

**EXPLANATORY MEMORANDUM TO THE BUILDING REGULATIONS &C.
(AMENDMENT) (EXCEPTED ENERGY BUILDINGS) (WALES) REGULATIONS
2018**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Building Regulations &c. (Amendment) (Excepted Energy Buildings) (Wales) Regulations 2018. I am satisfied the benefits outweigh any costs.

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs

4 May 2018

1. Description

1.1 These Regulations amend the Building Regulations 2010 (“the Building Regulations”) and the Building (Approved Inspectors etc.) Regulations 2010 (“the Approved Inspectors Regulations”) to bring provisions in those Regulations in relation to excepted energy buildings in Wales in line with provisions applying to other buildings in Wales.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 These Regulations are made partly under section 2(2) of the European Communities Act 1972 (“the 1972 Act”). There is a choice of procedure in relation to instruments made under section 2(2) of the 1972 Act. In addition to section 2(2) of the 1972 Act, sections 1, 1A, 2, 2A, 3, 16, 17, 34, 35, 47, 49, 50, 51, 51A, 52 and 54 of and Schedules 1 and 4, to the Building Act 1984 (“the 1984 Act”) are used to make these Regulations. The power to make building regulations under the 1984 Act is subject to the negative procedure. There was no factor indicating the use of affirmative procedure.

3. Legislative background

3.1 As outlined above these regulations are partly made under section 2(2) of the 1972 Act and under sections 1, 1A, 2, 2A, 3, 16, 17, 34, 35, 47, 49, 50, 51, 51A, 52 and 54 of and Schedules 1 and 4, to the 1984 Act.

3.2 The Welsh Ministers are designated by the European Communities (Designation) Order 2016 (S.I. 2016/161) in relation to the design and construction of buildings, and in relation to services, fittings and equipment provided in or in connection with those buildings. The designation enables the Welsh Ministers to exercise powers under section 2(2) of the 1972 Act to make legislation, including regulations.

3.3 Functions under the 1984 Act to make building regulations and associated matters were transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019), subject to articles 3 and 4 of that Order (“the 2009 Order”). The 2009 Order came into force on 31 December 2011. An exclusion from the transfer was made in relation to “excepted energy buildings” which has the meaning given by the Schedule to the 2009 Order.

3.4 Section 54 of the Wales Act 2017 removes the exclusion in relation to excepted energy buildings by making the necessary provision for the transfer of functions under the 1984 Act for that category of buildings from 1 April 2018.

3.5 These Regulations are made using the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The purpose and intended effect of the amendments made by these Regulations is to bring provisions in the Building Regulations and Approved Inspectors Regulations in relation to excepted energy buildings in Wales in line with provisions applying to other buildings in Wales following commencement of. Section 54 of the Wales Act 2017 which removes the exclusion in relation to excepted energy buildings by making the necessary provision for the transfer of functions under the 1984 Act for that category of buildings from 1 April 2018.
- 4.2 These Regulations will come into force on the dates set out in regulation 1(2) of these Regulations.
- 4.3 The Welsh Ministers will issue a Circular to explain how the 2010 Regulations have been amended. This will be published on the Welsh Governments website.

5. Consultation

- 5.1 These Regulations make changes to the application of the requirements by those carrying out building work, building owners or building control bodies. The Building Act 1984 requires the Welsh Ministers to consult the Building Regulations Advisory Committee and such other bodies as appear to them to be representative of the interests concerned before making any building regulations containing substantive requirements. The Building Regulations Advisory Committee for Wales have been consulted, and offered no objections to, the amendments made by this instrument.

6 Regulatory Impact Assessment

- 6.1 No impact assessment has been undertaken for the amendments made in this Instrument, as minimal impact, or no impact, is foreseen on business or public sector bodies.