
STATUTORY INSTRUMENTS

2023 No. 753

**The Building Safety (Responsible Actors
Scheme and Prohibitions) Regulations 2023**

PART 2

The Responsible Actors Scheme

CHAPTER 1

Establishment and eligibility for membership

Establishment of scheme

5. A scheme to be known as the Responsible Actors Scheme (“the scheme”), which is a scheme to secure the safety of people in or about buildings and improve the standard of buildings by securing that persons in the building industry remedy defects in buildings relating to fire safety and contribute to costs associated with remedying such defects in relation to buildings, is established in accordance with these Regulations.

Eligibility: general

6. A person (in this regulation and regulations 7 to 11, “P”) is eligible to be a member of the scheme if P—

- (a) satisfies the criteria set out in regulation 7, 8 or 9; and
- (b) is not a registered provider of social housing, or a wholly-owned subsidiary of a registered provider of social housing (and “wholly-owned subsidiary” has the meaning given in section 1159 of the Companies Act 2006⁽¹⁾).

Eligibility: residential property developers

7.—(1) The criteria in this regulation are satisfied if—

- (a) P’s principal business is residential property development, within the meaning in regulation 10;
- (b) P has been responsible for the development or refurbishment of one or more relevant buildings in the relevant period; and
- (c) P satisfies the condition in regulation 11.

(2) For the purposes of determining whether the condition in paragraph (1)(b) is met, P is to be treated as being responsible for the development or refurbishment of a building, if that building is a relevant building which a body corporate in the same group as P (“GP”) was responsible for developing or refurbishing in the relevant period, whether or not the building was developed or refurbished before GP was in the same group as P.

(1) 2006 c. 46.

Eligibility: buildings eligible for remediation funds

8.—(1) The criteria in this regulation are satisfied if—

- (a) P has been responsible for the development or refurbishment of two or more buildings which have before the date these Regulations come into force been assessed as being eligible for funding under one of the following funds established by the Secretary of State—
 - (i) the Private Sector ACM Cladding Remediation Fund;
 - (ii) the Social Sector ACM Cladding Remediation Fund; or
 - (iii) the Building Safety Fund; and
- (b) P satisfies the condition in regulation 11.

(2) For the purposes of determining whether the condition in paragraph (1)(a) is met, P is to be treated as being responsible for the development or refurbishment of a building if a body corporate in the same group as P (“GP”) was responsible for developing or refurbishing the building, whether or not the building was developed or refurbished before GP was in the same group as P.

(3) For the purposes of paragraph (1)(a), a building has been assessed as eligible if—

- (a) a decision has been taken by the Secretary of State—
 - (i) in relation to the Private Sector ACM Cladding Remediation Fund, approving the grant of funding in relation to the building, with or without conditions,
 - (ii) in relation to the Social Sector ACM Cladding Remediation Fund, approving the application for funding, with or without conditions, or
 - (iii) in relation to the Building Safety Fund, determining that the building is eligible for funding from the Fund, and
- (b) notice in writing of the decision has been given to the person who made the application to the fund in question.

Voluntary eligibility

9.—(1) The criteria in this regulation are satisfied if—

- (a) P has been responsible for the development or refurbishment of one or more relevant buildings in the relevant period;
- (b) at least one of the buildings referred to in sub-paragraph (a) would require remediation under the Self Remediation Terms, if P were subject to the Self Remediation Terms; and
- (c) P wishes to become a member of the scheme.

(2) For the purposes of determining whether the condition in paragraph (1)(a) is met, P is to be treated as being responsible for the development or refurbishment of a building, if that building is a relevant building which a body corporate in the same group as P (“GP”) was responsible for developing or refurbishing in the relevant period, whether or not the building was developed or refurbished before GP was in the same group as P.

Residential property development

10.—(1) For the purposes of regulation 7(1)(a), P’s principal business is residential property development if—

- (a) 50% or more of P’s total adjusted operating profits for the specified period were derived from the development of residential property in the United Kingdom; or
- (b) it is reasonable for Secretary of State to conclude from—

- (i) annual reports published by P, or
 - (ii) where P does not publish an annual report, any other publication published by P or by a body corporate in the same group as P,
- which relate to the specified period, that P’s principal business activity during the specified period was the development of residential property.
- (2) For the purposes of this regulation—
- (a) “residential property” has the same meaning as in section 37 of the Finance Act 2022⁽²⁾;
 - (b) the “development of residential property”—
 - (i) means commissioning or undertaking the construction or refurbishment of residential property, with a view to granting or disposing of interests in that property, and
 - (ii) includes residential property development activities (within the meaning of section 35 of the Finance Act 2022) which are ancillary to the activities in paragraph (i);
 - (c) P’s adjusted operating profits means the adjusted operating profits for the specified period derived from P’s accounts or consolidated accounts, as applicable, in accordance with regulation 11.

