POLICY NOTE

THE BUILDING (PROCEDURE) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/376

The above instrument was made in exercise of the powers conferred by sections 24(2) and 33 and schedule 3 of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary Box

To ensure that information demonstrating how compliance with mandatory standards setting requirements for the energy and environmental performance of building work is provided. To require the issue of such information to the local authority verifier in respect of building design, on submission of an application for building warrant or application for amendment of building warrant and in respect of construction, on submission of a completion certificate.

Policy Objectives

Section 1 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations (building regulations) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings for purposes including securing the health, safety, welfare and convenience of persons in or about buildings, furthering the conservation of fuel and power, and furthering the achievement of sustainable development.

Section 24(2) of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations as to the information which shall be contained within building standards registers.

Section 33 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations as to the procedures to be followed in connection with applications required to be made under the Act.

In December 2022 the then Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirmed that, in response to Alex Rowley MSP's Proposed Domestic Building Environmental Standards (Scotland) Bill, the Scottish Government would make subordinate legislation by 14 December 2024 to give effect to Mr Rowley's final proposal "to introduce new minimum environmental design standards for all new build housing to meet a Scottish equivalent to the Passivhaus standard, in order to improve energy efficiency and thermal performance".

The purpose of review is to consider changes to the requirements and processes set within The Building (Scotland) Regulations 2004 (as amended) and The Building (Procedure) (Scotland) Regulations 2004. Changes under consideration are to introduce updates within Scottish building regulations and supporting guidance to define 'a Scottish equivalent to the Passivhaus standard'. The intent is that these changes will deliver two outcomes:

- Improvements to the setting of energy and environmental (ventilation) performance and standards for new buildings, leading to lower energy demand (and reduced running costs) and a healthy indoor environment; and

- Improvements to the design and construction process to give greater assurance that compliance, and therefore the performance sought, is delivered in practice.

The review is undertaken in two stages. Consultation is concluded on the first stage, which consulted on the principles behind such a change to standards and the regulatory change needed to enable the setting of such standards. A second stage will consult on the non-legislative changes needed to deliver such a change in practice through the building standards system. This instrument is made in response to the outcome of the first stage of the review.

This instrument implements the legislative changes needed to give effect to Mr Rowley's final proposal. Regulation 2 introduces a requirement for developers to provide an 'energy and environmental design statement" with applications for a building warrant or applications to amend a warrant and an 'energy and environmental construction statement" with each completion certificate. These statements describe how the design and construction of the building complies with paragraphs 3.13, 3.14, 3.28, 6.1 to 6.7, 6.10, 7.1 and 7.2 of schedule 5 of the Building (Scotland) Regulations 2004, these being the mandatory standards relevant to the delivery of energy and environmental performance. Regulation 2 also requires that this information be recorded on the building standards register.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Building (Procedure) (Scotland) Amendment Regulations 2024 compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

The subject of this review has relevance to the Scottish Government's policy to maintain alignment with the EU. Minimum energy standards set though building regulations formed part of the transposition of Directive 2002/91/EC (recast as 2010/31/EU) on the energy performance of buildings. Recent amendment of this Directive as (EU)2024/1275 are now published by the European Commission.

Whilst the regulatory changes made by this instrument do not directly affect previously transposed provisions, the ongoing review, examining non-legislative changes to performance targets and processes which will implement these changes, will assess the continued opportunities for, and risk to, alignment.

Consultation

Before making or amending building regulations, Scottish Ministers are required, under Section 1(2) of the Building (Scotland) Act 2003, to consult "such persons as appear to them to be representative of the interests concerned". Prior to public consultation on proposed changes, this duty is discharged through the development of proposals by a Departmental Working Group, comprising of officials and representatives of industry, together with communication with other parts of Government and bodies representing organisations of the construction industry.

The amendments made by this SSI were the subject of a public consultation that ran from 31 July to 23 October 2024. A total of 350 responses to the consultation were received. The consultation, responses and the consultation analysis report is published online at

https://consult.gov.scot/local-government-and-communities/building-regulations-passivhaus-equivalent/.

As a result of that consultation, proposals were further reviewed and changes to regulations to enable the outcome sought by the consultation were agreed. These confirmed amendments are made using powers under sections (24(2) and 33 of the Act. No legislative changes using powers under section 1 of the Act were identified. Consultation responses supported the proposal for implementation of changes in 2028, which is reflected in the in-force date. The outcome of the consultation will also inform the development of a consultation on further, non-legislative change also needed to enable the introduction of supporting changes to published guidance and approved calculation methodologies.

Impact Assessments
A Child Rights and Wellbeing Impact Assessment has been completed on the policy and the instrument and is attached. This identified no specific impact.

An Equality Impact Assessment has been completed on the policy and the instrument and the results report is attached. This identified no specific impact.

An Island Communities Impact Assessment has been completed on the policy and the instrument and is attached.

Scoping of a Fairer Scotland Duty Assessment and pre-screening for a Strategic Environmental Assessment were undertaken and it was confirmed that a full assessment is not required in either case.

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. A limited illustration of the overall potential impact of this policy on business is given. However, the impact of the changes to regulations made by this instrument is not itself quantified. Noting that the changes to building standards within which these regulatory changes to process will be applied has yet to be confirmed. It is noted that a full cost benefit analysis will be provided in support of the non-legislative changes needed to deliver the outcome of the review, in the second stage consultation scheduled for summer 2025.

Scottish Government
Housing Directorate

December 2024