

Local Government, Housing and Planning Committee

15th Meeting, 2021 (Session 6)

Tuesday 17 May 2022

Subordinate Legislation: The Building (Scotland) Amendment Regulations 2022

Introduction

1. The purpose of this paper is to provide information for the Committee's evidence session on the Building (Scotland) Amendment Regulations 2022 (SSI 2022/136).
2. At this meeting, the Committee will take evidence on the Regulations from the Minister for Zero-Carbon Housing, Active Travel and Tenants' Rights.
3. The Regulations and related documents can be accessed via the links below—
 - [The Building \(Scotland\) Amendment Regulations 2022](#)
 - [Policy Note](#)
 - [Final Regulatory Impact Assessment – changes on fire safety of external wall cladding systems](#)
 - [Final Regulatory Impact Assessment – changes to energy standards and associated topics, including review of domestic ventilation and overheating risk](#)
4. The Committee took evidence on the Regulations from a panel of stakeholders on 10 May 2022. The Official Report of that meeting had yet to be published at the time of writing but is expected to be available on the Committee's website on the afternoon of Friday 13th May: [Local Government, Housing and Planning Committee | Scottish Parliament Website](#)

5. Whilst the primary purpose of both evidence sessions is to consider the Regulations themselves, the Committee may also wish to take the opportunity to explore more broadly issues relating to fire safety standards in buildings with the Minister.
6. The Session 5 Local Government and Communities Committee's [Legacy Report](#) suggested that its successor may wish to continue scrutiny into "Zero valued homes: The issue of cladding systems, mortgage valuations, EWS1 forms and grants to support cladding removal and replacement may remain an issue for the foreseeable future."
7. Members will be aware that a Ministerial Statement providing an update on the Cladding Remediation Programme was expected to take place on the afternoon of Thursday 12 May. The content of the statement was not known at the time of writing, but it is likely that it will be relevant to this meeting.

The Regulations

8. The Regulations were laid on 29 April under powers conferred by the Building (Scotland) Act 2003 and amend the Building (Scotland) Regulations 2004 which set out mandatory standards for buildings and building works. The Scottish Government's intention is that Parts 1 and 2 will come into force on 1 June 2022 whilst Part 3 will come into force from 1 October 2022.
9. The Policy Note states that—

"The policy objectives, where building work is undertaken, are to improve fire safety in buildings, improve the emission and energy performance of buildings and to reduce the risk to health from overheating in new residential buildings."
10. Part 2 of the Regulations relates to fire safety whilst Part 3 relates to energy performance and overheating risk. Both parts of the Regulations apply to new buildings and to buildings being converted, altered or extended.
11. Part 2 of the Regulations—

- introduces new requirements applicable to external wall cladding systems to prevent the use of high-risk materials;
- requires that work to an external wall cladding system (other than a minor repair) will require a building warrant and to meet the mandatory standards; and
- clarifies that compliance with the standard which addresses fire spread on external walls (standard 2.7) requires that regard should be taken of the height, use and position of the building.

12. Part 3 of the Regulations—

- introduces a new requirement (standard 3.28) to address overheating risk in certain types of residential building;
- amends standard 6.1 to require that the design and construction of certain buildings is capable of reducing the energy demand of the building; and
- provides that the emissions target in standard 6.1, which requires that the energy performance of the building is capable of reducing carbon dioxide emissions, only applies to buildings which are heated or cooled by a “direct emissions heating system”

13. The Regulations also amend the requirements for commissioning of building systems (standard 6.7).

Consultation

14. The Policy Note confirms that the Scottish Government consulted on the Regulations with interested persons and bodies. The consultation, responses and analysis reports can be accessed via the following links—

- [Building standards \(fire safety\) - a consultation on external wall systems](#)
- [Scottish Building Regulations: Proposed changes to Energy Standards and associated topics, including Ventilation, Overheating and Electric Vehicle Charging Infrastructure](#)

Financial Effects

15. The Policy Note states that both parts of the Regulations “are considered to have a material impact on the cost of delivering new buildings and new building work.” Further information on the financial impacts is provided in the impact assessments published alongside the Regulations.

