developers with the costs, funding commitments have been secured from Openreach, Virgin Media and Gigaclear. Further information on these commitments is set out at: https://www.gov.uk/government/publications/new-build-developments-delivering-gigabit-capable-connections. Given the funding commitments made by network operators, we estimate that developers would need to make a cost contribution in less than 5% of new build premises. We estimate that the average cost contribution required from the developer in these instances will be below £2,000 and in many would be below £1,000 per premise.

7.5 We estimate that the cost cap will be breached in less than 2% of cases. This will likely occur in areas that are isolated from existing infrastructure that can support a connection. However, the requirements are technologically neutral so that types of connections more typically deployed in areas that may be impacted (including rural or very hard to reach areas) can be used. Where the cost cap is breached, the home is still required to be built with gigabit-ready infrastructure to future-proof for a gigabit connection.

7.6 As gigabit-capable coverage grows across the UK over time, cost cap breaches will be a diminishing problem.

7.7 The Department for Digital, Culture, Media and Sport (DCMS) has worked closely with the Department for Levelling Up, Housing and Communities (DLUHC) on these

new measures. The measures are also consistent with DLUHC aims for deployment of gigabit-capable broadband to new homes and DLUHC's Levelling Up the United Kingdom White Paper mission to have national gigabit-capable broadband by 2030. The White Paper is available on: https://www.gov.uk/government/publications/levelling-up-the-united-kingdom.gov.uk.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government periodically carries out a consolidation of building regulations, the amendments made by this instrument will be included the next time there is a consolidation of building regulations.

10. Consultation outcome

10.1 The Department for Digital, Culture, Media & Sport issued a policy consultation on 29 October 2018 which closed on 21 December 2018. The Department published its policy position in the response New Build Developments: Consultation on delivering gigabit-capable connections - Government response on 17 March 2020 which is available on: https://www.gov.uk/government/consultations/new-build-developments-delivering-gigabit-capable-connections.

10.2 A public technical consultation New build developments consultation: delivering gigabit-capable connections was issued on 21 December 2021 and closed on 28 February 2022. The technical consultation complied with the duty on the Secretary of State in section 14 of the Building Act 1984 to consult with the Building Regulations Advisory Committee for England and other representative interests on proposed changes to the substantive requirements in the Building Regulations 2010.

10.3 The technical consultation received 28 responses from a range of private and public bodies including building developers, telecommunications companies, professional bodies, local authorities and bodies and a union. Local authorities were the highest proportion of respondents (39%) to the technical consultation followed by telecommunications companies (18%).

10.4 Respondents were largely supportive of the Government's proposals. Following analysis and consideration of all the comments received, some amendments have been made to the proposals. The amendments are designed to assist developers when installing gigabit-ready physical infrastructure when a gigabit-capable connection has not been secured, remove dwellings created through a material change of use (conversion) from the scope of the requirements and assist developers evidence compliance with the requirements.

10.5 The Government’s response to the publication was published on 22 September 2022 and is available at; http://www.gov.uk/government/consultations/new-build-developments-consultation-delivering-gigabit-capable-connections/outcome/new-build-developments-consultation-delivering-gigabit-capable-connections-government-response.

11. Guidance

11.1 The Approved Documents provide statutory guidance on how to meet the requirements of the Building Regulations 2010. New versions of the Approved Document R have been produced and are available online on: https://www.gov.uk/government/collections/approved-documents.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the impact of the annual direct cost on business and the private sector is estimated to be below £5 million.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is as follows. Given the common practice in the home building industry of contracting and sub-contracting, it is less appropriate in the case of this sector to determine what constitutes a small business by the normal government method (in which a small business is defined as having 49 or less employees). A common home building industry practice is to define small businesses by whether a firm produces less than 100 new homes annually. We estimate there are 2,100 such firms, producing 10% of new build homes annually.

13.4 Our analysis suggests the additional annual costs each small business will face relating to the new requirements will be, on average, less than £500. None of the potential mitigations for reducing the impact of a policy on small businesses suggested by the Regulatory Policy Committee (such as using exemptions or transition periods) look to be appropriate in the context of achieving the policy's objectives (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827960/RPC_Small_and_Micro_Business_Assessment__SaMBA___August_2019.pdf).

14. Monitoring & review

14.1 An existing statutory review clause set out in regulation 55 of the Building Regulations 2010 will apply to the requirements in this instrument.

15. Contact

15.1 Alex Demetris at the Department for Digital, Culture, Media & Sport Telephone: 07740 545 734 or email: alex.demetris@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Hitchen, Deputy Director for Broadband Regulation and Investment, at the Department for Digital, Culture, Media & Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Julia Lopez at the Department for Digital, Culture, Media & Sport can confirm that this Explanatory Memorandum meets the required standard.