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Consultation Document

Draft Building Regulations &c. (Amendment) (Wales) Regulations 2013

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Responses by: 20 February 2013

Overview

This is a consultation on the draft Building Regulations &c. (Amendment) (Wales) Regulations 2013 ("the draft regulations"). The draft regulations introduce changes in Wales through amendments to the Building Regulations 2010 ("the building regulations") and through the Building (Approved Inspector etc) Regulations 2010 ("the approved inspector regulations"). In broad terms, the amendments implement elements of the EU Directive 2010/31/EU ("the Directive") on the energy performance of buildings, facilitate the Green Deal, amend provisions providing for completion certificates and update schedule 3 of the building regulations which provides for self-certification (competent person) schemes.

Section 14(7) of the Building Act 1984 requires the Welsh Ministers to consult the Building Regulations Advisory Committee for Wales (BRACW) and such other such bodies as appear to them to be representative of the interests concerned before making building regulations that contain substantive requirements.

This consultation seeks your views on the how the draft regulations transpose elements of the Directive in Wales. We are required by law to implement the Directive and so do not seek your views on whether or not the Directive should be implemented. This consultation also seeks your views on how the draft regulations facilitate the Green Deal in Wales. The Green Deal is a UK Government environmental initiative that provides opportunities for business in Wales and we do not seek your views on whether or not the Welsh Government should facilitate the Green Deal in Wales.

The draft regulations are based on regulations already made in England which are titled "The Building Regulations &c. (Amendment) Regulations 2012" S.I.2012/3119 ("England's regulations"). The amendments made by the draft regulations have already been the subject of consultation in England.

England's regulations can be found at the legislation.gov.uk website.

A further set of regulations made in England which are titled "The Energy Performance of Buildings (England and Wales) Regulations 2012" S.I. 2012/3118 transpose, in England and Wales, elements of the Directive which are not the subject of this consultation. These regulations can be found at the legislation.gov.uk website

The Directive can be found at the eur-lex.europa.eu website

The proposed amendments to schedule 3 are subject to a separate consultation with BRACW, the Competent Persons Forum and LABC and are reproduced for information only.

How to respond

Consultees are invited to email responses to: enquiries.brconstruction@wales.gsi.gov.uk

Those who prefer to submit a paper copy of their response should send these to:

Building Regulations Consultation
Construction Unit
Environment and Sustainable Development Directorate
Welsh Government
Rhyd y Car Offices
Merthyr Tydfil
CF48 1UZ

Further information and related documents
Large print, Braille and alternative language versions of this document are available on request.

Contact Details

For further information:

Construction Unit
Welsh Government
Rhyd y Car Offices
Merthyr Tydfil
CF48 1UZ

Telephone: 0300 062 8141

E-mail: enquiries.brconstruction@wales.gsi.gov.uk

Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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1. Introduction

Please read the overview section of this document as it introduces abbreviations that are used throughout the document.

1. The building regulations control certain types of building work, principally the erection and extension of buildings and provision or extension of certain services or fittings, chiefly to ensure that buildings meet certain standards of health, safety, welfare, convenience and sustainability.
2. Compliance with the building regulations is the responsibility of the person carrying out the work and the building control system helps to ensure that the required level of performance has been met. The role of a building control body, either the local authority or a private sector Approved Inspector, is to act as an independent third-party check to help achieve compliance. As an alternative to third-party checking by building control, some types of work may be self-certified as being compliant by installers who are registered as a member of a competent person self-certification scheme and have been assessed as competent to do so.
3. The building regulations greatly influence how our buildings are constructed and used. As such, they help to deliver significant benefits to society. Regulation can also impose costs on both businesses and individuals. The “functional” nature of the building regulations, by having regulations setting out the broad requirement rather than prescribing how it must be achieved, seeks to minimise this cost and also ensure innovation is not hindered. Guidance in the Approved Documents, that accompany the regulations, then sets out some of the ways that these requirements can be met although it does not have to be followed if the required level of performance can be shown to be achieved in a different way. This approach provides clarity for building control bodies and industry alike.
4. To avoid the risk of unnecessarily onerous and costly standards being

imposed on industry it is important that a proper cost/benefit assessment and consultation with industry has been undertaken by Government to assess what reasonable minimum standards are appropriate.