Profit condition

- 11.**—(1) The condition in this regulation is satisfied if—
- (a) where P does not file consolidated accounts, the average adjusted operating profits for the specified period, as derived from P’s accounts are greater or equal to £10 million; or
 - (b) where P files consolidated accounts, the average adjusted operating profits for the specified period, as derived from the consolidated accounts for P are greater or equal to £10 million.
- (2) The average adjusted operating profits referred to in paragraph (1) are to be calculated as the sum of the adjusted operating profits derived from P’s accounts (or where paragraph (1)(b) applies, the adjusted operating profits derived from P’s consolidated accounts) in each of the three financial years in the specified period divided by three.
- (3) If P satisfies the criteria at regulation 7 or 8 including the condition in paragraph 11(1), P does not cease to be eligible to be a member of the scheme because P’s adjusted operating profits fall below £10 million in any financial year after the specified period has ended.
- (4) In this regulation—
- “accounts” means—
- (a) financial statements delivered to the registrar of companies in accordance with section 441 of the Companies Act 2006⁽³⁾; or
 - (b) where P is not subject to section 441 of the Companies Act 2006, such other available financial information about P which enables P’s adjusted operating profits to be determined;
- “adjusted operating profits” means operating profits adjusted, if necessary, so as to—
- (a) include the share of any profit or loss from joint ventures or associates, where consolidated accounts are prepared;
 - (b) include any investment income recognised from subsidiaries, joint ventures or associates, where unconsolidated accounts are prepared;

(2) 2022 c. 3.
(3) 2006 c. 46.

- (c) exclude items that are non-recurring in nature, such exclusions to include—
 - (i) items described in the accounts as “exceptional”, which are material individually or in aggregate, and are non-recurring in nature;
 - (ii) gains or losses on the disposal of businesses and investments;
 - (iii) non-recurring costs of restructuring or the reorganisation of existing businesses;
 - (iv) costs of integrating newly acquired businesses;
 - (v) acquisition or disposal costs incurred on the acquisition or disposal of control of a business; and
 - (vi) costs associated with remediating or mitigating defects in buildings relating to fire safety, including any provision made for such costs;
- (d) exclude unrealised valuation adjustments, other than normal depreciation charges, such exclusions to include—
 - (i) fair value adjustments;
 - (ii) revaluation gains or losses;
 - (iii) impairment losses.

“associate” has the same meaning as in IAS 28;

“IAS 28” means International Accounting Standard 28 Investments in Associates and Joint Ventures, as published in October 2017 by the International Accounting Standards Board;

“joint venture” has the same meaning as in IAS 28;

“operating profits” means the profits derived from operating activities, so far as their disclosure in the accounts (whether consolidated or unconsolidated) complies with paragraph 5.9B of Financial Reporting Standard 102 as published by the Financial Reporting Council in March 2013 and revised in March 2018.

(5) For the purposes of paragraph (4), where operating profits are not disclosed in the accounts (whether consolidated or unconsolidated) then operating profit should be determined from profit before tax adjusted to exclude interest, investment income and finance costs.

Eligibility: avoidance

12.—(1) In any assessment of a person’s eligibility to be a member of the scheme under these Regulations, the Secretary of State must disregard any steps taken by the person or by a member of their group after the date on which these Regulations were laid before Parliament where such steps were taken for the main purpose, or one of the main purposes, of the person avoiding being eligible for the scheme (“avoidance action”).

(2) Where—

- (a) a person (“W”) has been wound up, and
- (b) the Secretary of State concludes that—
 - (i) they were wound up as a result of avoidance action, and
 - (ii) they would have been eligible for the scheme but for such avoidance action,

the Secretary of State may direct that another person (“B”) in the group of which W was a member before being wound up, including a person which does not itself meet the criteria in regulation 7 or 8, is to be treated as eligible to join the scheme.

(3) The direction referred to in paragraph (2) must contain a statement that unless B complies with the conditions in paragraph (4), the Secretary of State must include the name of B, and the names of persons controlled by B, on the prohibitions list.

