EXPLANATORY MEMORANDUM TO

THE BUILDING (REPEAL OF PROVISIONS OF LOCAL ACTS) REGULATIONS 2012

2012 No. 3124

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (the "Department") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations repeal certain provisions in local Acts which are adequately legislated for in national building regulations. The provisions in this instrument that are subject to repeal relate to fire precautions in car parks, large storage buildings and high buildings and are no longer required as the Building Regulations 2010 (S.I. 2010/2214 as amended) (the "2010 Regulations") contain adequate national provisions relating to the safety and welfare of persons in the event of a fire.

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

3.1 There are no matters of special interest.

4. Legislative Context

4.1 Section 1 of the Building Act 1984 (the "1984 Act") confers on the Secretary of State power to make building regulations imposing requirements with respect to building work. Building regulations cover a range of health, safety and sustainability issues, including structural stability, fire protection, resistance to moisture and contamination, energy and energy efficiency, ventilation, combustion and accessibility. They also make provision about building control procedures and the testing of certain kinds of work (see sections 1 to 2A of, and Schedule 1 to, the 1984 Act).

4.2 This instrument is made under the powers in section 1(1) of, and paragraphs 10 and 11(1)(c) of Schedule 1 to, the 1984 Act, which enable the Secretary of State to make building regulations that repeal certain local Acts if it appears to the Secretary of State that any provision of a local Act (passed before 3 November 1994, being the day on which the Deregulation and Contracting Out Act 1994 was passed) is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in or made under any enactment relating to building regulations.

4.3 These Regulations are being made because Part B of Schedule 1 to, the 2010 Regulations, sets out national provisions for fire safety protection in buildings, which includes car parks, large storage buildings (over 7000 cubic metres) and tall buildings (over 30 metres). Part B is accompanied by statutory guidance: Approved Document B (as amended) which can be found at http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partb/. The local Acts referred to in this instrument are being repealed because they are considered by the Secretary of State unnecessarily to impose additional regulatory cost burdens in car parks, large storage buildings and high buildings, beyond the national requirements in the 2010 Regulations which provide reasonable standards of life safety in the event of a fire.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

5.2 Certain functions under the 1984 Act were transferred from the Secretary of State to the National Assembly for Wales constituted under the Government of Wales Act 1998. The transfer was effected by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as varied by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). In May 2007, the functions were transferred to the Welsh Ministers by the Government of Wales Act 2006 (Schedule 11, paragraph 30). These earlier transferred functions related largely to the resolution of disputes under the 1984 Act.

5.3 As a result of the Welsh Ministers (Transfer of Functions) (No 2) Order 2009 (S.I. 2009/3019) most of the Secretary of State's functions under the 1984 Act and related secondary legislation transferred to the Welsh Ministers on 31 December 2011. The following functions under the 1984 Act remain with the Secretary of State: functions relating to certain types of energy infrastructure building, functions exercisable by the Secretary of State as a Crown authority (section 44(5)), power to appoint a day for modification to cease to have effect or for a provision to come into force (sections 42(7) and 134(1)).

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State (Don Foster) has made the following statement regarding Human Rights: In my view the provisions of the Building (Repeal of Provisions of Local Acts) Regulations 2012 are compatible with the Convention rights.

7. Policy background

7.1 Standards for fire safety in the design of new buildings in England are set principally through the 2010 Regulations. However, there are some parts of England where additional provisions are applied as 23 local Acts have one or more provisions relating to fire protection. Such measures impose construction, maintenance and administrative cost burdens on industry (for

example, on developers, builders, designers, building owners). In some situations these provisions can also obstruct fair competition between the local authority and approved inspector building control bodies, who are responsible for supervising the procedural aspects of building control. The local Act provisions that are subject to repeal in these Regulations are not considered to be necessary to ensure life safety in case of fire. The associated Impact Assessment estimates an equivalent annual net saving for business of £0.755m.