Background

16. After the Grenfell Tower fire in 2017, the Scottish Government established the [Building Standards \(Fire Safety\) Review Panel](#), chaired by Dr Paul Stollard, with the following remit—

1. To review standards in light of evidence from Grenfell Tower.
2. To comment on appropriateness and relevance of the current standards and guidance.
3. To consider the relevance of British Standard and European tests.
4. To provide an opinion of whether any changes are necessary.
5. To keep this under review, as further evidence emerges.

17. The Review Panel recommended to Ministers that the building regulations relating to external fire spread (Standard 2.7) did not require to be amended. It did, however, recommend that the supporting guidance in the technical handbooks could be strengthened. Its report was published in June 2018 and can be accessed via the following link—

- [Review Panel on Building Standards \(Fire Safety\) in Scotland: report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

18. A parallel [Review Panel on Compliance and Enforcement](#), chaired by Professor John Cole, was established at the same time. The scope of this Review Panel was—

1. To review the standards and guidance for high rise domestic buildings and high-rise residential buildings. A high-rise building means a building with any storey at a height of more than 18 metres above the ground. A domestic building means a dwelling or dwellings and any common areas associated with a dwelling. A residential building means a non-domestic building having sleeping accommodation.
2. The primary focus for these high-rise buildings is on standards 2.4 to 2.9 and standard 2.15. These standards cover cavities, internal linings, spread to neighbouring buildings, spread on external walls, spread from neighbouring buildings, escape and automatic life safety fire suppression systems.
3. Finally, the standards and guidance for the other building types (including low rise buildings) will be reviewed in light of any changes to standards or guidance from 1 or 2 above.

19. The Review Panel on Compliance and Enforcement's report was also published in June 2018 and can be accessed via the link below—

- [Building standards compliance and enforcement review: report - gov.scot \(www.gov.scot\)](#)
20. The Scottish Government then introduced the following key changes in relation to cladding on 1 October 2019 via the [Building \(Scotland\) Amendment Regulations 2019 \(SSI 2019 No. 210\)](#)—
- lowering the height at which combustible cladding can be used from 18 metres to 11 metres to align with fire fighting from the ground
 - tighter controls over the combustibility of cladding systems on hospitals, residential care buildings, entertainment and assembly buildings, regardless of building height.
21. In December 2020, the Scottish Government then established a further [Building Standards \(Fire Safety\) Review Panel 2020/21](#), chaired by Peter Drummond of the Royal Incorporation of Architects in Scotland, with the following remit—
- consider a ban on the highest risk cladding materials including Metal Composite Material (MCM) cladding panels;
 - consider the ongoing role of BS 8414 in supporting guidance including any new test evidence, modelling, real fire data and evidence emerging from the Grenfell Phase 2 Inquiry;
 - competence of those involved in cladding systems design, testing, installation and verification will also be considered; and
 - any unintended consequences will also be identified and considered.
22. The current Regulations arose from this Review Panel’s recommendations and the most recent set of minutes (from [January 2022](#)) state that “a submission would be sent to Ministers to agree final fire policy direction.”
23. The minutes further confirm that the Review Panel “agreed no need for further meetings and the BSD would only revert back to or inform the panel if any notable change or new information came to light through the Grenfell Tower Inquiry.”

Procedure

24. The Regulations are subject to the negative procedure meaning there is no requirement for the Committee to report on them. However, it may wish to write to the Minister after his evidence session if it wishes to make any specific recommendations or seek further information on potential future work in this area.
25. The deadline by which the Committee must complete its consideration of the Regulations is 31 May 2022.
26. The Delegated Powers and Law Reform Committee, which considers the technical aspects of subordinate legislation, considered the Regulations on

[3 May](#) and agreed that it did not need to draw the Parliament's attention to the instrument under any of the reporting grounds within its remit.

Conclusion

27. The Committee is invited to consider the above information in its evidence session with the Minister for Zero-Carbon Housing, Active Travel and Tenants' Rights.

**Committee Clerks,
May 2022**