(4) Where B receives the direction referred to in paragraph (2), regulation 14(2) applies as though—

- (a) B were the person referred to as F in that regulation; and
- (b) the notice referred to in paragraph (2)(b) of that regulation were a notice that W would not have been eligible to join the scheme but for the avoidance action as a result of which W was wound up.

CHAPTER 2

Membership of the scheme

Invitation by the Secretary of State to apply for membership

13.—(1) In this regulation—

- (a) “E” is a person whom the Secretary of State considers is likely to satisfy the criteria in regulation 7 or 8 and does not fall within regulation 6(b);
- (b) “D” is the designated person in accordance with paragraph (3);
- (c) “C” is a person invited to apply to become a member of the scheme in accordance with paragraphs (2), (4) or (5).

(2) Subject to paragraphs (3) to (6), the Secretary of State must give notice to E inviting E to apply to become a member of the scheme.

(3) Where E is a member of a group and the Secretary of State considers that there is more than one person in the group who is likely to satisfy the criteria in regulation 7 or 8 and does not fall within regulation 6(b), the Secretary of State must direct that only one of those persons is for the time being to be invited to apply to become a member of the scheme (“the designated person”, D).

(4) Where paragraph (3) applies the Secretary of State must give notice to D inviting D to apply to become a member of the scheme.

(5) Where a person in E’s group which is not eligible under regulation 6 has entered into a Self Remediation Contract before the date on which these Regulations come into force, subject to paragraph (6), the Secretary of State must give notice inviting the following persons to apply to become a member of the scheme—

- (a) the person who has entered into a Self Remediation Contract, and
- (b) either E or, where paragraph (3) applies, D,

and must accept such an application by either the person invited under sub-paragraph (a) or the person invited under sub-paragraph (b).

(6) Where, before the date of the notice referred to in paragraph (5), the person falling within paragraph (5)(a) gives notice to the Secretary of State that they intend to apply to become a member of the scheme, the Secretary of State may direct that only that person is for the time being to be invited to apply to become a member of the scheme, and accordingly is not required by paragraph (5) to give a notice to any person under paragraph (5)(b).

(7) The notice given under paragraphs (2) or (4) must contain a statement that unless C complies with the conditions in regulation 14, the Secretary of State must include the name of C, and the names of persons controlled by C, on the prohibitions list.

(8) Any notices given under paragraph (5) must contain a statement that unless each person to whom a notice is given complies with the conditions in regulation 14, the Secretary of State must include the name of any person falling within paragraph (5)(b), or the person who would have been invited to join the scheme under that paragraph if notice had not been dispensed with under paragraph (6), and the names of persons controlled by that person, on the prohibitions list.

Application for membership following invitation

14.—(1) In this regulation—

- (a) “F” is a person invited to apply to become a member of the scheme in accordance with regulation 13(2) or (4);
- (b) “G” is a person invited to apply to become a member of the scheme in accordance with regulation 13(5)(a);
- (c) “H” is a person invited to apply to become a member of the scheme in accordance with regulation 13(5)(b), or, for the purposes of paragraph (3), is the person who would have been invited to join the scheme under regulation 13(5)(b) if notice had not been dispensed with under regulation 13(6).

(2) F must, within 60 days beginning with the date of the notice given under regulation 13(2) or (4), unless that period is extended under paragraph (12)—

- (a) enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership to the Secretary of State in accordance with paragraph (11); or
- (b) give notice to the Secretary of State that neither F nor any body corporate in the same group as F is eligible to join the scheme and evidence to support that view must accompany that notice;

and if F does not do so, then with effect from the date that period expires—

- (i) F will be treated as a person who is eligible to join the scheme but has not joined, and
- (ii) the name of F and the names of persons controlled by F must be included on the prohibitions list.

(3) Where the notice to the person in regulation 13(5)(b) is dispensed with in accordance with regulation 13(6), G must, within 60 days beginning with the date of the notice given under regulation 13(5)(a), unless that period is extended under paragraph (12), submit an application for membership to the Secretary of State in accordance with paragraph (11) and if G does not do so then with effect from the date that period expires—

- (a) H will be treated as a person who is eligible to join the scheme but has not joined, and
- (b) the name of H and the names of persons controlled by H must be included on the prohibitions list.