European Directive

5. In June 2010 the Directive was published in the Official Journal of the EU. The Directive includes a number of new provisions relating to energy performance standards for new and existing buildings. The Directive requires that Member States transpose the requirements of the Directive into domestic law. A number of the amendments to the building regulations and approved inspector regulations required in England fell to the Secretary of State and these have been made through England's regulations. However, a number of the amendments to the building regulations and approved inspector regulations in Wales fall to the Welsh Ministers and we propose to introduce those amendments through the draft regulations.

Green Deal

6. The Green Deal is a UK Government initiative from the Department of Energy and Climate Change. The Green Deal stems from a legislative framework that is designed to stimulate investment from private companies into energy efficiency measures in homes and businesses. It has also been designed as a way of removing barriers for customers in terms of the upfront costs associated with installing such measures. The Green Deal is intended to be a market led approach, with those organisations operating in the market taking responsibility for marketing it with potential customers.
7. The Green Deal is designed to operate across the housing and commercial property sectors in the UK. It is seen as a way to address the current lack of investment in energy saving measures in both the domestic and non-domestic property.

8. It aims to establish a new financing framework enabling private firms to offer consumers energy efficiency improvements to their homes, community spaces and businesses while avoiding the need for consumers to pay upfront cost. Instead payments for the improvements will be recouped through a charge in instalments attached to their energy bill/meter and repaid over a number of years. There will be an obligation on the energy company to administer the charges and pass the monies recouped onto the appropriate party.
9. As such, this is not a conventional loan and is attached to the property and the bill payer. This will mean that the obligation to pay the loan will pass to the new occupier or bill payer if the current customer moves on. It is hoped that removing upfront costs and attaching the charge to the energy bill, rather than the individual, will act as an incentive, remove barriers to access and encourage wider uptake.
10. Given the nature of the Green Deal, the Welsh Government has taken an enabling role to ensure that stakeholders in Wales can consider the opportunities presented by the Green Deal. In order to allow home owners and business to participate in the Green Deal a number of amendments are required to the building regulations and approved inspector regulations in Wales.
11. The proposals include a requirement for completion certificates issued by local authorities to be mandatory. We also propose to amend the wording on completion certificates and their equivalents (Approved Inspector final certificates and competent persons building regulation compliance certificates) to reflect the legal position that the certificates are evidence but not conclusive proof of compliance with the building regulations.

Competent Person Self-Certification Schemes

12. The competent person self-certification schemes, commonly known as competent person schemes were introduced by the UK Government in 2002 to allow registered installers (i.e. businesses, mostly small firms or sole traders), who are competent in their field, to self-certify certain types of building work as compliant with the requirements of building regulations.
13. These schemes offer benefits to both consumers and the building industry. Scheme members save time by not having to notify in advance and use a building control body (i.e. a local authority or a private sector approved inspector) to check/inspect their work and consumers benefit from lower prices as building control charges are not payable. The schemes help to tackle the problem of cowboy builders by raising standards in the industry and enabling consumers to identify competent installers. They also allow building control bodies to concentrate their resources on areas of higher risk.
14. Following the devolution of the power to make building regulations to the Welsh Ministers on 31 December 2011, the authorisation of the competent person schemes in Wales now falls to the Welsh Ministers.
15. Schedule 3 of the building regulations lists all companies registered for self-certification schemes and exemptions from the requirement to give building notice or deposit full plans. If any of these details change, the building regulations require amendment.
16. The proposed amendments to schedule 3 include a change to the types of work for the scheme operators Ascertiva Group Limited, Benchmark Certification Limited, CERTASS Limited, ECA Certification Limited, HETAS Limited, NAPIT Registration Limited and Stroma Certification Limited. The proposed amendments reflect a change of name of a scheme operator, from Building Engineering Services Competence Accreditation

Ltd to Building Engineering Services Competence Assessment Ltd and introduce three new types of work related to Green Deal measures for which competent installers can be registered.

17. We have separately sought the views of the Building Regulations Advisory Committee for Wales and the Competent Persons Forum and the Local Authority Building Control in relation to these changes and as such this consultation does not seek views on this area of the amendments.

18. Due to the market driven nature of the self-certification schemes, it was never our intention to vary the competent person schemes or to create a Wales specific scheme as this could provide unfair competition, financial burdens and additional bureaucracy for businesses and individuals in Wales. Therefore, the amendments to schedule 3 (except those made in relation to Part P changes in England which will be subject of a further consultation in Wales) are reflective of the amendments made in England's regulations.

