POLICY NOTE

THE BUILDING (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2024

SSI 2024/327

The above instrument was made in exercise of the powers conferred by section 1 and schedule 1 of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary Box

The regulatory amendment will extend the limitations included in the original New Build Heat Standard. The extended limitations will serve to permit the use of bioenergy and peat systems in new buildings, as well as in existing buildings undertaking certain conversion works covered by the Standard, for space heating, cooling and hot water demand. The amendment will also take secondary heating systems outside the scope of the Standard – meaning any heating appliance will be permitted if used to provide secondary heating.

Policy Objectives

In 2022, direct emissions from buildings accounted for almost 20% of Scotland's total GHG emissions – this indicates that in order to meet our 2045 target for net zero emissions, action needs to be taken to tackle the generation of greenhouse gas emissions in both new and existing buildings.

The New Build Heat Standard was introduced on 1 April 2024 under Standard 6.11 of the Building (Scotland) Amendment Regulations 2023, and was the Scottish Government's first regulatory step in changing the way Scotland's buildings are heated and cooled to be compatible with net zero. The regulations prohibited the use of direct emission heating (DEH) systems in new buildings. Its purpose was to eliminate the greenhouse gas emissions associated with delivering space heating, hot water, and cooling in new buildings, as well as conversions of existing buildings under specific circumstances.

Following the introduction of the Standard on 1 April 2024, significant concerns were raised regarding the resilience of rural and island communities during periods of extreme weather and other events which may cause the failure of the main heating system, and therefore the reliance of those communities on alternative sources of fuel for heating.

The review of the New Build Heat Standard (as introduced under Standard 6.11 of the Building (Scotland) Amendment Regulations (2023)) covered the period May – October 2024. While the core objective of the New Build Heat Standard remains, this amendment looks to address concerns on the resilience of communities during periods of extreme weather (and other events which may cause the failure of the main heating system), address concerns on fuel poverty, and respect cultural practices.

Amendments

The current New Build Heat Standard (as introduced under Standard 6.11 of the Building (Scotland) Amendment Regulations (2023)) does not apply to:

(a) alterations to, or extension of, a pre-2024 building,
(b) emergency heating,
(c) heating provided solely for the purpose of frost protection.

These limitations will remain under the amended standard.

The amended standard will extend this list of limitations and also not apply to:

(d) a bioenergy or peat heating system,
(e) secondary heating.

This means that such heating systems will be permitted in new buildings.

We recognise that bioenergy may represent the best option to help decarbonise some homes for which there may be challenges in installing a clean heating system – due to grid constraints or other reasons. We also recognise the cultural significance of peat for heat, particularly in island and rural communities. The amended standard will therefore allow the installation of appliances, in new builds, where bioenergy or peat can be used.

An exemption for secondary heating systems has been included to ensure alternative heating options continue to be available to those who are likely to face interruptions to their supply more frequently than others or where these interruptions may be more prolonged due to the remoteness of these communities. It is challenging to define boundaries around such provisions – geographical or otherwise, especially ones which ensure nobody is left behind. For that purpose and based on the low level of usage of such systems, all secondary systems will be permitted.

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 (Scotland) Amendment (No.2) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The review involved a series of both individual and group workshops with key stakeholders including from rural and island communities, as well as two Ministerial roundtables. Over 70 organisations attended these meetings and stakeholders were also invited to submit written evidence. The full list of organisations and communities represented by stakeholders is listed in the accompanying addendum to the Business and Regulatory Impact Assessment (BRIA).

A number of discussions also took place with a core group of local authority verifiers via the Scottish Building Standards Hub to inform the proposed regulatory amendment.

Impact Assessments

A number of impact assessments were previously completed for the New Build Heat Standard as introduced under Standard 6.11 of the Building (Scotland) Amendment Regulations 2023. As part of the review, we considered how these may need to be updated to reflect the consideration of amendment options.

The following impact assessments have been amended:

Strategic Environmental Assessment (SEA)

A pre-screening SEA assessment has been completed.

Children's Rights and Wellbeing Impact Assessment (CRWIA)

A Children's Rights and Wellbeing Impact Assessment was undertaken in accordance with the section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

Island Communities Impact Assessment (ICIA)

The specific impacts of these regulatory amendments on Island communities, in particular the smaller islands, were considered through engagement with island stakeholders and have been reported in an addendum to the original ICIA.

Financial Effects

A full Business and Regulatory Impact Assessment (BRIA) was previously completed for the New Build Heat Standard (as introduced on 1 April 2024). The amended regulations will expand the permitted heating systems in new builds, rather than limiting or changing the proposals in any other significant manner. Therefore, to complement the original BRIA an addendum has been added to capture any specific impacts associated with these amended regulations - both documents should be read in conjunction.

The addendum captures feedback from a wide range of stakeholders representing the stove industry, crofters, the forestry sector as well as island, and rural communities.

Overall, the impact on business, from allowing the use of bioenergy or peat heating systems and wood burning stoves, was viewed as positive.

Scottish Government
Directorate for Energy and Climate Change

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