(4) Where the notice to the person in regulation 13(5)(b) is not dispensed with in accordance with regulation 13(6), within 60 days beginning with the date of the notices given under regulation 13(5), unless that period is extended under paragraph (12)—

- (a) either—
 - (i) G must submit an application for membership to the Secretary of State in accordance with paragraph (11); or
 - (ii) H must enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership to the Secretary of State in accordance with paragraph (11); or
- (b) both G and H must give notice to the Secretary of State that neither H nor any body corporate in the same group as them is eligible to join the scheme and evidence supporting that view must accompany that notice;

and if G and H do not do so, then with effect from the date that period expires—

- (i) H will be treated as a person who is eligible to join the scheme but has not joined, and
- (ii) the name of H and the names of persons controlled by H must be included on the prohibitions list.

(5) Where the Secretary of State receives notice under paragraph (2)(b) or (4)(b), the Secretary of State must determine—

- (a) in the case of a notice under paragraph (2)(b), whether F or, where relevant, any other body corporate in the same group as F, is eligible to join the scheme;
- (b) in the case of a notice under paragraph (4)(b), whether H or, where relevant, any other body corporate in the same group as H is eligible to join the scheme.

(6) The Secretary of State may request that the person giving the notice under paragraph (2)(b) or (4)(b), or any body corporate in the same group as that person, provide any further information which the Secretary of State requires to make a determination under paragraph (5). A request under this paragraph must—

- (a) be by notice in writing;
- (b) specify the further information which the Secretary of State requires; and
- (c) specify a time by which the information must be provided.

(7) If a person requested to provide information under paragraph (6) does not provide the specified information within the period specified in the notice, the determination under paragraph (5) must be treated as a determination that F or H, as applicable, is eligible and paragraph (8) will apply.

(8) Where—

- (a) following the giving of a notice under paragraph (2)(b), the Secretary of State determines that F is eligible to join the scheme (including where paragraph (7) applies)—
 - (i) the Secretary of State must give notice in writing to F of that determination, and
 - (ii) to join the scheme, F must enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership in accordance with paragraph (11) within 30 days beginning with the date of the notice of the determination, unless that period is extended under paragraph (12);
- (b) following the giving of a notice under paragraph (4)(b), the Secretary of State determines that H is eligible to join the scheme (including where paragraph (7) applies)—
 - (i) the Secretary of State must give notice in writing to H of that determination (and may give notice to G of the determination), and
 - (ii) to join the scheme, H must enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership in accordance with paragraph (11) within 30 days beginning with the date of the notice of the determination, unless that period is extended under paragraph (12).

(9) Where the Secretary of State determines that F or, where applicable, H, is not eligible to join the scheme, but that a different body corporate in the same group is eligible (“the eligible body corporate”), the Secretary of State must—

- (a) direct that the eligible body corporate is for the time being to be invited to apply to become a member of the scheme, and
- (b) give notice of his determination to the eligible body corporate,

and the eligible body corporate must enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership in accordance with paragraph (11), within 30 days beginning with the date of the notice of the determination unless that period is extended under paragraph (12).

(10) The notice given under paragraph (9) must contain a statement that unless the eligible body corporate takes the action provided for in that paragraph, the Secretary of State must include the name of the eligible body corporate, and the names of persons controlled by the eligible body corporate, on the prohibitions list.

(11) An application for membership must—

- (a) be made in writing,
- (b) set out the date on which the applicant entered into a Self Remediation Contract, and
- (c) contain such other information as the Secretary of State may direct.

(12) The Secretary of State may extend any time period specified in this regulation whether or not the Secretary of State receives a request to do so, save that the Secretary of State may not extend any time period after it has already expired.

Request for an invitation to apply for membership

15.—(1) If a person (“R”) considers they are likely to satisfy the criteria in regulation 7 or 8, and does not fall within regulation 6(b), but neither R nor any other person in the same group as R has received a notice under regulation 13(2), (4) or (5), R may request that the Secretary of State invite R to apply to become a member of the scheme.

(2) Where R makes a request under paragraph (1), the Secretary of State must treat R as though R is the person referred to as E in regulation 13 and must proceed in accordance with regulations 13 and 14.

Applications for volunteers

16.—(1) If a person (“V”) considers they are likely to satisfy the criteria in regulation 9, and does not fall within regulation 6(b), but neither V nor any other person in the same group as V has received a notice under regulation 13(2), (4) or (5), V may apply to the Secretary of State for a determination as to whether V satisfies the criteria in regulation 9, providing the Secretary of State with evidence of the application of those criteria to V.