7.2 Whilst the fire protection provisions of the local Acts vary slightly they tend to include certain typical provisions which give local authorities the discretion to impose additional requirements for fire protection which are more onerous than the provisions required in national building regulations for car parks, large storage buildings and high buildings. These Regulations repeal these provisions which are not considered necessary to ensure safety in case of fire. The local Acts also typically include provisions for local authorities to ensure that fire service appliances (vehicles) can gain access to a site, these provisions will be retained.

7.3 These Regulations repeal parts of 23 local Acts. There are no proposals to consolidate the texts of these local Acts.

8. Consultation outcome

8.1 A statutory consultation with the Building Regulations Advisory Committee (BRAC) and other representative interests, including other government departments, local authorities, fire and rescue authorities and the Association of Corporate Approved Inspectors (ACAI) was carried out under section 14(4) of the 1984 Act in relation to the repeal of fire protection measures in local Acts.

8.2 The Department wrote to interested groups on 18 August 2010 asking for comments on the proposed repeals. We received 45 responses of which 21 respondents supported the repeals and 17 objected, with the majority of objectors citing concerns for fire-fighter safety and/or property protection. A further seven respondents were neutral or gave a mixed response. Supporters broadly felt that local Acts imposed unnecessary bureaucratic and cost burdens on developers and created barriers to fair competition for building control services. Several local authorities supported repeal because they did not enforce the local Acts.

8.3 Some respondents suggested that local Acts currently provided better protection for fire-fighters than the protection provided by the 2010 Regulations. However, no evidence was provided as to why fire-fighters should need better protection in some areas of England than in the rest. In many cases Fire and Rescue Authorities cover geographic areas that are only partly covered by a local Act. It was also suggested that local Act provisions contributed to reducing financial losses from fires. However, there is no reason why this should be applied in specific locations and management of

business risks is considered to be a matter for the business community and their insurers.

8.4 Some respondents expressed a concern that some fire protection measures, provided under the local Acts might be considered to be necessary for life safety but their maintenance could not be required under article 17 of the Regulatory Reform (Fire Safety) Order 2005. A saving has been introduced in regulation 4 of these Regulations to ensure that necessary precautions must be suitably maintained.

8.5 A wider consultation on proposed changes to the Building Regulations published on 31 January 2012 also confirmed the intention to repeal the fire protection provisions in local Acts and sought comments from affected local authorities on a draft statutory instrument. No comments were made on the text of the draft statutory instrument. However, several respondents took the opportunity to comment more generally with comments echoing those made in the previous consultation referred to above. Finally, in autumn 2012 affected local authorities were given a further opportunity to comment on the accuracy of the specific provisions being repealed pertinent to them.

9. Guidance

9.1 The Department will issue a circular letter to local authorities setting out the timing of these repeals and their effect in relation to existing conditions imposed under these provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to reduce the construction, maintenance and administrative cost burdens imposed by local Act provisions that go beyond those necessary to achieve reasonable standards of life safety in the event of a fire. It is likely that some organisations will choose to continue to build to these provisions where they consider it to be in their own interests to do so.

10.2 The impact on the public sector is to remove the responsibility of administration and enforcement of these local Act provisions from local authorities in their areas.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the Office of Public Sector Information website.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We have considered the need for a sunset clause in this statutory instrument. We are not proposing a formal review of the provisions of these regulations. This statutory instrument has a deregulatory effect and does not impose a burden on businesses, charities, voluntary bodies or local authorities.

12.2 There are periodic reviews of the requirements in building regulations, generally at three-yearly intervals, and the Department would expect any problems or benefits to be picked up in these.

12.3 In addition, the Department maintains a constant review of fire incidents in England via an incident reporting system for fire and rescue authorities.

13. Contact

Brian Martin at the Department of Communities and Local Government Tel: 030 3444 1787 or email: building.regulations@communities.gsi.gov.uk can answer any queries regarding the instrument.