2. Directive 2010/31/EU Energy Performance of Buildings (Recast)

Article 2 of the Directive – Definitions

19. This article requires a number of definitions to be written into the building regulations in Wales. Many of these definitions are covered by the building regulations in Wales and it is not our intention to make amendments where the definitions presented by the EU are covered by definitions already in use and recognised by the public and the construction sector. These changes mirror those made in England's regulations.

20. "building envelope" - We propose to add this definition to part 6 of the building regulations using domestic terms.

21. "nearly zero-energy building" - This is a new definition which we propose to add to part 6 of the building regulations by mirroring the text contained in the Directive.

22. "technical building system" - the building regulations provide the definition "fixed building services", which means:

- any part of, or any controls associated with -
- (a) fixed internal or external lighting systems, but does not include emergency escape lighting or specialist process lighting; or
- (b) fixed systems for heating, hot water, air conditioning or mechanical ventilation.

23. The Directive introduces the option for a combination of (a) or (b) in the definition of "fixed building services". We propose to amend regulation 2 of the building regulations to reflect this.

24. "energy from renewable sources" – this is a new definition which we propose to add to part 6 of the building regulations by mirroring the text contained in the Directive.

25. “major renovation” - for domestic consistency, we wish to refer to major renovation of the **surface area** of the building envelope. We propose to add this definition to part 6 of the building regulations by mirroring the text contained in the Directive.
26. “cogeneration” – We propose to add this definition to part 6 of the building regulations by mirroring the text contained in the Directive.
27. “heat pump” – We propose to add this definition to part 6 of the building regulations by mirroring the text contained in the Directive.
28. “district heating or district cooling” – We propose to add this definition to part 6 of the building regulations by mirroring the text contained in the Directive.

Article 4 of the Directive – Setting of minimum energy performance requirements

29. Article 4(1) of the Directive provides for the setting of minimum energy performance requirements for buildings. Article 4(2) provides possible exemptions for categories of buildings from the requirements of article 4(1). The majority of these exemptions are transposed in domestic legislation through regulation 21 of the building regulations.
30. One of the exemptions in article 4(2) is for “buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character of appearance”. In our view, the exemptions in regulation 21(3)(a) of the building regulations reflect these buildings and we do not believe there is a need to make amendments to restrict the categories of exempted buildings in regulation 21(3)(a) to mirror those listed in the Directive as the

respective exemptions do not differ significantly in their meaning or purpose.

31. Article 4(2) of the Directive provides the option to extend the exemptions to residential buildings which are used or intended to be used for either less than 4 months of the year or where energy consumption is likely to be less than 25% of the expected all-year use. We do not propose adding this amendment to the building regulations as we do not believe this is in the spirit of our nearly zero carbon aspirations.

Question 1

Do you agree with our proposed approach, that the additional exemption listed in paragraph 31 above should not be added to the exemptions in regulation 21 of the building regulations ?

Article 6 – New buildings

32. The Directive imposes a requirement to consider “high-efficiency alternative systems” for all new buildings before the start of construction.
33. The Directive only places an obligation for the ***consideration*** of the technical, environmental and economic feasibility of alternative systems. It does not impose a requirement to implement alternative systems.
34. We propose to amend the building regulations to ensure that the industry is aware of the obligation to carry out an analysis and that the analysis needs to be made available to building control bodies.
35. In order to comply with the requirements to make the documents available for verification purposes we propose to add a requirement for persons carrying out work to notify the local authority that the consideration of alternative systems has been carried out and documented; and that the documents are available for verification. We also propose to introduce a

provision to allow local authorities to have the powers to request the documentation.

36. The Directive allows for the analysis to be carried out for individual buildings, groups of similar buildings or for common typologies of buildings in the same area. We propose to amend the building regulations to reflect this.

Article 7 – Existing buildings

37. This article requires the improvements to energy performance of existing buildings undergoing major renovation and for the retrofit or replacement of building elements (as defined in the Directive) in so far as is technically, functionally and economically feasible.

38. The majority of this article is already transposed in domestic legislation – through regulation 23 of the building regulations. However, the definition of “*major renovation*” requires a new definition to be inserted into the building regulations. “Major renovation” is defined in the Directive as follows;

‘major renovation’ means the renovation of a building where:

(a) the total cost of the renovation relating to the building envelope or the technical building systems is higher than 25 % of the value of the building, excluding the value of the land upon which the building is situated; or

(b) more than 25 % of the surface of the building envelope undergoes renovation;

Member States may choose to apply option (a) or (b).