(2) Subject to paragraph (7), if the Secretary of State determines that V satisfies the criteria in regulation 9, the Secretary of State must—

- (a) give notice in writing to V of that determination, and
- (b) notify V that V must submit an application for membership to the Secretary of State in accordance with paragraph (5).

(3) The notice referred to in paragraph (2)(b) must contain the statement that if V joins the scheme, and V’s membership is later revoked, the Secretary of State must include V’s name, and the names of persons controlled by V, on the prohibitions list.

(4) Where V receives a notice under paragraph (2)(b), to join the scheme V must, within 60 days beginning with the date of the notice unless that period is extended under paragraph (6), enter into a Self Remediation Contract (if they have not already done so) and submit an application for membership in accordance with paragraph (5).

(5) An application for membership must—

- (a) be made in writing,
- (b) set out the date on which the applicant entered into a Self Remediation Contract, and
- (c) contain such other information as the Secretary of State may direct.

(6) The Secretary of State may extend any time period specified in this regulation whether or not the Secretary of State receives a request to do so, save that the Secretary of State may not extend any time period after it has already expired.

(7) A person may not apply for membership under this regulation where the person or a person in their group satisfies the criteria in regulation 7 or 8.

Late application for membership

17.—(1) A person (“L”) who, in accordance with regulation 14—

- (a) has been determined to be eligible to join the scheme but has not joined in accordance with that regulation, or
- (b) is treated as a person who is eligible to join the scheme but has not joined in accordance with that regulation,

may notify the Secretary of State in writing that it wishes to apply to become a member of the scheme.

(2) A notice under paragraph (1) must state that L is willing to enter into a Self Remediation Contract.

(3) Following receipt of a notice which complies with paragraph (2), the Secretary of State must give notice to L inviting L to apply to become a member of the scheme.

(4) The notice given under paragraph (3) must contain a statement that until L has entered into a Self Remediation Contract and become a member of the scheme—

- (a) L’s name, and the names of persons controlled by L, will not be removed from the prohibitions list, and
- (b) the prohibitions in Part 3 applicable to persons on the prohibitions list will continue to apply.

(5) On receipt of the notice referred to in paragraph (3), to join the scheme L must—

- (a) enter into a Self Remediation Contract (if they have not already done so), and
- (b) make an application for membership of the scheme in accordance with paragraph (6).

(6) An application for membership must—

- (a) be made in writing,
- (b) set out the date on which the applicant entered into a Self Remediation Contract, and
- (c) contain such other information as the Secretary of State may direct.

Application following revocation of membership

18.—(1) A person (“N”) whose membership of the scheme has been revoked by the Secretary of State in accordance with regulation 26 may notify the Secretary of State in writing that it wishes to apply to become a member of the scheme.

(2) A notice under paragraph (1)—

- (a) must describe how N proposes to rectify the matters which led to N’s membership being revoked if N’s membership of the scheme is restored, providing evidence to support that contention;
- (b) must provide evidence of steps already taken to rectify those matters;
- (c) if N has ceased to be subject to the Self Remediation Terms, must state that N is willing to enter into a Self Remediation Contract.

(3) Following receipt of a notice under paragraph (1), if the Secretary of State is satisfied that—

- (a) the proposals contained in the notice for the purposes of paragraph (2)(a) are sufficient and appropriately evidenced;
- (b) N has taken reasonable steps to rectify the matters which led to N’s membership being revoked; and
- (c) where relevant, the request contains the statement required by paragraph (2)(c),

the Secretary of State must give notice to N inviting N to apply to become a member of the scheme.

- (4) The notice given under paragraph (3) must contain a statement that until N has entered into a Self Remediation Contract (if N has ceased to be subject to the Self Remediation Terms), and has become a member of the scheme—
- (a) N's name, and the names of persons controlled by N, will not be removed from the prohibitions list; and
 - (b) the prohibitions in Part 3 applicable to persons on the prohibitions list will continue to apply.
- (5) On receipt of the notice referred to in paragraph (3), to join the scheme N must—
- (a) enter into a new Self Remediation Contract, if N has ceased to be subject to the Self Remediation Terms; and
 - (b) make an application for membership of the scheme in accordance with paragraph (6).
- (6) An application for membership must—
- (a) be made in writing,
 - (b) set out the date on which the applicant entered into a Self Remediation Contract, and
 - (c) contain such other information as the Secretary of State may direct.

