

## Local Government, Housing and Planning Committee

### 33<sup>rd</sup> Meeting, 2022 (Session 6)

Tuesday, 20 December 2022

### SSI cover note for: Building (Scotland) Amendment (Amendment) (No. 2) Regulations 2022

#### SSI 2022/340

**Title of Instrument:** Building (Scotland) Amendment (Amendment) (No. 2) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 17 November 2022

**Circulated to Members:** 17 November 2022

**Meeting Date:** 20 December 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** Yes

**Reporting deadline:** 9 January 2023

## Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: [Building \(Scotland\) Amendment \(Amendment\) \(No. 2\) Regulations 2022](#)
3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## Purpose

4. The Policy Note states that—

“These Regulations amend The Building (Scotland) Amendment Regulations 2022 (the “2022 Regulations”) which introduced new mandatory energy and environmental standards for buildings and building work. The purpose of this instrument is to amend the date on which Part 3 of the 2022 Regulations comes into force from 1 December 2022 to 1 February 2023.”

5. The Policy Note further states that—

“The policy objectives are to improve the emission and energy performance of buildings and to reduce the risk to health from overheating in new residential buildings. This is achieved through amendment of The Building (Scotland) Regulations 2004 (the “2004 Regulations”), made under the Act, which set minimum standards for the function and performance of buildings and building work.”

“This change is required to provide a longer period for the development and implementation of supporting third-party energy assessment software tools used to demonstrate compliance with the building standards introduced in Part 3.”

## **Delegated Powers and Law Reform Committee consideration**

6. At its meeting on 6 December 2022 the DPLR Committee considered the instrument and agreed to draw it to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.<sup>1</sup>

7. The Committee drew to the attention of the lead committee, the reasons given by the Scottish Government for the breach of the 28 day rule in this instance.

8. The Scottish Government’s letter is included in the DPLRC Committee’s report as an annexe. It explains that—

“the instrument breached the laying requirements because the development and approval of commercial products produced by third parties in order to support developers to undertake and complete assessment of new buildings against the new standards, had taken longer than planned.”

9. This in turn impacted on “the ability of those undertaking new development to submit full proposals for building warrant approval to their local authority.”

10. The DPLR report further states that “the Committee asked for a further explanation for the breach given the laying requirements were complied with the last time the deadline was postponed.”

11. In its response, the Scottish Government advised that “the last round of engagement with providers was on 14 October. It further advised that whilst some

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<sup>1</sup> [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 6 December 2022 | Scottish Parliament](#)

responses were immediate, it took longer than expected to determine the full picture and that it was aware of further changes, likely to disrupt the development process, being made over the period by the contractor managing the software approval process on its behalf.”

## **Procedure for Negative Instruments**

12. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

13. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,  
Local Government, Housing and Planning Committee**

## **Annexe A**

### **Scottish Government Explanatory Note**

These Regulations amend the Building (Scotland) Amendment Regulations 2022 (the “2022 Regulations”) and come into force on 30 November 2022.

Regulation 2(2) of these Regulations amends regulation 1(3) of the 2022 Regulations to change the date on which Part 3 of the 2022 Regulations comes into force from 1 December 2022 to 1 February 2023.

Regulation 2(3) amends the heading of Part 3 and regulation 2(4) amends the heading of regulation 7 of the 2022 Regulations to reflect the change in date on which Part 3 comes into force.

Regulation 2(5) amends the transitional provision for the regulations in Part 3 of the 2022 Regulations so that the regulations in that Part will not apply to work which does not require a building warrant and which is completed before 1 February 2023 or not completed before that date where the contract for the work is entered into before 1 February 2022 and the work is completed on or before 31 May 2023.

As per purpose above and including Scottish Government Policy Note

## **POLICY NOTE**

### **THE BUILDING (SCOTLAND) AMENDMENT (AMENDMENT) (NO. 2) REGULATIONS 2022**

#### **SSI 2022/340**

The above instrument was made in exercise of the powers conferred by sections 1 and 54(2) and schedule 1 of the Building (Scotland) Act 2003. The instrument is subject to negative parliamentary procedure.

#### **Purpose of the instrument.**

These Regulations amend The Building (Scotland) Amendment Regulations 2022 (the “2022 Regulations”) which introduced new mandatory energy and environmental standards for buildings and building work. The purpose of this instrument is to amend the date on which Part 3 of the 2022 Regulations comes into force from 1 December 2022 to 1 February 2023.

#### **Policy Objectives**

Section 1 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations (building regulations) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings for purposes including securing the health, safety, welfare and convenience of persons in or about buildings, furthering the conservation of fuel and power, and furthering the achievement of sustainable development.

The policy objectives are to improve the emission and energy performance of buildings and to reduce the risk to health from overheating in new residential buildings. This is achieved through amendment of The Building (Scotland) Regulations 2004 (the “2004 Regulations”), made under the Act, which set minimum standards for the function and performance of buildings and building work. The mandatory standards applicable to building design and construction are set out in regulation 9 and schedule 5 of the 2004 Regulations.

This instrument amends the date on which provisions within Part 3 of the 2022 Regulations come into force from 1 December 2022 to 1 February 2023. The date on which provisions within Part 3 of the 2022 Regulations come into force was

previously amended by The Building (Scotland) Amendment (Amendment) Regulations 2022.

This change is required to provide a longer period for the development and implementation of supporting third-party energy assessment software tools used to demonstrate compliance with the building standards introduced in Part 3. These Regulations also make changes to the transitional provision in regulation 11 of the 2022 Regulations and to headings in those regulations, where reference is made to an into force date of 1 December 2022.

**Consultation**

No consultation was needed for this amending instrument

**Impact Assessments**

No impact assessments are required for this amending instrument.

**Financial Effects**

This instrument has no financial effects.

Scottish Government  
Local Government and Housing Directorate  
November 2022