EXPLANATORY MEMORANDUM TO

THE ENERGY EFFICIENCY (BUILDING RENOVATION AND REPORTING) (AMENDMENT) REGULATIONS 2020

2020 No. 563

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to insert new requirements into the Energy Efficiency (Building Renovation and Reporting) Regulations 2014, transposing three articles (Articles 2a, 10(6) and 20(2)) contained within Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (the Energy Performance of Buildings Directive or EPBD).[1]

2.2 This SI is required to ensure the UK fulfils its obligations under the Withdrawal Agreement to transpose EU law into domestic statute until the end of the Transition Period. This instrument will expire on the last day of the Transition Period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure and is not scheduled for debate there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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.

[1] OJ No L 153, 18.6.2010, p. 13, as amended by Directive (EU) 2018/844 (OJ No L 156, 19.06.2018, p.75) and Regulation (EU) 2018/1999 (OJ No L 328, 21.12.2018, p. 1).

6. Legislative Context

6.1 During the Transition Period, EU law continues to apply to and in the UK. This instrument relies on section 2(2) of the European Communities Act 1972 (ECA)[2] to transpose an EU Directive into UK law.

6.2 The EPBD was amended in 2018 and this instrument implements three provisions of the amended Directive:

- Article 2a, which requires all Member States to produce a Long-Term Renovation Strategy (LTRS) to support the delivery of a highly energy efficient and decarbonised UK building stock by 2050.
- Article 10(6), which requires Member States to link financial measures for improving the energy performance of buildings to the measures' targeted or achieved energy savings.
- Article 20(2), which requires Member States to provide energy efficiency advice and information through accessible and transparent advisory tools such as renovation advice and one-stop-shops.

6.3 A Transposition Note is published alongside the SI and EM on legislation.gov.uk.

7. Policy background

What is being done and why?

7.1 The aim of the EPBD is to drive improvements in the energy efficiency and emissions of buildings. Buildings are responsible for approximately 40% of EU energy consumption and 36% of carbon dioxide emissions. More broadly, the Commission has proposed a legally-binding target of net zero greenhouse gas emissions by 2050.

7.2 Transposition of EPBD Articles 2a, 10(6), 20(2) adopts the copy-out principle in line with HM Government Transposition Guidance[3].

7.3 Article 2a: The requirement to deliver a highly energy efficient and decarbonised building stock by 2050 matches existing UK policy and is in line with our overarching commitment to Net Zero.

7.4 In accordance with Article 2a of the EPBD the first LTRS was due on 31 December 2019 as part of the UK government's National Energy and Climate Plan (NECP). This date was amended by Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action,[4] which provides a derogation in Article 2a(8) of the EPBD for this first LTRS to be submitted to the European Commission on 10 March 2020. The UK's LTRS will be submitted in due course.

[2] Section 1A of the European Union (Withdrawal Agreement) Act 2020 saves/modifies the effect of section 2(2) of the ECA (despite its repeal by section 1 of the European Union (Withdrawal) Act 2018).
[3] Available at https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law.
[4] OJ No L 328, 21.12.2018, p. 1.

7.5 An optional element of the LTRS concerns fire safety and risks to buildings relating to seismic activity. This section will not be transposed by the UK because fire safety is dealt with extensively by extant regulations[5].

7.6 Article 10(6): The requirement to link financial measures for improving the energy performance of buildings to the measures' targeted or achieved energy savings matches existing UK policy including as set out in HM Treasury's Managing Public Money[6] and Green Book publications[7] which provide guidance for central government organisations on economic appraisal and evaluation.

7.7 Article 20(2): The requirement to provide energy efficiency advice and information through accessible and transparent advisory tools such as renovation advice and one-stop-shops matches existing UK policy. A wide range of advisory tools are provided both by the UK government and Devolved Administrations, for example the Simple Energy Advice service provides members of the public in England & Wales free and impartial advice on household energy consumption. Scotland offers a similar service called Home Energy Scotland, whilst in Northern Ireland the NI Housing Executive operates a free impartial advice service called NI Energy Advice which superseded the service from Bryson Energy from 1st April 2020. The Energy Technology List (ETL) is a UK-wide scheme that seeks to overcome barriers to the procurement of the most energy efficient plant and machinery – such as boilers, heat pumps and lighting – in the non-domestic sector. It does so by providing consumers with information on a product's energy performance through independent assurance of asset performance and by reducing transaction costs for businesses.

7.8 The Ministry of Housing, Communities and Local Government (MHCLG) and The Department for Transport/Office for Low Emission Vehicles are separately transposing the remaining EPBD articles as necessary.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. Section 2(2) of the ECA is the relevant power being used to transpose EU law during the Transition Period.

9. Consolidation

9.1 These Regulations are not being consolidated with any other legislation.

10. Consultation outcome

10.1 There has been no public consultation undertaken prior to the implementation of this Statutory Instrument. Other government departments and the devolved administrations were consulted and were supportive of the approach taken to the transposition of the requirements of Article 2a, 10(6) and 20(2) of the EPBD.

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[5] Scotland: Section 2 (Fire) of Schedule 5 of the Building (Scotland) Regulations 2004 (as amended); Northern Ireland: Part E (Fire Safety) of the Building Regulations (Northern Ireland) 2012 (as amended); England and Wales: Part B (Fire Safety) of Schedule 1 of the Building Regulations 2010 (as amended).

[6] Available at https://www.gov.uk/government/publications/managing-public-money.

[7] Available at https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-governent.

11. Guidance

11.1 There is no intention to publish guidance because these Regulations will place requirements on government only. No new requirements will be placed on business, charities or voluntary bodies.

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 is negligible.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies. A small resource burden will be imposed upon central government but this will be met within existing budgets.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument includes a sunset clause providing for its automatic expiry on the last day of the Transition Period. Inclusion of a sunset clause allows for full compliance with our obligations under the Withdrawal Agreement during the Transition Period.

14.2 The Regulations do not include a statutory review clause, in line with the provisions made by section 28(3) of the Small Business, Enterprise and Employment Act 2015. A statutory review clause is not required in the Energy Efficiency (Building Renovation and Reporting) (Amendment) Regulations 2020 as these Regulations will cease to have effect on the last day of the Transition Period, before a period of 5 years has passed.

15. Contact

15.1 Hibaq Ahmed Ibrahim at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument. Telephone: 020 7215 6451 or email: hibaq.ahmed.ibrahim@beis.gov.uk.

15.2 Sam Balch, Deputy Director for Home Retrofit and Energy-Using Products, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Business, Energy and Clean Growth, the Rt Hon. Kwasi Kwarteng MP, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.