EXPLANATORY MEMORANDUM TO

THE ENERGY PERFORMANCE OF BUILDINGS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2020

2020 No. 1422

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Energy Performance of Buildings (England and Wales) Regulations 2012 ("the principal regulations"). It updates the requirements of assessments of air-conditioning systems, requiring inspections to now consider the capabilities of systems to optimise performance under typical operating conditions, partially implementing Article 15(1) of the Energy Performance of Buildings Directive (EPBD) 2018/844/EU[1].

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 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 England and Wales.

4.2 The territorial application of this instrument is England and Wales.

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 EPBD 2018/844/EU amends the previous EPBD 2010/31/EU. The amended Directive underpins domestic policy to improve the energy efficiency of buildings by introducing amendments aimed at accelerating the cost-effective renovation of existing buildings with the vision of a decarbonised building stock by 2050. The

[1] The amended Directive can be seen at:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.156.01.0075.01.ENG

changes to the Directive introduce new requirements alongside updates to existing provisions.

6.2 In producing this instrument a "copy-out" approach has been taken to the second half of the second sentence of the first subparagraph of Article 15(1), transposing only the necessary parts of the Directive. The only elaboration being the removal of "or average" as its inclusion would increase ambiguity and adding "for that system" at the end of the sentence. This delivers a clearer interpretation of the Directive's intentions.

6.3 The changes should be transposed into domestic legislation as the transposition deadline falls within the Transition Period.

6.4 We are making these amendments to the principal regulations using section 2(2) of the European Communities Act 1972, as saved by section 1A of the European Union (Withdrawal) Act 2018 during the transition period.

7. Policy background

What is being done and why?

7.1 The principal regulations implement Directive 2010/31/EU of the European Parliament and of the Council on the Energy Performance of Buildings (recast) which establishes requirements concerning the assessment and certification of the energy performance of buildings, including the production of Energy Performance Certificates, Display Energy Certificates, Air-Conditioning Inspection Reports and recommendation reports.

7.2 The regulations are being amended to transpose part of the EPBD 2018/844/EU and to contribute to meeting the Government's legislative commitment to net zero greenhouse gas emissions by 2050.

7.3 In order to improve the inspection of the energy efficiency of air-conditioning systems in buildings, an amendment has been made to the principal regulations. This amendment requires inspections to include consideration of the capabilities of the air-conditioning system or of the system for combined air-conditioning and ventilation to optimise its performance under typical operating conditions.

7.4 This instrument amends the principal regulations from 28th December 2020.

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Ministry of Housing, Communities and Local Government has no current plans to consolidate the principal regulations.

10. Consultation outcome

10.1 A consultation on amendments to air-conditioning system and combined air-conditioning and ventilation system inspections was published on 19 May 2020 and closed on 14 July 2020. The Energy Performance of Buildings: A consultation on

changes to The Energy Performance of Buildings Regulations 2012, No. 3118[2] was a public consultation and was aimed at stakeholders in the energy assessment industry, landlords/building owners, system installers and research organisations. The consultation proposed increasing the effective rated output threshold for inspection of air-conditioning systems and combined air-conditioning and ventilation systems of more than 12kW to an effective rated output of more than 70kW.

10.2 This was in line with the amended requirements in EPBD 2018/844/EU and also followed government policy to transpose only Directive requirements and not introduce or retain regulations that impose requirements which go beyond the minimum.

10.3 A majority (87%) of consultation respondents were in favour of retaining the existing inspection and reporting system threshold of an effective rated output of more than 12kW for air-conditioning systems and combined air-conditioning and ventilation systems. This would mean that regulation requirements would go beyond those needed to comply with EPBD 2018/844/EU.

10.4 The government aim of net zero greenhouse gas emissions by 2050 requires the continued reduction of carbon emissions from all buildings. Consultation responses noted that the existing regime allows inefficient, lower output air-conditioning systems to be identified; increasing the rate of replacement and adjustment for these systems; improving overall performance; and providing cost savings to the building owner. The regime also provides opportunities for advice to be provided to building owners and occupiers about improving the energy efficiency of their air-conditioning systems.

10.5 We also received evidence to show that, whilst a higher threshold would provide for a more streamlined and efficient regime with a focus on the technological solutions that larger units often make use of and potentially provide larger carbon savings, compliance is low. Our further analysis tells us that a higher level of compliance would be required in order to realise the carbon saving benefits of a regime targeted at larger systems.

10.6 We concluded that the requirement for energy efficiency inspections of air-conditioning systems and combined air-conditioning and ventilation systems should be retained for systems with effective rated output of more than 12kW.

10.7 We also concluded that a minor and technical amendment is required in order to comply with EPBD 2018/844/EU Article 15 (1) This instrument therefore amends the principal regulations so that inspections of air-conditioning systems and combined air-conditioning and ventilation systems must consider the capabilities of optimisation of systems under typical operating conditions for that system.

10.8 The consultation also confirmed that the option to produce a report on Alternative Measures relating to heating systems and combined heating and ventilation systems for submission to the European Commission, rather than having a heating system inspection regime, should continue to be adopted for heating systems and combined heating and ventilation systems with effective rated output of more than 70kW.

[2] Link to the consultation document:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885924/EPBD_consultation.pdf

10.9 A link to the government response to the consultation can be found at: https://www.gov.uk/government/consultations/energy-performance-of-buildings-changes-to-the-energy-performance-of-buildings-regulations-2012-no-3118

11. Guidance

11.1 The guidance document entitled Improving the Energy Efficiency of Our Buildings; A guide to air conditioning inspections for buildings, is planned to be revised by 28th December 2020.

12. Impact

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

12.2 There is no impact on the public sector.

12.3 An Impact Assessment was published alongside the Government Response to The Energy Performance of Buildings: A consultation on changes to The Energy Performance of Buildings Regulations 2012, No. 3118 in November 2020.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (those employing up to 50 people), the threshold for air-conditioning inspections at an effective rated output of more than 12kW will be retained. This provides for the minimum disruption to small businesses and maintains the opportunity for small businesses to benefit from air-conditioning inspections that could improve maintenance, performance and energy efficiency of such systems, reducing operating costs for small businesses as well as carbon emissions.

14. Monitoring & review

14.1 A requirement to review this instrument is already included in the principal regulations.

15. Contact

15.1 Katherine Higley at the Ministry of Housing, Communities and Local Government Telephone: 030 3444 1793 or e-mail: katherine.higley@communities.gov.uk can answer any queries regarding the instrument.

15.2 Rebecca Williams-Phelan, Deputy Director for Energy Performance of Buildings, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Christopher Pincher MP, Minister of State for Housing at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.