

Explanatory Memorandum to the Building Safety Act 2022 (Consequential Amendments) (Approved Inspectors) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Building Regulations Team and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Building Safety Act 2022 (Consequential Amendments) (Approved Inspectors) (Wales) Regulations 2022.

Julie James MS

Minister for Climate Change

07 July 2022

PART 1

1. Description

1.1 The Building Safety Act 2022 (Consequential Amendments) (Approved Inspectors) (Wales) Regulations 2022 (“these Regulations”) amend the Building (Approved Inspectors etc.) Regulations 2010 (“the 2010 AI Regulations”) to remove references to the requirement for insurance under a scheme approved by the Welsh Ministers in respect of approved inspectors.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 Section 47(6) of the Building Act 1984 (“the 1984 Act”) provides the Secretary of State with a power to approve schemes that appear to him to secure the provision of adequate insurance cover for approved inspectors. This function, along with most of the Secretary of State’s functions conferred by or under the 1984 Act were, so far as exercisable in relation to Wales, transferred to Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009, and in relation to excepted energy buildings in Wales, by section 54 of the Wales Act 2017.

3.2 The Building Safety Act 2022 received Royal Assent on the 28 April 2022. Section 48 of the Building Safety Act 2022 makes amendments to the 1984 Act, including removing the power for the Welsh Ministers to approve schemes of insurance for approved inspectors. The Building Safety Act 2022 (Commencement No. 1) (Wales) Regulations 2022 (“the Commencement Regulations”) provide that section 48 will come into force in Wales on 28 July 2022.

3.3 Once section 48 is commenced, consequential amendments will be necessary to remove references to, and requirements in relation to, approved schemes of insurance for approved inspectors in the 2010 AI Regulations. These Regulations will make these consequential amendments pursuant to section 167(1) and (2) of the Building Safety Act 2022.

3.4 In accordance with section 167(6) of the Building Safety Act 2022 these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The current insurance scheme approved by the Welsh Ministers is being withdrawn by the provider in August 2022. At that point, as there will be no Welsh Minister approved insurance scheme, approved inspectors will not be able to comply with the current requirements in the 1984 Act and the 2010 AI Regulations.

4.2 Section 48 of the Building Safety Act 2022 removes the power for the Welsh Ministers to approve schemes of insurance and makes other related amendments to the 1984 Act. The Commencement Regulations will bring section 48 into force on 28 July. These Regulations make the necessary consequential amendments to remove references and requirement in relation to approved schemes of insurance for approved inspectors.

4.3 The intended effect of section 48 is to increase the market provision of approved inspector insurance. Following the removal of the requirement for approval of schemes by the Welsh Ministers the insurance industry will be able to provide cover on a more flexible basis based on individual company profiles and liabilities. This should increase market availability and enable insurance to reflect the risk of an individual company and the work they undertake. The approved inspector and insurance market operates on an England and Wales basis and the same amendments are being made in England for the same reasons at the same time.

4.4 Approved inspectors will still be required to have insurance as part of their registration on the Approved Inspectors Register, currently maintained by CICAIR.

1.1 It should be noted that these Regulations only address references to the approved insurance schemes for approved inspectors, not those under sections 16 and 17 of the Building Act 1984. This is because they currently have no effect in Wales and will be addressed as part of a full review of sections 16 and 17.

5. Consultation

5.1 No public consultation has been undertaken for these Regulations. In the circumstances it is considered a public consultation is not necessary as these Regulations make technical amendments consequential on commencement of section 48 of the Building Safety Act 2022. The Building Regulations Advisory Committee for Wales were notified on 7 June and raised no issues.

6. Regulatory Impact Assessment (RIA)

6.1 As these Regulations make consequential amendments to update subordinate legislation and the amendments do not impose additional costs, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.