39. We propose to amend the building regulations to apply option (b).

Question 2

Do you agree with the proposed application of option (b)?

Article 9 Nearly zero-energy buildings

40. This Article places an obligation to ensure new buildings are “nearly zero-energy buildings” by 31 December 2020 for all new buildings and after 31 December 2018 for new buildings occupied by public authorities. We propose to amend the building regulations to reflect this requirement.

Summary of Amendments

41. Draft regulations 3, 11 to 19, 21 and 22 transpose articles 2, 3, 6, 7, 9 and 11 of the Directive – they mirror England’s Regulations.

42. Draft regulations 3 and 19 insert definitions into the building regulations.

43. Draft regulation 12 amends regulation 23 of the building regulations relating to the renovation or replacement of thermal elements to implement the requirements of the Directive.

44. Draft regulation 14 implements in part the requirements in the Directive for high-efficiency alternative systems and nearly zero-carbon buildings in respect of new buildings.

45. Draft regulations 15 to 18 set out requirements for energy performance certificates in relation to the construction of a building; they transpose the Directive and also include provisions previously set out in the Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 (S.I. 2007/991).

46. Draft regulations 29 and 31 amend the approved inspector regulations to ensure that certain changes apply when the building control function is undertaken by an approved inspector.
47. The draft regulations make minor textual amendments to certain provisions to reflect the Directive's wording (i.e. draft regulation 13 which amends regulation 25 of the 2010 Regulations) and amendments to update references to the Directive and to other legislation (i.e. draft regulations 11, 17 and 18).
48. The draft regulations also seek to introduce (through draft regulation 14) the following additional requirements arising from Articles 6 and 9 of the Directive; a consideration of high-efficiency alternative systems for new buildings and a requirement for all new buildings to be nearly zero-energy buildings.
49. The Directive introduces changes to the provisions on energy performance certificates. The content of the certificate is to be supplemented by including a list of energy efficiency improvements that could be carried out as part of a major refurbishment, and signposting consumers to more detailed information about the recommendations and how they can be implemented. Draft regulations 15 and 16 implement these changes.
50. The Directive's provisions concerning the major renovation of existing buildings (Article 7) fall under a domestic policy area which is already regulated for under regulation 23 of the building regulations. Draft regulation 12 amends regulation 23 to transpose fully the requirements of Article 7 at regulation 23(1)(a) of the building regulations. The remaining provisions of regulation 23 reflect domestic policy where more than 50% of an individual thermal element's surface area is to be renovated or replaced. All the requirements in the amended regulation 23 of the building regulations would be subject to the Article 7 qualification that the

requirement to meet the minimum energy performance requirements applies only where technically, functionally and economically feasible.

51. We propose that, to maintain a consistency in the building Regulations, our draft Regulations which transpose articles 2, 3, 6, 7, 9 and 11 of the Directive should mirror England's Regulations which transpose those articles of the Directive.

Question 3

Do you agree with our proposal to mirror England's Regulations which transpose articles 2, 3, 6, 7, 9 and 11 of the Directive?

If you do not agree, please state why not and where you believe that our approach to the transposition of the said articles should differ.

3. Green Deal Amendments and amendments to provisions that provide for completion certificates

52. Draft regulations 4 to 10 and 21 to 23 facilitate the requirements of the Green Deal and amend provisions that provide for completion certificates in the building regulations - they mirror England's Regulations.

53. Draft regulation 7 contains new provisions regarding the giving by the local authority of completion certificates and draft regulation 8 adds a new regulation, 17A to the building regulations which replaces and largely re-enacts, with minor amendments, the substance of regulation 17 with regard to buildings which are occupied before work is completed. The following amendments are consequential to this amendment:

- i. regulation 14 of the building regulations in draft regulation 4;
- ii. regulation 15 of the building regulations in draft regulation 5;
- iii. regulation 19 of the building regulations in draft regulation 9;
- iv. regulation 47 of the building regulations in draft regulation 21; and
- v. regulation 48 of the building regulations in draft regulation 22.

54. Draft regulations 7(b) and 10(b) add to regulation 17 and to regulation 20 respectively, a requirement for wording in specified certificates about the evidential value of those certificates.

55. Draft regulation 10 amends regulation 20 to provide that a certificate issued in accordance with regulation 20 of the building regulations, under a self-certification scheme, states that future payment liabilities apply to the property concerned under a Green Deal plan for repayment of the costs of energy efficiency improvement work on the property. The

amendment also requires the local authority to store the relevant notices and certificates in a retrievable form.