Determination of applications

- 19.**—(1) Where the Secretary of State receives an application for membership in accordance with regulations 14, 16, 17 or 18, the Secretary of State must—
- (a) register the applicant as a member of the scheme,
 - (b) notify the applicant that they have been so registered, and
 - (c) inform them of the date from which their registration takes effect.
- (2) If the application is made under regulation 17 or 18, on receipt of the application the Secretary of State must remove the applicant's name, and the names of persons controlled by the applicant, from the prohibitions list.

Publication of list of members, prohibitions list and other lists

- 20.**—(1) The Secretary of State must prepare, maintain and publish—
- (a) a list of members of the scheme, and
 - (b) a list of persons to whom regulation 28 applies (“the prohibitions list”).
- (2) The Secretary of State may not include a person on the prohibitions list if that person has had the planning and building control prohibitions disapplied in their entirety in accordance with regulation 42.
- (3) Before including a person on the prohibitions list the Secretary of State must give notice to the person in accordance with these Regulations that they are to be included on the list.
- (4) The notice referred to in paragraph (3) must contain the following information—
- (a) the date from which the person is to be included on the prohibitions list; and
 - (b) where applicable, the date or dates by which the person must make an application for any exceptions provided for in these Regulations.
- (5) The Secretary of State may also publish a list of persons to whom the Secretary of State has sent a warning notice under regulation 25 which has not been withdrawn.

CHAPTER 3

Conditions of scheme

Self Remediation Terms

21.—(1) Subject to paragraph (3), a member of the scheme must enter into a contract with the Secretary of State (“a Self Remediation Contract”) which contains terms that apply to contracts between a developer and the Secretary of State providing for the developer to undertake the remediation of the buildings for which they are responsible, as published by the Secretary of State on 16th March 2023 and referred to as the developer remediation contract (“the Self Remediation Terms”).

- (2) Each member of the scheme must, in accordance with the Self Remediation Terms—
- (a) identify those buildings for which they are responsible in accordance with the Self Remediation Terms (“their own buildings”) which require works to remedy fire safety defects;
 - (b) undertake at their own cost, or procure at their own cost, the works necessary to remediate or fully to mitigate any fire safety defects (“remediation works”) in their own buildings, where this is required under the Self Remediation Terms and in accordance with the standards applicable to those works as provided for in the Self Remediation Terms;
 - (c) accept responsibility for undertaking remediation works at their own cost, or procuring remediation works at their own cost, to such fund buildings as they are required to or agree to accept under the Self Remediation Terms;
 - (d) make payment to the government of any amounts paid out by any government fund for remediation works on their own buildings as required by the Self Remediation Terms;
 - (e) not undertake or procure others to undertake restructuring or other actions that would, or would reasonably be expected to, result in the member being unable to fulfil its obligations under the Self Remediation Terms except in the circumstances allowed under the Self Remediation Terms; and
 - (f) comply with all other obligations to which they are subject under the Self Remediation Terms.

(3) A member of the scheme who has entered into a contract with the Secretary of State on the same or substantially the same terms as the Self Remediation Terms before the date on which these Regulations come into force is to be treated as satisfying the scheme condition in paragraph (1), and references to Self Remediation Contract in these Regulations are to be treated as including references to the terms of such a contract.

- (4) In this regulation—
- “fire safety defect” has the same meaning as the term “Defect” in the Self Remediation Terms;
 - “fund building” has the meaning given in the definition of “Fund Building” in the Self Remediation Terms.

Provision of information to the Secretary of State

- 22.** A member of the scheme must—
- (a) give the Secretary of State any information they are required to provide under the Self Remediation Terms, at the times or in respect of the periods specified in the Self Remediation Terms;

- (b) provide the Secretary of State with such other information specified by the Secretary of State which the Secretary of State reasonably requires in order to monitor and enforce their compliance with the Self Remediation Terms and these Regulations.

Membership conditions: avoidance

23. A member of the scheme must not themselves take, or procure other persons to take, any step where the main purpose, or one of the main purposes, is to avoid the member's obligations under these Regulations or to frustrate the purposes of the scheme set out in regulation 5.

