POLICY NOTE

THE BUILDING (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/247

The above instrument was made in exercise of the powers conferred by sections 1 and 54(2) and schedule 1 of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary Box

Insert one or two sentences to explain what the purpose of the instrument is.

To ensure that new domestic and non-domestic buildings, as well as existing buildings undertaking certain conversion works, are equipped with the passive infrastructure to support gigabit-capable broadband connections.

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.

The Scottish Government is working closely with the UK Government to help deliver Project Gigabit in Scotland. Project Gigabit is a UK Government programme which aims to ensure 85% gigabit-capable coverage by 2025, and nationwide coverage by 2030, is met.

Part of meeting this target is through future-proofed development of new dwellings (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.

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-capable physical infrastructure.

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

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 Regulations 2024 is 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

From 2018 the Digital Connectivity Division of Scottish Government has been involved with discussions with the UK Government around mandating gigabit-capable connectivity to new build developments. The Department for Digital, Culture, Media and 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. Following consultation the UK Governemnt decided to amend building regulations. As a consequence this limited the territorial extent of the UK Government changes to the England only.

The Scottish Government held one to one meetings with network operators and the trade bodies representing the housebuilding sector in March and April of 2023 to discuss our intent to consult opon proposals to amend building standards.

To comply with section 1(2) of the Building (Scotland) Act 2003, consultation with interested persons has been carried out.

The Scottish Government ran a public consultation from 19 September 2023 to 12 December 2023 seeking views on implementing a similar policy to that in England by amending Standard 4.14 of the Building Standards Technical Handbook. The consultation received 22 responses including from the housebuilding sector, the telecoms sector, local authorities and other public sector organisations. A full list of those conulted and who agreed to the release of information is published alongside the consultation response on the Scottish Governemnt website and Citizen Space. This includes FMB Scotland, Homes for Scotland and Openreach.

The consultation outcome supported proposals to introduce a requirement on housing developers to complete a Connectivity Plan to verify the type of connection available at a premises was a gigabit-capable connection. Where it is not possible to provide a gigabit-capable connection up to a cost cap of £2,000 per premise an exemption can be relied upon to provide the 'next best' connection available at a premise while installing the passive infrastructure (e.g. ducts) in-building and onsite to facilitate the retrospective connection to a gigabit-capable network.

Impact Assessments

The number of impact assessments have been completed for the Building (Scotland) Amendment Regulations 2024.

- Business and Regulatory Impact Assessment (BRIA);
- Child Rights and Wellbeing Impact Assessment (CRWIA);

- Equality Impact Assessment (EQIA);
- Island Communities Impact Assessment (ICIA);
- Fairer Scotland Duty (FSD); and
- Strategic Environmental Assessment (SEA).

All were published on the Scottish Government website in September 2024 except the SEA. A copy of the SEA determination will be made available on the SEA database. There were no children's, equality, island-specific, socio-economic or environmental impact issues identified.

Financial Effects

A full Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. As part of this, businesses were consulted on the impact of the regulations and viewed the standard as aligning with that the market largely delivers commercially between developers and network operators. Data from the telecoms sector indicates that of new build dwellings where fixed-line broadband infrastructure is provided to over 96% receive gigabit-capable fibre to the premise connections. It was noted that additional costs are more likely to affect smaller developments in rural areas. Larger developments already receive gigabit-capable connectivity on a commercial basis from network operators. By applying a cost cap within the statutory guidance this ensures the additional costs are limited. In instances where additional costs are incurred as a result of meeting the new requirements around gigabit-capable infrastructure costs be passed on to the customer.

No significant issues of competition, restriction or imbalance were identified.

Scottish Government
Digital Directorate

September 2024