EXPLANATORY MEMORANDUM TO

THE CONSTRUCTION PRODUCTS (AMENDMENT) REGULATIONS 2022

2022 No. 712

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument adds the Secretary of State as an enforcement authority in respect of the investigative and enforcement powers in the Construction Product Regulations 2013 and the Construction Products (Amendment etc.) (EU Exit) Regulations 2020. The intent of this addition is to provide the Secretary of State with the existing investigatory, enforcement and prosecutorial powers available to enforcement authorities under these regulations to regulate the construction products sector.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of powers under Schedule 11 to the Building Safety Act 2022.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 Construction Product Regulations 2013 and the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 set out the regulatory regime for construction products in the United Kingdom, including the obligations on relevant economic operators, the enforcement authorities of those obligations, and the investigatory and enforcement powers that those enforcement authorities have access to.

6.2 This instrument amends those regulations to add the Secretary of State as an enforcement authority throughout the UK. The instrument is made under provisions under paragraphs 1 and 21(1)(a) of Schedule 11 to the Building Safety Act 2022.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments to the 2013 and 2020 Construction Product Regulations. These amendments will add the Secretary of State as an enforcement authority of the construction product regulations. The purpose of these amendments is to ensure that the Secretary of State has access to the investigatory and enforcement powers currently available to enforcement authorities of these regulations.

7.2 A National Regulator for Construction Products was announced in January 2021 to bring leadership to the regulatory regime, and lead and co-ordinate market surveillance and enforcement. The Office for Product Safety and Standards took on the role of National Regulator for Construction Products in addition to its existing responsibilities. The Office for Product Safety and Standards, in its role as National Regulator for Construction Products, uses investigative, enforcement and punitive powers in the name of the Secretary of State. The Secretary of State does already hold a number of enforcement powers in this sector, and by adding the Secretary of State as an enforcement authority of the construction products regulations, the National Regulator for Construction Products will have access to the full range of existing investigatory and enforcement powers available to enforcement authorities in this sector to enforce the current regime, these will be in addition to the powers that the Secretary of State already holds.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 Local Authority Trading Standards (in Great Britain) and District Councils (in Northern Ireland) were the only enforcement authorities of the construction product regulations. No national body had access to the investigatory and enforcement powers that these local enforcement authorities held.

Why is it being changed?

7.4 The Secretary of State is being added as an enforcement authority of the construction product regulations to strengthen regulation of the sector at a national level. The change means the National Regulator for Construction Products will be able to access existing investigatory and enforcement powers to enforce the current regime on his behalf.

What will it now do?

7.5 The law will permit the Secretary of State, and therefore the National Regulator for Construction Products, in addition to the current enforcement authorities to enforce the construction product regulations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in Schedule 11 paragraph 21 of the Building Safety Act 2022, in order to amend the 2013 and 2020 Regulations.

8.2 This instrument is not being made under the European Union (Withdrawal) Act 2018 (the "2018 Act") but relates to the withdrawal of the United Kingdom from the European Union because it amends subordinate legislation originally made under section 2(2) of the European Communities Act 1972.

8.3 In accordance with the requirements of the 2018 Act the Minister has made the relevant statements as detailed in Annex 1 to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument does not change the requirements of the existing construction products regulatory regime. The Government's Building a Safer Future consultation in 2019 on proposals for reform to the building safety regulatory system included questions on national construction products oversight. The overwhelming majority of respondents agreed that the powers and duties set out in paragraph 350 of the consultation should be taken forward by a national regulator for construction products. The Department has discussed the establishment of a National Regulator for Construction Products with UK wide powers with key partners including trade bodies and from industry, local authority trading standards, other Government Departments, and the Devolved Administrations.

11. Guidance

11.1 No guidance is required.

12. Impact

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

12.2 The impact on the public sector of establishing a national regulator for construction products is included in the Impact Assessment for the Building Safety Act 2022. This instrument does not alter these impacts.

12.3 A full Impact Assessment has not been prepared for this instrument as the instrument does not make any changes to the existing obligations of businesses under the current construction products regulatory regime. The costs associated with a National Regulator for Construction Products were provided in the Impact Assessment for the Building Safety Act 2022.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, however, the amendments introduced do not make any changes to the obligations of businesses under the current construction products regulatory regime. As such it is not necessary to take any steps to minimise impacts.

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 was that no changes are being made to the existing obligations of small businesses under the current construction products regulatory regime.

14. Monitoring & review

14.1 This instrument is being made under the Building Safety Act 2022. Section 162 of the Building Safety Act 2022 requires a statutory review of the building safety regulatory

regime every 5 years or sooner. These reviews will include a review of the effectiveness of the regulation of construction products in the United Kingdom.

15. Contact

15.1 Catherine Canning at the Department for Levelling Up, Housing and Communities: catherine.canning@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Camilla Sheldon, Deputy Director for Building Safety Reform and Legislation, at the Department for Levelling Up Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Greenhalgh, the Minister of State for Building Safety and Fire at the Department for Levelling Up Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

16. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

16.1 The Lord Greenhalgh, the Minister of State for Building Safety and Fire at the Department for Levelling Up, Housing and Communities has made the following statement regarding regulations made under the European Communities Act 1972:

"In my opinion there are good reasons for the Construction Products (Amendment) Regulations 2022 to amend the Construction Products Regulations 2013 made under section 2(2) of the European Communities Act 1972 which are being amended."

16.2 These are ensuring that the legislation amended by this instrument is proportionately enforced in the UK at a national level and are also set out in sub-section 7.1 of the main body of this explanatory memorandum.

16.3 Dame Judith Hackitt, in her Independent Review of Building Regulations and Fire Safety recommended Government ensure there is a more effective enforcement, complaint investigation and market surveillance regime with national oversight to cover construction products safety.

16.4 In recognising the need for more effective investigation and enforcement in this sector, this instrument allows the National Regulator for Construction Products to oversee the construction products regulatory regime and lead and co-ordinate market surveillance and enforcement. Whilst this instrument does not change the obligations on business under the 2013 or 2019 Regulations, both industry and the public will benefit from more the regulations being more effectively enforced and, in turn, improved public safety.

16.5 The effect of this instrument on the retained EU law set out in the 2013 Regulations, is that the Secretary of State has been added as an enforcement authority of those regulations. This will facilitate more effective national oversight of those regulations. This instrument makes no changes to the retained EU law with respect to obligations on businesses or any other area of the Construction Product Regulations.