CHAPTER 4

Termination of membership

Grounds for revocation of membership

- 24.—**(1) The Secretary of State may revoke any member's membership of the scheme where—
- (a) the member ("M", in this regulation and in regulations 25 to 27) has failed to comply with any of the membership conditions in regulation 21(2)(a) to (e) or with any other requirement of the Self Remediation Terms, and that failure is material or persistent;
 - (b) M has failed without reasonable excuse to comply with a request for information under regulation 22;
 - (c) M has provided information to the Secretary of State in an application for membership of the scheme or in response to a request for information under regulation 22 and M—
 - (i) knew the information to be false or misleading in a material respect, or
 - (ii) provided such information recklessly, and the information is false or misleading in a material respect;
 - (d) M has failed to comply with regulation 23.

(2) Nothing in paragraph (1) may be taken to mean that the Secretary of State may only revoke a member's membership of the scheme where a right to terminate a Self Remediation Contract arises under and in accordance with the Self Remediation Terms or is otherwise available at law.

Warning of revocation of membership

25.—(1) Where the Secretary of State considers that one or more of the grounds for revocation of M's membership of the scheme under regulation 24(1) exist, the Secretary of State may give M a notice ("a warning notice") stating that the Secretary of State is proposing to start the procedure for revocation of M's membership in accordance with regulation 26.

- (2) The warning notice must specify—
- (a) the reasons—
 - (i) why the Secretary of State considers that there are grounds to revoke M's membership;
 - (ii) if the Secretary of State proposes to impose conditions under paragraph (3), why the Secretary of State proposes to do so;
 - (b) a period of 28 days after the day on which the warning notice is given ("the representation period"), within which M may make representations to the Secretary of State, and
 - (c) where the Secretary of State publishes a list under regulation 20(5), that M's name will be included on that list and the date from which M is to be included on that list.

(3) The conditions which may be specified in the warning notice are conditions which would allow M to continue as a member of the scheme, if complied with in the period specified in the notice (“the compliance period”).

(4) If M makes any representations to the Secretary of State during the representation period, the Secretary of State must, at the end of that period, after considering M’s representations, decide whether to—

- (a) withdraw the warning notice and remove M’s name from any list published under regulation 20(5);
- (b) confirm the warning notice but vary any conditions which have been specified including by varying the compliance period;
- (c) confirm the warning notice as first given to M.

(5) The Secretary of State must give M notice in writing of the decision taken under paragraph (4).

(6) Where the warning notice contains conditions under paragraph (3), the notice of the Secretary of State’s decision under paragraph (5) must—

- (a) confirm which conditions are to apply, and
- (b) state the date from which the conditions come into effect and from which the compliance period will run.

Procedure for revocation of membership

26.—(1) Where the Secretary of State considers that one or more of the grounds for revocation of M’s membership of the scheme under regulation 24(1) exist, and the Secretary of State proposes to revoke M’s membership of the scheme, a notice must be given to M specifying—

- (a) the grounds for the revocation of M’s membership;
- (b) the reasons why the Secretary of State considers that those grounds exist;
- (c) a period of 28 days after the date on which the notice is given, within which M may make representations to the Secretary of State (“the representation period”);
- (d) where M was given a warning notice under regulation 25 specifying conditions under regulation 25(3), and that notice was not withdrawn, the reasons why the Secretary of State considers that M has not satisfied the conditions in the warning notice.

(2) The Secretary of State—

- (a) may not take the final decision to revoke M’s membership of the scheme until the representation period has expired, and
- (b) must take any representations made during the representation period into account, and may, in the Secretary of State’s discretion, take into account any representations made after the end of that period, in taking that decision.

(3) The Secretary of State must make a final decision and may revoke M’s membership where one or more of the grounds for revocation of M’s membership of the scheme in regulation 24(1) exist.

(4) The Secretary of State must give M notice of a final decision, and where the decision is to revoke M’s membership, that notice must—

- (a) set out the reasons for the decision,
- (b) state the date on which the revocation of M’s membership takes effect, and
- (c) inform M that M’s name and the names of persons controlled by M will from that date be included on the prohibitions list.

(5) The Secretary of State may issue a notice under paragraph (1) whether or not the Secretary of State has previously given M a warning notice under regulation 25.

Ending membership otherwise than by revocation

27.—(1) The Secretary of State may end M’s membership of the scheme where M has substantially satisfied all of M’s obligations under these Regulations and the Self Remediation Terms.

(2) Where M’s membership has ended under paragraph (1), M’s name and the names of persons controlled by M must not be included in the prohibitions list and M and those persons are not subject to the prohibitions in Part 3.