56. We propose making amendments to regulation 17 of the building regulations to require a local authority to give a completion certificate in all cases where it has been able to ascertain, after taking all reasonable steps, that the work specified in the certificate is compliant.

57. When a property subject to a Green Deal payment plan is sold, the Green Deal payments remain with the property and the payments must be taken on by the new owner. To help make sure that the new owner is aware that the property is subject to a Green Deal payment plan we propose to introduce draft regulation 10 to require that the notices given to building control bodies and the certificates of compliance given to customers, by the Competent Person or Green Deal Authorised body, state whether there is such a Green Deal plan in force. These notices and certificates are normally made available through a local authority search on an exchange of property so will help the buyer to be aware whether there is an outstanding Green Deal plan.

58. To make sure that the information on notices given to the local authority is made available regulation 10 also requires the local authority to hold the notices and certificates it receives in a retrievable form. Regulation 10 requires the certificates given to customers to state their evidential status.

59. Draft Regulations 30 and 32 provide for the evidential status of certificates used by approved inspectors.

60. We propose that, to maintain a consistency in the building regulations and to ensure that the Green Deal is equally accessible in England and Wales, our draft Regulations which facilitate the Green Deal in Wales and which

amend the provisions that provide for completion certificates in Wales should mirror England's Regulations.

Question 4

Do you agree with our proposal that our draft Regulations which facilitate the Green Deal in Wales and which amend the provisions that provide for completion certificates in Wales should mirror England's Regulations?

4. Coming into force

61. After considering the responses to this consultation and introducing any amendments in their light, we propose to bring the draft regulations into force as follows:

- i. Draft regulations 1-5, 7-9, 10(a) (in so far as it inserts paragraphs (3B), (3C) and (3D) into regulation 20) and (b), 11, 12 (in respect of buildings occupied by public authorities), 13, 14 for the purpose of new regulation 25A in respect of new buildings occupied by public authorities, 15-22, 23(1), 23(2)(c)-(p), 24-29 and 31 as soon as reasonably possible.
- ii. Draft regulations 6 and 23(2)(a)-(b), 30 and 32 on 6 April 2013 or as soon as reasonably possible.
- iii. Draft regulation 12 (in respect of all buildings) and draft regulation 14 for the purpose of new regulation 25A and in respect of all new buildings on 9 July 2013.
- iv. Draft regulation 10(a) so far as not otherwise commenced on 1 October 2013.
- v. Draft regulation 14 for the purpose of new regulation 25B and in respect of new buildings occupied by public authorities on 1 January 2019.
- vi. Draft regulation 14 for the purpose of new regulation 25B and in respect of all new buildings on 31 December 2020.
- vii. We propose to bring the majority of the amendments to schedule 3 to the building regulations into force as soon as reasonably possible.

- viii. We propose to bring the majority of the amendments to implement articles 2, 3, 6, 7, 9 and 11 of the Directive into force as soon as reasonably possible.
- ix. We propose to require local authorities to store in a retrievable format, copies of notices and certificates issued by self-certification schemes from 1 October 2013.

5. Regulatory Impact Assessment

62. An RIA analysing the costs and benefits of this approach is included in the consultation package.

Question 5

Do you agree with the costs and benefits outlined in the RIA?

6. Consultation Response Sheet

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Amendments to reflect the required changes as a result of the Energy Performance of Buildings Directive (Directive 2010/31/EU (Recast)).

Question 1

Do you agree with our proposed approach, that the additional exemption listed in paragraph 31 above should not be added to the exemptions in regulation 21 of the building regulations?

Yes

No

Comments:

Question 2

Do you agree with the proposed application of option (b)?

Yes

No

Comments:

Question 3

Do you agree with our proposal to mirror England's Regulations which transpose articles 2, 3, 6, 7, 9 and 11 of the Directive?

If you do not agree, please state why not and where you believe that our approach to the transposition of the said articles should differ.

Yes

No

Comments:

Green Deal Requirements

Question 4

Do you agree with our proposal that our draft Regulations which facilitate the Green Deal in Wales and which amend the provisions that provide for completion certificates in Wales should mirror England's Regulations?

Yes

No

Comments:

Question 5

Do you agree with the costs and benefits outlined in the RIA?

Yes

No

Comments:

Question 6

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: