

SL(5)485 – The Building (Amendment) (Wales) Regulations 2019

Background and Purpose

These Regulations amend the Building Regulations 2010 (“the 2010 Regulations”) to restrict the materials that may become part of an external wall, or certain attachments to an external wall, of particular buildings.

The amendments apply to buildings at least 18 metres in height where:

- i) the building contains at least one dwelling;
- ii) the building contains a room for residential purposes, including student accommodation and school dormitories; or
- iii) the building is used as living accommodation for, or for the treatment, care or maintenance of persons (as defined in regulation 2(1) of the 2010 Regulations).

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 3 makes transitional provisions so that the amendments made by regulation 2 will not apply where a building notice or initial notice has been given to, or full plans deposited with, a local authority before the date these Regulations come into force (13 January 2020) and the building work has already started or is started within eight weeks beginning with that date. The explanatory note states that the timescale is two months, not eight weeks, which could lead to confusion and uncertainty for the reader.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

1.1 These Regulations are in response to the Grenfell Tower fire in June 2017, and the subsequent independent Review by Dame Judith Hackitt of Building Regulations and Fire Safety (the Hackitt report). In response to the Hackitt report, the then Minister for Housing and Regeneration made a commitment in a [written statement](#) on 23 May 2018 that subject to consultation, the Welsh Government would move to ban the use of combustible materials in cladding systems on high-rise residential buildings in Wales. The explanatory memorandum confirms that these Regulations deliver on that commitment (as well as extending the Regulations to some non-residential high-rise buildings). The proposed ban has been the subject of several media news stories and public interest.



1.2 Paragraph 4.4 of the explanatory memorandum potentially causes confusion when explaining one of the ways in which a building with a storey over 18m above ground level may currently meet the 2010 Regulations requirement for resisting fire spread over external walls. It explains that one of the ways is by meeting the guidance in paragraph 13.7 of Approved Document B on Fire Safety Volume 2 (Buildings other than Dwellinghouses) in relation to insulation materials/products. However we read Approved Document B (see paragraph 13.5) as requiring that external walls in such buildings should meet guidance in relation to the external surfaces of walls (paragraph 13.6) and cavity barriers (paragraph 13.8 and 13.9), as well as the guidance in relation to insulation products/materials.

1.3 The footnote relating to transfer of functions explains that the Secretary of State's functions under section 34 of the Building Act 1984 were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009. However we believe that the functions under section 34 transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

Technical Scrutiny point :

Inconsistency between regulation 3(1)(b) and paragraph 7 of the Explanatory Note.

The reporting point is noted and accepted in principle, although it is noted that there is no technical defect nor legal uncertainty as the Explanatory Note is not part of the instrument. The government will seek to correct this point by way of correction slip.

Merits Scrutiny :

Point 1 – The proposed ban has been the subject of several media news stories and public interest.

The reporting point is noted and accepted.

Point 2 – The explanatory memorandum potentially causes confusion when explaining one of the current ways in which a building with a storey over 18m above ground level may meet the 2010 Regulations.

The reporting point is noted and accepted.

In accordance with standard practice when there is a change of policy, the Government has issued an amendment slip to Approved Document B which can be found at <https://gov.wales/building-regulations-guidance-amendments-approved-documents-b-volume-12-and-7>. It is clear from the wording of the amendment slip as to how the requirements may be met for buildings with a storey over 18m above ground. The Approved Document (as may be amended from time to time) is what the industry refers to in practice to establish methods of compliance.

Point 3 – Incorrect footnote in relation to the transfer of functions under section 34 of the Building Act 1984.

The reporting point is not accepted. Section 34 attaches to the power to make building regulations in section 1 of the Building Act 1984 as well as to powers to make directions or instruments elsewhere in that Act. In this context it is relied upon to enable section 1 to be used in a particular manner. So it is the Government's view that the relevant transfer for the purposes of this instrument took place at the time of



the transfer of the powers under section 1, which was under SI 2009/3019. For accessibility, the footnote does not explain the earlier partial transfer for purposes which are not relevant to this instrument.

Legal Advisers
Constitutional and Legislative Affairs Committee
7 January 2020

